UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, DC 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) **September 23, 2016**

Digital Turbine, Inc.
(Exact Name of Registrant as Specified in Its Charter)

Delaware	**001-35958**	**22-2267658**
(State or Other Jurisdiction of Incorporation)	(Commission File Number)	(IRS Employer Identification No.)

1300 Guadalupe Street Suite # 302, Austin TX	**78701**
(Address of Principal Executive Offices)	(Zip Code)

(512) 387-7717
(Registrant's Telephone Number, Including Area Code)

(Former Name or Former Address, if Changed Since Last Report)

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))

Item 1.01. Entry into a Material Definitive Agreement

On September 28, 2016, Digital Turbine, Inc. (“Digital Turbine,” “we” or the “Company”) closed the previously announced private placement of $16 million aggregate principal amount of its 8.75% Convertible Senior Notes due 2020 (the “Notes”). BTIG, LLC was the initial purchaser under the Initial Purchase Agreement described below. The net proceeds of the offering, after deducting the initial purchaser's discounts and commissions and the estimated offering expenses payable by Digital Turbine, were approximately $14.3 million. The net proceeds from the private placement were used to repay approximately $11 million of secured indebtedness, consisting of approximately $3 million to Silicon Valley Bank and $8 million to North Atlantic Capital, retiring both such debts in their entirety, and will otherwise be used for general corporate purposes.

Initial Purchaser Agreement

The offer and sale of the Notes and the accompanying warrants (as detailed below) were made pursuant to an Initial Purchaser Agreement, dated September 23, 2016, among the Company, certain subsidiary guarantors of the Company and BTIG, LLC, as initial purchaser. The Initial Purchaser Agreement includes customary representations, warranties and covenants by Digital Turbine and such subsidiary guarantors.

The Company sold the Notes to the initial purchaser at a purchase price of 92.75% of the principal amount thereof. The initial purchaser also received an additional 250,000 warrants on the same terms as the warrants issued with the Notes (as detailed below under “Warrant Agreement”) and has the right to receive 2.5% of any cash consideration received by the Company in connection with a future exercise of any of the warrants issued with the Notes.

The Company understands that the initial purchaser will offer the Notes at a price equal to 100% of the principal amount thereof and the accompanying warrants to qualified institutional buyers pursuant to Rule 144A under the Securities Act, as amended (the "Securities Act"), and to a limited number of institutional accredited investors within the meaning of subparagraph (a)(1), (2), (3) or (7) of Rule 501 under the Securities Act.

Indenture

The Notes were issued under an Indenture, dated as of September 28, 2016, between Digital Turbine, Inc., certain Guarantors and US Bank National Association, as trustee. The Notes are senior unsecured obligations of the Company, and bear interest at a rate of 8.75% per year, payable semiannually in arrears on September 15th and March 15th of each year, beginning on March 15, 2017. The Notes are unconditionally guaranteed by certain of the Company’s wholly-owned domestic and foreign subsidiaries, and will mature on September 23, 2020, unless converted, repurchased or redeemed in accordance with their terms prior to such date.

The Notes are convertible by the holders at their option at any time prior to the close of business on the business day immediately preceding the stated maturity date, and upon conversion, the holders will receive shares of the Company’s common stock. The initial conversion rate for the Notes is 733.14 shares per $1,000 principal amount of Notes, which is equivalent to an initial conversion price of $1.364 per share of common stock. The conversion rate and the conversion price is subject to adjustment in certain events as outlined in the Indenture.

With respect to any conversion prior to September 23, 2019, in addition to the shares deliverable upon conversion, holders of the Notes will be entitled to receive a payment equal to the remaining scheduled payments of interest that would have been made on the notes being converted from the date of conversion until September 23, 2019 (an “Early Conversion Payment”). We may pay the Early Conversion Payment in cash or, subject to certain equity-related conditions set forth in the Indenture, in shares of our common stock.

We may redeem the notes, for cash, in whole or in part, at any time after September 23, 2018, at a redemption price equal to $1,000 per $1,000 principal amount of the notes to be redeemed plus accrued and unpaid interest, if any, to, but excluding, the date of redemption, plus an additional payment (payable in cash or stock) equivalent to the amount of, and subject to equivalent terms and conditions applicable for, an Early Conversion Payment had the notes been converted on the date of redemption, if (1) the closing price of our common shares on the NASDAQ Capital Market has exceeded 200% of the conversion price then in effect (but disregarding the effect on such price from certain anti-dilution adjustments) for at least 20 trading days (whether or not consecutive) during any 30 consecutive trading day period (including the last trading day of such period) ending within the five trading days immediately preceding the date on which we provide the redemption notice, (2) for the 15 consecutive trading days following the last trading day on which the closing price of our common shares was equal to or greater than 200% of the conversion price in effect (but disregarding the effect on such price from certain anti-dilution adjustments) on such trading day for the purpose of the foregoing clause, the closing price of our common shares remains equal to or greater than 150% of the conversion price in effect (but disregarding the effect on such price from certain anti-dilution adjustments) on the given trading day and (3) we are in compliance with certain other equity-related conditions as set forth in the Indenture.

If we undergo a fundamental change, as described in the Indenture, holders may require us to purchase the Notes in whole or in part for cash at a price equal to 120% of the principal amount of the Notes to be purchased plus any accrued and unpaid interest, including additional interest, if any, to, but excluding, the repurchase date. Conversions that occur in connection with a fundamental changes may entitle the holder to receive an increased number of shares of common stock issuable upon such conversion, depending on the date of such fundamental change and the valuation of the Company’s common stock related thereto.

