UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

# FORM 8-K

**CURRENT REPORT**

**Pursuant to Section 13 or 15(d)
of the Securities Exchange Act of 1934**

**Date of Report (Date of earliest event reported): February 12, 2008**

# MANDALAY MEDIA, INC.

**(Exact name of registrant as specified in its charter)**

| Delaware | 00-10039 | 22-2267658 |
|---|---|---|
| (State or other jurisdiction of incorporation) | (Commission File Number) | (IRS Employer Identification No.) |

**2121 Avenue of the Stars, Suite 2550
Los Angeles, CA 90067
(Address of principal executive offices and zip code)**

**Registrant's telephone number, including area code: (310) 601-2500**

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions (*see* General Instruction A.2. below):

☐ Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)

☐ Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)

☐ Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))

☐ Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))

**Safe Harbor Statement under the Private Securities Litigation Reform Act of 1995**

Information included in this Current Report on Form 8-K may contain forward-looking statements within the meaning of Section 27A of the Securities Act of 1933, as amended (the "Securities Act"), and Section 21E of the Securities Exchange Act of 1934, as amended (the "Exchange Act"). This information may involve known and unknown risks, uncertainties and other factors which may cause the actual results, performance or achievements of Mandalay Media, Inc., a Delaware corporation ("Mandalay" or the "Registrant"), and Twistbox Entertainment, Inc., a Delaware corporation ("Twistbox" and together with Mandalay, the "Companies"), to be materially different from future results, performance or achievements expressed or implied by any forward-looking statements. Forward-looking statements, which involve assumptions and describe future plans, strategies and expectations of the Companies, are generally identifiable by use of the words "may," "will," "should," "expect," "anticipate," "estimate," "believe," "intend" or "project" or the negative of these words or other variations on these words or comparable terminology. Forward-looking statements are based on assumptions that may be incorrect, and there can be no assurance that any projections or other expectations included in any forward-looking statements will come to pass. The actual results of the Companies could differ materially from those expressed or implied by the forward-looking statements as a result of various factors. Except as required by applicable laws, Mandalay undertakes no obligation to update publicly any forward-looking statements for any reason, even if new information becomes available or other events occur in the future.

Unless the context otherwise indicates, the use of the terms "we," "our" or "us" refers to the business and operations of Mandalay Media, Inc. through its sole operating and wholly-owned subsidiary, Twistbox Entertainment, Inc.

**Item 1.01 Entry into a Material Definitive Agreement.**

As reported on our Current Report on Form 8-K filed with the Securities and Exchange Commission (the "Commission") on January 2, 2008, which is incorporated herein by reference, on December 31, 2007, Mandalay entered into an Agreement and Plan of Merger (the "Original Merger Agreement") with Twistbox Acquisition, Inc., a Delaware corporation and a wholly-owned subsidiary of Mandalay ("Merger Sub"), Twistbox, and Adi McAbian and Spark Capital, L.P. as representatives of the stockholders of Twistbox (the "Stockholder Representatives"), pursuant to which Merger Sub would merge with and into Twistbox, with Twistbox as the surviving corporation through an exchange of capital stock of Twistbox for common stock of Mandalay (the "Merger").

On February 12, 2008, Mandalay, Merger Sub, Twistbox and the Stockholder Representatives entered into an Amendment to Agreement and Plan of Merger (the "Amendment"), which amended certain provisions of the Original Merger Agreement. Pursuant to the Amendment, each outstanding Twistbox option (a "Twistbox Option") to purchase shares of common stock, $0.001 par value per share, of Twistbox ("Twistbox Common Stock") issued pursuant to Twistbox's 2006 Stock Incentive Plan (the "Twistbox 2006 Plan") was assumed by Mandalay upon the consummation of the Merger, subject to the same terms and conditions as were applicable under such plan immediately prior to the Merger, except that (a) the number of shares of common stock of Mandalay, $0.0001 par value per share ("Mandalay Common Stock"), issuable upon exercise of each such Twistbox Option was determined by multiplying the number of shares of Twistbox Common Stock that were subject to such Twistbox Option immediately prior to the Merger by 0.72967 (the "Option Conversion Ratio"), rounded down to the nearest whole number; and (b) the per share exercise price for the shares of Mandalay Common Stock issuable upon exercise of each Twistbox Option was determined by dividing the per share exercise price of Twistbox Common Stock subject to such Twistbox Option, as in effect prior to the Merger, by the Option Conversion Ratio, subject to any adjustments required by the Internal Revenue Code. The merger consideration was also amended to consist of up to an aggregate of 12,325,000 shares of Mandalay Common Stock (the "Merger Consideration"), which included the conversion of all shares of Twistbox capital stock and the reservation of 2,144,700 shares of Mandalay Common Stock required for assumption of the vested Twistbox Options. Mandalay reserved an additional 318,722 shares of Mandalay Common Stock required for the assumption of the unvested Twistbox Options. All other terms of the Original Merger Agreement remained the same and in effect. The Merger was completed on February 12, 2008. A copy of the Amendment is attached hereto as Exhibit 2.2 and incorporated herein by reference.

In connection with the Merger, Mandalay guaranteed part of Twistbox's outstanding debt owed to ValueAct SmallCap Master Fund L.P. ("ValueAct"), and in connection therewith issued ValueAct two warrants to purchase shares of Mandalay Common Stock, as fully described below in Item 2.03 of this Current Report on Form 8-K, which is incorporated herein by reference.

**Item 2.01 Completion of Acquisition or Disposition of Assets.**

**SUMMARY OF THE MERGER**

Mandalay entered into an Agreement and Plan of Merger on December 31, 2007, as subsequently amended by the Amendment dated February 12, 2008 (the "Merger Agreement"), with Merger Sub, Twistbox, and the Stockholder Representatives, pursuant to which Merger Sub would merge with and into Twistbox, with Twistbox as the surviving corporation. The Merger was completed on February 12, 2008.

Pursuant to the Merger Agreement, upon the completion of the Merger, each outstanding share of Twistbox Common Stock, on a fully-converted basis, with the conversion on a one-for-one basis of all issued and outstanding shares of the Series A Convertible Preferred Stock of Twistbox and the Series B Convertible Preferred Stock of Twistbox, each $0.01 par value per share (the "Twistbox Preferred Stock," and together with Twistbox Common Stock, the "Twistbox Capital Stock"), converted automatically into and became exchangeable for Mandalay Common Stock in accordance with certain exchange ratios set forth in the Merger Agreement. In addition, by virtue of the Merger, each Twistbox Option issued pursuant to the Twistbox 2006 Plan was assumed by Mandalay, subject to the same terms and conditions as were applicable under such plan immediately prior to the Merger, except that (a) the number of shares of Mandalay Common Stock issuable upon exercise of each Twistbox Option was determined by multiplying the number of shares of Twistbox Common Stock that were subject to such Twistbox Option immediately prior to the Merger by the Option Conversion Ratio, rounded down to the nearest whole number; and (b) the per share exercise price for the shares of Mandalay Common Stock issuable upon exercise of each Twistbox Option was determined by dividing the per share exercise price of Twistbox Common Stock subject to such Twistbox Option, as in effect prior to the Merger, by the Option Conversion Ratio, subject to any adjustments required by the Internal Revenue Code. As part of the Merger, Mandalay also assumed all unvested Twistbox Options. The Merger Consideration consisted of an aggregate of up to 12,325,000 shares of Mandalay Common Stock, which included the conversion of all shares of Twistbox Capital Stock and the reservation of 2,144,700 shares of Mandalay Common Stock required for assumption of the vested Twistbox Options. Mandalay reserved an additional 318,722 shares of Mandalay Common Stock required for the assumption of the unvested Twistbox Options. In exchange for the grant of piggy-back registration rights, Mandalay intends to enter into lock-up agreements with certain of our stockholders holding, in the aggregate, 9,466,720 shares of Mandalay Common Stock issued or issuable as part of the Merger Consideration pursuant to which all of such shares, and all other shares of Mandalay Common Stock or securities exercisable for or convertible into Mandalay Common Stock currently held or to be acquired in the future by such stockholders, will be subject to an 18-month lock-up period commencing as of on February 12, 2008, during which time their shares shall not be sold or otherwise transferred without the prior written consent of Mandalay. All warrants to purchase shares of Twistbox Common Stock outstanding at the time of the Merger were terminated on or before the effective time of the Merger.

Upon the completion of the Merger, all shares of the Twistbox Capital Stock were no longer outstanding and were automatically canceled and ceased to exist, and each holder of a certificate representing any such shares ceased to have any rights with respect thereto, except the right to receive the applicable Merger Consideration. Additionally, each share of the Twistbox Capital Stock held by Twistbox or owned by Merger Sub, Mandalay or any subsidiary of Twistbox or Mandalay immediately prior to the Merger, was canceled and extinguished as o f the completion of the Merger without any conversion or payment in respect thereof. Each share of common stock, $0.001 par value per share, of Merger Sub issued and outstanding immediately prior to the Merger was converted upon completion of the Merger into one validly issued, fully paid and non-assessable share of common stock, $0.001 par value per share, of the surviving corporation.

Effective as of the closing of the Merger (the "Closing"), Ian Aaron and Adi McAbian were appointed to our board of directors (the "Board of Directors").

## SUMMARY DESCRIPTION OF BUSINESS

***Historical Operations of Mandalay Media, Inc.***

Mandalay Media, Inc. was originally incorporated in the State of Delaware on November 6, 1998 under the name eB2B Commerce, Inc. On April 27, 2000, Mandalay merged into DynamicWeb Enterprises Inc., a New Jersey corporation, and changed its name to eB2B Commerce, Inc. On April 13, 2005, Mandalay changed its name to Mediavest, Inc. On November 7, 2007, through a merger, we reincorporated in the State of Delaware under the name Mandalay Media, Inc.

On October 27, 2004, and as amended on December 17, 2004, Mandalay filed a plan for reorganization under Chapter 11 of the United States Bankruptcy Code in the United States Bankruptcy Court for the Southern District of New York ("the Plan of Reorganization"). Under the Plan of Reorganization, as completed on January 26, 2005: (1) Mandalay's net operating assets and liabilities were transferred to the holders of the secured notes in satisfaction of the principal and accrued interest thereon; (2) $400,000 were transferred to a liquidation trust and used to pay administrative costs and certain preferred creditors; (3) $100,000 were retained by Mandalay to fund the expenses of remaining public; (4) 3.5% of the new common stock of Mandalay (140,000 shares) was issued to the holders of record of Mandalay's preferred stock in settlement of their liquidation preferences; (5) 3.5% of the new common stock of the company (140,000 shares) was issued to common stockholders of record as of January 26, 2005 in exchange for all of the outstanding shares of the common stock of the company; and (6) 93% of the new common stock of Mandalay (3,720,000 shares) was issued to the sponsor of the Plan of Reorganization in exchange for $500,000 in cash. Through January 26, 2005, Mandalay and its subsidiaries were engaged in providing business-to-business transaction management services designed to simplify trading between buyers and suppliers.

Immediately prior to the Closing, Mandalay was a public shell company with no operations, and controlled by its stockholder, Trinad Capital Master Fund, L.P ("Trinad Capital Master Fund").

***Current Operations of our Sole Operating and Wholly-Owned Subsidiary, Twistbox Entertainment, Inc. and its Subsidiaries***

**Overview**

Twistbox Entertainment, Inc. is a global publisher and distributor of branded entertainment content, including images, video, TV programming and games, for Third Generation (3G) mobile networks. Twistbox publishes and distributes its content in over 40 countries representing more than one billion subscribers. Twistbox began operations in 2003. Since that time, Twistbox has developed an intellectual property portfolio unique to its target demographic (18 to 35 year old) that includes worldwide exclusive (or territory exclusive) mobile rights to global brands and content from leading film, television and lifestyle content publishing companies. Twistbox has built a proprietary mobile publishing platform that includes: tools that automate handset rendering and provisioning for the distribution of images and video; a mobile games development suite that automates the porting of mobile games and applications to over 1,500 handsets; and a content standards and ratings system globally adopted by major wireless carriers to assist with the responsible deployment of age-verified content. Twistbox has leveraged its brand portfolio and platform to secure "direct" distribution agreements with the largest mobile operators in the world, including, among others, AT&T, Hutchinson 3G, O2, MTS, Orange, T-Mobile, Telefonica, Verizon and Vodafone.

Twistbox is headquartered in the Los Angeles area and has offices in London, Paris, Stockholm, Dortmund, Moscow and Mexico City that provide local sales and marketing support for both mobile operators and third party distribution in their respective regions.

**Lines of Business**

Twistbox operates under three lines of business that include general entertainment, games and late night (with mature themes) programming.

**General Entertainment**

The general entertainment category that includes mobile content, games and mobile marketing programs targets 18 to 35 year olds and is focused on Hollywood, lifestyle and glamour. Twistbox has launched services that include Latin Twist, a mobile portal focused on celebrity news, gossip and Telenovelas targeting the U.S. Hispanic and Latin American markets with leading local and national brands from companies such as Editorial Televisa. Twistbox also has an exclusive global agreement with CardPlayer Media LLC, the leading magazine publisher for poker news and entertainment that incorporates extensive tournament coverage, results, schedules and exclusive interviews with players and celebrities. Twistbox has taken a partnership approach to this category by providing mobile site creation, content localization, game development, integrated mobile marketing campaigns and global distribution.

**Games**

Twistbox Games, Twistbox's related entity, develops, publishes and aggregates mobile games and applications. Twistbox has developed and published more than 250 branded and casual games across a number of genres including action, casino, puzzle and strategy. Twistbox Games' portfolio is based on third party licensed brands as well as its own original brands and intellectual property and includes works for leading publishers such as Sony, EA, Square Enix, Taito, Namco, i-Play, PopCap and many others. This division provides services including award-winning development, universal handset porting and quality assurance based on its proprietary RapidPort™ development platform. Through unique applications that include in-game advertising and promotions, a play-for-prizes platform with fulfillment and in-game billing services and carrier class content download platform Nitro CDP™, Twistbox Games has taken a value-added approach that has allowed it to secure agreements and preferred on-deck placement with leading mobile operators that collectively represent over one billion subscribers.

**Late Night Entertainment**

Twistbox distributes mature programming to the 18 to 35 year old demographic under its separate wholly-owned subsidiary, WAAT Media Corp. ("WAAT Media"). This programming is directed towards male audiences and includes extreme sports, comedy, glamour and adult content from leading brands such as Playboy, Havoc, Penthouse and Vivid. Within this late night category, approximately 38% of the programming is age-verified, while 62% is within each territory's local broadcast standards. WAAT Media has developed a proprietary content standards matrix and a suite of tools and best practices for the responsible deployment of age-verified mobile programming. The "WAAT Media Wireless Content Standards Rating Matrix©", developed in conjunction with the top six mobile operators in the UK, has been globally adopted by major mobile carriers including Vodafone, Orange, O2, Telefonica and Hutchinson 3G, among others, to support the "on-deck" deployment of age-verified mobile entertainment. Through its brands and its commitment to content standards and best practices, Twistbox has secured on-deck distribution in over 40 countries and exclusive carrier relationships for the late night and age-verified categories with more than 20 operators in markets that include the U.S., the United Kingdom, Mexico, Greece, Netherlands, Hungary, Spain and Portugal.

**<u>Distribution</u>**

Twistbox distributes its programming and services through on-deck relationships with mobile carriers and off-deck relationships with third-party aggregation, connectivity and billing providers.

**On-Deck**

Twistbox's on-deck services include the programming and provisioning of games and games aggregation, images, videos and mobile TV content and portal management. Twistbox currently has on-deck agreements with more than 100 mobile operators including Vodafone, T-Mobile, Verizon, Cingular, Orange, O2, Virgin Mobile, Telefonica and MTS in over 40 countries. Through these on-deck agreements, Twistbox relies on the carriers for both marketing and billing. Through these relationships, Twistbox currently reaches over one billion mobile subscribers worldwide. Its currently deployed programming includes over 300 Wireless Application Protocol ("WAP") sites, 250 games, and 66 mobile TV channels.

**Off-Deck**

Twistbox has recently deployed off-deck services that include the programming and distribution of video, images, games, videos and text chat services and mobile marketing campaigns. Twistbox manages the campaigns directly and maintains billing and connectivity agreements with leading service providers in each territory. In addition, Twistbox has built and implemented a "Web-to-Mobile" affiliate program that allows for the cross-marketing and sales of mobile content from Web storefronts of its various programming partners and their affiliates. To date, Twistbox's on-line content and magazine publishing partners generate in excess of 20 million unique page views per day.

**Technology**

Twistbox's proprietary portfolio of technology encompasses platforms and tools that enhance the delivery, management and quality of Twistbox's programming.

- **Renux™ -** Twistbox's carrier class content management, publishing and distribution platform developed internally for the development, integration, deployment and marketing of mobile programming. Renux value added WAP services include comprehensive advertising, ad auction, search and web based promotional tools.

- **RapidPort™ - -** Twistbox's software suite that enables the development and porting of mobile games and applications to over 1,500 different handsets from leading manufacturers including Nokia, Motorola, Samsung and Sony Ericsson.

- **Nitro-CDP™ -** an internally developed content download and delivery platform allowing for real-time content upload, editing, rating and deployment, and merchandising, while maintaining carrier-grade security, reliability and scalability.

- **CMX Wrapper™ -** developed internally by Twistbox, enables mobile operators to integrate additional and complimentary functionality ("try before you buy") into existing mobile games and applications without the need to alter the original code or involve the original developer.

- **Play for Prizes - Competition goes mobile® -** The Twistbox Games For-Prizes platform enables skill-based multiplayer tournaments for prizes with the ability to integrate unique in game promotions through carrier-specific campaigns in cooperation with sponsors and advertisers.

- **WAAT Media Content Standards Rating Matrix -** WAAT Media has developed a proprietary and copyrighted content standards matrix widely known as the "WAAT Media Wireless Content Standards Ratings Matrix©". It is the globally-accepted content ratings system for age-verified mobile programming that encompasses explicitness and is available to Mobile operators and content providers through a licensing program on a royalty-free basis.

**Revenue Model**

Twistbox's primary revenue model is based on a per-download or subscription charge for image galleries, video clips, games, WAP site access, mobile TV and other content. In addition to its mobile content offerings, Twistbox generates, or intends to generate, revenues from selective advertising and permission-based marketing, where appropriate, to its target demographic. Twistbox receives payment directly from the mobile operators and from third-party service providers. The network operators typically receive between 40% to 50% of the retail purchase price in the on-deck environment. The remainder, the net revenue, is shared with Twistbox's content providers, with the licensor typically receiving between 20% to 50%.

## INDUSTRY OVERVIEW

### Overview

The wireless entertainment market has emerged as a result of the rapid growth and significant technological advancement in the wireless communications industry. Wireless carriers are launching new data services, including video clips, games, ring tones and images, to drive revenues and take advantage of advanced wireless networks and next generation mobile phones. The growth in the wireless entertainment market has been positively influenced by a number of key factors and trends that are expected to continue in the near future, including the following factors set out below.

### Growth in Wireless Subscribers

The number of global wireless subscribers has surpassed 1.0 billion and subscriber growth is expected to continue as wireless communications increase in emerging markets, including China and India. According to iSuppli, a provider of market analysis, the number of global wireless subscribers is expected to grow from approximately 2.6 billion in 2006 to over 4.0 billion in 2010 with most of this growth occurring in markets outside the U.S., Western Europe and Japan.

### Deployment of Advanced Wireless Networks

Wireless carriers are deploying high-speed, next-generation digital networks to enhance wireless voice and data transmission. These advanced networks have enabled the provisioning and billing of data applications and have increased the ability of wireless subscribers to quickly download large amounts of data, including games.

### Availability of Mobile Phones with Multimedia Capabilities

Annual mobile phone sales grew from 482.5 million units in 2001 to 561.0 million units in 2004 and are expected to grow to 767.0 million units in 2009, according to The ARC Group, a provider of market research and analysis. In recent years, the mobile phone has evolved from a voice-only device to a personal data and voice communications device that enables access to wireless content and data services. Mobile phone manufacturers are competing for consumers by designing next-generation mobile phones with enhanced features including built-in digital cameras, color screens, music and data connectivity. Manufacturers are also embedding application environments such as BREW and Java into mobile phones to enable multimedia applications. The ARC Group estimates that sales of BREW-enabled mobile phones are expected to grow from 11.6 million units in 2003 to 75.6 million units in 2008, and sales of Java-enabled mobile phones are expected to grow from 95.5 million units in 2003 to 594.9 million units in 2008, collectively representing approximately 97% of all mobile phones to be sold in 2008. We believe that the availability of these next-generation mobile phones is driving demand for wireless entertainment applications that take advantage of these advanced multimedia capabilities.

### Demand for Wireless Entertainment

Wireless carriers are increasingly launching and promoting wireless entertainment applications to differentiate their services and drive revenues. The delivery of video clips, games, ring tones, images, and other entertainment content to subscribers enables wireless carriers to leverage both the increasing installed base of next-generation mobile phones and their investment in high bandwidth wireless networks. Consumers are downloading and paying for wireless gaming content offered by the carriers. According to Informa Telecoms and Media, a market forecast provider in the telecommunications and media markets, worldwide mobile content sales will climb from $18.8 billion in 2006 to $38.1 billion in 2010, representing a compound growth rate of 15.2%.

**DESCRIPTION OF OUR BUSINESS**

Effective as of the Closing, Twistbox became Mandalay's wholly-owned subsidiary. As a result thereof, the historical business operations of Twistbox will comprise Mandalay's principal business operations going forward.

**Overview**

Twistbox Entertainment, Inc. is a global publisher and distributor of branded entertainment content, including images, video, TV programming and games, for Third Generation (3G) mobile networks. Twistbox publishes and distributes its content in over 40 countries representing more than one billion subscribers. Operating since 2003, Twistbox has developed an intellectual property portfolio unique to its target demographic (18 to 35 year old) that includes worldwide exclusive (or territory exclusive) mobile rights to global brands and content from leading film, television and lifestyle content publishing companies. Twistbox has built a proprietary mobile publishing platform that includes: tools that automate handset portability for the distribution of images and video; a mobile games development suite that automates the porting of mobile games and applications to over 1,500 handsets; and a content standards and ratings system globally adopted by major wireless carriers to assist with the responsible deployment of age-verified content. Twistbox has leveraged its brand portfolio and platform to secure "direct" distribution agreements with the largest mobile operators in the world, including, among others, AT&T, Hutchinson 3G, O2, MTS, Orange, T-Mobile, Telefonica, Verizon and Vodafone. Twistbox has experienced annual revenue growth in excess of 50% over the past two years and expects to become one of the leading players in the rapidly-growing, multibillion-dollar mobile entertainment market.

Twistbox maintains a worldwide distribution agreement with Vodafone. Through this relationship, Twistbox serves as Vodafone's exclusive supplier of late night content, a portion of which is age-verified. Additionally, Twistbox is one of the select few content aggregators for Vodafone. Twistbox aggregates content from leading entertainment companies and manages distribution of this content t o Vodafone. Additionally, Twistbox maintains distribution agreements with other leading mobile network operators throughout the North American, European, and Asia-Pacific regions that include Verizon, Virgin Mobile, T-Mobile, Telefonica, Hutchinson 3G, Three, O2 and Orange.

Twistbox's intellectual property encompasses over 75 worldwide exclusive or territory exclusive content licensing agreements that cover all of its key content genres including lifestyle, glamour, and celebrity news and gossip for U.S. Hispanic and Latin American markets, poker news and information, late night entertainment and casual games.

Twistbox currently has content live on more than 100 network operators in 40 countries. Through these relationships, Twistbox can currently reach over one billion mobile subscribers worldwide. Its existing content portfolio includes 300 WAP sites, 250 games, and 66 mobile TV channels.

In addition to its content publishing business, Twistbox operates a rapidly growing suite of Premium Short Message Service (Premium SMS) services that include text and video chat and web2mobile marketing services of video, images and games that are promoted through on-line, magazine and TV affiliates. The Premium SMS infrastructure essentially allows end consumers of Twistbox content to pay for their content purchases directly from their mobile phone bills.

Twistbox's end-users are the highly-mobile, digitally-aware 18 to 35 year old demographic. This group is a major consumer of digital entertainment services and commands significant amounts of disposable income. In addition, this group is very focused on consumer lifestyle brands and is much sought after by advertisers.

**Revenue Model**

Twistbox's revenue model is based primarily on a per-download or, alternatively, subscription charge for video clips, games, WAP sites, and other content.

In addition to its mobile content offerings, Twistbox has begun to leverage its distribution and traffic to generate revenues from WAP advertising where it manages mobile content portals on an exclusive basis.

Twistbox typically bills and receives payment directly through mobile operators and portals that form the majority of its customers. The network operators typically receive between 40% to 50% of the retail purchase price in the on-deck environment. The remainder, the net revenue, is shared with Twistbox's content providers, with the licensor typically receiving between 20% to 50% of the net revenue.

Payment methods available to end-users include SMS reverse billing and prepayment as well as the more traditional credit and debit card channels. Twistbox typically receives payment directly from the mobile operators and portals that constitute the majority of its customers.

**Development Process**

Twistbox has an active content development program and has experience producing release-ready applications for the world's leading wireless formats and platforms, including J2ME, BREW, DoJa, Windows Mobile, SMS and Symbian.

Twistbox intends to acquire additional third-party licenses and to develop new applications through relationships with outside developers and its in-house development staff. We believe that these efforts will assure that Twistbox has a steady stream of new content to offer its customers and end-users.

**Twistbox Technology and Tools**

Twistbox's production activities currently address over 1,500 handsets, including models manufactured by Nokia, Motorola, Samsung and Sony Ericsson. Twistbox has created an automated handset abstraction tool that significantly reduces the time required to "port" a game across a significant number of these handsets.

Twistbox works with a number of languages, platforms, and formats, including J2ME, BREW, DoJa, and Symbian, and localizes its releases in the EFIGS languages (English, French, Italian, German and Spanish). It is actively involved in a number of technical initiatives aimed at enhancing its titles with value-added features, such as multi-player functionality, 3D graphics, and location-based features. The market for mobile entertainment should increase dramatically as mobile operators continue to roll out their next generation service offerings and we see increases in bandwidth drive acceptance of handsets and other connected devices offering improvements in data handling capability, graphics resolution, and other features. Real-time, operating-system based handsets (smart phones/PDA phones) were previously available but at high price points, reflecting the fact they were high-end devices. As prices decrease in the future, phones should continue to grow steadily in both penetration and power.

The availability of mobile content should hasten the adoption of the next generation of handsets and promote the increase in data traffic required by carriers for recovery of their investments in 3G licenses and infrastructure.

Twistbox's proprietary portfolio of technology encompasses platforms and tools that enhance the delivery, management and quality of Twistbox's programming.

**Renux™**

Renux™ is Twistbox's carrier class content management, publishing and distribution platform developed internally for the development, integration, deployment and marketing of mobile programming. The system has been in operation for over five years and today supports over 300 WAP sites, more than 66 mobile TV channels and 250 games in 18 languages. The Renux™ content management system stores image and video content formatted for 1.5G to up to 3G devices, and incorporates a comprehensive metadata format that categorizes the content for handset recognition, programming, marketing and reporting. Twistbox maintains content hosting facilities in Los Angeles, Washington, D.C. and Frankfurt that support the distribution of content to mobile network operators.

**RapidPort™**

RapidPort™ is Twistbox's software suite that enables the development and porting of mobile games and applications to over 1,000 different handsets from leading manufacturers including Nokia, Motorola, Samsung and Sony Ericsson. Twistbox has created an automated handset abstraction tool that significantly reduces the time required to "port" a game across a significant number of these handsets. The RapidPort™ development platform supports a broad number of wireless device formats including J2ME, BREW, DoJa and Symbian, and provides localization in over 18 languages. Twistbox Games has recently enhanced RapidPort™ to include new technology designed to enhance titles with value-added features, such as in-game advertising, multi-player and play for prizes functionality, 3D graphics and location-based services (LBS).

**Nitro-CDP™**

Nitro-CDP™ is an internally developed content download and delivery platform for mobile network operators, portals and content publishers. The Nitro-CDP™ platform allows for real-time content upload, editing, rating and deployment, and merchandising, while maintaining carrier-grade security, reliability and scalability. The platform enables mobile network operators to effectively manage millions of mobile download transactions across multiple channels and categories. Nitro-CDP™ also provides innovative cross-promotional tools, including purchase history-based up-sales and advertising, an individual "My Downloads" area for each consumer and peer-to-peer recommendations.

**CMX Wrapper™**

The CMX Wrapper™ technology, developed internally by Twistbox, enables mobile operators to integrate additional and complimentary functionality into existing mobile games and applications without the need to alter the original code or involve the original developer. This value-added functionality includes support for in-game promotions and billing, and "try before you buy" and "refer a friend" functionality.

**Play for Prizes - Competition goes mobile®**

The Twistbox Games For-Prizes Network, currently deployed by major mobile operators across the US such as AT&T Wireless and Verizon, offers several genres of games in which players compete in daily and weekly skill-based multiplayer tournaments to win prizes. Subscribers can compete in both daily head-to-head and weekly progressive tournaments. The Twistbox Games For-Prizes platform enables unique in-game promotions through carrier-specific campaigns in cooperation with sponsors and advertisers.

**WAAT Media Wireless Content Standards Rating Matrix©**

First developed in 2003, and refined over the last several years, WAAT Media has developed a proprietary content standards matrix widely known as the "WAAT Media Wireless Content Standards Ratings Matrix©" (the "Ratings Matrix"). The Ratings Matrix has been filed with the Library of Congress' Copyright Office. It is the globally-accepted content ratings system for age-verified mobile programming that encompasses language, violence and explicitness. The system is licensed on a royalty-free basis by the world's leading mobile carriers and leading content providers and is the basis for the United Kingdom's Code of Practice. The Ratings Matrix currently supports 33 ratings levels and incorporates a suite of content validation tools and industry best practices that takes into account country-by-country carrier programming requirements and local broadcast standards.

**Mobile Rights**

Twistbox has major mobile publishing agreements with leading entertainment companies. Through such agreements, as well as its own portfolio of intellectual property, Twistbox has the wireless mobile rights to the following applications and brands that include but are not limited to:

**Games**

- Taito
- Sony
- EA
- i-Play
- PopCap
- Konami
- Namco

**General Entertainment**

- Editorial Televisa
- CardPlayer Magazine

**Late Night**

- Playboy
- Penthouse
- Girls Gone Wild
- Vivid
- Portland TV

We believe that these widely recognized brands attract both mobile operators and end users. Twistbox intends to exploit the depth and breadth of its intellectual property in order to continue to grow its revenue and cash flow.

**Content Development**

Twistbox has experience producing release-ready entertainment applications for several wireless formats and platforms, including J2ME, BREW, WAP 2.0, Symbian and DoJa.

Twistbox intends to acquire additional third-party licenses and to develop new applications through relationships with third-party developers as well as its in-house development staff. We believe that these efforts will assure that it has a steady supply of new content to offer its customers.

In addition to mobile video clips, games, WAP sites, and other entertainment applications, Twistbox is currently focusing its development and licensing activities on complementary applications such as in game advertising, TV-SMS campaigns, play-for-prizes, and multi-player games.

**Distribution**

Twistbox distributes its programming and services through on-deck relationships with mobile carriers and off-deck relationships with third-party aggregation, connectivity and billing providers.

**On-Deck**

Twistbox's on-deck services include the programming and provisioning of games and games aggregation, images, videos and mobileTV content and portal management. Twistbox currently has on-deck agreements with more than 100 mobile operators including Vodafone, T-Mobile, Verizon, AT&T, Orange, O2, Virgin Mobile, Telefonica and MTS in over 40 countries. Through these on-deck agreements, Twistbox relies on the carriers for both marketing and billing. Through these relationships, Twistbox currently reaches over one billion mobile subscribers worldwide. Its currently deployed programming includes over 300 WAP sites, 250 games, and 66 mobile TV channels.

**Off-Deck**

Twistbox has recently deployed off-deck services that include the programming and distribution of games, images, videos, chat services and mobile marketing campaigns. Twistbox manages the campaigns directly and maintains billing and connectivity agreements with leading service providers in each territory. In addition, Twistbox has built and implemented a "Web-to-Mobile" affiliate program that allows for the cross-marketing and sales of mobile content from Web storefronts of its various programming partners and their affiliates. To date, Twistbox's content partners generate in excess of eight million on-line unique users per day.

**Mobile Operators (Carriers)**

Twistbox currently has a large number of distribution agreements with mobile operators and portals in Europe, the U.S., Japan, and Latin America. Twistbox currently has distribution agreements with more than 100 single territory operators in 40 countries. Twistbox continues to sign new operators on a quarterly basis and, in the near term, intends to extend its distribution base into Eastern Europe and South America. The strength and coverage of these relationships is of paramount importance and the ability to support and service them is a vital component in route to the consumer. Twistbox's distribution agreements with Vodafone account for approximately 36% of the company's current revenue.

**Affiliates Program**

Twistbox has also established an Affiliates Program to market and sell its content "off-deck," that is, through a direct-to-consumer online portal that end users can access directly from their PCs or phones. We believe that this channel offers an attractive secondary outlet for consumers wishing to peruse and purchase content in an environment less limiting and restrictive than an operator's "walled garden."

**Sales and Marketing**

In order to sell to its target base of carrier and infrastructure customers, Twistbox has built a growing affiliate sales and marketing team that is localized on a country-by-country basis. In order to sell to its target base of carrier and infrastructure customers, Twistbox has built a growing affiliate sales and marketing team that is localized on a country-by-country basis. As of February 8, 2008, Twistbox had a workforce of approximately 132 employees.

**Competition**

While many mobile marketing companies sell a diversified portfolio of content from ring tones to wall papers and kids programming to adult, Twistbox has taken a more focused and disciplined approach. Twistbox focuses on programming and platforms where it can manage categories on an exclusive or semi-exclusive basis for a mobile operator. Target markets include Age Verified Programming, Play4Prizes or areas in which Twistbox has exclusive rights to the top one or two brands in a genre.

In the area of mature themed mobile entertainment, Twistbox is a leading provider of content and services. Twistbox has strengthened its position with the operators by deploying new services to enhance the category revenue that include age verification systems, in portal advertising and ad auction services and new search features to enhance discover. The industry trend has been for leading operators to focus on fewer partners and often assign a company to manage the category. We believe that its responsible reputation and the Ratings Matrix combined with its publishing platform and leading brands that maximize revenue, positions it to manage the age-verified category for operators globally.

Twistbox competes with a number of other companies in the mobile games publishing industry, including Arvato, Minick, Jamba, Buongiorno, Mobile Streams, Glu Mobile, Player X and Gameloft. Brands such as Playboy have sought to create their own direct distribution arrangements with network operators. To the extent that such firms continue to seek such relationships, they will compete directly with Twistbox in their respective content segments. While Twistbox competes with many of the leading publishers, its core business is providing services and platforms for operators and publishers to enhance revenues. In turn, through the management of an operator's download platform, providing a cross carrier Play4Prizes infrastructure or facilitating in game advertising or billing, Twistbox has become a strategic value added partner to both the mobile operator and publishing communities.

Direct-to-consumer (D2C) Web portals may have an adverse impact on Twistbox's business, as these portals may not strike distribution arrangements with Twistbox. Additionally, wireless device manufacturers such as Nokia, Sony Ericsson and Motorola may choose to pursue their own content strategies.

We believe that the principal competitive factors in the market for mobile games and other content include carrier relationships, access to compelling content, quality and reliability of content delivery, availability of talented content developers and skilled technical personnel, and financial stability.

**Trademarks, Tradenames and Copyrights**

Twistbox has used, registered and applied to register certain trademarks and service marks to distinguish its products, technologies and services from those of its competitors in the United States and in foreign countries. Twistbox also has a copyright known as the "WAAT Media Wireless Content Standards Ratings Matrix©", which has been filed with the Library of Congress' Copyright Office. We believe that these trademarks, tradenames and copyright are important to its business. The loss of some of Twistbox's intellectual property might have a negative impact on its financial results and operations.

## RISK FACTORS

*You should carefully consider each of the risks described below and other information contained in this Current Report on Form 8-K, including our consolidated financial statements and the related notes. The following risks and the risks described elsewhere in this Current Report on Form 8-K, including in the section entitled "Management's Discussion and Analysis of Financial Condition and Results of Operation," could materially affect our business, prospects, financial condition, operating results or cash flow. Additional risks and uncertainties not currently known to us or that we currently deem immaterial may also adversely affect our business. If any of these risks materialize, the trading price of our common stock could decline.*

Unless the context otherwise indicates, the use of the terms "we," "our" or "us" refers to the business and operations of Mandalay Media, Inc. through its sole operating and wholly-owned subsidiary, Twistbox Entertainment, Inc.

### Risks Related to Our Business

**Twistbox has a history of net losses, may incur substantial net losses in the future and may not achieve profitability.**

We expect to continue to increase expenses as we implement initiatives designed to continue to grow our business, including, among other things, the development and marketing of new products and services, further international and domestic expansion, expansion of our infrastructure, development of systems and processes, acquisition of content, and general and administrative expenses associated with being a public company. If our revenues do not increase to offset these expected increases in operating expenses, we will continue to incur significant losses and will not become profitable. Our revenue growth in recent periods should not be considered indicative of our future performance. In fact, in future periods, our revenues could decline. Accordingly, we may not be able to achieve profitability in the future.

**We have a limited operating history in an emerging market, which may make it difficult to evaluate our business.**

We have only a limited history of generating revenues, and the future revenue potential of our business in this emerging market is uncertain. As a result of our short operating history, we have limited financial data that can be used to evaluate our business. Any evaluation of our business and our prospects must be considered in light of our limited operating history and the risks and uncertainties encountered by companies in our stage of development. As an early stage company in the emerging mobile entertainment industry, we face increased risks, uncertainties, expenses and difficulties. To address these risks and uncertainties, we must do the following:

- maintain our current, and develop new, wireless carrier relationships, in both the international and domestic markets;
- maintain and expand our current, and develop new, relationships with third-party branded and non-branded content owners;
- retain or improve our current revenue-sharing arrangements with carriers and third-party content owners;
- maintain and enhance our own brands;
- continue to develop new high-quality products and services that achieve significant market acceptance;
- continue to port existing products to new mobile handsets;
- continue to develop and upgrade our technology;
- continue to enhance our information processing systems;
- increase the number of end users of our products and services;
- maintain and grow our non-carrier, or “off-deck,” distribution, including through our third-party direct-to-consumer distributors;
- expand our development capacity in countries with lower costs;
- execute our business and marketing strategies successfully;
- respond to competitive developments; and

- attract, integrate, retain and motivate qualified personnel.

We may be unable to accomplish one or more of these objectives, which could cause our business to suffer. In addition, accomplishing many of these efforts might be very expensive, which could adversely impact our operating results and financial condition.

**Our financial results could vary significantly from quarter to quarter and are difficult to predict.**

Our revenues and operating results could vary significantly from quarter to quarter because of a variety of factors, many of which are outside of our control. As a result, comparing our operating results on a period-to-period basis may not be meaningful. In addition, we may not be able to predict our future revenues or results of operations. We base our current and future expense levels on our internal operating plans and sales forecasts, and our operating costs are to a large extent fixed. As a result, we may not be able to reduce our costs sufficiently to compensate for an unexpected shortfall in revenues, and even a small shortfall in revenues could disproportionately and adversely affect financial results for that quarter. Individual products and services, and carrier relationships, represent meaningful portions of our revenues and net loss in any quarter. We may incur significant or unanticipated expenses when licenses are renewed. In addition, some payments from carriers that we recognize as revenue on a cash basis may be delayed unpredictably.

In addition to other risk factors discussed in this section, factors that may contribute to the variability of our quarterly results include:

- the number of new products and services released by us and our competitors;
- the timing of release of new products and services by us and our competitors, particularly those that may represent a significant portion of revenues in a period;
- the popularity of new products and services, and products and services released in prior periods;
- changes in prominence of deck placement for our leading products and those of our competitors;
- the expiration of existing content licenses;
- the timing of charges related to impairments of goodwill, intangible assets, royalties and minimum guarantees;
- changes in pricing policies by us, our competitors or our carriers and other distributors;
- changes in the mix of original and licensed content, which have varying gross margins;
- the timing of successful mobile handset launches;

- the seasonality of our industry;
- fluctuations in the size and rate of growth of overall consumer demand for mobile products and services and related content;
- strategic decisions by us or our competitors, such as acquisitions, divestitures, spin-offs, joint ventures, strategic investments or changes in business strategy;
- our success in entering new geographic markets;
- foreign exchange fluctuations;
- accounting rules governing recognition of revenue;
- the timing of compensation expense associated with equity compensation grants; and
- decisions by us to incur additional expenses, such as increases in marketing or research and development.

As a result of these and other factors, our operating results may not meet the expectations of investors or public market analysts who choose to follow our company. Failure to meet market expectations would likely result in decreases in the trading price of our common stock.

**The markets in which we operate are highly competitive, and many of our competitors have significantly greater resources than we do.**

The development, distribution and sale of mobile products and services is a highly competitive business. We compete for end users primarily on the basis of “on-deck” or “off-deck” positioning, brand, quality and price. We compete for wireless carriers for “on-deck” placement based on these factors, as well as historical performance, technical know-how, perception of sales potential and relationships with licensors of brands and other intellectual property. We compete for content and brand licensors based on royalty and other economic terms, perceptions of development quality, porting abilities, speed of execution, distribution breadth and relationships with carriers. We also compete for experienced and talented employees.

Our primary competitors include Arvato, Minick, Jamba, Buongiorno, Mobile Streams, Glu Mobile, Player X and Gameloft. In the future, likely competitors include major media companies, traditional video game publishers, platform developers, content aggregators, mobile software providers and independent mobile game publishers. Carriers may also decide to develop, internally or through a managed third-party developer, and distribute their own products and services. If carriers enter the wireless market as publishers, they might refuse to distribute some or all of our products and services or might deny us access to all or part of their networks.

Some of our competitors’ and our potential competitors’ advantages over us, either globally or in particular geographic markets, include the following:

- significantly greater revenues and financial resources;

- stronger brand and consumer recognition regionally or worldwide;
- the capacity to leverage their marketing expenditures across a broader portfolio of mobile and non-mobile products;
- more substantial intellectual property of their own from which they can develop products and services without having to pay royalties;
- pre-existing relationships with brand owners or carriers that afford them access to intellectual property while blocking the access of competitors to that same intellectual property;
- greater resources to make acquisitions;
- lower labor and development costs; and
- broader global distribution and presence.

If we are unable to compete effectively or we are not as successful as our competitors in our target markets, our sales could decline, our margins could decline and we could lose market share, any of which would materially harm our business, operating results and financial condition.

**Failure to renew our existing brand and content licenses on favorable terms or at all and to obtain additional licenses would impair our ability to introduce new products and services or to continue to offer our products and services based on third-party content.**

Revenues are derived from our products and services based on or incorporating brands or other intellectual property licensed from third parties. Any of our licensors could decide not to renew our existing license or not to license additional intellectual property and instead license to our competitors or develop and publish its own products or other applications, competing with us in the marketplace. Several of these licensors already provide intellectual property for other platforms, and may have significant experience and development resources available to them should they decide to compete with us rather than license to us.

We have both exclusive and non-exclusive licenses and both licenses that are global and licenses that are limited to specific geographies. Our licenses generally have terms that range from two to five years. We may be unable to renew these licenses or to renew them on terms favorable to us, and we may be unable to secure alternatives in a timely manner. Failure to maintain or renew our existing licenses or to obtain additional licenses would impair our ability to introduce new products and services or to continue to offer our current products or services, which would materially harm our business, operating results and financial condition. Some of our existing licenses impose, and licenses that we obtain in the future might impose, development, distribution and marketing obligations on us. If we breach our obligations, our licensors might have the right to terminate the license which would harm our business, operating results and financial condition.

Even if we are successful in gaining new licenses or extending existing licenses, we may fail to anticipate the entertainment preferences of our end users when making choices about which brands or other content to license. If the entertainment preferences of end users shift to content or brands owned or developed by companies with which we do not have relationships, we may be unable to establish and maintain successful relationships with these developers and owners, which would materially harm our business, operating results and financial condition. In addition, some rights are licensed from licensors that have or may develop financial difficulties, and may enter into bankruptcy protection under U.S. federal law or the laws of other countries. If any of our licensors files for bankruptcy, our licenses might be impaired or voided, which could materially harm our business, operating results and financial condition.

**We currently rely on wireless carriers to market and distribute our products and services and thus to generate our revenues. The loss of or a change in any of these significant carrier relationships could cause us to lose access to their subscribers and thus materially reduce our revenues.**

Our future success is highly dependent upon maintaining successful relationships with the wireless carriers with which we currently work and establishing new carrier relationships in geographies where we have not yet established a significant presence. A significant portion of our revenue is derived from a very limited number of carriers. We expect that we will continue to generate a substantial majority of our revenues through distribution relationships with a limited number of carriers for the foreseeable future. Our failure to maintain our relationships with these carriers would materially reduce our revenues and thus harm our business, operating results and financial condition.

We have both exclusive and non-exclusive carrier agreements. Typically, carrier agreements have a term of one or two years with automatic renewal provisions upon expiration of the initial term, absent a contrary notice from either party. In addition, some carrier agreements provide that the carrier can terminate the agreement early and, in some instances, at any time without cause, which could give them the ability to renegotiate economic or other terms. The agreements generally do not obligate the carriers to market or distribute any of our products or services. In many of these agreements, we warrant that our products do not violate community standards, do not contain libelous content, do not contain material defects or viruses, and do not violate third-party intellectual property rights and we indemnify the carrier for any breach of a third party's intellectual property. In addition, many of our agreements allow the carrier to set the retail price without adjustment to the negotiated revenue split. If one of these carriers sets the retail price below historic pricing models, the total revenues received from these carriers will be significantly reduced.

Many other factors outside our control could impair our ability to generate revenues through a given carrier, including the following:

- the carrier's preference for our competitors' products and services rather than ours;
- the carrier's decision not to include or highlight our products and services on the deck of its mobile handsets;
- the carrier's decision to discontinue the sale of some or all of products and services;
- the carrier's decision to offer similar products and services to its subscribers without charge or at reduced prices;
- the carrier's decision to require market development funds from publishers like us;

- the carrier's decision to restrict or alter subscription or other terms for downloading our products and services;
- a failure of the carrier's merchandising, provisioning or billing systems;
- the carrier's decision to offer its own competing products and services;
- the carrier's decision to transition to different platforms and revenue models; and
- consolidation among carriers.

If any of our carriers decides not to market or distribute our products and services or decides to terminate, not renew or modify the terms of its agreement with us or if there is consolidation among carriers generally, we may be unable to replace the affected agreement with acceptable alternatives, causing us to lose access to that carrier's subscribers and the revenues they afford us, which could materially harm our business, operating results and financial condition.

**End user tastes are continually changing and are often unpredictable; if we fail to develop and publish new products and services that achieve market acceptance, our sales would suffer.**

Our business depends on developing and publishing new products and services that wireless carriers distribute and end users will buy. We must continue to invest significant resources in licensing efforts, research and development, marketing and regional expansion to enhance our offering of new products and services, and we must make decisions about these matters well in advance of product release in order to implement them in a timely manner. Our success depends, in part, on unpredictable and volatile factors beyond our control, including end-user preferences, competing products and services and the availability of other entertainment activities. If our products and services are not responsive to the requirements of our carriers or the entertainment preferences of end users, or they are not brought to market in a timely and effective manner, our business, operating results and financial condition would be harmed. Even if our products and services are successfully introduced and initially adopted, a subsequent shift in our carriers or the entertainment preferences of end users could cause a decline in the popularity of our offerings that could materially reduce our revenues and harm our business, operating results and financial condition.

**Inferior deck placement would likely adversely impact our revenues and thus our operating results and financial condition.**

Wireless carriers provide a limited selection of products that are accessible to their subscribers through a deck on their mobile handsets. The inherent limitation on the volume of products available on the deck is a function of the limited screen size of handsets and carriers' perceptions of the depth of menus and numbers of choices end users will generally utilize. Carriers typically provide one or more top level menus highlighting products that are recent top sellers or are of particular interest to the subscriber, that the carrier believes will become top sellers or that the carrier otherwise chooses to feature, in addition to a link to a menu of additional products sorted by genre. We believe that deck placement on the top level or featured menu or toward the top of genre-specific or other menus, rather than lower down or in sub-menus, is likely to result in products achieving a greater degree of commercial success. If carriers choose to give our products less favorable deck placement, our products may be less successful than we anticipate, our revenues may decline and our business, operating results and financial condition may be materially harmed.

**If we are unsuccessful in establishing and increasing awareness of our brand and recognition of our products and services or if we incur excessive expenses promoting and maintaining our brand or our products and services, our potential revenues could be limited, our costs could increase and our operating results and financial condition could be harmed.**

We believe that establishing and maintaining our brand is critical to retaining and expanding our existing relationships with wireless carriers and content licensors, as well as developing new relationships. Promotion of the company's brands will depend on our success in providing high-quality products and services. Similarly, recognition of our products and services by end users will depend on our ability to develop engaging products and quality services to maintain existing, and attract new, business relationships and end users. However, our success will also depend, in part, on the services and efforts of third parties, over which we have little or no control. For instance, if our carriers fail to provide high levels of service, our end users' ability to access our products and services may be interrupted, which may adversely affect our brand. If end users, branded content owners and carriers do not perceive our offerings as high-quality or if we introduce new products and services that are not favorably received by our end users and carriers, then we may be unsuccessful in building brand recognition and brand loyalty in the marketplace. In addition, globalizing and extending our brand and recognition of our products and services will be costly and will involve extensive management time to execute successfully. Further, the markets in which we operate are highly competitive and some of our competitors already have substantially more brand name recognition and greater marketing resources than we do. If we fail to increase brand awareness and consumer recognition of our products and services, our potential revenues could be limited, our costs could increase and our business, operating results and financial condition could suffer.

**Our business and growth may suffer if we are unable to hire and retain key personnel, who are in high demand.**

We depend on the continued contributions of our domestic and international senior management and other key personnel. The loss of the services of any of our executive officers or other key employees could harm our business. All of our executive officers and key employees are under short term employment agreements which means, that their future employment with the company is uncertain. We do maintain a key-person life insurance policy on some of our officers or other employees, but the continuation of such insurance coverage is uncertain.

Our future success also depends on our ability to identify, attract and retain highly skilled technical, managerial, finance, marketing and creative personnel. We face intense competition for qualified individuals from numerous technology, marketing and mobile entertainment companies. In addition, competition for qualified personnel is particularly intense in the Los Angeles area, where our headquarters are located. Further, two of our principal overseas operations are based in the United Kingdom and Germany, areas that, similar to our headquarters region, have high costs of living and consequently high compensation standards and/or intense demand for qualified individuals which may require us to incur significant costs to attract them. We may be unable to attract and retain suitably qualified individuals who are capable of meeting our growing creative, operational and managerial requirements, or may be required to pay increased compensation in order to do so. If we are unable to attract and retain the qualified personnel we need to succeed, our business would suffer.

Volatility or lack of performance in our stock price may also affect our ability to attract and retain our key employees. Many of our senior management personnel and other key employees have become, or will soon become, vested in a substantial amount of stock or stock options. Employees may be more likely to leave us if the shares they own or the shares underlying their options have significantly appreciated in value relative to the original purchase prices of the shares or the exercise prices of the options, or if the exercise prices of the options that they hold are significantly above the market price of our common stock. If we are unable to retain our employees, our business, operating results and financial condition would be harmed.

**Growth may place significant demands on our management and our infrastructure.**

We operate in an emerging market and have experienced, and may continue to experience, growth in our business through internal growth and acquisitions. This growth has placed, and may continue to place, significant demands on our management and our operational and financial infrastructure. Continued growth could strain our ability to:

- develop and improve our operational, financial and management controls;
- enhance our reporting systems and procedures;
- recruit, train and retain highly skilled personnel;
- maintain our quality standards; and
- maintain branded content owner, wireless carrier and end-user satisfaction.

Managing our growth will require significant expenditures and allocation of valuable management resources. If we fail to achieve the necessary level of efficiency in our organization as it grows, our business, operating results and financial condition would be harmed.

**The acquisition of other companies, businesses or technologies could result in operating difficulties, dilution and other harmful consequences.**

We have made acquisitions and, although we have no present understandings, commitments or agreements to do so, we may pursue further acquisitions, any of which could be material to our business, operating results and financial condition. Future acquisitions could divert management's time and focus from operating our business. In addition, integrating an acquired company, business or technology is risky and may result in unforeseen operating difficulties and expenditures. We may also raise additional capital for the acquisition of, or investment in, companies, technologies, products or assets that complement our business. Future acquisitions or dispositions could result in potentially dilutive issuances of our equity securities, including our common stock, or the incurrence of debt, contingent liabilities, amortization expenses or acquired in-process research and development expenses, any of which could harm our financial condition and operating results. Future acquisitions may also require us to obtain additional financing, which may not be available on favorable terms or at all.

International acquisitions involve risks related to integration of operations across different cultures and languages, currency risks and the particular economic, political and regulatory risks associated with specific countries.

Some or all of these issues may result from our acquisition of the Germany based mobile games development and publishing company Charismatix Ltd & Co KG in May 2006 and the U.S. based mobile games studio from Infospace, Inc. in January 2007. If the anticipated benefits of these or future acquisitions do not materialize, we experience difficulties integrating Charismatix, the games studio or businesses acquired in the future, or other unanticipated problems arise, our business, operating results and financial condition may be harmed.

In addition, a significant portion of the purchase price of companies we acquire may be allocated to acquired goodwill and other intangible assets, which must be assessed for impairment at least annually. In the future, if our acquisitions do not yield expected returns, we may be required to take charges to our earnings based on this impairment assessment process, which could harm our operating results.

**We face added business, political, regulatory, operational, financial and economic risks as a result of our international operations and distribution, any of which could increase our costs and hinder our growth.**

We expect international sales to continue to be an important component of our revenues. Risks affecting our international operations include:

- challenges caused by distance, language and cultural differences;
- multiple and conflicting laws and regulations, including complications due to unexpected changes in these laws and regulations;
- the burdens of complying with a wide variety of foreign laws and regulations;
- higher costs associated with doing business internationally;
- difficulties in staffing and managing international operations;
- greater fluctuations in sales to end users and through carriers in developing countries, including longer payment cycles and greater difficulty collecting accounts receivable;
- protectionist laws and business practices that favor local businesses in some countries;
- foreign tax consequences;
- foreign exchange controls that might prevent us from repatriating income earned in countries outside the United States;

- price controls;
- the servicing of regions by many different carriers;
- imposition of public sector controls;
- political, economic and social instability;
- restrictions on the export or import of technology;
- trade and tariff restrictions;
- variations in tariffs, quotas, taxes and other market barriers; and
- difficulties in enforcing intellectual property rights in countries other than the United States.

In addition, developing user interfaces that are compatible with other languages or cultures can be expensive. As a result, our ongoing international expansion efforts may be more costly than we expect. Further, expansion into developing countries subjects us to the effects of regional instability, civil unrest and hostilities, and could adversely affect us by disrupting communications and making travel more difficult. These risks could harm our international expansion efforts, which, in turn, could materially and adversely affect our business, operating results and financial condition.

**If we fail to deliver our products and services at the same time as new mobile handset models are commercially introduced, our sales may suffer.**

Our business is dependent, in part, on the commercial introduction of new handset models with enhanced features, including larger, higher resolution color screens, improved audio quality, and greater processing power, memory, battery life and storage. We do not control the timing of these handset launches. Some new handsets are sold by carriers with certain products or other applications pre-loaded, and many end users who download our products or use our services do so after they purchase their new handsets to experience the new features of those handsets. Some handset manufacturers give us access to their handsets prior to commercial release. If one or more major handset manufacturers were to cease to provide us access to new handset models prior to commercial release, we might be unable to introduce compatible versions of our products and services for those handsets in coordination with their commercial release, and we might not be able to make compatible versions for a substantial period following their commercial release. If, because of launch delays, we miss the opportunity to sell products and services when new handsets are shipped or our end users upgrade to a new handset, or if we miss the key holiday selling period, either because the introduction of a new handset is delayed or we do not deploy our products and services in time for the holiday selling season, our revenues would likely decline and our business, operating results and financial condition would likely suffer.

**Wireless carriers generally control the price charged for our products and services and the billing and collection for sales and could make decisions detrimental to us.**

Wireless carriers generally control the price charged for our products and services either by approving or establishing the price of the offering charged to their subscribers. Some of our carrier agreements also restrict our ability to change prices. In cases where carrier approval is required, approvals may not be granted in a timely manner or at all. A failure or delay in obtaining these approvals, the prices established by the carriers for our offerings, or changes in these prices could adversely affect market acceptance of our offerings. Similarly, for the significant minority of our carriers, when we make changes to a pricing plan (the wholesale price and the corresponding suggested retail price based on our negotiated revenue-sharing arrangement), adjustments to the actual retail price charged to end users may not be made in a timely manner or at all (even though our wholesale price was reduced). A failure or delay by these carriers in adjusting the retail price for our offerings, could adversely affect sales volume and our revenues for those offerings.

Carriers and other distributors also control billings and collections for our products and services, either directly or through third-party service providers. If our carriers or their third-party service providers cause material inaccuracies when providing billing and collection services to us, our revenues may be less than anticipated or may be subject to refund at the discretion of the carrier. This could harm our business, operating results and financial condition.

**We may be unable to develop and introduce in a timely way new products or services, and our products and services may have defects, which could harm our brand.**

The planned timing and introduction of new products and services are subject to risks and uncertainties. Unexpected technical, operational, deployment, distribution or other problems could delay or prevent the introduction of new products and services, which could result in a loss of, or delay in, revenues or damage to our reputation and brand. If any of our products or services is introduced with defects, errors or failures, we could experience decreased sales, loss of end users, damage to our carrier relationships and damage to our reputation and brand. Our attractiveness to branded content licensors might also be reduced. In addition, new products and services may not achieve sufficient market acceptance to offset the costs of development, particularly when the introduction of a product or service is substantially later than a planned "day-and-date" launch, which could materially harm our business, operating results and financial condition.

**If we fail to maintain and enhance our capabilities for porting our offerings to a broad array of mobile handsets, our attractiveness to wireless carriers and branded content owners will be impaired, and our sales could suffer.**

Once developed, a product or application may be required to be ported to, or converted into separate versions for, more than 1,000 different handset models, many with different technological requirements. These include handsets with various combinations of underlying technologies, user interfaces, keypad layouts, screen resolutions, sound capabilities and other carrier-specific customizations. If we fail to maintain or enhance our porting capabilities, our sales could suffer, branded content owners might choose not to grant us licenses and carriers might choose not to give our products and services desirable deck placement or not to give our products and services placement on their decks at all.

Changes to our design and development processes to address new features or functions of handsets or networks might cause inefficiencies in our porting process or might result in more labor intensive porting processes. In addition, we anticipate that in the future we will be required to port existing and new products and applications to a broader array of handsets. If we utilize more labor intensive porting processes, our margins could be significantly reduced and it might take us longer to port our products and applications to an equivalent number of handsets. This, in turn, could harm our business, operating results and financial condition.

**If we do not adequately protect our intellectual property rights, it may be possible for third parties to obtain and improperly use our intellectual property and our competitive position may be adversely affected.**

Our intellectual property is an essential element of our business. We rely on a combination of copyright, trademark, trade secret and other intellectual property laws and restrictions on disclosure to protect our intellectual property rights. To date, we have not sought patent protection. Consequently, we will not be able to protect our technologies from independent invention by third parties. Despite our efforts to protect our intellectual property rights, unauthorized parties may attempt to copy or otherwise to obtain and use our technology and software. Monitoring unauthorized use of our technology and software is difficult and costly, and we cannot be certain that the steps we have taken will prevent piracy and other unauthorized distribution and use of our technology and software, particularly internationally where the laws may not protect our intellectual property rights as fully as in the United States. In the future, we may have to resort to litigation to enforce our intellectual property rights, which could result in substantial costs and diversion of our management and resources.

In addition, although we require third parties to sign agreements not to disclose or improperly use our intellectual property, it may still be possible for third parties to obtain and improperly use our intellectual properties without our consent. This could harm our business, operating results and financial condition.

**Third parties may sue us for intellectual property infringement, which, if successful, may disrupt our business and could require us to pay significant damage awards.**

Third parties may sue us for intellectual property infringement or initiate proceedings to invalidate our intellectual property, either of which, if successful, could disrupt the conduct of our business, cause us to pay significant damage awards or require us to pay licensing fees. In the event of a successful claim against us, we might be enjoined from using our licensed intellectual property, we might incur significant licensing fees and we might be forced to develop alternative technologies. Our failure or inability to develop non-infringing technology or software or to license the infringed or similar technology or software on a timely basis could force us to withdraw products and services from the market or prevent us from introducing new products and services. In addition, even if we are able to license the infringed or similar technology or software, license fees could be substantial and the terms of these licenses could be burdensome, which might adversely affect our operating results. We might also incur substantial expenses in defending against third-party infringement claims, regardless of their merit. Successful infringement or licensing claims against us might result in substantial monetary liabilities and might materially disrupt the conduct of our business.

**Indemnity provisions in various agreements potentially expose us to substantial liability for intellectual property infringement, damages caused by malicious software and other losses.**

In the ordinary course of our business, most of our agreements with carriers and other distributors include indemnification provisions. In these provisions, we agree to indemnify them for losses suffered or incurred in connection with our products and services, including as a result of intellectual property infringement and damages caused by viruses, worms and other malicious software. The term of these indemnity provisions is generally perpetual after execution of the corresponding license agreement, and the maximum potential amount of future payments we could be required to make under these indemnification provisions is generally unlimited. Large future indemnity payments could harm our business, operating results and financial condition.

**As a result of a majority of our revenues currently being derived from a limited number of wireless carriers, if any one of these carriers were unable to fulfill its payment obligations, our financial condition and results of operations would suffer.**

If any of our primary carriers is unable to fulfill its payment obligations to us under our carrier agreements with them, our revenues could decline significantly and our financial condition will be harmed.

**We may need to raise additional capital to grow our business, and we may not be able to raise capital on terms acceptable to us or at all.**

The operation of our business and our efforts to grow our business will further require significant cash outlays and commitments. If our cash, cash equivalents and short-term investments balances and any cash generated from operations are not sufficient to meet our cash requirements, we will need to seek additional capital, potentially through debt or equity financings, to fund our growth. We may not be able to raise needed cash on terms acceptable to us or at all. Financings, if available, may be on terms that are dilutive or potentially dilutive to our stockholders, and the prices at which new investors would be willing to purchase our securities may be lower than the fair market value of our common stock. The holders of new securities may also receive rights, preferences or privileges that are senior to those of existing holders of our common stock. If new sources of financing are required but are insufficient or unavailable, we would be required to modify our growth and operating plans to the extent of available funding, which would harm our ability to grow our business.

**We face risks associated with currency exchange rate fluctuations.**

We currently transact a significant portion of our revenues in foreign currencies. Conducting business in currencies other than U.S. Dollars subjects us to fluctuations in currency exchange rates that could have a negative impact on our reported operating results. Fluctuations in the value of the U.S. Dollar relative to other currencies impact our revenues, cost of revenues and operating margins and result in foreign currency transaction gains and losses. To date, we have not engaged in exchange rate hedging activities. Even if we were to implement hedging strategies to mitigate this risk, these strategies might not eliminate our exposure to foreign exchange rate fluctuations and would involve costs and risks of their own, such as ongoing management time and expertise, external costs to implement the strategies and potential accounting implications.

**Our business in countries with a history of corruption and transactions with foreign governments, including with government owned or controlled wireless carriers, increase the risks associated with our international activities.**

As we operate and sell internationally, we are subject to the U.S. Foreign Corrupt Practices Act, or the FCPA, and other laws that prohibit improper payments or offers of payments to foreign governments and their officials and political parties by the United States and other business entities for the purpose of obtaining or retaining business. We have operations, deal with carriers and make sales in countries known to experience corruption, particularly certain emerging countries in Eastern Europe and Latin America, and further international expansion may involve more of these countries. Our activities in these countries create the risk of unauthorized payments or offers of payments by one of our employees, consultants, sales agents or distributors that could be in violation of various laws including the FCPA, even though these parties are not always subject to our control. We have attempted to implement safeguards to discourage these practices by our employees, consultants, sales agents and distributors. However, our existing safeguards and any future improvements may prove to be less than effective, and our employees, consultants, sales agents or distributors may engage in conduct for which we might be held responsible. Violations of the FCPA may result in severe criminal or civil sanctions, and we may be subject to other liabilities, which could negatively affect our business, operating results and financial condition.

**Changes to financial accounting standards could make it more expensive to issue stock options to employees, which would increase compensation costs and might cause us to change our business practices.**

We prepare our financial statements to conform with accounting principles generally accepted in the United States. These accounting principles are subject to interpretation by the Financial Accounting Standards Board, or FASB, the Commission and various other bodies. A change in those principles could have a significant effect on our reported results and might affect our reporting of transactions completed before a change is announced. For example, we have used stock options as a fundamental component of our employee compensation packages. We believe that stock options directly motivate our employees to maximize long-term stockholder value and, through the use of vesting, encourage employees to remain in our employ. Several regulatory agencies and entities have made regulatory changes that could make it more difficult or expensive for us to grant stock options to employees. We may, as a result of these changes, incur increased compensation costs, change our equity compensation strategy or find it difficult to attract, retain and motivate employees, any of which could materially and adversely affect our business, operating results and financial condition.

**We may be liable for the content we make available through our products and services with mature themes.**

Because some of our products and services contain content with mature themes, we may be subject to obscenity or other legal claims by third parties. Our business, financial condition and operating results could be harmed if we were found liable for this content. Implementing measures to reduce our exposure to this liability may require us to take steps that would substantially limit the attractiveness of our products and services and/or its availability in various geographic areas, which would negatively impact our ability to generate revenue. Furthermore, our insurance may not adequately protect us against all of these types of claims.

**Government regulation of our content with mature themes could restrict our ability to make some of our content available in certain jurisdictions.**

Our business is regulated by governmental authorities in the countries in which we operate. Because of our international operations, we must comply with diverse and evolving regulations. The governments of some countries have sought to limit the influence of other cultures by restricting the distribution of products deemed to represent foreign or “immoral” influences. Regulation aimed at limiting minors’ access to content with mature themes could also increase our cost of operations and introduce technological challenges, such as by requiring development and implementation of age verification systems. As a result, government regulation of our adult content could have a material adverse effect on our business, financial condition or results of operations.

**Negative publicity, lawsuits or boycotts by opponents of content with mature themes could adversely affect our operating performance and discourage investors from investing in our publicly traded securities.**

We could become a target of negative publicity, lawsuits or boycotts by one or more advocacy groups who oppose the distribution of adult-oriented entertainment. These groups have mounted negative publicity campaigns, filed lawsuits and encouraged boycotts against companies whose businesses involve adult-oriented entertainment. To the extent our content with mature themes is viewed as adult-oriented entertainment, the costs of defending against any such negative publicity, lawsuits or boycotts could be significant, could hurt our finances and could discourage investors from investing in our publicly traded securities. To date, we have not been a target of any of these advocacy groups. As a provider of content with mature themes, we cannot assure you that we may not become a target in the future.

**Risks Relating to Our Industry**

**Wireless communications technologies are changing rapidly, and we may not be successful in working with these new technologies.**

Wireless network and mobile handset technologies are undergoing rapid innovation. New handsets with more advanced processors and supporting advanced programming languages continue to be introduced. In addition, networks that enable enhanced features are being developed and deployed. We have no control over the demand for, or success of, these products or technologies. If we fail to anticipate and adapt to these and other technological changes, the available channels for our products and services may be limited and our market share and our operating results may suffer. Our future success will depend on our ability to adapt to rapidly changing technologies and develop products and services to accommodate evolving industry standards with improved performance and reliability. In addition, the widespread adoption of networking or telecommunications technologies or other technological changes could require substantial expenditures to modify or adapt our products and services.

Technology changes in the wireless industry require us to anticipate, sometimes years in advance, which technologies we must implement and take advantage of in order to make our products and services, and other mobile entertainment products, competitive in the market. Therefore, we usually start our product development with a range of technical development goals that we hope to be able to achieve. We may not be able to achieve these goals, or our competition may be able to achieve them more quickly and effectively than we can. In either case, our products and services may be technologically inferior to those of our competitors, less appealing to end users, or both. If we cannot achieve our technology goals within our original development schedule, then we may delay their release until these technology goals can be achieved, which may delay or reduce our revenues, increase our development expenses and harm our reputation. Alternatively, we may increase the resources employed in research and development in an attempt either to preserve our product launch schedule or to keep up with our competition, which would increase our development expenses. In either case, our business, operating results and financial condition could be materially harmed.

**The complexity of and incompatibilities among mobile handsets may require us to use additional resources for the development of our products and services.**

To reach large numbers of wireless subscribers, mobile entertainment publishers like us must support numerous mobile handsets and technologies. However, keeping pace with the rapid innovation of handset technologies together with the continuous introduction of new, and often incompatible, handset models by wireless carriers requires us to make significant investments in research and development, including personnel, technologies and equipment. In the future, we may be required to make substantial investments in our development if the number of different types of handset models continues to proliferate. In addition, as more advanced handsets are introduced that enable more complex, feature rich products and services, we anticipate that our development costs will increase, which could increase the risks associated with one or more of our products or services and could materially harm our operating results and financial condition.

**If wireless subscribers do not continue to use their mobile handsets to access mobile entertainment and other applications, our business growth and future revenues may be adversely affected.**

We operate in a developing industry. Our success depends on growth in the number of wireless subscribers who use their handsets to access data services and, in particular, entertainment applications of the type we develop and distribute. New or different mobile entertainment applications developed by our current or future competitors may be preferred by subscribers to our offerings. In addition, other mobile platforms may become widespread, and end users may choose to switch to these platforms. If the market for our products and services does not continue to grow or we are unable to acquire new end users, our business growth and future revenues could be adversely affected. If end users switch their entertainment spending away from the kinds of offerings that we publish, or switch to platforms or distribution where we do not have comparative strengths, our revenues would likely decline and our business, operating results and financial condition would suffer.

**Our industry is subject to risks generally associated with the entertainment industry, any of which could significantly harm our operating results.**

Our business is subject to risks that are generally associated with the entertainment industry, many of which are beyond our control. These risks could negatively impact our operating results and include: the popularity, price and timing of release of our offerings and mobile handsets on which they are accessed; economic conditions that adversely affect discretionary consumer spending; changes in consumer demographics; the availability and popularity of other forms of entertainment; and critical reviews and public tastes and preferences, which may change rapidly and cannot necessarily be predicted.

**A shift of technology platform by wireless carriers and mobile handset manufacturers could lengthen the development period for our offerings, increase our costs and cause our offerings to be of lower quality or to be published later than anticipated.**

Mobile handsets require multimedia capabilities enabled by technologies capable of running applications such as ours. Our development resources are concentrated in today's most popular platforms, and we have experience developing applications for these platforms. If one or more of these technologies fall out of favor with handset manufacturers and wireless carriers and there is a rapid shift to a new technology where we do not have development experience or resources, the development period for our products and services may be lengthened, increasing our costs, and the resulting products and services may be of lower quality, and may be published later than anticipated. In such an event, our reputation, business, operating results and financial condition might suffer.

**System or network failures could reduce our sales, increase costs or result in a loss of end users of our products and services.**

Mobile publishers rely on wireless carriers' networks to deliver products and services to end users and on their or other third parties' billing systems to track and account for the downloading of such offerings. In certain circumstances, mobile publishers may also rely on their own servers to deliver products on demand to end users through their carriers' networks. In addition, certain products require access over the mobile internet to our servers in order to enable certain features. Any failure of, or technical problem with, carriers', third parties' or our billing systems, delivery systems, information systems or communications networks could result in the inability of end users to download our products, prevent the completion of a billing transaction, or interfere with access to some aspects of our products. If any of these systems fails or if there is an interruption in the supply of power, an earthquake, fire, flood or other natural disaster, or an act of war or terrorism, end users might be unable to access our offerings. For example, from time to time, our carriers have experienced failures with their billing and delivery systems and communication networks, including gateway failures that reduced the provisioning capacity of their branded e-commerce system. Any failure of, or technical problem with, the carriers', other third parties' or our systems could cause us to lose end users or revenues or incur substantial repair costs and distract management from operating our business. This, in turn, could harm our business, operating results and financial condition.

**Our business depends on the growth and maintenance of wireless communications infrastructure.**

Our success will depend on the continued growth and maintenance of wireless communications infrastructure in the United States and internationally. This includes deployment and maintenance of reliable next-generation digital networks with the speed, data capacity and security necessary to provide reliable wireless communications services. Wireless communications infrastructure may be unable to support the demands placed on it if the number of subscribers continues to increase, or if existing or future subscribers increase their bandwidth requirements. Wireless communications have experienced a variety of outages and other delays as a result of infrastructure and equipment failures, and could face outages and delays in the future. These outages and delays could reduce the level of wireless communications usage as well as our ability to distribute our products and services successfully. In addition, changes by a wireless carrier to network infrastructure may interfere with downloads and may cause end users to lose functionality. This could harm our business, operating results and financial condition.

**Future mobile handsets may significantly reduce or eliminate wireless carriers' control over delivery of our products and services and force us to rely further on alternative sales channels, which, if not successful, could require us to increase our sales and marketing expenses significantly.**

A growing number of handset models currently available allow wireless subscribers to browse the internet and, in some cases, download applications from sources other than through a carrier's on-deck portal. In addition, the development of other application delivery mechanisms such as premium-SMS may enable subscribers to download applications without having to access a carrier's on-deck portal. Increased use by subscribers of open operating system handsets or premium-SMS delivery systems will enable them to bypass the carriers' on-deck portal and could reduce the market power of carriers. This could force us to rely further on alternative sales channels and could require us to increase our sales and marketing expenses significantly. Relying on placement of our products and services in the menus of off-deck distributors may result in lower revenues than might otherwise be anticipated. We may be unable to develop and promote our direct website distribution sufficiently to overcome the limitations and disadvantages of off-deck distribution channels. This could harm our business, operating results and financial condition.

**Actual or perceived security vulnerabilities in mobile handsets or wireless networks could adversely affect our revenues.**

Maintaining the security of mobile handsets and wireless networks is critical for our business. There are individuals and groups who develop and deploy viruses, worms and other illicit code or malicious software programs that may attack wireless networks and handsets. Security experts have identified computer "worm" programs that target handsets running on certain operating systems. Although these worms have not been widely released and do not present an immediate risk to our business, we believe future threats could lead some end users to seek to reduce or delay future purchases of our products or reduce or delay the use of their handsets. Wireless carriers and handset manufacturers may also increase their expenditures on protecting their wireless networks and mobile phone products from attack, which could delay adoption of new handset models. Any of these activities could adversely affect our revenues and this could harm our business, operating results and financial condition.

**Changes in government regulation of the media and wireless communications industries may adversely affect our business.**

It is possible that a number of laws and regulations may be adopted in the United States and elsewhere that could restrict the media and wireless communications industries, including laws and regulations regarding customer privacy, taxation, content suitability, copyright, distribution and antitrust. Furthermore, the growth and development of the market for electronic commerce may prompt calls for more stringent consumer protection laws that may impose additional burdens on companies such as ours conducting business through wireless carriers. We anticipate that regulation of our industry will increase and that we will be required to devote legal and other resources to address this regulation. Changes in current laws or regulations or the imposition of new laws and regulations in the United States or elsewhere regarding the media and wireless communications industries may lessen the growth of wireless communications services and may materially reduce our ability to increase or maintain sales of our products and services.

A number of studies have examined the health effects of mobile phone use, and the results of some of the studies have been interpreted as evidence that mobile phone use causes adverse health effects. The establishment of a link between the use of mobile phone services and health problems, or any media reports suggesting such a link, could increase government regulation of, and reduce demand for, mobile phones and, accordingly, the demand for our products and services, and this could harm our business, operating results and financial condition.

**Risks Relating to Our Common Stock**

**There is a limited trading market for our common stock.**

Although prices for our shares of common stock are quoted on the OTC Bulletin Board (under the symbol MNDL.OB), there is no established public trading market for our common stock, and no assurance can be given that a public trading market will develop or, if developed, that it will be sustained.

**The liquidity of our common stock will be affected by its limited trading market.**

Bid and ask prices for shares of our common stock are quoted on the OTC Bulletin Board under the symbol MNDL.OB. There is currently no broadly followed, established trading market for our common stock. While we are hopeful that, following the Merger, we will command the interest of a greater number of investors, an established trading market for our shares of common stock may never develop or be maintained. Active trading markets generally result in lower price volatility and more efficient execution of buy and sell orders. The absence of an active trading market reduces the liquidity of our common stock. As a result of the lack of trading activity, the quoted price for our common stock on the OTC Bulletin Board is not necessarily a reliable indicator of its fair market value. Further, if we cease to be quoted, holders of our common stock would find it more difficult to dispose of, or to obtain accurate quotations as to the market value of, our common stock, and the market value of our common stock would likely decline.

**If and when a trading market for our common stock develops, the market price of our common stock is likely to be highly volatile and subject to wide fluctuations, and you may be unable to resell your shares at or above the current price.**

The market price of our common stock is likely to be highly volatile and could be subject to wide fluctuations in response to a number of factors that are beyond our control, including announcements of new products or services by our competitors. In addition, the market price of our common stock could be subject to wide fluctuations in response to a variety of factors, including:

- quarterly variations in our revenues and operating expenses;
- developments in the financial markets, and the worldwide or regional economies;
- announcements of innovations or new products or services by us or our competitors;
- fluctuations in merchant credit card interest rates;
- significant sales of our common stock or other securities in the open market; and
- changes in accounting principles.

In the past, stockholders have often instituted securities class action litigation after periods of volatility in the market price of a company's securities. If a stockholder were to file any such class action suit against us, we would incur substantial legal fees and our management's attention and resources would be diverted from operating our business to respond to the litigation, which could harm our business.

**The sale of securities by us in any equity or debt financing could result in dilution to our existing stockholders and have a material adverse effect on our earnings.**

Any sale of common stock by us in a future private placement offering could result in dilution to the existing stockholders as a direct result of our issuance of additional shares of our capital stock. In addition, our business strategy may include expansion through internal growth by acquiring complementary businesses, acquiring or licensing additional brands, or establishing strategic relationships with targeted customers and suppliers. In order to do so, or to finance the cost of our other activities, we may issue additional equity securities that could dilute our stockholders' stock ownership. We may also assume additional debt and incur impairment losses related to goodwill and other tangible assets if we acquire another company, and this could negatively impact our earnings and results of operations.

**Future sales of shares by our stockholders could cause the market price of our common stock to drop significantly, even if our business is performing.**

Upon completion of the Merger, we will have outstanding 32,048,365 shares of common stock. In exchange for the grant of piggy-back registration rights, Mandalay intends to enter into lock-up agreements with certain of our new stockholders and optionholders as of the Merger holding, in the aggregate, 10,566,720 shares of our common stock or securities exercisable for or convertible into our common stock, and certain of our directors, officers, and principal stockholders prior to the Merger holding, an additional 16,200,000 shares of our common stock or securities exercisable for our common stock pursuant to which all of such shares and all other shares of our common stock or securities exercisable for or convertible into our common stock held by such stockholders and option holders will be subject to an 18-month lock-up period beginning on February 12, 2008, during which time their shares shall not be sold or otherwise transferred without the prior written consent of Mandalay. As these restrictions on transfer end, the market price of our stock could drop significantly if the holders of such shares sell them or are perceived by the market as intending to sell them. This decline in our stock price could occur even if our business is otherwise doing well.

**I f securities or industry analysts do not publish research or reports about our business, or if they downgrade their recommendations regarding our common stock, our stock price and trading volume could decline.**

The trading market for our common stock will be influenced by the research and reports that industry or securities analysts publish about us or our business. If any of the analysts who cover us downgrade our common stock, our common stock price would likely decline. If analysts cease coverage of our company or fail to regularly publish reports on us, we could lose visibility in the financial markets, which in turn could cause our common stock price or trading volume to decline.

**"Penny stock" rules may restrict the market for our common stock.**

Our common stock is subject to rules promulgated by the Commission relating to "penny stocks," which apply to companies whose shares are not traded on a national stock exchange or on NASDAQ, trade at less than $5.00 per share, or who do not meet certain other financial requirements specified by the Commission. These rules require brokers who sell "penny stocks" to persons other than established customers and "accredited investors" to complete certain documentation, make suitability inquiries of investors, and provide investors with certain information concerning the risks of trading in such penny stocks. These rules may discourage or restrict the ability of brokers to sell our common stock and may affect the secondary market for our common stock. These rules could also hamper our ability to raise funds in the primary market for our common stock.

**If we fail to maintain an effective system of internal controls, we might not be able to report our financial results accurately or prevent fraud; in that case, our stockholders could lose confidence in our financial reporting, which could negatively impact the price of our stock.**

Effective internal controls are necessary for us to provide reliable financial reports and prevent fraud. In addition, Section 404 of the Sarbanes-Oxley Act of 2002, or the Sarbanes-Oxley Act, will require us to evaluate and report on our internal control over financial reporting and have our independent registered public accounting firm attest to our evaluation beginning with our Annual Report on Form 10-K for the year ending December 31, 2008. We are in the process of preparing and implementing an internal plan of action for compliance with Section 404 and strengthening and testing our system of internal controls to provide the basis for our report. The process of implementing our internal controls and complying with Section 404 will be expensive and time- consuming, and will require significant attention of management. We cannot be certain that these measures will ensure that we implement and maintain adequate controls over our financial processes and reporting in the future. Even if we conclude, and our independent registered public accounting firm concurs, that our internal control over financial reporting provides reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles, because of its inherent limitations, internal control over financial reporting may not prevent or detect fraud or misstatements. Failure to implement required new or improved controls, or difficulties encountered in their implementation, could harm our operating results or cause us to fail to meet our reporting obligations. If we or our independent registered public accounting firm discover a material weakness or a significant deficiency in our internal control, the disclosure of that fact, even if quickly remedied, could reduce the market's confidence in our financial statements and harm our stock price. In addition, a delay in compliance with Section 404 could subject us to a variety of administrative sanctions, including ineligibility for short form resale registration, action by the Commission, and the inability of registered broker-dealers to make a market in our common stock, which could further reduce our stock price and harm our business.

**We do not anticipate paying dividends.**

We have never paid cash or other dividends on our common stock. Payment of dividends on our common stock is within the discretion of our Board of Directors and will depend upon our earnings, our capital requirements and financial condition, and other factors deemed relevant by our Board of Directors. However, the earliest our Board of Directors would likely consider a dividend is if we begin to generate excess cash flow now that the Merger is completed.

**Our officers, directors and principal stockholders can exert significant influence over us and may make decisions that are not in the best interests of all stockholders.**

Our officers, directors and principal stockholders (greater than 5% stockholders) collectively beneficially own approximately 88% of our outstanding common stock. As a result, this group will be able to affect the outcome of, or exert significant influence over, all matters requiring stockholder approval, including the election and removal of directors and any change in control. In particular, this concentration of ownership of our common stock could have the effect of delaying or preventing a change of control of us or otherwise discouraging or preventing a potential acquirer from attempting to obtain control of us. This, in turn, could have a negative effect on the market price of our common stock. It could also prevent our stockholders from realizing a premium over the market prices for their shares of common stock. Moreover, the interests of this concentration of ownership may not always coincide with our interests or the interests of other stockholders, and, accordingly, this group could cause us to enter into transactions or agreements that we would not otherwise consider.

**Maintaining and improving our financial controls and the requirements of being a public company may strain our resources, divert management's attention and affect our ability to attract and retain qualified members for our Board of Directors.**

As a public company, we will be subject to the reporting requirements of the Exchange Act and the Sarbanes-Oxley Act. The requirements of these rules and regulations will increase our legal, accounting and financial compliance costs, will make some activities more difficult, time-consuming and costly and may also place undue strain on our personnel, systems and resources.

The Sarbanes-Oxley Act requires, among other things, that we maintain effective disclosure controls and procedures and internal control over financial reporting. This can be difficult to do. For example, we depend on the reports of wireless carriers for information regarding the amount of sales of our products and services and to determine the amount of royalties we owe branded content licensors and the amount of our revenues. These reports may not be timely, and in the past they have contained, and in the future they may contain, errors.

In order to maintain and improve the effectiveness of our disclosure controls and procedures and internal control over financial reporting, we will need to expend significant resources and provide significant management oversight. We have a substantial effort ahead of us to implement appropriate processes, document our system of internal control over relevant processes, assess their design, remediate any deficiencies identified and test their operation. As a result, management's attention may be diverted from other business concerns, which could harm our business, operating results and financial condition. These efforts will also involve substantial accounting-related costs.

The Sarbanes-Oxley Act will make it more difficult and more expensive for us to maintain directors' and officers' liability insurance, and we may be required to accept reduced coverage or incur substantially higher costs to maintain coverage. If we are unable to maintain adequate directors' and officers' insurance, our ability to recruit and retain qualified directors, and officers will be significantly curtailed.

## MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS

*You should read the following discussion and analysis in conjunction with our consolidated financial statements and related notes included elsewhere in this Current Report on Form 8-K. This discussion contains forward-looking statements that involve risks, uncertainties and assumptions. Our actual results may differ materially from those anticipated in these forward-looking statements as a result of a variety of factors, including those set forth under "Risk Factors" beginning on page 15 and elsewhere in this filing.*

### Overview

Our operations are currently conducted through our sole operating and wholly-owned subsidiary, Twistbox Entertainment, Inc. Unless the context otherwise indicates, the use of the terms "we," "our" or "us" refers to the business and operations of Mandalay Media, Inc. through Twistbox. Twistbox is a global publisher and distributor of branded entertainment content, including images, video, TV programming and games, for Third Generation (3G) mobile networks. Twistbox publishes and distributes its content in over 40 countries representing more than one billion subscribers.

***Strategies***

We believe that improving quality and greater availability of 2.5 and 3G handsets is in turn encouraging consumer awareness and demand for high quality content on their mobile devices. At the same time, carriers and branded content owners are focusing on a small group of publishers that have the ability to provide high-quality mobile content consistently and port it rapidly and cost-effectively to a wide variety of handsets. Additionally, branded content owners are seeking publishers that have the ability to distribute content globally through relationships with most or all of the major carriers. We believe we have created the requisite development and porting technology and have achieved the scale to operate at this level. We also believe that leveraging our carrier and content owner relationships will allow us to grow our revenues without corresponding percentage growth in our infrastructure and operating costs. Our revenue growth rate will depend significantly on continued growth in the mobile content market and our ability to leverage our distribution and content relationships, as well as to continue to expand. Our ability to attain profitability will be affected by the extent to which we must incur additional expenses to expand our sales, marketing, development, and general and administrative capabilities to grow our business. The largest component of our expenses is personnel costs. Personnel costs consist of salaries, benefits and incentive compensation, including bonuses and stock-based compensation, for our employees. Our operating expenses will continue to grow in absolute dollars, assuming our revenues continue to grow. As a percentage of revenues, we expect these expenses to decrease.

Twistbox started its business as The WAAT Corp. in 2003. A global agreement was signed with Vodafone plc that year. In 2005, the company was reconstituted with its founding shareholders. In September 2006, we reorganized the corporate structure, with The WAAT Corp. being merged into Twistbox Entertainment Inc., and separate divisions created for the games and late night businesses. We acquired Charismatix in February 2006, a developer and distributor of games, based in Germany. The acquisition gave us access to unique technology developed by Charismatix, provided a games development studio, and deepened our relationship with our primary European customer. We acquired the mobile games assets from InfoSpace in January 2007. This acquisition provided a games studio in San Mateo, California, as well as a unique multi-player gaming platform (*Play for Prizes*), additional valuable content licenses, and increased access to U.S. based wireless carriers.

These acquisitions:

- broadened our capabilities and expanded our distribution network;
- expanded and deepened our management capacity and capability to conduct business globally;
- enabled us to compete for licenses on a broader scale because of enhanced distribution and production capabilities;

- provided access to unique technologies that enable us to develop and offer content across multiple handsets and systems in a cost effective manner; and

- provided complementary technical production and testing capabilities that enabled the combined companies to create products superior to those developed by either separately.

We believe that these acquisitions, together with our internal growth, have significantly enhanced our attractiveness to wireless carriers and branded content owners, allowing us to pursue our ongoing strategy.

***Revenues***

We generate the vast majority of our revenues from mobile phone carriers that market and distribute our content. These carriers generally charge a one-time purchase fee or a monthly subscription fee on their subscribers' phone bills when the subscribers download our games to their mobile phones. The carriers perform the billing and collection functions and generally remit to us a contractual percentage of their collected fee for each game. We recognize as revenues the percentage of the fees due to us from the carrier. End users may also initiate the purchase of our games through various Internet portal sites or through other delivery mechanisms, with carriers or third parties being responsible for billing, collecting and remitting to us a portion of their fees. To date, our international revenues have been much more significant than our domestic revenues.

***Cost of Revenues***

Our cost of revenues consists primarily of royalties that we pay to content owners from which we license brands and other intellectual property. In addition, certain other direct costs such as quality assurance ("QA") and use of short codes are included in cost of revenues. Our cost of revenues also includes noncash expenses—amortization of certain acquired intangible assets, and any impairment of guarantees. We generally do not pay advance royalties to licensors. Where we acquire rights in perpetuity or for a specific time period without revenue share or additional fees, we record the payments made to content owners as prepaid royalties on our balance sheet when payment is made to the licensor. We recognize royalties in cost of revenues based upon the revenues derived from the relevant game multiplied by the applicable royalty rate. If applicable, we will record an impairment of prepaid royalties or accrue for future guaranteed royalties that are in excess of anticipated recoupment. At each balance sheet date, we perform a detailed review of prepaid royalties and guarantees that considers multiple factors, including forecasted demand, anticipated share for specific content providers, development and launch plans, and current and anticipated sales levels. We expense the costs for development of our content prior to technological feasibility as we incur them throughout the development process, and we include these costs in product development expenses.

***Gross Margin***

Our gross margin is determined principally by the mix of content that we deliver. Our games based on licensed intellectual property require us to pay royalties to the licensor and the royalty rates in our licenses vary significantly. Our own in-house developed games, which are based on our own intellectual property, require no royalty payments to licensors. For late night business, branded content requires royalty payment to the licensors, generally on a revenue share basis, while for acquired content we amortize the cost against revenues, and this will generally result in a lower cost associated with it. There are multiple internal and external factors that affect the mix of revenues between games and late night content, and among licensed, developed and acquired content within those categories, including the overall number of licensed games and developed games available for sale during a particular period, the extent of our and our carriers' marketing efforts for each type of content, and the deck placement of content on our carriers' mobile handsets. We believe the success of any individual game during a particular period is affected by the recognizability of the title, its quality, its marketing and media exposure, its overall acceptance by end users and the availability of competitive games. In the case of Play for Prizes games, this is further impacted by its suitability to "tournament" play and the prizes available. For other content, we believe that success is driven by the carrier's deck placement, the rating of the content, by quality and by brand recognition. If our product mix shifts more to licensed games or games with higher royalty rates, our gross margin would decline. For other content as we increase scale, we believe that we will have the opportunity to move the mix towards higher margin acquired product. Our gross margin is also affected by direct costs such as charges for mobile phone short codes, and QA, and by periodic charges for impairment of intangible assets and of prepaid royalties and guarantees. These charges can cause gross margin variations, particularly from quarter to quarter.

***Operating Expenses***

Our operating expenses primarily include product development expenses, sales and marketing expenses and general and administrative expenses. They have in the past also included a charge for taxes associated with our major customer. Our product development expenses consist primarily of salaries and benefits for employees working on creating, developing, editing, programming, porting, quality assurance, carrier certification and deployment of our content, on technologies related to interoperating with our various mobile phone carriers and on our internal platforms, payments to third parties for developing our content, and allocated facilities costs. We devote substantial resources to the development, supporting technologies, porting and quality assurance of our content. We believe that developing games internally through our own development studios allows us to increase operating margins, leverage the technology we have developed and better control game delivery. During 2006, as a result of our acquisition of Charismatix, and again in 2007 with the acquisition of the mobile games division of InfoSpace, we substantially increased our ability to develop games internally. As a result, we have not generally incurred significant expenses for external development. Games development may encompass development of a game from concept through deployment or adaption or rebranding of an existing game. For acquired content, typically we will receive content from our licensors which must be edited for mobile phone users, combined with other appropriate content, and packaged for end consumers. The process is made more complex by the need to deliver content on multiple carriers platforms and across a large number of different handsets.

*Sales and Marketing.* Our sales and marketing expenses consist primarily of salaries, benefits and incentive compensation for sales, business development, project management and marketing personnel, expenses for advertising, trade shows, public relations and other promotional and marketing activities, expenses for general business development activities, travel and entertainment expenses and allocated facilities costs. We expect sales and marketing expenses to increase in absolute terms with the growth of our business and as we further promote our content and expand our carrier network.

*General and Administrative.* Our general and administrative expenses consist primarily of salaries and benefits for general and administrative personnel, consulting fees, legal, accounting and other professional fees, information technology costs and allocated facilities costs. We expect that general and administrative expenses will increase in absolute terms as we hire additional personnel and incur costs related to the anticipated growth of our business and our operation as a public company. We also expect that these expenses will increase because of the additional costs to comply with the Sarbanes-Oxley Act and related regulation, our efforts to expand our international operations and, in the near term, additional accounting costs related to our operation as a public company.

*Amortization of Intangible Assets.* We record amortization of acquired intangible assets that are directly related to revenue-generating activities as part of our cost of revenues and amortization of the remaining acquired intangible assets, such as customer lists and platform, as part of our operating expenses. We record intangible assets on our balance sheet based upon their fair value at the time they are acquired. We determine the fair value of the intangible assets using a contribution approach. We amortize the amortizable intangible assets using the straight-line method over their estimated useful lives of three to five years.

### *Interest Income and Interest Expense*

Interest income represents interest earned, primarily on money market accounts placed with our bank. Interest income was substantially higher in fiscal 2007 due to cash invested following our Series B private placement in May 2006. In fiscal 2006 interest expense was primarily connected to advances from an associated company, PowerSports Video Productions CCT, Inc. In fiscal 2007, interest expense primarily related to a facility provided by our bank to fund the acquisition of the mobile games division of InfoSpace. In April 2007, we raised $3.0 million by issuing 436,680 shares of Series B1 Preferred Stock at $6.87 per share. In July 2007, we entered into a debt financing agreement in the form of a Senior Secured Note amounting to $16.5 million payable at 30 months. These financing arrangements will result in both interest income and interest expense being higher in fiscal 2008. The level of net interest expense will depend on our use of cash in the future.

### *Accounting for Income Taxes*

We are subject to tax in the United States as well as other tax jurisdictions or countries in which we conduct business. Earnings from our non-U.S. activities are subject to local country income tax and may be subject to current United States income tax depending on whether these earnings are subject to U.S. income tax based upon U.S. anti-deferral rules, such as Subpart F of the Internal Revenue Code of 1986, as amended, or the Code. In addition, some revenues generated outside of the United States may be subject to withholding taxes. In some cases, these withholding taxes may be deductible on a current basis or may be available as a credit to offset future income taxes depending on a variety of factors. We record a valuation allowance to reduce any deferred tax asset to the amount that is more likely than not to be realized. We consider historical levels of income, expectations and risks associated with estimates of future taxable income and ongoing prudent and feasible tax planning strategies in assessing the need for a valuation allowance. If we were to determine that we would be able to realize deferred tax assets in the future in excess of the net recorded amount, we would record an adjustment to the deferred tax asset valuation allowance. Such an adjustment would increase our income in the period the determination is made. Historically, we have incurred operating losses and have generated significant net operating loss carryforwards. At September 30, 2007, we had net operating loss carryforwards of approximately $17.0 million federal and state tax purposes. These carryforwards will begin to expire in 2019. Our ability to use our net operating loss carryforwards to offset any future taxable income may be subject to restrictions attributable to equity transactions that result in changes of ownership as defined by section 382 of the Code.

**Critical Accounting Policies and Estimates**

Our consolidated financial statements are prepared in accordance with United States generally accepted accounting principles, or GAAP. These accounting principles require us to make certain estimates and judgments that can affect the reported amounts of assets and liabilities as of the dates of the consolidated financial statements, the disclosure of contingencies as of the dates of the consolidated financial statements, and the reported amounts of revenues and expenses during the periods presented. Although we believe that our estimates and judgments are reasonable under the circumstances existing at the time these estimates and judgments are made, actual results may differ from those estimates, which could affect our consolidated financial statements. We believe the following to be critical accounting policies because they are important to the portrayal of our financial condition or results of operations and they require critical management estimates and judgments about matters that are uncertain:

- revenue recognition;
- license fees;
- goodwill;
- software development costs;
- stock-based compensation; and
- income taxes.

***Revenue Recognition***

Our revenues are derived primarily by licensing material and software products in the form of products (Image Galleries, Wallpapers, video, WAP Site access, Mobile TV) and mobile games. License arrangements with the end user can be on a perpetual or subscription basis.

A perpetual license gives an end user the right to use the product, image or game on the registered handset on a perpetual basis. A subscription license gives an end user the right to use the product, image or game on the registered handset for a limited period of time, ranging from a few days to as long as one month. We distribute our products primarily through mobile telecommunications service providers, or carriers, which market the product, images or games to end users. License fees for perpetual and subscription licenses are usually billed by the carrier upon download of the product, image or game by the end user. In the case of subscriber licenses, many subscriber agreements provide for automatic renewal until the subscriber opts-out, while the others provide opt-in renewal. In either case, subsequent billings for subscription licenses are generally billed monthly. We apply the provisions of Statement of Position 97-2, *Software Revenue Recognition*, as amended by Statement of Position 98-9, Modification of SOP 97-2, *Software Revenue Recognition, With Respect to Certain Transactions*, to all transactions.

Revenues are recognized from our products, images and games when persuasive evidence of an arrangement exists, the product, image or game has been delivered, the fee is fixed or determinable, and the collection of the resulting receivable is probable. For both perpetual and subscription licenses, management considers a signed license agreement to be evidence of an arrangement with a carrier and a “clickwrap” agreement to be evidence of an arrangement with an end user. For these licenses, we define delivery as the download of the product, image or game by the end user. We estimate revenues from carriers in the current period when reasonable estimates of these amounts can be made. Most carriers only provide detailed sales transaction data on a one to two month lag. Some carriers provide reliable interim preliminary reporting and others report sales data within a reasonable time frame following the end of each month, both of which allow us to make reasonable estimates of revenues and therefore to recognize revenues during the reporting period when the end user licenses the product, image or game. Determination of the appropriate amount of revenue recognized involves judgments and estimates that the we believe are reasonable, but it is possible that actual results may differ from our estimates. We estimate for revenues include consideration of factors such as preliminary sales data, carrier-specific historical sales trends, volume of activity on company monitored sites, seasonality, time elapsed from launch of services or product lines, the age of games and the expected impact of newly launched games, successful introduction of new handsets, growth of 3G subscribers by carrier, promotions during the period and economic trends. When we receive the final carrier reports, to the extent not received within a reasonable time frame following the end of each month, we record any differences between estimated revenues and actual revenues in the reporting period when we determine the actual amounts. Revenues earned from certain carriers may not be reasonably estimated. If we are unable to reasonably estimate the amount of revenues to be recognized in the current period, we recognize revenues upon the receipt of a carrier revenue report and when a portion of licensed revenues are fixed or determinable and collection is probable. To monitor the reliability of our estimates, management, where possible, reviews the revenues by country by carrier and by product line on a regular basis to identify unusual trends such as differential adoption rates by carriers or the introduction of new handsets. If we deem that a carrier is not creditworthy, we defer all revenues from the arrangement until we receive payment and all other revenue recognition criteria have been met.

In accordance with Emerging Issues Task Force, or EITF Issue No. 99-19, *Reporting Revenue Gross as a Principal Versus Net as an Agent*, we recognize as revenue the amount the carrier reports as payable upon the sale of our products, images or games. We have evaluated our carrier agreements and have determined that it is not the principal when selling our products, images or games through carriers. Key indicators that it evaluated to reach this determination include:

- wireless subscribers directly contract with the carriers, which have most of the service interaction and are generally viewed as the primary obligor by the subscribers;
- carriers generally have significant control over the types of games that they offer to their subscribers;
- carriers are directly responsible for billing and collecting fees from their subscribers, including the resolution of billing disputes;
- carriers generally pay us a fixed percentage of their revenues or a fixed fee for each game;
- carriers generally must approve the price of our games in advance of their sale to subscribers, and our more significant carriers generally have the ability to set the ultimate price charged to their subscribers; and
- we have limited risks, including no inventory risk and limited credit risk.

***License Fees***

Our license fees expense consist of fees that we pay to branded content owners for the use of their intellectual property, including trademarks and copyright. We do not generally pay advances to licensors, and license fees are expensed as incurred. Where we acquire the rights for unlimited use of content either in perpetuity or for a specific period, we treat the cost as a prepayment and amortize it against revenue over its anticipated life. Minimum guarantees are required under certain content provider contracts and are expensed when paid. We regularly evaluate remaining liabilities under contracts subject to minimum guarantees and where recoupability of the guarantees is subject to doubt, recognizes the relevant liability and record an impairment charge immediately. This evaluation considers multiple factors, including the term of the agreement, forecasted revenue, forecasted demand for that content, and launch plans. As a result, we recorded a minimum guaranteed liability of approximately $6.0 million as of March 31, 2007. The impairments that we recorded were related to license agreements entered into prior to June 2006 and contained significant and in some cases escalating regular guarantee payments to secure a long term contract for the brand. Subsequent to that time we have not entered into contracts with significant future guaranteed payments. We classify minimum royalty payment obligations as current liabilities to the extent they are contractually due within the next twelve months.

***Goodwill***

In accordance with SFAS No. 142, *Goodwill and Other Intangible Assets* ("SFAS No. 142"), we do not amortize goodwill or other intangible assets with indefinite lives but rather test them for impairment. SFAS No. 142 requires us to perform an impairment review of our goodwill balance at least annually, which we do as of December 31 each year, and also whenever events or changes in circumstances indicate that the carrying amount of these assets may not be recoverable. In our impairment review, we look at two of our reporting units—Twistbox Games Germany and the United States — since none of our goodwill is attributable to other areas. We compare the fair value of each unit to its carrying value, including goodwill. The primary methods used to determine the fair values for SFAS No. 142 impairment purposes were the discounted cash flow and market methods. To date, no unit's carrying value has exceeded its fair value, and thus we have taken no goodwill impairment charges. Application of the goodwill impairment test requires judgment, including the identification of the reporting units, the assigning of assets and liabilities to reporting units, the assigning of goodwill to reporting units and the determining of the fair value of each reporting unit. Significant judgments and assumptions include the forecast of future operating results used in the preparation of the estimated future cash flows, including forecasted revenues and costs, timing of overall market growth and our percentage of that market, discount rates and growth rates in terminal values. The market comparable approach estimates the fair value of a company by applying to that company market multiples of publicly traded firms in similar lines of business. The use of the market comparable approach requires judgments regarding the comparability of companies with lines of business similar to ours. This process is particularly difficult in a situation where no similar public companies exist. The factors used in the selection of comparable companies include growth characteristics as measured by revenue or other financial metrics, margin characteristics; product-defined markets served, customer defined markets served, the size of a company as measured by financial metrics such as revenue or market capitalization, the competitive position of a company, such as whether it is a market leader in terms of indicators such as market share, and company-specific issues that suggest appropriateness or inappropriateness of a particular company as a comparable. We weighted the income and market comparable valuations equally as we did not believe that either method was more appropriate. Further, the total gross value calculated under each method was not materially different and therefore if the weighting were different we do not believe that this would significantly impact our conclusion. If different comparable companies had been used, the market multiples and resulting estimates of the fair value of our stock would also have been different. Changes in these estimates and assumptions could materially affect the determination of fair value for each reporting unit, which could trigger impairment.

***Software Development Costs***

We apply the principles of Statement of Financial Accounting Standards No. 86, *Accounting for the Costs of Computer Software to Be Sold, Leased, or Otherwise Marketed* ("SFAS No. 86"). SFAS No. 86 requires that software development costs incurred in conjunction with product development be charged to research and development expense until technological feasibility is established. Thereafter, until the product is released for sale, software development costs must be capitalized and reported at the lower of unamortized cost or net realizable value of the related product. We have adopted the "tested working model" approach to establishing technological feasibility for our products and games. Under this approach, we do not consider a product or game in development to have passed the technological feasibility milestone until we have a completed a model of the product or game that contains essentially all the functionality and features of the final game, and we have tested the model to ensure that it works as expected. To date, we have not incurred significant costs between the establishment of technological feasibility and the release of a product or game for sale. Thus, we have expensed all software development costs as incurred. We consider the following factors in determining whether costs can be capitalized: the emerging nature of the mobile market; the gradual evolution of the wireless carrier platforms and mobile phones as they relate to products and games; the lack of pre-orders or sales history for products and games; the uncertainty regarding a product's or game's revenue-generating potential; the lack of control over the carrier distribution channel resulting in uncertainty as to when, if ever, a product or game will be available for sale; and the historical practice of canceling products and games at any stage of the development process.

***Stock-Based Compensation***

We have adopted the fair value provisions of SFAS No. 123R, *Share-Based Payment* ("SFAS No. 123R"). SFAS No. 123R requires the recognition of compensation expense, using a fair-value based method, for costs related to all share based payments including stock options. SFAS No. 123R requires companies to estimate the fair value of share-based payment awards on the grant date using an option pricing model. To value stock option awards, we used the Black-Scholes option pricing model, which requires, among other inputs, an estimate of the fair value of the underlying common stock on the date of grant and assumptions as to volatility of our stock over the term of the related options, the expected term of the options, the risk-free interest rate and the option forfeiture rate. We determined the assumptions used in this pricing model at each grant date. We concluded that it was not practicable to calculate the volatility of our share price since our securities are not publicly traded and therefore there is no readily determinable market value for our stock. Therefore, we based expected volatility on the historical volatility of a peer group of publicly traded entities. We determined the expected term of our options based upon the options' contractual term, along with expected experience with exercises and post-vesting cancellations. We based the risk-free rate for the expected term of the option on the U.S. Treasury Constant Maturity Rate as of the grant date. We determined the forfeiture rate based upon anticipated experience with option cancellations since there is little historical experience.

We recorded total employee non-cash stock-based compensation expense under SFAS 123R of $19,000 in fiscal 2006; $55,000 in fiscal 2007 and $58,000 for the six months ended September 30, 2007. We expect that in future periods, stock-based compensation expense may increase as we issue additional equity-based awards to continue to attract and retain key employees. Additionally, SFAS 123R requires that we recognize compensation expense only for the portion of stock options that are expected to vest. Our estimated forfeiture rate in fiscal 2007 was 10%. If the actual number of forfeitures differs from that estimated by management, we may be required to record adjustments to stock-based compensation expense in future periods.

Given the absence of an active market for our common stock at the date of grant prior to the Merger, our board of directors, the members of which we believe had extensive business, finance and venture capital experience, was required to estimate the fair value of our common stock for purposes of determining exercise prices for the options it granted. Through the first half of 2006, it determined the estimated fair value of our common stock, based in part on a market capitalization analysis of comparable public companies and other metrics, including revenue multiples and price/earning multiples, as well as the following:

- the prices for our convertible preferred stock sold to outside investors in arms-length transactions;

- the rights, preference and privileges of that convertible preferred stock relative to those of our common stock;
- our operating and financial performance;
- the hiring of key personnel;
- the introduction of new products;
- our stage of development and revenue growth;
- the fact that the options grants involved illiquid securities in a private company;
- the risks inherent in the development and expansion of our services; and
- the likelihood of achieving a liquidity event, such as an initial public offering or sale of the company, for the shares of common stock underlying the options given prevailing market conditions.

In late 2006, we engaged an independent third-party valuation firm, Cerian Technology Ventures LLC ("Cerian"), to perform valuations of our common stock. We obtained estimates of the respective then-current fair values of our stock prepared by Cerian as of November 13, 2006 and August 31, 2007. These valuations used a market comparable approach to estimate our aggregate enterprise value at each valuation date. The market comparable approach estimates the fair value of a company by applying to that company market multiples of publicly traded firms in similar lines of business. The use of the market comparable approach requires judgments regarding the comparability of companies with lines of business similar to ours. If different comparable companies had been used, the market multiples and resulting estimates of the fair value of our stock would also have been different. We allocated the implied enterprise value that we estimated to the shares of preferred and common stock using the option-pricing method at each valuation date. The option-pricing method involves making assumptions regarding the anticipated timing of a potential liquidity event, such as an initial public offering, and estimates of the volatility of our equity securities. The anticipated timing was based on the plans of our board of directors and management. Estimating the volatility of the share price of a privately held company is complex because there is no readily available market for the shares. Cerian estimated the volatility of our stock based on available information on the volatility of stocks of publicly traded companies in our industry. Had different estimates of volatility and anticipated timing of a potential liquidity event been used, the allocations between the shares of preferred and common stock would have been different and would have resulted in a different value being determined for our common stock as of each valuation date. Finally, a discount was applied to the valuation of the common stock for lack of marketability. Based on empirical studies, Cerian used a factor of 25% for this purpose.

Since January 15, 2003, we have granted options as listed above. The Cerian valuation at both valuation dates noted above determined a valuation for our common stock of $0.59 per share. While there have been placements of preferred stock during these periods, there have not been any sales of common stock which could be used to assist in the determination of valuation of the common stock. From January 15, 2003 to May 15, 2006, stock options were issued at an exercise price of $0.35. From June 5, 2006 onwards, all stock options were issued with an exercise price of $0.59, which was based on the two Cerian reports and was equivalent to the fair market value of the shares. The first Cerian valuation was available to the Board at the time that stock grants were approved with grant dates as from June 2006 and the valuation was considered to be appropriate for grants from that time. In addition, at that time the Board also approved grants for certain employees as of their employment start date, which covered periods prior to June 2006. The Board determined that the exercise price for these grants should also be set at $0.59.

If we had made different assumptions and estimates than those described in the paragraphs above, the amount of our recognized and to be recognized stock-based compensation expense, net loss and net loss per share amounts could have been materially different. We believe that we have used reasonable methodologies, approaches and assumptions consistent with the American Institute of Certified Public Accountants Practice Guide, *Valuation of Privately-Held-Company Equity Securities Issued as Compensation,* to determine the fair value of our common stock.

*Income Taxes*

We account for income taxes in accordance with SFAS No. 109, *Accounting for Income Taxes*. As part of the process of preparing our consolidated financial statements, we are required to estimate our income tax benefit (provision) in each of the jurisdictions in which we operate. This process involves estimating our current income tax benefit (provision) together with assessing temporary differences resulting from differing treatment of items for tax and accounting purposes. These differences result in deferred tax assets and liabilities, which are included within our consolidated balance sheet using the enacted tax rates in effect for the year in which we expect the differences to reverse. We record a valuation allowance to reduce our deferred tax assets to an amount that more likely than not will be realized. As of September 30, 2007, our valuation allowance on our net deferred tax assets was $9.9 million. While we have considered future taxable income and ongoing prudent and feasible tax planning strategies in assessing the need for the valuation allowance, in the event we were to determine that we would be able to realize our deferred tax assets in the future in excess of our net recorded amount, we would need to make an adjustment to the allowance for the deferred tax asset, which would increase income in the period that determination was made. We have not provided federal income taxes on the unremitted earnings of foreign subsidiaries because these earnings are intended to be reinvested permanently.

**Results of Operations**

The following sections discuss and analyze the changes in the significant line items in the historical operations and statements of operations for Twistbox for the comparison periods identified. This discussion does not include any historical information of Mandalay, which was a shell company prior to the Merger.

***Comparison of the Six Months Ended September 30, 2006 and 2007***

***Revenues***

| | Six Months Ended September 30, | |
|---|---|---|
| | **2007** | **2006** |
| | **(In thousands)** | |
| Revenues by type: | | |
| Games | $ 1,917 | $ 1,248 |
| Other content | 5,147 | 3,581 |
| Total | $ 7,064 | $ 4,829 |
| Percentage of Revenues by type: | | |
| Games | 27.1% | 25.8% |
| Other content | 72.9% | 74.2% |
| Total | 100.0% | 100.0% |

Our revenues increased $2.3 million, or 46 %, from $ 4.8 million in the six months ended September 30, 2006 to $ 7.1 million in six months ended September 30, 2007, largely as a result of volume increases, achieved by both increasing volume with individual carriers and by expanding our base by adding carrier relationships in territories in which we already operated, and by expanding into new territories. Other content includes a broad range of primarily licensed product delivered in the form of WAP, Video, Wallpaper and more recently Mobile TV. Other content revenues grew by $1.6 million or 44 % period over period - primarily the result of an increase in volume in existing major territories - the top eight territories revenues increased by $1.1 million or 35%.

***Cost of Revenues***

| | Six Months Ended September 30, | |
|---|---|---|
| | **2007** | **2006** |
| Cost of Revenues: | **(In thousands)** | |
| License Fees | 3,218 | 2,512 |
| Other direct cost of revenues | 269 | 51 |
| Total Cost of Revenues | 3,487 | 2,563 |
| Revenues | 7,064 | 4,829 |
| Gross Margin | 50.6% | 46.9% |

Our cost of revenues increased $0.9 million, or 36%, from $2.6 million in the six months ended September 30, 2006 to $3.5 million in the six months ended September 30, 2007. The increase in license fees was largely driven by the increase in revenues flowing through to increased license fees payable. The average royalty rate for games decreased due to the 2007 revenues including game revenue from the InfoSpace acquisition at lower average rates. Other direct cost of revenues increased as we have introduced new revenue streams which have an element of fixed costs.

***Gross Margin***

Our gross margin increased from 46.9% in the six months ended September 30, 2006 to 50.6% in the six months ended September 30, 2007. This increase was primarily due to increased mix of higher margin games revenue, and the impact of the higher margin InfoSpace games within the games revenue.

***Product Development Expenses***

| | Six Months Ended September 30, | |
|---|---|---|
| | 2007 | 2006 |
| | (In thousands) | |
| Product Development Expenses | $ 4,792 | $ 3,310 |
| Percentage of Revenues | 67.8% | 68.5% |

Our product development expenses increased $1.5 million, or 45%, from $3.3 million in the six months ended September 30, 2006 to $4.8 million in the six months ended September 30, 2007. The increase primarily resulted from a $1.5 million increase in salaries and benefits due to increases in personnel. The increase in these costs and expenses was primarily due to the build up of our development infrastructure - for games in Germany and Poland as well as the addition of the San Mateo development studio with the acquisition of the InfoSpace assets in January 2007; and for other content we increased our development staff in Los Angeles.

***Sales and Marketing Expenses***

| | Six Months Ended September 30, | |
|---|---|---|
| | 2007 | 2006 |
| | (In thousands) | |
| Sales and Marketing Expenses | $ 2,554 | $ 1,636 |
| Percentage of Revenues | 36.2% | 33.9% |

Our sales and marketing expenses increased $0.9 million, or 56%, from $1.6 million in the six months ended September 30, 2006 to $2.6 million in the six months ended September 30, 2007. The increase resulted from a $1.0 million increase in salaries and benefits, and $0.3 million increase in rent and allocated facilities costs, offset by a $0.4 million reduction in expenditures on trade shows. We increased our sales and marketing staff from 14 at June 30, 2006 to 21 at June 30, 2007. We expanded our staff as we continued to expand into new territories, which required an on-the-ground account management presence, and as we continued to develop a more sophisticated approach to dealing with our primary customers.

***General and Administrative Expenses***

| | Six Months Ended September 30, | |
|---|---|---|
| | 2007 | 2006 |
| | (In thousands) | |
| General and Administrative Expenses | $ 2,363 | $ 1,542 |
| Percentage of Revenues | 33.5% | 31.9% |

Our general and administrative expenses increased $0.8 million, or 53%, from $1.5 million in the six months ended September 30, 2006 to $2.4 million in the six months ended September 30, 2007. The increase was due primarily to an increase of $0.6 million in salaries and benefits resulting from an increase in headcount. We increased our general and administrative staff from 15 on June 30, 2006 to 24 on June 30, 2007. As a percentage of revenues, general and administrative expenses increased from 31.9% in 2006 to 33.5.2% in 2007 due to the timing of general and administrative expense increases.

*Other Operating Expenses*

Our amortization of intangible assets increased from $0 in the six months ended September 30, 2006 to $47,000 in the six months ended September 30, 2007. This increase was due to the intangible assets acquired from InfoSpace in January 2007.

*Other Expenses*

Interest income decreased from $110,000 in the six months ended September 30, 2006 to $100,000 in the six months ended September 30, 2007. In 2006, we had excess funds invested following the Series B preferred stock placement; in 2007 we had excess funds invested following the debt financing in July 2007. Interest expense increased from $29,000 in the six months ended September 30, 2006 to $326,000 in the six months ended September 30, 2007. The 2006 expense related to a loan in place prior to the Series B placement, the 2007 expense represents 2 months of interest on the $16.5 million debt financing completed in late July 2007.

Foreign exchange transaction gain increased from $15,000 in the six months ended September 30, 2006 to $104,000 in the six months ended September 30, 2007, as the result of the steadily declining value of the US dollar during the six months ended September 30, 2007 against the major currencies in which we collect revenues - primarily the Euro and UK pound sterling.

Other expense increased from $122,000 in the six months ended September 30, 2006 to $252,000 in the six months ended September 30, 2007. The increase primarily relates to amortization of transaction costs related to the debt and equity placements in the period, and an increase in a reserve for payment of VAT liabilities related to changes in reporting proposed by our largest customer.

*Income Tax Benefit/(Provision)*

Income tax benefit was $6,000 in the six months ended September 30, 2006 - resulting from a tax refund. There was no benefit/(provision ) in the six months ended September 30, 2007. Our primary operating entities in the U.S. and Germany incurred losses for tax purposes in both periods.

*Quarterly Results of Operations*

The following table sets forth unaudited quarterly consolidated statements of operations data for fiscal 2006 and fiscal 2007 and the six months ended September 30, 2007. We derived this information from unaudited consolidated financial statements, which we prepared on the same basis as our audited consolidated financial statements contained in this document. In our opinion, these unaudited statements include all adjustments, consisting only of normal recurring adjustments, that we consider necessary for a fair statement of that information when read in conjunction with the consolidated financial statements and related notes included elsewhere in this document. The operating results for any quarter should not be considered indicative of results for any future period.

| | Fiscal 2006 | | | | Fiscal 2007 | | | | Fiscal 2008 | |
|---|---|---|---|---|---|---|---|---|---|---|
| | June 30 | September 30 | December 31 | March 30 | June 30 | September 30 | December 31 | March 30 | June 30 | September 30 |
| Revenues | $ 442 | $ 639 | $ 1,343 | $ 2,445 | $ 2,247 | $ 2,582 | $ 3,361 | $ 3,708 | $ 3,708 | $ 3,356 |
| Cost of revenues | | | | | | | | | | |
| License Fees | 217 | 372 | 651 | 1,232 | 1,155 | 1,357 | 1,866 | 1,889 | 1,719 | 1,499 |
| Impairment of guarantees | - | - | - | - | - | - | - | 6,022 | - | - |
| Other direct cost of revenues | - | - | - | - | 1 | 50 | 46 | 15 | 119 | 150 |
| Total cost of revenues | 217 | 372 | 651 | 1,232 | 1,156 | 1,407 | 1,912 | 7,926 | 1,838 | 1,649 |
| Gross Profit/(Loss) | 225 | 267 | 692 | 1,213 | 1,091 | 1,175 | 1,449 | (4,218) | 1,870 | 1,707 |
| Operating expenses | | | | | | | | | | |
| Product development | 229 | 410 | 596 | 1,619 | 1,511 | 1,799 | 1,987 | 2,516 | 2,491 | 2,301 |
| Sales and marketing | 36 | 188 | 313 | 593 | 558 | 1,078 | 816 | 1,672 | 1,352 | 1,202 |
| General and administrative | 213 | 40 | 56 | 221 | 516 | 1,026 | 735 | 1,317 | 1,215 | 1,148 |
| Amortization of intangible assets | - | - | - | - | - | - | - | 23 | 24 | 23 |
| Restructuring charge | | | | | | | | | - | - |
| Total operating expenses | 478 | 638 | 965 | 2,433 | 2,585 | 3,903 | 3,538 | 5,528 | 5,082 | 4,674 |
| Loss from operations | (253) | (371) | (273) | (1,220) | (1,494) | (2,728) | (2,089) | (9,746) | (3,212) | (2,967) |
| Interest and other income/(expense), net | | | | | | | | | | |
| Interest income | - | - | - | 11 | 39 | 71 | 36 | 23 | 9 | 91 |
| Interest expense | (18) | (20) | (28) | (28) | (23) | (6) | (10) | (35) | (54) | (272) |
| Foreign exchange transaction gain/(loss) | (5) | - | - | 6 | (10) | 25 | 55 | 54 | 69 | 35 |
| Other income/(expense), net | (5) | (7) | (1) | (32) | (54) | (68) | (94) | (154) | (170) | (82) |
| Interest and other income/(expense) | (28) | (27) | (29) | (43) | (48) | 22 | (13) | (112) | (146) | (228) |
| Loss before income taxes | (281) | (398) | (302) | (1,263) | (1,542) | (2,706) | (2,102) | (9,858) | (3,358) | (3,195) |
| Income tax benefit/(provision) | - | - | (1) | - | - | 6 | (4) | (21) | - | - |
| Net Loss | (281) | (398) | (303) | (1,263) | (1,542) | (2,700) | (2,106) | (9,879) | (3,358) | (3,195) |

The following table sets forth our historical results, for the periods indicated, as a percentage of our revenues.

| | Fiscal 2006 | | | | Fiscal 2007 | | | | Fiscal 2008 | |
|---|---|---|---|---|---|---|---|---|---|---|
| | June 30 | September 30 | December 31 | March 30 | June 30 | September 30 | December 31 | March 30 | June 30 | September 30 |
| Revenues | 100.0% | 100.0% | 100.0% | 100.0% | 100.0% | 100.0% | 100.0% | 100.0% | 100.0% | 100.0% |
| Cost of revenues | | | | | | | | | | |
| License Fees | 49.1 | 58.2 | 48.5 | 50.4 | 51.4 | 52.6 | 55.5 | 50.9 | 46.4 | 44.7 |
| Impairment of guarantees | - | - | - | - | - | - | - | 162.4 | - | - |
| Other direct cost of revenues | - | - | - | - | 0.0 | 1.9 | 1.4 | 0.4 | 3.2 | 4.5 |
| Total cost of revenues | 49.1 | 58.2 | 48.5 | 50.4 | 51.4 | 54.5 | 56.9 | 213.8 | 49.6 | 49.1 |
| Gross Profit/(Loss) | 50.9 | 41.8 | 51.5 | 49.6 | 48.6 | 45.5 | 43.1 | (113.8) | 50.4 | 50.9 |
| Operating expenses | | | | | | | | | | |
| Product development | 51.8 | 64.2 | 44.4 | 66.2 | 67.2 | 69.7 | 59.1 | 67.9 | 67.2 | 68.6 |
| Sales and marketing | 8.1 | 29.4 | 23.3 | 24.3 | 24.8 | 41.8 | 24.3 | 45.1 | 36.5 | 35.8 |
| General and administrative | 48.2 | 6.3 | 4.2 | 9.0 | 23.0 | 39.7 | 21.9 | 35.5 | 32.8 | 34.2 |
| Amortization of intangible assets | - | - | - | - | - | - | - | 0.6 | 0.6 | 0.7 |
| Total operating expenses | 108.1 | 99.8 | 71.9 | 99.5 | 115.0 | 151.2 | 105.3 | 149.1 | 137.1 | 139.3 |
| Loss from operations | (57.2) | (58.1) | (20.3) | (49.9) | (66.5) | (105.7) | (62.2) | (262.8) | (86.6) | (88.4) |
| Interest and other income/(expense), net | | | | | | | | | | |
| Interest income | - | - | - | 0.5 | 1.7 | 2.7 | 1.1 | 0.6 | 0.2 | 2.7 |
| Interest expense | (4.1) | (3.1) | (2.1) | (1.1) | (1.0) | (0.2) | (0.3) | (0.9) | (1.5) | (8.1) |
| Foreign exchange transaction gain/(loss) | (1.1) | - | - | 0.2 | (0.4) | 1.0 | 1.6 | 1.5 | 1.9 | 1.0 |
| Other income/(expense), net | (1.1) | (1.1) | (0.1) | (1.3) | (2.4) | (2.6) | (2.8) | (4.2) | (4.6) | (2.4) |
| Interest and other income/(expense) | (6.3) | (4.2) | (2.2) | (1.8) | (2.1) | 0.9 | (0.4) | (3.0) | (3.9) | (6.8) |
| Loss before income taxes | (63.6) | (62.3) | (22.5) | (51.6) | (68.6) | (104.8) | (62.5) | (265.9) | (90.6) | (95.2) |
| Income tax benefit/(provision) | | | | | | | | | | |
| Net Loss | -63.6% | -62.3% | -22.6% | -51.6% | -68.6% | -104.6% | -62.7% | -266.4% | -90.6% | -95.2% |

Our revenues generally increased as we established and then expanded our carrier distribution network, by both increasing volume with individual carriers and by expanding our base by adding carrier relationships in territories in which we already operated; and by expanding into new territories. Revenues from the March quarter of fiscal 2006 onwards were favorably impacted by revenues generated from the Charismatix acquisition in February 2006; and from the March quarter of fiscal 2007 by incremental revenues flowing from the InfoSpace acquisition.

Many new mobile handset models are released in the fourth calendar quarter to coincide with the holiday shopping season. Because many end users download our content soon after they purchase new handsets, we may experience seasonal sales increases based on this key holiday selling period. However, due to the time between handset purchases and content purchases, much of this holiday impact may occur in our March quarter. For a variety of reasons, we may experience seasonal sales decreases during the summer, particularly in Europe, which is predominantly reflected in our September quarter. In addition to these possible seasonal patterns, our revenues may be impacted by new or changed carrier deals, and by changes in the manner that our major carrier partners marketing our content on their deck. Initial spikes in revenues as a result of successful launches or campaigns may create further aberrations in our revenue patterns.

Our cost of revenues increased over the above periods as a result of increased royalty payments to licensors and developers caused by increased revenues. However, our cost of revenues did not increase sequentially as a percentage of revenues in all quarters because of changes in revenue mix, because of the impact of minimum guarantees (primarily in fiscal 2007) and because of the impairment charge in the March quarter of fiscal 2007.

Our quarterly product development expenses increased over the period as we built up our development infrastructure. These expenses increased particularly in the March quarter of fiscal 2006 with the addition of the development following the Charismatix acquisition, and in the March quarter of fiscal 2007 with the addition of the staff in the San Mateo games development studio acquired from InfoSpace. The decrease in product development expenses in the September quarter of fiscal 2008 was due to a reduction in employee costs resulting from a restructuring initiated in that quarter.

Our sales and marketing expenses increased over the period as we created and then built up our sales and marketing infrastructure. We added staff and local sales office as we expanded into new territories and as we further developed our relationships with our carrier partners. In the March quarter of fiscal 2007 we significantly upgraded our staffing with the addition of senior sales and marketing personnel and the establishment of enhanced sales capabilities in our German subsidiary. The decrease in the September quarter of fiscal 2008 was due to a reduction in employee costs resulting from a restructuring initiated in that quarter.

Our general and administrative expenses increased over the period as we built up our ability to service the business and created a corporate infrastructure. In the September quarter of fiscal 2006, we incurred significant legal expenses related to a corporate entity restructuring and re-branding under the Twistbox name. Several members of the executive team were added during fiscal 2007. Amortization of intangible assets commenced in the March quarter of fiscal 2007 following the acquisition of intangibles from InfoSpace

**Liquidity and Capital Resources**

| Consolidated Statement of Cash Flows Data: | Year Ended March 31, 2007 | Year Ended March 31, 2006 | Six Months Ended September 30, 2007 |
|---|---|---|---|
| | (In thousands) | | (In thousands) |
| Capital expenditures | 631 | 553 | 204 |
| Cash flows used in operating activities | 9,090 | 1,643 | 6,670 |
| Cash flows (used in)/ provided by investing activities | 2,084 | 780 | 184 |
| Cash flows provided by financing activities | 10,784 | 3,286 | (16,936) |

Since our inception, we have incurred recurring losses and negative annual cash flows from operating activities, and we had an accumulated deficit of $25.4 million as of September 30, 2007. Our primary sources of liquidity have historically been private placements of shares of our preferred stock with aggregate proceeds of $15.7 million and borrowings under our credit facilities with aggregate proceeds of $16.5 million. In the future, we anticipate that our primary sources of liquidity will be cash generated by our operating activities.

**Operating Activities**

In fiscal 2007, we used $9.1 million of net cash in operating activities as compared to $1.6 million in fiscal 2006. This increase was primarily due to an increase in our net loss of $14.0 million from fiscal 2006 to fiscal 2007, and the increase in net receivables of $3.1 million and prepaid expenses by $0.4 million; offset by increases in accounts payable, accrued license fees and other liabilities of $10.3. The loss and the increase in accrued license fees both include the non-cash impact of the $6.0 impairment charge recorded in fiscal 2007.

In the six months ended September 30, 2007, we used $6.7 million of net cash in operating activities as compared to $4.5 million in the six months ended September 30, 2006. This increase was primarily to an increase in our net loss of $2.3 million, an increase in accrued license fees of $2.2 million, offset by a decrease in accounts receivable of $1.0 million , and a decrease in current liabilities and accrued compensation of $1.1 million.

**Investing Activities**

Our primary investing activities have consisted of purchases of property and equipment, and the acquisitions of Charismatix in fiscal 2006 and the mobile games division of InfoSpace in fiscal 2007. Property and equipment purchases were $0.6 million in fiscal 2006 and $0.6 million in fiscal 2007. The consideration for the acquisition of Charismatix in fiscal 2006 included $0.3 million in cash, but was offset by $0.2 cash acquired within the business. The consideration for the acquisition of the assets from InfoSpace in fiscal 2007 was $1.5 million in cash. In the six months ended September 30, 2007, our primary investing activities have consisted of purchases of property and equipment.

**Financing Activities**

In fiscal 2006, we generated $3.3 million of net cash from financing activities - this came from a combination of a short term loan from a related party, and the issuance and sale of $2.5 million of Series A preferred stock. In fiscal 2007, we generated $10.8 million of net cash from financing activities - $10.3 from the issuance and sale of Series A and Series B preferred stock, and $1.7 million from a short term bank facility, offset by a net repayment of short term loans from a related party of $1.2 million.

In the six months ended September 30, 2007, we generated $16.9 million of net cash from financing activities - this came from a $3.0 million issuance of Series B-1 preferred stock, and $15.7 from a secured debt facility, net of costs - detailed under “Contractual Obligations” below. At the same time we repaid $1.7 million in short term bank loans.

**Sufficiency of Current Cash, Cash Equivalents and Short-Term Investments**

Our cash, cash equivalents and short-term investments were $10.7 million as of September 30, 2007. We believe that our cash, cash equivalents and short-term investments and any cash flow from operations will be sufficient to meet our anticipated cash needs, including for working capital purposes, capital expenditures and various contractual obligations, for the next 12 months. We may, however, require additional cash resources due to changed business conditions or other future developments, including any investments or acquisitions we may decide to pursue. If these sources are insufficient to satisfy our cash requirements, we may seek to sell additional debt securities or additional equity securities or to obtain a credit facility. The sale of convertible debt securities or additional equity securities could result in additional dilution to our stockholders. The incurrence of increased indebtedness would result in additional debt service obligations and could result in additional operating and financial covenants that would restrict our operations. In addition, there can be no assurance that any additional financing will be available on acceptable terms, if at all.

**Contractual Obligations**

The following table is a summary of our contractual obligations as of September 30, 2007:

| | Payments due by period | | |
|---|---|---|---|
| | Total | Less than 1 Year | 1-3 Years |
| | (In thousands) | | |
| Long-term debt obligations | $ 20,213 | $ 1,513 | $ 18,700 |
| Operating lease obligations | 763 | 301 | 462 |
| Guaranteed royalties | 7,248 | 2,615 | 4,633 |
| Capitalized leases and other obligations | 5,571 | 3,089 | 2,482 |

Debt obligations include interest payments on the loan. In July 2007, we borrowed $16,500,000 from ValueAct, in the form of a Senior Secured Note (“the Note”) payable at 30 months. ValueAct was granted first lien over all of the company’s assets. The Note carries interest of 9% annually for the first year and 10% subsequently, with semi-annual interest only payments. In connection with the Merger, the debt obligations to ValueAct are guaranteed in part by Mandalay, as described in more detail in Item 2.03 below. The agreement includes certain restrictive covenants, including a requirement to maintain certain levels of cash by Twistbox and Mandalay. ValueAct was also granted a warrant which has been canceled in connection with the Merger and Mandalay issued ValueAct two new warrants to purchase its common stock. One warrant entitles ValueAct to purchase up to a total of 1,092,622 shares of our common stock at an exercise price of $7.55 per share. The other warrant entitles ValueAct to purchase up to a total of 1,092,621 shares of our common stock at an initial exercise price of $5.00 per share, which, if not exercised in full by February 12, 2009, will be permanently increased to an exercise price of $7.55 per share. The warrants expire on July 30, 2011.

Operating lease obligations represent noncancelable operating leases for our office facilities in several locations, expiring in various years through 2010.

We have entered into license agreements with various owners of brands and other intellectual property so that we could develop and publish branded products for mobile handsets. Pursuant to some of these agreements, we are required to pay minimum royalties over the term of the agreements regardless of actual sales. The commitments in the above table include guaranteed royalties to licensors that are included as a liability in our consolidated balance sheet of $5.3 million as of September 30, 2007 because we have determined that recoupment is unlikely.

Capitalized leases and other obligations include payments to various distribution providers, technical providers and employees for agreements with initial terms greater than one year at September 30, 2007.

On May 30, 2006, we entered into a distribution agreement pursuant to which we are required to pay quarterly license fees for the use and distribution of certain intellectual property. The amount of license fees payable by us is equal to the greater of 50% of the net revenues received by us in connection with the use and distribution of the intellectual property subject to the agreement and certain minimum guarantee payments. The term of the agreement expires on December 1, 2009, subject to earlier termination under certain circumstances, and automatically renews for one two-year period unless prior notice is given by either party of its intent not to renew the agreement.

**Off-Balance Sheet Arrangements**

We do not have any relationships with unconsolidated entities or financial partners, such as entities often referred to as structured finance or special purpose entities, which would have been established for the purpose of facilitating off-balance sheet arrangements or other contractually narrow or limited purposes. In addition, we do not have any undisclosed borrowings or debt, and we have not entered into any synthetic leases. We are, therefore, not materially exposed to any financing, liquidity, market or credit risk that could arise if we had engaged in such relationships.

***Comparison of the Years Ended March 31, 2006 and 2007***

***Revenues***

| | Year Ended March 31, | |
|---|---|---|
| | **2007** | **2006** |
| Revenues by type: | **(In thousands)** | |
| Games | $ 3,162 | $ 902 |
| Other content | 8,736 | 3,968 |
| Total | $ 11,898 | $ 4,869 |
| Percentage of Revenues by type: | | |
| Games | 26.6% | 18.5% |
| Other content | 73.4% | 81.5% |
| Total | 100.0% | 100.0% |

Our revenues increased $7.0 million, or 144%, from $4.9 million in 2006 to $11.9 million in 2007, largely as a result of volume increases, achieved by both increasing volume with individual carriers and by expanding our base by adding carrier relationships in territories in which we already operated, and by expanding into new territories. The fiscal 2006 games revenues include only two months related to Charismatix, while fiscal 2007 includes $1.9million related to the German subsidiary. Other content includes a broad range of primarily licensed product delivered in the form of WAP, Video, Wallpaper and more recently Mobile TV. Other content revenues grew by $4.8 million or 120% year over year. This was a combination of an increase in volume in existing major territories - the top eight territories revenues increased by $3.7 milllion or 101% year over year; and expansion into new territories - which contributed some $0.6 million of the growth.

***Cost of Revenues***

| | Year Ended March 31, | |
|---|---|---|
| | 2007 | 2006 |
| | (In thousands) | |
| Cost of Revenues: | | |
| License Fees | $ 6,267 | $ 2,472 |
| Impairment of guarantees | 6,022 | - |
| Other direct cost of revenues | 112 | - |
| Total Cost of Revenues | $ 12,401 | $ 2,472 |
| | | |
| Revenues | $ 11,898 | $ 4,869 |
| | | |
| Gross Margin | -4.2% | 49.2% |

Our cost of revenues increased $9.9 million, from $2.5 million in fiscal 2006 to $12.4 million in fiscal 2007. Excluding the effect of the impairment of guarantees, the increase was $3.9 million. The increase in license fees was largely driven by the increase in revenues flowing through to increased license fees payable. The impairment charge related to three specific content deals which were entered into prior to June 2006 and contained significant and in some cases escalating regular guarantee payments to secure a long term contract for the brand. As part of our evaluation of the remaining commitments under these deals and the recoupability of the guarantees, we recorded a charge for impairment of $6.0 million in the period ended March 31, 2007.

***Gross Margin***

Games revenues include a mix of licensed and internally developed product, while other revenues were largely from licensed products in these periods. Excluding the effect of the impairment charge, margins decreased from 49.2% to 46.4%, primarily due to the incidence of minimum guarantees in the mix of license fees during the course of the year.

***Product Development Expenses***

| | Year Ended March 31, | |
|---|---|---|
| | 2007 | 2006 |
| | (In thousands) | |
| Product Development Expenses | $ 7,813 | $ 2,854 |
| Percentage of Revenues | 65.7% | 58.6% |

Our product development expenses increased $5.0 million, or 174%, from $2.9 million in fiscal 2006 to $7.9 million in fiscal 2007. The increase in product development costs was primarily due to increases in headcount during the period. This was driven by the acquisition of Charismatix which immediately 20 heads in product development, and the subsequent build up of our games development capabilities in Germany, Poland and in the U.S. As we built up our capability in the U.S., the headcount increased from 38 in March 2006 to 58 in December 2006. The acquisition of the InfoSpace mobile games division added a further 10 heads in January 2007. Product development expenses included $10,000 of stock-based compensation expense in fiscal 2006 and $18,000 in fiscal 2007. As a percentage of revenues, product development expenses increased from 58.6% in fiscal 2006 to 65.7% in fiscal 2007.

***Sales and Marketing Expenses***

| | Year Ended March 31, | |
|---|---|---|
| | **2007** | **2006** |
| | **(In thousands)** | |
| Sales and Marketing Expenses | $ 4,124 | $ 1,130 |
| Percentage of Revenues | 34.7% | 23.2% |

Our sales and marketing expenses increased $3.0 million, or 265%, from $1.1 million in fiscal 2006 to $4.1 million in fiscal 2007. Most of the increase was attributable to a $1.4 million increase in salaries and benefits, as we built up our sales and marketing presence in our key territories to a headcount of 16 by March 2007. As we built up the sales force, travel and entertainment and facilities allocations increased by $0.5 million in this area. In addition we made a significant investment in two major trade shows in fiscal 2007 as we were building up our brand and our relationships in the market, resulting in $0.6 million higher expenses in fiscal 2007. We expanded our staff as we continued to expand into new territories, which required an on-the-ground account management presence, and as we continued to develop a more sophisticated approach to dealing with our primary customers. As a percentage of revenues, sales and marketing expenses increased from 23.2% in fiscal 2006 to 34.7% in fiscal 2007 as we created the infrastructure necessary to support further expansion. Sales and marketing expenses included $5,000 of stock-based compensation expense in fiscal 2006 and $19,000 in fiscal 2007.

***General and Administrative Expenses***

| | Year Ended March 31, | |
|---|---|---|
| | **2007** | **2006** |
| | **(In thousands)** | |
| General and Administrative Expenses | $ 3,594 | $ 530 |
| Percentage of Revenues | 30.2% | 10.9% |

Our general and administrative expenses increased $3.1 million, from $0.5 million in fiscal 2006 to $3.6 million in fiscal 007. The increase in general and administrative expenses was primarily the result of a $2.7 million increase in salaries and benefits and a $0.4 million increase in consulting and professional fees. We increased our general and administrative headcount from 10 to 21 in fiscal 2007. As a percentage of revenues, general and administrative expenses increased from 10.9% in fiscal 2006 to 30.2% in fiscal 2007 as a result of the growth in salaries, particularly as the executive management team was completed. General and administrative expenses included $3,000 of stock-based compensation expense in fiscal 2006 and $23,000 in fiscal 2007.

***Amortization of Intangible Assets***

| | Year Ended March 31, | | | |
|---|---|---|---|---|
| | 2007 | | 2006 | |
| | (In thousands) | | | |
| Amortization of Intangible Assets | $ | 23 | $ | - |
| Percentage of Revenues | | 0.2% | | 0.0% |

Our amortization of intangible assets, such as platform, licenses and trademarks, acquired from InfoSpace was $23,000 in fiscal 2007.

***Other Income and Expenses***

Interest income increased from $11,000 in fiscal 2006 to $169,000 in fiscal 2007. This increase was primarily due to interest income earned an excess funds invested following the Series B preferred stock placement in May 2006. Interest expense decreased from $94,000 in fiscal 2006 to $74,000 in fiscal 2007, due to the shorter period in fiscal 2007 during which we required loan funding.

Foreign exchange transaction gain increased from $1,000 in fiscal 2006 to $124,000 in fiscal 2007, as the result of the steadily declining value of the US dollar during fiscal 2007 against the major currencies in which we collect revenues - primarily the Euro and UK pound sterling. Other income (expense), net increased from $45,000 in fiscal 2006 to $370,000 in fiscal 2007. The increase primarily relates to an increase in a reserve for payment of VAT liabilities related to changes in reporting proposed by our largest customer.

***Income Tax Benefit/(Provision)***

Income tax provision increased from $1 in fiscal 2006 to $19 in fiscal 2007. The amounts in both years represent minimum payments required in certain jurisdictions. Our primary operating entities in the U.S. and Germany incurred losses for tax purposes in both years.

**Recent Accounting Pronouncements**

In September 2006, the FASB issued SFAS No. 157, “Fair Value Measurements” (“SFAS No. 157”). This statement clarifies the definition of fair value, establishes a framework for measuring fair value, and expands the disclosures on fair value measurements. SFAS No. 157 is effective for fiscal years beginning after November 15, 2007. The adoption of SFAS No. 157 is not expected to have a material effect on our consolidated results of operations or financial condition.

In September 2006, the FASB released SFAS No. 158, "Employers' Accounting for Defined Benefit Pension and Other Postretirement Plans, an amendment of FASB Statements No. 87, 88, 106, and 132(R)." Under the new standard, companies must recognize a net liability or asset to report the funded status of their defined benefit pension and other postretirement benefit plans on their balance sheets. The recognition and disclosure provisions of SFAS No. 158 are effective for periods beginning after December 15, 2006. We believe that SAB 108 will not have a significant impact on our results of operations or financial position.

In October 2006, the FASB issued FASB Staff Position No. 123R-5, "Amendment of FASB Staff Position FAS 123(R)-1". The FSP amends FSP 123(R)-1 for equity instruments that were originally issued as employee compensation and then modified, with such modification made to the terms of the instrument solely to reflect an equity restructuring that occurs when the holders are no longer employees. In such circumstances, no change in the recognition or the measurement date of those instruments will result if both of the following conditions are met: a. There is no increase in fair value of the award (or the ratio of intrinsic value to the exercise price of the award is preserved, that is, the holder is made whole), or the antidilution provision is not added to the terms of the award in contemplation of an equity restructuring; and b. All holders of the same class of equity instruments (for example, stock options) are treated in the same manner. We believe that FSP 123(R)-5 will not have a significant impact on our results of operations or financial position.

In February 2007, the FASB issued SFAS No. 159, "The Fair Value Option for Financial Assets and Liabilities, including an amendment of FASB Statement No. 115" ("SFAS No. 159"). SFAS No. 159 permits entities to choose, at specified election dates, to measure many financial instruments and certain other items at fair value that are not currently required to be measured at fair value. Unrealized gains and losses shall be reported on items for which the fair value option has been elected in earnings at each subsequent reporting date. SFAS No. 159 is effective for fiscal years beginning after November 15, 2007. Early adoption is permitted as of the beginning of a fiscal year that begins on or before November 15, 2007, provided the entity also elects to apply the provisions of SFAS No. 157 "Fair Value Measurements" ("SFAS No. 157"). We are currently assessing the impact that SFAS No. 159 will have on our financial statements.

In December 2007, the FASB issued SFAS No. 160, "Noncontrolling Interests in Consolidated Financial Statements" ("SFAS No. 160"), which is an amendment of Accounting Research Bulletin ("ARB") No. 51. This statement clarifies that a noncontrolling interest in a subsidiary is an ownership interest in the consolidated entity that should be reported as equity in the consolidated financial statements. This statement changes the way the consolidated income statement is presented, thus requiring consolidated net income to be reported at amounts that include the amounts attributable to both parent and the noncontrolling interest. This statement is effective for the fiscal years, and interim periods within those fiscal years, beginning on or after December 15, 2008. Based on current conditions, we do not expect the adoption of SFAS No. 160 to have a significant impact on our results of operations or financial position.

In December 2007, the FASB issued SFAS No. 141 (revised 2007), "Business Combinations" ("SFAS No. 141"). This statement replaces FASB Statement No. 141, "Business Combinations." This statement retains the fundamental requirements in SFAS 141 that the acquisition method of accounting (which SFAS No.141 called the purchase method) be used for all business combinations and for an acquirer to be identified for each business combination. This statement defines the acquirer as the entity that obtains control of one or more businesses in the business combination and establishes the acquisition date as the date that the acquirer achieves control. This statement requires an acquirer to recognize the assets acquired, the liabilities assumed, and any noncontrolling interest in the acquiree at the acquisition date, measured at their fair values as of that date, with limited exceptions specified in the statement. This statement applies prospectively to business combinations for which the acquisition date is on or after the beginning of the first annual reporting period beginning on or after December 15, 2008. We do not expect the adoption of SFAS No. 160 to have a significant impact on our results of operations or financial position.

**Quantitative and Qualitative Disclosures about Market Risk**

***Interest Rate and Credit Risk***

We have exposure to interest rate risk that relates primarily to our investment portfolio. All of our current investments are classified as cash equivalents or short-term investments and carried at cost, which approximates market value. We do not currently use or plan to use derivative financial instruments in our investment portfolio. The risk associated with fluctuating interest rates is limited to our investment portfolio, and we do not believe that a 10% change in interest rates would have a significant impact on our interest income, operating results or liquidity.

As of September 30, 2007, our cash and cash equivalents were maintained by financial institutions in the United States, Germany, the United Kingdom, Poland, Russia, Argentina and Colombia, and our current deposits are likely in excess of insured limits. We believe that the financial institutions that hold our investments are financially sound and, accordingly, minimal credit risk exists with respect to these investments. Our accounts receivable primarily relate to revenues earned from domestic and international Mobile phone carriers. We perform ongoing credit evaluations of our carriers' financial condition but generally require no collateral from them. At September 30, 2007, our largest customer represented 36% of our gross accounts receivable.

***Foreign Currency Risk***

The functional currencies of our United States and German operations are the United States Dollar, or USD, and the Euro, respectively. A significant portion of our business is conducted in currencies other than the USD or the Euro. Our revenues are usually denominated in the functional currency of the carrier. Operating expenses are usually in the local currency of the operating unit, which mitigates a portion of the exposure related to currency fluctuations. Intercompany transactions between our domestic and foreign operations are denominated in either the USD or the Euro. At month-end, foreign currency-denominated accounts receivable and intercompany balances are marked to market and unrealized gains and losses are included in other income (expense), net. Our foreign currency exchange gains and losses have been generated primarily from fluctuations in the Euro and pound sterling versus the USD and in the Euro versus the pound sterling. In fiscal 2007 and in the six months ended September 30, 2007 these movements have resulted in net foreign exchange transaction gains, due to the strengthening of other currencies against the USD. It is uncertain whether these currency trends will continue. In the future, we may experience foreign currency exchange losses on our accounts receivable and intercompany receivables and payables. Foreign currency exchange losses could have a material adverse effect on our business, operating results and financial condition.

***Inflation***

We do not believe that inflation has had a material effect on our business, financial condition or results of operations. If our costs were to become subject to significant inflationary pressures, we might not be able to offset these higher costs fully through price increases. Our inability or failure to do so could harm our business, operating results and financial condition.

## DESCRIPTION OF PROPERTY

The principal offices of the Registrant are the offices of Trinad Capital, L.P., located at 2121 Avenue of the Stars, Suite 2550, Los Angeles, California 90067. In March 2007, we entered into a month-to-month lease for such office space with Trinad Management, LLC (“Trinad Management”) for rent in the amount of $8,500 per month.

The principal offices of our subsidiary Twistbox are headquartered at 14242 Ventura Boulevard., 3rd Floor, Sherman Oaks, California 91423. On July 1, 2005, the WAAT Corp. (Twistbox’s predecessor-in-interest) entered into a lease for these premises with Berkshire Holdings, LLC, at a base rent of $21,000 per month. The term of the lease expires on July 15, 2010. Twistbox also leases property in Dortmund, Germany and Poland, where it has a branch operation.

## SECURITY OWNERSHIP OF CERTAIN BENEFICIAL OWNERS AND MANAGEMENT

The following table sets forth certain information regarding the beneficial ownership of our common stock on February 12, 2008, immediately prior to and immediately following the Closing by (i) each of our executive officers and directors, (ii) all persons, including groups, known to us to own beneficially more than five percent (5%) of our outstanding common stock, and (iii) all current executive officers and directors as a group. As of February 12, 2008, (a) immediately prior to the Merger, there were a total of 21,868,074 shares of our common stock outstanding and (b) following the Merger, there were a total of 32,048,365 shares of our common stock outstanding.

| Name and Address [1] | Number of Shares Beneficially Owned[2] | | Percentage Owned | |
|---|---|---|---|---|
| | Prior to the Merger | Following the Merger | Prior to the Merger (%) | Following the Merger (%) |
| Trinad Capital Master Fund, Ltd.(3) | 9,400,000 | 9,400,000 | 43.0 | 29.3 |
| Robert S. Ellin(4) | 9,400,000 | 9,400,000 | 43.0 | 29.3 |
| Jay A. Wolf (5) | 9,400,000 | 9,400,000 | 43.0 | 29.3 |
| Lyrical Partners, L.P.(6)<br>405 Park Avenue, 6th Floor<br>New York, NY 10022 | 3,000,000 | 3,000,000 | 12.8 | 8.9 |
| David E. Smith (7)<br>888 Linda Flora Drive<br>Los Angeles, CA 90049 | 4,000,000 | 4,000,000 | 16.8 | 11.7 |
| David Chazen (8) | 150,000 | 150,000 | * | * |
| Barry I. Regenstein (9) | 50,000 | 50,000 | * | * |
| Peter Guber (10) | 4,500,000 | 5,071,427 | 20.6 | 15.8 |
| Paul Schaeffer (11) | 500,000 | 500,000 | 2.3 | 1.6 |
| Jim Lefkowitz (12) | 166,667 | 166,667 | * | * |
| Bruce Stein (13) | 166,667 | 166,667 | * | * |
| Robert Zangrillo (14) | 166,667 | 166,667 | * | * |
| Richard Spitz (15) | 33,333 | 33,333 | * | * |
| Ian Aaron(16) | 0 | 1,166,813 | 0 | 3.6 |
| Adi McAbian (17) | 0 | 966,813 | 0 | 3.0 |
| Russell Burke (18) | 0 | 171,392 | 0 | * |
| David Mandell (19) | 0 | 263,394 | 0 | * |
| Eugen Barteska (20) | 0 | 251,281 | 0 | * |
| Spark Capital, L.P. (21) | 0 | 2,867,143 | 0 | 8.9 |
| ValueAct SmallCap Master Fund L.P. (22) | 0 | 2,185,243 | 0 | 6.4 |
| | | | | |
| All directors and executive officers as a group (11 persons prior to the Merger and 16 persons following the Merger) | 15,133,334 | 18,524,454 | 46.2 | 54.8 |

* Less than one percent.

(1) Except as otherwise indicated, the address of each of the following persons is c/o Mandalay Media, Inc., 2121 Avenue of the Stars, Suite 2550, Los Angeles, CA 90067.

(2) Except as specifically indicated in the footnotes to this table, the persons named in this table have sole voting and investment power with respect to all shares of common stock shown as beneficially owned by them, subject to community property laws where applicable. Beneficial ownership is determined in accordance with the rules of the Commission. In computing the number of shares beneficially owned by a person and the percentage ownership of that person, shares of common stock subject to options, warrants or rights held by that person that are currently exercisable or exercisable, convertible or issuable within 60 days of February 12, 2008, are deemed outstanding. Such shares, however, are not deemed outstanding for the purpose of computing the percentage ownership of any other person.

(3) Consists of 9,300,000 shares of common stock held by Trinad Capital Master Fund, Ltd. and 100,000 shares of common stock issuable upon conversion of 100,000 shares of Series A Convertible Preferred Stock held by Trinad Management, assuming a conversion on a one-for-one basis of the Series A Convertible Preferred Stock. The number of shares of common stock into which the Series A Convertible Preferred Stock is convertible is subject to adjustment for stock splits, stock dividends, reorganizations, the issuance of dividends, and other events specified in our certificate of incorporation. Trinad Management is an affiliate of, and provides investment management services to, Trinad Capital Master Fund. The address of Trinad Capital Master Fund, Ltd. is 2121 Avenue of the Starts, Suite 2550, Los Angeles, CA 90067.

(4) Consists of 9,300,000 shares of common stock held by Trinad Capital Master Fund, Ltd. and 100,000 shares of common stock issuable upon conversion of 100,000 shares of Series A Convertible Preferred Stock held by Trinad Management. Trinad Management is an affiliate of, and provides investment management services to, Trinad Capital Master Fund. Robert Ellin and Jay Wolf are the managing members of Trinad Management. As a result, each may be deemed indirectly to beneficially own an aggregate of 9,400,000 shares of common stock. Mr. Ellin disclaims beneficial ownership of these securities except to the extent of his pecuniary interest therein.

(5) Consists of 9,300,000 shares of common stock held by Trinad Capital Master Fund and 100,000 shares of common stock issuable upon conversion of 100,000 shares of Series A Convertible Preferred Stock held by Trinad Management. Trinad Management is an affiliate of, and provides investment management services to, Trinad Capital Master Fund. Robert Ellin and Jay Wolf are the managing members of Trinad Management. As a result, each may be deemed indirectly to beneficially own an aggregate of 9,400,000 shares of common stock. Mr. Wolf disclaims beneficial ownership of these securities except to the extent of his pecuniary interest therein.

(6) Lyrical Multi-Manager Fund, LP beneficially owns 2,000,000 units (1,000,000 of which are shares of common stock and 1,000,000 of which are shares of common stock issuable upon exercise of warrants held by Lyrical Multi-Manager Fund, LP) and Lyrical Multi-Manager Offshore Fund Ltd. beneficially owns 1,000,000 units (500,000 of which are shares of common stock and 500,000 of which are shares of common stock issuable upon exercise of warrants held by Lyrical Multi-Manager Offshore Fund Ltd.) of the company. Lyrical Partners, L.P., as the investment manager of Lyrical Multi-Manager Fund, LP and Lyrical Multi-Manager Offshore Fund Ltd., has the sole power to vote and dispose of the 3,000,000 shares of common stock held collectively by Lyrical Multi-Manager Fund, LP and Lyrical Multi-Manager Offshore Fund Ltd. This information is based solely on a Schedule 13D filed by Jeffrey Keswin with the Commission on February 13, 2007, which reported ownership as of September 12, 2006.

(7) David E. Smith beneficially owns 4,000,000 units, consisting of 2,000,000 shares of common stock of the company and 2,000,000 warrants, each exercisabel for one share of common stock. This information is based solely on a Schedule 13D filed by David E. Smith with the Commission on November 27, 2006, which reported ownership as of September 25, 2006.

(8) Consists of a warrant to purchase 150,000 shares of our common stock.

(9) Consists of a warrant to purchase 50,000 shares of our common stock.

(10) Consists of 4,500,000 shares of common stock held prior to the Merger and 571,427 shares issued upon consummation of the Merger. The securities indicated are held indirectly by Mr. Guber through the Guber Family Trust for which he serves as a trustee. Mr. Guber disclaims beneficial ownership of these securities except to the extent of his pecuniary interest.

(11) Consists of 500,000 shares of common stock. The securities indicated are held indirectly by Mr. Schaeffer through the Paul and Judy Schaeffer Living Trust for which he serves as a trustee. Mr. Schaeffer disclaims beneficial ownership of these securities except to the extent of his pecuniary interest.

(12) Includes 166,667 shares of common stock underlying options.

(13) Includes 166,667 shares of common stock underlying options.

(14) Includes 166,667 shares of common stock underlying options.

(15) Includes 33,333 shares of common stock underlying options.

(16) Includes 254,725 shares of common stock underlying options. The address for Mr. Aaron is c/o Twistbox Entertainment, Inc., 14242 Ventura Blvd., 3rd Floor, Sherman Oaks, CA 91423.

(17) Includes 54,725 shares of common stock underlying options. The address for Mr. McAbian is c/o Twistbox Entertainment, Inc., 14242 Ventura Blvd., 3rd Floor, Sherman Oaks, CA 91423.

(18) Includes 221,725 shares of common stock underlying options. The address for Mr. Burke is c/o Twistbox Entertainment, Inc., 14242 Ventura Blvd., 3rd Floor, Sherman Oaks, CA 91423.

(19) Includes 263,394 shares of common stock underlying options. The address for Mr. Mandell is c/o Twistbox Entertainment, Inc., 14242 Ventura Blvd., 3rd Floor, Sherman Oaks, CA 91423.

(20) Includes 199,161 shares of common stock underlying options. The address for Mr. Barteska is c/o Twistbox Games Ltd & Co KG (Charismatix), Lohbachestr. 12, D-58239, Schwerte, Germany.

(21) Consists of: (i) 2,779,986 shares of common stock held by Spark Capital, L.P., (ii) 49,357 shares of common stock held by Spark Capital Founders' Fund, L.P., and (iii) 27,801 shares of common stock held by Spark Member Fund, L.P. The address for Spark Capital, L.P. is c/o Gipson, Hoffman & Pancione, 1901 Avenue of the Stars, Suite 1100, Los Angeles, CA 90067.

(22) Represents 2,185,243 shares of common stock underlying currently exercisable warrants. The address for ValueAct SmallCap Master Fund, L.P. is c/o ValueAct Capital, 435 Pacific Avenue, 4th Floor, San Francisco, CA 94133.

## DIRECTORS, EXECUTIVE OFFICERS, PROMOTERS AND CONTROL PERSONS

The following table sets forth our directors and executive officers as of the completion of the Merger:

| Name | Age | Position(s) |
|---|---|---|
| Robert S. Ellin | 43 | Chief Executive Officer, Director |
| Jay A. Wolf | 35 | Chief Financial Officer, Secretary, Director |
| James Lefkowitz | 49 | President |
| Bruce Stein | 53 | Chief Operating Officer, Director |
| Ian Aaron | 47 | President, Chief Executive Officer of Twistbox, Director |
| Russell Burke | 47 | Senior Vice President and Chief Financial Officer of Twistbox |
| David Mandell | 46 | Executive Vice President, General Counsel and Corporate Secretary of Twistbox |
| Eugen Barteska | 36 | Managing Director of Twistbox Games |
| Adi McAbian | 34 | Managing Director of Twistbox. Director |
| David Chazen | 46 | Director |
| Barry I. Regenstein | 51 | Director |
| Peter Guber | 66 | Director |
| Paul Schaeffer | 60 | Director |
| Robert Zangrillo | 42 | Director |
| Richard Spitz | 47 | Director |

Biographical information for our directors and executive officers are as follows:

**Robert S. Ellin.** Mr. Ellin has been our Chairman and Chief Executive Officer since February 2005. Mr. Ellin is also a Managing Member of Trinad Capital Master Fund, Ltd., our principal stockholder and a hedge fund dedicated to investing in micro-cap public companies. Mr. Ellin currently sits on the boards of Command Security Corporation (CMMD), ProLink Holdings Corporation (PLKH), MPLC, Inc. (MPNC) and U.S. Wireless Data, Inc. (USWD). Prior to joining Trinad Capital Master Fund Ltd., Mr. Ellin was the founder and President of Atlantis Equities, Inc., a personal investment company. Founded in 1990, Atlantis has actively managed an investment portfolio of small capitalization public company as well as select private company investments. Mr. Ellin frequently played an active role in Atlantis investee companies including board representation, management selection, corporate finance and other advisory services. Through Atlantis and related companies, Mr. Ellin spearheaded investments into ThQ, Inc. (OTC:THQI), Grand Toys (OTC: GRIN), Forward Industries, Inc. (OTC: FORD) and completed a leveraged buyout of S&S Industries, Inc. where he also served as President from 1996 to 1998. Prior to founding Atlantis Equities, Mr. Ellin worked in Institutional Sales at LF Rothschild and prior to that he was the Manager of Retail Operations at Lombard Securities. Mr. Ellin received his B.A. from Pace University.

**Jay A. Wolf.** Mr. Wolf has been our Chief Financial Officer since February 2005, and was Chief Operating Officer from February 2005 until January 2008. He has served on our Board of Directors since February 2005. Mr. Wolf is also a Managing Director of Trinad Capital Master Fund Ltd. Mr. Wolf currently sits on the boards of Shells Seafood Restaurants (SHLL), ProLink Holdings Corporation (PLKH), U.S. Wireless Data, Inc. (USWD) and Optio Software, Inc. Mr. Wolf has ten years of investment and operations experience in a broad range of industries. Mr. Wolf is a co-founder of Trinad Capital, L.P., where he served as a managing director since its inception in 2003. Prior to founding Trinad, Mr. Wolf served as the Executive Vice-President of Corporate Development for Wolf Group Integrated Communications where he was responsible for the company's acquisition program. Prior to Wolf Group Integrated Communications, Mr. Wolf worked at Canadian Corporate Funding, a Toronto-based merchant bank, in the senior debt department, and subsequently for Trillium Growth, the Canadian Corporate Funding's venture capital fund. Mr. Wolf received his B.A from Dalhousie University.

**James Lefkowitz.** Mr. Lefkowitz has been our President since June 2007. He is a 20 year entertainment industry veteran with a wide range of experience in law, business, finance, film and television. Mr. Lefkowitz joined Mandalay from Cantor Fitzgerald (Cantor), where he was managing director of Cantor Entertainment. Prior to Cantor, Mr. Lefkowitz was an agent for eight years at Creative Artists Agency, the premiere talent agency in Hollywood, where he represented actors, writers and directors. He began his career as an attorney at the law firm of Manatt, Phelps, and Phillips in Los Angeles. He subsequently worked for six years as a business affairs executive at Walt Disney Studios and Touchstone Pictures. Mr. Lefkowitz is a graduate of the University of Michigan School of Business Administration and Michigan Law School.

**Bruce Stein.** Mr. Stein has served on our Board of Directors since November 2007. He has been our Chief Operating Officer since January 2008. Mr. Stein is founder and since September 2003 has been Co-Chief Executive Officer of The Hatchery LLC ("The Hatchery"), a company specializing in intellectual property development and entertainment production of kids and family franchises. Since 2003, he has served on the board of directors of ViewSonic, Inc. and is chairman of the compensation committee. Prior to joining The Hatchery, Mr. Stein held various executive titles at Mattel, Inc., including Worldwide President, Chief Operating Officer and a member of the board of directors from August 1996 through March 1999. From August 1995 through August 1996, Mr. Stein was Chief Executive Officer of Sony Interactive Entertainment Inc., a subsidiary of Sony Computer Entertainment America Inc. At various times between January 1995 and June 1998, Mr. Stein served as a consultant to DreamWorks SKG, Warner Bros. Entertainment and Mandalay Entertainment. From 1987 through 1994, Mr. Stein served as President of Kenner Products, Inc. Mr. Stein received a B.A. from Pitzer College and an M.B.A. from the University of Chicago.

**Ian Aaron.** Ian Aaron became a member of our Board of Directors as of the Closing and has been the President of Twistbox since January 2006. He is responsible for Twistbox's general entertainment, games and late night business units. Mr. Aaron has over 20 years of experience in the fields of international CATV, telecom and mobile distribution and has served on the board of directors of a number of international media and technology-based companies. Prior to joining Twistbox, Mr. Aaron served as President of the TV Guide Television Group of Gemstar - TV Guide International, Inc., a NASDAQ publicly traded company that engages in the development, licensing, marketing, and distribution of products and services for TV guidance and home entertainment needs of TV viewers worldwide. From August 2000 to May 2003, Mr. Aaron served as President, Chief Executive Officer and Director of TVN Entertainment, Inc., which is the largest privately held digital content aggregation, management, distribution, and service company in the United States. From October 1994 to August 2000, Mr. Aaron worked in a number of capacities, including as President and Director, with SoftNet Systems, Inc., a broadband internet service provider that was traded publicly on NASDAQ. Mr. Aaron received a B.S. in electrical engineering and a B.S. in communications from the University of Illinois.

**Russell Burke.** Russell Burke serves as Senior Vice President and Chief Financial Officer of Twistbox and is responsible for all aspects of Twistbox's financial infrastructure including reporting and financial systems and information systems. He also has responsibility for strategic planning and for managing investor relationships. Mr. Burke was previously the Managing Director for Australia and New Zealand for Weight Watchers International, Inc, a publicly traded company. He had full responsibility for the company's operations across those territories, and was a member of the company's global executive committee. Prior to this, Mr. Burke served as the Senior Vice-President and Chief Financial Officer of pressplay, a joint venture of Sony Music and Universal Music. He joined pressplay at the start up stage and was part of a small management team which forged a viable business in the digital music arena. He was responsible for developing all financial systems and oversaw the creation of management and external reporting; as well as international business development. Additionally, he was involved in the acquisition of pressplay by Roxio, Inc. and the subsequent re-branding and re-launching of the service as Napster. Before joining pressplay, Mr. Burke held a number of senior financial positions at Sony Music International in Sydney (Australia), New York and London. Mr Burke began his career with Price Waterhouse (now PricewaterhouseCoopers) in Australia, where over a period of 13 years he worked with a broad range of clients in the Los Angeles, Sydney and Newcastle (Australia) offices of Price Waterhouse, advising on business and compliance matters. Mr. Burke received a B. Comm. from the University of Newcastle (Australia).

**David Mandell.** David Mandell has served as Executive Vice President, General Counsel and Corporate Secretary of Twistbox since June 2006. Mr. Mandell is responsible for all corporate governance matters for Twistbox, including those related to all foreign and domestic subsidiaries and affiliated companies. Prior to joining Twistbox, Mr. Mandell was Senior Vice President, Business/Legal Affairs of Gemstar-TV Guide International, Inc., a NASDAQ publicly traded company that engages in the development, licensing, marketing, and distribution of products and services for TV guidance and home entertainment needs of TV viewers worldwide. From October 1998 to January 2003, Mr. Mandell served as Vice President, Business/Legal Affairs of Playboy Entertainment Group, Inc., a subsidiary of Playboy Enterprises, Inc., which owns adult film and television properties (Playboy Films, Playboy TV, Spice Networks), related home video imprints, and online content and gaming operations. Mr. Mandell received a B.A. from the University of Florida and a J.D. from the University of Miami School of Law.

**Eugen Barteska.** Eugen Barteska is the co-founder and Managing Director of Twistbox Games. As Managing Director of Twistbox Games, Mr. Barteska designs and develops Java games and applications for the mobile space and is responsible for the deployment of games and application to wireless telephone operators. Prior to co-founding Twistbox Games, Mr. Barteska served as manager of technical support and a programmer for HSP GmbH, a German company that delivers and supports leading high-end development tools for the embedded real-time market. Mr. Barteska graduated with a degree in civil engineering for microelectronics and physics from the University of Applied Sciences Südwestfalen in Iserlohn, Germany.

**Adi McAbian.** Adi McAbian has served on our Board of Directors since February 2008 and is a co-founder and Managing Director of Twistbox. As the Managing Director of Twistbox, Mr. McAbian is responsible for global sales and carrier relationships that span the globe. Mr. McAbian's background includes experience as an entrepreneur and executive business leader with over 12 years experience as a business development and sales manager in the broadcast television industry. Mr. McAbian is experienced in entertainment and media rights management, licensing negotiation and production, and has previously secured deals with AOL/Time Warner, Discovery Channel, BMG, RAI, Disney, BBC and Universal among others. He has been responsible for facilitating strategic collaborations with over 60 mobile operators worldwide on content standards and minor protection legislation and he has been a frequent speaker, lecturing on adult mobile content business and management issues throughout Europe and the U.S., including conferences organized by iWireless World, Mobile Entertainment Forum, and Informa.

**David Chazen.** Mr. Chazen has served on our Board of Directors since August 2006. He was also our President from August 2006 until June 2007. Mr. Chazen is Managing Director of Chazen Capital Partners, a private investment partnership founded in 1997 that provides equity capital and management support to consumer-oriented companies. Mr. Chazen also serves as President of Win Stuff Corporation, the largest specialized operator of entertainment skill crane vending machines in the U.S. Mr. Chazen also serves as the President of Good Stuff Toys, a manufacturer of licensed toys. Mr. Chazen is also the Managing Director of HQ Enterprises, a provider of stored value gift cards for the shopping mall industry. Mr. Chazen is a director of the St. Johns Companies, the Chazen Institute of International Business at Columbia University, the Society of Fellows at the Aspen Institute, and Jazz Aspen. Mr. Chazen also serves on the Board of Advisors of Trinad Management, LLC, the manager of Trinad Capital Master Fund, one of our principal stockholders. Mr. Chazen received his B.S. from the Wharton School at the University of Pennsylvania in 1982, and his M.B.A. from Columbia Business School in 1986.

**Barry I. Regenstein.** Mr. Regenstein has served on our Board of Directors since February 2005. Mr. Regenstein is also the President and Chief Financial Officer of Command Security Corporation. Trinad Capital Master Fund, Ltd. is a significant shareholder of Command Security Corporation and Mr. Regenstein has formerly served as a consultant for Trinad Capital Master Fund, Ltd. Mr. Regenstein has over 28 years of experience with 23 years of such experience in the aviation services industry. Mr. Regenstein was formerly Senior Vice President and Chief Financial Officer of Globe Ground North America (previously Hudson General Corporation), and previously served as the company’s Controller and as a Vice President. Prior to joining Hudson General Corporation in 1982, he had been with Coopers & Lybrand in Washington, D.C. since 1978. Mr. Regenstein currently sits of the boards of GTJ Co., Inc., ProLink Holdings Corporation (PLKH) and MPLC, Inc. (MPNC). Mr. Regenstein is a Certified Public Accountant and received his Bachelor of Science in Accounting from the University of Maryland and an M.S. in Taxation from Long Island University.

**Peter Guber**. Mr. Guber has served on our Board of Directors since August 2007 as Co-Chairman. He is a 30-year veteran of the entertainment industry. His positions previously held include: Former Studio Chief, Columbia Pictures; Founder of Casablanca Record and Filmworks; Founder, and Former Chairman/CEO, PolyGram Filmed Entertainment; Founder and Former Co-owner, Guber-Peters Entertainment Company; Former Chairman and CEO, Sony Pictures Entertainment (SPE). Films directly produced and executive produced by Guber have received more than 50 Academy Award nominations, including four times for Best Picture. Among his personal producing credits are Witches of Eastwick, The Deep, Color Purple, Midnight Express, The Jacket, Missing, Batman and Rain Man, which won the Oscar for best picture. During Mr. Guber's tenure at SPE, the Motion Picture Group achieved, over four years, an industry-best domestic box office market share averaging 17%. During the same period, Sony Pictures led all competitors with a remarkable total of 120 Academy Award nominations, the highest four-year total ever for a single company. After leaving Sony in 1995, Mr. Guber formed Mandalay Entertainment Group ("Mandalay Entertainment") as a multimedia entertainment vehicle in motion pictures, television, sports entertainment and new media. Mr. Guber is a full professor at the UCLA School of Theater, Film and Television and has been a member of the faculty for over 30 years. He also can be seen every Sunday morning on the American Movie Channel (AMC), as the co-host of the critically acclaimed show, Sunday Morning Shootout. He received his B.A. from Syracuse University, and both a Masters and Juris Doctor degree in law from New York University and was recruited by Columbia Pictures Corporation from NYU where he pursued an M.B.A. degree. He is a member of the New York and California Bars.

**Paul Schaeffer**. Mr. Schaeffer has served on our Board of Directors since August 2007 as Vice-Chairman. He is Vice Chairman, Chief Operating Officer and Co-Founder of the Mandalay Entertainment. Along with Peter Guber, Mr. Schaeffer is responsible for all aspects of the motion picture and television business, focusing primarily on the corporate and business operations of those entities. Prior to forming Mandalay Entertainment, Mr. Schaeffer was the Executive-Vice President of Sony Pictures Entertainment, overseeing the worldwide corporate operations for SPE including Worldwide Administration, Financial Affairs, Human Resources, Corporate Affairs, Legal Affairs and Corporate Communications. During his tenure, Mr. Schaeffer also had supervisory responsibility for the $105 million rebuilding and renovation of Sony Pictures Studios. Mr. Schaeffer is a member of the Academy of Motion Pictures, Arts, & Sciences. A veteran of 20 years of private law practice, Mr. Schaeffer joined SPE from Armstrong, Hirsch and Levine, where he was a senior partner working with corporate entertainment clients. He spent two years as an accountant with Arthur Young & Company in Philadelphia. He graduated from the University of Pennsylvania Law School and received his accounting degree from Pennsylvania State University.

**Robert Zangrillo.** Mr. Zangrillo has served on our Board of Directors since November 2007. He is a 19-year veteran of the financial services, software and Internet-based industries. Mr. Zangrillo is the founder, Chairman and Chief Executive Officer of North Star Systems International ("North Star"), which provides wealth management software to financial services institutions. Prior to joining North Star, Mr. Zangrillo was founder, Chairman and Chief Executive Officer of InterWorld, Corp., a provider of eCommerce software applications. Over the last 19 years, Mr. Zangrillo has held various positions including Chairman, Chief Executive Officer, private equity investor, director and advisor to numerous growth companies including ArcSight, Inc., Dick's Sporting Goods Inc. (NYSE: DKS), EarthLink, Inc. (NASDAQ: ELNK), HomeSpace (acquired by Lending Tree International, Inc., NASDAQ: LTRE), InterWorld Corp. (acquired by The Essar Group), Imperium Renewables, Inc., Loudeye Corp. (acquired by Nokia, NYSE: NOK), Overture (acquired by Yahoo, NASDAQ: YHOO), Project PlayList, UGO Networks (acquired by the Hearst Corporation), Ulta Salon, Cosmetics & Fragrance, Inc. (NASDAQ:ULTA) and YOUcentric Inc. (acquired by JG Edwards, NASDAQ: ORCL). Mr. Zangrillo also worked as an associate in the Investment Banking Division of Donaldson, Lufkin & Jenrette. He recently served as a member of the Council on Foreign Relations, where he served on the Committee on Finance and Budget. Mr. Zangrillo received a B.A. from the University of Vermont and an M.B.A. from Stanford University Graduate School of Business.

**Richard Spitz.** Mr. Spitz has served on our Board of Directors since November 2007. He is the head of Korn/Ferry International Global Technology Markets where he is in charge of go-to market strategy across all subsectors and regions within the technology market. Mr. Spitz has worked at Korn/Ferry International since May 1996 where he has advised investors and companies on leadership issues, talent management and senior executive recruitment. From August 1987 through May 1996, Mr. Spitz worked at Paul, Hastings, Janofsky and Walker. Mr. Spitz has served on and advises private and public company boards as well as on the Dean's Special Task Force for New York University Law School. He also currently serves on the Board of Advisors to the Harold Price Center for Entrepreneurial Studies at the Anderson School of Business. Mr. Spitz received a BS from California State University, Northridge, a J.D. from Tulane University Law School and an L.L.M. from New York University Law School.

## EXECUTIVE COMPENSATION

### Summary Compensation Table

The following table sets forth information concerning all compensation paid during our fiscal year ended December 31, 2007 to our named executive officers:

| Name and Principal Position | Year | Salary | Bonus | Stock Awards | Option Awards | All Other Compensation | Total |
|---|---|---|---|---|---|---|---|
| | | ($) | ($) | ($) | ($) | ($) | ($) |
| Robert S. Ellin, | 2006 | - | - | - | - | - | - |
| *Chief Executive Officer* | 2007 | - | - | - | - | - | - |
| James Lefkowitz, | 2006 | - | - | - | - | - | - |
| *President* | 2007 | 123,923 | 100,000 | - | 771,862(1) | - | 995,785 |
| Ian Aaron, *Chief Executive Officer of Twistbox*(2) | 2007 | 396,538(3) | - | - | 3,048(4) | 23,888 | 423,474 |

(1) We valued the options for FAS 123R purposes utilizing the Black-Scholes method. The assumptions made for utilizing the Black-Scholes method were a volatility equal to 75.2% and a discount rate equal to 3.89%.

(2) Ian Aaron became one of our executive officers in connection with the Merger. The table reflects his compensation received as an executive officer of Twistbox in 2007.

(3) This amount reflects Mr. Aaron's salary reduction that occurred during the fourth quarter of 2007.

(4) This amount was calculated using the provisions of FAS 123R for the calendar year ended December 31, 2007. For a description of FAS 123R and the assumptions used in determining the value of the options, see "Management's Discussion and Analysis or Plan of Operation - Critical Accounting Policies - Stock Based Compensation".

On June 28, 2007, James Lefkowitz was appointed our President pursuant to an employment letter. Pursuant to such employment letter, his initial base salary was set at $250,000 per year. Additionally, he received a signing bonus of $100,000 and is eligible for bonus compensation at the discretion of the Board. In the event that he is terminated without cause, meaning misconduct that harms the company, conviction of a felony or a crime involving fraud or financial misconduct, violation of our Code of Ethics, or violation of confidentiality obligations, he is eligible for severance equal to one month of base pay (determined at the time of termination) for each year of employment, up to a maximum of 12 months of base pay. He is not eligible for severance if he resigns or is terminated for cause.

Our Board of Directors granted Mr. Lefkowitz options to purchase 500,000 shares of our common stock pursuant to the Mandalay Media, Inc. 2007 Employee, Director and Consultant Plan on November 7, 2007 in connection with his employment as President. The options have a 10-year term and are exercisable at a price of $2.65 per share. One-third of the options were immediately exercisable upon grant, an additional one-third become exercisable on June 28, 2008, and the remaining one-third become exercisable on June 28, 2009.

On January 17, 2006, Mr. Aaron was granted options to purchase 75,000 shares of common stock of Twistbox, pursuant to the terms of the Twistbox 2006 Plan, at $0.35 per share in connection with his employment agreement. The options have a term of 10 years. Upon consummation of the Merger, all of the options held by Mr. Aaron, which pursuant to the Merger became exercisable for 54,725 shares of Mandalay Common Stock, became immediately exercisable.

On February 12, 2008, in connection with the Closing, Twistbox entered into the Second Amendment to Employment Agreement (the "Second Amendment"), an amendment to its existing letter employment agreement with Ian Aaron for his service as Chief Executive Officer of Twistbox, dated as of May 16, 2006, as amended by that certain Amendment to Employment Agreement dated December 30, 2007 and then in effect. Pursuant to such employment agreement, as amended by the Second Amendment (the "Employment Agreement"), Mr. Aaron shall serve in his role as CEO until February 12, 2011, such term to thereafter renew upon mutual agreement of Twistbox and Mr. Aaron (to be determined on or about August 12, 2010), unless earlier terminated pursuant to the Employment Agreement. Mr. Aaron's Employment Agreement provides that his base salary shall be at the annual rate of $350,000 from February 12, 2008 through February 11, 2009, $367,500 from February 12, 2009 through February 11, 2010, and $385,875 from February 12, 2010 through February 12, 2011. He is eligible for an annual cash bonus of up to 50% of base salary based upon the achievement of performance goals set by Twistbox's board of directors, a minimum of four weeks paid vacation, reimbursement of certain expenses, an automobile allowance of $1,000 per month, and life insurance equal to two times base salary. During the term of his employment and for 12 months thereafter, Mr. Aaron is prohibited from competing with the company directly or indirectly by participating in any business relating to Mobile Adult WAP, Adult MobileTV, Adult Off-Deck Services, Mobile AVS Systems or Mobile Adult Advertising Services, soliciting customers, or soliciting employees.

Upon termination of Mr. Aaron's employment as a result of disability or death, he is entitled to receive all accrued but unpaid payments and benefits and any bonus earned but unpaid. Upon termination of Mr. Aaron's employment as a result of cause, generally defined as willful misconduct having a material negative impact on the company, indictment for, conviction of, or pleading guilty to a felony or any crime involving fraud, dishonesty or moral turpitude, failure to perform duties or follow legal direction of Board of Directors in good faith, or any uncured other material breach of the Employment Agreement, he is entitled to receive all accrued but unpaid payments and benefits excluding any bonus earned but unpaid. In addition, if Mr. Aaron's employment is terminated by us without cause or by Mr. Aaron for good reason, which is defined as material diminution in title, position, authority, duties or reporting requirements unless incapacitated, mandatory relocation to a principal place of employment greater than 15 miles from current location, or any other material breach of the Employment Agreement, then he is entitled to receive all accrued but unpaid payments and benefits and any bonus earned but unpaid, and (i) continued payment of base salary for a period equal to six months following the termination, (ii) a pro-rata bonus based on actual results achieved during the fiscal year of termination, (iii) continued participation during the six month period following termination in our group health plan, subject to certain conditions and restrictions and (iv) immediate vesting of all outstanding stock options to purchase our common stock.

In addition, pursuant to the Second Amendment, Mr. Aaron received options on February 12, 2008 pursuant to the Mandalay Media, Inc. 2007 Employee, Director and Consultant Plan to purchase 600,000 shares of our common stock at an exercise price of equal to the fair market value of the closing trading price of our common stock on February 12, 2008. One-third of the options vested on February 12, 2008, with the remaining amount vesting annually in equal installments over a two-year period thereafter. All of such options accelerate upon a change of control or sale of all or substantially all of the assets of Mandalay.

Other than as described above, we have no plans or arrangements with respect to remuneration received or that may be received by our named executive officers to compensate such officers in the event of termination of employment (as a result of resignation, retirement, change of control) or a change of responsibilities following a change of control.

**OUTSTANDING EQUITY AWARDS AT FISCAL YEAR-END**

The following table presents information regarding outstanding options held by certain of our executive officers as of December 31, 2007.

| Name | Number of Securities Underlying Unexercised Options (#) Exercisable | Number of Securities Underlying Unexercised Options (#) Unexercisable | Equity Incentive Plan Awards: Number of Securities Underlying Unexercised Unearned Options (#) | Option Exercise Price ($) | Option Expiration Date |
|---|---|---|---|---|---|
| Robert S. Ellin, *Chief Executive Officer* | — | — | — | — | — |
| James Lefkowitz, *President* (1) | 166,667 | 333,333 | — | 2.65 | 11/7/17 |
| Ian Aaron, *Chief Executive Officer of Twistbox* (2) | 54,725 | — | — | .35 | 1/17/16 |

(1) Mandalay's Board of Directors granted Mr. Lefkowitz the options pursuant to the Mandalay Media, Inc. 2007 Employee, Director and Consultant Plan on November 7, 2007 in connection with his employment as President of Mandalay. The options have a 10 year term and are exercisable at a price of $2.65 per share. One-third of the options were immediately exercisable upon grant, an additional one-third become exercisable on June 28, 2008 and the remaining one-third become exercisable on June 28, 2009.

(2) Twistbox's board of directors granted Mr. Aaron the options pursuant to the terms of the Twistbox 2006 Plan on January 17, 2006 in connection with his employment as Chief Executive Officer of Twistbox. The options have a 10-year term and are exercisable at a price of $0.35 per share. Upon consummation of the Merger, all of the options held by Mr. Aaron, became immediately exercisable for 54,725 shares of Mandalay Common Stock.

**DIRECTOR COMPENSATION**

The following table presents information regarding outstanding compensation paid to our directors as of December 31, 2007.

| Name | Fees Earned or Paid in Cash ($) | Option Awards ($) | All Other Compensation ($) | Total ($) |
|---|---|---|---|---|
| Bruce Stein | $ 25,641 | 771,862(1) | - | $ 797,503 |
| Robert Zangrillo | $ - | 771,862(2) | - | $ 771,862 |
| Richard Spitz | $ - | 145,634(3) | - | $ 145,634 |
| Adi McAbian (4) | $ - | - | - | $ - |

(1) Mandalay's Board of Directors granted Mr. Stein the options pursuant to the Mandalay Media, Inc. 2007 Employee, Director and Consultant Plan on November 7, 2007 in connection with services provided to Mandalay. The options have a 10-year term and are exercisable at a price of $2.65 per share. One-third of the options were immediately exercisable upon grant, an additional one-third become exercisable on the first anniversary of the date of grant and the remaining one-third become exercisable on the second anniversary of the date of grant.

(2) Mandalay's Board of Directors granted Mr. Zangrillo the options pursuant to the Mandalay Media, Inc. 2007 Employee, Director and Consultant Plan on November 7, 2007 in connection with services provided to Mandalay. The options have a 10-year term and are exercisable at a price of $2.65 per share. One-third of the options were immediately exercisable upon grant, an additional one-third become exercisable on the first anniversary of the date of grant and the remaining one-third become exercisable on the second anniversary of the date of grant.

(3) Mandalay's Board of Directors granted Mr. Spitz the options pursuant to the Mandalay Media, Inc. 2007 Employee, Director and Consultant Plan on November 14, 2007 in connection with services provided to Mandalay. The options have a 10-year term and are exercisable at a price of $2.50 per share. One-third of the options were immediately exercisable upon grant, an additional one-third become exercisable on the first anniversary of the date of grant and the remaining one-third become exercisable on the second anniversary of the date of grant.

(4) Mr. McAbian became a member of our Board of Directors in connection with the Merger. He was not a director of Twistbox, but did receive compensation for his services as an executive officer of Twistbox in 2007, which is not reflected in this table.

## CERTAIN RELATIONSHIPS AND RELATED PARTY TRANSACTIONS

### Mandalay

On September 14, 2006, we entered into a management agreement (the "Management Agreement") with Trinad Management, an affiliate of Trinad Capital Master Fund, which is one of our principal stockholders. Pursuant to the terms of the Management Agreement, which is for a term of five years, Trinad Management will provide certain management services, including without limitation the sourcing, structuring and negotiation of a potential business combination transaction involving the company. We have agreed to pay Trinad Management a management fee of $90,000 per quarter, plus reimbursement of all expenses reasonably incurred by Trinad Management in connection with the provision of management services. Either party may terminate with prior written notice. However, in the event the company terminates the Management Agreement, we shall pay to Trinad Management a termination fee of $1,000,000. Management fee expenses for the year ended December 31, 2006 totaled $107,000 and for the year ended December 31, 2007 totaled $360,000.

In addition, Trinad Capital Master Fund beneficially owns 9,400,000 shares of Mandalay, which consists of 9,300,000 shares of Mandalay Common Stock and 100,000 shares of Mandalay Common Stock issuable upon conversion of 100,000 shares of Series A Convertible Preferred Stock held by Trinad Management. Robert Ellin and Jay Wolf are the managing members of Trinad Management.

### Twistbox

Twistbox engages in various business relationships with its shareholders and officers and their related entities. The significant relationships are as follows:

#### *Lease of Premises*

Twistbox leases its primary offices in Los Angeles, California from Berkshire Holdings, LLC, a company with common ownership by officers of Twistbox. Amounts paid in connection with this lease were $314,000 and $213,000 for the years ended March 31, 2007 and 2006 respectively.

Twistbox is party to an oral agreement with a person affiliated with Twistbox with respect to a lease of an apartment in London. Amounts paid in connection with this lease were $59,000 and $48,000 for the years ended March 31, 2007 and 2006 respectively.

In addition, Twistbox paid the costs of a leased apartment in Sherman Oaks, California that was rented by an officer of Twistbox. The apartment was used to accommodate employees visiting from other locations. Amounts paid in connection with this lease were $18,000 and $2,000 for the years ended March 31, 2007 and 2006 respectively. In August 2007, Twistbox entered into a one-year written agreement to rent an apartment in the same building at a cost of $1,500 per month.

***Loans***

Twistbox had a note payable to an affiliated company, PowerSports Video Productions CCT, Inc., as of March 31, 2007 for $250,000 (the "PowerSports Note"). The PowerSports Note had a maturity date of March 28, 2008 and carried interest at 8.25%. The PowerSports Note was subsequently cancelled. In addition, Twistbox had an advance from an affiliated company, PowerSports Video Productions CCT, Inc., as of March 31, 2006 for $1,335, inclusive of accrued interest. The advance did not have a specific maturity date and carried interest at 7.73%. Interest expense paid or payable to PowerSports Video Productions CCT was $18,000 and $80,000, for the years ended March 31, 2007 and 2006 respectively.

Twistbox is party to a loan from East-West Bank, which originated on January 27, 2006 in an amount of $161,000. Twistbox also entered into a loan agreement with an affiliated company, PowerSports Video Productions CCT, effective on the same date for the same amount. The bank agreement was secured with a motor vehicle operated exclusively by an officer of Twistbox. The interest income under the loan to an affiliate completely offset interest expense incurred under the bank loan. As of March 31, 2007, $106,000 was due to Twistbox under this loan, and the amount payable under the bank loan was $102,000. Amounts paid for the years ended March 31, 2007 and 2006 were $59,000 and, $10,000, respectively, including interest of $8,000 and $1,000, respectively. Amounts received for the years ended March 31, 2007 and 2006 were $55,000 and $10,000, respectively, including interest of $8,000 and $1,000, respectively. The agreement has subsequently been terminated.

***Dealings with Content Provider***

Two officers of Twistbox, Camill Sayadeh and Adi McAbian, are also members of the board of directors of Peach International, with which Twistbox has a Content Provider Agreement. Amounts paid or payable under this agreement to Peach International in the years ended March 31, 2007 and 2006 were $165,000 and $203,000, respectively.

## DESCRIPTION OF SECURITIES

### Common Stock

We are authorized to issue up to 100,000,000 shares of common stock, par value $0.0001 per share, of which 32,048,365 shares were outstanding as of the Closing. Holders of our common stock are entitled to one vote for each share held of record on each matter submitted to a vote of stockholders. Subject to the prior rights of any series of preferred stock which may from time to time be outstanding, holders of our common stock are entitled to receive dividends if, as and when declared by our Board of Directors out of funds legally available therefor and, upon the liquidation, dissolution, or winding up of the company, are entitled to share ratably in all assets of the company available for distribution to its stockholders. Holders of our common stock have no preemptive rights and have no rights to convert their common stock into any other securities.

**Preferred Stock**.

Our Board of Directors is authorized, without further action by the stockholders, to fix the designations, powers, preferences and other rights and the qualifications, limitations or restrictions of, and cause Mandalay to issue, up to 1,000,000 shares of preferred stock, par value $0.0001 per share ("Preferred Stock"), in one or more series. There are currently 100,000 shares of Preferred Stock designated as Series A Convertible Preferred Stock ("Series A Preferred Stock"), of which 100,000 shares were issued and outstanding as of the Closing. Unless otherwise provided by law, the holders of Series A Preferred Stock vote together with the holders of our common stock as a single class on all matters submitted for a vote of the holders of our common stock; each share of Series A Preferred Stock entitles the holder thereof to cast one vote on an as-converted basis, subject to adjustment as set forth in our certificate of incorporation.

If our Board of Directors declares a dividend payable upon our common stock, the holders of the outstanding shares of Series A Preferred Stock are entitled to the same amount of dividends on an as-converted basis (rounded down to the nearest whole share). Upon the liquidation, dissolution, or winding up of Mandalay, the holders of Series A Preferred Stock are entitled to have set apart for them or to be paid, out of the assets of the company available for distribution to stockholders, before any distribution or payment is made with respect to any shares of common stock, an amount equal to the greater of (i) $10.00 per share of Series A Preferred Stock (subject to adjustment as set forth in our certificate of incorporation) and (ii) the amount that would have been payable as on as-converted basis (rounded down to the nearest whole share) immediately prior to such event. Each holder of Series A Preferred Stock may elect after any such transaction is consummated, to treat any of the following transactions as a dissolution or winding up of the company: a consolidation or merger of the company with or into any other corporation, a sale of all or substantially all of the assets of the company, the issuance and/or sale by the company in a single or integrated transaction of shares of common stock (or securities convertible into shares of common stock) constituting a majority of the shares of common stock outstanding immediately following such issuance and any other form of acquisition or business combination where the company is the target of such acquisition and where a change in control occurs

**Anti-Takeover Provisions**

The provisions of Delaware law and of our certificate of incorporation and by-laws discussed below could discourage or make it more difficult to accomplish a proxy contest or other change in our management or the acquisition of control by a holder of a substantial amount of our voting stock. It is possible that these provisions could make it more difficult to accomplish, or could deter, transactions that stockholders may otherwise consider to be in their best interests or our best interests.

*Business Combinations*. We are subject to the provisions of Section 203 of the General Corporation Law of the State of Delaware ("DGCL"). Section 203 prohibits a publicly-held Delaware corporation from engaging in a "business combination" with an "interested stockholder" for a period of three years after the date of the transaction in which the person became an interested stockholder, unless the business combination is approved in a prescribed manner. A "business combination" includes mergers, asset sales and other transactions resulting in a financial benefit to the interested stockholder. Subject to specified exceptions, an "interested stockholder" is a person who, together with affiliates and associates, owns, or within three years did own, 15% or more of the corporation's voting stock.

*Limitation of Liability; Indemnification*. Our certificate of incorporation contains provisions permitted under the DGCL relating to the liability of directors. The provisions eliminate a director's liability for monetary damages for a breach of fiduciary duty as a director, except in certain circumstances including involving wrongful acts, such as the breach of a director's duty of loyalty or acts or omissions which involve intentional misconduct or a knowing violation of law, or for any transaction from which the director derived an improper personal benefit. The limitation of liability described above does not alter the liability of our directors and officers under federal securities laws. Furthermore, our certificate of incorporation and by-laws contain provisions to indemnify our directors and officers to the fullest extent permitted by the DGCL. These provisions do not limit or eliminate our right or the right of any stockholder of ours to seek non-monetary relief, such as an injunction or rescission in the event of a breach by a director or an officer of his duty of care to us. We believe that these provisions will assist us in attracting and retaining qualified individuals to serve as directors.

*Preferred Stock Issuances*. As described above, our certificate of incorporation provides that, without stockholder approval, we can issue up to 1,000,000 shares of preferred stock with rights and preferences determined by our Board of Directors.

**MARKET PRICE OF AND DIVIDENDS ON COMMON EQUITY AND RELATED SHAREHOLDER MATTERS**

**Market Information**

As of February 11, 2008, the closing price of our common stock was $4.60.

Our common stock is quoted on the OTC Bulletin Board under the symbol "MNDL.OB." Any investor who purchases our common stock is not likely to find any liquid trading market for our common stock and there can be no assurance that any liquid trading market will develop.

The following table reflects the high and low closing quotations of our common stock for the years ended December 31, 2006 and December 31, 2007.

| Fiscal 2006 | High | Low | Fiscal 2007 | High | Low |
|---|---|---|---|---|---|
| First quarter | N/A | N/A | First quarter | $ 2.50 | $ 1.75 |
| Second quarter | $ 5.75 | $ 0.40 | Second quarter | $ 3.00 | $ 1.90 |
| Third quarter | $ 2.05 | $ 1.25 | Third quarter | $ 4.00 | $ 2.25 |
| Fourth quarter | $ 2.05 | $ 2.00 | Fourth quarter | $ 4.50 | $ 2.30 |

There has never been a public trading market for any of our securities other than our common stock.

**Holders**

As of February 12, 2008, there were 534 holders of record of our common stock. There were also an undetermined number of holders who hold their stock in nominee or "street" name.

**Dividends**

We have not declared cash dividends on our common stock since our inception and we do not anticipate paying any cash dividends in the foreseeable future.

**Equity Compensation Plan Information**

The following table sets forth information concerning our equity compensation plans as of December 31, 2007.

| Plan Category | Number of securities to be issued upon exercise of outstanding options, warrants and rights (a) | Weighted-average exercise price of outstanding options, warrants and rights (b) | Number of securities remaining available for future issuance under equity compensation plans (excluding securities reflected in column (a)) (c) |
|---|---|---|---|
| Equity compensation plans approved by security holders | 1,600,000 | $ 2.64 | 1,400,000 |
| Equity compensation plans not approved by security holders | 0 | 0 | 0 |
| **Total** | 1,600,000 | $ 2.64 | 1,400,000 |

## LEGAL PROCEEDINGS

As of this date of filing this Current Report on Form 8-K, we are not a party to any litigation that we believe would have a material adverse effect on us.

## CHANGES IN AND DISAGREEMENTS WITH ACCOUNTANTS

On May 11, 2007, we were advised by Most & Company, LLP (“Mostco”) that Mostco had combined its practice into Raich Ende Malter & Co. LLP (“Raich Ende”). Mostco therefore effectively resigned as our independent certified public accounting firm. Effective May 11, 2007, we engaged Raich Ende as our independent certified public accounting firm to audit our financial statements. Raich Ende was not consulted on any matter described in Item 304(a)(2) of Regulation S-B prior to May 11, 2007. The resignation of Mostco and appointment of Raich Ende was approved by our Board of Directors.

The reports of Mostco on our financial statements for the years ended December 31, 2006 and 2005 contained no adverse opinions or disclaimers of opinion, nor were they qualified or modified as to uncertainty, audit scope or accounting principles.

In connection with the audits for the fiscal years ended December 31, 2006 and 2005 and during the subsequent interim period through May 11, 2007, there were no disagreements between us and Mostco on any matter of accounting principles or practices, financial statement disclosure, or auditing scope or procedures, which disagreements, if not resolved to Mostco's satisfaction, would have caused Mostco to make reference to the subject matter of the disagreement in connection with its reports.

In connection with the audit of the fiscal years ended December 31, 2006 and 2005 and during the subsequent interim period through May 11, 2007, Mostco did not advise us that: internal controls necessary for us to develop reliable financial statements did not exist; information had come to its attention that led them to no longer be able to rely on our management's representations or made it unwilling to be associated with the financial statements prepared by our management; there was a need to expand significantly the scope of its audit, or that information had come to its attention during such time periods that, if further investigated, might materially impact the fairness or reliability of either a previously issued audit report or the underlying financial statements, or the financial statements issued or to be issued covering the fiscal periods subsequent to the date of the most recent financial statements covered by an audit report; or information had come to its attention that it had concluded materially impacted the fairness or reliability of either (i) a previously issued audit report or the underlying financial statements, or (ii) the financial statements issued or to be issued covering the fiscal periods subsequent to the date of the most recent financial statements covered by an audit report.

Prior to the engagement of Raich Ende, we had no consultations or discussions with Raich Ende regarding the application of accounting principles to a specific completed or contemplated transaction, or the type of audit opinion that might be rendered by them on or financial statements. Further, prior to their engagement, we received no oral or written advice from Raich Ende of any kind.

## RECENT SALES OF UNREGISTERED SECURITIES

On July 24, 2007, pursuant to a subscription agreement, we sold an aggregate of 5,000,000 shares of our common stock, at $0.50 per share, for an aggregate price of $2,500,000. The issuance of the shares was made in reliance on the exemption from registration contained in Section 4(2) of the Securities Act.

On November 7, 2007, we entered into non-qualified stock option agreements with certain of our directors and officers (the "Option Holders") pursuant to the 2007 Employee, Director and Consultant Plan (the "Mandalay 2007 Plan") whereby we issued options (the "Options") to purchase an aggregate of 1,500,000 shares of our common stock. The Option Holders include James Lefkowitz, our President, Robert Zangrillo, a director of the company, and Bruce Stein, a director of the company and Chief Operating Officer, each of whom was granted Options to purchase 500,000 shares of our common stock in connection with services provided to Mandalay. The Options have a ten year term and are exercisable at a price of $2.65 per share. The Options for Messrs. Zangrillo and Stein become exercisable over a two-year period, with one-third of the Options granted vesting immediately upon grant, an additional one-third vesting on the first anniversary of the date of grant, and the remaining one-third on the second anniversary of the date of grant. The Options for Mr. Lefkowitz also become exercisable over a two-year period, with one-third of the Options granted vesting immediately upon grant, an additional one-third vesting on June 28, 2008, and the remainder vesting on June 28, 2009. The Options were granted pursuant to the exemption from registration permitted under Rule 506 of Regulation D of the Securities Act.

On November 14, 2007, we appointed Richard Spitz as a director and granted Mr. Spitz options to purchase an aggregate of 100,000 shares of our common stock, pursuant to the Mandalay 2007 Plan. The options have a ten year term and are exercisable at a price of $2.50 per share. The options are exercisable over a two-year period, with one-third of the options granted vesting immediately upon grant, an additional one-third vesting on the first anniversary of the date of grant and the remaining one-third vesting on the second anniversary of the date of grant. The options were granted pursuant to the exemption from registration permitted under Rule 506 of Regulation D of the Securities Act.

On January 2, 2008, we granted Mr. Stein additional options to purchase 50,000 shares of our common stock. The options have a ten-year term and are exercisable at a price of $4.65 per share. One-third of the options granted were immediately exercisable upon grant, an additional one-third will vest on November 7, 2008 and the remaining one-third will vest on November 7, 2009. The options were granted pursuant to the exemption from registration permitted under Rule 506 of Regulation D of the Securities Act.

As described above, pursuant to the Merger, we issued 10,180,291 shares of Mandalay common stock as part of the Merger Consideration in connection with the Merger. Such issuance was made pursuant to the exemption from registration permitted under Section 4(2) of the Securities Act.

In addition, also in connection with the Merger, on February 12, 2008, we entered into non-qualified stock option agreements with certain of our directors and officers under the Mandalay 2007 Plan, as amended, whereby we issued options to purchase an aggregate of 1,700,000 shares of our common stock. Ian Aaron, Chief Executive Officer of Twistbox and a director of Mandalay, Russell Burke, Chief Financial Officer of Twistbox, David Mandell, Executive Vice-President, General Counsel and Corporate Secretary of Twistbox and Patrick Dodd, Senior Vice of Worldwide Sales and Marketing of Twistbox, each of whom received an option to purchase 600,000 shares, 350,000 shares, 450,000 shares and 300,000 shares, respectively, of our common stock. The options have a ten year term and are exercisable at a price per share equal to the fair market value of our common stock on February 12, 2008. The options become exercisable over a two-year period, with one-third of the options granted vesting immediately upon grant, an additional one-third vesting on the first anniversary of the date of grant, and the remaining one-third on the second anniversary of the date of grant. The options were granted pursuant to the exemption from registration permitted under Rule 506 of Regulation D of the Securities Act.

**INDEMNIFICATION OF DIRECTORS AND OFFICERS**

Our certificate of incorporation and by-laws provide that each person who was or is made a party or is threatened to be made a party to or is otherwise involved (including, without limitation, as a witness) in any action, suit or proceeding, whether civil, criminal, administrative or investigative, by reason of the fact that he or she is or was a director or an officer of Mandalay Media, Inc. or is or was serving at our request as a director, officer, or trustee of another corporation, or of a partnership, joint venture, trust or other enterprise, including service with respect to an employee benefit plan, whether the basis of such proceeding is alleged action in an official capacity as a director, officer or trustee or in any other capacity while serving as a director, officer or trustee, shall be indemnified and held harmless by us to the fullest extent authorized by the DGCL against all expense, liability and loss (including attorneys’ fees, judgments, fines, excise taxes or penalties and amounts paid in settlement) reasonably incurred or suffered by such.

Section 145 of the DGCL permits a corporation to indemnify any director or officer of the corporation against expenses (including attorney's fees), judgments, fines and amounts paid in settlement actually and reasonably incurred in connection with any action, suit or proceeding brought by reason of the fact that such person is or was a director or officer of the corporation, if such person acted in good faith and in a manner that he reasonably believed to be in, or not opposed to, the best interests of the corporation, and, with respect to any criminal action or proceeding, if he or she had no reason to believe his or her conduct was unlawful. In a derivative action, (i.e., one brought by or on behalf of the corporation), indemnification may be provided only for expenses actually and reasonably incurred by any director or officer in connection with the defense or settlement of such an action or suit if such person acted in good faith and in a manner that he or she reasonably believed to be in, or not opposed to, the best interests of the corporation, except that no indemnification shall be provided if such person shall have been adjudged to be liable to the corporation, unless and only to the extent that the court in which the action or suit was brought shall determine that the defendant is fairly and reasonably entitled to indemnity for such expenses despite such adjudication of liability.

Pursuant to Section 102(b)(7) of the DGCL, our certificate of incorporation eliminates the liability of a director to us or our stockholders for monetary damages for such a breach of fiduciary duty as a director, except for liabilities arising: from any breach of the director's duty of loyalty to us or our stockholders; from acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law; under Section 174 of the DGCL from any transaction from which the director derived an improper personal benefit.

**Item 2.03 Creation of a Direct Financial Obligation or an Obligation under an Off-Balance Sheet Arrangement of a Registrant.**

As part of the Merger, Mandalay agreed to guarantee up to $8,250,000 of Twistbox's outstanding debt to ValueAct, with certain amendments. On July 30, 2007, Twistbox had entered into a Securities Purchase Agreement by and among Twistbox, the Subsidiary Guarantors, as defined therein, and ValueAct, pursuant to which ValueAct purchased a note in the amount of $16,500,000 (the "Note") and a warrant which entitled ValueAct to purchase from Twistbox up to a total of 2,401,747 shares of Twistbox's common stock (the "Warrant"). In connection therewith, Twistbox and ValueAct had also entered into a Guarantee and Security Agreement by and among Twistbox, each of the subsidiaries of Twistbox, the Investors, as defined therein, and ValueAct, as collateral agent, pursuant to which the parties agreed that the Note would be secured by substantially all of the assets of Twistbox and its subsidiaries. In connection with the Merger, the Warrant was terminated and we issued two warrants in place thereof to ValueAct to purchase shares of our common stock. One of such warrants entitles ValueAct to purchase up to a total of 1,092,622 shares of our common stock at an exercise price of $7.55 per share. The other warrant entitles ValueAct to purchase up to a total of 1,092,621 shares of our common stock at an initial exercise price of $5.00 per share, which, if not exercised in full by February 12, 2009, will be permanently increased to an exercise price of $7.55 per share. Both warrants expire on July 30, 2011. We also entered into a Guaranty with ValueAct whereby Mandalay agreed to guarantee Twistbox's payment to ValueAct of up to $8,250,000 of principal under the Note in accordance with the terms, conditions and limitations contained in the Note. The financial covenants of the Note were also amended, pursuant to which Twistbox is required maintain a cash balance of not less than $2,500,000 at all times and Mandalay is required to maintain a cash balance of not less than $4,000,000 at all times.

**Item 3.02 Unregistered Sales of Equity Securities.**

As described above in Item 2.01 of this Current Report on Form 8-K, which is incorporated herein by reference, Mandalay issued 10,180,291 shares of Mandalay common stock as part of the Merger Consideration in connection with the Merger. 9,466,720 of such shares are subject to an 18-month lock-up period beginning on February 12, 2008, during which time they shall not be sold or otherwise transferred without the prior written consent of Mandalay. Such issuance was made pursuant to the exemption from registration permitted under Section 4(2) of the Securities Act.

Also in connection with the Merger, as described above in Item 2.01 of this Current Report on Form 8-K, which is incorporated herein by reference, on February 12, 2008, we granted options to purchase an aggregate of 1,700,000 shares of our common stock to certain of our directors and officers. The options have a 10-year term and are exercisable at a price per share equal to the fair market value of our common stock on February 12, 2008. We intend to enter into lock-up agreements with all of such option holders pursuant to which all of the shares subject to such options will be subject to an 18-month lock-up period commencing as of February 12, 2008, during which time they shall not be sold or otherwise transferred without the prior written consent of Mandalay, and in exchange will grant piggy-back registration rights with respect to all such shares. The options were granted pursuant to the exemption from registration permitted under Rule 506 of Regulation D of the Securities Act.

**Item 5.02 Departure of Directors or Certain Officers; Election of Directors; Appointment of Certain Officers; Compensatory Arrangements of Certain Officers.**

(d) On February 12, 2008, Mandalay increased its the size of its Board of Directors to eleven members and appointed Ian Aaron and Adi McAbian as directors of Mandalay, as set forth in Item 2.01 of this Current Report on Form 8-K, which is incorporated herein by reference.

There are no arrangements or understandings between each of Messrs. Aaron or McAbian and any other person pursuant to which each was appointed as a director of Mandalay. There are no transactions to which Mandalay is a party and in which Messrs. Aaron or McAbian have material interests that are required to be disclosed under Item 404(a) or (b) of Regulation S-B. Messrs. Aaron and McAbian have not previously held any positions in Mandalay, and do not have family relations with any directors or executive officers of Mandalay.

As described above in Item 2.01 of this Current Report on Form 8-K, under the heading "Executive Compensation," which Item 2.01 is incorporated herein by reference, Twistbox entered into the Second Amendment to Employment Agreement, which amended its existing employment agreement with Mr. Aaron regarding his service as Chief Executive Officer.

(e) In connection with the Merger, we amended the Mandalay 2007 Plan (the "Plan Amendment") to increase the number of shares of our common stock that may be issued under the Mandalay 2007 Plan to 7,000,000 shares and to increase the shares with respect to which stock rights may be granted in any fiscal year to 600,000 shares. All other terms of the plan remain in full force and effect. The Plan Amendment is attached hereto as Exhibit 10.2 and incorporated herein by reference.

Pursuant to the Merger, we assumed the Twistbox 2006 Plan and the options issued under the plan to purchase an aggregate of 2,463,472 shares of our common stock. We cannot grant any further options under the plan. The Twistbox 2006 Plan is attached hereto as Exhibit 10.3 and incorporated herein by reference.

**Item 5.06 Change in Shell Company Status.**

We ceased to be a shell company on February 12, 2008, as described in Item 2.01 of this Current Report on Form 8-K, which is incorporated herein by reference.

**Item 9.01 Financial Statements and Exhibits.**

(a) Financial Statements of Businesses Acquired.

The audited financial statements of Twistbox for fiscal years ended March 30, 2006 through March 31, 2007 are incorporated herein by reference to Exhibit 99.1 to this Current Report. The unaudited financial statements of Twistbox for the quarterly periods ended September 30, 2006 and September 30, 2007 are incorporated herein by reference to Exhibit 99.2 to this Current Report on Form 8-K.

(b) Pro Forma Financial Information.

Immediately prior to the Merger on February 12, 2008, the Registrant had no material operations, assets, or liabilities. Accordingly, for all meaningful purposes, the audited financial statements for Twistbox which are filed with this Current Report on Form 8-K comprise the Registrant's pro forma financials as well. Preparation of unaudited pro forma financials other than the financial statements filed herewith would have imposed a substantial burden upon the Registrant as the surviving entity at this time without any meaningful additional disclosure.

(c) Shell company transactions.

Reference is made to the disclosure set forth under Item 9.01(a) and 9.01(b) of this Current Report on Form 8-K, which disclosure is incorporated herein by reference.

(d) Exhibits.

See attached Exhibit Index.

## SIGNATURES

Pursuant to the requirements of the Securities Exchange Act of 1934, the Registrant has duly caused this report to be signed on its behalf by the undersigned hereunto duly authorized.

**MANDALAY MEDIA, INC.**

Dated : February 12, 2008

By: /s/ Jay A. Wolf

Jay A. Wolf
Chief Financial Officer

**EXHIBIT INDEX**

| Exhibit No. | Description |
|---|---|
| **2.1** | Agreement and Plan of Merger, dated as of December 31, 2007, by and among Mandalay Media, Inc., Twistbox Acquisition, Inc., Twistbox Entertainment, Inc. and Adi McAbian and Spark Capital, L.P. Incorporated by reference to Exhibit 2.1 of the Registrant's Current Report on Form 8-K (File No.000-10039), filed with the Commission on January 2, 2008. |
| **2.2** | Amendment to Agreement and Plan of Merger, dated as of February 12, 2008, by and among Mandalay Media, Inc., Twistbox Acquisition, Inc., Twistbox Entertainment, Inc. and Adi McAbian and Spark Capital, L.P. |
| **3.1** | Certificate of Incorporation of the Registrant. Incorporated by reference to Exhibit 3.1 of the Registrant's Current Report on Form 8-K (File No. 000-10039), filed with the Commission on November 14, 2007. |
| **3.2** | Bylaws of the Registrant. Incorporated by reference to Exhibit 3.2 of the Registrant's Current Report on Form 8-K (File No. 000-10039), filed with the Commission on November 14, 2007. |
| **4.1** | Senior Secured Note, dated July 30, 2007, by and between Twistbox and ValueAct SmallCap Master Fund, L.P. |
| **4.2** | Class A Warrant, dated July 30, 2007, issued to ValueAct SmallCap Master Fund, L.P. |
| **4.3** | Warrant dated February 12, 2008 issued to ValueAct SmallCap Master Fund, L.P. (fixed exercise price) |
| **4.4** | Warrant dated February 12, 2008 issued to ValueAct SmallCap Master Fund, L.P. (adjusting exercise price) |
| **4.5** | Amendment and Waiver to Senior Secured Note, dated February 12, 2008, by and between Twistbox and ValueAct SmallCap Master Fund, L.P. |
| **10.1** | 2007 Employee, Director and Consultant Stock Plan. Incorporated by reference to Exhibit 10.2 of the Registrant's Current Report on Form 8-K (File No. 000-10039), filed with the Commission on November 14, 2007. |
| **10.1.1** | Form of Non-Qualified Stock Option Agreement for the 2007 Employee, Director and Consultant Stock Plan. Incorporated by reference to Exhibit 10.3 of the Registrant's Current Report on Form 8-K (File No. 000-10039), filed the Commission on November 14, 2007. |

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| **10.2** | Amendment to 2007 Employee, Director and Consultant Stock Plan. |
| **10.3** | Twistbox 2006 Stock Incentive Plan. |
| **10.3.1** | Form of Stock Option Agreement for Twistbox 2006 Stock Incentive Plan. |
| **10.4** | Securities Purchase Agreement, dated July 30, 2007, by and among Twistbox Entertainment, Inc., the Subsidiary Guarantors and ValueAct SmallCap Master Fund, L.P. |
| **10.5** | Guarantee and Security Agreement, dated July 30, 2007 by and among Twistbox Entertainment, Inc., each of the Subsidiaries party thereto, the Investor party thereto and ValueAct SmallCap Master Fund, L.P. |
| **10.6** | Control Agreement, dated July 30, 2007, by and among Twistbox Entertainment. Inc. and ValueAct SmallCap Master Fund, L.P. to East West Bank. |
| **10.7** | Trademark Security Agreement, dated July 30, 2007, by Twistbox, in favor of ValueAct SmallCap Master Fund, L.P. |
| **10.8** | Copyright Security Agreement, dated July 30, 2007, by Twistbox in favor of ValueAct SmallCap Master Fund, L.P. |
| **10.9** | Guaranty given as of February 12, 2008, by Mandalay Media, Inc. to ValueAct SmallCap Master Fund, L.P. |
| **10.10** | Termination Agreement, dated as of February 12, 2008, by and between Twistbox Entertainment, Inc. and ValueAct SmallCap Master Fund, L.P. |
| **10.11** | Waiver to Guarantee and Security Agreement, dated February 12, 2008, by and between Twistbox Entertainment, Inc. and ValueAct SmallCap Master Fund, L.P. |
| **10.12** | Standard Industrial/Commercial Multi-Tenant Lease, dated July 1, 2005, by and between Berkshire Holdings, LLC and The WAAT Corp. |
| **10.13** | Letter Agreement, dated May 16, 2006, between The WAAT Corp. and Adi McAbian. |
| **10.14** | Amendment to Employment Agreement by and between Twistbox Entertainment, Inc. and Adi McAbian, dated as of December 31, 2007. |
| **10.15** | Second Amendment to Employment Agreement, dated February 12, 2008, by and between Twistbox Entertainment, Inc. and Adi McAbian. |

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| **10.16** | Letter Agreement, dated May 16, 2006 between The WAAT Corp. and Ian Aaron. |
| **10.17** | Amendment to Employment Agreement, by and between Twistbox Entertainment, Inc. and Ian Aaron, dated as of December 31, 2007. |
| **10.18** | Second Amendment to Employment Agreement by and between Twistbox Entertainment, Inc. and Ian Aaron, dated February 12, 2008. |
| **10.19** | Employment Agreement, dated May 9, 2006, between Charismatix and Eugen Barteska. |
| **10.20** | Employment Agreement, dated June 5, 2006, between The WAAT Corp. and David Mandell. |
| **10.21** | First Amendment to Employment Agreement, by and between Twistbox Entertainment, Inc. and David Mandell, dated February 12, 2008. |
| **10.22** | Employment Agreement, dated December 11, 2006 between Twistbox and Russell Burke. |
| **10.23** | First Amendment to Employment Agreement by and between Twistbox Entertainment, Inc. and Russell Burke, dated February 12, 2008. |
| **10.24** | Directory Agreement, dated as of May 1, 2003, between Vodafone Global Content Services Limited and The WAAT Corporation.* |
| **10.25** | Contract Acceptance Notice - Master Global Content Reseller Agreement by Vodafone Hungary Ltd. |
| **10.26** | Master Global Content Agency Agreement, effective as of December 17, 2004, between Vodafone Group Services Limited and The WAAT Media Corporation.* |
| **10.27** | Letter of Amendment, dated February 27, 2007, by and between WAAT Media Corporation and Vodafone UK Content Services Limited.* |
| **10.28** | Content Schedule, dated December 17, 2004, by and between WAAT Media Corporation and Vodafone Group Services Limited.* |
| **10.29** | Contract Acceptance Notice - Master Global Content Agency Agreement by Vodafone D2 GmbH. |
| **10.30** | Contract Acceptance Notice - Master Global Content Agency Agreement by Vodafone Sverige AB. |
| **10.31** | Master Global Content Reseller Agreement, effective January 17, 2005, between Vodafone Group Services Limited and The WAAT Corporation.* |

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| **10.32** | Contract Acceptance Notice - Master Global Content Agency Agreement by Vodafone New Zealand Limited. |
| **10.33** | Contract Acceptance Notice - Master Global Content Agency Agreement by Vodafone España, S.A. |
| **10.34** | Contract Acceptance Notice - Master Global Content Reseller Agreement by Vodafone UK Content Services LTD. |
| **10.35** | Contract Acceptance Notice - Master Global Content Reseller Agreement by VODAFONE-PANAFON Hellenic Telecommunications Company S.A. |
| **10.36** | Content Schedule, dated January 17, 2005, by and between WAAT Media Corporation and Vodafone Group Services Limited.* |
| **10.37** | Contract Acceptance Notice - Master Global Content Agency Agreement by Belgacom Mobile NV. |
| **10.38** | Content Schedule, dated January 17, 2005, by and between WAAT Media Corporation and Vodafone Group Services Limited.* |
| **10.39** | Contract Acceptance Notice - Master Global Content Agency Agreement by Swisscom Mobile. |
| **10.40** | Linking Agreement, dated November 1, 2006 between Vodafone Libertel NV and Twistbox Entertainment, Inc.* |
| **10.41** | Agreement, dated as of March 23, 2007, between Twistbox Entertainment, Inc. and Vodafone Portugal - COMUNICAÇÕES PESSOAIS, S.A.* |
| **10.42** | Contract for Content Hosting and Services “Applications and Games Services,” effective August 27, 2007 between Vodafone D2 GmbH and Twistbox Games Ltd & Co. KG.* |
| **10.43** | Partner Agreement, dated August 27, 2007, by and between Vodafone D2 GmbH and Twistbox.* |
| **10.44** | Letter of Amendment, dated February 25, 2006 by and between WAAT Media Corporation and Vodafone UK Content Services Limited.* |
| **10.45** | Letter of Amendment, dated August 2007, by and between WAAT Media Corporation and Vodafone UK Content Services Limited.* |
| **10.46** | Content Schedule, dated December 17, 2004, by and between WAAT Media Corporation and Vodafone Group Services Limited.* |
| **99.1** | Consolidated financial statements of Twistbox Entertainment, Inc. for the fiscal years ended March 31, 2006 and March 31, 2007. |

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| **99.2** | Consolidated financial statements of Twistbox Entertainment, Inc. for the six months ended September 20, 2006 and September 30, 2007. |

* We have requested confidential treatment for certain provisions contained in this exhibit. The confidential portions have been so omitted in the copy filed as an exhibit and has been filed separately with the Commission.

**AMENDMENT TO**
**AGREEMENT AND PLAN OF MERGER**

This Amendment, dated as of February 12, 2008, is among Mandalay Media, Inc., a Delaware corporation (“Parent”), Twistbox Acquisition, Inc., a Delaware corporation and a wholly-owned subsidiary of Parent (“Merger Sub”), Twistbox Entertainment, Inc., a Delaware corporation (the “Company”), and Adi McAbian and Spark Capital, L.P. (“Spark Capital”) as representatives of the stockholders of the Company (collectively, the “Stockholder Representatives” and individually, a “Stockholder Representative”).

1. Reference to Merger Agreement; Definitions. Reference is made to the Agreement and Plan of Merger dated as of December 31, 2007, by and among Parent, Merger Sub, the Company and the Stockholder Representatives (the “Merger Agreement”). Terms defined in the Merger Agreement and not otherwise defined herein are used herein with the meanings so defined.

2. Amendment to Section 1.4(a) of Merger Agreement. Section 1.4(a) of the Merger Agreement is hereby deleted in its entirety and replaced with the following:

“(a) At the Effective Time, the Certificate of Incorporation of the Company shall be the Certificate of Incorporation of the Surviving Corporation.”

3. Amendment to Schedule 1.5(a) of Merger Agreement. Schedule 1.5(a) of the Merger Agreement is hereby deleted in its entirety and replaced with new Schedule 1.5(a) attached hereto.

4. Amendment to Section 1.5(e) of Merger Agreement. Section 1.5(e) of the Merger Agreement is hereby deleted in its entirety and replaced with the following:

“(e) Stock Options. At the Effective Time, each outstanding option (a “Company Option”) to purchase shares of Company Common Stock issued pursuant to the Company’s 2006 Stock Incentive Plan (the “Stock Plan”) shall be assumed by Parent, on the same terms and conditions as were applicable under the Stock Plan immediately prior to the Effective Time, except that: (i) the number of shares of Parent Common Stock subject to each Company Option shall be determined by multiplying the number of shares of Company Common Stock that were subject to such Company Option immediately prior to the Effective Time by the Option Conversion Ratio (as defined below), and rounding the resulting number down to the nearest whole number of shares of Parent Common Stock; and (ii) the per share exercise price for the shares of Parent Common Stock issuable upon exercise of each Company Option shall be determined by dividing the per share exercise price of Company Common Stock subject to such Company Option, as in effect immediately prior to the Effective Time, by the Option Conversion Ratio; provided, however, that the exercise price and the number of shares of Parent Common Stock subject to each Company Option shall be determined in a manner consistent with the requirements of Section 409A of the Code to the extent applicable; and provided, further, that in the case of any Company Option to which Section 422 of the Code applies, the option price, the number of shares subject to such Company Option and the terms and conditions of exercise of such Company Option shall be determined in accordance with the foregoing, subject to such adjustments as are necessary in order to satisfy the requirements of Section 424(a) of the Code. Any restriction on the exercise of any Company Option assumed by Parent shall continue in full force and effect and the term, exercisability and other provisions of such Company Option shall otherwise remain unchanged as a result of the assumption of such Company Option; provided, however, the Company Options that are accelerated at the Effective Time as a result of the Merger, as set forth in Schedule 2.3(a), shall be immediately exercisable after the Effective Time. The “Option Conversion Ratio” shall be equal to 0.72967. Notwithstanding anything to the contrary set forth herein or on Schedule 1.5(a), the Merger Consideration shall consist of an aggregate of 12,325,000 shares of Parent Common Stock which will include the conversion of all shares of Company Capital Stock and the reservation of all shares of Parent Common Stock required for assumption of the Company Options that have vested as of the Effective Time.

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Parent shall reserve for issuance a sufficient number of shares of Parent Common Stock for delivery upon exercise of the Company Options assumed by Parent, which, as of the date hereof, are as set forth on Schedule 1.5(a) (such Schedule to be amended at or prior to Closing to reflect the issuance of any shares of Company Common Stock, whether by exercise of Company Options or otherwise, after the date hereof and prior to Closing)."

5. Miscellaneous

. Except as otherwise set forth herein, the Merger Agreement shall remain in full force and effect without change or modification. This Amendment may be executed in any number of counterparts, which together shall constitute one instrument, and shall bind and inure to the benefit of the parties and their respective successors and assigns.

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IN WITNESS WHEREOF, the parties hereto have executed this Amendment as of the day and year first above written.

MANDALAY MEDIA, INC.

By: /s/ Jay Wolf
Name: Jay Wolf
Title: Chief Financial Officer

TWISTBOX ACQUISITION, INC.

By: /s/ Jay Wolf
Name: Jay Wolf
Title: Chief Financial Officer

TWISTBOX ENTERTAINMENT, INC.

By: /s/ Ian Aaron
Name: Ian Aaron
Title: President and Chief Executive Officer

STOCKHOLDER REPRESENTATIVE

By: /s/ Adi McAbian
Name: Adi McAbian

Spark Capital, L.P.

By: Spark Management Partners, LLC,
its General Partner

By: /s/ Dennis Miller
Name: Dennis Miller
Managing Member

THIS NOTE HAS NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT"), OR APPLICABLE STATE SECURITIES LAWS AND MAY NOT BE SOLD, TRANSFERRED, OR OTHERWISE DISPOSED OF EXCEPT PURSUANT TO AN EFFECTIVE REGISTRATION STATEMENT UNDER THE SECURITIES ACT AND APPLICABLE STATE SECURITIES LAWS OR PURSUANT TO AN APPLICABLE EXEMPTION FROM THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT AND APPLICABLE STATE SECURITIES LAWS.

$16,500,000

**TWISTBOX ENTERTAINMENT, INC.**

**SENIOR SECURED NOTE DUE JANUARY 30, 2010**

Section 1. General.

FOR VALUE RECEIVED, TWISTBOX ENTERTAINMENT, INC., a Delaware corporation (the "**Company**"**),** hereby promises to pay to the order of VALUEACT SMALLCAP MASTER FUND, L.P. (the "**Investor**"), the principal sum of SIXTEEN MILLION FIVE HUNDRED THOUSAND DOLLARS AND ZERO CENTS (**$16,500,000.00**), or such lesser amount as shall then equal the outstanding principal amount hereof, together with interest ("**Interest**") thereon at a rate (the "**Interest Rate**") equal to (i) 9.00% per annum from, and including, July 30, 2007 to, but excluding, July 30, 2008 and (ii) 10.00% per annum from, and including, July 30, 2008 to, but excluding, January 30, 2010, each computed on the basis of a year of 360 days comprised of twelve 30 day months. All unpaid principal, together with any then unpaid and accrued interest and other amounts payable hereunder, shall be due and payable on the earlier of the January 30, 2010 (the "**Maturity Date**"); or (ii) when such amounts become due and payable as a result of, and following, an Event of Default in accordance with Section 3. This Note shall be prepayable without penalty, in whole or in part, at any time at the Company's option at 100% of the principal amount plus accrued but unpaid interest to and including the date of prepayment. Any prepayments will be applied first to any accrued but unpaid interest and then to unpaid principal.

This Note is one of a duly authorized issue of notes of the Company (this note being referred to as the "**Note**" and, collectively, all similar notes issued by the Company being referred to as the "**Notes**"), issued in the aggregate principal amount limited to $16,500,000.00 pursuant to the Securities Purchase Agreement, dated as of July 30, 2007 (as the same may be amended, supplemented or otherwise modified from time to time, the "**Securities Purchase Agreement**") by and among the Company and the Investor party thereto, and is entitled to the benefits thereof and to the exercise of the remedies provided thereby or otherwise available in respect thereof. Capitalized terms used herein without definition have the meanings assigned thereto in the Securities Purchase Agreement. Unless the context otherwise requires, an accounting term not otherwise defined has the meaning assigned to it in accordance with the United States generally accepted accounting principles ("**GAAP**").

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Interest on this Note shall accrue from, and including, the date of issuance through and until repayment of the principal amount of this Note and payment of all Interest in full, and shall be payable in cash semi-annually in arrears on each January 1 and July 1 that the Notes are outstanding or, if any such date shall not be a Business Day, on the next succeeding Business Day to occur after such date (each date upon which interest shall be so payable, an "**Interest Payment Date**"), to holders of record on each preceding December 15 and June 15 to the applicable Interest Payment Date, beginning on January 1, 2008, by wire transfer of immediately available funds to an account at a bank designated in writing by the Investor on reasonable notice.

Notwithstanding the foregoing provisions of this Section 1, any overdue principal of, overdue Interest on, and any other overdue amounts payable under, this Note shall bear interest, payable on demand in immediately available funds, for each day from the date payment thereof was due to the date of actual payment at a rate equal to the sum of (i) the Interest Rate and (ii) an additional two percent (2.00%) per annum. Subject to applicable law, any interest that shall accrue on overdue interest on this Note as provided in the preceding sentence and shall not have been paid in full in cash on or before the next Interest Payment Date to occur after the date on which the overdue interest became due and payable shall itself be deemed to be overdue interest on this Note to which the preceding sentence shall apply. In addition, notwithstanding the foregoing provisions of this Section 1, if an Event of Default has occurred and is continuing, then, so long as such Event of Default is continuing, all outstanding principal of this Note shall bear interest, after as well as before judgment, at a rate equal to the sum of (i) the Interest Rate and (ii) an additional two percent (2.00%) per annum.

Section 2. Repurchase Right Upon a Fundamental Change.

Notwithstanding anything to the contrary contained herein and in addition to any other right of the Investor, upon the occurrence of a Fundamental Change the Investor shall have the right for a period of thirty days, by written notice to the Company, to require the Company to repurchase all of this Note on the repurchase date that is five Business Days after the date of delivery of such notice to the Company at a price equal to 100% of the outstanding principal amount under this Note plus all accrued and unpaid interest on such principal amount to, but excluding, the date of such repurchase plus any other amounts due hereunder. A "**Fundamental Change**" shall be deemed to have occurred upon the occurrence of any of the following events: (a) any merger or consolidation of the Company with or into another Person or any sale of all or substantially all of the stock or assets of the Company, unless (i) the holders of capital stock of the Company immediately prior to such transaction are entitled to exercise, directly or indirectly, 50% or more of the voting power of all shares of capital stock entitled to vote generally in the election of directors of the continuing or surviving corporation, and (ii) such Fundamental Change does not result in a reclassification, conversion, exchange or cancellation of the Common Stock, (b) the approval of a plan relating to the liquidation or dissolution of the Company by its stockholders or (c) the Company's first domestic or foreign public offering of its capital stock. A "**Person**" means any individual, corporation, partnership, joint venture, association, joint-stock company, trust, unincorporated organization, limited liability company or government or other entity.

Section 3. Events of Defaults.

The occurrence of any of the following shall constitute an "**Event of Default**" under this Note:

(a) The Company shall fail to pay any principal owing under this Note when due; or

(b) The Company shall fail to pay any interest owing under this Note when due, and such failure shall continue for thirty (30) days; or

(c) The Company or any Subsidiary shall fail to observe or perform any other covenant, obligation, condition or agreement contained in this Note (other than those specified in clauses (a) or (b) above) or the Guarantee and Security Agreement, dated the date hereof, among the Company, the Subsidiaries party thereto and ValueAct SmallCap Master Fund, L.P., as Collateral Agent for the benefit of the Investor (as the same may be amended, supplemented or otherwise modified from time to time, and together with all other documents, agreements and instruments executed in connection therewith, the "**Guarantee and Security Agreement**"), and, to the extent such failure is capable of being cured, such failure shall continue for sixty (60) days after notice is given to the Company by the Investor holding more than 25% of the aggregate principal balance of the Notes then outstanding to comply with such provisions contained in the Note or the Guarantee and Security Agreement; or

(d) The Company or any Subsidiary shall (i) fail to make any payment when due under the terms of any bond, debenture, note or other evidence of indebtedness to be paid by the Company or such Subsidiary (excluding this Note, which default is addressed by clauses (a) and (b) above, but including any other evidence of indebtedness of the Company or such Subsidiary) and such failure shall continue beyond any period of grace provided with respect thereto, or (ii) default in the observance or performance of any other agreement, term or condition contained in any such bond, debenture, note or other evidence of indebtedness, and the effect of such failure or default is to cause, or permit the holder thereof to cause, indebtedness of the Company and the Subsidiaries in an aggregate amount of One Million Dollars ($1,000,000) or more to become due prior to its stated date of maturity; or

(e) An involuntary proceeding shall be commenced or an involuntary petition shall be filed seeking (i) liquidation, reorganization or other relief in respect of the Company or any Subsidiary or its debts, or of a substantial part of its assets, under any federal, state or foreign bankruptcy, insolvency, receivership or similar law now or hereafter in effect or (ii) the appointment of a receiver, trustee, custodian, sequestrator, conservator or similar official for the Company or any Subsidiary or for a substantial part of the Company's or such Subsidiary's assets, and, in any such case, such proceeding or petition shall continue undismissed for 60 days or an order or decree approving or ordering any of the foregoing shall be entered; or

(f) The Company or any Subsidiary shall (i) voluntarily commence any proceeding or file any petition seeking liquidation, reorganization or other relief under any federal, state or foreign bankruptcy, insolvency, receivership or similar law now or hereafter in effect, (ii) consent to the institution of, or fail to contest in a timely and appropriate manner, any proceeding or petition described in clause (e) of this Section, (iii) apply for or consent to the appointment of a receiver, trustee, custodian, sequestrator, conservator or similar official for the Company or any Subsidiary or for a substantial part of the Company's or such Subsidiary's assets, (iv) file an answer admitting the material allegations of a petition filed against it in any such proceeding, (v) make a general assignment for the benefit of creditors or (vi) take any action for the purpose of effecting any of the foregoing; or

(g) One or more judgments for the payment of money in an amount in excess of Five Million Dollars ($5,000,000) in the aggregate, outstanding at any one time, shall be rendered against the Company and the Subsidiaries and the same shall remain undischarged for a period of sixty (60) days during which execution shall not be effectively stayed, or any judgment, writ, assessment, warrant of attachment, or execution or similar process shall be issued or levied against a substantial part of the property of the Company or any Subsidiary and such judgment, writ, or similar process shall not be released, stayed, vacated or otherwise dismissed within sixty (60) days after issue or levy; or

(h) Any Note or the Guarantee and Security Agreement shall be asserted in writing by the Company or any Subsidiary not to be in full force and effect, or the Company or any Subsidiary shall disavow any of its obligations thereunder;

(i) Any Lien purported to be created under the Guarantee and Security Agreement shall be asserted by the Company or any Subsidiary not to be, a valid and perfected Lien on any Collateral, with the priority required by the Guarantee and Security Agreement; or

(j) The Company shall have failed to make filings within sixty (60) days of the date hereof with the United States Patent and Trademark Office in respect of the security interests granted in the Company's Trademarks (as defined in the Guarantee and Security Agreement) to the Investor under the Guarantee and Security Agreement; or

(k) Any Event of Default under and as defined in the Guarantee and Security Agreement shall have occurred.

Section 4. Rights Of Investor Upon Default.

(a) Upon the occurrence or existence of any Event of Default (other than an Event of Default referred to in Sections 3(e) or 3(f) hereof) and at any time thereafter during the continuance of such Event of Default, the Investor may, upon the approval of Investor holding more than 25% of the aggregate principal balance of the Notes then outstanding, by written notice to the Company, declare all outstanding amounts payable by the Company hereunder to be immediately due and payable without presentment, demand, protest or any other notice of any kind, all of which are hereby expressly waived, anything contained herein to the contrary notwithstanding. Upon the occurrence or existence of any Event of Default described in Sections 3(e) or 3(f) hereof, immediately and without notice, all outstanding amounts payable by the Company hereunder shall automatically become immediately due and payable, without presentment, demand, protest or any other notice of any kind, all of which are hereby expressly waived, anything contained herein to the contrary notwithstanding. In addition to the foregoing remedies, upon the occurrence or existence of any Event of Default, the Investor may exercise, upon the approval of Investor holding more than a majority of the aggregate principal balance of the Notes, any other right, power or remedy permitted to it by law, either by suit in equity or by action at law, or both.

(b) Upon the occurrence of an event specified in Section 3 that with the giving of notice or passage of time would be an Event of Default, the Company may assign the right to one or more of its then existing shareholders, to purchase the Notes from the Investor and acquire all, but not less than all, of such Investor's right, title and interest herein at a price equal to 100% of the outstanding principal amount under this Note plus all accrued and unpaid interest on such principal amount to, but excluding, the date of such purchase plus any other amounts due hereunder. The Company may assign its right to repurchase the Notes by giving the Investor written notice five business days before the specified purchase date. In any event the purchase date may take place after the occurrence of an Event of Default without the Investor's prior written consent.

Section 5. Affirmative Covenants.

Until all principal and interest and any other amounts due and payable under this Note have been paid in full in cash, the Company shall, and shall cause each Subsidiary to:

(a) promptly upon the Company's receipt of the proceeds of issuance of the Note, pay in full the Indebtedness existing as of the date hereof listed on Exhibit A hereto;

(b) make, within sixty (60) days of the date hereof, filings with the United States Copyright Office in respect of the security interests granted in the Company's Copyrights (as defined in the Guarantee and Security Agreement) to the Investor under the Guarantee and Security Agreement; provided, that such period shall be extended to the extent required by the United States Copyright Office in connection with the recordation of the security interest granted in the Company's Copyrights; provided, further, that no filings shall be required to be made by the Company or any Subsidiary in respect of the Exclusive Distribution Agreement dated October 30, 2000 between Vivid Interactive, Inc. and WAAT Corporation, Inc. recorded with the United States Copyright Office on February 8, 2001;

(c) provide written notice to the Investor promptly upon becoming aware of: (i) the occurrence of any Event of Default, or any event which with the giving of notice or passage of time, or both, would constitute an Event of Default, hereunder; (ii) the occurrence of each and every event which would be an event of default (or an event which with the giving of notice or lapse of time would be an event of default) under any indebtedness for borrowed money, such notice to include the names and addresses of the holders of such indebtedness and the amount thereof; and (iii) any loss or damage to any Collateral (as defined in the Guarantee and Security Agreement) in excess of $500,000;

(d) do or cause to be done all things necessary to preserve, renew and keep in full force and effect its legal existence and the rights, licenses, permits, privileges and franchises material to the conduct of its business; and

(e) maintain, with financially sound and reputable insurance companies, adequate insurance for its insurable properties, all to such extent and against such risks, including fire, casualty, fidelity, business interruption and other risks insured against by extended coverage, as is customary with companies in the same or similar businesses operating in the same or similar locations; and

The Company shall maintain a Consolidated EBITDA (as defined below) for any period of four consecutive fiscal quarters (the "**Reference Period**") commencing with the Reference Period ending on March 31, 2008 of greater than negative $8,500,000. The Company shall calculate the Company's Consolidated EBITDA with respect to each fiscal month within 75 days of the end of such month and provide Investor the necessary information to validate such calculation.

As used herein "**Consolidated EBITDA**" shall mean, with respect to the Company, for any period, the Consolidated Net Income of the Company for such period adjusted to add thereto (to the extent deducted from the net revenues in determining consolidated net income), without duplication, the sum of:

(a) consolidated income tax expense;

(b) consolidated depreciation and amortization expense;

(c) Consolidated Fixed Charges;

(d) non-cash charges relating to employee benefit or other management compensation plans of the Company or any of its Subsidiaries or any non-cash compensation charge arising from any grant of stock, stock options or other equity-based awards of the Company or any of its Subsidiaries (excluding in each case any non-cash charge to the extent that it represents an accrual of or reserve for cash expenses in any future period or amortization of a prepaid cash expense incurred in a prior period);

(e) non-cash losses or charges relating to impairment of goodwill and other intangible assets, less the amount of all cash payments made by the Company or any of its Subsidiaries during such period to the extent such payments relate to non-cash charges that were added back in determining Consolidated EBITDA for such period or any prior period; and

(f) non-recurring income and expenses that are of a non-operating and non-cash nature including but not limited to: diminution in value of an asset, impairment in the value of goodwill or contracts, and changes in accounting policy or accounting methods which are consistent with GAAP. Notwithstanding the foregoing none of the above shall include restructuring charges, expenses or write-offs that are expected to result in current or future cash outlays;

*provided,* that consolidated income tax expense and depreciation and amortization of a Subsidiary that is a less than wholly-owned Subsidiary shall only be added to the extent of the equity interest in such Subsidiary.

As used herein "**Consolidated Fixed Charges**" shall mean, with respect to the Company, for any period, the aggregate amount (without duplication and determined in each case in accordance with GAAP) of:

(a) interest expensed or capitalized, paid, accrued, or scheduled to be paid or accrued of the Company and Subsidiaries during such period, (x) including (1) original issue discount and non-cash interest payments or accruals on any Indebtedness, (2) the interest portion of all deferred payments obligations, (3) all commissions, discounts and other fees and charges owed with respect to bankers' acceptances and letters of credit financings and currency and interest swap hedging obligations and (4) legal costs and expenses, and advisory fees paid in connection with equity or debt financing activities on behalf of the Company or its Subsidiaries, but (y) less any interest income, in each case to the extent attributable to such period; and

(b) the amount of dividends accrued or payable (or guaranteed) by the Company or Subsidiaries in respect of capital stock of the Company (other than by Subsidiaries).

Additionally, for the purpose of calculating Consolidated EBITDA:

(a) acquisitions that have been made by the Company or any of its Subsidiaries, including through mergers or consolidations and including any related financing transactions, during the four-quarter reference period or subsequent to such reference period and on or prior to the date of calculation will be given pro forma effect as if they had occurred on the first day of the four-quarter reference period and consolidated cash flow for such reference period will be calculated on a pro forma basis in accordance with Regulation S-X under the Securities Act;

(b) the Consolidated Net Income attributable to discontinued operations, as determined in accordance with GAAP, and operations or businesses disposed of on or prior to the date of calculation, will be excluded; and

(c) the Consolidated Fixed Charges attributable to discontinued operations of the Company or any of its Subsidiaries, as determined in accordance with GAAP, and operations or businesses disposed of on or prior to the date of calculation, will be excluded, but only to the extent that the obligations giving rise to such fixed charges will not be obligations of the Company or its Subsidiaries following the date of calculation.

As used herein "**Consolidated Net Income**" shall mean, with respect to the Company, for any period, the aggregate net income of the Company and wholly owned Subsidiaries and its *pro rata* share of the net income of its other Subsidiaries for such period, on a consolidated basis, determined in accordance with GAAP; *provided* that

(a) the net income (but not loss) of any Person that is not a Subsidiary or that is accounted for by the equity method of accounting will be included only to the extent the amount of dividends or distributions paid in cash to the specified Person or a Subsidiary of the Person;

(b) the net income of any Subsidiary will be excluded to the extent, but only to the extent, that the declaration or payment of dividends or similar distributions by that Subsidiary of that net income is not at the time permitted by the operation of the terms of its charter or any agreement, instrument, judgment, decree, order, statute, rule or governmental regulation applicable to that Subsidiary; and

(c) the cumulative effect of a change in accounting principles will be excluded.

Section 6. Negative Covenants.

Until all principal and interest and any other amounts due and payable under this Note have been paid in full in cash, the Company shall not, and shall not permit any Subsidiary to, without the prior written approval of the Investor holding a majority in principal amount of the Notes:

(a) create, incur, assume or permit to exist (i) all indebtedness, whether or not contingent, for borrowed money or for the deferred purchase price of property or services, (ii) any other indebtedness that is evidenced by a note, bond, debenture or similar instrument, (iii) all obligations under financing leases or letters of credit, (iv) all obligations in respect of acceptances issued or created, (v) all liabilities secured by any lien on any property, and (vi) all guarantee obligations, in each case including the principal amount thereof, any accrued interest thereon and any prepayment premiums or fees or termination fees with respect thereto ((i)-(vi) together, "**Indebtedness**") except:

(i) Indebtedness with respect to trade accounts of the Company or any Subsidiary arising in the ordinary course of business,

(ii) Indebtedness of any Subsidiary in favor of the Company or another Subsidiary,

(iii) Indebtedness under the Notes,

(iv) Indebtedness in an amount less than $500,000 per incurrence; provided however, that the aggregate amount of indebtedness that can be incurred pursuant to this Section 6(a)(iv) shall not exceed $3,000,000 and all such Indebtedness shall be subordinated in right of payment to the Notes and shall have an average weighted maturity after the Maturity Date,

(v) Indebtedness in connection with a receivables facility not in excess of the lesser of (x) $5,000,000 or (y) 85% of the Net Receivable Balance (as defined in the Guarantee and Security Agreement) at any point in time, which Indebtedness shall rank pari passu in right of payment to the Notes (the "**Receivables Facility**"),

(vi) Indebtedness in favor of VAC relating to an acquisition of another entity by the Company,

(vii) Indebtedness incurred in connection with equipment leases entered into in the ordinary course of business subsequent to the date hereof not exceeding $250,000 in the aggregate, and

(viii) Indebtedness existing as of the date hereof listed on Exhibit B hereto;

(b) create, incur, assume or suffer to exist any mortgage, pledge, security interest, assignment, lien (statutory or other), claim, encumbrance, license or sublicense or security interest (collectively, a "**Lien**") in or upon any of its assets, except:

(i) Liens existing on July 30, 2007,

(ii) Liens in favor of the Company or any Subsidiaries,

(iii) Liens for taxes, assessments or similar charges incurred in the ordinary course of business that are not yet due and payable,

(iv) Liens created pursuant to the Guarantee and Security Agreement,

(v) Liens created pursuant to the Receivables Facility as follows: (1) Liens on (x) an amount of cash not to exceed $1,000,000 which shall be placed in a Deposit Account that shall not be commingled with and shall be separate from the Deposit Accounts in which the Investor has an existing Lien, and (y) all right, title and interest in, to and under all Receivables (the terms "**Deposit Account**" and "**Receivables**" shall have the meanings ascribed to such terms in the Guarantee and Security Agreement) and (2) subject to an intercreditor agreement reasonably acceptable to the Collateral Agent which shall contain customary limitations on the exercise of remedies and pay-over provisions, Liens on assets other than those described in the foregoing clauses (x) and (y) that are junior and subordinate in right, priority, operation, effect and all other respects to all Liens on such assets in favor of the Collateral Agent securing the Obligations (the terms "**Collateral Agent**" and "**Obligations**" shall have the meanings ascribed to such terms in the Guarantee and Security Agreement),

(vi) Liens created to secure indebtedness incurred pursuant to Section 6(a)(vi) hereof,

(vii) Liens to secure the performance of statutory obligations, surety or appeal bonds, performance bonds or other obligations of a like nature incurred in the ordinary course of business,

(viii) Liens created in connection with equipment leases pursuant to Section 6(a)(vii), and

(ix) licenses relating to the Company's intellectual property granted in the ordinary course of business.

(c) create, incur, assume or permit to exist any guarantee, directly or indirectly, except:

(i) Indebtedness with respect to trade accounts of the Company or any Subsidiary arising in the ordinary course of business, including, without limitation, guaranteed minimum payments required to be made under agreements entered into by the Company or any Subsidiary in the ordinary course of business, consistent with current practice,

(ii) Indebtedness under the Notes, and

(iii)Indebtedness incurred pursuant to Section 6(a)(v);

(d) change to any material extent the principal type of business conducted by it on July 30, 2007;

(e) excluding (x) the transactions with Affiliates as of the date hereof and as set forth on Exhibit C hereto (each, an "**Existing Affiliate Transaction**") and (y) transactions between or among the Company and its Subsidiaries, enter into any transaction, including, without limitation, the purchase, sale, or exchange of property or the rendering of any service, with any Affiliate (each, an "**Affiliate Transaction**"), unless

(i) the Affiliate Transaction is in the ordinary course of and pursuant to the reasonable requirements of the Company's or such Subsidiary's business and upon fair and reasonable terms no less favorable to the Company or such Subsidiary than would obtain in a comparable arm's length transaction with a Person not an Affiliate; and

(A) if the Affiliate Transaction or series of related Affiliate Transactions involves aggregate consideration less than or equal to $2,000,000, the Company shall deliver to the Investor a resolution of the Board of Directors of the Company set forth in an officers' certificate certifying that such Affiliate Transaction complies with this covenant and that such Affiliate Transaction has been approved by a majority of the disinterested members of the Board of Directors of the Company; and

(B) if the Affiliate Transaction or series of related Affiliate Transactions involves aggregate consideration greater than $2,000,000, the Company shall either deliver to the Investor an opinion as to the fairness to the Company of such Affiliate Transaction from financial point of view issued by an accounting, appraisal or investment banking firm of national standing or shall receive the Investor's affirmative written consent.

(f) declare any dividends on any shares of any class of its capital stock or membership interests, or apply any of its property or assets to the purchase, redemption or other retirement of, or set apart any sum for the payment of any dividends on, or for the purchase, redemption or other retirement of, or make any other distribution by reduction of capital or otherwise in respect of, any shares of any class of its capital stock or membership interests; provided, however, any Subsidiary wholly owned by the Company may pay dividends directly to the Company;

(g) issue or sell any shares, or rights to acquire any shares, of preferred stock, whether hereafter designated, of any Subsidiary;

(h) sell or transfer any of the Company's technology or intellectual property other than licenses in the ordinary course of business;

(i) purchase or acquire the obligations or stock of, or any other interest in, or make any loan or advance or any other investment in any Person (other than a Person that is directly or indirectly 100% owned by the Company or as a result of such purchase, acquisition, loan, advance or investment will be directly or indirectly 100% owned by the Company), except:

(i) direct obligations issued or guaranteed by the United States of America with a maturity not exceeding two years,

(ii) commercial paper rated at least A-2 or the equivalent thereof by S&P or at least P-2 or the equivalent thereof by Moody's with a maturity not exceeding two years,

(iii) money market accounts or certificates of deposit with a maturity not exceeding two years issued by a commercial bank having a combined capital and surplus of at least $100,000,000, chartered under the laws of the United States or one of the states thereof and a member of the Federal Reserve System,

(iv) loans or advances made in the ordinary course of business to employees or directors, and

(v) payments in connection with the retirement of up to $3,000,000 in the aggregate of indebtedness of the Company existing on July 30, 2007 incurred pursuant to Section 6(a)(iv);

(j) create or acquire any new Subsidiary, unless (A) (i) such Subsidiary, if required under the terms of the Guarantee and Security Agreement, promptly, and in no event later than five Business Days, becomes a party to the Guarantee and Security Agreement in the manner provided therein and complies with all of the terms, provisions and requirements thereof, including, without limitation, taking such actions to create and perfect Liens on such Subsidiary's assets, and (ii) the Investor shall have received an opinion of counsel of such Subsidiary containing such opinions that are reasonably acceptable to the Investor and that are materially identical in substance to the opinions received on the date hereof with respect to the Subsidiaries entering into the Guarantee and Security Agreement on the date hereof or (B) if such Subsidiary is a foreign Subsidiary and 65% of such Subsidiary's capital stock is pledged to the Investor under the Guarantee and Security Agreement;

(k) enter into any sale and leaseback transaction;

(1) merge with or into or consolidate with any other Person unless the holders of capital stock of the Company immediately prior to such transaction are entitled to exercise, directly or indirectly, 50% or more of the voting power of all shares of capital stock entitled to vote generally in the election of directors of the continuing or surviving corporation, or sell, lease, or otherwise dispose of all or substantially all of its properties or assets;

(m) enter into or suffer to exist or become effective any consensual encumbrance or restriction on the ability of any Subsidiary of the Company to (i) make any dividend payments in respect of any capital stock of such Subsidiary held by the Company, (ii) repay or prepay any indebtedness owed to or by the Company or any other Subsidiary of the Company, (iii) transfer any of its assets to the Company or any other Subsidiary of the Company, except for such restrictions existing under or by reason of (x) this Note or the Guarantee and Security Agreement, (y) the Receivables Facility or (z) customary restrictions on the assignment of agreements, leases and licenses entered into in the ordinary course of business;

(n) knowingly take any action that could reasonably be likely to result in (i) the approval of a plan relating to the liquidation or dissolution of the Company by its stockholders or (ii) any event specified in Section 3(e) or Section 3(f) hereof; and

(o) permit the Subsidiaries that are not party to the Guarantee and Security Agreement to have assets in an aggregate amount greater than $250,000 individually or $1,000,000 in the aggregate.

Section 6A. Company's Issuance of Securities.

The Investor agrees that the Company shall not be prohibited from, nor be deemed in breach of the provisions of any Transaction Document due to, issuing any equity security.

Section 7. Defenses.

The obligations of the Company under this Note shall not be subject to reduction, limitation, impairment, termination, defense, set-off, counterclaim or recoupment for any reason.

Section 8. Guarantee and Security Agreement.

This Note is a senior secured obligation of the Company. The Company's obligations under this Note are (i) guaranteed by certain of its Subsidiaries, and (ii) secured by a security interest in substantially all of the assets of the Company and such Subsidiaries, in each case pursuant to the terms and provisions of the Guarantee and Security Agreement. This Note is subject to the terms and provisions of the Guarantee and Security Agreement, and the Investor, by its acceptance of this Note, hereby acknowledges and agrees to such terms and provisions.

Section 9. Transfer of Note; Lost or Stolen Note.

(a) The Investor may sell, transfer or otherwise dispose of all or any part of this Note (including without limitation pursuant to a pledge) to any Person or entity as long as such sale, transfer or disposition is in accordance with the provisions of the Securities Purchase Agreement. From and after the date of any such sale, transfer or disposition, the transferee hereof shall be deemed to be the holder of a Note in the principal amount acquired by such transferee, and the Company shall, as promptly as practicable, issue and deliver to such transferee a new Note identical in all respects to this Note, in the name of such transferee and, if such transferee acquires less than the entire principal amount of this Note, the Company shall contemporaneously issue to the Investor a new Note identical in all respects to this Note, representing the outstanding balance of this Note. The Company shall be entitled to treat the original Investor as the holder of this entire Note unless and until it receives written notice of the sale, transfer or disposition hereof.

(b) Upon receipt by the Company of evidence of the loss, theft, destruction or mutilation of this Note, and (in the case of loss, theft or destruction) of indemnity or security reasonably satisfactory to the Company, and upon surrender and cancellation of the Note, if mutilated, the Company shall execute and deliver to the Investor a new Note identical in all respects to this Note.

Section 10. Attorneys' and Collection Fees.

Should the indebtedness evidenced by this Note or any part hereof be collected at law or in equity or in bankruptcy, receivership or other court proceedings, the Company agrees to pay, in addition to the principal and interest due and payable hereon, all costs of collection, including reasonable attorneys' fees and expenses, incurred by the Investor or its agent in collecting or enforcing this Note.

Section 11. Indemnification

(a) The Company shall indemnify the Investor, and any other Person directly or indirectly controlling or controlled by or under direct or indirect common control with such Investor (each an "**Affiliate**" of the Investor) (each such Person being called an "**Indemnitee**") against, and hold each Indemnitee harmless from, any and all losses, claims, damages, liabilities and related expenses, including the fees, charges, disbursements of any counsel for any Indemnitee, incurred by or asserted against any Indemnitee by a third party arising out of, in connection with, or as a result of (i) the execution or delivery of this Note, the Securities Purchase Agreement, the Guarantee and Security Agreement or any agreement or instrument contemplated hereby or thereby, the performance by the parties hereto of their respective obligations hereunder or the consummation of or the use of the proceeds therefrom, (ii) the breach by the Company or any Subsidiary of any representation, warranty, covenant or agreement contained herein, in the Securities Purchase Agreement or in the Guarantee and Security Agreement, or (iii) any actual or prospective claim, litigation, investigation or proceeding relating to any of the foregoing, whether based on contract, tort or any other theory and regardless of whether any Indemnitee is a party thereto; provided that such indemnity shall not, as to any Indemnitee, be available to the extent that such losses, claims, damages, liabilities or related expenses are determined by judgment of a court of competent jurisdiction to have primarily resulted from the gross negligence or willful misconduct of such Indemnitee.

(b) To the extent permitted by applicable law, the Company shall not assert, and hereby waives, any claim against any Indemnitee, on any theory of liability, for special, indirect, consequential or punitive damages arising out of, in connection with, or as a result of, this Note, the Securities Purchase Agreement, the Guarantee and Security Agreement or any agreement or instrument contemplated hereby or thereby, or the use of the proceeds thereof, other than claims predicated upon the gross negligence or willful misconduct of such Indemnitee.

Section 12. Waivers.

(a) The Company hereby waives presentment, demand for payment, notice of dishonor, notice of protest and all other notices or demands in connection with the delivery, acceptance, performance or default of this Note. No delay by the Investor in exercising any power or right hereunder shall operate as a waiver of any power or right, nor shall any single or partial exercise of any power or right preclude other or further exercise thereof, or the exercise thereof, or the exercise of any other power or right hereunder or otherwise; and no waiver whatsoever or modification of the terms hereof shall be valid unless set forth in writing by the Investor and then only to the extent set forth therein.

(b) The Company covenants (to the extent that it may lawfully do so) that it shall not at any time insist upon, plead, or in any manner whatsoever claim or take the benefit or advantage of, any usury law wherever enacted, now or at any time hereafter in force, that may affect the covenants or the performance of this Note; and the Company (to the extent that it may lawfully do so) hereby expressly waives all benefit or advantage of any such law, and covenants that it shall not, by resort to any such law, hinder, delay or impede the execution of any power herein granted to the Investor, but shall suffer and permit the execution of every such power as though no such law has been enacted.

Section 13. Amendments.

No amendment, modification or other change to, or waiver of any provision of, this Note may be made unless such amendment, modification or change is set forth in writing and is signed by the Company and Investor holding more than 75% of the aggregate principal balance of the Notes.

Section 14. Governing Law; Jurisdiction; Consent to Service of Process; Waiver of Jury Trial.

(a) THIS AGREEMENT SHALL BE CONSTRUED IN ACCORDANCE WITH AND GOVERNED BY THE LAWS OF THE STATE OF NEW YORK, INCLUDING, WITHOUT LIMITATION, SECTIONS 5-1401 AND 5-1402 OF THE NEW YORK GENERAL OBLIGATIONS LAW AND NEW YORK CIVIL PRACTICE LAWS AND RULES 327(b).

(b) THE COMPANY HEREBY IRREVOCABLY AND UNCONDITIONALLY SUBMITS, FOR ITSELF AND ITS PROPERTY, TO THE NONEXCLUSIVE JURISDICTION OF THE SUPREME COURT OF THE STATE OF NEW YORK SITTING IN NEW YORK COUNTY AND OF THE UNITED STATES' DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK, AND ANY APPELLATE COURT FROM ANY THEREOF, IN ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER COLLATERAL DOCUMENT, OR FOR RECOGNITION OR ENFORCEMENT OF ANY JUDGMENT, AND EACH OF THE PARTIES HERETO HEREBY IRREVOCABLY AND UNCONDITIONALLY AGREES THAT ALL CLAIMS IN RESPECT OF ANY SUCH ACTION OR PROCEEDING MAY BE HEARD AND DETERMINED IN SUCH NEW YORK STATE OR, TO THE EXTENT PERMITTED BY LAW, IN SUCH FEDERAL COURT. EACH OF THE PARTIES HERETO AGREES THAT A FINAL JUDGMENT IN ANY SUCH ACTION OR PROCEEDING SHALL BE CONCLUSIVE AND MAY BE ENFORCED IN OTHER JURISDICTIONS BY SUIT ON THE JUDGMENT OR IN ANY OTHER MANNER PROVIDED BY LAW. NOTHING IN THIS AGREEMENT SHALL AFFECT ANY RIGHT THAT LENDER MAY OTHERWISE HAVE TO BRING ANY ACTION OR PROCEEDING RELATING TO THIS AGREEMENT AGAINST THE COMPANY OR ITS PROPERTIES IN THE COURTS OF ANY JURISDICTION.

(c) THE COMPANY HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVES, TO THE FULLEST EXTENT IT MAY LEGALLY AND EFFECTIVELY DO SO, ANY OBJECTION WHICH IT MAY NOW OR HEREAFTER HAVE TO THE LAYING OF VENUE OF ANY SUIT, ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS NOTE, THE SECURITIES PURCHASE AGREEMENT OR THE GUARANTEE AND SECURITY AGREEMENT IN ANY COURT REFERRED TO IN PARAGRAPH (B) OF THIS SECTION. EACH OF THE PARTIES HERETO HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY LAW, THE DEFENSE OF AN INCONVENIENT FORUM TO THE MAINTENANCE OF SUCH ACTION OR PROCEEDING IN ANY SUCH COURT.

(d) EACH PARTY TO THIS AGREEMENT IRREVOCABLY CONSENTS TO SERVICE OF PROCESS IN THE MANNER PROVIDED FOR NOTICES IN SECTION 16. NOTHING IN THIS AGREEMENT WILL AFFECT THE RIGHT OF ANY PARTY TO THIS AGREEMENT TO SERVE PROCESS IN ANY OTHER MANNER PERMITTED BY LAW.

(e) EACH PARTY HERETO HEREBY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS NOTE, THE SECURITIES PURCHASE AGREEMENT, THE GUARANTEE AND SECURITY AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY). EACH PARTY HERETO (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION.

Section 15. Successors and Assigns.

The terms and conditions of this Note shall inure to the benefit of and be binding upon the respective successors (whether by merger or otherwise) and permitted assigns of the Company and the Investor. The Company may not assign its rights or obligations under this Note.

Section 16. Notices.

Whenever notice is required to be given under this Note, unless otherwise provided herein, such notice shall be delivered in accordance with Section 9.4 of the Securities Purchase Agreement.

Section 17. Entire Agreement.

The Securities Purchase Agreement, the Notes, the Guarantee and Security Agreement and the other Transaction Documents constitute the full and entire understanding and agreement between the parties with regard to the subjects hereto and thereof.

Section 18. Headings.

The headings used in this Note are used for convenience only and are not to be considered in construing or interpreting this Note.

Section 19. Severability.

In case any one or more of the provisions of this Note shall be held invalid, illegal or unenforceable, in any respect for any reason, the validity, legality and enforceability of any such provision in every other respect and of the remaining provisions shall not in any way be affected or impaired thereby, it being intended that all of the provisions hereof shall be enforceable to the fullest extent permitted by law.

**[Signature Page Follows]**

IN WITNESS WHEREOF, the Company has caused this Senior Secured Note to be duly executed by its duly authorized officer as of the date indicated below.

Date: July 30, 2007

TWISTBOX ENTERTAINMENT, INC.

By:/s/ Ian Aaron

Name: IAN AARON
Title: PRES. / CEO

Note No. 1
Amount: $16,500,000.000
Investor Name: ValueAct SmallCap Master Fund, L.P.
Address: 435 Pacific Avenue, 4th Floor
San Francisco, CA 94133
Telephone: (415) 249-1237
Facsimile: (415) 249-1242

**NEITHER THE SECURITIES REPRESENTED BY THIS WARRANT NOR THE SECURITIES INTO WHICH THESE SECURITIES ARE EXERCISABLE HAVE BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, OR APPLICABLE STATE SECURITIES AND BLUE SKY LAWS. THE SECURITIES MAY NOT BE OFFERED FOR SALE, SOLD, TRANSFERRED OR ASSIGNED (1) IN THE ABSENCE OF (A) AN EFFECTIVE REGISTRATION STATEMENT FOR THE SECURITIES UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT") OR FOREIGN SECURITIES LAW, OR (B) IF REASONABLY REQUESTED BY THE COMPANY, AN OPINION OF COUNSEL REASONABLY ACCEPTABLE TO THE COMPANY THAT REGISTRATION IS NOT REQUIRED UNDER SAID ACT OR FOREIGN SECURITIES LAW AND (2) IF SUCH SALE, TRANSFER OR ASSIGNMENT VIOLATES APPLICABLE STATE SECURITIES AND BLUE SKY LAWS.**

**THIS WARRANT AND THE UNDERLYING SECURITIES ISSUABLE UPON EXERCISE OF THIS WARRANT ARE SUBJECT TO THE PROVISIONS OF A CERTAIN SECURITIES PURCHASE AGREEMENT, DATED AS OF JULY 30, 2007, INCLUDING CERTAIN RESTRICTIONS ON TRANSFER SET FORTH THEREIN, AND AN AMENDED AND RESTATED INVESTORS' RIGHTS AGREEMENT, DATED AS OF JULY 30, 2007. COMPLETE AND CORRECT COPIES OF SUCH AGREEMENTS ARE AVAILABLE FOR INSPECTION AT THE PRINCIPAL OFFICE OF THE COMPANY AND WILL BE FURNISHED TO ANY HOLDER OF THIS WARRANT OR ANY UNDERLYING SECURITIES ISSUABLE UPON EXERCISE OF THIS WARRANT UPON WRITTEN REQUEST AND WITHOUT CHARGE.**

**TWISTBOX ENTERTAINMENT, INC.**

**CLASS A WARRANT**

Warrant No. **WR-1** Dated: July 30, 2007

Twistbox Entertainment, Inc., a Delaware corporation (the **"Company"),** hereby certifies that, for value received, ValueAct SmallCap Master Fund, L.P. (together with its transferees permitted hereby, the **"Holder"),** is entitled to purchase from the Company up to a total of TWO MILLION FOUR HUNDRED ONE THOUSAND SEVEN HUNDRED FORTY SEVEN (2,401,747) shares of common stock, $0.001 par value per share (the **"Common Stock"),** of the Company (each such share, a **"Warrant Share"** and all such shares, the **"Warrant Shares"**) at an exercise price equal to $6.87 per share (as adjusted from time to time as provided in Section 9, the **"Exercise Price"**),at any time and from the date hereof and through and including 6:30 p.m. New York City Time on July 30, 2011 (the **"Expiration Date"**), and subject to the following terms and conditions. This Class A Warrant (this **"Warrant"**) is issued pursuant to that certain Securities Purchase Agreement, dated as of the date hereof, by and among the Company and the Investors identified therein (the **"Securities Purchase Agreement"**) and in connection with the issuance of certain of the Company's Senior Secured Notes. All such warrants are referred to herein, collectively, as the **"Warrants."**

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1. Definitions. In addition to the terms defined elsewhere in this Warrant, capitalized terms that are not otherwise defined herein have the meanings given to such terms in the Securities Purchase Agreement.

2. Registration of Warrant. The Company shall register this Warrant, upon records to be maintained by the Company for that purpose (the **"Warrant Register"**), in the name of the record Holder hereof from time to time. The Company may deem and treat the registered Holder of this Warrant as the absolute owner hereof for the purpose of any exercise hereof or any distribution to the Holder, and for all other purposes, absent actual notice to the contrary.

3. Registration of Transfers.

(a) The Company shall register the transfer of any portion of this Warrant in the Warrant Register, upon surrender of this Warrant, with the Form of Assignment attached hereto duly completed and signed, to the transfer agent or to the Company at its address specified herein and the payment by the Holder of any tax payable in respect of any such transfer. Upon any such registration or transfer, a new warrant to purchase Common Stock, in substantially the form of this Warrant (any such new warrant, a **"New Warrant"**), evidencing the portion of this Warrant so transferred shall be issued to the transferee and a New Warrant evidencing the remaining portion of this Warrant not so transferred, if any, shall be issued to the transferring Holder. The acceptance of the New Warrant by the transferee thereof shall be deemed the acceptance by such transferee of all of the rights and obligations of a holder of a Warrant.

(b) This Warrant and the Warrant Shares issued upon exercise thereof may not be offered for sale, sold, assigned, hypothecated or otherwise transferred (i) in the absence of (a) an effective registration statement for the securities under the Securities Act or Foreign Securities Law, or (b) if so requested by the Company, an opinion of counsel reasonably acceptable to the Company that registration is not required under said act or Foreign Securities Law and (ii) if such sale, assignment, hypothecation or transfer is in violation of applicable state securities and blue sky laws. The Holder may not sell, assign, hypothecate or otherwise transfer any Warrant or any Warrant Shares to any Person that the Board of Directors of the Company, in its reasonable judgment, deems to be a competitor of the Company or an affiliate thereof; provided, however, that upon the filing of an effective registration statement for the securities under the Securities Act or Foreign Securities Law, such restriction shall be null and void. Notwithstanding anything contained herein to the contrary, any transferee of any Warrant or Warrant Shares shall, as a condition precedent to such Transfer, agree in writing to be subject to the terms of the Transaction Documents to the same extent as if the transferee were an original Investor under the Securities Purchase Agreement.

4. Exercise and Duration of Warrants.

(a) This Warrant shall be exercisable by the registered Holder at any time and from time to time on or after the date hereof to and including the Expiration Date. On the Expiration Date, the portion of this Warrant not exercised prior thereto shall be and become void and of no value; provided that, on the Expiration Date, if the Closing Price exceeds the Exercise Price, this Warrant shall be deemed to have been exercised in full (to the extent not previously exercised) on a "cashless exercise" basis immediately prior to the expiration thereof.

(b) A Holder may exercise this Warrant by delivering to the Company (i) an exercise notice, in the form attached hereto (the **"Exercise Notice")**, appropriately completed and duly signed along with the Warrant, and (ii) payment of the Exercise Price for the number of Warrant Shares as to which this Warrant is being exercised (which may take the form of (w) cash, (x) Senior Secured Notes having a principal amount plus accrued but unpaid interest equal to the Exercise Price, (y) a "cashless exercise" pursuant to Section 10 below, or (z) any combination thereof, in each case as indicated in the Exercise Notice), and the date such items are delivered to the Company (as determined in accordance with the notice provisions hereof) is an **"Exercise Date."** Execution and delivery of the Exercise Notice shall have the same effect as cancellation of the original Warrant and issuance of a New Warrant evidencing the right to purchase the remaining number of Warrant Shares.

5. Delivery of Warrant Shares.

(a) Upon exercise of this Warrant, the Company shall promptly issue or cause to be issued and cause to be delivered to or upon the written order of the Holder a certificate for the Warrant Shares issuable upon such exercise.

(b) This Warrant is exercisable, either in its entirety or, from time to time, in part. Upon surrender of this Warrant following one or more partial exercises, the Company shall issue or cause to be issued, at its expense, a New Warrant evidencing the right to purchase the remaining number of Warrant Shares.

(c) The Company's obligations to issue and deliver Warrant Shares in accordance with the terms hereof are absolute and unconditional, irrespective of any action or inaction by the Holder to enforce the same, any waiver or consent with respect to any provision hereof, the recovery of any judgment against any Person or any action to enforce the same, or any setoff, counterclaim, recoupment, limitation or termination, or any breach or alleged breach by the Holder or any other Person of any obligation to the Company (other than a failure to comply with the provisions of this Warrant related to the exercise thereof). Nothing herein shall limit a Holder's right to pursue any other remedies available to it hereunder, at law or in equity including, without limitation, a decree of specific performance and/or injunctive relief with respect to the Company's failure to timely deliver certificates representing shares of Common Stock upon exercise of the Warrant as required pursuant to the terms hereof.

6. Charges, Taxes and Expenses. Initial issuance and delivery of certificates for shares of Common Stock to the Holder upon exercise of this Warrant shall be made without charge to the Holder for any issue or transfer tax, withholding tax, transfer agent fee or other incidental tax or expense in respect of the issuance of such certificates, all of which taxes and expenses shall be paid by the Company; provided, however, that the Company shall not be required to pay any tax which may be payable in respect of any transfer involved in the registration of any certificates for Warrant Shares or Warrants in a name other than that of the Holder and the Holder shall be responsible therefor. The Holder shall be responsible for all other tax liability that may arise as a result of holding or transferring this Warrant or receiving Warrant Shares upon exercise hereof.

7. Replacement of Warrant. If this Warrant is mutilated, lost, stolen or destroyed, the Company shall issue or cause to be issued in exchange and substitution for and upon cancellation hereof, or in lieu of and substitution for this Warrant, a New Warrant, but only upon receipt of evidence reasonably satisfactory to the Company of such loss, theft or destruction and customary and reasonable bond or indemnity, if requested. Applicants for a New Warrant under such circumstances shall also comply with such other reasonable regulations and procedures and pay such other reasonable third-party costs as the Company may prescribe.

8. Reservation of Warrant Shares. The Company covenants that it will at all times reserve and keep available out of the aggregate of its authorized but unissued and otherwise unreserved Common Stock, solely for the purpose of enabling it to issue Warrant Shares upon exercise of this Warrant as herein provided, the number of Warrant Shares which are then issuable and deliverable upon the exercise of this entire Warrant, free from preemptive rights or any other contingent purchase rights of persons other than the Holder (after giving effect to the adjustments and restrictions of Section 9, if any). The Company covenants that all Warrant Shares so issuable and deliverable shall, upon issuance and the payment of the applicable Exercise Price in accordance with the terms hereof, be duly and validly authorized, issued and fully paid and nonassessable.

9. Certain Adjustments. The Exercise Price and number of Warrant Shares issuable upon exercise of this Warrant are subject to adjustment from time to time as set forth in this Section 9.

(a) Adjustments for Split, Subdivision or Combination of Shares. If the Company at any time while this Warrant, or any portion hereof, remains outstanding and unexpired shall split, subdivide or combine the Common Stock as to which purchase rights under this Warrant exist, into a different number of shares of Common Stock, the Exercise Price for such shares shall be proportionately decreased in the case of a split or subdivision or proportionately increased in the case of a combination or reverse split and the shares of Common Stock as to which purchase rights under this Warrant exist shall be proportionately increased in the case of a split or subdivision or proportionately decreased in the case of a combination or reverse split.

(b) Adjustments for Dividends in Stock or Other Securities or Property. If while this Warrant, or any portion hereof, remains outstanding and unexpired, the holders of the Common Shares as to which purchase rights under this Warrant exist at the time shall have received, or, on or after the record date fixed for the determination of eligible stockholders, shall have become entitled to receive, without payment therefor, other or additional stock or other securities or property (other than cash) of the Company by way of dividend, then and in each case, this Warrant shall represent the right to acquire, in addition to the number of Warrant Shares receivable upon exercise of this Warrant, and without payment of any additional consideration therefor, the amount of such other or additional stock or other securities or property (other than cash) of the Company that such holder would have received on the date of such exercise had it been the holder of record of the security receivable upon exercise of this Warrant on the record date for such dividend or distribution.

(c) Adjustment of Exercise Price Upon Issuance of Additional Shares of Common Stock. In the event that any shares of Common Stock or any options to purchase shares of Common Stock or any stock or security convertible into or exercisable or exchangeable for Common Stock are issued following the date hereof (the "**Additional Shares**") for a price per share less than the Exercise Price (the "**Additional Share Price**"), then the Exercise Price shall be reduced to the consideration per share of Common Stock (as calculated on an as converted basis for the issuance of convertible securities and on an as exercised basis assuming the payment in full of the exercise price for warrants or options in addition to any consideration paid in connection with the issuance of such option, warrant or other convertible security), if any, received or receivable by the Company upon such issuance or sale, the value of which, if not cash, shall be as determined by the Company's Board of Directors in good faith. Notwithstanding the foregoing, no adjustment shall be made pursuant to this Section 9(c) in connection with any Additional Shares issued, issuable or deemed issued: (i) to officers, directors and employees of, and consultants to, the Company pursuant to any incentive plans or arrangements approved by the Company's Board of Directors; (ii) upon conversion of shares of Company preferred stock outstanding on the date hereof; (iii) pursuant to any bona fide business acquisition; provided, however, that for so long as the Senior Secured Notes are outstanding, the maximum aggregate value (as determined by the Company's Board, in good faith) of all such Additional Shares issued in connection with such bona fide business acquisitions for consideration that is less than the Exercise Price then in effect shall not exceed $30,000,000; or (iv) pursuant to any event for which adjustment has already been made pursuant to this Section 9.

(d) Adjustment of Exercise Price Upon an Event of Default. Upon the occurrence of an Event of Default, as such term is defined in the Senior Secured Note, the Exercise Price shall be permanently reduced to $4.41 per share, as the same may thereafter be adjusted from time to time as provided under this Section 9.

(e) Fundamental Transaction. If at any time while this Warrant, or any portion hereof, is outstanding and unexpired there shall be (i) a reorganization (other than a combination, reclassification, exchange or subdivision of shares otherwise provided for herein), (ii) a merger or consolidation of the Company with or into another corporation in which the Company is not the surviving entity, or a reverse triangular merger in which the Company is the surviving entity but the shares of the Company's capital stock outstanding immediately prior to the merger are converted by virtue of the merger into other property, whether in the form of securities, cash, or otherwise, or (iii) a sale or transfer of all or substantially all the Company's properties and assets to another person (each of (i)-(iii) a "**Fundamental Transaction**"), then, as a part of such reorganization, merger, consolidation, sale, or transfer, lawful provision shall be made so that the holder of this Warrant shall thereafter be entitled to receive upon exercise of this Warrant, during the period specified herein and upon payment of the Exercise Price then in effect, the number of shares of stock or other securities or property of the successor corporation resulting from a Fundamental Transaction that a holder of the shares deliverable upon exercise of this Warrant would have been entitled to receive in such Fundamental Transaction if this Warrant had been exercised immediately before such Fundamental Transaction, all subject to further adjustment as provided in this Section 9. The foregoing provisions of this Section 9(e) shall similarly apply to successive reorganizations, consolidations, mergers, sales and transfers and to the stock or securities of any other corporation that are at the time receivable upon the exercise of this Warrant. If the per share consideration payable to the Holder for shares in connection with any such transaction is in a form other than cash or marketable securities, then the value of such consideration shall be determined in good faith by the Company's Board of Directors. If the per share consideration payable to the Holder for shares in connection with any such transaction is in a form other than cash or marketable securities, appropriate adjustment (as determined in good faith by the Company's Board of Directors) shall be made in the application of the provisions of this Warrant with respect to the rights and interests of the Holder after the transaction (including provisions for adjustment to the Exercise Price), to the end that the provisions of this Warrant shall be applicable after that event, as near as reasonably may be, in relation to any shares or other property deliverable after that event upon exercise of this Warrant.

(f) Reclassifications, etc. If the Company, at any time while this Warrant, or any portion hereof, remains outstanding and unexpired by reclassification of securities or otherwise, shall change any of the securities as to which purchase rights under this Warrant exist into the same or a different number of securities of any other class or classes, this Warrant shall thereafter represent the right to acquire such number and kind of securities as would have been issuable as the result of such change with respect to the securities that were subject to the purchase rights under this Warrant immediately prior to such reclassification or other change and the Exercise Price therefore shall be appropriately adjusted, all subject to further adjustment as provided for in this Section 9.

(g) Calculations. All calculations under this Section 9 shall be made to the nearest cent or the nearest 1/100th of a share, as applicable. The disposition of any shares owned or held by or for the account of the Company shall be considered an issue or sale of Common Stock.

(h) Notice of Adjustments. Upon the occurrence of each adjustment pursuant to this Section 9, the Company at its expense will promptly compute such adjustment in accordance with the terms of this Warrant and prepare a certificate setting forth such adjustment, including a statement of the adjusted Exercise Price and adjusted number or type of Warrant Shares or other securities issuable upon exercise of this Warrant (as applicable), describing the transactions giving rise to such adjustments and showing in detail the facts upon which such adjustment is based. Upon written request, the Company will promptly deliver a copy of each such certificate to the Holder and to the Company's transfer agent.

(i) Notice of Corporate Events. If the Company (i) declares a dividend or any other distribution of cash, securities or other property in respect of its Common Stock, including without limitation any granting of rights or warrants to subscribe for or purchase any capital stock of the Company or any Subsidiary, (ii) authorizes or approves, enters into any agreement contemplating or solicits stockholder approval for (x) any Fundamental Transaction, (y) any tender offer or exchange offer (whether by the Company or another Person) pursuant to which holders of Common Stock are permitted to tender or exchange their shares for other securities, cash or property, or (z) any reclassification of the Common Stock or any compulsory share exchange pursuant to which the Common Stock is effectively converted into or exchanged for other securities, cash or property or (iii) authorizes the voluntary dissolution, liquidation or winding up of the affairs of the Company, then the Company shall deliver to the Holder a notice describing the material terms and conditions of such transaction, at least fifteen days prior to the applicable record or effective date on which a Person would need to hold Common Stock in order to participate in or vote with respect to such transaction.

10. Payment of Exercise Price. The Holder shall pay the Exercise Price which may take the form of (i) cash, (ii) Senior Secured Notes having a principal amount plus accrued but unpaid interest equal to the Exercise Price, (iv) a “cashless exercise” or (iv) any combination thereof. If the Holder elects to satisfy its obligation to pay the Exercise Price through a "cashless exercise," the Company shall issue to the Holder the number of Warrant Shares determined as follows:

$$X = Y \frac{(A-B)}{A}$$

where:

X = the number of Warrant Shares to be issued to the Holder.

Y = the number of Warrant Shares with respect to which this Warrant is being exercised.

A = the Closing Price.

B = the Exercise Price.

For purposes of the above calculation, “**Closing Price**” shall be determined by the Company's Board of Directors in good faith; provided, however, that where there exists a public market for the Common Stock at the time of such exercise, the fair market value per share shall be the average of the closing bid and asked prices of the Common Stock quoted in the Over-The-Counter Market Summary or the last reported sale price of the Common Stock or the closing price quoted on the Nasdaq National Market or any exchange on which the Common Stock is listed, whichever is applicable, for the five (5) trading days prior to the date of determination of fair market value. Notwithstanding the foregoing, in the event the Warrant is exercised in connection with the Company's initial public offering of Common Stock, the fair market value per share shall be the per share offering price to the public of the Company's initial public offering.

11. Compliance with Securities Laws.

(a) The Holder of this Warrant, by acceptance hereof, acknowledges that this Warrant and the Warrant Shares are being acquired solely for the Holder's own account and not as a nominee for any other party, and for investment, and that the Holder will not offer, sell or otherwise dispose of this Warrant or any Warrant Shares except under circumstances that will not result in a violation of the Securities Act or any state securities or blue sky laws. Upon exercise of this Warrant, the Holder shall, if so requested by the Company, confirm in writing, in a form satisfactory to the Company, that the Warrant Shares so purchased are being acquired solely for Holder's own account and not as a nominee for the any other party, for investment and not with a view toward distribution or sale.

(b) This Warrant may not be transferred or assigned in whole or in part without compliance with all applicable federal and state securities laws by the transferor and the transferee (including the delivery of investment representation letters and legal opinions reasonably satisfactory to the Company, if such are requested by the Company). Subject to the provisions of this Warrant with respect to compliance with the Securities Act or Foreign Securities Law and the provisions of the Transaction Documents with respect to the restrictions on transfer (including, without limitation, the requirement that any transferee agree in writing to be subject to the terms of the Transaction Documents to the same extent as if the transferee were an original Investor under the Securities Purchase Agreement), title to this Warrant may be transferred by endorsement (by the Holder executing the assignment form annexed hereto) and delivery in the same manner as a negotiable instrument transferable by endorsement and delivery.

(c) For purposes of Rule 144 promulgated under the Securities Act, it is intended, understood and acknowledged that the Warrant Shares issued in a cashless exercise transaction shall be deemed to have been acquired by the Holder, and the holding period for the Warrant Shares shall be deemed to have commenced, on the date this Warrant was originally issued pursuant to the Securities Purchase Agreement.

(d) The Warrant Shares shall be stamped or imprinted with a legend in substantially the following form (in addition to any legend required by state securities laws):

THE SECURITIES REPRESENTED HEREBY HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, OR APPLICABLE STATE SECURITIES AND BLUE SKY LAWS. THE SECURITIES MAY NOT BE OFFERED FOR SALE, SOLD, TRANSFERRED OR ASSIGNED (1) IN THE ABSENCE OF (A) AN EFFECTIVE REGISTRATION STATEMENT FOR THE SECURITIES UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT") OR FOREIGN SECURITIES LAW, OR (B) IF REASONABLY REQUESTED BY THE COMPANY, AN OPINION OF COUNSEL REASONABLY ACCEPTABLE TO THE COMPANY THAT REGISTRATION IS NOT REQUIRED UNDER SAID ACT OR FOREIGN SECURITIES LAW AND (2) IF SUCH SALE, TRANSFER OR ASSIGNMENT VIOLATES APPLICABLE STATE SECURITIES AND BLUE SKY LAWS.

THE SECURITIES REPRESENTED HEREBY ARE SUBJECT TO THE PROVISIONS OF A CERTAIN SECURITIES PURCHASE AGREEMENT, DATED AS OF JULY 30, 2007, INCLUDING CERTAIN RESTRICTIONS ON TRANSFER SET FORTH THEREIN AND AN AMENDED AND RESTATED INVESTORS' RIGHTS AGREEMENT, DATED AS OF JULY 30, 2007. COMPLETE AND CORRECT COPIES OF SUCH AGREEMENTS ARE AVAILABLE FOR INSPECTION AT THE PRINCIPAL OFFICE OF THE COMPANY AND WILL BE FURNISHED TO ANY HOLDER OF THE SECURITIES UPON WRITTEN REQUEST WITHOUT CHARGE.

12. Fractional Shares. The Company shall not be required to issue or cause to be issued fractional Warrant Shares on the exercise of this Warrant. If any fraction of a Warrant Share would, except for the provisions of this Section, be issuable upon exercise of this Warrant, the Company shall pay the Holder an amount in cash equal to the product of (i) such fraction of a Warrant Share and (ii) the excess of the Closing Price over the Exercise Price.

13. Notices. Any and all notices or other communications or deliveries hereunder (including without limitation any Exercise Notice) shall be in writing and shall be deemed given and effective on the earliest of (i) the date of transmission, if such notice or communication is delivered via facsimile at the facsimile number specified in the Securities Purchase Agreement prior to 6:30 p.m. (New York City time) on a Business Day, (ii) the next Business Day after the date of transmission, if such notice or communication is delivered via facsimile at the facsimile number specified in the Securities Purchase Agreement on a day that is not a Business Day or later than 6:30 p.m. (New York City time) on any Business Day, (iii) the Business Day following the date of mailing, if sent by nationally recognized overnight courier service or (iv) upon actual receipt by the party to whom such notice is required to be given. The address for such notices or communications shall be as set forth in the Securities Purchase Agreement.

14. Registration Rights. The Common Shares for which this Warrant is exercisable are entitled to the benefits of registration rights as set forth in the Amended and Restated Investors' Rights Agreement and subject to the limitations therein.

15. Governing Law; Venue; Waiver Of Jury Trial.

(A) ALL QUESTIONS CONCERNING THE CONSTRUCTION, VALIDITY, ENFORCEMENT AND INTERPRETATION OF THIS WARRANT SHALL BE GOVERNED BY AND CONSTRUED AND ENFORCED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK, INCLUDING, WITHOUT LIMITATION, SECTIONS 5-1401 AND 5-1402 OF THE NEW YORK GENERAL OBLIGATIONS LAW AND NEW YORK CIVIL PRACTICE LAWS AND RULES 327(b). EACH PARTY HEREBY IRREVOCABLY SUBMITS TO THE EXCLUSIVE JURISDICTION OF THE STATE AND FEDERAL COURTS SITTING IN THE CITY OF NEW YORK, BOROUGH OF MANHATTAN, FOR THE ADJUDICATION OF ANY DISPUTE HEREUNDER OR IN CONNECTION HEREWITH OR WITH ANY TRANSACTION CONTEMPLATED HEREBY OR DISCUSSED HEREIN (INCLUDING WITH RESPECT TO THE ENFORCEMENT OF ANY OF THE TRANSACTION DOCUMENTS), AND HEREBY IRREVOCABLY WAIVES, AND AGREES NOT TO ASSERT IN ANY SUIT, ACTION OR PROCEEDING, ANY CLAIM THAT IT IS NOT PERSONALLY SUBJECT TO THE JURISDICTION OF ANY SUCH COURT, THAT SUCH SUIT, ACTION OR PROCEEDING IS IMPROPER. EACH PARTY HEREBY IRREVOCABLY WAIVES PERSONAL SERVICE OF PROCESS AND CONSENTS TO PROCESS BEING SERVED IN ANY SUCH SUIT, ACTION OR PROCEEDING BY MAILING A COPY THEREOF VIA REGISTERED OR CERTIFIED MAIL OR OVERNIGHT DELIVERY (WITH EVIDENCE OF DELIVERY) TO SUCH PARTY AT THE ADDRESS IN EFFECT FOR NOTICES TO IT UNDER THIS AGREEMENT AND AGREES THAT SUCH SERVICE SHALL CONSTITUTE GOOD AND SUFFICIENT SERVICE OF PROCESS AND NOTICE THEREOF. NOTHING CONTAINED HEREIN SHALL BE DEEMED TO LIMIT IN ANY WAY ANY RIGHT TO SERVE PROCESS IN ANY MANNER PERMITTED BY LAW. THE COMPANY HEREBY WAIVES ALL RIGHTS TO A TRIAL BY JURY.

16. Miscellaneous.

(a) Subject to the restrictions on transfer set forth herein, this Warrant may be assigned by the Holder. This Warrant may not be assigned by the Company except to a successor in the event of a Fundamental Transaction. This Warrant shall be binding on and inure to the benefit of the parties hereto and their respective successors and assigns. Subject to the preceding sentences, nothing in this Warrant shall be construed to give to any Person other than the Company and the Holder any legal or equitable right, remedy or cause of action under this Warrant. This Warrant may be amended only in writing signed by the Company and the Holder and their successors and assigns.

(b) The Company will not, by amendment of its governing documents or through any reorganization, transfer of assets, consolidation, merger, dissolution, issue or sale of securities or any other voluntary action, avoid or seek to avoid the observance or performance of any of the terms of this Warrant, but will at all times in good faith assist in the carrying out of all such terms. Without limiting the generality of the foregoing, the Company (i) will not increase the par value of any Warrant Shares above the amount payable therefor on such exercise, (ii) will take all such action as may be reasonably necessary or appropriate in order that the Company may issue fully paid and nonassessable Warrant Shares on the exercise of this Warrant, and (iii) will not close its stockholder books or records in any manner which interferes with the timely exercise of this Warrant.

(c) Nothing contained in this Warrant shall be construed as conferring upon the Holder any rights as a stockholder of the Company.

(d) The headings herein are for convenience only, do not constitute a part of this Warrant and shall not be deemed to limit or affect any of the provisions hereof.

(e) In case any one or more of the provisions of this Warrant shall be invalid or unenforceable in any respect, the validity and enforceability of the remaining terms and provisions of this Warrant shall not in any way be affected or impaired thereby and the parties will attempt in good faith to agree upon a valid and enforceable provision which shall be a commercially reasonable substitute therefor, and upon so agreeing, shall incorporate such substitute provision in this Warrant.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK, SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the Company has caused this Warrant to be duly executed by its authorized officer as of the date first indicated above.

**TWISTBOX ENTERTAINMENT, INC.**

By: /s/ IAN AARON

Name: IAN AARON

Title: PRES./CEO

ACCEPTED AND AGREED TO BY:

**VALUEACT SMALLCAP MASTER FUND, L.P.**
By Its General Partner, VA SmallCap Partners, LLC

By: /s/ DAVID LOCKWOOD

Name: DAVID LOCKWOOD

Title: MANAGING MEMBER

**FORM OF EXERCISE NOTICE**

To be executed by the Holder to exercise the right to purchase shares of Common Stock under the foregoing Warrant.

To: TWISTBOX ENTERTAINMENT, INC.

The undersigned is the Holder of Warrant No. ____________ (the **"Warrant"**) issued by Twistbox Entertainment, Inc., a Delaware corporation (the **"Company"**). Capitalized terms used herein and not otherwise defined have the respective meanings set forth in the Warrant.

1. The Warrant is currently exercisable to purchase a total of _____________ Warrant Shares.

2. The undersigned Holder hereby exercises its right to purchase ___________ Warrant Shares pursuant to the Warrant.

3. The Holder intends that payment of the Exercise Price shall be made as (check one):

____ "Cash Exercise" under Section 10

____ "Cashless Exercise" under Section 10

____ "Senior Secured Note Due January 30, 2010" having a principal amount plus accrued but unpaid interest equal to the Exercise Price

4. If the Holder has elected a Cash Exercise, the holder shall pay the sum of $________ to the Company in accordance with the terms of the Warrant.

5. Pursuant to this exercise, the Company shall deliver to the holder __________ Warrant Shares in accordance with the terms of the Warrant.

6. Following this exercise, the Warrant shall be exercisable to purchase a total of _____________ Warrant Shares.

Dated: _______________, ________

Name of Holder:

(Print) ______________________________

By: ______________________________

Name: ______________________________

Title: ______________________________

(Signature must conform in all respects to name of holder as specified on the face of the Warrant)

**FORM OF ASSIGNMENT**

To be completed and signed only upon transfer of Warrant.

FOR VALUE RECEIVED, the undersigned hereby sells, assigns and transfers unto ______________________ the right represented by the within Warrant to purchase ______________ shares of Common Stock of Twistbox Entertainment, Inc. to which the within Warrant relates and appoints ______________ attorney to transfer said right on the books of Twistbox Entertainment, Inc. with full power of substitution in the premises.

Dated: _______________,______

_______________________________________

(Signature must conform in all respects to name of holder as specified on the face of the Warrant)

_______________________________________

Address of Transferee

_______________________________________

_______________________________________

_______________________________________

Security or Taxpayer Identification Number

In the presence of:

_______________________________________

NEITHER THESE SECURITIES NOR THE SECURITIES ISSUABLE UPON EXERCISE OF THESE SECURITIES HAVE BEEN REGISTERED WITH THE SECURITIES AND EXCHANGE COMMISSION OR THE SECURITIES COMMISSION OF ANY STATE IN RELIANCE UPON AN EXEMPTION FROM REGISTRATION UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT"), AND, ACCORDINGLY, MAY NOT BE OFFERED OR SOLD EXCEPT PURSUANT TO A N EFFECTIVE REGISTRATION STATEMENT UNDER THE SECURITIES ACT OR PURSUANT TO AN AVAILABLE EXEMPTION FROM, OR IN A TRANSACTION NOT SUBJECT TO, THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT AND IN ACCORDANCE WITH APPLICABLE STATE SECURITIES LAWS AS EVIDENCED BY A LEGAL OPINION OF COUNSEL TO THE TRANSFEROR TO SUCH EFFECT, THE SUBSTANCE OF WHICH SHALL BE REASONABLY ACCEPTABLE TO THE COMPANY. THESE SECURITIES AND THE SECURITIES ISSUABLE UPON EXERCISE OF THESE SECURITIES MAY BE PLEDGED IN CONNECTION WITH A BONA FIDE MARGIN ACCOUNT SECURED BY SUCH SECURITIES.

**MANDALAY MEDIA, INC.**

**WARRANT**

Date of Original Issuance: February 12, 2008

**Mandalay Media, Inc.**, a Delaware corporation (the **"Company"**), hereby certifies that, for value received, VALUEACT SMALLCAP MASTER FUND, L.P. or its registered assigns (the **"Holder"**), is entitled to purchase from the Company up to a total of 1,092,622 shares of common stock, $0.0001 par value per share (the **"Common Stock"**), of the Company (each such share, a **"Warrant Share"** and all such shares, the **"Warrant Shares"**), at an exercise price equal to $7.55 per share (as adjusted from time to time as provided in Section 9, the **"Exercise Price"**), at any time and from time to time from and after the date hereof and through and including July 30, 2011 (the **"Expiration Date"**), and subject to the following terms and conditions:

1. Registration of Warrant. The Company shall register this Warrant, upon records to be maintained by the Company for that purpose (the **"Warrant Register"**), in the name of the record Holder hereof from time to time. The Company may deem and treat the registered Holder of this Warrant as the absolute owner hereof for the purpose of any exercise hereof or any distribution to the Holder, and for all other purposes, absent written notice to the contrary.

2. Registration of Transfers. The Company shall register the transfer of any portion of this Warrant in the Warrant Register, upon surrender of this Warrant, with the Form of Assignment attached hereto duly completed and signed, to the Company at its address specified herein. Upon any such registration or transfer, a new Warrant to purchase Common Stock, in substantially the form of this Warrant (any such new Warrant, a **"New Warrant"**), evidencing the portion of this Warrant so transferred shall be issued to the transferee and a New Warrant evidencing the remaining portion of this Warrant not so transferred, if any, shall be issued to the transferring Holder. The acceptance of the New Warrant by the transferee thereof shall be deemed the acceptance by such transferee of all of the rights and obligations of a holder of a Warrant.

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3. Lock-Up. Holder agrees with the Company that, during a period of one (1) year from the date of the Effective Time (as such term is defined in the Agreement and Plan of Merger by and among the Company, Twistbox Acquisition, Inc., Twistbox Entertainment, Inc. ("**Twistbox**") and Adi McAbian and Spark Capital L.P. as representatives of the stockholders of Twistbox), Holder will not, directly or indirectly, (i) offer, pledge, sell, contract to sell, sell any option or contract to purchase, purchase any option or contract to sell, grant any option, right or warrant for the sale of, or otherwise dispose of or transfer any Common Stock or any securities convertible into or exchangeable or exercisable for Common Stock, whether now owned or hereafter acquired by the Holder or with respect to which the Holder has or hereafter acquires the power of disposition, or file, or cause to be filed, any registration statement under the Securities Act with respect to any of the foregoing (collectively, the "**Lock-Up Securities**") or (ii) enter into any swap or any other agreement or any transaction that transfers, in whole or in part, directly or indirectly, the economic consequence of ownership of the Lock-Up Securities, whether any such swap or transaction is to be settled by delivery of Common Stock or other securities, in cash or otherwise. The Holder also agrees and consents to the entry of stop transfer instructions with the Company's transfer agent and registrar against the transfer of the Holder's shares of Common Stock except in compliance with the foregoing restrictions.

4. Exercise and Duration of Warrants.

(a) This Warrant shall be exercisable by the registered Holder at any time and from time to time on or after the date hereof to and including the Expiration Date. At 5:30 p.m., New York City time on the Expiration Date, the portion of this Warrant not exercised prior thereto shall be and become void and of no value; provided that, on the Expiration Date, if the Closing Price exceeds the Exercise Price, this Warrant shall be deemed to have been exercised in full (to the extent not previously exercised) on a "cashless exercise" basis immediately prior to expiration thereof.

(b) A Holder may exercise this Warrant by delivering to the Company (i) an exercise notice, in the form attached hereto (the "**Exercise Notice**") (with the attached Warrant Shares Exercise Log), appropriately completed and duly signed along with the Warrant, and (ii) payment of the Exercise Price for the number of Warrant Shares as to which this Warrant is being exercised (which may take the form of (w) cash, (x) surrender of Senior Secured Notes issued by Twistbox due January 30, 2010 ("**Senior Secured Notes**") having a principal amount plus accrued but unpaid interest equal to the Exercise Price, (y) a "cashless exercise" pursuant to Section 10 below, or (z) any combination thereof, in each case as indicated in the Exercise Notice), and the date such items are delivered to the Company (as determined in accordance with the notice provisions hereof) is a "**Date of Exercise**." Execution and delivery of the Exercise Notice shall have the same effect as cancellation of the original Warrant and issuance of a New Warrant evidencing the right to purchase the remaining number of Warrant Shares.

5. Delivery of Warrant Shares.

(a) Upon exercise of this Warrant, the Company shall promptly issue or cause to be issued and cause to be delivered to or upon the written order of the Holder a certificate for the Warrant Shares issuable upon such exercise.

(b) This Warrant is exercisable, either in its entirety or, from time to time, in part. Upon surrender of this Warrant following one or more partial exercises, the Company shall issue or cause to be issued, at its expense, a New Warrant evidencing the right to purchase the remaining number of Warrant Shares.

(c) The Company's obligations to issue and deliver Warrant Shares in accordance with the terms hereof are absolute and unconditional, irrespective of any action or inaction by the Holder to enforce the same, any waiver or consent with respect to any provision hereof, the recovery of any judgment against any Person (as defined herein) or any action to enforce the same, or any setoff, counterclaim, recoupment, limitation or termination, or any breach or alleged breach by the Holder or any other Person of any obligation to the Company or any violation or alleged violation of law by the Holder or any other Person, and irrespective of any other circumstance which might otherwise limit such obligation of the Company to the Holder in connection with the issuance of Warrant Shares. Nothing herein shall limit a Holder's right to pursue any other remedies available to it hereunder, at law or in equity including, without limitation, a decree of specific performance and/or injunctive relief with respect to the Company's failure to timely deliver certificates representing shares of Common Stock upon exercise of the Warrant as required pursuant to the terms hereof. "**Person**" shall mean any individual, corporation (including any non-profit corporation), general partnership, limited partnership, limited liability partnership, joint venture, estate, trust, company (including any limited liability company or joint stock company), firm or other enterprise, association, organization, entity or governmental entity

6. Charges, Taxes and Expenses. Issuance and delivery of certificates for shares of Common Stock upon exercise of this Warrant shall be made without charge to the Holder for any issue or transfer tax, withholding tax, transfer agent fee or other incidental tax or expense in respect of the issuance of such certificates, all of which taxes and expenses shall be paid by the Company; provided, however, that the Company shall not be required to pay any tax which may be payable in respect of any transfer involved in the registration of any certificates for Warrant Shares or Warrants in a name other than that of the Holder. The Holder shall be responsible for all other tax liability that may arise as a result of holding or transferring this Warrant or receiving Warrant Shares upon exercise hereof.

7. Replacement of Warrant. If this Warrant is mutilated, lost, stolen or destroyed, the Company shall issue or cause to be issued in exchange and substitution for and upon cancellation hereof, or in lieu of and substitution for this Warrant, a New Warrant, but only upon receipt of evidence reasonably satisfactory to the Company of such loss, theft or destruction and customary and reasonable indemnity (which shall not include a surety bond), if requested. Applicants for a New Warrant under such circumstances shall also comply with such other reasonable regulations and procedures and pay such other reasonable third-party costs as the Company may prescribe. If a New Warrant is requested as a result of a mutilation of this Warrant, then the Holder shall deliver such mutilated Warrant to the Company as a condition precedent to the Company's obligation to issue the New Warrant.

8. Reservation of Warrant Shares. The Company covenants that it will at all times reserve and keep available out of the aggregate of its authorized but unissued and otherwise unreserved Common Stock, solely for the purpose of enabling it to issue Warrant Shares upon exercise of this Warrant as herein provided, the number of Warrant Shares which are then issuable and deliverable upon the exercise of this entire Warrant, free from preemptive rights or any other contingent purchase rights of persons other than the Holder (taking into account the adjustments and restrictions of Section 9). The Company covenants that all Warrant Shares so issuable and deliverable shall, upon issuance and the payment of the applicable Exercise Price in accordance with the terms hereof, be duly and validly authorized, issued and fully paid and nonassessable. The Company will take all such action as may be necessary to assure that such Warrant Shares may be issued as provided herein without violation of any applicable law or regulation, or of any requirements of any securities exchange, over-the-counter bulletin board or automated quotation system upon which the Common Stock may be listed.

9. Certain Adjustments. The Exercise Price and number of Warrant Shares issuable upon exercise of this Warrant are subject to adjustment from time to time as set forth in this Section 9.

(a) Stock Dividends and Splits. If the Company, at any time while this Warrant is outstanding, (i) pays a stock dividend on its Common Stock or otherwise makes a distribution on any class of capital stock that is payable in shares of Common Stock, (ii) subdivides outstanding shares of Common Stock into a larger number of shares, or (iii) combines outstanding shares of Common Stock into a smaller number of shares, then in each such case the Exercise Price shall be multiplied by a fraction of which the numerator shall be the number of shares of Common Stock outstanding immediately before such event and of which the denominator shall be the number of shares of Common Stock outstanding immediately after such event. Any adjustment made pursuant to clause (i) of this paragraph shall become effective immediately after the record date for the determination of stockholders entitled to receive such dividend or distribution, and any adjustment pursuant to clause (ii) or (iii) of this paragraph shall become effective immediately after the effective date of such subdivision or combination.

(b) Fundamental Transactions. If, at any time while this Warrant, or any portion hereof, is outstanding and unexpired there shall be (i) a reorganization (other than a combination, reclassification, exchange or subdivision of shares otherwise provided for herein), (ii) a merger or consolidation of the Company with or into another Person in which the Company is not the surviving entity, or a reverse triangular merger in which the Company is the surviving entity but the shares of the Company's capital stock outstanding immediately prior to the merger are converted by virtue of the merger into other property, whether in the form of securities, cash or otherwise, or (iii) a sale of all or substantially all of the Company's assets to another Person in one or a series of related transactions, (iv) any tender offer or exchange offer (whether by the Company or another Person) completed pursuant to which holders of Common Stock are permitted to tender or exchange their shares for other securities, cash or property, or (v) any reclassification of the Common Stock or any compulsory share exchange pursuant to which the Common Stock is effectively converted into or exchanged for other securities, cash or property (each of (i)-(v), a "**Fundamental Transaction**"), then, as a part of such Fundamental Transaction, lawful provision shall be made so that the Holder shall thereafter be entitled to receive upon exercise of this Warrant, during the period specified herein and upon payment of the Exercise Price then in effect, the number of shares of stock or other securities or property resulting from a Fundamental Transaction that a Holder upon exercise of this Warrant would have been entitled to receive in such Fundamental Transaction if this Warrant had been exercised immediately before such Fundamental Transaction, all subject to further adjustment as provided in this Section 9. The foregoing provision of this Section 9(b) shall similarly apply to successive reorganizations, consolidations, mergers, sales and transfers and to the stock or securities of any other corporation that are at the time receivable upon the exercise of this Warrant. If holders of Common Stock are given any choice as to the securities, cash or security to be received in a Fundamental Transaction, then the Holder shall be given the same choice. If the per share consideration payable to the Holder for shares in connection with any such transaction is in a form other than cash or marketable securities, then the value of such consideration shall be determined in good faith by the Company's Board of Directors. If the per share consideration payable to the Holder for shares in connection with any such transaction is in a form other than cash or marketable securities, appropriate adjustment (as determined in good faith by the Company's Board of Directors) shall be made in the application of the provisions of this Warrant with respect to the rights and interests of the Holder after the transaction (including provisions for adjustment to the Exercise Price), to the end that the provisions of this Warrant shall be applicable after that event, as near as reasonably may be, in relation to any shares or other property deliverable after that event upon exercise of this Warrant. The terms of any agreement pursuant to which a Fundamental Transaction is effected shall include terms requiring any such successor or surviving entity to comply with the provisions of this Section 9(b) and insuring that the Warrant (or any such replacement security) will be similarly adjusted upon any subsequent transaction analogous to a Fundamental Transaction.

(c) Number of Warrant Shares. Simultaneously with any adjustment to the Exercise Price pursuant to paragraph (a) of this Section 9, the number of Warrant Shares that may be purchased upon exercise of this Warrant shall be increased or decreased proportionately, so that after such adjustment the aggregate Exercise Price payable hereunder for the adjusted number of Warrant Shares shall be the same as the aggregate Exercise Price in effect immediately prior to such adjustment.

(d) Calculations. All calculations under this Section 9 shall be made to the nearest cent or the nearest 1/100th of a share, as applicable. The number of shares of Common Stock outstanding at any given time shall not include shares owned or held by or for the account of the Company, and the disposition of any such shares shall be considered an issue or sale of Common Stock.

(e) Notice of Adjustments. Upon the occurrence of each adjustment pursuant to this Section 9, the Company at its expense will promptly compute such adjustment in accordance with the terms of this Warrant and prepare a certificate setting forth such adjustment, including a statement of the adjusted Exercise Price and adjusted number or type of Warrant Shares or other securities issuable upon exercise of this Warrant (as applicable), describing the transactions giving rise to such adjustments and showing in detail the facts upon which such adjustment is based. Upon written request, the Company will promptly deliver a copy of each such certificate to the Holder and to the Company's transfer agent.

(f) Notice of Corporate Events. If the Company (i) declares a dividend or any other distribution of cash, securities or other property in respect of its Common Stock, including without limitation any granting of rights or warrants to subscribe for or purchase any capital stock of the Company or any Subsidiary, (ii) authorizes or approves, enters into any agreement contemplating or solicits stockholder approval for any Fundamental Transaction or (iii) authorizes the voluntary dissolution, liquidation or winding up of the affairs of the Company, then the Company shall deliver to the Holder a notice describing the material terms and conditions of such transaction, at least ten business days prior to the applicable record or effective date on which a Person would need to hold Common Stock in order to participate in or vote with respect to such transaction, and the Company will take all steps reasonably necessary in order to insure that the Holder is given the practical opportunity to exercise this Warrant prior to such time so as to participate in or vote with respect to such transaction; provided, however, that the failure to deliver such notice or any defect therein shall not affect the validity of the corporate action required to be described in such notice.

10. Payment of Exercise Price. The Holder may pay the Exercise Price in one of the following manners:

(a) Cash Exercise. The Holder may deliver immediately available funds;

(b) Senior Secured Notes Exercise. The Holder may surrender Senior Secured Notes having a principal amount plus accrued but unpaid interest equal to the Exercise Price; or

(c) Cashless Exercise. The Holder may notify the Company in an Exercise Notice of its election to utilize cashless exercise, in which event the Company shall issue to the Holder the number of Warrant Shares determined as follows:

$$X = Y [(A-B)/A]$$

where:

X = the number of Warrant Shares to be issued to the Holder.

Y = the number of Warrant Shares with respect to which this Warrant is being exercised.

A = the average of the closing bid and asked prices of the Common Stock quoted in the Over-The-Counter Market Summary or the last reported sale price of Common Stock or the closing price quoted on the Nasdaq National Market or any exchange on which the Common Stock is listed, whichever is applicable, for the five trading days immediately prior to (but not including) the Exercise Date.

B = the Exercise Price.

For purposes of Rule 144 promulgated under the Securities Act, it is intended, understood and acknowledged that the Warrant Shares issued in a cashless exercise transaction shall be deemed to have been acquired by the Holder, and the holding period for the Warrant Shares shall be deemed to have commenced, on the date this Warrant was originally issued.

11. No Rights as Stockholder. Until the exercise of this Warrant, the Holder shall not have or exercise any rights by virtue hereof as a stockholder of the Company.

12. No Fractional Shares. No fractional shares of Warrant Shares will be issued in connection with any exercise of this Warrant. If any fraction of a Warrant Share would, except for the provisions of this Section 12, be issuable upon exercise of this Warrant, the number of Warrant Shares to be issued will be rounded up to the nearest whole share.

13. Notices. Any and all notices or other communications or deliveries hereunder (including, without limitation, any Exercise Notice) shall be in writing and shall be deemed given and effective on the earliest of (i) the date of transmission, if such notice or communication is delivered via facsimile at the facsimile number specified in this Section 13 prior to 5:30 p.m. (New York City time) on a business day, (ii) the next business day after the date of transmission, if such notice or communication is delivered via facsimile at the facsimile number specified in this Section 13 on a day that is not a business day or later than 5:30 p.m. (New York City time) on any business day, (iii) the business day following the date of mailing, if sent by nationally recognized overnight courier service, or (iv) upon actual receipt by the party to whom such notice is required to be given. The addresses for such communications shall be: (i) if to the Company, to Mandalay Media, Inc., 2121 Avenue of the Stars, Suite 2550, Los Angeles, CA 90067 Attention: President, Facsimile No.: 310-277-2741 or such other address as the Company shall so notify the Holder, or (ii) if to the Holder, to the address or facsimile number appearing on the Warrant Register or such other address or facsimile number as the Holder may provide to the Company in accordance with this Section 13.

14. Warrant Agent. The Company shall serve as warrant agent under this Warrant. Upon 10 business days' notice to the Holder, the Company may appoint a new warrant agent. Any corporation into which the Company or any new warrant agent may be merged or any corporation resulting from any consolidation to which the Company or any new warrant agent shall be a party or any corporation to which the Company or any new warrant agent transfers substantially all of its corporate trust or shareholders services business shall be a successor warrant agent under this Warrant without any further act. Any such successor warrant agent shall promptly cause notice of its succession as warrant agent to be mailed (by first class mail, postage prepaid) to the Holder at the Holder's last address as shown on the Warrant Register.

15. Miscellaneous.

(a) This Warrant shall be binding on and inure to the benefit of the parties hereto and their respective successors and assigns. Subject to the preceding sentence, nothing in this Warrant shall be construed to give to any Person other than the Company and the Holder any legal or equitable right, remedy or cause of action under this Warrant. This Warrant may be amended only in writing signed by the Company and the Holder and their successors and assigns.

(b) ALL QUESTIONS CONCERNING THE CONSTRUCTION, VALIDITY, ENFORCEMENT AND INTERPRETATION OF THIS WARRANT SHALL BE GOVERNED BY AND CONSTRUED AND ENFORCED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK, INCLUDING, WITHOUT LIMITATION, SECTIONS 5-1401 AND 5-1402 OF THE NEW YORK GENERAL OBLIGATIONS LAW AND NEW YORK CIVIL PRACTICE LAWS AND RULES 327(b). EACH PARTY HEREBY IRREVOCABLY SUBMITS TO THE EXCLUSIVE JURISDICTION OF THE STATE AND FEDERAL COURTS SITTING IN THE CITY OF NEW YORK, BOROUGH OF MANHATTAN, FOR THE ADJUDICATION OF ANY DISPUTE HEREUNDER OR IN CONNECTION HEREWITH OR WITH ANY TRANSACTION CONTEMPLATED HEREBY OR DISCUSSED HEREIN (INCLUDING WITH RESPECT TO THE ENFORCEMENT OF ANY OF THE TRANSACTION DOCUMENTS), AND HEREBY IRREVOCABLY WAIVES, AND AGREES NOT TO ASSERT IN ANY SUIT, ACTION OR PROCEEDING, ANY CLAIM THAT IT IS NOT PERSONALLY SUBJECT TO THE JURISDICTION OF ANY SUCH COURT, THAT SUCH SUIT, ACTION OR PROCEEDING IS IMPROPER. EACH PARTY HEREBY IRREVOCABLY WAIVES PERSONAL SERVICE OF PROCESS AND CONSENTS TO PROCESS BEING SERVED IN ANY SUCH SUIT, ACTION OR PROCEEDING BY MAILING A COPY THEREOF VIA REGISTERED OR CERTIFIED MAIL OR OVERNIGHT DELIVERY (WITH EVIDENCE OF DELIVERY) TO SUCH PARTY AT THE ADDRESS IN EFFECT FOR NOTICES TO IT UNDER THIS AGREEMENT AND AGREES THAT SUCH SERVICE SHALL CONSTITUTE GOOD AND SUFFICIENT SERVICE OF PROCESS AND NOTICE THEREOF. NOTHING CONTAINED HEREIN SHALL BE DEEMED TO LIMIT IN ANY WAY ANY RIGHT TO SERVE PROCESS IN ANY MANNER PERMITTED BY LAW. THE COMPANY HEREBY WAIVES ALL RIGHTS TO A TRIAL BY JURY.

(c) The headings herein are for convenience only, do not constitute a part of this Warrant and shall not be deemed to limit or affect any of the provisions hereof.

(d) In case any one or more of the provisions of this Warrant shall be invalid or unenforceable in any respect, the validity and enforceability of the remaining terms and provisions of this Warrant shall not in any way be affected or impaired thereby and the parties will attempt in good faith to agree upon a valid and enforceable provision which shall be a commercially reasonable substitute therefor, and upon so agreeing, shall incorporate such substitute provision in this Warrant.

(e) This Warrant may be executed and acknowledged in one or more counterparts by the different parties hereto, each of which when executed shall be deemed to be an original but all of which taken together shall constitute one and the same instrument.

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SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the Company has caused this Warrant to be duly executed by its authorized officer as of the date first indicated above.

**MANDALAY MEDIA, INC.**

By: /s/ Jay Wolf
Name: Jay Wolf
Title: Chief Financial Officer

Acknowledged and accepted:

**VALUEACT SMALLCAP MASTER FUND, L.P.**

By: /s/ David Lockwood
Name: David Lockwood
Title: Managing Member

**FORM OF EXERCISE NOTICE**

To be executed by the Holder to exercise the right to purchase shares of Common Stock under the foregoing Warrant.

To: MANDALAY MEDIA, INC.

The undersigned is the Holder of Warrant No. _______ (the "**Warrant**") issued by Mandalay Media, Inc., a Delaware corporation (the "**Company**"). Capitalized terms used herein and not otherwise defined have the respective meanings set forth in the Warrant.

(1) The Warrant is currently exercisable to purchase a total of ______________ Warrant Shares.

(2) The undersigned Holder hereby exercises its right to purchase _________________ Warrant Shares pursuant to the Warrant.

(3) The Holder intends that payment of the Exercise Price shall be made as (check one):

____ "Cash Exercise" under Section 10

____ "Cashless Exercise" under Section 10

____ "Senior Secured Note Due January 30, 2010" having a principal amount plus accrued but unpaid interest equal to the Exercise Price

(4) If the Holder has elected a Cash Exercise, the holder shall pay the sum of $____________ to the Company in accordance with the terms of the Warrant.

(5) Pursuant to this exercise, the Company shall deliver to the holder _______________ Warrant Shares in accordance with the terms of the Warrant.

(6) Following this exercise, the Warrant shall be exercisable to purchase a total of ______________ Warrant Shares.

Dated: __________, ____

Name of Holder:

(Print)_________________________

By:___________________________
Name:_________________________
Title:_________________________

(Signature must conform in all respects to name of holder as specified on the face of the Warrant)

Warrant Shares Exercise Log

| Date | Number of Warrant Shares Available to be Exercised | Number of Warrant Shares Exercised | Number of Warrant Shares Remaining to be Exercised |
|---|---|---|---|
| | | | |

**MANDALAY MEDIA, INC.**

WARRANT ORIGINALLY ISSUED FEBRUARY 12, 2008

FORM OF ASSIGNMENT

[To be completed and signed only upon transfer of Warrant]

FOR VALUE RECEIVED, the undersigned hereby sells, assigns and transfers unto ________________________________ the right represented by the above-captioned Warrant to purchase ____________ shares of Common Stock to which such Warrant relates and appoints ________________ attorney to transfer said right on the books of the Company with full power of substitution in the premises.

Dated: _______________, ____

_______________________________________
(Signature must conform in all respects to name of holder as specified on the face of the Warrant)

_______________________________________
Address of Transferee

_______________________________________

_______________________________________

In the presence of:

__________________________

NEITHER THESE SECURITIES NOR THE SECURITIES ISSUABLE UPON EXERCISE OF THESE SECURITIES HAVE BEEN REGISTERED WITH THE SECURITIES AND EXCHANGE COMMISSION OR THE SECURITIES COMMISSION OF ANY STATE IN RELIANCE UPON AN EXEMPTION FROM REGISTRATION UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT"), AND, ACCORDINGLY, MAY NOT BE OFFERED OR SOLD EXCEPT PURSUANT TO A N EFFECTIVE REGISTRATION STATEMENT UNDER THE SECURITIES ACT OR PURSUANT TO AN AVAILABLE EXEMPTION FROM, OR IN A TRANSACTION NOT SUBJECT TO, THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT AND IN ACCORDANCE WITH APPLICABLE STATE SECURITIES LAWS AS EVIDENCED BY A LEGAL OPINION OF COUNSEL TO THE TRANSFEROR TO SUCH EFFECT, THE SUBSTANCE OF WHICH SHALL BE REASONABLY ACCEPTABLE TO THE COMPANY. THESE SECURITIES AND THE SECURITIES ISSUABLE UPON EXERCISE OF THESE SECURITIES MAY BE PLEDGED IN CONNECTION WITH A BONA FIDE MARGIN ACCOUNT SECURED BY SUCH SECURITIES.

**MANDALAY MEDIA, INC.**

**WARRANT**

Date of Original Issuance: February 12, 2008

**Mandalay Media, Inc.**, a Delaware corporation (the **"Company"**), hereby certifies that, for value received, VALUEACT SMALLCAP MASTER FUND, L.P. or its registered assigns (the **"Holder"**), is entitled to purchase from the Company up to a total of 1,092,621 shares of common stock, $0.0001 par value per share (the **"Common Stock"**), of the Company (each such share, a **"Warrant Share"** and all such shares, the **"Warrant Shares"**), at an exercise price equal to $5.00 per share (as adjusted from time to time as provided in Section 9, the **"Exercise Price"**), at any time and from time to time from and after the date hereof and through and including July 30, 2011 (the **"Expiration Date"**), and subject to the following terms and conditions:

1. Registration of Warrant. The Company shall register this Warrant, upon records to be maintained by the Company for that purpose (the **"Warrant Register"**), in the name of the record Holder hereof from time to time. The Company may deem and treat the registered Holder of this Warrant as the absolute owner hereof for the purpose of any exercise hereof or any distribution to the Holder, and for all other purposes, absent written notice to the contrary.

2. Registration of Transfers. The Company shall register the transfer of any portion of this Warrant in the Warrant Register, upon surrender of this Warrant, with the Form of Assignment attached hereto duly completed and signed, to the Company at its address specified herein. Upon any such registration or transfer, a new Warrant to purchase Common Stock, in substantially the form of this Warrant (any such new Warrant, a **"New Warrant"**), evidencing the portion of this Warrant so transferred shall be issued to the transferee and a New Warrant evidencing the remaining portion of this Warrant not so transferred, if any, shall be issued to the transferring Holder. The acceptance of the New Warrant by the transferee thereof shall be deemed the acceptance by such transferee of all of the rights and obligations of a holder of a Warrant.

3. Lock-Up. Holder agrees with the Company that, during a period of one (1) year from the date of the Effective Time (as such term is defined in the Agreement and Plan of Merger by and among the Company, Twistbox Acquisition, Inc., Twistbox Entertainment, Inc. ("**Twistbox**") and Adi McAbian and Spark Capital L.P. as representatives of the stockholders of Twistbox), Holder will not, directly or indirectly, (i) offer, pledge, sell, contract to sell, sell any option or contract to purchase, purchase any option or contract to sell, grant any option, right or warrant for the sale of, or otherwise dispose of or transfer any Common Stock or any securities convertible into or exchangeable or exercisable for Common Stock, whether now owned or hereafter acquired by the Holder or with respect to which the Holder has or hereafter acquires the power of disposition, or file, or cause to be filed, any registration statement under the Securities Act with respect to any of the foregoing (collectively, the "**Lock-Up Securities**") or (ii) enter into any swap or any other agreement or any transaction that transfers, in whole or in part, directly or indirectly, the economic consequence of ownership of the Lock-Up Securities, whether any such swap or transaction is to be settled by delivery of Common Stock or other securities, in cash or otherwise. The Holder also agrees and consents to the entry of stop transfer instructions with the Company's transfer agent and registrar against the transfer of the Holder's shares of Common Stock except in compliance with the foregoing restrictions.

4. Exercise and Duration of Warrants.

(a) This Warrant shall be exercisable by the registered Holder at any time and from time to time on or after the date hereof to and including the Expiration Date. At 5:30 p.m., New York City time on the Expiration Date, the portion of this Warrant not exercised prior thereto shall be and become void and of no value; provided that, on the Expiration Date, if the Closing Price exceeds the then applicable Exercise Price, this Warrant shall be deemed to have been exercised in full (to the extent not previously exercised) on a "cashless exercise" basis immediately prior to expiration thereof.

(b) A Holder may exercise this Warrant by delivering to the Company (i) an exercise notice, in the form attached hereto (the "**Exercise Notice**") (with the attached Warrant Shares Exercise Log), appropriately completed and duly signed along with the Warrant, and (ii) payment of the then applicable Exercise Price for the number of Warrant Shares as to which this Warrant is being exercised (which may take the form of (w) cash, (x) surrender of Senior Secured Notes issued by Twistbox due January 30, 2010 ("**Senior Secured Notes**") having a principal amount plus accrued but unpaid interest equal to the Exercise Price, (y) a "cashless exercise" pursuant to Section 10 below, or (z) any combination thereof, in each case as indicated in the Exercise Notice), and the date such items are delivered to the Company (as determined in accordance with the notice provisions hereof) is a "**Date of Exercise**." Execution and delivery of the Exercise Notice shall have the same effect as cancellation of the original Warrant and issuance of a New Warrant evidencing the right to purchase the remaining number of Warrant Shares.

5. Delivery of Warrant Shares.

(a) Upon exercise of this Warrant, the Company shall promptly issue or cause to be issued and cause to be delivered to or upon the written order of the Holder a certificate for the Warrant Shares issuable upon such exercise.

(b) This Warrant is exercisable, either in its entirety or, from time to time, in part. Upon surrender of this Warrant following one or more partial exercises, the Company shall issue or cause to be issued, at its expense, a New Warrant evidencing the right to purchase the remaining number of Warrant Shares.

(c) The Company's obligations to issue and deliver Warrant Shares in accordance with the terms hereof are absolute and unconditional, irrespective of any action or inaction by the Holder to enforce the same, any waiver or consent with respect to any provision hereof, the recovery of any judgment against any Person (as defined herein) or any action to enforce the same, or any setoff, counterclaim, recoupment, limitation or termination, or any breach or alleged breach by the Holder or any other Person of any obligation to the Company or any violation or alleged violation of law by the Holder or any other Person, and irrespective of any other circumstance which might otherwise limit such obligation of the Company to the Holder in connection with the issuance of Warrant Shares. Nothing herein shall limit a Holder's right to pursue any other remedies available to it hereunder, at law or in equity including, without limitation, a decree of specific performance and/or injunctive relief with respect to the Company's failure to timely deliver certificates representing shares of Common Stock upon exercise of the Warrant as required pursuant to the terms hereof. "**Person**" shall mean any individual, corporation (including any non-profit corporation), general partnership, limited partnership, limited liability partnership, joint venture, estate, trust, company (including any limited liability company or joint stock company), firm or other enterprise, association, organization, entity or governmental entity

6. Charges, Taxes and Expenses. Issuance and delivery of certificates for shares of Common Stock upon exercise of this Warrant shall be made without charge to the Holder for any issue or transfer tax, withholding tax, transfer agent fee or other incidental tax or expense in respect of the issuance of such certificates, all of which taxes and expenses shall be paid by the Company; provided, however, that the Company shall not be required to pay any tax which may be payable in respect of any transfer involved in the registration of any certificates for Warrant Shares or Warrants in a name other than that of the Holder. The Holder shall be responsible for all other tax liability that may arise as a result of holding or transferring this Warrant or receiving Warrant Shares upon exercise hereof.

7. Replacement of Warrant. If this Warrant is mutilated, lost, stolen or destroyed, the Company shall issue or cause to be issued in exchange and substitution for and upon cancellation hereof, or in lieu of and substitution for this Warrant, a New Warrant, but only upon receipt of evidence reasonably satisfactory to the Company of such loss, theft or destruction and customary and reasonable indemnity (which shall not include a surety bond), if requested. Applicants for a New Warrant under such circumstances shall also comply with such other reasonable regulations and procedures and pay such other reasonable third-party costs as the Company may prescribe. If a New Warrant is requested as a result of a mutilation of this Warrant, then the Holder shall deliver such mutilated Warrant to the Company as a condition precedent to the Company's obligation to issue the New Warrant.

8. Reservation of Warrant Shares. The Company covenants that it will at all times reserve and keep available out of the aggregate of its authorized but unissued and otherwise unreserved Common Stock, solely for the purpose of enabling it to issue Warrant Shares upon exercise of this Warrant as herein provided, the number of Warrant Shares which are then issuable and deliverable upon the exercise of this entire Warrant, free from preemptive rights or any other contingent purchase rights of persons other than the Holder (taking into account the adjustments and restrictions of Section 9). The Company covenants that all Warrant Shares so issuable and deliverable shall, upon issuance and the payment of the applicable Exercise Price in accordance with the terms hereof, be duly and validly authorized, issued and fully paid and nonassessable. The Company will take all such action as may be necessary to assure that such Warrant Shares may be issued as provided herein without violation of any applicable law or regulation, or of any requirements of any securities exchange, over-the-counter bulletin board or automated quotation system upon which the Common Stock may be listed.

9. Certain Adjustments. The Exercise Price and number of Warrant Shares issuable upon exercise of this Warrant are subject to adjustment from time to time as set forth in this Section 9.

(a) Stock Dividends and Splits. If the Company, at any time while this Warrant is outstanding, (i) pays a stock dividend on its Common Stock or otherwise makes a distribution on any class of capital stock that is payable in shares of Common Stock, (ii) subdivides outstanding shares of Common Stock into a larger number of shares, or (iii) combines outstanding shares of Common Stock into a smaller number of shares, then in each such case the Exercise Price shall be multiplied by a fraction of which the numerator shall be the number of shares of Common Stock outstanding immediately before such event and of which the denominator shall be the number of shares of Common Stock outstanding immediately after such event. Any adjustment made pursuant to clause (i) of this paragraph shall become effective immediately after the record date for the determination of stockholders entitled to receive such dividend or distribution, and any adjustment pursuant to clause (ii) or (iii) of this paragraph shall become effective immediately after the effective date of such subdivision or combination.

(b) Fundamental Transactions. If, at any time while this Warrant, or any portion hereof, is outstanding and unexpired there shall be (i) a reorganization (other than a combination, reclassification, exchange or subdivision of shares otherwise provided for herein), (ii) a merger or consolidation of the Company with or into another Person in which the Company is not the surviving entity, or a reverse triangular merger in which the Company is the surviving entity but the shares of the Company's capital stock outstanding immediately prior to the merger are converted by virtue of the merger into other property, whether in the form of securities, cash or otherwise, or (iii) a sale of all or substantially all of the Company's assets to another Person in one or a series of related transactions, (iv) any tender offer or exchange offer (whether by the Company or another Person) completed pursuant to which holders of Common Stock are permitted to tender or exchange their shares for other securities, cash or property, or (v) any reclassification of the Common Stock or any compulsory share exchange pursuant to which the Common Stock is effectively converted into or exchanged for other securities, cash or property (each of (i)-(v), a "**Fundamental Transaction**"), then, as a part of such Fundamental Transaction, lawful provision shall be made so that the Holder shall thereafter be entitled to receive upon exercise of this Warrant, during the period specified herein and upon payment of the Exercise Price then in effect, the number of shares of stock or other securities or property resulting from a Fundamental Transaction that a Holder upon exercise of this Warrant would have been entitled to receive in such Fundamental Transaction if this Warrant had been exercised immediately before such Fundamental Transaction, all subject to further adjustment as provided in this Section 9. The foregoing provision of this Section 9(b) shall similarly apply to successive reorganizations, consolidations, mergers, sales and transfers and to the stock or securities of any other corporation that are at the time receivable upon the exercise of this Warrant. If holders of Common Stock are given any choice as to the securities, cash or security to be received in a Fundamental Transaction, then the Holder shall be given the same choice. If the per share consideration payable to the Holder for shares in connection with any such transaction is in a form other than cash or marketable securities, then the value of such consideration shall be determined in good faith by the Company's Board of Directors. If the per share consideration payable to the Holder for shares in connection with any such transaction is in a form other than cash or marketable securities, appropriate adjustment (as determined in good faith by the Company's Board of Directors) shall be made in the application of the provisions of this Warrant with respect to the rights and interests of the Holder after the transaction (including provisions for adjustment to the Exercise Price), to the end that the provisions of this Warrant shall be applicable after that event, as near as reasonably may be, in relation to any shares or other property deliverable after that event upon exercise of this Warrant. The terms of any agreement pursuant to which a Fundamental Transaction is effected shall include terms requiring any such successor or surviving entity to comply with the provisions of this Section 9(b) and insuring that the Warrant (or any such replacement security) will be similarly adjusted upon any subsequent transaction analogous to a Fundamental Transaction.

(c) Adjustment of Exercise Price. If this Warrant is not exercised in full by February 12, 2009, the Exercise Price shall be permanently increased to $7.55 per share, as the same may thereafter be adjusted from time to time as provided under this Section 9, except that the provisions of Section 9(d) below shall not apply with respect to the increase of the Exercise Price pursuant to this Section 9(c).

(d) Number of Warrant Shares. Simultaneously with any adjustment to the Exercise Price pursuant to paragraph (a) of this Section 9, the number of Warrant Shares that may be purchased upon exercise of this Warrant shall be increased or decreased proportionately, so that after such adjustment the aggregate Exercise Price payable hereunder for the adjusted number of Warrant Shares shall be the same as the aggregate Exercise Price in effect immediately prior to such adjustment.

(e) Calculations. All calculations under this Section 9 shall be made to the nearest cent or the nearest $1/100^{th}$ of a share, as applicable. The number of shares of Common Stock outstanding at any given time shall not include shares owned or held by or for the account of the Company, and the disposition of any such shares shall be considered an issue or sale of Common Stock.

(f) Notice of Adjustments. Upon the occurrence of each adjustment pursuant to this Section 9 (other than the adjustment under Section 9(c)), the Company at its expense will promptly compute such adjustment in accordance with the terms of this Warrant and prepare a certificate setting forth such adjustment, including a statement of the adjusted Exercise Price and adjusted number or type of Warrant Shares or other securities issuable upon exercise of this Warrant (as applicable), describing the transactions giving rise to such adjustments and showing in detail the facts upon which such adjustment is based. Upon written request, the Company will promptly deliver a copy of each such certificate to the Holder and to the Company's transfer agent.

(g) Notice of Corporate Events. If the Company (i) declares a dividend or any other distribution of cash, securities or other property in respect of its Common Stock, including without limitation any granting of rights or warrants to subscribe for or purchase any capital stock of the Company or any Subsidiary, (ii) authorizes or approves, enters into any agreement contemplating or solicits stockholder approval for any Fundamental Transaction or (iii) authorizes the voluntary dissolution, liquidation or winding up of the affairs of the Company, then the Company shall deliver to the Holder a notice describing the material terms and conditions of such transaction, at least ten business days prior to the applicable record or effective date on which a Person would need to hold Common Stock in order to participate in or vote with respect to such transaction, and the Company will take all steps reasonably necessary in order to insure that the Holder is given the practical opportunity to exercise this Warrant prior to such time so as to participate in or vote with respect to such transaction; provided, however, that the failure to deliver such notice or any defect therein shall not affect the validity of the corporate action required to be described in such notice.

10. Payment of Exercise Price. The Holder may pay the Exercise Price in one of the following manners:

(a) Cash Exercise. The Holder may deliver immediately available funds;

(b) Senior Secured Notes Exercise. The Holder may surrender Senior Secured Notes having a principal amount plus accrued but unpaid interest equal to the Exercise Price; or

(c) Cashless Exercise. The Holder may notify the Company in an Exercise Notice of its election to utilize cashless exercise, in which event the Company shall issue to the Holder the number of Warrant Shares determined as follows:

$$X = Y [(A-B)/A]$$

where:

X = the number of Warrant Shares to be issued to the Holder.

Y = the number of Warrant Shares with respect to which this Warrant is being exercised.

A = the average of the closing bid and asked prices of the Common Stock quoted in the Over-The-Counter Market Summary or the last reported sale price of Common Stock or the closing price quoted on the Nasdaq National Market or any exchange on which the Common Stock is listed, whichever is applicable, for the five trading days immediately prior to (but not including) the Exercise Date.

B = the Exercise Price.

For purposes of Rule 144 promulgated under the Securities Act, it is intended, understood and acknowledged that the Warrant Shares issued in a cashless exercise transaction shall be deemed to have been acquired by the Holder, and the holding period for the Warrant Shares shall be deemed to have commenced, on the date this Warrant was originally issued.

11. No Rights as Stockholder. Until the exercise of this Warrant, the Holder shall not have or exercise any rights by virtue hereof as a stockholder of the Company.

12. No Fractional Shares. No fractional shares of Warrant Shares will be issued in connection with any exercise of this Warrant. If any fraction of a Warrant Share would, except for the provisions of this Section 12, be issuable upon exercise of this Warrant, the number of Warrant Shares to be issued will be rounded up to the nearest whole share.

13. Notices. Any and all notices or other communications or deliveries hereunder (including, without limitation, any Exercise Notice) shall be in writing and shall be deemed given and effective on the earliest of (i) the date of transmission, if such notice or communication is delivered via facsimile at the facsimile number specified in this Section 13 prior to 5:30 p.m. (New York City time) on a business day, (ii) the next business day after the date of transmission, if such notice or communication is delivered via facsimile at the facsimile number specified in this Section 13 on a day that is not a business day or later than 5:30 p.m. (New York City time) on any business day, (iii) the business day following the date of mailing, if sent by nationally recognized overnight courier service, or (iv) upon actual receipt by the party to whom such notice is required to be given. The addresses for such communications shall be: (i) if to the Company, to Mandalay Media, Inc., 2121 Avenue of the Stars, Suite 2550, Los Angeles, CA 90067 Attention: President, Facsimile No.: 310-277-2741 or such other address as the Company shall so notify the Holder, or (ii) if to the Holder, to the address or facsimile number appearing on the Warrant Register or such other address or facsimile number as the Holder may provide to the Company in accordance with this Section 13.

14. Warrant Agent. The Company shall serve as warrant agent under this Warrant. Upon 10 business days' notice to the Holder, the Company may appoint a new warrant agent. Any corporation into which the Company or any new warrant agent may be merged or any corporation resulting from any consolidation to which the Company or any new warrant agent shall be a party or any corporation to which the Company or any new warrant agent transfers substantially all of its corporate trust or shareholders services business shall be a successor warrant agent under this Warrant without any further act. Any such successor warrant agent shall promptly cause notice of its succession as warrant agent to be mailed (by first class mail, postage prepaid) to the Holder at the Holder's last address as shown on the Warrant Register.

15. Miscellaneous.

(a) This Warrant shall be binding on and inure to the benefit of the parties hereto and their respective successors and assigns. Subject to the preceding sentence, nothing in this Warrant shall be construed to give to any Person other than the Company and the Holder any legal or equitable right, remedy or cause of action under this Warrant. This Warrant may be amended only in writing signed by the Company and the Holder and their successors and assigns.

(b) ALL QUESTIONS CONCERNING THE CONSTRUCTION, VALIDITY, ENFORCEMENT AND INTERPRETATION OF THIS WARRANT SHALL BE GOVERNED BY AND CONSTRUED AND ENFORCED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK, INCLUDING, WITHOUT LIMITATION, SECTIONS 5-1401 AND 5-1402 OF THE NEW YORK GENERAL OBLIGATIONS LAW AND NEW YORK CIVIL PRACTICE LAWS AND RULES 327(b). EACH PARTY HEREBY IRREVOCABLY SUBMITS TO THE EXCLUSIVE JURISDICTION OF THE STATE AND FEDERAL COURTS SITTING IN THE CITY OF NEW YORK, BOROUGH OF MANHATTAN, FOR THE ADJUDICATION OF ANY DISPUTE HEREUNDER OR IN CONNECTION HEREWITH OR WITH ANY TRANSACTION CONTEMPLATED HEREBY OR DISCUSSED HEREIN (INCLUDING WITH RESPECT TO THE ENFORCEMENT OF ANY OF THE TRANSACTION DOCUMENTS), AND HEREBY IRREVOCABLY WAIVES, AND AGREES NOT TO ASSERT IN ANY SUIT, ACTION OR PROCEEDING, ANY CLAIM THAT IT IS NOT PERSONALLY SUBJECT TO THE JURISDICTION OF ANY SUCH COURT, THAT SUCH SUIT, ACTION OR PROCEEDING IS IMPROPER. EACH PARTY HEREBY IRREVOCABLY WAIVES PERSONAL SERVICE OF PROCESS AND CONSENTS TO PROCESS BEING SERVED IN ANY SUCH SUIT, ACTION OR PROCEEDING BY MAILING A COPY THEREOF VIA REGISTERED OR CERTIFIED MAIL OR OVERNIGHT DELIVERY (WITH EVIDENCE OF DELIVERY) TO SUCH PARTY AT THE ADDRESS IN EFFECT FOR NOTICES TO IT UNDER THIS AGREEMENT AND AGREES THAT SUCH SERVICE SHALL CONSTITUTE GOOD AND SUFFICIENT SERVICE OF PROCESS AND NOTICE THEREOF. NOTHING CONTAINED HEREIN SHALL BE DEEMED TO LIMIT IN ANY WAY ANY RIGHT TO SERVE PROCESS IN ANY MANNER PERMITTED BY LAW. THE COMPANY HEREBY WAIVES ALL RIGHTS TO A TRIAL BY JURY.

(c) The headings herein are for convenience only, do not constitute a part of this Warrant and shall not be deemed to limit or affect any of the provisions hereof.

(d) In case any one or more of the provisions of this Warrant shall be invalid or unenforceable in any respect, the validity and enforceability of the remaining terms and provisions of this Warrant shall not in any way be affected or impaired thereby and the parties will attempt in good faith to agree upon a valid and enforceable provision which shall be a commercially reasonable substitute therefor, and upon so agreeing, shall incorporate such substitute provision in this Warrant.

(e) This Warrant may be executed and acknowledged in one or more counterparts by the different parties hereto, each of which when executed shall be deemed to be an original but all of which taken together shall constitute one and the same instrument.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK,

SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the Company has caused this Warrant to be duly executed by its authorized officer as of the date first indicated above.

**MANDALAY MEDIA, INC.**

By: /s/ Jay Wolf
Name: Jay Wolf
Title: Chief Financial Officer

Acknowledged and accepted:

**VALUEACT SMALLCAP MASTER FUND, L.P.**

By: /s/ David Lockwood
Name: David Lockwood
Title: Managing Member

**FORM OF EXERCISE NOTICE**

To be executed by the Holder to exercise the right to purchase shares of Common Stock under the foregoing Warrant.

To: MANDALAY MEDIA, INC.

The undersigned is the Holder of Warrant No. _______ (the "**Warrant**") issued by Mandalay Media, Inc., a Delaware corporation (the "**Company**"). Capitalized terms used herein and not otherwise defined have the respective meanings set forth in the Warrant.

(1) The Warrant is currently exercisable to purchase a total of ______________ Warrant Shares.

(2) The undersigned Holder hereby exercises its right to purchase _________________ Warrant Shares pursuant to the Warrant.

(3) The Holder intends that payment of the Exercise Price shall be made as (check one):

____ "Cash Exercise" under Section 10

____ "Cashless Exercise" under Section 10

____ "Senior Secured Note Due January 30, 2010" having a principal amount plus accrued but unpaid interest equal to the Exercise Price

(4) If the Holder has elected a Cash Exercise, the holder shall pay the sum of $____________ to the Company in accordance with the terms of the Warrant.

(5) Pursuant to this exercise, the Company shall deliver to the holder _______________ Warrant Shares in accordance with the terms of the Warrant.

(6) Following this exercise, the Warrant shall be exercisable to purchase a total of ______________ Warrant Shares.

Dated: ___________, ____

Name of Holder:

(Print)________________

By:__________________

Name:________________

Title:_________________

(Signature must conform in all respects to name of holder as specified on the face of the Warrant)

Warrant Shares Exercise Log

| Date | Number of Warrant Shares Available to be Exercised | Number of Warrant Shares Exercised | Number of Warrant Shares Remaining to be Exercised |
|---|---|---|---|
| | | | |

**MANDALAY MEDIA, INC.**

WARRANT ORIGINALLY ISSUED FEBRUARY 12, 2008

FORM OF ASSIGNMENT

[To be completed and signed only upon transfer of Warrant]

FOR VALUE RECEIVED, the undersigned hereby sells, assigns and transfers unto _________________________________ the right represented by the above-captioned Warrant to purchase ____________ shares of Common Stock to which such Warrant relates and appoints ________________ attorney to transfer said right on the books of the Company with full power of substitution in the premises.

Dated: _______________, ____

________________________________________
(Signature must conform in all respects to name of holder as specified on the face of the Warrant)

________________________________________
Address of Transferee

________________________________________

________________________________________

In the presence of:

__________________________

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**AMENDMENT AND WAIVER TO SENIOR SECURED NOTE**

This **AMENDMENT AND WAIVER TO SENIOR SECURED NOTE** (this "***Amendment***") amends that Senior Secured Note due January 30, 2010 (the "***Secured Note***") issued pursuant to the Securities Purchase Agreement, dated July 30, 2007 (the "***Purchase Agreement***") by and among TWISTBOX ENTERTAINMENT, INC., a Delaware corporation (the "***Company***"), certain subsidiaries of the Company and VALUEACT SMALLCAP MASTER FUND, L.P. (the "***Investor***") and is made and entered into as of February 12, 2008 by and between the Company and the Investor. Capitalized terms used and not otherwise defined in this Amendment are used herein as defined in the Secured Note.

**W I T N E S S E T H:**

WHEREAS, the Company and the Investor desire to amend certain provisions of the Secured Note and to waive compliance with certain provisions of the Secured Note.

WHEREAS, Section 13 of the Secured Note provides that the terms thereof may be amended or waived only pursuant to a written instrument executed by the Company and the holders of 75% of the aggregate principal amount of all Notes issued pursuant to the Purchase Agreement.

WHEREAS, the Investor owns 100% of the aggregate principal amount of all Notes issued pursuant to the Purchase Agreement.

NOW, THEREFORE, in consideration of the foregoing and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereby agree as follows:

**1.** Waivers.

**1.1** Waiver of Section 2. The Investor hereby waives its rights to require the Company to repurchase the Secured Note upon the occurrence of a Fundamental Change pursuant to Section 2 of the Secured Note solely with respect to the transactions contemplated by the Agreement and Plan of Merger dated as of December 31, 2007, by and among Mandalay Media, Inc., a Delaware corporation ("***Parent***"), Twistbox Acquisition, Inc., a Delaware corporation and a wholly-owned subsidiary of Parent, the Company and Adi McAbian and Spark Capital, L.P., as representatives of the stockholders of the Company, as the same may be amended from time to time (the "***Merger Agreement***").

**1.2** Waiver of Section 6(l). The Investor hereby waives compliance with the covenant set forth in Section 6(l) of the Secured Note solely with respect to the transactions contemplated by the Merger Agreement.

**2.** Amendments.

**2.1** Amendment to Section 3. The Secured Note is hereby amended by adding the following paragraph to Section 3:

“(l) Guarantor shall fail to observe its covenant contained in Section 5 of this Note.”

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**2.2** Amendment to Section 5. The Secured Note is hereby amended by deleting the financial covenants consisting of the entire text of Section 5 following Section 5(e) and replacing such text with the following:

"The Company shall maintain a cash balance of not less than $2,500,000 to be held in a "deposit account", as such term is defined in Article 9 of the Uniform Commercial Code as in effect from time to time in the State of New York (the "UCC"), free and clear of all Liens except as set forth in the Guarantee and Security Agreement and will provide the Investor with reasonable proof of such cash balance as reasonably requested by the Investor from time to time.

Mandalay Media, Inc., the Company's parent corporation (the "**Guarantor**"), shall maintain a cash balance of not less than $4,000,000 and will provide the Investor with reasonable proof of such cash balance as reasonably requested by the Investor from time to time. Until at least $8,250,000 of principal has been paid on this Note, Guarantor will not, without the prior written approval of Investor (which approval will not be unreasonably withheld after good faith negotiations between Guarantor and Investor) create, incur, assume or permit to exist (i) all indebtedness, whether or not contingent, for borrowed money or for the deferred purchase price of property or services, (ii) any other indebtedness that is evidenced by a note, bond, debenture or similar instrument, (iii) all obligations under financing leases or letters of credit, (iv) all obligations in respect of acceptances issued or created, (v) all liabilities secured by any lien on any property, and (vi) all guarantee obligations, in each case including the principal amount thereof, any accrued interest thereon and any prepayment premiums or fees or termination fees with respect thereto ((i)-(vi)) together, "**Guarantor Indebtedness**") except: (a) Guarantor Indebtedness with respect to trade accounts of the Guarantor or for services provided to the Guarantor each as arising in the ordinary course of business; (b) Guarantor Indebtedness in connection with a receivables facility not in excess of $25,000,000 and (c) Guarantor Indebtedness incurred in connection with equipment leases entered into in the ordinary course of business subsequent to the date hereof not exceeding $250,000 in the aggregate."

**3.** Effectiveness of this Amendment. This Amendment shall have no force or effect until immediately prior to the Effective Time (as defined in the Merger Agreement).

**4.** Full Force and Effect. Except as modified by this Amendment, all other terms and conditions in the Secured Note shall remain in full force and effect.

**5.** Effect. Unless the context otherwise requires, the Secured Note and this Amendment shall be read together and shall have effect as if the provisions of the Secured Note and this Amendment were contained in one agreement. After the effective date of this Amendment, all references in the Secured Note to "this Note," "hereto," "hereof," "hereunder" or words of like import referring to the Secured Note shall mean the Secured Note as modified by this Amendment.

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**6.** Counterparts. This Amendment may be executed in separate counterparts, all of which taken together shall constitute a single instrument.

[SIGNATURE PAGE FOLLOWS]

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IN WITNESS WHEREOF, the parties hereto have executed this Amendment effective as of the day and year first above written.

**THE COMPANY:**

TWISTBOX ENTERTAINMENT, INC.

By: /s/ Ian Aaron
Name: Ian Aaron
Title: CEO

**INVESTOR:**

VALUEACT SMALLCAP MASTER FUND, L.P.,
By VA Smallcap Partners, LLC, its General Partner

By: /s/ David Lockwood
Name: David Lockwood
Title: Managing Member

With respect to Section 2 hereof, and the amendment to Section 5 of the Secured Note:

MANDALAY MEDIA, INC.

By: /s/ Jay Wolf
Name: Jay Wolf
Title: Chief Financial Officer

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**MANDALAY MEDIA, INC.**
**AMENDMENT TO 2007 EMPLOYEE, DIRECTOR AND CONSULTANT STOCK PLAN**

This Amendment (the "Amendment") to the Mandalay Media, Inc. (the "Company") 2007 Employee, Director and Consultant Stock Plan (the "Plan"), is hereby effective as of February 12, 2008. Capitalized terms used in this Amendment and not otherwise defined herein shall have the meanings ascribed to them in the Plan.

**WHEREAS,** the Company enacted the Plan in accordance with the purposes set forth therein;

**WHEREAS,** Section 31 of the Plan reserves to the Company's board of directors (the "Board") the power in its discretion to amend the Plan at any time and from time to time subject to applicable law and the rights of the Participants on the date of such action;

**WHEREAS,** the Board deems it appropriate to amend the Plan to increase the aggregate number of Shares which may be issued from time to time pursuant to the Plan from three million (3,000,000) shares to seven million (7,000,000) shares; and

**WHEREAS,** the Board deems it appropriate to amend the Plan to increase the maximum number of Shares with respect to which Stock Rights may be granted to any Participant in any fiscal year from five hundred thousand (500,000) to six hundred thousand (600,000).

**NOW, THEREFORE,** the Plan is hereby amended as set forth below:

1. Section 3(a) of the Plan is hereby amended by deleting "three million (3,000,000)" from the second line thereof and inserting "seven million (7,000,000)" in its place.

2. Section 4(c) of the Plan is hereby amended by deleting "500,000" from the third line thereof and inserting "600,000" in its place.

3. The Plan shall remain in full force and effect except as specifically amended herein.

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**TWISTBOX**

**2006 STOCK INCENTIVE PLAN**

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TWISTBOX

2006 STOCK INCENTIVE PLAN

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ARTICLE I
PURPOSE

The purpose of the Plan is to enhance the profitability and value of the Company for the benefit of its shareholder by enabling the Company to offer Eligible Employees, Consultants and Non-Employee Directors stock options, restricted stock and other stock-based awards, thereby creating a means to raise the level of stock ownership by such individuals to attract, retain and reward such individuals and strengthen the mutuality of interests between such individuals and the Company's shareholders.

ARTICLE II
DEFINITIONS

For purposes of the Plan, the following terms shall have the following meanings:

2.1. **"Acquisition Events"** has the meaning set forth in Section 4.2(d).

2.2. **"Award"** means any award under the Plan of any Stock Option, Restricted Stock or Other Stock-Based Award. All Awards shall be confirmed by, and subject to the terms of, a written or electronic agreement executed by the Company and the Participant. Any reference herein to an agreement in writing shall be deemed to include an electronic writing to the extent permitted by applicable law.

2.3. **"Board"** means the Board of Directors of the Company.

2.4. **"Cause"** means, with respect to a Participant's Termination of Employment or Termination of Consultancy, the following: (a) in the case where there is no employment agreement, consulting agreement, change in control agreement or similar agreement in effect between the Company or a Subsidiary and the Participant at the time of the grant of the Award (or where there is such an agreement but it does not define "cause" (or words of like import)), termination due to a Participant's insubordination, dishonesty, fraud, incompetence, moral turpitude, misconduct, refusal to perform his or her duties or responsibilities for any reason other than illness or incapacity or unsatisfactory performance of his or her duties for the Company or a Subsidiary, as determined by the Committee in its sole discretion; or (b) in the case where there is an employment agreement, consulting agreement, change in control agreement or similar agreement in effect between the Company or a Subsidiary and the Participant at the time of the grant of the Award or an Award agreement that defines "cause" (or words of like import), "cause" as defined under such agreement; provided, that with regard to any agreement under which the definition of "cause" only applies on occurrence of a change in control, such definition of "cause" shall not apply until a change in control actually takes place and then only with regard to a termination thereafter. With respect to a Participant's Termination of Directorship, "cause" means an act or failure to act that constitutes cause for removal of a director under applicable Delaware law.

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2.5. **"<u>Change in Control</u>"** has the meaning set forth in Section 10.2.

2.6. **"<u>Code</u>"** means the Internal Revenue Code of 1986, as amended. Any reference to any section of the Code shall also be a reference to any successor provision and any Treasury Regulation promulgated thereunder.

2.7. **"<u>Committee</u>"** means (a) prior to the Registration Date, a committee or subcommittee of the Board appointed from time to time by the Board and (b) following the Registration Date, a committee or subcommittee of the Board appointed from time to time by the Board that shall consist of two or more non-employee directors, each of whom is intended to be, to the extent required by Rule 16b-3, a "non-employee director" as defined in Rule 16b-3 and comply with any applicable stock exchange rules; provided, however, that if for any reason the appointed Committee does not meet the requirements of Rule 16b-3 such noncompliance shall not affect the validity of grants, interpretations or other actions of the Committee. With respect to the application of the Plan to Non -Employee Directors, the Committee shall refer to the Board. Notwithstanding the foregoing, if, and to the extent that no Committee exists that has the authority to administer the Plan, the functions of the Committee shall be exercised by the Board and all references herein to the Committee shall be deemed to be references to the Board.

2.8. **"<u>Common Stock</u>"** means the common stock of the Company, $0.001 par value per share.