Subject to limited exceptions, the Indenture prohibits us from incurring additional indebtedness at any time while the Notes remain outstanding.

The Company has also agreed to hold a special or annual meeting of its stockholders not later than January 15, 2017 to consider resolutions approving the issuance of the shares of common stock underlying the Notes and the warrants such that such future issuances shall not be subject to any issuance limitation cap required by The Nasdaq Capital Market in the absence of such stockholder approval. We are required to hold additional meetings if such approval is not obtained.

Warrant Agreement

Each purchaser of the Notes also received warrants to purchase 256.60 shares of the Company's common stock for each $1,000 in Notes purchased, or up to 4,105,600 warrants in aggregate, in addition to the 250,000 warrants issued to the initial purchaser, as described above. The warrants were issued under a Warrant Agreement, dated as of September 28, 2016, between Digital Turbine, Inc. and US Bank National Association, as warrant agent.

The warrants are immediately exercisable on the date of issuance at an initial exercise price of $1.364 per share and will expire on September 23, 2020. The exercise price is subject to adjustment in certain events as outlined in the Warrant Agreement.

In the event of a fundamental change, as set forth in the Warrant Agreements, the holders can elect to exercise their warrants or to receive an amount of cash under a Black-Scholes calculation of the value of such warrants.

Registration Rights Agreement

In connection with the private placement, the Company has agreed to file a registration statement covering the resale of the notes, the warrants, the shares of our common stock issuable upon exercise of the warrants or upon conversion of the notes, and any shares of our common stock issued in connection with an Early Conversion Payment.

The Notes, accompanying warrants, and shares of the Company's common stock issuable upon conversion of the Notes or issuable upon exercise of the warrants are not registered under the Securities Act or the securities laws of any state or other jurisdiction's securities laws and may not be offered or sold in the United States absent registration or an applicable exemption from the registration requirements of the Securities Act and applicable state or other jurisdictions' securities laws.

On September 23, 2016, the Company issued a press release announcing the pricing of the private placement. A copy of the press is filed as Exhibit 99.1 hereto and is incorporated herein by reference.

In connection with the private placement, the Company provided investors in the private placement with an offering memorandum which included risk factors relating to the Company, its business and the industries in which it operates, and risks to consider with respect to an investment in the Company's common stock, the Notes and the warrants. A copy of such updated risk factors is filed as Exhibit 99.2 hereto and is incorporated herein by reference.

The foregoing summaries of the Indenture, the Warrant Agreement, the Registration Rights Agreement and the Initial Purchaser Agreement, are subject to, and qualified in their entirety by, such documents attached hereto as Exhibits 4.1, 4.2, 4.3 and 10.1, which are incorporated herein by reference. Certain of these documents contain representations and warranties and other statements (including statements that were negotiated for risk allocation purposes among the parties thereto) which are not for the benefit of any party other than the parties to such document or agreement and are not intended as a document for investors (to the extent they are not a party to such agreement) or the public generally to obtain factual information about us or our subsidiaries.

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

The terms and conditions of the Notes and the Indenture described in Item 1.01 of this report are incorporated herein by reference into this Item 2.03.

Item 3.02 Unregistered Sales of Equity Securities

The terms and conditions of the Notes and the Indenture described in Item 1.01 of this report are incorporated herein by reference into this Item 2.03. The offer and sale of the Notes and the warrants detailed above were made in reliance on an exemption from registration pursuant to Section 4(a)(2) of the Securities Act.

Forward-Looking Statements

This Form 8-K contains statements that are forward-looking statements within the meaning of the Private Securities Litigation Reform Act of 1995. These statements are based on current expectations, estimates and projections about our business based, in part, on assumptions made by management. These statements are not guarantees of future performance and involve risks, uncertainties and assumptions that are difficult to predict. Therefore, actual outcomes and results may differ materially from what is expressed or forecasted in such forward-looking statements due to numerous factors and risks discussed from time to time in our SEC filings and reports. In addition, such statements could be affected by general industry and market conditions and growth rates, and general domestic and international economic conditions. Such forward-looking statements speak only as of the date on which they are made and we do not undertake any obligation to update any forward-looking statement to reflect events or circumstances after the date of this report.

Item 9.01 Financial Statements and Exhibits

(d) Exhibits

Exhibit No.	Description
4.1	Indenture, dated as of September 28, 2016, between Digital Turbine, Inc., certain Guarantors and US Bank National Association, as trustee.
4.2	Warrant Agreement, dated as of September 28, 2016, between Digital Turbine, Inc. and US Bank National Association, as warrant agent.
4.3	Registration Rights Agreement, dated as of September 28, 2016, between Digital Turbine, Inc. and BTIG, LLC.
10.1	Initial Purchaser Agreement, dated as of September 23, 2016, between Digital Turbine, Inc., certain Guarantors, and BTIG, LLC, as initial purchaser.
99.1	Pricing Press Release, dated September 23, 2016.
99.2	Updated Risk Factors.

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 thereunto duly authorized.

Dated: September 29, 2016

Digital Turbine, Inc.

By: /s/ William Stone
William Stone
Chief Executive Officer

Exhibit 4.1

DIGITAL TURBINE, INC.

as issuer,

the Guarantors party hereto

AND

U.S. Bank National Association

as Trustee

Indenture

Dated as of September 28, 2016

8.75% Convertible Senior Notes due 2020

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INDENTURE, dated as of September 28, 2016 between Digital Turbine, Inc., a company duly incorporated and existing under the laws of Delaware, United States of America, and having its principal office at 300 GUADALUPE STREET, SUITE 302, AUSTIN TX 78701, as Issuer (the "**Company**"), the Guarantors (as defined) and U.S. Bank National Association, as Trustee (the "**Trustee**").