2.9. **"<u>Company</u>"** means The WATT Corp., a California corporation, and its successors by operation of law.

2.10. **"<u>Consultant</u>"** means any natural person who is an advisor or consultant that provides bona fide services to the Company or its Subsidiaries, provided that such services are not in connection with the offer or sale of securities in a capital raising transaction, and do not directly or indirectly promote or maintain a market for the Company's or its Subsidiaries' securities.

2 11. **"<u>Disability</u>"** means, with respect to a Participant's Termination, a permanent and total disability as defined in Section 22(e)(3) of the Code; provided, that for Awards that are subject to Section 409A of the Code, Disability shall mean that a Participant is disabled under Section 409A(a)(2)(C)(i) of the Code. A Disability shall only be deemed to occur at the time of the determination by the Committee of the Disability.

2.12. **"<u>Effective Date</u>"** means the effective date of the Plan as defined in Article XV.

2.13. **"<u>Eligible Employee</u>"** means each employee of the company or  a Subsidiary.

2.14. **“<u>Exchange Act</u>”** means the Securities Exchange Act of 1934, as amended, and all rules and regulations promulgated thereunder. Any references to any section of the Exchange Act shall also be a reference to any successor provision and all rules and regulations promulgated thereunder.

2.15 **“<u>Fair Market Value</u>”** means, for purposes of the Plan, unless otherwise required by any applicable provision of the Code, as of any date and except as provided below, (a) if the Common Stock is not readily tradable on an established securities market as determined under Section 409A of the Code or other guidance promulgated thereunder, a value determined by the reasonable application of a reasonable valuation method in accordance with Section 409A of the Code or other guidance promulgated thereunder or (b) if the Common Stock is readily tradable on an established securities market as determined under Section 409A of the Code or other guidance promulgated thereunder, a value based on the closing price reported for the Common Stock on the trading day before the determination. Notwithstanding anything herein to the contrary, for purposes of granting Incentive Stock Options, “Fair Market Value” means the price for Common Stock set by the Committee in good faith based on reasonable methods set forth under Section 422 of the Code including, without limitation, a method utilizing the average of prices of the Common Stock reported on the principal national securities exchange on which it is then traded during a reasonable period designated by the Committee.

2.16. **“<u>Family Member</u>”** means “family member” as defined in Rule 701 under the Securities Act or, following the filing of a Form S-8 pursuant to the Securities Act with respect to the Plan, as in Section Al(5) of the general instructions of Form S-8.

2.17. **“<u>Incentive Stock Option</u>”** means any Stock Option awarded to an Eligible Employee under the Plan intended to be and designated as an “Incentive Stock Option” within the meaning of Section 422 of the Code.

2.18. **“<u>Listing Date</u>”** means the first date upon which any security of the Company is listed (or approved for listing) upon notice of issuance on any securities exchange or designated (or approved for designation) upon notice of issuance as a national market security on an interdealer quotation system if such securities exchange or interdealer quotation system has been certified in accordance with the provisions of Section 25100(o) of the California Corporate Securities Law of 1968.

2.19. **“<u>Non-Employee Director</u>”** means a “non-employee director” as defined in Rule 16b-3.

2.20. **“<u>Non-Qualified Stock Option</u>”** means any Stock Option awarded under the Plan that is not an Incentive Stock Option.

2.21. **“<u>Other Stock-Based Award</u>”** means an Award of Common Stock and other awards (including awards of cash, restricted stock units and performance share awards) made pursuant to Article VIII that are valued in whole or in part by reference to, or are payable in or otherwise based on, Common Stock, including, without limitation, an Award valued by reference to a Subsidiary.

2.22. **"Parent"** means any parent corporation of the Company within the meaning of Section 424(e) of the Code.

2.23. **"Participant"** means any Eligible Employee, Consultant or Non-Employee Director to whom an Award has been granted under the Plan.

2.24. **"Person"** means any individual, corporation, partnership, limited liability company, firm, joint venture, association, joint-stock company, trust, incorporated organization, governmental or regulatory or other entity.

2.25. **"Plan"** means The WAAT Corp. 2006 Stock Incentive Plan, as amended from time to time.

2.26. **"Registration Date"** means the first date after the Effective Date (a) on which the Company sells its Common Stock in a bona fide, firm commitment underwriting pursuant to a registration statement under the Securities Act or (b) any class of common equity securities of the Company is required to be registered under Section 12 of the Exchange Act.

2.27. **"Restricted Stock"** means a share of Common Stock issued under the Plan that is subject to restrictions under Article VII.

2.28. **"Restriction Period"** has the meaning set forth in Section 7.1.

2.29. **"Retirement"** means a Termination of Employment or Termination of Consultancy for any reason other than for Cause at or after age 65 or such earlier date after age 50 as may be approved by the Committee with regard to such Participant. With respect to a Participant's Termination of Directorship, Retirement means the failure to stand for reelection (other than a Termination for Cause) on or after a Participant has attained age 65 or, with the consent of the Board, before age 65 but after age 50.

2.30. **"Rule 16b-3"** means Rule 16b-3 under Section 16(b) of the Exchange Act as then in effect or any successor provision.

2.31. **"Securities Act"** means the Securities Act of 1933, as amended and all rules and regulations promulgated thereunder. Any reference to any section of the Securities Act shall also be a reference to any successor provision and all rules and regulations promulgated thereunder.

2.32. **"Shareholders Agreement"** means the Shareholders Agreement dated December 16, 2005 entered into by and among the Company and certain individuals set forth therein, as amended from time to time in accordance with the terms thereof.

2.33. **"Stock Option"** or **"Option"** means any option to purchase shares of Common Stock granted to Eligible Employees, Non-Employee Directors or Consultants under Article VI.

2.34. **"Subsidiary"** means any subsidiary corporation of the Company within the meaning of Section 424(f) of the Code.

2.35.**"Ten Percent Stockholder"** means a person owning stock possessing rare than 10% of the total combined voting power of all classes of stock of the Company, its Subsidiaries or its Parent.

2.36. **"Termination"** means a Termination of Consultancy, Termination of Directorship or Termination of Employment, as applicable.

2.37. **"Termination of Consultancy"** means: (a) that the Consultant is no longer acting as a consultant to the Company or a Subsidiary; or (b) when an entity that is retaining a Participant as a Consultant ceases to be a Subsidiary unless the Participant otherwise is, or thereupon becomes, a Consultant to the Company or a Subsidiary at the time the entity ceases to be a Subsidiary. In the event that a Consultant becomes an Eligible Employee or a Non-Employee Director upon the termination of his or her consultancy, unless otherwise determined by the Committee, in its sole discretion, no Termination of Consultancy shall be deemed to occur until such time as such Consultant is no longer a Consultant, Eligible Employee or Non-Employee Director. Notwithstanding the foregoing, the Committee may otherwise define Termination of Consultancy in the Award agreement or, if no rights of a Participant are reduced, may otherwise define Termination of Consultancy thereafter.

2.38. **"Termination of Directorship"** means that the Non-Employee Director has ceased to the a director of the Company; except that if a Non-Employee Director becomes an Eligible Employee or a Consultant upon the termination of his or her directorship, his or her ceasing to be a director of the Company shall not be treated as a Termination of Directorship unless and until the Participant has a Termination of Employment or Termination of Consultancy, as the case may be.

2.39. **"Termination of Employment"** means: (a) a termination of employment (for reasons other than a military or approved personal leave of absence) of a Participant from the Company and its Subsidiaries; or (b) when an entity that is employing a Participant ceases to be a Subsidiary, unless the Participant otherwise is, or thereupon becomes, employed by the Company or a Subsidiary at the time the entity ceases to be a Subsidiary. In the event that an Eligible Employee becomes a Consultant or Non-Employee Director upon the termination of his or her employment, unless otherwise determined by the Committee, in its sole discretion, no Termination of Employment shall be deemed to occur until such time as such Eligible Employee is no longer an Eligible Employee, Consultant or Non-Employee Director. Notwithstanding the foregoing, the Committee may otherwise define Termination of Employment in the Award agreement or, if no rights of a Participant are reduced, may otherwise define Termination of Employment thereafter.

2.40. "Transfer" means: (a) when used as a noun, any direct or indirect transfer, sale, assignment, pledge, hypothecation, encumbrance or other disposition (including the issuance of equity in a Person), whether for value or no value and whether voluntary or involuntary (including by operation of law), and (b) when used as a verb, to directly or indirectly transfer, sell, assign, pledge, encumber, charge, hypothecate or otherwise dispose of (including the issuance of equity in a Person) whether for value or for no value and whether voluntarily or involuntarily (including by operation of law). "Transferred" and "Transferable" shall have a correlative meaning.

## ARTICLE III
## ADMINISTRATION

3.1. The Committee. The Plan shall be administered and interpreted by the Committee.

3.2. Grants of Awards. The Committee shall have full authority to grant Awards to Eligible Employees, Consultants and Non-Employee Directors pursuant to the terms of the Plan. All Awards shall be granted by, confirmed by, and subject to the terms of, a written agreement executed by the Company and the Participant. In particular, the Committee shall have the authority:

(a) to select the Eligible Employees, Consultants and Non-Employee Directors to whom Awards may from time to time be granted hereunder;

(b) to determine whether and to what extent Awards are to be granted hereunder to one or more Eligible Employees, Consultants and Non-Employee Directors;

(c) to determine, in accordance with the terms of the Plan, the number of shares of Common Stock to be covered by each Award granted hereunder;

(d) to determine the terms and conditions, not inconsistent with the terms of the Plan, of any Award granted hereunder (including, but not limited to, the exercise or purchase price (if any), any restriction or limitation, any vesting schedule or acceleration thereof and any forfeiture restrictions or waiver thereof, regarding any Award and the shares of Common Stock relating thereto, based on such factors, if any, as the Committee shall determine, in its sole discretion);

(e) to determine whether and under what circumstances a Stock Option may be settled in cash, Common Stock and/or Restricted Stock under Section 6.3(d);

(f) to determine whether, to what extent and under what circumstances to provide loans (which may be on a recourse basis and shall bear interest at the rate the Committee shall provide) to Participants in order to exercise Awards or to purchase or pay for shares of Common Stock issuable pursuant to Awards, provided that on and after the Registration Date executive officers and directors are not eligible to receive such loans, and provided further, that all outstanding loans shall be repaid before the Registration Date;

(g) to determine whether a Stock Option is an Incentive Stock Option or Non-Qualified Stock Option;

(h) to determine whether to require an Eligible Employee, Non-Employee Director or Consultant, as a condition of the granting of any Award, not to sell or otherwise dispose of shares of Common Stock acquired pursuant to the Award for a period of time as determined by the Committee, in its sole discretion, following the date of the Award;

(i) to modify, extend or renew an Award, subject to Article XI herein, provided, however, that if a Stock Option is modified, extended or renewed and thereby deemed to be the issuance of a new Stock Option under the Code or the applicable accounting rules, the exercise price of a Stock Option may continue to be the original exercise price even if less than the Fair Market Value of the Common Stock at the time of such modification, extension or renewal; and

(j) to offer to buy out a Stock Option previously granted, based on such terms and conditions as the Committee shall establish and communicate to the Participant at the time such offer is made.

3.3. Guidelines. Subject to Article XI hereof, the Committee shall have the authority to adopt, alter and repeal such administrative rules, guidelines and practices governing the Plan and perform all acts, including the delegation of its administrative responsibilities to the extent permitted by applicable law and applicable stock exchange rules, as it shall, from time to time, deem advisable; to construe and interpret the terms and provisions of the Plan and any Award granted under the Plan (and any agreements relating thereto); and to otherwise supervise the administration of the Plan. The Committee may correct any defect, supply any omission or reconcile any inconsistency in the Plan or in any agreement relating thereto in the manner and to the extent it shall deem necessary to effectuate the purpose and intent of the Plan. The Committee may adopt special guidelines and provisions for persons who are residing in or employed in, or subject to, the taxes of, any domestic or foreign jurisdictions to comply with applicable tax and securities laws and may impose any limitations and restrictions that it deems necessary to comply with the applicable tax and securities laws of such domestic or foreign jurisdictions. To the extent applicable, the Plan is intended to comply with the applicable requirements of Rule 16b-3 and shall be limited, construed and interpreted in a manner so as to comply therewith.

3.4. Decisions Final. Any decision, interpretation or other action made or taken in good faith by or at the direction of the Company, the Board or the Committee (or any of its members) arising out of or in connection with the Plan shall be within the absolute discretion of all and each of them, as the case may be, and shall be final, binding and conclusive on the Company and all employees and Participants and their respective heirs, executors, administrators, successors and assigns.

3.5. Reliance on Counsel. The Company, the Board or the Committee may consult with legal counsel, who may be counsel for the Company or other counsel, with respect to its obligations or duties hereunder, or with respect to any action or proceeding or any question of law, and shall not be liable with respect to any action taken or omitted by it in good faith pursuant to the advice of such counsel.

3.6. Procedures. If the Committee is appointed, the Board shall designate one of the members of the Committee as chairman and the Committee shall hold meetings, subject to the By-Laws of the Company, at such times and places as it shall deem advisable, including, without limitation, by telephone conference or by written consent to the extent permitted by applicable law. A majority of the Committee members shall constitute a quorum. All determinations of the Committee shall be made by a majority of its members. Any decision or determination reduced to writing and signed by all the Committee members in accordance with the By-Laws of the Company, shall be fully as effective as if it had been made by vote at a meeting duly called and held. The Committee shall keep minutes of its meetings and shall make such rules and regulations for the conduct of its business as it shall deem advisable.

3.7. Designation of Consultants/Liability. (a) The Committee may designate employees of the Company and professional advisors to assist the Committee in the administration of the Plan (to the extent permitted by applicable law and applicable stock exchange rules) and may grant authority to officers to execute agreements or other documents on behalf of the Committee.

(b) The Committee may employ such legal counsel, consultants and agents as it may deem desirable for the administration of the Plan and may rely upon any opinion received from any such counsel or consultant and any computation received from any such consultant or agent. Expenses incurred by the Committee or the Board in the engagement of any such counsel, consultant or agent shall be paid by the Company. The Committee, its members and any person designated pursuant to this Section 3.7 above shall not be liable for any action or determination made in good faith with respect to the Plan. To the maximum extent permitted by applicable law, no officer of the Company or member or former member of the Committee or of the Board shall be liable for any action or determination made in good faith with respect to the Plan or any Award granted under it.

3.8. Indemnification. To the maximum extent permitted by applicable law and the Certificate of Incorporation and By-Laws of the Company and to the extent not covered by insurance directly insuring such person, each officer and member or former member of the Committee or the Board shall be indemnified and held harmless by the Company against any cost or expense (including reasonable fees of counsel reasonably acceptable to the Committee) or liability (including any sum paid in settlement of a claim with the approval of the Committee), and advanced amounts necessary to pay the foregoing at the earliest time and to the fullest extent permitted, arising out of any act or omission to act in connection with the administration of the Plan, except to the extent arising out of such officer's, member's or former member's own fraud or bad faith. Such indemnification shall be in addition to any rights of indemnification the employees, officers, directors or members or former officers, directors or members may have under applicable law or under the Certificate of Incorporation or By-Laws of the Company or any Subsidiary. Notwithstanding anything else herein, this indemnification will not apply to the actions or determinations made by an individual with regard to Awards granted to him or her under the Plan.

3.9. Shareholders Agreement. Notwithstanding anything herein to the contrary, the Plan and the operation and administration of the Plan (including any action taken by the Committee) shall be subject to the terms and conditions set forth in the Shareholders Agreement to the greatest extent permissible under applicable law.

## ARTICLE IV
## SHARE AND OTHER LIMITATIONS

4.1. Shares. The aggregate number of shares of Common Stock that may be issued or used for reference purposes under the Plan or with respect to which Awards may be granted under the Plan shall not exceed 2,463,422 shares (subject to any increase or decrease pursuant to Section 4.2), which may be either authorized and unissued Common Stock or Common Stock held in or acquired for the treasury of the Company or both. To the extent that a distribution pursuant to an Award is made in cash, the share reserve shall be reduced by the number of shares of Common Stock bearing a value equal to the amount of the cash distribution as of the time that such amount was determined.

4.2. Changes.

(a) The existence of the Plan and the Awards granted hereunder shall not affect in any way the right or power of the Board or the shareholders of the Company to make or authorize (i) any adjustment, recapitalization, reorganization or other change in the Company's capital structure or its business, (ii) any merger or consolidation of the Company or any Subsidiary, (iii) any issuance of bonds, debentures, preferred or prior preference stock ahead of or affecting the Common Stock, (iv) the dissolution or liquidation of the Company or any Subsidiary, (v) any sale or transfer of all or part of the assets or business of the Company or any Subsidiary or (vi) any other corporate act or proceeding.

(b) Subject to the provisions of Section 4.2(d), in the event of any such change in the capital structure or business of the Company by reason of any stock split, reverse stock split, stock dividend, combination or reclassification of shares, recapitalization, or other change in capital structure of the Company, merger, consolidation, spin-off, reorganization, partial or complete liquidation, issuance of rights or warrants to purchase any Common Stock or securities convertible into Common Stock, any sale or transfer of all or part of the Company's assets or business, or any other corporate transaction or event having an effect similar to any of the foregoing and effected without receipt of consideration by the Company, then the aggregate number and kind of shares that thereafter may be issued under the Plan, the number and kind of shares or other property (including cash) to be issued upon exercise of an outstanding Stock Option or under other Awards ("Exercisable Awards") granted under the Plan and the purchase or exercise price thereof shall be appropriately adjusted consistent with such change in such manner as the Committee may deem equitable to prevent substantial dilution or enlargement of the rights granted to, or available for, Participants under the Plan, and any such adjustment determined by the Committee in good faith shall be final, binding and conclusive on the Company and all Participants and their respective heirs, executors, administrators, successors and assigns. In connection with any event described in this sub-section, the Committee may provide, in its sole discretion, for the cancellation of any outstanding Awards and payment in cash or other property in exchange therefor. Except as provided in this Section 4.2, a Participant shall have no rights by reason of any issuance by the Company of any class of securities convertible into stock of any class, any subdivision or consolidation of shares of stock of any class, the payment of any stock dividend, any other increase or decrease in the number of shares of stock of any class, any sale or transfer of all or part of the Company's assets or business or any other change affecting the Company's capital structure or business.

(c) Fractional shares of Common Stock resulting from any adjustment in Exercisable Awards pursuant to Section 4.2(a) or (b) shall be aggregated until, and eliminated at the time of such adjustment by rounding-down for fractions less than one-half and rounding-up for fractions equal to or greater than one-half; provided, however, that any such fractional shares of Common Stock resulting from any adjustment to an Incentive Stock Option shall be eliminated by rounding down. No fractional shares of Common Stock shall be issued under the Plan. Notice of any adjustment shall be given by the Committee to each Participant whose Award has been adjusted and such adjustment (whether or not such notice is given) shall be effective and binding for all purposes of the Plan.

(d) In the event of a merger or consolidation in which the Company is not the surviving entity or in the event of any transaction that results in the acquisition of all or substantially all of the Company's outstanding Common Stock (or the acquisition of more than fifty percent (50%)ofthe voting interests of all outstanding classes of stock of the Company) by a single person or entity or by a group of persons and/or entities acting in concert, or in the event of the sale or transfer of all or substantially all of the Company's assets (all of the foregoing being referred to as "Acquisition Events"), then the Committee may, in its sole discretion, terminate all outstanding Exercisable Awards, effective as of the date of the Acquisition Event, by delivering notice of termination to each Participant at least 20 days prior to the date of consummation of the Acquisition Event, in which case during the period from the date on which such notice of termination is delivered to the consummation of the Acquisition Event, each such Participant shall have the right to exercise his or her Exercisable Awards that are then outstanding to the extent vested as of the date on which such notice of termination is delivered (or, at the discretion of the Committee, without regard to, or subject to, any limitations on exercisability otherwise contained in the Award agreements), but any such exercise shall be contingent upon and subject to the occurrence of the Acquisition Event, and, provided that, if the Acquisition Event does not take place within a specified period after giving such notice for any reason whatsoever, the notice and exercise pursuant thereto shall be null and void. If the Acquisition Event does take place after giving of such notice, any Exercisable Award not exercised prior to the date of the consummation of such Acquisition Event shall be forfeited simultaneous with the consummation of the Acquisition Event.

If an Acquisition Event occurs but the Committee does not terminate the outstanding Exercisable Awards pursuant to this Section 4.2(d), then the provisions of Section 4.2(b) shall apply.

4.3. Minimum Purchase Price. Notwithstanding any provision of the Plan to the contrary, if authorized but previously unissued shares of Common Stock are issued under the Plan, such shares shall not be issued for a consideration that is less than as permitted under applicable law.

4.4. Assumption of Awards. Stock options that were granted by the Company prior to the Effective Date shall for all purposes be treated as if granted under the Plan and shall be governed by the terms of the Plan as of the Effective Date.

## ARTICLE V
## ELIGIBILITY

5.1. General Eligibility. All Eligible Employees, Non-Employee Directors and Consultants and prospective Eligible Employees, Consultants and Non-Employee Directors are eligible to be granted Non-Qualified Stock Options, Restricted Stock and Other Stock-Based Awards. Eligibility for the grant of Awards and actual participation in the Plan shall be determined by the Committee in its sole discretion.

5.2. Incentive Stock Options. All Eligible Employees of the Company and its Subsidiaries are eligible to be granted Incentive Stock Options under the Plan. Eligibility for the grant of an Incentive Stock Option and actual participation in the Plan shall be determined by the Committee in its sole discretion.

5.3. General Requirement. The granting, vesting and exercise of Awards granted to a prospective Eligible Employee Consultant or Non-Employee Director are conditioned upon such individual actually becoming an Eligible Employee, Consultant or Non-Employee Director, provided that no Award may be granted to a prospective Eligible Employee, Consultant or Non-Employee Director unless the Company determines that the Award will comply with applicable laws, including the securities laws of all relevant jurisdictions.

ARTICLE VI
STOCK OPTIONS

6.1. Stock Options. Each Stock Option granted hereunder shall be one of two types: (a) an Incentive Stock Option; or (b) a Non-Qualified Stock Option.

6.2. Grants. Subject to the provisions of Article V, the Committee shall have the authority to grant to any Eligible Employee one or more Incentive Stock Options, Non-Qualified Stock Options or both types of Stock Options. To the extent that any Stock Option does not qualify as an Incentive Stock Option (whether because of its provisions or the time or manner of its exercise or otherwise), such Stock Option or the portion thereof that does not qualify, shall constitute a separate Non-Qualified Stock Option. The Committee shall have the authority to grant any Consultant or Non-Employee Director one or more Non-Qualified Stock Options.

6.3. Terms of Stock Options. Stock Options shall be subject to the following terms and conditions, and shall be in such form and contain such additional terms and conditions, not inconsistent with the terms of the Plan (including Article XVII), as the Committee shall deem desirable:

(a) *Exercise Price* The exercise price per share of Common Stock subject to a Stock Option shall be determined by the Committee at the time of grant; provided that the per share exercise price of a Stock Option shall not be less than 100% of the Fair Market Value of the share of Common Stock at the time of grant; and provided, further, that if an Incentive Stock Option is granted to a Ten Percent Stockholder, the exercise price per share shall be no less than 110% of the Fair Market Value of the Common Stock.

(b) *Stock Option Term.* The term of each Stock Option shall be fixed by the Committee; provided, however, that no Stock Option shall be exercisable more than 10 years after the date such Stock Option is granted; and further provided that the term of an Incentive Stock Option granted to a Ten Percent Stockholder shall not exceed five years.

(c) *Exercisability.* Stock Options shall be exercisable at such time or times and subject to such terms and conditions as shall be determined by the Committee at the time of grant. If the Committee provides, in its discretion, that any Stock Option is exercisable subject to certain limitations (including, without limitation, that such Stock Option is exercisable only in installments or within certain time periods or upon the attainment of certain financial results or other criteria), the Committee may waive such limitations on the exercisability at any time at or after grant in whole or in part (including, without limitation, waiver of the installment exercise provisions or acceleration of the time at which such Stock Option may be exercised), based on such factors, if any, as the Committee shall determine, in its sole discretion.

(d) *Method of Exercise.* Subject to whatever installment exercise and waiting period provisions apply under sub-section (c) above, to the extent vested, a Stock Option may be exercised in whole or in part at any time and from time to time during the Stock Option term by giving written notice of exercise to the Committee specifying the number of shares to be acquired. Such notice shall be accompanied by payment in full of the purchase price as follows: (i) in cash or by check, bank draft or money order payable to the order of the Company; (ii) to the extent permitted by law, if the Common Stock is traded on a national securities exchange, The Nasdaq Stock Market, Inc. or quoted on a national quotation system sponsored by the National Association of Securities Dealers, through a procedure whereby the Participant delivers irrevocable instructions to a broker reasonably acceptable to the Committee to deliver promptly to the Company an amount equal to the purchase price, to the extent authorized by the Committee; or (iii) on such other terms and conditions as may be acceptable to the Committee (including, without limitation, the relinquishment of Stock Options or by payment in full or in part in the form of Common Stock owned by the Participant (and for which the Participant has good title free and clear of any liens and encumbrances) based on the Fair Market Value of the Common Stock on the payment date). No shares of Common Stock shall be issued until payment therefor, as provided herein, has been made or provided for.

(e) *Incentive Stock Option Limitations.* To the extent that the aggregate Fair Market Value (determined as of the time of grant) of the Common Stock with respect to which Incentive Stock Options are exercisable for the first time by an Eligible Employee during any calendar year under the Plan and/or any other stock option plan of the Company, any Subsidiary or any Parent exceeds $100,000, such Options shall be treated as Non-Qualified Stock Options. In addition, if an Eligible Employee does not remain employed by the Company, any Subsidiary or any Parent at all times from the time an Incentive Stock Option is granted until three months prior to the date of exercise thereof (or such other period as required by applicable law), such Stock Option shall be treated as a Non-Qualified Stock Option. Should any provision of the Plan not be necessary in order for the Stock Options to qualify as Incentive Stock Options, or should any additional provisions be required, the Committee may amend the Plan accordingly, without the necessity of obtaining the approval of the shareholders of the Company.

(f) *Form, Modification, Extension and Renewal of Stock Options.* Subject to the terms and conditions and within the limitations of the Plan, Stock Options shall be evidenced by such form of agreement or grant as is approved by the Committee, and the Committee may (i) modify, extend or renew outstanding Stock Options (provided that the rights of a Participant are not reduced without his or her consent), and (ii) accept the surrender of outstanding Stock Options (up to the extent not theretofore exercised) and authorize the granting of new Stock Options in substitution therefor (to the extent not theretofore exercised).

(g) *Early Exercise.* The Committee may provide that a Stock Option include a provision whereby the Participant may elect at any time before the Participant's Termination to exercise the Stock Option as to any part or all of the shares of Common Stock subject to the Stock Option prior to the full vesting of the Stock Option and such shares shall be subject to certain restrictions as determined by the Committee and be treated as Restricted Stock. Any unvested shares of Common Stock so purchased may be subject to a repurchase option in favor of the Company or to any other restriction the Committee determines to be appropriate.

(h) *Other Terms and Conditions.* Stock Options may contain such other provisions, which shall not be inconsistent with any of the terms of the Plan, as the Committee shall deem appropriate.

## ARTICLE VII
## RESTRICTED STOCK

7.1. Awards of Restricted Stock. The Committee shall determine the eligible Participants to whom, and the time or times at which, grants of Restricted Stock will be made, the number of shares to be awarded, the purchase price (if any) to be paid by the Participant (subject to Section 7.2), the time or times at which such Awards may be subject to forfeiture (if any), the vesting schedule (if any) and rights to acceleration thereof, and all other terms and conditions of the Awards. The Committee may condition the grant or vesting of Restricted Stock upon the attainment of specified performance targets or such other factors as the Committee may determine, in its sole discretion. Unless otherwise determined by the Committee, the Participant shall not be permitted to transfer shares of Restricted Stock awarded under the Plan during a period set by the Committee (if any) (the "Restriction Period") commencing with the date of such Award, as set forth in the applicable Award agreement.

7.2. Awards and Certificates. A Participant selected to receive Restricted Stock shall not have any rights with respect to such Award, unless and until such Participant has delivered to the Company a fully executed copy of the Award agreement evidencing the Award and has otherwise complied with the applicable terms and conditions of such Award. Further, such Award shall be subject to the following conditions and the conditions specified in Article XVII:

(a) *Purchase Price.* The purchase price of Restricted Stock shall be determined by the Committee, but shall not be less than as permitted under applicable law.

(b) *Acceptance.* Awards of Restricted Stock must be accepted within a period of 60 days (or such shorter period as the Committee may specify at grant) after the grant date, by executing an Award agreement and by paying the purchase price (if any) the Committee has designated thereunder.

(c) *Legend.* Each Participant receiving Restricted Stock shall be issued a stock certificate in respect of such shares of Restricted Stock, unless the Committee elects to use another system, such as book entries by the transfer agent, as evidencing ownership of Restricted Stock. Such certificate shall be registered in the name of such Participant, and shall bear an appropriate legend referring to the terms, conditions, and restrictions applicable to such Award, substantially in the following form:

"The anticipation, alienation, attachment, sale, transfer, assignment, pledge, encumbrance or charge of the shares of stock represented hereby are subject to the terms and conditions (including forfeiture) of The WAAT Corp. (the "Company") 2006 Stock Incentive Plan (the "Plan"), and an Award agreement entered into between the registered owner and the Company dated __________. Copies of such Plan and Award agreement are on file at the principal office of the Company."

(d) *Custody.* The Committee may require that any stock certificates evidencing such shares be held in custody by the Company until the restrictions thereon shall have lapsed, and that, as a condition to the grant of Restricted Stock, the Participant shall have delivered a duly signed stock power, endorsed in blank, relating to the Common Stock covered by such Award.

(e) *Rights as Shareholder.* Except as provided in this sub-section and sub-section (d) above and as otherwise determined by the Committee, the Participant shall have, with respect to the shares of Restricted Stock, all of the rights of a holder of shares of Common Stock of the Company including, without limitation, the right to receive any dividends, the right to vote such shares and, subject to and conditioned upon the full vesting of shares of Restricted Stock, the right to tender such shares. Notwithstanding the foregoing, the payment of dividends shall be deferred until, and conditioned upon, the expiration of the applicable Restriction Period, unless the Committee, in its sole discretion, specifies otherwise at the time of the grant of the Award.

(f) *Lapse of Restrictions.* If and when the Restriction Period expires without a prior forfeiture of the Restricted Stock subject to such Restriction Period, the certificates for such shares shall be delivered to the Participant. All legends shall be removed from said certificates at the time of delivery to the Participant except as otherwise required by applicable law or the Shareholders Agreement. Notwithstanding the foregoing, actual certificates shall not be issued to the extent that book entry recordkeeping is used.

ARTICLE VIII
OTHER STOCK-BASED AWARDS

8.1. Awards of Other Stock-Based Awards. The Committee shall have authority to determine the persons to whom and the time or times at which Other Stock-Based Awards shall be made, the number of shares of Common Stock or dollar amount to be awarded pursuant to such Awards, and all other conditions of the Awards. The Committee may also provide for the grant of Common Stock or payment of the dollar amount under such Awards upon the completion of a specified performance period or such other criteria as determined by the Committee, in its sole discretion.

8.2. Terms and Conditions. Other Stock-Based Awards made pursuant to this Article VIII shall be subject to the terms of the applicable Award agreement and following terms and conditions and the conditions specified in Article XVII:

(a) Dividends. Unless otherwise determined by the Committee at the time of award, subject to the provisions of the Award agreement or grant letter and the Plan, the recipient of an Award under this Article VIII shall be entitled to receive, currently or on a deferred basis, dividends or dividend equivalents with respect to the number of shares of Common Stock covered by the Award, as determined at the time of the Award by the Committee, in its sole discretion.

(b) Vesting. Any Award under this Article VIII and any Common Stock covered by any such Award shall vest or be forfeited to the extent so provided in the Award agreement, as determined by the Committee, in its sole discretion.

(c) Waiver of Limitation. The Committee may, in its sole discretion, waive in whole or in part any or all of the limitations imposed hereunder (if any) with respect to all or any portion of an Award under this Article VIII.

(d) Price. Common Stock or Other Stock-Based Awards issued on a bonus basis under this Article VIII may be issued for no cash consideration; Common Stock or Other Stock-Based Awards purchased pursuant to a purchase right awarded under this Article VIII shall be priced as determined by the Committee. Subject to Section 4.3, the purchase price of shares of Common Stock or Other Stock-Based Awards may be zero to the extent permitted by applicable law, and, to the extent not so permitted, such purchase price may not be less than par value. The purchase of shares of Common Stock or Other Stock-Based Awards may be made on either an after-tax or pre-tax basis, as determined by the Committee; provided, however, that if the purchase is made on a pre-tax basis, such purchase shall be made pursuant to a deferred compensation program established by the Committee, which will be deemed a part of the Plan.

(e) Payment. The form of payment for the Other Stock-Based Awards shall be specified in the Award agreement.

(f)

ARTICLE IX
NON-TRANSFERABILITY AND TERMINATION OF
EMPLOYMENT/CONSULTANCY/DIRECTORSHIP

9.1. Non-Transferability.

(a) Except as otherwise specifically provided herein, no Stock Option shall be Transferable by the Participant otherwise than by will or by the laws of descent and distribution. All Stock Options shall be exercisable, during the Participant's lifetime, only by the Participant. Shares of Restricted Stock or Other Stock-Based Awards may not be Transferred prior to the date on which shares are issued, or if later, the date on which any applicable restriction, performance or deferral period lapses. Any attempt to Transfer any such Award or share of Common Stock not in accordance with the provisions of Section 12.2 shall be void and immediately cancelled, and no Award shall in any manner be liable for or subject to the debts, contracts, liabilities, engagements or torts of any person who shall be entitled to such Award, nor shall it be subject to attachment or legal process for or against such person.

(b) Notwithstanding the foregoing, the Committee may determine, in its sole discretion, at the time of grant or thereafter that a Non-Qualified Stock Option that is otherwise not Transferable pursuant to this Section 9.1 is Transferable to a Family Member in whole or in part and in such circumstances, and under such conditions, as specified by the Committee. A Non-Qualified Stock Option that is Transferred to a Family Member pursuant to the preceding sentence (i) may not be subsequently Transferred otherwise than by will or by the laws of descent and distribution and (ii) remains subject to the terms of the Plan and the Stock Option agreement. Any shares of Common Stock acquired upon the exercise of a Stock Option by a permissible transferee of a Stock Option or a permissible transferee pursuant to a Transfer after the exercise of the Stock Option shall be subject to the terms of the Plan and the Stock Option agreement, including, without limitation, the provisions of Article XII hereof.

9.2. Termination. The following rules apply with regard to the Termination of a Participant.

(a) *Rules Applicable to Stock Options*. Unless otherwise determined by the Committee at grant or, if no rights of the Participant are reduced, thereafter:

(i) *Termination by Reason of Death, Disability or Retirement.* If a Participant's Termination is by reason of death, Disability or Retirement, all Stock Options that are held by such Participant that are vested and exercisable at the time of the Participant's Termination may be exercised by the Participant (or, in the case of death, by the legal representative of the Participant's estate) at any time within a period of one year from the date of such Termination, but in no event beyond the expiration of the stated term of such Stock Options; provided, however, that in the case of Retirement, if the Participant dies within such exercise period, all unexercised Stock Options held by such Participant shall thereafter be exercisable, to the extent to that they were exercisable at the time of death, for a period of one year from the date of such death, but in no event beyond the expiration of the stated term of such Stock Options.

(ii) *Involuntary Termination Without Cause*. If a Participant's Termination is by involuntary termination without Cause, all Stock Options that are held by such Participant that are vested and exercisable at the time of the Participant's Termination may be exercised by the Participant at any time within a period of 90 days from the date of such Termination, but in no event beyond the expiration of the stated term of such Stock Options.

(iii) *Voluntary Termination*. If a Participant's Termination is voluntary (other than a voluntary termination described in Section 9.2(a)(iv)(2) below), all Stock Options that are held by such Participant that are vested and exercisable at the time of the Participant's Termination may be exercised by the Participant at any time within a period of 30 days from the date of such Termination, but in no event beyond the expiration of the stated terms of such Stock Options.

(iv) *Termination for Cause*. If a Participant's Termination: (1) is for Cause or (2) except with respect to Participants whose awards are subject to Section 260.140.41 of Title 10 of the California Code of Regulations, is a voluntary Termination (as provided in sub-section (iii) above) after the occurrence of an event that would be grounds for a Termination for Cause, all Stock Options, whether vested or not vested, that are held by such Participant shall thereupon terminate and expire as of the date of such Termination.

(v) *Unvested Stock Options*. Stock Options that are not vested as of the date of a Participant's Termination for any reason shall terminate and expire as of the date of such Termination.

(b) *Rules Applicable to Restricted Stock and Other Stock-Based Awards*. Unless otherwise determined by the Committee at grant or, if no rights of the Participant are reduced, thereafter, upon a Participant's Termination for any reason: (i) during the relevant Restriction Period, all Restricted Stock still subject to restriction shall be forfeited; and (ii) any unvested Other Stock-Based Awards shall be forfeited.

ARTICLE X

10.1. Benefits. Except as otherwise provided by the Committee in an Award agreement, in the event of a Change in Control of the Company after the Effective Date, the Committee may, but shall not be obligated to:

(a) accelerate, vest or cause the restrictions to lapse with respect to, all or any portion of an Award; or

(b) cancel Awards for fair value (as determined in good faith by the Committee) which, in the case of Options, may equal the excess, if any, of the value of the consideration to be paid in the Change in Control transaction to holders of the same number of shares of Common Stock subject to such Options (or, if no consideration is paid in any such transaction, the Fair Market Value of the shares of Common Stock subject to such Options) over the aggregate exercise price of such Options; or

(c) provide for the issuance of substitute Awards that will substantially preserve the otherwise applicable terms of any affected Awards previously granted hereunder as determined by the Committee in its sole discretion.

10.2. Change in Control Defined. Unless otherwise determined by the Committee in the applicable Award agreement, a "Change in Control" shall be the occurrence of any of the following after the Effective Date: (i) any acquisition, by merger or otherwise, of equity securities of the Company, from shareholders of the Company, representing at least 75% of the outstanding voting securities of the Company, by any unaffiliated third party; or (ii) any sale of all or substantially all of the assets of the Company to any unaffiliated third party.

ARTICLE XI
TERMINATION OR AMENDMENT OF PLAN

Notwithstanding any other provision of the Plan, the Board or the Committee may at any time, and from time to time, amend, in whole or in part, any or all of the provisions of the Plan (including any amendment deemed necessary to ensure that the Company may comply with any regulatory requirement referred to in Article XIV or Section 409A of the Code as described below), or suspend or terminate it entirely, retroactively or otherwise; provided, however, that if the Committee, in its sole discretion, determines that the rights of a Participant with respect to Awards granted prior to such amendment, suspension or termination, may be adversely impaired, the consent of such Participant shall be required; and provided further, without the approval of the shareholders of the Company entitled to vote in accordance with applicable law, no amendment may be made that would:

(a) increase the aggregate number of shares of Common Stock that may be issued under the Plan (other than due to an adjustment under Section 4.2);

(b) change the classification of individuals eligible to receive Awards under the Plan;

(c) decrease the minimum exercise price of any Stock Option;

(d) extend the maximum Stock Option period under Section 6.3; or

(e) require shareholder approval in order for the Plan to continue to comply with Section 422 of the Code to the extent applicable to Incentive Stock Options or the rules of any exchange or system on which the Company's securities are listed or traded at the request of the Company.

The Committee may amend the terms of any Award theretofore granted, prospectively or retroactively, but, subject to Article IV above or as otherwise specifically provided herein, no such amendment or other action by the Committee shall adversely impair the rights of any holder without the holder's consent. Notwithstanding anything herein to the contrary, the Board or the Committee may amend the Plan or any Award granted hereunder at any time without a Participant's consent to comply with Section 409A of the Code or any other applicable law.

## ARTICLE XII
## COMPANY CALL RIGHTS; RIGHTS OF FIRST REFUSAL

12.1. Company Call Rights.

(a) In the event of a Participant's Termination for Cause or a Participant's voluntary Termination within 90 days after the occurrence of an event that would be grounds for a Termination for Cause, the Company may at any time repurchase (or may cause its designee to repurchase) from the Participant (or his or her transferee) any shares of Common Stock previously acquired by the Participant through the exercise of a Stock Option or pursuant to Restricted Stock or Other Stock-Based Awards granted under the Plan at a repurchase price equal to the lesser of (A) the original purchase price or exercise price (as applicable), if any or (B) the Fair Market Value of a share of Common Stock on the date of Termination or the date of repurchase, as selected by the Committee.

(b) In the event of a Termination for any reason other than for Cause (including Termination due to Retirement, death, Disability, involuntary termination without Cause or resignation), the Company may at any time within the later of one year after (i) a Participant incurs a Termination or (ii) the date a Participant acquires shares of Common Stock upon the exercise of a Stock Option following his or her Termination for any reason other than for Cause: (A) repurchase (or may cause its designee to purchase) from the Participant the outstanding vested portion of the Option based on the difference between the exercise price of a share of Common Stock relating to such Stock Option and the Fair Market Value of a share of Common Stock on the date of repurchase and (B) repurchase from the Participant any shares of Common Stock previously acquired by the Participant through the exercise of a Stock Option at a repurchase price equal to the Fair Market Value on the date of repurchase.

(c) In the event of a Termination for any reason other than for Cause (including Termination due to Retirement, death, Disability, involuntary termination without Cause or resignation), the Company may at any time within one year after a Participant incurs a Termination other than for Cause repurchase (or may cause its designee to purchase) from the Participant any shares of Common Stock previously acquired by the Participant pursuant to Restricted Stock or Other Stock-Based Awards under the Plan at a repurchase price equal to Fair Market Value on the date of repurchase.

(d) (i) If the Company elects to exercise call rights under this Section 12.1, it shall do so by delivering to the Participant a notice of such election, specifying the number of shares to be purchased and such closing date and time that, solely for purposes of sub-sections (b) and (c), is within the applicable one year period. Such closing shall take place at the Company's principal executive offices.

(ii) At such closing, the Company will pay the Participant the repurchase price as specified in this Section 12.1 in cash, or by cancellation of indebtedness of the Participant to the Company.

12.2. Transfer Limit. (a) No Participant shall, directly or indirectly, prior to the Registration Date or such other date determined by the Committee, Transfer any shares of Common Stock acquired through the exercise of a Stock Option or pursuant to Restricted Stock or Other Stock-Based Award under the Plan prior to the Participant's Termination and expiration of the time period provided in Sections 11.1(b) and (c) hereof (the "Transfer Restriction Period"). Notwithstanding the foregoing, the Participant shall have the right to Transfer such shares of Common Stock to a "Permissible Transferee" who takes the shares subject to the terms of the Plan and applicable Award agreement. Permissible Transferees shall mean Family Members.

(b) After the Transfer Restriction Period, no Participant shall Transfer any Common Stock acquired through the exercise of a Stock Option or pursuant to Restricted Stock or Other Stock-Based Award to any Person other than a Permissible Transferee unless in each such instance the Participant (or his or her estate or legal representative) shall have first offered to the Company the Common Stock proposed to be Transferred pursuant to a bona fide offer to a third party.

(c) *Notice of Proposed Transfer*. Prior to any proposed Transfer of the Common Stock acquired through the exercise of a Stock Option or pursuant to Restricted Stock or Other Stock-Based Award, the Participant shall give a written notice (the "Transfer Notice") to the Company describing fully the proposed Transfer, including the number of shares of Common Stock, the name and address of the proposed Transferee (the "Proposed Transferee") and, if the Transfer is voluntary, the proposed Transfer price, and containing such information necessary to show that the Participant has obtained a bona fide binding offer to Transfer the Common Stock for cash from a third party. The Participant shall provide a separate Transfer Notice with regard to each Proposed Transferee. The Transfer Notice shall be signed by both the Participant and the Proposed Transferee and must constitute a binding and unconditional commitment of the Participant and the Proposed Transferee for the Transfer of the Common Stock to the Proposed Transferee for cash subject only to the right of first refusal specified herein.

(d) *Bona Fide Transfer.* If the Company determines that the information provided by the Participant in the Transfer Notice is insufficient to establish the bona fade nature of a proposed voluntary Transfer, the Company shall give the Participant written notice of the Participant's failure to comply with the procedure described herein, and the Participant shall have no right to Transfer the Common Stock without first complying with this procedure. The Participant shall not be permitted to Transfer the Common Stock if the proposed Transfer is not bona fide.

(e) *Exercise of Right of First Refusal.* If the Company determines the proposed Transfer to be a bona fide Transfer, the Company shall have the right to repurchase all or any part of the shares of Common Stock at the proposed Transfer price per share, by delivering to the Participant (or his or her estate or legal representative) written notice of such exercise within 30 days after the date the Company has determined that the proposed Transfer is bona fide. The Company's exercise or failure to exercise the right of first refusal with respect to any proposed Transfer described in a Transfer Notice shall not affect the Company's right to exercise the right of first refusal with respect to any proposed Transfer described in any other Transfer Notice, whether or not such other Transfer Notice is issued by the Participant or issued by a person other than the Participant with respect to a proposed Transfer to the same Proposed Transferee. If the Company exercises the right of first refusal, the Company and the Participant shall thereupon consummate the sale of the Common Stock to the Company within five days after the date the Company has decided to exercise the right of first refusal described herein (unless a longer period is offered by the Proposed Transferee). For purposes of the foregoing, cancellation of any indebtedness of the Participant to the Company shall be treated as payment to the Participant in cash to the extent of the unpaid principal and any accrued interest canceled.

(f) *Failure to Exercise Right of First Refusal.* If the Company fails to exercise the right of first refusal with respect to any share of Common Stock within the period specified in sub-section (e) above, and the Company has not given notice to the Participant that the proposed Transfer is not a bona fide Transfer pursuant to sub-section (d) above, the Participant may conclude a Transfer to the Proposed Transferee of the Common Stock on the terms and conditions described in the Transfer Notice, provided such Transfer occurs not later than five days after the date the Company has determined not to exercise the right of first refusal described herein. The Company shall have the right to demand further assurances from the Participant and the Proposed Transferee (in a form satisfactory to the Company) that the Transfer of the Common Stock was actually carried out on the terms and conditions described in the Transfer Notice. No Common Stock shall be transferred on the books of the Company until the Company has received such assurances, if so demanded, and has approved the proposed Transfer as bona fide. Any proposed Transfer on terms and conditions different from those described in the Transfer Notice, as well as any subsequent proposed Transfer by the Participant (or his or her estate or legal representative), shall again be subject to the right of first refusal and shall require compliance by the Participant with the procedure described in this Section 12.2.

(g) *Assignment of Right of First Refusal.* The Company shall have the right to assign the right of first refusal at any time, whether or not there has been an attempted Transfer, to one or more persons as may be selected by the Company, from time to time.

(h) *Application to Transferees.* This Section 12.2 shall apply to any Permissible Transferee in the same manner as it applies to a Participant.

12.3. Alternative Call Rights, Rights of First Refusal and Other Rights. The Committee may provide in the applicable Award agreement alternative (or no) call rights and/or rights of first refusal and/or other rights at the time of grant (or, thereafter, if no rights of the Participant are reduced) as it may decide in its sole discretion (including as necessary to comply with the requirements specified in Article XVII). Notwithstanding anything herein to the contrary, if a Participant executes the Shareholders Agreement (or similar agreement) that provides call rights and/or rights of first refusal and/or drag-along and/or co-sale rights, the provisions in the Shareholders Agreement (or similar agreement) shall control to the extent they are inconsistent with or in addition to the provisions of this Article XII.

12.4. Effect of Registration. Notwithstanding the foregoing, unless otherwise determined by the Committee, the Company shall cease to have rights pursuant to this Article XII on and after the Registration Date.

## ARTICLE XIII
## UNFUNDED PLAN

The Plan is intended to constitute an “unfounded” plan for incentive and deferred compensation. With respect to any payments as to which a Participant has a fixed and vested interest but which are not yet made to a Participant by the Company, nothing contained herein shall give any such Participant any rights that are greater than those of a general unsecured creditor of the Company.

ARTICLE XIV
GENERAL PROVISIONS

14.1. Legend. The Committee may require each person receiving shares pursuant to an Award to represent to and agree with the Company in writing that the Participant is acquiring the shares without a view to distribution thereof and such other securities law related representations as the Committee shall request. In addition to any legend required by the Plan, the certificates and/or book entry accounts for such shares may include any legend that the Committee deems appropriate to reflect any restrictions on Transfer.

All certificates and book entry accounts for shares of Common Stock delivered under the Plan shall be subject to such stop transfer orders and other restrictions as the Committee may deem advisable under the rules, regulations and other requirements of the Securities and Exchange Commission, any stock exchange upon which the Common Stock is then listed or any national automated quotation system upon whose system the Common Stock is then quoted, any applicable Federal or state securities law, and any applicable corporate law, and the Committee may cause a legend or legends to be put on any such certificates to make appropriate reference to such restrictions.

14.2. Other Plans. Nothing contained in the Plan shall prevent the Board from adopting other or additional compensation arrangements, subject to shareholder approval if such approval is required; and such arrangements may be either generally applicable or applicable only in specific cases.

14.3. No Right to Employment/Consultancy/Directorship. Neither the Plan nor the grant of any Award hereunder shall give any Participant or other employee, Consultant or Non-Employee Director any right with respect to continuance of employment, consultancy or directorship by the Company or any Subsidiary, nor shall there be a limitation in any way on the right of the Company or any Subsidiary by which an employee is employed or a Consultant or Non-Employee Director is retained to terminate his or her employment, consultancy or directorship at any time.

14.4. Withholding of Taxes. The Company shall have the right to deduct from any payment to be made to a Participant, or to otherwise require, prior to the issuance or delivery of any shares of Common Stock or the payment of any cash hereunder, payment by the Participant of, any Federal, state or local taxes required by law to be withheld. Upon the vesting of Restricted Stock, or upon making an election under Section 83(b) of the Code, a Participant shall pay all required withholding to the Company.

Any statutorily required withholding obligation with regard to any Eligible Employee may be satisfied, subject to the consent of the Committee, by reducing the number of shares of Common Stock otherwise deliverable or by delivering shares of Common Stock already owned. Any fraction of a share of Common Stock required to satisfy such tax obligations shall be disregarded and the amount due shall be paid instead in cash by the Participant.

14.5. Listing and Other Conditions.

(a) Unless otherwise determined by the Committee, as long as the Common Stock is listed on a national securities exchange or system sponsored by a national securities association, the issue of any shares of Common Stock pursuant to an Award shall be conditioned upon such shares being listed on such exchange or system. The Company shall have no obligation to issue such shares unless and until such shares are so listed, and the right to exercise any Award with respect to such shares shall be suspended until such listing has been effected.

(b) If at any time counsel to the Company shall be of the opinion that any sale or delivery of shares of Common Stock pursuant to an Award is or may in the circumstances be unlawful or result in the imposition of excise taxes on the Company under the statutes, rules or regulations of any applicable jurisdiction, the Company shall have no obligation to make such sale or delivery, or to make any application or to effect or to maintain any qualification or registration under the Securities Act or otherwise with respect to shares of Common Stock or Awards, and the right to exercise any Award may be suspended until, in the opinion of said counsel, such sale or delivery shall be lawful and will not result in the imposition of excise taxes on the Company.

(c) Upon termination of any period of suspension under this Section 14.5, an Award affected by such suspension that shall not then have expired or terminated shall be reinstated as to all shares available before such suspension and as to shares that would otherwise have become available during the period of such suspension, but no such suspension shall extend the term of any Award.

(d) A Participant shall be required to supply the Company with any certificates, representations and information that the Company requests and otherwise cooperate with the Company in obtaining any listing, registration, qualification, exemption, consent or approval the Company deems necessary or appropriate.

14.6. Shareholders Agreement and Other Requirements. Notwithstanding anything herein to the contrary, as a condition to the receipt of shares of Common Stock pursuant to an Award, to the extent required by the Committee, the Participant shall execute and deliver a shareholders agreement or such other documentation that shall set forth certain restrictions on transferability of the shares of Common Stock acquired upon exercise or purchase, a right of first refusal of the Company with respect to shares, and such other terms or restrictions as the Board or Committee shall from time to time establish. Such shareholders agreement or other documentation shall apply to the Common Stock acquired under the Plan and covered by such shareholders agreement or other documentation. The Company may require, as a condition of exercise, the Participant to become a party to any other existing shareholders agreement or other agreement.

14.7. Governing Law. The Plan shall be governed and construed in accordance with the laws of the State of Delaware (regardless of the law that might otherwise govern under applicable Delaware principles of conflict of laws).

14.8. Construction. Wherever any words are used in the Plan in the masculine gender they shall be construed as though they were also used in the feminine gender in all cases where they would so apply, and wherever any words are used herein in the singular form they shall be construed as though they were also used in the plural form in all cases where they would so apply.

14.9. Other Benefits. No Award shall be deemed compensation for purposes of computing benefits under any retirement plan of the Company or its Subsidiaries nor affect any benefits under any other benefit plan now or subsequently in effect under which the availability or amount of benefits is related to the level of compensation.

14.10. Costs. The Company shall bear all expenses associated with administering the Plan, including expenses of issuing Common Stock pursuant to any Award granted hereunder.

14.11. No Right to Same Benefits. The provisions of Awards need not be the same with respect to each Participant, and Awards granted to individual Participants need not be the same.

14.12. Death/Disability. The Committee may in its discretion require the transferee of a Participant to supply it with written notice of the Participant's death or Disability and to supply it with a copy of the will (in the case of the Participant's death) or such other evidence as the Committee deems necessary to establish the validity of the transfer of an Award. The Committee may also require that the agreement of the transferee to be bound by all of the terms and conditions of the Plan.

14 .13. Section 16(b) of the Exchange Act. On and after the Registration Date, all elections and transactions under the Plan by persons subject to Section 16 of the Exchange Act involving shares of Common Stock are intended to comply with any applicable exemptive condition under Rule 16b-3. The Committee may establish and adopt written administrative guidelines, designed to facilitate compliance with Section 16(b) of the Exchange Act, as it may deem necessary or proper for the administration and operation of the Plan and the transaction of business thereunder.

14.14. Severability of Provisions. If any provision of the Plan shall be held invalid or unenforceable, such invalidity or unenforceability shall not affect any other provisions hereof, and the Plan shall be construed and enforced as if such provisions had not been included; provided, however, that if the Company's call rights and rights of first refusal set forth in Article XII shall be held invalid or unenforceable, the Awards granted under the Plan shall be cancelled and terminated.

14.15. Headings and Captions. The headings and captions herein are provided for reference and convenience only, shall not be considered part of the Plan, and shall not be employed in the construction of the Plan.

14.16. Securities Act Compliance. Except as the Company or Committee shall otherwise determine, the Plan is intended to comply with Section 4(2) or Rule 701 of the Securities Act, and any provisions inconsistent with such Section or Rule of the Securities Act shall be inoperative and shall not affect the validity of the Plan.

14 .17. Successors and Assigns. The Plan shall be binding on all successors and permitted assigns of a Participant, including, without limitation, the estate of such Participant and the executor, administrator or trustee of such estate.

I4.18. Payment to Minors, Etc. Any benefit payable to or for the benefit of a minor, an incompetent person or other person incapable of receipt thereof shall be deemed paid when paid to such person's guardian or to the party providing or reasonably appearing to provide for the care of such person, and such payment shall fully discharge the Committee, the Board, the Company, its Subsidiaries and their employees, agents and representatives with respect thereto.

14.19. Agreement. As a condition to the grant of an Award, if requested by the Company and the lead underwriter of any public offering of the Common Stock (the “Lead Underwriter”), a Participant shall irrevocably agree not to sell, contract to sell, grant any option to purchase, transfer the economic risk of ownership in, make any short sale of, pledge or otherwise transfer or dispose of, any interest in any Common Stock or any securities convertible into, derivative of, or exchangeable or exercisable for, or any other rights to purchase or acquire Common Stock (except Common Stock included in such public offering or acquired on the public market after such offering) during such period of time following the effective date of a registration statement of the Company filed under the Securities Act that the Lead Underwriter shall specify (the “Lock-up Period”). The Participant shall further agree to sign such documents as may be requested by the Lead Underwriter to effect the foregoing and agree that the Company may impose stop-transfer instructions with respect to Common Stock acquired pursuant to an Award until the end of such Lock-up Period.

14.20. No Rights as Shareholder. Except as provided in Article VII with respect to Restricted Stock or Article VIII with respect to Other Stock-Based Awards, subject to the provisions of the Award agreement, no Participant or Permitted Transferee shall have any rights as a shareholder of the Company with respect to any Award until such individual becomes the holder of record of the shares of Common Stock underlying the Award.

14.21. Section 409A of the Code. The Plan is intended to comply with the applicable requirements of Section 409A of the Code and shall be limited, construed and interpreted in accordance with such intent. To the extent that any Award is subject to Section 409A of the Code, it shall be paid in a manner that will comply with Section 409A of the Code, including proposed, temporary or final regulations or any other guidance issued by the Secretary of the Treasury and the Internal Revenue Service with respect thereto. Notwithstanding anything herein to the contrary, any provision in the Plan that is inconsistent with Section 409A of the Code shall be deemed to be amended to comply with Section 409A of the Code and to the extent such provision cannot be amended to comply therewith, such provision shall be null and void.

14.22. Consideration. Awards may be awarded in consideration for past services actually rendered to the Company or a Subsidiary for its benefit; provided, however, that in the case of an Award to be made to a new Eligible Employee, Non-Employee Director, or Consultant who has not performed prior services for the Company, the Company will require payment of the par value of the Common Stock by cash or check in order to ensure proper issuance of the shares in compliance with Delaware General Corporation Law.

## ARTICLE XV
## EFFECTIVE DATE OF PLAN

The Plan shall become effective upon adoption by the Board or such later date as provided in the adopting resolution, subject to the approval of the Plan by the shareholders of the Company within 12 months before or after adoption of the Plan by the Board in accordance with the laws of the State of Delaware.

## ARTICLE XVI
## TERM OF PLAN

No Award shall be granted pursuant to the Plan on or after the tenth anniversary of the earlier of the date the Plan is adopted or the date of shareholder approval, but Awards granted prior to such tenth anniversary may, and the Committee's authority to administer the terms of such Awards shall, extend beyond that date.

## ARTICLE XVII
## PROVISIONS APPLICABLE TO AWARDS
## GRANTED TO RESIDENTS OF CALIFORNIA

Notwithstanding the foregoing, any Award granted under the Plan to a California resident shall be subject to the provisions of this Article XVII (in addition to other applicable provisions of the Plan that are not inconsistent with this Article XVII) and, notwithstanding any provision of the Plan to the contrary, solely to the extent necessary to comply with Title 10 of the California Code of Regulations at the time an Award is granted, the following shall apply to each such Award:

17.1 At no time shall the total number of shares issuable upon exercise or vesting of all outstanding Awards provided for under any stock bonus or similar plan of the Company exceed thirty percent (30%) of all outstanding shares of the Company, including convertible preferred shares or convertible senior common shares on an as-converted basis, based on the shares of the Company which are outstanding at the time the calculation is made.

17.2. Any Stock Option granted under the Plan shall be exercisable according to the terms hereof at such times and under such conditions as determined by the Committee and set forth in the Stock Option agreement. Except in the case of Stock Options granted to officers, directors and consultants, Stock Options shall become exercisable at a rate of no less than 20% per year over five years from the date the Stock Options are granted.

17.3. Any repurchase option in favor of the Company that is applicable to an Award to an Eligible Employee who is not an officer, director or consultant shall be subject to the following:

(a) The repurchase option gives the Company the right to repurchase the shares of Stock upon Termination at not less than the Fair Market Value of the shares of Common Stock to be purchased on the date of Termination and (x) the right to repurchase is exercised for cash or cancellation of purchase money indebtedness for the shares of Common Stock within ninety (90) days of Termination (or in the case of shares of Common Stock issued upon exercise of Awards after such date of Termination, within ninety (90) days after the date of the exercise) or such longer period as may be agreed to by the Company and the Participant and (y) the right shall terminates on and after the Listing Date.

(b) The repurchase option gives the Company the right to repurchase the shares of Common Stock upon Termination at the original purchase price, if and (x) the right to repurchase at the original purchase price lapses at the rate of at least twenty percent (20%) of such shares of Common Stock per year over five (5) years from the date that the Award is granted (without respect to the date the Award was exercised or became exercisable) and (y) the right to repurchase is exercised for cash or cancellation of purchase money indebtedness for the shares of Common Stock within ninety (90) days of Termination (or in the case of shares of Common Stock issued upon exercise of Options after such date of termination, within ninety (90) days after the date of the exercise) or such longer period as may be agreed to by the Company and the Participant in compliance with applicable law.

17.4. Prior the Date, Listing a Ten Percent Stockholder shall not be granted a Non-Qualified Stock Option unless the exercise price of such Option is at least (i) one hundred ten percent (110%) of the Fair Market Value of the Common Stock on the date of grant or (ii) such lower percentage of the Fair Market Value of the Common Stock at the date of grant as is permitted by Section 260.140.41 of Title 10 of the California Code of Regulations at the time of the grant of the Option. Prior to the Listing Date, a Ten Percent Stockholder shall not be granted an award of Restricted Stock unless the purchase price of the Restricted Stock is at least (i) one hundred percent (100%) of the Fair Market Value of the Common Stock at the date of grant or (ii) such lower percentage of the Fair Market Value of the Common Stock at the date of grant as is permitted by Section 260.140.41 of Title 10 of the California Code of Regulations at the time of the grant of the Option.

17.5. Prior to the Listing Date, the Fair Market Value of the Common Stock subject to an Award shall be determined in a manner consistent with Section 260.140.50 of Title 10 of the California Code of Regulations.

17.6. In addition to the restrictions set forth in Section 9.1, an Award shall be Transferable solely to the extent permitted by Section 260.140.41(d) of Title 10 of the California Code of Regulations.

17.7. Prior to the Listing Date, to the extent required by Section 260.140.46 of Title 10 of the California Code of Regulations, the Company shall deliver financial statements to Participants at least annually. This sub-section shall not apply to key employees whose duties in connection with the Company assure them access to equivalent information.

17.8. Except as the Company or the Committee shall otherwise determine, the Plan is intended to comply with Section 25.102(o) of the California Corporations Code, and any provisions inconsistent with such Section of the California Corporations Code shall be inoperative and shall not affect the validity of the Plan

**TWISTBOX ENTERTAINMENT, INC.**
**NON-QUALIFIED STOCK OPTION AGREEMENT**
**PURSUANT TO THE**
**TWISTBOX ENTERTAINMENT, INC. 2006 STOCK INCENTIVE PLAN**

This Non-Qualified Stock Option AGREEMENT ("**Agreement**"), dated as of ________ (the "**Grant Date**" ) by and between Twistbox Entertainment, Inc., a California corporation (the "**Company**") and «Name» (the "**Participant**").

**Preliminary Statement**

The Committee has authorized this grant of a non-qualified stock option (the "**Option**") on ________ to purchase the number of shares of the Company's common stock (the "**Common Stock**") set forth below to the Participant, as an Eligible Employee of the Company or a Subsidiary (collectively, the Company and all Subsidiaries of the Company shall be referred to as the "**Employer**"). Unless otherwise indicated, any capitalized term used but not defined herein shall have the meaning ascribed to such term in the Twistbox Entertainment, Inc. 2006 Stock Incentive Plan (the "**Plan**"). A copy of the Plan has been delivered to the Participant. By signing and returning this Agreement, the Participant acknowledges having received and read a copy of the Plan and agrees to comply with it, this Agreement and all applicable laws and regulations.

Accordingly, the parties hereto agree as follows:

1. **Tax Matters**. No part of the Option granted hereby is intended to qualify as an "incentive stock option" under Section 422 of the Internal Revenue Code of 1986, as amended.

2. **Grant of Option**. Subject in all respects to the Plan and the terms and conditions set forth herein and therein, the Participant is hereby granted an Option to purchase from the Company «shares» shares of Common Stock, at a price per share of $__ (the "**Option Price**").

3. **Exercise**.

(a) Except as set forth in subsection (b) below, the Option shall vest and become exercisable as provided below, which shall be cumulative. To the extent that the Option has become exercisable with respect to a number of shares of Common Stock as provided below, the Option may thereafter be exercised by the Participant, in whole or in part, at any time or from time to time prior to the expiration of the Option as provided herein and in accordance with Section 6.3(d) of the Plan, including, without limitation, the filing of such written form of exercise notice, if any, as may be required by the Committee and payment in full of the Option Price multiplied by the number of shares of Common Stock underlying the portion of the Option exercised. Upon expiration of the Option, the Option shall be canceled and no longer exercisable. Exhibit A (Vesting Schedule) indicates each date upon which the Participant shall be vested and entitled to exercise the Option with respect to the percentage indicated beside that date provided that the Participant has not suffered a Termination of Employment prior to the applicable vesting date. There shall be no proportionate or partial vesting in the periods prior to each vesting date and all vesting shall occur only on the appropriate vesting date.

(b) Upon the occurrence of an IPO or Change in Control, the Option shall immediately become exercisable with respect to all shares of Common Stock subject thereto.

(c) Notwithstanding the foregoing, the Participant may not exercise the Option unless the shares of Common Stock issuable upon such exercise are then registered under the Securities Act, or, if such shares of Common Stock are not then so registered, the Company has determined that such exercise and issuance would be exempt from the registration requirements of the Securities Act. The exercise of the Option must also comply with other applicable laws and regulations governing the Option, and the Participant may not exercise the Option if the Company determines that such exercise would not be in material compliance with such laws and regulations. In addition, the Participant may not exercise the Option if the terms of the Plan do not permit the exercise of Options at such time.

4. **Option Term**. The term of each Option shall be until the tenth ($10^{th}$) anniversary of the Grant Date, after which time it shall terminate, subject to earlier termination in the event of the Participant's Termination of Employment as specified in Section 5 below.

5. **Termination of Employment**.

(a) Subject to the terms of the Plan and this Agreement, the Option, to the extent vested at the time of the Participant's Termination of Employment, shall remain exercisable as provided in Section 9.2(a) of the Plan.

(b) Any portion of the Option that is not vested as of the date of the Participant's Termination of Employment for any reason shall terminate and expire as of the date of such Termination of Employment.

(c) If the Participant breaches any agreement with the Company or any of its Subsidiaries regarding competition, confidentiality or the solicitation of customers or employees, the Option (whether vested or unvested) and shares of Common Stock acquired upon exercise of the Option (without compensation other than repayment of the Option Price) shall be immediately forfeited to the Company unless the Participant cures such breach (if curable) within 15 days of being notified of such breach.

6. **Restriction on Transfer of Option**. No part of the Option shall be Transferable other than by will or by the laws of descent and distribution and during the lifetime of the Participant, may be exercised only by the Participant or the Participant's guardian or legal representative. In addition, the Option shall not be assigned, negotiated, pledged or hypothecated in any way (except as provided by law or herein), and the Option shall not be subject to execution, attachment or similar process. Upon any attempt to Transfer the Option or in the event of any levy upon the Option by reason of any execution, attachment or similar process contrary to the provisions hereof, the Option shall immediately become null and void.

7. **Company Call Rights; Restrictions on Transfer.** The Option, and any shares of Common Stock that the Participant acquires upon exercise of the Option, shall be subject to the Company call rights and restrictions on transfer (including the Company's right of first refusal) set forth in Article XIII of the Plan. To ensure that the shares of Common Stock issuable upon exercise of the Option are not transferred in contravention of the terms of the Plan and this Agreement, and to ensure compliance with other provisions of the Plan and this Agreement, the Company may deposit the certificates evidencing the shares of Common Stock to be issued upon the exercise of the Option with an escrow agent designated by the Company.

8. **Securities Representations.** Upon the exercise of the Option prior to the registration of the Common Stock subject to the Option pursuant to the Securities Act or other applicable securities laws, the Participant shall be deemed to acknowledge and make the representations and warranties as described below and as otherwise may be requested by the Company for compliance with applicable laws, and any issuances of Common Stock by the Company shall be made in reliance upon the express representations and warranties of the Participant.

(a) The Participant is acquiring and will hold the shares of Common Stock for investment for his account only and not with a view to, or for resale in connection with, any "distribution" thereof within the meaning of the Securities Act or other applicable securities laws.

(b) The Participant has been advised that the shares of Common Stock have not been registered under the Securities Act or other applicable securities laws, on the ground that no distribution or public offering of the shares of Common Stock is to be effected (it being understood, however, that the shares of Common Stock are being issued and sold in reliance on the exemption provided under Rule 701 under the Securities Act), and that the shares of Common Stock must be held indefinitely, unless they are subsequently registered under the applicable securities laws or the Participant obtains an opinion of counsel (in the form and substance satisfactory to the Company and its counsel) that registration is not required. In connection with the foregoing, the Company is relying in part on the Participant's representations set forth in this Section. The Participant further acknowledges and understands that the Company is under no obligation hereunder to register the shares of Common Stock.

(c) The Participant is aware of the adoption of Rule 144 by the Securities and Exchange Commission under the Securities Act, which permits limited public resale of securities acquired in a non-public offering, subject to the satisfaction of certain conditions. The Participant acknowledges that he is familiar with the conditions for resale set forth in Rule 144, and acknowledges and understands that the conditions for resale set forth in Rule 144 have not been satisfied and that the Company has no plans to satisfy these conditions in the foreseeable future.

(d) The Participant will not sell, transfer or otherwise dispose of the shares of Common Stock in violation of the Plan, this Agreement, Securities Act (or the rules and regulations promulgated thereunder) or under any other applicable securities laws. The Participant agrees that he will not dispose of the Common Stock unless and until he has complied with all requirements of this Agreement applicable to the disposition of the shares of Common Stock.

(e) The Participant has been furnished with, and has had access to, such information as he considers necessary or appropriate for deciding whether to invest in the shares of Common Stock, and the Participant has had an opportunity to ask questions and receive answers from the Company regarding the terms and conditions of the issuance of the Common Stock.

(f) The Participant is aware that his investment in the Company is a speculative investment that has limited liquidity and is subject to the risk of complete loss. The Participant is able, without impairing his financial condition, to hold the Shares for an indefinite period and to suffer a complete loss of his investment in the Common Stock.

9. **Rights as a Stockholder**. The Participant shall have no rights as a stockholder with respect to any shares covered by the Option unless and until the Participant has become the holder of record of the shares, and no adjustments shall be made for dividends in cash or other property, distributions or other rights in respect of any such shares, except as otherwise specifically provided for in the Plan.

10. **Provisions of Plan Control**. This Agreement is subject to all the terms, conditions and provisions of the Plan, including, without limitation, the amendment provisions thereof, and to such rules, regulations and interpretations relating to the Plan as may be adopted by the Committee and as may be in effect from time to time. The Plan is incorporated herein by reference. If and to the extent that this Agreement conflicts or is inconsistent with the terms, conditions and provisions of the Plan, the Plan shall control, and this Agreement shall be deemed to be modified accordingly. This Agreement contains the entire understanding of the parties with respect to the subject matter hereof (other than any exercise notice or other documents expressly contemplated herein or in the Plan) and supersedes any prior agreements between the Company and the Participant with respect to the subject matter hereof.

11. **Notices**. Any notice or communication given hereunder shall be in writing and shall be deemed to have been duly given: (i) when delivered in person; (ii) two (2) days after being sent by United States mail; or (iii) on the first business day following the date of deposit if delivered by a nationally recognized overnight delivery service, to the appropriate party at the address set forth below (or such other address as the party shall from time to time specify):

If to the Company, to:

Twistbox Entertainment, Inc.
14242 Ventura Boulevard, 3rd Floor
Sherman Oaks, California 91423
Attention: Plan Administrator

If to the Participant, to the address on file with the Company.

12. **No Obligation to Continue Employment**. This Agreement is not an agreement of employment. This Agreement does not guarantee that the Employer will employ the Participant for any specific time period, nor does it modify in any respect the Employer's right to terminate or modify the Participant's employment or compensation.

13. **Agreement.** As a condition to the receipt of shares of Common Stock when the Option is exercised, the Participant shall execute and deliver an Assumption Agreement, and to the extent required by the Committee, the Participant shall execute and deliver a stockholder's agreement or such other documentation which shall set forth certain restrictions on transferability of the shares of Common Stock acquired and such other terms or restrictions as the Committee shall from time to time establish. Such Assumption Agreement, stockholder's agreement or other documentation shall apply to the Common Stock acquired under the Plan and covered by such Assumption Agreement, stockholder's agreement or other documentation. The Company may require, as a condition of exercise, the Participant to become a party to any other existing stockholder agreement or other agreement.

14. **409A.** NOTWITHSTANDING ANYTHING HEREIN OR IN THE PLAN TO THE CONTRARY, IF THE COMMON STOCK DOES NOT CONSTITUTE "SERVICE RECIPIENT STOCK" FOR PURPOSES OF SECTION 409A OF THE CODE OR IF THE OPTION OTHERWISE IS DEEMED TO BE DEFERRED COMPENSATION UNDER SECTION 409A OF THE CODE AS A RESULT OF ANY PROPOSED, TEMPORARY OR FINAL REGULATIONS OR ANY OTHER GUIDANCE ISSUED BY THE SECRETARY OF THE TREASURY AND THE INTERNAL REVENUE SERVICE WITH RESPECT TO SECTION 409A OF THE CODE, THE COMPANY SHALL BE PERMITTED TO AMEND THE PLAN AND THE OPTION TO COMPLY WITH SECTION 409A WITHOUT THE PARTICIPANT'S CONSENT. THE COMPANY SHALL HAVE NO LIABILITY TO THE PARTICIPANT OR OTHERWISE IF THE OPTION AND ANY AMOUNTS PAID OR PAYABLE THEREUNDER IS SUBJECT TO SECTION 409A OF THE CODE.

**[Remainder of Page Left Intentionally Blank]**

**[Signature Page Follows]**

IN WITNESS WHEREOF, the parties have executed this Agreement on the date and year first above written.

**TWISTBOX ENTERTAINMENT, INC.**

By:

Authorized Officer

«Name»
Employee [ID or Social Security] number:

I, _____________________, the spouse of the Participant, do hereby join with my spouse in executing this Agreement and do hereby agree to be bound by all of the terms and provisions thereof.

_____________________________
Signature

SECURITIES PURCHASE AGREEMENT

by and among

TWISTBOX ENTERTAINMENT, INC.,

THE SUBSIDIARY GUARANTORS,

AND

VALUEACT SMALLCAP MASTER FUND, L.P,

dated as of

July 30, 2007

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Exhibits


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Exhibit B Form of Senior Secured Note

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Exhibit F Schedule of Exceptions

Exhibit G Form of Opinion of Company Counsel

Exhibit H Form of Amended and Restated Investors’ Rights Agreement

Exhibit I Form of Shareholders Agreement Amendment

## SECURITIES PURCHASE AGREEMENT

This **SECURITIES PURCHASE AGREEMENT** (the **"Agreement"**), is dated as of July 30, 2007, by and among Twistbox Entertainment, Inc., a Delaware corporation (the **"Company"**), each of the Subsidiary Guarantors (as defined below) and ValueAct SmallCap Master Fund, L.P. (the **"Investor"**).

WHEREAS:

A. The Company and the Investor are executing and delivering this Agreement in reliance upon the exemption from securities registration afforded by Section 4(2) of the Securities Act of 1933, as amended (the **"Securities Act"**), and Rule 506 of Regulation D (**"Regulation D"**) as promulgated by the United States Securities and Exchange Commission (the **"SEC"**) under the Securities Act.

B. The Investor wishes to purchase, and the Company wishes to sell, upon the terms and conditions stated in this Agreement: (i) that aggregate principal amount of notes (the **"Senior Secured Notes"**) in substantially the form attached hereto as Exhibit B set forth opposite such Investor's name in column two (2) on the Schedule of Investors attached hereto as Exhibit A, and (ii) that aggregate number of Warrants (the **"Warrants"**) in substantially the form attached hereto as Exhibit C set forth opposite such Investor's name in column four (4) on the Schedule of Investors which will be exercisable to purchase shares of Common Stock, par value $0.001 per share (the **"Common Stock"**), of the Company (as exercised, collectively, the **"Warrant Shares"**).

C. Each of the Subsidiary Guarantors (as defined below) will guarantee (the **"Guarantee"**) the Company's obligations under the Senior Secured Notes on the terms and subject to the conditions of the Guarantee and Security Agreement (as defined below).

D. The Senior Secured Notes, Warrants and Warrant Shares are collectively referred to herein as the **"Securities."**

E. NOW, THEREFORE, IN CONSIDERATION of the mutual covenants contained in this Agreement, and for other good and valuable consideration the receipt and adequacy of which are hereby acknowledged, the Company and the Investors agree as follows:

## ARTICLE I
## DEFINITIONS

1.1 Definitions. In addition to the terms defined elsewhere in this Agreement, the following terms have the meanings indicated:

**"Action"** has the meaning set forth in Section 3.1(m).

**"Affiliate"** means any Person that, directly or indirectly through one or more intermediaries, controls or is controlled by or is under common control with a Person, as such terms are used in and construed under Rule 144.

**"Amended and Restated Investors' Rights Agreement"** means the Amended and Restated Investors' Rights Agreement in substantially the form set forth as Exhibit H hereto.

**"Board"** means the Board of Directors of the Company.

**"Business Day"** means any day other than Saturday, Sunday or other day on which commercial banks in The City of New York are required by law to remain closed.

**"Closing"** means the closing of the purchase and sale of the Securities pursuant to Section 2.1.

**"Closing Date"** means the date and time of the Closing and shall be 12:00 p.m., eastern standard time, on July 30, 2007 (or such other date and time as is mutually agreed to by the Company and each Investor).

**"Collateral"** has the meaning assigned to such term in the Guarantee and Security Agreement.

**"Collateral Agent"** has the meaning assigned to such term in the Guarantee and Security Agreement.

**"Company Counsel"** means Proskauer Rose LLP, special counsel to the Company.

**"Common Stock"** has the meaning set forth in the Preamble.

**"Environmental Laws"** has the meaning set forth in Section 3.1(n).

**"Exchange Act"** means the Securities Exchange Act of 1934, as amended.

**"Financial Statements"** has the meaning set forth in Section 3.1(h).

**"Foreign Securities Law"** means the laws and regulations governing the sale of securities of a jurisdiction outside the United States of America where the capital stock of the Company may be listed or traded.

**"Fundamental Transaction"** shall be (i) a merger or consolidation of the Company with or into another corporation in which the Company is not the surviving entity unless the holders of the capital stock of the Company immediately prior to such transaction are entitled to exercise, directly or indirectly, 50% (fifty percent) or more of the voting power of all shares of capital stock entitled to vote generally in the election of directors of the continuing or surviving corporation, (ii) a reverse triangular merger in which the Company is the surviving entity but the shares of the Company's capital stock outstanding immediately prior to the merger are converted by virtue of the merger into other property, whether in the form of securities, cash or otherwise, or (iii) a sale of transfer of all or substantially all of the Company's properties and assets to another person.

**"Guarantee and Security Agreement"** by and among the Company, the Investor and Subsidiary Guarantors party thereto in substantially in the form set forth as Exhibit D hereto.

**"Grantor"** has the meaning assigned to such term in the Guarantee and Security Agreement.

**"Information"** has the meaning set forth in Section 6.1(b).

**"Lien"** means any lien, charge, claim, encumbrance, right of first refusal or other security interest.

**"Major Content Provider"** means each of the top five (5) content providers to the Company ranked by dollar volume during the fiscal year ended March 31, 2007.

**"Major Mobile Telephone Carrier"** means each of the top five (5) mobile telephone carriers of the Company's content ranked by revenue during the fiscal year ended March 31, 2007.

**"Material Adverse Effect"** has the meaning set forth in Section 3.1(a).

**"Material Agreements"** has the meaning set forth in Section 3.1(r).

**"Material Permits"** has the meaning set forth in Section 3.1(ff).

**"Measuring Date"** has the meaning set forth in Section 3.1(i).

**"Observer"** has the meaning set forth in Section 6.1(a).

**"Person"** means any individual or corporation, partnership, trust, incorporated or unincorporated association, joint venture, limited liability company, or joint stock company.

**"Plan"** has the meaning set forth in Section 3.1(f)(iii).

**"Preferred Stock"** means the Company's preferred stock designated as "Series A Preferred Stock" and "Series B Preferred Stock".

**"Proceeding"** means an action, claim, suit, investigation or proceeding (including, without limitation, an investigation or partial proceeding, such as a deposition), whether commenced or threatened in writing.

**"Proprietary Assets"** has the meaning set forth in Section 3.1(k)(i).

**"Purchase Price"** has the meaning set forth in Section 2.1(b).

**"Rule 144"** means Rule 144 promulgated by the SEC pursuant to the Securities Act, as such Rule may be amended from time to time, or any similar rule or regulation hereafter adopted by the SEC having substantially the same effect as such Rule.

**"SEC"** has the meaning set forth in the Preamble.

**“Securities”** has the meaning set forth in the Preamble.

**“Senior Secured Notes”** has the meaning set forth in the Preamble.

**“Shareholders Agreement”** means the Second Amended and Restated Shareholders Agreement, dated as of May 15, 2006, as amended, or otherwise modified from time to time (including by the Shareholders Agreement Amendment).

**“Shareholders Agreement Amendment”** means the Amendment to the Shareholders Agreement in substantially the form set forth as Exhibit I hereto.

**“Shares”** means shares of the Company’s Common Stock.

**“Subsidiary”** means any Person in which the Company, directly or indirectly, owns capital stock or holds an equity or similar interest.

**“Subsidiary Guarantor”** means each Subsidiary of the Company that has guaranteed the Senior Secured Notes pursuant to the Guarantee and Security Agreement.

**“Trading Market”** means any foreign or United States securities exchange, market or trading or quotation facility on which the Common Stock is then listed or quoted.

**“Transactions”** means the transactions contemplated by the Transaction Documents.

**“Transaction Documents”** means this Agreement, the schedules and exhibits attached hereto, the Senior Secured Notes, the Warrants, the Amended and Restated Investors’ Rights Agreement, the Shareholders’ Agreement Amendment and the Guarantee and Security Agreement.

**“Transfer”** means any sale, transfer, assignment or other disposition, directly or indirectly, and “Transferred” shall have the correlative meaning.

“**VAC**” has the meaning set forth in Section 6.2(a).

**“VAC Entity”** or **“VAC Entities”** has the meaning set forth in Section 6.2(a).

**“Violation”** has the meaning set forth in Section 5.8(a).

**“Warrant”** has the meaning set forth in the Preamble.

**“Warrant Shares”** has the meaning set forth in the Preamble.

## ARTICLE II
## PURCHASE AND SALE

2.1 Closing.

(a) Subject to the terms and conditions set forth in Sections 8.1 and 8.2 herein, at the Closing the Company shall issue and sell to the Investor, and the Investor shall purchase from the Company, such principal amount of Senior Secured Notes and number of Warrants set forth opposite the Investor's name on Exhibit A hereto under the headings "Senior Secured Notes" and "Warrants". The Closing shall take place on the Closing Date at the offices of Company Counsel.

(b) At the Closing, the Investor shall deliver or cause to be delivered to the Company the purchase price set forth opposite such Investor's name on Exhibit A hereto under the heading "Total Purchase Price" in United States dollars and in immediately available funds (the **"Purchase Price"**), by wire transfer to an account designated in writing to such Investor by the Company for such purpose; provided, however, that an amount of the Purchase Price equal to the principal amount together with accrued interest on the promissory note dated July 16, 2007 between the Company and the Investor in the principal amount of $250,000 (the **"Promissory Note"**) may be paid by the Investor by delivering to the Company the Promissory Note for cancellation by the Company.

## ARTICLE III
## REPRESENTATIONS AND WARRANTIES

3.1 Representations and Warranties of the Company. The Company hereby represents and warrants to the Investor that, except as set forth in the Schedule of Exceptions attached as Exhibit F to this Agreement, which exceptions shall be deemed to be part of the representations and warranties made hereunder, the following representations are true and complete as of the date hereof. The Schedule of Exceptions shall be arranged in sections corresponding to the numbered and lettered sections and subsections contained in this Section 3, and the disclosures in any section or subsection of the Schedule of Exceptions shall qualify other sections and subsections in this Section 3 if it is reasonably apparent from a reading of the disclosure that such disclosure is applicable to such other sections and subsections:

(a) Organization, Good Standing, Corporate Power and Qualification. Each of the Company and the Subsidiary Guarantors has been duly incorporated and organized, and is validly existing in good standing, under the laws of its state of incorporation and qualified to do business in any state or other jurisdiction in which the nature of the business conducted or property owned by it makes such qualification necessary except where the failure to be so qualified or in good standing, as the case may be, would not reasonably be expected to individually or in the aggregate, (i) materially and adversely affect the legality, validity or enforceability of any Transaction Document, (ii) have or result in a material adverse effect on the results of operations, assets, business, prospects or financial condition of the Company and the Subsidiaries, taken as a whole on a consolidated basis or (iii) materially and adversely impair the Company's ability to perform its obligations under any of the Transaction Documents (any of (i), (ii) or (iii), a **"Material Adverse Effect"**). Each of the Company and the Subsidiary Guarantors has the requisite corporate power and authority to enter into, deliver, and perform the Transaction Documents, to sell and issue the Securities (including the underlying Warrant Shares) hereunder, and to own and operate their properties and assets and to carry on their business as currently conducted and as presently proposed to be conducted. The Company has made available to the Investor copies of its Articles of Incorporation, Bylaws and its minute books. Said copies are true, correct and complete and reflect all amendments now in effect, and with respect to the minute books, contain minutes of all meetings and/or actions by written consent of directors and stockholders since the time of incorporation.

(b) Subsidiaries. The Company does not presently own or control, directly or indirectly, any interest in any other corporation, partnership, trust, joint venture, association, or other entity other than the Subsidiaries scheduled on Section 3.1(b) of the Schedule of Exceptions. The Company owns, directly or indirectly, all of the capital stock or comparable equity interests of each Subsidiary free and clear of any Lien and all the issued and outstanding shares of capital stock or comparable equity interest of each Subsidiary are, to the extent applicable, validly issued and are fully paid, non-assessable and free of preemptive and similar rights.

(c) Authorization; Enforcement. All corporate action on the part of the Company's and each of the Subsidiary Guarantor's directors and stockholders necessary, as applicable, for: (i) the authorization, execution, delivery of, and the performance of all obligations of the Company and each Subsidiary Guarantor under this Agreement and the other Transaction Documents to which it is a party; (ii) the authorization, issuance, reservation for issuance, sale and delivery of all of the Securities being sold under this Agreement and of the Warrant Shares; and (iii) amending the Company's bylaws, has been taken. This Agreement, along with the other Transaction Documents, when executed and delivered, will constitute valid and legally binding obligations of the Company and each Subsidiary Guarantor, to the extent party thereto, enforceable against the Company and each Subsidiary Guarantor, to the extent party thereto, in accordance with their respective terms, except as may be limited by (i) applicable bankruptcy, insolvency, reorganization or others laws of general application relating to or affecting the enforcement of creditors' rights generally, (ii) applicable federal or state securities laws limits on indemnification; and (iii) the effect of rules of law governing the availability of equitable remedies.

(d) No Conflicts. The execution, delivery and performance of this Agreement and the other Transaction Documents to which it is a party, and the consummation of the Transactions contemplated hereby or thereby will not result in any violation or default, or result in a violation or breach of, with or without the passage of time or the giving of notice or both, the Company's or any Subsidiary Guarantor's certificate or articles of incorporation, bylaws or other organizational or charter documents, any judgment, order or decree of any court or arbitrator to which the Company or any Subsidiary Guarantor is a party or is subject, any agreement or contract of the Company or any Subsidiary Guarantor, or, to the Company's knowledge, a violation of any statute, law, regulation or order, or an event which results in the creation of any Lien upon any asset of the Company or any Subsidiary Guarantor (other than the Lien granted to the Investor pursuant to the Transaction Documents).

(e) Valid Issuance of Securities.

(i) The Senior Secured Notes have been duly and validly authorized by the Company for issuance and sale to the Investor pursuant to this Agreement and, when paid for and then issued, as provided in this Agreement, will have been validly executed, issued and delivered by the Company in accordance with the terms of this Agreement and the Senior Secured Note.

(ii) The Guarantee and Security Agreement has been duly and validly authorized by each Subsidiary Guarantor and, on the Closing Date, will have been validly executed and delivered by each such Subsidiary Guarantor in accordance with the terms of the Guarantee and Security Agreement.

(iii) The Warrants have been duly and validly authorized by the Company and, when paid for and then issued, as provided in this Agreement, will have been validly executed and delivered by the Company. The Warrant Shares have been duly and validly authorized and reserved for issuance upon exercise of the Warrants and when issued upon such exercise in accordance with the Warrant, will be duly and validly issued and outstanding, fully paid and nonassessable.

(iv) Assuming the truth and accuracy of the representations made by the Investor in Section 3.2 hereof, the offer and sale of the Securities solely to the Investor in accordance with this Agreement and (assuming no change in currently applicable law, no Transfer of Securities by any holder thereof and no commission or other remuneration is paid or given, directly or indirectly, for soliciting the issuance of Warrant Shares upon exercise of the Warrants) the issuance of the Warrant Shares are exempt from the registration and prospectus delivery requirements of the Securities Act and the securities registration and qualification requirements of the currently effective provisions of the securities laws of the State of California and the states in which the Investor is a resident based upon its address set forth on the Schedule of Investors attached hereto as Exhibit A.

(f) Capitalization. The capitalization of the Company immediately prior to the Closing consists of the following:

(i) Preferred Stock. A total of 5,204,255 authorized shares of preferred stock, $0.01 par value per share, consisting of 2,500,000 shares designated as “Series A Preferred Stock,” of which 825,075 shares will be issued and outstanding and 2,704,255 shares designated as “Series B Preferred Stock,” of which 2,704,254 will be issued and outstanding.

(ii) Common Stock. A total of 20,000,000 authorized shares of Common Stock, of which 7,785,716 shares will be issued and outstanding.

(iii) Options, Warrants, Reserved Shares. Except for (i) any conversion privileges of the Preferred Stock, (ii) the 3,700,000 shares of Common Stock reserved for issuance under the Company’s 2006 Stock Incentive Plan (the “**Plan**”) under which (y) options to purchase 2,223,689 shares will be outstanding, and (z) 1,476,311 shares remain available for future issuance under the Plan, there are no outstanding options, warrants, rights (including conversion or preemptive rights) or agreement for the purchase or acquisition from the Company of any shares of its capital stock or any securities convertible into or ultimately exchangeable or exercisable for any shares of the Company’s capital stock. Apart from the exceptions noted herein or in the Schedule of Exceptions, no shares of the Company’s outstanding capital stock, or stock issuable upon exercise or exchange of any outstanding options, warrants or rights, or other stock issuable by the Company, are subject to any preemptive rights, rights of first refusal or other rights to purchase such stock (whether in favor of the Company or any other person), pursuant to any agreement or commitment of the Company. The Company has not made any representations regarding equity incentives to any officer, employee, director or consultant that are inconsistent with the share amounts and terms set forth in the Board minutes and/or actions by written consent of the Board.

(iv) The outstanding shares of the capital stock of the Company (i) are duly authorized and validly issued, fully paid and nonassessable, and have been approved by all requisite stockholder action, and (ii) assuming the accuracy of the representations and warranties and the compliance with the covenants made by the original purchasers of such shares, were issued in compliance with all applicable state and federal laws concerning the issuance of securities.

(v) All options granted vest as follows: twenty-five percent (25%) of the shares vest one (1) year following the vesting commencement date, with the remaining seventy-five percent (75%) vesting in equal quarterly installments over the next three (3) years. No stock plan, stock purchase, stock option or other agreement or understanding between the Company and any holder of any equity securities or rights to purchase equity securities provides for acceleration or other changes in the vesting provisions or other terms of such agreement or understanding as the result of (i) termination of employment or consulting services (whether actual or constructive); (ii) any merger, consolidated sale of stock or assets, change in control or any other transaction(s) by the Company; or (iii) the occurrence of any other event or combination of events.

(g) Consents. No consent, approval, order or authorization of, or registration, qualification, designation, declaration or filing with, (i) any federal, state or local governmental authority having jurisdiction over the Company or any Subsidiary Guarantor, or (ii) any other Person, is required on the part of the Company or any Subsidiary Guarantor in order to enable the Company or the Subsidiary Guarantors to execute, deliver and perform its obligations under this Agreement and the other Transaction Documents to which it is a party except (A) where the failure to obtain the same would not have a material and adverse impact on the Company's business, (B) for such qualifications or filings under applicable securities laws as may be required in connection with the Transactions contemplated by this Agreement and (C) for such board of director and stockholder consents that have been obtained prior to Closing. All such qualifications and filings will, in the case of qualifications, be effective on the Closing and will, in the case of filings, be made within the time prescribed by law.

(h) Financial Statements. The Company has delivered to each Investor its unaudited balance sheet and statements of operations and cash flows as of and for the period ended March 31, 2007 (collectively the **"Financial Statements"**). The Financial Statements are complete and correct in all material respects and have been prepared substantially in accordance with generally accepted accounting principles applied on a consistent basis throughout the periods indicated, except as set forth in Section 3.1(h) of the Schedule of Exceptions. The Financial Statements accurately set out and describe the financial condition and operating results of the Company as of the dates, and for the periods, indicated therein.

(i) Certain Actions. Since March 31, 2007 (the **"Measuring Date"**), the Company has not: (i) declared or paid any dividends, or authorized or made any distribution upon or with respect to any class or series of its capital stock; (ii) incurred any indebtedness for money borrowed individually in excess of Ten Thousand Dollars ($10,000) or in excess of Twenty Five Thousand Dollars ($25,000) in the aggregate; (iii) made any loans or advances to any person, other than advances (*e.g.*, travel expenses) made in the ordinary course of business in excess of Ten Thousand Dollars ($10,000) in the aggregate; (iv) sold, exchanged or otherwise disposed of any material assets or rights other than the sale of inventory in the ordinary course of its business; or (v) entered into any material transactions with any of its officers, directors or employees or any entity controlled by any of such individuals.

(j) Activities Since Measuring Date. Since the Measuring Date, there has not been:

(i) any damage, destruction or loss, whether or not covered by insurance, materially and adversely affecting the assets, properties, financial condition, operating results, prospects or business of the Company (as presently conducted and as presently proposed to be conducted), taken as a whole;

(ii) any waiver by the Company or any Subsidiary Guarantor of any material right or of a material debt owed to it;

(iii) any change or amendment to a material contract or arrangement by which the Company, any Subsidiary Guarantor or any of their assets or properties is bound or subject, except for changes or amendments which are expressly provided for or disclosed in this Agreement;

(iv) any satisfaction or discharge of any lien, claim or encumbrance or payment of any obligation by the Company or any Subsidiary Guarantor, except in the ordinary course of business and that is not material to the assets, properties, financial condition, operating results or business of the Company (as such business is presently conducted and as it is proposed to be conducted);

(v) any material change in any compensation arrangement or agreement with any employee;

(vi) any sale, assignment or Transfer of any material patents, trademarks, copyrights, trade secrets or other material intangible assets;

(vii) any resignation or termination of employment of any key officer of the Company; and the chief executive officer of the Company, to his knowledge, does not know of the impending resignation or termination of employment of any such officer;

(viii) any receipt of notice that there has been a loss of, or material order cancellation by, any Major Mobile Telephone Carrier or Major Content Provider of the Company;

(ix) any mortgage, pledge, Transfer of a security interest in, or lien, created by the Company or any Subsidiary Guarantor, with respect to any of its material intellectual property rights or any other material properties or assets, except liens for taxes not yet due or payable;

(x) any loans or guarantees made by the Company to or for the benefit of its employees, officers or directors, or any members of their immediate families, other than travel advances and other advances made in the ordinary course of its business;

(xi) any declaration, setting aside or payment or other distribution in respect of any of the Company's capital stock, or any direct; or indirect redemption, purchase or other acquisition of any of such stock by the Company; or

(xii) any agreement or commitment by the Company or any Subsidiary Guarantor to do any of the things described in this Section 3.1(j).

(k) Status of Proprietary Assets.

(i) Status. The Company and the Subsidiary Guarantors have full title and ownership of, or are duly licensed under or otherwise authorized to use, all inventions, patents, patent applications, trademarks, service marks, trade names, trade secrets, information, proprietary rights, processes and copyrights (all of the foregoing collectively hereinafter referred to as the **"Proprietary Assets"**) necessary to enable it to carry on its business as now conducted and as presently proposed to be conducted without any conflict with or, to its knowledge, infringement upon the rights of others. Neither the Company nor the Subsidiary Guarantors has received any written communications alleging that the Company or the Subsidiary Guarantor has violated or, by conducting its business as currently conducted, would violate any of the patents, trademarks, service marks, trade names, copyrights or trade proprietary rights of any other person or entity, nor is the Company or any Subsidiary Guarantor aware of any basis therefore.

(ii) Licenses; Other Agreements. Neither the Company nor any Subsidiary Guarantor has granted any options, licenses or agreements of any kind relating to any Proprietary Asset of the Company or any Subsidiary Guarantor, nor is the Company or any Subsidiary Guarantor bound by or a party to any option, license or agreement of any kind with respect to any of its respective Proprietary Assets. Neither the Company nor the Subsidiary Guarantor is obligated to pay any royalties or other payments to third parties with respect to the marketing, sale, distribution, manufacture, license or use of any Proprietary Asset or any other property or rights.

(iii) Employee Obligations. The Company is not aware that any of its employees is obligated under any contract (including licenses, covenants or commitments of any nature) or other agreement, or subject to any judgment, decree or order of any court or administrative agency, that would interfere with their duties to the Company or that would conflict with the Company's business as presently proposed to the conducted.

(iv) Assignment of Inventions. Each current or former partner, director, officer, employee or consultant of the Company who has, in each case, been involved in the development or modification of any Proprietary Assets owned or purported to be owned by the Company, has executed a written agreement expressly assigning to the Company all right, title and interest in any inventions and works of authorship and all intellectual property rights therein.

(1) Tax Matters. The Company and each Subsidiary (i) has timely prepared and filed all material foreign, federal and state income and all other tax returns, reports and declarations required by any jurisdiction to which it is subject, (ii) has paid all material taxes and other governmental assessments and charges that are material in amount, shown or determined to be due on such returns, reports and declarations, except those being contested in good faith, with respect to which adequate reserves have been set aside on the books of the Company and (iii) has set aside on its books provision reasonably adequate for the payment of all taxes for periods subsequent to the periods to which such returns, reports or declarations apply. To the Company's knowledge, there are no unpaid taxes in any material amount claimed to be past due by the taxing authority of any jurisdiction, and the Company knows of no basis for such claim. The Company has not waived or extended any statute of limitations at the request of any taxing authority. There are no outstanding tax sharing agreements or other such arrangements between the Company and any other corporation or entity and the Company is not presently undergoing any audit by a taxing authority.

(m) Absence of Litigation. There is no action, suit, proceeding, claim, arbitration or investigation (**"Action"**) pending (or, to the Company's knowledge, currently threatened) against the Company or any Subsidiary Guarantor, its respective activities or its respective properties before any court or governmental agency. There is no action, suit, proceeding or investigation by the Company or any Subsidiary Guarantor currently pending or which the Company or any Subsidiary Guarantor intends to initiate.

(n) Environmental Matters. The Company and each Subsidiary (i) is not in violation of any statute, rule, regulation, decision or order of any governmental agency or body or any court, domestic or foreign, relating to the use, disposal or release of hazardous or toxic substances or relating to the protection or restoration of the environment or human exposure to hazardous or toxic substances (collectively, **"Environmental Laws"**), (ii) does not own or operate any real property contaminated with any substance in violation of any Environmental Laws, (iii) is not liable for any off-site disposal or contamination pursuant to any Environmental Laws and (iv) is not subject to any claim relating to any Environmental Laws; which violation, contamination, liability or claim has affected or would reasonably be expected to affect, individually or in the aggregate, materially and adversely the assets, properties, financial condition, operating results or business of the Company; and there is no pending or, to the Company's knowledge, threatened investigation that might lead to such a claim.

(o) Compliance. None of the Company or any Subsidiary Guarantor is in violation of (i) any term of its certificate or articles of incorporation, bylaws or other organizational or charter documents, (ii) any material term or provision of any indebtedness, instrument, judgment or decree or Material Agreement and (iii) to its knowledge, is not in violation of any order, statute, rule or regulation applicable to the Company where such violation would have a Material Adverse Effect.

(p) Title to Assets. The Company and the Subsidiary Guarantors own and have good and marketable title to its respective tangible properties and assets, free and clear of all mortgages, deeds of trust, liens, encumbrances and security interests except for statutory liens for the payment of current taxes that are not yet delinquent and liens, encumbrances and security interests which arise in the ordinary course of business and which do not affect material properties and assets of the Company. All facilities, machinery, equipment, fixtures, vehicles and other properties owned, leased or used by the Company or the Subsidiary Guarantors are in good operating condition and repair, ordinary wear and tear excepted.

(q) Real Property. No condemnation, eminent domain, or similar proceeding exists, is pending or, to the knowledge of the Company, is threatened with respect to or that could affect any real property leased by the Company or any of the Subsidiary Guarantors, which proceedings has affected or would reasonably be expected to affect, individually or in the aggregate, materially and adversely the assets, properties, financial condition, operating results or business of the Company. No real property leased by the Company or any of the Subsidiary Guarantors is subject to any sales contract, option, right of first refusal or similar agreement or arrangement with any third party. The Company owns no real property.

(r) Material Agreements and Obligations. All of the indentures, contracts and agreements, with expected receipts or expenditures in excess of $25,000 or involving a license or grant of material rights to or from the Company involving, patents, copyrights, trademarks, or other proprietary information applicable to the current business of the Company or relating to compensation plans or arrangements with employees (other than with respect to such employees' salaries or grants of options pursuant to the Company's Plan), to which the Company is a party and which are in effect as of the Closing are listed on Exhibit E (the **"Material Agreements"**). The Material Agreements are valid, binding, and in full force and effect in all material respects, subject to laws of general application relating to bankruptcy, insolvency and the relief of debtors and rules of law governing specific performance, injunctive relief or other equitable remedies, and the Company has not received any written notice of termination with respect to any such contract or agreement by any of the parties to any such contract or agreement.

(s) Material Liabilities. The Company has no material liabilities or obligations, absolute or contingent (individually or in the aggregate), except (i) the liabilities and obligations set forth in the Financial Statements, (ii) liabilities and obligations which have been incurred subsequent to March 31, 2007 in the ordinary course of business which have not been, in the aggregate, materially adverse to the assets, properties, financial condition, operating results or business of the Company, (iii) liabilities and obligations under leases for its principal offices and for equipment, and (iv) liabilities and obligations under sales, procurement and other contracts and arrangements entered into in the normal course of business.

(t) No General Solicitation; Brokers or Finders. Neither the Company, nor any of its Affiliates, nor any Person acting on its or their behalf, has engaged in any form of general solicitation or general advertising (within the meaning of Regulation D) in connection with the offer or sale of the Securities. Other than as set forth on Section 3.1(t) of the Schedule of Exceptions, neither the Company nor the Investor, as a result of any action taken by the Company, have incurred or will incur, directly or indirectly, any liability for brokerage of finders' fees or agents' commissions or any similar charges in connection with this Agreement or the Transactions contemplated hereby.

(u) Private Placement. None of the Company, its Subsidiaries, any of their Affiliates, or any Person acting on their behalf has, directly or indirectly, at any time within the past six (6) months, made any offer or sale of any security or solicitation of any offer to buy any security under circumstances that would (i) eliminate the availability of the exemption from registration under Regulation D under the Securities Act in connection with the offer and sale by the Company of the Securities as contemplated hereby or (ii) cause the offering of the Securities pursuant to the Transaction Documents to be integrated with prior offerings by the Company for purposes of any applicable law, regulation or stockholder approval provisions, including, without limitation, under the rules and regulations of any Trading Market.

(v) Real Property Holding Corporation. The Company is not a real property holding corporation within the meaning of Code Section 897(c)(2) and any regulations promulgated thereunder.

(w) Off-Balance Sheet Arrangements. Neither the Company nor any of its Subsidiaries is a party to, or has any commitment to become a party to, any "off-balance sheet arrangements" (as defined in Item 303(a) of Regulation S-K of the SEC).

(x) Registration Rights. Except as contemplated by the Transaction Documents and the Registration Rights Agreement, dated May 16, 2006 by and among the Company and certain holders of the Company's Series A Preferred Stock, the Company is not under any obligation to register under the Securities Act or Foreign Securities Law any of its currently outstanding securities or any securities issuable upon exercise or conversion of its currently outstanding securities nor is the Company obligated to register or qualify any such securities under any state securities or blue sky laws.

(y) Disclosure. This Agreement, the Exhibits hereto, the other Transaction Documents and any certificate expressly delivered by the Company or any Subsidiary Guarantor to the Investor or their attorneys or agents in connection herewith or therewith or with the Transactions contemplated hereby or thereby, taken as a whole, neither contain any untrue statement of a material fact nor, to the Company's knowledge, omit to state a material fact necessary in order to make the statements contained herein or therein not misleading except that, with respect to the Company's business plan or investment presentations and any financial projections submitted to the Investor in connection with this Agreement and the Transactions contemplated hereby, the Company represents and warrants only that such business plan, investment presentations and financial projections were prepared in good faith based on reasonable assumptions and are not materially inconsistent with any internal Company plans, budgets or forecasts.

(z) Insurance. The Company and the Subsidiaries are insured by insurers of recognized financial responsibility against such losses and risks and in such amounts as are prudent and customary in the businesses and location in which the Company and the Subsidiaries are engaged, including directors' and officers' liability insurance. Neither the Company nor any Subsidiary has any knowledge that it will not be able to renew its existing insurance coverage as and when such coverage expires or to obtain similar coverage from similar insurers as may be necessary to continue its business without a significant increase in cost.

(aa) ERISA. The Company does not have any Employee Pension Benefit Plan as defined in Section 3 of the Employee Retirement Income Security Act of 1974, as amended.

(bb) Labor Agreements and Actions; Employee Compensation. The Company is not bound by or subject to any contract, commitment or arrangement with any labor union, and no labor union has requested or, to the best of the Company's knowledge, has sought to represent any of the employees of the Company. There is no strike or other labor dispute involving the Company pending, or to the best of the Company's knowledge, threatened, that could have a Material Adverse Effect, nor is the Company aware of any labor organization activity involving its employees. Other than the Company's Plan and any grants of options thereunder, the Company is not a party to any employment contract, deferred compensation agreement, bonus plan, incentive plan, profit sharing plan, retirement agreement, or other employee compensation agreement.

(cc) Employees. To the Company's knowledge, no employee of the Company nor any consultant with whom the Company has contracted, is in violation of any material term of any employment contract, proprietary information agreement, non-disclosure agreement or any other similar contract or agreement relating to the relationship of such employee or consultant with the Company, any former employer or any other party; and to the Company's knowledge the continued employment by the Company of its present employees, and the performance of the Company's contracts with its independent contractors, will not result in any such violation. The Company has not received any written notice alleging that any such violation has occurred. The Company does not have any collective bargaining agreement covering any of its employees. The Company does not believe it is or will be necessary to utilize any inventions of any of its employees made prior to or outside the scope of their employment by the Company. No employee of the Company has been granted the right to continued employment by the Company or to any material compensation following termination of employment with the Company. The chief executive officer of the Company is not aware that any officer, key employee or group of employees intends to terminate his, her or their employment with the Company, nor does the Company have a present intention to terminate the employment of any officer, key employee or group of employees.

(dd) Transactions With Affiliates and Employees. There are no obligations of the Company to officers, directors, stockholders, or employees of the Company other than (a) for payment of salary for services rendered, (b) reimbursement for reasonable expenses incurred on behalf of the Company and (c) for other standard employee benefits made generally available to all employees (including stock option agreements outstanding under any stock option plan approved by the Board). No officer, director, key employee or stockholder of the Company is indebted to the Company (excluding advances to employees made in the ordinary course of business not exceeding $10,000 in the aggregate). To the Company's knowledge, none of the officers, directors, key employees or stockholders of the Company or any members of their immediate families, has any direct or indirect ownership interest in any firm or corporation with which the Company is affiliated or with which the Company has a business relationship, or any firm or corporation that competes with the Company, other than (i) passive investments in publicly traded companies (representing less than 1 % of such company) which may compete with the Company and (ii) investments by venture capital funds or similar institutional investors with which directors of the Company may be affiliated and serve as a board member of a company in connection therewith due to a person's affiliation with a venture capital fund or similar institutional investor in such company. No officer, director or stockholder, or any member of their immediate families, is, directly or indirectly, personally interested in any material contract with the Company (other than such contracts as relate to any such person's (i) ownership of capital stock or other securities of the Company, (ii) indemnification by the Company or (iii) salary and other employment benefits provided by the Company to such person).

(ee) Questionable Payments. Neither the Company nor any Subsidiary, nor, to the Company's knowledge, directors, officers, employees, agents or other Persons acting on behalf of the Company or any Subsidiary has, in the course of its actions for, or on behalf of, the Company: (i) used any corporate funds for unlawful contributions, gifts, entertainment or other unlawful expenses relating to foreign or domestic political activity; (ii) made any direct or indirect unlawful payments to any foreign or domestic governmental officials or employees from corporate funds; (iii) violated in any respect any provision of the Foreign Corrupt Practices Act of 1977, as amended or (iv) made any other unlawful bribe, rebate, payoff, influence payment, kickback or other unlawful payment to any foreign or domestic government official or employee which, in the aggregate of clauses (i) through (iv) would materially and adversely affect the assets, properties, financial condition, operating results or business of the Company.

(ff) Regulatory Permits. The Company and the Subsidiaries possess all certificates, authorizations and permits issued by the appropriate federal, state, local or foreign regulatory authorities necessary to conduct their respective businesses, except where the failure to possess such permits does not, individually or in the aggregate, materially and adversely affect the assets, properties, financial condition, operating results, prospects or business of the Company (**"Material Permits"**), and neither the Company nor any Subsidiary has received any written notice of proceedings relating to the revocation or modification of any Material Permit.

(gg) Internal Accounting Controls. The Company and the Subsidiaries maintain a system of internal accounting controls sufficient to provide reasonable assurance that (i) transactions are executed in accordance with management's general or specific authorizations, (ii) transactions are recorded as necessary to permit preparation of financial statements substantially in conformity with generally accepted accounting principles and to maintain asset accountability, (iii) access to assets is permitted only in accordance with management's general or specific authorization and (iv) the recorded accountability for assets is compared with the existing assets at reasonable intervals and appropriate action is taken with respect to any differences.

(hh) Investment Company. Neither the Company nor any of its Subsidiaries is (i) an "investment company" as defined in, or subject to regulation under, the Investment Company Act of 1940 or (ii) a "holding company" as defined in, or subject to regulation under, the Public Utility Holding Company Act of 1935.

(ii) Margin Stock. Neither the Company nor any of the Subsidiaries is engaged principally, or as one of their important activities, in the business of extending credit for the purpose of buying or carrying Margin Stock (as such term is defined in Regulation U). Immediately before and after giving effect to the sale of the Senior Secured Note, Margin Stock will constitute less than 25% of the Company's assets as determined in accordance with Regulation U. No part of the proceeds of the Senior Secured Note will be used, whether directly or indirectly, and whether immediately, incidentally or ultimately, to purchase, acquire or carry any Margin Stock or for any purpose that entails a violation of, or that is inconsistent with, the provisions of the regulations of the Board of Governors of the Federal Reserve System of the United States of America, including Regulation T, U or X.

(jj) Application of Takeover Protections. There is no control share acquisition, business combination, poison pill (including any distribution under a rights agreement) or other similar anti-takeover provision under the Company's charter documents or the laws of its state of incorporation that is or would become applicable to any of the Investors as a result of the Investors and the Company fulfilling their obligations or exercising their rights under the Transaction Documents, including, without limitation, as a result of the Company's issuance of the Securities and the Investors' ownership of the Securities.

3.2 Representations and Warranties of the Investors. The Investor hereby represents and warrants to the Company as follows:

(a) Authorization. This Agreement constitutes the Investor's valid and legally binding obligation, enforceable against the Investor in accordance with its terms except as may be limited by (i) applicable bankruptcy, insolvency, reorganization or other laws of general application relating to or affecting the enforcement of creditors' rights generally and (ii) the effect of rules of law governing the availability of equitable remedies. The Investor represents that it has full power and authority to enter into the Transaction Documents to which it is a party.

(b) Purchase for Own Account. The Securities to be purchased by the Investor hereunder will be acquired for investment for the Investor's own account, not as a nominee or agent, and not with a view to the public resale or distribution thereof with the meaning of the Securities Act, and the Investor has no present intention of selling, granting any participation in, or otherwise distributing the same. If not an individual, the Investor also represents that the Investor has not been formed for the specific purpose of acquiring Securities.

(c) Disclosure of Information. At no time was the Investor presented with or solicited by any publicly issued or circulated newspaper, mail, radio, television or other form of general advertising or solicitation in connection with the offer, sale and purchase of the Securities. To the knowledge of such Investor, such Investor has received or has had full access to all the information it requested in connection with its investment decision with respect to the Securities to be purchased by such Investor under this Agreement. Such Investor further has had an opportunity to discuss the Company's business, management and financial affairs with directors, officers and management of the Company and has had the opportunity to review the Company's operations and facilities. Investor has also had the opportunity to ask questions of and receive answers from, the Company and its management regarding the terms and conditions of this investment.

(d) Investment Experience. The Investor understands that the purchase of the Securities involves substantial risk. The Investor: (i) has experience as an investor in securities of companies in the development stage and acknowledges that the Investor is able to fend for itself, can bear the economic risk of the Investor's investment in the Securities and has such knowledge and experience in financial or business matters that the Investor is capable of evaluating the merits and risks of this investment in the Securities and protecting its own interests in connection with this investment and/or (ii) has a preexisting personal or business relationship with the Company and certain of its officers, directors or controlling persons of a nature and duration that enables such Investor to be aware of the character, business acumen and financial circumstances of such persons. The Investor represents that the office in which its investment decision was made is located at the address on the Schedule of Investors attached hereto as Exhibit A.

(e) Accredited Investor Status. The Investor is an "accredited investor" within the meaning of Regulation D promulgated under the Securities Act.

(f) Restricted Securities. Such Investor understands that the Securities are characterized as "restricted securities" under the Securities Act inasmuch as they are being acquired from the Company in a transaction not involving a public offering and that under the Securities Act and applicable regulations thereunder such securities may be resold without registration under the Securities Act only in certain limited circumstances as set forth in Article IV. In this connection, such Investor represents that the Investor is familiar with Rule 144, as presently in effect, and understands the resale limitations imposed thereby and by the Securities Act. The Investor understands that the Company is under no obligation to register any of the Securities sold hereunder except as provided herein. The Investor understands that no public market now exists for any of the Securities and that it is uncertain whether a public market will ever exist for the Securities.

## ARTICLE IV

## OTHER AGREEMENTS OF THE PARTIES

4.1 Transfer Restrictions.

(a) The Investor covenants that the Securities will only be Transferred pursuant to an effective registration statement under, and in compliance with the requirements of, the Securities Act or Foreign Securities Law or, if so requested by the Company, upon delivery to the Company of an opinion of counsel reasonably satisfactory to the Company that such Transfer is being made pursuant to an available exemption from the registration requirements of the Securities Act or Foreign Securities Law, and in compliance with any applicable state securities laws. The Investor may not Transfer any Securities to any person that the Board, in its reasonable judgment, deems to be a direct competitor of the Company or an affiliate thereof. In connection with any Transfer of Securities other than pursuant to an effective registration statement or to the Company, the Company may require the transferor to provide to the Company an opinion of counsel selected by the transferor, the form and substance of which opinion shall be reasonably satisfactory to the Company, to the effect that such Transfer does not require registration under the Securities Act or Foreign Securities Law. Notwithstanding anything contained herein to the contrary, any transferee of any Securities shall, as a condition precedent to such Transfer, agree in writing to be subject to the terms of the Transaction Documents to the same extent as if the transferee were an original Investor hereunder.

(b) Such Investor understands that the instruments representing the Senior Secured Notes and the Warrants and, when issued, the stock certificates representing the Warrant Shares, until such time as the resale of the Secrities have been registered and sold under the Securities Act and Foreign Securities Law, shall bear any legend as required by the "blue sky" laws of any state and a restrictive legend in substantially the following form (and a stop-transfer order may be placed against transfer of such stock certificates):

[NEITHER THE SECURITIES REPRESENTED BY THIS CERTIFICATE NOR THE SECURITIES INTO WHICH THESE SECURITIES ARE EXERCISABLE HAVE BEEN] [THIS NOTE HAS NOT BEEN] REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, OR APPLICABLE STATE SECURITIES AND BLUE SKY LAWS. [THESE SECURITIES] [THIS NOTE] MAY NOT BE OFFERED FOR SALE, SOLD, TRANSFERRED OR ASSIGNED (1) IN THE ABSENCE OF (A) AN EFFECTIVE REGISTRATION STATEMENT FOR THE SECURITIES UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT") OR FOREIGN SECURITIES LAWS, OR (B) IF REASONABLY REQUESTED BY THE COMPANY, AN OPINION OF COUNSEL REASONABLY ACCEPTABLE TO THE COMPANY THAT REGISTRATION IS NOT REQUIRED UNDER SAID ACT OR FOREIGN SECURITIES LAWS AND (2) IF SUCH SALE, TRANSFER OR ASSIGNMENT VIOLATES APPLICABLE STATE SECURITIES AND BLUE SKY LAWS. [THESE SECURITIES] ARE SUBJECT TO THE PROVISIONS OF A CERTAIN SECURITIES PURCHASE AGREEMENT, DATED AS OF JULY 30, 2007, INCLUDING CERTAIN RESTRICTIONS ON TRANSFER SET FORTH THEREIN, AND AN AMENDED AND RESTATED INVESTORS' RIGHTS AGREEMENT, DATED AS OF JULY 30, 2007. COMPLETE AND CORRECT COPIES OF SUCH AGREEMENTS ARE AVAILABLE FOR INSPECTION AT THE PRINCIPAL OFFICE OF THE COMPANY AND WILL BE FURNISHED TO ANY HOLDER OF [THESE SECURITIES] UPON WRITTEN REQUEST WITHOUT CHARGE.

The legend set forth above shall be removed and the Company shall issue a certificate without such legend to the holder of the Securities upon which it is stamped, if, unless otherwise required by state securities laws, (i) such Securities have been registered and sold pursuant to an effective registration statement under the Securities Act or Foreign Securities Law or (ii) in connection with a sale, assignment or other Transfer, the Company reasonably requests that such holder provide the Company with opinion of counsel reasonably acceptable to the Company that the legend may be removed without registration under the applicable requirements of the Securities Act or Foreign Securities Law.

(c) Drag-Along. In the event that the Board and holders of a majority of the outstanding shares of Common Stock issued or issuable upon conversion of the shares of Series A Preferred Stock and Series B Preferred Stock approve (i) a sale of all or substantially all of the assets of the Company to an unrelated third party, (ii) a sale of more than 50% of the outstanding capital stock of the Company (on an as-converted basis) to one or more unrelated third parties or (iii) a merger or consolidation of the Company with an unrelated third party as a result of which either (x) the Company does not survive or (y) such unrelated third parties (or equity owners thereof) hold, directly or indirectly, at least a majority of the Common Stock (on an as-converted basis), (such events, a "Sale of the Company"), then each holder of Warrant Shares hereby agrees with respect to all shares of capital stock of the Company (including Common Stock) that he, she or it holds and any other Company securities over which he, she or it otherwise exercises dispositive power:

(i) in the event such transaction requires the approval of stockholders, (a) if the matter is to be brought to a vote at a stockholder meeting, after receiving proper notice of any meeting of stockholders of the Company to vote on the approval of a Sale of the Company, to be present, in person or by proxy, as a holder of the Company's capital stock, at all such meetings and be counted for the purposes of determining the presence of a quorum at such meetings; and (b) to vote (in person, by proxy or by action by written consent, as applicable) all shares of the Company's capital stock in favor of such Sale of the Company and in opposition of any and all other proposals that could reasonably be expected to delay or impair the ability of the Company to consummate such Sale of the Company;

(ii) in the event that the Sale of the Company is to be effected by the sale of shares of the Company's capital stock held by the holders of the Company's Series B Preferred Stock (the "Selling Stockholders") without the need for stockholder approval, each holder of Warrant Shares agrees to sell all shares of capital stock of the Company beneficially held thereby (or in the event that the Selling Stockholders are selling fewer than all of their shares of Company's capital stock, shares in the same proportion as the Selling Stockholders are selling) to the person to whom the Selling Stockholders propose to sell their shares, for the same per-share consideration (on an as-converted basis) and on the same terms and conditions as the Selling Stockholders, except that the holders of Warrant Shares will not be required to sell their shares unless the liability for indemnification of such holders of Warrant Shares in such Sale of the Company is several, not joint, and is pro rata in accordance with such holder's respective relative stock ownership of the Company, and will not exceed the consideration payable thereto, if any, in such transaction (except in the case of potential liability for fraud or willful misconduct thereby);

(iii) to refrain from exercising any dissenters' rights or rights of appraisal under applicable law at any time with respect to such Sale of the Company; and

(iv) to execute and deliver all related documentation and take such other action in support of the Sale of the Company as shall reasonably be requested by the Company.

If the drag-along provisions set forth in the Shareholders Agreement are amended or modified, or are replaced with a similar provision applicable to the shareholders of a successor to the Company in connection with a Fundamental Transaction, then the provisions of Section 4.1(c) above shall be deemed to have been similarly amended, modified or replaced, *mutatis mutandis*.

4.2 Use of Proceeds. The Company intends to use the net proceeds from the sale of the Securities for working capital and general corporate purposes and not for the (i) repayment of any of the Senior Secured Notes or (ii) redemption or repurchase of any of its equity securities. Pending these uses, the Company intends to invest the net proceeds from this offering in short-term, interest-bearing, investment-grade securities, or as otherwise pursuant to the Company's customary investment policies.

## ARTICLE V
## REGISTRATION RIGHTS

5.1 Warrant Shares. The Warrant Shares have certain rights to registration as set forth in the Amended and Restated Investors' Rights Agreement, dated as of July 30, 2007 and are subject to certain restrictions as set forth therein.

## ARTICLE VI
## OBSERVER RIGHTS

6.1 Observer.

(a) If ValueAct SmallCap Master Fund, L.P. (**"VAC"**) no longer has the right to elect one director pursuant to the Shareholders Agreement, then, so long as VAC owns at least $5,500,000 of the principal amount of the Senior Secured Notes or at least 800,582 shares of Common Stock issued or issuable upon exercise of the Warrants (as adjusted pursuant to the terms and conditions set forth therein), then VAC shall be granted the right to appoint, and the Company will permit, one representative appointed by VAC (the **"Observer"**) to attend all meetings of the Board and all committees thereof (whether in person, telephonic or other) in a non-voting, observer capacity and shall provide to the Observer, concurrently with the members of the Board, and in the same manner, notice of such meeting and a copy of all materials provided to such members. VAC may transfer its rights to appoint the Observer to one transferee of the Warrants or Warrant Shares in connection with a Transfer permitted by the terms of this Agreement, provided, however, that such Transfer to such transferee shall include at least $5,500,000 in principal amount of the Senior Secured Notes or 800,582 shares of Common Stock (as adjusted pursuant to the terms and conditions set forth therein) issued or issuable upon exercise of the Warrants. Notwithstanding anything contained herein to the contrary, the Company may withhold portions of information from the Observer and exclude the Observer from portions of any meeting if, upon advice of the Company's legal counsel, access to such information or attendance at a portion of a meeting by the Observer would adversely affect the attorney-client privilege between the Company and its legal counsel. The Observer shall execute a customary confidentiality agreement reasonably acceptable to the Company.

(b) The Company acknowledges that the Investor will likely have, from time to time, information that may be of interest to the Company (**"Information"**) regarding a wide variety of matters including, by way of example only, (i) current and future investments VAC has made, may make, may consider or may become aware of with respect to other companies and other technologies, products and services, including, without limitation, technologies, products and services that may be competitive with the Company's, and (ii) developments with respect to the technologies, products and services, and plans and strategies relating thereto, of other companies, including, without limitation, companies that may be competitive with the Company. The Company recognizes that a portion of such Information may be of interest to the Company. Such Information may or may not be known by the Observer. The Company, as a material part of the consideration for this Agreement, agrees that VAC and its Observer shall have no duty to disclose any Information to the Company or permit the Company to participate in any projects or investments based on any Information, or to otherwise take advantage of any opportunity that may be of interest to the Company if it were aware of such Information, and hereby waives, to the extent permitted by law, any claim based on the corporate opportunity doctrine or otherwise that could limit VAC's ability to pursue opportunities based on such Information or that would require VAC or Observer to disclose any such Information to the Company or offer any opportunity relating thereto to the Company.

6.2 Confidentiality. The Investor agrees to hold all information received pursuant to this Article VI, or otherwise in connection with its rights under the Transaction Documents, in confidence, and not to use or disclose any of such information to any third party, except to the extent such information was made publicly available by the Company; *provided, however,* that the Investor may disclose such information (i) as may be required by law, (ii) to its attorneys, accountants, consultants, and other professionals to the extent necessary to obtain their bona fide services in connection with monitoring its investment in the Company, (iii) to any potential purchaser of the Securities so long as such purchaser is advised of the confidentiality provisions of this Section 6.2 and is bound by confidentiality obligations at least as restrictive as this Section 6.2 and (iv) to any partner or affiliate of the Investor so long as such partner or affiliate is advised of the confidentiality provisions of this Section 6.2 and is bound by confidentiality obligations at least as restrictive as this Section 6.2.

6.3 Termination of Certain Rights. The Company's obligations under Sections 6.1 above will terminate (a) upon the closing of the first sale of the Company's Common Stock to the general public pursuant to an effective registration statement filed under the Securities Act or Foreign Securities Law in which the gross proceeds of the Company (without reduction for underwriter's discounts and commissions or expenses of the sale), equals or exceeds $25,000,000; (b) upon a Fundamental Transaction; or (c) at such time as VAC or any permitted transferee of the rights under Section 6.1, as the case may be, no longer own, beneficially or of record, at least (i) $5,500,000 in principal amount of the Senior Secured Notes or (ii) 800,582 of shares of Common Stock issued or issuable upon exercise of the Warrants as adjusted pursuant to the terms and conditions set forth therein.

## ARTICLE VII
## COVENANTS

7.1 Integration. The Company shall not, and shall use its best efforts to ensure that no Affiliate thereof shall, sell, offer for sale or solicit offers to buy or otherwise negotiate in respect of any security (as defined in Section 2 of the Securities Act) that would be integrated with the offer or sale of the Securities in a manner that would require the registration under the Securities Act of the sale of the Securities to the Investor or that would be integrated with the offer or sale of the Securities for purposes of the rules and regulations of any Trading Market.

7.2 Reservation of Securities. The Company shall maintain a reserve from its duly authorized shares of Common Stock for issuance pursuant to the Transaction Documents in such amount as may be required to fulfill its obligations in full under the Transaction Documents. In the event that at any time the then authorized shares of Common Stock are insufficient for the Company to satisfy its obligations in full under the Transaction Documents, the Company shall promptly take such actions as may be required to increase the number of authorized shares.

## ARTICLE VIII
## CONDITIONS

8.1 Conditions Precedent to the Investor's Obligation to Purchase. The obligation of the Investor to purchase the Securities at the Closing is subject to the satisfaction or waiver by the Investor, at or before the Closing, of each of the following conditions:

(a) The Company shall have duly executed and delivered to each Investor:

(i) one or more Senior Secured Notes with an aggregate principal amount as is set forth opposite the Investor's name in column two (2) on the Schedule of Investors;

(ii) that number of Warrants as is set forth opposite the Investor's name in column three (3) on the Schedule of Investors;

(iii) copies of the Amended and Restated Investors' Rights Agreement and the Shareholders Agreement Amendment fully executed by all parties thereto (other than the Investor);

(iv) the Guarantee and Security Agreement signed on behalf of the Company, and each Subsidiary Guarantor party thereto, together with the following:

(1) any certificated securities representing shares of capital stock or other similar interests owned by or on behalf of any Grantor (as defined in the Guarantee and Security Agreement) constituting Collateral (as defined in the Guarantee and Security Agreement) as of the Closing Date after giving effect to the Transactions;

(2) any promissory notes and other instruments evidencing all loans, advances and other debt owed or owing to any Grantor constituting Collateral as of the Closing Date after giving effect to the Transactions;

(3) stock powers and instruments of transfer, endorsed in blank, with respect to such certificated securities, promissory notes and other instruments;

(4) descriptions of all intellectual property, including all patents, trademarks and copyrights, owned by the Company and its Subsidiaries in detail reasonably satisfactory to the Investor;

(5) the Control Agreements executed by the relevant Grantors and the Collateral Agent and acknowledged and agreed to by the relevant Control Account Bank pursuant to the Guarantee and Security Agreement ("Control Agreement", "Collateral Agent" and "Control Account Bank" shall have the meanings set forth in the Guarantee and Security Agreement);

(6) all instruments and other documents, including UCC financing statements, required by law or reasonably requested by the Collateral Agent to be filed, registered or recorded to create or perfect the Liens intended to be created under the Guarantee and Security Agreement; and

(7) results of a search of the UCC (or equivalent) filings made and tax and judgment lien searches with respect to the Grantors in the jurisdictions contemplated by the Guarantee and Security Agreement and copies of the financing statements (or similar documents) disclosed by such search and evidence reasonably satisfactory to the Collateral Agent that the Liens indicated by such financing statements (or similar documents) are acceptable to the Collateral Agent or have been released.

(b) Such Investor shall have received the opinion of Company Counsel, dated as of the Closing Date, in substantially the form of Exhibit G attached hereto.

(c) The Company shall have delivered a certificate, executed on behalf of the Company by its Secretary, dated as of the Closing Date, certifying the resolutions adopted by the Board approving the Transactions contemplated by the Transaction Documents and the issuance of the Securities, certifying the current versions of the Certificate of Incorporation and Bylaws of the Company and certifying as to the signatures and authority of persons signing this Agreement and related documents on behalf of the Company.

(d) The representations and warranties of the Company shall be true and correct in all material respects (except for those representations and warranties that are qualified by materiality or Material Adverse Effect, which shall be true and correct in all respects) as of the date when made and as of the Closing Date as though made at that time (except for representations and warranties that speak as of a specific date) and the Company shall have performed, satisfied and complied in all material respects with the covenants, agreements and conditions required by the Transaction Documents to be performed, satisfied or complied with by the Company at or prior to the Closing Date. The Investor shall have received a certificate, executed on behalf of the Company by the Chief Executive Officer of the Company, dated as of the Closing Date, to the foregoing effect and as to such other matters as may be reasonably requested by the Investor.

(e) The Company shall have obtained all governmental, regulatory or third party consents and approvals, if any, necessary for the sale of the Securities, except for those consents and approvals set forth in Sections 3.1(d) and 3.1(g) to the Schedule of Exceptions.

(f) The Investors shall have received all fees and other amounts due and payable on or prior to the Closing Date pursuant to Section 9.2 hereof.

(g) The Company shall have delivered to such Investor such other documents relating to the Transactions contemplated by this Agreement as such Investor or its counsel may reasonably request.

8.2 Conditions Precedent to the Obligations of the Company. The Company's obligation to sell and issue the Securities at the Closing is, at the option of the Company, subject to the fulfillment or waiver of the following conditions:

(a) Receipt of Payment. The Investor shall have delivered payment of the Purchase Price to the Company for the Securities.

(b) Representations and Warranties. The representations and warranties of the Investor shall be true and correct in all material respects (except for those representations and warranties that are qualified by materiality or Material Adverse Effect, which shall be true and correct in all respects) as of the date when made and as of the Closing Date as though made at that time (except for representations and warranties that speak as of a specific date, which shall be true and correct as of such date) and the Investor shall have performed, satisfied and complied in all material respects with the covenants, agreements and conditions required by the Transaction Documents to be performed, satisfied or complied with by the Investor at or prior to the Closing Date.

(c) Covenants. All covenants, agreements and conditions contained in this Agreement to be performed, satisfied or complied with by the Investor on or prior to the Closing Date shall have been performed, satisfied or complied with in all material respects.

(d) Transaction Documents. The Company shall have received copies of all Transaction Documents fully executed by all parties thereto (other than the Company and its Subsidiaries).

## ARTICLE IX
## MISCELLANEOUS

9.1 Termination. This Agreement may be terminated by the Company or the Investor, by written notice to the other parties, if the Closing has not been consummated by the third Business Day following the date of this Agreement; provided that no such termination will affect the right of any party to sue for any breach by the other party (or parties).

9.2 Fees and Expenses. The Company shall reimburse the Investor for all of its reasonable costs and expenses incurred in connection with the Transactions contemplated by this Agreement, including, but not limited to, fees of outside counsel (in an amount not to exceed $150,000) and other out-of-pocket expenses. The Company shall pay all transfer agent fees, stamp taxes and other taxes and duties levied in connection with the initial sale and issuance of the applicable Securities (other than the Warrant Shares) to the Investor.

9.3 Entire Agreement. The Transaction Documents, together with the Exhibits and Schedules thereto, contain the entire understanding of the parties with respect to the subject matter hereof and supersede all prior agreements and understandings, oral or written, with respect to such matters, which the parties acknowledge have been merged into such documents, exhibits and schedules. At or after the Closing, and without further consideration, the Company and the Investor will execute and deliver such further documents as may be reasonably requested in order to give effect to the intention of the parties under the Transaction Documents.

9.4 Notices. Any and all notices or other communications or deliveries required or permitted to be provided hereunder shall be in writing and shall be deemed given and effective on the earliest of (a) the date of transmission, if such notice or communication is delivered via facsimile at the facsimile number specified in this Section prior to 6:30 p.m. (New York City time) on a Business Day, (b) the next Business Day after the date of transmission, if such notice or communication is delivered via facsimile at the facsimile number specified in this Section on a day that is not a Business Day or later than 6:30 p.m. (New York City time) on any Business Day, (c) the Business Day following the date of deposit with a nationally recognized overnight courier service, or (d) upon actual receipt by the party to whom such notice is required to be given. The addresses and facsimile numbers for such notices and communications are those set forth on the signature pages hereof, or such other address or facsimile number as may be designated in writing hereafter, in the same manner, by any such Person.

9.5 Amendments; Waivers. Any term of this Agreement may be amended and the observance of any term of this Agreement may be waived (either generally or in a particular instance and either retroactively or prospectively), with the written consent of the Company and the Investor(s) holding a majority in interest on an as converted basis of the Warrant Shares. Subject to the preceding sentence, any amendment or waiver effected in accordance with this Section shall be binding upon all parties to this Agreement, including, without limitation, any Investor who may not have executed such amendment or waiver.

9.6 Construction. The headings herein are for convenience only, do not constitute a part of this Agreement and shall not be deemed to limit or affect any of the provisions hereof. The language used in this Agreement will be deemed to be the language chosen by the parties to express their mutual intent, and no rules of strict construction will be applied against any party.

9.7 Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the parties and their successors and permitted assigns. The Company may not assign this Agreement or any rights or obligations hereunder without the prior written consent of the Investors. Any Investor may assign its rights under this Agreement to any Person to whom such Investor assigns or Transfers any Securities, provided such transferee agrees in writing to be bound, with respect to the Transferred Securities, by the provisions hereof that apply to the "Investors."

9.8 Governing Law; Venue; Waiver of Jury Trial. ALL QUESTIONS CONCERNING THE CONSTRUCTION, VALIDITY, ENFORCEMENT AND INTERPRETATION OF THIS AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED AND ENFORCED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK, INCLUDING, WITHOUT LIMITATION, SECTIONS 5-1401 AND 5-1402 OF THE NEW YORK GENERAL OBLIGATIONS LAW AND NEW YORK CIVIL PRACTICE LAWS AND RULES 327(b). EACH PARTY HEREBY IRREVOCABLY SUBMITS TO THE EXCLUSIVE JURISDICTION OF THE STATE AND FEDERAL COURTS SITTING IN THE CITY OF NEW YORK, BOROUGH OF MANHATTAN, FOR THE ADJUDICATION OF ANY DISPUTE HEREUNDER OR IN CONNECTION HEREWITH OR WITH ANY TRANSACTION CONTEMPLATED HEREBY OR DISCUSSED HEREIN (INCLUDING WITH RESPECT TO THE ENFORCEMENT OF ANY OF THE TRANSACTION DOCUMENTS), AND HEREBY IRREVOCABLY WAIVES, AND AGREES NOT TO ASSERT IN ANY SUIT, ACTION OR PROCEEDING, ANY CLAIM THAT IT IS NOT PERSONALLY SUBJECT TO THE JURISDICTION OF ANY SUCH COURT, THAT SUCH SUIT, ACTION OR PROCEEDING IS IMPROPER. EACH PARTY HEREBY IRREVOCABLY WAIVES PERSONAL SERVICE OF PROCESS AND CONSENTS TO PROCESS BEING SERVED IN ANY SUCH SUIT, ACTION OR PROCEEDING BY MAILING A COPY THEREOF VIA REGISTERED OR CERTIFIED MAIL OR OVERNIGHT DELIVERY (WITH EVIDENCE OF DELIVERY) TO SUCH PARTY AT THE ADDRESS IN EFFECT FOR NOTICES TO IT UNDER THIS AGREEMENT AND AGREES THAT SUCH SERVICE SHALL CONSTITUTE GOOD AND SUFFICIENT SERVICE OF PROCESS AND NOTICE THEREOF. NOTHING CONTAINED HEREIN SHALL BE DEEMED TO LIMIT IN ANY WAY ANY RIGHT TO SERVE PROCESS IN ANY MANNER PERMITTED BY LAW. THE COMPANY HEREBY WAIVES ALL RIGHTS TO A TRIAL BY JURY.

9.9 Survival. The representations and warranties, agreements and covenants contained herein shall survive the Closing.

9.10 Execution. This Agreement may be executed in two or more counterparts, all of which when taken together shall be considered one and the same agreement and shall become effective when counterparts have been signed by each party and delivered to the other party, it being understood that both parties need not sign the same counterpart. In the event that any signature is delivered by facsimile transmission, such signature shall create a valid and binding obligation of the party executing (or on whose behalf such signature is executed) with the same force and effect as if such facsimile signature page were an original thereof.

9.11 Severability. If any provision of this Agreement is held to be invalid or unenforceable in any respect, the validity and enforceability of the remaining terms and provisions of this Agreement shall not in any way be affected or impaired thereby and the parties will attempt to agree upon a valid and enforceable provision that is a reasonable substitute therefor, and upon so agreeing, shall incorporate such substitute provision in this Agreement.

9.12 Rescission and Withdrawal Right. Notwithstanding anything to the contrary contained in (and without limiting any similar provisions of) the Transaction Documents, whenever the Investor exercises a right, election, demand or option owed to the Investor by the Company under a Transaction Document and the Company does not timely perform its related obligations within the periods therein provided, then, prior to the performance by the Company of the Company's related obligation, such Investor may rescind or withdraw, in its sole discretion from time to time upon written notice to the Company, any relevant notice, demand or election in whole or in part without prejudice to its future actions and rights.

9.13 Replacement of Securities. If any certificate or instrument evidencing any Securities is mutilated, lost, stolen or destroyed, the Company shall issue or cause to be issued in exchange and substitution for and upon cancellation thereof, or in lieu of and substitution therefor, a new certificate or instrument, but only upon receipt of evidence reasonably satisfactory to the Company of such loss, theft or destruction and the execution by the holder thereof of a customary lost certificate affidavit of that fact and an agreement to indemnify and hold harmless the Company for any losses in connection therewith. The applicants for a new certificate or instrument under such circumstances shall also pay any reasonable third-party costs associated with the issuance of such replacement Securities.

9.14 No Promotion. Except as otherwise required by law and as provided in Section 4.5 herein, the Company agrees that it will not, without the prior written consent of VAC in each instance, (i) use in advertising, publicity, press release or otherwise the name of any VAC Entity, or any partner or employee of any VAC Entity, nor any trade name, trademark, trade device, service mark, symbol or any abbreviation, contraction or simulation thereof owned by any VAC Entity or (ii) represent, directly or indirectly, that any product or any service provided by the Company has been approved or endorsed by any VAC Entity. This provision shall survive termination of the Transaction Documents.

[SIGNATURE PAGES TO FOLLOW]

IN WITNESS WHEREOF, the parties hereto have caused this Securities Purchase Agreement to be duly executed by their respective authorized signatories as of the date first indicated above.

TWISTBOX ENTERTAINMENT, INC.

By: /s/ Ian Aaron
Name: IAN AARON
Title: PRES./CEO

WAAT MEDIA CORP.

By: /s/ Ian Aaron
Name: IAN AARON
Title: PRES./CEO

TWISTBOX GAMES LTD. & CO. KG

By: /s/ Ian Aaron
Name: IAN AARON
Title: PRES./CEO

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Investor Signature Page

By its execution and delivery of this signature page, the undersigned Investor hereby joins in and agrees to be bound by the terms and conditions of the Securities Purchase Agreement dated as of July 30, 2007 (the "Purchase Agreement") by and among Twistbox Entertainment, Inc., the Subsidiary Guarantors (as defined therein) and the Investor (as defined therein) and authorizes this signature page to be attached to the Purchase Agreement or counterparts thereof.

VALUEACT SMALLCAP MASTER FUND, L.P.
By its General Partner, VA SmallCap Partners, LLC

By: /s/ David Lockwood
Name: DAVID LOCKWOOD
Title: MANAGING MEMBER

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**GUARANTEE AND SECURITY AGREEMENT**

**among**

**TWISTBOX ENTERTAINMENT, INC.,**

**EACH OF THE SUBSIDIARIES PARTY HERETO,**

**THE INVESTOR PARTY HERETO,**

**and**

**VALUEACT SMALLCAP MASTER FUND, L.P., as Collateral Agent**

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**Dated as of July 30, 2007**

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GUARANTEE AND SECURITY AGREEMENT, dated as of July 30, 2007 (this "**Guarantee and Security Agreement"**), among Twistbox Entertainment, Inc., a Delaware corporation (the **"Company"**), each of the subsidiaries of the Company identified on Schedule I as being a subsidiary guarantor (each such subsidiary, individually a **"Subsidiary Guarantor"** and, collectively, the "**Subsidiary Guarantors**"; the Subsidiary Guarantors and the Company are referred to collectively herein as the **"Grantors"**), the Investors from time to time party hereto (including their successors and permitted assigns, the **"Investor"**) and ValueAct SmallCap Master Fund, L.P., as collateral agent for the benefit of the Secured Parties (including its successors and permitted assigns and in such capacity, the "**CollateralAgent"**).

Reference is made to the Securities Purchase Agreement, dated as of July 30, 2007, among the Company and the Investors from time to time party thereto (as amended, supplemented or otherwise modified from time to time, the **"Securities Purchase Agreement").**

The Investor has agreed to purchase Senior Secured Notes in the aggregate principal amount of $16,500,000 (as amended, supplemented or otherwise modified, the **"Senior Secured Notes")** from the Company pursuant to, and upon the terms and subject to the conditions specified in, the Securities Purchase Agreement. Each of the Subsidiary Guarantors has agreed to guarantee, among other things, all the obligations of the Company and each other Subsidiary Guarantor under the Secured Transaction Documents. The obligations of the Investor to purchase Senior Secured Notes are conditioned upon, among other things, the execution and delivery by the Grantors of an agreement in the form hereof to guarantee and secure the Obligations.

Accordingly, the Grantors and the Collateral Agent, on behalf of itself and each other Secured Party (and each of their respective successors or permitted assigns), hereby agree as follows:

## ARTICLE 1.

## DEFINITIONS; GUARANTEE; GRANT OF SECURITY; CONTINUING PERFECTION AND PRIORITY

Section 1.1 General Definitions

As used in this Guarantee and Security Agreement, the following terms shall have the meanings specified below:

**"Account Debtor"** means each Person who is obligated in respect of any Receivable or any Supporting Obligation or Collateral Support related thereto.

**"Accounts"** means all "accounts" as defined in Article 9 of the UCC.

**"Additional Subsidiary Guarantor and Grantor"** has the meaning assigned to such term in Article 11.

**"Applicable Date"** means (i) in the case of any Grantor (other than an Additional Subsidiary Guarantor and Grantor), the date hereof, and (ii) in the case of any Additional Subsidiary Guarantor and Grantor, the date of the Supplement executed and delivered by such Additional Subsidiary Guarantor and Grantor.

**“Approved Securities Intermediary”** means a Securities Intermediary or commodity intermediary selected or approved by the Collateral Agent and with respect to which a Grantor has delivered to the Collateral Agent an executed Securities Control Account Letter.

**“Authorization”** means, collectively, any license, approval, permit or other authorization issued by Governmental Authority.

**“Bankruptcy Law”** means Title 11, U.S. Code, or any similar foreign, federal or state law for the relief of debtors.

**“Business Day”** means any day other than Saturday, Sunday or other day on which commercial banks in The City of New York are authorized or required by law to remain closed.

**“Cash Collateral Account”** means any Deposit Account or Securities Account established by the Collateral Agent in which cash may from time to time be on deposit or held therein pursuant to the Secured Transaction Documents.

**“Chattel Paper”** means all “chattel paper” as defined in Article 9 of the UCC.

**“Claim Proceeds”** means, with respect to any Commercial Tort Claim or any Collateral Support or Supporting Obligation relating thereto, all Proceeds thereof, including all insurance proceeds and other amounts and recoveries resulting or arising from the settlement or other resolution thereof, in each case regardless of whether characterized as a **“commercial tort claim”** under Article 9 of the UCC or “proceeds” under the UCC.

**“Collateral”** has the meaning assigned to such term in Section 1.4(a).

**“Collateral Records”** means all books, instruments, certificates, Records, ledger cards, files, correspondence, customer lists, blueprints, technical specifications, manuals and other documents, and all computer software, computer printouts, tapes, disks and related data processing software and similar items, in each case that at any time represent, cover or otherwise evidence any of the Collateral.

**“Collateral Support”** means all property (real or personal) assigned, hypothecated or otherwise securing any of the Collateral, and shall include any security agreement or other agreement granting a lien or security interest in such real or personal property.

**“Commercial Tort Claims”** means (i) all “commercial tort claims” as defined in Article 9 of the UCC and (ii) all Claim Proceeds with respect to any of the foregoing; including all claims described on Schedule 3.7.

**“Company”** has the meaning assigned to such term in the preliminary statement of this Guarantee and Security Agreement.

**“Control Account”** means a Deposit Account maintained by any Grantor with a Control Account Bank which account is the subject of an effective Control Agreement, and includes all monies on deposit therein.

**“Control Account Bank”** means a financial institution selected or approved by the Collateral Agent and with respect to which a Grantor has entered into a Control Agreement.

**“Control Agreement”** means a Control Agreement, substantially in the form of Exhibit B (with such changes thereto as may be agreed to by the Collateral Agent), executed by the relevant Grantor and the Collateral Agent and acknowledged and agreed to by the relevant Control
Account Bank.

**“Copyright License”** means any written agreement, now or hereafter in effect, granting any right to any third party under any Copyright now or hereafter owned or held by any Grantor or which any Grantor otherwise has the right to license, or granting any right to any Grantor under any Copyright now or hereafter owned by any third party, and all rights of any Grantor under any such agreement, including each agreement described on Schedule 3.6.

**“Copyrights”** means all of the following: (i) all copyright rights in any work subject to the copyright laws of the United States or any other country, whether as author, assignee, transferee or otherwise, and (ii) all registrations and applications for registration of any such copyright in the United States or any other country, including registrations, recordings, supplemental registrations and pending applications for registration in the United States Copyright Office or any similar offices in the United States or any other country, including those described on Schedule 3.6.

**“Deposit Accounts”** means all “deposit accounts” as defined in Article 9 of the UCC, including all such accounts described on Schedule 3.8.

**“Documents”** means all “documents” as defined in Article 9 of the UCC.

**“Equipment”** means (i) all “equipment” as defined in Article 9 of the UCC, (ii) all machinery, manufacturing equipment, data processing equipment, computers, office equipment, furnishings, furniture, appliances, fixtures and tools, in each case, regardless of whether characterized as “equipment” under the UCC, and (iii) all accessions or additions to any of the foregoing, all parts thereof, whether or not at any time of determination incorporated or installed therein or attached thereto, and all replacements therefor, wherever located, now or hereafter existing.

**“Equity Interest”** means (i) shares of corporate stock, partnership interests, membership interests, and any other interest that confers on a Person the right to receive a share of the profits and losses of, or distribution of assets of, the issuing Person, and (ii) all warrants, options or other rights to acquire any Equity Interest set forth in clause (i) of this defined term.

**“Equity Related Documents”** means the Securities Purchase Agreement, any Convertible Note or Warrant issued pursuant to the Securities Purchase Agreement.

**“Event of Default”** has the meaning assigned to such term in the Senior Secured Notes.

**“Excepted Deposit Accounts”** has the meaning assigned to such term in Section 3.8(b).

**“Foreign Subsidiary”** means any direct subsidiary of any Grantor organized under the laws of any jurisdiction outside the United States of America other than any Subsidiary Guarantor and as designated as such on Schedule I hereto.

**“Foreign Subsidiary Voting Stock”** means the voting capital stock of any Foreign Subsidiary.

**“Financial Assets”** means all “financial assets” as defined in Article 8 of the UCC.

**“General Intangibles”** means (i) all “general intangibles” as defined in Article 9 of the UCC and (ii) all chooses in action and causes of action, all indemnification claims, all goodwill, all tax refunds, all licenses, permits, concessions, franchises and authorizations, all Intellectual Property, all Payment Intangibles and all Software, in each case, regardless of whether characterized as a “general intangible” under the UCC.

**“Goods”** means (i) all “goods” as defined in Article 9 of the UCC and (ii) all Equipment and Inventory and any computer program embedded in goods and any supporting information provided in connection with such program, to the extent (a) such program is associated with such goods in such a manner that it is customarily considered part of such goods or (b) by becoming the owner of such goods, a Person acquires a right to use the program in connection with such goods, in each case, regardless of whether characterized as a “good” under the UCC.

**“Governmental Authority”** means any nation or government, any state, province, city, municipal entity or other political subdivision thereof, and any governmental, executive, legislative, judicial, administrative or regulatory agency, department, authority, instrumentality, commission, board, bureau or similar body, whether federal, state, provincial, territorial, local or foreign.

**“Grantor”** and **“Grantors”** have the meanings assigned to such terms in the preliminary statement of this Guarantee and Security Agreement.

**“Guaranteed Obligations”** has the meaning assigned to such term in Section 1.3(a)(i).

**“Instruments”** means all “instruments” as defined in Article 9 of the UCC.

**“Insurance”** means all insurance policies covering any or all of the Collateral (regardless of whether the Collateral Agent or any other Secured Party is an additional named insured or the loss payee thereof) and all business interruption insurance policies.

**“Intellectual Property”** means all intellectual and similar property owned by any Grantor of every kind and nature, including inventions, designs, Patents, Copyrights, Trademarks, Licenses, domain names, Trade Secrets, confidential or proprietary technical and business information, know how, show how or other data or information, software and databases and all embodiments or fixations thereof and related documentation, registrations and franchises, and all additions, improvements and accessions to, and books and records describing or used in connection with, any of the foregoing.

**“Inventory”** means (i) all “inventory” as defined in Article 9 of the UCC and (ii) all goods held for sale or lease or to be furnished under contracts of service or so leased or furnished, all raw materials, work in process, finished goods and materials used or consumed in the manufacture, packing, shipping, advertising, selling, leasing, furnishing or production of such inventory or otherwise used or consumed in any Grantor's business, all goods which are returned to or repossessed by or on behalf of any Grantor, and all computer programs embedded in any goods, and all accessions thereto and products thereof, in each case, regardless of whether characterized as “inventory” under the UCC.

**“Investor”** has the meaning assigned to such term in the preliminary statements of this Guarantee and Security Agreement.

**“Investment Property”** means, collectively, all **“investment property”** as defined in Article 9 of the UCC including all Pledged Collateral.

**"Letter of Credit Rights"** means all "letter-of-credit rights" as defined in Article 9 of the UCC and all rights, title and interests of each Grantor to any letter of credit, in each case regardless of whether characterized as a "letter-of-credit right" under the UCC.

**"License"** means any Copyright License, Patent License, Trademark License, Trade Secret License or other license or sublicense to which any Grantor is a party.

**"Lien"** means any lien, mortgage, charge, claim, security interest, encumbrance, or right of first refusal.

**"Net Receivables Balance"** means all amounts recorded on the Company's balance sheet as Receivables or accrued Receivables net of allowance for doubtful accounts consistent with past practice.

**"New Deposit Account"** has the meaning assigned to such term in Section 3.8.

**"Obligations"** means (i) the due and punctual payment of (a) principal of and premium, if any, and interest (including interest accruing during the pendency of any bankruptcy, insolvency, receivership or other similar proceeding, regardless of whether allowed or allowable in such proceeding) on the Senior Secured Notes, when and as due, whether at maturity or by acceleration or otherwise, and (b) all other monetary obligations, including fees, commissions, costs, expenses and indemnities, whether primary, secondary, direct, contingent, fixed or otherwise (including monetary obligations incurred during the pendency of any bankruptcy, insolvency, receivership or other similar proceeding, regardless of whether allowed or allowable in such proceeding), of the Grantors to the Secured Parties when and as due, or that are otherwise payable to any Investor, in each case under the Secured Transaction Documents when and as due, (ii) the due and punctual performance of all covenants, agreements, obligations and liabilities of the Grantors or any other party (other than an Investor) under or pursuant to the Secured Transaction Documents, and (iii) with respect to the Subsidiary Guarantor, the Guaranteed Obligations.

**"Patent License"** means any written agreement, now or hereafter in effect, granting to any third party any right to make, use or sell any invention on which a Patent, now or hereafter owned or held by or on behalf of any Grantor or which any Grantor otherwise has the right to license, is in existence, or granting to any Grantor any right to make, use or sell any invention on which a Patent, now or hereafter owned by any third party, is in existence, and all rights of any Grantor under any such agreement, including each agreement described on Schedule 3.6.

**"Patents"** means all of the following: (i) all letters patent of the United States or any other country, all registrations and recordings thereof and all applications for letters patent of the United States or any other country, including registrations, recordings and pending applications in the United States Patent and Trademark Office or any similar offices in the United States or any other country, including those described on Schedule 3.6, and (ii) all reissues, continuations, divisions, continuations in part, renewals or extensions thereof, and the inventions disclosed or claimed therein, including the right to make, use and/or sell the inventions disclosed or claimed therein.

**"Payment Intangibles"** means all "payment intangibles" as defined in Article 9 of the UCC.

**"Person"** means any individual or corporation, partnership, trust, incorporated or unincorporated association, joint venture, limited liability company, or joint stock company.

**"Pledged Collateral**" means, collectively, Pledged Debt and Pledged Equity Interests.

**"Pledged Debt"** means all indebtedness for borrowed money owed or owing to any Grantor, including all indebtedness described on Schedule 3.4, all Instruments other than checks received in the ordinary course of business, Chattel Paper or other documents, if any, representing or evidencing such debt, and all interest, cash, instruments and other property or proceeds from time to time received, receivable or otherwise distributed in respect of or in exchange for any or all of such debt.

**"Pledged Equity Interests"** means all Equity Interests owned or held by or on behalf of any Grantor, including all such Equity Interests described on Schedule 3.4, and all certificates, instruments and other documents, if any, representing or evidencing such Equity Interests and all interests of such Grantor on the books and records of the issuers of such Equity Interests, all of such Grantor's right, title and interest in, to and under any partnership, limited liability company, shareholder or similar agreements to which it is a party, and all dividends, distributions, cash, warrants, rights, options, instruments, securities and other property or proceeds from time to time received, receivable or otherwise distributed in respect of or in exchange for any or all of such Equity Interests; provided, however, that in no event shall more than 65% of the total outstanding Foreign Subsidiary Voting Stock of any Foreign Subsidiary be pledged (or deemed to be pledged) hereunder.

**"Proceeds"** means (i) all "proceeds" as defined in Article 9 of the UCC, (ii) payments or distributions made with respect to any Investment Property, (iii) any payment received from any insurer or other Person or entity as a result of the destruction, loss, theft, damage or other involuntary conversion of whatever nature of any asset or property that constitutes the Collateral, and (iv) whatever is receivable or received when any of the Collateral or proceeds are sold, exchanged, collected or otherwise disposed of, whether such disposition is voluntary or involuntary, including any claim of any Grantor against any third party for (and the right to sue and recover for and the rights to damages or profits due or accrued arising out of or in connection with) (a) past, present or future infringement of any Patent now or hereafter owned or held by or on behalf of any Grantor, or licensed under a Patent License, (b) past, present or future infringement or dilution of any Trademark now or hereafter owned or held by or on behalf of any Grantor, or licensed under a Trademark License, or injury to the goodwill associated with or symbolized by any Trademark now or hereafter owned or held by or on behalf of any Grantor, (c) past, present or future infringement of any Copyright now or hereafter owned or held by or on behalf of any Grantor, or licensed under a Copyright License, (d) past, present or future infringement of any Trade Secret now or hereafter owned or held by or on behalf of any Grantor, or licensed under a Trade Secret License, and (e) past, present or future breach of any License, in each case, regardless of whether characterized as "proceeds" under the UCC.

**"QRF Deposit Account"** has the meaning assigned to such term in Section 1.4(c).

**"QRF Lender"** has the meaning assigned to such term in Section 1.4(c).

"Qualified Receivables Facility" means a receivables facility not to exceed the lesser of (i) $5,000,000, or (ii) 85% of the Net Receivables Balance at any point in time.

**"Receivables"** means all rights to payment, whether or not earned by performance, for goods or other property sold, leased, licensed, assigned or otherwise disposed of, or services rendered or to be rendered, including all such rights constituting or evidenced by any Account, Chattel Paper, Instrument or other document, General Intangible or Investment Property, together with all of the applicable Grantor's rights, if any, in any goods or other property giving rise to such right to payment, and all Collateral Support and Supporting Obligations related thereto and all Receivables Records.

**"Receivables Records"** means (i) all originals of all documents, instruments or other writings or electronic records or other Records evidencing any Receivable, (ii) all books, correspondence, credit or other files, Records, ledger sheets or cards, invoices, and other papers relating to such Receivable, including all tapes, cards, computer tapes, computer discs, computer runs and record keeping systems, whether in the possession or under the control of the applicable Grantor or any computer bureau or agent from time to time acting for such Grantor or otherwise, (iii) all evidences of the filing of financing statements relating to such Receivable and the registration of other instruments in connection therewith, and amendments, supplements or other modifications thereto, notices to other creditors or secured parties, and certificates, acknowledgments, or other writings, including lien search reports, from filing or other registration officers and (iv) all credit information, reports and memoranda relating to such Receivable.

“**Record**” means a “record” as defined in Article 9 of the UCC.

“**Related Party**” means, with respect to any specified Person, such Person's affiliates and the respective directors, officers, employees, agents and advisors of such Person and such Person's affiliates.

“**Secured Parties**” means (i) the Collateral Agent, (ii) the Investor under the Senior Secured Notes, (iii) the beneficiaries of each indemnification obligation undertaken by or on behalf of any Grantor under any Secured Transaction Document, and (iv) the successors and permitted assigns of each of the foregoing.

“**Secured Transaction Documents**” means the Senior Secured Notes, this Guarantee and Security Agreement, any Control Agreement, any Securities Control Account Letter, and all other instruments, documents, certificates and agreements related thereto (exclusive of the Equity Related Documents).

“**Securities Accounts**” means all “securities accounts” as defined in Article 8 of the UCC, including all such accounts described on Schedule 3.4.

“**Securities Control Account**” means a Securities Account or commodity account maintained by any Grantor with an Approved Securities Intermediary which account is the subject of an effective Control Account Letter, and includes all Financial Assets held therein and all certificates and instruments, if any, representing or evidencing the Financial Assets held therein.

“**Securities Control Account Letter**” means a Securities Control Account Letter, substantially in the form of Exhibit C (with such changes thereto as may be agreed to by the Collateral Agent), executed by any Grantor and the Collateral Agent and acknowledged and agreed to by the relevant Approved Securities Intermediary.

“**Securities Intermediary**” has the meaning specified in Article 8 of the UCC.

“**Securities Purchase Agreement**” has the meaning assigned to such term in the preliminary statement of this Guarantee and Security Agreement.

“**Security Interest**” has the meaning assigned to such term in Section 1.4(a).

“**Senior Secured Notes**” has the meaning assigned to such term in the preliminary statement of this Guarantee and Security Agreement.

“**Software**” means all “software” as defined in Article 9 of the UCC.

"**Subordinated Obligations**" has the meaning assigned to such term in Section 1.3(e).

"**Subsidiary Guarantee**" has the meaning assigned to such term in Section 1.3(a)(i).

"**Subsidiary Guarantor**" has the meaning assigned to such term in the preliminary statement of this Guarantee and Security Agreement.

"**Supplement**" means a supplement hereto, substantially in the form of Exhibit A.

"**Supporting Obligation**" means (i) all "supporting obligations" as defined in Article 9 of the UCC and (ii) all Guaranties and other secondary obligations supporting any of the Collateral, in each case regardless of whether characterized as a "supporting obligation" under the UCC.

"**Trade Secret Licenses**" means any written agreement, now or hereafter in effect, granting to any third party any right to use any Trade Secrets now or hereafter owned or held by or on behalf of any Grantor or which such Grantor otherwise has the right to license, or granting to any Grantor any right to use any Trade Secrets now or hereafter owned by any third party, and all rights of any Grantor under any such agreement, including each agreement described on Schedule 3.6.

"**Trade Secrets**" means all trade secrets and all other confidential or proprietary information and know-how now or hereafter owned or used in, or contemplated at any time for use in, the business of any Grantor (all of the foregoing being collectively called a "Trade Secret"), whether or not such Trade Secret has been reduced to a writing or other tangible form, including all documents and things embodying, incorporating or referring in any way to such Trade Secret, the right to sue for any past, present and future infringement of any Trade Secret, and all proceeds of the foregoing, including licenses, royalties, income, payments, claims, damages and proceeds of suit.

"**Trademark License**" means any written agreement, now or hereafter in effect, granting to any third party any right to use any Trademark now or hereafter owned or held by any Grantor or which such Grantor otherwise has the right to license, or granting to any Grantor any right to use any Trademark now or hereafter owned by any third party, and all rights of any Grantor under any such agreement, including each agreement described on Schedule 3.6.

"**Trademarks**" means all of the following: (i) all trademarks, service marks, trade names, corporate names, company names, business names, fictitious business names, trade styles, trade dress, logos, other source or business identifiers, designs and general intangibles of like nature, now existing or hereafter adopted or acquired, all registrations and recordings thereof, and all registration and recording applications filed in connection therewith, including registrations and registration applications in the United States Patent and Trademark Office or any similar offices in the United States or any other country, and all extensions or renewals thereof, including those described on Schedule 3.6, (ii) all goodwill associated therewith or symbolized by any of the foregoing and (iii) all other assets, rights and interests that uniquely reflect or embody such goodwill.

"**QRF Lender**" has the meaning assigned to such term in Section 1.4(c).

"**UCC**" means the Uniform Commercial Code as in effect from time to time in the State of New York or, when the context implies, the Uniform Commercial Code as in effect from time to time in any other applicable jurisdiction.

Section 1.2 Other Definitions; Interpretation

(a) Other Definitions. Capitalized terms used herein and not otherwise defined herein, and the term "subsidiary" shall have the meanings assigned to such terms in the Securities Purchase Agreement.

(b) Rules of Interpretation. The definitions of terms herein shall apply equally to the singular and plural forms of the terms defined. Whenever the context may require, any pronoun shall include the corresponding masculine, feminine and neuter forms. The words “include”, “includes” and “including” shall be deemed to be followed by the phrase “without limitation”. The word “will” shall be construed to have the same meaning and effect as the word “shall”. Unless the context requires otherwise, (i) any definition of or reference to any agreement, instrument or other document herein shall be construed as referring to such agreement, instrument or other document as from time to time amended, supplemented or otherwise modified, (ii) any definition of or reference to any law shall be construed as referring to such law as from time to time amended and any successor thereto and the rules and regulations promulgated from time to time thereunder, (iii) any reference herein to any Person shall be construed to include such Person's successors and permitted assigns, (iv) the words “herein”, “hereof” and “hereunder”, and words of similar import, shall be construed to refer to this Guarantee and Security Agreement in its entirety and not to any particular provision hereof, (v) all references herein to Articles, Sections, Exhibits and Schedules shall be construed to refer to Articles and Sections of, and Exhibits and Schedules to and any Supplement thereto, this Guarantee and Security Agreement, and (vi) the words “asset” and “property” shall be construed to have the same meaning and effect and to refer to any and all tangible and intangible assets and properties, including cash, securities, accounts and contract rights. All references herein to provisions of the UCC shall include all successor provisions under any subsequent version or amendment to any Article of the UCC.

Section 1.3 Guarantee

(a) Subsidiary Guarantee; Limitation of Liability.

(i) Each Subsidiary Guarantor jointly and severally, hereby absolutely, unconditionally and irrevocably guarantees, as a primary obligor and not merely as surety, to the Collateral Agent for the ratable benefit of the Secured Parties the punctual payment when due (but subject to the expiration of any grace period granted by the Secured Parties in their sole discretion or the giving of any required notice provided for in any secured Transaction Document), whether at scheduled maturity or on any date of a required prepayment or by acceleration, demand or otherwise, of the Obligations of the Company and each other Grantor now or hereafter existing under or in respect of the Secured Transaction Documents (including, without limitation, any extensions, modifications, substitutions, amendments or renewals of any or all of the foregoing Obligations), whether direct or indirect, absolute or contingent, and whether for principal, interest, premiums, fees, indemnities, contract causes of action, costs, expenses or otherwise (such Obligations being the “**Guaranteed Obligations**”), and agrees to pay any and all reasonable expenses (including, without limitation, reasonable fees and out-of-pocket expenses of counsel) incurred by the Collateral Agent or any other Investor in enforcing any rights under this Subsidiary Guarantee (the “**Subsidiary Guarantee**”) or any other Secured Transaction Document. Without limiting the generality of the foregoing, each Subsidiary Guarantor's liability shall extend to all amounts that constitute part of the Guaranteed Obligations and would be owed by any other Grantor to the Collateral Agent or any Investor under or in respect of the Secured Transaction Documents but for the fact that they are unenforceable or not allowable due to the existence of a bankruptcy, reorganization or similar proceeding involving such other Grantor.

(ii) Each Subsidiary Guarantor, and by its acceptance of this Subsidiary Guarantee, the Collateral Agent and each other Investor, hereby confirms that it is the intention of all such Persons that this Subsidiary Guarantee and the Obligations of each Subsidiary Guarantor hereunder not constitute a fraudulent transfer or conveyance for purposes of Bankruptcy Law, the Uniform Fraudulent Conveyance Act, the Uniform Fraudulent Transfer Act or any similar foreign, federal or state law to the extent applicable to this Subsidiary Guarantee and the Obligations of each Subsidiary Guarantor hereunder. To effectuate the foregoing intention, the Collateral Agent, each Investor and the Subsidiary Guarantors hereby irrevocably agree that the Guaranteed Obligations of each Subsidiary Guarantor under this Subsidiary Guarantee at any time shall be limited to the maximum amount as will result in the Guaranteed Obligations of such Subsidiary Guarantor under this Subsidiary Guarantee not constituting a fraudulent transfer or conveyance.

(iii) Each Subsidiary Guarantor hereby unconditionally and irrevocably agrees that in the event any payment shall be required to be made to the Collateral Agent or any Investor under this Subsidiary Guarantee, such Subsidiary Guarantor will contribute, to the maximum extent permitted by law, such amounts to each other Subsidiary Guarantor so as to maximize the aggregate amount then required to be paid to the Collateral Agent and Investor under or in respect of the Secured Transaction Documents.

(b) Subsidiary Guarantee Absolute. Each Subsidiary Guarantor guarantees that the Guaranteed Obligations will be paid strictly in accordance with the terms of the Secured Transaction Documents, regardless of any law, regulation or order now or hereafter in effect in any jurisdiction affecting any of such terms or the rights of the Collateral Agent or any Investor with respect thereto. The Obligations of each Subsidiary Guarantor under or in respect of this Subsidiary Guarantee are independent of the Guaranteed Obligations or any other Obligations of any other Grantor under or in respect of the Secured Transaction Documents, and a separate action or actions may be brought and prosecuted against each Subsidiary Guarantor to enforce this Subsidiary Guarantee, irrespective of whether any action is brought against the Company or any other Grantor or whether the Company or any other Grantor is joined in any such action or actions. The liability of each Subsidiary Guarantor under this Subsidiary Guarantee shall be irrevocable, absolute and unconditional irrespective of, and each Subsidiary Guarantor hereby irrevocably waives any defenses it may now have or hereafter acquire in any way relating to, any or all of the following:

(i) any lack of validity or enforceability of any Secured Transaction Document or any agreement or instrument relating thereto;

(ii) any change in the time, manner or place of payment of, or in any other term of, all or any of the Guaranteed Obligations or any other Obligations of any other Grantor under or in respect of the Secured Transaction Documents, or any other amendment or waiver of or any consent to departure from any Secured Transaction Document, including, without limitation, any increase in the Guaranteed Obligations resulting from the extension of additional credit to any Grantor or any of its Subsidiaries or otherwise;

(iii) any taking, release or amendment or waiver of, or consent to departure from, any other guarantee, for all or any of the Guaranteed Obligations it being understood that any such amendment, waiver or consent shall be applicable to the Guaranteed Obligations of the Subsidiary Guarantors;

(iv) any change, restructuring or termination of the corporate structure or existence of any Grantor or any of its Subsidiaries;

(v) any failure of any Investor to disclose to any Grantor any information relating to the business, condition (financial or otherwise), operations, performance, properties or prospects of any other Grantor now or hereafter known to such Investor (each Subsidiary Guarantor waiving any duty on the part of the Investor to disclose such information);

(vi) the failure of any other Person to execute or deliver this Agreement, any Supplement or any other guarantee or agreement or the release or reduction of liability of any Subsidiary Guarantor or other guarantor or surety with respect to the Guaranteed Obligations; or

(vii) any other circumstance (including, without limitation, any statute of limitations) or any existence of or reliance on any representation by any Investor that might otherwise constitute a defense available to, or a discharge of, any Grantor or any other guarantor or surety, in each case other than payment in full of the Guaranteed Obligations (other than contingent indemnification obligations).

This Subsidiary Guarantee shall continue to be effective or be reinstated, as the case may be, if at any time any payment of any of the Guaranteed Obligations is rescinded or must otherwise be returned by any Investor or any other Person upon the insolvency, bankruptcy or reorganization of the Company or any other Grantor or otherwise, all as though such payment had not been made.

(c) Waivers and Acknowledgments. Each Subsidiary Guarantor hereby unconditionally and irrevocably waives:

(i) promptness, diligence, notice of acceptance, presentment, demand for performance, notice of nonperformance, default, acceleration, protest or dishonor and any other notice with respect to any of the Guaranteed Obligations and this Subsidiary Guarantee and any requirement that any Investor protect, secure, perfect or insure any Lien or any property subject thereto or exhaust any right or take any action against any Grantor or any other Person;

(ii) any right to revoke this Subsidiary Guarantee and acknowledges that this Subsidiary Guarantee is continuing in nature and applies to all Guaranteed Obligations, whether existing now or in the future;

(iii) (A) any defense arising by reason of any claim or defense based upon an election of remedies by any Investor that in any manner impairs, reduces, releases or otherwise adversely affects the subrogation, reimbursement, exoneration, contribution or indemnification rights of such Subsidiary Guarantor or other rights of such Subsidiary Guarantor to proceed against any of the other Grantors, any other guarantor or any other Person, and (B) any defense based on any right of set-off or counterclaim against or in respect of the Obligations of such Subsidiary Guarantor hereunder;

(iv) any duty on the part of any Investor to disclose to such Subsidiary Guarantor any matter, fact or thing relating to the business, condition (financial or otherwise), operations, performance, properties or prospects of any other Grantor or any of its Subsidiaries now or hereafter known by such Investor; and

(v) each Subsidiary Guarantor acknowledges that it will receive substantial direct and indirect benefits from the financing arrangements contemplated by the Secured Transaction Documents and that the waivers set forth in Section 1.3(b) and this Section 1.3(c) are knowingly made in contemplation of such benefits.

(d) Subrogation. Each Subsidiary Guarantor hereby unconditionally and irrevocably agrees not to exercise any rights that it may now have or hereafter acquire against the Company or any other Grantor that arise from the existence, payment, performance or enforcement of such Subsidiary Guarantor's obligations under or in respect of this Subsidiary Guarantee or any other Secured Transaction Document, including, without limitation, any right of subrogation, reimbursement, exoneration, contribution or indemnification and any right to participate in any claim or remedy of any Investor against the Company or any other Grantor, whether or not such claim, remedy or right arises in equity or under contract, statute or common law, including, without limitation, the right to take or receive from the Company or any other Grantor, directly or indirectly, in cash or other property or by set-off or in any other manner, payment or security on account of such claim, remedy or right, unless and until all of the Guaranteed Obligations (other than contingent indemnification rights) shall have been paid in full in cash. If any amount shall be paid to any Subsidiary Guarantor in violation of the immediately preceding sentence at any time prior to the latest of the payment in full in cash of the Guaranteed Obligations (other than contingent indemnification rights), such amount shall be received and held in trust for the benefit of the Investor, shall be segregated from other property and funds of such Subsidiary Guarantor and shall forthwith be paid or delivered to the Collateral Agent in the same form as so received (with any necessary endorsement or assignment) to be credited and applied to the Guaranteed Obligations, whether matured or unmatured, in accordance with the terms of the Secured Transaction Documents, or to be held as collateral for any Guaranteed Obligations. If (i) any Subsidiary Guarantor shall make payment to any Investor of all or any part of the Guaranteed Obligations and (ii) all of the Guaranteed Obligations (other than contingent indemnification rights) shall have been paid in full in cash, the Investor will, at such Subsidiary Guarantor's request and expense, execute and deliver to such Subsidiary Guarantor appropriate documents, without recourse and without representation or warranty, necessary to evidence the transfer by subrogation to such Subsidiary Guarantor of an interest in the Guaranteed Obligations resulting from such payment made by such Subsidiary Guarantor pursuant to this Subsidiary Guarantee.

(e) Subordination. Each Subsidiary Guarantor hereby subordinates any and all debts, liabilities and other obligations owed to such Subsidiary Guarantor by each other Grantor (the **"Subordinated Obligations"**) to the Guaranteed Obligations to the extent and in the manner hereinafter set forth in this Section 1.3:

(i) Prohibited Payments, Etc. Except during the continuance of an Event of Default, each Subsidiary Guarantor may receive payments from any other Grantor on account of the Subordinated Obligations. Upon the occurrence and during the continuance of any Event of Default, however, any Subsidiary Guarantor may demand, accept or take any action to collect any payment on account of the Subordinated Obligations.

(ii) Prior Payment of Guaranteed Obligations. In any proceeding under any Bankruptcy Law relating to any other Grantor, each Subsidiary Guarantor agrees that the Investor shall be entitled to receive payment in full in cash of all Guaranteed Obligations (includings all interest and expenses accruing after the commencement of a proceeding under any Bankruptcy Law, whether or not constituting an allowed claim in such proceeding (**"Post-Petition Interest"**)) (other than contingent indemnification obligations) before such Subsidiary Guarantor receives payment of any Subordinated Obligations.

(iii) Turn-Over. Upon the occurrence and during the continuance of any Event of Default, each Subsidiary Guarantor shall upon written request by the Collateral Agent, collect, enforce and receive payments on account of the Subordinated Obligations as trustee for the Investor and deliver such payments to the Collateral Agent on account of the Guaranteed Obligations (including all Post-Petition Interest), together with any necessary endorsements or other instruments of transfer, but without reducing or affecting in any manner the liability of such Subsidiary Guarantor under the other provisions of this Subsidiary Guarantee.

(iv) Collateral Agent Authorization. Upon the occurrence and during the continuance of any Event of Default, the Collateral Agent is authorized and empowered (but without any obligation to so do), in its reasonable discretion, (A) in the name of each Subsidiary Guarantor, to collect and enforce, and to submit claims in respect of, the Subordinated Obligations and to apply any amounts received thereon to the Guaranteed Obligations (including any and all Post-Petition Interest), and (B) to require each Subsidiary Guarantor (1) to collect and enforce, and to submit claims in respect of, the Subordinated Obligations and (2) to pay any amounts received on such obligations to the Collateral Agent for application to the Guaranteed Obligations (including any and all Post-Petition Interest).

(f) Continuing Subsidiary Guarantee; Assignments. This Subsidiary Guarantee is a continuing guarantee and shall (i) remain in full force and effect until the payment in full in cash of the Guaranteed Obligations, (ii) be binding upon each Subsidiary Guarantor, its successors and assigns, and (iii) inure to the benefit of and be enforceable by the Investor and their successors and permitted transferees and assigns.

(g) Mandatory Provisions of Bankruptcy Law. Nothing in this Section 1.3 shall limit any rights a receiver, liquidator, insolvency administrator may have under the GermanInsolvency Act (Insolvenzordnung).

Section 1.4 Grant of Security

(a) Grant by Grantors. As security for the payment or performance, as applicable, in full of the Obligations, each Grantor hereby pledges and grants to the Collateral Agent, for the ratable benefit of the Secured Parties, a lien on and security interest (the **"Security Interest"**) in and to all of the right, title and interest of such Grantor in, to and under the following property, wherever located, whether now existing or hereafter arising or acquired from time to time (all of which being hereinafter collectively referred to as the **"Collateral"**):

(i) all Accounts,

(ii) all Deposit Accounts and Securities Accounts, including all Cash Collateral Accounts and Control Accounts,

(iii) all Chattel Paper, Documents and Instruments,

(iv) all Commercial Tort Claims,

(v) all Equipment,

(vi) all General Intangibles,

(vii) all Goods,

(viii) all Insurance,

(ix) all Instruments,

(x) all Intellectual Property,

(xi) all Inventory,

(xii) all Investment Property, including all Pledged Collateral and all Securities Control Accounts,

(xiii) all Proceeds of Authorizations,

(xiv) all Receivables and Receivables Records,

(xv) all other goods and personal property of such Grantor, whether tangible or intangible, wherever located, including letters of credit,

(xvi) to the extent not otherwise included in clauses (i) through (xv) of this Section, all Collateral Records, Collateral Support and Supporting Obligations in respect of any of the foregoing,

(xvii) to the extent not otherwise included in clauses (i) through (xvi) of this Section, all other property in which a security interest may be granted under the UCC or which may be delivered to and held by the Collateral Agent pursuant to the terms hereof (including the account referred to in Section 3.4(c)(ii) and all funds and other property from time to time therein or credited thereto),

(xviii) all Collateral of Twistbox Games Ltd. & Co. KG as further defined in Schedule 1.4(a) in compliance with mandatory German law, and

(xix) to the extent not otherwise included in clauses (i) through (xvii) of this Section, all Proceeds, products, substitutions, accessions, rents and profits of or in respect of any of the foregoing.

(b) Revisions to UCC. For the avoidance of doubt, it is expressly understood and agreed that, to the extent the UCC is revised after the date hereof such that the definition of any of the foregoing terms included in the description or definition of the Collateral is changed, the parties hereto desire that any property which is included in such changed definitions, but which would not otherwise be included in the Security Interest on the date hereof, nevertheless be included in the Security Interest upon the effective date of such revision. Notwithstanding the immediately preceding sentence, the Security Interest is intended to apply immediately on the date hereof to all of the Collateral to the fullest extent permitted by applicable law, regardless of whether any particular item of the Collateral was then subject to the UCC.

(c) Qualified Receivables Facility. The Secured Parties agree with each Grantor that the Collateral Agent shall, upon receipt of written notice of such Grantor's imminent entry into a Qualified Receivables Facility, release the Security Interest granted hereunder in all of such Grantor's right, title and interest in, to and under (i) all Receivables of such Grantor, whereupon such Grantor shall be permitted to pledge and grant a first priority lien on and security interest in all of its right, title and interest in, to and under such Receivables in favor of the lender under such Qualified Receivables Facility (the **"QRF Lender"**) and (ii) an amount of cash not to exceed $1,000,000 which shall be placed in a Deposit Account not subject to a Control Agreement (the **"QRF Deposit Account"**) whereupon such Grantor shall be permitted to pledge and grant a first priority lien on and security interest in all of its right, title and interest in, to and under the QRF Deposit Account in favor of the QRF Lender; provided, that the QRF Deposit Account shall not be commingled with and shall be separate from the Deposit Accounts on which the Secured Party has an existing Lien. Promptly after the QRF Lender's filing of a UCC-1 financing statement in respect of such Receivables, such Grantor shall, at its own cost and expense, execute, acknowledge, deliver and/or cause to be duly filed all such agreements, instruments and other documents that may be reasonably requested by the Collateral Agent, and take all such further actions, that the Collateral Agent may from time to time reasonably request (i) in order to pledge and grant to the Collateral Agent, for the ratable benefit of the Secured Parties, subject to an intercreditor agreement which shall contain customary limitations on the exercise of remedies and pay-over provisions, a second priority Security Interest in all of such Grantor's right title and interest in, to and under all of such Grantor's Receivables and (ii) to enable the Collateral Agent to perfect such Security Interest. The Secured Parties acknowledge and agree that nothing in any Secured Transaction Document shall restrict or be deemed to restrict a Grantor from agreeing with the QRF Lender that, upon the occurrence of an event of default under the Qualified Receivables Facility, the QRF Lender shall be entitled to instruct each Account Debtor to remit all payments in respect of Receivables directly to the QRF Lender or its designee. If any Grantor proposes to enter into a Qualified Receivables Facility, the Collateral Agent agrees to negotiate an intercreditor agreement with the QRF Lender reasonably and in good faith. Any costs reasonably incurred by the Collateral Agent in connection with the negotiation of and its entry into an intercreditor agreement with the QRF Lender shall be borne by the Grantors.

ARTICLE 2.

SECURITY FOR OBLIGATIONS; NO ASSUMPTION OF LIABILITY

Section 2.1 Security for Obligations

This Guarantee and Security Agreement secures, and the Collateral is collateral security for, the prompt and complete payment or performance in full when due, whether at stated maturity, by required prepayment, declaration, acceleration, demand or otherwise (including the payment of amounts that would become due but for the operation of the automatic stay under Section 362(a) of Title 11 of the United States Code, or any similar provision of any other bankruptcy, insolvency, receivership or other similar law), of all Obligations with respect to each Grantor.

Section 2.2 No Assumption of Liability

Notwithstanding anything to the contrary herein, the Security Interest is granted as security only and shall not subject the Collateral Agent or any other Secured Party to, or in any way alter or modify, any obligation or liability of any Grantor with respect to or arising out of the Collateral.

ARTICLE 3.

REPRESENTATIONS AND WARRANTIES AND COVENANTS

Section 3.1 Generally

(a) Representations and Warranties. Each of the Grantors, jointly with the other Grantors and severally, represents and warrants to the Collateral Agent and the other Secured Parties that:

(i) As of the Applicable Date, (A) such Grantor's chief executive office or its principal place of business is, and for the preceding four months has been, located at the office indicated on Schedule 3.1(a)(i), (B) such Grantor's jurisdiction of organization is the jurisdiction indicated on Schedule 3.1(a)(i), and (C) such Grantor's Federal Employer Identification Number and/or company organizational number is as set forth on Schedule 3.1(a)(i).

(ii) As of the Applicable Date, (A) such Grantor's full legal name is as set forth on Schedule 3.1(a)(ii) and (B) such Grantor has not changed its legal name in the preceding five years, except as set forth on Schedule 3.1(a)(ii).

(iii) Such Grantor has not within the five years preceding the Applicable Date become bound (whether as a result of merger or otherwise) as debtor under a security agreement entered into by another Person, which has not theretofore been terminated.

(iv) Such Grantor has good and valid rights in, and title to, the Collateral with respect to which it has purported to grant the Security Interest, except for minor defects in title that do not materially interfere with its ability to conduct its business as currently conducted or to utilize such Collateral for its intended purposes, and except for Liens expressly permitted pursuant to the Secured Transaction Documents.

(v) To the best of such Grantor's knowledge, all actions and consents, including all filings, notices, registrations and recordings, necessary or desirable to create, perfect or ensure the first priority (subject only to Liens expressly permitted by the Secured Transaction Documents) of the Security Interest in the Collateral owned or held by it or on its behalf or for the exercise by the Collateral Agent or any other Secured Party of any voting or other rights provided for in this Guarantee and Security Agreement or the exercise of any remedies in respect of any such Collateral have been made or obtained, (A) except for (1) the filing of UCC financing statements naming such Grantor as "debtor" and the Collateral Agent as "secured party", or the making of other appropriate filings, registrations or recordings, containing a description of such Collateral in each applicable governmental, municipal or other office specified on Schedule 3.1(a)(v)(A), (2) the filing, registration or recordation of fully executed security agreements in the form hereof (or in such other form as shall be in all respects satisfactory to the Collateral Agent) and containing a description of all such Collateral consisting of Patents, Trademarks and Copyrights, together with all other necessary documents, in each applicable governmental registry or office, (3) Deposit Accounts with respect to which a Control Agreement is not required hereunder or is not required as of the Applicable Date, (4) Collateral in which the Security Interest may be perfected only by possession, the delivery of which to the Collateral Agent is not required hereunder; (B) except for any such Collateral as to which the representations and warranties in this Section 3.1(a)(v) would not be true solely by virtue of such Collateral having been used or disposed of in a manner expressly permitted hereunder or under any other Secured Transaction Document; and (C) except to the extent that such Security Interest may not be perfected by filing, registering, recording or taking any other action in the United States. The filing, in a timely manner, of the Securities Purchase Agreement and/or the Guarantee and Security Agreement and/or the Pledge Agreements with the following governmental bodies is required in order to perfect the security interests granted thereunder:

- The United States Patent and Trademark Office and the United States Copyright Office
- The Patents, Trademarks and Designs Office of any other jurisdiction.

The Collateral Agent agrees that it shall not seek (nor require any Grantor to take any action in order) to perfect its Security Interest in the trademarks set forth on Schedule 3.1(a)(v)(B).

Subsequent recording and filing with the United States Patent and Trademark Office and the United States Copyright Office may be necessary to perfect a Lien on registered patents, trademarks, trademark applications and copyrights acquired by the Company or any of its Subsidiaries after the date hereof.

(vi) It has not filed or authorized the filing of (A) any financing statement or analogous document under the UCC or any other applicable laws covering any such Collateral, (B) any assignment in which it assigns any such Collateral or any security agreement or similar instrument covering any such Collateral with the United States Patent and Trademark Office or the United States Copyright Office, or (C) any assignment in which it assigns any such Collateral or any security agreement or similar instrument covering any such Collateral with any foreign governmental, municipal or other office, in each case, which financing statement, analogous document, assignment or other instrument, as applicable, is still in effect, except for Liens expressly permitted by the Secured Transaction Documents.

(vii) The Security Interest in the Collateral owned or held by it or on its behalf (A) is effective to vest in the Collateral Agent, on behalf of the Secured Parties, the rights of the Collateral Agent in such Collateral as set forth herein and (B) does not violate Regulation T, U or X as of the Applicable Date.

(viii) Immediately after the Applicable Date, (i) the fair value of the assets of the Company and the Subsidiary Guarantors, taken as a whole, at a fair valuation, will exceed their debts and liabilities, subordinated, contingent or otherwise, (ii) the present fair saleable value of the property of the Company and the Subsidiary Guarantors, taken as a whole, will be greater than the amount that will be required to pay the probable liability of their debts and other liabilities, subordinated, contingent or otherwise, as such debts and other liabilities become absolute and matured, (iii) the Company and the Subsidiary Guarantors, taken as a whole, will be able to pay its debts and liabilities, subordinated, contingent or otherwise, as such debts and liabilities become absolute and matured, and (iv) each of the Company and the Subsidiary Guarantors will not have unreasonably small capital with which to conduct the business following such date.

(b) Covenants and Agreements. Each Grantor hereby covenants and agrees as follows:

(i) It will promptly notify the Collateral Agent in writing of any change (A) in its legal name, (B) in the location of its chief executive office, principal place of business, any office in which it maintains books or records relating to any of the Collateral owned or held by it or on its behalf or, except to the extent permitted by Section 3.1(b)(vii) or Section 3.2, any office or facility at which any such Collateral is located (including the establishment of any such new office or facility), (C) in its identity or legal or organizational structure or its jurisdiction of formation, or (D) in its Federal Taxpayer Identification Number. It agrees not to effect or permit any change referred to in the preceding sentence unless all filings have been made under the Uniform Commercial Code or otherwise that are required in order for the Collateral Agent to continue at all times following such change to have a valid, legal and perfected security interest in all the Collateral with the priority required hereby.

(ii) It shall maintain, at its own cost and expense, such complete and accurate Records with respect to the Collateral owned or held by it or on its behalf as is consistent with its current practices and in accordance with such prudent and standard practices used in industries that are the same as or similar to those in which it is engaged, but in any event to include complete accounting Records indicating all payments and proceeds received with respect to any part of such Collateral.

(iii) It shall, at its own cost and expense, take any and all actions reasonably necessary to defend title to the Collateral owned or held by it or on its behalf against all Persons and to defend the Security Interest in such Collateral and the priority thereof against any Lien or other interest not expressly permitted by the Secured Transaction Documents, and in furtherance thereof, it shall not take, or permit to be taken, any action not otherwise expressly permitted by the Secured Transaction Documents that is reasonably likely to impair the Security Interest or the priority thereof or any Secured Party's rights in or to such Collateral in violation hereof.

(iv) The Collateral Agent and such Persons as the Collateral Agent may designate shall have the right at reasonable times and on reasonable notice, at the cost and expense of such Grantor, to inspect all of its Records (and to make extracts and copies from such Records), to discuss its affairs with its officers and (to the extent consented to by such independent accountants) independent accountants and to verify under reasonable procedures the validity, amount, quality, quantity, value, condition and status of, or any other matter relating to, the Collateral owned or held by or on behalf of such Grantor, including, upon the occurrence and during the continuance of any Event of Default, in the case of Receivables, Pledged Debt, General Intangibles, Commercial Tort Claims or Collateral in the possession of any third person, by contacting Account Debtors, contract parties or other obligors thereon or any third person possessing such Collateral for the purpose of making such a verification. The Collateral Agent shall maintain the confidentiality of all such information and shall have the absolute right to share on a confidential basis any information it gains from such inspection or verification with any Secured Party.

(v) At its option, the Collateral Agent may discharge past due taxes, assessments, charges, fees, Liens, security interests or other encumbrances at any time levied or placed on the Collateral owned or held by or on behalf of such Grantor, and not permitted by the Secured Transaction Documents, and may pay for the maintenance and preservation of such Collateral to the extent such Grantor fails to do so as required by the Secured Transaction Documents, and such Grantor agrees, jointly with the other Grantors and severally, to reimburse the Collateral Agent on demand for any payment made or any expense incurred by the Collateral Agent pursuant to the foregoing authorization; provided, however, that nothing in this paragraph shall be interpreted as excusing any Grantor from the performance of, or imposing any obligation on the Collateral Agent or any other Secured Party to cure or perform, any covenants or other promises of any Grantor with respect to taxes, assessments, charges, fees, Liens, security interests or other encumbrances and maintenance as set forth herein or in the other Secured Transaction Documents.

(vi) It shall not be excused from liability as a result of granting of the Security Interest pursuant to this Guarantee and Security Agreement to observe and perform all the conditions and obligations to be observed and performed by it under each contract, agreement or instrument relating to the Collateral owned or held by it or on its behalf, all in accordance with the terms and conditions thereof and it agrees, jointly with the other Grantors and severally, to indemnify and hold harmless the Collateral Agent and the other Secured Parties from and against any and all liability for such performance.

(vii) It shall not make, or permit to be made, an assignment, pledge or hypothecation of the Collateral owned or held by it or on its behalf, or grant any other Lien in respect of such Collateral, except as expressly permitted by the Secured Transaction Documents. Except as expressly permitted by the Secured Transaction Documents, it shall not make or permit to be made any transfer of such Collateral, and it shall remain at all times in possession of such Collateral and the direct owner, beneficially and of record, of the Pledged Equity Interests included in such Collateral, except that (A) Inventory may be sold in the ordinary course of business and (B) unless and until the Collateral Agent shall notify it that an Event of Default shall have occurred and be continuing and that, during the continuance thereof, it shall not sell, convey, lease, assign, transfer or otherwise dispose of any such Collateral (which notice may be given by telephone if promptly confirmed in writing), it may use and dispose of such Collateral in any lawful manner not inconsistent with the provisions of this Guarantee and Security Agreement or any other Secured Transaction Document.

Section 3.2 Equipment and Inventory

Each of the Grantors, jointly with the other Grantors and severally, represents and warrants to the Collateral Agent and the other Secured Parties that, except for such Equipment and Inventory that does not exceed a book value of $100,000 in the aggregate for all Grantors, as of the Applicable Date, all of the Equipment and Inventory included in the Collateral owned or held by it or on its behalf (other than mobile goods and Inventory and Equipment in transit) is kept only at the locations specified on Schedule 3.2. In addition, each Grantor covenants and agrees that it shall not permit any Equipment or Inventory owned or held by it or on its behalf to be in the possession or control of any warehouseman, bailee, agent or processor for a period of greater than ninety (90) consecutive days, unless such warehouseman, bailee, agent or processor shall have been notified of the Security Interest and shall have agreed in writing to hold such Equipment or Inventory subject to the Security Interest and the instructions of the Collateral Agent and to waive and release any Lien held by it with respect to such Equipment or Inventory, whether arising by operation of law or otherwise.

Section 3.3 Receivables

(a) Representations and Warranties. Each of the Grantors, jointly with the other Grantors and severally, represents and warrants to the Collateral Agent and the other Secured Parties that, except for (i) Receivables valued at less than $25,000 individually and $100,000 in the aggregate for all Grantors or (ii) any Receivable pledged to the QRF Lender, no Receivable is evidenced by an Instrument (other than checks received in the ordinary course of business) or Chattel Paper that has not been delivered to the Collateral Agent.

(b) Covenants and Agreements. Each Grantor hereby covenants and agrees that:

(i) At the reasonable request of the Collateral Agent, it shall mark conspicuously, in form and manner reasonably satisfactory to the Collateral Agent, all Chattel Paper, Instruments (other than checks received in the ordinary course of business) and other evidence of any Receivables owned or held by it or on its behalf (other than any delivered to the Collateral Agent as provided herein and other than purchase orders sent to customers), as well as the related Receivables Records with an appropriate reference to the fact that the Collateral Agent has a security interest therein.

(ii) Except with respect to any Receivable pledged to the QRF Lender, it will not, without the Collateral Agent's prior written consent (which consent shall not be unreasonably withheld), grant any extension of the time of payment of any such Receivable, compromise, compound or settle the same for less than the full amount thereof, release, wholly or partly, any Supporting Obligation or Collateral Support relating thereto, or allow any credit or discount whatsoever thereon, other than extensions, credits, discounts, releases, compromises or settlements granted or made in the ordinary course of business and consistent with its then current practices and in accordance with such practices reasonably believed by such Grantor to be prudent.

(iii) Except as otherwise provided in this Section and unless otherwise determined by such Grantor in accordance with its good faith business judgment, it shall continue to use its best efforts to collect all amounts due or to become due to it under all such Receivables and any Supporting Obligations or Collateral Support relating thereto, and diligently exercise each material right it may have thereunder, in each case at its own cost and expense, and in connection with such collections and exercise, it shall, upon the occurrence and during the continuance of an Event of Default, except with respect to any Receivable pledged to the QRF Lender, take such action as it or the Collateral Agent may reasonably deem necessary. Notwithstanding the foregoing, the Collateral Agent shall have the right at any time upon the occurrence and during the continuance of an Event of Default to notify, or require such Grantor to notify, any Account Debtor with respect to any such Receivable, Supporting Obligation or Collateral Support of the Collateral Agent's security interest therein, and in addition, at any time during the continuation of an Event of Default, the Collateral Agent may: (A) direct such Account Debtor to make payment of all amounts due or to become due to such Grantor thereunder directly to the Collateral Agent and (B) enforce, at the cost and expense of such Grantor, collection thereof and to adjust, settle or compromise the amount or payment thereof, in the same manner and to the same extent as such Grantor would be able to have done. If the Collateral Agent notifies such Grantor that it has elected to collect any such Receivable, Supporting Obligation or Collateral Support in accordance with the preceding sentence, any payments thereof received by such Grantor shall not be commingled with any of its other funds or property but shall be held separate and apart therefrom, shall be held in trust for the benefit of the Collateral Agent hereunder and shall be forthwith delivered to the Collateral Agent in the same form as so received (with any necessary indorsement), and such Grantor shall not grant any extension of the time of payment thereof, compromise, compound or settle the same for less than the full amount thereof, release the same, wholly or partly, or allow any credit or discount whatsoever thereon. For the avoidance of doubt, the parties agree that the foregoing second and third sentences of this Section 3.3(b)(iii) shall not apply to or be of any force or effect in respect of any Receivable which has been pledged to the QRF Lender.

(iv) It shall use its reasonable best efforts to keep in full force and effect any Supporting Obligation or Collateral Support relating to any Receivable.

(v) During the continuance of an Event of Default, at the request of the Collateral Agent, it shall direct each Account Debtor to make payment on each Receivable, other than any Receivable which has been pledged to the QRF Lender, to a Control Account.

Section 3.4 Investment Property

(a) Representations and Warranties. Each of the Grantors, jointly with the other Grantors and severally, represents and warrants to the Collateral Agent and the other Secured Parties that:

(i) Schedule 3.4 sets forth, as of the Applicable Date, (i) all of the Investment Property (other than (A) Receivables not evidenced by an Instrument or Chattel Paper and (B) Equity Interests with an immaterial value) owned or held by or on behalf of such Grantor to the extent not held in a Securities Account and (ii) each Securities Account or commodities account maintained by or on behalf of such Grantor.

(ii) All Pledged Equity Interests have been duly authorized and validly issued and are fully paid and nonassessable, and such Grantor is the direct owner, beneficially and of record, thereof, free and clear of all Liens (other than Liens expressly permitted by the Secured Transaction Documents).

(iii) All Pledged Debt other than Pledged Debt described on Schedule 3.4 hereto has been duly authorized, issued and delivered and, where necessary, authenticated, and constitutes the legal, valid and binding obligation of the obligor with respect thereto, enforceable in accordance with its terms, subject to the effects of bankruptcy, insolvency, fraudulent conveyance, reorganization, moratorium and other similar laws relating to or affecting creditors' rights generally, and general equitable principles (whether considered in a proceeding in equity or at law).

(iv) All Investment Property, other than Investment Property held in a Securities Account identified on Schedule 3.4, consisting of certificated securities, Chattel Paper or Instruments other than checks received in the ordinary course of business has been delivered to the Collateral Agent.

(v) All Pledged Collateral held by a Securities Intermediary in a Securities Account or a commodities account is in a Securities Control Account.

(vi) Other than the Pledged Equity Interests that constitute General Intangibles, there is no Investment Property other than that (x) represented by certificated securities or Instruments in the possession of the Collateral Agent or (y) held in a Securities Account identified on Schedule 3.4.

(vii) No Person other than the Collateral Agent or an Approved Securities Intermediary has “control” (within the meaning of Article 8 of the UCC) over any Investment Property of such Grantor.

(b) Registration in Nominee Name; Denominations. Each Grantor hereby agrees that (i) without limiting Article 5, the Collateral Agent, on behalf of the Secured Parties, shall have the right (in its sole and absolute discretion) to hold any Investment Property in its own name as pledgee, the name of its nominee (as pledgee or as sub agent) or the name of the applicable Grantor, endorsed or assigned, where applicable, in blank or in favor of the Collateral Agent, (ii) at the Collateral Agent's request, such Grantor will promptly give to the Collateral Agent copies of any material notices or other communications received by it with respect to any Investment Property registered in its name, and (iii) the Collateral Agent shall at all times have the right to exchange any certificates, instruments or other documents representing or evidencing any Investment Property owned or held by or on behalf of such Grantor for certificates, instruments or other documents of smaller or larger denominations for any purpose consistent with this Guarantee and Security Agreement.

(c) Voting and Distributions.

(i) Unless and until an Event of Default shall have occurred and be continuing:

(A) Each Grantor shall be entitled to exercise any and all voting and/or other consensual rights and powers inuring to an owner of the Investment Property, or any part thereof, for any purpose not inconsistent with the terms of this Guarantee and Security Agreement and the other Secured Transaction Documents; provided, however, that such Grantor will not be entitled to exercise any such right if the result thereof could materially and adversely affect the rights inuring to a holder of the Investment Property or the rights and remedies of the Collateral Agent under this Guarantee and Security Agreement or any other Secured Transaction Document or the ability of the Collateral Agent to exercise the same.

(B) The Collateral Agent shall execute and deliver to each Grantor, or cause to be executed and delivered to each Grantor, all such proxies, powers of attorney and other instruments as such Grantor may reasonably request for the purpose of enabling it to exercise the voting and/or consensual rights and powers it is entitled to exercise pursuant to subsection (c)(i)(A) and to receive the cash payments it is entitled to receive pursuant to subsection (c)(i)(C).

(C) Each Grantor shall be entitled to receive, retain and use any and all cash dividends, interest and principal paid on the Investment Property owned or held by it or on its behalf to the extent and only to the extent that such cash dividends, interest and principal are not prohibited by, and otherwise paid in accordance with, the terms and conditions of the Securities Purchase Agreement, the other Secured Transaction Documents and applicable laws. All non cash dividends, interest and principal, and all dividends, interest and principal paid or payable in cash or otherwise in connection with a partial or total liquidation or dissolution, return of capital, capital surplus or paid in surplus, and all other distributions (other than distributions referred to in the preceding sentence) made on or in respect of the Investment Property, whether paid or payable in cash or otherwise, whether resulting from a subdivision, combination or reclassification of the outstanding Pledged Equity Interests in any issuer of any Investment Property or received in exchange for any Investment Property, or any part thereof, or in redemption thereof, or as a result of any merger, consolidation, acquisition or other exchange of assets to which such issuer may be a party or otherwise, shall be and become part of the Collateral, and, if received by such Grantor, shall not be commingled with any of its other funds or property but shall be held separate and apart therefrom, shall be held in trust for the benefit of the Collateral Agent hereunder and shall be forthwith delivered to the Collateral Agent in the same form as so received (with any necessary endorsement).

(ii) Without limiting the generality of the foregoing, upon the occurrence and during the continuance of an Event of Default:

(A) Upon the direction of the Collateral Agent, all rights of each Grantor to dividends, interest or principal that it is authorized to receive pursuant to subsection (c)(i)(C) shall cease, and all such rights shall thereupon become vested in the Collateral Agent, which shall have the sole and exclusive right and authority to receive and retain such dividends, interest or principal, as applicable. All dividends, interest and principal received by or on behalf of any Grantor contrary to the provisions of this Section shall be held in trust for the benefit of the Collateral Agent, shall be segregated from other property or funds of such Grantor and shall be forthwith delivered to the Collateral Agent upon demand in the same form as so received (with any necessary endorsement). Any and all money and other property paid over to or received by the Collateral Agent pursuant to the provisions of this subsection (c)(ii)(A) shall be retained by the Collateral Agent in an account to be established in the name of the Collateral Agent, for the ratable benefit of the Secured Parties, upon receipt of such money or other property and shall be applied in accordance with the provisions of Section 6.2. Subject to the provisions of this subsection (c)(ii)(A), such account shall at all times be under the sole dominion and control of the Collateral Agent, and the Collateral Agent shall at all times have the sole right to make withdrawals therefrom and to exercise all rights with respect to the funds and other property from time to time deposited therein or credited thereto as set forth in the Secured Transaction Documents. After all Events of Default have been cured or waived, the Collateral Agent shall, within five Business Days after all such Events of Default have been cured or waived, repay to the applicable Grantor all cash dividends, interest and principal (without interest) that such Grantor would otherwise be permitted to retain pursuant to the terms of subsection (c)(i)(C) and which remain in such account.

(B) Upon the direction of the Collateral Agent, all rights of each Grantor to exercise the voting and consensual rights and powers it is entitled to exercise pursuant to subsection (c)(i)(A), and the obligations of the Collateral Agent under subsection (c)(i)(B), shall cease, and all such rights shall thereupon become vested in the Collateral Agent, which shall have the sole and exclusive right and authority to exercise such voting and consensual rights and powers, provided that, unless otherwise directed by the Investor, the Collateral Agent shall have the right from time to time upon the occurrence of and during the continuance of an Event of Default to permit such Grantor to exercise such rights. After all Events of Default have been cured or waived, the applicable Grantor will have the right to exercise the voting and consensual rights and powers that it would otherwise be entitled to exercise pursuant to the terms of subsection (c)(i)(A).

(d) Covenants and Agreements. Each Grantor hereby covenants and agrees as follows:

(i) Each Grantor agrees that it will not establish or maintain, or permit any other Grantor to establish or maintain, any Securities Account or commodities account that is not a Control Account.

(ii) In the event (A) any Grantor or any Approved Securities Intermediary shall, after the date hereof, terminate an agreement with respect to the maintenance of a Securities Control Account for any reason, (B) the Collateral Agent shall demand the termination of an agreement with respect to the maintenance of a Securities Control Account as a result of the failure of an Approved Securities Intermediary to comply with the terms of the applicable Securities Control Account Letter, or (C) the Collateral Agent determines in good faith that the financial condition of an Approved Securities Intermediary has materially deteriorated, such Grantor agrees to promptly transfer the assets held in such Securities Control Account to another Securities Control Account reasonably acceptable to the Collateral Agent.

(iii) If, after the date hereof, any Grantor seeks to establish a Securities Account or commodities account or the Collateral Agent, pursuant to the preceding clause (ii), requires the transfer of the assets held in a Securities Control Account, the Collateral Agent agrees (x) not to unreasonably withhold its consent to any Securities Intermediary or commodity intermediary selected by such Grantor and (y) to negotiate the Securities Control Account Letter reasonably and in good faith.

Section 3.5 Letter of Credit Rights

Each of the Grantors, jointly with the other Grantors and severally, represents and warrants to the Collateral Agent and the other Secured Parties that Schedule 3.5 sets forth, as of the Applicable Date, each letter of credit giving rise to a Letter of Credit Right included in the Collateral owned or held by or on behalf of such Grantor.

Section 3.6 Intellectual Property Collateral

(a) Representations and Warranties. Each of the Grantors, jointly with the other Grantors and severally, represents and warrants to the Collateral Agent and the other Secured Parties that Schedule 3.6 sets forth, as of the Applicable Date, all of the Patents, material Patent Licenses, Trademarks, Trademark Licenses, material Copyrights, material Copyright Licenses, Trade Secret Licenses and Domain Names included in the Collateral owned or held by such Grantor.

(b) Covenants and Agreements. Each Grantor hereby covenants and agrees as follows:

(i) It will not, knowingly or intentionally, nor will it permit any of its licensees (or sublicensees) to, do any act, or omit to do any act, whereby any Patent that is related to the conduct of its business may become invalidated or dedicated to the public, and it shall use its reasonable best efforts to continue to mark any products covered by a Patent with the relevant patent number as necessary and sufficient to establish and preserve its maximum rights under applicable patent laws.

(ii) It will (either directly or through its licensees or its sublicensees), for each Trademark that is necessary for the conduct of its business, (A) maintain such Trademark in full force free from any claim of abandonment or invalidity for non use, (B) display such Trademark with notice of Federal or other analogous registration to the extent necessary and sufficient to establish and preserve its rights under applicable law, and (C) not knowingly use or knowingly permit the use of such Trademark in violation of any third party's valid and legal rights.

(iii) It will promptly notify the Collateral Agent in writing if it knows or has reason to know that any Intellectual Property material to the conduct of its business may become abandoned, lost or dedicated to the public, or of any adverse determination or development (including the institution of, or any such determination or development in, any proceeding in the United States Patent and Trademark Office or the United States Copyright Office, or any similar offices or tribunals in the United States or any other country) regarding such Grantor's ownership of any such Intellectual Property, its right to register the same, or to keep and maintain the same.

(iv) In no event shall it, either directly or through any agent, employee, licensee or designee, file an application for any Intellectual Property with the United States Patent and Trademark Office, the United States Copyright Office or any similar offices in the United States or any other country, unless it promptly notifies the Collateral Agent in writing thereof and, upon request of the Collateral Agent, executes and delivers any and all agreements, instruments, documents and papers as the Collateral Agent may request to evidence the Collateral Agent's security interest in such Intellectual Property, and such Grantor hereby appoints the Collateral Agent as its attorney in fact to execute and file such writings for the foregoing purposes, all acts of such attorney being hereby ratified and confirmed; such power, being coupled with an interest, is irrevocable.

(v) It will take all necessary steps that are consistent with the practice in any proceeding before the United States Patent and Trademark Office, the United States Copyright Office or any similar offices or tribunals in the United States and the European Union, and except as otherwise determined in its good faith business judgment, any other country, to maintain and pursue each material application relating to the Intellectual Property owned or held by it (and to obtain the relevant grant or registration) and to maintain each issued Patent and each registered Trademark and Copyright that is material to the conduct of its business, including timely filings of applications for renewal, affidavits of use, affidavits of incontestability and payment of maintenance fees, and, if consistent, in good faith, with good business judgment, to initiate opposition, interference and cancellation proceedings against third parties. In the event that it has reason to believe that any Intellectual Property material to the conduct of its business has been or is about to be infringed, misappropriated or diluted by a third party, it promptly shall notify the Collateral Agent in writing and shall, if consistent with good business judgment, promptly sue for infringement, misappropriation or dilution and to recover any and all damages for such infringement, misappropriation or dilution, and take such other actions as are appropriate under the circumstances to protect such Intellectual Property.

(vi) During the continuance of an Event of Default, it shall use its reasonable best efforts to obtain all requisite consents or approvals by the licenser of each License to effect the assignment (as collateral security) of all of its right, title and interest thereunder to the Collateral Agent or its designee.

(vii) It shall take all steps reasonably necessary to protect the secrecy of all Trade Secrets relating to the products and services sold or delivered under or in connection with the Intellectual Property owned or held by, including entering into confidentiality agreements with employees and labeling and restricting access to secret information and documents.

(viii) It shall in accordance with its past practices continue to collect all amounts due or to become due to such Grantor under all Intellectual Property, and diligently exercise each material right it may have thereunder, in each case at its own cost and expense, and in connection with such collections and exercise, it shall, upon the occurrence and during the continuance of an Event of Default, take such action as it or the Collateral Agent may reasonably deem necessary. Notwithstanding the foregoing, the Collateral Agent shall have the right at any time after the occurrence and during the continuance of an Event of Default to notify, or require such Grantor to notify, any relevant obligors with respect to such amounts of the Collateral Agent's security interest therein.

Section 3.7 Commercial Tort Claims

(a) Representations and Warranties. Each of the Grantors, jointly with the other Grantors and severally, represents and warrants to the Collateral Agent and the other Secured Parties that Schedule 3.7 sets forth, as of the Applicable Date, all Commercial Tort Claims made by it or on its behalf or to which it otherwise has any right, title or interest.

(b) Covenants and Agreements. Each Grantor hereby covenants and agrees that promptly after the same shall have been commenced, it shall provide to the Collateral Agent written notice of any Commercial Tort Claim and any judgment, settlement or other disposition thereof.

Section 3.8 Deposit Accounts; Control Accounts

(a) Representations and Warranties. The only Deposit Accounts maintained by any Grantor on the Applicable Date are those listed on Schedule 3.8 which sets forth such information separately for each Grantor.

(b) Covenants and Agreements. Each Grantor hereby covenants and agrees as follows:

Prior to the Applicable Date, each Grantor shall cause the financial institution where any Deposit Account is maintained, other than the financial institutions where the Deposit Accounts specified in item nos. 10, 11, 12, 13 and 14 of Schedule 3.8 are maintained, to enter in to a Control Agreement in the form substantially as set forth on Exhibit B hereto; provided, however, that the enforceability of such Control Agreements shall be exclusively conditioned on the valid issuance of the Senior Secured Notes to the Investor and the receipt by the Company of gross proceeds of $16,500,000 therefrom. Notwithstanding the foregoing, Deposit Accounts where the amount of cash on deposit does not exceed $50,000 individually or $100,000 in the aggregate (exclusive of the amounts in accounts for unpaid payroll, payroll taxes and withholding taxes) shall not be subject to a Control Agreement.

Twistbox Games Ltd. & Co. KG shall use its reasonable best efforts to cause the financial institution where any Deposit Account specified in item nos. 10, 11, 12, 13 and 14 of Schedule 3.8 is maintained to enter in to a Control Agreement in the form substantially as set forth on Exhibit B hereto within forty-five (45) days after the Applicable Date; provided, that if Twistbox Games Ltd. & Co. KG is unable to cause one or more of such financial institutions to enter into a Control Agreement within such time period, the Deposit Account(s) maintained at any such financial institutions that are not subject to a Control Agreement (the **"Excepted Deposit Accounts"**) shall instead be subject to the following sentence. If at any time the amount of cash on deposit in the Excepted Deposit Accounts exceeds $500,000 in the aggregate, the excess shall within forty-five (45) days be transferred to a Deposit Account subject to a Control Agreement. Notwithstanding the foregoing, Deposit Accounts where the amount of cash on deposit does not exceed $50,000 individually or $100,000 in the aggregate (exclusive of the amounts in accounts for unpaid payroll, payroll taxes and withholding taxes) shall not be subject to a Control Agreement.

Following the Applicable Date, each Grantor shall provide the Investor and Collateral Agent fifteen (15) days written notice prior to the formation of a Deposit Account (each, a **"New Deposit Account"**) and shall (i) promptly cause the financial institution where such New Deposit Account is formed to enter into a Control Agreement with respect to such New Deposit Account in substantially the form as set forth on Exhibit B hereto and (ii) update Schedule 3.8 as appropriate thereafter. The preceding sentence shall not apply to the QRF Deposit Account. Notwithstanding the foregoing, New Deposit Accounts where the amount of cash on deposit does not exceed $50,000 individually or $100,000 in the aggregate (exclusive of the amounts in accounts for unpaid payroll, payroll taxes and withholding taxes) shall not be subject to a Control Agreement. If any Grantor seeks to establish a New Deposit Account, the Collateral Agent agrees (x) not to unreasonably withhold its consent to any Control Account Bank selected by such Grantor and (y) to negotiate the Control Agreement reasonably and in good faith.

Nothing herein shall limit the Grantors' right to transfer balances among Deposit Accounts where each such Deposit Account is subject to a Control Agreement.

ARTICLE 4.

FURTHER ASSURANCES

Each Grantor hereby covenants and agrees, at its own cost and expense, to execute, acknowledge, deliver and/or cause to be duly filed all such further agreements, instruments and other documents (including favorable legal opinions in connection with any Transaction) that may be reasonably requested by the Collateral Agent, and take all such further actions, that the Collateral Agent may from time to time reasonably request to preserve, protect and perfect the Security Interest granted by it and the rights and remedies created hereby, including the payment of any fees and taxes required in connection with its execution and delivery of this Guarantee and Security Agreement, the granting by it of the Security Interest and the filing of any financing statements or other documents in connection herewith or therewith. In addition, to the extent permitted by applicable law, each Grantor hereby irrevocably authorizes the Collateral Agent to file one or more financing or continuation statements, and amendments thereto, relative to all or any part of the Collateral owned or held by it or on its behalf without the signature of such Grantor and additionally agrees that a photographic or other reproduction of this Guarantee and Security Agreement may be filed with the United States Patent and Trademark Office and/or the United States Copyright Office, as applicable. Each Grantor hereby further irrevocably authorizes the Collateral Agent to file a Record or Records, including financing statements, in all jurisdictions and with all filing offices that the Collateral Agent may determine, in its sole and absolute discretion, are necessary, advisable or prudent to perfect the Security Interest granted by it and agrees that such financing statements may describe the Collateral owned or held by it or on its behalf in the same manner as described herein or may contain an indication or description of collateral that describes such property in any other manner that the Collateral Agent may determine, in its sole and absolute discretion, is necessary, advisable or prudent to perfect the Security Interest granted by such Grantor, including describing such property as "all assets" or "all personal property."

ARTICLE 5.

COLLATERAL AGENT APPOINTED ATTORNEY-IN-FACT

Each Grantor hereby appoints the Collateral Agent and any officer or agent thereof, as its true and lawful agent and attorney in fact for the purpose of carrying out the provisions of this Guarantee and Security Agreement and taking any action and executing any instrument that the Collateral Agent may deem necessary or advisable to accomplish the purposes hereof, which appointment is irrevocable and coupled with an interest, and without limiting the generality of the foregoing, the Collateral Agent shall have the right, with power of substitution for such Grantor and in such Grantor's name or otherwise, for the use and benefit of the Collateral Agent and the other Secured Parties, upon the occurrence and during the continuance of an Event of Default, (i) to receive, endorse, assign and/or deliver any and all notes, acceptances, checks, drafts, money orders or other evidences of payment relating to the Collateral owned or held by it or on its behalf or any part thereof; (ii) to demand, collect, receive payment of, give receipt for, and give discharges and releases of, any of such Collateral; (iii) to sign the name of such Grantor on any invoice or bill of lading relating to any of such Collateral; (iv) to send verifications of Receivables owned or held by it or on its behalf to any Account Debtor; (v) to commence and prosecute any and all suits, actions or proceedings at law or in equity in any court of competent jurisdiction to collect or otherwise realize on any of the Collateral owned or held by it or on its behalf or to enforce any rights in respect of any of such Collateral; (vi) to settle, compromise, compound, adjust or defend any actions, suits or proceedings relating to any of such Collateral; (vii) to notify, or to require such Grantor to notify, Account Debtors and other obligors to make payment directly to the Collateral Agent, and (viii) to use, sell, assign, transfer, pledge, make any agreement with respect to or otherwise deal with any of such Collateral, and to do all other acts and things necessary to carry out the purposes of this Guarantee and Security Agreement, as fully and completely as though the Collateral Agent were the absolute owner of such Collateral for all purposes; provided, however, that nothing herein contained shall be construed as requiring or obligating the Collateral Agent or any other Secured Party to make any commitment or to make any inquiry as to the nature or sufficiency of any payment received by the Collateral Agent or any other Secured Party, or to present or file any claim or notice, or to take any action with respect to any of the Collateral or the moneys due or to become due in respect thereof or any property covered thereby, and no action taken or omitted to be taken by the Collateral Agent or any other Secured Party with respect to any of the Collateral shall give rise to any defense, counterclaim or offset in favor of such Grantor or to any claim or action against the Collateral Agent or any other Secured Party in the absence of the Collateral Agent's or such Secured Party's gross negligence or willful misconduct. The provisions of this Article shall in no event relieve any Grantor of any of its obligations hereunder or under the other Secured Transaction Documents with respect to any of the Collateral or impose any obligation on the Collateral Agent or any other Secured Party to proceed in any particular manner with respect to any of the Collateral, or in any way limit the exercise by the Collateral Agent or any other Secured Party of any other or further right that it may have on the date of this Guarantee and Security Agreement or hereafter, whether hereunder, under any other Secured Transaction Document, by law or otherwise. Any sale pursuant to the provisions of this paragraph shall conform to the commercially reasonable standards as provided in Part 6 of Article 9 of the UCC.

ARTICLE 6.

REMEDIES UPON DEFAULT

Section 6.1 Remedies Generally

(a) General Rights. Upon the occurrence and during the continuance of an Event of Default, each Grantor agrees to deliver each item of Collateral owned or held by it or on its behalf to the Collateral Agent on demand, and it is agreed that the Collateral Agent shall have the right to take any of or all the following actions at the same or different times to the extent permitted by law: (i) with respect to any Collateral consisting of Intellectual Property or Commercial Tort Claims, on demand, to cause the Security Interest to become an assignment, transfer and conveyance of any such Collateral by the applicable Grantors to the Collateral Agent, or, in the case of Intellectual Property, to license or sublicense, whether general, special or otherwise, and whether on an exclusive or non-exclusive basis, any such Collateral throughout the world on such terms and conditions and in such manner as the Collateral Agent shall determine (other than in violation of any then-existing licensing arrangements to the extent that waivers cannot be obtained), and (ii) with or without legal process and with or without prior notice or demand for performance, to take possession of the Collateral owned or held by it or on its behalf and without liability for trespass to enter any premises where such Collateral may be located for the purpose of taking possession of or removing such Collateral and, generally, to exercise any and all rights afforded to a secured party under the UCC or other applicable law. Without limiting the generality of the foregoing, each Grantor agrees that, upon the occurrence and during the continuance of an Event of Default, the Collateral Agent shall have the right, subject to the mandatory requirements of applicable law, to sell or otherwise dispose of any of the Collateral owned or held by or on behalf of such Grantor, at public or private sale or at any broker's board or on any securities exchange, for cash, upon credit or for future delivery as the Collateral Agent shall deem appropriate. The Collateral Agent shall be irrevocably authorized at any such sale of such Collateral constituting securities (if it deems it advisable to do so) to restrict the prospective bidders or purchasers to Persons who will represent and agree that they are purchasing such Collateral for their own account for investment and not with a view to the distribution or sale thereof, and upon consummation of any such sale, the Collateral Agent shall have the right to assign, transfer and deliver to the purchaser or purchasers thereof the Collateral so sold. Each such purchaser at any such sale shall hold the property sold absolutely, free from any claim or right on the part of the applicable Grantor, and such Grantor hereby waives (to the extent permitted by law) all rights of redemption, stay, valuation and appraisal which such Grantor now has or may at any time in the future have under any rule of law or statute now existing or hereafter enacted.

(b) Sale of Collateral. The Collateral Agent shall give each Grantor ten days' written notice (which such Grantor agrees is reasonable notice within the meaning of Part 6 of Article 9 of the UCC) of the Collateral Agent's intention to make any sale of any of the Collateral owned or held by or on behalf of such Grantor. Such notice, in the case of a public sale, shall state the time and place for such sale and, in the case of a sale at a broker's board or on a securities exchange, shall state the board or exchange at which such sale is to be made and the day on which such Collateral will first be offered for sale at such board or exchange. Any such public sale shall be held at such time or times within ordinary business hours and at such place or places as the Collateral Agent may fix and state in the notice (if any) of such sale. At any such sale, the Collateral to be sold may be sold in one lot as an entirety or in separate parcels, as the Collateral Agent may (in its sole and absolute discretion) determine. The Collateral Agent shall not be obligated to make any sale of any Collateral if it shall determine not to do so, regardless of the fact that notice of sale of such Collateral shall have been given. The Collateral Agent may, without notice or publication, adjourn any public or private sale or cause the same to be adjourned from time to time by announcement at the time and place fixed for sale, and such sale may, without further notice, be made at the time and place to which the same was so adjourned. In case any sale of any of the Collateral is made on credit or for future delivery, the Collateral so sold may be retained by the Collateral Agent until the sale price is paid by the purchaser or purchasers thereof, but the Collateral Agent shall not incur any liability in case any such purchaser or purchasers shall fail to take up and pay for the Collateral so sold and, in case of any such failure, such Collateral may be sold again upon like notice. At any public (or, to the extent permitted by applicable law, private) sale made pursuant to this Section, any Secured Party may bid for or purchase, free (to the extent permitted by applicable law) from any right of redemption, stay, valuation or appraisal on the part of such Grantor (all said rights being also hereby waived and released to the extent permitted by law), any of the Collateral offered for sale and may make payment on account thereof by using any claim then due and payable to such Secured Party from such Grantor as a credit against the purchase price, and such Secured Party may, upon compliance with the terms of sale, hold, retain and dispose of such property without further accountability to such Grantor therefor. For purposes hereof, (i) a written agreement to purchase any of the Collateral shall be treated as a sale thereof, (ii) the Collateral Agent shall be free to carry out such sale pursuant to such agreement, and (iii) no Grantor shall be entitled to the return of any of the Collateral subject thereto, notwithstanding the fact that after the Collateral Agent shall have entered into such an agreement all Events of Default shall have been remedied and the Obligations paid in full. As an alternative to exercising the power of sale herein conferred upon it, the Collateral Agent may proceed by a suit or suits at law or in equity to foreclose upon any of the Collateral and to sell any of the Collateral pursuant to a judgment or decree of a court or courts having competent jurisdiction or pursuant to a proceeding by a court-appointed receiver. Without limiting the generality of the foregoing, each Grantor agrees as follows: (A) if the proceeds of any sale of the Collateral owned or held by it or on its behalf pursuant to this Article are insufficient to pay all the Obligations, it shall be liable for the resulting deficiency and the fees, charges and disbursements of any counsel employed by the Collateral Agent or any other Secured Party to collect such deficiency, (B) it hereby waives any claims against the Collateral Agent arising by reason of the fact that the price at which any such Collateral may have been sold at any private sale pursuant to this Article was less than the price that might have been obtained at a public sale, even if the Collateral Agent accepts the first offer received and does not offer such Collateral to more than one offeree, (C) there is no adequate remedy at law for failure by it to comply with the provisions of this Section and that such failure would not be adequately compensible in damages, and therefore agrees that its agreements in this Section may be specifically enforced, (D) the Collateral Agent may sell any such Collateral without giving any warranties as to such Collateral, and the Collateral Agent may specifically disclaim any warranties of title or the like, and (E) the Collateral Agent shall have no obligation to marshall any such Collateral.

Section 6.2 Application of Proceeds of Sale

The Collateral Agent shall apply the proceeds of any collection or sale of the Collateral, as well as any Collateral consisting of cash, as follows:

FIRST, to the payment of all reasonable costs and expenses incurred by the Collateral Agent in connection with such collection or sale or otherwise in connection with this Guarantee and Security Agreement, any other Secured Transaction Document or any of the Obligations, including all out of pocket court costs and the reasonable fees and expenses of its agents and legal counsel, the repayment of all advances made by the Collateral Agent hereunder or under any other Secured Transaction Document on behalf of any Grantor and any other reasonable out-of-pocket costs or expenses incurred in connection with the exercise of any right or remedy hereunder or under any other Secured Transaction Document;

SECOND, to the payment in full of the Obligations (the amounts so applied to be distributed among the Secured Parties pro rata in accordance with the amounts of the Obligations owed to them on the date of any such distribution); and

THIRD, to the applicable Grantor, its successors or assigns, or as a court of competent jurisdiction may otherwise direct.

The Collateral Agent shall have sole and absolute discretion as to the order of application of any such proceeds, moneys or balances in accordance with this Guarantee and Security Agreement. Upon any sale of the Collateral by the Collateral Agent (including pursuant to a power of sale granted by statute or under a judicial proceeding), the receipt of the purchase money by the Collateral Agent or of the officer making the sale shall be a sufficient discharge to the purchaser or purchasers of the Collateral so sold and such purchaser or purchasers shall not be obligated to see to the application of any part of the purchase money paid over to the Collateral Agent or such officer or be answerable in any way for the misapplication thereof.

Section 6.3 Investment Property

In view of the position of each Grantor in relation to the Investment Property, or because of other current or future circumstances, a question may arise under the Securities Act of 1933, as now or hereafter in effect, or any similar statute hereafter enacted analogous in purpose or effect (such Act and any such similar statute as from time to time in effect being called the **"Federal securities laws"**) with respect to any disposition of the Investment Property permitted hereunder. Each Grantor understands that compliance with the Federal securities laws might very strictly limit the course of conduct of the Collateral Agent if the Collateral Agent were to attempt to dispose of all or any part of the Investment Property, and might also limit the extent to which or the manner in which any subsequent transferee of any Investment Property could dispose of the same. Similarly, there may be other legal restrictions or limitations affecting the Collateral Agent in any attempt to dispose of all or part of the Investment Property under applicable Blue Sky or other state securities laws or similar laws analogous in purpose or effect. Each Grantor recognizes that in light of such restrictions and limitations the Collateral Agent may, with respect to any sale of the Investment Property, limit the purchasers to those who will agree, among other things, to acquire such Investment Property for their own account, for investment, and not with a view to the distribution or resale thereof. Each Grantor acknowledges and agrees that in light of such restrictions and limitations, the Collateral Agent, in its sole and absolute discretion, (i) may proceed to make such a sale whether or not a registration statement for the purpose of registering such Investment Property, or any part thereof, shall have been filed under the Federal securities laws and (ii) may approach and negotiate with a single potential purchaser to effect such sale. Each Grantor acknowledges and agrees that any such sale might result in prices and other terms less favorable to the seller than if such sale were a public sale without such restrictions. In the event of any such sale, the Collateral Agent shall incur no responsibility or liability for selling all or any part of the Investment Property at a price that the Collateral Agent, in its discretion, may in good faith deem reasonable under the circumstances, notwithstanding the possibility that a substantially higher price might have been realized if the sale were deferred until after registration as aforesaid or if more than a single purchaser were approached. The provisions of this Section will apply notwithstanding the existence of a public or private market upon which the quotations or sales prices may exceed substantially the price at which the Collateral Agent sells any such Investment Property.

Section 6.4 Grant of License to Use Intellectual Property

For the purpose of enabling the Collateral Agent to exercise rights and remedies under this Article, at such time as the Collateral Agent shall be lawfully entitled to exercise such rights and remedies, each Grantor hereby grants to the Collateral Agent an irrevocable, non exclusive license (exercisable without payment of royalty or other compensation to such Grantor) to use, license or sub license any of the Collateral consisting of Intellectual Property now owned or held or hereafter acquired or held by or on behalf of such Grantor, and wherever the same may be located, and including in such license reasonable access to all media in which any of the licensed items may be recorded or stored and to all computer software and programs used for the compilation or printout thereof. The use of such license by the Collateral Agent shall be exercised, at the option of the Collateral Agent, upon the occurrence and during the continuation of an Event of Default; provided that any license, sub license or other transaction entered into by the Collateral Agent in accordance herewith shall be binding upon such Grantor notwithstanding any subsequent cure of an Event of Default. Any royalties and other payments received by the Collateral Agent shall be applied in accordance with Section 6.2.

ARTICLE 7.

REIMBURSEMENT OF COLLATERAL AGENT

Each Grantor agrees, jointly with the other Grantors and severally, to pay to the Collateral Agent the amount of any and all reasonable out-of-pocket expenses, including the fees, other charges and disbursements of counsel and of any experts or agents, that the Collateral Agent may incur in connection with (i) the administration of this Guarantee and Security Agreement relating to such Grantor or any of its property, (ii) the custody or preservation of, or the sale of, collection from, or other realization upon, any of the Collateral owned or held by or on behalf of such Grantor, (iii) the exercise, enforcement or protection of any of the rights of the Collateral Agent hereunder relating to such Grantor or any of its property, or (iv) the failure by such Grantor to perform or observe any of the provisions hereof. Without limitation of its indemnification obligations under the other Secured Transaction Documents, each of the Grantors agrees, jointly with the other Grantors and severally, to indemnify the Collateral Agent and each Related Party thereof (each such Person being called an **"Indemnitee"**) against, and hold each Indemnitee harmless from, any and all losses, claims, damages, liabilities and related out-of-pocket expenses, including reasonable counsel fees, other charges and disbursements, incurred by or asserted against any Indemnitee arising out of, in any way connected with, or as a result of (a) the execution or delivery by such Grantor of this Guarantee and Security Agreement or any other Secured Transaction Document or any agreement or instrument contemplated hereby or thereby, or the performance by such Grantor of its obligations under the Secured Transaction Documents and the other transactions contemplated thereby or (b) any claim, litigation, investigation or proceeding relating to any of the foregoing, whether or not any Indemnitee is a party thereto, provided that such indemnity shall not, as to any Indemnitee, be available to the extent that such losses, claims, damages, liabilities or related expenses are determined by judgment of a court of competent jurisdiction to have primarily resulted from the gross negligence or willful misconduct of such Indemnitee. Any amounts payable as provided hereunder shall be additional Obligations secured hereby and by the other Secured Transaction Documents. The provisions of this Section shall remain operative and in full force and effect regardless of the termination of this Guarantee and Security Agreement or any other Secured Transaction Document, the consummation of the transactions contemplated hereby or thereby, the repayment of any of the Obligations, the invalidity or unenforceability of any term or provision of this Guarantee and Security Agreement or any other Secured Transaction Document or any investigation made by or on behalf of the Collateral Agent or any other Secured Party. All amounts due under this Section shall be payable within ten days of written demand therefor and shall bear interest at the then prevailing rate under the Secured Notes.

ARTICLE 8.

WAIVERS; AMENDMENTS

No failure or delay of the Collateral Agent in exercising any power or right hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any such right or power, or any abandonment or discontinuance of steps to enforce such a right or power, preclude any other or further exercise thereof or the exercise of any other right or power. The rights and remedies of the Collateral Agent and the other Secured Parties hereunder and under the other Secured Transaction Documents are cumulative and are not exclusive of any rights or remedies that they would otherwise have. No waiver of any provision of this Guarantee and Security Agreement or any other Secured Transaction Document or consent to any departure by any Grantor therefrom shall in any event be effective unless the same shall be permitted by this Section, and then such waiver or consent shall be effective only in the specific instance and for the purpose for which given. No notice or demand on any Grantor in any case shall entitle such Grantor to any other or further notice or demand in similar or other circumstances. Neither this Guarantee and Security Agreement nor any provision hereof may be waived, amended, supplemented or otherwise modified, or any departure therefrom consented to, except pursuant to an agreement or agreements in writing entered into by the Grantors and Investor holding more than a majority of the aggregate principal amount of the Senior Secured Notes then outstanding, provided that no such agreement shall waive, amend, supplement or otherwise modify, or consent to a departure to, the rights or duties of the Collateral Agent hereunder without the prior written consent of the Collateral Agent.

ARTICLE 9.

SECURITY INTEREST ABSOLUTE

All rights of the Collateral Agent hereunder, the Security Interest and all obligations of each Grantor hereunder shall be absolute and unconditional irrespective of (i) any lack of validity or enforceability of the Securities Purchase Agreement, any other Secured Transaction Document, any agreement with respect to any of the Obligations, or any other agreement or instrument relating to any of the foregoing, (ii) any change in the time, manner or place of payment of, or in any other term of, all or any of the Obligations, or any other waiver, amendment, supplement or other modification of, or any consent to any departure from, the Securities Purchase Agreement, any other Secured Transaction Document or any other agreement or instrument relating to any of the foregoing, (iii) any exchange, release or non-perfection of any Lien on any other collateral, or any release or waiver, amendment, supplement or other modification of, or consent under, or departure from, any guarantee, securing or guaranteeing all or any of the Obligations, or (iv) any other circumstance that might otherwise constitute a defense available to, or a discharge of, any Grantor in respect of the Obligations or in respect of this Guarantee and Security Agreement or any other Secured Transaction Document.

## ARTICLE 10.

## TERMINATION; RELEASE

This Guarantee and Security Agreement and the Security Interest shall terminate and be of no further force and effect when the Obligations shall have been finally and indefeasibly paid in full. Upon (i) any sale, transfer or other disposition permitted by the Secured Transaction Documents (other than any sale, transfer or other disposition of any Collateral that would, immediately after giving effect thereto, continue to be Collateral but for the release of the Security Interest therein pursuant to this clause) or (ii) the effectiveness of any written consent to the release of the Security Interest in any Collateral, the Security Interest in such Collateral shall be automatically released. In addition, if any of the Pledged Equity Interests in any Subsidiary are sold, transferred or otherwise disposed of pursuant to a transaction permitted by the Secured Transaction Documents and, immediately after giving effect thereto, such Subsidiary or subsidiary, as applicable, would no longer be a Subsidiary or a subsidiary, as applicable, then the obligations of such Subsidiary or subsidiary, as applicable, under this Guarantee and Security Agreement and the Security Interest in the Collateral owned or held by or on behalf of such Subsidiary or such subsidiary, as applicable, shall be automatically released. In addition, if the Company enters into a Qualified Receivables Facility, that portion of the Receivables subject to the Qualified Receivables Facility shall be automatically released from Collateral and no longer subject to Section 3.3(b) of this Guarantee and Security Agreement; provided, however, should such a Qualified Receivables Facility terminate, the Receivables subject thereto shall be Collateral and shall thereafter be subject to Section 3.3(b) of this Guarantee and Security Agreement. In connection with any termination or release pursuant to this Section, the Collateral Agent shall execute and deliver to the applicable Grantor, and hereby authorizes the filing of, at such Grantor's cost and expense, all Uniform Commercial Code termination statements and similar documents that such Grantor may reasonably request to evidence such termination or release. Any execution and delivery of documents pursuant to this Article shall be without recourse to or warranty by the Collateral Agent or any other Secured Party.

## ARTICLE 11.

## ADDITIONAL SUBSIDIARY GUARANTORS AND GRANTORS

Upon execution and delivery after the date hereof by the Collateral Agent and a Subsidiary of a Supplement, such Subsidiary shall become a Subsidiary Guarantor and Grantor, as applicable, hereunder with the same force and effect as of the date of such execution as if originally named as a Subsidiary Guarantor and a Grantor, as applicable, herein (each an **"Additional Subsidiary Guarantor and Grantor"**). The execution and delivery of any Supplement shall not require the consent of any other Grantor hereunder. The rights and obligations of each Grantor hereunder and each Grantor and other party (other than an Investor) under the Secured Transaction Documents shall remain in full force and effect notwithstanding the addition of any Additional Subsidiary Guarantor and Grantor as a party to this Guarantee and Security Agreement.

## ARTICLE 12.

## COLLATERAL AGENT

Each Investor hereby irrevocably appoints the Collateral Agent as its agent and authorizes the Collateral Agent to take such actions on its behalf and to exercise such powers as are delegated to the Collateral Agent by the terms hereof, together with such actions and powers as are reasonably incidental thereto.

The Person serving as the Collateral Agent hereunder shall have the same rights and powers in its capacity as an Investor as any other investor and may exercise the same as though it were not the Collateral Agent, and such Person and its Affiliates may accept deposits from, lend money to and generally engage in any kind of business with the Company or any Subsidiary or other Affiliate thereof as if it were not the Collateral Agent hereunder.

The Collateral Agent shall not have any duties or obligations except those expressly set forth herein. Without limiting the generality of the foregoing, (i) the Collateral Agent shall not be subject to any fiduciary or other implied duties, regardless of whether an Event of Default has occurred and is continuing, (ii) the Collateral Agent shall not have any duty to take any discretionary action or exercise any discretionary powers, except discretionary rights and powers expressly contemplated by this Agreement, and (iii) except as expressly set forth herein, the Collateral Agent shall not have any duty to disclose, and shall not be liable for the failure to disclose, any information relating to the Company or any of the Subsidiaries that is communicated to or obtained by the Person serving as Collateral Agent or any of its Affiliates in any capacity. The Collateral Agent shall not be liable for any action taken or not taken by it in the absence of its own gross negligence or willful misconduct. The Collateral Agent shall be deemed not to have knowledge of any Event of Default unless and until written notice thereof is given to the Collateral Agent by the Company or an Investor (and, promptly after its receipt of any such notice, it shall give each Investor and the Company notice thereof), and the Collateral Agent shall not be responsible for or have any duty to ascertain or inquire into (a) any statement, warranty or representation made in or in connection with any Secured Transaction Document, (b) the contents of any certificate, report or other document delivered thereunder or in connection therewith, (c) the performance or observance of any of the covenants, agreements or other terms or conditions set forth therein, (d) the validity, enforceability, effectiveness or genuineness thereof or any other agreement, instrument or other document or (e) the satisfaction of any condition set forth in herein, other than to confirm receipt of items expressly required to be delivered to the Collateral Agent.

The Collateral Agent shall be entitled to rely upon, and shall not incur any liability for relying upon, any notice, request, certificate, consent, statement, instrument, document or other writing reasonably believed by it to be genuine and to have been signed or sent by the proper Person. The Collateral Agent also may rely upon any statement made to it orally or by telephone and reasonably believed by it to be made by the proper Person, and shall not incur any liability for relying thereon. The Collateral Agent may consult with legal counsel (who may be counsel for the Grantors), independent accountants and other experts selected by it, and shall not be liable for any action taken or not taken by it in accordance with the advice of any such counsel, accountants or experts.

The Collateral Agent may perform any and all its duties and exercise its rights and powers by or through any one or more sub agents appointed by the Collateral Agent, provided that no such delegation shall serve as a release of the Collateral Agent or waiver by the Company of any rights hereunder. The Collateral Agent and any such sub agent may perform any and all its duties and exercise its rights and powers through their respective affiliates. The exculpatory provisions of the preceding paragraphs shall apply to any such sub agent and to the affiliates of the Collateral Agent and any such sub agent, and shall apply to their respective activities acting for the Collateral Agent.

Subject to the appointment and acceptance of a successor Collateral Agent as provided in this paragraph, the Collateral Agent may resign at any time by notifying the Investor and the Company. Upon any such resignation, the Investor holding a majority of the principal amount of the Senior Secured Notes shall have the right to appoint a successor. If no successor shall have been so appointed by the Investor and shall have accepted such appointment within 30 days after the retiring Collateral Agent gives notice of its resignation, then the retiring Collateral Agent may, on behalf of the Investor holding a majority of the principal amount of the Senior Secured Notes, appoint a successor Collateral Agent which shall be a bank with an office in New York, New York, or an affiliate of any such bank. Upon the acceptance of its appointment as Collateral Agent hereunder by a successor, such successor shall succeed to and become vested with all the rights, powers, privileges and duties of the retiring Collateral Agent, and the retiring Collateral Agent shall be discharged from its duties and obligations hereunder. After the Collateral Agent's resignation hereunder, the provisions of this Article shall continue in effect for the benefit of such retiring Collateral Agent, its sub agents and their respective affiliates in respect of any actions taken or omitted to be taken by any of them while it was acting as Collateral Agent.

Each Investor acknowledges that it has, independently and without reliance upon the Collateral Agent or any other Investor and based on such documents and information as it has deemed appropriate, made its own credit analysis and decision to enter into the Secured Transaction Documents. Each Investor also acknowledges that it will, independently and without reliance upon the Collateral Agent or any other-Investor and based on such documents and information as it shall from time to time deem appropriate, continue to make its own decisions in taking or not taking action under or based upon any Secured Transaction Document, any related agreement or any document furnished thereunder.

ARTICLE 13.

NOTICES

All notices, requests, demands and other communications to any party hereunder shall be in writing (including facsimile or similar writing) and shall be given to such party at its address or facsimile number set forth below or such other address or facsimile number as such party may hereafter specify by notice to the other parties listed below:

(a) If to the Company:

Twistbox Entertainment, Inc.
14242 Ventura Blvd., Third Floor
Sherman Oaks, CA 91423
Telephone: (818) 301-6200
Facsimile: (818) 708-0598
Attention: Chief Executive Officer
Attention: General Counsel

with a copy to:

Proskauer Rose LLP
1585 Broadway
New York, New York 10036
Telephone: (212) 969-3640
Facsimile: (212) 969-2900
Attention: Paul Rachlin, Esq.

(b) If to a Subsidiary Guarantor: At its address for notices set forth on Schedule I.

(c) If to the Collateral Agent:

ValueAct SmallCap Master Fund, L.P.
435 Pacific Avenue, 4th Floor
San Francisco, CA 94133
Telephone: (415) 249-1237
Facsimile: (415) 249-1242
Attention: Jimmy Price

with a copy to:

ValueAct SmallCap Master Fund, L.P.
435 Pacific Avenue, 4th Floor
San Francisco, CA 94133
Telephone: (415) 249-1237
Facsimile: (415) 249-1242
Attention: Jimmy Price

and

Skadden, Arps, Slate, Meagher & Flom LLP
525 University Avenue, Suite 1100
Palo Alto, CA 94301
Facsimile: (650) 470-4570
Telephone: (650) 470-4500
Attention: Thomas Ivey, Esq.

Each such notice, request or other communication shall be effective (i) upon receipt (provided, however, that notices received on a Saturday, Sunday or legal holiday or after 6:30 p.m. (New York City time) on any other day will be deemed to have been received on the next Business Day), if given by facsimile transmission, (ii) the Business Day following the date of delivery with a nationally recognized overnight courier service or (iii) if given by any other means, when delivered at the address specified in this Article 13.

ARTICLE 14.

BINDING EFFECT; SEVERAL AGREEMENT; ASSIGNMENTS

Whenever in this Guarantee and Security Agreement any of the parties hereto is referred to, such reference shall be deemed to include the successors and permitted assigns of such party, and all covenants, promises and agreements by or on behalf of any Grantor that are contained in this Guarantee and Security Agreement shall bind and inure to the benefit of each party hereto and its successors and permitted assigns. This Guarantee and Security Agreement shall become effective as to any Grantor when a counterpart hereof executed on behalf of such Grantor shall have been delivered to the Collateral Agent and a counterpart hereof shall have been executed on behalf of the Collateral Agent, and thereafter shall be binding upon such Grantor and the Collateral Agent and their respective successors and permitted assigns, and shall inure to the benefit of such Grantor, the Collateral Agent and the other Secured Parties, and their respective successors and permitted assigns, except that no Grantor shall have the right to assign its rights or obligations hereunder or any interest herein or in any of the Collateral (and any such attempted assignment shall be void), except as expressly contemplated by this Guarantee and Security Agreement or the other Secured Transaction Documents. This Guarantee and Security Agreement shall be construed as a separate agreement with respect to each of the Grantors and may be amended, supplemented, waived or otherwise modified or released with respect to any Grantor without the approval of any other Grantor and without affecting the obligations of any other Grantor hereunder.

ARTICLE 15.

SURVIVAL OF AGREEMENT; SEVERABILITY

All covenants, agreements, representations and warranties made by the Grantors herein and in the certificates or other instruments prepared or delivered in connection with or pursuant to this Guarantee and Security Agreement or any other Secured Transaction Document shall be considered to have been relied upon by the Collateral Agent and the other Secured Parties and shall survive the execution and delivery of any Secured Transaction Document and the making of any Loan, regardless of any investigation made by the Secured Parties or on their behalf, and shall continue in full force and effect until this Guarantee and Security Agreement shall terminate. In the event any one or more of the provisions contained in this Guarantee and Security Agreement or in any other Secured Transaction Document should be held invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions contained herein or therein shall not in any way be affected or impaired thereby (it being understood that the invalidity of a particular provision in a particular jurisdiction shall not in and of itself affect the validity of such provision in any other jurisdiction). The parties shall endeavor in good faith negotiations to replace the invalid, illegal or unenforceable provisions with valid provisions the economic effect of which comes as close as possible to that of the invalid, illegal or unenforceable provisions.

ARTICLE 16.

GOVERNING LAW

THIS GUARANTEE AND SECURITY AGREEMENT SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK. THE LAWS OF THE FEDERAL REPUBLIC OF GERMANY SHALL APPLY ONLY TO THE EXTENT SUCH APPLICATION IS MANDATORY PURSUANT TO THE PRINCIPLES OF INTERNATIONAL PRIVATE LAW (CONFLICT OF LAWS).

ARTICLE 17.

COUNTERPARTS

This Guarantee and Security Agreement may be executed in counterparts (and by different parties hereto on different counterparts), each of which shall constitute an original, but all of which, when taken together, shall constitute but one contract (subject to Article 14), and shall become effective as provided in Article 14. Delivery of an executed counterpart of this Guarantee and Security Agreement by facsimile transmission shall be as effective as delivery of a manually executed counterpart of this Guarantee and Security Agreement.

ARTICLE 18.

HEADINGS

Article and Section headings and the Table of Contents used herein are for convenience of reference only, are not part of this Guarantee and Security Agreement and shall not affect the construction of, or be taken into consideration in interpreting, this Guarantee and Security Agreement.

ARTICLE 19.

JURISDICTION; VENUE; CONSENT TO SERVICE OF PROCESS

EACH OF THE GRANTORS HEREBY IRREVOCABLY AND UNCONDITIONALLY SUBMITS, FOR ITSELF AND ITS PROPERTY, TO THE NONEXCLUSIVE JURISDICTION OF THE SUPREME COURT OF THE STATE OF NEW YORK SITTING IN NEW YORK COUNTY AND OF THE UNITED STATES' DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK, AND ANY APPELLATE COURT FROM ANY THEREOF, IN ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER COLLATERAL DOCUMENT, OR FOR RECOGNITION OR ENFORCEMENT OF ANY JUDGMENT, AND EACH OF THE PARTIES HERETO HEREBY IRREVOCABLY AND UNCONDITIONALLY AGREES THAT ALL CLAIMS IN RESPECT OF ANY SUCH ACTION OR PROCEEDING MAY BE HEARD AND DETERMINED IN SUCH NEW YORK STATE OR, TO THE EXTENT PERMITTED BY LAW, IN SUCH FEDERAL COURT. EACH OF THE PARTIES HERETO AGREES THAT A FINAL JUDGMENT IN ANY SUCH ACTION OR PROCEEDING SHALL BE CONCLUSIVE AND MAY BE ENFORCED IN OTHER JURISDICTIONS BY SUIT ON THE JUDGMENT OR IN ANY OTHER MANNER PROVIDED BY LAW. NOTHING IN THIS AGREEMENT SHALL AFFECT ANY RIGHT THAT THE SECURED PARTIES MAY OTHERWISE HAVE TO BRING ANY ACTION OR PROCEEDING RELATING TO THIS AGREEMENT AGAINST THE COMPANY OR ITS PROPERTIES IN THE COURTS OF ANY JURISDICTION.

EACH OF THE GRANTORS HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVES, TO THE FULLEST EXTENT IT MAY LEGALLY AND EFFECTIVELY DO SO, ANY OBJECTION WHICH IT MAY NOW OR HEREAFTER HAVE TO THE LAYING OF VENUE OF ANY SUIT, ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS GUARANTEE AND SECURITY AGREEMENT OR ANY OTHER SECURED TRANSACTION DOCUMENT IN ANY COURT REFERRED TO IN THE PRECEDING PARAGRAPH (b) OF THIS SECTION. EACH OF THE PARTIES HERETO HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY LAW, THE DEFENSE OF AN INCONVENIENT FORUM TO THE MAINTENANCE OF SUCH ACTION OR PROCEEDING IN ANY SUCH COURT.

EACH PARTY TO THIS AGREEMENT IRREVOCABLY CONSENTS TO SERVICE OF PROCESS IN THE MANNER PROVIDED FOR NOTICES IN ARTICLE 13. NOTHING IN THIS AGREEMENT WILL AFFECT THE RIGHT OF ANY PARTY TO THIS AGREEMENT TO SERVE PROCESS IN ANY OTHER MANNER PERMITTED BY LAW.

ARTICLE 20.

WAIVER OF JURY TRIAL

EACH PARTY HERETO HEREBY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS GUARANTEE AND SECURITY AGREEMENT OR ANY OTHER SECURED TRANSACTION DOCUMENTS OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY). EACH PARTY HERETO (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS GUARANTEE AND SECURITY AGREEMENT AND THE OTHER SECURED TRANSACTION DOCUMENTS BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION.

**[Signature Pages Follow]**

IN WITNESS WHEREOF, the parties hereto have duly executed this Guarantee and Security Agreement as of the day and year first above written.

TWISTBOX ENTERTAINMENT, INC.

By: /s/ IAN AARON

Name: IAN AARON
Title: PRES. / CEO

FOREIGN SUBSIDIARIES

TWISTBOX GAMES LTD. & CO. KG

By: /s/ IAN AARON

Name: IAN AARON
Title: PRES. / CEO

DOMESTIC SUBSIDIARIES

WAAT MEDIA CORP.

By: /s/ IAN AARON

Name: IAN AARON
Title: PRES. / CEO

---

VALUEACT SMALLCAP MASTER FUND, L.P.,
as Collateral Agent

By Its General Partner, VA SmallCap Partners,

By:/s/ DAVID LOCKWOOD

Name: DAVID LOCKWOOD
Title: MANAGING MEMBER

VALUEACT SMALLCAP MASTER FUND, L.P.,
as Investor

By Its General Partner, VA SmallCap Partners,

By:/s/ DAVID LOCKWOOD

Name: DAVID LOCKWOOD
Title: MANAGING MEMBER

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CONTROL AGREEMENT

July 30, 2007

East West Bank
9300 Flair Drive
El Monte, CA 91731

Ladies and Gentlemen:

The undersigned, WAAT Media Corp. (the "**Grantor**") has entered into a Guarantee and Security Agreement, dated as of July 30, 2007 (as the same may be amended, restated, supplemented or otherwise modified from time to time, the "**Guarantee and Security Agreement**"), among Twistbox Entertainment, Inc. (the "**Company**"), each of the Subsidiaries of the Company party thereto and ValueAct SmallCap Master Fund, L.P., as Collateral Agent for the benefit of the Secured Parties referred to therein (in such capacity, the "**Collateral Agent**") as required by (i) that certain Securities Purchase Agreement, dated as of July 30, 2007 (as the same may be amended, restated, supplemented or otherwise modified from time to time, the "**Securities Purchase Agreement**"), among the Company and ValueAct SmallCap Master Fund, L.P. (the "**Investor**"), and (ii) the Senior Secured Note, dated as of July 30 2007, among the Company and the Investor (as the same may be amended, restated, supplemented or otherwise modified from time to time, the "**Senior Secured Note**").

Pursuant to the Guarantee and Security Agreement and related documents, the Grantor has granted to the Collateral Agent, for the benefit of the Secured Parties (as defined therein), a security interest in the accounts set forth on Schedule I hereto (individually the "**Collateral Account**", together the "**Collateral Accounts**") and all present and future Assets in the Collateral Account.

1. Instructions of the Grantor. The Grantor hereby instructs you (the "**Control Account Bank**") to, and you hereby agree that you will:

(a) maintain the Collateral Account, as "Collateral Account No.: _______ - Twistbox Entertainment, Inc. Collateral Account";

(b) hold in the Collateral Account the assets, including all cash and other financial assets and property and rights now or hereafter received in such Collateral Account (collectively the "**Assets**");

(c) provide to the Collateral Agent, with a duplicate copy to the Grantor, a monthly statement of Assets including a confirmation statement of each transaction effected in the Collateral Account; and

(d) honor only the written instructions or entitlement orders in regard to or in connection with the Collateral Account given by the Collateral Agent, except that until such time as the Collateral Agent gives a written notice to the Control Account Bank substantially in the form of Annex 1 hereto (a "**Event of Default Notice**") that the Grantor's rights under this Control Account Agreement (the "**Control Account Agreement**") have been terminated, the Grantor may request the withdrawal of, or transfer of, Assets from any Collateral Account (each a "**Withdrawal Request**"), and the Control Account Bank shall honor such Withdrawal Requests. The Collateral Agent agrees with the Grantor that it shall not give (i) instructions or entitlement orders in regard to or in connection with the Collateral Account or (ii) an Event of Default Notice to the Control Account Bank unless, in each case, an Event of Default has occurred and is continuing under the Senior Secured Note. The Control Account Bank shall be entitled to rely and shall be fully protected in relying on the due authorization of any such written notice without inquiry. At the time the Collateral Agent gives an Event of Default Notice to the Control Account Bank it shall deliver a copy of such Event of Default Notice to the Grantor.

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2. Agreements of the Control Account Bank.

(a) By its signature below, the Control Account Bank agrees to comply with the written entitlement orders and instructions of the Collateral Agent directing transfer of the Assets relating to the Collateral Account (including any instructions with respect to transfers and withdrawals of cash or other of the Assets) without the consent of the Grantor or any other person (it being understood and agreed by the Grantor that the Control Account Bank shall have no duty or obligation whatsoever of any kind or character to have knowledge of the terms of the Guarantee and Security Agreement or the Securities Purchase Agreement or to determine whether or not an Event of Default exists thereunder). The Grantor hereby agrees to indemnify and hold harmless the Control Account Bank, its affiliates, officers and employees from and against any and all claims, causes of action, liabilities, lawsuits, demands and/or damages, including any and all court costs and reasonable attorney's fees, that may result by reason of the Control Account Bank complying with such instructions of the Collateral Agent. In the event that the Control Account Bank is sued or becomes involved in litigation as a result of complying with the above stated written instructions, the Grantor and the Collateral Agent agree that the Control Account Bank shall be entitled to charge all costs and fees it incurs in connection with such litigation to the Assets in the Collateral Account and withdraw such sums as the costs and charges accrue.

(b) Except with respect to the obligations and duties as set forth herein, this Control Account Agreement shall not impose or create any obligations or duties upon the Control Account Bank greater than or in addition to the customary and usual obligations and duties of the Control Account Bank to the Grantor.

(c) During the term of this Control Account Agreement, the Control Account Bank agrees that, except for Liens resulting from customary, fees, or charges based upon transactions in the Collateral Account, it subordinates in favor of the Collateral Agent any security interest, lien or right of setoff the Control Account Bank may have. The Control Account Bank acknowledges that it has not received notice of any other security interest in the Collateral Account or the Assets. In the event any such notice is received, the Control Account Bank will promptly notify the Collateral Agent.

3. Binding Agreement. This Control Account Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and permitted assigns and it and the rights and obligations of the parties hereto shall be governed by, and construed and interpreted in accordance with, and the law of the Control Account Bank's jurisdiction for the purposes of Sections 9-301, 9-304 and 9-307 of the UCC shall be, the law of the State of New York.

4. Control. The Grantor, Collateral Agent and Control Account Bank are entering into this Control Account Agreement to provide for the Collateral Agent's control of the Assets and to confirm the first and exclusive priority of the Collateral Agent's security interest in the Assets. The Control Account Bank agrees to promptly make and thereafter maintain all necessary entries or notations in its books and records to reflect the Collateral Agent's security interest in the Assets.

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5. Severability. If any term or provision of this Control Account Agreement is determined to be invalid or unenforceable, the remainder of this Control Account Agreement shall be construed in all respects as if the invalid or unenforceable term or provision were omitted. This Control Account Agreement may not be altered or amended in any manner without the express written consent of the Grantor, the Collateral Agent and the Control Account Bank. This Control Account Agreement may be executed in any number of counterparts, all of which shall constitute one original agreement.

6. Termination. This Control Account Agreement shall be terminated upon the earlier of (i) thirty (30) days following the date of the Control Account Bank's delivery of written notice to the Grantor and the Collateral Agent or (ii) written notice by the Collateral Agent to the Control Account Bank and the Grantor. The Collateral Agent shall deliver such notice promptly upon the termination of the Collateral Agent's security interest in the Assets.

7. Miscellaneous.

(a) The Grantor acknowledges that this Control Account Agreement supplements any existing agreements of the Grantor with the Control Account Bank and, except as expressly provided herein, is in no way intended to abridge any rights that the Control Account Bank might otherwise have.

(b) Any action arising out of or relating to this Control Account Agreement shall be litigated in, and only in, courts located in New York City, New York, Borough of Manhattan, and the parties hereby submit to the exclusive jurisdiction of such courts and agree that they are a convenient forum. Each party hereby waives the right to trial by jury in any action arising out of or relating to this Control Account Agreement.

(c) This Control Account Agreement may be executed in any number of counterparts and by different parties hereto in separate counterparts, each of which when so executed shall be deemed to be an original and all of which when taken together shall constitute one and the same agreement. Delivery of an executed counterpart of a signature page to this Control Account Agreement by telecopier shall be effective as delivery of a manually executed counterpart of this Control Account Agreement.

(d) This Control Account Agreement supersedes all prior agreements, oral or written, with respect to the subject matter hereof. There are no third party beneficiaries to this Control Account Agreement, other than as specifically referred to herein.

(e) This Control Account Agreement shall be governed by, and construed in accordance with, the law of the state of New York.

(f) Upon acceptance of this Control Account Agreement, it will be the valid and binding obligation of the Grantor, the Collateral Agent, and you, in accordance with its terms.

[Remainder of Page is Intentionally Blank]

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Very truly yours,

TWISTBOX ENTERTAINMENT, INC.

By: /s/ Ian Aaron
Name: IAN AARON
Title: PRES. /CEO

VALUEACT SMALLCAP MASTER FUND, L.P.,
as Collateral Agent

By: /s/ David Lockwood
Name: David Lockwood
Title: Managing Member

Acknowledged and agreed to as of the date first above written:

EAST WEST BANK

By: /s/ Phillip Leung
Phillip Leung, SVP

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TRADEMARK SECURITY AGREEMENT

This Trademark Security Agreement (this "Trademark Security Agreement"), dated as of July 30, 2007, is made by Twistbox Entertainment, Inc., a Delaware corporation, located at 14242 Ventura Blvd., Sherman Oaks, CA 91423 (the "Grantor"), in favor of ValueAct SmallCap Master Fund, L.P., a British Virgin Islands limited partnership, located at 435 Pacific Avenue, San Francisco, CA 94133, in its capacity as collateral agent for the benefit of the Secured Parties pursuant to the Guarantee and Security Agreement (defined below) dated July 30, 2007 (in such capacity, the "Collateral Agent").

WITNESSETH:

WHEREAS, reference is made to the Securities Purchase Agreement, dated as of July 30, 2007, among the Grantor, the Subsidiary Guarantors, and the Investor (as amended, supplemented or otherwise modified from time to time, the "Securities Purchase Agreement");

WHEREAS, the Investor has agreed to purchase the Senior Secured Notes from the Grantor pursuant to, and upon the terms and subject to the conditions specified in, the Securities Purchase Agreement;

WHEREAS, as a condition to the obligation of the Investor to purchase the Senior Secured Notes under the Security Purchase Agreement, Grantor, the Subsidiary Guarantors, Investor and the Collateral Agent have entered into a Guarantee and Security Agreement dated July 30, 2007 (the "Security Agreement") pursuant to which the Grantor is required to execute and deliver this Trademark Security Agreement;

NOW, THEREFORE, in consideration of the premises and as a condition to the obligation of the Investor to purchase the Senior Secured Notes, the Grantor and the Collateral Agent hereby agree as follows:

SECTION 1. Defined Terms. Unless otherwise defined herein, capitalized terms used herein have the meaning given to them in the Security Agreement.

SECTION 2. Grant of Security Interest in Trademark Collateral. As security for the payment or performance, as applicable, in full of the Obligations, the Grantor hereby pledges and grants to the Collateral Agent, for the ratable benefit of the Secured Parties, a lien on and security interest in and to all of its right, title and interest in, to and under all the following property of the Grantor, wherever located, whether now existing or hereafter arising or acquired from time to time (all of which being hereinafter collectively referred to as, the "Trademark Collateral"):

(a) all trademarks, service marks, trade names, corporate names, company names, business names, fictitious business names, trade styles, trade dress, logos, other source or business identifiers, designs and general intangibles of like nature, now existing or hereafter adopted or acquired, all registrations and recordings thereof, and all registration and recording applications filed in connection therewith, including registrations and registration applications in the United States Patent and Trademark Office or any similar offices in the United States or any other country, and all extensions or renewals thereof, including those trademark registrations and applications described on Schedule 1 attached hereto, (ii) all goodwill associated therewith or symbolized by any of the foregoing and (iii) all other assets, rights and interests that uniquely reflect or embody such goodwill; and

(b) all Proceeds, products, substitutions, accessions, rents and profits of or in respect of any of the foregoing.

SECTION 3. Security Agreement. The security interest granted pursuant to this Trademark Security Agreement is granted in conjunction with the security interest granted to the Collateral Agent pursuant to the Security Agreement, and the Grantor hereby acknowledges and affirms that the rights and remedies of the Collateral Agent with respect to the security interest in the Trademark Collateral made and granted hereby are more fully set forth in the Security Agreement, the terms and provisions of which are incorporated by reference herein as if fully set forth herein. In the event that any provision of this Trademark Security Agreement is deemed to conflict with the Security Agreement, the provisions of the Security Agreement shall control.

SECTION 4. Termination. Upon the full payment and performance of the Obligations and termination of the Security Agreement, upon written request of the Grantor, the Collateral Agent shall execute, acknowledge, and deliver to the Grantor an instrument in writing in recordable form releasing the collateral pledge, grant, assignment, lien on and security interest in the Trademark Collateral under this Trademark Security Agreement.

SECTION 5. Governing Law. THIS TRADEMARK SECURITY AGREEMENT SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK.

SECTION 6. Counterparts. This Trademark Security Agreement may be executed in counterparts (and by different parties hereto on different counterparts), each of which shall constitute an original, but all of which, when taken together, shall constitute but one contract. Delivery of an executed counterpart of this Trademark Security Agreement by facsimile transmission shall be as effective as delivery of a manually executed counterpart of this Trademark Security Agreement.

[Signature Page Follows]

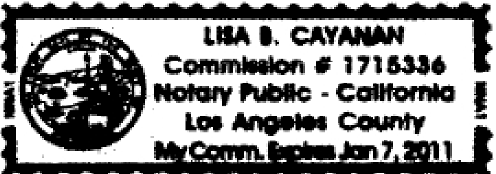
IN WITNESS WHEREOF, the Grantor has caused this Trademark Security Agreement to be executed and delivered by its duly authorized officer as of the date first set forth above.

**TWISTBOX ENTERTAINMENT, INC.**
as Grantor

By: /s/ Ian Aaron
Name: IAN AARON
Title: PRES. / CEO

Sworn to and subscribed before me this
31 day of July, 2007.

/s/ Lisa B. Cayanan
Notary Public




[Signature Page to Trademark Security Agreement]

IN WITNESS WHEREOF, the Grantor has caused this Trademark Security Agreement to be executed and delivered by its duly authorized officer as of the date first set forth above.

Accepted and Agreed:

**VALUEACT SMALLCAP MASTER FUND, L.P.**
as Collateral Agent

By Its General Partner,
VA SmallCap Partners, LLC

By: /s/ David Lockwood
Name: DAVID LOCKWOOD
Title: MANAGING MEMBER

Sworn to and subscribed before me this
1st day of AUGUST, 2007.

/s/ Sylvia N. Acacio
Notary Public

STATE OF CALIFORNIA
COUNTY OF SAN FRANCISCO

[Signature Page to Trademark Security Agreement]

SCHEDULE 1

to

TRADEMARK SECURITY AGREEMENT

TRADEMARK REGISTRATIONS AND APPLICATIONS

United States Trademarks

| Jurisdiction | Trademark | Registration No. (App. No.) | Registration Date (App. Date) | Record Owner | Status/ Comments |
|---|---|---|---|---|---|
| United States | COMPETITION GOES MOBILE | 3076001 | April 4, 2006 | Twistbox Entertainment, Inc. | Registered |
| United States | PRIZE-21 FOR PRIZES | 3040851 | January 10, 2006 | Twistbox Entertainment, Inc. | Registered |
| United States | TWISTBOX ENTERTAINMENT and Design | (78-958,901) | (August 23, 2006) | Twistbox Entertainment, Inc. | Pending |

Foreign Trademarks

| Jurisdiction | Trademark | Registration No. (App. No.) | Registration Date (App. Date) | Record Owner | Status/ Comments |
|---|---|---|---|---|---|
| Canada | TWISTBOX ENTERTAINMENT and Design | (1321869) | October 27, 2006 | Twistbox Entertainment, Inc. | Pending |
| CTM (EU) | CHARISMATIX | 4022844 | January 25, 2006 | Charismatix Ltd. & Co. KG | Registered |
| CTM (EU) | DELIGHT ENTERTAINMENT and design | 4022745 | March 29, 2006 | Charismatix Ltd. & Co. KG | Registered |
| CTM (EU) | TWISTBOX ENTERTAINMENT and Design | 005303581 | July 4, 2007 | Twistbox Entertainment, Inc. | Registered |
| Germany | BABESHUFFLE | 30452899 | December 16, 2004 | Charismatix Ltd. & Co. KG | Registered |
| Germany | BABETRIS | 30452903 | December 16, 2004 | Charismatix Ltd. & Co. KG | Registered |
| Germany | BOMBS’N BOOBS | 30452900 | December 16, 2004 | Charismatix Ltd. & Co. KG | Registered |
| Germany | EROTRIX | 30452902 | December 16, 2004 | Charismatix Ltd. & Co. KG | Registered |
| International Register | TWISTBOX ENTERTAINMENT and design | 901928 | September 19, 2006 | Twistbox Entertainment, Inc. | Pending |

| Jurisdiction | Trademark | Registration No. (App. No.) | Registration Date (App. Date) | Record Owner | Status/ Comments |
|---|---|---|---|---|---|
| Brazil | TWISTBOX ENTERTAINMENT and Design | (828805202) | (October 23, 2006) | Twistbox Entertainment, Inc. | Pending |
| Brazil | TWISTBOX ENTERTAINMENT and Design | (828805180) | (October 23, 2006) | Twistbox Entertainment, Inc. | Pending |
| Brazil | TWISTBOX ENTERTAINMENT and Design | (828805199) | (October 23, 2006) | Twistbox Entertainment, Inc. | Pending |
| Argentina | TWISTBOX ENTERTAINMENT and Design | (2711266) | (November 1, 2006) | Twistbox Entertainment, Inc. | Pending |
| Argentina | TWISTBOX ENTERTAINMENT and Design | (2711267) | (November 1, 2006) | Twistbox Entertainment, Inc. | Pending |
| Argentina | TWISTBOX ENTERTAINMENT and Design | (2711268) | (November 1, 2006) | Twistbox Entertainment, Inc. | Pending |
| Chile | TWISTBOX ENTERTAINMENT and Design | 782585 | (March 20, 2007) | Twistbox Entertainment, Inc. | Registered |
| Chile | TWISTBOX ENTERTAINMENT and Design | (748959) | (October 24, 2006) | Twistbox Entertainment, Inc. | Pending |
| Chile | TWISTBOX ENTERTAINMENT and Design | 782536 | March 20, 2007 | Twistbox Entertainment, Inc. | Registered |
| Colombia | TWISTBOX ENTERTAINMENT and Design | 332601 | May 16, 2007 | Twistbox Entertainment, Inc. | Registered |
| Colombia | TWISTBOX ENTERTAINMENT and Design | 332600 | May 16, 2007 | Twistbox Entertainment, Inc. | Registered |
| Colombia | TWISTBOX ENTERTAINMENT and Design | 332602 | May 16, 2007 | Twistbox Entertainment, Inc. | Registered |
| Venezuela | TWISTBOX ENTERTAINMENT and Design | (26866-06) | (November 15, 2006) | Twistbox Entertainment, Inc. | Pending |
| Venezuela | TWISTBOX ENTERTAINMENT and Design | (26867-06) | (November 15, 2006) | Twistbox Entertainment, Inc. | Pending |
| Venezuela | TWISTBOX ENTERTAINMENT and Design | (26868-06) | (November 15, 2006) | Twistbox Entertainment, Inc. | Pending |

| Jurisdiction | Trademark | Registration No. (App. No.) | Registration Date (App. Date) | Record Owner | Status/ Comments |
|---|---|---|---|---|---|
| Mexico | TWISTBOX ENTERTAINMENT and Design | 977723 | March 22, 2007 | Twistbox Entertainment, Inc. | Registered |
| Mexico | TWISTBOX ENTERTAINMENT and Design | 982555 | April 26, 2007 | Twistbox Entertainment, Inc. | Registered |
| Mexico | TWISTBOX ENTERTAINMENT and Design | 977724 | March 22, 2007 | Twistbox Entertainment, Inc. | Registered |

COPYRIGHT SECURITY AGREEMENT

This Copyright Security Agreement (this "Copyright Security Agreement"), dated as of July 30, 2007, is made by Twistbox Entertainment, Inc., a Delaware corporation, located at 14242 Ventura Blvd., Sherman Oaks, CA 91423 (the "Grantor"), in favor of ValueAct SmallCap Master Fund, L.P., a British Virgin Islands limited partnership, located at 435 Pacific Avenue, San Francisco, CA 94133, in its capacity as collateral agent for the benefit of the Secured Parties pursuant to the Guarantee and Security Agreement (defined below) dated July 30, 2007 (in such capacity, the "Collateral Agent").

WITNESSETH:

WHEREAS, reference is made to the Securities Purchase Agreement, dated as of July 30, 2007, among the Grantor, the Subsidiary Guarantors, and the Investor (as amended, supplemented or otherwise modified from time to time, the "Securities Purchase Agreement");

WHEREAS, the Investor has agreed to purchase the Senior Secured Notes from the Grantor pursuant to, and upon the terms and subject to the conditions specified in, the Securities Purchase Agreement;

WHEREAS, as a condition to the obligation of the Investor to purchase the Senior Secured Notes under the Security Purchase Agreement, Grantor, the Subsidiary Guarantors, Investor and the Collateral Agent have entered into a Guarantee and Security Agreement dated July 30, 2007 (the "Security Agreement") pursuant to which the Grantor is required to execute and deliver this Copyright Security Agreement;

NOW, THEREFORE, in consideration of the premises and as a condition to the obligation of the Investor to purchase the Senior Secured Notes, the Grantor and the Collateral Agent hereby agree as follows:

SECTION 1. Defined Terms. Unless otherwise defined herein, capitalized terms used herein have the meaning given to them in the Security Agreement.

SECTION 2. Grant of Security Interest in Copyright Collateral. As security for the payment or performance, as applicable, in full of the Obligations, the Grantor hereby pledges and grants to the Collateral Agent, for the ratable benefit of the Secured Parties, a lien on and security interest in and to all of its right, title and interest in, to and under all the following property of the Grantor, wherever located, whether now existing or hereafter arising or acquired from time to time (all of which being hereinafter collectively referred to as, the "Copyright Collateral"):

(a) (i) all copyright rights in any work subject to the copyright laws of the United States or any other country, whether as author, assignee, transferee or otherwise, and (ii) all registrations and applications for registration of any such copyright in the United States or any other country, including registrations, recordings, supplemental registrations and pending applications for registration in the United States Copyright Office or any similar offices in the United States or any other country, including those copyright rights described on Schedule 1 attached hereto; and

[Signature Page to Copyright Security Agreement]

(b) all Proceeds, products, substitutions, accessions, rents and profits of or in respect of any of the foregoing.

SECTION 3. Security Agreement. The security interest granted pursuant to this Copyright Security Agreement is granted in conjunction with the security interest granted to the Collateral Agent pursuant to the Security Agreement, and the Grantor hereby acknowledges and affirms that the rights and remedies of the Collateral Agent with respect to the security interest in the Copyright Collateral made and granted hereby are more fully set forth in the Security Agreement, the terms and provisions of which are incorporated by reference herein as if fully set forth herein. In the event that any provision of this Copyright Security Agreement is deemed to conflict with the Security Agreement, the provisions of the Security Agreement shall control.

SECTION 4. Termination. Upon the full payment and performance of the Obligations and termination of the Security Agreement, upon written request of the Grantor, the Collateral Agent shall execute, acknowledge, and deliver to the Grantor an instrument in writing in recordable form releasing the collateral pledge, grant, assignment, lien on and security interest in the Copyright Collateral under this Copyright Security Agreement.

SECTION 5. Governing Law. THIS COPYRIGHT SECURITY AGREEMENT SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK.

SECTION 6. Counterparts. This Copyright Security Agreement may be executed in counterparts (and by different parties hereto on different counterparts), each of which shall constitute an original, but all of which, whentaken together, shall constitute but one contract. Delivery of an executed counterpart of this Copyright Security Agreement by facsimile transmission shall be as effective as delivery of a manually executed counterpart of this Copyright Security Agreement.

[Signature Page Follows]

IN WITNESS WHEREOF, the Grantor has caused this Copyright Security Agreement to be executed and delivered by its duly authorized officer as of the date first set forth above.

**TWISTBOX ENTERTAINMENT, INC.**
as Grantor

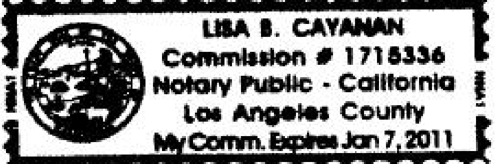
By: /s/ Ian Aaron

Name: IAN AARON
Title: PRES. /CEO

Sworn to and subscribed before me this 31 day of July, 2007

/s/ Lisa B. Cayanan

Notary Public




[Signature Page to Copyright Security Agreement]

IN WITNESS WHEREOF, the Grantor has caused this Copyright Security Agreement to be executed and delivered by its duly authorized officer as of the date first set forth above.

Accepted and Agreed:

**VALUEACT SMALLCAP MASTER FUND, L.P.**
as Collateral Agent
By Its General Partner, VA SmallCap Partners, LLC

By: /s/ David Lockwood

Name: DAVID LOCKWOOD
Title: MANAGING MEMBER

Sworn to and subscribed before me this 1st day of AUGUST, 2007.

/s/ Sylvia N. Acacio

Notary Public

STATE OF CALIFORNIA
COUNTY OF SAN FRANASCO

[Signature Page to Copyright Security Agreement]

SCHEDULE 1
to
COPYRIGHT SECURITY AGREEMENT
COPYRIGHT REGISTRATIONS AND APPLICATIONS

| Jurisdiction | Title | Registration No. | Registration Date | Status/ Comments |
|---|---|---|---|---|
| United States | Content rating matrix | TX6507607 | 10/06/2006 | Registered |

**GUARANTY**

This Guaranty (the "***Guaranty***") is given as of February 12, 2008, by MANDALAY MEDIA, INC., a Delaware corporation ("***Guarantor***") to VALUEACT SMALLCAP MASTER FUND, L.P. ("***ValueAct***").

WHEREAS, Guarantor has entered into an Agreement and Plan of Merger dated as of December 31, 2007, by and among Guarantor, Twistbox Acquisition, Inc., a Delaware corporation and a wholly-owned subsidiary of Guarantor, Twistbox Entertainment, Inc. (the "***Company***") and Adi McAbian and Spark Capital, L.P. as representatives of the stockholders of the Company, as the same may be amended from time to time (the "***Merger Agreement***"), pursuant to which Guarantor will acquire all of the capital stock of the Company;

WHEREAS, the Company is indebted to ValueAct in the original principal amount of $16,500,000 pursuant to a Senior Secured Note due January 30, 2010, dated July 30, 2007, as amended (the "***Note***");

WHEREAS, each of ValueAct, Guarantor and the Company desire to amend the Note; and

WHEREAS, ValueAct is willing to enter into such amendment on the condition that the Guarantor enter into this Guaranty.

NOW, THEREFORE, the Guarantor, in consideration of the foregoing, agrees as follows:

1. Guaranty. Subject to the other terms and the limitations contained in this Guaranty, the Guarantor does hereby guarantee to ValueAct the payment by the Company of up to $8,250,000 of principal (the "***Guaranteed Amount***") under the Note in accordance in all material respects with the terms, conditions and limitations contained in the Note (the "***Obligations***"). In the event of a default in payment of the Obligations by the Company under the Note, upon receipt of written notice of such default from ValueAct (which notice shall specify the nature of such default and any dispute between ValueAct and the Company with respect thereto), the Guarantor shall forthwith pay the same, provided, however, that Guarantor may (or may cause the Company) to cure such default within a period of 5 business days after the date on which written notice specifying such default shall have been given by ValueAct to the Guarantor. The Guarantor's obligations under this Guaranty shall be subject to the limitation that in no event shall the Guarantor be required to expend more than the Guaranteed Amount in the performance of its obligations under this Guaranty and in no event shall the Guarantor be required to expend any amount with respect to interest, fees, costs, expenses or other amounts.

2. Scope and Duration of Guaranty. Subject to the limitations set forth herein, this Guaranty shall continue in full force and effect until the Company or the Guarantor shall have satisfactorily performed or fully discharged the Obligations. Further, this Guaranty (a) shall remain in full force and effect without regard to, and shall not be affected or impaired by any invalidity, irregularity or unenforceability in whole or in part of this Guaranty, and (b) shall be discharged only by complete performance of the undertakings contained herein (subject to the limitations set forth herein); provided, that the Guarantor shall have the full benefit of all defenses, setoffs, counterclaims, reductions, diminution or limitations of any Obligations available to the Company pursuant to or arising from the Note or otherwise.

3. Waivers by Guarantor. The Guarantor hereby waives, as a condition precedent to the performance of its obligations hereunder, (a) notice of acceptance hereof, (b) any requirement that, after a default by the Company, ValueAct exhaust any right, power or remedy or proceed against the Company under the Note or any other agreement or instrument referred to therein, and (c) any defense arising by reason of disability, lack of authority or power. Without limiting the generality of the foregoing, it is agreed that the occurrence of any one or more of the following shall not affect the liability of the Guarantor hereunder:

(i) at any time or from time to time, without notice to the Guarantor, the time for any performance of or compliance with any of the Obligations shall be extended; or

(ii) any of the Obligations shall be modified, supplemented or amended in any respect in accordance with the terms of the Note. Notwithstanding anything contained herein to the contrary, no modification, supplement or amendment to the Note shall be made without the Guarantor's prior written consent.

4. Subrogation. The Guarantor hereby agrees that until the payment and discharge in full and/or waiver of performance of the Obligations, it shall not exercise any right or remedy arising by reason of the performance of any of its obligations under this Guaranty, whether by subrogation or otherwise, against the Company.

5. Transfer of Guaranty. Upon written notice to the Guarantor, ValueAct may transfer its rights under this Guaranty to any party to whom it sells, transfers or otherwise disposes of all or any part of the Note.

6. Miscellaneous.

6.1 Limitation. The Guarantor's obligations under this Guaranty are to pay the Obligations of the Company under the Note (subject to the limitations set forth in this Guaranty) and no others. In no event shall the Guarantor be liable for any damages, direct or indirect, consequential, punitive or otherwise, as a result of the Company's failure to perform any of its obligations under the Note. Guarantor's liability shall be limited solely to actual and direct damages determined by a court of competent jurisdiction in a proceeding not subject to further appeal to have arisen primarily and directly as a result of Guarantor's failure to perform its obligations under this Guaranty.

6.2 Governing Law. This Guaranty is to be governed by and construed in accordance with the laws of the State of Delaware, without regard to its conflicts of laws rules.

6.3 Notices. All notices and other communications provided for herein shall be in writing and shall be delivered by hand or overnight courier service, mailed by certified or registered mail or sent by facsimile transmission, as follows:

**Guarantor:**

Mandalay Media, Inc.
2121 Avenue of the Stars, Suite 2550
Los Angeles, California 90067
Attention: James Lefkowitz

with a copy to:

Kenneth R. Koch, Esq.
Mintz Levin Cohn Ferris Glovsky and Popeo, P.C.
666 Third Avenue
New York, New York 10017

**ValueAct:**

435 Pacific Avenue, 4th Fl.
San Francisco, CA 94133
Attention: Jimmy Price

Either the Guarantor or ValueAct may change its address for notices and other communications hereunder by notice to the other. Each such notice or other communication shall for all purposes of this Guaranty be treated as effective or having been given (i) when delivered if delivered personally, (ii) if sent by registered or certified mail, at the earlier of its receipt or three business days after registration or certification thereof, (iii) if sent by overnight courier, on the next business day after the same has been deposited with a nationally recognized courier service for next day delivery, or (iv) when sent by confirmed facsimile, on the day sent (if a business day) if sent during normal business hours of the recipient, and if not, then on the next business day.

6.4 Amendments and Waivers. No amendment, modification, termination or waiver of any provision of this Guaranty or consent to any departure by the Guarantor therefrom shall be effective absent the written agreement of the Guarantor and ValueAct.

6.5 Headings. Section and subsection headings contained in this Guaranty are inserted for convenience of reference only, shall not be deemed to be a part of this Guaranty for any purpose, and shall not in any way define or affect the meaning, construction or scope of any of the provisions hereof.

6.6 Waiver of Jury Trial. EACH PARTY HEREBY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS GUARANTY OR THE TRANSACTIONS CONTEMPLATED HEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY).

[SIGNATURE PAGE FOLLOWS]

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IN WITNESS WHEREOF, the Guarantor has duly executed and delivered this Guaranty and ValueAct has executed its acceptance of this Guaranty effective as of the date first written above.

MANDALAY MEDIA, INC.

By: /s/ Jay Wolf
Name: Jay Wolf
Title: Chief Financial Officer

***Accepted***:

VALUEACT SMALLCAP MASTER FUND, L.P.,
By VA Smallcap Partners, LLC, its General Partner

By: /s/ David Lockwood
Name: David Lockwood
Title: Managing Member

**TERMINATION AGREEMENT**

This Termination Agreement (the "Agreement") is dated as of February 12, 2008 and is entered into between TWISTBOX ENTERTAINMENT, INC., a Delaware corporation (the "Company") and VALUEACT SMALLCAP MASTER FUND, L.P. (the "Holder").

WHEREAS, reference is made to that certain Class A Warrant No. WR-1, dated July 30, 2007, issued by the Company to the Holder (the "Warrant"). Capitalized terms used and not otherwise defined herein shall have the meanings ascribed to them in the Warrant;

WHEREAS, reference is made to that certain Agreement and Plan of Merger dated as of December 31, 2007, by and among Mandalay Media, Inc., a Delaware corporation ("Parent"), Twistbox Acquisition, Inc., a Delaware corporation and a wholly-owned subsidiary of Parent, the Company and Adi McAbian and Spark Capital, L.P., as representatives of the stockholders of the Company, as the same may be amended from time to time (the "Merger Agreement"); and

WHEREAS, in order to consummate the transactions contemplated by the Merger Agreement, the undersigned desire to terminate the Warrant as set forth herein.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. Each of the undersigned hereby agrees that, effective immediately, the Warrant shall be terminated and all of the terms and provisions contained therein shall be of no further force and effect.

2. This Agreement may be executed in one or more counterparts, and by facsimile, each of which shall constitute an original agreement, but which together shall constitute one in the same instrument.

[SIGNATURE PAGE TO FOLLOW]

IN WITNESS WHEREOF, the undersigned have executed this Termination Agreement as of the date first written above.

TWISTBOX ENTERTAINMENT, INC.

By: /s/ Ian Aaron
Name: Ian Aaron
Title: CEO

VALUEACT SMALLCAP MASTER FUND, L.P.,
By VA Smallcap Partners, LLC, its General Partner

By: /s/ David Lockwood
Name: Managing Member

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**WAIVER TO THE GUARANTEE AND SECURITY AGREEMENT**

This **WAIVER TO THE GUARANTEE AND SECURITY AGREEMENT** (this "***Waiver***") relates to that Guarantee and Security Agreement, dated July 30, 2007 (the "***Guarantee***") by and among TWISTBOX ENTERTAINMENT, INC., a Delaware corporation (the "***Company***"), certain subsidiaries of the Company and VALUEACT SMALLCAP MASTER FUND, L.P. (the "***Investor***") and is made and entered into as of February 12, 2008 by and between the Company and the Investor. Capitalized terms used and not otherwise defined in this Waiver are used herein as defined in the Guarantee.

**W I T N E S S E T H:**

WHEREAS, the Company and the Investor desire to waive compliance with certain provisions of the Guarantee.

WHEREAS, Article 8 of the Guarantee provides that the terms thereof may be amended or waived only pursuant to a written instrument executed by the Grantors and the holders of a majority of the aggregate principal amount of the Senior Secured Notes then outstanding.

WHEREAS, the Investor owns 100% of the aggregate principal amount of the Senior Secured Notes.

NOW, THEREFORE, in consideration of the foregoing and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereby agree as follows:

**1.** Waiver of Section 3.1(b)(i)(C). The Investor hereby waives compliance with the covenant set forth in Section 3.1(b)(i)(C) of the Guaranty solely with respect to the transactions contemplated by the Agreement and Plan of Merger dated as of December 31, 2007, by and among Mandalay Media, Inc., a Delaware corporation ("***Parent***"), Twistbox Acquisition, Inc., a Delaware corporation and a wholly-owned subsidiary of Parent, the Company and Adi McAbian and Spark Capital, L.P., as representatives of the stockholders of the Company, as the same may be amended from time to time (the "***Merger Agreement***")

**2.** Effectiveness of this Waiver. This Waiver shall have no force or effect until immediately prior to the Effective Time (as defined in the Merger Agreement).

**3.** Full Force and Effect. Except as modified by this Waiver, all other terms and conditions in the Guarantee shall remain in full force and effect.

**4.** Effect. Unless the context otherwise requires, the Guarantee and this Waiver shall be read together and shall have effect as if the provisions of the Guarantee and this Waiver were contained in one agreement. After the effective date of this Waiver, all references in the Guarantee "this Guarantee and Security Agreement," "hereto," "hereof," "hereunder" or words of like import referring to the Guarantee shall mean the Guarantee as modified by this Waiver.

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**5.** Counterparts. This Waiver may be executed in separate counterparts, all of which taken together shall constitute a single instrument.

[SIGNATURE PAGE FOLLOWS]

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IN WITNESS WHEREOF, the parties hereto have executed this Waiver effective as of the day and year first above written.

**THE COMPANY:**

TWISTBOX ENTERTAINMENT, INC.

By: /s/ Ian Aaron
Name: Ian Aaron
Title: CEO

**INVESTOR:**

VALUEACT SMALLCAP MASTER FUND, L.P.,
By VA Smallcap Partners, LLC, its General Partner

By: /s/ David Lockwood
Name: David Lockwood
Title: Managing Member

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STANDARD INDUSTRIAL/COMMERCIAL MULTI-TENANT LEASE - NET
AIR COMMERCIAL REAL ESTATE ASSOCIATION

1. Basic Provisions (“ Basic Provisions”).

1.1 Parties: This Lease (“Lease”), dated for reference purposes only July 1, 2005, is made by and between Berkshire Holdings, LLC (“Lessor”) and Waat Corp., a California corporation (“Lessee”), (collectively the “Parties”, or individually a “Party”).

1.2 (a) Premises: That certain portion of the Project (as defined below), including all improvements therein or to be provided by Lessor under the terms of this Lease, commonly known by the street address of 14242 Ventura Boulevard, Suite 300 located in the City of Sherman Oaks, County of Los Angeles, State of California, with zip code 91423, as outlined on Exhibit A attached hereto (“Premises”) and generally described as (describe briefly the nature of the Premises): Office space

In addition to Lessee’s rights to use and occupy the Premises as hereinafter specified, Lessee shall have non-exclusive rights to the any utility raceways of the building containing the Premises (“Building”) and to the common Areas (as defined in Paragraph 2.7 below), but shall not have any rights to the roof or exterior walls of the Building or to any other buildings in the Project. The Premises, the Building, the Common Areas, the land upon which they are located, along with all other buildings and improvements thereon, are herein collectively referred to as the “Project.” (See also Paragraph 2)

1.2 (b) Parking: 200 unreserved vehicle parking spaces (“Unreserved Parking Spaces”) and 30 reserved vehicle parking spaces (“Reserved Parking Spaces”). (See also Paragraph 2.6)

1.3 Term: five years and zero months (“Original Term”) commencing July 15, 2005 (“Commencement Date”) and ending July 15, 2010 (“Expiration Date”). (See also Paragraph 3)

1.4 Early Possession: N/A (“Early Possession Date”).
(See also Paragraphs 3.2 and 3.3)

1.5 Base Rent: $21,000.00 per month (“Base Rent”), payable on the first day of each month commencing July 15, 2005 (See also Paragraph 4)

☐ If this box is checked, there are provisions in this Lease for the Base Rent to be adjusted.

1.6 Lessee’s Share of Common Area Operating Expenses: Thirty-two percent (32%) (“Lessee’s Share”). Lessee’s Share has been calculated by dividing the approximate square footage of the Premises by the approximate square footage of the Project. In the event that the size of the Premises and/or the Project are modified during the term of this Lease, Lessor shall recalculate Lessee’s Share to reflect such modification.

1.7 Base Rent and Other Monies Paid Upon Execution:

(a) Base Rent: $10, 500.00 for the period July 15, 2005 - August 15, 2005

(b) Common Area Operating Expenses: $N/A for the period ___________

(c) Security Deposit: $21,000.00 (“Security Deposit”). (See also Paragraph 5)

(d) Other: $N/A for________________________________________

(e) Total Due Upon Execution of this Lease: $31,500.00

1.8 Agreed Use: Office use and no other purpose (See also Paragraph 6)

1.9 Insuring Party. Lessor is the “Insuring Party”. (See also Paragraph 8)

1.10 Real Estate Brokers: (See also Paragraph 15) N/A

(a) Representation: The following real estate brokers (the “Brokers”) and brokerage relationships exist in this transaction

(check applicable boxes):

☑ N/A represents Lessor exclusively (“Lessor’s Broker”);

☑ N/A represents Lessee exclusively (“Lessee’s Broker”); or

☐ _________________ represents both Lessor and Lessee (“Dual Agency”).

(b) Payment to Brokers: Upon execution and delivery of this Lease by both Parties, Lessor shall pay to the Brokers the brokerage fee agreed to in a separate written agreement (or if there is no such agreement, the sum of N/A or ___ % of the total Base Rent for the brokerage services rendered by the Brokers).

1.11 Guarantor. The obligations of the Lessee under this Lease are to be guaranteed by N/A (“Guarantor”). (See also Paragraph 37)

1.12 Attachments. Attached hereto are the following, all of which constitute a part of this Lease:

☑ an Addendum consisting of Paragraphs 1 through 1;

☑ a site plan depicting the Premises;

☐ a site plan depicting the Project;

☐ a current set of the Rules and Regulations for the Project:

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☐ a current set of the Rules and Regulations adopted by the owners' association;

☐ a Work Letter;

☐ other (specify)

2. Promises.

2.1 Letting. Lessor hereby leases to Lessee, and Lessee hereby leases from Lessor, the Premises, for the term, at the rental, and upon all of the terms, covenants and conditions set forth in this Lease. Unless otherwise provided herein, any statement of size set forth in this Lease, or that may have been used in calculating Rent, is an approximation which the Parties agree is reasonable and any payments based thereon are not subject to revision whether or not the actual size is more or less. NOTE: Lessee is advised to verify the actual size prior to executing this Lease.

2.2 Condition. Lessor shall deliver that portion of the Premises contained within the Building ("Unit") to Lessee broom clean and free of debris on the Commencement Date or the Early Possession Date, whichever first occurs ("Start Date"), and, so long as the required service contracts described in Paragraph 7.1(b) below are obtained by Lessee and in effect within thirty days following the Start Date, warrants that the existing electrical, plumbing, fire sprinkler, lighting, heating, ventilating and air conditioning systems ("HVAC"), loading doors, sump pumps, if any, and all other such elements in the Unit, other than those constructed by Lessee, shall be in good operating condition on said date, that the structural elements of the roof, bearing walls and foundation of the Unit shall be free of material defects, and that the Unit does not contain hazardous levels of any mold or fungi defined as toxic under applicable state or federal law. If a non-compliance with such warranty exists as of the Start Date, or if one of such systems or elements should malfunction or fail within the appropriate warranty period, Lessor shall, as Lessor's sole obligation with respect to such matter, except as otherwise provided in this Lease, promptly after receipt of written notice from Lessee setting forth with specificity the nature and extent of such non-compliance, malfunction or failure, rectify same at Lessor's expense. The warranty periods shall be as follows: (i) 6 months as to the HVAC systems, and (ii) 30 days as to the remaining systems and other elements of the Unit. If Lessee does not give Lessor the required notice within the appropriate warranty period, correction of any such non-compliance, malfunction or failure shall be the obligation of Lessee at Lessee's sole cost and expense (except for the repairs to the fire sprinkler systems, roof, foundations, and/or bearing walls - see Paragraph 7).

2.3 Compliance. Lessor warrants that to the best of its knowledge the improvements on the Premises and the Common Areas comply with the building codes that were in effect at the time that each such improvement, or portion thereof, was constructed, and also with all applicable laws, covenants or restrictions of record, regulations, and ordinances in effect on the Start Date ("Applicable Requirements"). Said warranty does not apply to the use to which Lessee will put the Premises, modifications which may be required by the Americans with Disabilities Act or any similar laws as a result of Lessee's use (see Paragraph 49), or to any Alterations or Utility Installations (as defined in Paragraph 7.3(a)) made or to be made by Lessee. NOTE: Lessee is responsible for determining whether or not the Applicable Requirements and especially the zoning are appropriate for Lessee's intended use, and acknowledges that past uses of the Premises may no longer be allowed. If the Premises do not comply with said warranty, Lessor shall, except as otherwise provided, promptly after receipt of written notice from Lessee setting forth with specificity the nature and extent of such non-compliance, rectify the same at Lessor's expense. If Lessee does not give Lessor written notice of a non-compliance with this warranty within 6 months following the Start Date, correction of that non-compliance shall be the obligation of Lessee at Lessee's sole cost and expense. If the Applicable Requirements are hereafter changed so as to require during the term of this Lease the construction of an addition to or an alteration of the Unit, Premises and/or Building, the remediation of any Hazardous Substance, or the reinforcement or other physical modification of the Unit, Premises and/or Building ("Capital Expenditure"), Lessor and Lessee shall allocate the cost of such work as follows:

(a) Subject to Paragraph 23(c) below, if such Capital Expenditures are required as a result of the specific and unique use of the Premises by Lessee as compared with uses by tenants in general, Lessee shall be fully responsible for the cost thereof, provided, however that if such Capital Expenditure is required during the last 2 years of this Lease and the cost thereof exceeds 6 months' Base Rent, Lessee may instead terminate this Lease unless Lessor notifies Lessee, in writing, within 10 days after receipt of Lessee's termination notice that Lessor has elected to pay the difference between the actual cost thereof and the amount equal to 6 months' Base Rent. If Lessee elects termination, Lessee shall immediately cease the use of the Premises which requires such Capital Expenditure and deliver to Lessor written notice specifying a termination date at least 90 days thereafter. Such termination date shall however, in no event be earlier than the last day that Lessee could legally utilize the Premises without commencing such Capital Expenditure.

(b) If such Capital Expenditure is not the result of the specific and unique use of the Premises by Lessee (such as, governmentally mandated seismic modifications), then Lessor and Lessee shall allocate the obligation to pay for the portion of such costs reasonably attributable to the Premises pursuant to the formula set out in Paragraph 7.1(d); provided, however, that if such Capital Expenditure is required during the last 2 years of this Lease or if Lessor reasonably determines that it is not economically feasible to pay its share thereof, Lessor shall have the option to terminate this Lease upon 90 days prior written notice to Lessee unless Lessee notifies Lessor, in writing, within 10 days after receipt of Lessor's termination notice that Lessee will pay for such Capital Expenditure. If Lessor does not elect to terminate, and fails to tender its share of any such Capital Expenditure, Lessee may advance such funds and deduct same, with Interest, from Rent until Lessor's share of such costs have been fully paid. If Lessee is unable to finance Lessor's share, or if the balance of the Rent due and payable for the remainder of this Lease is not sufficient to fully reimburse Lessee on an offset basis, Lessee shall have the right to terminate this Lease upon 30 days written notice to Lessor.

(c) Notwithstanding the above, the provisions concerning Capital Expenditures are intended to apply only to non-voluntary,

unexpected, and new Applicable Requirements. If the Capital Expenditures are instead triggered by Lessee as a result of an actual or proposed change in use, change in intensity of use, or modification to the Premises then, and in that event, Lessee shall either: (i) immediately cease such changed use or intensity of use and/or take such other steps as may be necessary to eliminate the requirement for such Capital Expenditure, or (ii) complete such Capital Expenditure at its own expense. Lessee shall not have any right to terminate this Lease.

2.4 Acknowledgements. Lessee acknowledges that: (a) it has been advised by Lessor and/or Brokers to satisfy itself with respect to the condition of the Premises (including but not limited to the electrical, HVAC and fire sprinkler systems, security, environmental aspects, and compliance with Applicable Requirements and the Americans with Disabilities Act), and their suitability for Lessee's intended use, (b) Lessee has made such investigation as it deems necessary with reference to such matters and assumes all responsibility therefor as the same relate to its occupancy of the Premises, and (c) neither Lessor, Lessor's agents, nor Brokers have made any oral or written representations or warranties with respect to said matters other than as set forth in this Lease. In addition, Lessor acknowledges that: (i) Brokers have made no representations, promises or warranties concerning Lessee's ability to honor the Lease or suitability to occupy the Premises, and (ii) it is Lessor's sole responsibility to investigate the financial capability and/or suitability of all proposed tenants.

2.5 Lessee as Prior Owner/Occupant. The warranties made by Lessor in Paragraph 2 shall be of no force or effect if immediately prior to the Start Date Lessee was the owner or occupant of the Premises. In such event, Lessee shall be responsible for any necessary corrective work.

2.6 Vehicle Parking. Lessee shall be entitled to use the number of parking spaces specified in Paragraph 1.2(b) on those portions of the Common Areas designated from time to time by Lessor for parking. Lessee shall not use more parking spaces than said number. Said parking spaces shall be used for parking by vehicles no larger than full-size passenger automobiles or pick-up trucks, herein called "Permitted Size Vehicles." Lessor may regulate the loading and unloading of vehicles by adopting Rules and Regulations as provided in Paragraph 2.9. No vehicles other than Permitted Size Vehicles may be parked in the Common Area without the prior written permission of Lessor. In addition:

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(a) Lessee shall not permit or allow any vehicles that belong to or are controlled by Lessee or Lessee's employees, suppliers, shippers, customers, contractors or invitees to be loaded, unloaded, or parked in areas other than those designated by Lessor for such activities.

(b) Lessee shall not service or store any vehicles in the Common Areas.

(c) If Lessee permits or allows any of the prohibited activities described in this Paragraph 2.6, then Lessor shall have the right, without notice, in addition to such other rights and remedies that it may have, to remove or tow away the vehicle involved and charge the cost to Lessee, which cost shall be immediately payable upon demand by Lessor.

2.7 Common Areas - Definition. The term "Common Areas" is defined as all areas and facilities outside the Premises and within the exterior boundary line of the Project and interior utility raceways and installations within the Unit that are provided and designated by the Lessor from time to time for the general non-exclusive use of Lessor, Lessee and other tenants of the Project and their respective employees, suppliers, shippers, customers, contractors and invitees, including parking areas, loading and unloading areas, trash areas, roadways, walkways, driveways and landscaped areas

2.8 Common Areas - Lessee's Rights. Lessor grants to Lessee, for the benefit of Lessee and its employees, suppliers, shippers, contractors, customers and invitees. during the term of this Lease, the non-exclusive right to use, in common with others entitled to such use, the Common Areas as they exist from time to time, subject to any rights, powers, and privileges reserved by Lessor under the terms hereof or under the terms of any rules and regulations or restrictions governing the use of the Project. Under no circumstances shall the right herein granted to use the Common Areas be deemed to include the right to store any property, temporarily or permanently, in the Common Areas. Any such storage shall be permitted only by the prior written consent of Lessor or Lessor's designated agent, which consent may be revoked at any time. In the event that any unauthorized storage shall occur then Lessor shall have the right, without notice, in addition to such other rights and remedies that it may have, to remove the property and charge the cost to Lessee, which cost shall be immediately payable upon demand by Lessor.

2.9 Common Areas - Rules and Regulations. Lessor or such other person(s) as Lessor may appoint shall have the exclusive control and management of the Common Areas and shall have the right, from time to time, to establish, modify, amend and enforce reasonable rules and regulations ("Rules and Regulations") for the management, safety, care, and cleanliness of the grounds, the parking and unloading of vehicles and the preservation of good order, as well as for the convenience of other occupants or tenants of the Building and the Project and their invitees. Lessee agrees to abide by and conform to all such Rules and Regulations, and shall use its best efforts to cause its employees, suppliers, shippers, customers, contractors and invitees to so abide and conform. Lessor shall not be responsible to Lessee for the non-compliance with said Rules and Regulations by other tenants of the Project.

2.10 Common Areas - Changes. Lessor shall have the right, in Lessor's sole discretion, from time to time:

(a) To make changes to the Common Areas, including, without limitation, changes in the location, size, shape and number of driveways, entrances, parking spaces, parking areas, loading and unloading areas, ingress, egress, direction of traffic, landscaped areas, walkways and utility raceways;

(b) To close temporarily any of the Common Areas for maintenance purposes so long as reasonable access to the Premises remains available;

(c) To designate other land outside the boundaries of the Project to be a part of the Common Areas;

(d) To add additional buildings and improvements to the Common Areas;

(e) To use the Common Areas while engaged in making additional improvements, repairs or alterations to the Project, or any portion thereof; and

(f) To do and perform such other acts and make such other changes in, to or with respect to the Common Areas and Project as Lessor may, in the exercise of sound business judgment, deem to be appropriate.

3. Term.

3.1 Term. The Commencement Date, Expiration Date and Original Term of this Lease are as specified in Paragraph 1.3.

3.2 Early Possession. If Lessee totally or partially occupies the Premises prior to the Commencement Date, the obligation to pay Base Rent shall be abated for the period of such early possession. All other terms of this Lease (including but not limited to the obligations to pay Lessee's Share of Common Area Operating Expenses, Real Property Taxes and insurance premiums and to maintain the Premises) shall be in effect during such period. Any such early possession shall not affect the Expiration Date.

3.3 Delay In Possession. Lessor agrees to use its best commercially reasonable efforts to deliver possession of the Premises to Lessee by the Commencement Date. If, despite said efforts, Lessor is unable to deliver possession as agreed, Lessor shall not be subject to any

liability therefor, nor shall such failure affect the validity of this Lease or change the Expiration Date. Lessee shall not, however, be obligated to pay Rent or perform its other obligations until Lessor delivers possession of the Premises and any period of rent abatement that Lessee would otherwise have enjoyed shall run from the date of the delivery of possession and continue for a period equal to what Lessee would otherwise have enjoyed, but minus any days of delay caused by the acts or omissions of Lessee. If possession is not delivered within 60 days after the Commencement Date, Lessee may, at its option, by notice in writing within 10 days after the end of such 60 day period, cancel this Lease, in which event the Parties shall be discharged from all obligations hereunder. If such written notice is not received by Lessor within said 10 day period, Lessee's right to cancel shall terminate. Except as otherwise provided, if possession is not tendered to Lessee by the Start Date and Lessee does not terminate this Lease, as aforesaid, any period of rent abatement that Lessee would otherwise have enjoyed shall run from the date of delivery of possession and continue for a period equal to what Lessee would otherwise have enjoyed under the terms hereof, but minus any days of delay caused by the acts or omissions of Lessee. If possession of the Premises is not delivered within 4 months after the Commencement Date, this Lease shall terminate unless other agreements are reached between Lessor and Lessee, in writing.

3.4 Lessee Compliance. Lessor shall not be required to tender possession of the Premises to Lessee until Lessee complies with its obligation to provide evidence of insurance (Paragraph 8.5). Pending delivery of such evidence, Lessee shall be required to perform all of its obligations under this Lease from and after the Start Date, including the payment of Rent, notwithstanding Lessor's election to withhold possession pending receipt of such evidence of insurance. Further, if Lessee is required to perform any other conditions prior to or concurrent with the Start Date, the Start Date shall occur but Lessor may elect to withhold possession until such conditions are satisfied.

4. Rent.

4.1 Rent Defined. All monetary obligations of Lessee to Lessor under the terms of this Lease (except for the Security Deposit) are deemed to be rent ("Rent").

4.2 Common Area Operating Expenses. Lessee shall pay to Lessor during the term hereof, in addition to the Base Rent, Lessee's Share (as specified in Paragraph 1.6) of all Common Area Operating Expenses, as hereinafter defined, during each calendar year of the term of this Lease, in accordance with the following provisions.

(a) "Common Area Operating Expenses" are defined, for purposes of this Lease, as all costs incurred by Lessor relating to the ownership .and operation of the Project, including, but not limited to, the following:

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(i) The operation, repair and maintenance, in neat, clean, good order and condition, and if necessary the replacement, of the following.

(aa) The Common Areas and Common Area improvements, including parking areas, loading and unloading areas, trash areas, roadways, parkways, walkways, driveways, landscaped areas, bumpers, irrigation systems, Common Area lighting facilities, fences and gates, elevators, roofs, and roof drainage systems

(bb) Exterior signs and any tenant directories.

(cc) Any fire sprinkler systems.

(ii) The cost of water, gas, electricity and telephone to service the Common Areas and any utilities not separately metered

(iii) Trash disposal, pest control services, property management, security services, owners' association dues and fees, the cost to repaint the exterior of any structures and the cost of any environmental inspections.

(iv) Reserves set aside for maintenance, repair and/or replacement of Common Area improvements and equipment.

(v) Real Property Taxes (as defined in Paragraph 10).

(vi) The cost of the premiums for the insurance maintained by Lessor pursuant to Paragraph 8.

(vii) Any deductible portion of an insured loss concerning the Building or the Common Areas.

(viii) Auditors, accountants' and attorneys' fees and costs related to the operation, maintenance, repair and replacement of the Project.

(ix) The cost of any capital improvement to the Building or the Project not covered under the provisions of Paragraph 2.3 provided, however, that Lessor shall allocate the cost of any such capital improvement over a 12 year period and Lessee shall not be required to pay more than Lessee's Share of 1/144th of the cost of such capital improvement in any given month.

(x) Any other services to be provided by Lessor that are stated elsewhere in this Lease to be a Common Area Operating Expense.

(b) Any Common Area Operating Expenses and Real Property Taxes that are specifically attributable to the Unit, the Building or to any other building in the Project or to the operation, repair and maintenance thereof, shall be allocated entirely to such Unit, Building, or other building. However, any Common Area Operating Expenses and Real Property Taxes that are not specifically attributable to the Building or to any other building or to the operation, repair and maintenance thereof, shall be equitably allocated by Lessor to all buildings in the Project.

(c) The inclusion of the improvements, facilities and services set forth in Subparagraph 4.2(a) shall not be deemed to impose an obligation upon Lessor to either have said improvements or facilities or to provide those services unless the Project already has the same, Lessor already provides the services, or Lessor has agreed elsewhere in this Lease to provide the same or some of them.

(d) Lessee's Share of Common Area Operating Expenses is payable monthly on the same day as the Base Rent is due hereunder. The amount of such payments shall be based on Lessor's estimate of the annual Common Area Operating Expenses. Within 60 days after written request (but not more than once each year) Lessor shall deliver to Lessee a reasonably detailed statement showing Lessee's Share of the actual Common Area Operating Expenses incurred during the preceding year. If Lessee's payments during such year exceed Lessee's Share, Lessor shall credit the amount of such over-payment against Lessee's future payments. If Lessee's payments during such year were less than Lessee's Share, Lessee shall pay to Lessor the amount of the deficiency within 10 days after delivery by Lessor to Lessee of the statement.

(e) Common Area Operating Expenses shall not include any expenses paid by any tenant directly to third parties, or as to which Lessor is otherwise reimbursed by any third party, other tenant, or insurance proceeds.

4.3 Payment Lessee shall cause payment of Rent to be received by Lessor in lawful money of the United States, without offset or deduction (except as specifically permitted in this Lease), on or before the day on which it is due. All monetary amounts shall be rounded to the nearest whole dollar. In the event that any invoice prepared by Lessor is inaccurate such inaccuracy shall not constitute a waiver and Lessee shall be obligated to pay the amount set forth in this Lease. Rent for any period during the term hereof which is for less than one full calendar month shall be prorated based upon the actual number of days of said month. Payment of Rent shall be made to Lessor at its address stated herein or to such other persons or place as Lessor may from time to time designate in writing. Acceptance of a payment which is less than the amount then due shall not be a waiver of Lessor's rights to the balance of such Rent, regardless of Lessor's endorsement of any check so

stating. In the event that any check, draft, or other instrument of payment given by Lessee to Lessor is dishonored for any reason, Lessee agrees to pay to Lessor the sum of $25 in addition to any Late Charge and Lessor, at its option, may require all future Rent be paid by cashier's check. Payments will be applied first to accrued late charges and attorney's fees, second to accrued interest, then to Base Rent and Common Area Operating Expenses, and any remaining amount to any other outstanding charges or costs.

5. Security Deposit. Lessee shall deposit with Lessor upon execution hereof the Security Deposit as security for Lessee's faithful performance of its obligations under this Lease. If Lessee fails to pay Rent, or otherwise Defaults under this Lease, Lessor may use, apply or retain all or any portion of said Security Deposit for the payment of any amount due Lessor or to reimburse or compensate Lessor for any liability, expense, loss or damage which Lessor may suffer or incur by reason thereof. If Lessor uses or applies all or any portion of the Security Deposit, Lessee shall within 10 days after written request therefor deposit monies with Lessor sufficient to restore said Security Deposit to the full amount required by this Lease. If the Base Rent increases during the term of this Lease, Lessee shall, upon written request from Lessor, deposit additional monies with Lessor so that the total amount of the Security Deposit shall at all times bear the same proportion to the increased Base Rent as the initial Security Deposit bore to the initial Base Rent. Should the Agreed Use be amended to accommodate a material change in the business of Lessee or to accommodate a sublessee or assignee, Lessor shall have the right to increase the Security Deposit to the extent necessary, in Lessor's reasonable judgment, to account for any increased wear and tear that the Premises may suffer as a result thereof. If a change in control of Lessee occurs during this Lease and following such change the financial condition of Lessee is, in Lessor's reasonable judgment, significantly reduced, Lessee shall deposit such additional monies with Lessor as shall be sufficient to cause the Security Deposit to be at a commercially reasonable level based on such change in financial condition. Lessor shall not be required to keep the Security Deposit separate from its general accounts. Within 14 days after the expiration or termination of this Lease, if Lessor elects to apply the Security Deposit only to unpaid Rent, and otherwise within 30 days after the Premises have been vacated pursuant to Paragraph 7.4(c) below, Lessor shall return that portion of the Security Deposit not used or applied by Lessor. No part of the Security Deposit shall be considered to be held in trust, to bear interest or to be prepayment for any monies to be paid by Lessee under this Lease.

6 Use

6.1 Use. Lessee shall use and occupy the Premises only for the Agreed Use, or any other legal use which is reasonably comparable thereto, and for no other purpose. Lessee shall not use or permit the use of the Premises in a manner that is unlawful, creates damage, waste or a nuisance, or that disturbs occupants of or causes damage to neighboring premises or properties. Other than guide, signal and seeing eye dogs, Lessee shall not keep or allow in the Premises any pets, animals, birds, fish, or reptiles. Lessor shall not unreasonably withhold or delay its consent to any written request for a modification of the Agreed Use, so long as the sane will not impair the structural integrity of the Building or the mechanical or electrical systems therein, and/or is not significantly more burdensome to the Project. If Lessor elects to withhold consent, Lessor shall within 7 days after such request give written notification of same, which notice shall include an explanation of Lessor's objections to the change in the Agreed Use.

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6.2 Hazardous Substances.

(a) Reportable Uses Require Consent. The term "Hazardous Substance" as used in this Lease shall mean any product, substance, or waste whose presence, use, manufacture, disposal, transportation, or release, either by itself or in combination with other materials expected to be on the Premises, is either: (i) potentially injurious to the public health, safety or welfare, the environment or the Premises, (ii) regulated or monitored by any governmental authority, or (iii) a basis for potential liability of Lessor to any governmental agency or third party under any applicable statute or common law theory. Hazardous Substances shall include, but not be limited to, hydrocarbons, petroleum, gasoline, and/or crude oil or any products, by-products or fractions thereof. Lessee shall not engage in any activity in or on the Premises which constitutes a Reportable Use of Hazardous Substances without the express prior written consent of Lessor and timely compliance (at Lessee's expense) with all Applicable Requirements. "Reportable Use" shall mean (i) the installation or use of any above or below ground storage tank, (ii) the generation, possession, storage, use, transportation, or disposal of a Hazardous Substance that requires a permit from, or with respect to which a report, notice, registration or business plan is required to be filed with, any governmental authority, and/or (iii) the presence at the Premises of a Hazardous Substance with respect to which any Applicable Requirements requires that a notice be given to persons entering or occupying the Premises or neighboring properties. Notwithstanding the foregoing, Lessee may use any ordinary and customary materials reasonably required to be used in the normal course of the Agreed Use, ordinary office supplies (copier toner, liquid paper, glue, etc.) and common household cleaning materials, so long as such use is in compliance with all Applicable Requirements, is not a Reportable Use, and does not expose the Premises or neighboring property to any meaningful risk of contamination or damage or expose Lessor to any liability therefor. In addition, Lessor may condition its consent to any Reportable Use upon receiving such additional assurances as Lessor reasonably deems necessary to protect itself, the public, the Premises and/or the environment against damage, contamination, injury and/or liability, including, but not limited to, the installation (and removal on or before Lease expiration or termination) of protective modifications (such as concrete encasements) and/or increasing the Security Deposit.

(b) Duty to Inform Lessor. If Lessee knows, or has reasonable cause to believe, that a Hazardous Substance has come to be located in, on under or about the Premises, other than as previously consented to by Lessor, Lessee shall immediately give written notice of such fact to Lessor, and provide Lessor with a copy of any report, notice, claim or other documentation which it has concerning the presence of such Hazardous Substance.

(c) Lessee Remediation. Lessee shall not cause or permit any Hazardous Substance to be spilled or released in, on, under, or about the Premises (including through the plumbing or sanitary sewer system) and shall promptly, at Lessee's expense, comply with all Applicable Requirements and take all investigatory and/or remedial action reasonably recommended, whether or not formally ordered or required, for the cleanup of any contamination of and for the maintenance, security and/or monitoring of the Premises or neighboring properties, that was caused or materially contributed to by Lessee, or pertaining to or involving any Hazardous Substance brought onto the Premises during the term of this Lease, by or for Lessee or any third party.

(d) Lessee Indemnification. Lessee shall indemnify, defend and hold Lessor, its agents, employees, lenders and ground lessor, if any, harmless from and against any and all loss of rents and/or damages, liabilities, judgments, claims, expenses, penalties, and attorneys' and consultants' fees arising out of or involving any Hazardous Substance brought onto the Premises by or for Lessee, or any third party (provided, however, that Lessee shall have no liability under this Lease with respect to underground migration of any Hazardous Substance under the Premises from areas outside of the Project not caused or contributed to by Lessee). Lessee's obligations shall include, but not be limited to, the effects of any contamination or injury to person, property or the environment created or suffered by Lessee, and the cost of investigation, removal, remediation, restoration and/or abatement, and shall survive the expiration or termination of this Lease. No termination, cancellation or release agreement entered into by Lessor and Lessee shall release Lessee from its obligations under this Lease with respect to Hazardous Substances, unless specifically so agreed by Lessor in writing at the time of such agreement.

(e) Lessor Indemnification. Lessor and its successors and assigns shall indemnify, defend, reimburse and hold Lessee. its employees and lenders, harmless from and against any and all environmental damages, including the cost of remediation, which are suffered as a direct result of Hazardous Substances on the Premises prior to Lessee taking possession or which are caused by the gross negligence or willful misconduct of Lessor, its agents or employees. Lessor's obligations, as and when required by the Applicable Requirements, shall include, but not be limited to, the cost of investigation, removal, remediation, restoration and/or abatement, and shall survive the expiration or termination of this Lease.

(f) Investigations and Remediations. Lessor shall retain the responsibility and pay for any investigations or remediation measures required by governmental entities having jurisdiction with respect to the existence of Hazardous Substances on the Premises prior to the Lessee taking possession, unless such remediation measure is required as a result of Lessee's use (including "Alterations", as defined in paragraph 7. 3(a) below) of the Premises, in which event Lessee shall be responsible for such payment. Lessee shall cooperate fully in any such activities at the request of Lessor, including allowing Lessor and Lessor's agents to have reasonable access to the Premises at reasonable times in order to carry out Lessor's investigative and remedial responsibilities.

(g) Lessor Termination Option. If a Hazardous Substance Condition (see Paragraph 9.1(e)) occurs during the term of this Lease, unless Lessee is legally responsible therefor (in which case Lessee shall make the investigation and remediation thereof required by the Applicable Requirements and this Lease shall continue in full force and effect, but subject to Lessor's rights under Paragraph 6.2(d) and Paragraph 13), Lessor may, at Lessor's option, either (i) investigate and remediate such Hazardous Substance Condition, if required, as soon as reasonably possible at Lessor's expense, in which event this Lease shall continue in full force and effect, or (ii) if the estimated cost to remediate such condition exceeds 12 times the then monthly Base Rent or $100,000, whichever is greater, give written notice to Lessee, within 30 days after receipt by Lessor of knowledge of the occurrence of such Hazardous Substance Condition, of Lessor's desire to terminate this Lease as of the date 60 days following the date of such notice. In the event Lessor elects to give a termination notice, Lessee may, within 10

days thereafter, give written notice to Lessor of Lessee's commitment to pay the amount by which the cost of the remediation of such Hazardous Substance Condition exceeds an amount equal to 12 times the then monthly Base Rent or $100,000, whichever is greater Lessee shall provide Lessor with said funds or satisfactory assurance thereof within 30 days following such commitment. In such event, this Lease shall continue in full force and effect, and Lessor shall proceed to make such remediation as soon as reasonably possible after the required funds are available. If Lessee does not give such notice and provide the required funds or assurance thereof within the time provided, this Lease shall terminate as of the date specified in Lessor's notice of termination.

6.3 Lessee's Compliance with Applicable Requirements. Except as otherwise provided in this Lease, Lessee shall, at Lessee's sole expense, fully, diligently and in a timely manner, materially comply with all Applicable Requirements, the requirements of any applicable fire insurance underwriter or rating bureau, and the recommendations of Lessor's engineers and/or consultants which relate in any manner to such Requirements, without regard to whether said Requirements are now in effect or become effective after the Start Date. Lessee shall, within 10 days after receipt of Lessor's written request, provide Lessor with copies of all permits and other documents, and other information evidencing Lessee's compliance with any Applicable Requirements specified by Lessor, and shall immediately upon receipt, notify Lessor in writing (with copies of any documents involved) of any threatened or actual claim, notice, citation, warning, complaint or report pertaining to or involving the failure of Lessee or the Premises to comply with any Applicable Requirements Likewise, Lessee shall immediately give written notice to Lessor of: (i) any water damage to the Premises and any suspected seepage, pooling, dampness or other condition conducive to the production of mold, or (ii) any mustiness or other odors that might indicate the presence of mold in the Premises.

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6.4 Inspection; Compliance. Lessor and Lessor's "Lender" (as defined in Paragraph 30) and consultants shall have the right to enter into Premises at any time, in the case of an emergency, and otherwise at reasonable times after reasonable notice, for the purpose of inspecting the condition of the Premises and for verifying compliance by Lessee with this Lease. The cost of any such inspections shall be paid by Lessor, unless a violation of Applicable Requirements, or a Hazardous Substance condition (see Paragraph 9.1) is found to exist or be imminent, or the inspection is requested or ordered by a governmental authority. In such case, Lessee shall upon request reimburse Lessor for the cost of such inspection, so long as such inspection is reasonably related to the violation or contamination. In addition, Lessee shall provide copies of all relevant material safety data sheets (MSDS) to Lessor within 10 days of the receipt of written request therefor.

7. Maintenance; Repairs, Utility Installations; Trade Fixtures and Alterations.

7.1 Lessee's Obligations

(a) In General. Subject to the provisions of Paragraph 2.2 (Condition), 2.3 (Compliance), 6.3 (Lessee's Compliance with Applicable Requirements), 7.2 (Lessor's Obligations). 9 (Damage or Destruction), and 14 (Condemnation), Lessee shall, at Lessee's sole expense, keep the Premises, Utility Installations (intended for Lessee's exclusive use, no matter where located), and Alterations in good order, condition and repair (whether or not the portion of the Premises requiring repairs, or the means of repairing the same, are reasonably or readily accessible to Lessee, and whether or not the need for such repairs occurs as a result of Lessee's use, any prior use, the elements or the age of such portion of the Premises), including, but not limited to, all equipment or facilities, such as plumbing, HVAC equipment, electrical, lighting facilities, boilers, pressure vessels, fixtures, interior walls, interior surfaces of exterior walls, ceilings, floors, windows, doors, plate glass, and skylights but excluding any items which are the responsibility of Lessor pursuant to Paragraph 7.2. Lessee, in keeping the Premises in good order, condition and repair, shall exercise and perform good maintenance practices, specifically including the procurement and maintenance of the service contracts required by Paragraph 7.1(b) below. Lessee's obligations shall include restorations, replacements or renewals when necessary to keep the Premises and all improvements thereon or a part thereof in good order. condition and state of repair.

(b) Service Contracts. Lessee shall, at Lessee's sole expense, procure and maintain contracts, with copies to Lessor, in customary form and substance for, and with contractors specializing and experienced in the maintenance of the following equipment and improvements, if any, if and when installed on the Premises: (i) HVAC equipment, (ii) boiler and pressure vessels, (iii) clarifiers, and (iv) any other equipment, if reasonably required by Lessor. However, Lessor reserves the right, upon notice to Lessee, to procure and maintain any or all of such service contracts and Lessee shall reimburse Lessor, upon demand, for the cost thereof.

(c) Failure to Perform. If Lessee fails to perform Lessee's obligations under this Paragraph 7.1, Lessor may enter upon the Premises after 10 days' prior written notice to Lessee (except in the case of an emergency, in which case no notice shall be required), perform such obligations on Lessee's behalf, and put the Premises in good order, condition and repair, and Lessee shall promptly pay to Lessor a sum equal to 115% of the cost thereof.

(d) Replacement Subject to Lessee's indemnification of Lessor as set forth in Paragraph 8.7 below, and without relieving Lessee of liability resulting from Lessee's failure to exercise and perform good maintenance practices, if an item described in Paragraph 7.1(b) cannot be repaired other than at a cost which is in excess of 50% of the cost of replacing such item, then such item shall be replaced by Lessor, and the cost thereof shall be prorated between the Parties and Lessee shall only be obligated to pay, each month during the remainder of the term of this Lease, on the date on which Base Rent is due, an amount equal to the product of multiplying the cost of such replacement by a fraction, the numerator of which is one, and the denominator of which is 144 (i.e. 1/144th of the cost per month). Lessee shall pay Interest on the unamortized balance but may prepay its obligation at any time.

7.2 Lessor's Obligations. Subject to the provisions of Paragraphs 2.2 (Condition), 2.3 (Compliance), 4.2 (Common Area Operating Expenses), 6 (Use), 7.1 (Lessee's Obligations), 9 (Damage or Destruction) and 14 (Condemnation), Lessor, subject to reimbursement pursuant to Paragraph 4.2, shall keep in good order, condition and repair the foundations, exterior walls, structural condition of interior bearing walls, exterior roof, fire sprinkler system, Common Area fire alarm and/or smoke detection systems, fire hydrants, parking lots, walkways, parkways, driveways, landscaping, fences, signs and utility systems serving the Common Areas and all parts thereof, as well as providing the services for which there is a Common Area Operating Expense pursuant to Paragraph 4.2. Lessor shall not be obligated to paint the exterior or interior surfaces of exterior walls nor shall Lessor be obligated to maintain, repair or replace windows, doors or plate glass of the Premises. Lessee expressly waives the benefit of any statute now or hereafter in effect to the extent it is inconsistent with the terms of this Lease.

7.3 Utility Installations; Trade Fixtures; Alterations.

(a) Definitions. The term "Utility Installations" refers to all floor and window coverings, air and/or vacuum lines, power panels, electrical distribution, security and fire protection systems, communication cabling, lighting fixtures, HVAC equipment, plumbing, and fencing in or on the Premises. The term "Trade Fixtures" shall mean Lessee's machinery and equipment that can be removed without doing material damage to the Premises. The term "Alterations" shall mean any modification of the improvements, other than Utility Installations or Trade Fixtures, whether by addition or deletion. "Lessee Owned Alterations and/or Utility Installations" are defined as Alterations and/or Utility Installations made by Lessee that are not yet owned by Lessor pursuant to Paragraph 7.4(a).

(b) Consent. Lessee shall not make any Alterations or Utility Installations to the Promises without Lessor's prior written consent. Lessee may, however, make non-structural Utility Installations to the interior of the Premises (excluding the roof) without such consent but upon notice to Lessor, as long as they are not visible from the outside, do not involve puncturing, relocating or removing the roof

or any existing walls, will not affect the electrical, plumbing, HVAC, and/or life safety systems, and the cumulative cost thereof during this Lease as extended does not exceed a sum equal to 3 month's Base Rent in the aggregate or a sum equal to one month's Base Rent in any one year. Notwithstanding the foregoing, Lessee shall not make or permit any roof penetrations and/or install anything on the roof without the prior written approval of Lessor. Lessor may, as a precondition to granting such approval, require Lessee to utilize a contractor chosen and/or approved by Lessor. Any Alterations or Utility Installations that Lessee shall desire to make and which require the consent of the Lessor shall be presented to Lessor in written form with detailed plans. Consent shall be deemed conditioned upon Lessee's: (i) acquiring all applicable governmental permits, (ii) furnishing Lessor with copies of both the permits and the plans and specifications prior to commencement of the work, and (iii) compliance with all conditions of said permits and other Applicable Requirements in a prompt and expeditious manner. Any Alterations or Utility Installations shall be performed in a workmanlike manner with good and sufficient materials. Lessee shall promptly upon completion furnish Lessor with as-built plans and specifications. For work which costs an amount in excess of one month's Base Rent, Lessor may condition its consent upon Lessee providing a lien and completion bond in an amount equal to 150% of the estimated cost of such Alteration or Utility Installation and/or upon Lessee's posting an additional Security Deposit with Lessor.

(c) Liens; Bonds Lessee shall pay, when due all claims for labor or materials furnished or alleged to have been furnished to or for Lessee at or for use on the Premises, which claims are or may be secured by any mechanic's or materialman's lien against the Premises or any interest therein. Lessee shall give Lessor not less than 10 days notice prior to the commencement of any work in, on or about the Premises, and Lessor shall have the right to post notices of non-responsibility. If Lessee shall contest the validity of any such lien, claim or demand, then Lessee shall at its sole expense defend and protect itself, Lessor and the Promises against the same and shall pay and satisfy any such adverse judgment that may be rendered thereon before the enforcement thereof. If Lessor shall require, Lessee shall furnish a surety bond in an amount equal to 150% of the amount of such contested lien, claim or demand, indemnifying Lessor against liability for the same. If Lessor elects to participate in any such action, Lessee shall pay Lessors attorneys' fees and costs.

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7.4 Ownership; Removal; Surrender; and Restoration.

(a) Ownership Subject to Lessor's right to require removal or elect ownership as hereinafter provided, all Alterations and Utility Installations made by Lessee shall be the property of Lessee, but considered a part of the Premises. Lessor may, at any time, elect in writing to be the owner of all or any specified part of the Lessee Owned Alterations and Utility Installations. Unless otherwise instructed per paragraph 7.4(b) hereof, all Lessee Owned Alterations and Utility Installations shall, at the expiration or termination of this Lease, become the property of Lessor and be surrendered by Lessee with the Premises.

(b) Removal. By delivery to Lessee of written notice from Lessor not earlier than 90 and not later than 30 days prior to the end of the term of this Lease, Lessor may require that any or all Lessee Owned Alterations or Utility Installations be removed by the expiration or termination of this Lease. Lessor may require the removal at any time of all or any part of any Lessee Owned Alterations or Utility Installations made without the required consent

(c) Surrender; Restoration. Lessee shall surrender the Premises by the Expiration Date or any earlier termination date, with all of the improvements, parts and surfaces thereof broom clean and free of debris, and in good operating order, condition and state of repair, ordinary wear and tear excepted. "Ordinary wear and tear" shall not include any damage or deterioration that would have been prevented by good maintenance practice. Notwithstanding the foregoing, if this Lease is for 12 months or less, then Lessee shall surrender the Premises in the same condition as delivered to Lessee on the Start Date with NO allowance for ordinary wear and tear. Lessee shall repair any damage occasioned by the installation, maintenance or removal of Trade Fixtures, Lessee owned Alterations and/or Utility Installations, furnishings, and equipment as well as the removal of any storage tank installed by or for Lessee. Lessee shall also completely remove from the Premises any and all Hazardous Substances brought onto the Premises by or for Lessee, or any third party (except Hazardous Substances which were deposited via underground migration from areas outside of the Project) even if such removal would require Lessee to perform or pay for work that exceeds statutory requirements. Trade Fixtures shall remain the property of Lessee and shall be removed by Lessee. Any personal property of Lessee not removed on or before the Expiration Date or any earlier termination date shall be deemed to have been abandoned by Lessee and may be disposed of or retained by Lessor as Lessor may desire. The failure by Lessee to timely vacate the Premises pursuant to this Paragraph 7.4(c) without the express written consent of Lessor shall constitute a holdover under the provisions of Paragraph 26 below.

8. Insurance; Indemnity.

8.1 Payment of Premiums. The cost of the premiums for the insurance policies required to be carried by Lessor, pursuant to Paragraphs 8.2(b), 8.3(a) and 8.3(b), shall be a Common Area Operating Expense. Premiums for policy periods commencing prior to, or extending beyond. the term of this Lease shall be prorated to coincide with the corresponding Start Date or Expiration Date.

8.2 Liability Insurance.

(a) Carried by Lessee. Lessee shall obtain and keep in force a Commercial General Liability policy of insurance protecting Lessee and Lessor as an additional insured against claims for bodily injury, personal injury and property damage based upon or arising out of the ownership, use, occupancy or maintenance of the Premises and all areas appurtenant thereto. Such insurance shall be on an occurrence basis providing single limit coverage in an amount not less than $1,000,000 per occurrence with an annual aggregate of not less than $2,000,000. Lessee shall add Lessor as an additional insured by means of an endorsement at least as broad as the Insurance Service Organization's "Additional Insured-Managers or Lessors of Premises" Endorsement and coverage shall also be extended to include damage caused by heat, smoke or fumes from a hostile fire. The policy shall not contain any intra-insured exclusions as between insured persons or organizations, but shall include coverage for liability assumed under this Lease as an "insured contract" for the performance of Lessee's indemnity obligations under this Lease. The limits of said insurance shall not, however, limit the liability of Lessee nor relieve Lessee of any obligation hereunder. Lessee shall provide an endorsement on its liability policy(ies) which provides that its insurance shall be primary to and not contributory with any similar insurance carried by Lessor, whose insurance shall be considered excess insurance only.

(b) Carried by Lessor. Lessor shall maintain liability insurance as described in Paragraph 8.2(a), in addition to, and not in lieu of, the insurance required to be maintained by Lessee. Lessee shall not be named as an additional insured therein.

8.3 Property Insurance - Building, Improvements and Rental Value.

(a) Building and Improvements. Lessor shall obtain and keep in force a policy or policies of insurance in the name of Lessor, with loss payable to Lessor, any ground-lessor, and to any Lender insuring loss or damage to the Premises. The amount of such insurance shall be equal to the full insurable replacement cost of the Premises, as the same shall exist from time to time, or the amount required by any Lender, but in no event more than the commercially reasonable and available insurable value thereof. Lessee Owned Alterations and Utility Installations, Trade Fixtures, and Lessee's personal property shall be insured by Lessee under Paragraph 8.4. If the coverage is available and commercially appropriate, such policy or policies shall insure against all risks of direct physical loss or damage (except the perils of flood and/or earthquake unless required by a Lender), including coverage for debris removal and the enforcement of any Applicable Requirements requiring the upgrading, demolition, reconstruction or replacement of any portion of the Premises as the result of a covered loss. Said policy or policies shall also contain an agreed valuation provision in lieu of any coinsurance clause, waiver of subrogation, and inflation guard protection causing an increase in the annual property insurance coverage amount by a factor of not less than the adjusted U.S. Department of Labor Consumer Price Index for All Urban Consumers for the city nearest to where the Premises are located. If such insurance coverage has a deductible clause, the deductible amount shall not exceed $1,000 per occurrence.

(b) Rental Value. Lessor shall also obtain and keep in force a policy or policies in the name of Lessor with loss payable to Lessor and any Lender, insuring the loss of the full Rent for one year with an extended period of indemnity for an additional 180 days ("Rental Value Insurance"). Said insurance shall contain an agreed valuation provision in lieu of any coinsurance clause, and the amount of coverage shall be adjusted annually to reflect the projected Rent otherwise payable by Lessee, for the next 12 month period.

(c) Adjacent Promises. Lessee shall pay for any increase in the premiums for the property insurance of the Building and for the Common Areas or other buildings in the Project if said increase is caused by Lessee's acts, omissions, use or occupancy of the Premises.

(d) Lessee's Improvements. Since Lessor is the Insuring Party, Lessor shall not be required to insure Lessee Owned Alterations and Utility installations unless the item in question has become the property of Lessor under the terms of this Lease.

8.4 Lessee's Property; Business Interruption Insurance.

(a) Property Damage. Lessee shall obtain and maintain insurance coverage on all of Lessee's personal property, Trade Fixtures, and Lessee Owned Alterations and Utility Installations. Such insurance shall be full replacement cost coverage with a deductible of not to exceed $1,000 per occurrence. The proceeds from any such insurance shall be used by Lessee for the replacement of personal property, Trade Fixtures and Lessee Owned Alterations and Utility Installations. Lessee shall provide Lessor with written evidence that such insurance is in force.

(b) Business Interruption. Lessee shall obtain and maintain loss of income and extra expense insurance in amounts as will reimburse Lessee for direct or indirect loss of earnings attributable to all perils commonly insured against by prudent lessees in the business of Lessee or attributable to prevention of access to the Premises as a result of such perils.

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(c) No Representation of Adequate Coverage. Lessor makes no representation that the limits or forms of coverage of insurance specified herein are adequate to cover Lessee's property, business operations or obligations under this Lease.

8.5 Insurance Policies. Insurance required herein shall be by companies duly licensed or admitted to transact business in the state where the Premises are located and maintaining during the policy term a "General Policyholders Rating" of at least A-, VI, as set forth in the most current issue of "Best's Insurance Guide", or such other rating as may be required by a Lender. Lessee shall not do or permit to be done anything which invalidates the required insurance policies. Lessee shall, prior to the Start Date, deliver to Lessor certified copies of policies of such insurance or certificates evidencing the existence and amounts of the required insurance. No such policy shall be cancelable or subject to modification except after 30 days prior written notice to Lessor. Lessee shall, at least 10 days prior to the expiration of such policies, furnish Lessor with evidence of renewals or "insurance binders" evidencing renewal thereof, or Lessor may order such insurance and charge the cost thereof to Lessee, which amount shall be payable by Lessee to Lessor upon demand. Such policies shall be for a term of at least one year, or the length of the remaining term of this Lease, whichever is less. If either Party shall fail to procure and maintain the insurance required to be carried by it, the other Party may, but shall not be required to procure and maintain the same.

8.6 Waiver of Subrogation. Without affecting any other rights or remedies, Lessee and Lessor each hereby release and relieve the other, and waive their entire right to recover damages against the other, for loss of or damage to its property arising out of or incident to the perils required to be insured against herein. The effect of such releases and waivers is not limited by the amount of insurance, carried or required, or by any deductibles applicable hereto. The Parties agree to have their respective property damage insurance carriers waive any right to subrogation that such companies may have against Lessor or Lessee, as the case may be, so long as the insurance is not invalidated thereby.

8.7 Indemnity. Except for Lessor's gross negligence or willful misconduct, Lessee shall indemnify, protect, defend and hold harmless the Premises, Lessor and its agents, Lessor's master or ground lessor, partners and Lenders, from and against any and all claims, loss of rents and/or damages, liens, judgments, penalties, attorneys' and consultants' fees, expenses and/or liabilities arising out of, involving, or in connection with, the use and/or occupancy of the Premises by Lessee. If any action or proceeding is brought against Lessor by reason of any of the foregoing matters, Lessee shall upon notice defend the same at Lessee's expense by counsel reasonably satisfactory to Lessor and Lessor shall cooperate with Lessee in such defense. Lessor need not have first paid any such claim in order to be defended or indemnified.

8.8 Exemption of Lessor from Liability. Lessor shall not be liable for injury or damage to the person or goods, wares, merchandise or other property of Lessee, Lessee's employees, contractors, invitees, customers, or any other person in or about the Premises, whether such damage or injury is caused by or results from fire, steam, electricity, gas, water or rain, indoor air quality, the presence of mold or from the breakage, leakage, obstruction or other defects of pipes, fire sprinklers, wires, appliances, plumbing, HVAC or lighting fixtures, or from any other cause, whether the said injury or damage results from conditions arising upon the Premises or upon other portions of the Building, or from other sources or places. Lessor shall not be liable for any damages arising from any act or neglect of any other tenant of Lessor nor from the failure of Lessor to enforce the provisions of any other lease in the Project. Notwithstanding Lessor's negligence or breach of this Lease, Lessor shall under no circumstances be liable for injury to Lessee's business or for any loss of income or profit therefrom.

8.9 Failure to Provide Insurance. Lessee acknowledges that any failure on its part to obtain or maintain the insurance required herein will expose Lessor to risks and potentially cause Lessor to incur costs not contemplated by this Lease, the extent of which will be extremely difficult to ascertain Accordingly, for any month or portion thereof that Lessee does not maintain the required insurance and/or does not provide Lessor with the required binders or certificates evidencing the existence of the required insurance, the Base Rent shall be automatically increased, without any requirement for notice to Lessee, by an amount equal to 10% of the then existing Base Rent or $100, whichever is greater. The parties agree that such increase in Base Rent represents fair and reasonable compensation for the additional risk/costs that Lessor will incur by reason of Lessee's failure to maintain the required insurance. Such increase in Base Rent shall in no event constitute a waiver of Lessee's Default or Breach with respect to the failure to maintain such insurance, prevent the exercise of any of the other rights and remedies granted hereunder, nor relieve Lessee of its obligation to maintain the insurance specified in this Lease.

9. Damage or Destruction.

9.1 Definitions.

(a) "Premises Partial Damage" shall mean damage or destruction to the improvements on the Premises, other than Lessee Owned Alterations and Utility Installations, which can reasonably be repaired in 3 months or less from the date of the damage or destruction, and the cost thereof does not exceed a sum equal to 6 month's Base Rent. Lessor shall notify Lessee in writing within 30 days from the date of the damage or destruction as to whether or not the damage is Partial or Total. Notwithstanding the foregoing, Premises Partial Damage shall not include damage to windows, doors, and/or other similar items which Lessee has the responsibility to repair or replace pursuant to the provisions of Paragraph 7.1

(b) "Premises Total Destruction" shall mean damage or destruction to the improvements on the Premises, other than Lessee Owned Alterations and Utility Installations and Trade Fixtures, which cannot reasonably be repaired in 3 months or less from the date of the damage or destruction and/or the cost thereof exceeds a sum equal to 6 month's Base Rent. Lessor shall notify Lessee in writing within 30 days from the date of the damage or destruction as to whether or not the damage is Partial or Total.

(c) "Insured Loss" shall mean damage or destruction to improvements on the Premises, other than Lessee Owned Alterations and Utility Installations and Trade Fixtures, which was caused by an event required to be covered by the insurance described in Paragraph 8.3(a), irrespective of any deductible amounts or coverage limits involved.

(d) “Replacement Cost” shall mean the cost to repair or rebuild the improvements owned by Lessor at the time of the occurrence to their condition existing immediately prior thereto, including demolition, debris removal and upgrading required by the operation of Applicable Requirements, and without deduction for depreciation.

(e) “Hazardous Substance Condition” shall mean the occurrence or discovery of a condition involving the presence of, or a contamination by, a Hazardous Substance as defined in Paragraph 6.2(a), in, on, or under the Premises which requires repair, remediation, or restoration.

9.2 Partial Damage - Insured Loss. If a Premises Partial Damage that is an Insured Loss occurs, then Lessor shall, at Lessor’s expense, repair such damage (but not Lessee’s Trade Fixtures or Lessee Owned Alterations and Utility Installations) as soon as reasonably possible and this Lease shall continue in full force and effect, provided, however, that Lessee shall, at Lessor’s election, make the repair of any damage or destruction the total cost to repair of which is $10,000 or less, and, in such event, Lessor shall make any applicable insurance proceeds available to Lessee on a reasonable basis for that purpose. Notwithstanding the foregoing, if the required insurance was not in force or the insurance proceeds are not sufficient to effect such repair, the Insuring Party shall promptly contribute the shortage in proceeds as and when required to complete said repairs. In the event, however, such shortage was due to the fact that, by reason of the unique nature of the improvements, full replacement cost insurance coverage was not commercially reasonable and available, Lessor shall have no obligation to pay for the shortage in insurance proceeds or to fully restore the unique aspects of the Premises unless Lessee provides Lessor with the funds to cover same, or adequate assurance thereof, within 10 days following receipt of written notice of such shortage and request therefor. If Lessor receives said funds or adequate assurance thereof within said 10 day period, the party responsible for making the repairs shall complete them as soon as reasonably possible and this Lease shall remain in full force and effect. If such funds or assurance are not received, Lessor may nevertheless elect by written notice to Lessee within 10 days thereafter to (i) make such restoration and repair as is commercially reasonable with Lessor paying any shortage in proceeds, in which case this Lease shall remain in full force and effect. or (ii) have this Lease terminate 30 days thereafter. Lessee shall not be entitled to reimbursement of any funds contributed by Lessee to repair any such damage or destruction. Premises Partial Damage due to flood or earthquake shall be subject to Paragraph 9.3, notwithstanding that there may be some insurance coverage, but the net proceeds of any such insurance shall be made available for the repairs if made by either Party.

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9.3 Partial Damage - Uninsured Loss. If a Premises Partial Damage that is not an Insured Loss occurs, unless caused by a negligent or willful act of Lessee (in which event Lessee shall make the repairs at Lessee's expense), Lessor may either. (i) repair such damage as soon as reasonably possible at Lessor's expense, in which event this Lease shall continue in full force and effect, or (ii) terminate this Lease by giving written notice to Lessee within 30 days after receipt by Lessor of knowledge of the occurrence of such damage. Such termination shall be effective 60 days following the date of such notice. In the event Lessor elects to terminate this Lease, Lessee shall have the right within 10 days after receipt of the termination notice to give written notice to Lessor of Lessee's commitment to pay for the repair of such damage without reimbursement from Lessor. Lessee shall provide Lessor with said funds or satisfactory assurance thereof within 30 days after making such commitment. In such event this Lease shall continue in full force and effect, and Lessor shall proceed to make such repairs as soon as reasonably possible after the required funds are available. If Lessee does not make the required commitment, this Lease shall terminate as of the date specified in the termination notice.

9.4 Total Destruction. Notwithstanding any other provision hereof, if a Premises Total Destruction occurs, this Lease shall terminate 60 days following such Destruction. If the damage or destruction was caused by the gross negligence or willful misconduct of Lessee, Lessor shall have the right to recover Lessor's damages from Lessee, except as provided in Paragraph 8.6.

9.5 Damage Near End of Term. If at any time during the last 6 months of this Lease there is damage for which the cost to repair exceeds one month's Base Rent, whether or not an Insured Loss, Lessor may terminate this Lease effective 60 days following the date of occurrence of such damage by giving a written termination notice to Lessee within 30 days after the date of occurrence of such damage. Notwithstanding the foregoing, if Lessee at that time has an exercisable option to extend this Lease or to purchase the Premises, then Lessee may preserve this Lease by, (a) exercising such option and (b) providing Lessor with any shortage in insurance proceeds (or adequate assurance thereof) needed to make the repairs on or before the earlier of (i) the date which is 10 days after Lessee's receipt of Lessor's written notice purporting to terminate this Lease, or (ii) the day prior to the date upon which such option expires. If Lessee duly exercises such option during such period and provides Lessor with funds (or adequate assurance thereof) to cover any shortage in insurance proceeds, Lessor shall, at Lessor's commercially reasonable expense, repair such damage as soon as reasonably possible and this Lease shall continue in full force and effect. If Lessee fails to exercise such option and provide such funds or assurance during such period, then this Lease shall terminate on the date specified in the termination notice and Lessee's option shall be extinguished.

9.6 Abatement of Rent; Lessee's Remedies.

(a) Abatement. In the event of Premises Partial Damage or Premises Total Destruction or a Hazardous Substance Condition for which Lessee is not responsible under this Lease, the Rent payable by Lessee for the period required for the repair, remediation or restoration of such damage shall be abated in proportion to the degree to which Lessee's use of the Premises is impaired, but not to exceed the proceeds received from the Rental Value insurance. All other obligations of Lessee hereunder shall be performed by Lessee, and Lessor shall have no liability for any such damage, destruction, remediation, repair or restoration except as provided herein.

(b) Remedies. If Lessor shall be obligated to repair or restore the Premises and does not commence, in a substantial and meaningful way, such repair or restoration within 90 days after such obligation shall accrue, Lessee may, at any lime prior to the commencement of such repair or restoration, give written notice to Lessor and to any Lenders of which Lessee has actual notice, of Lessee's election to terminate this Lease on a date not less than 60 days following the giving of such notice. If Lessee gives such notice and such repair or restoration is not commenced within 30 days thereafter, this Lease shall terminate as of the date specified in said notice. If the repair or restoration is commenced within such 30 days, this Lease shall continue in full force and effect. "Commence" shall mean either the unconditional authorization of the preparation of the required plans, or the beginning of the actual work on the Premises, whichever first occurs.

9.7 Termination; Advance Payments. Upon termination of this Lease pursuant to Paragraph 6.2(g) or Paragraph 9, an equitable adjustment shall be made concerning advance Base Rent and any other advance payments made by Lessee to Lessor. Lessor shall, in addition, return to Lessee so much of Lessee's Security Deposit as has not been, or is not then required to be, used by Lessor.

9.8 Waive Statutes. Lessor and Lessee agree that the terms of this Lease shall govern the effect of any damage to or destruction of the Premises with respect to the termination of this Lease and hereby waive the provisions of any present or future statute to the extent inconsistent herewith.

10. Real Property Taxes.

10.1 Definition. As used herein, the term "Real Property Taxes" shall include any form of assessment; real estate, general, special, ordinary or extraordinary, or rental levy or tax (other than inheritance, personal income or estate taxes); improvement bond; and/or license fee imposed upon or levied against any legal or equitable interest of Lessor in the Project, Lessor's right to other income therefrom, and/or Lessor's business of leasing, by any authority having the direct or indirect power to tax and where the funds are generated with reference to the Project address and where the proceeds so generated are to be applied by the city, county or other local taxing authority of a jurisdiction within which the Project is located. The term "Real Property Taxes" shall also include any tax, fee, levy, assessment or charge, or any increase therein: (i) imposed by reason of events occurring during the term of this Lease, including but not limited to, a change in the ownership of the Project, (ii) a change in the improvements thereon, and/or (iii) levied or assessed on machinery or equipment provided by Lessor to Lessee pursuant to this Lease. In calculating Real Property Taxes for any calendar year, the Real Property Taxes for any real estate tax year shall be included in the calculation of Real Property Taxes for such calendar year based upon the number of days which such calendar year and tax year have in common.

10.2 Payment of Taxes. Except as otherwise provided in Paragraph 10.3, Lessor shall pay the Real Property Taxes applicable to the Project, and said payments shall be included in the calculation of Common Area Operating Expenses in accordance with the provisions of Paragraph 4.2.

10.3 Additional Improvements. Common Area Operating Expenses shall not include Real Property Taxes specified in the tax assessor's records and work sheets as being caused by additional improvements placed upon the Project by other lessees or by Lessor for the exclusive enjoyment of such other lessees. Notwithstanding Paragraph 10.2 hereof, Lessee shall, however, pay to Lessor at the time Common Area Operating Expenses are payable under Paragraph 4.2, the entirety of any increase in Real Property Taxes if assessed solely by reason of Alterations, Trade Fixtures or Utility Installations placed upon the Premises by Lessee or at Lessee's request or by reason of any alterations or improvements to the Premises made by Lessor subsequent to the execution of this Lease by the Parties.

10.4 Joint Assessment. If the Building is not separately assessed, Real Property Taxes allocated to the Building shall be an equitable proportion of the Real Property Taxes for all of the land and improvements included within the tax parcel assessed, such proportion to be determined by Lessor from the respective valuations assigned in the assessor's work sheets or such other information as may be reasonably available. Lessor's reasonable determination thereof, in good faith, shall be conclusive.

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10.5 Personal Property Taxes. Lessee shall pay prior to delinquency all taxes assessed against and levied upon Lessee Owned Alterations and Utility Installations, Trade Fixtures, furnishings, equipment and all personal property of Lessee contained in the Premises. When possible, Lessee shall cause its Lessee Owned Alterations and Utility Installations, Trade Fixtures, furnishings. equipment and all other personal property to be assessed and billed separately from the real property of Lessor. If any of Lessee's said property shall be assessed with Lessor's real property, Lessee shall pay Lessor the taxes attributable to Lessee's property within 10 days after receipt of a written statement setting forth the taxes applicable to Lessee's property.

11. Utilities and Services. Lessee shall pay for all water, gas, heat, light, power, telephone, trash disposal and other utilities and services supplied to the Premises, together with any taxes thereon. Notwithstanding the provisions of Paragraph 4.2, it at any time in Lessor's sole judgment. Lessor determines that Lessee is using a disproportionate amount of water, electricity or other commonly metered utilities, or that Lessee is generating such a large volume of trash as to require an increase in the size of the trash receptacle and/or an increase in the number of times per month that it is emptied, then Lessor may increase Lessee's Base Rent by an amount equal to such increased costs. There shall be no abatement of Rent and Lessor shall not be liable in any respect whatsoever for the inadequacy, stoppage, interruption or discontinuance of any utility or service due to riot, strike, labor dispute, breakdown, accident, repair or other cause beyond Lessor's reasonable control or in cooperation with governmental request or directions.

12. Assignment and Subletting.

12.1 Lessor's Consent Required.

(a) Lessee shall not voluntarily or by operation of law assign, transfer, mortgage or encumber (collectively, "assign or assignment") or sublet all or any part of Lessee's interest in this Lease or in the Premises without Lessor's prior written consent.

(b) Unless Lessee is a corporation and its stock is publicly traded on a national stock exchange, a change in the control of Lessee shall constitute an assignment requiring consent. The transfer, on a cumulative basis, of 25% or more of the voting control of Lessee shall constitute a change in control for this purpose.

(c) The involvement of Lessee or its assets in any transaction, or series of transactions (by way of merger, sale, acquisition, financing, transfer, leveraged buy-out or otherwise), whether or not a formal assignment or hypothecation of this Lease or Lessee's assets occurs, which results or will result in a reduction of the Net Worth of Lessee by an amount greater than 25% of such Net Worth as it was represented at the time of the execution of this Lease or at the time of the most recent assignment to which Lessor has consented, or as it exists immediately prior to said transaction or transactions constituting such reduction, whichever was or is greater, shall be considered an assignment of this Lease to which Lessor may withhold its consent. "Net Worth of Lessee" shall mean the net worth of Lessee (excluding any guarantors) established under generally accepted accounting principles.