RECITALS OF THE COMPANY

WHEREAS, the Company has duly authorized the creation of an issue of 8.75% Convertible Senior Notes due 2020 (each a "**Note**" and collectively, the "**Notes**") of the tenor and amount hereinafter set forth, and to provide therefor the Company has duly authorized the execution and delivery of this Indenture;

WHEREAS, the Guarantors have duly authorized the creation of the Note Guarantees (as defined), and to provide therefor the Guarantors have duly authorized the execution and delivery of this Indenture; and

WHEREAS, all things necessary to make the Notes and the Note Guarantees, when executed by the Company and the Guarantors, respectively, and authenticated and delivered hereunder and duly issued by the Company and the Guarantors, respectively, the valid and legally binding obligations of the Company and the Guarantors, respectively, and to make this Indenture a valid and legally binding agreement of the Company and the Guarantors, respectively, in accordance with the terms of the Notes, the Note Guarantees and this Indenture, have been done.

NOW, THEREFORE, THIS INDENTURE WITNESSETH, for and in consideration of the premises and the purchases of the Notes by the Holders thereof, it is mutually agreed, for the benefit of the Company and the equal and proportionate benefit of all Holders of the Notes, as follows:

ARTICLE 1.
DEFINITIONS AND OTHER PROVISIONS OF GENERAL APPLICATION

Section 1.01 *Definitions*. For all purposes of this Indenture, except as otherwise expressly provided or unless the context otherwise requires: (i) the terms defined in this Article 1 have the meanings assigned to them in this Article and include the plural as well as the singular;

(i) all accounting terms not otherwise defined herein have the meanings assigned to them in accordance with GAAP; and

(ii) the words "herein," "hereof" and "hereunder" and other words of similar import refer to this Indenture as a whole and not to any particular Article, Section or other subdivision.

"**Act**," when used with respect to any Holder, has the meaning specified in Section 1.04.

"**Additional Interest**" means all amounts, if any, payable pursuant to Section 8.03 hereof and Section 6 of the Registration Rights Agreement. Unless the context otherwise requires, all references in this Indenture to interest include Additional Interest, if any. Any express reference to Additional Interest in this Indenture shall not be construed as excluding Additional Interest in any other text where no such express reference is made.

"**Additional Shares**" has the meaning specified in Section 6.08(a).

"**Affiliate**" of any specified Person means any other Person directly or indirectly controlling or controlled by or under direct or indirect common control with such specified Person. For the purposes of this definition, "control" when used with respect to any specified Person means the power to direct the management and policies of such Person, directly or indirectly, whether through the ownership of voting securities, by contract or otherwise; and the terms "controlling" and "controlled" have meanings correlative to the foregoing.

"**Affiliate Notes**" means Notes owned by a Holder that is an affiliate of the Company (within the meaning of Rule 144) as of the applicable date of determination or has been an affiliate of the Company (within the meaning of Rule 144) within the preceding three months.

"**Agent Members**" has the meaning specified in Section 3.06(b).

"**Applicable Conversion Price**" means the Conversion Price in effect at any given time.

"**Applicable Conversion Rate**" means the Conversion Rate in effect at any given time.

"**Applicable Procedures**" means, with respect to any transfer or transaction involving a Global Note or any beneficial interest therein, the rules and procedures of the Depositary for such Note, in each case to the extent applicable to such transfer or transaction and as in effect from time to time.

"**Approved Stock Plan**" means any and all currently existing or future equity incentive plans or agreements providing for issuance, upon approval by the Board or a duly authorized committee or delegee thereof, of shares of Common Stock, options to purchase Common Stock or other securities of, or exchangeable for, the Company to the employees, officers, directors and/or consultants of the Company or its Subsidiaries, in each case, that are approved by shareholders or are inducement plans under the rules and regulations of the Principal Market. For clarity, the Company's 2011 Equity Incentive Plan, as amended to date, and all shares issued and issuable thereunder now or in the future, is included as an Approved Stock Plan.

"**Attribution Parties**" means, collectively, the following Persons and entities: (i) any investment vehicle, including, any funds, feeder funds or managed accounts, directly or indirectly managed or advised by the Holder's investment manager or any of its Affiliates or principals, (ii) any direct or indirect Affiliates of the Holder's or any of the foregoing, and (iii) any other Persons whose beneficial ownership of the Company's Common Stock would or could be aggregated with the Holder's and the other Attribution Parties for purposes of Section 13(d) of the Exchange Act. For clarity, the purpose of the foregoing is to subject, collectively, the Holder and all other Attribution Parties to the Maximum Percentage.

"**Authorized Capital Increase**" has the meaning specified in Section 6.04.

"**Authorized Share Failure**" has the meaning specified in the definition of "Equity Conditions."

"**Board of Directors**" means, with respect to any Person, either the board of directors of such Person or any duly authorized committee of that board.

"**Board Resolution**" means, with respect to any Person, a copy of a resolution certified by the Secretary or an Assistant Secretary or the General Counsel of such Person to have been duly adopted by the Board of Directors and to be in full force and effect on the date of such certification, and delivered to the Trustee.

"**Business Day**" means any day other than a Saturday, a Sunday or a day on which the Federal Reserve Bank of New York or the Corporate Trust Office is authorized or required by law or executive order to close or be closed.

"**Capital Stock**" means any and all shares, interests, participations, rights or other equivalents (however designated) of corporate stock and, with respect to partnerships, partnership interests (whether general or limited) and any other interest or participation that confers on a Person the right to receive a share of the profits and losses of, or distributions of assets of, such partnership.

"**Clause A Distribution**" has the meaning specified in Section 6.05(d).

"**Clause B Distribution**" has the meaning specified in Section 6.05(d).

"**Clause C Distribution**" has the meaning specified in Section 6.05(d).

"**Close of Business**" means 5:00 p.m. New York City time.

"**Code**" means the Internal Revenue Code of 1986, as amended.

"**Commission**" means the Securities and Exchange Commission, as from time to time constituted, created under the Exchange Act.

"**Common Stock**" means the shares of common stock, $0.0001 par value per share, of the Company as they exist on the date of this Indenture, subject to the provisions of Section 6.06.

"**Company**" means the Person named as the "Company" in the first paragraph of this instrument until a successor Person shall have become such pursuant to the applicable provisions of this Indenture, and thereafter "Company" shall mean such successor Person.

"**Company Order**" or "**Company Request**" means a written request or order signed in the name of the Company (a) by its Chief Executive Officer, its President, or its Chief Financial Officer or any of its Vice Presidents, and (b) by its Treasurer, any Assistant Treasurer, its Secretary, any Assistant Secretary or any of its Vice Presidents, and delivered to the Trustee.

"**Conversion Agent**" means the Trustee or such other office or agency designated by the Company where Notes may be presented for conversion.

"**Conversion Date**" has the meaning specified in Section 6.02(b).

"**Conversion Notice**" shall have the meaning specified in Section 6.02(b).

"**Conversion Price**" means, per share of Common Stock, $1,000 *divided by* the Applicable Conversion Rate.

"**Conversion Rate**" means initially 733.14 shares of Common Stock per $1,000 Principal Amount of Notes, subject to adjustment as set forth herein.

"**Conversion Shares**" means shares of Common Stock received pursuant to conversion of Notes in accordance with Article 6 hereof.

"**Conversion Share Delivery Date**" has the meaning specified in Section 6.02(c)

"**Corporate Trust Office**" means the office of the Trustee at which this Indenture shall, at any particular time, be principally administered, which office is, at the date as of which this Indenture is dated, located at U.S. Bank National Association, 633 West Fifth Street, 24th Floor, Los Angeles, California 90071, Attention: B. Scarbrough (Digital Turbine Administrator), Facsimile No.: (213) 615-6197, or such other address in the United States as the Trustee may designate from time to time by notice to the Holders and the Company, or the principal corporate trust office in the United States of any successor Trustee (or such other address in the United States as such successor Trustee may designate from time to time by notice to the Holders and the Company). With respect to presentation of notes for Registration of transfer or exchange or Maturity, such address shall be the address set forth above.

"**Daily VWAP**" means the per share volume-weighted average price of the Common Stock as displayed under the heading "Bloomberg VWAP" on Bloomberg page "APPS <equity> AQR" (or any successor thereto if such page it not available) in respect of the period from the scheduled open of trading until the scheduled close of trading of the primary trading session on such VWAP Trading Day (or if such volume-weighted average price is unavailable, the market value of one share of the Common Stock on such VWAP Trading Day, determined, if practicable, using a volume-weighted average method, by an independent, nationally recognized investment banking firm retained by the Company for this purpose). The Daily VWAP shall be determined without regard to after-hours trading or any other trading outside of the regular trading session trading hours.

"**Default**" means any event that is or with the passage of time or the giving of notice or both would become an Event of Default.

"**Depositary**" means DTC until a successor Depositary shall have become such pursuant to the applicable provisions of this Indenture, and thereafter "Depositary" shall mean such successor Depositary.

"**Distributed Property**" has the meaning specified in Section 6.05(d).

"**DTC**" means The Depository Trust Company.

"**Early Conversion Payment**" means, with respect to any conversion of the Notes prior to September 23, 2019, a payment equal to the remaining scheduled payments of interest that would have been made on the Notes being converted from the date of conversion (or, in the case of conversion between a Regular Record Date and the following Interest Payment Date, from such Interest Payment Date) until the September 23, 2019.

"**Effective Date**" has the meaning specified in Section 6.08(c).

"**effective date**" for purposes of Section 6.05, means the first date on which the shares of Common Stock trade on the applicable exchange or applicable market, regular way, reflecting the relevant share split or share combination, as applicable.

"**Eligible Market**" has the meaning specified in the definition of "Fundamental Change."