(d) An assignment or subletting without consent shall, at Lessor's option, be a Default curable after notice per Paragraph 13.1(c), or a noncurable Breach without the necessity of any notice and grace period. If Lessor elects to treat such unapproved assignment or subletting as a noncurable Breach, Lessor may either: (i) terminate this Lease, or (ii) upon 30 days written notice, increase the monthly Base Rent to 110% of the Base Rent then in effect. Further, in the event of such Breach and rental adjustment, (i) the purchase price of any option to purchase the Premises held by Lessee shall be subject to similar adjustment to 110% of the price previously in effect, and (ii) all fixed and non-fixed rental adjustments scheduled during the remainder of the Lease term shall be increased to 110% of the scheduled adjusted rent.

(e) Lessee's remedy for any breach of Paragraph 12.1 by Lessor shall be limited to compensatory damages and/or injunctive relief.

(f) Lessor may reasonably withhold consent to a proposed assignment or subletting if Lessee is in Default at the time consent is requested.

(g) Notwithstanding the foregoing, allowing a diminimus portion of the Premises, i.e. 20 square feet or less, to be used by a third party vendor in connection with the installation of a vending machine or payphone shall not constitute a subletting.

12.2 Terms and Conditions Applicable to Assignment and Subletting.

(a) Regardless of Lessor's consent, no assignment or subletting shall: (i) be effective without the express written assumption by such assignee or sublessee of the obligations of Lessee under this Lease, (ii) release Lessee of any obligations hereunder, or (iii) alter the primary liability of Lessee for the payment of Rent or for the performance of any other obligations to be performed by Lessee.

(b) Lessor may accept Rent or performance of Lessee's obligations from any person other than Lessee pending approval or disapproval of an assignment. Neither a delay in the approval or disapproval of such assignment nor the acceptance of Rent or performance shall constitute a waiver or estoppel of Lessor's right to exercise its remedies for Lessee's Default or Breach.

(c) Lessor's consent to any assignment or subletting shall not constitute consent to any subsequent assignment or subletting.

(d) In the event of any Default or Breach by Lessee. Lessor may proceed directly against Lessee, any Guarantors or anyone else responsible for the performance of Lessee's obligations under this Lease, including any assignee or sublessee, without first exhausting

Lessor’s remedies against any other person or entity responsible therefore to Lessor, or any security held by Lessor.

(e) Each request for consent to an assignment or subletting shall be in writing, accompanied by information relevant to Lessor’s determination as to the financial and operational responsibility and appropriateness of the proposed assignee or sublessee, including but not limited to the intended use and/or required modification of the Premises, if any, together with a fee of $500 as consideration for Lessors considering and processing said request. Lessee agrees to provide Lessor with such other or additional information and/or documentation as may be reasonably requested. (See also Paragraph 36)

(f) Any assignee of, or sublessee under, this Lease shall, by reason of accepting such assignment, entering into such sublease, or entering into possession of the Premises or any portion thereof, be deemed to have assumed and agreed to conform and comply with each and every terms, covenant, condition and obligation herein to be observed or performed by Lessee during the term of said assignment or sublease, other than such obligations as are contrary to or inconsistent with provisions of an assignment or sublease to which Lessor has specifically consented to in writing.

(g) Lessor’s consent to any assignment or subletting shall not transfer to the assignee or sublessee any Option granted to the original Lessee by this Lease unless such transfer is specifically consented to by Lessor in writing. (See Paragraph 39.2)

12.3 Additional Terms and Conditions Applicable to Subletting. The following terms and conditions shall apply to any subletting by Lessee of all or any part of the Premises and shall be deemed included in all subleases under this Lease whether or not expressly incorporated therein:

(a) Lessee hereby assigns and transfers to Lessor all of Lessee’s interest in all Rent payable on any sublease, and Lessor may collect such Rent and apply same toward Lessee’s obligations under this Lease; provided, however, that until a Breach shall occur in the performance of Lessee’s obligations, Lessee may collect said Rent. In the event that the amount collected by Lessor exceeds Lessee’s then outstanding obligations any such excess shall be refunded to Lessee Lessor shall not, by reason of the foregoing or any assignment of such sublease, nor by reason of the collection of Rent, be deemed liable to the sublessee for any failure of Lessee to perform and comply with any of Lessee’s obligations to such sublessee. Lessee hereby irrevocably authorizes and directs any such sublessee, upon receipt of a written notice from Lessor stating that a Breach exists in the performance of Lessee’s obligations under this Lease, to pay to Lessor all Rent due and to become due under the sublease Sublessee shall rely upon any such notice from Lessor and shall pay all Rents to Lessor without any obligation or right to inquire as to whether such Breach exists, notwithstanding any claim from Lessee to the contrary.

(b) In the event of a Breach by Lessee, Lessor may, at its option, require sublessee to attorn to Lessor, in which event Lessor shall undertake the obligations of the sublessor under such sublease from the time of the exercise of said option to the expiration of such sublease: provided, however, Lessor shall not be liable for any prepaid rents or security deposit paid by such sublessee to such sublessor or for any prior Defaults or Breaches of such sublessor.

(c) Any matter requiring the consent of the sublessor under a sublease shall also require the consent of Lessor.

(d) No sublessee shall further assign or sublet all or any part of the Premises without Lessor's prior written consent.

(e) Lessor shall deliver a copy of any notice of Default or Breach by Lessee to the sublessee, who shall have the right to cure the Default of Lessee within the grace period, if any, specified in such notice. The sublessee shall have a right of reimbursement and offset from and against Lessee for any such Defaults cured by the sublessee

13. Default; Breach; Remedies.

13.1 Default; Breach. A "Default" is defined as a failure by the Lessee to comply with or perform any of the terms, covenants, conditions or Rules and Regulations under this Lease. A "Breach" is defined as the occurrence of one or more of the following Defaults, and the failure of Lessee to cure such Default within any applicable grace period:

(a) The abandonment of the Premises, or the vacating of the Premises without providing a commercially reasonable level of security, or where the coverage of the property insurance described in Paragraph 8.3 is jeopardized as a result thereof, or without providing reasonable assurances to minimize potential vandalism.

(b) The failure of Lessee to make any payment of Rent or any Security Deposit required to be made by Lessee hereunder, whether to Lessor or to a third party, when due, to provide reasonable evidence of insurance or surety bond, or to fulfill any obligation under this Lease which endangers or threatens life or property, where such failure continues for a period of 3 business days following written notice to Lessee.

(c) The commission of waste, act or acts constituting public or private nuisance, and/or an illegal activity on the Premises by Lessee, where such actions continue for a period of 3 business days following written notice to Lessee.

(d) The failure by Lessee to provide (i) reasonable written evidence of compliance with Applicable Requirements, (ii) the service contracts, (iii) the rescission of an unauthorized assignment or subletting, (iv) an Estoppel Certificate, (v) a requested subordination, (vi) evidence concerning any guaranty and/or Guarantor, (vii) any document requested under Paragraph 41, (viii) material data safety sheets (MSDS), or (ix) any other documentation or information which Lessor may reasonably require of Lessee under the terms of this Lease, where any such failure continues for a period of 10 days following written notice to Lessee.

(e) A Default by Lessee as to the terms, covenants, conditions or provisions of this Lease, or of the rules adopted under Paragraph 2.9 hereof, other than those described in subparagraphs 13.1(a), (b), (c) or (d), above, where such Default continues for a period of 30 days after written notice; provided, however, that if the nature of Lessee's Default is such that more than 30 days are reasonably required for its cure, then it shall not be deemed to be a Breach if Lessee commences such cure within said 30 day period and thereafter diligently prosecutes such cure to completion.

(f) The occurrence of any of the following events: (i) the making of any general arrangement or assignment for the benefit of creditors; (ii) becoming a "debtor" as defined in 11 U.S.C. § 101 or any successor statute thereto (unless, in the case of a petition filed against Lessee, the same is dismissed within 60 days); (iii) the appointment of a trustee or receiver to take possession of substantially all of Lessee's assets located at the Premises or of Lessee's interest in this Lease, where possession is not restored to Lessee within 30 days, or (iv) the attachment, execution or other judicial seizure of substantially all of Lessee's assets located at the Premises or of Lessee's interest in this Lease, where such seizure is not discharged within 30 days; provided, however, in the event that any provision of this subparagraph is contrary to any applicable law, such provision shall be of no force or effect, and not affect the validity of the remaining provisions.

(g) The discovery that any financial statement of Lessee or of any Guarantor given to Lessor was materially false.

(h) If the performance of Lessee's obligations under this Lease is guaranteed: (i) the death of a Guarantor, (ii) the termination of a Guarantor's liability with respect to this Lease other than in accordance with the terms of such guaranty, (iii) a Guarantor's becoming insolvent or the subject of a bankruptcy filing, (iv) a Guarantor's refusal to honor the guaranty, or (v) a Guarantor's breach of its guaranty obligation on an anticipatory basis, and Lessee's failure, within 60 days following written notice of any such event, to provide written alternative assurance or security, which, when coupled with the then existing resources of Lessee, equals or exceeds the combined financial resources of Lessee and the Guarantors that existed at the time of execution of this Lease.

13.2 Remedies. If Lessee fails to perform any of its affirmative duties or obligations, within 10 days after written notice (or in case of an emergency, without notice), Lessor may, at its option, perform such duty or obligation on Lessee's behalf, including but not limited to the obtaining of reasonably required bonds, insurance policies, or governmental licenses, permits or approvals. Lessee shall pay to Lessor an amount equal to 115% of the costs and expenses incurred by Lessor in such performance upon receipt of an invoice therefor. In the event of a Breach, Lessor may, with or without further notice or demand, and without limiting Lessor in the exercise of any right or remedy which

Lessor may have by reason of such Breach:

(a) Terminate Lessee's right to possession of the Premises by any lawful means, in which case this Lease shall terminate and Lessee shall immediately surrender possession to Lessor. In such event Lessor shall be entitled to recover from Lessee: (i) the unpaid Rent which had been earned at the time of termination; (ii) the worth at the time of award of the amount by which the unpaid rent which would have been earned after termination until the time of award exceeds the amount of such rental loss that the Lessee proves could have been reasonably avoided; (iii) the worth at the time of award of the amount by which the unpaid rent for the balance of the term after the time of award exceeds the amount of such rental loss that the Lessee proves could be reasonably avoided, and (iv) any other amount necessary to compensate Lessor for all the detriment proximately caused by the Lessee's failure to perform its obligations under this Lease or which in the ordinary course of things would be likely to result therefrom, including but not limited to the cost of recovering possession of the Premises, expenses of reletting, including necessary renovation and alteration of the Premises, reasonable attorneys' fees, and that portion of any leasing commission paid by Lessor in connection with this Lease applicable to the unexpired term of this Lease. The worth at the time of award of the amount referred to in provision (iii) of the immediately preceding sentence shall be computed by discounting such amount at the discount rate of the Federal Reserve Bank of the District within which the Premises are located at the time of award plus one percent. Efforts by Lessor to mitigate damages caused by Lessee's Breach of this Lease shall not waive Lessor's right to recover damages under Paragraph 12. If termination of this Lease is obtained through the provisional remedy of unlawful detainer, Lessor shall have the right to recover in such proceeding any unpaid Rent and damages as are recoverable therein, or Lessor may reserve the right to recover all or any part thereof in a separate suit. If a notice and grace period required under Paragraph 13.1 was not previously given, a notice to pay rent or quit, or to perform or quit given to Lessee under the unlawful detainer statute shall also constitute the notice required by Paragraph 13.1. In such case, the applicable grace period required by Paragraph 13.1 and the unlawful detainer statute shall run concurrently, and the failure of Lessee to cure the Default within the greater of the two such grace periods shall constitute both an unlawful detainer and a Breach of this Lease entitling Lessor to the remedies provided for in this Lease and/or by said statute.

(b) Continue the Lease and Lessee's right to possession and recover the Rent as it becomes due, in which event Lessee may sublet or assign, subject only to reasonable limitations. Acts of maintenance, efforts to relet, and/or the appointment of a receiver to protect the Lessor's interests shall not constitute a termination of the Lessee's right to possession.

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(c) Pursue any other remedy now or hereafter available under the laws or judicial decisions of the state wherein the Premises are located. The expiration or termination of this Lease and/or the termination of Lessee's right to possession shall not relieve Lessee from liability under any indemnity provisions of this Lease as to matters occurring or accruing during the term hereof or by reason of Lessee's occupancy of the Premises.

13.3 Inducement Recapture. Any agreement for free or abated rent or other charges, or for the giving or paying by Lessor to or for Lessee of any cash or other bonus, inducement or consideration for Lessee's entering into this Lease, all of which concessions are hereinafter referred to as "Inducement Provisions", shall be deemed conditioned upon Lessee's full and faithful performance of all of the terms, covenants and conditions of this Lease. Upon Breach of this Lease by Lessee, any such Inducement Provision shall automatically be deemed deleted from this Lease and of no further force or effect, and any rent, other charge, bonus, inducement or consideration theretofore abated, given or paid by Lessor under such an Inducement Provision shall be immediately due and payable by Lessee to Lessor, notwithstanding any subsequent cure of said Breach by Lessee. The acceptance by Lessor of rent or the cure of the Breach which initiated the operation of this paragraph shall not be deemed a waiver by Lessor of the provisions of this paragraph unless specifically so stated in writing by Lessor at the time of such acceptance.

13.4 Late Charges. Lessee hereby acknowledges that late payment by Lessee of Rent will cause Lessor to incur costs not contemplated by this Lease, the exact amount of which will be extremely difficult to ascertain. Such costs include, but are not limited to processing and accounting charges, and late charges which may be imposed upon Lessor by any Lender. Accordingly, if any Rent shall not be received by Lessor within 5 days after such amount shall be due, then, without any requirement for notice to Lessee, Lessee shall immediately pay to Lessor a one-time late charge equal to 10% of each such overdue amount or $100, whichever is greater. The parties hereby agree that such late charge represents a fair and reasonable estimate of the costs Lessor will incur by reason of such late payment. Acceptance of such late charge by Lessor shall in no event constitute a waiver of Lessee's Default or Breach with respect to such overdue amount, nor prevent the exercise of any of the other rights and remedies granted hereunder. In the event that a late charge is payable hereunder, whether or not collected, for 3 consecutive installments of Base Rent, then notwithstanding any provision of this Lease to the contrary, Base Rent shall, at Lessor's option, become due and payable quarterly in advance.

13.5 Interest. Any monetary payment due Lessor hereunder, other than late charges, not received by Lessor, when due as to scheduled payments (such as Base Rent) or within 30 days following the date on which it was due for non-scheduled payment, shall bear interest from the date when due, as to scheduled payments, or the 31st day after it was due as to non-scheduled payments. The interest ("Interest") charged shall be computed at the rate of 10% per annum but shall not exceed the maximum rate allowed by law. Interest is payable in addition to the potential late charge provided for in Paragraph 13.4.

13.6 Breach by Lessor.

(a) Notice of Breach. Lessor shall not be deemed in breach of this Lease unless Lessor fails within a reasonable time to perform an obligation required to be performed by Lessor. For purposes of this Paragraph, a reasonable time shall in no event be less than 30 days after receipt by Lessor, and any Lender whose name and address shall have been furnished Lessee in writing for such purpose, of written notice specifying wherein such obligation of Lessor has not been performed; provided, however, that if the nature of Lessor's obligation is such that more than 30 days are reasonably required for its performance, then Lessor shall not be in breach if performance is commenced within such 30 day period and thereafter diligently pursued to completion

(b) Performance by Lessee on Behalf of Lessor. In the event that neither Lessor nor Lender cures said breach within 30 days after receipt of said notice, or if having commenced said cure they do not diligently pursue it to completion, then Lessee may elect to cure said breach at Lessee's expense and offset from Rent the actual and reasonable cost to perform such cure, provided however, that such offset shall not exceed an amount equal to the greater of one month's Base Rent or the Security Deposit, reserving Lessee's right to reimbursement from Lessor for any such expense in excess of such offset, Lessee shall document the cost of said cure and supply said documentation to Lessor.

14. Condemnation. If the Premises or any portion thereof are taken under the power of eminent domain or sold under the threat of the exercise of said power (collectively "Condemnation"), this Lease shall terminate as to the part taken as of the date the condemning authority takes title or possession, whichever first occurs. If more than 10% of the floor area of the Unit, or more than 25% of Lessee's Reserved Parking Spaces, is taken by Condemnation, Lessee may, at Lessee's option, to be exercised in writing within 10 days after Lessor shall have given Lessee written notice of such taking (or in the absence of such notice, within 10 days after the condemning authority shall have taken possession) terminate this Lease as of the date the condemning authority takes such possession. If Lessee does not terminate this Lease in accordance with the foregoing, this Lease shall remain in full force and effect as to the portion of the Premises remaining, except that the Base Rent shall be reduced in proportion to the reduction in utility of the Premises caused by such Condemnation. Condemnation awards and/or payments shall be the property of Lessor, whether such award shall be made as compensation for diminution in value of the leasehold, the value of the part taken, or for severance damages; provided, however, that Lessee shall be entitled to any compensation for Lessee's relocation expenses, loss of business goodwill and/or Trade Fixtures, without regard to whether or not this Lease is terminated pursuant to the provisions of this Paragraph. All Alterations and Utility Installations made to the Premises by Lessee, for purposes of Condemnation only, shall be considered the property of the Lessee and Lessee shall be entitled to any and all compensation which is payable therefore. In the event that this Lease is not terminated by reason of the Condemnation, Lessor shall repair any damage to the Premises caused by such Condemnation.

15. Brokerage Fees.

15.1 Additional Commission. In addition to the payments owed pursuant to Paragraph 1.10 above, and unless Lessor and the Brokers

otherwise agree in writing, Lessor agrees that (a) if Lessee exercises any Option, (b) it Lessee acquires from Lessor any rights to the Premises or other premises owned by Lessor and located within the Project, (c) if Lessee remains in possession of the Premises, with the consent of Lessor, after the expiration of this Lease, or (d) if Base Rent is increased, whether by agreement or operation of an escalation clause herein, then, Lessor shall pay Brokers a fee in accordance with the schedule of the Brokers in effect at the time of the execution of this Lease.

15.2 Assumption of Obligations. Any buyer or transferee of Lessor's interest in this Lease shall be deemed to have assumed Lessor's obligation hereunder. Brokers shall be third party beneficiaries of the provisions of Paragraphs 1.10, 15, 22 and 31. If Lessor fails to pay to Brokers any amounts due as and for brokerage fees pertaining to this Lease when due, then such amounts shall accrue Interest. In addition, if Lessor fails to pay any amounts to Lessee's Broker when due, Lessee's Broker may send written notice to Lessor and Lessee of such failure and if Lessor fails to pay such amounts within 10 days after said notice, Lessee shall pay said monies to its Broker and offset such amounts against Rent. In addition, Lessee's Broker shall be deemed to be a third party beneficiary of any commission agreement entered into by and/or between Lessor and Lessor's Broker for the limited purpose of collecting any brokerage fee owed.

15.3 Representations and Indemnities of Broker Relationships. Lessee and Lessor each represent and warrant to the other that it has had no dealings with any person, firm, broker or finder (other than the Brokers, if any) in connection with this Lease, and that no one other than said named Brokers is entitled to any commission or finder's fee in connection herewith. Lessee and Lessor do each hereby agree to indemnify, protect, defend and hold the other harmless from and against liability for compensation or charges which may be claimed by any such unnamed broker, finder or other similar party by reason of any dealings or actions of the indemnifying Party, including any costs, expenses, attorneys' fees reasonably incurred with respect thereto.

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16. Estoppel Certificates.

(a) Each Party (as “Responding Party”) shall within 10 days after written notice from the other Party (the “Requesting Party”) execute, acknowledge and deliver to the Requesting Party a statement in writing in form similar to the then most current “Estoppel Certificate” form published by the AIR Commercial Real Estate Association, plus such additional information, confirmation and/or statements as may be reasonably requested by the Requesting Party.

(b) If the Responding Party shall fail to execute or deliver the Estoppel Certificate within such 10 day period, the Requesting Party may execute an Estoppel Certificate stating that (i) the Lease is in full force and effect without modification except as may be represented by the Requesting Party, (ii) there are no uncured defaults in the Requesting Party’s performance, and (iii) if Lessor is the Requesting Party, not more than one month’s rent has been paid in advance. Prospective purchasers and encumbrancers may rely upon the Requesting Party’s Estoppel Certificate, and the Responding Party shall be estopped from denying the truth of the facts contained in said Certificate.

(c) If Lessor desires to finance, refinance, or sell the Premises, or any part thereof, Lessee and all Guarantors shall deliver to any potential lender or purchaser designated by Lessor such financial statements as may be reasonably required by such lender or purchaser, including but not limited to Lessee’s financial statements for the past 3 years. All such financial statements shall be received by Lessor and such lender or purchaser in confidence and shall be used only for the purposes herein set forth.

17. Definition of Lessor. The term “Lessor” as used herein shall mean the owner or owners at the time in question of the fee title to the Premises, or, if this is a sublease, of the Lessee’s interest in the prior lease. In the event of a transfer of Lessor’s title or interest in the Premises or this Lease, Lessor shall deliver to the transferee or assignee (in cash or by credit) any unused Security Deposit held by Lessor. Except as provided in Paragraph 15, upon such transfer or assignment and delivery of the Security Deposit, as aforesaid, the prior Lessor shall be relieved of all liability with respect to the obligations and/or covenants under this Lease thereafter to be performed by the Lessor. Subject to the foregoing, the obligations and/or covenants in this Lease to be performed by the Lessor shall be binding only upon the Lessor as hereinabove defined.

18. Severability. The invalidity of any provision of this Lease, as determined by a court of competent jurisdiction, shall in no way affect the validity of any other provision hereof.

19. Days. Unless otherwise specifically indicated to the contrary, the word “days” as used in this Lease shall mean and refer to calendar days.

20. Limitation on Liability. The obligations of Lessor under this Lease shall not constitute personal obligations of Lessor, or its partners, members, directors, officers or shareholders, and Lessee shall look to the Premises, and to no other assets of Lessor, for the satisfaction of any liability of Lessor with respect to this Lease, and shall not seek recourse against Lessor’s partners, members, directors, officers or shareholders, or any of their personal assets for such satisfaction.

21. Time of Essence. Time is of the essence with respect to the performance of all obligations to be performed or observed by the Parties under this Lease.

22. No Prior or Other Agreements; Broker Disclaimer. This Lease contains all agreements between the Parties with respect to any matter mentioned herein, and no other prior or contemporaneous agreement or understanding shall be effective. Lessor and Lessee each represents and warrants to the Brokers that it has made, and is relying solely upon, its own investigation as to the nature, quality, character and financial responsibility of the other Party to this Lease and as to the use, nature, quality and character of the Premises. Brokers have no responsibility with respect thereto or with respect to any default or breach hereof by either Party. The liability (including court costs and attorneys’ fees), of any Broker with respect to negotiation, execution, delivery or performance by either Lessor or Lessee under this Lease or any amendment or modification hereto shall be limited to an amount up to the fee received by such Broker pursuant to this Lease; provided, however, that the foregoing limitation on each Broker’s liability shall not be applicable to any gross negligence or willful misconduct of such Broker.

23. Notices

23.1 Notice Requirements. All notices required or permitted by this Lease or applicable law shall be in writing and may be delivered in person (by hand or by courier) or may be sent by regular, certified or registered mail or U. S. Postal Service Express Mail, with postage prepaid, or by facsimile transmission, and shall be deemed sufficiently given if served in a manner specified in this Paragraph 23. The addresses noted adjacent to a Party’s signature on this Lease shall be that Party’s address for delivery or mailing of notices. Either Party may by written notice to the other specify a different address for notice, except that upon Lessee’s taking possession of the Premises. the Premises shall constitute Lessee’s address for notice. A copy of all notices to Lessor shall be concurrently transmitted to such party or parties at such addresses as Lessor may from time to time hereafter designate in writing.

23.2 Date of Notice. Any notice sent by registered or certified mail, return receipt requested, shall be deemed given on the date of delivery shown on the receipt card, or if no delivery date is shown, the postmark thereon. If sent by regular mail the notice shall be deemed given 72 hours after the same is addressed as required herein and mailed with postage prepaid. Notices delivered by United States Express Mail or overnight courier that guarantee next day delivery shall be deemed given 24 hours after delivery of the same to the Postal Service or courier. Notices transmitted by facsimile transmission or similar means shall be deemed delivered upon telephone confirmation of receipt (confirmation report from fax machine is sufficient), provided a copy is also delivered via delivery or mail. If notice is received on a Saturday, Sunday or legal holiday, it shall he deemed received on the next business day.

24. Waivers. No waiver by Lessor of the Default or Breach of any term, covenant or condition hereof by Lessee, shall be deemed a waiver of any other term, covenant or condition hereof, or of any subsequent Default or Breach by Lessee of the same or of any other term, covenant or condition hereof. Lessor's consent to, or approval of, any act shall not be deemed to render unnecessary the obtaining of Lessor's consent to, or approval of, any subsequent or similar act by Lessee, or be construed as the basis of an estoppel to enforce the provision or provisions of this Lease requiring such consent. The acceptance of Rent by Lessor shall not be a waiver of any Default or Breach by Lessee. Any payment by Lessee may be accepted by Lessor on account of moneys or damages due Lessor, notwithstanding any qualifying statements or conditions made by Lessee in connection therewith, which such statements and/or conditions shall be of no force or effect whatsoever unless specifically agreed to in writing by Lessor at or before the time of deposit of such payment.

25. Disclosures Regarding The Nature of a Real Estate Agency Relationship.

(a) When entering into a discussion with a real estate agent regarding a real estate transaction, a Lessor or Lessee should from the outset understand what type o f agency relationship or representation it has with the agent or agents in the transaction. Lessor and Lessee acknowledge being advised by the Brokers in this transaction, as follows:

(i) *Lessor's Agent.* A Lessor's agent under a listing agreement with the Lessor acts as the agent for the Lessor only. A Lessor's agent or subagent has the following affirmative obligations: To the Lessor: A fiduciary duty of utmost care, integrity, honesty, and loyalty in dealings with the Lessor. To the Lessee and the Lessor: (a) Diligent exercise of reasonable skills and care in performance of the agent's duties. (b) A duty of honest and fair dealing and good faith. (c) A duty to disclose all facts known to the agent materially affecting the value or desirability of the property that are not known to, or within the diligent attention and observation of, the Parties. An agent is not obligated to reveal to either Party any confidential information obtained from the other Party which does not involve the affirmative duties set forth above.

(ii) *Lessee's Agent.* An agent can agree to act as agent for the Lessee only. In these situations, the agent is not the Lessor's agent, even if by agreement the agent may receive compensation for services rendered, either in full or in part from the Lessor. An agent acting only for a Lessee has the following affirmative obligations. To the Lessee: A fiduciary duly of utmost care, integrity, honesty, and loyalty in dealings with the Lessee. To the Lessee and the Lessor: (a) Diligent exercise of reasonable skills and care in performance of the agent's duties. (b) A duty of honest and fair dealing and good faith. (c) A duty to disclose all facts known to the agent materially affecting the value or desirability of the property that are not known to, or within the diligent attention and observation of, the Parties. An agent is not obligated to reveal to either Party any confidential information obtained from the other Party which does not involve the affirmative duties set forth above.

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(iii) *Agent Representing Both Lessor and Lessee*. A real estate agent, either acting directly or through one or more associate licenses, can legally be the agent of both the Lessor and the Lessee in a transaction, but only with the knowledge and consent of both the Lessor and the Lessee. In a dual agency situation, the agent has the following affirmative obligations to both the Lessor and the Lessee: (a) A fiduciary duty of utmost care, integrity, honesty and loyalty in the dealings with either Lessor or the Lessee. (b) Other duties to the Lessor and the Lessee as stated above in subparagraphs (i) or (ii). In representing both Lessor and Lessee, the agent may not without the express permission of the respective Party, disclose to the other Party that the Lessor will accept rent in an amount less than that indicated in the listing or that the Lessee is willing to pay a higher rent than that offered. The above duties of the agent in a real estate transaction do not relieve a Lessor or Lessee from the responsibility to protect their own interests. Lessor and Lessee should carefully read all agreements to assure that they adequately express their understanding of the transaction. A real estate agent is a person qualified to advise about real estate. If legal or tax advice is desired, consult a competent professional.

(b) Brokers have no responsibility with respect to any Default or Breach hereof by either Party. The Parties agree that no lawsuit or other legal proceeding involving any breach of duty, error or omission relating to this Lease may be brought against Broker more than one year after the Start Date and that the liability (including court costs and attorneys' fees), of any Broker with respect to any such lawsuit and/or legal proceeding shall not exceed the fee received by such Broker pursuant to this Lease, provided, however, that the foregoing limitation on each Broker's liability shall not be applicable to any gross negligence or willful misconduct of such Broker.

(c) Buyer and Seller agree to identify to Brokers as "Confidential" any communication or information given Brokers that is considered by such Party to be confidential.

26. No Right To Holdover. Lessee has no right to retain possession of the Premises or any part thereof beyond the expiration or termination of this Lease. In the event that Lessee holds over, then the Base Rent shall be increased to 150% of the Base Rent applicable immediately preceding the expiration or termination. Nothing contained herein shall be construed as consent by Lessor to any holding over by Lessee.

27. Cumulative Remedies. No remedy or election hereunder shall be deemed exclusive but shall, wherever possible, be cumulative with all other remedies at law or in equity.

28. Covenants and Conditions; Construction of Agreement. All provisions of this Lease to be observed or performed by Lessee are both covenants and conditions. In construing this Lease, all headings and titles are for the convenience of the Parties only and shall not be considered a part of this Lease. Whenever required by the context, the singular shall include the plural and vice versa. This Lease shall not be construed as if prepared by one of the Parties, but rather according to its fair meaning as a whole, as if both Parties had prepared it.

29. Binding Effect; Choice of Law. This Lease shall be binding upon the parties, their personal representatives, successors and assigns and be governed by the laws of the State in which the Premises are located. Any litigation between the Parties hereto concerning this Lease shall be initiated in the county in which the Premises are located.

30. Subordination; Attornment; Non-Disturbance.

30.1 Subordination. This Lease and any Option granted hereby shall be subject and subordinate to any ground lease, mortgage, deed of trust, or other hypothecation or security device (collectively, "Security Device"), now or hereafter placed upon the Premises, to any and all advances made on the security thereof, and to all renewals, modifications, and extensions thereof. Lessee agrees that the holders of any such Security Devices (in this Lease together referred to as "Lender") shall have no liability or obligation to perform any of the obligations of Lessor under this Lease. Any Lender may elect to have this Lease and/or any Option granted hereby superior to the lien of its Security Device by giving written notice thereof to Lessee, whereupon this Lease and such Options shall be deemed prior to such Security Device, notwithstanding the relative dates of the documentation or recordation thereof.

30.2 Attornment. In the event that Lessor transfers title to the Premises, or the Premises are acquired by another upon the foreclosure or termination of a Security Device to which this Lease is subordinated (i) Lessee shall, subject to the non-disturbance provisions of Paragraph 30.3, attorn to such new owner, and upon request, enter into a new lease, containing all of the terms and provisions of this Lease, with such new owner for the remainder of the term hereof, or, at the election of the new owner, this Lease will automatically become a new lease between Lessee and such new owner, and (ii) Lessor shall thereafter be relieved of any further obligations hereunder and such new owner shall assume all of Lessor's obligations, except that such new owner shall not: (a) be liable for any act or omission of any prior lessor or with respect to events occurring prior to acquisition of ownership, (b) be subject to any offsets or defenses which Lessee might have against any prior lessor, (c) be bound by prepayment of more than one month's rent, or (d) be liable for the return of any security deposit paid to any prior lessor.

30.3 Non-Disturbance. With respect to Security Devices entered into by Lessor after the execution of this Lease, Lessee's subordination of this Lease shall be subject to receiving a commercially reasonable non-disturbance agreement (a "Non-Disturbance Agreement") from the Lender which Non-Disturbance Agreement provides that Lessee's possession of the Premises, and this Lease, including any options to extend the terns hereof, will not be disturbed so long as Lessee is not in Breach hereof and attorns to the record owner of the Premises. Further, within 60 days after the execution of this Lease, Lessor shall use its commercially reasonable efforts to obtain a Non-Disturbance Agreement from the holder of any pre-existing Security Device which is secured by the Premises. In the event that Lessor is unable to provide the Non-Disturbance Agreement within said 60 days, then Lessee may, at Lessee's option, directly contact Lender and attempt to negotiate for the execution and delivery of a Non-Disturbance Agreement.

30.4 Self-Executing. The agreements contained in this Paragraph 30 shall be effective without the execution of any further documents; provided, however, that, upon written request from Lessor or a Lender in connection with a sale, financing or refinancing of the Premises, Lessee and Lessor shall execute such further writings as may be reasonably required to separately document any subordination, attornment and/or Non-Disturbance Agreement provided for herein.

31. Attorneys' Fees. If any Party or Broker brings an action or proceeding involving the Premises whether founded in tort, contract or equity, or to declare rights hereunder, the Prevailing Party (as hereafter defined) in any such proceeding, action, or appeal thereon, shall be entitled to reasonable attorneys' fees. Such fees may be awarded in the same suit or recovered in a separate suit, whether or not such action or proceeding is pursued to decision or judgment. The term, "Prevailing Party" shall include, without limitation, a Party or Broker who substantially obtains or defeats the relief sought, as the case may be, whether by compromise, settlement, judgment, or the abandonment by the other Party or Broker of its claim or defense. The attorneys' fees award shall not be computed in accordance with any court fee schedule, but shall be such as to fully reimburse all attorneys' fees reasonably incurred. In addition, Lessor shall be entitled to attorneys' fees, costs and expenses incurred in the preparation and service of notices of Default and consultations in connection therewith, whether or not a legal action is subsequently commenced in connection with such Default or resulting Breach ($200 is a reasonable minimum per occurrence for such services and consultation).

32. Lessor's Access; Showing Premises; Repairs. Lessor and Lessor's agents shall have the right to enter the Premises at any time, in the case of an emergency, and otherwise at reasonable times after reasonable prior notice for the purpose of showing the same to prospective purchasers, lenders, or tenants, and making such alterations, repairs, improvements or additions to the Premises as Lessor may deem necessary or desirable and the erecting, using and maintaining of utilities, services, pipes and conduits through the Premises and/or other premises as long as there is no material adverse effect on Lessee's use of the Premises. All such activities shall be without abatement of rent or liability to Lessee.

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33. Auctions. Lessee shall not conduct, nor permit to be conducted, any auction upon the Premises without Lessor's prior written consent. Lessor shall not be obligated to exercise any standard of reasonableness in determining whether to permit an auction.

34. Signs. Lessor may place on the Premises ordinary "For Sale" signs at any time and ordinary "For Lease" signs during the last 6 months of the term hereof. Except for ordinary "For Sublease" signs which may be placed only on the Premises, Lessee shall not place any sign upon the Project without Lessor's prior written consent. All signs must comply with all Applicable Requirements.

35. Termination; Merger. Unless specifically stated otherwise in writing by Lessor, the voluntary or other surrender of this Lease by Lessee, the mutual termination or cancellation hereof, or a termination hereof by Lessor for Breach by Lessee, shall automatically terminate any sublease or lesser estate in the Premises; provided, however, that Lessor may elect to continue any one or all existing subtenancies. Lessor's failure within 10 days following any such event to elect to the contrary by written notice to the holder of any such lesser interest, shall constitute Lessor's election to have such event constitute the termination of such interest.

36. Consents. Except as otherwise provided herein, wherever in this Lease the consent of a Party is required to an act by or for the other Party, such consent shall not be unreasonably withheld or delayed Lessor's actual reasonable costs and expenses (including but not limited to architects', attorneys', engineers' and other consultants' fees) incurred in the consideration of, or response to, a request by Lessee for any Lessor consent, including but not limited to consents to an assignment, a subletting or the presence or use of a Hazardous Substance, shall be paid by Lessee upon receipt of an invoice and supporting documentation therefor. Lessor's consent to any act, assignment or subletting shall not constitute an acknowledgment that no Default or Breach by Lessee of this Lease exists, nor shall such consent be deemed a waiver of any then existing Default or Breach, except as may be otherwise specifically stated in writing by Lessor at the time of such consent. The failure to specify herein any particular condition to Lessor's consent shall not preclude the imposition by Lessor at the time of consent of such further or other conditions as are then reasonable with reference to the particular matter for which consent is being given. In the event that either Party disagrees with any determination made by the other hereunder and reasonably requests the reasons for such determination, the determining party shall furnish its reasons in writing and in reasonable detail within 10 business days following such request.

37. Guarantor.

37.1 Execution. The Guarantors, if any, shall each execute a guaranty in the form most recently published by the AIR Commercial Real Estate Association.

37.2 Default. It shall constitute a Default of the Lessee if any Guarantor fails or refuses, upon request to provide: (a) evidence of the execution of the guaranty, including the authority of the party signing on Guarantor's behalf to obligate Guarantor, and in the case of a corporate Guarantor, a certified copy of a resolution of its board of directors authorizing the making of such guaranty, (b) current financial statements, (c) an Estoppel Certificate, or (d) written confirmation that the guaranty is still in effect.

38. Quiet Possession. Subject to payment by Lessee of the Rent and performance of all of the covenants, conditions and provisions on Lessee's part to be observed and performed under this Lease, Lessee shall have quiet possession and quiet enjoyment of the Premises during the term hereof.

39. Options. If Lessee is granted an option, as defined below, then the following provisions shall apply.

39.1 Definition. "Option" shall mean: (a) the right to extend the term of or renew this Lease or to extend or renew any lease that Lessee has on other property of Lessor; (b) the right of first refusal or first offer to lease either the Premises or other property of Lessor; (c) the right to purchase or the right of first refusal to purchase the Premises or other property of Lessor.

39.2 Options Personal To Original Lessee. Any Option granted to Lessee in this Lease is personal to the original Lessee, and cannot be assigned or exercised by anyone other than said original Lessee and only while the original Lessee is in full possession of the Premises and, if requested by Lessor, with Lessee certifying that Lessee has no intention of thereafter assigning or subletting.

39.3 Multiple Options. In the event that Lessee has any multiple Options to extend or renew this Lease, a later Option cannot be exercised unless the prior Options have been validly exercised.

39.4 Effect of Default on Options.

(a) Lessee shall have no right to exercise an Option: (i) during the period commencing with the giving of any notice of Default and continuing until said Default is cured, (ii) during the period of time any Rent is unpaid (without regard to whether notice thereof is given Lessee), (iii) during the time Lessee is in Breach of this Lease, or (iv) in the event that Lessee has been given 3 or more notices of separate Default, whether or not the Defaults are cured, during the 12 month period immediately preceding the exercise of the Option.

(b) The period of time within which an Option may be exercised shall not be extended or enlarged by reason of Lessee's inability to exercise an Option because of the provisions of Paragraph 39.4(a).

(c) An Option shall terminate and be of no further force or effect, notwithstanding Lessee's due and timely exercise of the Option, if, after such exercise and prior to the commencement of the extended term or completion of the purchase, (i) Lessee fails to pay Rent for a period of 30 days after such Rent becomes due (without any necessity of Lessor to give notice thereof), or (ii) if Lessee commits a

Breach of this Lease.

40. Security Measures. Lessee hereby acknowledges that the Rent payable to Lessor hereunder does not include the cost of guard service or other security measures, and that Lessor shall have no obligation whatsoever to provide same. Lessee assumes all responsibility for the protection of the Premises, Lessee, its agents and invitees and their property from the acts of third parties.

41. Reservations. Lessor reserves the right: (i) to grant, without the consent or joinder of Lessee, such easements, rights and dedications that Lessor deems necessary, (ii) to cause the recordation of parcel maps and restrictions, and (iii) to create and/or install new utility raceways, so long as such easements, rights, dedications, maps, restrictions, and utility raceways do not unreasonably interfere with the use of the Premises by Lessee. Lessee agrees to sign any documents reasonably requested by Lessor to effectuate such rights.

42. Performance Under Protest. If at any time a dispute shall arise as to any amount or sum of money to be paid by one Party to the other under the provisions hereof, the Party against whom the obligation to pay the money is asserted shall have the right to make payment “under protest” and such payment shall not be regarded as a voluntary payment and there shall survive the right on the part of said Party to institute suit for recovery of such sum. If it shall be adjudged that there was no legal obligation on the part of said Party to pay such sum or any part thereof, said Party shall be entitled to recover such sum or so much thereof as it was not legally required to pay. A Party who does not initiate suit for the recovery of sums paid “under protest” within 6 months shall be deemed to have waived its right to protest such payment.

43. Authority; Multiple Parties; Execution.

(a) If either Party hereto is a corporation, trust, limited liability company, partnership, or similar entity, each individual executing this Lease on behalf of such entity represents and warrants that he or she is duly authorized to execute and deliver this Lease on its behalf. Each Party shall, within 30 days after request, deliver to the other Party satisfactory evidence of such authority.

(b) If this Lease is executed by more than one person or entity as “Lessee”, each such person or entity shall be jointly and severally liable hereunder. It is agreed that any one of the named Lessees shall be empowered to execute any amendment to this Lease, or other document ancillary thereto and bind all of the named Lessees, and Lessor may rely on the same as if all of the named Lessees had executed such document.

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(c) This Lease may be executed by the Parties in counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same instrument.

44. Conflict. Any conflict between the printed provisions of this Lease and the typewritten or handwritten provisions shall be controlled by the typewritten or handwritten provisions.

45 Offer. Preparation of this Lease by either party or their agent and submission of same to the other Party shall not be deemed an offer to lease to the other Party. This Lease is not intended to be binding until executed and delivered by all Parties hereto.

46. Amendments. This Lease may be modified only in writing, signed by the Parties in interest at the time of the modification. As long as they do not materially change Lessee's obligations hereunder, Lessee agrees to make such reasonable non-monetary modifications to this Lease as may be reasonably required by a Lender in connection with the obtaining of normal financing or refinancing of the Premises.

47. Waiver of Jury Trial. THE PARTIES HEREBY WAIVE THEIR RESPECTIVE RIGHTS TO TRIAL BY JURY IN ANY ACTION OR PROCEEDING INVOLVING THE PROPERTY OR ARISING OUT OF THIS AGREEMENT.

48. Mediation and Arbitration of Disputes. An Addendum requiring the Mediation and/or the Arbitration of all disputes between the Parties and/or Brokers arising out of this Lease ☐ is ☐ is not attached to this Lease.

49. Americans with Disabilities Act. Since compliance with the Americans with Disabilities Act (ADA) is dependent upon Lessee's specific use of the Premises, Lessor makes no warranty or representation as to whether or not the Premises comply with ADA or any similar legislation. In the event that Lessee's use of the Premises requires modifications or additions to the Premises in order to be in ADA compliance, Lessee agrees to make any such necessary modifications and/or additions at Lessee's expense.

LESSOR AND LESSEE HAVE CAREFULLY READ AND REVIEWED THIS LEASE AND EACH TERM AND PROVISION CONTAINED HEREIN, AND BY THE EXECUTION OF THIS LEASE SHOW THEIR INFORMED AND VOLUNTARY CONSENT THERETO. THE PARTIES HEREBY AGREE THAT, AT THE TIME THIS LEASE IS EXECUTED, THE TERMS OF THIS LEASE ARE COMMERCIALLY REASONABLE AND EFFECTUATE THE INTENT AND PURPOSE OF LESSOR AND LESSEE WITH RESPECT TO THE PREMISES.

ATTENTION: NO REPRESENTATION OR RECOMMENDATION IS MADE BY THE AIR COMMERCIAL REAL ESTATE ASSOCIATION OR BY ANY BROKER AS TO THE LEGAL SUFFICIENCY, LEGAL EFFECT, OR TAX CONSEQUENCES OF THIS LEASE OR THE TRANSACTION TO WHICH IT RELATES. THE PARTIES ARE URGED TO.

1 SEEK ADVICE OF COUNSEL AS TO THE LEGAL AND TAX CONSEQUENCES OF THIS LEASE.

2 RETAIN APPROPRIATE CONSULTANTS TO REVIEW AND INVESTIGATE THE CONDITION OF THE PREMISES. SAID INVESTIGATION SHOULD INCLUDE BUT NOT BE LIMITED TO: THE POSSIBLE PRESENCE OF HAZARDOUS SUBSTANCES, THE ZONING OF THE PREMISES, THE STRUCTURAL INTEGRITY, THE CONDITION OF THE ROOF AND OPERATING SYSTEMS, COMPLIANCE WITH THE AMERICANS WITH DISABILITIES ACT AND THE SUITABILITY OF THE PREMISES FOR LESSEE'S INTENDED USE.

WARNING: IF THE PREMISES ARE LOCATED IN A STATE OTHER THAN CALIFORNIA, CERTAIN PROVISIONS OF THE LEASE MAY NEED TO BE REVISED TO COMPLY WITH THE LAWS OF THE STATE IN WHICH THE PREMISES ARE LOCATED.

The parties hereto have executed this Lease at the place and on the dates specified above their respective signatures.

Executed at: __________
On: __________

**By LESSOR:**
Berkshire Holdings, LLC

By: /s/ LENA BARSEGHIAN
Name Printed: LENA BARSEGHIAN
Title: OFFICE MANAGER

By: __________
Name Printed: __________

Executed at: __________
On: __________

**By LESSEE:**
Waat Corp.,
a California corporation

By: /s/ TAL McAbian
Name Printed: TAL McAbian
Title: Partner

By: __________
Name Printed: __________

| | |
|---|---|
| Title: ______ | Title: ______ |
| Address: ______ | Address: ______ |
| ______ | ______ |
| ______ | ______ |
| Telephone: ( ) ______ | Telephone: ( ) ______ |
| Facsimile: ( ) ______ | Facsimile: ( ) ______ |
| Federal ID No. ______ | Federal ID No ______ |

| | |
|---|---|
| **BROKER:** | **BROKER:** |
| ______ | ______ |
| ______ | ______ |
| Attn: ______ | Attn: ______ |
| Title: ______ | Title: ______ |
| Address: ______ | Address: ______ |
| ______ | ______ |
| Telephone: ( ) ______ | Telephone: ( ) ______ |
| Facsimile: ( ) ______ | Facsimile: ( ) ______ |
| Email: ______ | Email: ______ |
| FederalI D No. ______ | Federal ID No. ______ |

These forms are often modified to meet changing requirements of law and needs of the industry. Always write or call to make sure you are utilizing the most current form: AIR COMMERCIAL REAL ESTATE ASSOCIATION, 700 South Flower Street, Suite 600, Los Angeles, CA 90017. (213) 687-8777.

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INITIALS ______ ______ INITIALS

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INITIALS

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**ADDENDUM**

Date: July 15, 2005

By and Between (Lessor) Berkshire Holdings, LLC

(Lessee) Waat Corp.

Address of Premises: 14242 Ventura Boulevard, Suite 300

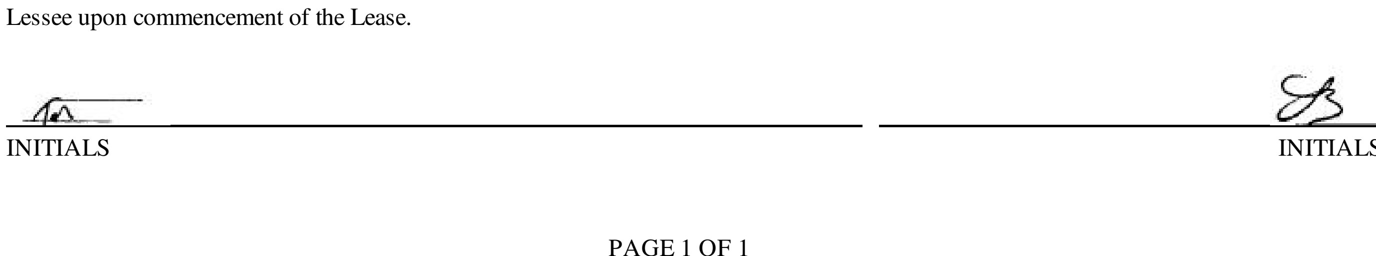
Sherman Oaks, California 91423

Addendum A

This Addendum is to the Standard Industrial Commercial Multi-Tenant Lease - Net dated July 1, 2005, between Berkshire Holdings, LLC and Waat Corp. of 18226 Ventura Boulevard, Suite # 102 Tarzana, CA 91356 USA. As a material consideration for Lessee's agreement to lease the Premises from Lessor, Lessor hereby agrees to construct the following improvements pursuant to Lessee's specifications.

- Cubicles
- Woodwork
- Tempered glass/dividers/doors
- Shelves and desks
- Tenant improvement line/DSL line
- Air conditioning (additional)
- Furniture
- Carpeting
- Lighting
- Cabinets
- White boards
- Conference Room
- Internal Windows, Frames and Blinds
- Wooden floors
- Special paints

Lessor and Lessee hereby agree that the total value and cost of these Improvements is $150,000.00, which shall be reimbursed to Lessor by Lessee upon commencement of the Lease.



INITIALS INITIALS

**ADDENDUM**

Date: July 15, 2005

By and Between (Lessor) Berkshire Holdings, LLC
(Lessee) Waat Corp.

Address of Premises: 14242 Ventura Boulevard, Suite 300
Sherman Oaks, California 91423

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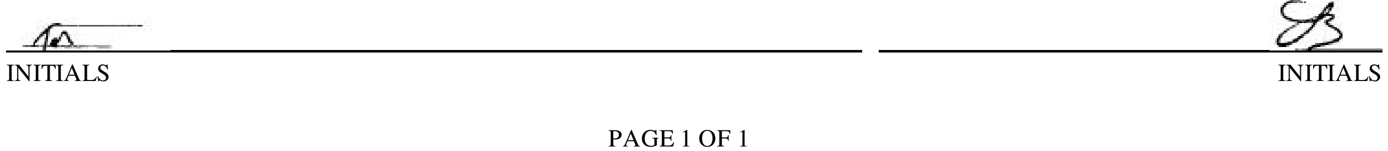

INITIALS INITIALS

**Execution Version**

**THE WAAT CORP.**

May 16, 2006

Mr. Adi McAbian
c/o The WAAT Corp.
14242 Ventura Blvd, 3rd Floor
Sherman Oaks, California 91423

Dear Adi:

The purpose of this letter (the "**Letter Agreement**") is to acknowledge and set forth the terms and conditions of your employment with The WAAT Corp., a California corporation (the **"Company"**).

1. **Duties and Responsibilities.** During the Employment Term, you will serve as the Managing Director of the Company or in such other position as determined by the Chief Executive Officer of the Company from time to time. You will report to the Chief Executive Officer of the Company (or its designee). You will have such duties and responsibilities that are commensurate with your position and such other duties and responsibilities as are from time to time assigned to you by the Chief Executive Officer (or its designee). During the Employment Term, you will devote your full business time, energy and skill to the performance of your duties and responsibilities hereunder, provided the foregoing shall not prevent you from (i) serving on the board of directors of non-profit organizations and, with the prior written approval of the Board, other companies, (ii) participating in charitable, civic, educational, professional, community or industry affairs and (iii) managing your and your family's passive personal investments; provided such activities in the aggregate do not interfere or conflict with your duties hereunder or create a potential business conflict.

2. **Employment Term.** The term of your employment under this Letter Agreement (the "**Employment Term**") will be for a term commencing on the date first written above (the "**Effective Date**") and, unless terminated earlier as provided in paragraph 6 hereof or extended by mutual consent of you and the Company on terms at least as favorable as those in the final year of the Employment Term, ending on the third anniversary of the Effective Date.

3. **Base Salary.** During the Employment Term, the Company will pay you a base salary at the rate of $300,000 per year, in accordance with the usual payroll practices of the Company. Your Base Salary shall be subject to annual review by the Board and may be increased, but not decreased, from time to time by the Board; provided, however, that, commencing January 1, 2007, you shall receive a minimum annual increase in Base Salary equal to the lesser of 5% or the percentage equal to the increase, if any, in the Consumer Price Index measured for the 12 month period immediately preceding the effective date of the increase. The base salary as determined herein from time to time shall constitute "**Base Salary**" for purposes of this Letter Agreement. For purposes of this paragraph 3, "**Consumer Price Index**" shall mean the Consumer Price Index for Urban Wage Earners and Clerical Works (1982 - 1984 = 100) for the Los Angeles Metropolitan area published by the United States Department of Labor, Bureau of Statistics.

4. **Annual Bonus.** You will be eligible to receive an annual target cash bonus of up to 35% of Base Salary, if earned, determined by the Board (the "**Bonus**"). Such bonus will be based upon the achievement of performance goals set by the Board (or a committee thereof), including, without limitation, the operating results of the Company and your individual performance, as determined by the Board in its sole discretion.

5. **Benefits and Fringes.**

(a) **General.** During the Employment Term, you will be entitled to such benefits and fringes, if any, as are generally provided from time to time by the Company to its employees at a level commensurate with your position, subject to the satisfaction of any eligibility requirements.

(b) **Vacation.** You will also be entitled to annual paid vacation in accordance with the Company's vacation policies in effect from time to time, but in no event less than four weeks per calendar year (as prorated for partial years), which vacation may be taken at such times as you elect with due regard to the needs of the Company.

(c) **Reimbursement of Business and Entertainment Expenses; Travel.** Upon presentation of appropriate documentation, you will be reimbursed in accordance with the Company's expense reimbursement policy for all reasonable and necessary business and entertainment expenses incurred in connection with the performance of your duties and responsibilities hereunder. If you travel on business of the Company, you will be reimbursed for the cost of airfare (business class airfare or other airfare class comparable in cost to business class airfare on all flights scheduled to have a flight time of three or more hours) and the reasonable cost of business class lodging accommodations, as well as for your reasonable and necessary out-of-pocket expenses incurred in connection therewith, in accordance with the Company's policies.

(d) **Automobile Allowance.** During the Employment Term, you will receive an automobile allowance in the amount of $600 per month.

6. **Termination of Employment.** Your employment and the Employment Term will terminate on the first of the following to occur:

(a) **<u>Disability</u>.** Upon written notice by the Company to you of termination due to Disability, while you remain Disabled. For purposes of this Letter Agreement, "**Disability**" will be defined as your inability to perform your material duties hereunder due to a physical or mental injury, infirmity or incapacity for a continuous period of not less than 90 days (including weekends and holidays) or for 180 days (including weekends and holidays) in any 365-day period.

(b) **<u>Death</u>.** Automatically on the date of your death.

(c) **<u>Cause</u>.** Immediately upon written notice by the Company to you of a termination for Cause. For purposes of this Letter Agreement, "**Cause**" will mean:

(1) your willful misconduct which, in the good faith judgment of the Board, has a material negative impact on the Company (either economically or on its reputation);

(2) your indictment for, conviction of, or pleading of guilty or *nolo contendere* to, a felony (or equivalent outside of the United States) or any crime involving fraud, dishonesty or moral turpitude;

(3) your failure to perform your duties, which failure is not remedied within 20 days of written notice from the Board specifying the details thereof;

(4) your failure to follow the legal direction of the Board after written notice from the Board specifying the details thereof; and

(5) any other material breach of this Letter Agreement by you that is not remedied within 20 days of written notice from the Board specifying the details thereof.

(d) **<u>Without Cause</u>.** Upon 30 days' prior written notice by the Company to you of an involuntary termination without Cause, other than for death or Disability;

(e) **<u>Good Reason</u>.** Upon written notice by you to the Company of a termination for Good Reason, unless such events are corrected in all material respects by the Company within 20 days following your written notification to the Company for one of the reasons set forth below. "**Good Reason**" will mean, withbut your express written consent, any reduction of, or failure to timely pay, your Base Salary or any material breach of paragraphs 4 or 5 of this Letter Agreement. Good Reason will cease to exist for an event on the 90th day following its occurrence, unless you have given the Company written notice thereof prior to such date.

(f) **Expiration of Employment Term.** Upon the end of the Employment Term.

7**. Compensation Upon Termination.**

(a) **Disability; Death; Cause.** If your employment terminates on account of your Disability or your death or if the Company terminates you for Cause, the Company will pay or provide to you (i) any unpaid Base Salary through the date of termination; (ii) other than if the Company terminates your employment for Cause, any Bonus earned but unpaid with respect to the fiscal year ending on or preceding the date of termination; (iii) reimbursement for any unreimbursed expenses incurred through the date of termination; (iv) any accrued but unused vacation time in accordance with Company policy; and (v) all other payments, benefits or fringe benefits to which you may be entitled under the terms of any applicable compensation arrangement or benefit, equity or fringe benefit plan or program or grant or this Letter Agreement (collectively items (i) through (v) shall be hereafter referred to as "**Accrued Benefits**")

(b) **Termination Without Cause or For Good Reason.** If your employment by the Company is terminated by the Company without Cause or by you for Good Reason, the Company will pay or provide you with (x) any Accrued Benefits; and (y) subject to your compliance with the obligations in paragraphs 8 and 9 hereof: (1) continued payment of your base salary (but not as an employee) in accordance with the usual payroll practices of the Company for the greater of (A) a period equal to the period between the date of termination and the end of the Employment Term or (B) a period equal to three months following such termination (the "**Severance Period**"); (2) at the time bonuses are typically paid to employees, a pro-rata portion of the Bonus for the fiscal year in which your termination occurs based on actual results for the plan year (determined by multiplying the amount of the Bonus which would be due for the full fiscal year by a fraction, the numerator of which is the number of days during the fiscal year of termination that you are employed by the Company and the denominator of which is 365); (3) subject to (A) your timely election of continuation coverage under the Consolidated Budget Omnibus Reconciliation Act of 1985, as amended ("**COBRA**") and (B) your continued copayment of premiums at the same level and cost to you as if you were an employee of the Company (excluding, for purposes of calculating cost, an employee's ability to pay premiums with pre-tax dollars), to the extent permitted under applicable law and the terms of such plan, continued participation during the Severance Period in the Company's group health plan which covers you as of the date of termination at the Company's expense (other than the aforementioned premiums), provided that you are eligible and remain eligible for COBRA coverage; provided, however, that in the event that you obtain other employment that offers substantially similar or improved group health benefits, such continuation of coverage by the Company under this sub-paragraph shall immediately cease; and (4) immediate vesting and exercisability of 50% of all outstanding stock options to purchase shares of the Company's common stock. Payments or benefits provided in this paragraph 7(b) shall be in lieu of any termination or severance payments or benefits for which you may be eligible under any of the plans, policies or programs of the Company.

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(c) **Expiration of Employment Term.** If the Employment Term ends at the third anniversary of the Effective Date and you do not continue as an employee beyond such time, the Company will pay or provide you with (x) any Accrued Benefits; and (y) subject to your compliance with the obligations in paragraphs 8 and 9 hereof: (1) continued payment of your base salary (but not as an employee) in accordance with the usual payroll practices of the Company for a period equal to three months following such termination; and (2) the benefits provided in paragraph 7(b)(3) for a period of three months.

8. **Release; No Set-Off; No Mitigation.**

(a) Any and all amounts payable and benefits or additional rights provided pursuant to this Letter Agreement beyond Accrued Benefits shall only be payable if you deliver to the Company and do not revoke a general release of all claims related to the Company, its affiliates, and their respective past, present and future employees, officers, trustees, agents and representatives in a form substantially in the form of Exhibit A hereto and mutually agreed upon by you and the Company.

(b) The Company's obligation to make any payment provided for in this Letter Agreement shall not be subject set-off, counterclaim or recoupment of amounts owed by you to the Company or its affiliates.

(c) In no event shall you be obliged to seek other employment or take any other action by way of mitigation of the amounts payable to you under any of the provisions of this Letter Agreement, nor shall the amount of any payment hereunder be reduced by any compensation earned by you as a result of employment by another employer (other than as provided in paragraph 7(b)(y)(3)).

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9. **Restrictive Covenants.**

(a) **Non-Competition.** During the Employment Term, you will not, directly or indirectly, without the prior written consent of the Company, enter into Competition with the Company or any of its affiliates (the "**Employer**"). **"Competition"** means participating, directly or indirectly, as an individual proprietor, partner, stockholder, officer, employee, director, joint venturer, investor, lender, consultant or in any capacity whatsoever in a business in the field of business that the Employer is engaged in as of the date of your termination of employment with the Company or is actively planning to engage in as of the date of your termination of employment with the Company.

(b) **Confidentiality.** During the Employment Term and thereafter, you will hold in a fiduciary capacity for the benefit of the Employer all secret or confidential information, knowledge or data relating to the Employer, and their respective businesses, which will have been obtained by you during your employment by the Company and which will not be or become public knowledge (other than by acts by you or your representatives in violation of this Letter Agreement). You will not, except as may be required to perform your duties hereunder or as may otherwise be required by law or legal process, without limitation in time or until such information will have become public or known in the Employer's industry (other than by acts by you or your representatives in violation of this Letter Agreement), communicate or divulge to others or use, whether directly or indirectly, any such information, knowledge or data regarding the Employer, and their respective businesses.

(c) **Non-Solicitation of Customers.** During the Employment Term and for the twelve-month period following your termination of employment for any reason (the "**Restricted Period**"), you will not, directly or indirectly, influence or attempt to influence customers or suppliers of the Employer to divert their business to any competitor of the Employer.

(d) **Non-Solicitation of Employees.** You recognize that you possess and will possess confidential information about other employees of the Employer relating to their education, experience, skills, abilities, compensation and benefits, and inter-personal relationships with customers of the Employer. You recognize that the information you possess and will possess about these other employees is not generally known, is of substantial value to the Employer in developing its business and in securing and retaining customers, and has been and will be acquired by you because of your business position with the Employer. You agree that, during the Restricted Period, you will not, directly or indirectly, solicit or recruit any employee of the Employer for the purpose of being employed by you or by any competitor of the Employer on whose behalf you are acting as an agent, representative or employee and that you will not convey any such confidential information or trade secrets about other employees of the Employer to any other person.

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(e) **Non-Disparagement.** You shall not, or induce others to, Disparage the Employer or any of their past and present officers, directors, employees or products. "**Disparage**" shall mean making comments or statements to the press, the Employer's employees or any individual or entity with whom the Employer has a business relationship which would adversely affect in any manner: (i) the conduct of the business of the Employer (including, without limitation, any products or business plans or prospects); or (ii) the business reputation of the Employer, or any of their products, or their past or present officers, directors or employees.

(f) **Cooperation.** Upon the receipt of notice from the Company (including outside counsel), you agree that during the Employment Term and thereafter, you will respond and provide information with regard to matters in which you have knowledge as a result of your employment with the Company, and will provide reasonable assistance to the Employer and its representatives in defense of any claims that may be made against the Employer, and will assist the Employer in the prosecution of any claims that may be made by the Employer, to the extent that such claims may relate to the period of your employment with the Company (or any predecessor). You agree to promptly inform in the Company if you become aware of any lawsuits involving such claims that may be filed or threatened against the Employer. You also agree to promptly inform the Company (to the extent you are legally permitted to do so) if you are asked to assist in any investigation of the Employer (or their actions), regardless of whether a lawsuit or other proceeding has then been filed against the Employer with respect to such investigation, and will not do so unless legally required.

(g) **Injunctive Relief.** It is further expressly agreed that the Employer will or would suffer irreparable injury if you were to violate the provisions of this paragraph 9 and that the Employer would by reason of such violation be entitled to injunctive relief in a court of appropriate jurisdiction and you further consent and stipulate to the entry of such injunctive relief in such court prohibiting you from violating the provisions of this paragraph 9.

(h) **Survival of Provisions.** The obligations contained in this paragraph 9 will survive the termination of your employment with the Company and will be fully enforceable thereafter. If it is determined by a court of competent jurisdiction in any state that any restriction in this paragraph 9 is excessive in duration or scope or extends for too long a period of time or over too great a range of activities or in too broad a geographic area or is unreasonable or unenforceable under the laws of that state, it is the intention of the parties that such restriction may be modified or amended by the court to render it enforceable to the maximum extent permitted by the law of that state or jurisdiction.

10. **Representations.** You represent and warrant that your execution and delivery of this Letter Agreement and your performing the contemplated services does not and will not conflict with or result in any breach or default under any agreement, contract or arrangement which you are a party to or violate any other legal restriction. You further represent and warrant that you have been advised by the Company to consult independent legal counsel of your choice before signing this Letter Agreement.

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11. **Assignment.** Notwithstanding anything else herein, this Letter Agreement is personal to you and neither the Letter Agreement nor any rights hereunder may be assigned by you. The Company may assign the Letter Agreement to an affiliate or to any acquiror of all or substantially all of the assets of the Company. This Letter Agreement will inure to the benefit of and be binding upon the personal or legal representatives, executors, administrators, successors, heirs, distributees, devisees, legatees and permitted assignees of the parties.

12. **Arbitration.** You agree that all disputes and controversies arising under or in connection with this Letter Agreement, other than seeking injunctive or other equitable relief under paragraph 9(g), will be settled by arbitration conducted before one (1) arbitrator mutually agreed to by the Company and you, sitting in Los Angeles, California or such other location agreed to by you and the Company, in accordance with the National Rules for the Resolution of Employment Disputes of the American Arbitration Association then in effect; provided, however, that if the Company and you are unable to agree on a single arbitrator within 30 days of the demand by another party for arbitration, an arbitrator will be designated by the Los Angeles Office of the American Arbitration Association. The determination of the arbitrator will be final and binding on you and the Employer. Judgment may be entered on the award of the arbitrator in any court having proper jurisdiction. Each party will bear their own expenses of such arbitration.

13. **Indemnification.** The Company hereby agrees to indemnify you and hold you harmless to the extent provided under the by-laws of the Company against and in respect to any and all actions, suits, proceedings, claims, demands, judgments, costs, expenses (including reasonable attorney's fees), losses, and damages resulting from the your good faith performance of his duties and obligations with the Company. This obligation shall survive the termination of your employment with the Company.

14. **Liability Insurance.** The Company shall cover you under directors and officers liability insurance both during and, while potential liability exists, after the Employment Term in the same amount and to the same extent as the Company covers its other officers and directors.

15. **Withholding Taxes.** The Company may withhold from any and all amounts payable to you such federal, state and local taxes as may be required to be withheld pursuant to any applicable laws or regulations.

16. **Governing Law.** This Letter Agreement will be governed by, and construed under and in accordance with, the internal laws of the State of California, without reference to rules relating to conflicts of laws.

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17. **<u>Entire Agreement; Amendments</u>.** This Letter Agreement and the agreements referenced herein contain the entire agreement of the parties relating to the subject matter hereof, and supercede in their entirety any and all prior agreements, understandings or representations relating to the subject matter hereof. No amendments, alterations or modifications of this Letter Agreement will be valid unless made in writing and signed by the parties hereto.

18. **<u>Notice</u>.** Any notice or other communication required or permitted to be given under this Agreement (a "**Notice**") shall be in writing and delivered in person, by facsimile transmission (with a Notice contemporaneously given by another method specified in this paragraph 18), by overnight courier service or by postage prepaid mail with a return receipt requested, at the following locations (or to such other address as either party may have furnished to the other in writing by like Notice. All such Notices shall only be duly given and effective upon receipt (or refusal of receipt).

If to the Executive:

At the address (or to the facsimile number) shown
on the records of the Company

If to the Company:

The WAAT Corp.
14242 Ventura Blvd, 3rd Floor
Sherman Oaks, California 91423
Attention: Chief Executive Officer

We hope that you find the foregoing terms and conditions acceptable. You may indicate your agreement with the terms and conditions set forth in this Letter Agreement by signing the enclosed duplicate original of this Letter Agreement and returning it to me.

---

We look forward to your continued employment with the Company.

Very truly yours,

**THE WAAT CORP.**

By: /s/ Ian Aaron
Name: Ian Aaron
Title: Chief Executive Officer

**Accepted and Agreed:**

/s/ Adi McAbian

Adi McAbian

**Exhibit A**

**Form of Release**

To: The WAAT Corp.
14242 Ventura Blvd, 3rd Floor
Sherman Oaks, California 91423
Attention: Chief Executive Officer

1. **Termination.** (a) I hereby acknowledge that my employment with The WAAT Corp. ("**WAAT**") will terminate on ____________, ____(the "**Termination Date**") pursuant to provisions of paragraph 6 of my employment letter agreement dated as of May __, 2006 with WAAT (the "**Letter Agreement**"), that WAAT will not have an obligation to rehire me or to consider me for reemployment after the Termination Date and that my employment with WAAT is permanently and irrevocably severed.

(b) I hereby confirm my resignation from my position as Chief Executive Officer of WAAT and that I will not be eligible for any benefits or compensation after the Termination Date, other than as specifically provided hereunder and in paragraph 7 of the Letter Agreement. In addition, effective as of the Termination Date, I hereby resign from all offices, directorships, trusteeships, committee memberships and fiduciary capacities held with, or on behalf of, WAAT or any of its affiliates or any benefit plans of WAAT or any of its affiliates. These resignations will become irrevocable on the Effective Date of this Agreement, as defined in paragraph 7 below.

(c) I further acknowledge and agree that, after the Termination Date, I will not represent myself as being a director, employee, officer, trustee, agent or representative of WAAT for any purpose and will not make any public statements relating to WAAT and in no event will I make any statements as an agent or representative of WAAT.

2. **Consideration.** I acknowledge that this General Release is being executed in accordance with paragraph 8 of the Letter Agreement.

3. **General Release.** (a) For and in consideration of the payments to be made and the promises set forth in the Letter Agreement, I, for myself and for my heirs, dependents, executors, administrators, trustees, legal representatives and assigns (collectively referred to as "**Releasors**"), hereby forever release, waive and discharge WAAT and its shareholders, representatives, affiliates and subsidiaries, employee benefit and/or pension plans or funds, insurers, successors and assigns, and all of its or their past, present and/or future officers, trustees, agents, attorneys, employees, fiduciaries, trustees, administrators and assigns when acting as agents for WAAT (collectively referred to as "**Releasees**"), from any and all claims, demands, causes of action, fees and liabilities of any kind whatsoever, whether known or unknown, which Releasors ever had, now have, or hereafter may have against Releasees by reason of any actual or alleged act, omission, transaction, practice, policy, procedure, conduct, occurrence, or other matter up to and including the date of my execution of this General Release, including without limitation, those in connection with, or in any way related to or arising out of, my employment, service as a director, service as a trustee, service as a fiduciary or termination of any of the foregoing with WAAT or any other agreement, understanding, relationship, arrangement, act, omission or occurrence, with WAAT or other claims.

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(b) Without limiting the generality of the foregoing, this General Release is intended and will release the Releasees from any and all claims, whether known or unknown, which Releasors ever had, now have, or may hereafter have against the Releasees including, but not limited to, (i) any claim of discrimination or retaliation under the Age Discrimination in Employment Act ("**ADEA**") 29 U.S.C. Section 621 et seq., Title VII of the Civil Rights Act, the Americans with Disabilities Act, the Employee Retirement Income Security Act of 1974, as amended ("**ERISA**") or the Family and Medical Leave Act; (ii) any claim under the California Fair Employment Act, the California Labor Code, the California Family Rights Act, the California Pregnancy Disability Leave Law or the California Continuation Benefits Replacement Act; (iii) any other claim (whether based on federal, state or local law or ordinance statutory or decisional) relating to or arising out of my employment, the terms and conditions of such employment, the termination of such employment and/or any of the events relating directly or indirectly to or surrounding the termination of such employment, and/or any of the events relating directly or indirectly to or surrounding the termination of that employment, including, but not limited to, breach of contract (express or implied), tort, wrongful discharge, detrimental reliance, defamation, emotional distress or compensatory or punitive damages; and (iv) any claim for attorney's fees, costs, disbursements and the like.

(c) I agree that I will not, from any source or proceeding, seek or accept any award or settlement with respect to any claim or right covered by paragraph 3(a) or (b) above, including, without limitation, any source or proceeding involving any person or entity, the United States Equal Employment Opportunity Commission or other similar federal or state agency. Except as otherwise required by law, I further agree that I will not, at any time hereafter, commence, maintain, prosecute, participate in as a party, permit to be filed by any other person on my behalf (to the extent it is within my control or permitted by law), or assist in the commencement or prosecution of as an advisor, witness (unless compelled by legal process or court order) or otherwise, any action or proceeding of any kind, judicial or administrative (on my own behalf, on behalf of any other person and/or on behalf of or as a member of any alleged class of persons) in any court, agency, investigative or administrative body against any Releasee with respect to any actual or alleged act, omission, transaction, practice, conduct, occurrence or any other matter up to and including the date of my execution of this General Release which I released pursuant to paragraph 3(a) or (b) above. I further represent that, as of the date I sign this General Release, I have not taken any action encompassed by this paragraph 3(c). If, notwithstanding the foregoing promises, I violate this paragraph 3(c), I will indemnify and hold harmless Releasees from and against any and all demands, assessments, judgments, costs, damages, losses and liabilities and attorneys' fees and other expenses which result from, or are incidents to, such violation. Notwithstanding anything herein to the contrary, this paragraph 3(c) will not apply to any claims that I may have under the ADEA and will not apply to the portion of the release provided for in paragraph 3(a) or (b) relating to the ADEA.

(d) The sole matters to which the release and covenants in this paragraph 3 do not apply are: (i) my rights of indemnification and coverage under directors and officers liability insurance to which I was entitled immediately prior to the Termination Date under the Company's certificate of incorporation, bylaws or other corporate governance documents or paragraphs 13 and 14 of the Letter Agreement; or (ii) my rights under any tax-qualified pension plan maintained by WAAT or claims for accrued, vested benefits under any other employee benefit plan or under the Consolidated Omnibus Budget Reconciliation Act of 1985, as amended, (iii) my rights as a stockholder of the Company; and (iv) my rights under the Letter Agreement.

(e) I hereby expressly and knowingly waive application of Section 1542 of the California Civil Code and all comparable, equivalent or similar provisions of state or federal law. I further certify that I have read and understand the provisions of Section 1542 of the California Civil Code, which reads as follows:

> A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM MUST HAVE MATERIALLY AFFECTED HIS SETTLEMENT WITH THE DEBTOR.

4. **Restrictive Covenants; Survival.** I hereby acknowledge the existence and applicability of the restrictions set forth in paragraph 9 of the Letter Agreement, as well as the other provisions of the Letter Agreement which are intended to survive termination of employment. All such provisions shall remain in full force and effect following the Termination Date.

5. **Governing Law; Enforceability.** The interpretation of this General Release will be governed and construed in accordance with the laws of the State of California, without reference to principles of conflict of laws. If any provisions of this General Release will be declared to be invalid or unenforceable, in whole or in part, such invalidity or unenforceability will not affect the remaining provisions hereof which will remain in full force and effect.

6. **Acknowledgement.** I acknowledge that I have been advised by WAAT in writing to consult independent legal counsel of my choice before signing this General Release. I further acknowledge that I have had the opportunity to consult, and I have consulted with, independent legal counsel and to consider the terms of this General Release for a period of at least 21 days.

7. **Effective Date.** I further acknowledge that this General Release will not become effective until the eighth day following my execution of this General Release (the "**Effective Date**"), and that I may at any time prior to the Effective Date revoke this General Release by delivering written notice of revocation to: The WAAT Corp. at 14242 Ventura Blvd, 3rd Floor, Sherman Oaks, California 91423, to the attention of the [________] In the event that I revoke this General Release prior to the eighth day after its execution, this General Release and the promises contained in the Letter Agreement, will automatically be null and void.

8. **Entire Agreement.** I understand that this General Release and the Letter Agreement constitute the complete understanding between WAAT and me and that no other promises or agreements will be binding unless in writing and signed by me and WAAT after the date hereof.

9. **Counterparts.** This General Release may be executed in several counterparts, each of which will be deemed to be an original but all of which together will constitute one and the same instrument.

______________________________________

Dated:

## AMENDMENT TO EMPLOYMENT AGREEMENT

This amendment ("Amendment") is effective as of December 31, 2007 ("Amendment Date") by and between Twistbox Entertainment, Inc. (as successor-in-interest to The WAAT Corporation) ("Twistbox") and Adi McAbian ("Founder"), and amends that certain Employment Agreement dated as of May 16, 2006 by and between Twistbox and Founder ("Agreement"). Unless otherwise defined herein, defined terms shall have their meanings as set forth in the Agreement.

### RECITALS

**WHEREAS,** Twistbox and Ian Aaron, Adi McAbian, Tal Dean McAbian and Camill Sayadeh (the "Founders"), and owners of a significant percentage of the common stock of Twistbox, have instituted a company wide cost reduction plan;

**WHEREAS,** Founder deems it to be in the best interest of Twistbox to agree to a voluntary reduction in his Base Salary; and

**WHEREAS,** the parties hereto desire to memorialize their prior oral agreements and mutual understandings as contained herein.

### AMENDMENT

**NOW THEREFORE,** in consideration of the foregoing, Twistbox and Founder desire to amend and/or modify the Agreement and enter into this Amendment on the terms and conditions provided below:

1. Commencing with the payroll paid on August 3, 2007 through November 9, 2007, Founder has agreed to reduce his Base Salary to One Hundred Fifty Thousand Dollars ($150,000).

2. Commencing with the payroll paid on November 23, 2007, Founder agreed to reduce his Base Salary to zero (subject to California minimum wage requirements); provided that, Employee's Base Salary shall be reset to One Hundred Fifty Thousand Dollars ($150,000) (the "Reset Base Salary") upon Twistbox achieving cash flow break-even, as that term is customarily understood and applied under GAAP, with such cash flow break-even calculation to include Founder's Reset Base Salary, interest payments to ValueAct SmallCap Master Fund, L.P for a period of three (3) months and such other ordinary and usual amounts, including earned interest income; provided further, however, in the event the Company achieves cash flow break-even ninety (90) days following the Amendment Date, Twistbox shall cause the Board of Directors to convene a subcommittee of independent directors to consider awarding bonuses to Founder, so long as any such award does not result in the Company no longer being cash flow break-even in any given calendar month.

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3. Twistbox hereby agrees and acknowledges that nothing contained herein shall serve as a waiver of any other rights or remedies, in law or equity, which Employee may have by virtue of his Agreement and/or any statutes, laws or regulations governing employer/employee matters.

4. All terms and conditions of the Agreement not specifically and expressly modified or amended herein are hereby ratified and confirmed in all respects and shall remain in full force and effect.

5. Each person who executes this Amendment represents and warrants to each party hereto that he has the authority to do so and to bind each entity as contemplated hereby, and agrees to hold harmless each other party from any claim that such authority did not exist. This Amendment will inure to the benefit of and be binding upon the parties and their respective shareholders, successors and permitted assigns.

**IN WITNESS WHEREOF,** the parties hereto have executed this Amendment as of the Amendment Date set forth above.

TWISTBOX ENTERTAINMENT, INC. FOUNDER (AS SUCCESSOR-IN-INTEREST TO THE WAAT CORPORATION)

By: /s/ David Mandell
Name: David Mandell
Title: EVP/General Counsel

FOUNDER

By: /s/ Adi McAbian
Name: Adi McAbian
Title: Managing Director

**SECOND AMENDMENT TO EMPLOYMENT AGREEMENT**

This second amendment ("Second Amendment") is effective as of February 12, 2008 ("Amendment Date") by and between Twistbox Entertainment, Inc. (as successor-in-interest to The WAAT Corporation) ("Twistbox") and Adi McAbian ("Employee"), and amends that certain Letter Agreement dated May 16, 2006 by and between Twistbox and Employee, as amended as of December 31, 2007 (collectively, the "Agreement"). Unless otherwise defined herein, defined terms shall have their meanings as set forth in the Agreement.

**RECITALS**

**WHEREAS,** Twistbox and Mandalay Media, Inc. ("Mandalay") have entered into that certain Agreement and Plan of Merger dated December 31, 2007, as amended ('Plan of Merger"), pursuant to which Employee has agreed to sell, assign, transfer and convey his shares of capital stock in Twistbox in exchange for shares of capital stock of Mandalay (the "Merger");

**WHEREAS**, the parties believe it is in the best interest of Twistbox and Employee to mutually agree to certain modifications to the Agreement; and

**WHEREAS**, the parties hereto desire to memorialize their mutual understandings as contained herein.

**AMENDMENT**

**NOW THEREFORE,** in consideration of the foregoing, Twistbox and Employee desire to amend and/or modify the Agreement and enter into this Amendment on the terms and conditions provided below:

Subject to and expressly conditioned upon the close of the Plan of Merger, Employee's Agreement shall be modified as follows:

1. Paragraph 3 shall be deleted in its entirety and replaced with the following:

   > "In consideration of your full time employment during the Employment Term, the Company will pay you a base salary at the rate of $200,000 on an annualized basis, in accordance with the usual payroll practices of the Company."

2. Sub-section (a) of paragraph 9 shall be deleted in its entirety and replaced with the following:

   > "**Non-Competition.** During the Employment Term and for the twelve month period following expiration or termination of your employment (the **"Restricted Period")**, you will not, directly or indirectly, enter into Competition with the Company or any of its affiliates (the "**Employer**"). "**Competition"** means participating, directly or indirectly, as an individual proprietor, partner, stockholder, officer, employee, director, joint venturer, investor, lender or in any capacity whatsoever in any activities or businesses related to the provisioning of any of the following products and/or services in connection with Mobile Adult WAP, Adult MobileTV, Adult Off-Deck Services, Mobile AVS Systems and Mobile Adult Advertising Services."

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3. All terms and conditions of the Agreement not specifically and expressly modified or amended herein are hereby ratified and confirmed in all respects and shall remain in full force and effect.

4. Each person who executes this Second Amendment represents and warrants to the other party hereto that they have the authority to do so and to bind such party as contemplated hereby, and agrees to hold harmless the other party from any claim that such authority did not exist. This Second Amendment will inure to the benefit of and be binding upon the parties and their respective shareholders, successors and permitted assigns.

5. Employee acknowledges and agrees that this Second Amendment and the agreement by Employee in Section 2 above is also given in consideration of Employee's sale, transfer and conveyance of his shares of capital stock in Twistbox and his receipt of consideration in exchange thereof.

**IN WITNESS WHEREOF**, the parties hereto have executed this Second Amendment as of the Amendment Date set forth above.

| TWISTBOX ENTERTAINMENT, INC.<br>(AS SUCCESSOR-IN-INTEREST TO<br>THE WAAT CORPORATION) | EMPLOYEE |
| --- | --- |
| By: David Mandell<br>Name: David Mandell<br>Title: EVP/General Counsel | By: /s/ Adi McAbian<br>Name: Adi McAbian<br>Title: Managing Director |

**THE WAAT CORP.**

May 16, 2006

Mr. Ian Aaron
c/o The WAAT Corp.
14242 Ventura Blvd, 3rd Floor
Sherman Oaks, California 91423

Dear Ian:

The purpose of this letter (the "**Letter Agreement**") is to acknowledge and set forth the terms and conditions of your employment with The WAAT Corp., a California corporation (the "**Company"**).

1. **Duties and Responsibilities.** During the Employment Term, you will serve as the Chief Executive Officer of the Company and will report to the Board of Directors of the Company (the **"Board"**).You will have such duties and responsibilities that are commensurate with your position and such other duties and responsibilities as are from time to time assigned to you by the Board (or a committee thereof). During the Employment Term, you will devote your full business time, energy and skill to the performance of your duties and responsibilities hereunder, provided the foregoing shall not prevent you from (i) serving on the board of directors of non-profit organizations and, with the prior written approval of the Board, other companies, (ii) participating in charitable, civic, educational, professional, community or industry affairs and (iii) managing your and your family's passive personal investments; provided such activities in the aggregate do not interfere or conflict with your duties hereunder or create a potential business conflict. The Company hereby acknowledges that you are entitled to continue serving as a member of the board of directors of MEVEE and Platco and you are entitled to retain any compensation received on account of such services.

2. **Employment Term.** The term of your employment under this Letter Agreement (the "**Employment Term**") will be for a term commencing on the date first written above (the "**Effective Date**") and, unless terminated earlier as provided in paragraph 6 hereof or extended by mutual consent of you and the Company on terms at least as favorable as those in the final year of the Employment Term, ending on the third anniversary of the Effective Date.

3. **Base Salary.** During the Employment Term, the Company will pay you a base salary at the annual rate of $500,000 for the period commencing on the Effective Date and ending on the first anniversary of the Effective Date, $525,000 for the period commencing on the first anniversary of the Effective Date and ending on the second anniversary of the Effective Date and $551,250 for the period commencing on the second anniversary of the Effective Date and ending on the third anniversary of the Effective Date, in accordance with the usual payroll practices of the Company.

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4. **Annual Bonus.** You will be eligible to receive an annual target cash bonus of up to 50% of Base Salary, if earned, determined by the Board (the **"Bonus"**). Such bonus will be based upon the achievement of performance goals set by the Board (or a committee thereof) after good faith consultation with you, including, without limitation, the operating results of the Company and your individual performance, as determined by the Board in its sole discretion.

5. **Benefits and Fringes.**

(a) **General.** During the Employment Term, you will be entitled to such benefits and fringes, if any, as are generally provided from time to time by the Company to its senior executives at a level commensurate with your position, subject to the satisfaction of any eligibility requirements.

(b) **Vacation.** You will also be entitled to annual paid vacation in accordance with the Company's vacation policies in effect from time to time, but in no event less than four weeks per calendar year (as prorated for partial years), which vacation may be taken at such times as you elect with due regard to the needs of the Company.

(c) **Reimbursement of Business and Entertainment Expenses; Travel.** Upon presentation of appropriate documentation, you will be reimbursed in accordance with the Company's expense reimbursement policy for all reasonable and necessary business and entertainment expenses incurred in connection with the performance of your duties and responsibilities hereunder. If you travel on business of the Company, you will be reimbursed for the cost of airfare (business class airfare on all flights scheduled to have a flight time of three or more hours or, if sufficient business class service is not available for such flight, first class airfare) and the reasonable cost of business class lodging accommodations, as well as for your reasonable and necessary out-of-pocket expenses incurred in connection therewith, in accordance with the Company's policies.

(d) **Automobile Allowance.** During the Employment Term, you will receive an automobile allowance in the amount of $1,000 per month covering all expenses of maintaining and operating an automobile (including, without limitation, cost, repairs, maintenance, insurance and parking), provided that all such expenses are accounted for in accordance with the policies and procedures established by the Company. Alternatively, the Company may elect to provide you with a Company-owned or leased automobile at an expense of not more than $1,000 per month (including expenses).

(e) **Life Insurance.** Notwithstanding the foregoing, during the Employment Term, the Company will provide, subject to your insurability at standard rates and your full cooperation in obtaining such coverage (including, without limitation, taking any required physical examinations), life insurance on your life equal to two times your annual base salary.

**6. <u>Termination of Employment.</u>** Your employment and the Employment Term will terminate on the first of the following to occur:

(a) **<u>Disability.</u>** Upon written notice by the Company to you of termination due to Disability, while you remain Disabled. For purposes of this Letter Agreement, **"Disability"** will be defined as your inability to perform your material duties hereunder due to a physical or mental injury, infirmity or incapacity for a continuous period of not less than 90 days (including weekends and holidays) or for 180 days (including weekends and holidays) in any 365-day period.

(b) **<u>Death.</u>** Automatically on the date of your death.

(c) **<u>Cause.</u>** Immediately upon written notice by the Company to you of a termination for Cause. For purposes of this Letter Agreement, **"Cause"** will mean:

(1) your willful misconduct which, in the good faith judgment of the Board, has a material negative impact on the Company (either economically or on its reputation);

(2) your indictment for, conviction of, or pleading of guilty or *nolo contendere* to, a felony (or equivalent outside of the United States) or any crime involving fraud, dishonesty or moral turpitude;

(3) your failure to attempt in good faith to perform your duties, which failure is not remedied within 20 days of written notice from the Board specifying the details thereof;

(4) your failure to attempt in good faith to follow the legal direction of the Board after written notice from the Board specifying the details thereof; and

(5) any other material breach of this Letter Agreement by you that is not remedied within 20 days of written notice from the Board specifying the details thereof.

Notwithstanding the foregoing, you will not be deemed to have been terminated for Cause without (i) advance written notice provided to you setting forth the Company's intention to consider terminating you; (ii) an opportunity for you to be heard before the Board; and (iii) a duly adopted resolution of the Board, after such opportunity, stating that your actions constituted Cause. Cause will cease to exist for an event on the 90th day following its occurrence, unless the Company has given you written notice thereof prior to such date.

(d) **Without Cause.** Upon 30 days' prior written notice by the Company to you of an involuntary termination without Cause, other than for death or Disability;

(e) **Good Reason.** Upon written notice by you to the Company of a termination for Good Reason, unless such events are corrected in all material respects by the Company within 20 days following your written notification to the Company for one of the reasons set forth below. **"Good Reason"** will mean, without your express written consent, the occurrence of any of the following events:

(1) material diminutions in title, position, authority, duties or reporting requirements, except temporarily while you are incapacitated;

(2) your being required to relocate to a principal place of employment more than 15 miles from your current location in Sherman Oaks, California;

(3) any other material breach of this Letter Agreement, including, but not limited to, any reduction of, or failure to pay, your Base Salary or any failure to timely pay or provide the benefits contemplated herein.

Good Reason will cease to exist for an event on the 90th day following its occurrence, unless you have given the Company written notice thereof prior to such date.

(f) **Expiration of Employment Term.** Upon the end of the Employment Term.

7. **Compensation Upon Termination.**

(a) **Disability; Death; Cause.** If your employment terminates on account of your Disability or your death or if the Company terminates you for Cause, the Company will pay or provide to you (i) any unpaid Base Salary through the date of termination; (ii) other than if the Company terminates your employment for Cause, any Bonus earned but unpaid with respect to the fiscal year ending on or preceding the date of termination; (iii) reimbursement for any unreimbursed expenses incurred through the date of termination; (iv) any accrued but unused vacation time in accordance with Company policy; and (v) all other payments, benefits or fringe benefits to which you may be entitled under the terms of any applicable compensation arrangement or benefit, equity or fringe benefit plan or program or grant or this Letter Agreement (collectively items (i) through (v) shall be hereafter referred to as **"Accrued Benefits"**)

(b) **<u>Termination Without Cause or For Good Reason.</u>** If your employment by the Company is terminated by the Company without Cause or by you for Good Reason, the Company will pay or provide you with (x) any Accrued Benefits; and (y) subject to your compliance with the obligations in paragraphs 8 and 9 hereof: (1) continued payment of your base salary (but not as an employee) in accordance with the usual payroll practices of the Company for the greater of (A) a period equal to the period between the date of termination and the end of the Employment Term or (B) a period equal to six months following such termination (the **"Severance Period"**); (2) at the time bonuses are typically paid to employees, a pro-rata portion of the Bonus for the fiscal year in which your termination occurs based on actual results for the plan year (determined by multiplying the amount of the Bonus which would be due for the full fiscal year by a fraction, the numerator of which is the number of days during the fiscal year of termination that you are employed by the Company and the denominator of which is 365); (3) subject to (A) your timely election of continuation coverage under the Consolidated Budget Omnibus Reconciliation Act of 1985, as amended ("**COBRA**") and (B) your continued copayment of premiums at the same level and cost to you as if you were an employee of the Company (excluding, for purposes of calculating cost, an employee's ability to pay premiums with pre-tax dollars), to the extent permitted under applicable law and the terms of such plan, continued participation during the Severance Period in the Company's group health plan which covers you as of the date of termination at the Company's expense (other than the aforementioned premiums), provided that you are eligible and remain eligible for COBRA coverage; provided, however, that in the event that you obtain other employment that offers substantially similar or improved group health benefits, such continuation of coverage by the Company under this sub-paragraph shall immediately cease; and (4) immediate vesting and exercisability of all outstanding stock options to purchase shares of the Company's common stock. Payments or benefits provided in this paragraph 7(b) shall be in lieu of any termination or severance payments or benefits for which you may be eligible under any of the plans, policies or programs of the Company.

(c) **<u>Expiration of Employment Term.</u>** If the Employment Term ends at the third anniversary of the Effective Date and you do not continue as an employee beyond such time, the Company will pay or provide you with (x) any Accrued Benefits; and (y) subject to your compliance with the obligations in paragraphs 8 and 9 hereof: (1) continued payment of your base salary (but not as an employee) in accordance with the usual payroll practices of the Company for a period equal to six months following such termination; and (2) the benefits provided in paragraph 7(b)(3) for a period of six months.

8. **Release; No Set-Off; No Mitigation**.

(a) Any and all amounts payable and benefits or additional rights provided pursuant to this Letter Agreement beyond Accrued Benefits shall only be payable if you deliver to the Company and do not revoke a general release of all claims related to the Company, its affiliates, and their respective past, present and future employees, officers, trustees, agents and representatives occurring up to the release date in such form and substance as mutually agreed upon by you and the Company (such form shall also include a reciprocal general release by the Company and related parties of all claims against you and your related parties (other than claims involving or arising from your criminal activity)), provided that such release will not include a waiver of (a) your rights of indemnification and directors and officers liability insurance coverage to which you were entitled immediately prior to the termination of your employment under the Company's By-laws, the Company's Certificate of Incorporation, this Letter Agreement or otherwise, (b) your rights under any tax-qualified pension plan maintained by the Company or claims for accrued, vested benefits under any other employee benefit plan or under COBRA, (c) your rights as a stockholder of the Company and (d) your rights under this Letter Agreement. Any such release shall not have any forfeiture provision, claw back, penalty, restriction or limitation (a “Restrictive Provision”) that is based on criteria that is any more limiting than the provisions contained in this Letter Agreement and the Company shall not require you to agree to any such Restrictive Provision as a condition of receiving any payment, benefit or grant. Any such Restrictive Provision violating the foregoing shall be null and void.

(b) The Company's obligation to make any payment provided for in this Letter Agreement shall not be subject set-off, counterclaim or recoupment of amounts owed by you to the Company or its affiliates.

(c) In no event shall you be obliged to seek other employment or take any other action by way of mitigation of the amounts payable to you under any of the provisions of this Letter Agreement, nor shall the amount of any payment hereunder be reduced by any compensation earned by you as a result of employment by another employer (other than as provided in paragraph 7(b)(y)(3)).

9. **Restrictive Covenants.**

**(a) Non-Competition.** During the Employment Term, you will not, directly or indirectly, without the prior written consent of the Company, enter into Competition with the Company or any of its affiliates (the “**Employer**”). **“Competition”** means participating, directly or indirectly, as an individual proprietor, partner, stockholder, officer, employee, director, joint venturer, investor, lender, consultant or in any capacity whatsoever in a business in the field of business that the Employer is engaged in as of the date of your termination of employment with the Company or is actively planning to engage in as of the date of your termination of employment with the Company.

(b) **Confidentiality.** During the Employment Term and thereafter, you will hold in a fiduciary capacity for the benefit of the Employer all secret or confidential information, knowledge or data relating to the Employer, and their respective businesses, which will have been obtained by you during your employment by the Company and which will not be or become public knowledge (other than by acts by you or your representatives in violation of this Letter Agreement). You will not, except as may be required to perform your duties hereunder or as may otherwise be required by law or legal process, without limitation in time or until such information will have become public or known in the Employer's industry (other than by acts by you or your representatives in violation of this Letter Agreement), communicate or divulge to others or use, whether directly or indirectly, any such information, knowledge or data regarding the Employer, and their respective businesses.

(c) **Non-Solicitation of Customers.** During the Employment Term and for the twelve-month period following your termination of employment for any reason (the "**Restricted Period**"), you will not, directly or indirectly, influence or attempt to influence customers or suppliers of the Employer to divert their business to any competitor of the Employer.

(d) **Non-Solicitation of Employees.** You recognize that you possess and will possess confidential information about other employees of the Employer relating to their education, experience, skills, abilities, compensation and benefits, and inter-personal relationships with customers of the Employer. You recognize that the information you possess and will possess about these other employees is not generally known, is of substantial value to the Employer in developing its business and in securing and retaining customers, and has been and will be acquired by you because of your business position with the Employer. You agree that, during the Restricted Period, you will not, directly or indirectly, solicit or recruit any employee of the Employer for the purpose of being employed by you or by any competitor of the Employer on whose behalf you are acting as an agent, representative or employee and that you will not convey any such confidential information or trade secrets about other employees of the Employer to any other person.

(e) **Non-Disparagement.** You shall not, or induce others to, Disparage the Employer or any of their past and present officers, directors, employees or products. **"Disparage"** shall mean making comments or statements to the press, the Employer's employees or any individual or entity with whom the Employer has a business relationship which would adversely affect in any manner: (i) the conduct of the business of the Employer (including, without limitation, any products or business plans or prospects); or (ii) the business reputation of the Employer, or any of their products, or their past or present officers, directors or employees.

(f) **Cooperation.** Upon the receipt of notice from the Company (including outside counsel), you agree that during the Employment Term and thereafter, you will respond and provide information with regard to matters in which you have knowledge as a result of your employment with the Company, and will provide reasonable assistance to the Employer and its representatives in defense of any claims that may be made against the Employer, and will assist the Employer in the prosecution of any claims that may be made by the Employer, to the extent that such claims may relate to the period of your employment with the Company (or any predecessor). You agree to promptly inform the Company if you become aware of any lawsuits involving such claims that may be filed or threatened against the Employer. You also agree to promptly inform the Company (to the extent you are legally permitted to do so) if you are asked to assist in any investigation of the Employer (or their actions), regardless of whether a lawsuit or other proceeding has then been filed against the Employer with respect to such investigation, and will not do so unless legally required.

(g) **Injunctive Relief.** It is further expressly agreed that the Employer will or would suffer irreparable injury if you were to violate the provisions of this paragraph 9 and that the Employer would by reason of such violation be entitled to injunctive relief in a court of appropriate jurisdiction and you further consent and stipulate to the entry of such injunctive relief in such court prohibiting you from violating the provisions of this paragraph 9.

(h) **Survival of Provisions.** The obligations contained in this paragraph 9 will survive the termination of your employment with the Company and will be fully enforceable thereafter. If it is determined by a court of competent jurisdiction in any state that any restriction in this paragraph 9 is excessive in duration or scope or extends for too long a period of time or over too great a range of activities or in too broad a geographic area or is unreasonable or unenforceable under the laws of that state, it is the intention of the parties that such restriction may be modified or amended by the court to render it enforceable to the maximum extent permitted by the law of that state or jurisdiction.

10. **Representations.** You represent and warrant that your execution and delivery of this Letter Agreement and your performing the contemplated services does not and will not conflict with or result in any breach or default under any agreement, contract or arrangement which you are a party to or violate any other legal restriction. You further represent and warrant that you have been advised by the Company to consult independent legal counsel of your choice before signing this Letter Agreement.

11. **Assignment.** Notwithstanding anything else herein, this Letter Agreement is personal to you and neither the Letter Agreement nor any rights hereunder may be assigned by you. The Company may assign the Letter Agreement to an affiliate or to any acquiror of all or substantially all of the assets of the Company. This Letter Agreement will inure to the benefit of and be binding upon the personal or legal representatives, executors, administrators, successors, heirs, distributees, devisees, legatees and permitted assignees of the parties.

12. **Arbitration.** You agree that all disputes and controversies arising under or in connection with this Letter Agreement, other than seeking injunctive or other equitable relief under paragraph 9(g), will be settled by arbitration conducted before one (1) arbitrator mutually agreed to by the Company and you, sitting in Los Angeles, California or such other location agreed to by you and the Company, in accordance with the National Rules for the Resolution of Employment Disputes of the American Arbitration Association then in effect; provided, however, that if the Company and you are unable to agree on a single arbitrator within 30 days of the demand by another party for arbitration, an arbitrator will be designated by the Los Angeles Office of the American Arbitration Association. The determination of the arbitrator will be final and binding on you and the Employer. Judgment may be entered on the award of the arbitrator in any court having proper jurisdiction. Each party will bear their own expenses of such arbitration.

13. **Indemnification.** The Company hereby agrees to indemnify you and hold you harmless to the extent provided under the by-laws of the Company against and in respect to any and all actions, suits, proceedings, claims, demands, judgments, costs, expenses (including reasonable attorney's fees), losses, and damages resulting from the your good faith performance of his duties and obligations with the Company. This obligation shall survive the termination of your employment with the Company.

14. **Liability Insurance.** The Company shall cover you under directors and officers liability insurance both during and, while potential liability exists, after the Employment Term in the same amount and to the same extent as the Company covers its other officers and directors.

15. **Withholding Taxes.** The Company may withhold from any and all amounts payable to you such federal, state and local taxes as may be required to be withheld pursuant to any applicable laws or regulations.

16. **<u>Governing Law.</u>** This Letter Agreement will be governed by, and construed under and in accordance with, the internal laws of the State of California, without reference to rules relating to conflicts of laws.

17. **<u>Entire Agreement; Amendments.</u>** This Letter Agreement and the agreements referenced herein contain the entire agreement of the parties relating to the subject matter hereof, and supercede in their entirety any and all prior agreements, understandings or representations relating to the subject matter hereof. No amendments, alterations or modifications of this Letter Agreement will be valid unless made in writing and signed by the parties hereto.

18. **<u>Notice.</u>** Any notice or other communication required or permitted to be given under this Agreement (a "**Notice**") shall be in writing and delivered in person, by facsimile transmission (with a Notice contemporaneously given by another method specified in this paragraph 18), by overnight courier service or by postage prepaid mail with a return receipt requested, at the following locations (or to such other address as either party may have furnished to the other in writing by like Notice. All such Notices shall only be duly given and effective upon receipt (or refusal of receipt).

If to you:

At the address (or to the facsimile number) shown
on the records of the Company

If to the Company:

The WAAT Corp.
14242 Ventura Blvd, 3rd Floor
Sherman Oaks, California 91423
Attention: General Counsel

We hope that you find the foregoing terms and conditions acceptable. You may indicate your agreement with the terms and conditions set forth in this Letter Agreement by signing the enclosed duplicate original of this Letter Agreement and returning it to me.

We look forward to your continued employment with the Company.

Very truly yours,

**THE WAAT CORP.**

By: /s/ Tal Dean McAbian

Name: Tal Dean McAbian
Title: Director of Content/Partner

**Accepted and Agreed:**

/s/ Ian Aaron

**AMENDMENT TO EMPLOYMENT AGREEMENT**

This amendment ("Amendment") is effective as of December 30, 2007 ("Amendment Date") by and between Twistbox Entertainment, Inc. (as successor-in-interest to The WAAT Corporation) ("Twistbox") and Ian Aaron ("Founder"), and amends that certain Employment Agreement dated as of May 16, 2006 by and between Twistbox and Founder ("Agreement"). Unless otherwise defined herein, defined terms shall have their meanings as set forth in the Agreement.

**RECITALS**

**WHEREAS,** Twistbox and Ian Aaron, Adi McAbian, Tal Dean McAbian and Camill Sayadeh ("the Founders"), and owners of a significant percentage of the common stock of Twistbox, have instituted a company wide cost reduction plan;

**WHEREAS,** Founder deems it to be in the best interest of Twistbox to voluntary reduce his Base Salary and waive certain rights under the Agreement; and

**WHEREAS,** the parties hereto desire to memorialize their prior oral agreements and the further mutual understandings contained herein.

**AMENDMENT**

**NOW THEREFORE,** in consideration of the foregoing, Twistbox and Founder desire to amend and/or modify the Agreement and enter into this Amendment on the terms and conditions provided below:

1. Commencing with the payroll paid on August 3, 2007 through August 31, 2007, Founder has agreed to reduce his Base Salary to Three Hundred Fifty Thousand Dollars ($350,000).

2. Commencing with the payroll paid on September 19, 2007 through November 9, 2007, Founder has agreed to further reduce his Base Salary to Three Hundred Thousand Dollars ($300,000).

3. Commencing with the payroll paid on November 23, 2007, Founder has agreed to reduce his Base Salary to zero (subject to California minimum wage requirements); provided that, Founder's Base Salary shall be reset to One Hundred Fifty Thousand Dollars ($150,000) (the "Reset Base Salary") upon Twistbox achieving cash flow break-even, as that term is customarily understood and applied under GAAP, with such cash flow break-even calculation to include Founder's Reset Base Salary, interest payments to ValueAct SmallCap Master Fund, L.P for a period of three (3) months (the "Reduction Period") and such other ordinary and usual amounts, including earned interest income; provided further, however, in the event the Company achieves cash flow break-even ninety (90) days following the Amendment Date, Twistbox shall cause the Board of Directors to convene a subcommittee of independent directors to consider awarding bonuses to Founder, so long as any such award does not result in the Company no longer being cash flow break-even in any given calendar month.

4. Twistbox and Mandalay Media, Inc. ("Mandalay") intend to enter into a plan of merger whereby Twistbox shall become a wholly owned subsidiary of Mandalay ("Merger"). In the event the Merger is not consummated, Founder hereby agrees to waive his right to seek the Severance Period benefits under the Agreement. In exchange for such waiver, Twistbox shall issue to Founder an option to buy One Hundred Twenty-Five Thousand (125,000) shares of common stock of Twistbox at the then current fair market value (the "Option"). The Option shall vest in twelve (12) equal monthly installments commencing upon the first day following Twistbox's final determination not to pursue the Merger.

5. Twistbox hereby agrees and acknowledges that nothing contained herein shall serve as a waiver of any other rights or remedies, in law or equity, which Founder may have by virtue of his Agreement and/or any statutes, laws or regulations governing employer/employee matters.

6. All terms and conditions of the Agreement not specifically and expressly modified or amended herein are hereby ratified and confirmed in all respects and shall remain in full force and effect.

7. Each person who executes this Amendment represents and warrants to each party hereto that he has the authority to do so and to bind each entity as contemplated hereby, and agrees to hold harmless each other party from any claim that such authority did not exist. This Amendment will inure to the benefit of and be binding upon the parties and their respective shareholders, successors and permitted assigns.

**IN WITNESS WHEREOF,** the parties hereto have executed this Amendment as of the Amendment Date set forth above.

TWISTBOX ENTERTAINMENT, INC. FOUNDER (AS SUCCESSOR-IN-INTEREST TO THE WAAT CORPORATION)

By: /s/ David Mandell
Name: David Mandell
Title: EVP/General Counsel

FOUNDER

By: /s/ Ian Aaron
Name: Ian Aaron
Title: President/CEO

**SECOND AMENDMENT TO EMPLOYMENT AGREEMENT**

This second amendment ("Second Amendment") is effective as of February 12, 2008 ("Amendment Date") by and between Twistbox Entertainment, Inc. (as successor-in-interest to the WAAT Corporation) ("Twistbox") and Ian Aaron ("Employee"), and amends that certain Letter Agreement dated May 16, 2006 by and between Twistbox and Employee, as amended (the "Agreement"). Unless otherwise defined herein, defined terms shall have their meanings as set forth in the Agreement.

**RECITALS**

**WHEREAS,** Twistbox and Mandalay Media, Inc. ("Mandalay") have entered into that certain Agreement and Plan of Merger dated December 31, 2007, as amended, pursuant to which Employee has agreed to sell, transfer, assign and convey all of his capital stock in Twistbox to Mandalay in exchange for common stock of Mandalay;

**WHEREAS**, Twistbox and Employee believe it is in the best interest of Twistbox and Employee to mutually agree to certain modifications to the Agreement; and

**WHEREAS**, the parties hereto desire to memorialize their mutual understandings as contained herein.

**AMENDMENT**

**NOW THEREFORE,** in consideration of the foregoing, Twistbox and Employee desire to further amend and/or modify the Agreement and enter into this Second Amendment on the terms and conditions provided below:

Employee's Agreement shall be modified as follows:

1. Section 2 of the Agreement shall be deleted in its entirety and replaced with the following:

"**EMPLOYMENT TERM**.

The term of your employment under this Letter Agreement (the "**Employment Term**") will be for a term commencing on February 12, 2008 (the "**Effective Date**") and unless terminated earlier as provided in paragraph 6 hereto or extended by mutual consent of you and the Company on terms at least as favorable as those in the final year of the Employment Term, ending on the third anniversary of the Effective Date. On or about August 12, 2010, you and the Company shall meet in good faith to discuss the terms of a renewal, in order to negotiate terms related to, among other things, base salary, bonus percentage and additional grants of stock options."

2. Section 3 of the Agreement shall be deleted in its entirety and replaced with the following:

"A. **Base Salary**. During the Employment Term, the Company will pay to you a base salary at the annual rate of $350,000 from February 12, 2008 through February 11, 2009, $367,500 from February 12, 2009 through February 11, 2010, and $385,875 from February 12, 2010 through February 12, 2011, in accordance with the usual payroll practices of the Company."

3. Sub-paragraph (f) shall be added to Section 5 of the Agreement as follows:

"**Stock Options**. On the Effective Date, the Company shall cause Mandalay to grant to Employee an initial option ("Option") to purchase 600,000 shares of Mandalay's common stock ("Common Shares") at an exercise price equal to the closing price of the Common Shares on the Effective Date. Each Option shall represent the right to acquire one (1) Common Share. The Option shall vest in full and become immediately exercisable as follows: (a) one-third shall immediately vest on the Effective Date, (b) one-third shall vest on the first anniversary of the Effective Date and (c) one-third shall vest on the second anniversary of the Effective Date. The Option shall be evidenced by a written option agreement and be governed by the terms and conditions thereof and the terms and conditions of Mandalay's 2007 Stock Plan. Notwithstanding anything to the contrary, the Option is subject to full accelerated vesting upon a change of control and/or the sale of all or substantially all of the assets of Mandalay."

4. Lines five through nine of sub-paragraph (b) of Section 7 of the Agreement beginning with "(1)" and ending with "(the **"Severance Period"**)" shall be deleted in their entirety and replaced with the following:

"(1) continued payment of your base salary (but not as an employee) in accordance with the usual payroll practices of the Company for a period equal to six (6) months following such termination (the **"Severance Period"**);"

5. Sub-paragraph (e)(2) of Section 6 shall be deleted in its entirety and replaced with the following:

"(2) your being required to relocate to a principal place of employment more than 15 miles from your current location in Sherman Oaks, California; provided, that you acknowledge that the Company is currently seeking to relocate within the Los Angeles, CA area and the Company's first move from its current location to a new location within the Los Angeles area will not be deemed a "Good Reason" hereunder;"

6. Sub-paragraph (c) of Section 7 of the Agreement is hereby deleted in its entirety.

7. Sub-paragraph (a) of Section 9 shall be deleted in its entirety and replaced with the following:

“**Non-Competition.** During the Employment Term and for the twelve month period following expiration or termination of your employment, you will not, directly or indirectly, enter into Competition with the Company or any of its affiliates (the “**Employer**”). “**Competition”** means participating, directly or indirectly, as an individual proprietor, partner, stockholder, officer, employee, director, joint venturer, investor, lender or in any capacity whatsoever in any activities or businesses related to the provisioning of any of the following products and/or services in connection with Mobile Adult WAP, Adult MobileTV, Adult Off-Deck Services, Mobile AVS Systems and Mobile Adult Advertising Services.”

8. All terms and conditions of the Agreement not specifically and expressly modified or amended herein are hereby ratified and confirmed in all respects and shall remain in full force and effect.

9. Each person who executes this Amendment represents and warrants to each party hereto that he has the authority to do so and to bind each entity as contemplated hereby, and agrees to hold harmless each other party from any claim that such authority did not exist. This Amendment will inure to the benefit of and be binding upon the parties and their respective shareholders, successors and permitted assigns.

**[SIGNATURE PAGE FOLLOWS]**

**IN WITNESS WHEREOF**, the parties hereto have executed this Second Amendment as of the Amendment Date set forth above.

TWISTBOX ENTERTAINMENT, INC.
(AS SUCCESSOR-IN-INTEREST TO
THE WAAT CORPORATION)

By: David Mandell
Name: David Mandell
Title: EVP/General Counsel

EMPLOYEE

By: /s/ Ian Aaron
Name: Ian Aaron

**EMPLOYMENT AGREEMENT**

THIS EMPLOYMENT AGREEMENT (the "Agreement") is made and entered into as of the 9th day of May 2006, by and between The WAAT Corp., a stock corporation with offices at 14242 Ventura Blvd, 3rd Floor, Sherman Oaks, CA 91423 USA ("WAAT"), Charismatix, a German limited liability company with offices at Lohbachstraße 12, 58239 Schwerte (the "Company"), and Mr. Eugen Barteska, residing at Senningsweg 8a, 58239 Schwerte, (the "Executive"; WAAT, the Company and Executive collectively the "Parties" and each a "Party").

**WHEREAS,** the Company has offered and desires to employ Executive upon the terms and conditions set forth herein; and

**WHEREAS,** Executive desires to accept such employment by the Company upon the terms and conditions set forth herein.

**NOW, THEREFORE,** in consideration of the premises and the mutual covenants and obligations undertaken herein, the Parties hereto agree as follows:

1. **Employment**

The Company hereby employs Executive and Executive hereby accepts such employment, subject to the terms and conditions herein set forth. Executive shall hold the office of Vice President of the Company reporting to the Chief Executive Officer of the Company.

2. **Term and Termination**

(a) This Agreement shall commence on May 9, 2006 (the "Employment Date") and is entered into for an initial period of four (4) years.

(b) The Executive is entitled to terminate this Agreement after the expiry of the first year under this Agreement by giving three months notice per the end of a calendar month.

(c) Unless one Party terminates the Agreement three months prior to the expiration of the initial period or the subsequent periods as per this subsection, the term of this Agreement shall be automatically extended for further one-year periods, subject however to subsection (b) above.

(d) Either Party may terminate the employment for Cause *(aus wichtigem Grund)* without a notice period. Notwithstanding German law, for the purposes hereof, the term "Cause" shall in particular, but not limited thereto, mean: (i) Executive's repeated failure or refusal to perform his duties or Executive's material breach of this Agreement where such conduct or breach shall not have ceased within fifteen (15) days following written warning from the Company; (ii) Executive's performance of any act or his failure to act, for which if Executive were prosecuted and convicted, would constitute a crime or offense involving money or other property of the Company or its subsidiaries or other affiliates, or a felony in the jurisdiction involved; (iii) any attempt by Executive to secure any personal profit in connection with the business of the Company or any of its subsidiaries or other affiliates, except where Executive can demonstrate that there is no misappropriation of any corporate opportunity; (iv) Executive's engagement in a fraudulent act which could cause damage or prejudice to the Company or its subsidiaries or other affiliates or in conduct or activities which could be materially damaging to the property, business or reputation of Company or its subsidiaries or other affiliates, all as reasonably determined by the Board of Directors; (v) any act or omission by Executive involving willful misconduct or gross negligence in the performance of Executive's duties to the material detriment of the Company or its subsidiaries or other affiliates; (vi) the entry of an order of a court that remains in effect and is not discharged for a period of at least sixty (60) days, which enjoins or otherwise limits or restricts the performance by Executive under this Agreement, relating to any contract, agreement or commitment made by or applicable to Executive in favor of any former employer or any other person; (vii) the engaging by Executive in any business other than the business of the Company and its subsidiaries or other affiliates which interferes with the performance of his material duties hereunder; (viii) any breach by Executive of his non-compete, non-disclosure and/or non-solicitation obligations pursuant to this Agreement; or (ix) any false representation made by Executive in connection with the employment contemplated hereunder. Upon termination of Executive's employment for cause, Executive shall not be entitled to any amounts or benefits hereunder other than such portion of Executive's annual salary pursuant to Section 3(a) hereof, and reimbursement of expenses pursuant to Section 4 hereof as has been accrued through the effective date of his termination of employment.

(e) Notice of termination must be given in writing.

3. **Compensation**

(a) **Salary** As compensation for the employment services to be rendered by Executive hereunder, including all services as an officer of the Company and any of its subsidiaries or other affiliates, the Company agrees to pay, or cause to be paid, to Executive, and Executive agrees to accept, an annual gross salary of EUR 125,000 (the "Base Salary"), payable in arrears in twelve (12) monthly instalments at the end of each calendar month. Executive's compensation hereunder shall be increased annually at a rate of three (3) per cent. For the period from February 1, 2006 until the date of this Agreement, the Executive shall receive an amount of EUR 33,940, less the amount of any withdrawal during such period.

(b) **Bonus** At the sole discretion of the Company, Executive shall further be entitled to receive an annual bonus of up to 25% of his Base Salary (the "Bonus"). The actual amount of the Bonus, if any, shall be determined by the board of directors of WAAT.

(c) **Stock Options** On the Effective Date, Executive will receive two hundred thirty seven thousand nine hundred and fourty-six (237,946), options (the "Options") in accordance with The WAAT Corporation 2006 Stock Incentive Plan (the "Plan"). The Options can be exercised for shares of voting common stock in WAAT at an exercise price equal to US$0.35 per share. These Options vest on a linear basis during a four year period starting from the Employment Date as follows: (i) upon completion of the first year of employment, 59,486 shares shall vest; (ii) thereafter, 14,871 shares shall vest at the completion of each quarter with an additional 8 shares vesting at the completion of the last quarter of the fourth year of employment. All Options will vest upon the occurrence of a Change of Control in WAAT as defined in Section 10.2 of the Plan, in case of an Initial Public Offering of WAAT and upon termination of this Agreement by the Company other than for Cause. "Initial Public Offering" shall mean the closing of a firm commitment underwritten public offering of WAAT's Common Stock resulting in gross proceeds (before underwriting discounts and commissions, if any) to WAAT of at least US$15.0 million.

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(d) **Benefit Plans** Executive shall be entitled to participate in all benefit plans for which Executive qualifies that are generally available to other employees of WAAT under WAAT's general employee policies. WAAT reserves the right to amend the general employee policies from time to time.

(e) **No extra overtime work compensation** By payment of the above-mentioned total remuneration all activities which Executive must perform under this Agreement shall be deemed compensated. In particular, Executive shall not be entitled to any additional compensation for overtime work.

4. **Expenses**

The Company shall pay or reimburse Executive, upon presentment of suitable receipts and within the applicable German tax regulations, for all reasonable business and travel expenses which are incurred or paid by Executive in connection with his employment,hereunder, provided that such expenses are approved in advance by the Company, Executive shall keep such records as the Company may deem necessary to meet the requirements of the German tax law.

5. **Vacation, Direct Insurance and Other Benefits**

(a) Executive shall be entitled to thirty (30) days of paid vacation per year. Saturdays are not considered working days. The time of vacation shall duly be agreed between the Company and the Executive, taking into consideration both the business requirements of the Company and the personal wishes of the Executive. The total vacation has to be taken in the given calendar year. In case the vacation cannot be taken due to special personal or business-related reasons, the vacation may be carried over until 31 March of the following calendar year. If the vacation is not taken by that date the vacation entitlement lapses.

(b) The Company shall provide Executive social benefits, including payment of medical health insurance contributions, in accordance with German social security law.

6. **Duties and Services**

(a) Executive shall perform such reasonable duties and functions as the Chief Executive Officer shall from time to time determine and Executive shall comply in the performance of his duties with the policies of, and be subject to the direction of, the Chief Executive Officer of the Company.

(b) Executive shall be obliged to procure business for the Company in Germany, cooperate in the conclusion and completion of contracts and use his best efforts to support the Company in all its business activities.

(c) During the term of this Agreement, Executive shall devote all of his working time and attention, the specified vacation time and absences for sickness excepted, to the business of the Company, as necessary to properly fulfill his duties. Executive shall perform the duties assigned to him with fidelity and to the best of his ability. All other activities for remuneration as well as activities, which normally entitle him to remuneration, including any part-time work or self-employed work, are prohibited unless the Company has explicitly given its prior written consent. The Company will grant such consent if business requirements are not affected by the activities. Notwithstanding anything herein to the contrary, Executive may engage in other non-employment activities so long as such activities do not unreasonably interfere with Executive's performance of his duties hereunder and do not violate Section 9 hereof.

(d) Nothing in this Agreement shall be construed to prevent Executive from investing or trading in non-conflicting investments as he sees fit for his own account, including real estate, stocks, bonds, securities, commodities or other forms of investments.

(e) The principal location at which Executive shall perform his duties hereunder shall be the location of the Company, or at such other location as may be mutually agreed upon between the Parties.

7. **Inability to Perform Duties**

(a) Executive is obliged to inform the Company without delay of any inability to perform his duties and the expected duration. Upon request, he shall inform the Company of the reasons for such absence.

(b) In case of sickness lasting longer than three (3) calendar days, Executive is obliged to submit a medical certificate on his incapacity to work and its prospective duration not later than on the following working day. The Company is entitled to demand an earlier submission of the medical certificate. If his absence continues longer than indicated in the medical certificate, Executive is obliged to submit a new medical certificate within three (3) days after the end of the period certified. Also in this case, Executive is obliged to inform the Company immediately of the continuation of the indicted absence. The notification may be given by telephone call.

(c) In the event of sickness or accident, the Company shall continue to pay the monthly base salary pursuant to Section 3(a) for a period of six weeks.

(d) If Executive has compensation claims against third parties due to the loss of his earnings, caused by the inability to work, he shall assign such claims to the Company in the amount of the continued payment of salary. This shall not include any payments pursuant to insurance agreements concluded by the Executive.

8. **Representations and Agreements of Executive**

(a) Executive represents and warrants that he is free to enter into this Agreement and to perform the duties required hereunder, and that there are no employmentcontracts or understandings, restrictive covenants or other restrictions, whether written or oral, relating to or preventing the performance of his duties hereunder.

(b) Executive agrees to cooperate and supply such information and documents as may be reasonably required by any insurance company in connection with any type of insurance or fringe benefit as the Company shall determine from time to time to obtain.

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9. **Non - Competition**

(a) In view of the unique and valuable services expected to be rendered by Executive to the Company, Executive's knowledge of the Company's trade secrets and other proprietary information made available to Executive relating to the business and in consideration of the compensation to be received hereunder, Executive agrees that during his employment (the “Contractual Non-Competition Period”) by the Company, and following the termination of Executive's employment hereunder for a further period of twelve (12) months (the “Post-Contractual Non-Competition Period”, together with the Contractual Non-Competition Period the “Non-Competition Period”), Executive shall not, directly or indirectly, whether as owner, partner, joint venturer, stockholder, employee, agent, principal, corporate officer, director, licensor, or in any capacity whatsoever engage in, become financially interested in, be employed by, or render any consultation or business advice with respect to any person, firm, corporation, business or other organization engaged in fields of development and marketing of software, media design, multimedia entertainment as well as services, and in the business of an advertising agency in Germany, where, at the time of the termination of his employment hereunder, the business of the Company or any of its subsidiaries or other affiliates is being conducted, or is proposed to be conducted as set forth in the Company's then current annual plan for operation within the Non-Competition Period, in any manner whatsoever, provided, however, that Executive may passively own any securities of any corporation which is engaged in such business and is publicly owned and traded on a recognized national securities exchange but in an amount not to exceed at any one time five percent (5%) of any class of stock or securities of such corporation.

(b) In addition, Executive shall not, directly or indirectly, during the Non-Competition Period, request or cause any suppliers or customers with whom the Company or any of its subsidiaries or other affiliates has a business relationship to cancel, terminate or diminish any such business relationship with the Company or any of its subsidiaries or other affiliates or solicit, interfere with or entice from the Company any employee of the Company or any of its subsidiaries or other affiliates.

(c) The obligations pursuant to Section 9(a) and (b) shall apply for Germany. If the area in which the Company engaged in its business activities changes, or if the area in which Executive performed his work duties changes within the term of this Agreement, the obligations pursuant to Section 9(a) and (b) shall apply for the area in which the Company engaged in its business activities at the time of the termination of this Agreement and for the area in which Executive performed his work duties within the past two (2) years.

(d) During the Post-Contractual Non-Competition Period the Company shall pay Executive compensation in the amount of US$ 83,237.35 (the “Compensation”). The Compensation is to be paid as a one-time lump-sum at the beginning of the Post-Contractual Non-Competition Period. Executive will be entitled to the Compensation even if the Company waives its rights under this non-competition covenant with respect to the Post-Contractual Non-Competition Period. Any amounts, be it in cash or in kind (including any benefits received from unemployment insurance) Executive will receive, earn in the course of any other employment or engagement or would have earned had he not maliciously failed to pursue other opportunities during the Post-Contractual Non-Competition Period shall be set-off from any further compensation which has to be paid pursuant to mandatory German law, if any, to the extent legally permissible. Executive shall, upon request by the Company, provide information with respect to the amount of his earnings and details of the respective employer.

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(e) Executive undertakes to pay a contractual penalty in the amount of EUR 10,000 for each case of breach of his obligation pursuant to Section 9(a) and (b). The aforementioned penalty shall be due for each additional month or portion thereof during which such violation persists. As long as Executive is in breach of his obligations pursuant to Section 9(a) and (b), the Company shall not be obliged to pay to Executive the compensation set forth in Section 9(c). The Company reserves the right to claim further damages.

(f) Sections 74 et seq. of the German Commercial Code *(Handelsgesetzbuch)* shall apply accordingly.

(g) If any portion of the restrictions set forth in this Section 9 should, for any reason whatsoever, be declared invalid by a court of competent jurisdiction, the validity or enforceability of the remainder of such restrictions shall not thereby be adversely affected.

10. **Copyrights**

Executive hereby irrevocably assigns to the Company all exclusive rights to all copyrightable work products originating from or in connection with Executive's performance of duties and tasks within and during his employment relationship with the Company. The Company may assign such rights and may publish the work products. The assignment of rights and exploitation of work products by the Company shall be deemed compensated by the remuneration paid to Executive. Executive hereby waives his right to be named as an author of the work products and his right to publish the work products.

11. **Inventions and Discoveries**

Irrespective of the German Act on Employee's Inventions *(Arbeitnehmererfindungsgesetz)* which shall remain applicable, Executive (i) shall fully disclose to the Company, and with all necessary detail for a complete understanding of the same, all developments, know-how, discoveries, inventions, improvements, concepts, ideas, writings, formulae, processes and methods (whether copyrightable, patentable or otherwise) made, received, conceived, acquired or written during-working hours, or otherwise, by Executive during the period of his employment with, or rendering of advisory or consulting services to, the Company or any of its subsidiaries or other affiliates, solely or jointly with others in or relating to any activities of the Company or its subsidiaries or other affiliates known to him as a consequence of his employment or the rendering of advisory and consulting services hereunder (collectively, the "Subject Matter"), and (ii) shall assign and transfer, and agrees to assign and transfer, to the Company, at the Company's expense, all his rights, title and interest in and to the Subject Matter, and Executive further agrees to deliver to the Company any and all drawings, notes, specifications and data relating to the Subject Matter, and to execute, acknowledge and deliver all such further papers, including applications for copyrights or patents, as may be necessary to obtain copyrights and patents for any thereof in any and all countries and to vest title thereto to the Company. Executive shall assist the Company in obtaining such copyrights or patents during the term of this Agreement, and any time thereafter on reasonable notice and at mutually convenient times, and Executive agrees to testify in any prosecution or litigation involving any of the Subject Matter; provided, however, that Executive shall be reasonably compensated for his time and reimbursed for any out-of-pocket expenses incurred in rendering such assistance or giving or preparing to give such testimony.

12. **Non - Disclosure of Confidential Information, Return of Working Material**

(a) Executive shall not, during the term of this Agreement, or at any time following termination of this Agreement, directly or indirectly, disclose or permit to be known (other than as is required in the regular course of his duties (including without limitation disclosures to the Company's advisors and consultants) or is required by law (in which case Executive shall give the Company prior written notice of such required disclosure) or with the prior written consent of the Company), to any person, firm or corporation, any confidential information acquired by him during the course of, or as an incident to, his employment or the rendering of his advisory or consulting services hereunder, relating to the Company or any of its subsidiaries or other affiliates, any client of the Company or any of its subsidiaries or other affiliates, or any corporation, partnership or other entity owned or controlled, directly or indirectly, by any of the foregoing, or in which any of the foregoing has a beneficial interest, including, but not limited to, the business affairs of each of the foregoing. Such confidential information shall include, but shall not be limited to, proprietary technology, trade secrets, patented processes, research and development data, know-how, financial statements and data, market studies and forecasts, competitive analyses, pricing policies, employee lists, personnel policies, the substance of agreements with customers, suppliers and others, marketing or dealership arrangements, servicing and training programs and arrangements, customer lists and any other documents embodying such confidential information. This confidentiality obligation shall not apply to any confidential information which thereafter becomes publicly available other than pursuant to a breach of this Section 12(a) by Executive.

(b) All information and documents relating to the Company and its subsidiaries or other affiliates as hereinabove described (or other business affairs) shall be the exclusive property of the Company, and Executive shall use best efforts to prevent any publication or disclosure thereof. Upon termination of Executive's employment with the Company, all documents, records, reports, writings and other similar documents containing confidential information, including copies thereof, then in Executive's possession or control shall be returned and left with the Company.

13. **Release from Obligation to Work**

(a) If one of the Parties has given notice of termination, the Company is entitled to release Executive from his obligation to work at any time until the end of the notice period. Any open vacation claims shall be deemed to be compensated by such period of release.

(b) In case Executive receives remuneration due to another employment, service or consultancy contract during the period of release, its amount shall be deducted from the salary he receives from the Company, except for the part of the period of release during which Executive takes his remaining vacation.

(c) Executive has to inform the Company, without being asked, about any remuneration he obtains apart from the salary he receives from the Company. This duty to inform also includes the amount of the remuneration. If the Company so requires, Executive has to prove this information by presenting auditable records.

(d) At any time upon the request of the Company, and without solicitation after notice of termination of the employment relationship, irrespective of the Party giving notice, Executive shall return all working materials and other items belonging to the Company, in particular business documents and copies thereof. Executive has no right of retention and no damage compensation claims.

14. **Amendment or Alteration**

No amendment or alteration of the terms of this Agreement shall be valid unless made in writing and signed by all of the Parties hereto.

15. **Governing Law**

This Agreement shall be governed by, and be construed in accordance with, the laws of the Federal Republic of Germany.

16. **Severability**

In the case that one or more provisions of this Agreement shall be invalid, unenforceable or impracticable, this shall not affect the validity and enforceability of the other provisions of this Agreement. In such case the Parties agree to recognize and give effect to such valid, enforceable and practicable provision or provisions which reflect as closely as possible the commercial intention of the Parties associated with the invalid or unenforceable provision. The same shall apply in the event that the Agreement contains any omissions *(VertragslÜcken).*

17. **Notices**

Any notices required or permitted to be given hereunder shall be sufficient if in writing, and if delivered by hand or courier, or sent by certified mail, return receipt requested, to the addresses set forth above or such other address as either Party may from time to time designate in writing to the other, and shall be deemed given as of the date of the delivery or at the expiration of three days in the event of a mailing.

18. **Data Protection**

(a) Executive consents to the collection, processing and use of personal data, as far as this is necessary for the performance of this Agreement.The data may be used only for the purpose of performing this Agreement and may be communicated only within the Company or its subsidiaries or other affiliates. They can only be made accessible to those persons who are competent to work on confident personal matters and who are bound to secrecy.

(b) Within the scope of the above- mentioned limits, Executive consents to the transmission of these data within Germany as well as abroad.

19. **Waiver or Breach**

It is agreed that a waiver by either Party of a breach of any provision of this Agreement shall not operate, or be construed, as a waiver of any subsequent breach by that same Party.

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20. **Entire Agreement and Binding Effect**

This Agreement contains the entire agreement of the Parties with respect to the subject matter hereof, supersedes all prior agreements, both written and oral, between the Parties with respect to the subject matter hereof and may be modified only by a written instrument signed by each of the Parties hereto. This Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective legal representatives, heirs, distributors, successors and assigns, provided, however, that Executive shall not be entitled to assign or delegate any of his rights or obligations hereunder without the prior written consent of the Company.

21. **Survival**

Except as otherwise expressly provided herein, the termination of Executive's employment hereunder or the expiration of this Agreement shall not affect the enforceability of Sections 4, 9, 10, 11, 12 and 13 hereof.

22. **Further Assurances**

The Parties agree to execute and deliver all such further documents, agreements and instrunents and take such other and further action as may be necessary or appropriate to carry out the purposes and intent of this Agreement.

23. **Construction of Agreement**

No provision of this Agreement or any related document shall be construed against or interpreted to the disadvantage of any Party hereto by any court or other governmental or judicial authority by reason of such Party having or being deemed to have structured or drafted such provision.

24. **Headings**

The Section headings appearing in this Agreement are for the purposes of easy reference and shall not be considered a part of this Agreement or in any way modify, amend or affect its provisions.

25. **Counterparts and Facsimile Signatures**

This Agreement may be signed in counterparts with the same effect as if the signatures to each counterpart were upon a single instrument, and all such counterparts together shall be deemed an original to this Agreement. For the purposes of this Agreement, a facsimile copy of a Party's signature shall be sufficient to bind such Party.

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**IN WITNESS WHEREOF,** the Parties hereto have executed this Agreement as of the date and year first above written.

**The WAAT Corp.**

By: /s/ Ian Aaron

Name: Ian Aaron
Title: Chief Executive Officer

**Charismatix Ltd. & Co. KG**

**By:** /s/ Ian Aaron

Name:
Title:

**The Executive:**

**By:** /s/Eugen Barteska

Eugen Barteska



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# EMPLOYMENT AGREEMENT

This Employment Agreement (the "Agreement") is entered into by and between THE WAAT CORPORATION., a corporation organized under the laws of California with its principal offices located at 14242 Ventura Boulevard, Sherman Oaks, California 91423 (the "Company, which shall include any parent or holding company") and David Mandell ("Employee"), as of June 5, 2006 ("Effective Date").

## I. EMPLOYMENT.

The Company hereby employs Employee and Employee hereby accepts such employment, upon the terms and conditions hereinafter set forth, from June 5, 2006 ("Employment Date"), to and including June 30, 2009 (the "Term"). This Agreement is subject to renewal only as set forth in Section VI below. In the event the Agreement is renewed pursuant to Section VI below, reference to the Term in this Agreement shall also refer to such renewal term.

## II. DUTIES.

A. Employee shall serve during the course of his employment as Executive Vice President, General Counsel and Corporate Secretary of the Company and shall have such other duties and responsibilities as are consistent with those generally performed by the Executive Vice President, General Counsel and Corporate Secretary of a similarly situated company as the Chief Executive Officer of the Company shall determine from time to time, including the authority to hire and fire appropriate legal and administrative staff personnel. The Company shall provide Employee with all reasonable and necessary business equipment to allow Employee to perform such duties and responsibilities. The Company retains absolute discretion to reorganize the Company from time to time and that nothing in this Agreement shall in any way affect or limit such discretion; provided that, such reorganization shall not serve to diminish or otherwise materially alter Employee's position as Executive Vice President, General Counsel and Corporate Secretary after any such reorganization.

B. Employee agrees to devote substantially all of his time, energy and ability to the business of the Company. Nothing herein shall prevent Employee, upon approval of the Board of Directors of the Company, from serving as a director or trustee of other corporations or businesses which are not in direct competition with the business of the Company or in direct competition with any present or future affiliate of the Company; provided, however, that no approval of the Board of Directors of the Company shall be required for Employee to continue to serve as a director of any company of which he was a director as of the Effective Date so long as such company is not in direct competition with the Company. Nothing herein shall prevent Employee from (i) investing in real estate for his own account, (ii) becoming a partner or a stockholder in any corporation, partnership or other venture not in direct competition with the business of the Company or in direct competition with any present affiliate of the Company, or (iii) becoming up to a 5% stockholder in any publicly held corporation whether or not in competition with the business of the Company or in competition with any present or future affiliate of the Company.

C. For the Term of this Agreement, Employee shall report to the Chief Executive Officer of the Company and serve as a member of the Company's core executive team, regardless of any reorganization of the Company.

III. COMPENSATION.

A. The Company will pay to Employee a base salary at the annual rate of $300,000 from June 5, 2006 through June 4, 2007, $315,000 from June 5, 2007 through June 4, 2008 and $330,750 from June 5, 2008 through June 30, 2009. Such salary shall be earned monthly and shall be payable in periodic installments no less frequently than monthly in accordance with the Company's customary practices. Amounts payable shall be reduced by standard withholding and other authorized deductions. The Company may in its discretion increase Employee's salary beyond these set amounts but it may not reduce it during the Term or any extension thereof.

B. Annual Bonus. Employee shall be paid an annual bonus (the "Bonus") at the Company's sole discretion based upon Employee's performance and the performance of the Company with a target Bonus of thirty-five percent (35%) of the then-current base salary, such Bonus to be determined and paid on the Company's fiscal year basis to the extent and in such manner as determined with such other comparable senior executives of the Company.

C. Welfare Benefit Plans. Employee and/or his family, as the case may be, shall be eligible for participation in and shall receive all benefits under welfare benefit plans, practices, policies and programs provided by the Company (including, without limitation, medical, prescription, dental, vision, disability, salary continuance, employee life, group life, accidental death, travel accident insurance plans and programs and 401K Plan) to the extent applicable generally to other comparable senior executives of the Company.

D. Expenses. Employee shall be entitled to receive prompt reimbursement for all reasonable employment expenses incurred by him in accordance with the policies, practices and procedures as in effect generally with respect to other comparable senior executives of the Company.

E. Fringe Benefits. Employee shall be entitled to fringe benefits in accordance with the plans, practices, programs and policies as in effect generally with respect to other comparable senior executives of the Company.

F. Vacation. Employee shall be entitled to four (4) weeks paid vacation each year which shall be taken in accordance with the policies and practices as in effect generally with respect to other comparable senior executives of the Company.

G. Stock Options. The Company shall grant to Employee on June 5, 2006 ("First Issue Date"), subject to Compensation Committee approval and the vesting provisions described in this Agreement, nonqualified stock options (the "Options") under the Company's 2006 Stock Incentive Plan, as amended (the "Plan"), to acquire seventy five thousand (75,000) shares of the Company's Common Stock ("Common Shares") at the exercise price per Common Share under each such Option of Thirty Five Cents ($0.35). The Company shall grant to Employee on June 5, 2007 ("Second Issue Date") an additional seventy five thousand (75,000) shares of the Company's Common Shares at the exercise price per Common Share under each such Option determined at the time of grant and no greater than the Series B financing purchase price. Each Option shall represent the right to acquire one (1) Common Share. Subject to earlier termination of the Options as described below, the Options shall vest in full and become immediately exercisable as follows: (a) twenty five percent (25%) on the first anniversary of the First Issue Date and the remaining seventy five percent (75%) in equal quarterly installments over the three (3) year period following the first anniversary of the First Issue Date and (b) twenty five percent (25%) on the first anniversary of the Second Issue Date and the remaining seventy five percent (75%) in equal quarterly installments over the three (3) year period following the first anniversary of the Second Issue Date. The Options shall expire on the first to occur of (i) the close of business on the last business day of the Company coinciding with or immediately preceding the day before the tenth anniversary of the Effective Date, (ii) the termination of the Options pursuant to the Plan, or (iii) the termination of the Options in connection with a termination of Employee's employment with the Company as contemplated by the Option Agreement. The Options shall be evidenced by a written option agreement in the form attached hereto as Exhibit A (the "Option Agreement"). In addition to any provision contained in the Plan and/or the Option Agreement, all Options are subject to full accelerated vesting upon an underwritten initial public offering of the securities of the Company and/or a Change of Control of the Company. At the Company's sole discretion, to the extent other comparable executives of the Company are granted additional Options, Employee shall be granted additional Options.

H. The Company reserves the right to modify, suspend or discontinue any and all of the plans, practices, policies and programs described in Sections III-C, III-D, and III-E above at any time without recourse by Employee so long as such action is taken generally with respect to other comparable senior executives, is not applied retroactively, and does not single out Employee. Notwithstanding such right, in the event the Company ceases to provide medical insurance, the Company shall reimburse Employee for premiums paid for COBRA continuation of medical insurance during the Term and any renewal.

IV. TERMINATION.

A. Death or Disability. Employee's employment shall terminate automatically upon Employee's death. If a Disability of Employee has occurred (pursuant to the definition of Disability set forth below), the Company may give to Employee written notice of its intention to terminate Employee's employment. In such event, Employee's employment with the Company shall terminate effective on the 120th day after receipt of such notice by Employee, provided that, within the 120 days after such receipt, Employee shall not have returned to full-time performance of his duties. For purposes of this Agreement, "Disability" shall mean either a physical or mental impairment which substantially limits a major life activity of Employee and which renders Employee unable to perform the essential functions of his position, even with reasonable accommodation which does not impose an undue hardship on the Company for an aggregate of 120 days in any twelve-month period. The determination of Disability under the preceding sentence, shall be based upon information supplied by Employee and/or his medical personnel, as well as information from medical personnel (or others) selected by the Company. In the event Employee's health care provider and the Company do not agree as to whether Employee has a Disability, Employee and the Company shall appoint a third-party qualified physician who shall evaluate Employee and provide a determination of whether Employee has a Disability.

B. Cause. The Company may terminate Employee's employment for "Cause" in the event the Employee has engaged in or committed: willful misconduct; gross negligence; theft, or fraud; any willful act that is reasonably likely to and which does in fact have the effect of materially injuring the reputation, business or a business relationship of the Company; and material breach of any material term of this Agreement. In the event the Company determines that Cause for termination exists based upon willful misconduct or gross negligence, the Company shall give Employee fourteen (14) days prior written notice of such termination which notice shall include reasonable detail as to the ground for such termination. If such ground is curable, Employee shall be given thirty (30) days from the date of such notice to cure such ground for termination for Cause. After the expiration of any such cure period, the Company shall make a good faith determination as to whether Employee has cured such ground for termination for Cause and shall give written notice thereof to the Employee which, in the case of a determination that Employee has failed to cure, shall include reasonable detail as to why Employee's efforts to cure were not adequate. Notwithstanding anything to the contrary set forth in this Section IV-B, the Company shall not have the right to terminate the Employee for "Cause" after the expiration of six (6) months from discovery by the Company of the conduct or circumstances that are the basis for such termination.

C. Good Reason. Employee may terminate employment for Good Reason. For purposes of this Agreement, "Good Reason" shall mean any of the following: (i) the Company requires Employee to relocate his principal office more than 25 miles from the Company's current principal place of business without Employee's consent; (ii) the Company assigns Employee to a position other than Executive Vice President, General Counsel and Corporate Secretary of the Company without Employee's consent; (iii) the Company requires Employee to report directly to any officer other than Ian Aaron, Chief Executive Officer, without Employee's consent; (iv) Ian Aaron is no longer the Chief Executive Officer of the Company (v) the Company substantially diminishes Employee's duties or responsibilities; and/or (vi) the Company fails to pay any amounts owed to Employee when due or otherwise materially breaches any material term of this Agreement. Before terminating his employment with Good Reason under subsections (i) - (vi), Employee shall give the Company written notice of his intent to terminate for Good Reason and the basis therefore, and the Company shall have thirty (30) days to cure (the "Cure Period") the Good Reason. At the end the Cure Period, Employee shall determine in good faith determination as to whether the Company has cured such Good Reason. If Employee determines that the Company has failed to cure the Good Reason within the Cure Period, Employee may terminate his employment and this Agreement upon an additional ten (10) days' written notice which notice shall include reasonable detail as to why the Company's efforts to cure such Good Reason were inadequate. For all purposes under this Agreement, any termination by Employee with Good Reason shall be treated as a termination without Cause and Employee shall be entitled to the payments and benefits set forth in Section IV-E-3 pursuant to its terms.

D. Other than Cause or Death or Disability. The Company may terminate Employee's employment at any time, with or without cause, upon ninety (90) days' written notice.

E. Obligations of the Company Upon Termination.

1. Death or Disability. If Employee's employment is terminated by reason of Employee's Death or Disability, this Agreement shall terminate without further obligations to Employee or his legal representatives under this Agreement (except as provided in this Section IV-E-1), other than for (a) payment of the sum of (i) Employee's annual base salary through the date of termination to the extent not theretofore paid, (ii) Employee's pro rata portion of the Bonus (based on the number of days elapsed prior to termination) for the calendar year during which the Employee's Death or Disability occurs, and (iii) any compensation previously deferred by Employee (together with any accrued interest or earnings thereon) and any accrued vacation pay, in each case to the extent not theretofore paid (the sum of the amounts described in clauses (i), (ii), and (iii) shall be hereinafter referred to as the "Accrued Obligations"), which shall be paid to Employee or his estate or beneficiary, as applicable, in a lump sum in cash within thirty (30) days of the date of termination; (b) payment to Employee or his estate or beneficiary, as applicable, any amounts due pursuant to the terms of any applicable welfare benefit plans, and (c) to the extent termination is due to Disability, until the earlier of the end of such Disability and June 30, 2009 (or the end of the renewal, if any), continued participation in medical, dental, hospitalization and life insurance coverage and in all other plans and programs in which Employee was participating (on the same basis he was participating) on the date of termination. Upon a termination as a result of Death or Disability, the Options, and any other options granted to Employee by the Company during his employment, to the extent outstanding and not previously vested at the time of such termination, shall thereupon vest in full and shall continue to be exercisable for a period of three (3) years after such termination.

2. Cause. If Employee's employment is terminated by the Company for Cause, this Agreement shall terminate without further obligations to Employee other than for the timely payment of Accrued Obligations. If it is subsequently determined that the Company did not have Cause for termination under Section IV-B, then the Company's decision to terminate shall be deemed to have been a determination by the Company that Employee's services are no longer needed or desired under Section IV-D and the amounts payable under Section IV-E-3 shall be the only amounts Employee may receive thereunder.

3. Other than Cause or Death or Disability. If the Company terminates Employee's employment for other than Cause or Death or Disability, or if Employee terminates his employment with Company for Good Reason, this Agreement shall terminate without further obligations to Employee (except as provided in this Section IV-E-3) other than for (a) the immediate payment of Accrued Obligations; (b) upon Employee's execution, and non-revocation, of a release substantially in the form attached hereto as Exhibit B, immediate lump sum payment to Employee of a sum equal to the balance of base salary payments for all remaining years of this Agreement and Bonus had Employee remained employed through the end of the Term or renewal, less standard withholdings and other authorized deductions; and (c) reimbursement to Employee of all premiums paid for COBRA continuation of medical insurance until the earlier of (i) Employee becomes eligible for group medical insurance with another employer or (ii) twelve (12) months. Furthermore, if the Company terminates Employee's employment for other than Cause, Death or Disability, or if Employee terminates his employment with Company for Good Reason, the Options, and any other options granted to Employee by the Company during his employment, to the extent outstanding and not previously vested at the time of such termination, shall thereupon vest in full and shall continue to be exercisable for a period of three (3) years after such termination.

4. Termination By Employee Other than for Good Reason. Employee may terminate his employment with Company upon 30 days' written notice for any reason other than Good Reason, Death or Disability. For all purposes under this Agreement, any such termination by Employee shall be treated as a termination for Cause.

5. Exclusive Remedy; No Mitigation. Employee agrees that the payments contemplated by this Agreement shall constitute the exclusive and sole remedy for any termination of his employment and Employee covenants not to assert or pursue any other remedies, at law or in equity, with respect to any termination of employment. The Company agrees that the payments contemplated by the Agreement shall not be reduced by any compensation Employee may receive as a result of employment by any other person or entity after the termination of his employment.

V. ARBITRATION.

Any controversy arising out of or relating to this Agreement, its enforcement or interpretation, or because of an alleged breach, default, or misrepresentation in connection with any of its provisions, or any other controversy arising out of Employee's employment, including, but not limited to, any state or federal statutory claims, shall be submitted to arbitration in Los Angeles, California, before a sole arbitrator selected from the American Arbitration Association ("AAA"), and shall be conducted in accordance with the AAA rules for the resolution of Employment Disputes as the exclusive forum for the resolution of such dispute; provided, however, that provisional injunctive relief may, but need not, be sought by either party to this Agreement in a court of law while arbitration proceedings are pending, and any provisional injunctive relief granted by such court shall remain effective until otherwise modified by the Arbitrator; provided, however, that such provisional injunctive relief shall be sought in aid and in advance of the arbitration only. Final resolution of any dispute through arbitration may include any remedy or relief which the Arbitrator deems just and equitable, including any and all remedies provided by applicable state or federal statutes. At the conclusion of the arbitration, the Arbitrator shall issue a written decision that sets forth the essential findings and conclusions upon which the Arbitrator's award or decision is based. Any award or relief granted by the Arbitrator hereunder shall be final and binding on the parties hereto and may be enforced by any court of competent jurisdiction. The parties acknowledge and agree that they are hereby waiving any rights to trial by jury in any action, proceeding or counterclaim brought by either of the parties against the other in connection with any matter whatsoever arising out of or in any way connected with this Agreement or Employee's employment. Employee and Company agree that in any proceeding to enforce the terms of this Agreement, the prevailing party shall be entitled to its or his reasonable attorneys' fees and costs (including forum costs associated with the arbitration) incurred by it or him in connection with resolution of the dispute in addition to any other relief granted.

VI. RENEWAL.

This Agreement shall automatically renew for one additional term of three (3) years, commencing July 1, 2009, unless either Employee or the Company gives the other written notice on or before April 1, 2009), of an intent not to renew. If this Agreement is to renew, Employee and the Company shall meet in good faith to discuss the terms of the renewal prior to May 1, 2009 to negotiate new terms related to, among other things, base salary, bonus percentage and additional grants of stock options. In the event the Company notifies Employee in writing of its election not to renew, this Agreement shall expire and terminate on June 30, 2009 and the Company shall pay Employee a lump sum payment equal to six (6) months of Employee's then-current base salary and shall reimburse Employee for all premiums paid for COBRA continuation of medical insurance for a period not to exceed six (6) months. Furthermore, if the Company elects not to renew, the Options, and any other options granted to Employee by the Company during his employment, to the extent outstanding and not previously vested at the time of such notice of non-renewal, shall thereupon vest in full and shall continue to be exercisable for a period of three (3) years after such notice of non-renewal. In the event Employee notifies the Company of his election not to renew, this Agreement shall expire and terminate on June 30, 2009, and such termination shall be treated for all purposes under this Agreement as a termination by Employee without Good Reason.

VII. ANTISOLICITATION.

Employee promises and agrees that during the term of this Agreement or renewal in accordance with Section VI above, and for a period of twelve (12) months thereafter, he will not influence or attempt to influence any mobile telecommunications operator which distributes the Company's programming, games and services to cease distribution of the Company's programming, games and services with its subscribers and replace it with similar services of any direct competitor with the business of the Company.

IX. SOLICITING EMPLOYEES.

Employee promises and agrees that he will not, during the term of this Agreement and for a period of twelve (12) months following termination of his employment or the expiration of this Agreement or renewal in accordance with Section VI above, directly or indirectly solicit any of the Company employees who earned annually $50,000 or more as a Company employee during the last six months of his or her own employment to work for any business, individual, partnership, firm, corporation, or other entity then in direct competition with the business of the Company or any subsidiary of the Company. For the purposes of this provision, "indirectly solicit" shall mean that Employee has provided name(s) or other identifying information to aid in the solicitation of such person.

X. CONFIDENTIAL INFORMATION.

A. Employee, in the performance of Employee's duties on behalf of the Company, shall have access to, receive and be entrusted with confidential information, including but in no way limited to development, marketing, organizational, financial, management, administrative, production, distribution and sales information, data, specifications and processes presently owned or at any time in the future developed, by the Company or its agents or consultants, or used presently or at any time in the future in the course of its business that is not otherwise part of the public domain (collectively, the "Confidential Material"). All such Confidential Material is considered secret and will be available to Employee in confidence. Except in the performance of duties on behalf of the Company, Employee shall not, directly or indirectly for any reason whatsoever, disclose or use any such Confidential Material, unless such Confidential Material ceases (through no fault of Employee's) to be confidential because it has become part of the public domain. All records, files, drawings, documents, equipment and other tangible items, wherever located, relating in any way to the Confidential Material or otherwise to the Company's business, which Employee prepares, uses or encounters, shall be and remain the Company's sole and exclusive property and shall be included in the Confidential Material. Upon termination of this Agreement by any means, or whenever requested by the Company, Employee shall promptly deliver to the Company any and all of the Confidential Material, not previously delivered to the Company, that may be or at any previous time has been in Employee's possession or under Employee's control, provided however, that Employee may retain in his possession any Confidential Material that reflects the terms of his employment with the Company or the terms or amount of his compensation and benefits.

XI. INDEMNIFICATION. To the maximum extent permitted by applicable law, Company shall indemnify Employee and hold Employee harmless from and against any and all claims, liabilities, judgments fines, penalties, costs and expenses (including, without limitation, reasonable attorneys' fees, costs of investigation and experts, settlements and other amounts actually incurred by Employee in connection with the defense of any action, suit or proceeding, and in connection with any appeal thereon) incurred by Employee in any and all threatened, pending or completed actions, suits or proceedings, whether civil, criminal administrative or investigative (including, without limitation, actions, suits or proceedings brought by or in the name of Company) arising, directly or indirectly, by reason of Employee's status, action or inaction as a director, officer, employee or agent of Company or of an affiliate of Company. The Company shall promptly advance to Employee upon request any and all expenses incurred by Employee in defending any and all such actions, suits or proceedings to the maximum extent permitted by law.

XII. SUCCESSORS.

A. This Agreement is personal to Employee and shall not, without the prior written consent of the Company, be assignable by Employee.

B. This Agreement may not be assigned by the Company without Employee's prior written consent, unless such assignment is made in connection with a Change in Control, in which case, this Agreement shall inure to the benefit of and be binding upon the Company and its successors and assigns and any such successor or assignee shall be deemed substituted for the Company under the terms of this Agreement for all purposes. With respect to any assignment of this Agreement by Company requiring Employee's prior written consent, no such permitted assignment shall relieve the Company of its obligations or liability hereunder unless Employee otherwise agrees in writing.

XIII. WAIVER.

No waiver of any breach of any term or provision of this Agreement shall be construed to be, nor shall be, a waiver of any other breach of this Agreement. No waiver shall be binding unless in writing and signed by the party waiving the breach.

XIV. MODIFICATION.

This Agreement may not be amended or modified other than by a written agreement executed by Employee and the Company's Chief Executive Officer.

XV. SAVINGS CLAUSE.

If any provision of this Agreement or the application thereof is held invalid, the invalidity shall not affect other provisions or applications of the Agreement which can be given effect without the invalid provisions or applications and to this end the provisions of this Agreement are declared to be severable.

XVI. COMPLETE AGREEMENT.

This Agreement constitutes and contains the entire agreement and final understanding concerning Employee's employment with the Company and the other subject matters addressed herein between the parties. It is intended by the parties as a complete and exclusive statement of the terms of their agreement. It supersedes and replaces all prior negotiations and all agreements proposed or otherwise, whether written or oral, concerning the subject matter hereof. Any representation, promise or agreement not specifically included in this Agreement shall not be binding upon or enforceable against either party. This is a fully integrated agreement. To the extent that there is any conflict or inconsistency between the terms of this Agreement and the terms of the Option Agreement or the Plan, the terms of this Agreement shall govern.

XVII. GOVERNING LAW.

This Agreement shall be deemed to have been executed and delivered within the State of California, and the rights and obligations of the parties hereunder shall be construed and enforced in accordance with, and governed by, by the laws of the State of California without regard to principles of conflict of laws.

XVIII. CONSTRUCTION.

Each party has cooperated in the drafting and preparation of this Agreement. Hence, in any construction to be made of this Agreement, the same shall not be construed against any party on the basis that the party was the drafter. The captions of this Agreement are not part of the provisions hereof and shall have no force or effect.

XIX. COMMUNICATIONS.

All notices, requests, demands and other communications hereunder shall be in writing and shall be deemed to have been duly given if delivered or if mailed by registered or certified mail, postage prepaid, addressed to Employee at 4523 Grimes Place, Encino, California 91316 or addressed to the Company at 14242 Ventura Blvd., Sherman Oaks CA 91423, Attention: Ian Aaron, Chief Executive Officer. Either party may change the address at which notice shall be given by written notice given in the above manner.

XX. EXECUTION.

This Agreement is being executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Photographic copies of such signed counterparts may be used in lieu of the originals for any purpose.

XXI. CONFLICT WITH OTHER AGREEMENTS.

In the event that an express provision of this Agreement conflicts with an express provision of the Plan and/or the Option Agreement, the express provision of this Agreement shall govern.

In witness whereof, the parties hereto have executed this Agreement as of the date first above written.

THE WAAT CORPORATION

By: /s/ Ian Aaron
Its Pres. /CEO

DAVID MANDELL

/s/ David Mandell

EXHIBIT A

OPTION AGREEMENT

(To Be Provided)

EXHIBIT B

General Release Agreement

This General Release Agreement (the "Agreement") is entered into as of ___, 200_, by and between David Mandell (the "Employee") and WAAT CORPORATION. (the "Company"). Employee and the Company are parties to an Employment Agreement effective as of June 5, 2006 (the "Employment Agreement").

Employee's employment with the Company will terminate effective on ______, 200_ (the "Termination Date"). In exchange for the severance pay and other severance benefits provided to Employee under Section IV-E-3 of the Employment Agreement (including, but not limited to, the right to retain all vested 401K benefits pursuant to the 401K Plan), and except for the obligations of Company under such Section IV-E-3, Employee hereby covenants not to sue and releases the Company, and its subsidiaries, parent and affiliated entities, past and present, and each of them, as well as their respective trustees, directors, officers, agents, employees, shareholders, assignees, successors, attorneys, and insurers, past and present, and each of them (individually and collectively referred to herein as "Releasees"), from any and all claims, wages, agreements, contracts, obligations, covenants, demands, costs, expenses, attorneys' fees, rights, debts, liens, and causes of action, known or unknown, suspected or unsuspected, arising out of or in any way connected with his employment or any other transactions, occurrences, acts or omissions, or any loss, damage or injury whatsoever, known or unknown, suspected or unsuspected, resulting from any act or omission by or on the part of said Releasees, or any of them, committed or omitted, prior to the execution of this Agreement, whether based on contract, tort, common law, or statute. Employee acknowledges by the execution of this Agreement that he has no further claims against the Releasees other than for the performance of the obligations set forth in Section IV-E-3 and Section XI of the Employment Agreement.

The Employee hereby acknowledges that he has read this Agreement, understands its contents and agrees to its terms and conditions knowingly, voluntarily and of his own free will. Specifically, the Employee agrees: (a) that he is releasing any and all claims under the Age Discrimination in Employment Act of 1967, as amended by the Older Workers Benefit Protection Act, and any federal, state or local fair employment acts arising up to the date of the execution of this Agreement; (b) that the consideration being received by the Employee is greater than he would have been entitled to receive before signing this Agreement; (c) that the Employee is hereby advised to consult an attorney of his choice prior to the execution of this Agreement; (d) that the Employee was given at least twenty-one (21) days from the date of receipt of this Agreement to decide whether or not to execute it; and (e) that the Employee has seven (7) days from the execution of this Agreement to revoke its execution and this Agreement will become null and void if he elects revocation during that time. Any revocation must be in writing and must be received by the Company during the seven-day revocation period. In the event of such revocation, the Company will not have any obligations under this Agreement or Section IV-E-3 of the Employment Agreement except for the payment of Accrued Obligations as defined in the Employment Agreement.

If any provision of this Agreement or its application is held invalid, the invalidity shall not affect other provisions or applications of the Agreement which can be given effect without the invalid provisions or application and, therefore, the provisions of this Agreement are declared to be severable.

The undersigned have read and understand the consequences of this Agreement and voluntarily sign it.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the __ day of _ 200_.

DAVID MANDELL

____________________________________

THE WAAT CORPORATION

By ____________________________________

Its ____________________________________

**FIRST AMENDMENT TO EMPLOYMENT AGREEMENT**

This first amendment ("First Amendment") is effective as of February 12, 2008 ("Amendment Date") by and between Twistbox Entertainment, Inc. (as successor-in-interest to The WAAT Corporation) ("Twistbox") and David Mandell ("Employee"), and amends that certain Employment Agreement dated as of June 5, 2006 by and between Twistbox and Employee (the "Agreement"). Unless otherwise defined herein, defined terms shall have their meanings as set forth in the Agreement.

**RECITALS**

**WHEREAS,** Twistbox and Mandalay Media, Inc. ("Mandalay") have entered into that certain Agreement and Plan of Merger dated December 31, 2007, as amended;

**WHEREAS**, Twistbox and Employee believe it is in the best interest of Twistbox and Employee to mutually agree to certain modifications to the Agreement; and

**WHEREAS**, the parties hereto desire to memorialize their mutual understandings as contained herein.

**AMENDMENT**

**NOW THEREFORE,** in consideration of the foregoing, Twistbox and Employee desire to further amend and/or modify the Agreement and enter into this First Amendment on the terms and conditions provided below:

Employee's Agreement shall be modified as follows:

1. The first sentence of Section I of the Agreement shall be deleted and replaced with the following:

"**EMPLOYMENT**.

The Company hereby employs Employee and Employee hereby accepts such employment, upon the terms and conditions hereinafter set forth, from February 12, 2008 ("Employment Date"), to and including February 12, 2011 (the "Term"). On or about August 12, 2010, Employee and the Company shall meet in good faith to discuss the terms of a renewal, in order to negotiate terms related to, among other things, base salary, bonus percentage and additional grants of stock options."

2. The first sentence of Sub-section A of Section III of the Agreement shall be deleted and replaced with the following:

"A. **Base Salary**. The Company will pay to Employee a base salary at the annual rate of $300,000 from February 12, 2008 through February 11, 2009; $315,000 from February 12, 2009 through February 11, 2010, and $330,750 from February 12, 2010 through February 12, 2011."

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3. A new Sub-paragraph G.2 shall be added to Section III of the Agreement following Sub-paragraph G thereof as follows:

"G.2. **Stock Options**. On the Employment Date, the Company shall cause Mandalay to grant to Employee an initial option (the "Mandalay Option") to purchase 450,000 shares of Mandalay's common stock ("Common Shares") at an exercise price equal to the closing price of the Common Shares on the date of grant. Each Mandalay Option shall represent the right to acquire one (1) Common Share. The Mandalay Option shall vest in full and become immediately exercisable as follows: (a) one-third shall immediately vest on the Employment Date, (b) one-third shall vest on the first anniversary of the Employment Date and (c) one-third shall vest on the second anniversary of the Employment Date. The Mandalay Option shall be evidenced by a written option agreement and be governed by the terms and conditions thereof and the terms and conditions of Mandalay's 2007 Stock Plan. Notwithstanding anything to the contrary, the Mandalay Option is subject to full accelerated vesting upon a change of control and/or the sale of all or substantially all of the assets of Mandalay."

4. Lines 6 through 9 of sub-paragraph C of Section IV of the Agreement that provides as follows, "(iii) the Company requires employee to report directly to any officer other than Ian Aaron, Chief Executive Officer, without Employee's consent; (iv) Ian Aaron is no longer the Chief Executive Officer of the Company", shall be deleted in their entirety.

5. The last sentence of sub-paragraph E.2 of Section IV of the Agreement beginning with "Upon" and ending with "termination." is hereby deleted in its entirety and replaced with the following:

"Upon a termination as a result of Death or disability, the Options, to the extent outstanding and not previously vested at the time of such termination, shall thereupon vest in full and shall continue to be exercisable for a period of three (3) years after such termination."

6. Lines 6 through 12 of sub-paragraph E.3 of Section IV of the Agreement beginning with "(b)" and ending with "deductions" shall be deleted in their entirety and replaced with the following:

"(b) upon Employee's execution, and non-revocation, of a release substantially in the form attached hereto as Exhibit B, payment to Employee of a sum equal to base salary in accordance with the usual payroll practices of the Company for a period equal to six (6) months following such termination;"

7. Section VI of the Agreement shall be deleted in its entirety and replaced with the following: "INTENTIONALLY LEFT BLANK."

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8. All terms and conditions of the Agreement not specifically and expressly modified or amended herein are hereby ratified and confirmed in all respects and shall remain in full force and effect.

9. Each person who executes this Amendment represents and warrants to each party hereto that he has the authority to do so and to bind each entity as contemplated hereby, and agrees to hold harmless each other party from any claim that such authority did not exist. This Amendment will inure to the benefit of and be binding upon the parties and their respective shareholders, successors and permitted assigns.

**[SIGNATURE PAGE FOLLOWS]**

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**IN WITNESS WHEREOF**, the parties hereto have executed this First Amendment as of the Amendment Date set forth above.

| TWISTBOX ENTERTAINMENT, INC.<br>(AS SUCCESSORS-IN-INTEREST TO<br>THE WAAT CORPORATION) | EMPLOYEE |
| --- | --- |
| By: /s/ Ian Aaron<br>Name: Ian Aaron<br>Title: CEO/PRES | By: /s/ David Mandell<br>Name: David Mandell |

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EMPLOYMENT AGREEMENT

This Employment Agreement (the "Agreement") is entered into by and between Twistbox Entertainment, Inc., a Delaware corporation organized under the laws of the State of Delaware, with its principal offices located at 14242 Ventura Boulevard, Sherman Oaks, California 91423 (the "Company") and Russell Burke ("Employee") dated as of December 11, 2006 ("Effective Date").

I. EMPLOYMENT.

The Company hereby employs Employee and Employee hereby accepts such employment upon the terms and conditions hereinafter set forth commencing as of December 11, 2006 ("Employment Date") through and including December 10, 2008; provided that, notwithstanding any other provision contained herein to the contrary, the first ninety (90) days of your employment will be on a probationary basis where either party may provide the other with fifteen (l5) days prior notice of its intention not to continue with your employment with the Company for any or no reason whatsoever. In such event, you agree and acknowledge that neither party shall have any further obligation to the other except with respect to the Company's obligation to pay your accrued salary as of the last day of your employment.

II. DUTIES.

A. Employee shall serve during the course of his employment as Chief Financial Officer and shall have such other duties and responsibilities as are consistent with those generally performed by the Chief Financial Officer of a similarly situated company and as the Chief Executive Officer shall determine from time to time including matters concerning: capital asset/financial planning; financial systems and modeling, budgeting and forecasting; strategic planning and competitive analyses; business evaluations and due diligence; acquisitions and divestitures; debt and equity financing and restructuring; financial management; banking relations; business policies, practices and procedures; public and private offerings; and Sarbanes-Oxley (or similar) compliance. The Company shall provide Employee with all reasonable and necessary business equipment to allow Employee to perform such duties and responsibilities. The Company retains absolute discretion to reorganize the Company from time to time and that nothing in this Agreement shall in any way affect or limit such discretion.

B. Employee agrees to devote substantially all of his time, energy and ability to the business of the Company. Nothing herein shall prevent Employee, upon approval of the Board of Directors of the Company, from serving as a director or trustee of other corporations or businesses which are not in direct competition with the business of the Company or in direct competition with any present or future affiliate of the Company; provided, however, that no approval of the Board of Directors of the Company shall be required for Employee to continue to serve as a director of any company of which he was a director as of the Effective Date so long as such company is not in competition with the Company. Nothing herein shall prevent Employee from (i) investing in real estate for his own account, (ii) becoming a partner or a stockholder in any corporation, partnership or other venture not in direct competition with the business of the Company or in competition with any present affiliate of the Company, or (iii) becoming up to a 5% stockholder in any publicly held corporation whether or not in competition with the business of the Company or in competition with any present or future affiliate of the Company.

C. Employee shall report to Ian Aaron, Chief Executive Officer.

III. COMPENSATION.

A. The Company will pay to Employee a base salary at the annual rate of $240,000. Such salary shall be earned monthly and shall be payable in periodic installments no less frequently than monthly in accordance with the Company's customary practices. Amounts payable shall be reduced by standard withholding and other authorized deductions. The Company may in its discretion increase Employee’s salary beyond these set amounts but it may not reduce it.

B. Annual Bonus. Employee shall eligible for an annual performance/merit bonus (the “Bonus”) at the Company’s sole discretion based upon Employee’s performance and the performance of the Company with a target Bonus of fifty percent (50%) of your base salary. Such Bonus to be determined by the Company’s Board of Directors and/or Compensations Committee based upon several factors including the profitability of the Company, your performance and the achievement of goals each fiscal year. A Bonus is to be paid on the Company’s fiscal year basis to the extent and in such manner as determined with such other comparable senior executives of the Company.

C. Welfare Benefit Plans. Employee and/or his family, as the case may be, shall be eligible for participation in and shall receive all benefits under welfare benefit plans, practices, policies and programs provided by the Company (including, without limitation, medical, prescription, dental, vision, disability, salary continuance, employee life, group life, accidental death, travel accident insurance plans and programs and 401K Plan) to the extent applicable generally to other comparable senior executives of the Company.

D. Expenses. Employee shall be entitled to receive prompt reimbursement for all reasonable employment expenses incurred by him in accordance with the policies, practices and procedures as in effect generally with respect to other comparable senior executives of the Company.

E. Fringe Benefits. Employee shall be entitled to fringe benefits in accordance with the plans, practices, programs and policies as in effect generally with respect to other comparable senior executives of the Company.

F. Vacation. Employee shall be entitled to twenty (20) business days of paid vacation for each full year employment which shall be taken in accordance with the policies and practices as in effect generally with respect to other comparable senior executives of the Company.

G. Stock Options. The Company shall grant to Employee, subject to Compensation Committee approval and the vesting provisions described in this Agreement, nonqualified stock options (the "Options") under the Company's 2006 Stock Incentive Plan, as amended (the "Plan"), to acquire seventy five thousand (75,000) shares of the Company's Common Stock ("Common Shares") at the exercise price of $0.59 per Common Share under each such Option. Each Option shall represent the right to acquire one (1) Common Share. Subject to earlier termination of the Options as described below, the Options shall vest in full and become immediately exercisable as follows: (a) twenty five percent (25%) on the first anniversary of the Employment Date and the remaining seventy five percent (75%) in equal quarterly installments over the three (3) year period following the first anniversary of the Employment Date. The Options shall expire on the first to occur of (i) the close of business on the last business day of the Company coinciding with or immediately preceding the day before the tenth anniversary of the Effective Date, (ii) the termination of the Options pursuant to the Plan, or (iii) the termination of the Options in connection with a termination of Employee's employment with the Company as contemplated by the Option Agreement. The Options shall be evidenced by a written option agreement in the Form attached hereto as Exhibit A (the "Option Agreement"). In addition to any provision contained in the Plan and/or the Option Agreement, all Options are subject to full accelerated vesting upon an underwritten initial public offering of the securities of the Company and/or a Change of Control of the Company.

H. The Company reserves the right to modify, suspend or discontinue any and all of the plans, practices, policies and programs described in Sections III-C, III-D, and III-E above at any time without recourse by Employee so long as such action is taken generally with respect to other comparable employees, is not applied retroactively, and does not single out Employee.

IV. TERMINATION.

A. Death or Disability. Employee's employment shall terminate automatically upon Employee's death. If a Disability of Employee has occurred (pursuant to the definition of Disability set forth below), the Company may give to Employee written notice of its intention to terminate Employee's employment. In such event, Employee's employment with the Company shall terminate effective on the 120th day after receipt of such notice by Employee, provided that, within the 120 days after such receipt, Employee shall not have returned to full-time performance of his duties. For purposes of this Agreement. "Disability" shall mean either a physical or mental impairment which substantially limits a major life activity of Employee and which renders Employee unable to perform the essential functions of his position, even with reasonable accommodation which does not impose an undue hardship on the Company for an aggregate of 120 days in any twelve-month period. The determination of Disability under the preceding sentence shall be based upon information supplied by Employee and/or his medical personnel, as well as information from medical personnel (or others) selected by the Company. In the event Employee's health care provider and the Company do not agree as to whether Employee has a Disability, Employee and the Company shall appoint a third-party qualified physician who shall evaluate Employee and provide a determination of whether Employee has a Disability.

B. Cause. The Company may terminate Employee's employment for "Cause" in the event the Employee has engaged in or committed: willful misconduct; gross negligence; theft, or fraud; any willful act that is reasonably likely to and which does in fact have the effect of materially injuring the reputation, business or a business relationship of the Company; and material breach of any material term of this Agreement. In the event the Company determines that Cause for termination exists based upon willful misconduct or gross negligence, the Company shall give Employee fourteen (14) days prior written notice of such termination which notice shall include reasonable detail as to the ground for such termination. If such ground is curable, Employee shall be given thirty (30) days from the date of such notice to cure such ground for termination for Cause. After the expiration of any such cure period, the Company shall make a good faith determination as to whether Employee has cured such ground for termination for Cause and shall give written notice thereof to the Employee which, in the case of a determination that Employee has failed to cure, shall include reasonable detail as to why Employee's efforts to cure were not adequate.

C. Other than Cause or Death or Disability. The Company may terminate Employee's employment at any time, with or without cause, upon ninety (90) days' written notice.

D. Obligations of the Company Upon Termination.

I. Death or Disability. If Employee's employment is terminated by reason of Employee's Death or Disability, this Agreement shall terminate without further obligations to Employee or his legal representatives under this Agreement (except as provided in this Section IV-D-1), other than for (a) payment of the sum of (i) Employee's pro rata portion of the annual base salary through the date of termination to the extent not theretofore paid, (ii) Employee's pro rata portion of the Bonus for any unpaid amounts accrued prior to termination for the calendar year during which the Employee's Death or Disability occurs, and (iii) any accrued vacation pay, in each case to the extent not theretofore paid (the sum of the amounts described in clauses (i), (ii), and (iii) shall be hereinafter referred to as the "Accrued Obligations"), which shall be paid to Employee or his estate or beneficiary, as applicable, in a lump sum in cash within thirty (30) days of the date of termination; (b) payment to Employee or his estate or beneficiary, as applicable, any amounts due pursuant to the terms of any applicable welfare benefit plans, and (c) to the extent termination is due to Disability, until the earlier of the end of such Disability and one (1) year following Employee's notice to the Company of any such Disability, continued participation in medical, dental, hospitalization and life insurance coverage and in all other plans and programs in which Employee was participating (on the same basis he was participating) on the date of termination. Upon a termination as a result of Death or Disability, the Options, and any other options granted to Employee by the Company during his employment, to the extent outstanding and not previously vested at the time of such termination, shall thereupon vest in full and shall continue to be exercisable for a period of three (3) years after such termination.

2. Cause. If Employee's employment is terminated by the Company for Cause, this Agreement shall terminate without further obligations to Employee.

3. Other than Cause or Death or Disability. If the Company terminates Employee's employment for other than Cause or Death or Disability, this Agreement shall terminate without further obligations to Employee other than for: (a) the payment of Accrued Obligations and (b) the lump sum payment of a sum equal to the balance of base salary payments for the remainder of the Term had Employee remained employed through the end of the Term, less standard withholdings and other authorized deductions. Such payments to be made upon Employee's execution, and non-revocation, of a release substantially in the form attached hereto as Exhibit B. Furthermore, if the Company terminates Employee's employment for other than Cause, Death or Disability, the Options, and any other options granted to Employee by the Company during his employment, to the extent outstanding and not previously vested at the time of such termination, shall thereupon vest in full and shall continue to be exercisable for a period of three (3) years after such termination.

4. Termination By Employee. Employee may terminate his employment with Company upon ninety (90) days' written notice for any reason other than Good Reason, Death or Disability. For all purposes under this agreement, any such termination by Employee shall be treated as a termination for Cause.

5. Exclusive Remedy. Employee agrees that the payments contemplated by this Agreement shall constitute the exclusive and sole remedy for any termination of his employment and Employee covenants not to assert or pursue any other remedies, at law or in equity, with respect to any termination of employment.

V. ARBITRATION. Any controversy arising out of or relating to this Agreement, its enforcement or interpretation or because of an alleged breach, default, or misrepresentation in connection with any of its provisions, or any other controversy arising out of Employee's employment, including, but not limited to, any state or federal statutory claims, shall be submitted to arbitration in Los Angeles, California, before a sole arbitrator selected from the American Arbitration Association ("AAA"), and shall be conducted in accordance with the AAA rules for the resolution of Employment Disputes as the exclusive forum for the resolution of such dispute, provided, however, that provisional injunctive relief may, but need not, be sought by either party to this Agreement in a court of law while arbitration proceedings are pending, and any provisional injunctive relief granted by such court shall remain effective until otherwise modified by the Arbitrator, provided, however, that such provisional injunctive relief shall be sought in aid and in advance of the arbitration only. Final resolution of any dispute through arbitration may include any remedy or relief which the Arbitrator deems just and equitable, including any and all remedies provided by applicable state or federal statutes. At the conclusion of the arbitration, the Arbitrator shall issue a written decision that sets forth the essential findings and conclusions upon which the Arbitrator's award or decision is based. Any award or relief granted by the Arbitrator hereunder shall be final and binding on the parties hereto and may be enforced by any court of competent jurisdiction. The parties acknowledge and agree that they are hereby waiving any rights to trial by jury in any action, proceeding or counterclaim brought by either of the parties against the other in connection with any matter whatsoever arising out of or in any way connected with this Agreement or Employee's employment. Employee and Company agree that in any proceeding to enforce the terms of this Agreement, the prevailing party shall be entitled to its or his reasonable attorneys' fees and costs (including forum costs associated with the arbitration) incurred by it or him in connection with resolution of the dispute in addition to any other relief granted.

VI. ANTI SOLICITATION.

Employee promises and agrees that during his employment, and for a period of twelve (12) months thereafter, he will not influence or attempt to influence any mobile telecommunications operator or other distributor of the Company's programming, games and services to cease distribution of the Company's programming, games and services with its subscribers and replace it with similar services of any competitor with the business of the Company.

VII. SOLICITING EMPLOYEES.

Employee promises and agrees that during his employment, and for a period of twelve (12) months thereafter, directly or indirectly, solicit any of the Company employees who earned annually $50,000 or more as a Company employee during the last six months of his or her own employment to work for any business, individual, partnership, firm, corporation, or other entity then in direct competition with the business of the Company or any subsidiary of the Company. For the purposes of this provision, “indirectly solicit” shall mean that Employee has provided name(s) or other identifying information to aid in the solicitation of such person.