"**Equity Conditions**" means, with respect to an given date of determination: (i) on each day during the period beginning thirty (30) calendar days prior to such applicable date of determination and ending on and including such applicable date of determination (the "**Equity Conditions Measuring Period**") either (x) one or more Registration Statements filed pursuant to the Registration Rights Agreement shall be effective and the prospectus contained therein shall be available on such applicable date of determination (with, for the avoidance of doubt, any shares of Common Stock previously sold pursuant to such prospectus deemed unavailable) for the resale of all shares of Common Stock to be issued in connection with the event requiring this determination (or, in connection with a redemption, issuable upon conversion of the Notes being redeemed in the event requiring this determination at the Conversion Price then in effect (without regard to any limitations on conversion set forth herein)) (the "**Required Minimum Securities Amount**"), in each case, in accordance with the terms of the Registration Rights Agreement (it being understood that any day that, under the Registration Rights Agreement, the Registration Statement or prospectus contained therein is not required to be available shall be disregarded for purposes of measuring compliance during the Equity Conditions Measuring Period of this clause (x)) or (y) the Required Minimum Securities Amount shall be eligible for sale pursuant to Rule 144 without the need for registration under any applicable federal or state securities laws (in each case, disregarding any limitation on conversion of the Notes, other issuance of securities with respect to the Notes and exercise of the Warrants) and the Company is in compliance with the requirements of Rule 144(c)(1), including, without limitation, satisfying the current public information requirement under Rule 144(c); (ii) on each day during the Equity Conditions Measuring Period, the Common Stock (including all Required Minimum Securities Amount) is listed or designated for quotation (as applicable) on the Nasdaq Capital Market or other Eligible Market and shall not have been suspended from trading on the Nasdaq Capital Market or other Eligible Market (other than suspensions of not more than two (2) days and occurring prior to the applicable date of determination due to business announcements by the Company) nor shall delisting or suspension by an Eligible Market have been threatened in writing (with a reasonable prospect of delisting occurring after giving effect to all applicable notice, appeal, compliance and hearing periods) or reasonably likely to occur or pending as evidenced by (A) a writing by the Nasdaq Capital Market or other Eligible Market or (B) the Company falling below the minimum listing maintenance requirements of the Nasdaq Capital Market or other Eligible Market on which the Common Stock is then listed or designated for quotation (as applicable) (provided, at any time that the Nasdaq Capital Market or other Eligible Market shall have accepted a plan of remediation or plan to regain compliance, then so long as such acceptance is in effect, then a delisting or suspension by an Eligible Market shall not be deemed to exist); (iii) during the Equity Conditions Measuring Period, the Company shall, in all material respects, have delivered all shares of Common Stock issuable upon conversion of this Note on a timely basis and all other shares of capital stock required to be delivered by the Company on a timely basis as set forth in the Warrant Agreement; (iv) on each day during the Equity Conditions Measuring Period, no public announcement of a pending, proposed or intended Fundamental Change shall have occurred which has not been abandoned, terminated or consummated; (v) on each day during the Equity Conditions Measuring Period, there shall not have occurred and there shall not exist an Event of Default or an event that with the passage of time or giving of notice would constitute an Event of Default; (vi) the shares of Common Stock issuable pursuant the event requiring the satisfaction of the Equity Conditions are duly authorized and listed and eligible for trading without restriction on the Nasdaq Capital Market or other Eligible Market, (vii) any shares of Common Stock to be issued in connection with the event requiring determination (or, in connection with a redemption, issuable upon conversion of the Notes to be redeemed in the event requiring this determination at the Conversion Price then in effect (without regard to any limitations on conversion set forth herein)) may be issued in full without violating Section 6.04(a) hereof and, assuming solely for the purpose of this clause (vii), that such Holder together with the other Attribution Parties do not then hold any shares of Common Stock "long" (as defined in Regulation SHO of the Exchange Act), would not result in a violation of Section 6.04(c) hereof (provided (A) satisfaction of this clause (vii) shall be measured on a Holder by Holder basis, such that failure of this condition as to one Holder shall not be deemed failure of this condition as to any other Holder and (B) in connection with a redemption, if the Company elects in its sole discretion to deliver notice of such redemption to the affected Holder and all other Holders (whether or not affected) in accordance with this Indenture at least 65 calendar days prior to the applicable date of redemption, the Company may assume for purposes of determining whether a violation of Section 6.04(c) would occur that, in addition to the assumption regarding not holding shares "long" noted above, that the Maximum Percentage of every Holder is 9.99%); (viii) such applicable Holder shall not be in possession of any material, non-public information provided to any of them by the Company, any of its Subsidiaries or any of their respective affiliates, employees, officers, representatives, agents or the like (provided, satisfaction of this clause (viii) shall be measured on a Holder by Holder basis, such that failure of this condition as to one Holder shall not be deemed failure of this condition as to any other Holder) , (ix) on the applicable date of determination (A) no failure to have the applicable Required Minimum Securities Amount of shares of Common Stock reserved by the Company and available to be issued pursuant to this Indenture shall exist or be continuing (an "**Authorized Share Failure**") and (B) all shares of Common Stock to be issued in connection with the event requiring this determination (or, in connection with a redemption, issuable conversion of the Notes to be redeemed in the event requiring this determination at the Conversion Price then in effect (without regard to any limitations on conversion set forth herein)) may be issued in full without resulting in an Authorized Share Failure; (x) the Company shall have no knowledge of any fact that would reasonably be expected to cause both (1) any Registration Statement required to be filed pursuant to the Registration Rights Agreement to not be effective or the prospectus contained therein to not be available for the resale of the applicable Required Minimum Securities Amount of shares of Common Stock in accordance with the terms of the Registration Rights Agreement and (2) any shares of Common Stock issuable upon conversion of the Notes or exercise of the Warrants (without regard to any limitations on conversion or exercise with respect thereto) to not be eligible for sale pursuant to Rule 144 without the need for registration under any applicable federal or state securities laws (in each case, disregarding any limitation on conversion of the Notes, other issuance of securities with respect to the Notes and exercise of the Warrants) or the Company to not be in compliance with the requirements of Rule 144(c)(1), including, without limitation, satisfying the current public information requirement under Rule 144(c) and (xi) no Volume Failure Exists.

"**Equity Conditions Failure**" means that as of any given date of determination, the Equity Conditions have not been satisfied (or waived in writing by the Holders to the extent required by Article 13).

"**Equity Conditions Measuring Period**" has the meaning in the definition "Equity Conditions" above.

"**Event**" has the meaning specified in the Registration Rights Agreement.

"**Event Date**" has the meaning specified in the Registration Rights Agreement.

"**Event of Default**" has the meaning specified in Section 8.01.

"**Ex-Dividend Date**" means the first date on which the shares of Common Stock trade on the applicable exchange or in the applicable market, regular way, without the right to receive the issuance, dividend or distribution in question, from the Company or, if applicable, from the seller of the shares of Common Stock on such exchange or market (in the form of due bills or otherwise) as determined by such exchange or market.

"**Exchange Act**" means the U.S. Securities Exchange Act of 1934, as amended.

"**Exchange Cap**" has the meaning specified in Section 6.04.

"**Exchange Cap Share Cancellation Amount**" has the meaning specified in Section 2.03.

"**Exchange Cap Allocation Increase**" has the meaning specified in Section 2.03.

"**Exchange Cap/Underauthorized Shares**" has the meaning specified in Section 6.04.

"**Exchange Cap Share Cancellation Amount**" has the meaning specified in Section 6.04.

"**Exchange Cap Allocation Increase**" has the meaning specified in Section 6.04.

"**Freely Tradable**" means, with respect to any Notes, that such Notes are eligible to be sold by a Person who is not an Affiliate of the Company (within the meaning of Rule 144) and has not been an Affiliate of the Company (within the meaning of Rule 144) during the immediately preceding three months either (1) without any volume or manner of sale restrictions under the Securities Act or (2) because a registration statement under the Securities Act with respect to the resale of such Notes has been declared effective under the Securities Act.

"**Free Transferability Certificate**" means a certificate substantially in the form of Exhibit B.

"**Fundamental Change**" means the occurrence of any of the following events at any time after the Notes are originally issued:

(1) a "person" or "group" within the meaning of Section 13(d) of the Exchange Act other than the Company, the Company's Subsidiaries or the Company's or the Company's Subsidiaries' employee benefit plans files a Schedule TO or any schedule, form or report under the Exchange Act disclosing that such person or group has become the direct or indirect "beneficial owner," as defined in Rule 13d-3 under the Exchange Act, of the Company's common equity representing more than 50% of the voting power of all outstanding classes of the Company's common equity entitled to vote generally in the election of the Company's directors;

(2) consummation of (A) any share exchange, consolidation or merger involving the Company pursuant to which the Common Stock will be converted into cash, securities or other property or (B) any sale, lease or other transfer in one transaction or a series of transactions of all or substantially all of the consolidated assets of the Company and the Company's Subsidiaries, taken as a whole, to any person other than one or more of the Company's Subsidiaries; *provided*, *however*, that a share exchange, consolidation or merger transaction described in clause (A) above in which the holders of more than 50% of all shares of Common Stock entitled to vote generally in the election of the Company's directors immediately prior to such transaction own, directly or indirectly, more than 50% of all shares of Common Stock entitled to vote generally in the election of the directors of the continuing or surviving entity or the parent entity thereof immediately after such transaction in substantially the same proportions (relative to each other) as such ownership immediately prior to such transaction will not, in either case, be a Fundamental Change;

(3) the Company's shareholders approve any plan or proposal for the liquidation or dissolution of the Company; or

(4) the Common Stock (or other Capital Stock into which the Notes are then convertible pursuant to the terms of this Indenture) ceases to be listed on any of The New York Stock Exchange, The NASDAQ Global Select Market, The NASDAQ Global Market, The NASDAQ Capital Market or The NYSE MKT (or their respective successors) (each, an "**Eligible Market**").

If a transaction occurs that constitutes a Fundamental Change under both clause (1) and clause (2) above, such transaction will be treated solely as a Fundamental Change under clause (2) above.

"**Fundamental Change Company Notice**" has the meaning specified in Section 7.01(b).

"**Fundamental Change Purchase Date**" has the meaning specified in Section 7.01(a).

"**Fundamental Change Purchase Notice**" has the meaning specified in Section 7.01(a)(i).

"**Fundamental Change Purchase Price**" has the meaning specified in Section 7.01(a).

"**GAAP**" means generally accepted accounting principles set forth in the opinions and pronouncements of the Accounting Principles Board of the American Institute of Certified Public Accountants and statements and pronouncements of the Financial Accounting Standards Board or in such other statements by such other entity as have been approved by a significant segment of the accounting profession, in each case, as in effect in the United States on the date hereof.

"**Global Note**" means a Note in global form registered in the Register in the name of a Depositary or a nominee thereof.

"**Guarantors**" means any Significant Subsidiary of the Company that executes a Note Guarantee in accordance with the provisions of this Indenture, and their respective successors and assigns, in each case, until the Note Guarantee of such Person has been released in accordance with the provisions of this Indenture.

"**Holder**" means a Person in whose name a Note is registered in the Register.

"**Indenture**" means this instrument as originally executed or as it may from time to time be supplemented or amended by one or more indentures supplemental hereto entered into pursuant to the applicable provisions hereof, including, for all purposes of this instrument and any such supplemental indenture.

"**Initial Purchaser Agreement**" means the Initial Purchaser Agreement, dated September 23, 2016, entered into by the Company, the Guarantors and the Purchaser in connection with the sale of the Notes.

"**Interest Payment Date**" means each September 15 and March 15 of each year, beginning March 15, 2017.

"**Issue Date**" means the date the Notes are originally issued as set forth on the face of the Note under this Indenture.