VIII. CONFIDENTIAL INFORMATION.

A. Employee, in the performance of Employee's duties on behalf of the Company, shall have access to, receive and be entrusted with confidential information, including but in no way limited to development, marketing, organizational, financial, management, administrative, production, distribution and sales information, data, specifications and processes presently owned or at any time in the future developed, by the Company or its agents or consultants, or used presently or at any time in the future in the course of its business that is not otherwise part of the public domain (collectively, the “Confidential Material”). All such Confidential Material is considered secret and will be available to Employee in confidence. Except in the performance of duties on behalf of the Company, Employee shall not, directly or indirectly for any reason whatsoever, disclose or use any such Confidential Material, unless such Confidential Material ceases (through no fault of Employee’s) to be confidential because it has become part of the public domain. All records, files, drawings, documents, equipment and other tangible items, wherever located, relating in any way to the Confidential Material or otherwise to the Company’s business, which Employee prepares, uses or encounters, shall be and remain the Company’s sole and exclusive property and shall be included in the Confidential Material. Upon termination of this Agreement by any means, or whenever requested by the Company, Employee shall promptly deliver to the Company any and all of the Confidential Material, not previously delivered to the Company, that may be or at any previous time has been in Employee’s possession or under Employee’s control, provided however, that Employee may retain in his possession any Confidential Material that reflects the terms of his employment with the Company or the terms or amount of his compensation and benefits.

IX. SUCCESSORS.

A. This Agreement is personal to Employee and shall not, without the prior written consent of the Company, be assignable by Employee.

B. This Agreement may not be assigned by the Company without Employee's prior written consent, unless such assignment is made in connection with a Change in Control, in which case, this Agreement shall inure to the benefit of and be binding upon the Company and its successors and assigns and any such successor or assignee shall be deemed substituted for the Company under the terms of this Agreement for all purposes. With respect to any assignment of this Agreement by Company requiring Employee's prior written consent, no such permitted assignment shall relieve the Company of its obligations or liability hereunder unless Employee otherwise agrees in writing.

X. WAIVER.

No waiver of any breach of any term or provision of this Agreement shall be construed to be, nor shall be, a waiver of any other breach of this Agreement. No waiver shall be binding unless in writing and signed by the party waiving the breach.

XI. MODIFICATION.

This Agreement may not be amended or modified other than by a written agreement executed by Employee and the Company's Chief Executive Officer.

XII. SAVINGS CLAUSE.

If any provision of this Agreement or the application thereof is held invalid, the invalidity shall not affect other provisions or applications of the Agreement which can be given effect without the invalid provisions or applications and to this end the provisions of this Agreement are declared to be severable.

XIII. COMPLETE AGREEMENT.

This Agreement constitutes and contains the entire agreement and final understanding concerning Employee's employment with the Company and the other subject matters addressed herein between the parties. It is intended by the parties as a complete and exclusive statement of the terms of their agreement. It supersedes and replaces all prior negotiations and all agreements proposed or otherwise, whether written or oral, concerning the subject matter hereof. Any representation, promise or agreement not specifically included in this Agreement shall not be binding upon or enforceable against either party.

XIV. GOVERNING LAW.

This Agreement shall be deemed to have been executed and delivered within the State of California, and the rights and obligations of the parties hereunder shall be construed and enforced in accordance with, and governed by, by the laws of the State of California without regard to principles of conflict of laws.

XV. CONSTRUCTION.

Each party has cooperated in the drafting and preparation of this Agreement. Hence, in any construction to be made of this Agreement, the same shall not be construed against any party on the basis that the party was the drafter. The captions of this Agreement are not part of the provisions hereof and shall have no force or effect.

XVI. COMMUNICATIONS.

All notices, requests, demands and other communications hereunder shall be in writing and shall be deemed to have been duly given if delivered or if mailed by registered or certified mail, postage prepaid, addressed to Employee at the address on file with the Company or addressed to the Company at 14242 Ventura Blvd., Sherman Oaks CA 91423, Attention: Ian Aaron, Chief Executive Officer. Either party may change the address at which notice shall be given by written notice given in the above manner.

XVII. EXECUTION.

This Agreement is being executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Photographic copies of such signed counterparts may be used in lieu of the originals for any purpose.

In witness whereof, the parties hereto have executed this Agreement as of the date first above written.

| Russell Burke | Twistbox Entertainment, Inc. |
| --- | --- |
| By: /s/ R. J. Burke | By: /s/ Ian Aaron |
| | Name: Ian Aaron |
| | Its: President/CEO |

EXHIBIT A
<u>OPTION AGREEMENT</u>

**TWISTBOX ENTERTAINMENT, INC.**
**NON-QUALIFIED STOCK OPTION AGREEMENT**
**PURSUANT TO THE**
**TWISTBOX ENTERTAINMENT, INC.**
**2006 STOCK INCENTIVE PLAN**

This Non-Qualified Stock Option Agreement ("**Agreement**") dated as of December 11, 2006 (the "**Grant Date**") by and between Twistbox Entertainment, Inc., a Delaware corporation (the "**Company**") and Russell Burke (the "**Participant**").

**Preliminary Statement**

The Committee has authorized this grant of a non-qualified stock option (the "**Option**") on November 21, 2006 to purchase the number of shares of the Company's common stock (the "**Common Stock**") set forth below to the Participant, as an Eligible Employee of the Company or a Subsidiary (collectively, the Company and all Subsidiaries of the Company shall be referred to as the "**Employer**"). Unless otherwise indicated, any capitalized term used but not defined herein shall have the meaning ascribed to such term in the Twistbox Entertainment, Inc. 2006 Stock Incentive Plan (the "**Plan**"). A copy of the Plan has been delivered to the Participant. By signing and returning this Agreement, the Participant acknowledges having received and read a copy of the Plan and agrees to comply with it, this Agreement and all applicable laws and regulations.

Accordingly, the parties hereto agree as follows:

1. **Tax Matters**. No part of the Option granted hereby is intended to qualify as an "incentive stock option" under Section 422 of the Internal Revenue Code of 1986, as amended.

2. **Grant of Option**. Subject in all respects to the Plan and the terms and conditions set forth herein and therein, the Participant is hereby granted an Option to purchase from the (Company 75,000 shares of Common Stock, at a price per share of $0.59 (the "**Option Price**").

3. **Exercise**.

(a) Except as set forth in subsection (b) below, the Option shall vest and become exercisable as provided in Schedule A, which shall be cumulative. To the extent that the Option has become exercisable with respect to a number of shares of Common Stock as provided below, the Option may thereafter be exercised by the Participant, in whole or in part, at any time or from time to time prior to the expiration of the Option as provided herein and in accordance with Section 6.3(d) of the Plan, including, without limitation, the filing of such written form of exercise notice, if any, as may be required by the Committee and payment in full of the Option Price multiplied by the number of shares of Common Stock underlying the portion of the Option exercised. Upon expiration of the Option, the Option shall be canceled and no longer exercisable. Schedule A (Vesting Schedule) indicates each date upon which the Participant shall be vested and entitled to exercise the Option with respect to the percentage indicated beside that date provided that the Participant has not suffered a Termination of Employment prior to the applicable vesting date. There shall be no proportionate or partial vesting in the periods prior to each vesting date and all vesting shall occur only on the appropriate vesting date.

(b) Upon the occurrence of an IPO or Change of Control, the Options shall immediately become exercisable with respect to all shares of Common Stock subject thereto.

(c) Notwithstanding the foregoing, the Participant may not exercise the Option unless the shares of Common Stock issuable upon such exercise are then registered under the Securities Act, or, if such shares of Common Stock are not then so registered, the Company has determined that such exercise and issuance would be exempt from the registration requirements of the Securities Act. The exercise of the Option must also comply with other applicable laws and regulations governing the Option, and the Participant may not exercise the Option if the Company determines that such exercise would not be in material compliance with such laws and regulations. In addition, the Participant may not exercise the Option if the terms of the Plan do not permit the exercise of Options at such time.

4. **Option Term**. The term of each Option shall be until the tenth ($10^{th}$) anniversary of the Grant Date, after which time it shall terminate, subject to earlier termination in the event of the Participant's Termination of Employment as specified in Section 5 below.

5. **Termination of Employment**.

(a) Subject to the terms of the Plan and this Agreement, the Option, to the extent vested at the time of the Participant's Termination of Employment, shall remain exercisable as provided in Section 9.2(a) of the Plan.

(b) Any portion of the Option that is not vested as of the date of the Participant's Termination of Employment for any reason shall terminate and expire as of the date of such Termination of Employment.

(c) If the Participant breaches any agreement with the Company or any of its Subsidiaries regarding competition, confidentiality or the solicitation of customers or employees, the Option (whether vested or unvested) and shares of Common Stock acquired upon exercise of the Option (without compensation other than repayment of the Option Price) shall be immediately forfeited to the Company unless the Participant cures such breach (if curable) within I5 days of being notified of such breach.

6. **Restriction on Transfer of Option**. No part of the Option shall be Transferable other than by will or by the laws of descent and distribution and during the lifetime of the Participant, may be exercised only by the Participant or the Participant's guardian or legal representative. In addition, the Option shall not be assigned, negotiated, pledged or hypothecated in any way (except as provided by law or herein), and the Option shall not be subject to execution, attachment or similar process. Upon any attempt to Transfer the Option or in the event of any levy upon the Option by reason of any execution, attachment or similar process contrary to the provisions hereof, the Option shall immediately become null and void.

7. **Company Call Rights; Restrictions on Transfer**. The Option, and any shares of Common Stock that the Participant acquires upon exercise of the Option, shall be subject to the Company call rights and restrictions on transfer (including the Company's right of first refusal) set forth in Article XIII of the Plan. To ensure that the shares of Common Stock issuable upon exercise of the Option are not transferred in contravention of the terms of the Plan and this Agreement, and to ensure compliance with other provisions of the Plan and this Agreement, the Company may deposit the certificates evidencing the shares of Common Stock to be issued upon the exercise of the Option with an escrow agent designated by the Company.

8. **Securities Representations**. Upon the exercise of the Option prior to the registration of the Common Stock subject to the Option pursuant to the Securities Act or other applicable securities laws, the Participant shall be deemed to acknowledge and make the representations and warranties as described below and as otherwise may be requested by the Company for compliance with applicable laws, and any issuances of Common Stock by the Company shall he made in reliance upon the express representations and warranties of the Participant.

(a) The Participant is acquiring and will hold the shares of Common Stock for investment for his account only and not with a view to, or for resale in connection with, any "distribution" thereof within the meaning of the Securities Act or other applicable securities laws.

(b) The Participant has been advised that the shares of Common Stock have not been registered under the Securities Act or other applicable securities laws, on the ground that no distribution or public offering of the shares of Common Stock, is to be effected (it being understood, however, that the shares of Common Stock are being issued and sold in reliance on the exemption provided under Rule 701 under the Securities Act), and that the shares of Common Stock must be held indefinitely, unless they are subsequently registered under the applicable securities laws or the Participant obtains an opinion of counsel (in the form and substance satisfactory to the Company and its counsel) that registration is not required. In connection with the foregoing, the Company is relying in part on the Participant's representations set forth in this Section. The Participant further acknowledges and understands that the Company is under no obligation hereunder to register the shares of Common Stock.

(c) The Participant is aware of the adoption of Rule 144 by the Securities and Exchange Commission under the Securities Act, which permits limited public resale of securities acquired in a non-public offering, subject to the satisfaction of certain conditions. The Participant acknowledges that he is familiar with the conditions for resale set forth in Rule 144, and acknowledges and understands that the conditions for resale set forth in Rule 144 have not been satisfied and that the Company has no plans to satisfy these conditions in the foreseeable future.

(d) The Participant will not sell, transfer or otherwise dispose of the shares of Common Stock in violation of the Plan, this Agreement, Securities Act (or the rules and regulations promulgated thereunder) or under any other applicable securities laws. The Participant agrees that he will not dispose of the Common Stock unless and until he has complied with all requirements of this Agreement applicable to the disposition of the shares of Common Stock.

(e) The Participant has been furnished with, and has had access to, such information as he considers necessary or appropriate for deciding whether to invest in the shares of Common Stock, and the Participant has had an opportunity to ask questions and receive answers from the Company regarding the terms and conditions of the issuance of the Common Stock.

(f) The Participant is aware that his investment in the Company is a speculative investment that has limited liquidity and is subject to the risk of complete loss. The Participant is able, without impairing his financial condition, to hold the Shares for an indefinite period and to suffer a complete loss of his investment in the Common Stock.

9. **Rights as a Stockholder**. The Participant shall have no rights as a stockholder with respect to any shares covered by the Option unless and until the Participant has become the holder of record of the shares, and no adjustments shall be made for dividends in cash or other property, distributions or other rights in respect of any such shares, except as otherwise specifically provided for in the Plan.

10. **Provisions of Plan Control**. This Agreement is subject to all the terms, conditions and provisions of the Plan, including, without limitation, the amendment provisions thereof, and to such rules, regulations and interpretations relating to the Plan as may be adopted by the Committee and as may be in effect from time to time. The Plan is incorporated herein by reference. If and to the extent that this Agreement conflicts or is inconsistent with the terms, conditions and provisions of the Plan, the Plan shall control, and this Agreement shall be deemed to be modified accordingly. This Agreement contains the entire understanding of the parties with respect to the subject matter hereof (other than any exercise notice or other documents expressly contemplated herein or in the Plan) and supersedes any prior agreements between the Company and the Participant with respect to the subject matter hereof.

11. **Notices**. Any notice or communication given hereunder shall be in writing and shall be deemed to have been duly given: (i) when delivered in person; (ii) two (2) days after being sent by United States mail; or (iii) on the first business day following the date of deposit if delivered by a nationally recognized overnight delivery service, to the appropriate party at the address set forth below (or such other address as the party shall from time to time specify):

If to the Company, to:

Twistbox Entertainment, Inc.
14242 Ventura Boulevard, 3rd Floor
Sherman Oaks, California 91423
Attention: Plan Administrator

If to the Participant, to the address on file with the Company.

12. **No Obligation to Continue Employment**. This Agreement is not an agreement of employment. This Agreement does not guarantee that the Employer will employ the Participant for any specific time period, nor does it modify in any respect the Employer's right to terminate or modify the Participant's employment or compensation.

13. **Agreement**. As a condition to the receipt of shares of Common Stock when the Option is exercised, the Participant shall execute and deliver an Assumption Agreement, and to the extent required by the Committee, the Participant shall execute and deliver a stockholder's agreement or such other documentation which shall set forth certain restrictions on transferability of the shares of Common Stock acquired and such other terms or restrictions as the Committee shall from time to time establish. Such Assumption Agreement, stockholder's agreement or other documentation shall apply to the Common Stock acquired under the Plan and covered by such Assumption Agreement, stockholder's agreement or other documentation. The Company may require, as a condition of exercise, the Participant to become a party to any other existing stockholder agreement or other agreement.

14. **409A**. NOTWITHSTANDING ANYTHING HEREIN OR IN THE PLAN TO THE CONTRARY, IF THE COMMON STOCK DOES NOT CONSTITUTE "SERVICE RECIPIENT STOCK" FOR PURPOSES OF SECTION 409A OF THE CODE OR IF THE OPTION OTHERWISE IS DEEMED TO BE DEFERRED COMPENSATION UNDER SECTION 409A OF THE CODE AS A RESULT OF ANY PROPOSED, TEMPORARY OR FINAL REGULATIONS OR ANY OTHER GUIDANCE ISSUED BY THE SECRETARY OF THE TREASURY AND THE INTERNAL REVENUE SERVICE WITH RESPECT TO SECTION 409A OF THE CODE, THE COMPANY SHALL BE PERMITTED TO AMEND THE PLAN AND THE OPTION TO COMPLY WITH SECTION 409A WITHOUT THE PARTICIPANT'S CONSENT. THE COMPANY SHALL HAVE NO LIABILITY TO THE PARTICIPANT OR OTHERWISE IF THE OPTION AND ANY AMOUNTS PAID OR PAYABLE THEREUNDER IS SUBJECT TO SECTION 409A OF THE CODE.

**[Signature Page Follows]**

IN WITNESS WHEREOF, the parties have executed this Agreement on the date and year first above written.

**TWISTBOX ENTERTAINMENT, INC.**

By: /s/ Adi McAbian

Authorized Officer

/s/ Russell Burke

Russell Burke
Employee Social Security number:

I, ____________________, the spouse of the Participant, do hereby join with my spouse in executing this Agreement and do hereby agree to be bound by all of the terms and provisions thereof.

Signature

## SCHEDULE A
## VESTING SCHEDULE

**Employee Name:** **Russell Burke**

**Total Grant:**

| | |
|---|---|
| **Shares:** | **75,000** |
| **Date:** | **December 11, 2006** |

**First Vesting Period:**

| | |
|---|---|
| **Shares:** | 18,750 |
| **Date:** | December 11, 2007 |
| **Shares:** | 23,438 |
| **Date:** | March 11, 2008 |
| **Shares:** | 28,125 |
| **Date:** | June 10, 2008 |
| **Shares:** | 32,813 |
| **Date:** | September 9, 2008 |

**Second Vesting Period:**

| | |
|---|---|
| **Shares:** | 37,500 |
| **Date:** | December 10, 2008 |
| **Shares:** | 42,188 |
| **Date:** | March 11, 2009 |
| **Shares:** | 46,875 |
| **Date:** | June 10, 2009 |
| **Shares:** | 51,563 |
| **Date:** | September 9, 2009 |

**Third Vesting Period:**

| | |
|---|---|
| **Shares:** | 56,250 |
| **Date:** | December 10, 2009 |
| **Shares:** | 60,938 |
| **Date:** | March 11, 2010 |
| **Shares:** | 65,625 |
| **Date:** | June 10, 2010 |
| **Shares:** | 70,313 |
| **Date:** | September 9, 2010 |

**Fourth Vesting Period:**

| | |
|---|---|
| **Shares:** | 75,000 |
| **Date:** | December 10, 2010 |

EXHIBIT B

General Release Agreement

This General Release Agreement (the "Agreement") is entered into as of____, 200__, by and between Russell Burke (the "Employee") and Twistbox Entertainment, Inc. (the "Company"). Employee and the Company are parties to an Employment Agreement effective as of December 11, 2006 (the "Employment Agreement").

Employee's employment with the Company will terminate effective on_____ , 200__ (the "Termination Date"). In exchange for the severance pay and other severance benefits provided to Employee under Section IV-D-3 of the Employment Agreement (including, but not limited to, the right to retain all vested 401K benefits pursuant to the 401K Plan), and except for the obligations of Company under such Section IV-D-3, Employee hereby covenants not to sue and releases the Company, and its subsidiaries, parent and affiliated entities, past and present, and each of them, as well as their respective trustees, directors, officers, agents, employees, shareholders, assignees, successors, attorneys, and insurers, past and present, and each of them (individually and collectively referred to herein as "Releasees"), from any and all claims, wages, agreements, contracts, obligations, covenants, demands, costs, expenses, attorneys' fees, rights, debts, liens, and causes of action, known or unknown, suspected or unsuspected, arising out of or in any way connected with his employment or any other transactions, occurrences, acts or omissions, or any loss, damage or injury whatsoever, known or unknown, suspected or unsuspected, resulting from any act or omission by or on the part of said Releasees, or any of them, committed or omitted, prior to the execution of this Agreement, whether based on contract, tort, common law, or statute. Employee acknowledges by the execution of this Agreement that he has no further claims against the Releasees other than for the performance of the obligations set forth in Section IV-D-3 and Section XI of the Employment Agreement.

The Employee hereby acknowledges that he has read this Agreement, understands its contents and agrees to its terms and conditions knowingly, voluntarily and of his own free will. Specifically, the Employee agrees: (a) that he is releasing any and all claims under the Age Discrimination in Employment Act of 1967, as amended by the Older Workers Benefit Protection Act, and any federal, state or local fair employment acts arising up to the date of the execution of this Agreement, (b) that the consideration being received by the Employee is greater than he would have been entitled to receive before signing this Agreement, (c) that the Employee is hereby advised to consult an attorney of his choice prior to the execution of this Agreement, (d) that the Employee was given at least twenty-one (21) days from the date of receipt of this Agreement to decide whether or not to execute it, and (e) that the Employee has seven (7) days from the execution of this Agreement to revoke its execution and this Agreement will become null and void if he elects revocation during that time. Any revocation must be in writing and must be received by the Company during the seven-day revocation period. In the event of such revocation, the Company will not have any obligations under this Agreement or Section IV-D-3 of the Employment Agreement except for the payment of Accrued Obligations as defined in the Employment Agreement.

If any provision of this Agreement or its application is held invalid, the invalidity shall not affect other provisions or applications of the Agreement which can be given effect without the invalid provisions or application and, therefore, the provisions of this Agreement are declared to be severable.

The undersigned have read and understand the consequences of this Agreement and voluntarily sign it.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the ________ day of __________________ 200_.

Russell Burke

By: /s/ Russell Burke

Social Security #: ___________________________

Twistbox Entertainment, Inc.

By: /s/ Adi McAbian

Name: Adi McAbian
Its: Managing Director

# FIRST AMENDMENT TO EMPLOYMENT AGREEMENT

This first amendment ("First Amendment") is effective as of February 12, 2008 ("Amendment Date") by and between Twistbox Entertainment, Inc. ("Twistbox") and Russell Burke ("Employee"), and amends that certain Employment Agreement dated as of December 11, 2006 by and between Twistbox and Employee (the "Agreement"). Unless otherwise defined herein, defined terms shall have their meanings as set forth in the Agreement.

## RECITALS

**WHEREAS,** Twistbox and Mandalay Media, Inc. ("Mandalay") have entered into that certain Agreement and Plan of Merger dated December 31, 2007, as amended;

**WHEREAS**, Twistbox and Employee believe it is in the best interest of Twistbox and Employee to mutually agree to certain modifications to the Agreement; and

**WHEREAS**, the parties hereto desire to memorialize their mutual understandings as contained herein.

## AMENDMENT

**NOW THEREFORE,** in consideration of the foregoing, Twistbox and Employee desire to further amend and/or modify the Agreement and enter into this First Amendment on the terms and conditions provided below:

Employee's Agreement shall be modified as follows:

1. Section I of the Agreement is hereby deleted and replaced with the following:

"**EMPLOYMENT**.

The Company hereby employs Employee and Employee hereby accepts such employment upon the terms and conditions hereinafter set forth commencing as of February 12, 2008 ("Employment Date") through and including February 12, 2011 (the "Term"). On or about August 12, 2010, Employee and the Company shall meet in good faith to discuss the terms of a renewal, in order to negotiate terms related to, among other things, base salary, bonus percentage and additional grants of stock options."

2. The first sentence of Sub-section A of Section III of the Agreement shall be deleted and replaced with the following:

"A. **Base Salary**. The Company will pay to Employee a base salary at the annual rate of $204,000 from February 12, 2008 through March 31, 2008 and $240,000 from April 1, 2008 through February 11, 2009; $252,000 from February 12, 2009 through February 11, 2010; and $264,600 from February 12, 2010 through February 12, 2011."

3. A new Sub-paragraph G.2 shall be added to Section III of the Agreement following Sub-paragraph G thereof as follows:

"G.2. **Stock Options**. On the Employment Date, the Company shall cause Mandalay to grant to Employee an initial option (the "Mandalay Option") to purchase 350,000 shares of Mandalay's common stock ("Common Shares") at an exercise price equal to the closing price of the Common Shares on the date of grant. Each Mandalay Option shall represent the right to acquire one (1) Common Share. The Mandalay Option shall vest in full and become immediately exercisable as follows: (a) one-third shall immediately vest on the Employment Date, (b) one-third shall vest on the first anniversary of the Employment Date and (c) one-third shall vest on the second anniversary of the Employment Date. The Mandalay Option shall be evidenced by a written option agreement and be governed by the terms and conditions thereof and the terms and conditions of Mandalay's 2007 Stock Plan. Notwithstanding anything to the contrary, the Mandalay Option is subject to full accelerated vesting upon a change of control and/or the sale of all or substantially all of the assets of Mandalay."

3. The first sentence of Sub-section D.3 of Section IV of the Agreement shall be deleted and replaced with the following:

"3. **Other than Cause or Death or Disability**. If the Company terminates Employee's employment for other than Cause or Death or Disability, this Agreement shall terminate without further obligations to Employee other than for: (a) the payment of Accrued Obligations and (b) the payment of Employee's base salary in accordance with the usual payroll practices of the Company for a period equal to six (6) months following such termination."

4. All terms and conditions of the Agreement not specifically and expressly modified or amended herein are hereby ratified and confirmed in all respects and shall remain in full force and effect.

5. Each person who executes this Amendment represents and warrants to each party hereto that he has the authority to do so and to bind each entity as contemplated hereby, and agrees to hold harmless each other party from any claim that such authority did not exist. This Amendment will inure to the benefit of and be binding upon the parties and their respective shareholders, successors and permitted assigns.

**[SIGNATURE PAGE FOLLOWS]**

**IN WITNESS WHEREOF**, the parties hereto have executed this First Amendment as of the Amendment Date set forth above.

| TWISTBOX ENTERTAINMENT, INC. | EMPLOYEE |
| --- | --- |
| By: /s/ David Mandell<br>Name: David Mandell<br>Title: EVP/General Counsel | By: /s/ Russell Burke<br>Name: Russell Burke |

# DIRECTORY AGREEMENT

**DATE** This directory agreement (the "**Agreement**") is made on the 1st of May, 2003 between:

**THE PARTIES**

1. **Vodafone Global Content Services Limited (CRN: 04064873)** a company incorporated in England and whose registered office is Vodafone House, The Connection, Newbury, Berkshire RG14 2FN ("**VGCS**")

2. **Name: The WAAT Corporation**
   **Address: 18226 Ventura Blvd, Suite #102 Tarzana, CA 91356 U.S.A.**

(the "**Directory Partner**"),

each a "**Party**" and together the "**Parties**".

**RECITALS**

(A) Vodafone manages a directory service within "Vodafone live!" that facilitates access to mobile content and services.

(B) The Directory Partner owns or has the rights to the Content, which it wishes to place in the Directory for the purposes of sale to Customers.

(C) The Parties have agreed that VGCS shall place the Content on the Directory on the terms and subject to the conditions contained herein.

**AGREEMENT STRUCTURE** This Agreement comprises: (1) Operative Key Terms - Part 1 (2) the Terms and Conditions - Part 2 (3) the Definitions - Part 3 and any schedules, annexures or addendums which may be attached to it from time to time.

## PART 1
## OPERATIVE KEY TERMS

**1. The Content:**

**Content description** The Content to be made available under this Agreement relates to certain Adult / Erotic, details of which are set out in Schedule 1 and shall also include such other content as may be agreed by the Parties from time to time.

The Content will be supplied in the languages and for the Specified Mobile Phones listed in Schedule 1.

VGCS shall be authorised to provide the Content to Customer in accordance with this Agreement in the Territories listed in Schedule 1.

**Content specifications** The Content will comply with the Guidelines.

**Placement** VGCS shall be entitled to place the Content in any section of the Directory as it reasonably considers appropriate having regard to the Directory proposition as a whole and the impact on the Customer experience or otherwise remove the Content from the Directory.

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| | |
|---|---|
| **Branding** | The Directory Partner must display its own brand (or, with the consent of VGCS, such other third party brands as it has the rights to display) on the Content such that it is clear that the Content is being provided by the Directory Partner and not VGCS or Vodafone. The Content will be provided to and sold by the Directory Partner to the Customer pursuant to the Directory Partner's standard terms and conditions. The Directory Partner will ensure that: (1) its terms and conditions are easily accessible to the Customer at all times the Customer is accessing the Content; (2) such terms make it clear that VGCS will bill and collect all payments for the downloading and provision of the Content as the Directory Partner's marketing and billing agent; and (3) that the Customer is required to accept such terms and conditions as a precondition of the Content being made available to the Customer.<br><br>For the purposes of this Clause, VGCS consents to the Directory Partner branding the Content Peach, VIVID Interactive, or any other brands represented by Directory Partner.<br><br>The Directory Partner will supply to VGCS a copy of the Directory Partner branding materials without charge which VGCS will be authorised to use in connection with any marketing or promotional activities which may be carried out by VGCS in relation to the Content from time to time. |
| **Advertising** | Except as instructed from time to time by VGCS, the Directory Partner shall ensure that the Content shall at all times not contain any form of advertising of any goods or services and the Directory Partner agrees that it shall have no right to include any form of advertising on such Content without Vodafone's express prior written approval. |

**2. Content testing:**

| | |
|---|---|
| **Delivery** | The Content will be made available to VGCS for testing on the dates set out in Schedule 1 or as otherwise agreed from time to time by the Parties in writing. |
| **Testing** | Prior to the Content being placed on the Directory by any Vodafone Group Company the Content shall to be tested to ensure that it is suitable in each of the Territories. |

**3. Customer Support:**

| | |
|---|---|
| **Customer Support** | VGCS shall be responsible for dealing with all First Line Customer inquiries concerning the Content and the Directory Partner shall be responsible for dealing with all Second Line Customer inquiries and authorises VGCS to refer such inquiries to the Directory Partner's nominated contact number(s) specified in Section 8 of Part 1.<br><br>The Directory Partner shall, if requested by VGCS, document and agree in good faith, appropriate operational processes for the transfer of any Customer from First Line Customer Support to Second Line Customer Support. |
| **"First Line" and "Second Line" Customer Support** | "**First Line**" customer support shall include all Customer inquiries relating to billing and payment collection, connection to the mobile internet, access to the Content and any non-Content specific issues relating to the Directory.<br><br>"**Second Line**" customer support shall include all Customer inquiries other than First Line Customer support, including, but not limited to any Content, delivery related and/or Technical Support enquiries. |

**4. Hosting:**

| | |
|---|---|
| **Hosting** | The Directory Partner will be responsible for hosting the Content on the Platform and for making available, operating, supporting and maintaining the Platform in accordance with the further provisions of this Agreement and will ensure that all such services shall meet or exceed the KPIs for such services at all times. |

**5. Pricing, Revenue and Billing:**

| | |
|---|---|
| **Pricing:** | The Directory Partner may in its reasonable discrection determine the price at which the Content is sold to Customers in the Territories. However, nothing shall prevent VGCS from rebating or otherwise crediting part or all of the Directory Fee to Customers so as to effectively reduce the price which Customers pay for the Content. |
| **Directory Fee:** | VGCS shall be entitled to be paid a Directory Fee equivalent to [INFORMATION OMITTED AND FILED SEPARATELY WITH THE COMMISSION UNDER RULE 24B-2] of the Net Revenue. |
| **Billing and Reconciliation:** | VGCS as agent for the Directory Partner, shall be responsible for the billing of and collection of revenues from the Customers in respect of Chargeable Events.<br><br>The Directory Partner shall provide to VGCS all relevant financial information, in particular, details of all value added tax, turnover tax and other sales taxes which may be payable on supplies of Content within each Territory (collectively "VAT") to enable VGCS to comply with its billing, collection and financial obligations under this Agreement. For the avoidance of doubt, the Directory Partner remains wholly responsible for payment of any such VAT to the relevant tax authorities.<br><br>VGCS will generate monthly reports showing the calculation of the Directory Partner Revenue and the Directory Fee for the relevant month.<br><br>Within 30 days of the end of each month VGCS will remit to the Directory Partner the report together with VGCS's invoice for the Directory Fee for that month. VGCS shall pay to the Directory Partner the Directory Partner Revenue within 60 days of the end of the month in which the Chargeable Event occurred. VGCS shall also be permitted to set off the sums billed to the Directory Partner in respect of its invoice for the Directory Fee against the Directory Partner Revenue owed to the Directory Partner.<br><br>Where a Deduction arises as a result of a refund issued or credited to a Customer, VGCS shall deduct that part of the Directory Partner Revenue paid to the Directory Partner in respect of the refunded Chargeable Event against the calculation of the Directory Partner Revenue in the report for the month following the refund or credit.<br><br>The monthly reports shall be sent to:<br><br>The Waat Corporation<br>Mail: 18226 Ventura Blvd Suite #102 Tarzana, CA 91356 U.S.A.<br>Fax: 1-818-708-9995 Email: Adi@waatmedia.com |
| **Payment Terms:** | Payment by VGCS to the Directory Partner shall be made by BACS to the following bank account:<br><br>EAST WEST BANK<br>18321 Ventura Blvd. Tarzana, CA 91356<br>Account Name: The Waat Corporation<br>Account Number: 8270-2648<br>ABA# 322070381<br><br>The currency of this Agreement shall be Euros. All financial reports, statements, invoices, charges and payments made by one Party to the other shall be in Euros. In respect of revenues generated in a country that does not have the Euro as its primary currency (a "Non-Euro Amount"), VGCS shall convert such Non-Euro Amount to Euros using the UK Financial Times average middle market exchange rate calculated for the applicable month. |

**6. Term:**

| | |
|---|---|
| **The Initial Term:** | The Initial Term shall be [INFORMATION OMITTED AND FILED SEPARATELY WITH THE COMMISSION UNDER RULE 24B-2] commencing on the date on which the Agreement is signed by both Parties. |

**7. KPIs and Technical Support:**

**Availability:** percentage of 97% throughout each period of 30 consecutive days.

**Capacity:** The Content must be able to handle a minimum of 50 simultaneous Customer requests per second.

**Response Time:** The Content will not exceed an average Response Time of 1 second] over any 24-hour period, excluding any Downtime.

**Additional KPIs:** None

**Technical Support** The Directory Partner shall provide appropriate support when requested by VGCS in accordance with this Agreement. The Directory Partner will proactively monitor all aspects of performance and not rely upon VGCS for notification of faults.

The following guidelines will be used to determine the priority of incidents and the Directory Partner's corresponding obligation to respond and resolve such incidents involving the Content and other services delivered or under the responsibility of the Directory Partner.

Priority 1 (Critical): Complete failure of the Content or a significant part of the Content or the problem creates a definite business or financial exposure or affects a large number of Customers. Response within 10 minutes and resolution within 4 hours

Priority 2 (High): Content not totally down, but the affected components form a significant part of the functionality of the Content and the problem creates a possible business or financial exposure. Response within 30 minutes and resolution within 8 hours

Priority 3 (Medium): The Content is largely available and the problem has little or no effect on the services provided by the Content and the problem creates no business or financial exposure. Response time within 3 hours and resolution time within 2 business days

**8. Reporting:**

**KPI Reporting:** By the fifth day of each calendar month for the first six months of this agreement and quarterly thereafter during the term of this Agreement, the Directory Partner shall provide to VGCS's commercial and technical contact by email (or to such other contacts and in such other formats as VGCS may reasonably request from time to time) a report in relation to the performance of the Directory Partner against the KPIs in the preceding month.

**Relevant Contacts:** The relevant contacts for this Agreement are as follows:
The Directory Partner:
Technical - *Camill Sayadeh Tel (818)708-9995 Mobile (818)723-2488 fax (818)708-0598 Email Camill@waatmedia.com*
Commercial - *Adi McAbian Tel (818)708-9995 Mobile (818)644-1300 fax (818)708-0598 Email adi@waatmedia.com*
VGCS:
Technical - *Charlotte Andrew Tel (+44 207 212 0000); Email charlotte.andrew@vodafone.com*
Commercial - *Ion Valaskakis Mobile +44 7900 227 088; Email ion.valaskakis@vodafone.com*

**SIGNED on behalf of Vodafone Global Content Services Limited on:** )
)

/s/ Lee Fenton
**Name: Lee Fenton**
**Title: Commercial Director**

**SIGNED on behalf of The Waat Corporation (the Directory Partner) on:** )
)

/s/ Adi McAbian
**Name: Adi McAbian**
**Title: Vice President**

***WE HAVE REQUESTED CONFIDENTIAL TREATMENT OF CERTAIN PROVISIONS CONTAINED IN THIS EXHIBIT. THE COPY FILED AS AN EXHIBIT OMITS THE INFORMATION SUBJECT TO THE CONFIDENTIALITY REQUEST.***

## PART 2

## TERMS AND CONDITIONS

### 1. ASSIGNMENT AND THIRD PARTIES

1.1 The Directory Partner acknowledges that all rights granted to VGCS hereunder are for the benefit of VGCS and for the additional purpose of conferring the same benefit on the Vodafone Group. The Parties agree that VGCS may assign, transfer or sub-contract any or all of its rights and/or obligations under this Agreement to any company in the Vodafone Group without the Directory Partner's prior written consent provided that where it sub-contracts it remains the contracting party and responsible for all obligations hereunder.

1.2 Subject to Clauses 1.1 and 1.3, this Agreement is made solely and specifically between the Parties hereto for the benefit of the Parties and the Vodafone Group Companies and is not intended to be for the benefit of or enforceable by any other person, whether under the Contracts (Rights of Third Parties) Act 1999 or otherwise, and neither Party can declare itself a trustee of the rights under this Agreement for the benefit of any such person.

1.3 The Directory Partner acknowledges that the rights of VGCS and the obligations of the Directory Partner under this Agreement are also respectively rights of and obligations owed to the Vodafone Group Companies and that any loss, damage, cost or liability incurred by any member of the Vodafone Group Companies shall also be and shall be deemed to have been incurred by VGCS as if VGCS had incurred the same. Accordingly, VGCS may institute and maintain legal or other proceedings in its own name against the Directory Partner for compensation, damages and all other remedies specifically related to any breach of the terms & conditions of this agreement by Directory Partner, subject to any applicable limitations contained in this Agreement. VGCS and the Directory Partner may by agreement amend this Agreement without obtaining the consent of the Vodafone Group notwithstanding that such amendments may relate to benefits conferred on the Vodafone Group hereunder.

### 2 THE CONTENT

2.1 The Directory Partner will provide the Content to VGCS in accordance with this Agreement and in particular the requirements set out in Section 1 of Part 1. The Directory Partner hereby appoints VGCS as its non-exclusive agent in the Territory to promote, advertise and offer for sale Content in the Territory on the Directory and to provide billing and payment collection services to the Directory Partner. The Directory Partner further gives authority to VGCS to offer for sale the Content to Customers and to bill and collect payment in respect of sales made by the Directory Partner of the Content in accordance with the terms of this Agreement.

2.2 The Directory Partner will deliver the Content by the Delivery Date ready for testing by VGCS.

2.3 The Parties will carry out testing in accordance with Section 2 of Part 1.

2.4 Unless otherwise agreed in writing, the Content will not require a Customer to register separately with the Directory Partner in order to access the Content.

2.5 The Directory Partner shall not change or vary materially the Content or the Format without VGCS's prior written consent. The Content shall comply with the Guidelines as updated by VGCS from time to time upon reasonable notice to the Directory Partner.

2.6 Where:

2.6.1 the Content (or any part thereof) breaches any of the Guidelines or any Code of Practice;

2.6.2 VGCS receives complaints regarding any of the Content or the Directory Partner which it considers to be of such seriousness or number as to be materially prejudicial to the brand or reputation of VGCS or Vodafone; and/or

2.6.3 the Content (or any part thereof) breaches any other provision of this Agreement,

Without prejudice to its other rights and remedies, VGCS may require the Directory Partner to and the Directory Partner shall use its reasonable endeavours to amend or to replace the Content with Content which, in VGCS's reasonable opinion, satisfactorily deals with the matters set out in sub-Clauses 2.8.1 - 2.8.3 above. VGCS, without prejudice to its other rights and remedies, reserves the right to temporarily suspend or disconnect the Directory Partner or remove or bar access to all or any part of the Content from the Directory until such time as the replacement or new Content is provided in accordance with this Clause 2.8.

2.7 As between VGCS and the Directory Partner, the Directory Partner accepts responsibility for all matters relating to the provision or non-provision of the Content to Customers. For the avoidance of doubt VGCS shall be under no obligation to review any of the Content to ascertain if it complies with the terms of this Agreement and any legal, regulatory or other applicable requirements.

2.8 Where VGCS receives any complaint from a Customer in relation to the Content, it may in its sole discretion decide to make a

refund or issue a credit to such Customer in respect of the Chargeable Event and such amount shall be treated as a Deduction and dealt with in accordance with the provisions of Section 5 of Part 1.

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2.9 VGCS may, with the written agreement of the Directory Partner, offer to Customers promotions in respect of the Content and such offers shall not be treated as a Chargeable Event (unless otherwise expressly agreed in writing with the Directory Partner).

2.10 The Directory Partner will use its best efforts to rectify bugs associated with any Content made available to Customers on the Directory at its own expense and in accordance with the response and fix times set out in the KPIs. Where a particular error cannot be fixed the Directory Partner will provide an amended version free of charge.

**3 VGCS OBLIGATIONS**

3.1 VGCS shall make available the Content to the Customers in accordance with the terms of this Agreement and in particular the requirements set out in Section 1 of Part 1 subject to the Content being Accepted by VGCS.

3.2 As soon as reasonably possible following the execution of this Agreement, VGCS will provide to the Directory Partner a copy of each of the relevant Guidelines and all relevant Codes of Practice and will use its reasonable endeavours to provide such other reasonable information and materials as reasonably requested by the Directory Partner which are necessary to enable the Directory Partner to comply with its obligations under this Agreement.

3.3 The Directory Partner acknowledges and agrees that nothing in this Agreement requires VGCS to place the Content (whether in whole or in part) on the Directory, to make the Content available to Customers in all of the Territories and/or actively to market and promote the Content to Customers.

**4. HOSTING OBLIGATIONS**

4.1 The Directory Partner will:

4.1.1 host the Content on the Platform in accordance with the terms of this Agreement;

4.1.2 provide Second Line Customer support and general customer support (in respect of its hosting obligations which shall include application monitoring, application support and fault and change management, in accordance the with the terms of this Agreement); and

4.1.3 make available, operate, support and maintain the Platform in accordance with in accordance with the terms of this Agreement; and will ensure that all such services shall meet or exceed the KPIs for such services at all times.

4.2 Where, the Directory Partner materially or persistently fails to meet any of the KPIs Levels or any Codes of Practice relating to the services to be performed under Clause 4, without prejudice to its other rights and remedies, VGCS shall be entitled to temporarily suspend or disconnect the Directory Partner or remove or to bar access to the Content (or any part thereof) on the Directory to its Customers until such time as the Directory Partner, can show to VGCS's reasonable satisfaction the it has taken reasonable steps to resolve the problem.

4.3 VGCS shall on and from Acceptance, use its reasonable endeavours to maintain the Directory on which Content displayed is 24 hours in every day on every day of the year but VGCS shall not be liable for any failure to maintain the Directory in such manner whether this arises from a technical or other failure in the Directory, the Vodafone Networks or otherwise. VGCS does not warrant that the Directory or the Vodafone Networks will be fault free or free of interruptions. VGCS reserves the right from time to time to improve or alter the Directory as it deems appropriate (including changes to the category structure or channels). Further VGCS reserves the right to suspend the operation of the Directory for the purposes of remedial o r preventative maintenance or improvement of the Directory.

4.4 The Directory Partner acknowledges and agrees the Directory and the distribution of Content may depend on factors beyond VGCS's control including but not limited to factors affecting the operation of the Vodafone Networks and the public networks. VGCS is not obliged to provide the Directory where such factors prevent it.

4.5 VGCS reserves the right to suspend or disconnect the Directory Partner or remove or bar access to any Content without prior notice or liability of whatsoever kind to the Directory Partner, in the event that:

4.5.1 a fault occurs (including for the avoidance of doubt any fault connected with the Content) that is considered by VGCS in its sole discretion to affect or be likely to affect the performance of the Directory or any associated charging or payment mechanism or the Vodafone Networks or any mobile access devices; or

4.5.2 the capacity of the Directory or the Vodafone Networks is or is likely to be exceeded; or

4.5.3 it is reasonably requested to do so by Vodafone.

4.6 VGCS shall not be liable to the Directory Partner for barring access to the Directory or any part thereof or for ceasing to make available or distribute any Content to Customers pursuant to this Clause.

## 5. INTELLECTUAL PROPERTY RIGHTS

5.1 The Directory Partner shall be responsible for clearing all Intellectual Property Rights in the Content for use by VGCS pursuant to this Agreement and the payment of any royalties thereon and the Directory Partner shall indemnify and hold harmless VGCS against any loss or damage of whatsoever nature arising from a failure to do so.

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5.2 The Parties agree that all Intellectual Property Rights in the Content shall remain with the Directory Partner and its licensors. In so far as required for VGCS to perform its obligations as agent under this Agreement, the Directory Partner grants VGCS a non-exclusive royalty-free licence in the Territory to display, broadcast and otherwise make available to the public the Content on or through the Directory for the term of this Agreement, including without limitation the right to distribute the Content through various technologies (including without limitation SMS, MMS and IM) to Customers.

5.3 In so far as is required for VGCS to perform its obligations as agent under this Agreement, the Directory Partner grants to VGCS a non-exclusive royalty-free licence for the term of this agreement in the Territory to use those of its trade marks, brands and other intellectual property (including the Directory Partner Branding) as are necessary to brand the Content in accordance with Part 1 and/or for the purposes of performing its obligations as the Company's agent under this Agreement.

5.4 The Directory Partner shall procure that all moral rights in the Content are waived to the extent necessary for the purposes of this Agreement.

5.5 The Directory Partner grants VGCS an irrevocable royalty free license to keep a copy of the Content for the purpose of archiving internal analysis and pursuant to Clause 6.4.

5.6 Vodafone shall be entitled, without the consent of the Directory Partner, to appoint other companies within the Vodafone Group (the "**Vodafone Sub-Agents**") as its sub-agent for the purposes of this Agreement which have the same rights and obligations as Vodafone provided that Vodafone shall remain liable for all of its obligations set out in this Agreement.

## 6. REPORTING AND AUDITING

6.1 The Parties shall comply with the reporting requirements set out in Part 1.

6.2 Each Party shall during the term of this Agreement, deliver to the other upon its reasonable written request access to and copies of such information that the other may reasonably require to perform its obligations under this Agreement, including without limitation any technical information required to assess the Content, and any financial or statistical information required to verify the number of Chargeable Events and use of the Content by Customers.

6.3 Both Parties shall, at their own expense and upon 30 days' notice to the other Party, have the right to have the other Party's relevant books and records examined during the ordinary course of business by an independent auditor solely for the purposes of verifying the accuracy of any financial report or statement made under this Agreement. If such Party subsequently discovers any discrepancy, the other Party will rectify such discrepancy within 30 working days after notification of the discrepancy. The Parties shall only be entitled to utilize this provision once in any three-month period.

6.4 If VGCS maintains a repository within a particular Territory containing details of Content purchased by a Customer in such Territory, VGCS shall be entitled to download Content free of charge to any Customer in that Territory where such Customer has already been charged for such Content on a one-off basis by VGCS.

## 7. PAYMENTS

7.1 The Parties shall make all payments which may be required to be paid to each other in accordance with the provisions of Section 5 of Part 1. Unless otherwise expressly set out in this Agreement or unless such amount is bona fide in dispute, the Parties shall pay all sums owed to each other under such arrangements within 30 days of receipt of a valid invoice for the relevant sum.

7.2 The Directory Fee is exclusive of value added tax (if any) chargeable thereon and the Directory Partner shall pay to VGCS in addition to the Directory Fee an amount equal to any value added tax chargeable thereon.

7.3 VGCS and any Vodafone Group Company shall be entitled to make any deduction or withholding required by law from any payment payable under this Agreement or any agreement between Vodafone Group Companies entered into for the purposes of this Agreement.

7.4 VGCS shall not be obliged to make any payment for any Content that is in breach of Clause 8.1 or 8.2.

## 8. WARRANTIES, INDEMNITY AND LIABILITY

8.1 The Directory Partner warrants and undertakes to VGCS that:

8.1.1 it has full right and authority to enter into this Agreement and that its entry into this Agreement does not breach any third party's rights or any other Agreement to which it is a party;

8.1.2 it shall implement and comply with the Codes of Practice and any other reasonable policies provided by VGCS or Vodafone to the Directory Partner from time to time which address anti-social, fraudulent or unlawful use of Directory, the Content, the Vodafone

Networks and/or any mobile device;

8.1.3 it shall not act in a way which will impair the operation of the Directory, the Vodafone Networks or any part of them, or put them in jeopardy;

8.1.4 it shall comply with all relevant requirements of the Data Protection Legislation and will not reproduce, sell, publish or otherwise commercially exploit any information or data obtained by it under this Agreement;

8.1.5 it has the necessary licences, consents, permission or approvals to operate, and to grant the rights to use the Content as permitted by the terms of this Agreement;

8.1.6 it will use reasonable skill and care in carrying out its obligations and exercising its rights under this Agreement; and

8.1.7 The Company and the Platform shall comply with the KPIs and the Platform shall otherwise be fit for he purpose set out in this Agreement.

8.2 The Directory Partner warrants and undertakes to VGCS that the Content:

8.2.1 be of satisfactory quality, be fit for purpose, and be kept fresh, updated and current (with reference to the nature of the Content's subject matter) at all times;

8.2.2 will comply with the Format, the Content Description and all relevant Guidelines;

8.2.3 will not infringe any third Party's rights (including Intellectual Property Rights);

8.2.4 will not be defamatory, racist, materially inaccurate, be so violent or abusive in nature as to be reasonably likely to cause serious offence to any material group of people, or otherwise be in breach of any applicable law, regulation or code of conduct or result in VGCS or any part of the Vodafone Group or Vodafone Group being in breach of any law;

8.2.5 will not contain any Content that promotes a Competitor or criticises VGCS or Vodafone or brings VGCS or Vodafone into disrepute;

8.2.6 shall not, and the Platform shall not, contain any computer viruses, logic bombs, trojan horses and/or any other items of software which would disrupt the proper operation of the Directory or any mobile device; and

8.2.7 it is tax resident in the United States and will be deemed to remain tax resident in that territory unless it notifies VGCS of a change of tax residency on 30 days prior written notice. The Company shall immediately provide any documentation required by VGCS evidencing its tax residency in such territory.

8.3 VGCS warrants and undertakes that:

8.3.1 it has full right and authority to enter into this Agreement;

8.3.2 it shall comply with all relevant requirements of the Data Protection Legislation; and

8.3.3 it will use reasonable skill and care in carrying out its obligations and exercising its rights under this Agreement.

8.4 Each Party will immediately notify the other in writing of any claim or action, actual or threatened, by a third Party as a consequence of this Agreement or any of the Content.

8.5 The Directory Partner shall indemnify Vodafone and all members of the Vodafone Group from and against all loss, damage, expense or cost (including legal costs calculated on a solicitor-client basis) sustained by Vodafone or any Vodafone Group company because of any claim or allegation that the provision, use, receipt or possession of any Intellectual Property Right or materials provided by or on behalf of the Directory Partner to Vodafone or a Vodafone Group Company infringes the Intellectual Property Rights of a third party.

8.6 Nothing in this Agreement excludes either Party's liability with respect to death and personal injury resulting from the negligence of that Party, its employees, agents or subcontractors, or either Party's liability for fraud or any other liability which may not be excluded or restricted by law.

8.7 Except under Causes 8.5 and 8.6 in no circumstances will either Party be liable for any indirect, special or consequential damages or loss of profits arising from breach of contract, negligence or other liability even if the other Party had been advised or knew (or should have known) of the possibility of such damages.

8.8 Both Parties agree that they carry and will maintain throughout the term adequate insurance to cover such of their liabilities under this Agreement. In particular Directory Partner agrees to keep and maintain products/liability insurance to the value of [INFORMATION OMITTED AND FILED SEPARATELY WITH THE COMMISSION UNDER RULE 24B-2] million and third party intellectual property rights insurance to the value of [INFORMATION OMITTED AND FILED SEPARATELY WITH THE COMMISSION UNDER RULE 24B-2] million (and if requested to do so will note the Vodafone's interest on the policy) and will not do anything to vitiate such insurance during the term of this Agreement and a period of 1 year thereafter.

8.9 The Parties acknowledge that their respective obligations and liabilities are exhaustively defined in this Agreement and that the express obligations and warranties made in this Clause 8 are in lieu of and to the exclusion of any warranty, condition, term, undertaking or representation of any kind, express or implied, statutory or otherwise relating to anything supplied or provided or services performed under or in connection with this Agreement including (without limitation) as to the condition, quality, performance, satisfactory quality or fitness for the purpose.

**9. TERM AND TERMINATION**

9.1 This Agreement will commence on the day it is executed by the Directory Partner and will continue for the Initial Term set out in Part 1 unless it is otherwise terminated earlier in accordance with this Agreement. Following the expiry of the Initial Term, this Agreement shall automatically continue unless either Party gives to the other at least thirty (30) days prior written notice to terminate the Agreement.

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9.2 Either Party may terminate this Agreement immediately on written notice (such notice not to be made by email) if:

9.2.1 the other is in material breach of its terms and such breach is incapable of remedy or, if capable of remedy, fails to remedy that breach within 14 days' notice from the non-breaching Party requiring remedy; or

9.2.2 the other ceases to carry on its business or has a liquidator, receiver or administrative receiver appointed to it or over any part of its undertaking or assets or passes a resolution for its winding up (otherwise than for the purpose of a bona fide scheme of solvent amalgamation or reconstruction where the resulting entity will assume all of the liabilities of it) or a court of competent jurisdiction makes an administration order or liquidation order or similar order over the other, or the other enters into any voluntary arrangement with its creditors, or is unable to pay its debts as they fall due or suffers any similar or equivalent act in another relevant jurisdiction.

9.3 VGCS will be entitled to terminate this Agreement immediately on written notice, without prejudice to its other rights and remedies, in the event that:

9.3.1 the Format for the Content set out in Part 1 is changed by the Directory Partner in such a way that is, in VGCS's reasonable opinion, incompatible with the Directory;

9.3.2 the Directory Partner materially or persistently fails to meet any of the KPIs, the Guidelines and/or the Codes of Practice;

9.3.3 VGCS receives complaints regarding any of the Content or the Directory Partner which it considers to be of such seriousness or number as to be materially prejudicial to the brand or reputation of VGCS or Vodafone; and/or

9.3.4 in our reasonable opinion the continued use of the Content (or part thereof) or the performance of any of its obligations under this Agreement relating to the use of the Content will infringe third party rights, be illegal, or not in compliance with or will otherwise be in breach of any applicable laws, regulations or statutory enactments.

9.3.5 where the access to the Content has been barred pursuant to Clauses 2.8, 4.2 and 12.5 and the Directory Partner has failed to resolve the problems identified by VGCS to VGCS's reasonable satisfaction by the date specified by VGCS pursuant to those Clauses.

9.4 VGCS shall be entitled to terminate this Agreement without cause at any time, either in full or in relation to particular Territories or items of Content (or both), by giving 30 days' written notice to the Directory Partner, without prejudice to its other rights and remedies. Any partial termination shall not affect the validity or enforceability of this Agreement in respect of the remainder of the Agreement.

9.5 Termination of this Agreement does not affect the accrued rights, obligations or liabilities of the Parties prior to termination.

9.6 Upon termination or expiry of this Agreement for whatever reason:

9.6.1 VGCS will remove the Content from the Directory and cease providing access to the Content to its Customers;

9.6.2 each Party will return to the other any confidential information or materials provided to it by the other within 30 days of the date of termination;

9.6.3 each Party will remove all references to the other's trade marks from any marketing and promotional materials;

9.6.4 the Parties shall settle all outstanding sums either may owe the other within 60 days of the date of termination; and

9.6.5 all licences granted under this Agreement will immediately cease.

9.7 VGCS may request and the Directory Partner will agree to extend the operation of this Agreement for a period of not more than three (3) months beyond what would otherwise be the effective date of termination or expiration to give VGCS an opportunity to replace the Content and rebrand its marketing materials.

## 10. CONFIDENTIALTY

10.1 Except as may be required by law or any applicable regulatory body, or as is strictly required to perform its obligations under this Agreement, each Party shall keep secret and confidential and not use, disclose or divulge to any third party any information that they obtain about the other concerning the business, finances, technology and affairs of the other, and in particular but not limited to this Agreement and its subject matter. This Clause does not apply to information that has come into the public domain other than by breach of this Clause or any other duty of confidence or is obtained from a third Party without breach of this Clause or is required to be disclosed by law. The obligations under this Clause 10.1 shall continue for period of five (5) years only following the date of expiry or termination of this Agreement.

10.2 The Parties agree that VGCS shall be entitled to share any or all information it receives from or generates on behalf of the Directory Partner pursuant to this Agreement with the Vodafone Group.

**11. DATA PROTECTION**

11.1 Each Party agrees that any personal data used by the Parties in connection with this Agreement in their business and/or transferred beyond the European Economic Area for the purposes of this Agreement shall be processed in accordance with the requirements of the applicable Data Protection Legislation and each Party agrees to do all such acts and things (including entering into any necessary agreements) at their own expense to ensure that they so comply.

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11.2 All personal and traffic data will remain the exclusive property of Vodafone. The Directory Partner shall be entitled to receive, on written request from time to time, aggregated user information for the limited purpose of analysing the effectiveness of the Content.

11.3 To the extent that the Directory Partner is required in connection with the performance of its obligations under this Agreement to gather personal data relating to any Customer, then the Directory Partner shall not make any use of that data for any reason other than to perform its obligations hereunder and in particular shall not make any use of the personal data for marketing purposes.

11.4 To the extent that the Directory Partner handles personal data for which Vodafone are responsible, the Directory Partner undertakes to use all reasonable endeavours to ensure that it has in place appropriate technical and organisational security measures (in addition to those set out in Clause 12 of this Agreement) in respect of the relevant data as far as such endeavours are necessary to comply with the same or equivalent obligations as those imposed on VGCS under applicable Data Protection Legislation.

**12. BACKUPS, ARCHIVING AND SECURITY STANDARD**

12.1 The Directory Partner will provide sufficient redundancy in services and infrastructure in order to maintain the Content to the standards set out in this Agreement. The Directory Partner shall perform daily backups of all data regarding Chargeable Events and be able to recover to the last backup. Backups will be treated in accordance with the industry standard security.

12.2 Notwithstanding the obligations under the Data Protection Legislation all facilities associated with the hosting of the Content, the Content data and the transmission of that data will be provided with physical protection in order to ensure security commensurate with the sensitivity of the data being processed and the service being provided. The Directory Partner is responsible for obtaining and maintaining the Content and the Platform.

12.3 The Directory Partner shall:

12.3.1 ensure that viruses are not introduced to the Platform;

12.3.2 respond without delay to all virus attacks, destroy any Virus detected, document each incident and report the details to VGCS as soon as practicable in the circumstances; and

12.3.3 scan all incoming computer media for viruses before they are read by any hardware associated with the Content

12.4 The Directory Partner will take all reasonable measures to prevent unlawful or unauthorised access to the Directory Partner computer systems associated with the Content and the Content data and Content backups (including measures designed to prevent unlawful or unauthorised use, copying or redistribution of the Content data by Customers). Where appropriate this will include use of locking devices, firewalls, shared secrets, digital certificates, password protection, and content filtering, encryption and intrusion detection.

12.5 Where the Directory Partner materially or persistently fails to meet any of the KPIs and/or the Codes of Practice relevant to the provisions of this Clause or any of its obligations under this Clause 12, without prejudice to its other rights and remedies, VGCS shall be entitled to temporarily suspend or disconnect the Directory Partner or remove or to bar access to the Content (or any part thereof) on the Directory to its Customers until such time as the Directory Partner, can show to VGCS's reasonable satisfaction the it has taken reasonable steps to resolve the problem.

**13. GENERAL**

13.1 Neither Party shall issue any press statement or other announcements relating to this Agreement or the subject matter thereof without the prior written consent of the other Party.

13.2 No variation of this Agreement or of any of the documents referred to in it shall be valid or effective unless it is in writing and signed by or on behalf of each of the Parties.

13.3 This Agreement may be executed in any number of counterparts, each of which, when executed and delivered, shall be an original, and all the counterparts together shall constitute one and the same instrument.

13.4 Any notice or other communication required to be given or made under this Agreement will be in writing and addressed to the receiving Party's principal contact at the address of the receiving Party as set out in the Agreement or such other person or address as notified from time to time in accordance with the terms of this Clause 13.4. Any such notice or communication may be delivered by hand, first class post (if both Parties are within the UK), airmail (If one of the Parties is overseas), fax or email and shall be deemed to be given or made if: (a) sent by hand, upon receipt; (b) by first class post, on the second working day following the date of posting; (c) by airmail, on the seventh working day following the date of posting and (d) by fax or email,

when dispatched provided that a confirmatory copy is immediately dispatched by first class post or airmail (as appropriate).

13.5 This Agreement represents the entire understanding between the Parties in relation to its subject matter and supersedes all agreements and representations made by either Party, whether oral or written. This Clause shall not affect either Party's liability for fraud.

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13.6 Failure or delay by either Party to enforce any provisions under this Agreement will not be taken as or deemed to be a waiver of its rights or operate as a waiver of any subsequent breach.

13.7 If any part of this Agreement is held to be void, voidable, illegal or unenforceable, the validity or enforceability of the remainder of this Agreement will not be affected.

13.8 Except as otherwise may be expressly permitted by this Agreement, neither Party shall assign, transfer or sub-contract to any other person any of its rights or obligations under this Agreement without the other Party's prior written consent (which shall not be unreasonably withheld).

13.9 The Parties will use all reasonable endeavours to procure that any necessary third party will do, execute and perform all such further deeds, documents, assurances, acts and things as may reasonably be required to carry the provisions of this Agreement into full force and effect.

13.10 Any termination of this Agreement for any reason shall be without prejudice to any other rights or remedies a Party may be entitled to at law or under this Agreement and shall not affect any accrued rights or liabilities of either Party nor the coming into force or the continuance in force of any provision of this Agreement which is expressly or by implication intended to come into or continue in force on or after such termination including without limitation Clauses 1.2 (Contracts (Rights of Third Parties) Act 1999), 5 (Intellectual Property Rights), 6 (Audit), 8 (Warranties), 8.10 (Insurance), 10 (Confidentiality), 13.1 (Publicity), 13.5 (Entire Agreement), 13.6 (Waiver), 13.7 (Severability), 13.11 (Survival of Terms), and 13.16 (Law).

13.11 VGCS and the Directory Partner may amend this Agreement by mutual agreement in writing.

13.12 In the event of any conflict between these Terms and Conditions and Part 1 (Content Description) then, to the extent of such inconsistency only, Part 1 shall prevail.

13.13 Neither Party shall be liable for any delay or failure in performing any of its obligations under this Agreement if such delay or failure is caused by circumstances outside the reasonable control without limitation, any delay or failure caused by any act or default of the other party).

13.14 In this Agreement:

13.14.1 reference to persons shall include legal as well as natural persons and (where the context so admits), references to the singular shall include the plural and vice versa;

13.14.2 reference to clause, paragraphs and section numbers and to schedules and parts, shall be those of this Agreement unless the contrary is stated;

13.14.3 reference to this Agreement shall include reference to any schedule and to this Agreement as the same may be amended, novated or supplemented from time to time in accordance with its terms;

I3.14.4 paragraph, section and clause headings in this Agreement are for ease of reference only and shall not affect its interpretation, validity or enforceability;

13.14.5 in the event of any conflict between the terms of this Agreement and its Schedules, the Schedules shall prevail;

13.14.6 Reference to any statute, act, directive or other regulation includes a reference to that statute, act or directive or other regulation as re-enacted or amended from time to time.

13.14.7 the words "include" and "including" shall be construed without limitation to the words following.

13.15 Any times, dates or periods specified in the Agreement may be extended or altered only by agreement in writing between the Parties. Time shall however be of the essence of this Agreement, as regards the obligations of the Directory Partner both as regards times, dates and periods specified in the Agreement and as to any times, dates or periods that may by agreement between the Parties be substituted for any of them.

13.16 This Agreement will be governed by and construed and interpreted in accordance with the law of England and Wales and the Parties to this Agreement submit to the exclusive jurisdiction of the English Courts.

**PART 3**
**DEFINITIONS**

"**Acceptance**" means acceptance of the Content by VGCS in accordance with the terms of this Agreement and "**Accept**" and "**Accepted**" shall be construed accordingly.

"**Acceptance Criteria**" shall have the meaning given in Section 2 of Part 1.

"**Application Submission Criteria for Java QA**" means those guidelines relating to the standards of Content produced and amended from time to time by VGCS and provided to the Directory Partner in connection with the Vodafone certification process.

"**Availability**" is defined as the period of time the Content are accessible to VGCS or VGCS Customers within each period of 30 (thirty) consecutive days and will be measured using the following formula:

$$100 \times \frac{MP-D}{MP} = \%\ \text{Availability}$$

"**Chargeable Event**" means any use of the Content by a Customer for which the Customer will be charged by VGCS or any Vodafone Sub-Agent(which for the avoidance of doubt shall not include use of the Content for demonstration, testing or for any other purpose which has been expressly excluded under the terms of this Agreement).

"**Codes of Practice**" means (1) all codes of practice (including any generally recognised voluntary codes of practice regulating the operation of the internet), all applicable laws Including the Data Protection Legislation), regulations, any government recommendations and/or any recommendations of any regulatory body and (2) any rules of procedure (including technical or quality control procedures), guidelines, directions, policies and/or other requirements made or adopted by VGCS from time to time which relate to the operation of the Directory, the participation of directory partners in the Vodafone Live! service, the provision of content for use on the Directory and/or the subject matter generally of this Agreement.

"**Competitor**" means any third party competitor of the Vodafone Live! service including without limitation any consumer focused multi-access internet portal, wireless portal or online service provider focused on the provision of wireless content services including but not limited to any operator, or any company affiliated with such operator, of a public mobile telephony network.

"**Content**" means the information, text, data, graphics, moving and still images and sound recordings (including the music and lyrics on such recordings) and/or services as described in the Agreement and where the context so requires, includes the link supplied by the Directory Partner to VGCS to be placed in the Directory.

"**Content Charge**" mean VGCS's and/or each Vodafone Group Company's specific charge to the Customer including any value added tax, turnover tax or other local sales or other taxes for the use of the Content excluding for the avoidance of doubt the Network Charges.

"**Contract Year**" means each calendar year of this Agreement commencing on the date of this agreement and on each subsequent anniversary thereof.

"**Customer**" means a user of the Directory.

"**Data Protection Legislation**" means any applicable national data protection and privacy legislation in force anywhere in the Territory.

"**Deductions**" means: (1) all Customer refunds (or credits which may issued to a Customer in lieu of a refund,) in respect of a Chargeable Event; (2) any deductions or withholdings which VGCS or any Vodafone Sub-Agent may be required to make by law from any payment payable under this Agreement or any agreement between Vodafone Group Companies entered into for the purposes of this Agreement; (3) any value added tax, turnover tax or other local sales taxes or other taxes (other than such taxes included in the Content Charge) paid by VGCS or a Vodafone Group Company as a result of arrangements entered into for the purposes of this Agreement; and (4) such other deductions which the Parties may agree from time to time in writing.

"**Delivery Date**" means the date(s) agreed by the Parties for the delivery of the Content (if any) as set out in Schedule 1.

"**Directory**" means the mobile content directory operated for and on behalf of or in conjunction with Vodafone that is accessible by Customers of the Vodafone Networks and which lists various mobile content and services.

"**Directory Fee**" means the amount payable to VGCS in respect of the provision of its advertising and billing and collection services under this Agreement as set out in Section 5 of Part 1.

"**Directory Partner Branding**" means the branding, layout, Format, "look and feel" and style (including all copyright works and trade and service marks and names included therein) to be used in relation to the Content, as set out in Section 1 of Part 1.

"**Directory Partner Revenue**" means the Net Revenue less the Deductions.

“**File**” means each individual file comprising the Content which has been developed for use on each Specified Mobile Phone.

“**First Line Customer Support**” has the meaning ascribed to such term in Section 2 of Part 1.

“**Format**” means the technical format of the Content as set out in Section 1 of Part 1.

“**Gross Revenue**” means the aggregate Content Charges billed by Vodafone to Customers in respect of Chargeable Events.

“**Guidelines**” means the Style Guidelines, the Application Submission Criteria for Java QA (if applicable) and the Integration Guidelines.

“**Initial Term**” shall have the meaning given in Section 6 of Part 1.

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"**Intellectual Property Rights**"means all intellectual and industrial property rights including registered trade and service marks, letters patent, utility models, registered designs, unregistered trade and service marks, trade and business names (including rights in any get-up or trade dress), domain names, rights in domain names, topography rights, copyright, database rights, unregistered design rights and all other similar proprietary rights in every case which may subsist in any part of the world including any registration of any such rights and applications and any rights to make applications for any of the foregoing.

"**Integration Guidelines**" means the technical performance and format requirements relating to the Content produced and amended from time to time by VGCS and provided to the Directory Partner for use in accordance with the terms of this Agreement.

"**KPI**"means the key performance indicators used to measure the operational and technical performance of the Directory Partner as set out in Section 7 of Part 1.

"**month**"means a calendar month and "monthly" shall be construed accordingly.

"**MP**"or "**Measured Period**"means the total number of hours in the period of 30 consecutive days less any Scheduled Downtime registered with VGCS. "**Scheduled Downtime**,"means agreed downtime which is not included in the calculation of the Measured Period. Scheduled Downtime is subject to a maximum of 2 hours in any period of 30 consecutive days, and not less than five working days' notice to VGCS, otherwise it shall be treated as Downtime. "**D**"or "**Downtime**"means downtime of the Content which is not Scheduled Downtime.

"**Net Revenue**"means the Gross Revenue less any value added tax, turnover tax or other local sales or other taxes tax charged to Customers.

"**Network Charges**"means Vodafone's or its service providers' Network charges to the Customers in connection with the access, carriage and use of the Content.

"**Platform**"means the system, including the equipment, the link and the software used by the Directory Partner to host and maintain the Content.

"**Response Time**"is defined as the time period between (1) when the Directory Partner receives a request from a Customer or VGCS and (2) when the Directory Partner has successfully recognised that request and responded to that request in accordance with the Content agreed method of operation.

"**Second Line Customer Support**"has the meaning ascribed to such term in Section 2 of Part 1.

"**Specified Mobile Phone**"means the mobile phones on which the Content will be supplied as specified in Schedule 1 of the Agreement.

"**Style Guidelines**"means those guidelines relating to the style of Content, produced and amended from time to time by VGCS and provided to the Directory Partner for use in accordance with the terms of this Agreement.

"**Territory**"means all of those countries in respect of which VGCS is authorised by this Agreement to provide the Content to Customers as set out in Schedule 1 and "**Territories**" shall mean any such country or countries.

"**Vodafone Group**"or "**Vodafone**" means Vodafone Group plc and each company or entity in which Vodafone Group plc has a shareholding or interest, directly or indirectly of 15% or more or has the right to exercise, directly or indirectly 15% or more of the voting rights and all Vodafone Partner Networks and "**Vodafone Group Company**" shall be construed accordingly.

"**Vodafone Partner Networks**"means any company or corporation with which a Vodafone Company has entered into a co-operation agreement with regard to the development and supply of new products and services and other related matters, and Vodafone Group Plc (or such Vodafone Group Company as Vodafone Group Plc has nominated) has entered into a brand licence agreement in relation to the licensing and use of the Vodafone name and brand.

"**Vodafone Networks**"means the wireless communications systems operated and/or provided for and on behalf of Vodafone within the Territory.

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SCHEDULE 1

| | | |
|---|---|---|
| 1. | **Content Description** | Images and videos (when technically possible and permitted by law) of erotic / adult content subject to VGCS guidelines and restrictions |
| 2. | **Vodafone Certification** | Not applicable |
| 3. | **Languages** | English and such other languages as agreed by the Parties from time to time. |
| 4. | **Territories** | Worldwide |
| 5. | **Specified Mobile Phones** | Sharp GX10 and GXl0i and any other type of mobile appliance, machine or device that inter alia can be used to connect to the Directory as agreed by the Parties from time to time. |
| 6. | **Delivery Dates** | As of May $15^{th}$ 2003 |

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## GUIDELINES FOR ADULT CONTENT v.1.1

These are an initial set of Guidelines issued by VGCS as of 1 May 2003. Updates and further Guidelines will be issued from time to time by VGCS and Vodafone operating companies.

The following elements are classified as hard core, illegal or defamatory and as such must not form part of the Content provided by content partners for access via the vodafone live! service:

- The portrayal of explicit sexual activity (i.e. contact, intercourse)
- Female Genitalia / Aroused male genitalia
- Ejaculation images
- Masturbation
- Oral-genital contact of any kind
- Penetration (including anal, oral or vaginal) by finger, penis, tongue, or any object
- Fetish material – die whips, chains, bondage materials and dress
- Hosted material (including dialogue) likely to encourage an interest in abusive sexual activity (e.g. paedophilia, incest) which may include depictions involving adults role-playing as non-adults.
- The infliction of pain or physical harm, real or (in a sexual context) simulated or otherwise.
- Depiction of the use of any form of physical restraint, for example, gags and bonds.
- Activity which is degrading or dehumanising (examples include the portrayal of bestiality, necrophilia, defecation, urolagnia).
- Child pornography or material that provides or depicts incest or the abuse of children.
- Any material which depicts a person that appears to be under the age of 18 in sexual activity, or presenting in a sexually provocative way.
- Material containing racial, religious or ethnic hatred or abuse, material containing discriminatory or defamatory abuse
- Any material which is in breach of the law, including copyright laws, criminal laws, obscene publications etc.

These guidelines apply equally to both heterosexual and homosexual activities. For written materials, similar care should be taken to limit hard core content (educational materials that are not erotic in nature may be considered acceptable if agreed through sign off process).

In addition, and without prejudice to any obligation contained in the agency agreement between the parties, the content partners must adhere to the following rules, in addition to any which may be imposed by applicable Vodafone operating companies:

- The Directory Partner must implement a warning screen, notifying the Customer in the language native to the particular territory that they are leaving the vodafone live! service to go to a site controlled by the Directory Partner and which contains adult content which they must be 18 years of age to view.
- The Directory Partner shall proactively implement industry best practice as regards the protection of children.

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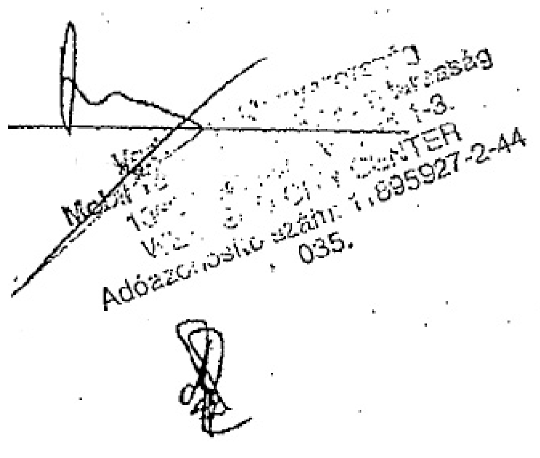
Contract Acceptance Notice - Reseller

| To: | WAAT Media Corporation, United States of America, registered no. 2512380 and Address: 18226 Ventura Blvd. Suite 102 Tarzana, Ca 91356<br><br>Attention: Camill Sayadeh<br><br>Fax: +1 818 708 0598 |
|---|---|
| From the Vodafone Group Company identified opposite: | Vodafone Hungary Ltd (CRN: Cg. 01-10-044159), a company incorporated in Hungary and whose registered office is 1062 Budapest, Váci út 1-3.. |
| CC: | Vodafone Group Services Limited<br>Vodafone House<br>The Connection,<br>Newbury, Berkshire RG14 2FN<br>United Kingdom<br>Attention: Executive Head of Content Development (Graeme Ferguson)<br>Fax: +44 207 212 0312 |
| Territory | *Hungary* |

We accept the Standing Offer set out in the Master Agreement entered into between you and VGSL dated 17 January 2005 (entitled "Vodafone Master Global Content Reseller Terms and Conditions"), a copy of which (together with any relevant Content Schedules) we have seen.

We elect that our Contract's Commencement Date be 29 September 2003.

Signed on behalf of:
The Vodafone Group Company
Identified above



Print signatories' name: Vital Attila

Position: CEO

Date signed:

*NB - Prior to signing this Contract Acceptance Notice, the Vodafone Group Company must be sent copies of the final, signed versions of: (1) Terms and Conditions; and (2) Content Schedule(s).*

**Master Global Content Agency Agreement**

between

**Vodafone Group Services Limited**

and

**The WAAT Media Corporation**

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VODAFONE MASTER GLOBAL CONTENT AGENCY TERMS AND CONDITIONS (the "Master Agreement")

**1. BACKGROUND**

**2. AND STRUCTURE**

1.1. The Content Provider owns or otherwise has the right to exploit certain Content suitable for provision to Vodafone Group Companies for distribution and sale by those companies to their Customers as the non-exclusive agents of the Content Provider.

1.2. All Content offered by the Content Provider from time to time under this Master Agreement shall be set out in Content Schedules signed by VGSL and the Content Provider. The Parties intend that each Vodafone Group Company wishing to distribute and/or offer for sale some or all of such Content enters into a separate Contract with the Content Provider in accordance with the process set out in Clause 2.

1.3 The Parties acknowledge and agree that:

1.3.1 VGSL shall not be liable to the Content Provider in respect of any obligations owed to the Content Provider by any other Vodafone Group Company pursuant to a Contract; and

1.3.2 the Content Provider shall not be liable to VGSL in respect of any obligations owed to another Vodafone Group Company by the Content Provider pursuant to a Contract.

**2. FORMATION OF CONTRACTS**

2.1 This Master Agreement is a standing offer by the Content Provider to all Vodafone Group Companies to be appointed as the non-exclusive agents of the Content Provider in the relevant Territories to (subject to Clause 2.5) promote, advertise, distribute and offer for sale to Customers the Content on and in the Directory and to provide billing and payment collection services to the Content Provider on the terms of this Master Agreement. The Content Provider further gives authority to Vodafone to offer for sale by the Content Provider the Content to Customers and to bill and collect payment in respect of sales made by the Content Provider of the Content in accordance with the terms of this Master Agreement.

2.2 Any Vodafone Group Company may, but is not obliged to, accept the Standing Offer by completing and signing the attached Contract Acceptance Notice.

2.3 A Contract is formed between the Content Provider and a Vodafone Group Company when the Content Provider receives the Contract Acceptance Notice signed on behalf of that Vodafone Group Company. Where a Vodafone Group Company is already party to a Contract with the Content Provider and the Content Provider enters into a new Content Schedule with VGSL, such new Content Schedule shall be deemed to be added to such Contract on the date that the Vodafone Group Company first acquires, promotes, advertises, distributes or resells the Content featured in such new Content Schedule. Under each Contract Vodafone appoints VGSL as its agent to agree with the Content Provider any amendments to any Content Schedule (and therefore Contract) but only to the extent that such amendments do not impose additional obligations on Vodafone.

2.4 The Standing Offer shall lapse upon termination or expiry of this Master Agreement for any reason and is not otherwise revocable by the Content Provider.

2.5 Two Vodafone Group Companies may be party to the same Contract where one of such Vodafone Group Companies provides the billing and payment collecting services, and the other provides the promotion, advertising, distribution and offering for sale services, in relation to the Content. In such circumstances the term "Vodafone" when used in this Master Agreement and such Contract shall refer to both such Vodafone Group Companies or to the relevant one, as appropriate. All notices for the purposes of this Master Agreement or the Contract shall only be valid if sent to or by (as appropriate) both such Vodafone Group Companies. Where two Vodafone Group Companies wish to be party to the same Contract in accordance with this Clause 2.5 they shall both execute the same Contract Acceptance Notice.

**3. APPOINTMENT AND DELIVERY**

3.1 The Content Provider appoints Vodafone as its non-exclusive agent in the Territory to promote, advertise, distribute and offer for sale to Customers the Content (or licences thereof) on and in the Directory and to provide billing and payment collection services to the Content Provider.

3.2 The Content Provider shall at all times provide to Vodafone Content compliant and compatible with the Format, the Integration Guidelines, the Mobile Devices and in the Languages.

3.3 The Content Provider shall provide the Content to Vodafone in accordance with any applicable Delivery Timetable.

3.4 Where a Content Schedule provides that the Content is to be compliant with the Application Submission Criteria for QA, such Content shall be delivered to Vodafone only after it has been certified by a QA Company as complying with the Application Submission Criteria for QA.

3.5 The Content shall not be featured on the Directory until it has successfully completed any testing procedures required by Vodafone. The Content Provider shall bear all the costs and expenses incurred in connection with any testing of the Content required by Vodafone (including, but not limited to, any quality assurance testing undertaken by the QA Company).

**4. THE CONTENT**

4.1 Unless otherwise agreed in writing with Vodafone, the Content shall:

4.1.1 [INFORMATION OMITTED AND FILED SEPARATELY WITH THE COMMISSION UNDER RULE 24B-2]

4.1.2 not require a Customer to provide any personal information or data to the Content Provider as a condition to access.

4.2 Subject to Clauses 4.3, 4.4 and 4.5, the Content Provider has full editorial control over the Content.

4.3 The Content Provider shall not change or vary the Content or the Format in a material way without VGSL's prior written consent. The Content shall comply with the Guidelines as updated by VGSL from time to time upon reasonable notice to the Content Provider.

4.4 Where:

4.4.1 the Content (or any part thereof) breaches any of the Guidelines;

4.4.2 Vodafone receives complaints regarding any of the Content or the Content Provider which it considers to be of such seriousness or number as to be prejudicial to the brand or reputation of Vodafone or other Vodafone Group Companies; or

4.4.3 errors are identified in the Content or the Content (or any part thereof) breaches any other provision of this Master Agreement or a Contract,

then, without prejudice to its other rights and remedies, Vodafone may require the Content Provider to use its reasonable endeavours to amend or to replace the Content with content which is acceptable to Vodafone, acting reasonably.

4.5 Vodafone is entitled to alter the format, layout or form of display of the Content:

4.5.1 to the extent necessary or desirable to allow the Content to be presented to Customers on the Directory or in downloaded form in an attractive or easy-to-use/view fashion; and

4.5.2 to comply with any Vodafone security, safety or other integrity process or requirement.

4.6 Vodafone is entitled (without the consent of the Content Provider) to offer Preview Options to Customers in respect of the Content. Preview Options shall not be treated as Chargeable Events.

4.7 The Content Provider shall ensure that the Content shall not contain any form of advertising for any goods or services and the Content Provider agrees that it shall have no right to include any form of advertising in the Content other than branding agreed to be incorporated in the Content pursuant to the Content Provider Branding Guidelines.

4.8 Vodafone may, with the written agreement of the Content Provider, offer to Customers promotions in respect of the Content and such offers shall not be treated as Chargeable Events (unless otherwise expressly agreed in writing with the Content Provider).

4.9 The Content Provider agrees that Vodafone does not have an obligation to place the Content on the Directory or, once placed, retain the Content on the Directory or to make the whole or any part of the Content available to Customers or to make the Content available in all or any of the Territories. Furthermore, Vodafone shall be entitled but not obliged, to market and promote the Content to Customers.

4.10 The Content Provider acknowledges that a Customer of a Directory in a Territory may as a result of international roaming or cross-border signal leakage be able to access that Directory, and access the Content, outside of the Territory. Such access, distribution or provision of the Content shall be permitted under this Master Agreement and the provisions relating to the Territory shall be interpreted accordingly.

4.11 The Content Provider shall ensure that:

4.11.1 its terms and conditions of sale are easily accessible to the Customers at all times at which the Customers access the Content;

4.11.2 such terms and conditions make it clear that Vodafone will bill and collect all payments for the downloading and provision of the Content as the Content Provider's marketing and billing agent; and

4.11.3 the Customer is required to accept such terms and conditions as a precondition of the Content being made available to the Customer.

4.12 As between VGSL, Vodafone and the Content Provider, the Content Provider accepts responsibility for all matters relating to the provision or non-provision of the Content to Customers. For the avoidance of doubt, neither VGSL nor Vodafone shall be under any obligation to review any of the Content to ascertain if it complies with the terms of this Agreement and any legal, regulatory or other applicable requirements.

4.13 The Content Provider will use its best efforts to rectify bugs associated with any Content made available to Customers on the Directory at its own expense and in accordance with the response and fix times set out in the Content Schedule. Where a particular error cannot be fixed the Content Provider will provide an amended version free of charge.

**5. THE DIRECTORY**

5.1 The Content Provider acknowledges and agrees that the Directory and the distribution of Content may depend upon factors beyond Vodafone's control including, but not limited to, factors affecting the operation of the Vodafone Network. Vodafone shall use reasonable endeavours to maintain the availability of the Directory twenty-four (24) hours a day, every day of the year but Vodafone shall not be liable for any failure to maintain the Directory in such manner whether this arises from a technical or other failure in the Directory, the Vodafone Network or otherwise. Vodafone does not warrant that the Directory or the Vodafone Network will be free of errors, faults or interruptions.

5.2 Vodafone reserves the right from time to time to improve or otherwise alter the Directory as it deems appropriate (including changes to the category structure or channels). Vodafone reserves the right to suspend the operation of the Directory for the purposes of remedial or preventative maintenance or improvement of the Directory.

5.3 Vodafone may at any time during the term of a Contract, without incurring any liability to the Content Provider, temporarily or permanently suspend, disconnect, remove or bar access to (a) the Directory; or (b) the Content (or any part thereof) on the Directory. Vodafone shall give the Content Provider notice of any such action.

5.4 Without prejudice to its other rights under a Contract, Vodafone shall be entitled to move the Content to, or place the Content in, any section of the Directory as it considers appropriate.

## 6. INTELLECTUAL PROPERTY RIGHTS AND BRANDING

6.1 The Content Provider grants to VGSL and Vodafone a non-exclusive, non-transferable (except to an assignee in accordance with the terms of a Contract) royalty-free (except for the payments specified in Clause 10) licence in the Territory (subject to Clause 4.10) to:

6.1.1 use, store, reproduce, display, distribute, transmit, broadcast and/or otherwise communicate and/or make available to the public the Content through various technologies (including without limitation WAP, SMS, MMS and IM);

6.1.2 use the Content Provider Marks to display, promote and advertise the Content in accordance with the Content Provider Branding Guidelines; and

6.1.3 use the Marketing Materials to promote and advertise the Content in accordance with Clause 6.2.

6.2 The Content Provider shall provide to VGSL as soon as practicable the Marketing Materials. VGSL and each Vodafone Group Company shall be entitled to use the Marketing Materials as follows:

6.2.1 for internal purposes within the Vodafone Group (including, without limitation, featuring on www.vodafonebrand.com and, where Content is Java-based, on VGSL's Java repository) and as a record of marketing relating to the Directory, without the prior consent of the Content Provider;

6.2.2 in respect of advertising and marketing for and of the Content on television and radio, in the press, on billboards and other outdoor media and in advertising in cinemas, with the prior consent of the Content Provider (such consent not to be unreasonably withheld or delayed - in the absence of reasonable refusal within seven days of request, consent shall be deemed to have been given); and

6.2.3 in respect of all advertising or marketing for and of the Content not specified in Clause 6.2.2 (including, without limitation, featuring in the Vodafone section of www.java.com where the Content is Java based), without the prior consent of the Content Provider.

6.3 All use of the Content Provider Marks shall be for the benefit of Content Provider and, save insofar as use of the Marketing Materials is permitted under Clause 6.2, in accordance with the reasonable terms of use generally applied by the Content Provider to its own activities and applying to licensees of the Content Provider Marks as notified to Vodafone and VGSL in the Content Provider Branding Guidelines.

6.4 For the avoidance of doubt, neither VGSL nor any Vodafone Group Company is obliged to conduct any advertising, marketing or promotion for or in relation to the Content.

6.5 Except as specifically authorised in a Contract or by this Clause 6, neither Party shall use the other Party's name or trade marks (including in the case of the Content Provider, the "Vodafone" name and any trade mark of any Vodafone Group Company) without the other's prior written consent.

6.6 Each Vodafone Group Company shall be entitled to sub-license its rights under this Clause 6 to:

6.6.1 any other Vodafone Group Company;

6.6.2 any Customer to the extent necessary to enable that Customer to exercise those rights in connection with the Content as are associated with a Chargeable Event; and

6.6.3 any service provider if that Vodafone Group Company outsources all or part of the provision or management of the Directory. Such outsourcing contractor shall be allowed to use the rights granted under this Clause 6 subject to that Vodafone Group Company remaining responsible for the acts or omissions of the outsourcing contractor.

6.7 Title to and ownership of all Intellectual Property Rights embodied by or otherwise incorporated into the Content shall remain with the Content Provider or its licensor(s) and the Content Provider shall be responsible for obtaining all licenses, clearances, permissions, waivers, approvals or consents required in order to grant the licenses required under Clause 6.1, including, without limitation, obtaining any necessary clearances and consents from, and making royalty or other payments to, the owners of the applicable Intellectual Property Rights (including payment of any Collecting Society Royalties).

## 7. TECHNICAL AND CUSTOMER SUPPORT

7.1 Vodafone shall provide First Line Customer Support in respect of the Content and the Content Provider shall provide Second Line Customer Support in respect of the Content. The Content Provider authorises Vodafone to refer any Second Line Customer support inquiries to the Content Provider's nominated Relevant Contacts.

7.2 The Content Provider shall not be required to provide support directly to any Customers.

7.3 The following ratings shall be used by the Parties to determine the priority of incidents and the Content Provider's corresponding obligation to respond and resolve such incidents involving the Content and other services delivered or under the responsibility of the Content Provider:

7.3.1 Priority 1 (Critical): Complete failure of the hosting service under Clause 9, the Content or a significant part of the Content or the problem creates a definite business or financial exposure or affects a large number of Customers. Response within ten (10) minutes and resolution within two (2) hours;

7.3.2 Priority 2 (High): Content not totally down, but the affected components form a significant part of the functionality of the Content and the problem creates a possible business or financial exposure. Response within thirty (30) minutes and resolution within eight (8) hours; and

7.3.3 Priority 3 (Medium): The Content is largely available and the problem has little or no effect on the services provided by the Content and the problem creates no business or financial exposure. Response time within three (3) hours and resolution time within two (2) business days.

**8. CONTENT PROTECTION**

8.1 These Clauses 8.1 to 8.8 (inclusive) shall only apply in the circumstances where a Content Schedule provides that Vodafone is responsible for providing the agreed level of protection for the Content.

8.2 Vodafone shall put in place the agreed DRM specified in the DRM Guidelines.

8.3 Nothing in this Master Agreement or any Content Schedule or Contract shall affect any rights of action that the Content Provider or any Vodafone Group Company may have under any applicable law in the Territory against:

8.3.1 the circumvention of the DRM put in place by Vodafone pursuant to Clause 8.2 or other technological measures put in place by the Content Provider pursuant to Clause 9.6;

8.3.2 any device, product or component or the provision of services for circumvention of such DRM or other technological measures;

8.3.3 removal or alteration of any Rights associated with Protected Content; or

8.3.4 distribution, importation, broadcasting, communication or making available to the public of Protected Content from which Rights have been removed or altered without authority

(collectively, the "**Anti-Circumvention Rights**").

8.4 For the avoidance of doubt, neither VGSL nor any Vodafone Group Company is obliged to exercise its Anti-Circumvention Rights in relation to the Protected Content.

8.5 The Content Provider acknowledges that in order to carry out its obligations under this Clause 8, Vodafone may need to:

8.5.1 substantially adapt any Protected Content distributed via the Vodafone Network to make it or a part of it deliverable to the recipient's Mobile Device; or

8.5.2 override any copy protection or similar measures incorporated into the Content delivered to VGSL or Vodafone (including without limitation copy protection measures supported by SMAF formats) to make such Content deliverable to Customers as Protected Content.

8.6 The Content Provider provides its irrevocable consent to any such adaptation or overriding undertaken as Vodafone may reasonably determine is necessary for the purpose of transmission or delivery of the Content and to any transient copying undertaken in the process of transmission or delivery. The Content Provider agrees that the existence and validity of this Master Agreement shall be conditional upon such consent. For the purposes of this Clause 8.6 and Clause 8.5.1, the term "adaptation" includes, without limitation, the conversion of a video message into a series of still images, the removal of all or part of the Content and the insertion of a link to a URL.

8.7 Neither VGSL nor Vodafone warrants that the DRM put in place pursuant to Clause 8.2 will prevent Protected Content being unlawfully accessed, copied, distributed or used. In particular, the Content Provider acknowledges that the security of such DRM depends upon the robust implementation of industry standards by third parties, in particular, the Mobile Device manufacturers. Neither VGSL nor Vodafone can guarantee that such standards have been implemented correctly or to a sufficiently high standard by such third parties.

8.8 Vodafone shall use its reasonable endeavours to identify the make and model of Mobile Devices to which the Protected Content is distributed with the intention of only distributing such Protected Content to the Mobile Devices specified in the Content Schedule (Specified Mobile Devices) purporting to support the DRM specified in the DRM Guidelines. Vodafone does not warrant the authenticity of any Mobile Device identification information and the Content Provider acknowledges and accepts the risk that third parties may seek to defraud Vodafone and the Content Provider by misrepresenting such information.

## 9. HOSTING

9.1 These Clauses 9.1 to 9.7 (inclusive) shall only apply in the circumstances where a Content Schedule provides that the Content Provider is responsible for hosting the Content.

9.2 The Content Provider shall host the Content on the Platform (which shall include provision of application monitoring, application support and fault and change management).

9.3 The Content Provider shall provide sufficient redundancy in services and infrastructure in order to maintain the Content. The Content Provider shall collect and process appropriately all data relating to Chargeable Events and provide this data to VGSL on request. The Content Provider shall perform daily backups of all data regarding Chargeable Events and be able to recover to the last backup. Backups shall be treated in accordance with industry standard security.

9.4 Notwithstanding obligations under Data Protection Legislation, all facilities associated with the hosting of the Content, the Content data and the transmission of that data shall ensure security commensurate with the sensitivity of the data being processed and the service being provided. The Content Provider is responsible for obtaining and maintaining the Content and the Platform.

9.5 The Content Provider shall:

9.5.1 ensure that viruses are not introduced to the Platform;

9.5.2 respond to all virus attacks and destroy any virus detected on the Platform, document each incident and report the details immediately to Vodafone; and

9.5.3 scan all incoming computer media for viruses before they are read by any hardware associated with the Content.

9.6 The Content Provider shall take all reasonable measures to prevent unlawful or unauthorised access to the Content Provider computer systems associated with the Content and the Content data and Content backups (including in the circumstances where a Content Schedule provides that the Content Provider is responsible for protecting the Content, technological measures designed to prevent unlawful or unauthorised use, copying or redistribution of the Content by Customers or any other person). Where appropriate this shall include use of locking devices, firewalls, shared secrets, digital certificates, password protection, and content filtering, encryption and intrusion detection.

9.7 Where the Content Provider materially or persistently fails to meet any of the KPI levels set out in the Content Schedule or any Guidelines relating to its service under this Clause 9, without prejudice to its other rights and remedies and for the avoidance of doubt Vodafone shall be entitled to temporarily suspend or disconnect the Content Provider or remove or bar access to the Content (or any part thereof) on the Directory to its Customers until such time as the Content Provider can show to Vodafone's reasonable satisfaction that it has taken reasonable steps to resolve the problem.

**10. PRICING, REVENUE AND PAYMENTS**

10.1 The Content Provider may in its reasonable discretion determine the price at which the Content is sold, licensed or otherwise distributed to Customers in the Territory (including in the case of Protected Content the price attributed to each of the Purchase Options). However, nothing shall prevent Vodafone from rebating or otherwise crediting part or all of the Content Charge to Customers so as to effectively reduce the price which Customers pay for the Content. Vodafone may include the Content in a bundle or package of other content as a single or combined offering to the Customer, in which event the Gross Revenue applicable to the Content shall be an appropriate proportion of the relevant charge for such bundle or package, as reasonably determined by Vodafone.

10.2 Vodafone shall pay to the Content Provider the Content Provider Revenue less Deductions in accordance with the procedure set out in this Clause 10. Save as otherwise notified to the Content Provider, VGSL shall act as each relevant Vodafone Group Company's agent for the purposes of paying such sums.

10.3 Vodafone shall not be obliged to make any payment in respect of any Chargeable Event unless and/or until the Customer has paid for the Content in full.

10.4 If Vodafone maintains a repository within a particular Territory containing details of Content purchased by a Customer in such Territory, Vodafone shall be entitled to provide such Content free of charge to any Customer in that Territory where such Customer has already been charged for such Content.

10.5 Save as otherwise notified to the Content Provider, VGSL shall, on behalf of Vodafone, no later than thirty (30) days after the end of the month in which the relevant Chargeable Events were incurred (it being acknowledged that, where the Content Provider hosts the Content, the Content Provider will need to provide the relevant information to VGSL in a timely manner to allow VGSL to meet its obligations under this Clause 10.5):

10.5.1 generate and send to the Content Provider's Relevant Contact for financial matters monthly reports showing the calculation of the Content Provider Revenue for the relevant month; and

10.5.2 (where relevant) issue and send to the Content Provider's Relevant Contact for finance matters monthly purchase invoices in respect of Vodafone Commission for the relevant month.

10.6 The Content Provider shall, upon receipt from VGSL of the report specified in Clause 10.5.1 on behalf of Vodafone, issue an invoice in respect of the applicable Content Provider Revenue in the name of each applicable Vodafone Group Company and send such invoices to VSGL (or directly to the relevant Vodafone Group Company, if so directed by VGSL).

10.7 Unless an amount is in bona fide dispute, the Parties shall pay all sums owed to each other under a Contract within sixty (60) days of receipt of a valid invoice for the relevant sum.

10.8 Where Vodafone receives any complaint from a Customer in relation to the Content, it may in its sole discretion decide to make a refund or issue a credit to such Customer in respect of the Chargeable Event. Where such a refund is issued or credited, or where a bad debt is incurred, after the relevant Content Provider Revenue has been paid to the Content Provider, Vodafone shall be entitled to deduct from the calculation of Net Revenue for the following month the amount of such refund, credit or bad debt less any sums (other than Deductions) already received and retained by Vodafone in respect of such Chargeable Event.

10.9 Payment by VGSL on behalf of Vodafone to the Content Provider shall be made by electronic transfer to the Content Provider's bank account specified in the relevant Content Schedule.

10.10 The currency of this Master Agreement and each Contract shall be Euros. All financial reports, statements, invoices, charges and payments made by one Party to the other shall be in Euros. In respect of revenues generated in a Territory that does not have the Euro as its primary currency (a "**Non-Euro Amount**"), Vodafone shall convert such Non-Euro Amount to Euros using the UK Financial Times average middle market exchange rate calculated for the applicable month.

10.11 Where a Party (the "**Debtor**") fails to pay another Party (the "**Creditor**") any amount due and payable under a Contract by the time prescribed by the Contract (the "**Due Date**"), the Creditor shall be entitled to give the Debtor written notice of its intention to charge interest. If payment of the amount due has still not been received by the Creditor within 14 days of receipt of such notice by the Debtor, the Debtor shall on demand by the Creditor pay the Creditor interest on the unpaid amount at a rate of 1% per annum above the Euribor rate of interest (as prescribed by the European Banking Federation) which is in force on the Due Date, calculated from the Due Date until payment of the unpaid amount is made in full. The Parties acknowledge and agree that the interest payment mechanism set out in this Clause 10 is a substantial remedy.

## 11. TAX

11.1 Vodafone shall be entitled to make any deduction or withholding required by law from any payment payable under a Contract or any agreement between Vodafone Group Companies entered into for the purposes of a Contract. In the event that a withholding tax or deduction is payable by Vodafone in respect of the Content Provider Revenue, Vodafone will pay the Content Provider Revenue net of the required withholding or deduction to the Content Provider. Vodafone will supply to the Content Provider evidence to the reasonable satisfaction of the Content Provider that Vodafone has accounted to the relevant authority for the sum withheld or deducted and will provide all such assistance as may be reasonably requested by the Content Provider in recovering the amount of the withholding. In the event that a double taxation treaty applies which provides for a reduced withholding tax rate, Vodafone shall only withhold and pay the reduced tax on behalf and for the account of the Content Provider if an appropriate exemption certificate is issued by the competent tax authority and provided to Vodafone.

11.2 If Vodafone, in good faith, pays the Content Provider Revenue without set-off, counterclaim, or required withholding or deduction and a subsequent audit identifies that a withholding or deduction should have been made from the Content Provider

Revenue, the Content Provider shall be liable to pay this withholding or deduction to the relevant authority or (if Vodafone makes the payment to the relevant authority) to Vodafone, together with any interest and penalties due thereon and shall indemnify Vodafone in respect of any such residual liability.

11.3 If a Vodafone Group Company, in order to reduce the VAT Taxes due on the Content Charge, enters into a Contract with the Content Provider and sells, licenses or otherwise distributes the Content in a Territory from outside of that Territory, the following shall be deemed to be an additional Deduction for the purposes of the Contract: the difference between the valued added tax, turnover tax or other taxes included in the Content Charge, and, if higher, the prevailing rate of equivalent taxes that would otherwise be payable with respect to the Content in the country where the Customer purchased the Content.

11.4 The Content Provider warrants and undertakes to Vodafone that it is tax resident in the place indicated in every Content Schedule and shall be deemed to remain tax resident in that territory unless it notifies Vodafone of a change of tax residency on thirty (30) days prior written notice. The Content Provider shall on demand provide any documentation required by Vodafone evidencing its tax residency in such territory.

11.5 In the event that Vodafone is not reasonably informed of a change in tax residence by the Content Provider, the Content Provider will indemnify Vodafone against any costs (including but not limited to withholding tax and any accrued interest and penalties) incurred by Vodafone due to such failure to inform.

11.6 Content Provider Revenue shall be exclusive of any applicable VAT Tax.

11.7 If any VAT Tax is chargeable by the Content Provider in respect of any amount payable by Vodafone under this Master Agreement or any Contract, the Content Provider shall provide Vodafone with an invoice that specifically states such VAT Tax and (if a relief procedure is available) meets all further conditions required by applicable law which are necessary to allow Vodafone to obtain relief from such VAT Tax. Vodafone shall, upon receipt of such invoice, pay to the Content Provider such VAT Tax at the rate then properly chargeable in respect of the relevant payment.

11.8 If the Content Provider provides Content or services under a Contract from outside of the European Union to Vodafone, the Content Provider shall provide to Vodafone a reasonable explanation of the nature of any applicable VAT Tax charged by the Content Provider under the Contract, the rate of such VAT Tax and the processes by which Vodafone can obtain relief for such VAT Tax.

11.9 If the Content Provider has incorrectly charged VAT Tax to Vodafone under a Contract then the relevant invoice shall be corrected as soon as practicable and: (a) where Vodafone has overpaid the VAT Tax, the Content Provider will repay to Vodafone the overpayment of VAT Tax; and (b) where Vodafone has underpaid the VAT Tax, Vodafone shall pay the outstanding amount upon receipt of a valid invoice. Payments under (a) and (b) shall be made in accordance with Clauses 10.7 and 10.11.

11.10 In the circumstances set out in section (b) of Clause 11.9 the Content Provider shall reimburse Vodafone for any and all costs, charges. VAT Taxes and related interest and penalties relating to such underpayment, save to the extent that Vodafone is (acting reasonably) able to recover such amounts from the applicable authorities.

## 12 REPORTING AND AUDIT

12.1 Each Party shall, during the term of a Contract, deliver to the other upon its reasonable written request access to and copies of such information that the other may reasonably require to perform its obligations (or to verify that the other Party is performing its obligations) under a Contract.

12.2 Vodafone and the Content Provider shall, at their own expense and upon 30 days' prior written notice, have the right to appoint an independent auditor solely for the purposes of verifying the accuracy of any financial report or statement issued by the other Party under a Contract. If such audit subsequently reveals any financial discrepancy, the audited Party shall rectify such discrepancy within thirty (30) working days after notification of the discrepancy. Each Party shall only be entitled to utilize this provision once in any twelve (12) month period of a Contract.

## 13. WARRANTIES

13.1 The Content Provider warrants and undertakes to VGSL and Vodafone that:

13.1.1 it has full right and authority to enter into this Master Agreement and any Contract and that its entry into this Master Agreement and any Contract does not breach any third party's rights or any other agreement to which it is a party;

13.1.2 it shall implement and comply with any Guidelines provided from time to time by VGSL or any other Vodafone Group Company to the Content Provider which relate to:

13.1.2.1 content standards (including anti-social, adult, fraudulent, unlawful or otherwise inappropriate content) and, in particular, shall clearly classify the Content in accordance with the adult content classification framework criteria agreed between the Content Provider and VGSL;

13.1.2.2 access or use of the Directory by Customers (including anti-social, fraudulent, underage, unlawful or improper use); or

13.1.2.3 the Vodafone Network and/or any mobile device;

13.1.3 it shall not act in a way which shall impair or put in jeopardy the operation of the Directory, the Vodafone Network, any mobile device or any part of them;

13.1.4 it has the necessary licences, consents, permissions or approvals to operate and to grant Vodafone the rights to use the Content, the Marketing Materials and the Content Provider Marks in accordance with the terms of a Contract;

13.1.5 it shall use reasonable skill and care in carrying out its obligations and exercising its rights under a Contract and/or this Master Agreement; and

13.1.6 it shall comply with all applicable laws and regulations when performing its obligations under this Master Agreement and/or a Contract.

13.2 The Content Provider warrants and undertakes to VGSL and Vodafone that the Content shall:

13.2.1 be of satisfactory quality and be kept fresh, updated and current (with reference to the nature of the Content's subject matter) and shall not be factually inaccurate;

13.2.2 not infringe any third party's rights (including Intellectual Property Rights);

13.2.3 not offend taste or decency, nor be defamatory, obscene, racist, materially inaccurate, be so violent, or abusive in nature as to be reasonably likely to cause serious offence in Vodafone's opinion, or otherwise be in breach of any applicable law, regulation or code of conduct or result in Vodafone or any Vodafone Group Company being in breach of any law;

13.2.4 not result in Vodafone or any other Vodafone Group Company being held to carry out any regulated activity in the applicable Territory including but not limited to any gambling service, betting service or lottery (where "regulated activity" means any activity requiring specific governmental authorisation or license, other than the provision of telecommunications or electronic communications services);

13.2.5 not contain any content that promotes a Competitor or criticises Vodafone or any other company within the Vodafone Group, or otherwise bring Vodafone Group Companies into disrepute or damages the reputation or goodwill of Vodafone, or any other Vodafone Group Company or any trade mark of any Vodafone Group Company in any of the Territories; and

13.2.6 not contain any computer viruses, logic bombs, trojan horses and/or any other items of software which would disrupt the proper operation of the Directory, the Vodafone Network or any mobile device.

13.3 VGSL warrants and undertakes that it has full right and authority to enter into this Master Agreement. Each Vodafone Group Company which executes the Contract Acceptance Notice warrants and undertakes that it has full right and authority to execute that Contract Acceptance Notice.

13.4 The Parties acknowledge that their respective obligations and liabilities are exhaustively defined in each Contract and this Master Agreement (as the context requires) and that to the extent permitted by law, the express obligations and warranties provided in each such Contract and this Master Agreement are in lieu of and to the exclusion of any warranty, condition, term, undertaking or representation of any kind, express or implied, statutory or otherwise relating to anything supplied or provided. or services performed under or in connection with each such Contract and/or this Master Agreement including (without limitation) as to the condition, quality, performance, satisfactory quality or fitness for the purpose.

13.5 Save as otherwise notified to the Content Provider, VGSL shall act as the single point of contact between the Content Provider and each Vodafone Group Company entering into a Contract including, without limitation, in respect of any claims made by the Content Provider or such a Vodafone Group Company under this Master Agreement or any Contract.

**14. INTELLECTUAL PROPERTY INDEMNITY**

14.1 The Content Provider shall indemnify Vodafone, VGSL and all other Vodafone Group Companies from and against all losses, damages, costs, expenses, claims, proceedings and liabilities (including legal costs calculated on a solicitor-client basis) sustained or incurred by Vodafone or any Vodafone Group Company arising out of or in connection with any claim or allegation that the provision, use, receipt or possession of the Content, the Marketing Materials and/or the Content Provider Marks:

14.1.1 infringes the Intellectual Property Rights, other proprietary rights or rights of publicity or privacy of a third party; or

14.1.2 is defamatory, obscene, racist, materially inaccurate, violent, or abusive in nature, or otherwise in breach of any applicable law, regulation or code of conduct.

14.2 If any third party makes a claim or demand or brings an action against, or notifies an intention to make or bring a claim, demand or action against VGSL or any Vodafone Group Company which may give rise to a liability under this Clause 14 (in this clause, a "relevant claim"), Vodafone shall:

14.2.1 without limiting the generality of this Clause 14, as soon as reasonably practicable give written notice of the relevant claim to the Content Provider;

14.2.2 not make any admission of liability, agreement or compromise in relation to the relevant claim (save where required by law, legislation, court order or governmental regulations) which may be prejudicial to the defence or settlement of any claim, demand or action by VGSL, a Vodafone Group Company or the Content Provider without the prior written consent of the Content Provider (such consent not to be unreasonably withheld or delayed); and

14.2.3 at the request of the Content Provider and at the Content Provider's cost, afford all reasonable assistance for the purpose of contesting the relevant claim.

**15. LIABILITY**

15.1 Except for liability arising under Clauses 14.1 and 15.4, in each Contract Year the aggregate liability of each Party for all claims made under or in connection with a Contract, whether based on contract, tort, negligence or otherwise shall be limited to the

greater of: (a) [INFORMATION OMITTED AND FILED SEPARATELY WITH THE COMMISSION UNDER RULE 24B-2] or (b) [INFORMATION OMITTED AND FILED SEPARATELY WITH THE COMMISSION UNDER RULE 24B-2] arising under the Contract in question in the Contract Year in which the applicable liability is sustained.

15.2 Except for liability arising under Clauses 14.1 and 15.4, the total aggregate liability of (a) the Content Provider to VGSL and Vodafone (together); and (b) VGSL and Vodafone (together) to the Content Provider, under this Master Agreement and all Contracts for all claims made under or in connection with this Master Agreement and all Contracts, whether based on contract, tort, negligence or otherwise shall (in each of the cases (a) and (b)) be limited to [INFORMATION OMITTED AND FILED SEPARATELY WITH THE COMMISSION UNDER RULE 24B-2].

15.3 Except for liability arising under Clauses 14.1 and 15.4, in no circumstances shall a Party be liable for any indirect, special or consequential damages arising from breach of contract, negligence or other liability even if the other Party had been advised or knew (or should have known) of the possibility of such damages.

15.4 Nothing in this Master Agreement or a Contract excludes a Party's liability with respect to death or personal injury resulting from negligence, or excludes a Party's liability for fraudulent misrepresentation or any other liability to the extent that such liability may not be excluded or restricted by law.

**16. INSURANCE**

16.1 Both Parties agree that they carry and will maintain throughout the term adequate insurance to cover such of their liabilities under this Master Agreement and each Contract. In particular the Content Provider agrees to keep and maintain products/liability insurance to the value of [INFORMATION OMITTED AND FILED SEPARATELY WITH THE COMMISSION UNDER RULE 24B-2] per claim and third party intellectual property rights insurance to the value of [INFORMATION OMITTED AND FILED SEPARATELY WITH THE COMMISSION UNDER RULE 24B-2] per claim.

16.2 The Content Provider shall ensure that the appropriate noting of VGSL's and Vodafone's interests have been recorded on the Insurance Policies or a generic interest clause has been included, together with a waiver of subrogation and any right of contribution in favour of VGSL and Vodafone, and shall on the written request of Vodafone from time to time provide a certificate signed by the Content Provider's insurer or such insurer's appointed agents confirming that the Content Provider is insured in accordance with this Clause 16. On the renewal of any Insurance Policies, the Content Provider shall promptly send a copy of the premium receipt to VGSL, if so requested.

16.3 The Content Provider shall during the term of this Agreement and for a period of [INFORMATION OMITTED AND FILED SEPARATELY WITH THE COMMISSION UNDER RULE 24B-2] thereafter.

16.3.1 administer the Insurance Policies and the Content Provider's relationship with its insurers in such a manner as to preserve any benefits to Vodafone from the operation of this Clause 16;

16.3.2 do nothing to invalidate any Insurance Policies or to prejudice the Content Provider's entitlement under the insurance Policies; and

16.3.3 not subsequently alter the terms of the Insurance Policies in such a way as to diminish any benefits to VGSL or Vodafone from the Insurance Policies.

16.4 The Content Provider shall ensure that its contractors, subcontractors and agents are insured in the same manner as set out in this Clause 16.

**17. TERM AND TERMINATION**

17.1 This Master Agreement shall commence on the date when it has been executed by both parties to the Master Agreement and shall continue unless and until terminated in accordance with the provisions of this Master Agreement. Each Contract shall commence on its Commencement Date and will continue unless otherwise terminated in accordance with its terms or, if earlier, on the termination of this Master Agreement.

17.2 Either Party to this Master Agreement may terminate this Master Agreement, or a Party to a Contract may terminate that Contract, immediately on written notice to the other Party (such notice not to be effective if sent by email) if:

17.2.1 the other Party is in material breach of its terms and such breach is incapable of remedy or, if capable of remedy, fails to remedy that breach within fourteen (14) days' notice from the non-breaching Party requiring remedy; or

17.2.2 the other Party ceases to carry on its business or has a liquidator, receiver or administrative receiver appointed to it or over any part of its undertaking or assets or passes a resolution for its winding up (otherwise than for the purpose of a bona fide scheme of solvent amalgamation or reconstruction where the resulting entity will assume all of the liabilities of it) or a court of competent jurisdiction makes an administration order or liquidation order or similar order over the other, or the other enters into any voluntary arrangement with its creditors, or is unable to pay its debts as they fall due or suffers any similar or equivalent act in another relevant jurisdiction.

17.3 VGSL shall be entitled to terminate this Master Agreement or any Contract without cause at any time, either in full or in relation to particular Territories or items of Content (or both), by giving thirty [INFORMATION OMITTED AND FILED SEPARATELY WITH THE COMMISSION UNDER RULE 24B-2] written notice to the Content Provider, without prejudice to its other rights and remedies. Any partial termination of a Contract shall not affect the validity or enforceability of either (a) this Master Agreement; (b) other Contracts; or (c) the remainder of the Contract in question.

17.4 Vodafone shall be entitled to terminate a Contract to which it is party without cause at any time, either in full or in relation to particular items of Content, by giving thirty [INFORMATION OMITTED AND FILED SEPARATELY WITH THE COMMISSION UNDER RULE 24B-2] written notice to the Content Provider, without prejudice to its other rights and remedies. Any partial termination of a Contract shall not affect the validity or enforceability of the remainder of the Contract in question.

17.5 The Content Provider shall be entitled to terminate this Master Agreement or any Contract without cause at any time after the date [INFORMATION OMITTED AND FILED SEPARATELY WITH THE COMMISSION UNDER RULE 24B-2] from the date of this Master Agreement (in the case of termination of this Master Agreement) or [INFORMATION OMITTED AND FILED SEPARATELY WITH THE COMMISSION UNDER RULE 24B-2] from the Commencement Date of the relevant Contract (in the case of termination relating to a Contract), either in full or in relation to particular Territories or items of Content (or both), by giving [INFORMATION OMITTED AND FILED SEPARATELY WITH THE COMMISSION UNDER RULE 24B-2] written notice to VGSL (in the case of termination of this Master Agreement) or to Vodafone with a copy to VGSL (in the case of termination relating to a Contract), without prejudice to its other rights and remedies. Any partial termination of a Contract shall not affect either the validity or enforceability of either (a) this Master Agreement; (b) other Contracts; or (c) the remainder of Contract in question.

17.6 This Master Agreement shall terminate automatically six [INFORMATION OMITTED AND FILED SEPARATELY WITH THE COMMISSION UNDER RULE 24B-2] after the expiration or termination of the last remaining Contract.

17.7 Termination of this Master Agreement or a Contract does not affect the accrued rights, obligations or liabilities of the Parties prior to termination.

17.8 Upon termination of a Contract or this Master Agreement for whatever reason:

17.8.1 Vodafone shall remove the relevant Content from the Directory and cease providing access to such Content to its Customers;

17.8.2 each Party to that termination shall, upon request, return to the other or destroy any relevant confidential information or materials provided to it by the other;

17.8.3 each Party to that termination shall remove all references to the other's trade marks from any marketing and promotional materials save in respect of any ongoing relationship between the Parties and subject to VGSL retaining a copy of all Content and related marketing and promotional materials for archive and internal analysis purposes;

17.8.4 the Parties shall settle all outstanding sums either may owe the other within one hundred and twenty (120) days of the date of termination; and

17.8.5 subject to Clause 20.8, all rights granted under the Contract in question or this Master Agreement (as appropriate) shall immediately cease.

17.9 VGSL has the right to extend the operation of a Contract for a period of not more than three (3) months after what would otherwise be the effective date of termination or expiration to give Vodafone an opportunity to replace the relevant Content and make appropriate amendments to its marketing materials.

**18. CONFIDENTIALITY AND PUBLICITY**

18.1 Except as may be required by law or any applicable regulatory body, or as is strictly required to perform its obligations under this Master Agreement or a Contract, each Party shall keep secret and confidential and not use, disclose or divulge to any third party any information that they obtain from the other concerning the business, finances, technology and affairs of the other, and in particular but not limited to the terms of this Master Agreement and any Contract and their subject matters. This Clause does not apply to information that has come into the public domain other than by breach of this Clause or any other duty of confidence or is obtained from a third party without breach of this Clause or is required to be disclosed by law.

18.2 The Content Provider agrees that VGSL and Vodafone shall be entitled to share any or all information it receives from or generates on behalf of the Content Provider pursuant to this Master Agreement and/or any Contract with other Vodafone Group Companies.

18.3 Neither Party shall issue any press statement or other announcements relating to this Master Agreement and/or any Contract or the subject matters thereof (as the context requires) without the prior written consent of the other Party.

**19. DATA PROTECTION**

19.1 All personal and traffic data generated by or otherwise collected in relation to the Content will remain the exclusive property of Vodafone. The Content Provider shall be entitled to receive, on written request from time to time, aggregated user information for the limited purpose of analysing the effectiveness of the Content.

19.2 To the extent that the Content Provider is required in connection with the performance of its obligations under this Master Agreement or a Contract to process personal data relating to any Customer, the Content Provider shall:

19.2.1 only process such personal data on behalf of Vodafone;

19.2.2 act solely on the instructions of Vodafone in respect of such personal data; and

19.2.3 not make any use of that data for any reason other than to perform its obligations hereunder and in particular shall not make any use of the personal data for its marketing purposes.

19.3 To the extent that the Content Provider processes personal data on behalf of Vodafone, the Content Provider must ensure that it has in place appropriate technical and organisational security measures (in addition to those expressly required by this Master Agreement or a Contract) to protect such personal data from accidental or unlawful destruction or accidental loss, damage, alteration, unauthorised disclosure or access, in particular where the processing involves the transmission of data over a network, and against all other unlawful forms of processing.

**20. GENERAL**

20.1 No variation of this Master Agreement or a Contract or of any of the documents referred to in either agreement shall be valid or effective unless it is in writing and signed by or on behalf of each of the Parties (and, in the case of a Contract, but subject to Clause 2.3, by the relevant Vodafone Group Company).

20.2 This Master Agreement may be executed in any number of counterparts, each of which, when executed and delivered, shall be an original, and all the counterparts together shall constitute one and the same instrument.

20.3 Any notice or other communication required to be given or made under this Master Agreement or a Contract shall be in writing and addressed to the receiving Party's principal contact at the address of the receiving Party as set out in the Master Agreement or a Contract (as the context requires) or such other person or address as notified from time to time in accordance with the terms of this Clause. Any such notice or communication may be delivered by hand, first class post (if both Parties are within the UK), airmail (if one of the Parties is overseas) or fax and shall be deemed to be given or made if: (a) sent by hand, upon receipt; (b) by first class post, on the second working day following the date of posting; (c) by airmail, on the seventh working day following the date of posting; and (d) by fax or email, when despatched provided that a confirmatory copy is immediately despatched by first class post or airmail (as appropriate). The Content Provider shall, whenever it sends a notice to Vodafone, provide a copy of such notice to VGSL.

20.4 This Master Agreement or each Contract, as the context requires, represents the entire understanding between the respective Parties in relation to its subject matter and supersedes all agreements and representations made by either Party, whether oral or written. In particular, this Master Agreement supersedes the Directory Agreement (the "Old Agreement") made on 1 May 2003

between the Content Provider and Vodafone Global Content Services Limited (whose business was transferred to VGSL on 1 April 2004). The Old Agreement shall only remain in force until (and shall automatically terminate on) the date that the last "Vodafone Sub-Agent" (appointed in accordance with clause 5.6 of the Old Agreement) has entered into a Contract or otherwise terminated its sub-agency under the Old Agreement, save in respect of any accrued rights or liabilities under or in relation to the Old Agreement prior to that date. This Clause shall not affect either Party's liability for fraud.

20.5 Failure or delay by either Party to enforce any provisions under this Master Agreement or a Contract shall not be taken as or deemed to be a waiver of its rights or operate as a waiver of any subsequent breach.

20.6 If any part of this Master Agreement or a Contract is held to be void, voidable, illegal or unenforceable, the validity or enforceability of the remainder of this Master Agreement or a Contract shall not be affected.

20.7 The Parties shall perform all such further deeds, assurances, acts and things and execute such other documents as may reasonably be required to carry the provisions of this Master Agreement or a Contract into full force and effect.

20.8 The following clauses shall survive termination of this Master Agreement or a Contract for any reason: 10 (Pricing, Revenue and Payments) 11 (Tax), 13 (Warranties), 14 (Intellectual Property Indemnity), 15 (Liability), 16 (Insurance), 17.8 (Term and Termination), 18 (Confidentiality and Publicity), 20.4 (Entire Agreement), 20.5 (Waiver), 20.6 (Severability), 20.7 (Further Assurances), 20.8 (Survival of Terms), 20.9 (Force Majeure), 20.12 (Conflict), 20.13 (Third Party Beneficiaries), 20.14 (Law) and any other clause which should, by its nature, survive termination.

20.9 Neither Party shall be liable for any delay or failure in performing any of its obligations under this Master Agreement or a Contract if such delay or failure is caused by circumstances outside its reasonable control including without limitation, any delay or failure caused by any act or default of the other Party.

20.10 Neither Party may assign, transfer or sub-contract to any other party any of its rights or obligations under this Master Agreement or a Contract except that VGSL (in respect of this Master Agreement) and Vodafone (in respect of a Contract) may assign or transfer its rights or sub-contract its obligations to any Vodafone Group Company. Any Vodafone Group Company may appoint a third party (including, without limitation and for the avoidance of doubt, another Vodafone Group Company) as its agent for the purpose of fulfilling its obligations or exercising its rights under this Agreement.

20.11 To the extent that any provision of this Master Agreement as incorporated into any Contract conflicts with any local legislation or regulation in the Territory specified in the Contract, then the provisions of the local legislation or regulation shall prevail over the conflicting provisions to the extent of such conflict.

20.12 If there is any inconsistency between the provisions of this Master Agreement and the provisions set out in any Content Schedule or any other type of annexure, exhibit or other attachment, the following order of precedence shall be applied so that the higher ranking provisions prevail over the lower-ranking provisions to the extent of the inconsistency:

20.12.1 the Special Conditions;

20.12.2 the terms of this Master Agreement;

20.12.3 the Content Schedule (excluding the Special Conditions); and

20.12.4 any other type of annexure, exhibit or other attachment.

20.13 Save where expressly provided to the contrary in this Master Agreement or in the provisions of a Contract, this Master Agreement is made solely and specifically between the Content Provider and VGSL and each Contract is made solely and specifically between the Content Provider and Vodafone and neither is intended to be for the benefit of or enforceable by any other person, whether under the Contracts (Rights of Third Parties) Act 1999 or otherwise, and neither Party nor Vodafone can declare itself a trustee of the rights under this Master Agreement or a Contract for the benefit of any such person.

20.14 This Master Agreement and each Contract shall be governed by and construed and interpreted in accordance with the law of England and Wales and the Parties to this Master Agreement and each Contract submit to the exclusive jurisdiction of the English Courts.

## 21. DEFINITIONS

21.1 In this Master Agreement and each Contract:

21.1.1 reference to persons shall include legal as well as natural persons and (where the context so admits), references to the singular shall include the plural and vice versa;

21.1.2 reference to Clauses shall be to those clauses of this Master Agreement unless the contrary is stated;

21.1.3 reference to this Master Agreement shall (unless the context otherwise requires) include reference to any schedule to this Master Agreement as the same may be amended, novated or supplemented from time to time in accordance with its terms;

21.1.4 section and clause headings in this Master Agreement are for ease of reference only and shall not affect its interpretation, validity or enforceability;

21.1.5 reference to any statute, act, directive or other regulation includes a reference to that statute, act or directive or other regulation as re-enacted or amended from time to time;

21.1.6 the words "include" and "including" shall be construed without limitation to the words following; and

21.1.7 defined terms are set out and described in Clause 21.2.

21.2 In this Master Agreement and each Contract, the following words and expressions shall have the expanded definitions set out below.

"**Anti-Circumvention Rights**" shall have the meaning given to that term in Clause 8.3;

"**Application Submission Criteria for QA**" means those guidelines relating to the standards of Content produced and amended from time to time by Vodafone and provided to the Content Provider in connection with the Vodafone certification process;

"**Chargeable Event**" means any purchase of the Content by a Customer (including in the case of Protected Content any purchase of a subscription service offered pursuant to an applicable Purchase Option) from the Content Provider for which the Customer is charged by Vodafone (as agent for the Content Provider);

"**Collecting Society Royalties**" means the payment of any royalties due in respect of Collecting Society Rights;

"**Collecting Society Rights**" means those rights in or in relation to the Content which are controlled by copyright and related rights collecting societies, or which copyright and related rights collecting societies otherwise have the right to exploit, in the Territories and which are applicable to the use and exploitation of the Content pursuant to a Contract;

"**Commencement Date**" means the date when the Content Provider receives the signed Contract Acceptance Notice from a Vodafone Group Company;

"**Competitor**" means any third party competitor of the Vodafone live! service. in the Territory including without limitation any consumer focused multi-access Internet portal, wireless portal or online service provider focused on the provision of wireless content services including but not limited to any operator, or any company affiliated with such operator of an electronic communications network;

"**Content**" means the information, text, data, graphics, images, software and audio and visual material in whatever media or form described in a Content Schedule or otherwise provided by or on behalf of the Content Provider to Vodafone with the intent to be featured on the Directory and, where the context so requires, includes any Link supplied by the Content Provider to Vodafone which is to be placed in the Directory, any underlying executable code and any Rights;

"**Content Charge**" means the specific charge to the Customer including any value added tax, turnover tax or other local sales or other taxes for the purchase of the Content from it excluding for the avoidance of doubt the Network Charges;

"**Content Provider**" means the company, partnership, person or entity identified in the Content Schedule attached to this Master Agreement;

"**Content Provider Branding Guidelines**" means the branding, layout, format, "look and feel" and style guidelines governing the use of the Content and the Content Provider Marks described in a Content Schedule or otherwise provided by the Content Provider to Vodafone under a Contract as at the date of each applicable Contract;

"**Content Provider Marks**" means the trade and service marks, trade names, domain names, logos and any and all other branding which the Content Provider owns or has the right to license (whether registered or not and including applications for the same), to be used by Vodafone to brand the Content in accordance with a Contract;

"**Content Provider Revenue**" means the percentage of Net Revenue set out in the relevant Content Schedule which i s (after deduction of any Deductions) payable to the Content Provider by Vodafone under a Contract (being the Net Revenue less the Vodafone Commission);

"**Content Schedule**" means a schedule in a format similar to the content schedule attached to this Master Agreement and in each case completed and signed by VGSL and the Content Provider,

"**Contract**" means a contract to appoint as agent for the distribution and resale/licensing of and associated activities relating to specified Content on the terms of the relevant Content Schedule and this Master Agreement formed between the Content Provider and a Vodafone Group Company in accordance with the process described in Clause 2;

"**Contract Acceptance Notice**" means the form of contract acceptance notice attached to this Master Agreement;

"**Contract Year**" means each calendar year of a Contract commencing on the applicable Commencement Date;

"**Creditor**" shall have the meaning given to that term in Clause 10.11;

"**Customer**" means a user of the Directory;

"**Data Protection Legislation**" means any applicable national data protection and privacy legislation;

"**Debtor**" shall have the meaning given to that term in Clause 10.11;

"**Deductions**" means: (1) any deductions or withholdings which VGSL or Vodafone may be required to make by law from any payment payable under this Agreement or any agreement between Vodafone Group Companies entered into for the purposes of this Agreement; (2) any Collecting Society Royalties paid by VGSL, Vodafone and/or any other Vodafone Group Company; and (3) such other deductions which the Parties may agree from time to time in writing;

"**Delivery Timetable(s)**" means the date(s) agreed by the Parties for the delivery of the Content (if any) as set out in the relevant Content Schedule or as otherwise agreed by the Parties in writing from time to time;

"**Directory**" means the mobile content directory or other platform from time to time operated for and on behalf of or in conjunction with Vodafone that lists or otherwise facilitates access to various mobile content and services and associated use rights;

"**DRM**" means technological measures that are designed to prevent or restrict unlawful use, copying or redistribution of the Content or other acts in respect of the Content by Customers or third parties which are not authorized by the Content Provider pursuant to a Contract;

"**DRM Guidelines**" means the technical, performance and other information relating to the DRM service offered by VGSL and/or Vodafone as produced and amended from time to time by VGSL and/or Vodafone and provided to the Content Provider;

"**Due Date**" means the time for payment of a sum as specified in the relevant Contract;

"**First Line Customer Support**" means receiving and handling all Customer inquiries relating to billing and payment collection, connection to the mobile Internet, access to the Content and any non-Content specific issues relating to the Directory;

"**Format**" means any format described in the relevant Content Schedule or which Vodafone specifies from time to time;

"**Gross Revenue**" means the aggregate Content Charges billed to and collected from Customers by Vodafone (as agent for the Content Provider) in respect of Chargeable Events;

“**Guidelines**” means the Application Submission Criteria for QA (if applicable), the Integration Guidelines and any other rules of procedure (including technical or quality control procedures), guidelines, directions, policies and/or other requirements made or adopted by Vodafone or the Vodafone Group from time to time which relate to content, the operation of the Directory, the participation of companies in the Directory, the provision of content for use on the Directory and/or the subject matter generally of this Master Agreement and/or a Contract;

“**Insurance Policies**” shall have the meaning given to that term in Clause 16.1;

“**Intellectual Property Rights**” means all intellectual and industrial property rights, whether registered or unregistered, including trade and service marks, patents, utility models, designs and design rights, trade and business names (including rights in any get-up or trade dress), domain names, topography rights, copyright and related rights, database rights, moral rights and all other similar proprietary rights in every case which may subsist in any part of the world including any registration of any such rights and applications and any rights to make applications for any of the foregoing;

“**Integration Guidelines**” means the technical performance, style and format requirements relating to the Content produced and amended from time to time by Vodafone and provided to the Content Provider for use in accordance with the terms of a Contract;

“**Languages**” means the languages that the Content is supplied in by the Content Provider as specified in a Content Schedule;

“**Link**” means any link that the Content Provider provides in order to facilitate access to the Content by a Customer via the Directory;

“**Marketing Materials**” means the marketing and promotional materials specified in each Content Schedule or otherwise provided by or on behalf of the Content Provider to Vodafone for use in relation to the Content;

“**Mobile Device**” means the mobile device(s) that the Content must be compatible with as specified in the relevant Content Schedule;

“**month**” means a calendar month and “monthly” shall be construed accordingly;

“**Net Revenue**” means the Gross Revenue less (1) value added tax, turnover tax or other local sales tax or other taxes charged to Customers and (2) all Customer refunds (or credits which may be issued to a Customer in lieu of a refund) in respect of a Chargeable Event;

“**Network Charges**” means the charges to a Customer levied by Vodafone in connection with the Customer’s access, carriage and use of the Content including but not limited to all airtime revenue, whether measured in terms of time, volume or event consumption and activation and access fee charges both from voice and data transmission;

“**Party**” and “**Parties**” means a party/the parties to a Contract and/or this Master Agreement, as the context requires;

“**Platform**” means the system, including the equipment, the Link and the software used by the Content Provider to host and maintain the Content;

“**Preview Options**” means the provision by Vodafone to a Customer via the Directory of an option to preview the Content for the purpose of enabling the Customer to evaluate the Content before purchase;

“**Protected Content**” means Content to which DRM has been applied by Vodafone in accordance with Clauses 8.1 to 8.8 (inclusive);

“**Purchase Options**” means the options for use of Protected Content to be presented to Customers via the Directory in response to a request to purchase Protected Content as specified in the relevant Content Schedule;

“**QA Company**” means a quality assurance company certified by VGSL;

“**Relevant Contacts**” means the contacts for each Party from time to time as initially identified in the relevant Content Schedule;

“**Rights**” means a collection of permissions, constraints and other information, corresponding to the applicable Purchase Option, which identifies the Content and defines under what circumstances access is granted to, and what usages are permitted for, Protected Content and any underlying code that represents such information;

“**Second Line Customer Support**” means receiving and handling all inquiries from a Vodafone Group Company relating to First Line Customer Support;

“**Special Conditions**” means the special conditions (if any) set out in the relevant Content Schedule;

“**Standing Offer**” means the offer made by the Content Provider to Vodafone Group Companies as described in Clause 2;

“**Territory**” means those countries set out in the relevant Content Schedule or the particular country(s), as applicable, specified in any signed Contract Acceptance Notice;

“**VAT Tax**” means any value added tax, any state or local sales or use tax, any business transfer tax, any transaction tax and any tax analogous to such taxes in any relevant jurisdiction;

“**VGSL**” means Vodafone Group Services Limited, a company incorporated in England (registered number 3802001) and having its registered office at Vodafone House, The Connection, Newbury, Berkshire RG14 2FN, United Kingdom;

“**Vodafone**” means any Vodafone Group Company which has entered into a Contract with the Content Provider pursuant to Clause 2;

“**Vodafone Commission**” means the Net Revenue less the Content Provider Revenue, which shall be the sum retained by Vodafone as commission for its activities as the Content Provider’s agent under this Master Agreement and each Contract;

"**Vodafone Group**" means Vodafone Group Plc, Vodafone Partner Network Companies and each company or entity in which Vodafone Group Plc has a shareholding or interest directly or indirectly of 15% or more or has the right to exercise directly or indirectly 15% or more of the voting rights and "**Vodafone Group Company**" shall be construed accordingly;

"**Vodafone Partner Network Companies**" means any company or corporation with which a Vodafone Group Company (which for the avoidance of doubt excludes another Vodafone Partner Network Company) has entered into a co-operation agreement with regard to the development and supply of new products and services and other related matters, and with which Vodafone Group Plc (or such Vodafone Group Company as Vodafone Group Plc has nominated) has entered into a brand licence agreement in relation to the licensing and use of the Vodafone name and brand and "**Vodafone Partner Network Company**" shall be construed accordingly; and

"**Vodafone Network**" means the wireless communications systems operated and/or provided for and on behalf of Vodafone within the Territory.

**Executed as an agreement:**

| | | |
|---|---|---|
| By the authorised representative of: | ) | |
| **Vodafone Group Services Limited** | ) | |
| | ) | |
| | ) | |
| | ) | /s/ Graeme Ferguson |
| | ) | Name: GRAEME FERGUSON |
| | ) | Title: EXECUTIVE HEAD OF CONTENT DEVELOPMENT |
| | ) | Date: 17TH DECEMBER 2004 |

| | | |
|---|---|---|
| By the authorised representative of: | ) | |
| **The Content Provider** | ) | |
| | ) | |
| | ) | |
| | ) | /s/ Adi McAlian |
| | ) | Name: ADI MCALIAN |
| | ) | Title: MANAGING DIRECTOR |
| | ) | Date: December 8, 2004 |

***WE HAVE REQUESTED CONFIDENTIAL TREATMENT OF CERTAIN PROVISIONS CONTAINED IN THIS EXHIBIT. THE COPY FILED AS AN EXHIBIT OMITS THE INFORMATION SUBJECT TO THE CONFIDENTIALITY REQUEST.***

27 February 2007

Waat Media Corporation (k/n/a Twistbox Entertainment, Inc.)
14242 Ventura
Suite 300
Sherman Oaks
CA 91356
United States of America

FAO: Justin Richardson

Dear Sirs,

**FURTHER LETTER OF AMENDMENT OF CONTRACT BETWEEN WAAT MEDIA CORPORATION ("CONTENT PROVIDER") AND VODAFONE UK CONTENT SERVICES LIMITED ("VCS")**

The Content Provider and Vodafone Group Services Limited entered into a Master Global Content Reseller Agreement dated 17 December 2004 (**"Original Agreement"**)and a content schedule dated 17 January 2005 (**"Content Schedule"**).To implement the Original Agreement and the Content Schedule in the UK, VCS signed a Contract Acceptance Notice on 11 April 2005 (the Original Agreement, Content Schedule and Contract Acceptance Notice together the **"Contract"**).

On 25 February 2006 VCS entered into an agreement with the Content Provider which provides that the Content Provider shall supply certain services to VCS (**"Linking Agreement"**).The provision of such services by the Content Provider necessitates certain amendments to the Contract. Also on 25 February 2006, VCS, Vodafone Group Services and the Content Provider agreed by a letter ("the **First Amendment Letter**") to make amendments to the Contract with effect from that date, in respect of the relationship between the Content Provider and VCS in the UK only. VCS and the Content Provider have now agreed to amend the Contract in respect of the UK only as set out below:

1 Notwithstanding the date of this Letter, with effect from 1 January 2007, the Content Provider will pay VCS a minimum revenue guarantee of [INFORMATION OMITTED AND FILED SEPARATELY WITH THE COMMISSION UNDER RULE 24B-2] per month. Once the Gross Revenue (i.e., the aggregate amount derived from both the Original Agreement and the Linking Agreement) for a month exceeds [INFORMATION OMITTED AND FILED SEPARATELY WITH THE COMMISSION UNDER RULE 24B-2], then the Content Provider Revenue shall be [INFORMATION OMITTED AND FILED SEPARATELY WITH THE COMMISSION UNDER RULE 24B-2] of the Gross Revenue in excess of such amount. VCS and the Content Provider agree to discuss in good faith, between 1 April and 30 April 2007, whether these commercial terms are equitable and to adjust them accordingly.

2 In return for the payment of the minimum revenue guarantee in 1 above, VCS will additionally make available one dynamic module on the Vodafone Live! homepage to the Content Provider between the hours of 10 p.m. each night and 6 a.m. the following day for the Content Provider to promote the Content.

Vodafone UK Content Services Limited
Vodafone Content Services
Vodafone House, The Connection, Newbury, Berkshire RG14 2FN, England
Telephone: +44 (0)1635 33251, Facsimile: +44 (0)1635 686734

Registered Office: Vodafone House, The Connection, Newbury, Berkshire RG14 2FN, England, Registered in England No. 4064826

3 Save as varied by this Letter, the Contract shall continue in full force and effect and in the event of any conflict between its terms and this letter the terms of this letter shall prevail.

For the avoidance of doubt and unless otherwise provided in this Letter, the capitalised terms in this Letter shall have the same meaning as provided in the Contract.

Please confirm your agreement to this Letter by signing and returning the enclosed copy.

Yours sincerely

/s/ Al Russell

Al Russell
Head of UK Content & Messaging Services
E-mail: al.russell@vodafone.com

We hereby agree to the contents of this Letter.

EVP/ General Counsel
for and on behalf of
**Waat Media Corporation (k/n/a Twistbox Entertainment, Inc.)**
Dated: 28 February 2007

**Vodafone UK Content Services Limited**
Vodafone House, The Connection, Newbury, Berkshire RG14 2FN, England
Telephone: +44 (0)1635 33251, Facsimile: +44 (0)1635 686181

Registered Office: Vodafone House, The Connection, Newbury, Berkshire RG14 2FN, England, Registered in England No. 4064826

***WE HAVE REQUESTED CONFIDENTIAL TREATMENT OF CERTAIN PROVISIONS CONTAINED IN THIS EXHIBIT. THE COPY FILED AS AN EXHIBIT OMITS THE INFORMATION SUBJECT TO THE CONFIDENTIALITY REQUEST.***

Content Schedule

1. This Content Schedule incorporates the terms of the Master Global Content Agency Agreement (the "Master Agreement") between Vodafone Group Services Limited ("VGSL"), registered in England (registered number 3802001), having its registered office at Vodafone House, The Connection, Newbury, Berkshire RG14 2FN, United Kingdom and the Content Provider (as defined below) dated 17 December 2004.

2. When signed by VGSL and the Content Provider this Content Schedule is a standing offer by the Content Provider of the applicable Content (as defined below) to all Vodafone Group Companies on the terms of the Master Agreement and this Content Schedule.

3. A Vodafone Group Company may accept the Standing Offer by completing and signing the Contract Acceptance Notice and following the procedure set out in the Master Agreement.

| | |
|---|---|
| 1. Content Provider | Waat Media Corporation; United States of America; Company reg. 2512380;<br>Address: 18226 Ventura Blvd. Suite 102, Tarzana. CA 91356. |
| 2. Content | Content Provider will provide a minimum of two channels which may be included in theVodafone mobile TV offering:<br><br>1. 'Blue' (which may have an alternative name in different Territories) - This will take the form of a two hour loop, updated by the Content Provider 5 days per week (Monday-Friday), or a suitable refresh rate which suits both the delivery requirements and commercial customer proposition and is agreed by both parties, with the intent of offering the above refresh rate when commercially and technically viable. The channel shall be presented by a local presenter and/or local graphics will ensure a local feel to the channel, conforming to the highest television editorial and production standards. A language agnostic version may be made available for smaller markets as agreed between the Parties. The channel shall be produced in accordance with broadcast quality production values including "mobile sized" sensual clips, with captivating fillers and entertaining bumpers. The channel shall consist of segmented programming, just like on television networks and will feature quality brands and top tier content.<br><br>2. The Parties also intend to include a 'Playboy' channel which will be included in this Content Schedule upon agreement in writing (which shall include agreement by email) by the Parties. The 'Playboy' channel shall take the form of a two hour loop, updated by the Content Provider 5 days per week (Monday-Friday), or a suitable refresh rate which suits both the delivery requirements and commercial customer proposition and is agreed by both parties with the intent of offering the above refresh rate when commercially and technically viable. The channel shall be presented by a local presenter and/or local graphics will ensure a local feel to the channel, conforming to the highest television editorial and production standards. A language agnostic version may be made available for smaller markets as agreed between the parties. The channel shall consist of broadcast quality production values including "mobile sized" sensual clips, with captivating fillers and entertaining bumpers.<br><br>Content Provider confirms that it understands the difference between US and local European tastes and will ensure that the Content fully reflects this difference.<br><br>No third party advertising shall be included in the Content unless otherwise specified by VGSL. |
| 3. Content Provider Branding Guidelines | The Content Provider shall brand the Content in accordance with Section 2. of this Content Schedule. |
| 4. Marketing Materials | The Content Provider will provide marketing materials as requested by VGSL and/or the Vodafone Group Companies from time to time. |
| 5. Content Provider Revenue | For 'Blue', Content Provider Revenue shall be [INFORMATION OMITTED AND FILED SEPARATELY WITH THE COMMISSION UNDER RULE 24B-2] of Net Revenue, less all the Deductions. It is understood that Deductions (if any) shall be deducted from the Content Provider Revenue actually paid to the Content Provider in accordance with Clause 10.2.<br><br>For 'Playboy', Content Provider Revenue shall be [INFORMATION OMITTED AND FILED SEPARATELY WITH THE COMMISSION UNDER RULE 24B-2] of Net |

Revenue, less all the Deductions. It is understood that Deductions (if any) shall be deducted from the Content Provider Revenue actually paid to the Content Provider in accordance with Clause 10.2.

The Content Provider and VGSL shall seek to agree reasonable commercial models for 'promotional' content and bundled content as and when requested by VGSL or a Vodafone Group Company.

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| | |
|---|---|
| 6. Content Protection | Clause 8.1 to 8.9 of the Master Agreement are not applicable. The Content will be streamed in H.263 or MPEG 4 or otherwise as decided by VGSL. |
| 7. Hosting | Vodafone shall be responsible for hosting the Content initially but the Content Provider agrees that on request by Vodafone, the Content Provider shall be responsible for hosting the Content at no additional cost to Vodafone. |
| 8. Languages | As per section 2 of this Content Schedule, the Content shall be presented by a local presenter and shall be available in a minimum of English, French, German, Italian and Spanish (EFIGS) and any other languages as may be reasonably requested by VGSL from time to time. A language agnostic version of the Content shall be made available to those markets where it is not commercially viable to produce a non-EFIGS language. |
| 9. Territories | 'Blue' – Worldwide<br><br>'Playboy' – Worldwide excluding UK, Eire, Sweden, Austria, Italy, Australia, New Zealand, Hong Kong, Thailand. |
| 10. Mobile Devices | All mobile devices. |
| 11. Format | The Content Provider shall at its cost ensure that the Content is capable of supporting all Formats, which may be specified, by VGSL or the Vodafone Group Companies (the "Format") from time to time. The Content Provider shall not change or vary the Format without Vodafone's prior written consent. |
| 12. Purchase Options | Not applicable. |
| 13. VGSL Certification | Not applicable |
| 14. Delivery Timetables | As requested by the Vodafone Group Companies. However the Content Provider should be able to deliver the Content from 1 August 2005, or earlier depending on specific market requirements. |

15. Relevant Contacts

<u>The Content Provider:</u>

Technical –

Camill Sayadeh
Tel:. +1 818 708 9995
Mob: +1 818 723 2488
Fax: +1 818 708 0598
camill@waatmedia.com

Commercial –

Adi McAbian
Tel: +1 818 708 9995
Mob: +1 818 644 1300
Fax. +1 818 708 0598
adi@waatmedia.com

Financial –

Lena Barseghian
Tel: +1 818 708 9995
Mob: +1 818 652 6497
Fax: +1 818 708 0598
lena@waatmedia.com

<u>VGSL:</u>

Commercial – Andrew Stalbow

Tel: +44 207 212 0591
Mob: +44 7717 618 919
Fax: +44 207 212 0701
E-mail: andrew.stalbow@vodafone.com

16. Tax Residence — The same country as the registered address of the Content Provider set out above.

| | |
|---|---|
| 17. Content Provider's bank account details for electronic transfer payments | Payment by VGSL to the Content Provider shall be made by BACS to the following bank account:<br><br>EAST WEST BANK<br>18321 Ventura Blvd. Tarzana, CA 91356<br>Account Name: The Waat Corporation |

Account Number: 8270-2648
ABA# 322070381

The currency of this Agreement shall be in Euros. All financial reports, statements, invoices, charges and payments made by one Party to the other shall be in Euros.

18. Special Conditions

1 . The Content Provider will comply with all VGSL/Vodafone content standards guidelines and policies as have been worked on in conjunction with the Content Provider and / or have been provided to the Content Provider as may change from time to time. Content Provider agrees that Content provided in accordance with Section 2 of this Content Schedule will vary according to the Content Standard rating in each Territory, and that Content supplied shall always adhere to such rating as-agreed by the Vodafone Group Company locally. Content Provider shall also provide reasonable assistance to help create such standards and guidelines as agreed from time to time.

The current Content Standards Classification Matrix and associated Vodafone Group Company ratings dated April 2005 is attached. The Content Provider acknowledges that this will be updated and will change over time, and that the Content Provider is responsible for ensuring it delivers Content in accordance with the rating specified by each Vodafone Group Company as such rating may be amended from time to time.

Where a Vodafone Group Company has indicated in the Content Standards Classification Matrix that Content with a higher rating than other Content may be provided behind its access controls solution, the Content Provider shall ensure that higher rated Content is only accessible behind the access controls solution.

2. The Commencement Date for each individual Contract may, at the election of each relevant Vodafone Group Company, be either: (a) the Commencement Date as defined in the Master Agreement; (b) 29 September 2003; or (c) a date In between (a) and (b) specified by each relevant Vodafone Group Company.

3. Clause 15.2 of the Master Agreement shall not apply to this Content Schedule.

4. In addition to its obligation in Clause 6.7 of the Master Agreement, Content Provider shall be responsible for obtaining all licences, clearances, permissions, waivers, approvals or consents required in order to enable Vodafone and VGSL to exercise the rights granted to VGSL and Vodafone in the Master Agreement and each relevant Contract including without limitation, obtaining any necessary clearances and consents from, making royalty or other payments to the owners of the applicable Intellectual Property Rights (including payment of any Collecting Society Royalties). In the event that VGSL or Vodafone is required to obtain any clearances and consents or to make royalty or other payments, Content Provider shall reimburse VGSL and Vodafone for any costs incurred in obtaining such clearances and consents and for the amounts of such royalties or other payments.

5. In the event that the Content contains any Intellectual Property Rights in which the Content Provider has not been able to obtain all licences, clearances, permissions, waivers, approvals or consents referred to in Special Condition 4 above, Content Provider shall notify VGSL and Vodafone and shall give VGSL and Vodafone the option of including alternative content.

Signed on behalf of VGSL:

/s/ Graeme Ferguson

VGSL authorised signatory

Print name: Graeme Ferguson
Position: Director of Global Content Development
Date signed: 13th July 2005

Signed on behalf of Content Provider:

/s/ Camill Sayadeh

Content Provider authorised signatory

Print name: Camill Sayadeh
Position: COO
Date signed: July 5th 2005

***WE HAVE REQUESTED CONFIDENTIAL TREATMENT OF CERTAIN PROVISIONS CONTAINED IN THIS EXHIBIT. THE COPY FILED AS AN EXHIBIT OMITS THE INFORMATION SUBJECT TO THE CONFIDENTIALITY REQUEST.***

Contract Acceptance Notice - Agency

| | |
|---|---|
| To: | WAAT Media Corporation, United States of America, registered no. 2512380 and Address: 18226 Ventura Blvd. Suite 102 Tarzana, Ca 91356<br><br>Attention: Camill Sayadeh<br><br>Fax: +1 818 708 0598 |
| From the Vodafone Group Company identified opposite: | Vodafone D2 GmbH<br>Am Seestern 1<br>40547 Düsseldorf<br>Germany |
| CC: | Vodafone Group Services Limited<br>Vodafone House<br>The Connection,<br>Newbury, Berkshire RG14 2FN<br>United Kingdom<br>Attention: Executive Head of Content Development (Graeme Ferguson)<br>Fax: +44 207 212 0312 |
| Territory | *[Note that this Territory must form part of the Territory as defined in this Content Schedule or this notice is not valid]* |

We accept the Standing Offer set out in the Master Agreement entered into between you and VGSL dated 17 December 2004 (entitled "Vodafone Master Global Content Agency Terms and Conditions"), a copy of which (together with any relevant Content Schedules) we have seen.

Signed on behalf of:
The Vodafone Group Company
Identified above

Print signatories' name: Erik Friemuth

Position: Director Vodafone Live!

Date signed:

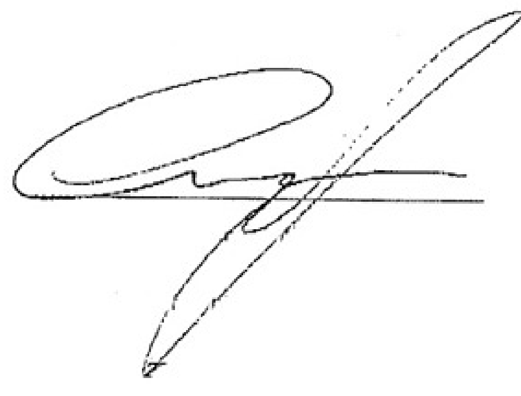
*NB - Prior to signing this Contract Acceptance Notice, the Vodafone Group Company* ***must*** *be sent copies of the final, signed versions of: (1) Terms and Conditions; and (2) Content Schedule(s).*

Contract Acceptance Notice - Agency

| | |
|---|---|
| To: | WAAT Media Corporation, United States of America, registered no. 2512380 and Address: 18226 Ventura Blvd. Suite 102 Tarzana, Ca 91356<br><br>Attention: Camill Sayadeh<br><br>Fax: +1 818 708 0598 |
| From the Vodafone Group Company identified opposite: | Vodafone Sverige AB<br>371 80 Kariskrona<br>Sweden<br>Attention: Head of Content Services (Anders Jensen)<br>Fax: +48 455 331375 |
| CC: | Vodafone Group Services Limited<br>Vodafone House<br>The Connection,<br>Newbury, Berkshire RG14 2FN<br>United Kingdom<br>Attention: Executive Head of Content Development (Graeme Ferguson)<br>Fax: +44 207 212 0312 |
| Territory | *[Note that this Territory must form part of the Territory as defined in this Content Schedule or this notice is not valid]* |

We accept the Standing Offer set out in the Master Agreement entered into between you and VGSL dated 17 December 2004 (entitled "Vodafone Master Global Content Agency Terms and Conditions"), a copy of which (together with any relevant Content Schedules) we have seen.

Signed on behalf of:
The Vodafone Group Company
Identified above



Print signatories' name: Anders Jensen

Position: Head of Content Services

Date signed: 22/12/04

*NB - Prior to signing this Contract Acceptance Notice, the Vodafone Group Company must be sent copies of the final, signed versions of: (1) Terms and Conditions; and (2) Content Schedule(s).*

**<u>Master Global Content Reseller Agreement</u>**

between

**Vodafone Group Services Limited**

and

**The WAAT Corporation**

---

**VODAFONE MASTER GLOBAL CONTENT RESELLER TERMS AND CONDITIONS (the "Master Agreement")**

**1. BACKGROUND AND STRUCTURE**

1.1. The Content Provider owns or otherwise has the right to exploit certain Content suitable for provision to Vodafone Group Companies for distribution and sale by those companies to their Customers.

1.2. All Content offered by the Content Provider from time to time under this Master Agreement shall be set out in Content Schedules signed by VGSL and the Content Provider. The Parties intend that each Vodafone Group Company wishing to distribute and/or resell some or all of such Content enters into a separate Contract with the Content Provider in accordance with the process set out in Clause 2.

1.3 The Parties acknowledge and agree that:

1.3.1 VGSL shall not be liable to the Content Provider in respect of any obligations owed to the Content Provider by any other Vodafone Group Company pursuant to a Contract; and

1.3.2 the Content Provider shall not be liable to VGSL in respect of any obligations owed to another Vodafone Group Company by the Content Provider pursuant to a Contract.

**2. FORMATION OF CONTRACTS**

2.1 This Master Agreement is a standing offer by the Content Provider to all Vodafone Group Companies to acquire and resell to Customers the Content on the terms of this Master Agreement.

2.2 Any Vodafone Group Company may, but is not obliged to, accept the Standing Offer by completing and signing the attached Contract Acceptance Notice.

2.3 A Contract is formed between the Content Provider and a Vodafone Group Company when the Content Provider receives the Contract Acceptance Notice signed on behalf of that Vodafone Group Company. Where a Vodafone Group Company is already party to a Contract with the Content Provider and the Content Provider enters into a new Content Schedule with VGSL. such new Content Schedule shall be deemed to be added to such Contract on the date that the Vodafone Group Company first acquires, promotes, advertises, distributes or resells the Content featured in such new Content Schedule. Under each Contract Vodafone appoints VGSL as its agent to agree with the Content Provider any amendments to any Content Schedule (and therefore Contract) but only to the extent that such amendments do not impose additional obligations on Vodafone.

2.4 The Standing Offer shall lapse upon termination or expiry of this Master Agreement for any reason and is not otherwise revocable by the Content Provider.

**3. APPOINTMENT AND DELIVERY**

3.1 The Content Provider appoints Vodafone as its non-exclusive authorised distributor and reseller in the Territory to promote, advertise, distribute and sell the Content (or licences thereof) on and in the Directory.

3.2 The Content Provider shall at all times provide to Vodafone Content compliant and compatible with the Format, the Integration Guidelines, the Mobile Devices and in the Languages.

3.3 The Content Provider shall provide the Content to Vodafone in accordance with any applicable Delivery Timetable.

3.4 Where a Content Schedule provides that the Content is to be compliant with the Application Submission Criteria for QA, such Content shall be delivered to Vodafone only after it has been certified by a QA Company as complying with the Application Submission Criteria for QA.

3.5 The Content shall not be featured on the Directory until it has successfully completed any testing procedures required by Vodafone. The Content Provider shall bear all the costs and expenses incurred in connection with any testing of the Content required by Vodafone (including, but not limited to, any quality assurance testing undertaken by the QA Company).

**4. THE CONTENT**

4.1 Unless otherwise agreed in writing with Vodafone, the Content shall:

4.1.1 [INFORMATION OMITTED AND FILED SEPARATELY WITH THE COMMISSION UNDER RULE 24B-2]

4.1.2 not require a Customer to provide any personal information or data to the Content Provider as a condition to access.

4.2 Subject to Clauses 4.3, 4.4 and 4.5, the Content Provider has full editorial control over the Content.

4.3 The Content Provider shall not change or vary the Content or the Format in a material way without VGSL's prior written consent. The Content shall comply with the Guidelines as updated by VGSL from time to time upon reasonable notice to the Content Provider.

4.4 Where:

4.4.1 the Content (or any part thereof) breaches any of the Guidelines;

4.4.2 Vodafone receives complaints regarding any of the Content or the Content Provider which it considers to be of such seriousness or number as to be prejudicial to the brand or reputation of Vodafone or other Vodafone Group Companies; or

4.4.3 errors are identified in the Content or the Content (or any part thereof) breaches any other provision of this Master Agreement or a Contract,

then, without prejudice to its other rights and remedies, Vodafone may require the Content Provider to use its reasonable endeavours to amend or to replace the Content with content which is acceptable to Vodafone, acting reasonably.

4.5 Vodafone is entitled to alter the format, layout or form of display of the Content:

4.5.1 to the extent necessary or desirable to allow the Content to be presented to Customers on the Directory or in downloaded form in an attractive or easy-to-use/view fashion; and

4.5.2 to comply with any Vodafone security, safety or other integrity process or requirement.

4.6 Vodafone is entitled (without the consent of the Content Provider) to offer Preview Options to Customers in respect of the Content. Preview Options shall not be treated as Chargeable Events.

4.7 The Content Provider shall ensure that the Content shall not contain any form of advertising for any goods or services and the Content Provider agrees that it shall have no right to include any form of advertising in the Content other than branding agreed to be incorporated in the Content pursuant to the Content Provider Branding Guidelines.

4.8 Vodafone may, with the written agreement of the Content Provider, offer to Customers promotions in respect of the Content and such offers shall not be treated as Chargeable Events (unless otherwise expressly agreed in writing with the Content Provider).

4.9 The Content Provider agrees that Vodafone does not have an obligation to place the Content on the Directory or, once placed, retain the Content on the Directory or to make the whole or any part of the Content available to Customers or to make the Content available in all or any of the Territories. Furthermore, Vodafone shall be entitled, but not obliged, to market and promote the Content to Customers.

4.10 The Content Provider acknowledges that a Customer of a Directory in a Territory may as a result of international roaming or cross-border signal leakage be able to access that Directory, and access the Content, outside of the Territory. Such access, distribution or provision of the Content shall be permitted under this Master Agreement and the provisions relating to the Territory shall be interpreted accordingly.

4.11 As between VGSL, Vodafone and the Content Provider, the Content Provider accepts responsibility for all matters relating to the provision or non-provision of the Content to Customers. For the avoidance of doubt, neither VGSL nor Vodafone shall be under any obligation to review any of the Content to ascertain if it complies with the terms of this Agreement and any legal, regulatory or other applicable requirements.

4.12 The Content Provider will use its best efforts to rectify bugs associated with any Content made available to Customers on the Directory at its own expense and in accordance with the response and fix times set out in the Content Schedule. Where a particular error cannot be fixed the Content Provider will provide an amended version free of charge.

**5. THE DIRECTORY**

5.1 The Content Provider acknowledges and agrees that the Directory and the distribution of Content may depend upon factors beyond Vodafone's control including, but not limited to, factors affecting the operation of the Vodafone Network. Vodafone shall use reasonable endeavours to maintain the availability of the Directory twenty-four (24) hours a day, every day of the year but Vodafone shall not be liable for any failure to maintain the Directory in such manner whether this arises from a technical or other failure in the Directory, the Vodafone Network or otherwise. Vodafone does not warrant that the Directory of the Vodafone Network will be free of errors, faults or interruptions.

5.2 Vodafone reserves the right from time to time to improve or otherwise alter the Directory as it deems appropriate (including changes to the category structure or channels). Vodafone reserves the right to suspend the operation of the Directory for the purposes of remedial or preventative maintenance or improvement of the Directory.

5.3 Vodafone may at any time during the term of a Contract, without incurring any liability to the Content Provider, temporarily or permanently suspend, disconnect, remove or bar access to: (a) the Directory; or (b) the Content (or any part thereof) on the Directory. Vodafone shall give the Content Provider notice of any such action.

5.4 Without prejudice to its other rights under a Contract, Vodafone shall be entitled to move the Content to, or place the Content in, any section of the Directory as it considers appropriate.

**6. INTELLECTUAL PROPERTY RIGHTS AND BRANDING**

6.1 The Content Provider grants to VGSL and Vodafone a non-exclusive, non-transferable (except to an assignee in accordance with the terms of a Contract) royalty-free (except for the payments specified in Clause 10) licence in the Territory (subject to Clause 4.10) to;

6.1.1 use, store, reproduce, display, distribute, transmit, broadcast and/or otherwise communicate and/or make available to the public the Content through various technologies (including without limitation WAP, SMS, MMS and IM);

6.1.2 use the Content Provider Marks to display, promote and advertise the Content in accordance with the Content Provider Branding Guidelines; and

6.1.3 use the Marketing Materials to promote and advertise the Content in accordance with Clause 6.2.

6.2 The Content Provider shall provide to VGSL as soon as practicable the Marketing Materials. VGSL and each Vodafone Group Company shall be entitled to use the Marketing Materials as follows:

6.2.1 for internal purposes within the Vodafone Group (including, without limitation, featuring on www.vodafonebrand.com and, where Content is Java-based, on VGSL's Java repository) and as a record of marketing relating to the Directory, without the prior consent of the Content Provider;

6.2.2 in respect of advertising and marketing for and of the Content on television and radio, in the press, on billboards and other outdoor media and in advertising in cinemas, with the prior consent of the Content Provider (such consent not to be unreasonably withheld or delayed - in the absence of reasonable refusal within seven days of request, consent shall be deemed to have been given); and

6.2.3 in respect of all advertising or marketing for and of the Content not specified in Clause 6.2.2 (including, without limitation, featuring in the Vodafone section of www.java.com where the Content is Java based), without the prior consent of the Content Provider.

6.3 All use of the Content Provider Marks shall be for the benefit of Content Provider and, save insofar as use of the Marketing Materials is permitted under Clause 6.2, in accordance with the reasonable terms of use generally applied by the Content Provider to its own activities and applying to licensees of the Content Provider Marks as notified to Vodafone and VGSL in the Content Provider Branding Guidelines.

6.4 For the avoidance of doubt, neither VGSL nor any Vodafone Group Company is obliged to conduct any advertising, marketing or promotion for or in relation to the Content.

6.5 Except as specifically authorised in a Contract or by this Clause 6, neither Party shall use the other Party's name or trade marks (including in the case of the Content Provider, the "Vodafone" name and any trade mark of any Vodafone Group Company) without the other's prior written consent.

6.6 Each Vodatone Group Company shall be entitled to sub-license its rights under this Clause 6 to:

6.6.1 any other Vodafone Group Company;

6.6.2 any Customer to the extent necessary to enable that Customer to exercise those rights in connection with the Content as are associated with a Chargeable Event; and

6.6.3 any service provider if that Vodafone Group Company outsources all or part of the provision or management of the Directory. Such outsourcing contractor shall be allowed to use the rights granted under this Clause 6 subject to that Vodafone Group Company remaining responsible for the acts or omissions of the outsourcng contractor.

6.7 Title to and ownership of all Intellectual Property Rights embodied by or otherwise incorporated into the Content shall remain with the Content Provider or its licensor(s) and the Content Provider shall be responsible for obtaining all licences, clearances, permissions, waivers, approvals or consents required in order to grant the licences required under Clause 6.1, including, without limitation, obtaining any necessary clearances and consents from, and making royalty or other payments to, the owners of the applicable Intellectual Property Rights (including payment of any Collecting Society Royalties).

## 7. TECHNICAL AND CUSTOMER SUPPORT

7.1 Vodafone shall provide First Line Customer Support in respect of the Content and the Content Provider shall provide Second Line Customer Support in respect of the Content. The Content Provider authorises Vodafone to refer any Second Line Customer support inquiries to the Content Provider's nominated Relevant Contacts.

7.2 The Content Provider shall not be required to provide support directly to any Customers.

7.3 The following ratings shall be used by the Parties to determine the priority of incidents and the Content Provider's corresponding obligation to respond and resolve such incidents involving the Content and other services delivered or under the responsibility of the Content Provider.

7.3.1 Priority 1 (Critical); Complete failure of the hosting service under Clause 9, the Content or a significant part of the Content or the problem creates a definite business or financial exposure or affects a large number of Customers. Response within ten (10) minutes and resolution within two (2) hours;

7.3.2 Priority 2 (High); Content not totally down, but the affected components form a significant part of the functionality of the Content and the problem creates a possible business or financial exposure. Response within thirty (30) minutes and resolution within eight (8) hours; and

7.3.3 Priority 3 (Medium): The Content is largely available and the problem has little or no effect on the services provided by the Content and the problem creates no business or financial exposure. Response time within three (3) hours and resolution time within two (2) business days.

## 8. CONTENT PROTECTION

8.1 These Clauses 8.1 to 8.8 (inclusive) shall only apply in the circumstances where a Content Schedule provides that Vodafone is responsible for providing the agreed level of protection for the Content.

8.2 Vodafone shall put in place the agreed DRM specified in the DRM Guidelines.

8.3 Nothing in this Master Agreement or any Content Schedule or Contract shall affect any rights of action that the Content Provider or any Vodafone Group Company may have under any applicable law in the Territory against:

8.3.1 the circumvention of the DRM put in place by Vodafone pursuant to Clause 8.2 or other technological measures put in place by the Content Provider pursuant to Clause 9.6;

8.3.2 any device, product or component or the provision of services for circumvention of such DRM or other technological measures;

8.3.3 removal or alteration of any Rights associated with Protected Content; or

8.3.4 distribution, importation, broadcasting, communication or making available to the public of Protected Content from which Rights have been removed or altered without authority

(collectively, the "Anti-Circumvention Rights").

8.4 For the avoidance of doubt, neither VGSL, nor any Vodafone Group Company is obliged to exercise its Anti-Circumvention Rights in relation to the Protected Content.

8.5 The Content Provider acknowledges that in order to carry out its obligations under this Clause 8, Vodafone may need to:

8.5.1 substantially adapt any Protected Content distributed via the Vodafone Network to make it or a part of it deliverable to the recipient's Mobile Device; or

8.5.2 override any copy protection or similar measures incorporated into the Content delivered to VGSL or Vodafone (including without limitation copy protection measures supported by SMAF formats) to make such Content deliverable to Customers as Protected Content.

8.6 The Content Provider provides its irrevocable consent to any such adaptation or overriding undertaken as Vodafone may reasonably determine is necessary for the purpose of transmission or delivery of the Content and to any transient copying undertaken in the process of transmission or delivery. The Content Provider agrees that the existence and validity of this Master Agreement shall be conditional upon such consent. For the purposes of this Clause 8.6 and Clause 8.5.1 the term “adaptation” includes, without limitation, the conversion of a video message into a series of still images, the removal of all or part of the Content and the insertion of a link to a URL.

8.7 Neither VGSL nor Vodafone warrants that the DRM put in place pursuant to Clause 8.2 will prevent Protected Content being unlawfully accessed, copied, distributed or used. In particular, the Content Provider acknowledges that the security of such DRM depends upon the robust implementation of industry standards by third parties, in particular, the Mobile Device manufacturers. Neither VGSL nor Vodafone can guarantee that such standards have been implemented correctly or to a sufficiently high standard by such third parties.

8.8 Vodafone shall use its reasonable endeavours to identify the make and model of Mobile Devices to which the Protected Content is distributed with the intention of only distributing such Protected Content to the Mobile Devices specified In the Content Schedule (Specified Mobile Devices) purporting to support the DRM specified in the DRM Guidelines. Vodafone does not warrant the authenticity of any Mobile Device identification information and the Content Provider acknowledges and accepts the risk that third parties may seek to defraud Vodafone and the Content Provider by misrepresenting such information.

**9. HOSTING**

9.1 These Clauses 9.1 to 9.7 (inclusive) shall only apply in the circumstances where a Content Schedule provides that the Content Provider is responsible for hosting the Content.

9.2 The Content Provider shall host the Content on the Platform (which shall include provision of application monitoring, application support and fault and change management).

9.3 The Content Provider shall provide sufficient redundancy in services and infrastructure in order to maintain the Content. The Content Provider shall collect and process appropriately all data relating to Chargeable Events and provide this data to VGSL on request. The Content Provider shall perform daily backups of all data regarding Chargeable Events and be able to recover to the last backup. Backups shall be treated in accordance with industry standard security.

9.4 Notwithstanding obligations under Data Protection Legislation, all facilities associated with the hosting of the Content, the Content data and the transmission of that data shall ensure security commensurate with the sensitivity of the data being processed and the service being provided. The Content Provider is responsible for obtaining and maintaining the Content and the Platform.

9.5 The Content Provider shall:

9.5.1 ensure that viruses are not introduced to the Platform;

9.5.2 respond to all virus attacks and destroy any virus detected on the Platform, document each incident and report the details immediately to Vodafone; and

9.5.3 scan all incoming computer media for viruses before they are read by any hardware associated with the Content.

9.6 The Content Provider shall take all reasonable measures to prevent unlawful or unauthorised access to the Content Provider computer systems associated with the Content and the Content data and Content backups (including in the circumstances where a Content Schedule provides that the Content Provider is responsible for protecting the Content, technological measures designed to prevent unlawful or unauthorised use, copying or redistribution of the Content by Customers or any other person). Where appropriate this shall include use of locking devices, firewalls, shared secrets, digital certificates, password protection, and content filtering, encryption and intrusion detection.

9.7 Where the Content Provider materially or persistently falls to meet any of the KPI levels set out in the Content Schedule or any Guidelines relating to its service under this Clause 9, without prejudice to its other rights and remedies and for the avoidance of doubt Vodafone shall be entitled to temporarily suspend or disconnect the Content Provider or remove or bar access to the Content (or any part thereof) on the Directory to its Customers until such time as the Content Provider can show to Vodafone's reasonable satisfaction that it has taken reasonable steps to resolve the problem.

**10. PRICING, REVENUE AND PAYMENTS**

10.1 Vodafone determines the price at which it sells, licenses or otherwise distributes the Content to Customers in the Territory (including in the case of Protected Content the price attributed to each of the Purchase Options). Vodafone shall consider any reasonable recommendations from the Content Provider when determining such price. Vodafone may include the Content in a bundle or package of other content as a single or combined offering to the Customer, In which event the Gross Revenue applicable to the Content shall be an appropriate proportion of the relevant charge for such bundle or package, as reasonably determined by Vodafone.

10.2 Vodafone shall pay to the Content Provider the Content Provider Revenue less Deductions in accordance with the procedure set out in this Clause 10. Save as otherwise notified to the Content Provider, VGSL shall act as each relevant Vodafone Group Company's agent for the purposes of paying such sums.

10.3 Vodafone shall not be obliged to make any payment in respect of any Chargeable Event unless and/or until the Customer has paid for the Content in full.

10.4 If Vodafone maintains a repository within a particular Territory containing details of Content purchased by a Customer in such Territory, Vodafone shall be entitled to provide such Content free of charge to any Customer in that Territory where such Customer has already been charged for such Content.

10.5 Save as otherwise notified to the Content Provider, VGSL shall, on behalf of Vodafone, no later than thirty (30) days after the end of the month in which the relevant Chargeable Events were incurred (it being acknowledged that, where the Content Provider hosts the Content, the Content Provider will need to provide the relevant information to VGSL in a timely manner to allow VGSL to meet its obligations under this Clause 10.5):

10.5.1 generate and send to the Content Provider's Relevant Contact for finance matters monthly reports showing the calculation of the Content Provider Revenue for the relevant month; and

10.5.2 (where relevant) issue and send to the Content Provider's Relevant Contact for finance matters a monthly purchase order in respect of the Content Provider Revenue for the relevant month.

10.6 The Content provider shall, upon receipt from VGSL of the report specified in clause 10.5.1 on behalf of Vodafone, issue an invoice in respect of the applicable Content Provider Revenue in the name of each applicable Vodafone Group Company and send such invoices to VGSL (or directly to the relevant Vodafone Group Company, if so directed by VGSL).

10.7 Unless an amount is in bona fide dispute, the Parties shall pay all sums owed to each other under a Contract within sixty (60) days of receipt of a valid invoice for the relevant sum.

10.8 Where Vodafone receives any complaint from a Customer in relation to the Content, it may in its sole discretion decide to make a refund or issue a credit to such Customer in respect of the Chargeable Event. Where such a refund is issued or credited, or where a bad debt is incurred, after the relevant Content Provider Revenue has been paid to the Content Provider, Vodafone shall be entitled to deduct from the calculation of Net Revenue for the following month the amount of such refund, credit or bad debt less any sums (other than Deductions) already received and retained by Vodafone in respect of such Chargeable Event.

10.9 Payment by VGSL on behalf of Vodafone to the Content Provider shall be made by electronic transfer to the Content Provider's bank account specified in the relevant Content Schedule.

10.10 The currency of this Master Agreement and each Contract shall be Euros. All financial reports, statements, invoices, charges and payments made by one Party to the other shall be in Euros. In respect of revenues generated in a Territory that does not have the Euro as its primary currency (a "Non-Euro Amount'), Vodafone shall convert such Non-Euro Amount to Euros using the UK Financial Times average middle market exchange rate calculated for the applicable month.

10.11 Where a Party (the "Debtor") fails to pay another Party (the "Creditor) any amount due and payable under a Contract by the time prescribed by the Contract (the "Due Date"), the Creditor shall be entitled to give the Debtor written notice of its intention to charge interest. If payment of the amount due has still not been received by the Creditor within 14 days of receipt of such notice by the Debtor, the Debtor shall on demand by the Creditor pay the Creditor interest on the unpaid amount at a rate of 1% per annum above the Euribor rate of interest (as prescribed by the European Banking Federation) which is in force on the Due Date, calculated from the Due Date until payment of the unpaid amount is made in full. The Parties acknowledge and agree that the interest payment mechanism set out in this Clause 10 is a substantial remedy.

## 11. TAX

11.1 Vodafone shall be entitled to make any deduction or withholding required by law from any payment payable under a Contract or any agreement between Vodafone Group Companies entered into for the purposes of a Contract. In the event that a withholding tax or deduction is payable by Vodafone in respect of the Content Provider Revenue, Vodafone will pay the Content Provider Revenue net of the required withholding or deduction to the Content Provider. Vodafone will supply to the Content Provider evidence to the reasonable satisfaction of the Content Provider that Vodafone has accounted to the relevant authority for the sum withheld or deducted and will provide all such assistance as may be reasonably requested by the Content Provider in recovering the amount of the withholding. In the event that a double taxation treaty applies which provides for a reduced withholding tax rate, Vodafone shall only withhold and pay the reduced tax on behalf and for the account of the Content Provider if an appropriate exemption certificate is issued by the competent tax authority and provided to Vodafone.

11.2 If Vodafone, in good faith, pays the Content Provider Revenue without set-off, counterclaim, or required withholding or deduction and a subsequent audit identifies that a withholding or deduction should have been made from the Content Provider Revenue, the Content Provider shall be liable to pay this withholding or deduction to the relevant authority or (if Vodafone makes the payment to the relevant authority) to Vodafone, together with any interest and penalties due thereon and shall indemnify Vodafone in respect of any such residual liability.

11.3 If a Vodafone Group Company, in order to reduce the VAT Taxes due on the Content Charge, enters into a Contract with the Content Provider and sells, licenses or otherwise distributes the Content in a Territory from outside of that Territory, the following shall be deemed to be an additional Deduction for the purposes of the Contract: the difference between the valued added tax, turnover tax or other taxes included in the Content Charge, and, if higher, the prevailing rate of equivalent taxes that would otherwise be payable with respect to the Content in the country where the Customer purchased the Content.

11.4 The Content Provider warrants and undertakes to Vodafone that it is tax resident in the place indicated in every Content Schedule and shall be deemed to remain tax resident in that territory unless it notifies Vodafone of a change of tax residency on thirty (30) days prior written notice. The Content Provider shall on demand provide any documentation required by Vodafone evidencing its tax residency in such territory.

11.5 In the event that Vodatone is not reasonably informed of a change in tax residence by the Content Provider, the Content Provider will indemnify Vodafone against any costs (including but not limited to withholding tax and any accrued interest and penalties) incurred by Vodafone due to such failure to inform.

11.6 Content Provider Revenue shall be exclusive of any applicable VAT Tax.

11.7 If any VAT Tax is chargeable by the Content Provider in respect of any amount payable by Vodafone under this Master Agreement or any Contract, the Content Provider shall provide Vodafone with an invoice that specifically states such VAT Tax and (if a relief procedure is available) meets all further conditions required by applicable law which are necessary to allow Vodafone to obtain relief from such VAT Tax. Vodafone shall, upon receipt of such invoice, pay to the Content Provider such VAT Tax at the rate then properly chargeable in respect of the relevant payment.

11.8 If the Content Provider provides Content or services under a Contract from outside of the European Union to Vodafone. the Content Provider shall provide to Vodafone a reasonable explanation of the nature of any applicable VAT Tax charged by the Content Provider under the Contract, the rate of such VAT Tax and the processes by which Vodafone can obtain relief for such VAT Tax.