"**Last Reported Sale Price**" means, on any Trading Day, the closing sale price per share of Common Stock (or if no closing sale price is reported, the average of the bid and ask prices or, if more than one in either case, the average of the average bid and/or the average ask prices) of the Common Stock on that Trading Day as reported in composite transactions for the principal United States national or regional securities exchange on which the Common Stock is traded. If the Common Stock is not listed for trading on a United States national or regional securities exchange on the relevant Trading Day, the "Last Reported Sale Price" will be the last quoted bid price per share of Common Stock in the over-the-counter market on the relevant Trading Day as reported by OTC Markets Group Inc. or similar organization selected by the Company. If the Common Stock is not so quoted, the "Last Reported Sale Price" will be the average of the mid-point of the last bid and ask prices per share of Common Stock on the relevant date from a nationally recognized independent investment banking firm selected by the Company for this purpose.

"**Legal Holiday**" is a Saturday, a Sunday or other day on which the Federal Reserve Bank of New York or the Corporate Trust Office is authorized or required by law or executive order to close or be closed.

"**Maturity Date**" means September 23, 2020.

"**Make-Whole Fundamental Change**" means any transaction or event that would constitute a Fundamental Change pursuant to clause (1), clause (2) or clause (4) of the definition thereof (determined after giving effect to any exceptions or exclusions to such definition, but without regard to the proviso in clause (2) of the definition thereof).

"**Merger Event**" has the meaning specified in Section 6.06.

"**Note Guarantee"** means the guarantee by each Guarantor of the Company's obligations under this Indenture and the Notes, executed pursuant to the provisions of this Indenture.

"**Notes**" has the meaning specified in the first paragraph of the Recitals of the Company, and includes any Note or Notes, as the case may be, authenticated and delivered under this Indenture, including any Global Note.

"**Notice of Default**" means written notice provided to the Company by the Trustee or to the Company and the Trustee by the Holders of not less than 25% in aggregate Principal Amount of Notes outstanding of a Default by the Company, which notice must specify the Default, demand that it be remedied and expressly state that such notice is a "Notice of Default."

"**Offering Memorandum**" means the preliminary offering memorandum dated September 23, 2016, relating to the offering and sale of the Notes.

"**Officers' Certificate**" means a certificate signed (a) by the Chief Executive Officer, the President, the Chief Financial Officer or any of the Vice Presidents of the Company, and (b) by the Treasurer, any Assistant Treasurer, the Secretary, any Assistant Secretary or any of the Vice Presidents of the Company, and delivered to the Trustee. An Officers' Certificate provided under Section 4.12 of this Indenture shall be signed by the Principal Executive, Principal Financial or Principal Accounting Officer.

"**Open of Business**" means 9:00 a.m., New York City time.

"**Opinion of Counsel**" means a written opinion of counsel, who may be external or in-house counsel for the Company and who is reasonably acceptable to the Trustee.

"**outstanding**" when used with reference to Notes, shall, subject to the provisions of Section 14.03, mean, as of any particular time, all Notes authenticated and delivered by the Trustee under this Indenture, except:

(i) Notes theretofore canceled by the Trustee or accepted by the Trustee for cancellation;

(ii) Notes, or portions thereof, that have become due and payable and in respect of which monies in the necessary amount shall have been deposited in trust with the Trustee or with any Paying Agent (other than the Company) or shall have been set aside and segregated in trust by the Company (if the Company shall act as its own Paying Agent);

(iii) Notes that have been paid pursuant to Section 3.09 and Notes in lieu of which, or in substitution for which, other Notes shall have been authenticated and delivered pursuant to the terms of Section 3.09 unless proof satisfactory to the Trustee is presented that any such Notes are held by protected purchasers in whose hands such Notes are valid obligations of the Company; and

(iv) Notes converted pursuant to Article 6 and required to be cancelled pursuant to Section 3.12.

"**Paying Agent**" means any Person (including the Company) authorized by the Company to pay the Principal Amount of, interest on, including Additional Interest, or the Fundamental Change Purchase Price of, any Notes on behalf of the Company. U.S. Bank, National Association shall initially be the Paying Agent.

"**Permitted Debt**" means:

(a) the Notes and any guarantees thereof, including the Note Guarantees;

(b) indebtedness already existing in an acquired entity at the time of acquisition of such entity by the Company or any of its Subsidiaries, so long as such debt was not incurred in order to effect such acquisition, and neither the Company nor any of its Subsidiaries shall guarantee such debt following such acquisition;

(c) any unsecured guarantees by the Company or any of its Subsidiaries of the Company's indebtedness or indebtedness of any of the Company's Subsidiaries not otherwise prohibited under this Indenture;

(d) indebtedness in respect of capital leases and synthetic lease obligations;

(e) unsecured intercompany indebtedness among the Company and any of its Subsidiaries, or between two or more of the Subsidiaries of the Company;

(f) current liabilities which are incurred in the ordinary course of business and which are not incurred through the borrowing of money, including credit incurred in the ordinary course of business with corporate credit cards by the Company and its Subsidiaries;

(g) indebtedness incurred as a result of endorsing negotiable instruments received in the ordinary course of business;

(h) purchase money indebtedness (i) for equipment acquired or held by the Company or its Subsidiaries incurred for financing the acquisition of the equipment, or (ii) existing on equipment when acquired;

(i) a letter of credit issued by Silicon Valley Bank used to satisfy a security deposit to the landlord of the Company's office in Australia, in the aggregate amount of not more than $350,000; and

(j) extensions, refinancings and renewals of indebtedness set forth above in this definition.