11.9 If the Content Provider has incorrectly charged VAT Tax to Vodafone under a Contract then the relevant invoice shall be corrected as soon as practicable and: (a) where Vodafone has overpaid the VAT Tax, the Content Provider will repay to Vodafone the overpayment of VAT Tax; and (b) where Vodafone has underpaid the VAT Tax, Vodafone shall pay the outstanding amount upon receipt of a valid invoice. Payments under (a) and (b) shall be made in accordance with Clauses 10.7 and 10.11.

11.10 In the circumstances set out in section (b) of Clause 11.9 the Content Provider shall reimburse Vodafone for any and all costs, charges, VAT Taxes and related interest and penalties relating to such underpayment, save to the extent that Vodafone is (acting reasonably) able to recover such amounts from the applicable authorities.

**12. REPORTING AND AUDIT**

12.1 Each Party shall, during the term of a Contract, deliver to the other upon its reasonable written request access to and copies of such information that the other may reasonably require to perform its obligations (or to verify that the other Party is performing its obligations) under a Contract.

12.2 Vodafone and the Content Provider shall, at their own expense and upon 30 days' prior written notice, have the right to appoint an independent auditor solely for the purposes of verifying the accuracy of any financial report or statement issued by the other Party under a Contract. If such audit subsequently reveals any financial discrepancy, the audited Party shall rectify such discrepancy within thirty (30) working days after notification of the discrepancy. Each Party shall only be entitled to utilize this provision once in any twelve (12) month period of a Contract.

**13. WARRANTIES**

13.1 The Content Provider warrants and undertakes to VGSL and Vodafone that:

13.1.1 it has full right and authority to enter into this Master Agreement and any Contract and that its entry into this Master Agreement and any Contract does not breach any third party's rights or any other agreement to which it is a party;

13.1.2 it shall implement and comply with any Guidelines provided from time to time by VGSL or any other Vodafone Group Company to the Content Provider which relate to:

13.1.2.1 content standards (including anti-social, adult, fraudulent, unlawful or otherwise inappropriate content) and, in particular, shall clearly classify the Content in accordance with the adult content classification framework criteria agreed between the Content Provider and VGSL;

13.1.2.2 access or use of the Directory by Customers (including anti-social, fraudulent, underage, unlawful or improper use); or

13.1.2.3 the Vodafone Network and/or any mobile device;

13.1.3 it shall not act in a way which shall impair or put in jeopardy the operation of the Directory, the Vodafone Network, any mobile device or any part of them;

13.1.4 it has the necessary licences, consents, permissions or approvals to operate and to grant Vodafone the rights to use the Content, the Marketing Materials and the Content Provider Marks in accordance with the terms of a Contract;

13.1.5 it shall use reasonable skill and care in carrying out its obligations and exercising its rights under a Contract and/or this Master Agreement; and

13.1.6 it shall comply with all applicable laws and regulations when performing its obligations under this Master Agreement and/or a Contract.

13.2 The Content Provider warrants and undertakes to VGSL and Vodafone that the Content shall:

13.2.1 be of satisfactory quality and be kept fresh, updated and current (with reference to the nature of the Content's subject matter) and shall not be factually inaccurate;

13.2.2 not infringe any third party's rights (including intellectual Property Rights);

13.2.3 not offend taste or decency, nor be defamatory, obscene. racist, materially inaccurate, be so violent or abusive in nature as to be reasonably likely to cause serious offence in Vodafone's opinion, or otherwise be in breach of any applicable law, regulation or code of conduct or result in Vodafone or any Vodafone Group Company being in breach of any law;

13.2.4 not result in Vodafone or any other Vodafone Group Company being held to carry out any regulated activity in the applicable Territory including but not limited to any gambling service, betting service or lottery (where "regulated activity" means any activity requiring specific governmental authorisation or license, other than the provision of telecommunications or electronic communications services);

13.2.5 not contain any content that promotes a Competitor or criticises Vodafone or any other company within the Vodafone Group, or otherwise bring Vodafone Group Companies into disrepute or damages the reputation or goodwill of Vodafone, or any other Vodafone Group Company or any trade mark of any Vodafone Group Company In any of the Territories; and

13.2.6 not contain any computer viruses, logic bombs, trojan horses and/or any other items of software which would disrupt the proper operation of the Directory, the Vodafone Network or any mobile device.

13.3 VGSL warrants and undertakes that it has full right and authority to enter into this Master Agreement. Each Vodafone Group Company which executes the Contract Acceptance Notice warrants and undertakes that it has full right and authority to execute that Contract Acceptance Notice.

13.4 The Parties acknowledge that their respective obligations and liabilities are exhaustively defined in each Contract and this Master Agreement (as the context requires) and that to the extent permitted by law, the express obligations and warranties provided in each such Contract and this Master Agreement are in lieu of and to the exclusion of any warranty, condition, term, undertaking or representation of any kind, express or implied, statutory or otherwise relating to anything supplied or provided or services performed under or in connection with each such Contract and/or this Master Agreement including (without limitation) as to the condition, quality, performance satisfactory quality or fitness for the purpose.

13.5 Save as otherwise notified to the Content Provider, VGSL shall act as the single point of contact between the Content Provider and each Vodafone Group Company entering into a Contract including, without limitation. in respect of any claims made by the Content Provider or such a Vodafone Group Company under this Master Agreement or any Contract.

**14. INTELLECTUAL PROPERTY INDEMNITY**

14.1 The Content Provider shall indemnify Vodafone, VGSL and all other Vodafone Group Companies from and against all losses, damages, costs, expenses, claims, proceedings and liabilities (including legal costs calculated on a solicitor-client basis) sustained or incurred by Vodafone or any Vodafone Group Company arising out of or in connection with any claim or allegation that the provision, use, receipt or possession of the Content, the Marketing Materials and/or the Content Provider Marks:

14.1.1 infringes the Intellectual Property Rights, other proprietary rights or rights of publicity or privacy of a third party; or

14.1.2 is defamatory, obscene, racist, materially inaccurate, violent or abusive in nature, or otherwise in breach of any applicable law, regulation or code of conduct.

14.2 If any third party makes a claim or demand or brings an action against, or notifies an intention to make or bring a claim, demand or action against VGSL or any Vodafone Group Company which may give rise to a liability under this Clause 14 (in this clause, a "relevant claim"), Vodafone shall:

14.2.1 without limiting the generality of this Clause 14, as soon as reasonably practicable give written notice of the relevant claim to the Content Provider;

14.2.2 not make any admission of liability, agreement or compromise in relation to the relevant claim (save where required by law, legislation, court order or governmental regulations) which may be prejudicial to the defence or settlement of any claim, demand or action by VGSL, a Vodafone Group Company or the Content Provider without the prior written consent of the Content Provider (such consent not to be unreasonably withheld or delayed); and

14.2.3 at the request of the Content Provider and at the Content Provider's cost, afford all reasonable assistance for the purpose of contesting the relevant claim.

**15. LIABILITY**

15.1 Except for liability arising under Clauses 14.1 and 15.4, in each Contract Year the aggregate liability of each Party for all claims made under or in connection with a Contract, whether based on contract, tort, negligence or otherwise shall be limited to the greater of: (a) [INFORMATION OMITTED AND FILED SEPARATELY WITH THE COMMISSION UNDER RULE 24B-2] or (b) [INFORMATION OMITTED AND FILED SEPARATELY WITH THE COMMISSION UNDER RULE 24B-2] arising under the Contract in question in the Contract Year in which the applicable liability is sustained.

15.2 Except for liability arising under Clauses 14.1 and 15.4, the total aggregate liability of: (a) the Content Provider to VGSL and Vodafone (together); and (b) VGSL and Vodafone (together) to the Content Provider, under this Master Agreement and all Contracts for all claims made under or in connection with this Master Agreement and all Contracts, whether based on contract, tort, negligence or otherwise shall (in each of the cases (a) and (b)) be limited to [INFORMATION OMITTED AND FILED SEPARATELY WITH THE COMMISSION UNDER RULE 24B-2].

15.3 Except for liability arising under Clauses 14.1 and 15.4, in no circumstances shall a Party be liable for any indirect, special or consequential damages arising from breach of contract, negligence or other liability even if the other Party had been advised or knew (or should have known) of the possibility of such damages.

15.4 Nothing in this Master Agreement or a Contract excludes a Party's liability with respect to death or personal injury resulting from negligence, or excludes a Party's liability for fraudulent misrepresentation or any other liability to the extent that such liability may not be excluded or restricted by law.

**16. INSURANCE**

16.1 Both Parties agree that they carry and will maintain throughout the term adequate Insurance to cover such of their liabilities under this Master Agreement and each Contract. In particular the Content Provider agrees to keep and maintain products/liability insurance to the value of US [INFORMATION OMITTED AND FILED SEPARATELY WITH THE COMMISSION UNDER RULE 24B-2] per claim and third party intellectual property rights insurance to the value of US [INFORMATION OMITTED AND FILED SEPARATELY WITH THE COMMISSION UNDER RULE 24B-2] per claim.

16.2 The Content Provider shall ensure that the appropriate noting of VGSL's and Vodafone's Interests have been recorded on the Insurance Policies or a generic interest clause has been included, together with a waiver of subrogation and any right of contribution in favour of VGSL and Vodafone, and shall on the written request of Vodafone from time to time provide a certificate signed by the Content Provider's insurer or such insurer's appointed agents confirming that the Content Provider is insured in accordance with this Clause 16. On the renewal of any Insurance Policies, the Content Provider shall promptly send a copy of the premium receipt to VGSL, if so requested.

16.3 The Content Provider shall during the term of this Agreement and for a period of [INFORMATION OMITTED AND FILED SEPARATELY WITH THE COMMISSION UNDER RULE 24B-2] years thereafter:

16.3.1 administer the Insurance Policies and the Content Provider's relationship with its insurers in such a manner as to preserve any benefits to Vodafone from the operation of this Clause 16;

16.3.2 do nothing to invalidate any Insurance Policies or to prejudice the Content Providers entitlement under the insurance Policies; and

16.3.3 not subsequently alter the terms of the Insurance Policies in such a way as to diminish any benefits to VGSL or Vodafone from the Insurance Policies.

16.4 The Content Provider shall ensure that its contractors, subcontractors and agents are insured in the same manner as set out in this Clause 16.

**17. TERM AND TERMINATION**

17.1 This Master Agreement shall commence on the date when it has been executed by both parties to the Master Agreement and shall continue unless and until terminated in accordance with the provisions of this Master Agreement. Each Contract shall commence on its Commencement Date and will continue unless otherwise terminated in accordance with Its terms or, if earlier,on the termination of this Master Agreement.

17.2 Either Party to this Master Agreement may terminate this Master Agreement, or a Party to a Contract may terminate that Contract, Immediately on Written notice to the other Party (such notice not to be effective if sent by email) If:

17.2.1 the other Party is in material breach of its terms and such breach is incapable of remedy or, if capable of remedy, fails to remedy that breach within fourteen (14) days' notice from the non-breaching Party requiring remedy; or

17.2.2 the other Party ceases to carry on its business or has a liquidator, receiver or administrative receiver appointed to it or over any part of its undertaking or assets or passes a resolution for its winding up (otherwise than for the purpose of a bona fide scheme of solvent amalgamation or reconstruction where the resulting entity will assume all of the liabilities of it) or a court of competent jurisdiction makes an administration order or liquidation order or similar order over the other, or the other enters into any voluntary arrangement with its creditors, or is unable to pay its debts as they fall due or suffers any similar or equivalent act in another relevant jurisdiction.

17.3 VGSL shall be entitled to terminate this Master Agreement or any Contract without cause at any time, either in full or in relation to particular Territories or Items of Content (or both), by giving [INFORMATION OMITTED AND FILED SEPARATELY WITH THE COMMISSION UNDER RULE 24B-2] written notice to the Content Provider, without prejudice to its other rights and remedies. Any partial termination of a Contract shall not affect the validity or enforceability of either: (a) this Master Agreement; (b) other Contracts; or (c) the remainder of the Contract in question.

17.4 Vodafone shall be entitled to terminate a Contract to which it is party without cause at any time, either in full or in relation to particular items of Content, by giving thirty [INFORMATION OMITTED AND FILED SEPARATELY WITH THE COMMISSION UNDER RULE 24B-2] written notice to the Content Provider, without prejudice to its other rights and remedies. Any partial termination of a Contract shall not affect the validity or enforceability of the remainder of the Contract in question.

17.5 The Content Provider shall be entitled to terminate this Master Agreement or any Contract without cause at any time after the date [INFORMATION OMITTED AND FILED SEPARATELY WITH THE COMMISSION UNDER RULE 24B-2] from the date of this Master Agreement (in the case of termination of this Master Agreement) or [INFORMATION OMITTED AND FILED SEPARATELY WITH THE COMMISSION UNDER RULE 24B-2]from the Commencement Date of the relevant Contract (in the case of termination relating to a Contract), either in full or in relation to particular Territories or items of Content (or both), by giving ninety [INFORMATION OMITTED AND FILED SEPARATELY WITH THE COMMISSION UNDER RULE 24B-2] written notice to VGSL (in the case of termination of this Master Agreement) or to Vodafone with a copy to VGSL (in the case of termination relating to a Contract), without prejudice to its other rights and remedies. Any partial termination of a Contract shall not affect either the validity or enforceability of either: (a) this Master Agreement; (b) other Contracts; or (c) the remainder of Contract in question.

17.6. This Master Agreement shall terminate automatically [INFORMATION OMITTED AND FILED SEPARATELY WITH THE COMMISSION UNDER RULE 24B-2] after the expiration or termination of the last remaining Contract.

17.7 Termination of this Master Agreement or a Contract does not affect the accrued rights, obligations or liabilities of the Parties prior to termination.

17.8 Upon termination of a Contract or this Master Agreement for whatever reason:

17.8.1 Vodafone shall remove the relevant Content from the Directory and cease providing access to such Content to its Customers;

17.8.2 each Party to that termination shall, upon request, return to the other or destroy any relevant confidential Information or materials provided to it by the other;

17.8.3 each Party to that termination shall remove all references to the other's trade marks from any marketing and promotional materials save in respect of any ongoing relationship between the Parties and subject to VGSL retaining a copy of all Content and related marketing and promotional materials for archive and internal analysis purposes;

17.8.4 the Parties shall settle all outstanding sums either may owe the other within one hundred and twenty (120) days of the date of termination; and

17.8.5 subject to Clause 20.8, all rights granted under the Contract in question or this Master Agreement (as appropriate) shall immediately cease.

17.9 VGSL has the right to extend the operation of a Contract for a period of not more than three (3) months after what would otherwise be the effective date of termination or expiration to give Vodafone an opportunity to replace the relevant Content and make appropriate amendments to its marketing materials.

## 18. CONFIDENTIALITY AND PUBLICITY

18.1 Except as may be required by law or any applicable regulatory body, or as is strictly required to perform Its obligations under this Master Agreement or a Contract, each Party shall keep secret and confidential and not use, disclose or divulge to any third party any information that they obtain from the other concerning the business, finances, technology and affairs of the other, and in particular but not limited to the terms of this Master Agreement and any Contract and their subject matters. This Clause does not apply to information that has come Into the public domain other than by breach of this Clause or any other duty of confidence or is obtained from a third party without breach of this Clause or is required to be disclosed by law.

18.2 The Content Provider agrees that VGSL and Vodafone shall be entitled to share any or all information it receives from or generates on behalf of the Content Provider pursuant to this Master Agreement and/or any Contract with other Vodafone Group Companies.

18.3 Neither Party shall issue any press statement or other announcements relating to this Master Agreement and/or any Contract or the subject matters thereof (as the context requires) without the prior written consent of the other Party.

**19. DATA PROTECTION**

19.1 All personal and traffic data generated by or otherwise collected in relation to the Content will remain the exclusive property of Vodafone. The Content Provider shall be entitled to receive, on written request from time to time, aggregated user Information for the limited purpose of analysing the effectiveness of the Content.

19.2 To the extent that the Content Provider is required in connection with the performance of its obligations under this Master Agreement or a Contract to process personal data relating to any Customer, the Content Provider shall:

19.2.1 only process such personal data on behalf of Vodafone;

19.2.2 act solely on the instructions of Vodafone in respect of such personal data; and

19.2.3 not make any use of that data for any reason other than to perform its obligations hereunder and in particular shall not make any use of the personal data for its marketing purposes.

19.3 To the extent that the Content Provider processes personal data on behalf of Vodafone, the Content Provider must ensure that it has in place appropriate technical and organisational security measures (in addition to those expressly required by this Master Agreement or a Contract) to protect such personal data from accidental or unlawful destruction or accidental loss, damage, alteration, unauthorised disclosure or access, in particular where the processing involves the transmission of data over a network, and against all other unlawful forms of processing.

## 20. GENERAL

20.1 No variation of this Master Agreement or a Contract or of any of the documents referred to in either agreement shall be valid or effective unless it is in writing and signed by or on behalf of each of the Parties (and, in the case of a Contract, but subject to Clause 2.3, by the relevant Vodafone Group Company).

20.2 This Master Agreement may be executed in any number of counterparts, each of which, when executed and delivered, shall be an original, and all the counterparts together shall constitute one and the same instrument.

20.3 Any notice or other communication required to be given or made under this Master Agreement or a Contract shall be in writing and addressed to the receiving Party's principal contact at the address of the receiving Party as set out in the Master Agreement or a Contract (as the context requires) or such other person or address as notified from time to time in accordance with the terms of this Clause. Any such notice or communication may be delivered by hand, first class post (if both Parties are within the UK), airmail (if one of the Parties is overseas) or fax and shall be deemed to be given or made if: (a) sent by hand, upon receipt; (b) by first class post, on the second working day following the date of posting; (c) by airmail, on the seventh working day following the date of posting; and (d) by fax or email, when despatched provided that a confirmatory copy is immediately despatched by first class post or airmail (as appropriate). The Content Provider shall, whenever it sends a notice to Vodafone, provide a copy of such notice to VGSL.

20.4 This Master Agreement or each Contract, as the context requires, represents the entire understanding between the respective Parties in relation to its subject matter and supersedes all agreements and representations made by either Party, whether oral or written, save in respect of the Master Agency Agreement signed between VGSL and the Content Provider and dated 17 December 2004. This Clause shall not affect either Party's liability for fraud.

20.5 Failure or delay by either Party to enforce any provisions under this Master Agreement or a Contract shall not be taken as or deemed to be a waiver of its rights or operate as a waiver of any subsequent breach.

20.6 If any part of this Master Agreement or a Contract is held to be void, voidable, illegal or unenforceable, the validity or enforceability of the remainder of this Master Agreement or a Contract shall not be affected.

20.7 The Parties shall perform all such further deeds, assurances, acts and things and execute such other documents as may reasonably be required to carry the provisions of this Master Agreement or a Contract into full force and effect.

20.8 The following clauses shall survive termination of this Master Agreement or a Contract for any reason: 10 (Pricing, Revenue and Payments), 11 (Tax), 13 (Warranties), 14 (Intellectual Property Indemnity), 15 (Liability), 16 (Insurance). 17.8 (Term and Termination), 18 (Confidentiality and Publicity), 20.4 (Entire Agreement), 20.5 (Waiver), 20.6 (Severability), 20.7 (Further Assurances), 20.8 (Survival of Terms), 20.9 (Force Majeure), 20.12 (Conflict), 20.13 (Third Party Beneficiaries), 20.14 (Law) and any other clause which should, by its nature, survive termination.

20.9 Neither Party shall be liable for any delay or failure in performing any of its obligations under this Master Agreement or a Contract if such delay or failure is caused by circumstances outside its reasonable control including without limitation, any delay or failure caused by any act or default of the other Party.

20.10 Neither Party may assign, transfer or sub-contract to any other party any of its rights or obligations under this Master Agreement or a Contract except that VGSL (in respect of this Master Agreement) and Vodafone (in respect of a Contract) may assign or transfer its rights or sub-contract its obligations to any Vodafone Group Company. Any Vodafone Group Company may appoint a third party (including, without limitation and for the avoidance of doubt, another Vodafone Group Company) as its agent for the purpose of fulfilling its obligations or exercising its rights under this Agreement.

20.11 To the extent that any provision of this Master Agreement as incorporated into any Contract conflicts with any local legislation or regulation in the Territory specified in the Contract, then the provisions of the local legislation or regulation shall prevail over the conflicting provisions to the extent of such conflict.

20.12 If there is any inconsistency between the provisions of this Master Agreement and the provisions set out in any Content Schedule or any other type of annexure, exhibit or other attachment, the following order of precedence shall be applied so that the higher ranking provisions prevail over the lower-ranking provisions to the extent of the inconsistency:

20.12.1 the Special Conditions;

20.12.2 the terms of this Master Agreement;

20.12.3 the Content Schedule (excluding the Special Conditions); and

20.12.4 any other type of annexure, exhibit or other attachment.

20.13 Save where expressly provided to the contrary In this Master Agreement or in the provisions of a Contract, this Master Agreement is made solely and specifically between the Content Provider and VGSL and each Contract is made solely and specifically between the Content Provider and Vodafone and neither is intended to be for the benefit of or enforceable by any other person, whether under the Contracts (Rights of Third Parties) Act 1999 or otherwise, and neither Party nor Vodafone can declare itself a trustee of the rights under this Master Agreement or a Contract for the benefit of any such person.

20.14 This Master Agreement and each Contract shall be governed by and construed and interpreted in accordance with the law of England and Wales and the Parties to this Master Agreement and each Contract submit to the exclusive jurisdiction of the English Courts.

## 21. DEFINITIONS

21.1 In this Master Agreement and each Contract:

21.1.1 reference to persons shall include legal as well as natural persons and (where the context so admits), references to the singular shall include the plural and vice versa;

21.1.2 reference to Clauses shall be to those clauses of this Master Agreement unless the contrary is stated;

21.1.3 reference to this Master Agreement shall (unless the context otherwise requires) include reference to any schedule to this Master Agreement as the same may be amended, novated or supplemented from time to time in accordance with its terns;

21.1.4 section and clause headings in this Master Agreement are for ease of reference only and shall not affect its interpretation, validity or enforceability;

21.1.5 reference to any statute, act, directive or other regulation includes a reference to that statute, act or directive or other regulation as re-enacted or amended from time to time;

21.1.6 the words "include" and "including" shall be construed without limitation to the words following; and

21.1.7 defined terms are set out and described in Clause 21.2.

21.2 In this Master Agreement and each Contract, the following words and expressions shall have the expanded definitions set out below:

**"Anti-Circumvention Rights"** shall have the meaning given to that term in Clause 8.3;

**"Application Submission Criteria for QA"** means those guidelines relating to the standards of Content produced and amended from time to time by Vodafone and provided to the Content Provider in connection with the Vodafone certification process;

**"Chargeable Event"** means any purchase of the Content by a Customer (including in the case of Protected Content any purchase of a subscription service offered pursuant to an applicable Purchase Option) from Vodafone for which the Customer is charged by Vodafone;

**"Collecting Society Royalties"** means the payment of any royalties due in respect of Collecting Society Rights;

**"Collecting Society Rights"** means those rights in or in relation to the Content which are controlled by copyright and related rights collecting societies, or which copyright and related rights collecting societies otherwise have the right to exploit, in the Territories and which are applicable to the use and exploitation of the Content pursuant to a Contract;

**"Commencement Date"** means the date when the Content Provider receives the signed Contract Acceptance Notice from a Vodafone Group Company;

**"Competitor"** means any third party competitor of the Vodafone live! service in the Territory including without limitation any consumer focused multi-access internet portal, wireless portal or online service provider focused on the provision of wireless content services including but not limited to any operator, or any company affiliated with such operator of an electronic communications network;

**"Content"** means the information, text, data, graphics, images, software and audio and visual material in whatever media or form described in a Content Schedule or otherwise provided by or on behalf of the Content Provider to Vodafone with the intent to be featured on the Directory and, where the context so requires, includes any Link supplied by the Content Provider to Vodafone which is to be placed in the Directory, any underlying executable code and any Rights;

**"Content Charge"** means Vodafone's specific charge to the Customer including any value added tax, turnover tax or other local sales or other taxes for the purchase of the Content from it excluding for the avoidance of doubt the Network Charges;

**"Content Provider"** means the company, partnership, person or entity identified in the Content Schedule attached to this Master Agreement;

**"Content Provider Branding Guidelines"** means the branding, layout, format, "look and feel" and style guidelines governing the use of the Content and the Content Provider Marks described in a Content Schedule or otherwise provided by the Content Provider to Vodafone under a Contrat as at the date of each applicable Contract;

**"Content Provider Marks"** means the trade and service marks, trade names, domain names, logos and any and all other branding which the Content Provider owns or has the right to license (whether registered or not and including applications for the same) to be used by Vodafone to brand the Content in accordance with a Contract;

**"Content Provider Revenue"** means the percentage of Net Revenue set out in the relevant Content Schedule which is (after deduction of any Deductions) payable to the Content Provider under a Contract;

**"Content Schedule"** means a schedule in a format similar to the content schedule attached to this Master Agreement and in each case completed and signed by VGSL and the Content Provider;

**"Contract"** means a contract for the distribution and resale/licensing of specified Content on the terms of the relevant Content Schedule and this Master Agreement formed between the Content Provider and a Vodafone Group Company in accordance with the process described in Clause 2;

**"Contract Acceptance Notice"** means the form of contract acceptance notice attached to this Master Agreement;

**"Contract Year"** means each calendar year of a Contract commencing on the applicable Commencement Date;

**"Creditor"** shall have the meaning given to that term in Clause 10.11;

**"Customer"** means a user of the Directory;

**"Data Protection Legislation"** means any applicable national data protection and privacy legislation;

**"Debtor"** shall have the meaning given to that term in Clause 10.11;

**"Deductions"** means: (1) any deductions or withholdings which VGSL or Vodafone may be required to make by law from any payment payable under this Agreement or any agreement between Vodafone Group Companies entered into for the purposes of this Agreement; (2) any Collecting Society Royalties paid by VGSL, Vodafone and/or any other Vodafone Group Company; and (3) such other deductions which the Parties may agree from time to time in writing;

**“Delivery Timetable(s)”** means the date(s) agreed by the Parties for the delivery of the Content (if any) as set out in the relevant Content Schedule or as otherwise agreed by the Parties in writing from time to time;

**“Directory”** means the mobile content directory or other platform from time to time operated for and on behalf of or in conjunction with Vodafone that lists or otherwise facilitates access to various mobile content and services and associated use rights;

**“DRM”** means technological measures that are designed to prevent or restrict unlawful use, copying or redistribution of the Content or other acts in respect of the Content by Customers or third parties which are not authorised by the Content Provider pursuant to a Contract;

**“DRM Guidelines”** means the technical, performance and other information relating to the DRM service offered by VGSL and/or Vodafone as produced and amended from time to time by VGSL and/or Vodafone and provided to the Content Provider;

**“Due Date”** means the time for payment of a sum as specified in the relevant Contract;

**“First Line Customer Support”** means receiving and handling all Customer Inquiries relating to billing and payment collection, connection to the mobile Internet, access to the Content and any non-Content specific issues relating to the Directory;

**“Format”** means any format described in the relevant Content Schedule or which Vodafone specifies from time to time;

**“Gross Revenue”** means the aggregate Content Charges billed to and collected from Customers by Vodafone in respect of Chargeable Events;

**“Guidelines”** means the Application Submission Criteria for QA (if applicable), the Integration Guidelines and any other rules of procedure (including technical or quality control procedures), guidelines, directions, policies and/or other requirements made or adopted by Vodafone or the Vodafone Group from time to time which relate to content, the operation of the Directory, the participation of companies in the Directory, the provision of content for use on the Directory and/or the subject matter generally of this Master Agreement and/or a Contract;

**“Insurance Policies”** shall have the meaning given to that term in Clause 16.1;

**“Intellectual Property Rights”** means all intellectual and industrial property rights, whether registered or unregistered, including trade and service marks, patents, utility models, designs and design rights, trade and business names (including rights in any get-up or trade dress), domain names, topography rights, copyright and related rights, database rights, moral rights and all other similar proprietary rights in every case which may subsist in any part of the world including any registration of any such rights and applications and any rights to make applications for any of the foregoing;

**“Integration Guidelines”** means the technical performance, style and format requirements relating to the Content produced and amended from time to time by Vodafone and provided to the Content Provider for use in accordance with the terms of a Contract;

**“Languages”** means the languages that the Content is supplied in by the Content Provider as specified in a Content Schedule;

**“Link”** means any link that the Content Provider provides in order to facilitate access to the Content by a Customer via the Directory;

**“Marketing Materials”** means the marketing and promotional materials specified in each Content Schedule or otherwise provided by or on behalf of the Content Provider to Vodafone for use in relation to the Content;

**“Mobile Device”** means the mobile device(s) that the Content must be compatible with as specified in the relevant Content Schedule;

**“month”** means a calendar month and “monthly” shall be construed accordingly;

**“Not Revenue”** means the Gross Revenue less (1) value added tax, turnover tax or other local sales tax or other taxes charged to Customers and (2) all Customer refunds (or credits which may be issued to a Customer in lieu of a refund) in respect of a Chargeable Event;

**“Network Charges”** means the charges to a Customer levied by Vodafone in connection with the Customer's access, carriage and use of the Content including but not limited to all airtime revenue whether measured In terms of time, volume or event consumption and activation and access fee charges both from voice and data transmission;

**“Party”** and**“Parties”** means a party/the parties to a Contract and/or this Master Agreement, as the context requires;

**“Platform”** means the system, including the equipment, the Link and the software used by the Content Provider to host and maintain the Content:

**“Preview Options”** means the provision by Vodafone to a Customer via the Directory of an option to preview the Content for the purpose of enabling the Customer to evaluate the Content before purchase;

**“Protected Content”** means Content to which DRM has been applied by Vodafone in accordance with Clauses 8.1 to 8.8 (inclusive);

**“Purchase Options”** means the options for use of Protected Content to be presented to Customers via the Directory in response to a request to purchase Protected Content as specified in the relevant Content Schedule;

**“QA Company”** means a quality assurance company certified by VGSL;

**“Relevant Contacts”** means the contacts for each Party from time to time as initially identified in the relevant Content Schedule;

**“Rights”** means a collection of permissions, constraints and other information, corresponding to the applicable Purchase Option, which identifies the Content and defines under what circumstances access is granted to, and what usages are permitted for, Protected Content and any underlying code that represents such information;

**“Second Line Customer Support”** means receiving and handling all inquiries from a Vodafone Group Company relating to First Line Customer Support;

**“Special Conditions”** means the special conditions (if any) set out in the relevant Content Schedule;

**“Standing Offer”** means the offer made by the Content Provider to Vodafone Group Companies as described in Clause 2;

**“Territory”** means those countries set out in the relevant Content Schedule or the particular country(s), as applicable, specified in any signed Contract Acceptance Notice;

**“VAT Tax”** means any value added tax, any state or local sales or use tax, any business transfer tax, any transaction tax and any tax analogous to such taxes in any relevant jurisdiction;

**“VGSL”** means Vodafone Group Services Limited, a company incorporated in England (registered number 3802001) and having its registered office at Vodafone House, The Connection, Newbury, Berkshire RG14 2FN, United Kingdom;

**“Vodafone”** means any Vodafone Group Company which has entered into a Contract with the Content Provider pursuant to Clause 2;

**“Vodafone Group”** means Vodafone Group Plc, Vodafone Partner Network Companies and each company or entity in which Vodafone Group Plc has a shareholding or interest, directly or indirectly of 15% or more or has the right to exercise, directly or Indirectly 15% or more of the voting rights and “**Vodafone Group Company**” shall be construed accordingly;

**“Vodafone Partner Network Companies”** means any company or corporation with which a Vodafone Group Company (which for the avoidance of doubt excludes another Vodafone Partner Network Company) has entered into a co-operation agreement with regard to the development and supply of new products and services and other related matters, and with which Vodafone Group Plc (or such Vodafone Group Company as Vodafone Group Plc has nominated) has entered into a brand licence agreement in relation to the licensing and use of the Vodafone name and brand and **“Vodafone Partner Network Company”** shall be construed accordingly; and

**“Vodafone Network”** means the wireless communications systems operated and/or provided for and on behalf of Vodafone within the Territory.

Executed as an agreement:

By the authorised representative of:
**Vodafone Group Services Limited**

/s/ Graeme Ferguson

Name: GRAEME FERGUSON

Title: EXECUTIVE HEAD OF CONTENT DEVELOPMENT

Date: 17th JANUARY 2005

By the authorised representative of:
**The Content Provider**

/s/ Camill Sayadeh

Name: Camill Sayadeh

Title: COO

Date: December 20, 2004

Contract Acceptance Notice - Agency

| To: | WAAT Media Corporation, United States of America, registered no. 2512380 and Address: 18226 Ventura Blvd. Suite 102 Tarzana, Ca 91356<br><br>Attention: Camill Sayadeh<br><br>Fax: +1 818 708 0598 |
|---|---|
| From the Vodafone Group Company identified opposite: | Vodafone New Zealand Limited, a company registered in New Zealand (927212), whose registered office is at Level 5, Vodafone House, 21 Pitt Street, Auckland.<br><br>Attention: General Manager, Legal<br><br>Fax: +64 9 357 0333 |
| CC: | Vodafone Group Services Limited<br>Vodafone House<br>The Connection,<br>Newbury, Berkshire RG14 2FN<br>United Kingdom<br>Attention: Executive Head of Content Development (Graeme Ferguson)<br>Fax: +44 207 212 0312 |
| Territory | New Zealand |

We accept the Standing Offer set out in the Master Agreement entered into between you and VGSL dated 17 December 2004 (entitled "Vodafone Master Global Content Agency Terms and Conditions"), a copy of which (together with any relevant Content Schedules) we have seen.

Signed on behalf of:
Vodafone New Zealand Limited

Print signatories' name: Kieren Cooney

Position: General Manager

Date signed: 8-2-2005

*NB - Prior to signing this Contract Acceptance Notice, the Vodafone Group Company must be sent copies of the final, signed versions of: (1) Terms and Conditions; and (2) Content Schedule(s).*

Contract Acceptance Notice - Agency

| | |
|---|---|
| To: | WAAT Media Corporation, United States of America, registered no. 2512380 and Address: 18226 Ventura Blvd. Suite 102 Tarzana, Ca 91356.<br><br>Attention: Camill Sayadeh<br><br>Fax: +1 818 708 0598 |
| From the Vodafone Group Company identified opposite: | Vodafone España, S.A, a company incorporated in Madrid, Spain and whose registered office is at Avda. De Europa 1, Parque Empresarial La Moraleja, 28108 Alcobandas, Madrid, Spain |
| CC: | Vodafone Group Services Limited<br>Vodafone House<br>The Connection,<br>Newbury, Berkshire RG14 2FN<br>United Kingdom<br>Attention: Executive Head of Content Development (Graeme Ferguson)<br>Fax: +44 207 212 0312 |
| Territory | Spain |

We accept the Standing Offer set out in the Master Agreement entered into between you and VGSL dated 17 December 2004 (entitled "Vodafone Master Global Content Agency Terms and Conditions"), a copy of which (together with any relevant Content Schedules) we have seen.

Signed /s/ Juan Antonio Alberca

Print Name: Juan Antonio Alberca

Title: Supply Chain Management Director

**For and on behalf of Vodafone España, S.A.**

Date: 14TH -February-2005

Signed /s/ Federico José Colom

Print Name: Federico José Colom

Title: Financial Controller

**For and on behalf of Vodafone España, S.A.**

Date: ______________________

*NB - Prior to signing this Contract Acceptance Notice, the Vodafone Group Company must be sent copies of the final, signed versions of: (1) Terms and Conditions; and (2) Content Schedule(s).*

Contract Acceptance Notice - Reseller

| To: | WAAT Media Corporation, United States of America, registered no. 2512380 and Address: 18226 Ventura Blvd, Suite 102 Tarzana, Ca 91356<br><br>Attention: Camill Sayadeh<br><br>Fax: +1 818 708 0598 |
|---|---|
| From the Vodafone Group Company identified opposite: | VODAFONE UK CONTENT SERVICES LTD |
| CC: | Vodafone Group Services Limited<br>Vodafone House<br>The Connection,<br>Newbury, Berkshire RG14 2FN<br>United Kingdom<br>Attention: Executive Head of Content Development (Graeme Ferguson)<br>Fax: +44 207 212 0312 |
| Territory | *[Note that this Territory must form part of the Territory as defined in this Content Schedule or this notice is not valid]* |

We accept the Standing Offer set out in the Master Agreement entered into between you and VGSL dated 17 January 2005 (entitled "Vodafone Master Global Content Reseller Terms and Conditions"), a copy of which (together with any relevant Content Schedules) we have seen.

We elect that our Contract's Commencement Date be 14/3/05.

Signed on behalf of:
The Vodafone Group Company
Identified above

Print signatories' name: Al Russell

Position: Head of Content Services

Date signed: 14/3/05

*NB - Prior to signing this Contract Acceptance Notice, the Vodafone Group Company must be sent copies of the final, signed versions of: (1) Terms and Conditions; and (2) Content Schedule(s).*

Contract Acceptance Notice - Reseller

| | |
|---|---|
| To: | WAAT Media Corporation, United States of America, registered no. 2512380 and Address: 18226 Ventura Blvd. Suite 102 Tarzana, Ca 91356<br><br>Attention: Camill Sayadeh<br><br>Fax: +1 818 708 0598 |
| From the Vodafone Group Company identified opposite: | VODAFONE-PANAFON Hellenic Telecommunications Company S.A.<br>1-3 Tzavella Street, Chalandri, 152-31, Athens, Greece.<br>Company registration Number: 094349850<br>Tax office: FAEE Athinon<br><br>Attention: Commercial Consumer Director (Mr. Athanasios Zarkalis)<br>Fax: +30 210 6703002 |
| CC: | Vodafone Group Services Limited<br>Vodafone House<br>The Connection,<br>Newbury, Berkshire RG14 2FN<br>United Kingdom<br>Attention: Executive Head of Content Development (Graeme Ferguson)<br>Fax: +44 207 212 0312 |
| Territory | *Greece* |

We accept the Standing Offer set out in the Master Agreement entered into between you and VGSL dated 17 January 2005 (entitled "Vodafone Master Global Content Reseller Terms and Conditions"), a copy of which (together with any relevant Content Schedules) we have seen. The relationship between the companies shall be governed by Greek law. Any dispute regarding the global Content Agreement shall be submitted to the exclusive jurisdiction of the courts of Athens.

We elect that our Contract's Commencement Date be 01/03/2005.

Signed on behalf of:
The Vodafone Group Company
Identified above

ΝΑΣΟΣ ΖΑΡΚΑΛΗΣ
VODAFONE - PANAFON
HELLENIC TELECOMMUNICATIONS COMPANY
1-3 TZAVELLA ST.
152 31 HALANDRI, GREECE
TEL.: +30 210 6702000, +30 210 6703000
VAT Reg. No: EL 094349850

Print signatories' name: Mr. Athanaslos Zarkalis

Position: Commercial Consumer Director

Date signed: 15/03/2005

*NB - Prior to signing this Contract Acceptance Notice, the Vodafone Group Company must be sent copies of the final, signed versions of: (1) Terms and Conditions; and (2) Content Schedule(s).*

**Content Schedule**

1. This Content Schedule incorporates the terms of the Master Reseller Agreement (the "Master Agreement") between Vodafone Group Services Limited ("**VGSL**"), registered in England (registered number 3802001), having its registered office at Vodafone House, The Connection, Newbury, Berkshire RG14 2FN, United Kingdom and the Content Provider (as defined below) dated 17 January 2005.

2. When signed by VGSL and the Content Provider this Content Schedule is a standing offer by the Content Provider of the applicable Content (as defined below) to all Vodafone Group Companies on the terms of the Master Agreement and this Content Schedule:

3. A Vodafone Group Company may accept the Standing Offer by completing and signing the Contract Acceptance Notice and following the procedure set out in the Master Agreement.

1. Content Provider

Waat Media Corporation; United States of America; Company reg. 2512380;
Address: 18226 Ventura Blvd. Suite 102, Tarzana, CA 91356.

2. Content

The Company will supply the following video Content to Vodafone Omnitel N.V. in accordance with agreement as subject to the Vodafone Omnitel N.V. self regulatory code.

**52 Erotic videos**

Real Media (GPRS) max 90 seconds
3GP - profilo low (GPRS) max 90 seconds
3GP - profilo high (Umts) both streaming/download max 150 seconds. max size 2, 8 Mega

naming convention:
videonumber_contentprovider_length_description_description_encoding.filetype

ES:
10001_p_90_jenny_blonde realmedia.rm (real media 90 seconds)
10001_p_90_jenny_blonde_low.3gp (profilo low 90 seconds)
10001_p_30_jenny_blonde_high.3gp (profilo high 30 seconds)

NB
Each video must be in three format and must have the naming convention as indicated up

**52 Erotic video MMS:**
max 30 seconds

**52 Erotic MMS (slide show)**

**Games**

***Titles***

- Vivid EroTrix
- Vivid Bombs 'N Boobs
- Peach Babe Quest XXX
- Playgirl Blox

***Contents***

For each title we need:

- one title sreenshot higt resolution, gif format;
- one title sreenshot higt resolution 200x200, gif or tif format;
- coywryte

and for each title and each devices we need:

- File jad;
- File jar,
- One in game screenshot, git format;

3. Content Provider Branding Guidelines

Waat Media will provide branded content per VGSL's guidelines.

| | |
|---|---|
| 4. Marketing Materials | Waat Media will provide marketing materials as requested by VGSL and local operators. |
| 5. Content Provider Revenue | Content Provider Revenue shall be [INFORMATION OMITTED AND FILED SEPARATELY WITH THE COMMISSION UNDER RULE 24B-2] of Net Revenue, less all the Deductions. It is understood that Deductions (if any) shall be deducted from the Content Provider |

Revenue actually paid to the Content Provider in accordance with Clause 10.2.

The Content Provider and VGSL shall seek to agree reasonable commercial models for 'promotional' content and bundled content as and when required.

6. Content Protection

The Content Provider shall be responsible for protecting the Content.

7. Hosting

The Content Provider will provide the Content directly to Vodafone Omnitel NV for hosting by Vodafone Omnitel NV.

8. Languages

All languages as may be reasonably requested by VGSL from time to time.

9. Territories

Italy only

10. Mobile Devices (to include but not limited to the following)

| Category | Handset |
|---|---|
| UMTS | Motorola V1050 |
| UMTS | Sharp 902 |
| UMTS | Samsung Z105 |
| UMTS | Samsung Z107 |
| UMTS | Sony Ericsson Z1010 |
| UMTS | Sony Ericsson V800 |
| UMTS | Motorola V980 |
| UMTS | Sharp 902 |
| UMTS | Motorola E1000 |
| UMTS | Nokia 6630 |
| VL Advanced | Sharp TQ-GX20 |
| VL Advanced | Nokia 6600 |
| VL Advanced | Motorola V525m |
| VL Advanced | Sharp TQ-GX10 e GX10i |
| VL Advanced | SonyEricsson T610 |
| VL Advanced | Panasonic X60 |
| VL Advanced | Panasonic X70 |
| VL Advanced | Sharp TQ-GX30 |
| VL Advanced | Panasonic GD87a |
| VL Advanced | Nokia 7650 |
| VL Advanced | Nokia 3200 |
| VL Advanced | Nokia 3650 |
| VL Advanced | Nokia 7250 e 7250i |
| VL Advanced | Panasonic x701 |
| VL Advanced | Samsung SGH E700 E710 |
| VL Advanced | Samsung SGH E810i |
| VL Advanced | Motorola V600 |
| VL Advanced | Nokia 3100 |
| VL Advanced | Nokia 6230 |
| VL Basic | SonyEricsson T68i |
| VL Basic | Motorola C550 |
| VL Advanced | SonyEricsson Z600 |
| VL Basic | Motorola T7201 |
| VL Basic | Motorola C350 |
| VL Advanced | Nokia 7610 |
| VL Basic | Panasonic G60 |

| | |
|---|---|
| VL Basic | Non certificati |
| VL Advanced | Sagem my-V55 |
| VL Basic | Siemens C62 |
| | Alcatel OT735 |
| | Sagem CX 2 |
| | Alcatel - OT531 |
| | Blackberry |
| VL Advanced | Panasonic X400 |
| VL Advanced | Samsung SGH P400 |
| VL Advanced | Panasonic G50 |
| VL Advanced | Nokia 6220 |
| UMTS | LG 8110 |
| UMTS | LG 8120 |
| | N9500 |
| VL Advanced | Nokia 3660 |
| VL Advanced | Samsung SGH E310 |
| VL Basic | LG G5400 |
| VL Basic | SonyEricson T310 |
| VL Advanced | Samsung SGH V200 |
| VL Advanced | Siemens S55 |
| VL Basic | Panasonic GD67 |
| VL Advanced | Siemens MC60 |
| VL Advanced | Panasonic GD87 |
| VL Advanced | Alcatel OT565 |
| VL Advanced | Mitsubishi Trium Eclipse |
| VL Advanced | Samsung E100 |
| VL Advanced | Nokia 6820 |
| VL Advanced | Siemens Hera |
| VL Basic | Nokia 6650 |
| VL Advanced | Samsung SGH X100 |
| VL Advanced | Sagem my-G5 |
| VL Advanced | Siemens SXI |
| VL Basic | Telit G80 |
| VL Basic | Philips Fisio 822 |
| VL Basic | Philips Fisio 825 |
| VL Advanced | Nokia 7600 |
| VL Advanced | Siemens SL55 |
| VL Advanced | Siemens M55 |
| VL Basic | Ericsson T68 |
| VL Advanced | Samsung SGH Z100 |
| VL Basic | BlackBerry 7230 |
| VL Advanced | Siemens A60 |
| VL Advanced | Sharp GX15 |
| VL Advanced | Nokia 3300 |
| VL Advanced | Sagem my-X5 |
| VL Advanced | Motorola V525 |
| VL Advanced | SonyEricsson Amy |
| VL Advanced | Nokia7200 |
| VL Advanced | PanasonicG51 |

| | VL Basic | EricssonT68 |
|---|---|---|
| | VL Basic | SamsungSGH-S500 |
| | VL Basic | SamsungSGH-P100 |
| | VL Advanced | AlcatelOneTouch 535 |

11. Format — Vodafone Omnitel NV shall deliver the Content in the format described in attached document Exhibit 1.

12. Purchase Options — As agreed from time to time.

13. VGSL Certification — Unless VGSL gives written notice otherwise, all Content requires certification by a QA Company.

14. Delivery Timetables — The company will make available to Vodafone Omnitel N.V. 52 video clips, 52 video mms, 52 mms, games from April 1st 2005 in the formats indicated on Exhibit 1. (Other Formats if necessary will be made available at a mutually agreed upon time).

15. Relevant Contacts

<u>The Content Provider:</u>

Technical - Camill Sayadeh
Tel: +1818 708 9995
Mob: +1 818 723 2488
Fax: +1818 708 0598
camill@waatmedia.com

Commercial - Adi Mcabian
Tel: +1818 708 9995
Mob: +1818 644 1300
Fax: +1 818 708 0598
adi@waatmedia.com

Financial - Lena Barseghian
Tel: +1 818 708 9995
Mob: +1 818 687 1377
Fax: +1 818 708 0598
lena@waatmedia.com

<u>VGSL:</u>

Commercial - Andrew Stalbow
Tel: +44 207 212 0591
Mob: +44 7717 618 919
Fax: +44 207 212 0701
E-mail: Andrew.stalbow@vodafone.com

16. Tax Residence — The same country as the registered address of the Content Provider set out above.

17. Content Provider's bank account details for electronic transfer payments — Payment by VGSL to the Content Provider shall be made by BACS to the following bank account

Bank: EAST WEST BANK, 18321 Ventura Blvd. Tarzana, CA 91356

Account Name: The Waat Corporation

Account No.: 8270-2648

ABA# 322070381

The currency of this Agreement shall be in Euros. All financial reports, statements, invoices, charges and payments made by one Party to the other shall be in Euros.

18. Special Conditions

The Content Provider will comply with all VGSL/Vodafone content standards, guidelines and policies provided to the Content Provider from time to time. The Content Provider shall also provide reasonable assistance to help create such standards and guidelines from time to time.

The Commencement Date for this Content Schedule shall be 1 April 2005.

The Contents can be distributed/supplied through the following technical channels:

- the WAP portal
- the VL! Portal
- the WEB portal
- the VO download platform
- the VO streaming platform
- the VO portal
- PDA
- UMTS
- AREA BUSINESS
- BLACKBERRY

Signed on behalf of VGSL:

/s/ Graeme Ferguson

VGSL authorized signatory
Print name: Graeme Ferguson
Position: Director of Global Content Development
Date signed: 08/04/2005

Signed on behalf of Content Provider:

/s/ Camill Sayadeh

Content Provider authorized signatory
Print name: Camill Sayadeh
Position: Head of Operations
Date signed: 29/03/05

***WE HAVE REQUESTED CONFIDENTIAL TREATMENT OF CERTAIN PROVISIONS CONTAINED IN THIS EXHIBIT. THE COPY FILED AS AN EXHIBIT OMITS THE INFORMATION SUBJECT TO THE CONFIDENTIALITY REQUEST.***

## Exhibit 1

## Format

**Real Media (GPRS)**

| | |
|---|---|
| **File format** | Real Media |
| **Video codec** | Real Video 8 |
| **Audio codec** | Real Audio 8 Voice (G2,RA8) |
| **Bitrate control** | Constant bitrate |
| **MaxTarget bitrate** | 30 Kbps |
| **Video bitrate** | 23.6 Kbps |
| **Audio bitrate** | 6.4 Kbps |
| **Encoded Frame rate** | 10 fps |
| **Exporting mode** | Two pass encoding |
| **Frame size** | 176x144 (QCIF) |

**3GP - profilo low (GPRS)**

| | |
|---|---|
| **Encoder** | Helix Producer Plus 10 |
| **Container** | 3GP |
| **Video Codec** | MPEG4 |
| **Bitrate control** | Constant bitrate |
| **Total bitrate** | 30 Kbps |
| **Video bitrate** | 21 Kbps |
| **Audio Codec** | AMR-NR |
| **Audio bitrate** | 7950 bps |
| **FpS** | 12.5 |
| **Key frame** | 5 |
| **Hinting Type** | Streaming optimized for server |
| **Exporting mode** | Two pass encoding |
| **Frame size** | 176x144 (QCIF) |

**3GP - profilo high (Umts) both streaming/download**

| | |
|---|---|
| **Encoder** | Helix Producer Plus 10 |
| **Container** | 3GP |
| **Video Codec** | MPEG4 |
| **Bitrate control** | Constant bitrate |
| **Total bitrate** | 110 Kbps |
| **Video bitrate** | 100 Kbps |
| **Audio Codec** | AMR-NR |
| **Audio bitrate** | 10200 bps |
| **FpS** | 12.5 |
| **Key frame** | 5 |
| **Hinting Type** | Streaming optimized for server |
| **Exporting mode** | Two pass encoding |
| **Max file size** | 950 KB (very important, be careful) |
| **Frame size** | 176x144 (QCIF) |

The parameters indicated above could be subjected to changes of the values so it will be retain valid until a new communication of VO.

Contract Acceptance Notice - Agency

| | |
|---|---|
| To: | WAAT Media Corporation, United States of America, registered no. 2512380 and<br>Address: 18226 Ventura Blvd. Suite 102 Tarzana, Ca 91356<br><br>Attention: Camill Sayadeh<br><br>Fax: +1 818 708 0598 |
| From the Vodafone Group Company identified opposite: | Belgacom Mobile NV<br>Vooruitgangstraat 55<br>B-1210 Brussels<br>BELGIUM<br>(HRB 587.244)<br><br>Attention: Xavier Huberland - Consumer Mobile Division Director<br>Guy Mat - Procurement Manager<br>Geoffroy de Wilde d'Estmael - Business Performance Manager |
| CC: | Vodafone Group Services Limited<br>Vodafone House<br>The Connection,<br>Newbury, Berkshire RG14 2FN<br>United Kingdom<br>Attention: Executive Head of Content Development (Graeme Ferguson)<br>Fax: +44 207 212 0312 |
| Territory | The country in which Belgacom Mobile NV is incorporated, namely Belgium |

We accept the Standing Offer set out in the Master Agreement entered into between you and VGSL dated 17 December 2004 (entitled "Vodafone Master Global Content Agency Terms and Conditions"), a copy of which (together with any relevant Content Schedules) we have seen.

Signed on behalf of:
The Vodafone Group Company
Identified above

Belgacom Mobile NV
Identified above

Print signatories' name: Xavier Huberland

Position: Consumer Mobile Division Director

Date signed: 13-06-05

Signature

Print signatories' name: Guy Mat

Position: Procurement Manager

Date signed: 24-04-05

Signature

Print signatories' name: Geoffroy de Wilde d'Estmael

Position: Business Performance Manager

Signed on behalf of:
WAAT Media Corporation
Print signatories' name: Camill Sayadeh

Position:
Date signed:
Signature

Date signed: 22-04-05

Signature

*NB - Prior to signing this Contract Acceptance Notice, the Vodafone Group Company must be sent copies of the final, signed versions of: (1) Terms and Conditions; and (2) Content Schedule(s).*

---

TO THE ATTENTION OF CAMILL SAYADEH

Europe, Belgium 7th of September 2005

Dear,

Because of our cooperation together via Vodafone I would like you to sign the Contract acceptance notice in attachment.

Thanks for sending me a copy via fax end please also send me an original signed copy via air-mail to the address/attention of:

Proximus - Belgacom Mobile
To Tania De Decker
Vooruitgangstraat 55
B-1210 Brussel
BELGIUM_EUROPE

Kind regards,
Tania De Decker

Tania.dedecker@proximus.net
Tel +32 2 205 20 88
Fax +32 2 205 45 28

**Content Schedule**

1. This Content Schedule incorporates the terms of the Master Global Content Reseller Agreement (the "Master Agreement") between Vodafone Group Services Limited ("VGSL"), registered in England (registered number 3802001), having its registered office at Vodafone House. The Connection, Newbury, Berkshire RG14 2FN, United Kingdom and the Content Provider (as defined below) dated on the same date as this Content Schedule.

2. When signed by VGSL and the Content Provider this Content Schedule is a standing offer by the Content Provider of the applicable Content (as defined below) to all Vodafone Group Companies on the terms of the Master Agreement and this Content Schedule.

3. A Vodafone Group Company may accept the Standing Offer by completing and signing the Contract Acceptance Notice and following the procedure set out in the Master Agreement.

| | | |
|---|---|---|
| **1.** | **Content Provider** | Waat Media Corporation; United States of America; Company reg. 2512380; Address: 18226 Ventura Blvd. Suite 102, Tarzana, CA 91356. |
| **2.** | **Content** | Video, images, games, audio and all other mobile content services of an adult nature. This offering will be selected from a selection of branded content such as Vivid Entertainment, Peach Interactive, and Spearmint Rhino. All and any Content provided by the Content Provider shall be covered by this Agreement. |
| **3.** | **Content Provider Branding Guidelines** | Waat Media will provide branded content per VGSLs guidelines. |
| **4.** | **Marketing Materials** | Waat Media will provide marketing materials asrequested by VGSL and local operators. |
| **5.** | **Content Provider Revenue** | Content Provider Revenue shall be [INFORMATION OMITTED AND FILED SEPARATELY WITH THE COMMISSION UNDER RULE 24B-2] of Net Revenue, less all the Deductions. It is understood that Deductions (if any) shall be deducted from the Content Provider Revenue actually paid to the Content Provider in accordance with Clause 10.2.<br><br>The Content Provider and VGSL shall seek to agree reasonable commercial models for 'promotional' content and bundled content as and when required. |
| **6.** | **Content Protection** | The Content Provider shall be responsible for protecting the Content. |
| **7.** | **Hosting** | The Content Provider shall be responsible for hosting the Content unless otherwise agreed between the Parties in writing. |
| **8.** | **Languages** | All languages as may be reasonably requested by VGSL from time to time. |
| **9.** | **Territories** | Worldwide, in such territories where the relevant Vodafone Group Company does not accept the Standing Offer under the Master Agency Agreement entered into between VGSL and the Content Provider and dated. |
| **10.** | **Mobile Devices** | All Vodafone Live! Handsets possible |
| **11.** | **Format** | The Content Provider shall ensure that the Content is capable of supporting all Formats, which may be specified, by VGSL or the Vodafone Group Companies or the Vodafone Partner Network Company (the "Format") from time to time. The Content Provider shall not change or vary the Format without Vodafone's prior written consent. |
| **12.** | **Purchase Options** | As agreed from time to time. |
| **13.** | **VGSL Certification** | Unless VGSL gives written or email notice otherwise, all Content requires certification by a QA Company. |
| **14.** | **Delivery Timetables** | The initial global Delivery Timetable (which may be updated and amended by the mutual written agreement of the Parties) is attached as an Annexure to this Content Schedule or as otherwise agreed by the Parties in writing or email. |
| **15.** | **Relevant Contacts** | <u>The Content Provider:</u><br>Technical - |

Camill Sayadeh
Tel: +1 818 708 9995
Mob: +1 818 723 2488
Fax: +1 818 708 0598
camill @waatmedia.com

Commercial -

Adi McAbian
Tel: +1 818 708 9995
Mob; +1 818 644 1300
Fax: +1 818 708 0598
adi@waatmedia.com

Financial -

Lena Barseghian
Tel: +1 818 708 9995
Mob: +1 818 652 6497
Fax: +1 818 708 0598
lena@waatmedia.com

VGSL;

Commercial - Andrew Stalbow
Tel: +44 207 212 0591
Mob: +44 7717 618 919
Fax: +44 207 212 0701
E-mail: andrew.stalbow@vodafone.com

**16. Tax Residence**

The same country as the registered address of the Content Provider set out above.

**17. Content Provider's bank account details for electronic transfer payments**

Payment by VGSL to the Content Provider shall be made by BACS to the following bank account:

EAST WEST BANK
18321 Ventura Blvd. Tarzana, CA 91356
Account Name: The Waat Corporation
Account Number: 8270-2648
ABA# 322070381

The currency of this Agreement shall be in Euros. All financial reports, statements, invoices, charges and payments made by one Party to the other shall be in Euros.

**18. Special Conditions**

The Content Provider will comply with all VGSL/Vodafone content standards guidelines and policies provided to the Content Provider from time to time. The Content Provider shall also provide reasonable assistance to help create such standards and guidelines as agreed from time to time.

The Commencement Date for each individual Contract may, at the election of each relevant Vodafone Group Company, be either: (a) the Commencement Date as defined In the Master Agreement; (b) 30 September 2003; or (c) a date in between (a) and (b) specified by each relevant Vodafone Group Company.

Signed on behalf of VGSL:

/s/ Graeme Ferguson

VGSL authorised signatory

Print name: GRAEME FERGUSON

Position: EXECUTIVE HEAD OF CONTENT DEVELOPMENT

Date signed: 17th JANUARY 2005

Signed on behalf of Content Provider:

/s/ Camill Sayadeh

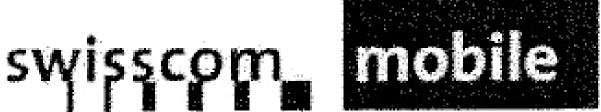
Content Provider authorised signatory

Print name: Camill Sayadeh

Position: COO

Date signed: December 20, 2004

***WE HAVE REQUESTED CONFIDENTIAL TREATMENT OF CERTAIN PROVISIONS CONTAINED IN THIS EXHIBIT. THE COPY FILED AS AN EXHIBIT OMITS THE INFORMATION SUBJECT TO THE CONFIDENTIALITY REQUEST.***




Swisscom Mobile Appendix 5 Acceptance Notice

| | |
|---|---|
| From the Vodafone Group Company: | Swisscom Mobile Ltd.<br>Schwaiztortstrasse 61<br>3007 Bern<br>Switzerland<br><br>Attention: Head of Content Management (Daniel Gerber)<br>Fax: +41 31 342 28 82 |
| To: | WAAT Media Corporation, United States of America, registered no. 2512380 and Address: 18226 Ventura Blvd. Suite 102 Tarzana, CA 91356<br><br>Attention: Camill Sayadeh<br><br>Fax: +1 818 708 0598 |
| Territory | Switzerland |

We accept the Appendix 5 from Swisscom Mobile Ltd. in coherence to the Master Agreement entered into between us and VGSL dated 17 December 2004 (entitled “Vodafone Master Global Content Agency Terms and Conditions”).

Signed on behalf of:
The WAAT Media Corporation
Identified above

Print signatories’ name:

Position: Managing Director

Date signed: 3/17/06

# LINKING AGREEMENT

This linking agreement (the "Contract") is dated the 1st day of November 2006.

**THE PARTIES**

(1) Vodafone Libertel NV, a company incorporated in the Netherlands and whose registered office is at Avenue Ceramique 300, 6221 KX Maastricht ("Vodafone NL").

(2) Twistbox Entertainment, Inc., a company incorporated in Delaware, under company number 4207607 and whose registered office is at 14242 Ventura Boulevard, 3rd Floor, Sherman Oaks, California 91423, United States of America (the "Company").

**THE PARTIES AGREE AS FOLLOWS:**

**1 Commencement and Term**

1.1 This Contract shall commence on the Effective Date and shall continue for the Initial Term unless terminated in accordance with Clause 1.2 or Clause 9.

1.2 On expiry of the Fixed Period either Party shall have the right to terminate this Contract by giving 3 months notice in writing to the other Party in the event that:

1.2.1 Vodafone NL has a change in policy that would prohibit either:

1.2.1.1 the Sale of Adult Content in the Directory; or

1.2.1.2 link(s) to Adult Content from the Directory.

1.3 After the Initial Term this Contract shall continue until terminated by any Party on 30 days written notice to the other Party or otherwise in accordance with Clause 9.

**2 Linking**

2.1 The Company shall supply the Links to Vodafone NL for incorporation into the Directory.

2.2 The Company grants Vodafone NL the Link Licence.

2.3 Vodafone NL shall not be deemed to be Selling any content or services to Customers or third parties on or through the Link Sites or the Links.

2.4 Vodafone NL shall place the Links in the Directory or any other section agreed between the Parties.

2.5 Vodafone NL shall give the Links prominent placement in particular sections of the Directory agreed between the Parties.

2.6 The Company shall be entitled to link the first 10 On-Net Keyword Search Results to Link Sites in the Directory.

2.7 The Company shall be entitled to link the first 10 Off-Net Keyword Search Results to:

2.7.1 Link Sites outside the Directory; or

2.7.2 other sites where an affiliate arrangement exists between the Company and that site owner.

2.8 The Company shall have the sole and exclusive management and hosting of the FON erotic part of the Vodafone NL WAP portal; provided, however, that Vodafone NL shall reserve the right to enter into written binding agreements with a maximum of three (3) third parties to directly commercialize erotic content on the Vodafone NL's FON Erotic WAP portal, without being in breach of this Agreement. Vodafone NL shall inform the Company in writing whenever it has entered into such written agreements with a third party. Any additional third party who desires to provide Vodafone NL's FON Erotic WAP Portal with erotic content, must first enter into an agreement with the Company, upon reasonable commercial terms and conditions, and subject to Vodafone NL's prior written approval, not to be unreasonably withheld.

## 3 Payment and Reporting

3.1 Each Party shall comply with the provisions set out in Schedule 2 (Payment and Reporting).

3.2 The relevant currency for this Contract shall be in Euros. All financial reports, statements, invoices, purchase orders, charges, payments and credits to be made or issued pursuant to this Contract shall be in Euros.

3.3 If a Party (in this Clause 3.3 the "Debtor") fails to pay the other Party (in this Clause 3.3 the "Creditor") any amount due and payable to the Creditor under this Contract by the time prescribed by this Contract (in this Clause 3.3 the "Due Date"), the Creditor shall be entitled to give the Debtor written notice of its intention to charge interest. All such notices shall be given in accordance with Clause 11.3. If payment of the amount due has still not been received by the Creditor within 14 days of receipt of such notice by the Debtor, the Debtor shall on demand by the Creditor pay the Creditor interest on the unpaid amount at the rate of 2% per annum above the De Nederlandsche Bank (d/b/a DNB) base rate in force on the Due Date, calculated from the Due Date until payment of the unpaid amount is made in full.

## 4 Tax

4.1 Parties make use of article 4 (3) of the Dutch VAT Act 1968. By which means The Company shall provide Vodafone NL with a valid invoice for fictitious delivered content that meets all requirements duly imposed by the relevant taxation authorities and which specifically states the VAT (if VAT is applicable) and reasonably meets reasonable conditions necessary to allow Vodafone NL to obtain relief from such VAT if a relief procedure is available ("Tax Invoice"). The Company will pay to the tax authorities any charged VAT stated on the Tax invoice.

(Free translation into English of article 4 (3) of the Dutch VAT Act 1968: Article 4 (1) Services are all transactions, not being a supply of goods, supplied for a consideration. (3) Services supplied by intermediation of a commissionaire or similar entrepreneurs who close agreements in own name but on behalf of another, must be considered to be received by and supplied to that entrepreneur.)

4.2 Vodafone NL shall provide invoices to end consumers for the fictitious delivered content and Vodafone NL will pay the VAT charged on the invoices to the tax authorities.

4.3 Vodafone NL handles the standard Dutch VAT rate of 19% on the invoices send to the end consumers. (Unless the Company can prove to Vodafone NL that a different VAT rate should apply and the application of a different VAT rate is explicit been agreed by Vodafone NL.)

**5 Directory and Vodafone NL Network**

5.1 Vodafone NL does not warrant that the Directory or the Vodafone NL Network will be fault free or free of interruptions. Vodafone NL aims to make the Directory available to its customers at all times and will take reasonable steps to do this. However, due to constraints of radio and electronic communications it is not possible for Vodafone NL to provide a fault free Directory service to its Customers.

5.2 Vodafone NL shall have no liability to the Company for any failure of the Directory or the Vodafone Network whether this arises from a technical fault or other failure in the Directory, the Vodafone NL Network or otherwise.

5.3 Vodafone NL may suspend the operation of the Directory and may suspend the operation of the Vodafone NL Network for the purposes of remedial or preventative maintenance and improvement and Vodafone NL (to the extent within its control) shall use all reasonable endeavours to keep such suspensions to a minimum.

**6 IPR**

6.1 The Parties agree that all IPR in the Links shall remain with the Company and its licensors.

6.2 The Company shall be responsible to obtain all licences, clearances, permissions, waivers, approvals or consents required in order to grant the Link Licence to Vodafone NL pursuant to Clause 2.2.

6.3 The Company shall indemnify and keep the Indemnified Parties indemnified from and against any and all demands, actions, claims, proceedings, losses, damages, costs and expenses (including court costs and legal costs assessed on a solicitor-client basis, and other professional costs and expenses) and other liabilities of whatever nature (whether foreseeable or not) suffered, incurred or sustained by any or all of the Indemnified Parties as a result of or in connection with any action, claim, demand or proceeding made or brought by any person alleging that the provision of any part of the Links by the Company or Vodafone NL's receipt, use or possession of any part of the Links in accordance with the Link Licence infringes the rights (including IPRs) of any person.

**7 Warranties**

7.1 Each Party warrants and represents to the other that it has full power and authority to enter into and perform its obligations under this Contract.

7.2 The Company warrants and represents to Vodafone NL that:

7.2.1 it has all necessary rights, title and interest in the Links in order to grant the Link Licence;

7.2.2 the Link Sites shall be compliant with the Guidelines and shall clearly classify any content accessible through the Link Sites with any adult content classification framework criteria agreed between Vodafone NL and the Company; and

7.2.3 it will exercise commercially reasonable efforts so that neither the Links nor the Link Sites will contain any Viruses.

7.3 Vodafone NL represents and warrants to the Company that:

7.3.1 that as of September 1, 2006, the total number of Age Verified Customers was 412,921; and

7.3.2 it will exercise commercially reasonable efforts to increase the number of Age Verified Customers by 30,000 for each quarter.

7.4 Each Party shall indemnify and hold harmless the Indemnified Parties from and against any actions, proceedings, costs, claims and demands brought or made against any or all of the Indemnified Parties and against any loss or expense suffered, incurred or sustained by any or all of the Indemnified Parties as a result of any breach of Clause 7.

8 **Liability and Insurance**

8.1 Nothing in this Contract shall be construed to limit or exclude any Party's liability:

8.1.1 for death or personal injury caused by such Party or such Party's employee's or contractor's negligence;

8.1.2 for fraudulent misrepresentation or fraud;

8.1.3 pursuant to Clause 6 (IPR);

8.1.4 pursuant to Clause 7 (Warranties); or

8.1.5 pursuant to Clause 10 (Confidentiality and Publicity).

8.2 Subject to Clause 8.1, no Party shall be liable for any loss of profit, business, revenue, opportunity, goodwill or anticipated savings in connection with this Contract.

8.3 Subject to Clause 8.1, no Party shall be liable for any indirect, incidental, special or consequential loss in connection with this Contract.

9 **Termination**

9.1 Either Party may terminate this Contract with immediate effect by giving written notice to the other Party, in circumstances where the other Party:

9.1.1 is in material breach of any terms of this Contract and fails to remedy the breach within 30 days after receiving written notice requiring it to do so; or

9.1.2 becomes subject to an Insolvency Event.

9.2 In the event that search terms and results provided by "Google," or any other white label solution, has a direct negative impact on traffic and revenues generated by the Company's content on Vodafone NL's FON Erotic WAP portal, the Parties agree to enter into good faith negotiation to renegotiate the terms of this Agreement. If the Parties fail to reach a compromise, the Company may terminate this Contract with immediate effect by giving written notice to Vodafone NL.

9.3 Termination of this Contract shall not affect the accrued rights and remedies of each Party.

## 10 Confidentiality and Publicity

10.1 Each Recipient Party agrees to:

10.1.1 use Confidential Information solely for the purposes envisaged under this Contract and not to use the Confidential Information for any other purposes;

10.1.2 ensure that only those of its employees, agents, advisers or sub-contractors who are directly concerned with the performance of this Contract have access to the Confidential Information on a "need to know" basis; and

10.1.3 keep the Confidential Information secret and confidential and not to disclose such Confidential Information to any third party for any reason without the prior written consent of the Disclosing Party.

10.2 The obligations of confidence referred to in Clause 10.1 above shall not extend to any Confidential Information which:

10.2.1 is or becomes generally available to the public otherwise than by reason of a breach by the Recipient Party of the provisions of Clause 10.1;

10.2.2 is known to the Recipient Party and is at its free disposal prior to its disclosure by the Disclosing Party;

10.2.3 is subsequently disclosed to the Recipient Party without obligations of confidence by a third party owing no such obligations of confidence to the Disclosing Party in respect of that Confidential Information;

10.2.4 is required to be disclosed by any court or government authority competent to require such disclosure; and

10.2.5 by any material applicable law, legislation or regulation.

10.3 Notwithstanding Clause 10.1, Vodafone NL may disclose any Confidential Information to any company in the Vodafone Group provided always that such company agrees to observe the same confidentiality obligations imposed on Vodafone NL pursuant this Clause 10.

10.4 No Party shall make any public statements or issue any press releases about this Contract or its contents or any other arrangements or potential arrangements between the Parties without the prior written consent of the other Party.

## 11 Data Protection and Data Security

11.1 The Company shall not allow any personal data it collects pursuant to this Contract to be used for any purpose other than those authorised or permitted by this Contract.

11.2 The Company shall not allow any personal data it collects pursuant to this Contract to be used (whether by the Company or any third party) for any marketing purposes without the prior written consent of Vodafone NL and the prior consent of the Customer to whom the personal information relates. Without limitation, this clause shall prevent the use of MSIDNs, targeted advertising, and tailoring Link Sites or affiliate Sites to the Customer without the prior written consent of Vodafone NL and the prior consent of the Customer to whom the personal information relates.

11.3 For the avoidance of doubt, the Company shall acquire no rights in any personal data collected pursuant to this Contract and shall only be entitled to process it in accordance with its obligations under this Contract. On termination of this Contract the Company shall immediately cease to use such personal data and shall arrange for its safe return, destruction, erasure or deletion.

11.4 Each Party shall strictly comply with:

11.4.1 the notification requirements under the DPA;

11.4.2 the relevant data protection principles specified in the DPA; and

11.4.3 any material applicable legislation and regulation in The Netherlands implementing European Union Directive 2002/58/EC.

11.5 The Company shall not allow any personal data it collects pursuant to this Contract to be transferred outside of the EEA without the prior written consent of Vodafone NL.

11.6 Each Party shall ensure that it has appropriate operational and technical processes in place to safeguard against any unauthorised access, loss, destruction, theft, use or disclosure of any personal data it collects pursuant to this Contract.

## 12 Assignment and Sub-contracting

12.1 Each Party shall be entitled to subcontract the performance of its rights and obligations under this Contract. Notwithstanding the use of any sub-contractor, each Party shall remain solely liable to the other Party for the performance of its rights and obligations under this Contract.

12.2 No Party shall be entitled to assign, novate or otherwise dispose of or deal with this Contract or any part of it without the previous consent in writing of the other Party, which may be withheld at the other Party's sole discretion; provided, however, no consent is necessary in the event of an assignment by either Party: (i) to a successor entity resulting from a merger, combination or consolidation; (ii) to the transferee of all or substantially all of the assets of the assigning Party or its parent(s); or (iii) to an entity under common control with, controlled by or in control of the assigning Party.

12.3 Notices given in accordance this Clause 12.3 shall be deemed to have been duly given: when delivered, if delivered by messenger during normal business hours of the recipient; when sent, if transmitted by facsimile transmission (receipt confirmed and with a confirmation copy sent by post) during normal business hours of the recipient; or on the third business day following posting, if posted by first class or recorded post with postage pre-paid.

Notice to the Company to be provided as follows:

If by mail or facsimile: Twistbox Entertainment, Inc..
14242 Ventura Boulevard, Third Floor
Sherman Oaks, California 91423 USA
Attn: International Sales/Distribution
Attn: EVP/General Counsel
Fax: (818) 708-0598

Notice to Vodafone NL to be provided as follows:

If by mail or facsimile: Vodafone Netherlands
Avenue Ceramique 241
6221 HX Maastricht
The Netherlands
Attn: Content & VAS wholesale department
Fax: +31 433558513

13 **General**

13.1 This Contract shall be capable of being varied only by a written instrument signed by duly authorised representatives of Vodafone NL and the Company.

13.2 Except in the case of any permitted assignment pursuant to this Contract and except in relation to Clause 6.3 and Clause 7.3, the Parties agree to exclude to the fullest extent possible the application of the Contracts (Rights of Third Parties) Act 1999 to this Contract.

13.3 This Contract is severable in that if any provision is determined to be illegal or unenforceable by any court of competent jurisdiction such provision shall be deemed to have been deleted without affecting the remaining provisions of this Contract.

13.4 The failure to exercise or delay in exercising a right or remedy provided by this Contract or by law does not constitute a waiver of the right or remedy or a waiver of other rights or remedies.

13.5 Except as expressly stated otherwise in this Contract, nothing in this Contract constitutes any relationship of employer and employee, agent and principal, or partnership between the Parties.

13.6 Except as may be expressly provided herein, any dispute between the Parties arising under this Contract shall be finally settled in London, England pursuant to the Rules of Arbitration of the International Chamber of Commerce.

## 14 Definitions and Interpretation

14.1 In this Contract the following words and terms shall have the following meanings unless the context otherwise requires:

**"Adult Content"** means any adult erotica content which is only accessible by Age Verified Customers.

**"Advertising"** means the advertising and promotion of any goods or services offered for sale by any third party;

**"Age Verified Customers"** A customer which has a postpaid subscription for the services provided by Vodafone NL. In order to get a postpaid subscription a person needs to be at least 18 years old.

**"Codes of Practice"** means:

(a) all material applicable codes of practice, laws, regulations, government recommendations and any recommendations of any applicable regulatory body; and

(b) any rules, procedures (including technical or quality control procedures), guidelines, directions, policies and any other requirements provided to the Company as made or adopted by Vodafone NL in relation to the operation of the Directory, the participation of content suppliers in the VLive! service or the provision of content for placement in the Directory;

**"Confidential Information"** means any financial, business and technical or other data and all other confidential information (whether written, oral, in electronic form or on magnetic or other media) concerning the business and affairs of a Party that the other Party obtains, receives or has access to as a result of the discussions or dealings leading up to or the entering into or the performance of this Contract (including, for the avoidance of doubt, the terms of this Contract);

**"Customer"** means a user of the Directory;

**"Directory"** means:

(a) the VLive! mobile content directory;

(b) any SMS, MMS, video download, audio download and video and audio streaming services provided by Vodafone NL; and

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|  | (c) any other delivery mechanism provided by Vodafone NL from time to time; |
| **"Disclosing Party"** | means the Party which has disclosed, furnished or made accessible to the Recipient Party, any Confidential Information; |
| **"DPA"** | means any material applicable laws, regulations or codes of conduct relating to data protection or the rights of the data subject; |
| **"EEA"** | means the European Economic Area consisting of all European Union member states together with Iceland, Liechtenstein and Norway; |
| **"Effective Date"** | means the date that this Contract is signed by the Parties; |
| **"Fixed Period"** | means a period of 6 calendar months commencing on the Effective Date; |
| **"Guidelines"** | means any written guidelines provided by Vodafone NL to the Company from time to time which relate to content standards (including anti-social, adult, fraudulent, unlawful or otherwise inappropriate content) and any Codes of Practice; |
| **"Image"** | means the images, likenesses, characteristics, names and other aspects of artists, celebrities, well known or famous people; |
| **"Indemnified Parties"** | means Vodafone NL including its officers, servants, agents, contractors and assigns; |
| **"Initial Term"** | means a period of 1 calendar year commencing on the Effective Date; |
| **"Insolvency Event"** | means circumstances in which a Party makes any voluntary arrangement with its creditors or becomes subject to an administration order or goes into liquidation (otherwise than for the purpose of amalgamation or reconstruction), or (being a company) has a receiver or an administrative receiver appointed over all or part of its assets; |
| **"IPR"** | means copyright (and related rights), database rights, design rights, topography rights, image rights, trade marks, service marks, trade and business names (including all goodwill associated with any trade marks, trade and business names or other names) or domain names (whether or not any of the same are registered and including applications for registration of any of the same); |

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| **"Keywords"** | means those adult erotic words and phrases which the Parties agree in writing will generate the relevant On-Net Keyword Search Results and Off-Net Keyword Search Results; |
| **"Link Licence"** | means the licence set out in Schedule 1; |
| **"Links"** | means any selectable connections to the Link Sites provided by the Company to Vodafone NL from time to time; |
| **"Link Sites"** | means a site featuring Adult Content owned or provided by the Company; |
| **"Off-Net Keyword Search Result"** | a result from a Customer search for Adult Content using a Keyword or Keywords in the Vodafone NL owned Directory search function which directs a Customer to Adult Content which is outside the Directory; |
| **"On-Net Keyword Search Result"** | a result from a Customer search for Adult Content using a Keyword or Keywords in the Vodafone NL owned Directory search function which directs a Customer to Adult Content in the Directory; |
| **"Party"** | means Vodafone NL and the Company individually; |
| **"Parties"** | means Vodafone NL and the Company collectively; |
| **"Recipient Party"** | means the Party to whom Confidential information has been disclosed, furnished or made accessible by the Disclosing Party; |
| **"Sale"** | means the licence and supply of content by the Company to a Customer on or through the Link Sites, and the terms "**Sell**" and "**Sold**" shall be construed accordingly; |
| **"Territory"** | means The Netherlands; |
| **"VAT"** | "VAT" means Value Added Tax or any analogous tax in any relevant jurisdiction including but not limited to use, sales and local sales taxes of any kind on any goods or services supplied pursuant to this contract or any goods or services supplied to customers |
| **"Virus"** | means any computer virus, trojan horses, worms, logic bombs, time bombs, invasive computer programs, or other computer programming routines that may damage or detrimentally interfere with any computer or telecommunications network (including the Vodafone NL Network), equipment or handsets; |
| **"Vodafone NL Network"** | means any telecommunication systems operated by Vodafone NL; |

14.2 In this Contract:

14.2.1 all references to Clauses and Schedules are references to clauses and schedules in this Contract, unless the context otherwise requires;

14.2.2 references to “includes” or “including” shall be construed without limitation to the generality of the preceding or proceeding words;

14.2.3 words importing gender shall include all genders, words denoting the singular shall include the plural, words denoting persons include incorporated and unincorporated bodies, and in each case vice versa;

14.2.4 any reference to a Party to this Contract includes a reference to that Party's successors in title and permitted assigns;

14.2.5 reference to any directive, statute, statutory provision or statutory instrument includes a reference to that directive, statute, statutory provision or statutory instrument together with all rules and regulations made under them and as from time to time amended, consolidated or re-enacted.

14.3 The headings in this Contract are for information only and are to be ignored in construing the same.

14.4 The attached Schedules shall form part of this Contract and shall be construed and shall have the same force and effect as if they were expressly set out in the main body of this Contract and any references to this Contract includes the Schedules.

14.5 In the event of any inconsistency, the terms of the main body of this Contract shall prevail over the terms of any Schedules.

14.6 References to this Contract shall be deemed to be a reference to the current version of this Contract in the event that it is varied by agreement of the Parties in accordance with Clause 13.1.

[SIGNATURE PAGE TO FOLLOW]

Signed for and behalf of Vodafone NL

Signature: /s/ Harry Odenhoven

Name: Harry Odenhoven
Title: director on-line services

Signature:

Name: Graeme Millar

Title: director consumer business unit

/s/ Graeme Millar

Signed for and on behalf of the company

Signature: /s/ David Mandell
Name: David Mandell
Title: EVP/General Counsel

***WE HAVE REQUESTED CONFIDENTIAL TREATMENT OF CERTAIN PROVISIONS CONTAINED IN THIS EXHIBIT. THE COPY FILED AS AN EXHIBIT OMITS THE INFORMATION SUBJECT TO THE CONFIDENTIALITY REQUEST.***

**SCHEDULE 1**

**Link Licence**

1 The Company hereby grants to Vodafone NL a non-exclusive licence for the term of this Contract to use, store, reproduce, display, distribute, transmit, communicate and make the Link available to Customers on or through the Directory in the Territory.

2 The Company hereby grants to Vodafone NL a non-exclusive licence to edit and modify the Link for the purpose of optimising such Content for:

2.1 the delivery of the Link to Customers on or through the Directory in the Territory; and

2.2 the display of the Link on mobile phones.

**SCHEDULE 2**

**Payment and Reporting**

## 1 Definitions and Interpretation

1.1 In this Schedule the following words and terms shall have the following meanings unless the context otherwise requires:

**"Actual AVC"** means the total number of Age Verified Customers measured at the end of a Quarter;

**"Actual Availability"** means the percentage of time that the Directory is available to Customers, measured across a Quarter;

**"Availability Factor"** means, for each Quarter,

- [INFORMATION OMITTED AND FILED SEPARATELY WITH THE COMMISSION UNDER RULE 24B-2]if Actual Availability is [INFORMATION OMITTED AND FILED SEPARATELY WITH THE COMMISSION UNDER RULE 24B-2]or greater;
- [INFORMATION OMITTED AND FILED SEPARATELY WITH THE COMMISSION UNDER RULE 24B-2], if Actual Availability is [INFORMATION OMITTED AND FILED SEPARATELY WITH THE COMMISSION UNDER RULE 24B-2] or greater but less than [INFORMATION OMITTED AND FILED SEPARATELY WITH THE COMMISSION UNDER RULE 24B-2];
- [INFORMATION OMITTED AND FILED SEPARATELY WITH THE COMMISSION UNDER RULE 24B-2], if Actual Availability is [INFORMATION OMITTED AND FILED SEPARATELY WITH THE COMMISSION UNDER RULE 24B-2] or greater but less than [INFORMATION OMITTED AND FILED SEPARATELY WITH THE COMMISSION UNDER RULE 24B-2];
- [INFORMATION OMITTED AND FILED SEPARATELY WITH THE COMMISSION UNDER RULE 24B-2], if Actual Availability is [INFORMATION OMITTED AND FILED SEPARATELY WITH THE COMMISSION UNDER RULE 24B-2] or greater but less than [INFORMATION OMITTED AND FILED SEPARATELY WITH THE COMMISSION UNDER RULE 24B-2];
- [INFORMATION OMITTED AND FILED SEPARATELY WITH THE COMMISSION UNDER RULE 24B-2], if Actual Availability is [INFORMATION OMITTED AND FILED SEPARATELY WITH THE COMMISSION UNDER RULE 24B-2] or greater but less than [INFORMATION OMITTED AND FILED SEPARATELY WITH THE COMMISSION UNDER RULE 24B-2];
- [INFORMATION OMITTED AND FILED SEPARATELY WITH THE COMMISSION UNDER RULE 24B-2], if Actual Availability is less than [INFORMATION OMITTED AND FILED SEPARATELY WITH THE COMMISSION UNDER RULE 24B-2]

**"AVC Factor"** means, for each Quarter

- [INFORMATION OMITTED AND FILED SEPARATELY WITH THE COMMISSION UNDER RULE 24B-2], if Actual AVC / Projected AVC expressed as a percentage is [INFORMATION OMITTED AND FILED SEPARATELY WITH THE COMMISSION UNDER RULE 24B-2]or greater;

- [INFORMATION OMITTED AND FILED SEPARATELY WITH THE COMMISSION UNDER RULE 24B-2], if Actual AVC / Projected AVC expressed as a percentage is [INFORMATION OMITTED AND FILED SEPARATELY WITH THE COMMISSION UNDER RULE 24B-2]or greater but less than [INFORMATION OMITTED AND FILED SEPARATELY WITH THE COMMISSION UNDER RULE 24B-2];

- [INFORMATION OMITTED AND FILED SEPARATELY WITH THE COMMISSION UNDER RULE 24B-2], if Actual AVC / Projected AVC expressed as a percentage is 85% or greater but less than [INFORMATION OMITTED AND FILED SEPARATELY WITH THE COMMISSION UNDER RULE 24B-2];

- [INFORMATION OMITTED AND FILED SEPARATELY WITH THE COMMISSION UNDER RULE 24B-2], if Actual AVC / Projected AVC expressed as a percentage is

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| **"Q2"** | means a period of 3 calendar months commencing on the date immediately following the expiration of Q1; |
| **"Q3"** | means a period of 3 calendar months commencing on the date immediately following the expiration of Q2; |
| **"Q4"** | means a period of 3 calendar months commencing on the date immediately following the expiration of Q3; |
| **"Quarter"** | means either Q1, Q2, Q3 or Q4, as appropriate; |
| **"Quarter Revenue Guarantee"** | means:<br>• for Q1, [INFORMATION OMITTED AND FILED SEPARATELY WITH THE COMMISSION UNDER RULE 24B-2]<br>• for Q2, [INFORMATION OMITTED AND FILED SEPARATELY WITH THE COMMISSION UNDER RULE 24B-2]<br>• for Q3, [INFORMATION OMITTED AND FILED SEPARATELY WITH THE COMMISSION UNDER RULE 24B-2]<br>• for Q4, [INFORMATION OMITTED AND FILED SEPARATELY WITH THE COMMISSION UNDER RULE 24B-2] |
| **"Reporting Address"** | |
| **"Revenue Payment"** | means the amount payable by the Company to Vodafone NL such amount being calculated in accordance with paragraph 2 of this Schedule 2; |
| **"Sale Deductions"** | means any VAT Amounts; |
| **"Sale Revenue"** | means the total amount of revenue generated by the Sale of Adult Content on Link Sites; by content charging (i.e. any data charges or access charges are excluded). |
| **"VAT Amounts"** | means any Value Added Tax or any analogous tax in any relevant jurisdiction including but not limited to use, sales and local sales taxes of any kind (excluding any taxes levied solely on the parties capital or income) to be paid and accounted for by parties in respect of a sale. |

1.2 In this Schedule all references to paragraphs are references to paragraphs in this Schedule unless the context otherwise requires.

**2 Revenue Payment and Additional Revenue Payment**

2.1 The Revenue Payment payable to Vodafone NL by the Company shall be calculated as [INFORMATION OMITTED AND FILED SEPARATELY WITH THE COMMISSION UNDER RULE 24B-2]% of the Net Partnership Revenue.

2.2 All payments shall be exclusive of VAT, which shall be paid in addition if applicable subject to receipt of a valid VAT invoice.

2.3 The combined total of all Net Sale Revenue and Net Partnership Revenue, generated by Vodafone NL's FON Erotic WAP portal, to be received by Vodafone NL for each Quarter shall be no less than the Quarter Revenue Guarantee which relates to that Quarter. Where the total of all Net Sale Revenue and Net Partnership Revenue received by Vodafone NL for a particular Quarter is less than the Quarter Revenue Guarantee which relates to that Quarter, the Company shall pay an additional Revenue Payment to Vodafone NL for that Quarter ("Additional Revenue Payment") in the same manner as the Revenue Payments are payable under of this Schedule 2. The Additional Revenue Payment shall be calculated on the following basis:

Additional Revenue Payment = (X - Y) x AVC Factor x Availability Factor where:

X = the Quarter Revenue Guarantee which relates to that Quarter; and

Y = the combined total of all Net Sale Revenue and Net Partnership Revenue.

**3 Monthly Reports**

3.1 Vodafone NL shall prepare a Monthly Report for each calendar month (or part thereof) during the term of this Contract and provide it to the Company no later than 10 working days after the end of each calendar month to which the monthly report relates at the following addresses:

Twistbox Entertainment, Inc.
14242 Ventura Boulevard, Third Floor
Sherman Oaks, California 91423 USA
Attn: Finance Department
Fax: 1-818-708-0598

Email: invoices @ waat.com and mrosengarten@waat.com

3.2 The Monthly Report shall set out details of the following matters:

3.2.1 the number and category of sales in that calendar month; and

3.2.2 the amount of gross sales revenue generated in that calendar month.

**4 Revenue Payment**

4.1 The Revenue Payment payable to the Company shall be calculated as 50% of the Net Sales Revenue. No revenue share shall apply to any data charges or time based charges for browsing in the FON area.

## 5 Payment Procedure

5.1 In accordance with the Monthly Report, the Company shall issue an invoice which contains details of the relevant invoice and the amount of the Revenue Payment payable to the Company for any calendar month (or part thereof) during the term of this Contract. The Company shall provide such invoice to Vodafone NL no later than thirty (30) days after the end of the calendar month to which the Revenue Payment relates.

5.2 Vodafone NL shall pay all invoices issued by the Company no later than the end of the calendar month in which the invoice is received by Vodafone NL.

5.3 Payment of any Revenue Payment shall be made by Vodafone NL to the Company as follows:

**Send to:**
American Express Bank, Frankfurt
Swift Code: AEIBDEFXXX

**Credit to:**
EAST WEST BANK, Pasadena
Swift Code: EWBKUS66XXX
ABA 322070381
Account: 018081601

**Further Credit to:**
EAST WEST BANK
18321 Ventura Boulevard
Tarzana, California 91356
Account Name: TwistBox Entertainment
ABA Number: 322070381
Account Number: 0082708884

## 6 Inspection

6.1 During the term of this Contract and for a period of 12 months after termination of this Contract, Vodafone NL shall, upon reasonable written request by the Company, provide the Company with reasonable access to inspect any information that the Company may reasonably require in order to verify the accuracy of any financial report or statement (including any Monthly Report) made or given by Vodafone NL under this Contract.

6.2 If as a result of any inspection carried out by the Company pursuant to paragraph 6.1 any discrepancy is discovered, Vodafone NL shall rectify such discrepancy within 15 days after being advised of the discrepancy and immediately pay to the Company all amounts discovered to be due the Company as a result of any such inspection within thirty (30) days of invoice. In addition, in the event any such inspection reveals a discrepancy of five percent (5%) or more in the Company's favor, Vodafone NL will pay all reasonable costs of the Company's inspection, and such costs shall be added to the Company's invoice for amounts due.

**AGREEMENT**

Entered into by and between

**TWISTBOX ENTERTAINMENT, INC.**
Tax number 80-0058995
Tel: +1-818-301-6200
Fax: +1-818-708-0598
(hereinafter "Twistbox")

AND

**VODAFONE PORTUGAL - COMUNICAÇÕES PESSOAIS, S. A.**
Tax number 502 544 180
Tel: +351 21 091 4407
Fax: + 351 21 091 4414
(hereinafter "Vodafone")

---

**AGREEMENT**

THIS AGREEMENT ("Agreement") is entered into on 23$^{th}$ day of March 2007, between:

**TWISTBOX ENTERTAINMENT, INC.,** a company incorporated under the laws of the State of Delaware, USA, having its registered office at Secretary of State Registry Office of Delaware under number 4207607, tax number 80-0058995, herein duly represented by David Mandell in his capacity of EVP/General Counsel, hereinafter referred to as **"Twistbox"** or "the Partner"

AND

**VODAFONE PORTUGAL - COMUNICAÇÕES PESSOAIS, S.A.,** a company incorporated under the laws of Portugal, having its registered office at Av. D. João II, Lote 1.04.01, 8$^{th}$ Floor, Parque das Nações, 1990-093 Lisbon, Portugal, with share capital of € 107.500.000, registered at the Commercial Registry Office in Lisboa under number 2424, tax number 502 544 180, herein duly represented by Mr. António Alberto Bastos Carriço and Mário Jorge Soares Vaz, in their capacity of members of Proxies, hereinafter referred to as "Vodafone".

**Whereas**,

(A) Vodafone has developed a Mobile Portal (as defined herein) which contains a directory service aimed to facilitate access to mobile content and services for the Customers (as defined herein);

(B) Twistbox, formerly trading under the corporate name of WAAT Media, is a company whose activity consists of licensing, creating, publishing and distributing products and services for access and use by consumers operating Wireless Devices (as defined herein);

(C) Vodafone wishes to restructure the adult content channel (the "Channel" as further defined herein) available within the Mobile Portal and Twistbox wishes to supply and place its content within such area of the Mobile Portal and to manage the adult content channel thereof;

(D) The Parties wish to set the terms and conditions under which Twistbox will supply the Content (as defined herein) to be placed in the Mobile Portal and manage the adult content channel thereof;

Therefore, in consideration of the mutual promises and covenants contained in this Agreement the Parties hereto agree as follows:

**1. Definitions**

In this Agreement the following words and expressions shall have the meaning set out below:

a) **"Agreement"** means this agreement and all its schedules;

b) **"Channel"** means the area in the Mobile Portal which exclusively contains adult content, which shall for the purposes of this Agreement exclude the area managed by Vodafone, as per the provisions of Clause 2.5 of this Agreement;

c) **"Chargeable Transaction"** means any use of the Content by a Customer for which the Customer will be charged in addition to the standard mobile telephone charges incurred by the Customer for access to the Content;

d) **"Competitor"** means any telecommunications operator and telecommunications services provider, other than Vodafone;

e) **"Content"** means the information, text, data, graphics, moving and still images and sound recordings (including the music and lyrics on such recordings) and/or services as further described in the Agreement;

f) **"Customer"** means the end user of the Mobile Portal;

g) **"Intellectual Property Rights"** means all intellectual and industrial property rights including registered trade and service marks, patents, registered designs, unregistered trade and service marks, trade and business names, domain names, rights in domain names, topography rights, copyright, database rights, unregistered design rights and all other similar proprietary rights in every case which may subsist in any part of the world including any registration of any such rights and applications and any rights to make applications for any of the foregoing;

h) **"Interface Requirements"** means the technical requirements which are necessary to fulfil in order to enable Twistbox to supply and place the Content in the Mobile Portal, as defined in Schedule I hereto;

i) **"Mobile Portal"** means the Vodafone's WAP mobile sites or services that offer a broad amount of resources and services to Customers;

j) **"Territory"** means Portugal;

k) **"Vodafone's Policies"** means those guidelines relating to the standards of Content production, format and style, attached hereto as Schedule III, as established and amended from time to time by Vodafone and with which Twistbox must comply;

l) **“Wireless Devices”** mean any device that can be carried from place to place, is generally small enough to fit in one’s pocket, and that is able to receive, transmit display and/or store information via wireless transmissions and/or the internet including, but not limited to, wireless phones, pagers, personal digital assistants and other such similar devices.

**2. Scope**

1. Twistbox, and/or its subsidiaries, owns all Intellectual Property Rights on the Content or otherwise is duly licensed by the owners thereof to exploit all such rights.

2. By means of this Agreement the Parties agree on the following:

   a) Twistbox shall develop and manage the Channel, pursuant to the provisions of Schedule I;

   b) Twistbox shall supply and place the Content into the Channel, pursuant to the provisions of Schedule I;

3. Twistbox hereby grants Vodafone, and Vodafone hereby accepts from Twistbox, the nonexclusive, non-transferable, revocable right to use, reproduce, display the Content within the Mobile Portal for distribution to the Customers for private use on Wireless Devices throughout the Territory during the Term (the “Licensed Rights”). For the purposes of clarification, the Parties acknowledge and accept that Vodafone is under no obligation to pay Twistbox or any third parties any financial consideration or any other rights, except for the payments agreed under the provisions of clause 4.3 and Schedule II.

4. Twistbox acknowledges and agrees that the Licensed Rights granted in the previous paragraph includes (i) the right to copy and reproduce the Content, should it be the case, as well as to make it available to an unlimited number of Customers, both in Portugal and abroad (to the extent that Customers may have access to the Mobile Portal and acquire the Content while in *roaming*) by means of digital networks and mobile internet, in whatever formats and means Vodafone may decide to adopt during the Term of this Agreement; and (ii) the right to attach Twistbox’s logo, name or brands in the Content, the Mobile Portal, Vodafone’s web site as well as in any advertising materials. The use of the Content as authorised herein does not constitute a breach by Vodafone of any Intellectual Property Rights of Twistbox or any third party. Twistbox further acknowledges and accepts that after termination of this Agreement Customers may continue to use and store the Content previously purchased.

5. Twistbox shall be Vodafone's exclusive provider of Content for the Channel available within the Mobile Portal, except for the three areas currently managed by Vodafone within the Channel. (i.e. Mobile TV, Alerts and DIMO). Vodafone may, at any time, by giving Twistbox a written notice thereof (which in the case of this clause may be provided by email) discontinue any of the above areas managed by Vodafone. In the event that any third party wishes to provide content for the Channel, the third party content provider shall first enter into an agreement with Twistbox upon reasonable commercial terms and conditions.

6. Vodafone may use the Content in any promotional activities related to the Mobile Portal; provided that Vodafone shall not distribute free Content to the Customers without Twistbox's prior written approval.

**3. Management of the Channel and Content**

1. Twistbox shall manage the Channel in the name and on behalf of Vodafone, with due care and diligence and in respect with the guidelines contained in Schedule I of this Agreement and any other future guidelines, issued from time to time by Vodafone and communicated in writing to Twistbox.

2. Any changes to the Channel (i.e. user experience, updates, etc) shall be subject to Vodafone's written approval.

3. The Channel shall only present the name, trade marks or logos owned or licensed by Twistbox, pursuant to the provisions of Schedule I.

4. Twistbox shall provide the Content in accordance with the terms of this Agreement and in particular with Schedules I and III hereto.

5. Vodafone may, at any time, issue new guidelines in respect of the management of the Channel or of the Content as well as review, revoke or suspend any existing or future guidelines, giving Twistbox reasonable prior written notice thereof.

6. Twistbox acknowledges and accepts that:

   a) Vodafone has developed a number of policies concerning social responsibility (including but not limited to the display and marketing of adult content and access control), as reflected in Schedule III and to which Twistbox shall comply with;

   b) Vodafone has developed an access controls policy that enables Customers to block access to adult content, either on Vodafone Live!, Wap and SMS.

## 4. Fees, Payments, Invoicing and other Consideration

1. The prices charged to Customers, and any changes thereto, for each Chargeable Transactions are suggested by Twistbox and defined by Vodafone.

2. Vodafone shall be responsible for the billing and collecting of payments from the Customer in respect with the Chargeable Transactions.

3. The Parties will share the amounts effectively collected from the Customers in respect with any Chargeable Transaction, subject to the payment of a minimum guaranteed fee paid by Twistbox to Vodafone, as defined in Schedule II to this Agreement.

4. Vodafone will not pay to Twistbox its share of any Chargeable Transactions which could not be collected from the Customers.

5. Vodafone shall send Twistbox, by e-mail and within the first fifteen (15) days of each month, a report (hereinafter referred to as the "Report") with the total number of the Chargeable Transactions made by the Customers during the preceding month, as per Schedule III.

6. Based upon the Report the Partner shall invoice Vodafone, by the 20th day of each month. All invoices issued by the Partner must always contain "CC C20902000" reference and shall be sent to the address set out in Schedule IV.

7. All the invoices shall be paid in Euros within forty-five (45) days after the invoice reception date.

8. All the amounts due under this Agreement shall be paid by wire transfer sent to:

9. During the Term, Vodafone shall maintain separate detailed and accurate records related to this Agreement and the Partner shall have the right, not more than once per calendar year, at Partner's cost to audit or inspect such records during normal business hours by an independent auditor selected by the Parties and in any event shall such inspection give access, or cause any disruptions, to Vodafone's services or systems. The cost of the audit(s) shall be for the account of the Partner, unless there is a seven and a half percent (7.5%) or higher discrepancy in the accuracy of any or all of Vodafone's payments and/or reports due to Vodafone's fault, in which case, the reasonable costs of the audit shall be borne by Vodafone. Vodafone shall remit any outstanding amount in respect of the discrepancy to Content Provider within forty-five (45) days of the audit or in case there is an overpayment. Partner shall remit the overpayment to Vodafone within forty-five (45) days of the audit and shall bear the costs of the audit.

**5. Warranties and Liability**

1. Twistbox represents and warrants that:

   a) it has full right and authority to enter into this Agreement;

   b) it will comply with all applicable material requirements of the legislation in force in Portugal regarding data protection;

   c) it will comply with the terms of Schedules I, II III, IV and V to this Agreement; and

   d) it will use reasonable skill and care in carrying out its obligations and exercising its rights under this Agreement.

2. Twistbox further represents and warrants that the Channel and Content displayed therein:

   a) is and will remain, for the duration of this Agreement, in compliance with this Agreement and with all applicable material legislations;

   b) is of satisfactory quality, fit for any purpose contemplated in this Agreement, and will be kept fresh, updated and current at all times and for all current and future Wap colour enabled handsets;

   c) is original and does not infringe any third Party's rights including, but not limited to, Intellectual Property Rights;

   d) making the Content available is duly authorised by the relevant entities and does not infringe any third Party's rights;

   e) is not and will not be defamatory, illicit offensive, racist xenophobic, obscene, pornographic (which for the avoidance of doubt is considered to be outside the levels of explicitness allowed in this Agreement), materially inaccurate or otherwise be in breach of any applicable material law, regulation code of conduct, public order or customary usage or result in Vodafone being in breach of any such law or regulation, code of conduct, public order or customary usage;

   f) does not and will not contain any Content that promotes a Competitor or criticises Vodafone or brings Vodafone into disrepute; and

g) Twistbox's computer systems hosting and/or delivering the Content to Vodafone and the computer systems of any Twistbox's subcontractor, should it be the case, are, and shall be at all times, equipped with the latest versions of the anti-virus applications available on the market and Twistbox shall, at all times, exercise commercially reasonable efforts to avoid that the Content contains any computer viruses, logic bombs, trojan horses and/or any other items of software which would disrupt the proper operation of the Channel or the Mobile Portal.

3. Vodafone represents and warrants that:

a) it has full right and authority to enter into this Agreement;

b) it will comply with all applicable material requirements of the legislation in force regarding data protection;

c) it will use reasonable skill and care in carrying out its obligations and exercising its rights under this Agreement; and

d) it will provide the necessary notifications to be given to Customer prior to any Chargeable Transaction being incurred (the messages shall include the specific price in euros).

4. Vodafone further represents and warrants that:

a) it will, on a continuing basis, use its best efforts to ensure the Content is disseminated and distributed in the Territory (except for the cases of international roaming) where the receipt and viewing of said Content is lawful and within the contemporary community standards of the Territory;

b) it will not allow or enable any person to access, view or receive or otherwise use any portion of the Content without first agreeing to pay the Chargeable Transaction fee for such access and viewing

5. Each Party will immediately notify the other in writing of any claim or action, actual or threatened, by a third party as a consequence of this Agreement or any of its content.

6. Each Party hereby agrees to indemnify the other in full (including reasonable legal fees), against all liabilities, claims, damages, losses and proceedings brought against the other as a result of a breach of any of its representations and warranties and material obligation contained in this Agreement. In no event shall either Party be liable for any indirect, special, incidental or consequential damages arising out of or in any way connected with this Agreement or any matter related hereto, including without limitation, lost of business or lost profits, even if advised of the possibility of such damages.

**6. Intellectual Property Rights**

1. The Parties agree that all Intellectual Property Rights in the Content shall remain with Twistbox and its licensors.

2. All Intellectual Property Rights concerning the Mobile Portal and related services shall remain at all times the property of Vodafone. For the avoidance of doubt, Twistbox may not use, or allow third parties to use (either in the benefit of Twistbox or in the benefit of such third parties) the user experience defined and approved by Vodafone (including any requirements set out in this Agreement or any of its Schedules) for any purposes other than the purposes of this Agreement.

**7. Marketing**

All use of Vodafone's trade mark, logo or name, must be subject to Vodafone's prior approval.

**8. Customer Support**

1. Vodafone, or a company appointed by Vodafone for this purpose, shall be responsible for dealing with all costumer inquiries concerning the Mobile Portal in general.

2. Twistbox will assist Vodafone's customer support services to solve any customers' issues within a maximum period of 24 hours.

**9. Term**

1. This Agreement is entered into for an initial period of [INFORMATION OMITTED AND FILED SEPARATELY WITH THE COMMISSION UNDER RULE 24B-2] months (the **"Initial Period"**), being its effects to retroact to 1st February 2007. This Agreement shall be automatically renewed until terminated by either Party pursuant to the provisions of the following paragraph.

2. Either Party may terminate this Agreement by giving the other a written notice at least [INFORMATION OMITTED AND FILED SEPARATELY WITH THE COMMISSION UNDER RULE 24B-2] day (i) prior to the end of the Initial Period or (ii) thereafter, prior to the date it wishes the termination notice becomes effective.

**10. Termination**

1. Either Party may, by written notice to the other, terminate this Agreement with immediate effect if the other Party breaches any of its representations and warranties and/or material obligations hereunder and such breach is incapable of remedy or, if capable of remedy, the Party fails to remedy that breach within thirty (30) days notice from the non-breaching Party requiring remedy.

2. Vodafone will be entitled to suspend or terminate this Agreement immediately on written notice, without prejudice to its other rights and remedies, in the event that:

   a) Twistbox fails to comply with any of the requirements set out in Schedules I, II, III, IV and V to this Agreement;

   b) Twistbox ceases to carry on its business or has a liquidator, receiver or administrative receiver appointed to it or over any part of its undertaking or assets or passes a resolution for its winding up (otherwise than for the purpose of a bona fide scheme of solvent amalgamation or reconstruction where the resulting entity will assume all of the liabilities of it) or a court of competent jurisdiction makes a liquidation order or similar order over the other, or the other enters into any voluntary arrangement with its creditors, or is unable to pay its debts as they fall due;

   c) In case of strategic changes in terms of Vodafone hosting an Erotic channel or service.

3. Termination of this Agreement does not affect the accrued rights, obligations or liabilities of the Parties prior to termination. Upon termination of this Agreement, the Parties shall settle all outstanding sums that either Party may owe the other within 45 days of the date of termination. Without prejudice to the above, Twistbox shall not be entitled to any indemnity or compensation for any damages or direct or indirect losses.

4. The termination notices must always be given in writing through registered letter with acknowledgement of receipt.

5. Upon termination of this Agreement, Vodafone shall cease to distribute, display, reproduce or sell the Content provided by Twistbox under this Agreement.

**11. Confidentiality**

Except as may be required by law or any applicable regulatory body, or as is strictly required to perform its obligations under this Agreement, each Party shall keep secret and confidential and not use, disclose or divulge to any third party any information that they obtain about the other concerning the business, finances, technology and affairs of the other, and in particular but not Limited to this Agreement and its subject matter. This clause does not apply to information that has come into the public domain other than by breach of this clause or any other duty of confidence or is obtained from a third Party without breach of this clause or is required to be disclosed by law.

**12. Assignment and Subcontracting**

1. Neither Party shall assign any of its rights or obligations under this Agreement without the other Party's prior written consent, such consent not to be unreasonably withheld; provided, however, no consent is necessary in the event of an assignment by either Party to an entity under common control with, controlled by or in control of the assigning Party. In any event Twistbox shall provide Vodafone with a notice thereof, 15-day prior to the date of the assignment.

2. Twistbox may not subcontract to a third party, either in full or in part, its rights and obligations under this Agreement without Vodafone's prior written consent, not to be unreasonable withheld, and in any case it shall remain the entity exclusively and solely liable for the performance thereof.

**13. Entire Agreement**

This Agreement represents the entire understanding between the Parties in relation to its subject matter and supersedes all Agreements and representations made by either Party, whether oral or written.

**14. Modifications**

This Agreement may only be modified or amended by a written instrument signed by both Parties.

## 15. Severability

If any part of this Agreement is held to be illegal or unenforceable, the validity or enforceability of the remainder of this Agreement will not be affected.

## 16. Governing Law and Jurisdiction

1. This Agreement shall be governed by and construed and interpreted in accordance with the Portuguese law.

2. Any dispute or disagreement regarding the interpretation or performance of this Agreement will be settled by the Lisbon Civil Courts.

## 17. Communications

1. Any notice or other communication required to be given or made under this Agreement will be in writing and transmitted by post, fax or e-mail to the receiving Party's address identified in Schedule IV.

2. Communications under number one above shall be effective upon the date of receipt or, if carried out after business hours, on the following working day. Communications transmitted by fax shall be effective on the day following the transmission.

This Agreement is signed by the Parties in two originals.

**(Stamp Duty Paid Against Receipt under Law 150/99, 11/09)**

**VODAFONE PORTUGAL, Comunicações Pessoais, SA**

| | | | |
|---|---|---|---|
| Signature: | /s/ António Carriço | Signature: | /s/ Mário Vaz |
| Name: | António Carriço | Name: | Mário Vaz |
| Title: | Director | Title: | Director |

**TWISTBOX ENTERTAINMENT, INC.**

Signature: /s/ David Mandell
Name: David Mandell
Title: EVP/General Counsel

***WE HAVE REQUESTED CONFIDENTIAL TREATMENT OF CERTAIN PROVISIONS CONTAINED IN THIS EXHIBIT. THE COPY FILED AS AN EXHIBIT OMITS THE INFORMATION SUBJECT TO THE CONFIDENTIALITY REQUEST.***

## SCHEDULE 1

## MANAGEMENT OF THE CHANNEL AND SUPPLY AND PLACE OF CONTENT

Pursuant to the provisions of this Agreement Twistbox undertakes to manage the Channel, subject however to the rules set out in this Schedule I.

### 1. The Channel technologies and Channel

The Channel shall support at least the following technologies:

- Browsing Images (Male/Female of the day, Thematic Strips)
- Downloads (Wallpapers, Java Games and Java Stripshows)
- Video (Streaming and Download)

Without prejudice to the above, Vodafone may continue to display the links or to provide services to Customers based upon the following:

- Mobile TV streams
- SMS/MMS Alerts
- dimo- directório móvel (Friendly Off-net Directory)

These 3 links will have to be included in the user experience to be implemented by Twistbox. In case Vodafone decides to maintain the above links, Twistbox will have to include it in the bottom of the Channel's home page, pursuant to the instruction provided by Vodafone in this respect.

The Channel should be developed in PartnerML (PML, a proprietary device-independent XML format defined by Vodafone), as per the information kit already supplied by Vodafone to Twistbox. The Channel must work on all mobile terminals supported by the Vodafone live! and WAP Basic enabled colour portals.

Regularly updates of this information kit will be available and sent to the Partner.

The supply of Content shall also be governed by the provisions of the proposal submitted by Twistbox to Vodafone on 16th October 2006, attached hereto as Appendix A of this Schedule I. In case of conflict between the provisions of the proposal and the provisions of this Agreement, the latter shall prevail.

**2. User Interface**

Pursuant to the provisions of clause 3.2. of the Agreement, Twistbox shall propose a user experience to be approved by Vodafone, which shall comply with the following pre-requisites:

- The Channel main colours are red and white.
- The Channel main language must be Portuguese (from Portugal).
- Content updates should be, at least, on a weekly basis
- Only Twistbox's brands may be published in the Channel in the format "Powered by".

**3. Access Controls**

Vodafone has implemented the following Access Controls structure to which Twistbox shall comply with

- To enter the Channel, Customers must always pass through the warning page which is displayed by Vodafone
- Customers may either (i) accept the conditions by clicking on the "Continue" link; or (ii) refuse to enter the Channel, by clicking on "Back" or (iii) chose the "Bar" option in which case it will be redirected to an page containing information as to the way to block access to the Channel.
- After this, Customers will be redirected to the Partner homepage.
- This control system is handled by Vodafone.

**4. KPIs**

Twistbox warrants that the Channel will be available 99.5% throughout each period of 30 consecutive days.

Additionally Twistbox shall exercise commercially reasonable efforts to ensure that Content will be available 24 hours/ day, with no interruption.

## 5. Technical Support

Twistbox shall provide technical support 24 hours a day, 365 days a year, with no interruption.

Twistbox shall exercise commercially reasonable efforts to monitor the performance of the Channel and the service and not rely upon Vodafone for notification. Notwithstanding the above, if so requested by Vodafone Twistbox shall provide appropriate support in accordance with this Agreement.

By "monitoring commercially reasonable efforts" the Parties shall means the following procedures undertaken by Twistbox on a daily baisis:

1. Random daily spot checks on the Channel and service;
2. outside checks every five minutes from different locations on the monitors;
3. server is monitored 24/7 and there is an automatic notification in case of failure, downtime, disconnection, etc.;
4. 3 fully redundant datacenters + 2 backups (East Coast, West Coast, and Europe) (data replicated over VPN -Virtual Private Network);
5. in-house monitors checking connectivity and uptime;
6. the service is tested twice prior to going "live;"
7. monitoring of Bandwidth, CPU and Memory;
8. personnel on call 24/7;
9. code walkthroughs are performed regularly;
10. bug tracker system, firewalls, VPN, and SSH; and
11. daily backups of the system stored both on-site and off-site.

The following guidelines will be used to determine the priority of incidents involving the Content and other services delivered or under the responsibility of Twistbox.

| | |
|---|---|
| Priority 1 (Critical): | (i) Failure of the Channel and/or the Content, in whole or in a significant part, or Channel and/or Content not totally down, but the affected components form a significant part of the functionality of the Content or (ii) the problem creates a definite or a possible business or financial exposure or affects a large number of Customers. Response within 2 hours from Twistbox having knowledge of, or (in case of Vodafone detecting a problem) receiving a written notice by email reporting the critical incident and resolution within 6 hours. |

| | |
|---|---|
| Priority 2 (High): | The Channel and/or the Content is largely available and the problem has little or no effect on the services provided by the Content and the problem creates no business or financial exposure. Response time within 12 hours from written notice by email reporting the high incident and resolution within 24 hours. |
| Priority 3 (Low): | Non-critical issues, i.e. typos, translation errors, etc. Response time within 24 hours from written notice by email reporting the low incident and resolution within 48 hours. |

## APPENDIX A

**Proposal submitted by Twistbox on 16th October 2006.**

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## SCHEDULE II

## REMUNERATION

Pursuant to the provisions of Clause 4 of the Agreement, the Parties will share the amounts effectively collected from the Customers in respect with any Chargeable Transaction subject to the payment of a minimum guaranteed fee by Twistbox to Vodafone.

### 1. Revenue share

On the basis of the monthly net revenue (i.e. exclusive of VAT, in EURO) generated by the Channel (which shall exclude any revenue generated by the areas managed by Vodafone as per Clause 2.5 of this Agreement) (the "**Net Revenue**"), the following model shall apply with cumulative steps

| **Net Revenue** | | |
|---|---|---|
| Vodafone revenue share | [INFORMATION OMITTED AND FILED SEPARATELY WITH THE COMMISSION UNDER RULE 24B-2] | [INFORMATION OMITTED AND FILED SEPARATELY WITH THE COMMISSION UNDER RULE 24B-2] |
| Partner revenue share | [INFORMATION OMITTED AND FILED SEPARATELY WITH THE COMMISSION UNDER RULE 24B-2] | [INFORMATION OMITTED AND FILED SEPARATELY WITH THE COMMISSION UNDER RULE 24B-2] |

### 2. Vodafone's monthly minimum guaranteed fee

Without prejudice to the above, Vodafone shall receive on a monthly basis the Net Revenue of 50.000 EUR; provided that traffic is not diverted from the Erotic Portal by (i) the introduction of friendly off-net erotic portals or search engines (e.g. Google); (ii) a decrease in marketing and promotion of the Vodafone's Mobile Portal; or (iii) any other reason not directly attributable to Twistbox.

For the purposes of the previous paragraph, the calculations made by Twistbox were based on the figures represented by Vodafone Portugal in the RFP Erotic Channel of October 2$^{nd}$, 2006, corresponding to 105 000 unique visitors in August 2006.

In the event traffic is diverted from the Erotic Portal for any reason not directly attributable to Twistbox, the Parties agree to consider the review of this amount. If the Parties fail to reach a compromise, they may terminate this Agreement upon thirty (30) days written notice.

## 3. Other Business Conditions

a) All Channel developments shall be exclusively paid by Twistbox.

b) The Content is supplied by Twistbox cleared from all authorisations and consents and any licences, rights, duties, levies, taxes or otherwise in respect of the Content (including but not limited to any payments due to collecting societies or other entities) shall be paid by Twistbox, being Vodafone under no obligation to make any payments to Twistbox (except for those referred to in clause 4.3 of this Agreement and in paragraph 1 of this Schedule II) or to any third Parties or individuals.

# SCHEDULE III

# VODAFONE'S POLICIES

## Part A - Content Standards

The Content available on the Channel shall be checked against the Content Matrix, which shows the erotic rating acceptable by Vodafone and shall respect the Banned Content list, as per point 2 hereof.

### 1. Content Matrix

The maximum level of explicitness allowed in the Channel, is the following:

- For Video contents, the top rating is CS 2.3
- For Image contents (still images), the top rating is CS 3.2 excluding CS 2.2, CS 2.4, CS 2.5 and CS 2.6

The Content Matrix (as approved from time to time by Vodafone Group) is attached hereto as Appendix A to this Schedule III.

### 2. Banned content list

Twistbox shall under no circumstances supply and place any Content that is forbidden according to the provisions of the Banned Content List, as approved by Vodafone Group and contained in Appendix B to this Schedule III (or any amended versions thereof).

### 3. Other issues

Notwithstanding any of the above, VODAFONE reserves the right, at any time, to instruct Twistbox to remove, change, discontinue, suspend, interrupt or otherwise not make available to Customers any Content (including but not limited to text content descriptions) VODAFONE, at its own discretion, decides that should not be displayed, supplied or made available to Customers. Twistbox shall comply with these instructions within reasonable time.

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APPENDIX A - CONTENT MATRIX

| Rating | Title | | Description | Base Sale | Comments |
|---|---|---|---|---|---|
| CS1.0 | Glamour/Topless | | | | |
| CS1.1 | | Lingerie | Single Model, no nudity must be wearing bra and panties/swimwear/etc. No nipples, no nipple shadow, no nipple covers, no pubic hair or see-through underwear. Can include full rear view if wearing G-String/panties. No sexually suggestive touching or position. No use of objects to imply sexual activity (See Comments). | | Use of Object to convey sexual activity covers the handling, kissing, licking or sucking of phallic-like objects. |
| CS1.2 | | Glamour | Single Model, no nipples, no nipple shadow, no nipple covers, no pubic hair or see-through underwear. Can include full rear view if wearing G-String/panties or nudity if photographed from the side. Can include limited sexually suggestive touching or position. No use of objects to imply sexual activity (See Comments). | Penis must not appear erect underneath clothing | Use of Object to convey sexual activity covers the handling, kissing, licking or sucking of phallic-like objects. Borderline images with hand positioned over genital area, if this implies masturbation the image will be uplifted to CS2.[illegible] |
| CS1.3 | | Medium Shot Female Nude - rear | Medium shot of single model, can include full rear view but not with legs up or apart. No pubic area/hair, outer lips and/or anus. No use of objects to imply sexual activity. | No Penis or genitalia visible | |
| CS1.4 | | Topless | Single model, no genitalia, no pubic hair, can include full rear view in 1.3. No sexually suggestive touching or position. No use of objects to imply sexual activity. | Penis must not appear erect underneath clothing | Sexually Suggestive contact includes hand to breast but excludes kissing/licking of breasts, or any hand contact with pubic area and genitalia. |
| CS1.5 | | Topless with sexual suggestion | As CS1.4 above, but it is limited sexually suggestive pose. | Penis must not appear erect underneath clothing | Borderline images with hand positioned over genital area, if this implies masturbation the image will be uplifted to CS2.[illegible] |
| CS1.7 | | Female Female Topless | More than one model, no genitalia, no pubic hair, can include full rear view. Limited sexually suggestive touching or position (See Comments). No use of objects to imply sexual activity. | | Limited sexually suggestive touching [illegible] breast to breast but can include breast to breast. |
| CS2.0 | Multiple/Initial Sexual Contact | | | | |
| CS2.1 | | Female Female Topless Touching | More than one model, no genitalia, no pubic hair, can include full rear view. Can include kissing, sexually suggestive touching of themselves or each other (See Comments). No use of objects to imply sexual activity. | N/A | Sexually suggestive contact includes hand to breast but excludes kissing/licking of breasts, or any hand/mouth contact with pubic area and genitalia. |
| CS2.2 | [illegible] | [illegible] | [illegible] | [illegible] | Sexually Suggestive contact includes hand to breast [illegible] contact with pubic area and genitalia. |
| CS2.3 | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] |
| [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] |
| CS3.0 | Genitalia | | | | |
| CS3.1 | | Medium Shot Female Genitalia | Medium shot of naked model in which pubic area and genital detail may be seen and can include legs up or apart. Picture [illegible] of pubic area. No secretion, no penetration, no pulling apart of lips. No anus visible. No use of objects to imply sexual activity. | N/A | |
| [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] |

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## APPENDIX B - BANNED CONTENT LIST

The following content must not be made available:

### 1/ Illegal Content

- Any material which is in breach of the national criminal law or otherwise must not be carried on a commercial basis.

### 2/ Sexually Explicit Material

Content of a highly explicit sexual nature, the sole purpose of which is sexual entertainment. The below applies to both heterosexual and homosexual activities equally.

#### a) Minors and Role playing

- Content depicting, or implying that a person who is (or who appears to be) under 18 years of age is engaged in sexual activity, or presented in a sexually provocative manner which may include depictions involving adults role-playing as non-adults
- All Vodafone's adult content providers must confirm that the models in the images supplied are over 18 years of age

#### b) Abusive sexual activity

- Sexual violence e.g. sexual assault and / or rape
- Content (including dialogue) likely to encourage an interest in abusive sexual activity (e.g. paedophilia, incest)

#### c) Sado Masochistic activity

- Content depicting or implying the infliction of constraint, coercion and pain or physical harm in a sexual context
- Content depicting or implying the use of any form of physical restraint, for example, gags and bonds

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**d) Other Fetish sexual activity**

- Content depicting or implying niche fetish activity not covered by the Adult Erotic Matrix; for example, necrophilia, defecation and urolagnia
- Content depicting or implying content that may or may not be covered by the Adult Erotic Matrix but is exploiting vulnerable people; for example, disabled or elderly people

**e) Bestiality**

- Content depicting or implying bestiality (even where legal within the OpCo territory)

**f) Live adult erotic web cams**

- Live web cams providing adult erotic services

**g) Use of sexual objects/props**

- Content depicting the use of sex props that are excessively large (relative to normal anatomy) or content depicting the sexual use of sharp or dangerous objects, or objects that imply illegal or abusive activities; for example, the use of guns and knives, bottles, children's toys, religious artifacts, household appliances or sports equipment.

**3/ Violence**

Content depicting actual instances of harm or distress to people or animals where used as a form of entertainment, excluding the reporting of an incident of public interest within news or documentary content that is acceptable within the Portuguese public broadcasting standards; or any fictional content covered by any Portuguese classification system e.g. gun scenes in film clips or any content that is acceptable within the Portuguese public broadcasting standards

- Extreme or gratuitous violence, including restraint, torture, sadism, mutilation, execution
- Exploitative / sadistic violence towards vulnerable and defenceless people and animals
- Self-infliction of extreme pain or physical harm resulting in permanent damage or death
- Content that incites violence

**4/ Incitement of illegal or anti-social behaviour**

- Incitement of racial, religious or ethnic hatred or abuse

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- Incitement or glamorising of anti-social behaviour such as illegal drug taking and solvent abuse, the glorification of vandalism, bomb making, terrorism etc
- Material that demonstrates criminal techniques

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**SCHEDULE III**

**VODAFONE'S POLICIES**

**Part B - Code of Ethical Purchasing**

2 Code of Ethical Purchasing. p...

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**VODAFONE CODE OF ETHICAL PURCHASING**

As one of the world's largest mobile telecommunications network companies, Vodafone has a significant role to play in enriching people's lives.

We also understand that we have a significant role to play in managing our business carefully and responsibly, which is why we have adopted a set of core Values and Business Principles to govern our activities and interactions with all our stakeholders across the world, including our suppliers.

Our Business Principles declare a commitment "to promote the application of our Business Principles by our business partners and suppliers."

The following Code of Ethical Purchasing is to be read in conjunction with our Business Principles, and is designed to promote safe and fair working conditions, and the responsible management of environmental and social issues in Vodafone's supply chain.

The Code has been developed in consultation with employees, suppliers, investors and Non-Governmental Organisations. It sets out the standards we wish to see achieved by Vodafone and our suppliers over time.

The principle of continuous improvement applies to all aspects of the Code.

In accordance with the implementation provisions of the Code, Vodafone will require first level suppliers to acknowledge their understanding and acceptance of our Code and to confirm that they will comply.

Vodafone will work collaboratively with our suppliers on the implementation of the Code, which may include joint audits and site visits to assess performance.

Vodafone will publicly report on the implementation of and compliance with the Code.

Vodafone will encourage all suppliers to implement our Code across their whole business and within their own supply chains.

**IMPLEMENTATION OF THE CODE**

**Ownership**

- The Vodafone Director of Global Supply Chain Management is the owner of the Vodafone Code of Ethical Purchasing, and reports to the Integrations and Operations Committee on the implementation of the Code.
- The Director of Global Supply Chain Management and the Heads of Supply Chain Management in each of the Operating Companies have operational responsibility for the implementation of the Code.

**Communication**

- Vodafone will communicate and promote its Code of Ethical Purchasing internally and externally to relevant stakeholders.
- Suppliers are encouraged to take all reasonable endeavours to promote the Code to their suppliers and subcontractors.

**Training and Awareness**

- Vodafone and its suppliers will ensure that all relevant people are provided with appropriate training and guidelines to support the Code.

**Application**

- Suppliers applying this code are expected to comply with all relevant laws, regulations and standards in all of the countries in which they operate.
- The Code is applied for the purposes of promoting safe and fair working conditions and the responsible management of environmental and social issues in Vodafone's supply chain.
- Suppliers will be asked to confirm (in writing) that they are implementing the Code, or similar purchasing standard such as the Ethical Trading Initiative (ETI) Base Code, Social Accountability International's SA 8000, or the Chartered Institute of Purchasing and Supply Ethical Business Practices in Purchasing and Supply.
- Vodafone will work collaboratively with its suppliers on the implementation of the Code, which may include joint audits[1] and site visits to assess performance against the Code.
- Suppliers will be asked to provide Vodafone with reasonable access to all relevant information and premises for the purposes of assessing performance against the Code, and use reasonable endeavours to ensure that sub-contractors do the same.

---

1 Audits would ideally be conducted jointly between Vodafone and the supplier, and may also include the assistance of an industry representative, or relevant Non-Governmental Organisation.

**Corrective Action**

- Suppliers are expected to identify and correct any activities that fall below the standard of the Code.

- Suppliers shall immediately report to Vodafone any serious breaches of the Code, together with an agreed schedule for corrective action.

- Where serious breaches of the Code persist, Vodafone will consider termination of the business relationship with the supplier concerned.

**Monitoring and Reporting**

- Vodafone's Corporate Responsibility and Purchasing teams will use a risk-based approach[2] to monitor implementation of and adherence to the Code in our supply chain, and will report progress in the annual Vodafone Corporate Social Responsibility Report.

- Vodafone and its suppliers will use reasonable endeavours to provide employees and other stakeholders with a confidential means to report any actual or potential breach of the Code.

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2 Vodafone will focus on those parts of the supply chain where the risk of not meeting the Code is highest and where the maximum difference can be made with resources available.

**CODE OF ETHICAL PURCHASING**

**1. Child Labour**

- No person is employed who is below the minimum legal age for employment.[3]

- Children (persons under 18 years) are not employed for any hazardous work, or work that is inconsistent with the child's personal development.[4]

- Where a child is employed, the best interests of the child shall be the primary consideration.

- Policies and programmes that assist any child found to be performing child labour are contributed to, supported, or developed.

**2. Forced Labour**

- Forced, bonded or compulsory labour is not used and employees are free to leave their employment after reasonable notice. Employees are not required to lodge deposits of money or identity papers with their employer.

**3. Health & Safety**

- A healthy and safe working environment is provided for employees, in accordance with international standards and national laws. This includes access to clean toilet facilities, drinkable water and, if applicable, sanitary facilities for food storage.

- Where an employer provides accommodation, it shall be clean, safe and meet the basic needs of employees.

- Appropriate health and safety information and training is provided to employees.

**4. Freedom of Association**

- As far as any relevant laws allow, all employees are free to join or not to join trade unions or similar external representative organisations.

**5. Discrimination**

- Negative discrimination[5] including racial or sexual discrimination is prohibited.

**6. Disciplinary Practices**

- Employees are treated with respect and dignity. Physical or verbal abuse or other harassment and any threats or other forms of intimidation are prohibited.

**7. Working Hours**

- Working hours of employees comply with national laws and are not excessive[6].

---

3 Minimum age is the age of completion of compulsory schooling, or not less than 15 years (or not less than 14 years, in countries where educational facilities are insufficiently developed).

4 Personal development includes a child's health or physical, mental, spiritual, moral or social development.

5 Forms of discrimination may include race, colour, sex, sexual orientation, religion, political opinion, nationality, social origin, social status, indigenous status, disability, age and union membership.

6 Consideration should be given to the type of work performed and the acceptable working hours for the role and the country concerned.

## 8. Payment

- Employees understand their employment conditions and fair and reasonable pay[7] and terms are provided.

## 9. Individual Conduct

- No form of bribery, including improper offers for payments to or from employees, or organisations, is tolerated.

## 10. Environment

- Processes are in place to actively improve the efficiency with which finite resources (such as energy, water, raw materials) are used.
- Appropriate management, operational and technical controls are in place to minimise the release of harmful emissions to the environment.
- Appropriate measures are in place to improve the environmental performance of products and services when in use by the end user.
- Innovative developments in products and services that offer environmental and social benefits are supported.

## REFERENCES

Vodafone's Code of Ethical Purchasing is based on the following international standards:

- The United Nations Universal Declaration of Human Rights.
- The Conventions of the International Labour Organisation.
- The United Nations Convention on the Rights of the Child.

Reference has also been made to:

- Social Accountability International's SA 8000 Standard
- The Ethical Trading Initiative (ETI) Base Code, and
- The UN Draft Norms of Responsibilities of Transnational Corporations and Other Business Enterprises with Regard to Human Rights (2003)

With respect to the International Labour Organisation Conventions on Labour Standards, the following provisions have been referenced in the development of this Code:

- Convention 1 (Acceptable working hours)
- Conventions 29 (Forced and bonded Labour)
- Convention 87, 98, and 135 (Freedom of Association)
- Convention 111 (Discrimination)
- Convention 138 (Minimum Age)
- Convention 135& Recommendation 143 (Workers' Representatives Convention)
- Convention 155 Article 19 (Health and safety training)

## DEFINITIONS

**A child** means a person below the age of 18 years, as defined in Article 1 of the United Nations Convention on the Rights of the Child.

**Personal development** is described in the Article 32 of the United Nations Convention on the Rights of the Child.

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7 Consideration should be given to the type of work performed and the market wage for the work as well as any statutory minimum wage for the country concerned.

**SCHEDULE IV**

**CUSTOMER SUPPORT AND COMMUNICATIONS**

For the purposes of Clauses 4, 8 and 17 of this Agreement, the following contacts shall be used as shown below:

## 1. Technical support

Subject to Section 8.2 of the Agreement, Twistbox shall be responsible for the creation, management and maintenance of a 24/7 technical support service the contacts of which are:

Telephone number: +1-818-301-6200
Cell Number: +1-310-770-6820
Email: support opco vopt@twistbox.com

For Priority 1 issues:
Telephone Number: +1-818-398-0303

## 2. Contract communications

Any contract communications shall be made by either party to the other as follows:

**VODAFONE**
Av.D.João II, Lote 1.04.01
Ala Norte, 6° piso
Parque das Nações
1990-093 Lisboa
Name:António Carriço
Title: Director de Gestão de Conteúdos
E-mail: antonio.carrico@vodafone.com
Tel: + 351 21 091 4407
Fax: + 351 21 091 4414

TWISTBOX ENTERTAINMENT, INC.

14242 Ventura Boulevard, Third Floor
Sherman Oaks CA 91423 USA

Name: David Mandell
Title: EVP/General Counsel
E-mail: legal@twistbox.com
Tel:+1-818-301-6200
Fax:+1-818-301-6239

## 3. Business Contacts

Any business communication shall be shall be made by either party to the other as follows:

**VODAFONE**
Name: Paulo Costa
Product Manager
Tel: + 351 21 091 5346
Email: paulo.costa@vodafone.com

**TWISTBOX ENTERTAINMENT, INC.**
Name: Jason Silberberg
Title: Senior operator Account Manager
Tel:+1-818-668-776
E-mail: jsilberberg@twistbox.com

## 4. Technical Communications

Any technical communication shall be shall be made by either party to the other as follows:

**VODAFONE**
Name: Paulo Costa
Product Manager
Tel:+351 21 091 5346
Email: paulo.costa@vodafone.com

**TWISTBOX ENTERTAINMENT, INC.**
Name: Terance Thatch
Title: Project Manager
Tel:+1-818-301-6200
Cell:+1-310-770-6820
E-mail: tthatch@twistbox.com

## 5. Invoicing Communications

Any invoicing communication shall be shall be made by either party to the other as follows:

**VODAFONE.**

**TWISTBOX ENTERTAINMENT, INC.**

Email: invoices@twistbox.com and mrosengarten@twist

A/C Dep$^{to}$Financeiro
Av. D. João II, Lote 1.04.01
Ala Norte, 2° piso
Parque das Nações
1990-093 Lisboa
Portugal

## 6. Banking details

All payments made under this Agreement by Vodafone to Twistbox shall be made pursuant to the provisions of Clause 4 to the following address:

**Send to:**
American Express Bank, Frankfurt
Swift Code: AEIBDEFXXX

**Credit to:**
East West Bank, Pasadena
Swift Code: EWBKUS66XXX
ABA # 3222070381
Account: 018081601

**Further Credit to:**
East West Bank
18321 Ventura Boulevard
Tarzana CA 91356
Account Name: Twistbox
Account Number: 0082708884
ABA # 322070381

---

## SCHEDULE V

### Penalties

1. Pursuant to the provisions of Clause 5.1 (c) of this Agreement, VODAFONE reserves the right to apply the following penalties to Twistbox, whenever any of the following event occurs and Twistbox is not able to resolve the issues within the agreed SLA, as set forth in Schedule 1,5:

   a) In case there are mistakes in the Content (including but not limited to rude language, factual, graphical image mistakes or typos), Twistbox shall pay Vodafone, for each such mistake or typo, as a penalty, a sum corresponding to [INFORMATION OMITTED AND FILED SEPARATELY WITH THE COMMISSION UNDER RULE 24B-2] of the minimum monthly guaranteed fee, as set out in Schedule II;

   b) In case any of the SLA defined in Schedule I is not met Twistbox shall pay Vodafone, for each such failure, as a penalty, a sum corresponding to [INFORMATION OMITTED AND FILED SEPARATELY WITH THE COMMISSION UNDER RULE 24B-2] of the minimum monthly guaranteed fee, as set out in Schedule II.

2. The aggregate value of the penalties set out in the previous paragraph shall not exceed per month 20% of the minimum monthly guaranteed fee, as set out in Schedule II.

3. Without prejudice of the application of the penalties defined in the Schedule, whenever the events described in paragraph 1 occurs during two consecutive months Vodafone may terminate this Agreement pursuant to the provisions of Clause 10.

---

**IN STRICT COMMERCIAL CONFIDENCE**

**Portugal**

**Vlive! White Label Erotic Portal**
***TOP LEVEL SUMMARY INFORMATION***

*Prepared by:* Jason Silberberg
*Direct telephone:* +1.818.301.6200 Ext. 259
*Mobile telephone:* +1.818.668.7776
*Fax:* +1.818.708.0598
*E-mail:* Jason@waat.com

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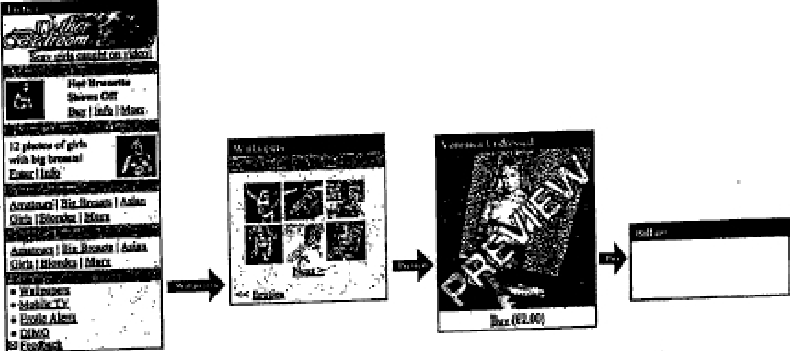
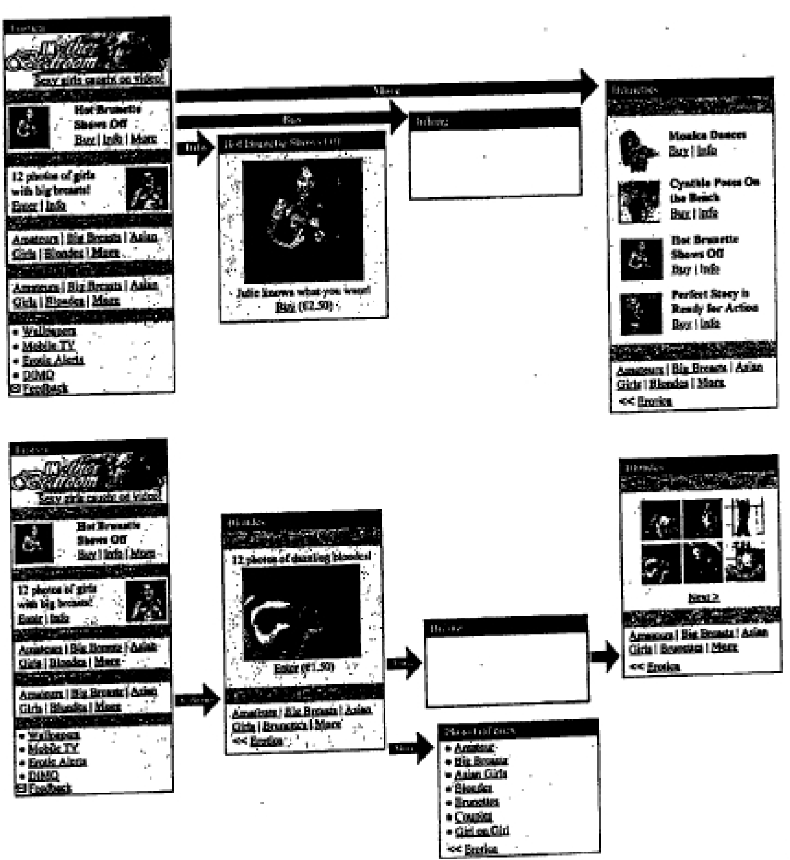
**Proposed User Experience/Interface:**

Through case studies from other European operators we work with we have found that a user has a specific liking of erotic content. Our ability to locate and optimize a user's preference is built into our platform (please refer to Appendix A), optimizing ARPU and user frequency. The site is genre specific with no reference to brands (see below). Users will have the opportunity to find a specific genre per product, i.e. Lingerie, Big Breasts, Bikinis, Brunettes, etc. These categories are broken down into product types, i.e. (Video, Wallpaper and Images). For wallpapers and videos we recommend a pay-per-event billing method. For images galleries, which contain 12 images of a specific genre, we recommend a pay-pay-photoset model. Price point recommendations are as follows, per video download is €2.50, per video streaming €2.00, per wallpaper is €1.00 and per photoset is €1.50. In addition, the use of a feedback form is a beneficial service allowing users to voice their opinion of the content and the site, giving us priceless information on what can be changed or added to generate additional revenue per user. Furthermore, the ability to purchase a product from the main page will heighten conversion and revenue; these areas are updated everyday as well as the featured site portion of the portal. The portal layout allows for optimal navigation; users will be able to browse and locate their specific content quickly and will consequently have an effect on revenue and user experience, while keeping click through and churn at a minimum. Update frequency will be daily and weekly, dependent on the genre and product. Video, Wallpapers and Image categories will be updated on a weekly basis.





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**Types of Content and Services:**

The site contains Videos, Wallpapers, Java Games and Photosets. Our video offering will be extensive and device specific - Offering 17, 30 and 90 second downloadable videos dependent on the device capabilities. Our platform recognizes the User Agent and sends the appropriate file respectively. In addition to Video Downloads, we will support and make available Streaming Videos between 2-4 minutes, either being hosted on Vodafone Portugal's platform or a third party, Triple-it, if needed. High quality Wallpapers will also be available supporting more than 1,000 handsets and over 150 different dimension types. Our system will recognize the User Agent and send the appropriate wallpaper dimension to ensure quality and user experience. We will feature more than 10 Java Games within the portal, either off of our games platform or off the Vodafone Portugal Platform. We support over 700 handsets and continuously make new ports for new handsets released in various markets ahead of their commercial release. Photosets are made available as well, giving users the opportunity to purchase one photoset at a time, each photoset contains 12 images. The photos have a preview image and a close-up image giving high user experience and quality. Samples of all the above mentioned content types and service are below for your reference:

**Content Brands Portfolio:**

**Proposed Content Refresh:**

Refresh rates will vary from genre and product. Below is a breakdown of our content refresh rate:

Videos, Wallpapers and Photosets will be updated weekly. Java games will be updated on a biweekly basis if necessary; currently we handle the erotic game section of Vodafone Live!

**CRM Capabilities:**

All content is meta-tagged with more than 40 unique identifiers (please reference Figure 3 in Appendix A). As users navigate through site, content is dynamically presented to best suit customer needs as determined by our Psychographic Analyzer (please reference Figure 4 in Appendix A). Content is presented to the user via targeted promotions, appearing as banners and, recommendation links (please reference Figure 5 in Appendix A).

Serving Targeted Content and Ads

Contextual

Personalized

Identifying Personal Preferences

Traffic Logs

Search Queries

Brand Preference

Purchase Behavior

Ad Click through

**SLA:**

We guarantee a 99.5% availability of the WAP portal, which includes all the information and telecommunication systems including connection lines as well as any application used for the provision of the service under our area of direct control and responsibility. We will provide the necessary support and maintenance services, at a 24x7x365 basis for all technical issues which may or may not arise. In the case that a problem does arise, we will notify Vodafone Portugal with a trouble ticket within 24 hours, dependent on the Priority Level, detailing the problem and current status of the specific issue as well as a time of completion of when the issue will be resolved. All issues will be broken down into 3 Priority Level as follows:

Priority Level 1 - Complete fail of service or users have issues with access or purchasing - Level 1 Priority notifications will be sent no later than 4 hours and resolved within 24 hours.

Priority Level 2 - Issue where parts of the service are unavailable or inaccessible, but the main part is still functional - Level 2 Priority notifications will be sent no later than 12 hours and resolved with 48 hours.

Priority Level 3 - Non-critical issue, i.e. typos, translation errors, etc. - Level 3 Priority notifications will be sent no later than 24 hours and resolved within 72 hours.

We reserve the right of a Schedules Maintenance of 3 hours per calendar month and availability does not apply. Notification of any Scheduled Maintenance will be provided 72 hours before each occurrence. We will deliver monthly reports including all data necessary for the calculation of, i.e. justified downtime, total availability of service provision, and detailed traffic (e.g. volume and type of traffic exchanged etc.) and will keep the relevant data for a period of at least 12 months. We shall provide access to the original system logs as part of problem investigation and verification should this need be necessary and communicated at least 2 working days prior to the required examination. For incidents identified through Quality Control testing where content retrieved by subscriber has no substance or with inaccurate or incomplete content or when no content is delivered at all during the service delivery/consumption process we will notify Vodafone Portugal in writing within 24 hours of the instance. The delivery/provision of the service to the end user is done one at a time following a request by the end user (pull service delivery). If needed, a “black list” can be used to deny access to certain users based off of their MSISDN whenever this is reasonably possible. For more detailed information concerning our SLA, please send a formal request and one will be provided to you.

**Experience with PML:**

We have a long standing experience with PML from Version 1.10 to the newest R7 and R9 versions. We have been working with numerous Vodafone operators since 2001 and have been building and maintaining PML sites throughout the years.

**Timings for deployment:**

Once a decision is made, we can have our service ready for testing within 2-4 weeks of receiving the official decision and live within a 1 week of delivery.

**Companies we work with:**

We currently work with over 90 operators worldwide, including more than 10 Vodafone operators. Additionally, we manage and aggregate more 10 erotic operator portals. For a highlighted list of operators we currently work with, please refer below (for a complete list, please send a request and one will be provide immediately):

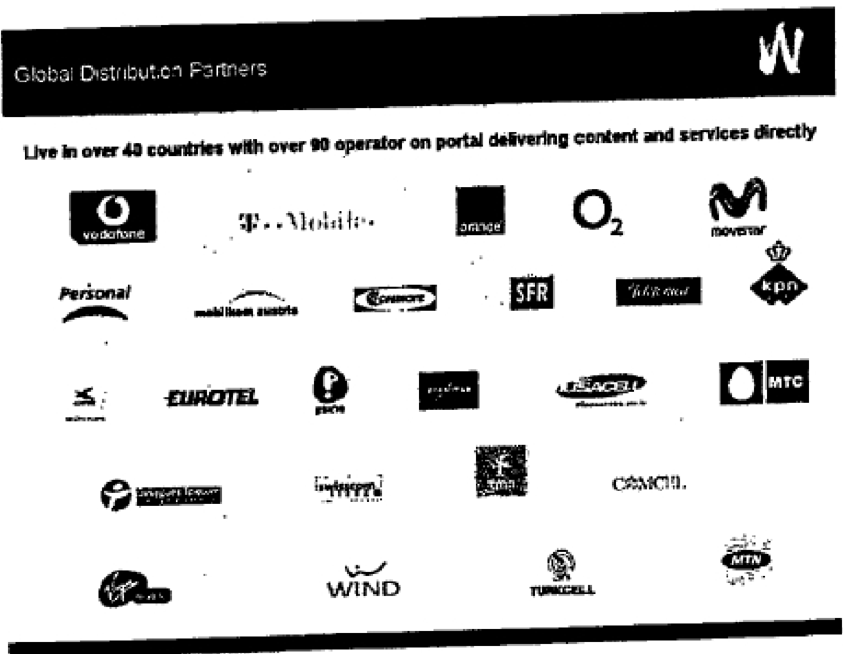
UK, Spain, Germany, France, Netherlands, Greece, Hungary, Belgium, Sweden, Italy, Romania, Czech Republic, Austria, Switzerland, Luxembourg, Slovenia, Portugal

T · · Mobile ·

Germany, Austria, Czech Republic, Slovakia, Poland, Croatia, Netherlands,

UK, Portugal, Spain, Netherlands, Poland, Slovakia, France, Belgium, Dominican Republic, Switzerland

UK (02), Czech Republic (02), Spain, Colombia, Mexico, Chile, Argentina, Peru

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**Appendix A:**

**Figure 1: Waat Media - Sample Reporting**

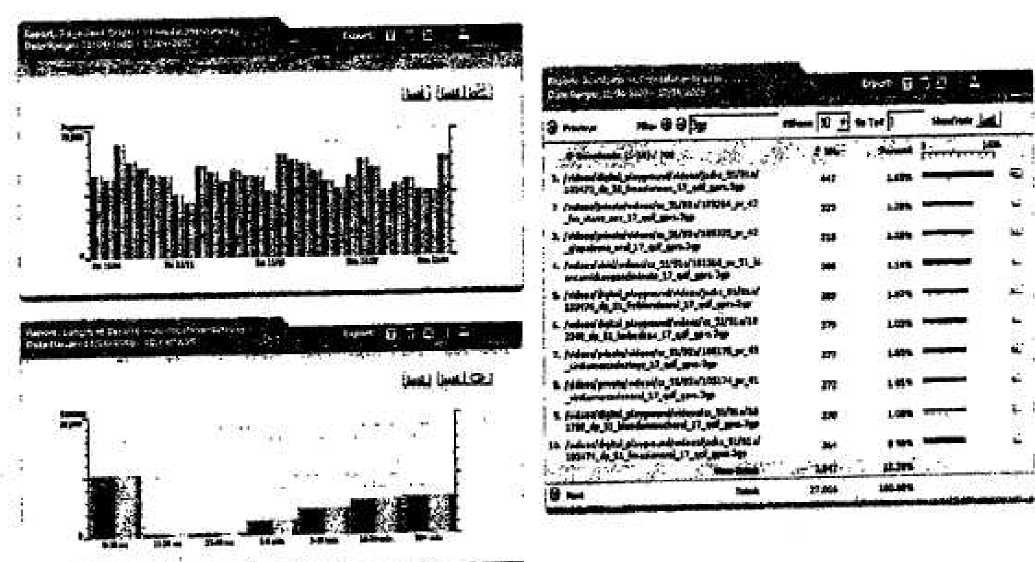
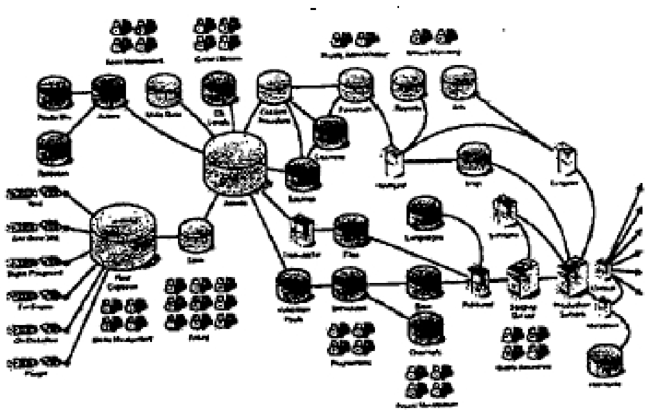
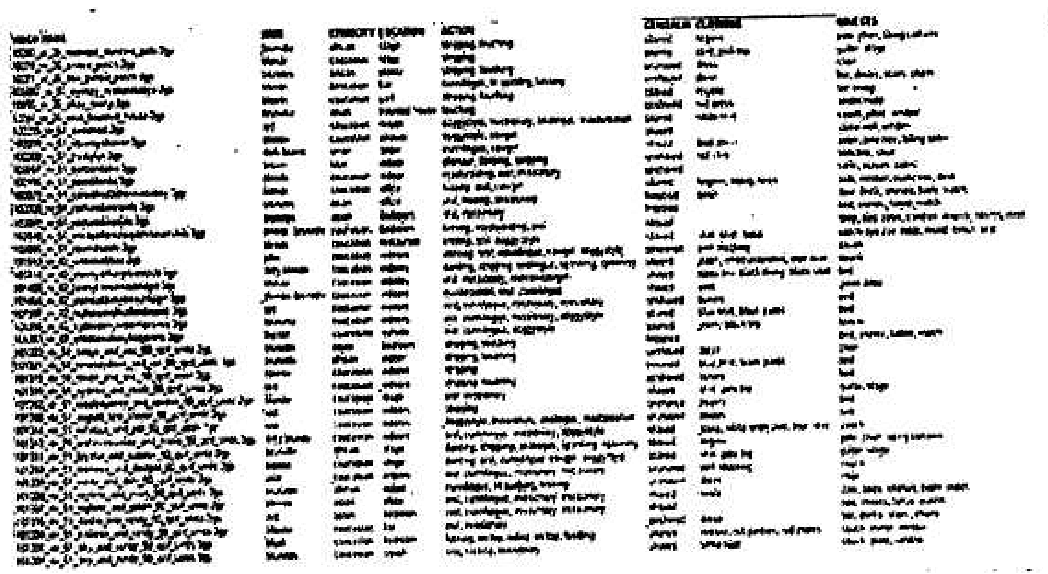


**Figure 2: Waat Media Platform -**



The Waat Media platforms contains an array of module specific to adult content including model release information, content meta data, profiling and advertising / content targeting.

**Figure 3: Sample Content Meta Data -**



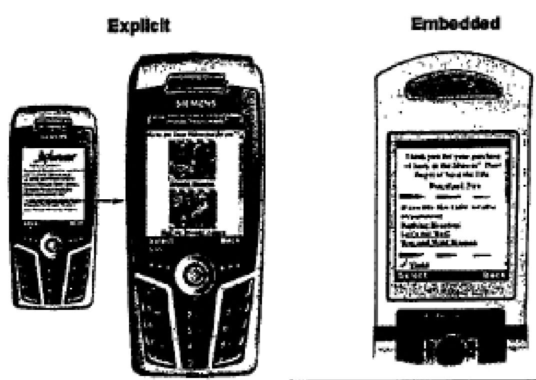
Meta Data information includes over 40 fields of data per piece of content form hair colour to breast size to activity. These key have been built over 3 years of content and behaviour analysis.

**Figure 4: Sample Psychographic Profile -**

Dirty
Spooning
Analingus
Stockings
Glamour
Two Girls
Dancing
Missionary
Doggy
Blowjob
Cunnilingus
Bra
Brunette
Stripping
Panties
Blonde
Kissing
Dildo
Unshaved
Shorts
0.00% 2.00% 4.00% 6.00% 8.00% 10.00%

Based a users behaviour and certain algorithms, our platform is able to build a psychographic profile in a customer and place them in a class that we can optimize their experience.

**Figure 5: Targeting and Recommendations -**




Our targeting module allows us to dynamically serve content that best suite the customer. We dynamically change the order of links, able to service up targeted banners and advertising as well as make recommendation at time of purchase and as well as a post purchase up sell.

**Figure 6: Sample Products**

**Contract**

**for**

**Content Hosting and Services**
**“Applications and Games Service”**

**between**

**Vodafone D2 GmbH**
**Am Seestern 1**
**40547 Düsseldorf, Germany**

**-hereafter known as “VF D2” -**

**and**

**Twistbox Games Ltd & Co KG**
**Lohbachstr. 12**
**58239 Schwerte**
**Germany**

**- hereafter known as the “Vendor” -**

**- both hereafter referred to jointly as “Parties” -**

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## A. General

### 1. Preamble

Only the German version of this document is authoritative.

VF D2 is a mobile phone network operator and provides end customers and others a range of value-added services and products. The vendor, as a specialized service provider for mobile network operators and other business customers, develops and operates mobile value-added solutions. VF D2 intends to use individual or multiple added-value service solutions provided by the vendor for company purposes. VF D2 also intends to draw on the experience gained from working with the vendor for the benefit of the Vodafone Group, i.e. for all the Vodafone Group Pic's direct and indirect subsidiaries, insofar VF D2 views this as pertinent in each specific case. In this context, and to achieve these goals, the parties agree on the following contractual terms and conditions.

### 2. Subject Matter of Contract

2.1 The subject matter of this contract is to acquire the hosting and provide the following products to end customers, including their further development (hereafter "contractual services"): Applications and games that end customers download to their mobile phones or play on line without the option of storing (hereafter "contractual products"), including design and hosting of the related WAP and WEB pages. The details are contained in the attachments to this contract, especially in the "Specifications" attachment.

2.2 Services shall be provided via a number of sales channels, especially the Vodafone WAP portal and also WEB portals. The details are contained in the attachments to this contract, especially in the "Specifications" attachment.

2.3 This contract governs the vendor's provision of the infrastructure and application for use by the customer via the VF D2 network, and all rights and obligations resulting from this for the parties.

2.4 The vendor assumes responsibility for content handling including the clarification of rights, pursuant to the requirements in the "Specifications" attachment. VF D2 and the vendor shall jointly agree on the focus of content design and optimize it according to the sales figures achieved. In the event of disagreement, VF D2's decision is binding.

2.5 The vendor shall - if desired by VF D2 - conclude contracts with content partners to be named by VF D2 and design an attractive and up-to-date portfolio.

2.6 If nothing to the contrary is agreed, all services provided by the vendor to VF D2 shall be offered to the customer in the name of VF D2.

## 3. Scope of Service

3.1 The vendor shall provide, at no additional cost, the infrastructure and application for customer use as well as a complete and error-free integration of vendor systems with all relevant systems belonging to VF D2, the Vodafone Group (e.g. GSP) and / or any third-party partners specified by VF D2. This shall apply irrespective of whether the vendor, and / or third parties, were involved in the creation of the existing relevant VF D2 systems.

3.2 The vendor also undertakes to integrate, at no extra cost, a fully functional test version of every service in the multi-vendor test center operated jointly by VF D2 and vendors, which consists of a technical model of the VF D2 mobile network.

3.3 If the technical specifications set down in this contract, including attachments, are incomplete, the vendor shall nevertheless be obligated to implement the services, such that the results are functional and complete, conforming both with latest technology and all other clauses in this contract. If the aforementioned specifications are not suited to achieve service goals or contain errors, the vendor shall notify VF D2 of this, suggest any adjustments or changes needed to achieve the service goals, and implement these, should VF D2 demand, at no additional cost. Where software is used and no agreement has been made to the contrary, the vendor shall use the newest version of the respective software.

3.4 The vendor shall, for every service performed, provide at no extra charge operating instructions, documentation, interface descriptions, and other information required by VF D2 for use, support, maintenance and repair of the contractual services, as well as for understanding how they function.

3.5 The vendor shall provide training sessions and training documents for training the relevant VF D2 personnel (e.g. in Customer Care, Product Management, Partner Integration) as well as for third-party partners, where applicable. This shall also apply for when launching new releases.

## 4. Content Handling

The vendor shall also take responsibility for content handling, and in certain cases, if desired by VF D2, for acquiring and supplying an attractive portfolio of the contractual products. The number of, and details pertaining to, the products to be provided at the start, or in the course of time, is set down in the "Specifications" attachment. The vendor shall acquire the portfolio as follows:

4.1 The vendor shall himself acquire licenses for customer use of the contractual products, if this is desired by VF D2 in specific cases. The vendor shall follow VF D2's specifications in doing so.

4.2 The vendor hereby transfers to VF D2 the non-exclusive right to offer and advertise the contractual products for which the vendor obtained licenses in the Vodafone-live! Portal and in the Vodafone internet presence, and to make them publicly available via downloads to customers of Germany mobile network providers, service providers pursuant to the Telecommunications Act (TKG), and mobile virtual network operators, such that users can determine themselves place and time of access. This includes, in the case of a download, the right to grant users the right to duplicate and save contractual products to their mobile end devices. The right to advertise the contractual products in all media is also transferred to VF D2. Due to potential non-concurrence on the part of licensers regarding advertising (product endorsement by artist), VF D2 shall inquire about advertising in media other than Vodafone Live! in good time to obtain written approval by the vendor or the licenser.

4.3 VF D2 itself owns licenses for the contractual products, which VF D2 acquired from licensers. VF D2 hereby grants - as far as possible - the vendor the right to store the contractual products for which VF D2 acquired licenses on the vendor's servers for use as downloads. The vendor shall be obligated to observe all rules of the VF D2 licenser regarding the contractual products, and to perform for VF D2 any contractually-agreed release processes etc.

4.4 The vendor shall provide the licensers the options for delivering data for the contractual products specified in the "Specifications" attachment. The vendor shall describe these delivery processes in detail in a document that either vendor or VF D2 shall supply to the licensers.

4.5 The vendor shall optimize for downloading the data delivered pursuant to section 4.4. The vendor shall also ensure that all end devices listed in the "Specifications" attachment shall be supported for the contractual services, by the dates named therein. VF D2 shall provide the vendor with an updated version of this list at regular intervals, and notify the vendor in good time of any end devices added. The vendor shall support the latest versions of the listed end devices for contractual services.

**5. Service Development**

The vendor shall develop the platform for the contractual service to conform with VF D2 specifications. The following points are especially important:

5.1 The service's scope of function at time of launch shall comply with the specification in the "Specifications" attachment.

5.2 The navigation for the service as well as the page displays shall comply with the contract attachments and require clearance from VF D2 in the framework of integration preparation.

5.3 The link to VF D2 content tracking system shall conform with the specifications for the Integrated Purchase Page (IPP) interface contained in the "Specifications" attachment. If needed, the vendor shall implement a link to additional billing systems used by VF D2 (such as credit card, online payment).

5.4 The vendor shall ensure that categorization of the contractual products conforms with the specifications set down by VF D2.

5.5 The vendor shall always protect the contractual products against non-permitted storing, copying or forwarding according to the relevant VF D2 specifications.

5.6 The vendor shall - if nothing to the contrary is stipulated - implement the integration in the Vodafone-live! portal pursuant to the specifications regarding PML authoring contained in the "Specifications" attachment.

5.7 Where the specifications and instructions provided by VF D2 are not suited to achieve service goals or contain errors, the vendor shall notify VF D2 of this, suggest any adjustments or changes needed to achieve the service goals, and implement these, should VF D2 demand, at no additional cost.

**6. Operating the Service**

The vendor shall hold full responsibility for the technical and content-related operation of the contractual service. This comprises the following:

6.1 The vendor shall be responsible for hosting the service and all contractual products. Requirements relating to technical availability etc. are specified in the "Service Level Agreement" attachment.

6.2 The vendor shall regularly consult with VF D2 on the guidelines for content design. A detailed description of this is contained in the "Specifications" attachment.

6.3 The vendor shall regularly update the service portfolio or contents. A detailed description of this is contained in the "Specifications" attachment.

6.4 Where the specifications as described are not suited to achieve service goals, or contain errors, the vendor shall notify VF D2 of this, suggest any adjustments or changes needed to achieve the service goals, and implement these, should VF D2 demand, at no additional cost.

**7. Reporting and License Administration**

The vendor, in the framework of the contractual service, shall process the transaction data collated for the following purposes:

7.1 The vendor shall regularly provide VF D2 with the statistics and management reports listed in the "Specifications" and "Service Level Agreement" attachments in electronic form and, if needed, in writing.

7.2 The vendor shall transfer all types of invoices relating to the licenses for the contractual products (such as for GEMA, licensers and other partners) - either in its own name to the relevant third parties, within the time limit specified in the respective agreements, or in the case of VF D2 license agreements, to VF D2 within the time limit specified, and to answer any related queries from third parties or VF D2. The vendor shall be responsible for complying with all other contractual obligations arising from its own license agreements, as well from vendor's obligations arising from VF D2 license agreements, in providing the contractual services. Provided that the vendor shall not be responsible for any financial obligations owed by VF D2 to any third parties.

7.3 The vendor shall pay the license payments resulting from these invoices within the time specified, on receipt of correct licensers' invoices.

**8. Enhancement**

The vendor and VF D2 shall enhance the contractual service on a continual basis, as follows:

8.1 The vendor shall continually enhance the contractual service, in mutual agreement with VF D2, at no additional charge. In order to protect VF D2's first mover status, the vendor shall implement for VF D2 at an early point in time additional features made possible by technological progress, introduced by VF D2 competitors, required by the VF Group in the framework of cross-concern product planning, or implemented by the vendor for other customers.

8.2 For this purpose, the vendor and VF D2 shall hold a joint workshop once a month, unless otherwise agreed. The vendor shall record the result of this workshop in the form of a specification together with a project plan for implementation, and send it to VF D2 for clearance. In the event of clearance being refused, the vendor shall improve the specification and project plan to incorporate the wishes of VF D2.

8.3 On clearance being given, the vendor shall proceed with implementation pursuant to project plan and to this contract.

**9. Prices, Payments, Audit**

9.1 The prices are specified in the "Prices and Discounts" attachment to this contract. Prices are exclusive of sales tax and in euros if not otherwise specified. All contractual services are paid for according to the "Prices and Discounts", and the "Consulting, Prices and Service" attachments.

9.2 The prices or revenue share agreed cover all the vendor's costs arising in connection with service performance.

9.3 If the vendor draws certain parts of a service from a third party, according to agreement or stipulated by VF D2, the vendor shall be obligated to pass on to VF D2 purchase price savings arising in business with a third party, subsequent to agreement on the applicable price between the vendor and VF D2. Any price mark-up made for the vendor's purchase price shall be shared proportionally.

9.4 VF D2 shall pay the contractual fee to the vendor within 30 days of receipt of a correct invoice.

9.5 If the vendor does not dispute the correctness of the usage overviews provided by VF D2 within a year of their receipt, they shall count as correct and binding for the vendor.

9.6 The invoice must contain the vendor's tax number and sales tax certificate.

9.7 Payment by VF D2 shall not imply any agreement with the invoice.

9.8 VF D2 will keep accurate and complete records in accordance with generally accepted accounting principles in order to determine the accuracy of the payments, and retain such records for at least three (3) years following their generation. As long as the vendor is providing services to VF D2 under the terms of this contract, the vendor or its legal representative will have the right, subject to ten (10) days prior written notice to VF D2, to audit, and review all applicable records and accounts once each calendar year during VF D2's normal business hours. VF D2 will pay to the vendor all amounts discovered to be due to vendor as a result of any audit within thirty (30) days of invoice. In addition, in the event any such audit by vendor reveals a discrepancy of 10 percent (10%) or more in vendor's favor, VF D2 will pay all reasonable costs of the vendor's audit, and such costs shall be added to vendor's invoice for amounts due.

**10. Services**

10.1 If VF D2 orders additional advisory or consulting services to which contract of service laws apply, the terms of this contract are valid as stipulated above, except for the following departures:

10.2 An acceptance procedure shall not take place - with the exception of repair and error elimination services in the framework of an agreement on maintenance services.

10.3 Payments are made at 100% within 30 days of fulfillment of service and due invoicing, on the basis of detailed proof of service.

10.4 If the vendor's service comprises the commercial supply of temporary workers, the vendor shall guarantee the possession of an unlimited permit for the commercial supply of temporary workers pursuant to section 1, paragraph 1 of the Temporary Labor Assignment Act (German acronym: AÜG), and that the vendor has in the past ensured correct payment of taxes and social insurance contributions and shall continue to do so.

10.5 If payment on a time and material basis has been agreed for individual secondary services, billing shall comply with the "Consulting Prices and Services" attachment.

**11. Surety for VF D2**

11.1 No later than 6 weeks after the conclusion of this contract, the vendor will place at the disposal of VF D2 an absolute surety that waives the benefit of discussion, to the sum of [INFORMATION OMITTED AND FILED SEPARATELY WITH THE COMMISSION UNDER RULE 24B-2] euros, in a major bank domiciled in the European Union. At the end of the third month after the services are operational in accordance with the milestone plan, the aforementioned surety can be reduced to [INFORMATION OMITTED AND FILED SEPARATELY WITH THE COMMISSION UNDER RULE 24B-2] euros. At the end of the twelfth month after the services are operation in accordance with the milestone plan, the surety can be reduced to [INFORMATION OMITTED AND FILED SEPARATELY WITH THE COMMISSION UNDER RULE 24B-2] euros.

11.2 The aforementioned surety shall serve the securing of all VF D2 claims to service fulfillment, and claims arising from breach of vendor duties, especially warranty claims and reimbursement claims. The vendor shall be able to reclaim the surety 24 months after the services are operational.

## B. Contractual Services

### 12. Characteristics of the Services

12.1 The vendor shall faultlessly perform the services pursuant to the relevant contractual terms. This includes implementation of the latest science and technology available at the point in time of service fulfillment to the extent relevant for the respective services.

12.2 Furthermore, the services shall comply with the principles of good business sense, with the principles of correct accounting and, where applicable, with the principles of correct data processing.

12.3 The vendor's services shall meet all the technical specifications as defined by VF D2, pursuant to the latest version of the specifications. The delivery shall conform to the agreed specifications, and comply with all relevant laws, ordinances, rules and norms, especially regarding technical safety, workplace and health safety, and protection of the environment and fire prevention.

12.4 If due to technical or legal circumstances, it becomes urgently necessary to change the scope of service, or to depart from the aforementioned terms, the vendor shall notify VF D2 of this immediately orally and in writing, and immediately instruct VF D2 about viable potential solutions, and agree any changes with VF D2. VF D2 shall not be obliged to accept any detrimental price alteration resulting from such changes. Any warranty claims and / or claims for payment of contractual penalties shall remain unaffected.

12.5 The vendor shall inform VF D2, at no extra charge, of changes in the state of science and technology, and of products that have become important in the market and might affect the contractual services. The vendor's obligation pursuant to section 8.1 shall remain unaffected.

12.6 The vendor shall guarantee that services are interoperable with VF D2 IT systems as they were at the time that the vendor gained knowledge of them, or, pursuant to contractual terms between the parties, should have gained knowledge of them.

12.7 Connection of third-party computers or systems (especially PCs, laptops, servers etc.) to the VF D2 company network is not permitted.

## 13. Vendor Personnel

13.1 The vendor shall be obligated to deploy qualified personnel, sufficient in number for contract implementation.

13.2 The vendor shall, at own expense, regularly train employees entrusted with contract implementation, in order that all services comprising contract implementation retain a consistent level of quality over the whole duration of implementation.

13.3 If the vendor performs services on VF D2 premises, the vendor shall immediately inform VF D2 of any workplace injuries to vicarious agents.

## 14. Crisis Management

14.1 To avoid major threats to the error-free functioning and utilizability of the VF D2 network, i.e. crises, VF D2 conducts business continuity planning pursuant to BS7799 / ISO IEC 17799. These processes enable VF D2 to be prepared in advance for a crisis.

14.2 In order to safeguard delivery and performance during or after a crisis affecting VF D2 and / or the vendor, the vendor is obligated to implement similar or equivalent processes describing and securing all relevant activities and the vendor's crisis management in such situations.

These processes shall describe how the vendor will respond in specific situations, such as malfunctioning of the VF D2 network, or a vendor production halt due to natural catastrophe or fire.

The vendor is obligated to document these processes in written form and to check them regularly regarding their capacity to function. The vendor shall, on request, make this documentation available to VF D2.

## 15. Certification, Quality Indicators

15.1 The parties agree that the vendor shall implement a properly documented quality management system that meets the EN ISO 9001:2000 standards. All services, products, projects, and processes will be implemented according to the guidelines of said quality management system.

15.2 The vendor shall be obligated to comply with the quality standards specified in the "Example: ASP Quality Requirements" attachment.

15.3 The parties shall agree on quality indicators for all services to be performed by the vendor. The vendor shall guarantee conformity with these. This shall hold in particular for all specifications in the contractual agreements relating to speed, absence of faults, data throughput, admissible downtimes and response times.

**16. Other Testing by the Vendor**

16.1 The vendor shall regularly test the services' conformity with the contract, especially regarding compliance with the quality indicators, and shall document the test results in writing in meaningful test logs. The vendor shall retain these test logs for a period of two years from the date of their respective compiling. VF D2 shall have the right to view any or all of these test protocols at any time or request the submission of photocopies.

16.2 If nothing to the contrary is agreed for specific cases, tests shall be performed once a month.

**17. Deadlines, Delays, System Failures**

17.1 The vendor shall perform all services on time, and, in particular, meet all agreed service deadlines. Deadlines for providing a defined acceptance procedure shall also be regarded as service deadlines. If it should transpire that the performance of a (component) service on time is, for what ever reason, not possible, the vendor shall be obligated to notify VF D2 of this immediately, orally and in written form by fax, together with details of the reasons. The obligation pursuant to sentence 1 remains unaffected by this.

17.2 Service performance deadlines are, in particular, specified in the "Milestones" and "Specifications" attachments to this contract. The legal consequences of non-compliance with the service performance deadlines specified in the aforementioned attachment shall only take effect in cases where, for the respective service, VF D2 had an obligation to co-operate of more than negligible extent, if the vendor was to blame for the tardiness. In all other cases, the vendor need not have been at fault for the legal consequences to take effect.

17.3 For service deadlines, a contractual penalty of [INFORMATION OMITTED AND FILED SEPARATELY WITH THE COMMISSION UNDER RULE 24B-2] euros per day the deadline is exceeded shall become due and payable during the first 14 days, with a penalty of [INFORMATION OMITTED AND FILED SEPARATELY WITH THE COMMISSION UNDER RULE 24B-2] euros for each day hereafter, not to exceed a total for a single instance of [INFORMATION OMITTED AND FILED SEPARATELY WITH THE COMMISSION UNDER RULE 24B-2] euros. The same shall apply if no deadline has been agreed, but VF D2 has set the vendor a reasonable time period for performing the service, and this has expired without any result.

17.4 For service downtime, the vendor shall pay VF D2 the following contractual penalty: On availability falling short of the agreed level as per Section 3.3 of the SLA, the contractual penalty shall comprise [INFORMATION OMITTED AND FILED SEPARATELY WITH THE COMMISSION UNDER RULE 24B-2] euros for every further started hour of system downtime / system impairment. The contractual penalty shall not exceed [INFORMATION OMITTED AND FILED SEPARATELY WITH THE COMMISSION UNDER RULE 24B-2] euros for an individual case, irrespective of the total duration of system failure / impairment. The terms of the "Service Level Agreement" attachment to this contract, as well as vendor obligations connected to them pursuant to this contract, shall remain unaffected.

17.5 In the event of the vendor's failure to meet the agreed deadlines, modification / revision by the parties of the schedule originally agreed upon shall not affect the vendor's obligation to pay contractual penalties resulting from failure to comply with the original schedule.

17.6 Legal rights are not affected by tardy or unperformed services. Temporary hindering of service performance shall also constitute tardiness in the legal sense.

**18. Warranty, Liability**

18.1 The vendor shall be liable for breach of duty pursuant to legal provisions, without any restriction. This means that, in the event of breach of duty, in particular in the event of deficient service performance, VF D2 can make the following claims for:

- Subsequent performance, including reimbursement of costs arising for VF D2 in connection with the subsequent performance.

And, where sufficient legal grounds exist, for:

- Reduction in fee or
- Compensation for wasted expenditure or
- Reimbursement of costs arising from self- performance
- Rescission of the contract and / or
- Compensation instead of service performance or
- Compensation for wasted expenditure.

Otherwise, the terms of the following clauses shall apply.

18.2 In the event of subsequent performance, VF D2 shall have the right to choose between rectification of defects and reperformance.

18.3 In the event of breach of duty, the vendor shall be obligated to provide VF D2 written notification of what measures are required to prevent such breach of duty occurring in the further course of service performance.

18.4 In the event of breach of duty by the vendor, and after expiry without result of a subsequent deadline set for the vendor by VF D2, VF D2 can take upon itself elimination of the consequences of the breach of duty, or have them eliminated by a third party, at the expense of the vendor. If documents or data in possession of the vendor are required for this, the vendor shall immediately render these free of charge to VF D2. If third party rights prevent such elimination, the vendor is obligated to indemnify VF D2 against claims resulting from these rights.

18.5 VF D2 shall only be obligated to serve notification of defects, pursuant to German Commercial Code (HGB) section 377, if a defect was identifiable in the framework of an appropriate quantity of random sample tests. Notification of defects can be made within 6 weeks; payment made by VF D2 shall not constitute acceptance of the services.

18.6 The warranty period for defect claims shall comprise 24 months, commencing with the complete and unreserved acceptance (final acceptance) of the last (component) service to be accepted pursuant to this contract.

18.7 If the vendor provides VD D2 services free of charge pursuant to section 2.1, for instance for test purposes, the aforementioned rules shall apply, even in the event that the vendor does not expressly refer to this contract.

**18.8 Contractual Penalty for Tardy Fault Elimination**

Irrespective of the aforementioned rights, the vendor shall be obligated to comply with the "Service Level Agreement" attachment to this contract without any separate fee being paid to the vendor by VF D2.

If the established deadlines for a workaround or the elimination of faults are exceeded (depending on which event occurs first), a contractual penalty according to the table below shall become due and payable.

The amount of the penalty is determined on a per-fault basis depending on the classification according to priority or the highest escalation level reached before the fault was eliminated.

| | Contract Penalty for Each Time the Escalation Level is Reached (According to SLA Attachment) | | |
|---|---|---|---|
| Fault Priority (according to SLA attachment) | Escalation Level I | Escalation Level II | Escalation Level III |
| Priority 1 | [INFORMATION OMITTED AND FILED SEPARATELY WITH THE COMMISSION UNDER RULE 24B-2]- € | [INFORMATION OMITTED AND FILED SEPARATELY WITH THE COMMISSION UNDER RULE 24B-2]- € | [INFORMATION OMITTED AND FILED SEPARATELY WITH THE COMMISSION UNDER RULE 24B-2]- € |
| Priority 2 | [INFORMATION OMITTED AND FILED SEPARATELY WITH THE COMMISSION UNDER RULE 24B-2]- € | [INFORMATION OMITTED AND FILED SEPARATELY WITH THE COMMISSION UNDER RULE 24B-2]- € | [INFORMATION OMITTED AND FILED SEPARATELY WITH THE COMMISSION UNDER RULE 24B-2]- € |
| Priority 3 | [INFORMATION OMITTED AND FILED SEPARATELY WITH THE COMMISSION UNDER RULE 24B-2]- € | [INFORMATION OMITTED AND FILED SEPARATELY WITH THE COMMISSION UNDER RULE 24B-2]- € | [INFORMATION OMITTED AND FILED SEPARATELY WITH THE COMMISSION UNDER RULE 24B-2]- € |
| Priority 4 | [INFORMATION OMITTED AND FILED SEPARATELY WITH THE COMMISSION UNDER RULE 24B-2]- € | [INFORMATION OMITTED AND FILED SEPARATELY WITH THE COMMISSION UNDER RULE 24B-2]- € | [INFORMATION OMITTED AND FILED SEPARATELY WITH THE COMMISSION UNDER RULE 24B-2]- € |

In case a fault is not eliminated within the established time period, a one-time contact penalty shall apply. The contract penalties are due and payable at the end of each 12-month period.

Example - Priority 1

Problem: The platform is down for 5 hours.

The penalty is calculated as follows: One-time penalty of [INFORMATION OMITTED AND FILED SEPARATELY WITH THE COMMISSION UNDER RULE 24B-2] Euros due and payable at the end of the 12-month period.

**19. Compensation for Loss of Sales**

19.1 The vendor shall be liable to pay compensation - irrespective of other rights connected to vendor's breach of duty pursuant to this contract - but shall be afforded opportunity for reperformance, or set another deadline. In the event that a fault in the service performed by the vendor should cause components in the VF D2 mobile network to fail, and consequently VF D2 to suffer loss of sales directly attributable to vendor's breach of duty, then the vendor shall not be afforded opportunity for reperformance, or set any other deadline.

19.2 All contractual or other penalties payable by the vendor as a direct result of the respective fault in service are offset against the loss of sales.

19.3 For any compensation for the loss of sales, VF D2 must prove that the vendor caused the damages.

**20. Monitoring Performance of Service**

20.1 VF D2 shall have the right to monitor at all times service performance by the vendor, in particular the installation of IT systems in the VF D2 network. Both parties shall bear the costs they respectively incur themselves.

20.2 The vendor shall be obligated to demonstrate to VF D2 the functionality of the services being performed, on demand and upon reasonable prior notice during normal business hours at the vendor's place of business. The vendor shall ensure that competent personnel are present at the demonstration to answer questions from VF D2 connected with the demonstration quickly and accurately.

## C. Acceptance and Further Procedure

### 21. Acceptance

21.1 Work performed by the vendor - except the services provided under contracts of service defined in this contract - shall require acceptance by VF D2, or third parties on behalf of VF D2. Acceptance of services - comprising multiple successive acceptance tests - is regulated in the "Specifications" attachment and "ASP Quality Requirements" attachment. In the framework of the acceptance procedure, in particular the following different declarations of acceptance may be made:

- Conditional Acceptance - under reservation of all rights - shall be granted if, by this point in time, all tests specified have been passed successfully, and no Category 1 or 2 faults have been identified, or if the vendor's respective service has been in commercial use for VF D2 longer than 2 weeks. Commercial use occurs when VF D2, directly or through vendors acting in its name, provides all end customers and potential end customers services based on the respective work performed, without these customers receiving notification of any technical restrictions.

- A further acceptance, called Final Acceptance, shall be given if no Category 1, 2 and 3 errors exist any longer.

21.2 For component services, a final acceptance as defined above, independent of acceptance of individual component services, can only be granted subsequent to a final acceptance test of the interaction of the component services, in particular of hardware and software, including interfaces. If the entire work is divided into different phases, where the component service for the individual phase can stand alone, a project-specific supplementary agreement can agree on final acceptance for the respective stand-alone phases.

21.3 The vendor shall give VF D2 20 working days advance warning of completion of work for the individual acceptance tests, in written form by fax.

21.4 VF D2 warranty rights shall commence with the vendor's presenting a service (a component service) for acceptance. The terms of section 18.6 are unaffected by this.

## 22. Contractual Penalty for Faults during Acceptance

22.1 If faults in the work are identified during acceptance, the vendor shall be obligated to pay a contractual penalty, the amount of which shall be calculated as follows:

- According to type and number of defects, a points score shall be calculated according to the following formula:

N=3X+2Y+Z

where:

N is the total points value,

X is the number of Priority 1 errors,

Y is the number of Priority 2 errors,

Z is the number of Priority 3 errors.

Errors are divided into the respective priority categories pursuant to the "Service Level Agreement" attachment to this contract or a corresponding attachment of the respective project-specific supplementary agreement.

- If the above formula give a value for N equal or greater to 20, the contractual penalty shall be:

| N= at least: | |
|---|---|
| 20 | [INFORMATION OMITTED AND FILED SEPARATELY WITH THE COMMISSION UNDER RULE 24B-2] euros |
| 25 | [INFORMATION OMITTED AND FILED SEPARATELY WITH THE COMMISSION UNDER RULE 24B-2] euros |
| 30 | [INFORMATION OMITTED AND FILED SEPARATELY WITH THE COMMISSION UNDER RULE 24B-2] euros |

22.2 The acceptance evaluation applies to the system as it is provided for the RFA (Ready for Acceptance) milestone.

22.3 Contractual penalties paid shall be balanced against any VF D2 claims for damages arising from the same cause in law; otherwise VF D2 warranty rights of all kinds shall not be affected by the contractual penalty mentioned above.

## 23. Environmental Legal Provisions, Waste Disposal

23.1 The vendor shall indemnify VF D2 against any liability relating to its failure to comply with material applicable laws for the protection of the environment that apply to the services performed by vendor under this Contract.

23.2 If the legal provisions adduced in the following are applicable, the vendor shall assume the responsibility of a producer pursuant to the German Battery Ordinance and Directive 2002/96/EG of the European Parliament and Council of 27 January, 2003, on Waste Electrical and Electronic Equipment including the norms implementing this directive in German law. To this extent, the vendor shall indemnify VF D2 against all costs resulting from the above legal provisions in connection with the contracted work. Furthermore, the vendor shall be obligated to comply with the terms of the Directive 2002/95/EC of the European Parliament and Council of 27 January, 2003, on the Restrictions on Harmful Substances including the norms implementing this directive in German law.

**24. Compliance with Human Rights Principles**

24.1 The vendor shall undertake to comply with the “Declaration on Fundamental Principles and Rights at Work” accepted by the member states of the International Labor Organization in 1998, and the principles and rights laid down here as well as in the eight core conventions (No. 87, 98, 29, 105, 100, 111, 138, 182) in the context of production and supply for VF D2. Furthermore, the vendor shall undertake to comply with the principles and conditions set forth in the “Ethical Purchasing” attachment.

24.2 Furthermore, the vendor shall undertake, with regard to products and deliveries for VF D2, to only work with vendors or other third parties similarly respecting the rights and principles mentioned above.

**25. Rights to Services Performed, Results of Work and Means of Work**

25.1 If creations protected by copyright or trademarks are incorporated in the service performed, VF D2 shall acquire a non-exclusive, transferable right of use unrestricted in time, space and content for so long as this contract is valid. This right includes, in particular, use of such creations in own business, or in third-party businesses, as well as its duplication, distribution, showing, exhibiting, transfer via or without telecommunications, editing or modifying as well as a commercial exploitation of the results of the work, even subsequent to their use (such as editing or modifying). In the case of the application of above rule to software, the vendor shall grant a non-exclusive, non-transferable use right to VF D2 related to property rights over the relevant data carriers.

25.2 If the vendor uses third-party software in service performance, and if the license conditions for this exclude provision of exclusive rights for unrestricted use, or restrict such provision, VF D2 shall receive a correspondingly restricted right of use. The vendor shall indicate to VF D2 the existence of such a situation, at the latest on conclusion of this contract.

25.3 VF D2 shall have the right, in all cases, to connect services performed by the vendor, in the case of an IT system, with other VF D2 systems, or to integrate them in other VF D2 systems. This shall apply irrespective of whether the other systems are owned by VF D2, or whether they are operated by a third party on behalf of D2.

25.4 The vendor shall not demand any separate fee for providing these rights described above to VF D2 or to customers of VF D2. The provision of these rights is covered by the fee pursuant to this contract.

**D. Other**

## 26. Third Party Rights

26.1 The vendor shall be responsible for its services or any third- party software it supplies being free from third-party rights in Germany or abroad that restrict use of the work by VF D2 as set forth in this contract. The vendor shall not be liable for any infringement of third party rights resulting from changes to the work performed, or to third-party software supplied, by the vendor, made by VF D2 or third parties acting on behalf of VF D2.

26.2 The vendor shall be responsible for seeing that all licenses necessary for use and provision of the contractual products in the framework of the contractual services exist pursuant to the terms of this contract, and shall indemnify VF D2 against third-party claims due to absence of or infringement of the aforementioned licenses.

26.3 The vendor shall be responsible for the proper performance of contractual services relative to end customers, and indemnifies VF D2 against all claims resulting from a breach of duty on the part of the vendor in performing the contractual services.

26.4 Irrespective of the preceding section, the vendor shall be obligated to notify VF D2 immediately in writing on learning of third-party rights.

## 27. Contractual Penalties

27.1 If the vendor has become liable for a contractual penalty, VF D2 shall be able to enforce this even subsequent to settlement of vendor invoices for the period in which the contractual penalties were incurred. German Civil Code section 341 paragraph 3 shall not apply. This holds irrespective of whether the contractual penalty rule is contained in this contract, or in a supplement, and even if there is no explicit reference to this rule.

27.2 Any contractual penalty payments by the vendor shall be balanced against VF D2 damage claims resulting from the same circumstance as the obligation to pay the contractual penalty.

27.3 If VF D2 makes use of contractual or legal rights of rescission or termination, claims for payment of contractual penalties already forfeited by the vendor at the point of rescission or termination remain valid.

## 28. Contact Persons

28.1 The vendor shall appoint a project manager and a deputy project manager, who shall prepare all necessary agreements relating to contract implementation, and who can attain decisions promptly. Replacement of the project manager during the term of the contract shall require written agreement in advance from VF D2. VF D2 shall provide such agreement if there is an important reason for replacing the project manager.

28.2 VF D2 shall have the right to demand the replacement of the vendor project manager during the term of the contract.

## 29. Obligations to Cooperate

29.1 V F D2 shall take all measures to co-operate with service performance by the vendor, to the extent that this is reasonable according to business considerations.

## 30. Confidentiality, Protection of Data

30.1 Both parties shall be obligated to keep secret from third parties all details of contractual agreements between them. This applies especially to prices. This obligation shall not apply to transferal by VF D2 of information to other members of the Vodafone Group Plc who in their turn shall be obligated to confidentiality.

30.2 In particular, the vendor shall not name VF D2 as a reference customer, or divulge the conclusion of this contract to third parties or to the public, unless VF D2 shall give advance permission in writing.

30.3 Both parties shall assure each other that they shall treat all information divulged to them from the other respective party, and expressly marked as confidential, or the confidential character of which can be deduced from the context, as trade secrets entrusted to them, and shall not divulge them to third parties:

- unless they were already known to the recipient before the obligation to confidentiality or
- are generally known or are becoming generally known through no fault of the recipient or
- they were legally divulged or rendered to the recipient without obligation to confidentiality or
- it can be proved that the recipient developed them independently or

- written permission was given to the recipient, clearing them for general circulation, or
- they were divulged to a financing party in the course of capital financing and for the sole purpose of obtaining said financing, to the extent that the confidentiality agreement in this contract also applies to this third party, or
- they needed to be divulged due to legal obligations.

30.4 The parties shall apply at least the same degree of care to keep confidential confidential information divulged to them by the other party, that they apply to similarly significant information of their own.

30.5 The party receiving the confidential information shall only give access to it to those personnel requiring it for implementation of the contract.

30.6 If, in the framework of the contractual partnership between the parties, it becomes necessary to entrust third parties with handling confidential information, the party concerned shall request written permission from the other party in advance. This party shall be able to refuse permission, if it is not established that the third party is sufficiently obligated to confidentiality.

30.7 On demand of a contracting party, and at the latest by expiry of the collaboration between the parties, all confidential information of the other party shall be deleted such that it cannot be retrieved, or returned to the other party. Deletion must be confirmed in writing immediately.

30.8 The vendor shall bear in mind that VF D2 is subject to numerous data protection obligations, in particular pursuant to the Federal Act on Data Protection and the Telecommunications Data Protection Ordinance. The vendor shall support VF D2 in meeting these obligations in the framework of the respective contractual agreements. If the vendor recognizes that an IT system to be deployed in the context of contract implementation, and for which the vendor is responsible in the relationship to VF D2, will infringe VF D2 data protection obligations, the vendor shall immediately notify VF D2 of this in writing.

30.9 The vendor shall be authorized to process and store data only as specified by VF D2 in the context of the legal provisions.

30.10 All aforementioned confidentiality and data protection obligations shall continue to apply even after expiry of this contract.

**31. Subcontractors, Third Parties**

31.1 If the vendor shall involve third parties in the performance of contractual duties, the vendor shall be as liable for their behavior as for it is for its own behavior.

31.2 The vendor shall waive any option of presenting exculpatory evidence pursuant to German Civil Code section 831 paragraph 2.

**32. Insurance**

The vendor shall be obligated to conclude a third-party insurance for all insurable damages that might be anticipated in the framework of the contract, and to provide VF D2 with documentary proof of this insurance. The vendor shall provide such documentary proof at least once per year without being requested to do so.

The vendor shall be obligated to obtain third-party provided insurance coverage from a qualified recognized insurance company containing errors and omission coverage with at least the stated amount of US[INFORMATION OMITTED AND FILED SEPARATELY WITH THE COMMISSION UNDER RULE 24B-2] per claim and US$[INFORMATION OMITTED AND FILED SEPARATELY WITH THE COMMISSION UNDER RULE 24B-2] in the aggregate.

**33. Prohibition of Transfer of Claims**

Claims of the vendor arising from this contract shall only be transferred to third parties with the agreement of VF D2.

**34. Term of Contract, Termination**

34.1 This contract shall come into effect on August 27, 2007 with both parties signing it, and will run for an unspecified time that shall, however, not be less than [INFORMATION OMITTED AND FILED SEPARATELY WITH THE COMMISSION UNDER RULE 24B-2] years. It shall be terminable with at [INFORMATION OMITTED AND FILED SEPARATELY WITH THE COMMISSION UNDER RULE 24B-2] months notice for both parties, to be submitted by 30$^{th}$ June or 31st December of any year, after expiry of the initial term. This shall not affect any right of immediate termination for an important reason.

34.2 An important reason for immediate termination of this contract shall be given

– on a material uncured breach of vendor's service performance based on the service performance parameters contained in the "Specifications" attachment and "Service Level Agreement" attachment

– if the other party ceases payment, or in case looming insolvency, insolvency or over-indebtedness indicate a significant deterioration in a party's financial circumstances

– on offering an out-of-court settlement to satisfy the creditors of the other party

– on an application being filed to initiate bankruptcy procedures for the assets of the other party;

– on bankruptcy procedures being opened for the assets of the other party;

The other respective party shall be obligated to notify the party with right of contract termination if grounds for termination should arise; provided, that the other party shall have a reasonable period of time to cure the grounds for termination.

34.3 In the event of termination of this contract, for whatever reason, the vendor shall be obligated to support VF D2 to the best of its ability in continuing operation of the service for a commercially reasonable period of time and subject to the parties entering into a separate agreement regarding vendor's fees for the provision of such support. This shall apply irrespective of whether VF D2 intends to operate the service after contract termination, or to have a third party operate it.

34.4 Support to be provided by the vendor pursuant to the preceding section shall encompass transfer by the vendor of all information, especially parameter settings, monitoring settings, operating rules, reporting indicators etc. at no extra charge for VF D2. The vendor shall be obligated to keep available, at all times, relevant and up-to-date information for this purpose.

34.5 The vendor shall also be obligated, in the event of termination, or any other ending of the contract, to transfer to VF D2, or a third party specified by VF D2, all files for the contractual products, including metadata, as well as any customer data collated during the period of contract. The details of this electronic transfer shall be jointly defined in good time prior to termination of the contract.

34.6 If termination of contract means that further operation of the service for VF D2, which is necessary for VF D2 business operations, is impossible and / or pointless in business terms, VF D2 shall have the right to demand from the vendor that the agreed services be continued for, at the most, one year subsequent to contract end. In this case, the parties will agree to other contractual terms based on fair market terms and conditions for such continued support.

34.7 Termination of contract, for whatever reason, must be submitted in writing.

**35. Period of Limitations**

35.1 The period of limitations for payment claims on the part of the vendor arising from this contract shall comprise three (3) years, commencing with the start of the period of limitations as specified in law.

35.2 For all claims, the periods of limitations laid down by the German Civil Code section 438, paragraph 1, no. 3, section 634a, paragraph 1, number 1, and section 479, paragraph 1, all comprise (3) three years, including claims arising from defects of title. Section 15.7 of the General Conditions of Purchase of IT Services shall be governed by this section 35.2.

**36. Changes to Services**

36.1 Changes to the agreed scope of service shall be agreed in a written supplement to this contract.

36.2 Change requests shall be submitted in written form to the contact person of the other respective party. The vendor shall examine change requests by VF D2 as a rule within one working day, at the latest, however, within five working days, and work out the effects of the changes in terms of functions, schedule and prices, and detail them in writing in a supplementary proposal. If the change request is labeled urgent by VF D2, then the aforementioned deadline shall comprise one working day. The price calculation shall be presented transparently.

36.3 VF D2 shall examine a supplementary proposal compiled by the vendor free of charge, and notify the vendor within an appropriate period of time, to be agreed case-by-case, whether VF D2 accepts the supplementary proposal. The supplementary proposal shall include in particular: A description of the proposal subject matter and the effects on existing documents and other results, effects on the scope of service as defined, as well as changes to time and material costs, and to the agreed schedule. If VF D2 rejects the proposal, this contract shall be enacted as originally conceived.

36.4 Any change requests made by the vendor shall be examined by VF D2 as a rule within five working days. The vendor shall be obligated to continue work pursuant to the original format, if, and for as long as, no agreement is reached pertaining to a change in the contract. If the vendor believes there are technical arguments against implementation of the contract as it exists, the vendor shall notify VF D2 of these in writing immediately.

36.5 Agreements to suspend work shall be made in mutual agreement and in writing. If nothing to the contrary has been agreed for an individual case, the implementation schedule and deadlines shall be rescheduled to accommodate the interruption.

36.6 The parties shall agree on the personnel and competencies of a joint committee that shall, regularly or irregularly, discuss preceding and future contractual co-operation and that, under defined conditions, can effect contractual changes, or binding decisions, on whether services performed are consistent with the contract.

**37. Site of Fulfillment, Court of Jurisdiction**

37.1 The site of fulfillment for payment is the VF D2 head office. The site of fulfillment for the vendor’s services is Düsseldorf, or the respective site of deployment of the services, if nothing to the contrary has been agreed.

37.2 Court of jurisdiction for all legal disputes resulting from this contract is Düsseldorf, unless another exclusive court of jurisdiction is specified by law.

**38. Applicability for other Vodafone Companies**

38.1 The vendor shall declare readiness to allow other companies with Vodafone Group Plc having a direct or indirect stake of more than 25% to enjoy the conditions of this contract as negotiated by the parties based on the location, size, and business volume of such other company, should they wish.

**39. Applicable Law, Requirement of Written Form, Severance Clause**

39.1 If this contract shall be applied, the entire legal relationship between the contracting parties shall be governed by German law on legal relations between parties domiciled in the Federal Republic of Germany. The parties rule out any application of the Vienna Convention on the Sale of Goods.

39.2 Changes to this contract must be made in written form. This shall also apply to the abrogation or alteration of this requirement to make changes in written form.

39.3 If one clause of this contract should be or become void, a legally valid provision shall replace it, such that it optimally fulfils the declared will of the parties. If such a clause is not obtained, the respective provision laid down by German law shall be valid. The validity of all other clauses shall, however, not be affected by the nullity of one clause.

39.4 If the preceding contract terms contain contradictions, the following order of bindingness shall apply:

- This contract
- The attachments to this contract in numerical sequence.

- The VF D2 General Conditions of Purchase:

The DDP Incoterms 2000 shall supplement these.

39.5 The vendor’s General Terms of Business shall not apply. This shall also hold true in individual cases where such General Terms of Business are not expressly contradicted by VF D2.

39.6 The language of the contract is German. To the extent that German law allows, the parties can draw up parts of the contract in English, and perform contract implementation in English, as far as this is pertinent.

39.7 The attachments to this contract constitute components of the contract. This contract contains the following attachments:

| | | |
|---|---|---|
| Attachment | 1 | - Specification |
| Attachment | 2 | - Service Level Agreement |
| Attachment | 3 | - Quality Requirements |
| Attachment | 4 | - Monitoring Alarming |
| Attachment | 5 | - Prices and Discounts |
| Attachment | 6 | - Consulting, Prices and Services |
| Attachment | 7 | - Bank Guarantee |
| Attachment | 8 | - Ethical Purchasing |
| Attachment | 9 | - Milestones |
| Attachment | 10 | - General Conditions of Purchase for IT Services |

| | |
|---|---|
| Düsseldorf, date: 8-27-2007 | Schwerte, date: 8-27-2007 |
| /s/ Johannes Becher | /s/ Ian Aaron |
| Vodafone D2 GmbH | Twistbox Games Ltd & Co KG |

***WE HAVE REQUESTED CONFIDENTIAL TREATMENT OF CERTAIN PROVISIONS CONTAINED IN THIS EXHIBIT. THE COPY FILED AS AN EXHIBIT OMITS THE INFORMATION SUBJECT TO THE CONFIDENTIALITY REQUEST.***

# Request for Quotation
# “Applications & Games Service”

## Attachment 05:
## Prices and Discounts

**Contents**

**1 Basic Revenue Share Model** **3**
**2 Discount** **3**
Example calculation **3**
**3 Price Cap** **3**
**4 Additional conditions** **3**
**5 Systems covered by the revenue share** **4**
**6 Service development** **5**
**7 Wire Transfer Instructions** **5**

**The prices shall be quoted according to the following structure:**

**1 Basic Revenue Share Model**

Overall monthly revenue share for Vendor in connection with the services rendered under the Content Hosting and Services Agreement shall be: [INFORMATION OMITTED AND FILED SEPARATELY WITH THE COMMISSION UNDER RULE 24B-2]% (the "Revenue Share").

The Revenue Share will be calculated based on total service revenue (net price excluding VAT) of VF D2 for all mobile games and application content items directly processed via Vendor's platform especially including all revenues through single purchase events and subscription models.

The Revenue Share will be retroactively calculated for each month based on the revenue report send through the VF D2 financial department.

**2 Discount**

The total revenue amount based on the Vendor's content selected by VF D2 and delivered based on a separate games and applications content Partner Agreement with Vendor and processed via Vendor's platform will be deducted from the total service revenue as a discount with a ratio of [INFORMATION OMITTED AND FILED SEPARATELY WITH THE COMMISSION UNDER RULE 24B-2] before applying the Revenue Share percentage defined above (ref 1.)

All revenues for downloads within subscription models will be calculated as such as a single purchase would have been undertaken based on the valid single purchase prices (net price excluding VAT) for specific content item at time of download.

Example calculation

Assumptions (ficticious month):

| | | |
|---|---|---|
| VF D2 Total Service Revenue: | EURO [INFORMATION OMITTED AND FILED SEPARATELY WITH THE COMMISSION UNDER RULE 24B-2] | |
| Vendor Total Content Revenue: | EURO [INFORMATION OMITTED AND FILED SEPARATELY WITH THE COMMISSION UNDER RULE 24B-2] | |
| Vendor Total Content Revenue Discount: | EURO [INFORMATION OMITTED AND FILED SEPARATELY WITH THE COMMISSION UNDER RULE 24B-2] | (Explanation: [INFORMATION OMITTED AND FILED SEPARATELY WITH THE COMMISSION UNDER RULE 24B-2]) |

Calculation:

Discount = [INFORMATION OMITTED AND FILED SEPARATELY WITH THE COMMISSION UNDER RULE 24B-2]

Adjusted Service Revenue = [INFORMATION OMITTED AND FILED SEPARATELY WITH THE COMMISSION UNDER RULE 24B-2]

Revenue Share = [INFORMATION OMITTED AND FILED SEPARATELY WITH THE COMMISSION UNDER RULE 24B-2]

**3 Price Cap**

In the event the monthly calculated Revenue Share for Vendor as provider for the platform (ref. 1.) exceeds the price cap EURO [INFORMATION OMITTED AND FILED SEPARATELY WITH THE COMMISSION UNDER RULE 24B-2] the amount exceeding the price cap will be attributed to advertising spend on VF D2's live! portal with the purpose of promoting Vendor's Games & Applications content.

The attributable monthly advertising spend will be calculated on a monthly basis and accrued for use at Vendor's discretion, but within 12 months of accrual.

**4 Additional conditions**

- The fulfillment of all requirements of the RfQ is covered by the Revenue Share, including development, integration, customization, quality assurance, maintenance, software e.g. for wrapper, etc.

- Capacity extensions are covered by the Revenue Share. Capacity extensions of bandwidth/traffic and hardware are included.
- Features and requirements marked priority 1 or priority 2 have to be ready-for-use on launch date. Priority 3 timeline is below
- Quality assurance covers an average of 7 titles at about 100 Stock Keeping Units each per week (also included in the Revenue Share).
- VF D2 SHALL BE ENTITLED TO OFFER TO ITS END USERS EACH MONTH FREE OF CHARGE A NUMBER OF DOWNLOADS NOT TO EXCEED [INFORMATION OMITTED AND FILED SEPARATELY WITH THE COMMISSION UNDER RULE 24B-2] PERCENT [INFORMATION OMITTED AND FILED SEPARATELY WITH THE COMMISSION UNDER RULE 24B-2]% OF THE AGGREGATE NUMBER OF DOWNLOADS AS REPORTED BY VF D2 DURING THE PRIOR MONTH.
  FOR EXAMPLE, IF THE TOTAL NUMBER OF DOWNLOADS IN THE MONTH OF SEPTEMBER IS [INFORMATION OMITTED AND FILED SEPARATELY WITH THE COMMISSION UNDER RULE 24B-2] VF D2 MAY MAKE UP TO [INFORMATION OMITTED AND FILED SEPARATELY WITH THE COMMISSION UNDER RULE 24B-2] DOWNLOADS FREE OF CHARGE.
  THEREAFTER, VENDOR SHALL BE ENTITLED TO RECEIVE ITS REVENUE SHARE FOR EACH ADDITIONAL FREE OF CHARGE DOWNLOAD CALCULATED BASED UPON AN AVERAGE GAME OR APPLICATION RETAIL PRICE OF 3,99€.
- V F D2 guarantees to Vendor a minimum of [INFORMATION OMITTED AND FILED SEPARATELY WITH THE COMMISSION UNDER RULE 24B-2] new launch slots per month for supplier's Games in the portal.

Priority 3 timelines

**Priority 3 timeline**

| | |
|---|---|
| C2.2.5 UI SVG Support | Q1 2008 |
| C2.5.4 The platform has to have the automated capability to send out specified SMS/MMS to upsell additional content | Available with launch of the service |
| C2.6.12 The platform has to provide the capability for a MMS-Newsletter | Q1 2008 |
| C2.6.17 Vendor has to provide SMS keyword discovery of content if required by VF D2. The customer receives a (Video) MMS with a video trailer and a deeplink to the purchase page. | Q1 2008 |
| C2.5.6 Delivery into non-VF networks | Q1 2008 |

**5 Systems covered by the revenue share**

Systems covered by the revenue share include

**System**
Production System
Redundant Backup System for Production (Hotswitch)
Testing (MVTC)
Download Test Server

### 6 Service development

For additional and further service development and change requests not included in Att 1 Specifications or not otherwise included the supplier provides an overall capacity of 33 mandays per month. Unused mandays will be credited up to 12 month.

### 7 Wire Transfer Instructions

All payments to be made to Supplier by VF D2 shall be made as follows:

Dortmunder Volksbank eG
Zweigstelle der Dortmunder Volksbank (optional)

**Address:** Kuhstr. 4, 58239 Schwerte
**Credit to:** Charismatix Ltd. & Co. KG
**Account number:** 633 030 1700
**lban#:** DE78 44160014 6330 3017 00
**Reference:** BIC GENODEMIDOR
**Bank Code:** 441600 14

**Partner Agreement**

between

**Vodafone D2 GmbH**
**Am Seestern 1**
**40547 Düsseldorf**

(hereinafter referred to as "**VF D2**")

and

**Twistbox Games Ltd & Co KG**
**Lohbachstr. 12**
**58239 Schwerte**
Germany

(hereinafter referred to as "**ASP**")

## I. Subject of Agreement

Provision of the Application by the ASP for use on the VF D2 portals such as, but not limited to the portal "Vodafone-live" in compliance with VF D2's general terms and conditions for Partner Agreements as set out in the version of such terms and conditions dated 27.08.2007 (hereinafter referred to as ("AGB") as Annex 1.

## II. Type of the Application

For all types of product mobile games and applications unless otherwise agreed.

## III. End user device compatibility

ASP is responsible for the best possible support of handsets which are stipulated in the Annex 2 of this Partner Agreement. Furthermore the ASP is also responsible for delivering reasonable application updates for supporting new handsets.

## IV. Rights of use

☐ Only German Vodafone Portals ☐ Others: ________________________________

**V. Brands to be offered for use by VF D2**

______________________________________________________________________________________________

☐ Co-branding with the ASP's brand agreed

**VI. Normal price**

For the avoidance of doubt, VF D2 is free to set its own charges for subscriptions for end users in accordance with the AGB.

**VII. Subscription fee revenue share**

If not otherwise agreed between the parties, the following revenue share shall apply:

[INFORMATION OMITTED AND FILED SEPARATELY WITH THE COMMISSION UNDER RULE 24B-2] ASP
[INFORMATION OMITTED AND FILED SEPARATELY WITH THE COMMISSION UNDER RULE 24B-2]VF D2

Calculation basis, pre-product deductions, free usages, calculation clauses for packs as well as all accounting and payment provisions are subject to the AGB.

**VIII. ASP's minimum fee in the event of discounts or packs**

[INFORMATION OMITTED AND FILED SEPARATELY WITH THE COMMISSION UNDER RULE 24B-2] EUR

**IX. ASP's Bank**

Dortmunder Volksbank eG
Credit to: Charismatix Ltd. & Co. KG
Account number: 633 030 1700
Iban#: DE78 44160014 6330 3017 00
Reference: BIC GENODEMIDOR
Bank Code: 441600 14

**X. Term**

Initial term: [INFORMATION OMITTED AND FILED SEPARATELY WITH THE COMMISSION UNDER RULE 24B-2] beginning August 27th, 2007

Option to extend the term in favour of VF D2:

☐ yes ☐ no

Optional term:

Automatic unlimited extension of the Term if not terminated: ☐ yes ☐ no

Any time after the initial term, either party may terminate this Partner Agreement upon at least [INFORMATION OMITTED AND FILED SEPARATELY WITH THE COMMISSION UNDER RULE 24B-2] prior written notice to the other party which such notice shall be delivered on or before the 15th of June or the 15th of December of any year after the expiration of the initial term.

**XI. ASP Contact persons**

| | |
|---|---|
| Business Development: | Name: |
| | eMail: |
| | Telephone: |
| Technical (Mo-Fri 8-18): | Name: |
| | eMail: |
| | Telephone: |
| Editorial: | Name: |
| | eMail: |
| | Telephone: |
| Customer Care: | Name: |
| | eMail: |
| | Telephone: |
| | Mobile: |

**XII. Preferred Aggregator;**

1. Preferred Aggregator. ASP shall be the main (preferred) content aggregator for the Games and Application Service by VF D2 such that any new third party which desires to distribute Games and Applications under a local agreement must first enter into negotiations for a license agreement with ASP on commercially reasonable terms and conditions in order for such third party's Games and Applications to be available via VF D2. [INFORMATION OMITTED AND FILED SEPARATELY WITH THE COMMISSION UNDER RULE 24B-2]

2. VF D2 guarantees to ASP [INFORMATION OMITTED AND FILED SEPARATELY WITH THE COMMISSION UNDER RULE 24B-2] launch slots per month for erotic games designated as 18+ in addition to any other agreed launch slots between parties. [INFORMATION OMITTED AND FILED SEPARATELY WITH THE COMMISSION UNDER RULE 24B-2]

**XIII. Special agreements and miscellaneous**

1. RIGHT TO AUDIT

VF D2 will keep accurate and complete records, in accordance with generally accepted accounting principles, in order to determine the accuracy of VF D2's reports and payments and retain such records for at least two (2) years following their generation. ASP, or its representative, will have the right, subject to ten (10) days prior written notice to VF D2, to examine, audit, and review all applicable records and accounts once each calendar year during VF D2's normal business hours for so long as this contract is valid. VF D2 will pay to ASP all amounts discovered to be due ASP as a result of any audit within thirty (30) days of invoice. In addition, in the event any such audit by ASP reveals a discrepancy of five percent (10%) or more in ASP's favor, VF D2 will pay all reasonable costs of ASP's audit, and such costs shall be added to ASP's invoice for amounts due.

## 2. NOTICES

Any written notice given under this Agreement shall be to the addresses set forth below. The notice shall be deemed duly given, if delivered by hand, on the same business day it was delivered, or on the next business day if delivered on a non-business day. The notice shall be deemed duly given, if delivered by facsimile, upon receipt of confirmation from an employee of the receiving party. The notice shall be deemed duly given, if sent by prepaid overnight, registered or certified mail, on the day of receipt. The failure to send a notice copy shall not affect the validity of any notice otherwise properly sent and actually received by a party.

Notice to ASP to be provided as follows:

| | |
|---|---|
| If by mail<br>or facsimile: | Twistbox Entertainment, Inc.<br>14242 Ventura Boulevard, Third Floor<br>Sherman Oaks, California 91423 USA<br>Attn: International Sales/Distribution<br>Attn: EVP/General Counsel<br>Fax: (818) 301-6239<br>Email: legal@twistbox.com |
| With a copy to: | Twistbox Games Ltd & Co KG<br>Lohbachstr. 12<br>58239 Schwerte - Germany<br>Attn: Eugen Barteska<br>Email: ebarteska@twistbox.com |

## 3. ASSIGNMENT

Either party may assign this Partner Agreement, without the consent of the other party, in the event of an assignment by either party: (i) to a successor entity resulting from a merger, combination or consolidation; (ii) to the transferee of all or substantially all of the assets of the assigning party or its parent(s); or (iii) to an entity under common control with, controlled by or in control of the assigning party. In the case of ASP, it shall not assign this Partner Agreement to a competitor of VF D2.

## 4. INDEMNIFICATION

Each party (the "Indemnifying Party") shall indemnify, defend and hold harmless the other party (including its parents, subsidiaries and affiliated companies), and its directors, officers, employees, successors, licensees, assignees, attorneys and agents (the "Indemnified Party(ies)") from and against any and all claims, losses, deficiencies, damages liabilities, costs, and expenses (including but not limited to reasonable attorney fees and related costs and expenses) incurred by the Indemnified Party(ies) as a result of any claim, judgment, or adjudication against the Indemnifying Party arising from any breach or alleged breach of any of the Indemnifying Party's covenants, obligations, representations or warranties under this Partner Agreement; provided that, the Indemnified Party(ies) promptly notify the Indemnifying Party in writing of any such claim and gives the Indemnifying Party the opportunity to defend or settle such claim at the Indemnifying Party's expense and cooperates with the Indemnifying Party in defending or settling such a claim.

5. LIMITED LIABILITY

IN NO EVENT SHALL EITHER PARTY BE LIABLE FOR ANY SPECIAL, INCIDENTAL DAMAGES (German explanation: entfernter Mangelfolgeschaden) ARISING OUT OF OR IN ANY WAY CONNECTED WITH THIS AGREEMENT OR ANY MATTER RELATED HERETO, INCLUDING WITHOUT LIMITATION, LOST BUSINESS OR LOST PROFITS, EVEN IF ADVISED OF THE POSSIBILITY O F SUCH DAMAGES. EXCEPT FOR THE PARTIES' INDEMNIFICATION OBLIGATIONS, IN NO EVENT SHALL TWISTBOX'S LIABILITY ARISING UNDER THIS AGREEMENT EXCEED, IN THE AGGREGATE, THE TOTAL AMOUNT PAID BY VF D2 TO ASP AS OF THE DATE ASP BECOMES LIABLE FOR ANY SUCH DAMAGES HEREUNDER.

6. SURVIVAL

A ll representations, warranties indemnifications and payment obligations contained in this Partner Agreement shall survive the termination and/or expiration of this Partner Agreement

7. VF D2 REPRESENTATIONS AND WARRANTIES

7.1 VF D2 represents and warrants as follows: (VF legal: remove paragraph)

(a) it has full authority and ability to enter into and perform its obligations under this Partner Agreement.

(b) it has not and will not undertake any action which might impair the exercise of ASP's full rights under this Agreement.

(c) VF D2 will, on a continuing basis, use its best efforts to ensure the content is distributed only where receipt and viewing of such content is lawful and within the contemporary community standards.

(d) VF D2 shall not make edits, modifications, changes or otherwise manipulate or rearrange the content without ASP's prior written consent, which may be withheld in ASP's sole discretion.

This Partner Agreement is subject to VF D2's general terms and conditions for Partner Agreements as set out in the version of such terms and conditions dated 15.03.2005 (Annex 1). Any conflicts between the terms of this Partner Agreement and the terms of VF D2's general terms and conditions for Partner Agreements, the terms of this Partner Agreement shall govern the rights and obligations of the parties.

| | |
|---|---|
| Düsseldorf, 27.08.2007 | Schwerte, AUG. 27, 2007 |
| /s/ Johannes Becher | /s/ Ian Aaron |
| for VF D2 | for the ASP |
| /s/ Johannes Becher | |
| for VF D2 | |

Annex 1: General Terms and Conditions for Partner Agreements
Annex 2: Vodafone D2 Java Games & Applications Local Submission Specifications

***WE HAVE REQUESTED CONFIDENTIAL TREATMENT OF CERTAIN PROVISIONS CONTAINED IN THIS EXHIBIT. THE COPY FILED AS AN EXHIBIT OMITS THE INFORMATION SUBJECT TO THE CONFIDENTIALITY REQUEST.***

## GENERAL TERMS AND CONDITIONS
## FOR PARTNER-CONTRACTS CONCERNING JAVA- APPLICATIONS

of

Vodafone D2 GmbH, Am Seestern 1, D-40547 Düsseldorf, Germany
(hereinafter "VF D2")

### 1 Preamble

1.1 VF D2 is a company belonging to the Vodafone Group, which does business internationally. VF D2 operates several Vodafone portals among which are the portals "Vodafone-live", "Vodafone WAP" and "Vodafone Web" and provides data for portals operated by Vodafone Group service providers, all of which are so-called "multi-access portals" (hereinafter jointly referred to as the "Portal"), through which third-party users (hereinafter, "End Users") are given access to data which is, if necessary, transmitted to them. This data may be in the form of texts, pictures, and sounds, singly or also in combined form or integrated into software programs (such data integrated into software programs such as but not limited to java-applications which represent mobile games hereinafter referred to as "Application(s)").

1.2 "Service Provider" in terms of this General Terms and Conditions for Partner-Contracts Concerning Java Applications (the "Agreement") shall mean providers of telecommunications services distributing on their own behalf and for their own account telecommunications services provided via the Vodafone telecommunications network to End Users.

1.3 Access to data on the Portal and Applications shall be effected regardless of the type of the device used in the individual case so long as ASP's obligations hereunder ex-tend to such device. Data access is presently made possible through the WWW and WAP, i.e., by means of mobile devices (such as mobile telephones) or personal computers. VF D2 intends to also employ new ways and forms of data transmission in the future.

1.4 The Partner Agreement between the parties (the "Contract") and this Agreement shall regulate the provision of ASP's Applications for use by End Users through Portals and rights and duties of the parties in connection thereto. Unless otherwise expressly stipulated in the Contract or in this Agreement, the provision and transmission of all Applications and data provided to the End Users by ASP shall be effected through VF D2 in its own name.

### 2 ASP's Services

2.1 ASP shall provide VF D2 with the Application described in the Contract for use on the Portal as stipulated in the Annex "Vodafone D2 Java Games & Applications Local submissions specifications".

2.2 The consideration rendered by the End Users for use of the Application shall entitle the End Users to use or to download the Application for the frequency or the time (in case of the latter with unlimited frequency) as described in the contract for so long as any such End User complies with the applicable terms of use and contractual obligations of VF D2.

The End User's revocable right to use or to download ASP's Application pursuant to this Agreement and the Contract for a consideration paid in advance for a certain time period or a certain number of times is referred to hereinafter as a "Subscription".

2.3 VF D2 intends to offer the Application to the End User at the price named in the Contract (hereinafter, the "Normal Price") per Subscription. The parties agree that VF D2 shall be free to set its own charges for Subscriptions for End Users.

2.4 ASP shall carry out and fulfil its duties as set out in the Contract and this Agreement with commercially reasonable technical and commercial diligence according to its best knowledge and ability. The Applications made available by ASP shall be in compliance with the Contract and this Agreement including technical specifications and other specifications provided in advance by VF D2 and approved by ASP based on the Contract and this Agreement.

2.5 ASP shall be entitled to establish a link from its Application to applications of third persons only with the prior written approval of VF D2 in each individual case.

2.5.1 If the Applications connect to an external server, i.e., one residing outside the Vodafone D2 network, that is hosted by the ASP itself or an agent thereof, the document "Vodafone Service Level Agreement for Content Partners" becomes part of the contract.

## 3 Rights of Use and Marketing

3.1 Unless otherwise stated in the Contract, ASP grants VF D2 a non-exclusive right to provide third persons in Germany access to the Application via a Portal and/or to transmit the Application to third persons pursuant to the terms of this Agreement and the Contract. This license is limited in duration to the term of the Contract and in scope to third parties necessary for delivery and utilisation of the Services, and the license is only transferable under the stipulations of the Contract and this Agreement. FOR THE AVOIDANCE OF DOUBT, IT IS UNDERSTOOD THAT DUE TO VF D2'S INTERNATIONAL ROAMING AGREEMENTS, GAMES AND APPLICATIONS MAY BE ACCESSED BY A VF D2 CUSTOMER WHEN THE CUSTOMER IS PHYSICALLY OUTSIDE OF VF D2'S TERRITORY SIGNAL. SUCH INCIDENTAL ACCESS AND SIGNAL SPILLOVER WILL NOT CONSTITUTE A BREACH OF THIS AGREEMENT.

3.2 In particular, ASP grants VF D2 the right to copy and distribute the Application and/or the results generated by it in whole or in part by means of on-demand procedure or by means of transfer in order to make them accessible for End Users. By the right of making available by means of on-demand procedure, the parties mean the utilisation of the Application or parts thereof and/or its results in that they are stored in digital form in a data processing system and can be requested by and/or transmitted to End Users by means of wire-bound or wireless systems as a digital signal, with the result that the stored data is transferred to the End User's receiver, where it is decoded either after storage, after temporary storage, or immediately, and thus can be converted back to texts, images, sounds and/or other and made visible or audible. The Application and/or its results may also be made accessible to the End User in such a way that the End User can call up the Application or parts thereof repeatedly after transmission to End User's receiver. A feature of interactive use on demand is that the application stored in digital form is made accessible to members of the public who are not present at the location of the origin of the accessibility in such a way that they have access and can request the transfer individually as to time and location even if the transfer of the application and/or its results to the End User is effected at a later time than requested. The parties understand the above-mentioned right to also mean the right of request and the right of making available to the public within the meaning of Directive 2001/29/EC of the European Parliament and the Council of 22 May 2001 (Gazette No. L 167, 22 June 2001, pp. 0010-0019). Concerning the right of making available by means of transfer the parties mean that a feature of such transmission is that the Application and/or its results stored in digital form is made accessible to members of the public who are not present at the location of the origin of the accessibility in such a way that initiation of the transmission process of the signals carrying the information to the End User's receiver is reserved to VF D2 and cannot be effected by the End User.

3.3 Also granted to VF D2 is

- the right to print, meaning the right to edit and to publish the content in unchanged form - in the last case in particular in the form of summaries and synopses for the purpose of copying and disseminating the content as a printed work, especially for advertising purposes. This also covers the right to manufacture, copy and distribute in any kind of book for all editions and issues, particularly in the form of illustrated and non-illustrated books, brochures, customer magazines (e.g. the current VF D2 customer magazines "Vodafone World" and "CallYa Zin"), comics, electronic press kits as well as other analogue and digital text, image and data carriers, etc. that are derived from the content by reproducing or presenting the content even in modified or newly arranged form - or by photographic, drawn or painted representations or similar as well as the right to provide corresponding editions via video and audio text or other distribution systems to interested persons;

- the right to present as the right to render the content entirely or partially publicly perceptible;

- the right to perform as the right to put forward the content or parts of the content in a form that does not take place on stage.

3.4 Subject to other provisions in the Contract and/ or this Agreement, VF D2 shall exclusively have the right to decide on the time and manner of making the Application available and marketing it. VF D2 shall decide, in particular, whether and for which groups of End Users the Application will be made accessible, whether and to what extent registration will be required for use, whether and in what amount there will be a charge for use and which access method will be used or for which End Users the Application will be made available. Furthermore, VF D2 shall exclusively have the right to decide on the placement, positioning, and linking of the Application within the Portal, on the name and title of the Application, and on the placement and manner of advertisements and other advertising and marketing steps for the Application inside and outside the Portal as long as no other express arrangement was made by the parties. The parties agree that VF D2 shall decide on its own whether the Application is to be marked with the logo of one or both of the parties or with the logo of a third person, as far as not otherwise set forth within the Contract.

3.5 VF D2 shall be entitled to market ASP's Application in so-called packages together with its own applications and/or applications of third persons at a package price set by VF D2.

3.6 After the expiration of the contract, VF D2 shall continuously be entitled for an unlimited period to use the application for purposes of internal archiving and preservation of evidence.

**4 Installation of an Application**

4.1 Release of the Application

4.1.1 VF D2 shall inform ASP, at latest, within ten working days after delivery of the application, whether the provided application is in conformity with the contract, in particular, whether the core functions are without errors (hereinafter, "release"). VF D2 shall not undertake to examine the legal permissibility or harmlessness of the application, the altered application, or individual parts thereof; ASP shall have a duty to do this. In the event the application provided by ASP is not in conformity with the contract and VF D2 has notified ASP of this, VF D2 shall be entitled to postpone the planned launch date and to notify ASP of a new planned launch date. ASP shall implement the alterations notified by VF D2 in each case, without cost to VF D2, within 5 working days after notification by VF D2. ASP shall again deliver the revised application to VF D2 and notify VF D2 of this in advance by e-mail and in writing.

4.1.2 In the event ASP does not deliver the Application as specified in the Contract and in this Agreement by the new planned launch date, the procedure set out in clause 4.1.1 shall be repeated if VF D2 gives notice of a new planned launch date in each case within the specified time periods. VF D2's right to terminate the contract without notice pursuant to clause 12.2.5 shall remain unaffected.

4.2 Launch Date

VF D2 shall be entitled to postpone the planned launch date for technical, editorial, or marketing reasons. VF D2 shall notify ASP of a postponement of the planned launch date in advance in writing or by e-mail. In the event of the postponement of the launch being a burden for ASP, ASP shall have a right to terminate of the contract within 7 days of such notification from VF D2.

**5 Marketing and PR**

5.1 VF D2 shall be entitled, for the term of the Contract, to use the company and product names, designations, in particular, trademarks and logos used by ASP (hereinafter, "Brands") within the framework of performance of the Contract and limited to this purpose. ASP shall grant VF D2, for the term of the Contract, free of charge, the nonexclusive right to use its Brands. This right of use shall apply, in particular, to the use of the Brands for the purpose of advertising in the form customary in this line of business in print, on TV, online, and via direct marketing in classic and electronic form as well as to PR, investor relations, and other communications steps.

**6 Share of Proceeds**

6.1 General

6.1.1 The parties shall perform their contractual duties for each other free of charge unless the parties have expressly agreed otherwise in writing in the Contract or in this Agreement or in a separate agreement. The parties shall share the proceeds realised through the sale of the Application itself and through chargeable events caused by the Application (hereinafter, "Application Proceeds") pursuant to the calculations set forth in this Section 6 and the revenue share terms set forth in the Contract.

6.1.2 VF D2 shall bill the application proceeds directly to end users or third persons. The billing of end users may, in particular, be carried out by charging through the telephone bill of the end user or direct debit. Furthermore, VF D2 shall distribute ASP's share of the application proceeds to ASP as set forth in detail in the stipulations under clause 6.4.

6.1.3 Application proceeds are the fees paid by the end users for the use of the application (hereinafter, gross application proceeds). In the event an application is offered to the end users together with other applications, contents, goods, and/or services as a package at a package price which is not broken down in detail, only the portion of the fee attributed to the relevant application shall be deemed the gross application proceeds allocated to this application within the meaning of this clause (pro rata). The portion attributed to one application shall be calculated by multiplying the normal price by a fraction whose numerator is the package price and denominator is the total of the normal prices of all of the elements of the package. (Price portion for single application in package = normal price per application * (total price package / total of the normal prices for the individual applications/goods/services). Should any of the elements not have a normal price, the current or last end user price quoted on the portal shall be used. In the event there is no such price, €0,99 for b/w applications and €1,49 for colour applications shall be used as a fictitious normal Net price for the package element in question.

6.2 Division of Application Proceeds

6.2.1 The net application proceeds pursuant to clause 6.3 shall be divided between VF D2 and ASP as set out in the contract.

6.2.2 In the event VF D2 markets ASP's application free of charge without the consent of ASP or for a price below the normal price given in clause 2.3, or if, without ASP's consent, the portion of the price attributed to the application within the framework of a package offer is below the normal price, ASP shall receive at least the percentage of the normal price as set out in the contract minus statutory VAT per use.

6.3 Calculation of Net Application Proceeds

6.3.1 Net Application Proceeds means the Gross Application Proceeds actually paid by the End Users and received by VF D2 related to use of Application, minus:

6.3.1.1 currently valid value added tax or similar sales taxes charged to the End Users ("Taxes");

6.3.1.2 the Gross Application Proceeds refunded at VF D2's discretion to the individual End Users ("Refunds"); VF D2 shall only effect such refunds if the End User has given a substantiated and comprehensible account of why he was unable or only partly or incorrectly able to make use of the relevant application for reasons for which he is not responsible.

6.3.2 VF D2 shall deduct from the gross application proceeds the deductible costs as stipulated in clause 6.3.1 on the statement that concern the period in which these are claimed from VF D2, at latest, however, three months after the respective claiming-date.

6.4 Billing, Due Dates, Payment

6.4.1 VF D2 shall transmit a detailed statement of application proceeds received by VF D2 and ASP's share of these proceeds to ASP within two weeks after the end of each calendar month. The statement shall include the Application name, the end user device, the event type, the total events, the price per download/subscription, any additional Application Proceeds received and the calculation of Net Application Proceeds. ASP shall examine the statement from VF D2 without undue delay after receipt and notify VF D2 in writing of possible errors without undue delay. In the event ASP does not give such notification, the statement shall be deemed to be approved 14 days after receipt of the statement by ASP. Notwithstanding anything herein to the contrary, the parties may mutually agree to discuss exceptions, errors or other peculiarities of the statements at any time prior to final payment.

6.4.2 ASP shall be entitled to bill VF D2 for ASP's share of the Application Proceeds shown in the statement within two weeks after receipt of the statement. The invoice may be provided in electronic format and is due upon receipt. VF D2 shall make payments solely by wire transfer to the ASP account set out in the contract.

6.4.3 If the ASP is registered outside of Germany, VF D2 might be obliged to deduct withholding tax from any payment due. In this event, VF D2 will withhold and pay the tax on behalf of and for the account of ASP to the tax office in charge. VF D2 will provide ASP with a respective tax receipt certificate. In case that a double taxation treaty applies which provides for a reduced withholding tax rate, VF D2 will only withhold and pay the reduced tax on behalf and for the account of ASP if a respective exemption certificate is issued by the competent authority. VF D2 shall assist in obtaining this certificate. Unless such a certificate is granted and presented VF D2 will deduct the tax of any respective sum according to the applicable tax law.

6.4.4 The Applications are subject to VAT in Germany. Therefore no VAT is issued according to Art. 9 (2) (e) of the EEC 6th Directive (reverse charge). VAT is owed by the recipient of the service.

6.5 ASP shall only set off costs towards VF D2 if ASP's claim is undisputed or has been finally determined by the courts.

**7 Data Recording and Data Protection**

ASP shall guarantee that it will observe current, applicable data protection rules (in particular, laws, ordinances, court decisions, and official directives). ASP shall not be entitled to record any data on End Users (including personal data), unless conclusively necessary for the use of the Application or for the purposes of reconciling reporting.

**8 Responsibility for Contents, Third-party Rights, Compensation for Damage, Indemnification**

8.1 ASP guarantees ("Garantie" as known in German Law) that the Application does not, to its knowledge, violate German law, in particular,

8.1.1 that it is not slanderous or defaming for other natural or legal persons;

8.1.2 that it does not infringe protected rights such as copyrights and intellectual property rights, trademarks and other brand rights, patents, business secrets or confidentiality agreements;

8.1.3 that it does not inflict injuries on persons or cause damage to property;

8.1.4 that it does not violate, the privacy of other persons;

8.1.5 that it does not contain pornographic, obscene, or disparaging material;

8.1.6 that it does not aid and abet acts in violation of the law; and/or

8.1.7 that it cannot be prosecuted in criminal or civil proceedings under currently valid law.

8.1.8 that ASP has obtained all required licenses, releases, and permits from third persons or official authorities and government agencies which, according to currently valid statutory law or rules, are required for the use of the Application in the Portal in compliance with the stipulations of the Contract and this Agreement.

8.2 Should ASP breach its guarantee as defined in clause 8.1, it shall be obligated to cease and desist from further breach, to compensate VF D2 for any actual sustained loss and loss which is still being sustained including any claims for damages and compensation for expenses incurred by third persons which were directly caused by the breach. All other claims of VF D2, in particular, to block the Application and to terminate the contract for cause, shall be unaffected.

8.3 In the event third persons assert claims against VF D2 due to ASP's breach of the guarantee listed in clause 8.1 or any other violations of law committed by ASP, ASP shall indemnify VF D2 to the full extent including any possible court costs and hold it harmless upon VF D2's first demand. VF D2 shall notify ASP without undue delay of the claim and, to the extent legally possible, give ASP the opportunity to defend itself against the asserted claim. Should VF D2, or any affiliate, alter, market, price, sell, advertise, bundle or modify the Application in violation of any law, regulation, intellectual property right or contract or reveal confidential information of ASP resulting in harm to ASP, VF D2 shall hold ASP harmless against any and all losses, claims or expenses associated with, related to, or caused by such violation or revelation.

## 9 Warranties of ASP

9.1 ASP gives the following warrants (“gewährleistet” as known in German Law)

9.2 The Application as provided by ASP shall meet the system specifications and characteristics of performance set out in the Contract and this Agreement.

9.3 ASP shall, in each case, use technical systems and means corresponding to commercially reasonable technology to prevent third persons having access to the Application as provided and to protect VF D2’s and the End Users’ computer systems (including any other devices for use of the Application) from software elements which could disturb or damage these computer systems (e.g., computer viruses, logic bombs, Trojan horses, etc.).

9.4 In the event of a failure to fulfil one of the warranties listed above, ASP shall be liable towards VF D2 for compensation for actual loss or damage sustained due to this failure to fulfil the warranty in question.

## 10 Refusal and Blocking of the Application

10.1 VF D2 shall be entitled to refuse the Application altogether or to block the link to it if there is a reasonable assumption on the part of VF D2 that ASP is in breach of its du-ties in clause 8.1. Any further claim of VF D2 against ASP shall be unaffected.

10.2 Should ASP be of the opinion that there has been no breach of clause 8.1, ASP shall provide VF D2 with a legal expert opinion to this effect by a person qualified to be a judge.

10.3 The event of a rightful refusal or blocking of the application by VF D2 will neither cause any responsibilities of VF D2 nor cause any rights and/or claims for damages in favour of ASP.

## 11 Limitations of Liability

11.1 Area of application

Except as specifically stated herein, each party shall be liable for damages on any legal basis whatsoever only in the amount stipulated in these provisions and only up to the fifty thousand euros (€ 50 000) Notwithstanding the above, neither party shall be liable under contract, tort or any other principle of law, to the other party for any indirect loss, consequential loss or loss of anticipated savings.

11.2 Intent and gross negligence

Each party’s liability for damages caused by such party or one of its vicarious agents or legal representatives with intent or gross negligence shall not be limited by amount.

11.3 Personal injury

In the event of damages based on injury to the life, body, or health of persons, each party’s liability shall be unlimited in cases of simple negligence by such party or one of its legal representatives or vicarious agents.

11.4 Organisational negligence and warranty Liability for damages resulting from gross negligence with regard to organisation on the part of a party as well as damages caused by the lack of a warranted quality shall also be unlimited as to amount.

11.5 Breach of material contractual duties

In the event of a breach of material contractual duties, each party's liability shall be limited to the typical, foreseeable damages for this type of contract unless one of Clauses 11.2 - 11.4 is applicable.

11.6 Exclusion of liability

Any further liability for damages shall be excluded; in particular, liability without fault shall be excluded.

11.7 Contributory negligence

In the event damages are caused both by the negligence of VF D2 and ASP, each party must allow the attribution of contributory negligence.

11.8 Neither party shall not be liable towards the other for the commercial success of the contract.

**12 Contractual Term, Termination**

12.1 The Contract shall become effective upon execution and shall be concluded for a basic term as set out within the Contract.

12.2 Each party may terminate the Contract without notice (except as set forth in clause 12.3.1) for cause as set forth below. For cause shall be given, in particular, if

12.2.1 the other party has violated a material contractual stipulation and does not remedy this violation within fourteen days after a written request from the party not in breach;

12.2.2 the other party ceases its business activities or becomes unable to pay its debts or if insolvency proceedings are initiated or a petition to initiate insolvency proceedings has been filed and the insolvency court orders security transactions pursuant to § 21 InsO;

12.2.3 ASP has failed to make its Application available for the full time period stipulated in the Contract and/ or this Agreement for two consecutive months for reasons for which ASP is responsible;

12.2.4 the customer care costs allocated to the ASP Application incurred by VF D2 in two consecutive months exceed 10 percent of the monthly net subscription proceeds for the Application;

12.2.5 if VF D2 does not effect a Release of the application pursuant to clause 4.1.1 twice in succession due to circumstances for which ASP is responsible;

12.2.6 if VF D2 has failed to submit the proceeds statement (according to clause 6.4.1.) or to make its share payments in due course (according to clause 6.4.3.) in two consecutive months for reasons for which VF D2 is responsible.

## 13 Confidentiality

13.1 The contents of all documents and information of a commercial, financial, or technical nature or documents and information marked as confidential which the parties receive in the course of the contractual relationship are to be treated confidentially by the par-ties and may only be copied or forwarded to third persons with the prior written consent of the other party. These confidentiality obligations also apply to the conditions of the contract and these terms and conditions, the use numbers and user statistics established in its performance, and the business models and financial conditions proposed by VF D2 or ASP. The parties may copy and use such documents and information only within the framework of the contract.

13.2 The parties shall undertake to impose a corresponding confidentiality obligation on the employees of the party, companies in the Vodafone Group, technical service provides and any outside firms called in connection with the Contract, including their employees.

13.3 Exceptions

The obligations above do not apply to information which

13.3.1 is already or becomes public knowledge at or after disclosure without fault of the party receiving the information;

13.3.2 is already known to the party receiving the information as shown by its own written notes at the time of receipt;

13.3.3 a party receives from a third person without this third person having received this in-formation directly or indirectly from the other contractual party.

13.3.4 must be disclosed according to statutory law or upon demand of a tax authority or by order of a competent authority, government agency, or a competent court, or accord-ing to the rules of a stock exchange at which the shares of a party to the contract or a holding company of one of the parties to the contract are noted.

13.4 The party citing clause 13.3 shall bear the burden of proof that these conditions are met.

13.5 VF D2 shall be entitled to pass confidential information on to companies within the Vodafone Group or, provided that this is fit and convenient for the purpose of operating the Portal, to technical service providers operating a system necessary for the use of the Application or the operation of the VF D2 platform.

13.6 The above-described confidentiality duty shall survive the termination of the Contract by five years. The parties shall undertake everything which can reasonably be expected in good faith to warrant the fulfilment of this duty even in the event of employees' leaving the company or a change of the third persons called in.

13.7 ASP shall require VF D2's prior written consent for press releases or other forms of public promotional disclosure.

## 14 Miscellaneous

14.1 Unless otherwise stipulated in the Contract or in this Agreement, neither party may assign rights, in particular, claims resulting from the contract, to a third person without the prior consent of the other contractual party.

14.2 Amendments or supplements to the contract, including this provision, must be in writing and executed by both parties.

14.3 The Contract, including its appendices, shall replace all written or oral statements in its scope submitted by the contractual parties during negotiations. It shall replace, in particular, with immediate effect, all previous oral or written agreements between the contractual parties with respect to the subject matter of the contract.

14.4 Neither party shall be deemed to be in default of or to have breached any provision of this Agreement or the Contract as a result of any material delay, failure in performance, or interruption of service, resulting, directly or indirectly, from acts of God, acts of civil or military authorities, civil disturbances, wars, strikes or other labor disputes, fires, transportation contingencies, interruptions in telecommunications or Internet services, and other catastrophes or occurrences which are beyond such party's reasonable control and which such party is unable to avoid or overcome by the exercise of reasonable diligence.

14.5 Waiver of any breach or failure to enforce any term of this Agreement or the Contract will not be deemed a waiver of any breach or right to enforce which may thereafter occur. No waiver will be valid against any party hereto, unless made in writing and signed by the party against whom enforcement of such waiver is sought and then only to the extent expressly specified therein. If any one or more of the provisions of this Agreement will for any reason be held to be invalid, illegal or unenforceable, that provision will be enforced to the maximum extent permissible, and the other provisions of this Agreement will remain in force. The parties shall agree on a valid provision to replace the invalid provisions or the omission which, to the extent legally possible, will reflect as closely as possible the economic purpose of the contractual parties or what they would have intended if they had considered this point.

14.6 The relationship of the parties hereunder is that of independent contractors. Nothing herein shall be construed to constitute a partnership or joint venture between such parties, nor will either party be deemed the agent of or have the right to bind the other party in any way without the prior written consent of the other party.

14.7 Each party hereby agrees to use commercially reasonable efforts to perform its obligations hereunder in a timely manner and agrees that the other party shall have the discretion to extend any delivery dates of its obligations set forth in this Agreement or the Contract by the same number of days that it delays in performing its obligations.

14.8 This Agreement and the Contract is entered into solely between, and may be enforced only by the parties hereto and their permitted successors and assigns. This Agreement shall not create or be construed to create any rights in third parties, including Affiliates (other than permitted successors and assigns), employees, suppliers, franchisees, or customers of a party.

14.9 The Contract shall be governed by the law of the Federal Republic of Germany under exclusion of the U. N. Convention on Contracts for the International Sale of Goods. Jurisdiction and venue is Düsseldorf, Germany; VF D2 shall also be entitled to bring suit against ASP in Los Angeles, California.

25 February 2006

Waat Media Corporation
14242 Ventura Blvd
Suite 300
Sherman Oaks
CA 91423
United States of America

FAO Adi McAbian

Dear Sirs

**LETTER OF AMENDMENT OF CONTRACT BETWEEN WAAT MEDIA CORPORATION ("CONTENT PROVIDER") AND VODAFONE UK CONTENT SERVICES ("VCS")**

The Content Provider and Vodafone Group Services Limited entered into a Master Global Content Reseller Agreement dated 17 December 2004 (**"Original Agreement"**)and a content schedule dated 17 January 2005 (**"Content Schedule"**). To implement the Original Agreement and the Content Schedule in the UK, VCS signed a Contract Acceptance Notice on 11 April 2005 (the Original Agreement, Content Schedule and Contract Acceptance Notice together the **"Contract"**).

On [25] February 2006 VCS entered into an agreement with the Content Provider which provides that the Content Provider shall supply certain services to VCS (**"Linking Agreement"**). The provision of such services by the Content Provider necessitates certain amendments to the Contract.

We therefore write to confirm that the amendments set out below shall be made to the Contract with effect from the date of this Letter, in respect of the relationship between the Content Provider and VCS in the UK only.

The following Special Conditions shall be added to the Content Schedule:

1. The Content Provider Revenue shall be [INFORMATION OMITTED AND FILED SEPARATELY WITH THE COMMISSION UNDER RULE 24B-2]% of Net Revenue, less all the Deductions in respect of distribution of the Content.

2. The Content Provider shall be the sole supplier of Adult Content in the Directory for the term of the Linking Agreement provided that VCS shall be entitled to place adult erotica content supplied by FHM, Maxim, 2dayuk and Filmnight within the Directory

   For the purposes of the Contract, Adult Content means any adult erotica content which is only accessible by Age Verified Customers, other than any adult erotica content supplied by FHM, Maxim, 2dayuk or Filmnight (**"Adult Content"**); and Age Verified Customers means a Customer which Vodafone Limited has verified as being 18 years of age or older, by means of its age verification process (**"Age Verified Customer"**).

3. In the event that the Content Provider breaches the Guidelines VCS shall be entitled to claim and receive from the Content Provider a liquidated damages payment equal to [INFORMATION OMITTED AND FILED SEPARATELY WITH THE COMMISSION UNDER RULE 24B-2] in respect of each instance in which a breach occurs (i.e. per incident and not per video/image) up to a maximum of [INFORMATION OMITTED AND FILED SEPARATELY WITH THE COMMISSION UNDER RULE 24B-2] in any month. The Content Provider shall pay the liquidated damages within fourteen days from demand by VCS of any or all of the liquidated damages under this Paragraph 3 or at its option VCS may set off the amount of the liquidated damages against any Content Provider Revenue due from VCS to the Content Provider. The amount of liquidated damages set out in this Paragraph 3 represents a genuine pre-estimate of the loss that it is anticipated VCS would suffer as a result of the breach.

   In the event that the liquidated damages amount to [INFORMATION OMITTED AND FILED SEPARATELY WITH THE COMMISSION UNDER RULE 24B-2] in [INFORMATION OMITTED AND FILED SEPARATELY WITH THE COMMISSION UNDER RULE 24B-2] consecutive months, VCS may terminate the Contract on 30 days notice.

For the avoidance of doubt and unless otherwise provided in this Letter, the capitalised terms in this Letter shall have the same meaning as provided in the Contract.

We confirm that save as specified in this Letter the terms of the Original Agreement and any contracts entered into under the Original Agreement (other than the Contract between the Content Provider and VCS) remain unchanged.

Please confirm your agreement to this Letter by signing and returning the enclosed copy.

______________________________

for and on behalf of
Vodafone Group Services Limited

We hereby agree to the contents of this Letter.

______________________________

for and on behalf of
**Waat Media Corporation**

Dated: 25 February 2006

We hereby agree to the contents of this Letter

/s/ Al Russell
for and on behalf of
**Vodafone UK Content Services Limited**

***WE HAVE REQUESTED CONFIDENTIAL TREATMENT OF CERTAIN PROVISIONS CONTAINED IN THIS EXHIBIT. THE COPY FILED AS AN EXHIBIT OMITS THE INFORMATION SUBJECT TO THE CONFIDENTIALITY REQUEST.***

___ August 2007

Adi McAbian
Waat Media Corporation
14242 Ventura Boulevard, 3rd Floor
Sherman Oaks, CA 91423
United States of America

**LETTER OF AMENDMENT OF CONTRACT BETWEEN WAAT MEDIA CORPORATION ("CONTENT PROVIDER") AND VODAFONE UK CONTENT SERVICES LIMITED ("VCS")**

Dear Adi,

The Content Provider and Vodafone Group Services Limited entered into a Master Global Content Reseller Agreement dated 17 December 2004 ("**Original Agreement**") and a content schedule dated 17 January 2005 ("**Content Schedule**"). To implement the Original Agreement and the Content Schedule in the UK, VCS signed a Contract Acceptance Notice on 11 April 2005 (the Original Agreement, Content Schedule and Contract Acceptance Notice, as amended by the letters of amendment dated 25 February 2007 and 27 February 2007 shall together be referred to as the "**Contract**").

On 25 February 2006 VCS entered into an agreement with the Content Provider which provides that the Content Provider shall supply certain services to VCS (as amended by letters of amendment on 25 February 2007 and 27 February 2007, the "**Linking Agreement**"). VCS and the Content Provider have now agreed to amend the Contract and Linking Agreement in respect of the UK only as set out below:

1 Effective 1 August 2007:

1.1 With respect to the Contract, Content Provider shall receive [INFORMATION OMITTED AND FILED SEPARATELY WITH THE COMMISSION UNDER RULE 24B-2]% of the Net Revenue, less all Deductions in respect of distribution of the Content.

1.2 With respect to the Linking Agreement, Content Provider shall receive [INFORMATION OMITTED AND FILED SEPARATELY WITH THE COMMISSION UNDER RULE 24B-2]% of Net Partnership Revenue.

2 Content Provider shall remain responsible for ensuring that the Code of Practice (as defined in the Linking Agreement) and Guidelines (as defined in the Linking Agreement) are adhered to and also the relevant content standards are maintained in their current format and shall ensure that the content of any third parties meets the same standards.

3 Save as varied by this letter of amendment, the Contract and Linking Agreement shall continue in full force and effect and in the event of any conflict between its terms and this letter of amendment, the terms of this letter of amendment shall prevail.

Vodafone UK Content Services Limited
Vodafone Content Services
Vodafone House, The Connection, Newbury, Berkshire RG14 2FN, England
Telephone: +44 (0)1635 33251, Facsimile: +44 (0)1635 686734

Registered Office: Vodafone House, The Connection, Newbury, Berkshire RG14 2FN, England. Registered in England No. 4064826

For the avoidance of doubt and unless otherwise provided in this letter of amendment, the capitalised terms in this letter of amendment shall have the same meaning as provided in the Contract and Linking Agreement, as applicable.

Please confirm your agreement to this letter of amendment by signing and returning the enclosed copy.

Yours sincerely

/s/ Bill Randall

Bill Randall
Head of Commercial Partnerships
E-mail: bill.randall@vodafone.com
We hereby agree to the contents of this letter of amendment.

for and on behalf of
**Waat Media Corporation**

Dated:

Vodafone UK Content Services Limited
Vodafone House, The Connection, Newbury, Berkshire RG14 2FN, England
Telephone: +44 (0)1635 33251, Facsimile: +44 (0)1635 686181

Registered Office: Vodafone House, The Connection, Newbury, Berkshire RG14 2FN, England.
Registered in England No. 4064826

***WE HAVE REQUESTED CONFIDENTIAL TREATMENT OF CERTAIN PROVISIONS CONTAINED IN THIS EXHIBIT. THE COPY FILED AS AN EXHIBIT OMITS THE INFORMATION SUBJECT TO THE CONFIDENTIALITY REQUEST.***

## Content Schedule

1. This Content Schedule incorporates the terms of the Master Global Content Agency Agreement (the "Master Agreement") between Vodafone Group Services Limited ("VGSL"), registered in England (registered number 3802001), having its registered office at Vodafone House. The Connection, Newbury, Berkshire RG14 2FN, United Kingdom and the Content Provider (as defined below) dated 17 December 2004.

2. When signed by VGSL and the Content Provider this Content Schedule is a standing offer by the Content Provider of the applicable Content (as defined below) to all Vodafone Group Companies on the terms of the Master Agreement and this Content Schedule.

3. A Vodafone Group Company may accept the standing offer by completing and signing the Contract Acceptance Notice and following the procedure set out in the Master Agreement.

**1. Content Provider**

Waat Media Corporation; United States of America; Company reg. 2512380; Address: 18226 Ventura Blvd. Suite 102, Tarzana, CA 91356.

**2. Content**

Content Provider will provide a minimum of two channels which may be included in the Vodafone mobile TV offering:

1. 'Blue' (which may have an alternative name in different Territories)- This will take the form of a two hour loop, updated by the Content Provider 5 days per week (Monday-Friday), or a suitable refresh rate which suits both the delivery requirements and commercial customer proposition and is agreed by both parties, with the intent of offering the above refresh rate when commercially and technically viable. The channel shall be presented by a local presenter and/or local graphics will ensure a local feel to the channel, conforming to the highest television editorial and production standards. A language agnostic version may be made available for smaller markets as agreed between the Parties. The channel shall be produced in accordance with broadcast quality production values including "mobile sized" sensual clips, with captivating fillers and entertaining bumpers. The channel shall consist of segmented programming, just like on television networks and will feature quality brands and top tier content.

2.The Parties also intend to include a 'Playboy' channel which will be included in this Content Schedule upon agreement in writing (which shall include agreement by email) by the Parties. The 'Playboy' channel shall take the form of a two hour loop, updated by the Content Provider 5 days per week (Monday - Friday), or a suitable refresh rate which suits both the delivery requirements and commercial customer proposition and is agreed by both parties with the intent of offering the above refresh rate when commercially and technically viable. The channel shall be presented by a local presenter and/or local graphics will ensure a local feel to the channel, conforming to the highest television editorial and production standards. A language agnostic version may be made available for smaller markets as agreed between the parties. The channel shall consist of broadcast quality production values including "mobile sized" sensual clips, with captivating fillers and entertaining bumpers.

Content Provider confirms that it understands the difference between US and local European tastes and will ensure that the Content fully reflects this difference.

No third party advertising shall be included in the Content unless otherwise specified by VGSL.

**3. Content Provider Branding Guidelines**

The Content Provider shall brand the Content in accordance with Section 2 of this Content Schedule

**4. Marketing Materials**

The Content Provider will provide marketing materials as requested by VGSL and/or the Vodafone Group Companies from time to time.

**5. Content Provider Revenue**

For 'Blue', Content Provider Revenue shall be [INFORMATION OMITTED AND FILED SEPARATELY WITH THE COMMISSION UNDER RULE 24B-2] of Net Revenue, less all the Deductions. It is understood that Deductions (if any) shall be deducted from the Content Provider Revenue actually paid to the Content Provider in accordance with : Clause 10.2.

.

For 'Playboy', Content Provider Revenue shall be [INFORMATION OMITTED AND FILED SEPARATELY WITH THE COMMISSION UNDER RULE 24B-2] of Net Revenue, less all the Deductions. It is understood that Deductions (if any) shall be deducted from the Content Provider Revenue actually paid to the Content Provider in accordance with Clause 10.2.

The Content Provider and VGSL shall seek to agree reasonable commercial models for

'promotional' content and bundled content as and when requested by VGSL or a Vodafone Group Company

| | | |
|---|---|---|
| **6.** | **Content Protection** | Clause 8.1 to 8.9 of the Master Agreement are not applicable. The content will be streamed in H.263 or MPEG 4 or otherwise as decided by VGSL. |
| **7.** | **Hosting** | Vodafone shall be responsible for hosting the Content initially but the Content Provider agrees that on request by Vodafone, the Content Provider shall be responsible for hosting the Content at no additional cost to Vodafone. |
| **8.** | **Languages** | As per section 2 of this Content Schedule, the Content shall be presented by a local presenter and shall be available in a minimum of English, French, German, Italian and Spanish (EFIGS) and any other languages as may be reasonably requested by VGSL from time to time. A language agnostic version of the Content shall be made available to those markets where it is not commercially viable to produce a non-EFIGS language. |
| **9.** | **Territories** | 'Blue' - Worldwide<br><br>'Playboy' - Worldwide excluding UK, Eire, Sweden, Austria, Italy, Australia, New Zealand, Hong Kong, Thailand. |
| **10.** | **Mobile Devices** | All mobile devices |
| **11.** | **Format** | The Content Provider shall at its cost ensure that the Content is capable of supporting all Formats, which may be specified, by VGSL or the Vodafone Group Companies (the "Format") from time to time. The Content Provider shall not change or vary the Format without Vodafone's prior written consent. |
| **12.** | **Purchase Options** | Not applicable. |
| **13.** | **VGSL Certification** | Not applicable. |
| **14.** | **Delivery Timetables** | As requested by the Vodafone Group Companies. However the Content Provider should be able to deliver the content from 1 August 2005,or earlier depending on specific market requirements. |
| **15.** | **Relevant Contacts** | The Content Provider:<br>Technical-<br>Camill Sayadeh<br>Tel: +1 818 708 9995<br>Mob: +1 818 723 2488<br>Fax: +1 818 708 0598<br>camill@waatmedia.com<br><br>Commercial-<br>Adi McAbian<br>Tel: +1 818 708 9995<br>Mob: +1 818 644 1300<br>Fax: +1 818 708 0598<br>adi@waatmedia.com<br><br>Financial-<br>Lena Barseghian<br>Tel: +1 818 708 9995<br>Mob: +1 818 652 6497<br>Fax: +1 818 708 0598<br>lena@waatmedia.com<br><br>VGSL-<br>Commercial - Andrew Stalbow<br>Tel: +44 207 212 0591<br>Mob: +44 7717 618 919<br>Fax: +44 207 212 0701<br>E-mail: andrew.stalbow@vadofone.com |
| **16.** | **Tax Residence** | The same country as the registered address of the Content Provider set out above. |
| **17.** | **Content Provider's bank** | Payment by VGSL, to the Content Provider shall be made by BACS to the following bank |

**account details for electronic transfer payments**

account:

EAST WEST BANK
18321 Ventura Blvd. Tarzana, CA 91356
Account Name: The Waat Corporation

Account Number: 8270-2648
ABA# 322070381

The currency of this Agreement shall be in Euros. All financial reports, statements, invoices, charges and payments made by one Party to the other shall be in Euros.

**18. Special Conditions**

1. The Content Provider will comply with all VGSL/Vodafone content standards guidelines and policies as have been worked on in conjunction with the Content Provider and / or have been provided to the Content Provider as may change from time to time. Content Provider agrees that Content provided in accordance with Section 2 of this Content Schedule will vary according to the Content Standard rating in each Territory, and that Content supplied shall always adhere to such rating as-agreed by the Vodafone Group Company locally. Content Provider shall also provide reasonable assistance to help create such standards and guidelines as agreed from time to time.

The current Content Standards Classification Matrix and associated Vodafone Group Company ratings dated April 2005 is attached. The Content Provider acknowledges that this will be updated and will change over time, and that the Content Provider is responsible for ensuring it delivers Content in accordance with the rating specified by each Vodafone Group Company as such rating may be amended from time to time.

Where a Vodafone Group Company has indicated in the Content Standards Classification Matrix that Content with a higher rating than other Content may be provided behind its access controls solution, the Content Provider shall ensure that higher rated Content is only accessible behind the access controls solution.

2. The Commencement Date for each individual Contract may, at the election of each relevant Vodafone Group Company, be either (a) the Commencement Date as defined in the Master Agreement; (b) 29 September 2003; or (c) a date in between (a) and (b) specified by each relevant Vodafone Group Company.

3. Clause 15.2 of the Master Agreement shall not apply to this Content Schedule.

4. In addition to its obligation in Clause 6.7 of the Master Agreement, Content Provider shall be responsible for obtaining all licences, clearances, permissions, waivers, approvals or consents required in order to enable Vodafone and VGSL to exercise the rights granted to VGSL and Vodafone in the Master Agreement and each relevant Contract including without limitation, obtaining any necessary clearances and consents from, making royalty or other payments to the owners of the applicable Intellectual Property Rights (including payment of any Collecting Society Royalties). In the event that VGSL or Vodafone is required to obtain any clearances and consents or to make royalty or other payments, Content Provider shall reimburse VGSL and Vodafone for any costs incurred in obtaining such clearances and consents and for the amounts of such royalties or other payments.

5. In the event that the Content contains any Intellectual Property Rights in which the Content Provider has not been able to obtain all licences, clearances, permissions, waivers, approvals or consents referred to in Special Condition 4 above, Content Provider shall notify VGSL and Vodafone and shall give VGSL and Vodafone the option of including alternative content.

| Signed on behalf of VGSL: | Signed on behalf of Content Provider: |
|---|---|
| /s/ Graeme Ferguson | /s/ Camill Sayadeh |
| VGSL authorised signatory | Content Provider authorised signatory |
| Print name: Graeme Ferguson | Print name: Camill Sayadeh |
| Position: Director of Global Content Development | Position: COO |
| Date signed: 13TH JULY 2005 | Date signed: JULY 5TH 2005 |

***WE HAVE REQUESTED CONFIDENTIAL TREATMENT OF CERTAIN PROVISIONS CONTAINED IN THIS**

**EXHIBIT. THE COPY FILED AS AN EXHIBIT OMITS THE INFORMATION SUBJECT TO THE CONFIDENTIALITY REQUEST.***

**Twistbox Entertainment Inc.**
**and Subsidiaries**
**Consolidated Financial Statements**
**March 31, 2007 and 2006**

**Twistbox Entertainment Inc. and Subsidiaries**
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## Report of Independent Auditors

Board of Directors and Stockholders
Twistbox Entertainment Inc. and Subsidiaries

We have audited the accompanying consolidated balance sheets of Twistbox Entertainment Inc. and Subsidiaries as of March 31, 2007 and 2006, and the related consolidated statements of operations, stockholders' deficit and comprehensive loss, and cash flows for the years then ended. These consolidated financial statements are the responsibility of the Company's management. Our responsibility is to express an opinion on these consolidated financial statements based on our audit.

We conducted our audit in accordance with generally accepted auditing standards as established by the Auditing Standards Board (United States) and in accordance with the auditing standards of the Public Company Accounting Oversight Board (United States). Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the consolidated financial statements are free of material misstatement. The Company is not required to have, nor were we engaged to perform, an audit of its internal control over financial reporting. Our audit included consideration of internal control over financial reporting as a basis for designing audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the Company's internal control over financial reporting. Accordingly we express no such opinion. An audit also includes examining, on a test basis, evidence supporting the amounts and disclosures in the consolidated financial statements, assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall consolidated financial statement presentation. We believe that our audit provides a reasonable basis for our opinion.

In our opinion, the consolidated financial statements referred to above present fairly, in all material respects, the financial position of Twistbox Entertainment Inc. and Subsidiaries as of March 31, 2007 and 2006, and the results of its operations and its cash flows for the years then ended in conformity with accounting principles generally accepted in the United States of America.

The accompanying consolidated financial statements have been prepared assuming that the Company will continue as a going concern. As discussed in Note 3 to the consolidated financial statements, the Company has suffered recurring losses from operations and a net stockholders' deficiency that raise substantial doubt about its ability to continue as a going concern. Management's plans in regard to these matters are also described in Note 3. The consolidated financial statements do not include any adjustments that might result from the outcome of this uncertainty.

/s/ Grobstein, Horwath & Company LLP

Sherman Oaks, California
January 31, 2008

**Twistbox Entertainment Inc. and Subsidiaries**
**Consolidated Balance Sheets**

**(In thousands)**

| | March 31, 2007 | March 31, 2006 |
|---|---|---|
| **ASSETS** | | |
| Current Assets | | |
| Cash and cash equivalents | $ 631 | $ 1,026 |
| Accounts receivable, net of allowances | 4,876 | 1,897 |
| Receivable from related party | 54 | 51 |
| Prepaid expenses and other current assets | 475 | 47 |
| Total current assets | 6,036 | 3,021 |
| Receivable from related party, net of current portion | 52 | 102 |
| Property and equipment, net | 1,027 | 588 |
| Intangible assets, net | 453 | 12 |
| Goodwill | 1,487 | 439 |
| **TOTAL ASSETS** | **$ 9,055** | **$ 4,162** |
| **LIABILITIES AND STOCKHOLDERS DEFICIT** | | |
| Current liabilities | | |
| Accounts payable | $ 1,168 | $ 307 |
| Accrued license fees | 5,227 | 1,137 |
| Accrued compensation | 694 | 181 |
| Current portion of long term debt | 2,063 | 1,432 |
| Other current liabilities | 918 | 598 |
| Total currrent liabilities | 10,070 | 3,655 |
| Accrued license fees, long term portion | 4,485 | - |
| Long term debt, net of current portion | 69 | 166 |
| Total liabilities | 14,624 | 3,821 |
| Commitments and contingencies (Note 15) | | |
| Stockholders deficit | | |
| Preferred stock (series A and B) | 32 | 8 |
| Common stock, $0.001 par value: 20,000,000 shares authorized; 7,785,716 issued and outstanding at March 31, 2007 and 2006 | 8 | 8 |
| Additional paid-in capital | 13,267 | 2,986 |
| Accumulated other comprehensive income | 17 | 5 |
| Accumulated deficit | (18,893) | (2,666) |
| Total stockholders' deficit | (5,569) | 341 |
| **TOTAL LIABILITIES AND STOCKHOLDERS DEFICIT** | **$ 9,055** | **$ 4,162** |

The accompanying notes are an integral part of these consolidated financial statements.

**Twistbox Entertainment Inc. and Subsidiaries**
**Consolidated Statements of Operations**

**(In thousands)**

| | Year Ended March 31, | |
|---|---|---|
| | **2007** | **2006** |
| Revenues | $ 11,898 | $ 4,869 |
| Cost of revenues | | |
| License fees | 6,267 | 2,472 |
| Impairment of guarantees | 6,022 | - |
| Other direct cost of revenues | 112 | - |
| Total cost of revenues | 12,401 | 2,472 |
| Gross profit/(loss) | (503) | 2,397 |
| Operating expenses | | |
| Product development | 7,813 | 2,854 |
| Sales and marketing | 4,124 | 1,130 |
| General and administrative | 3,594 | 530 |
| Amortization of intangible assets | 23 | - |
| Total operating expenses | 15,554 | 4,514 |
| Loss from operations | (16,057) | (2,117) |
| Interest and other income/(expense) | | |
| Interest income | 169 | 11 |
| Interest (expense) | (74) | (94) |
| Foreign exchange transaction gain | 124 | 1 |
| Other (expense) | (370) | (45) |
| Interest and other income/(expense) | (151) | (127) |
| Loss before income taxes | (16,208) | (2,244) |
| Income tax provision | (19) | (1) |
| Net loss | $ (16,227) | $ (2,245) |

The accompanying notes are an integral part of these consolidated financial statements.

**Twistbox Entertainment Inc. and Subsidiaries**
**Consolidated Statements of Stockholder's Deficit and Comprehensive Loss**

**(In thousands)**
**Fiscal Years Ended March 31, 2007 and 2006**

| | Common Stock | | Preferred Stock | | Additional Paid-In | Accumulated Other Comprehensive | Accumulated | | Comprehensive |
|---|---|---|---|---|---|---|---|---|---|
| | Shares | Amount | Shares | Amount | Capital | Income/(Loss) | Deficit | Total | Loss |
| Balance at March 31, 2005 | 7,500 | 7 | | | - | | (421) | (414) | |
| Net loss | | | | | | | (2,245) | (2,245) | (2,245) |
| Issuance of common stock and options for Charismatix acquisition | 286 | 1 | | | 476 | | | 477 | |
| Issuance of preferred stock series A at $3.33 per share | | | 750 | 8 | 2,490 | | | 2,498 | |
| Foreign currency translation gain/(loss) | | | | | | 5 | | 5 | 5 |
| Deferred stock-based compensation | | | | | 20 | | | 20 | |
| Comprehensive loss | | | | | | | | | $ (2,240) |
| Balance at March 31, 2006 | 7,786 | 8 | 750 | 8 | 2,986 | 5 | (2,666) | 341 | |
| Net Loss | | | | | | | (16,227) | (16,227) | (16,227) |
| Issuance of preferred stock series A at $3.33 per share | | | 75 | 1 | 249 | | | 250 | |
| Issuance of preferred stock series B at $4.41 per share | | | 2,268 | 23 | 9,977 | | | 10,000 | |
| Foreign currency translation gain/(loss) | | | | | | 12 | | 12 | 12 |
| Deferred stock-based compensation | | | | | 55 | | | 55 | |
| Comprehensive loss | | | | | | | | | $ (16,215) |
| Balance at March 31, 2007 | 7,786 | $ 8 | 3,093 | $ 32 | $ 13,267 | $ 17 | $ (18,893) | $ (5,569) | |

The accompanying notes are an integral part of these consolidated financial statements.

**Twistbox Entertainment Inc. and Subsidiaries**
**Consolidated Statements of Cash Flows**

**(In thousands)**

| | Years Ended March 31, | |
|---|---|---|
| | **2007** | **2006** |
| **Cash flows from operating activities** | | |
| Net loss | $ (16,227) | $ (2,245) |
| Adjustments to reconcile net loss to net cash used in operating activities: | | |
| Depreciation and amortization | 220 | 56 |
| Allowance for doubtful accounts | 146 | - |
| Deferred stock-based compensation | 55 | 20 |
| (Increase) / decrease in assets: | | |
| Accounts receivable | (3,125) | (1,178) |
| Prepaid expenses and other | (428) | (47) |
| Increase / (decrease) in liabilities: | | |
| Accounts payable | 861 | (133) |
| Accrued license fees | 8,575 | 1,108 |
| Accrued compensation | 513 | 181 |
| Other current liabilities | 320 | 595 |
| Net cash used in operating activities | (9,090) | (1,643) |
| **Cash flows from investing activities** | | |
| Issuance of advance to related party | - | (153) |
| Repayment of advance to related party | 47 | - |
| Purchase of property and equipment | (631) | (553) |
| Cash paid for acquisitions | (1,500) | (262) |
| Cash acquired with purchase of subsidiary | - | 188 |
| Net cash used in investing activities | (2,084) | (780) |
| **Cash flows from financing activities** | | |
| Proceeds from the issuance of debt | 1,967 | 786 |
| Repayment of debt | (1,433) | - |
| Proceeds from the sale of Series A & B preferred stock | 10,250 | 2,500 |
| Net cash provided by financing activities | 10,784 | 3,286 |
| Effect of exchange rate changes on cash and cash equivalents | (5) | - |
| **Net increase/(decrease) in cash and cash equivalents** | (395) | 863 |
| **Cash and cash equivalents, beginning of year** | 1,026 | 163 |
| **Cash and cash equivalents, end of year** | $ 631 | $ 1,026 |
| **Supplemental disclosure of cash flow information:** | | |
| Interest paid | 137 | 13 |
| Income taxes paid | 19 | 1 |

The accompanying notes are an integral part of these consolidated financial statements.

## 1. Organization

Twistbox Entertainment Inc. (formerly known as The WAAT Corporation) is incorporated in the State of Delaware.

The Company is a global publisher and distributor of branded entertainment content, including images, video, TV programming and games, for Third Generation (3G) mobile networks. The Company publishes and distributes its content in a number of countries. Since operations began in 2003, the Company has developed an intellectual property portfolio that includes mobile rights to global brands and content from leading film, television and lifestyle content publishing companies. The Company has built a proprietary mobile publishing platform that includes: tools that automate handset portability for the distribution of images and video; a mobile games development suite that automates the porting of mobile games and applications to multiple handsets; and a content standards and ratings system globally adopted by major wireless carriers to assist with the responsible deployment of age-verified content. Twistbox has distribution agreements with many of the largest mobile operators in the world.

The Company is headquartered in the Los Angeles area and has offices in Europe and South America that provide local sales and marketing support for both mobile operators and third party distribution in their respective regions.

## 2. Summary of Significant Accounting Policies

### Basis of Presentation

The consolidated financial statements have been prepared in accordance with accounting principles generally accepted in the United States of America ("GAAP") and pursuant to the rules and regulations of the Securities and Exchange Commission ("SEC") for annual financial statements. The consolidated financial statements, in the opinion of management, include all adjustments necessary for a fair statement of the consolidated results of operations, financial position and cash flows for each period presented.

### Revenue Recognition

The Company's revenues are derived primarily by licensing material and software products in the form of products (Image Galleries, Wallpapers, video, WAP Site access, Mobile TV) and mobile games. License arrangements with the end user can be on a perpetual or subscription basis.

A perpetual license gives an end user the right to use the product, image or game on the registered handset on a perpetual basis. A subscription license gives an end user the right to use the product, image or game on the registered handset for a limited period of time, ranging from a few days to as long as one month. The Company distributes its products primarily through mobile telecommunications service providers ("carriers"), which market the product, images or games to end users. License fees for perpetual and subscription licenses are usually billed by the carrier upon download of the product, image or game by the end user. In the case of subscriber licenses, many subscriber agreements provide for automatic renewal until the subscriber opts-out, while the others provide opt-in renewal. In either case, subsequent billings for subscription licenses are generally billed monthly. The Company applies the provisions of Statement of Position 97-2, *Software Revenue Recognition*, as amended by Statement of Position 98-9, Modification of SOP 97-2, *Software Revenue Recognition, With Respect to Certain Transactions*, to all transactions.

Revenues are recognized from our products, images and games when persuasive evidence of an arrangement exists, the product, image or game has been delivered, the fee is fixed or determinable, and the collection of the resulting receivable is probable. For both perpetual and subscription licenses, management considers a signed license agreement to be evidence of an arrangement with a carrier and a "clickwrap" agreement to be evidence of an arrangement with an end user. For these licenses, the Company defines delivery as the download of the product, image or game by the end user. The Company estimates revenues from carriers in the current period when reasonable estimates of these amounts can be made. Most carriers only provide detailed sales transaction data on a one to two month lag. Estimated revenue is treated as unbilled receivables until the detailed reporting is received and the revenues can be billed. Some carriers provide reliable interim preliminary reporting and others report sales data within a reasonable time frame following the end of each month, both of which allow the Company to make reasonable estimates of revenues and therefore to recognize revenues during the reporting period when the end user licenses the product, image or game. Determination of the appropriate amount of revenue recognized involves judgments and estimates that the Company believes are reasonable, but it is possible that actual results may differ from the Company's estimates, and those differences may be material. The Company's estimates for revenues include consideration of factors such as preliminary sales data, carrier-specific historical sales trends, volume of activity on company monitored sites, seasonality, time elapsed from launch of services or product lines, the age of games and the expected impact of newly launched games, successful introduction of new handsets, growth of 3G subscribers by carrier, promotions during the period and economic trends. When the Company receives the final carrier reports, to the extent not received within a reasonable time frame following the end of each month, the Company records any differences between estimated revenues and actual revenues in the reporting period when the Company determines the actual amounts. Revenues earned from certain carriers may not be reasonably estimated. If the Company is unable to reasonably estimate the amount of revenues to be recognized in the current period, the Company recognizes revenues upon the receipt of a carrier revenue report and when the Company's portion of licensed revenues are fixed or determinable and collection is probable. To monitor the reliability of the Company's estimates, management, where possible, reviews the revenues by country by carrier and by product line on a regular basis to identify unusual trends such as differential adoption rates by carriers or the introduction of new handsets. If the Company deems a carrier not to be creditworthy, the Company defers all revenues from the arrangement until the Company receives payment and all other revenue recognition criteria have been met.

In accordance with Emerging Issues Task Force, or EITF Issue No. 99-19, *Reporting Revenue Gross as a Principal Versus Net as an Agent*, the Company recognizes as revenues the amount the carrier reports as payable upon the sale of the Company's products, images or games. The Company has evaluated its carrier agreements and has determined that it is not the principal when selling its products, images or games through carriers. Key indicators that it evaluated to reach this determination include:

- wireless subscribers directly contract with the carriers, which have most of the service interaction and are generally viewed as the primary obligor by the subscribers;
- carriers generally have significant control over the types of content that they offer to their subscribers;
- carriers are directly responsible for billing and collecting fees from their subscribers, including the resolution of billing disputes;
- carriers generally pay the Company a fixed percentage of their revenues or a fixed fee for each game;
- carriers generally must approve the price of the Company's content in advance of their sale to subscribers, and the Company's more significant carriers generally have the ability to set the ultimate price charged to their subscribers; and
- the Company has limited risks, including no inventory risk and limited credit risk

**Principles of Consolidation**
The consolidated financial statements include the accounts of the Company and our wholly owned subsidiaries. The results of operations for acquisitions of companies have been included in the consolidated statements of operations beginning on the closing date of acquisition. All material intercompany balances and transactions have been eliminated in consolidation.

**Cash and Cash Equivalents**
The Company considers all highly liquid short-term investments purchased with a maturity of three months or less to be cash equivalents.

**Content Provider Licenses**

***Content Provider License Fees and Minimum Guarantees***
License fees payable to content providers are expensed as incurred based on recognizing the cost of sale associated with revenues. Minimum guarantees are required under certain content provider contracts and are expensed when paid. The Company regularly evaluates remaining liabilities under contracts subject to minimum guarantees and where recoupability of the guarantees is subject to doubt, recognizes the relevant liability and expense immediately.

***Content Acquired***
Amounts paid to third party content providers as part of an agreement to make content available to the Company for a term or in perpetuity, without a revenue share, have been capitalized and are included in the balance sheet as prepaid expenses. These balances will be expensed over the estimated life of the material acquired.

**Software Development Costs**
The Company applies the principles of Statement of Financial Accounting Standards No. 86, *Accounting for the Costs of Computer Software to Be Sold, Leased, or Otherwise Marketed* ("SFAS No. 86"). SFAS No. 86 requires that software development costs incurred in conjunction with product development be charged to research and development expense until technological feasibility is established. Thereafter, until the product is released for sale, software development costs must be capitalized and reported at the lower of unamortized cost or net realizable value of the related product.

The Company has adopted the "tested working model" approach to establishing technological feasibility for its products and games. Under this approach, the Company does not consider a product or game in development to have passed the technological feasibility milestone until the Company has completed a model of the product or game that contains essentially all the functionality and features of the final game and has tested the model to ensure that it works as expected. To date, the Company has not incurred significant costs between the establishment of technological feasibility and the release of a product or game for sale; thus, the Company has expensed all software development costs as incurred. The Company considers the following factors in determining whether costs can be capitalized: the emerging nature of the mobile market; the gradual evolution of the wireless carrier platforms and mobile phones for which it develops products and games; the lack of pre-orders or sales history for its products and games; the uncertainty regarding a product's or game's revenue-generating potential; its lack of control over the carrier distribution channel resulting in uncertainty as to when, if ever, a product or game will be available for sale; and its historical practice of canceling products and games at any stage of the development process.

**Foreign Currency Translation**.

The Company uses the United States dollar for financial reporting purposes. Assets and liabilities of foreign operations are translated using current rates of exchange prevailing at the balance sheet date. Equity accounts have been translated at their historical exchange rates when the capital transaction occurred. Statement of Operations amounts are translated at average rates in effect for the reporting period. The foreign currency translation adjustment of $12 and $5 in the years ended March 31, 2007 and 2006, respectively, has been reported as a component of comprehensive loss in the consolidated statement of stockholders equity (deficit) and comprehensive loss. Translation gains or losses are shown as a separate component of retained earnings.

**Concentrations of Credit Risk.**

Financial instruments which potentially subject us to concentration of credit risk consist principally of cash and cash equivalents, short-term investments, and accounts receivable. We have placed cash and cash equivalents and short-term investments with a single high credit-quality institution. As of March 31, 2007 we did not have any long-term marketable securities. Most of our sales are made directly to large national Mobile Phone Operators in the countries that we operate. We have a significant level of business and resulting significant accounts receivable balance with one operator and therefore have a high concentration of credit risk with that operator. We perform ongoing credit evaluations of our customers and maintain an allowance for potential credit losses. As of March 31, 2007 and 2006, approximately 54% and 72%, respectively, of our gross accounts receivable outstanding was with one major customer. This customer accounted for 69% of our gross sales in fiscal 2007 and 88% of our gross sales in fiscal 2006.

**Property and Equipment**

Property and equipment is stated at cost. Depreciation and amortization is calculated using the straight-line method over the estimated useful lives of the related assets. Estimated useful lives are 8 to 10 years for leasehold improvements and 5 years for other assets.

**Goodwill**

In accordance with Statement of Financial Accounting Standards No. 142, Goodwill and Other Intangible Assets (“SFAS No. 142”), the Company’s goodwill is not amortized but is tested for impairment on an annual basis or whenever events or changes in circumstances indicate that the carrying amount of these assets may not be recoverable.

**Impairment of Long-Lived Assets and Intangibles**

Long-lived assets, including purchased intangible assets with finite lives are amortized using the straight-line method over their useful lives ranging from three to ten years and are reviewed for impairment in accordance with SFAS No. 144, *Accounting for the Impairment or Disposal of Long-Lived Assets,* whenever events or changes in circumstances indicate that the carrying amount of an asset may not be recoverable. Recoverability of assets to be held and used is measured by a comparison of the carrying amount of an asset to future undiscounted net cash flows expected to be generated by the asset. If such assets are considered to be impaired, the impairment to be recognized is measured by the amount by which the carrying amount of the assets exceeds the fair value of the assets. Assets to be disposed of are reported at the lower of the carrying amount or fair value less costs to sell.

**Income Taxes**
The Company accounts for income taxes in accordance with Statement of Financial Accounting Standards No. 109, *Accounting for Income Taxes* ("SFAS No. 109"), which requires recognition of deferred tax assets and liabilities for the expected future tax consequences of events that have been included in its financial statements or tax returns. Under SFAS No. 109, the Company determines deferred tax assets and liabilities for temporary differences between the financial reporting basis and the tax basis of assets and liabilities along with net operating losses, if it is more likely than not the tax benefits will be realized using the enacted tax rates in effect for the year in which it expects the differences to reverse. To the extent a deferred tax asset cannot be recognized, a valuation allowance is established if necessary.

**Stock-based compensation**.
We have applied SFAS No. 123(R) Share-Based Payment ("FAS 123R") and accordingly, we record stock-based compensation expense for all of our stock-based awards.

Under FAS 123R, we estimate the fair value of stock options granted using the Black-Scholes option pricing model. The fair value for awards that are expected to vest is then amortized on a straight-line basis over the requisite service period of the award, which is generally the option vesting term. The amount of expense recognized represents the expense associated with the stock options we expect to ultimately vest based upon an estimated rate of forfeitures; this rate of forfeitures is updated as necessary and any adjustments needed to recognize the fair value of options that actually vest or are forfeited are recorded.

The Black-Scholes option pricing model, used to estimate the fair value of an award, requires the input of subjective assumptions, including the expected volatility of our common stock and an option's expected life. As a result, the financial statements include amounts that are based upon our best estimates and judgments relating to the expenses recognized for stock-based compensation.

**Use of Estimates**
The preparation of financial statements in conformity with generally accepted accounting principles requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosures of contingent asset and liabilities at the date of the financial statements and reported amounts of revenue and expenses during the period. Actual results could differ from those estimates. The most significant estimates relate to revenues for periods not yet reported by Carriers, liabilities recorded for future minimum guarantee payments under content licenses, accounts receivable allowances, and stock-based compensation expense.

**Recent Accounting Pronouncements**
In September 2006, the FASB issued SFAS No. 157, "Fair Value Measurements" ("SFAS No. 157"). This statement clarifies the definition of fair value, establishes a framework for measuring fair value, and expands the disclosures on fair value measurements. SFAS No. 157 is effective for fiscal years beginning after November 15, 2007. The adoption of SFAS No. 157 is not expected to have a material effect on our consolidated results of operations or financial condition.

I n September 2006, the FASB released SFAS No. 158, "Employers' Accounting for Defined Benefit Pension and Other Postretirement Plans, an amendment of FASB Statements No. 87, 88, 106, and 132(R)." Under the new standard, companies must recognize a net liability or asset to report the funded status of their defined benefit pension and other postretirement benefit plans on their balance sheets. The recognition and disclosure provisions of SFAS No. 158 are effective for periods beginning after December 15, 2006. The Company believes that SFAS No. 158 will not have a significant impact on its results of operations or financial position.

In October 2006, the FASB issued FASB Staff Position No. 123R-5, "*Amendment of FASB Staff Position FAS 123(R)-1*". The FSP amends FSP 123(R)-1 for equity instruments that were originally issued as employee compensation and then modified, with such modification made to the terms of the instrument solely to reflect an equity restructuring that occurs when the holders are no longer employees. In such circumstances, no change in the recognition or the measurement date of those instruments will result if both of the following conditions are met: a. There is no increase in fair value of the award (or the ratio of intrinsic value to the exercise price of the award is preserved, that is, the holder is made whole), or the antidilution provision is not added to the terms of the award in contemplation of an equity restructuring; and b. All holders of the same class of equity instruments (for example, stock options) are treated in the same manner. The Company believes that FSP 123(R)-5 will not have a significant impact on its results of operations or financial position.

In February 2007, the FASB issued SFAS No. 159, "The Fair Value Option for Financial Assets and Liabilities, including an amendment of FASB Statement No. 115" ("SFAS No. 159"). SFAS No. 159 permits entities to choose, at specified election dates, to measure many financial instruments and certain other items at fair value that are not currently required to be measured at fair value. Unrealized gains and losses shall be reported on items for which the fair value option has been elected in earnings at each subsequent reporting date. SFAS No. 159 is effective for fiscal years beginning after November 15, 2007. Early adoption is permitted as of the beginning of a fiscal year that begins on or before November 15, 2007, provided the entity also elects to apply the provisions of SFAS No. 157 "Fair Value Measurements" ("SFAS No. 157"). The Company is currently assessing the impact that SFAS No. 159 will have on its financial statements.

In December 2007, the FASB issued SFAS No. 160, "Noncontrolling Interests in Consolidated Financial Statements", which is an amendment of Accounting Research Bulletin ("ARB") No. 51. This statement clarifies that a noncontrolling interest in a subsidiary is an ownership interest in the consolidated entity that should be reported as equity in the consolidated financial statements. This statement changes the way the consolidated income statement is presented, thus requiring consolidated net income to be reported at amounts that include the amounts attributable to both parent and the noncontrolling interest. This statement is effective for the fiscal years, and interim periods within those fiscal years, beginning on or after December 15, 2008. Based on current conditions, the Company does not expect the adoption of SFAS 160 to have a significant impact on its results of operations or financial position.

In December 2007, the FASB issued SFAS No. 141 (revised 2007), "Business Combinations." This statement replaces FASB Statement No. 141, "Business Combinations." This statement retains the fundamental requirements in SFAS 141 that the acquisition method of accounting (which SFAS 141 called the purchase method) be used for all business combinations and for an acquirer to be identified for each business combination. This statement defines the acquirer as the entity that obtains control of one or more businesses in the business combination and establishes the acquisition date as the date that the acquirer achieves control. This statement requires an acquirer to recognize the assets acquired, the liabilities assumed, and any noncontrolling interest in the acquiree at the acquisition date, measured at their fair values as of that date, with limited exceptions specified in the statement. This statement applies prospectively to business combinations for which the acquisition date is on or after the beginning of the first annual reporting period beginning on or after December 15, 2008. The Company does not expect the adoption of SFAS 160 to have a significant impact on its results of operations or financial position.

## 3. Liquidity

The Company has incurred losses and negative cash flows from operations since commencement of operations. Management expects these operating losses and negative cash flows to continue for the foreseeable future. The Company has adequate liquidity for the time being, and management has projected to move toward positive cashflow in a manner consistent with the Company's strategies to build its business and in a time frame to preserve the Company's liquidity. These plans include continued increases in revenues by introducing new products and revenue streams, continued expansion into new territories and a restructuring of its overhead base which has occurred subsequent to period end.

## 4. Balance Sheet Components

***Accounts Receivable***

| | March 31, 2007 | March 31, 2006 |
|---|---|---|
| Accounts receivable | $ 5,022 | $ 1,897 |
| Less: allowance for doubtful accounts | (146) | - |
| | $ 4,876 | $ 1,897 |

Accounts receivable includes amounts billed and unbilled as of the respective balance sheet dates. The Company had no significant write-offs or recoveries during the years ended March 31, 2007, and 2006.

***Property and Equipment***

| | March 31, 2007 | March 31, 2006 |
|---|---|---|
| Equipment | $ 700 | $ 226 |
| Equipment subject to capitalized lease | 132 | 132 |
| Furniture & fixtures | 272 | 142 |
| Leasehold improvements | 177 | 151 |
| | 1,281 | 651 |
| Accumulated depreciation | (254) | (63) |
| | $ 1,027 | $ 588 |

Depreciation and amortization expense for the periods ended March 31, 2007 and 2006 was $220 and $56, respectively.

***Capital Lease***
Accumulated depreciation associated with the equipment under capital lease noted above was $43 and $15 at March 31, 2007 and 2006, respectively. The Company has a commitment to pay $42 under these leases during the year ending March 31, 2008 and $22 during the year ended March 31, 2009.These payments have a net present value of $58.

## 5. Description of Stock Plans

***Twistbox, Inc. 2006 Stock Incentive Plan***
On May 16, 2006, the Company's board of directors adopted, the WAAT Corp 2006 Stock Incentive Plan (the "2006 *Plan*"). The purpose of the Plan is to promote the success and enhance the value of the Company by providing the participants with an incentive for outstanding performance in generating superior returns for the Company shareholders and by enhancing the Company's capability to motivate, attract, and retain the services of individuals whose knowledge, judgment, interest and special effort contribute to the Company's success. Under the 2006 Plan, a total of 3,700,000 common shares will be available for issuance. The awards have a term of ten years and generally become fully vested between the first and fourth years.

The following table summarizes options granted for the periods or as of the dates indicated:

| | Options Granted | Weighted Average Exercise Price | |
|---|---|---|---|
| Balance, March 31, 2005 | 313,500 | $ | 0.36 |
| Exercised | - | | |
| Cancelled | - | | |
| Granted | 574,500 | $ | 0.36 |
| Balance, March 31, 2006 | 888,000 | $ | 0.36 |
| Exercised | - | | |
| Cancelled | (20,000) | $ | 0.35 |
| Granted | 1,493,054 | $ | 0.43 |
| Balance, March 31, 2007 | 2,361,054 | $ | 0.40 |
| | | | |
| Exercisable, March 31, 2007 | 715,288 | $ | 0.38 |

The weighted-average grant-date fair value of stock options granted during the years ended March 31, 2007 and 2006 was $0.29 and $0.21, respectively.

The fair value for these options was estimated at the date of grant using a Black-Scholes option pricing model with the following weighted-average assumptions:

| | March 31, 2007 | March 31, 2006 | March 31, 2005 |
|---|---|---|---|
| Expected life (years) | 3 | 3 | 3 |
| Risk-free interest rate | 4.72% - 5.03% | 3.83% - 4.57% | 2.03% - 2.35% |
| Expected volatility | 75% | 75% | 75% |
| Expected dividend yield | 0% | 0% | 0% |

The weighted average remaining contractual life of compensatory options outstanding is 8.8 years at March 31, 2007.

The exercise price for options outstanding at March 31, 2007 was as follows:

| Number of Options | Exercise Price | |
|---|---|---|
| 1,821,284 | $ | 0.35 |
| 539,770 | $ | 0.59 |
| 2,361,054 | | |

The above disclosure includes 951,784 options issued in connection with the Charismatix acquisition (refer Note 6).

## 6. Acquisitions/Purchase Price Accounting

The Company made two significant acquisitions during the period covered by these financial statements. The acquisitions and related purchase accounting are summarized as follows:

**Charismatix and related entities**

The Company acquired 100% of the shares in Charismatix & Co KG and Charismatix Ltd (collectively "Charismatix"), incorporated in Germany and the United Kingdom, respectively, as of February 1, 2006. Charismatix licensed and developed software, games and multimedia entertainment and marketed those licenses and services to companies including mobile phone carriers. Charismatix had developed unique technology which it deployed in its business. The Company had worked with Charismatix for some time and determined that an acquisition would enhance the opportunities to increase its presence in the mobile phones games business and introduce economies of scale to its games development efforts.

The purchase consideration consisted of $100 in cash; 285,716 shares of the Company's Common stock; 951,784 options to purchase common stock in the Company (vesting over 4 years); and additional payments to the four owners of Charismatix related to tax liabilities on pre-acquisition income. The additional payments were made subsequently and amounted to $162. The four owners were granted employment contracts with the Company, with 4 year terms.

Under the purchase method of accounting, the Company allocated the total purchase price of $740 to the net tangible and intangible assets acquired and liabilities assumed based upon their respective estimated fair values as of the acquisition date as follows:

| | $ (000s) |
|---|---|
| Cash | 188 |
| Accounts receivable | 256 |
| Accounts Payable and Accruals | (200) |
| PP&E | 48 |
| Intangibles | 12 |
| Goodwill | 436 |
| | $ 740 |

**Purchase of certain assets from InfoSpace Inc.**

The Company acquired certain assets from InfoSpace Inc. as of January 6, 2007. These assets represented the mobile games division of InfoSpace Inc. As part of the transaction, InfoSpace Inc. agreed to transfer the operations of its games studio in San Mateo, California including games platforms that had been developed for mobile phones, and to use its best efforts to assist in the transfer of existing business relationships with licensors and US based mobile phone carriers to the Company. Ten employees of the division were transitioned to become employees of the Company. The acquisition was strategic to the Company at several levels – it provided access to a unique gaming platform; it provided access to an established US market; and it helped to broaden the Company's products and market in its mobile games business. The acquisition has been treated as a business combination under SFAS 141.

The purchase consideration was $1,500 in cash. Under the purchase method of accounting, the Company allocated the total purchase price of $1,500 to the net tangible and intangible assets acquired (no liabilities were assumed) based upon their respective estimated fair values as of the acquisition date as follows:

| | $ (000s) |
|---|---|
| PP&E | 27 |
| Intangibles | 469 |
| Goodwill | 1,004 |
| | $ 1,500 |

Goodwill recognized in the above two transactions amounted to $1,440. Goodwill in relation to the acquisition of Charismatix is not expected to be deductible for income tax purposes. The preliminary purchase price allocation, including the allocation of goodwill, will be updated as additional information becomes available.

## 7. Goodwill

The changes in the carrying amount of goodwill for the fiscal years ended March 31, 2007 and 2006 were as follows:

| | |
|---|---|
| Balance at March 31, 2005 | $ - |
| Goodwill acquired | 436 |
| Foreign exchange translation differences | 3 |
| Balance at March 31, 2006 | 439 |
| Goodwill acquired | 1,004 |
| Foreign exchange translation differences | 44 |
| Balance at March 31, 2007 | $ 1,487 |

The Company performed an annual review of goodwill impairment in each of the fiscal years ended March 31, 2007, and 2006 and found no impairment.

## 8. Other Intangible Assets

| | **March 31, 2007** | **March 31, 2006** |
|---|---|---|
| Customer list | 277 | - |
| Platform | 113 | - |
| Licenses | 79 | - |
| Trademarks | 14 | 12 |
| | 483 | 12 |
| Accumulated Amortization | (30) | - |
| | 453 | 12 |

The Company has included amortization of acquired intangible assets directly attributable to revenue-generating activities in cost of revenues. The Company has included amortization of acquired intangible assets not directly attributable to revenue-generating activities in operating expenses. During the years ended March 31, 2007 and 2006, the Company recorded amortization expense in the amounts of $7 and $0, respectively, in cost of revenues. During the years ended March 31, 2007 and 2006, the Company recorded amortization expense in the amounts of $23, and $0, respectively, in operating expenses.

As of March 31, 2007, the total expected future amortization related to intangible assets was as follows:

| Year Ending March 31, | Amortization Included in Cost of Revenues | Amortization Included in Operating Expenses | Total Amortization Expense |
|---|---|---|---|
| 2008 | $ 26 | $ 93 | $ 119 |
| 2009 | 26 | 93 | 119 |
| 2010 | 20 | 84 | 104 |
| 2011 | - | 55 | 55 |
| 2012 | - | 42 | 42 |
| | $ 72 | $ 367 | $ 439 |

## 9. Debt

| | March 31, 2007 | March 31, 2006 |
|---|---|---|
| ***Short Term Debt*** | | |
| Loan from related party, inclusive of interest | $ 250 | $ 1,335 |
| Loans from bank, current portion | 1,771 | 51 |
| Capitalized lease liabilities, current portion | 42 | 46 |
| | $ 2,063 | $ 1,432 |

Details of the loan from related party are included in Note 10. The current portion of loans from bank consists of $54 as of March 31, 2007 and $51 as of March 31, 2006 in connection with the loan detailed in Note 10; and loans of $1,717 as of March 31, 2007 that were initiated in January 2007 at an interest rate of 9.25% and with a maturity of 12 months, and were fully repaid subsequent to March 31, 2007 as part of the debt financing disclosed in Note 16. Capitalized lease assets are set out in Note 4. Future obligations under capitalized leases are included as part of Other Obligations in Note 15.

| | March 31, 2007 | March 31, 2006 |
|---|---|---|
| ***Long Term Debt*** | | |
| Loan from bank, long term portion | $ 48 | $ 102 |
| Capitalized lease liabilities, long term portion | 21 | 64 |
| | $ 69 | $ 166 |

Loan from bank as of March 31, 2007 and 2006 is the long term portion of the loan detailed in Note 10. Capitalized lease assets are set out in Note 4. Future obligations under capitalized leases are included as part of Other Obligations in Note 15.

## 10. Related Party Transactions

The Company engages in various business relationships with shareholders and officers and their related entities. The significant relationships are disclosed below.

***Lease of Premises***
The Company leases its primary offices in Los Angeles from Berkshire Holdings, LLC, a company with common ownership by officers of the Company. Amounts paid in connection with this lease were $314 and $231 for the years ended March 31, 2007 and 2006, respectively.

The Company is party to an oral agreement with a person affiliated with the Company with respect to a lease of an apartment in London. Amounts paid in connection with this lease were $59 and $48 for the years ended March 31, 2007 and 2006, respectively.

The Company paid the costs of a leased apartment in Sherman Oaks that was rented by an officer of the Company. The apartment was used to accommodate employees visiting from other locations. Amounts paid in connection with this lease were $18 and $2 for the years ended March 31, 2007 and 2006, respectively. In August 2007 the Company entered into a one year written agreement to rent an apartment in the same building at a cost of $1.5 per month.

***Loans***
The Company had a note payable to an affiliated company, PowerSports Video Productions CCT, Inc., as of March 31, 2007 for $250. The note had a maturity date of March 28, 2008 and carried interest at 8.25%.

The Company had an advance from an affiliated company, PowerSports Video Productions CCT, Inc., as of March 31, 2006 for $1,335, inclusive of accrued interest. The advance did not have a specific maturity date, but has been classified as short term and carried interest at 7.73%.

Interest expense paid or payable to PowerSports Video Productions CCT was $18 and $80, for the years ended March 31, 2007 and 2006, respectively.

The Company is party to a loan from East-West Bank, originated on January 27, 2006 in an amount of $161. The Company also entered into a loan agreement to an affiliated company, effective on the same date for the same amount. The bank agreement is secured with a motor vehicle operated exclusively by an officer of the Company. The interest income under the loan to the affiliate completely offsets interest expense incurred under the bank loan. As of March 31, 2007 $106 was due to the Company under this loan, and the amount payable under the bank loan was $102. Amounts paid for the years ended March 31, 2007 and 2006 were $59 and $10, respectively, including interest of $8 and $1, respectively. Amounts received for the years ended March 31, 2007 and 2006 were $55 and $10, respectively, including interest of $8 and $1, respectively. The agreement has subsequently been terminated.

***Dealings with Content Provider***
Two officers of the Company are also board members of Peach International, with which the Company has a Content Provider agreement. Amounts paid or payable under this agreement to Peach in the years ended March 31, 2007 and 2006 were $165 and $203, respectively.

## 11. Capital Stock Transactions

In December 2005, the Company issued 750,000 shares of Series A Preferred Stock at $3.33 per share for a total purchase price of $2,498. As of March 31, 2006, 2,750,000 shares of Series A preferred stock were authorized, and 750,000 were issued and outstanding at a par value of $0.01 per share.

In April 2006, the Company issued 75,075 shares of Series A Preferred Stock at $3.33 per share for a total purchase price of $250. As of March 31, 2007, 2,750,000 shares of Series A preferred stock were authorized, and 825,075 were issued and outstanding at a par value of $0.01 per share.

In May 2006, the Company issued 2,267,574 shares of Series B Preferred Stock at $4.41 per share for a total purchase price of $10,000. As of March 31, 2007, 2,267,574 shares of Series B preferred stock were authorized, issued and outstanding, at a par value of $0.01 per share.

**Voting Rights**
The Series A stockholders voting together as a single class elect one member of the Company's Board of Directors. The Series B stockholder elects one member of the Company's Board of Directors.

**Preference Rights**
Upon any liquidation, dissolution or winding up of the Company, whether voluntary or involuntary, the holders of shares of Series A Preferred Stock are entitled to receive an amount of cash equal to their original purchase price of $3.33 per share plus all declared but unpaid dividends before any amount is paid with respect to any other series of preferred stock or common stock. If the amounts available for distribution are not sufficient to pay the full amount, then all assets of the Company legally available for distribution will be distributed to the holders of Series A Preferred Stock on a proportionate basis. After payment in full of the liquidation preference amount of the Series A Preferred Stock, the holders of shares of Series B Preferred Stock are entitled to liquidation preferences equal to their original issue prices of $4.41 per share, plus any declared but unpaid dividends. If the amounts available for distribution are not sufficient to pay the full amount, then any remaining assets of the Company legally available for distribution will be distributed to the holders of Series B Preferred Stock on a proportionate basis. Upon full payment of the liquidation preference amounts of all preferred stock, any remaining assets of the Company legally available for distribution will be distributed to the holders of common stock and preferred stock pro rata based on the number of shares on an "as-if converted" basis.

The preference stockholders also have anti-dilution rights in the case of certain specified transactions, so that to the extent that consideration is available in a transaction, each class of preferred stockholder is entitled to receive consideration at least equal to their original purchase price plus all declared but unpaid dividends before any amount is paid with respect to the next series of preferred stock or common stock. The ranking for this purpose is Series A, then Series B, then common stockholders. There are no dividend rights, nor are the shares convertible or callable.

## 12. Employee Benefit Plans

The Company has an employee 401(k) savings plan (the "Plan") covering full-time eligible employees. These employees may contribute eligible compensation up to the annual IRS limit. The Company does not make matching contributions.

## 13. Income Taxes

Deferred income taxes reflect the net tax effects of temporary differences between the carrying amounts of assets and liabilities for financial statement purposes and the amounts used for income tax purposes. Significant components of the Company's deferred tax liabilities and assets as of March 31, 2007 and 2006 are as follows:

| | 2007 | 2006 |
|---|---|---|
| Deferred tax assets: | | |
| Net operating loss carryforwards | $ 3,624 | $ 521 |
| Accrued compensation | 262 | 72 |
| Accrued license fees | 3,418 | 455 |
| Allowance for doubtful accounts | 59 | — |
| Equity compensation | 56 | 22 |
| Less valuation allowance | (7,419) | (1,070) |
| Net deferred tax asset | $ — | $ — |

Following is a reconciliation of the amount of income tax expense (benefit) that would result from applying the statutory federal income tax rates to pre-tax income and the reported amount of income tax expense (benefit) for the years ended March 31, 2007 and 2006:

| | 2007 | 2006 |
|---|---|---|
| Federal statutory rates | (34.0%) | (34.0%) |
| State taxes | (6.0%) | (6.0%) |
| Increase in valuation allowance | 39.9% | 40.0% |
| Income tax expense | 0.1% | 0.0% |

At March 31, 2007, the Company has provided a valuation allowance for the deferred tax assets since management has not been able to determine that the realization of that asset is more likely than not. The net change in valuation allowance for the years ended March 31, 2007 and 2006 was an increase of $6,349 and $901, respectively. The Company has net operating loss carryforwards for United States and foreign taxes of approximately $8,000 that begin to expire in 2019.

## 14. Segment and Geographic information

We operate in one reportable segment in which we are a developer and publisher of branded entertainment content for mobile phones. The following information sets forth geographic information on our sales and net property and equipment for the fiscal years ended March 31, 2007 and 2006:

| | North America | Europe | Latin America | Consolidated |
|---|---|---|---|---|
| Year ended March 31, 2007 | | | | |
| Net sales to unaffiliated customers | 309 | 11,374 | 215 | 11,898 |
| Property and equipment, net | 918 | 109 | - | 1,027 |
| Year ended March 31, 2006 | | | | |
| Net sales to unaffiliated customers | - | 4,869 | - | 4,869 |
| Property and equipment, net | 536 | 52 | - | 588 |

Our largest single customer accounted for 69% of our revenue in fiscal 2007, and 88% of our revenue in fiscal 2006.

## 15. Commitments and Contingencies

**Operating Lease Obligations**
The Company leases office facilities under noncancelable operating leases expiring in various years through 2011.

Following is a summary of future minimum payments under initial terms of leases at March 31, 2007:

| Year Ending March 31, | | |
|---|---|---|
| 2008 | $ | 372 |
| 2009 | | 269 |
| 2010 | | 253 |
| 2011 | | 74 |
| Total minimum lease payments | $ | 968 |

These amounts do not reflect future escalations for real estate taxes and building operating expenses. Rental expense amounted to $500 and $369 for the periods ended March 31, 2007 and 2006, respectively.

**Minimum Guaranteed Royalties**
The Company has entered into license agreements with various owners of brands and other intellectual property so that it could develop and publish branded products for mobile handsets.

Pursuant to some of these agreements, the Company is required to pay minimum royalties over the term of the agreements regardless of actual sales. Future minimum royalty payments for those agreements as of March 31, 2007 were as follows:

| Year Ending March 31, | Minimum Guaranteed Royalties |
|---|---|
| 2008 | $ 2,185 |
| 2009 | 2,990 |
| 2010 | 2,857 |
| 2011 | 120 |
| 2012 | 30 |
| Total minimum payments | $ 8,182 |

Commitments in the above table include guaranteed royalties to licensors that are included as a liability in the Company's consolidated balance sheet of $6,022 as of March 31, 2007, because the Company has determined that recoupment is unlikely.

**Other Obligations**

As of March 31, 2007, the Company was obligated for payments under various distribution agreements, equipment lease agreements and employment contracts with initial terms greater than one year at March 31, 2007. Annual payments relating to these commitments at March 31, 2007 are as follows:

| Year Ending March 31, | Commitments |
|---|---|
| 2008 | $ 4,115 |
| 2009 | $ 3,023 |
| 2010 | $ 1,010 |
| 2011 | $ 78 |
| Total minimum payments | $ 8,226 |

**Other Contingencies**

Subsequent to the period end, the Company has entered into an agreement with an investment banking firm, to modify the terms of a previous agreement. Under this amendment, $530 was paid in December 2007. An additional $650 may become payable should the Company enter into a merger or other business combination as defined in the agreement. The merger discussed in Note 16 would qualify as a merger under this agreement.

**Litigation**

The Company is subject to various claims and legal proceedings arising in the normal course of business. Based on the opinion of the Company's legal counsel, management believes that the ultimate liability, if any in the aggregate will not be material to the financial position or results of operations of the Company for any future period.

Leaway Enterprise, Ltd (dba "Mobival") v. Twistbox Entertainment, Inc.; FTV GmbH and Michel Adam Lisowski

On March 20, 2007, the Company and FTV GmbH entered into a Content License Agreement ("CLA") pursuant to which, among other things, the Company licensed certain FTV GmbH content and, in exchange, the Company agreed to make certain payments to FTV GmbH, and the Company did make an initial U.S. $200 payment to FTV. On or about April 17, 2007**,** Leaway Enterprises, Ltd. dba "Mobival" ("Mobival") filed an action in the High Court of Justice, Queen's Bench Division, Commercial Court, Royal Courts of Justice, Claim No. 2007 Folio 458 against FTV Ltd. BVI ("FTV BVI") alleging breach of a "Content Distribution Agreement" between Mobival and FTV BVI (hereinafter, the "U.K. Action"). On or about July 20, 2007, Mobival filed an action in the Los Angeles Superior Court, No. LC 078611 against the Company, FTV GmbH and Michel Adam Lisowksi ("Adam") alleging interference, unfair business practices and fraud (hereinafter, the "U.S. Action").

The Company has incurred certain legal fees participating in discovery and otherwise monitoring the U.K. Action, and has incurred certain legal fees defending its rights in the U.S. Action. The Company has demanded that FTV GmbH indemnify Twistbox for legal fees incurred to date in the U.K. Action and the U.S. Action, and the Company has also demanded that FTV GmbH defend the Company in the U.S. Action as provided under the CLA.

The Company contends and FTV denies that the claims made by Mobival in the U.K. Action and U.S. Action, and the press surrounding Mobival's claims, have placed a cloud on the rights to the content being licensed, have made the FTV content less valuable than it was at the time the CLA was signed, and has made it difficult or impossible for the Company to effectively develop the business. For these reasons, the Company asked to terminate the CLA, other than the indemnity and defense obligations, and the Company sought a return of its initial $200 payment;

FTV GmbH does not concede that it has an obligation to reimburse the Company for the fees the Company incurred in the U.K. Action or the U.S. Action, and FTV GmbH does not concede that it has any obligation to terminate the CLA. Notwithstanding FTV GmbH's position, the Company and FTV GmbH entered into that certain Indemnity, Defense and Termination Agreement effective as of November 15, 2007, whereby FTV returned to the Company its initial $200 payment, as well as an amount to reimburse the Company for a portion of its legal fees and costs related to the UK action and the US action.

There has been virtually no activity in the U.K. Action. With respect to the U.S. Action, a law firm is representing the Company and the other defendants. Mobival has propounded discovery requests, to which the Company has responded. Mobival seeks to depose an officer of FTV GmbH to establish FTV GmbH's minimum contacts with the State of California to effectuate a valid service of the complaint.

Additional disclosures regarding commitments to affiliate companies are included in Note 10.

## 16. Subsequent Events

*Series B-1*

In April 2007, the Company issued 436,680 shares of Series B1 Preferred Stock at $6.87 per share for a total purchase price of $3,000. The stock has the same liquidation preferences as other Preferred Stockholders, but ranking after Series A and Series B.

*Debt Financing*

In July 2007 the Company entered into a debt financing agreement in the form of a Senior Secured Note amounting to $16,500, payable at 30 months. The holder of the Note was granted first lien over all of the Company's assets. The Note carries interest of 9% annually for the first year and 10% subsequently, with semi-annual interest only payments. The agreement includes certain restrictive covenants, including a requirement not to exceed a maximum amount of losses. The Note holder was also granted 2,401,747 detachable warrants, with an exercise price of $6.87, and a 48 month maturity.

*Aggregation Agreement*

On August 27, 2007, the Company entered into a significant agreement to host and manage the games platform for a major customer. As part of the agreement, the Company was required to place a surety deposit to cover potential third party infringement claims and/or any defaults under the service level agreement. The Company is not aware of any claims against this surety.

*Mandalay Merger Agreement*

On January 2, 2008 Mandalay Media, Inc. ("Mandalay") announced that it has executed an Agreement and Plan of Merger with the Company. Pursuant to the proposed merger, the Company will become a wholly-owned subsidiary of Mandalay, and the shareholders and other security holders of the Company will receive shares of common stock in Mandalay as provided in the Agreement and Plan of Merger.

If the transaction is consummated, the Company would become Mandalay's sole current operations and continue to operate as usual across its subsidiaries and territories. The closing of the transaction is subject to certain conditions and expected to occur in the first quarter of 2008. There can be no assurance that the merger will be consummated or, if consummated, that the businesses will be successfully integrated.

**Twistbox Entertainment Inc.**
**and Subsidiaries**
**Consolidated Financial Statements**
**For the six months ended**
**September 30, 2007 and 2006**

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**Twistbox Entertainment Inc. and Subsidiaries**
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**Twistbox Entertainment Inc. and Subsidiaries**
**Consolidated Balance Sheets**

**(In thousands)**

| | September 30, 2007 (unaudited) | March 31, 2007 |
|---|---|---|
| **ASSETS** | | |
| Current Assets | | |
| Cash and cash equivalents | $ 10,726 | $ 631 |
| Accounts receivable, net of allowances | 3,836 | 4,876 |
| Receivable from related party | 51 | 54 |
| Prepaid expenses and other current assets | 980 | 475 |
| Total current assets | 15,593 | 6,036 |
| Receivable from related party, net of current portion | 39 | 52 |
| Property and equipment, net | 1,136 | 1,027 |
| Other long-term assets | 482 | - |
| Intangible assets, net | 394 | 453 |
| Goodwill | 1,518 | 1,487 |
| **TOTAL ASSETS** | **$ 19,162** | **$ 9,055** |
| **LIABILITIES AND STOCKHOLDERS DEFICIT** | | |
| Current liabilities | | |
| Accounts payable | $ 1,004 | $ 1,168 |
| Accrued license fees | 3,789 | 5,227 |
| Accrued compensation | 977 | 694 |
| Current portion of long term debt | 347 | 2,063 |
| Other current liabilities | 1,731 | 918 |
| Total currrent liabilities | 7,848 | 10,070 |
| Accrued license fees, long term portion | 3,754 | 4,485 |
| Long term debt, net of current portion | 16,506 | 69 |
| Total liabilities | 28,108 | 14,624 |
| Commitments and contingencies (Note 14) | | |
| Stockholders deficit | | |
| Preferred stock (series A, B and B-1) | 36 | 32 |
| Common stock, $0.001 par value: 20,000,000 shares authorized; 7,785,716 issued and outstanding at September 30, 2007 and March 31, 2007 | 8 | 8 |
| Additional paid-in capital | 16,341 | 13,267 |
| Accumulated other comprehensive income | 115 | 17 |
| Accumulated deficit | (25,446) | (18,893) |
| Total stockholders' deficit | (8,946) | (5,569) |
| **TOTAL LIABILITIES AND STOCKHOLDERS DEFICIT** | **$ 19,162** | **$ 9,055** |

The accompanying notes are an integral part of these consolidated financial statements.

**Twistbox Entertainment Inc. and Subsidiaries**
**Consolidated Statements of Operations (unaudited)**

**(In thousands)**

| | Six Months Ended September 30, 2007 | Six Months Ended September 30, 2006 |
|---|---|---|
| Revenues | $ 7,064 | $ 4,829 |
| Cost of revenues | | |
| License fees | 3,218 | 2,512 |
| Other direct cost of revenues | 269 | 51 |
| Total cost of revenues | 3,487 | 2,563 |
| Gross profit | 3,577 | 2,266 |
| Operating expenses | | |
| Product development | 4,792 | 3,310 |
| Sales and marketing | 2,554 | 1,636 |
| General and administrative | 2,363 | 1,542 |
| Amortization of intangible assets | 47 | - |
| Total operating expenses | 9,756 | 6,488 |
| Loss from operations | (6,179) | (4,222) |
| Interest and other income/(expense) | | |
| Interest income | 100 | 110 |
| Interest (expense) | (326) | (29) |
| Foreign exchange transaction gain | 104 | 15 |
| Other (expense) | (252) | (122) |
| Interest and other income/(expense) | (374) | (26) |
| Loss before income taxes | (6,553) | (4,248) |
| Income tax benefit | - | 6 |
| Net Loss | $ (6,553) | $ (4,242) |

The accompanying notes are an integral part of these consolidated financial statements.

**(In thousands)**

**Six Months Ended September 30, 2007**

| | Common Stock | | Preferred Stock | | Additional Paid-In | Accumulated Other Comprehensive | Accumulated | | Comprehensive |
|---|---|---|---|---|---|---|---|---|---|
| | Shares | Amount | Shares | Amount | Capital | Income/(Loss) | Deficit | Total | Loss |
| Balance at March 31, 2006 | 7,786 | $ 8 | 750 | $ 8 | 2,986 | 5 | $ (2,666) | $ 341 | |
| Net loss | | | | | | | (16,227) | (16,227) | $ (16,227) |
| Issuance of preferred stock series A at $3.33 per share | | | 75 | 1 | 249 | | | 250 | |
| Issuance of preferred stock series B at $4.41 per share | | | 2,268 | 23 | 9,977 | | | 10,000 | |
| Foreign currency translation gain/(loss) | | | | | | 12 | | 12 | 12 |
| Deferred stock-based compensation | | | | | 55 | | | 55 | |
| Comprehensive loss | | | | | | | | | $ (16,215) |
| Balance at March 31, 2007 | 7,786 | $ 8 | 3,093 | $ 32 | $ 13,267 | $ 17 | $ (18,893) | $ (5,569) | |
| Net loss | | | | | | | (6,553) | (6,553) | $ (6,553) |
| Issuance of preferred stock series B-1 at $6.87 per share | | | 437 | 4 | 2,996 | | | 3,000 | |
| Foreign currency translation gain/(loss) | | | | | | 98 | | 98 | 98 |
| Deferred stock-based compensation | | | | | 58 | | | 58 | |
| Issuance of 2,401,747 common stock warrants in connection with debt financing | | | | | 20 | | | 20 | |
| Comprehensive loss | | | | | | | | | $ (6,455) |
| Balance at September 30, 2007 (unaudited) | 7,786 | $ 8 | 3,530 | $ 36 | 16,341 | $ 115 | $ (25,446) | $ (8,946) | |

The accompanying notes are an integral part of these consolidated financial statements.

**Twistbox Entertainment Inc. and Subsidiaries**
**Consolidated Statements of Cash Flows (unaudited)**

**(In thousands)**

| | Six Months Ended September 30, 2007 | 2006 |
|---|---|---|
| **Cash flows from operating activities** | | |
| Net loss | $ (6,553) | $ (4,242) |
| Adjustments to reconcile net loss to net cash used in operating activities: | | |
| Depreciation and amortization | 161 | 69 |
| Allowance for doubtful accounts | 22 | - |
| Deferred stock-based compensation | 58 | 22 |
| (Increase) / decrease in assets: | | |
| Accounts receivable | 1,018 | (1,740) |
| Prepaid expenses and other | (140) | (168) |
| Increase / (decrease) in liabilities: | | |
| Accounts payable | (163) | 746 |
| Accrued license fees | (2,169) | 492 |
| Accrued compensation | 283 | 264 |
| Other current liabilities | 813 | (14) |
| Net cash used in operating activities | (6,670) | (4,571) |
| **Cash flows from investing activities** | | |
| Repayment of advance to related party | 20 | 30 |
| Purchase of property and equipment | (204) | (243) |
| Net cash used in investing activities | (184) | (213) |
| **Cash flows from financing activities** | | |
| Proceeds from the issuance of debt, net of costs | 15,653 | - |
| Repayment of debt | (1,717) | (1,384) |
| Proceeds from the sale of Series B-1 preferred stock | 3,000 | 10,250 |
| Net cash provided by financing activities | 16,936 | 8,866 |
| Effect of exchange rate changes on cash and cash equivalents | 13 | 5 |
| **Net increase/(decrease) in cash and cash equivalents** | 10,095 | 4,087 |
| **Cash and cash equivalents, beginning of period** | 631 | 1,026 |
| **Cash and cash equivalents, end of period** | $ 10,726 | $ 5,113 |
| **Supplemental disclosure of cash flow information:** | | |
| Interest paid | 72 | 10 |
| Income tax refund | - | 6 |

The accompanying notes are an integral part of these consolidated financial statements.

## 1. Organization

Twistbox Entertainment Inc. (formerly known as The WAAT Corporation) is incorporated in the State of Delaware.

The Company is a global publisher and distributor of branded entertainment content, including images, video, TV programming and games, for Third Generation (3G) mobile networks. The Company publishes and distributes its content in a number of countries. Since operations began in 2003, the Company has developed an intellectual property portfolio that includes mobile rights to global brands and content from leading film, television and lifestyle content publishing companies. The Company has built a proprietary mobile publishing platform that includes: tools that automate handset portability for the distribution of images and video; a mobile games development suite that automates the porting of mobile games and applications to multiple handsets; and a content standards and ratings system globally adopted by major wireless carriers to assist with the responsible deployment of age-verified content. Twistbox has distribution agreements with many of the largest mobile operators in the world.

The Company is headquartered in the Los Angeles area and has offices in Europe and South America that provide local sales and marketing support for both mobile operators and third party distribution in their respective regions.

## 2. Summary of Significant Accounting Policies

### Basis of Presentation

The consolidated financial statements have been prepared in accordance with accounting principles generally accepted in the United States of America ("GAAP") and pursuant to the rules and regulations of the Securities and Exchange Commission ("SEC") for annual financial statements. The consolidated financial statements, in the opinion of management, include all adjustments necessary for a fair statement of the consolidated results of operations, financial position and cash flows for each period presented.

### Revenue Recognition

The Company's revenues are derived primarily by licensing material and software products in the form of products (Image Galleries, Wallpapers, video, WAP Site access, Mobile TV) and mobile games. License arrangements with the end user can be on a perpetual or subscription basis.

A perpetual license gives an end user the right to use the product, image or game on the registered handset on a perpetual basis. A subscription license gives an end user the right to use the product, image or game on the registered handset for a limited period of time, ranging from a few days to as long as one month. The Company distributes its products primarily through mobile telecommunications service providers ("carriers"), which market the product, images or games to end users. License fees for perpetual and subscription licenses are usually billed by the carrier upon download of the product, image or game by the end user. In the case of subscriber licenses, many subscriber agreements provide for automatic renewal until the subscriber opts-out, while the others provide opt-in renewal. In either case, subsequent billings for subscription licenses are generally billed monthly. The Company applies the provisions of Statement of Position 97-2, *Software Revenue Recognition*, as amended by Statement of Position 98-9, Modification of SOP 97-2, *Software Revenue Recognition, With Respect to Certain Transactions*, to all transactions.

Revenues are recognized from our products, images and games when persuasive evidence of an arrangement exists, the product, image or game has been delivered, the fee is fixed or determinable, and the collection of the resulting receivable is probable. For both perpetual and subscription licenses, management considers a signed license agreement to be evidence of an arrangement with a carrier and a "clickwrap" agreement to be evidence of an arrangement with an end user. For these licenses, the Company defines delivery as the download of the product, image or game by the end user. The Company estimates revenues from carriers in the current period when reasonable estimates of these amounts can be made. Most carriers only provide detailed sales transaction data on a one to two month lag. Estimated revenue is treated as unbilled receivables until the detailed reporting is received and the revenues can be billed. Some carriers provide reliable interim preliminary reporting and others report sales data within a reasonable time frame following the end of each month, both of which allow the Company to make reasonable estimates of revenues and therefore to recognize revenues during the reporting period when the end user licenses the product, image or game. Determination of the appropriate amount of revenue recognized involves judgments and estimates that the Company believes are reasonable, but it is possible that actual results may differ from the Company's estimates, and those differences may be material. The Company's estimates for revenues include consideration of factors such as preliminary sales data, carrier-specific historical sales trends, volume of activity on company monitored sites, seasonality, time elapsed from launch of services or product lines, the age of games and the expected impact of newly launched games, successful introduction of new handsets, growth of 3G subscribers by carrier, promotions during the period and economic trends. When the Company receives the final carrier reports, to the extent not received within a reasonable time frame following the end of each month, the Company records any differences between estimated revenues and actual revenues in the reporting period when the Company determines the actual amounts. Revenues earned from certain carriers may not be reasonably estimated. If the Company is unable to reasonably estimate the amount of revenues to be recognized in the current period, the Company recognizes revenues upon the receipt of a carrier revenue report and when the Company's portion of licensed revenues are fixed or determinable and collection is probable. To monitor the reliability of the Company's estimates, management, where possible, reviews the revenues by country by carrier and by product line on a regular basis to identify unusual trends such as differential adoption rates by carriers or the introduction of new handsets. If the Company deems a carrier not to be creditworthy, the Company defers all revenues from the arrangement until the Company receives payment and all other revenue recognition criteria have been met.

In accordance with Emerging Issues Task Force, or EITF Issue No. 99-19, *Reporting Revenue Gross as a Principal Versus Net as an Agent*, the Company recognizes as revenues the amount the carrier reports as payable upon the sale of the Company's products, images or games. The Company has evaluated its carrier agreements and has determined that it is not the principal when selling its products, images or games through carriers. Key indicators that it evaluated to reach this determination include:

- wireless subscribers directly contract with the carriers, which have most of the service interaction and are generally viewed as the primary obligor by the subscribers;
- carriers generally have significant control over the types of content that they offer to their subscribers;
- carriers are directly responsible for billing and collecting fees from their subscribers, including the resolution of billing disputes;
- carriers generally pay the Company a fixed percentage of their revenues or a fixed fee for each game;
- carriers generally must approve the price of the Company's content in advance of their sale to subscribers, and the Company's more significant carriers generally have the ability to set the ultimate price charged to their subscribers; and
- the Company has limited risks, including no inventory risk and limited credit risk

**Principles of Consolidation**
The consolidated financial statements include the accounts of the Company and its wholly owned subsidiaries. The results of operations for acquisitions of companies have been included in the consolidated statements of operations beginning on the closing date of acquisition. All material intercompany balances and transactions have been eliminated in consolidation.

**Cash and Cash Equivalents**
The Company considers all highly liquid short-term investments purchased with a maturity of three months or less to be cash equivalents.

**Content Provider Licenses**

***Content Provider License Fees and Minimum Guarantees***
License fees payable to content providers are expensed as incurred, based on recognizing the cost of sale associated with revenues. Minimum guarantees are required under certain content provider contracts and are expensed when paid. The Company regularly evaluates remaining liabilities under contracts subject to minimum guarantees and where recoupment of the guarantees is subject to doubt, recognizes the relevant liability and expense immediately.

***Content Acquired***
Amounts paid to third party content providers as part of an agreement to make content available to the Company for a term or in perpetuity, without a revenue share, have been capitalized and are included in the balance sheet as prepaid expenses. These balances are expensed over the estimated life of the material acquired.

**Software Development Costs**
The Company applies the principles of Statement of Financial Accounting Standards No. 86, *Accounting for the Costs of Computer Software to Be Sold, Leased, or Otherwise Marketed* (“SFAS No. 86”). SFAS No. 86 requires that software development costs incurred in conjunction with product development be charged to research and development expense until technological feasibility is established. Thereafter, until the product is released for sale, software development costs must be capitalized and reported at the lower of unamortized cost or net realizable value of the related product.

The Company has adopted the “tested working model” approach to establishing technological feasibility for its products and games. Under this approach, the Company does not consider a product or game in development to have passed the technological feasibility milestone until the Company has completed a model of the product or game that contains essentially all the functionality and features of the final game and has tested the model to ensure that it works as expected. To date, the Company has not incurred significant costs between the establishment of technological feasibility and the release of a product or game for sale; thus, the Company has expensed all software development costs as incurred. The Company considers the following factors in determining whether costs can be capitalized: the emerging nature of the mobile market; the gradual evolution of the wireless carrier platforms and mobile phones for which it develops products and games; the lack of pre-orders or sales history for its products and games; the uncertainty regarding a product’s or game’s revenue-generating potential; its lack of control over the carrier distribution channel resulting in uncertainty as to when, if ever, a product or game will be available for sale; and its historical practice of canceling products and games at any stage of the development process.

**Foreign Currency Translation**

The Company uses the United States dollar for financial reporting purposes. Assets and liabilities of foreign operations are translated using current rates of exchange prevailing at the balance sheet date. Equity accounts have been translated at their historical exchange rates when the capital transaction occurred. Statement of Operations amounts are translated at average rates in effect for the reporting period. The foreign currency translation gain of $98 has been reported as a component of comprehensive loss in the consolidated statement of stockholders deficit and comprehensive loss. Translation gains or losses are shown as a separate component of retained earnings.

**Concentrations of Credit Risk**

Financial instruments which potentially subject us to concentration of credit risk consist principally of cash and cash equivalents, short-term investments, and accounts receivable. We have placed cash and cash equivalents and short-term investments with a single high credit-quality institution. As of September 30, 2007 we did not have any long-term marketable securities. Most of our sales are made directly to large national Mobile Phone Operators in the countries that we operate. We have a significant level of business and resulting significant accounts receivable balance with one operator and therefore have a high concentration of credit risk with that operator. We perform ongoing credit evaluations of our customers and maintain an allowance for potential credit losses. As of September 30, 2007 and March 31, 2007 approximately 36% and 54%, respectively, of our gross accounts receivable outstanding was with one major customer. This customer accounted for 57% of our gross sales in the six months ended September 30, 2007, and 80% of our gross sales in the six months ended September 30, 2006.

**Property and Equipment**

Property and equipment is stated at cost. Depreciation and amortization is calculated using the straight-line method over the estimated useful lives of the related assets. Estimated useful lives are 8 to 10 years for leasehold improvements and 5 years for other assets.

**Goodwill**

In accordance with Statement of Financial Accounting Standards No. 142, Goodwill and Other Intangible Assets (“SFAS No. 142”), the Company’s goodwill is not amortized but is tested for impairment on an annual basis or whenever events or changes in circumstances indicate that the carrying amount of these assets may not be recoverable.

**Impairment of Long-Lived Assets and Intangibles**

Long-lived assets, including purchased intangible assets with finite lives are amortized using the straight-line method over their useful lives ranging from three to ten years and are reviewed for impairment in accordance with SFAS No. 144, *Accounting for the Impairment or Disposal of Long-Lived Assets,* whenever events or changes in circumstances indicate that the carrying amount of an asset may not be recoverable. Recoverability of assets to be held and used is measured by a comparison of the carrying amount of an asset to future undiscounted net cash flows expected to be generated by the asset. If such assets are considered to be impaired, the impairment to be recognized is measured by the amount by which the carrying amount of the assets exceeds the fair value of the assets. Assets to be disposed of are reported at the lower of the carrying amount or fair value less costs to sell.

**Income Taxes**

The Company accounts for income taxes in accordance with Statement of Financial Accounting Standards No. 109, *Accounting for Income Taxes* (“SFAS No. 109”), which requires recognition of deferred tax assets and liabilities for the expected future tax consequences of events that have been included in its financial statements or tax returns. Under SFAS No. 109, the Company determines deferred tax assets and liabilities for temporary differences between the financial reporting basis and the tax basis of assets and liabilities along with net operating losses, if it is more likely than not the tax benefits will be realized using the enacted tax rates in effect for the year in which it expects the differences to reverse. To the extent a deferred tax asset cannot be recognized, a valuation allowance is established if necessary.

**Stock-based compensation**

We have applied SFAS No. 123(R) Share-Based Payment ("FAS 123R") and accordingly, we record stock-based compensation expense for all of our stock-based awards.

Under FAS 123R, we estimate the fair value of stock options granted using the Black-Scholes option pricing model. The fair value for awards that are expected to vest is then amortized on a straight-line basis over the requisite service period of the award, which is generally the option vesting term. The amount of expense recognized represents the expense associated with the stock options we expect to ultimately vest based upon an estimated rate of forfeitures; this rate of forfeitures is updated as necessary and any adjustments needed to recognize the fair value of options that actually vest or are forfeited are recorded.

The Black-Scholes option pricing model, used to estimate the fair value of an award, requires the input of subjective assumptions, including the expected volatility of our common stock and an option's expected life. As a result, the financial statements include amounts that are based upon our best estimates and judgments relating to the expenses recognized for stock-based compensation.

**Use of Estimates**

The preparation of financial statements in conformity with generally accepted accounting principles requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosures of contingent asset and liabilities at the date of the financial statements and reported amounts of revenue and expenses during the period. Actual results could differ from those estimates. The most significant estimates relate to revenues for periods not yet reported by Carriers, liabilities recorded for future minimum guarantee payments under content licenses, accounts receivable allowances, and stock-based compensation expense.

**Recent Accounting Pronouncements**

In September 2006, the FASB issued SFAS No. 157, "Fair Value Measurements" ("SFAS No. 157"). This statement clarifies the definition of fair value, establishes a framework for measuring fair value, and expands the disclosures on fair value measurements. SFAS No. 157 is effective for fiscal years beginning after November 15, 2007. The adoption of SFAS No. 157 is not expected to have a material effect on the Company's consolidated results of operations or financial condition.

In September 2006, the FASB released SFAS No. 158, "Employers' Accounting for Defined Benefit Pension and Other Postretirement Plans, an amendment of FASB Statements No. 87, 88, 106, and 132(R)." Under the new standard, companies must recognize a net liability or asset to report the funded status of their defined benefit pension and other postretirement benefit plans on their balance sheets. The recognition and disclosure provisions of SFAS No. 158 are effective for periods beginning after December 15, 2006. The Company believes that SFAS No. 158 will not have a significant impact on its results of operations or financial position.

In October 2006, the FASB issued FASB Staff Position No. 123R-5, "*Amendment of FASB Staff Position FAS 123(R)-1*". The FSP amends FSP 123(R)-1 for equity instruments that were originally issued as employee compensation and then modified, with such modification made to the terms of the instrument solely to reflect an equity restructuring that occurs when the holders are no longer employees. In such circumstances, no change in the recognition or the measurement date of those instruments will result if both of the following conditions are met: a. There is no increase in fair value of the award (or the ratio of intrinsic value to the exercise price of the award is preserved, that is, the holder is made whole), or the antidilution provision is not added to the terms of the award in contemplation of an equity restructuring; and b. All holders of the same class of equity instruments (for example, stock options) are treated in the same manner. The Company believes that FSP 123(R)-5 will not have a significant impact on its results of operations or financial position.

In February 2007, the FASB issued SFAS No. 159, "The Fair Value Option for Financial Assets and Liabilities, including an amendment of FASB Statement No. 115" ("SFAS No. 159"). SFAS No. 159 permits entities to choose, at specified election dates, to measure many financial instruments and certain other items at fair value that are not currently required to be measured at fair value. Unrealized gains and losses shall be reported on items for which the fair value option has been elected in earnings at each subsequent reporting date. SFAS No. 159 is effective for fiscal years beginning after November 15, 2007. Early adoption is permitted as of the beginning of a fiscal year that begins on or before November 15, 2007, provided the entity also elects to apply the provisions of SFAS No. 157 "Fair Value Measurements" ("SFAS No. 157"). The Company is currently assessing the impact that SFAS No. 159 will have on its financial statements.

In December 2007, the FASB issued SFAS No. 160, "Noncontrolling Interests in Consolidated Financial Statements", which is an amendment of Accounting Research Bulletin ("ARB") No. 51. This statement clarifies that a noncontrolling interest in a subsidiary is an ownership interest in the consolidated entity that should be reported as equity in the consolidated financial statements. This statement changes the way the consolidated income statement is presented, thus requiring consolidated net income to be reported at amounts that include the amounts attributable to both parent and the noncontrolling interest. This statement is effective for the fiscal years, and interim periods within those fiscal years, beginning on or after December 15, 2008. Based on current conditions, the Company does not expect the adoption of SFAS 160 to have a significant impact on its results of operations or financial position.

In December 2007, the FASB issued SFAS No. 141 (revised 2007), "Business Combinations." This statement replaces FASB Statement No. 141, "Business Combinations." This statement retains the fundamental requirements in SFAS 141 that the acquisition method of accounting (which SFAS 141 called the purchase method) be used for all business combinations and for an acquirer to be identified for each business combination. This statement defines the acquirer as the entity that obtains control of one or more businesses in the business combination and establishes the acquisition date as the date that the acquirer achieves control. This statement requires an acquirer to recognize the assets acquired, the liabilities assumed, and any noncontrolling interest in the acquiree at the acquisition date, measured at their fair values as of that date, with limited exceptions specified in the statement. This statement applies prospectively to business combinations for which the acquisition date is on or after the beginning of the first annual reporting period beginning on or after December 15, 2008. The Company does not expect the adoption of SFAS 160 to have a significant impact on its results of operations or financial position.

## 3. Liquidity

The Company has incurred losses and negative cash flows from operations since commencement of operations. Management expects these operating losses and negative cash flows to continue for the foreseeable future. The Company has adequate liquidity for the time being, and management has projected to move toward positive cashflow in a manner consistent with the Company's strategies to build its business and in a time frame to preserve the Company's liquidity. These plans include continued increases in revenues by introducing new products and revenue streams, continued expansion into new territories and a restructuring of its overhead base.

## 4. Balance Sheet Components

***Accounts Receivable***

| | September 30, 2007 | March 31, 2007 |
|---|---|---|
| Accounts receivable | $ 4,004 | $ 5,022 |
| Less: allowance for doubtful accounts | (168) | (146) |
| | $ 3,836 | $ 4,876 |

Accounts receivable includes amounts billed and unbilled as of the respective balance sheet dates. The Company had no significant write-offs or recoveries during the six months ended September 30, 2007 and 2006, respectively.

***Property and Equipment***

| | September 30, 2007 | March 31, 2007 |
|---|---|---|
| Equipment | $ 846 | $ 700 |
| Equipment subject to capitalized lease | 132 | 132 |
| Furniture & fixtures | 329 | 272 |
| Leasehold improvements | 184 | 177 |
| | 1,491 | 1,281 |
| Accumulated depreciation | (355) | (254) |
| | $ 1,136 | $ 1,027 |

Depreciation and amortization expense for the six months ended September 30, 2007 and 2006 was $101 and $71, respectively.

***Capital Lease***

Accumulated depreciation associated with the equipment under capital lease noted above was $57 and $43 at September 30, 2007 and March 31, 2007, respectively. The Company has a commitment to pay $35 under these leases during the year ending September 30, 2008 and $5 during the year ended September 30, 2009. These payments have a net present value of $38.

## 5. Description of Stock Plans

***Twistbox, Inc. 2006 Stock Incentive Plan***

On May 16, 2006, the Company's board of directors adopted, the WAAT Corp 2006 Stock Incentive Plan (the "2006 *Plan*"). The purpose of the Plan is to promote the success and enhance the value of the Company by providing the participants with an incentive for outstanding performance in generating superior returns for the Company shareholders and by enhancing the Company's capability to motivate, attract, and retain the services of individuals whose knowledge, judgment, interest and special effort contribute to the Company's success. Under the 2006 Plan, a total of 3,700,000 common shares will be available for issuance. The awards have a term of ten years and generally become fully vested between the first and fourth years.

The following table summarizes options granted for the periods or as of the dates indicated:

| | Options Granted | Weighted Average Exercise Price |
|---|---|---|
| Balance, March 31, 2006 | 888,000 | $ 0.36 |
| Exercised | - | |
| Cancelled | (20,000) | $ 0.35 |
| Granted | 1,493,054 | $ 0.43 |
| Balance, March 31, 2007 | 2,361,054 | $ 0.40 |
| Exercised | (2,500) | $ 0.35 |
| Cancelled | (73,500) | $ 0.46 |
| Granted | 1,089,741 | $ 0.59 |
| Balance, September 30, 2007 (unaudited) | 3,374,795 | $ 0.46 |
| | | |
| Exercisable, March 31, 2007 | 715,288 | $ 0.38 |
| Exercisable, September 30, 2007 (unaudited) | 1,055,374 | $ 0.40 |

The weighted-average grant-date fair value of stock options granted during the six months ended September 30, 2007 was $0.29 (unaudited) and during the year ended March 31, 2007 was $0.21.

The fair value for these options was estimated at the date of grant using a Black-Scholes option pricing model with the following weighted-average assumptions:

| | September 30, 2007 (unaudited) | March 31, 2007 |
|---|---|---|
| Expected life (years) | 3 | 3 |
| Risk-free interest rate | 3.94% - 4.85% | 4.72% - 5.03% |
| Expected volatility | 75% | 75% |
| Expected dividend yield | 0% | 0% |

The weighted average remaining contractual life of compensatory options outstanding is 8.78 years at September 30, 2007 (unaudited) and 8.8 at March 31, 2007.

The exercise price for options outstanding at March 31, 2007 was as follows:

| Number of Options | Exercise Price |
|---|---|
| 1,821,284 | $ 0.35 |
| 539,770 | $ 0.59 |
| 2,361,054 | |

The exercise price for options outstanding at September 30, 2007 (unaudited) was as follows:

| Number of Options | Exercise Price |
|---|---|
| 1,777,784 | $ 0.35 |
| 1,597,011 | $ 0.59 |
| 3,374,795 | |

The above disclosure includes 951,784 options issued in connection with the Charismatix acquisition.

## 6. Goodwill

The changes in the carrying amount of goodwill for the six months ended September 30, 2007 and the year ended March 31, 2007 was as follows:

| | |
|---|---|
| Balance at March 31, 2006 | $ 439 |
| Goodwill acquired | 1,004 |
| Foreign exchange translation differences | 44 |
| Balance at March 31, 2007 | 1,487 |
| Foreign exchange translation differences | 31 |
| Balance at September 30, 2007 | $ 1,518 |

## 7. Other Intangible Assets

| | September 30, 2007 | March 31, 2007 |
|---|---|---|
| Customer list | $ 277 | $ 277 |
| Platform | 113 | 113 |
| Licenses | 79 | 79 |
| Trademarks | 15 | 14 |
| | 484 | 483 |
| Accumulated Amortization | (90) | (30) |
| | $ 394 | $ 453 |

The Company has included amortization of acquired intangible assets directly attributable to revenue-generating activities in cost of revenues. The Company has included amortization of acquired intangible assets not directly attributable to revenue-generating activities in operating expenses. During the six months ended September 30, 2007 and 2006, the Company recorded amortization expense in the amounts of $13 and $0, respectively, in cost of revenues. During the six months ended September 30, 2007 and 2006, the Company recorded amortization expense in the amounts of $47, and $0, respectively, in operating expenses.

As of September 30, 2007, the total expected future amortization related to intangible assets was as follows:

| Year Ending September 30, | Amortization Included in Cost of Revenues | Amortization Included in Operating Expenses | Total Amortization Expense |
|---|---|---|---|
| 2008 | $ 26 | $ 93 | $ 119 |
| 2009 | 23 | 88 | 111 |
| 2010 | 10 | 70 | 80 |
| 2011 | - | 48 | 48 |
| 2012 | - | 36 | 36 |
| | $ 59 | $ 335 | $ 394 |

## 8. Debt

| | September 30, 2007 | March 31, 2007 |
|---|---|---|
| ***Short Term Debt*** | | |
| Loan from related party, inclusive of interest | $ - | $ 250 |
| Loan from bank, current portion | 56 | 1,771 |
| Capitalized lease liabilities, current portion | 35 | 42 |
| Senior Secured Note, accrued interest | 256 | - |
| | $ 347 | $ 2,063 |

Details of the loans from related party are included in Note 9. The current portion of loans from bank consists of $56 at September 30, 2006 and $54 at March 31, 2007 in connection with the loan detailed in Note 9; and loans of $0 as of September 30, 2007 and $1,717 as of March 31, 2007 that were initiated in January 2007 at an interest rate of 9.25% and with a maturity of 12 months and were fully repaid in July, 2007 as part of the debt financing noted below. Capitalized lease assets are set out in Note 4. Future obligations under capitalized leases are included as part of Other Obligations in Note 14. The current portion of the Senior Secured Note as described below represents accrued interest on that facility.

| | September 30, 2007 | March 31, 2007 |
|---|---|---|
| ***Long Term Debt*** | | |
| Loan from bank, long term portion | $ 19 | $ 48 |
| Capitalized lease liabilities, long term portion | 5 | 21 |
| Senior Secured Note, long term portion, net of discount | 16,482 | - |
| | $ 16,506 | $ 69 |

Loan from bank as of September 30, 2007 and March 31, 2007 is the long term portion of the loan detailed in Note 9. Capitalized lease assets are set out in Note 4. Future obligations under capitalized leases are included as part of Other Obligations in Note 14.

In July 2007 the Company entered into a debt financing agreement in the form of a Senior Secured Note amounting to $16,500, payable at 30 months. The holder of the Note was granted first lien over all of the Company's assets. The Note carries interest of 9% annually for the first year and 10% subsequently, with semi-annual interest only payments. The agreement includes certain restrictive covenants, including a requirement not to exceed a maximum amount of losses. The Note holder was also granted 2,401,747 detachable warrants, with an exercise price of $6.87 and a 48 month maturity. The Company calculated the fair value of the warrants using the Black-Scholes option pricing model with the following assumptions: volatility of 75%, term of two years based on the anticipated life of warrants, risk-free interest rate of 4.9% and dividend yield of 0%. The Company recorded the fair value of the warrants of $20 as a discount to the carrying value of the Note, of which $2 was amortized to interest expense in the six months ended September 30, 2007.

As of September 30, 2007, the future minimum payments under this loan were as follows:

| Year Ending September 30, | Minimum Payments |
|---|---|
| 2008 | 1,513 |
| 2009 | 1,650 |
| 2010 | 17,050 |

## 9. Related Party Transactions

The Company engages in various business relationships with shareholders and officers and their related entities. The significant relationships are disclosed below.

***Lease of Premises***
The Company leases its primary offices in Los Angeles from Berkshire Holdings, LLC, a company with common ownership by officers of the Company. Amounts paid in connection with this lease were $180 and $150 for the six months ended September 30, 2007 and 2006, respectively.

The Company is party to an oral agreement with a person affiliated with the Company with respect to a lease of an apartment in London. Amounts paid in connection with this lease were $36 and $28 for the six months ended September 30, 2007 and 2006, respectively

***Loans***
The Company is party to a loan from East-West Bank, originated on January 27, 2006 in an amount of $161. The Company also entered into a loan agreement to an affiliated company, effective on the same date for the same amount. The bank agreement is secured with a motor vehicle operated exclusively by an officer of the Company. The interest income under the loan to the affiliate completely offsets interest expense incurred under the bank loan. As of September 30, 2007, $90 was due to the Company under this loan, and the amount payable under the bank loan was $75. Amounts paid for the six months ended September 30, 2007 and 2006 were $30 and $30, respectively, including interest of $3 and $5, respectively. Amounts received for the six months ended September 30, 2007 and 2006 were $20 and $30 respectively, including interest of $2 and $5, respectively. The agreement has subsequently been terminated.

***Dealings with Content Provider***
Two officers of the Company are also board members of Peach International, with which the Company has a content provider agreement. Amounts paid or payable under this agreement to Peach in the six months ended September 30, 2007 and 2006 were $394 and $73, respectively.

## 10. Capital Stock Transactions

In December 2005, the Company issued 750,000 shares of Series A Preferred Stock at $3.33 per share for a total purchase price of $2,498.

In April 2006, the Company issued 75,075 shares of Series A Preferred Stock at $3.33 per share for a total purchase price of $250. As of September 30, 2007 and March 31, 2007, 2,750,000 shares of Series A preferred stock were authorized, and 825,075 were issued and outstanding at a par value of $0.01 per share.

In May 2006, the Company issued 2,267,574 shares of Series B Preferred Stock at $4.41 per share for a total purchase price of $10,000. As of September 30, 2007 and March 31, 2007 2,267,574 shares of Series B preferred stock were authorized, issued and outstanding at a par value of $0.01 per share.

In April 2007, the Company issued 436,680 shares of Series B-1 Preferred Stock at $6.87 per share for a total purchase price of $3,000. As of September 30, 2007, 436,680 shares of Series B-1 preferred stock were authorized, issued and outstanding at a par value of $0.01 per share.

**Voting Rights**
The Series A stockholders voting together as a single class elect one member of the Company's Board of Directors. The Series B stockholder elects one member of the Company's Board of Directors.

**Preference Rights**
Upon any liquidation, dissolution or winding up of the Company, whether voluntary or involuntary, the holders of shares of Series A Preferred Stock are entitled to receive an amount of cash equal to their original purchase price of $3.33 per share plus all declared but unpaid dividends before any amount is paid with respect to any other series of preferred stock or common stock. If the amounts available for distribution are not sufficient to pay the full amount, then all assets of the Company legally available for distribution will be distributed to the holders of Series A Preferred Stock on a proportionate basis. After payment in full of the liquidation preference amount of the Series A Preferred Stock, the holders of shares of Series B Preferred Stock are entitled to liquidation preferences equal to their original issue prices of $4.41 per share, plus any declared but unpaid dividends. If the amounts available for distribution are not sufficient to pay the full amount, then any remaining assets of the Company legally available for distribution will be distributed to the holders of Series B Preferred Stock on a proportionate basis. After payment in full of the liquidation preference amount of the Series B Preferred Stock, the holders of shares of Series B-1 Preferred Stock are entitled to liquidation preferences equal to their original issue prices of $6.87 per share, plus any declared but unpaid dividends. If the amounts available for distribution are not sufficient to pay the full amount, then any remaining assets of the Company legally available for distribution will be distributed to the holders of Series B-1 Preferred Stock on a proportionate basis. Upon full payment of the liquidation preference amounts of all preferred stock, any remaining assets of the Company legally available for distribution will be distributed to the holders of common stock and preferred stock pro rata based on the number of shares on an "as-if converted" basis.

The preference stockholders also have anti-dilution rights in the case of certain specified transactions, so that to the extent that consideration is available in a transaction, each class of preferred stockholder is entitled to receive consideration at least equal to their original purchase price plus all declared but unpaid dividends before any amount is paid with respect to the next series of preferred stock or common stock. The ranking for this purpose is Series A, then Series B, then Series B-1, then common stockholders. There are no dividend rights, nor are the shares convertible or callable.

## 11. Employee Benefit Plans

The Company has an employee 401(k) savings plan (the "Plan") covering full-time eligible employees. These employees may contribute eligible compensation up to the annual IRS limit. The Company does not make matching contributions.

## 12. Income Taxes

Deferred income taxes reflect the net tax effects of temporary differences between the carrying amounts of assets and liabilities for financial statement purposes and the amounts used for income tax purposes. Significant components of the Company's deferred tax liabilities and assets as of September 30, 2007 and March 31, 2007 are as follows:

| | September 30, 2007 | March 31, 2007 |
|---|---|---|
| Deferred tax assets: | | |
| Net operating loss carryforwards | $ 6,790 | $ 3,624 |
| Accrued compensation | 376 | 262 |
| Accrued license fees | 2,550 | 3,418 |
| Allowance for doubtful accounts | 67 | 59 |
| Equity compensation | 87 | 56 |
| Less valuation allowance | (9,870) | (7,419) |
| Net deferred tax asset | $ — | $ — |

Following is a reconciliation of the amount of income tax expense (benefit) that would result from applying the statutory federal income tax rates to pre-tax income and the reported amount of income tax expense (benefit) for the six months ended September 30, 2007 and 2006:

| | 2007 | 2006 |
|---|---|---|
| Federal statutory rates | (34.0)% | (34.0)% |
| State taxes | (6.0)% | (6.0)% |
| Increase in valuation allowance | 40.0% | 39.9% |
| Income tax expense (benefit) | (0.0)% | (0.1)% |

At September 30, 2007 and March 31, 2007, the Company has provided a valuation allowance for the deferred tax assets since management has not been able to determine that the realization of that asset is more likely than not. The net change in valuation allowance for the six months ended September 30, 2007 and 2006 was an increase of $2,451 and $1,627, respectively. The Company has net operating loss carryforwards for United States and foreign taxes of approximately $17,000 that begin to expire in 2019.

## 13. Segment and Geographic information

We operate in one reportable segment in which we are a developer and publisher of branded entertainment content for mobile phones. The following information sets forth geographic information on our sales for the six months ended September 30, 2007 and 2006; and property and equipment as of September 30, 2007 and March 31, 2007:

| | North America | Europe | Latin America | Consolidated |
|---|---|---|---|---|
| Net sales to unaffiliated customers for the six months ended September 30, 2007 | 483 | 6,411 | 170 | 7,064 |
| Property and equipment, net as of September 30, 2007 | 917 | 219 | - | 1,136 |
| Net sales to unaffiliated customers for the six months ended September 30, 2006 | 16 | 4,795 | 18 | 4,829 |
| Property and equipment, net as of March 31, 2007 | 894 | 133 | - | 1,027 |

Our largest single customer accounted for 57% of our revenue in six months ended September 30, 2007 and 80% of our revenue in six months ended September 30, 2006.

## 14. Commitments and Contingencies

**Operating Lease Obligations**

The Company leases office facilities under noncancelable operating leases expiring in various years through 2010.

Following is a summary of future minimum payments under initial terms of leases at September 30, 2007:

| Year Ending September 30, | | |
|---|---|---|
| 2008 | $ | 301 |
| 2009 | | 262 |
| 2010 | | 200 |
| Total minimum lease payments | $ | 763 |

These amounts do not reflect future escalations for real estate taxes and building operating expenses. Rental expense under all leases amounted to $480 and $187 for the six months ended September 30, 2007 and 2006, respectively.

**Minimum Guaranteed Royalties**

The Company has entered into license agreements with various owners of brands and other intellectual property so that it could develop and publish branded products for mobile handsets. Pursuant to some of these agreements, the Company is required to pay minimum royalties over the term of the agreements regardless of actual sales. Future minimum royalty payments for those agreements as of September 30, 2007 were as follows:

| Year Ending September 30, | | Minimum Guaranteed Royalties |
|---|---|---|
| 2008 | $ | 2,615 |
| 2009 | | 3,510 |
| 2010 | | 1,033 |
| 2011 | | 90 |
| | | |
| Total minimum payments | $ | 7,248 |

Commitments in the above table include guaranteed royalties to licensors that are included as a liability in the Company's consolidated balance sheet of $5,337 as of September 30, 2007 because the Company has determined that recoupment is unlikely.

**Other Obligations**
As of September 30, 2007, the Company was obligated for payments to various distribution providers, technical providers and employees for agreements with initial terms greater than one year at September 30, 2007. Annual payments relating to these commitments at September 30, 2007 are as follows:

| Year Ending September 30, | | Commitments |
|---|---|---|
| 2008 | $ | 3,089 |
| 2009 | | 2,208 |
| 2010 | | 274 |
| | | |
| Total minimum payments | $ | 5,571 |

**Other Contingencies**
Subsequent to the period end, the Company has entered into an agreement with an investment banking firm, to modify the terms of a previous agreement. Under this amendment, $530 was paid in December 2007. The $530 was accrued as of September 30, 2007 and is included with Other current liabilities; an offsetting asset was also created which is being amortized over 30 months. The net balance of $283 is included with Prepaid expenses as of September 30, 2007. An additional $650 may become payable should the Company enter into a merger or other business combination as defined in the agreement. The merger discussed in Note 15 would qualify a merger under this agreement.

**Litigation**
The Company is subject to various claims and legal proceedings arising in the normal course of business. Based on the opinion of the Company's legal counsel, management believes that the ultimate liability, if any in the aggregate will not be material to the financial position or results of operations of the Company for any future period.

Leaway Enterprise, Ltd (dba "Mobival") v. Twistbox Entertainment, Inc.; FTV GmbH and Michel Adam Lisowski

On March 20, 2007, the Company and FTV GmbH entered into a Content License Agreement ("CLA") pursuant to which, among other things, the Company licensed certain FTV GmbH content and, in exchange, the Company agreed to make certain payments to FTV GmbH, and the Company did make an initial U.S. $200 payment to FTV. On or about April 17, 2007**,** Leaway Enterprises, Ltd. dba "Mobival" ("Mobival") filed an action in the High Court of Justice, Queen's Bench Division, Commercial Court, Royal Courts of Justice, Claim No. 2007 Folio 458 against FTV Ltd. BVI ("FTV BVI") alleging breach of a "Content Distribution Agreement" between Mobival and FTV BVI (hereinafter, the "U.K. Action"). On or about July 20, 2007, Mobival filed an action in the Los Angeles Superior Court, No. LC 078611 against the Company, FTV GmbH and Michel Adam Lisowksi ("Adam") alleging interference, unfair business practices and fraud (hereinafter, the "U.S. Action").

The Company has incurred certain legal fees participating in discovery and otherwise monitoring the U.K. Action, and has incurred certain legal fees defending its rights in the U.S. Action. The Company has demanded that FTV GmbH indemnify Twistbox for legal fees incurred to date in the U.K. Action and the U.S. Action, and the Company has also demanded that FTV GmbH defend the Company in the U.S. Action as provided under the CLA.

The Company contends and FTV denies that the claims made by Mobival in the U.K. Action and U.S. Action, and the press surrounding Mobival's claims, have placed a cloud on the rights to the content being licensed, have made the FTV content less valuable than it was at the time the CLA was signed, and has made it difficult or impossible for the Company to effectively develop the business. For these reasons, the Company asked to terminate the CLA, other than the indemnity and defense obligations, and the Company sought a return of its initial $200 payment;

FTV GmbH does not concede that it has an obligation to reimburse the Company for the fees the Company incurred in the U.K. Action or the U.S. Action, and FTV GmbH does not concede that it has any obligation to terminate the CLA. Notwithstanding FTV GmbH's position, the Company and FTV GmbH entered into that certain Indemnity, Defense and Termination Agreement effective as of November 15, 2007, whereby FTV returned to the Company its initial $200 payment, as well as an amount to reimburse the Company for a portion of its legal fees and costs related to the UK action and the US action.

There has been virtually no activity in the U.K. Action. With respect to the U.S. Action, a law firm is representing the Company and the other defendants. Mobival has propounded discovery requests, to which the Company has responded. Mobival seeks to depose an officer of FTV GmbH to establish FTV GmbH's minimum contacts with the State of California to effectuate a valid service of the complaint.

Additional disclosures regarding commitments to affiliate companies are included in Note 9.

## 15. Subsequent Events

***Mandalay Merger Agreement***

On January 2, 2008 Mandalay Media, Inc. ("Mandalay") announced that it has executed an Agreement and Plan of Merger with the Company. Pursuant to the proposed merger, the Company will become a wholly-owned subsidiary of Mandalay, and the shareholders and other security holders of the Company will receive shares of common stock in Mandalay as provided in the Agreement and Plan of Merger.

If the transaction is consummated, the Company would become Mandalay's sole current operations and continue to operate as usual across its subsidiaries and territories. The closing of the transaction is subject to certain conditions and expected to occur in the first quarter of 2008. There can be no assurance that the merger will be consummated or, if consummated, that the businesses will be successfully integrated.