"**Person**" means any individual, corporation, partnership, limited liability company, joint venture, trust, unincorporated organization or government or any agency or political subdivision thereof.

"**Physical Notes**" means certificated Notes in registered form issued in minimum denominations of integral $1,000 Principal Amount and integral multiples of $1,000 in excess thereof.

"**Principal Amount**" of a Note means the principal amount as set forth on the face of the Note.

"**Principal Market**" means, as of the date hereof, the Nasdaq Capital Market or from time to time the principal national securities exchange or over-the-counter market where the Common Stock is then traded.

"**Publicly Traded Securities**" means shares of Capital Stock traded on an Eligible Market, or, with respect to a transaction that otherwise would be a Fundamental Change, which will be so traded when issued or exchanged in connection with such transaction.

"**Purchaser**" means BTIG, LLC, the initial purchaser of the Notes pursuant to the Initial Purchaser Agreement.

"**Qualified Financing**" means the sale by the Company of shares of Common Stock or securities convertible into, or exercisable or exchangeable for, Common Stock, provided that a Qualified Financing shall not include any of the following issuances by the Company: (i) shares of Common Stock or options to purchase Common Stock issued to directors, officers, employees of or consultants to the Company or its Subsidiaries for services rendered to the Company in their capacity as such pursuant to an Approved Stock Plan (as defined above), provided that the exercise price of any such options is not lowered, none of such options are amended to increase the number of shares issuable thereunder and none of the terms or conditions of any such options are otherwise materially changed in any manner that adversely affects any of the Holders' interests in the Notes; (ii) shares of Common Stock issued upon the conversion or exercise of convertible securities or warrants (other than options to purchase Common Stock issued pursuant to an Approved Stock Plan that are covered by clause (i) above) issued prior to the Issue Date, provided that the conversion price of any such convertible securities or warrants (other than options to purchase Common Stock issued pursuant to an Approved Stock Plan that are covered by clause (i) above) is not lowered other than pursuant to anti-dilution (including price-based anti-dilution) features that are currently in existence as of the Issue Date and are not amended after the Issue Date, none of such convertible securities or warrants (other than options to purchase Common Stock issued pursuant to an Approved Stock Plan that are covered by clause (i) above) are amended to increase the number of shares issuable thereunder and none of the terms or conditions of any such convertible securities or warrants (other than options to purchase Common Stock issued pursuant to an Approved Stock Plan that are covered by clause (i) above) are otherwise materially changed in any manner that adversely affects any of the Holders' interests in the Notes; (iii) the shares of Common Stock issuable upon conversion of the Notes or otherwise pursuant to the terms of the Notes; (iv) the shares of Common Stock issuable upon exercise of the Warrants; and (v) shares of Common Stock, options, warrants and convertible securities issued pursuant to equipment purchases, strategic mergers or acquisitions of other assets or businesses, or strategic licensing or development transactions; provided that (x) the primary purpose of such issuance is not to raise capital as determined in good faith by the Board of Directors of the Company, (y) the purchaser or acquirer of such shares of Common Stock in such issuance solely consists of either (1) the actual participants in such strategic licensing or development transactions, (2) the actual owners of such assets or securities acquired in such merger or acquisition or (3) the shareholders, partners or members of the foregoing Persons, and (z) the number or amount (as the case may be) of such shares of Common Stock issued to such Person by the Company shall not be disproportionate to such Person's actual participation in such strategic licensing or development transactions or ownership of such assets or securities to be acquired by the Company (as applicable).

"**Qualified Institutional Buyer**" shall have the meaning specified in Rule 144A.

"**Reference Property**" has the meaning specified in Section 6.06.

"**Redemption Date**" shall have the meaning specified in Section 5.02(a).

"**Redemption Notice**" shall have the meaning specified in Section 5.02(a).

"**Redemption Price**" means, for any Notes to be redeemed pursuant to Section 5.01, 100% of the principal amount of such Notes, *plus* accrued and unpaid interest, if any, to, but excluding, the Redemption Date (unless the Redemption Date falls after a Regular Record Date but on or prior to the immediately succeeding Interest Payment Date, in which case interest accrued to the Interest Payment Date will be paid to Holders of record of such Notes on such Regular Record Date, and the "**Redemption Price**" will be equal to 100% of the principal amount of such Notes), *plus* an additional amount equal to the same Early Conversion Payment (if any) that would have been due with respect to the Notes to be redeemed pursuant to Section 5.01 had they been converted on the Redemption Date and an Early Conversion Payment had been due with respect to such hypothetical conversion, with the additional amount under this clause being subject to the same terms and conditions applicable (including the rights and conditions on the Company's election to pay in Common Stock, and to the extent so paid, a "**Redemption/Early Exercise Share Payment**")) had an Early Conversion Payment been made in connection with an actual conversion (for added clarity, the *maximum* amount payable under this clause is equal to one year of interest that would have been due with respect to the Notes).

"**Register**" and "**Registrar**" have the respective meanings specified in Section 3.06.

"**Registrable Securities**" has the meaning specified in the Registration Rights Agreement.

"**Registration Default**" has the meaning specified in Section 2.03.

"**Registration Rights Agreement**" means the Registration Rights Agreement, dated as of September 28, 2016, among the Company, the Guarantors and the Purchaser, as such agreement may be amended, modified or supplemented from time to time.

"**Registration Statement**" means, with respect to any Registrable Securities, as defined in the Registration Rights Agreement, including in connection with an Early Conversion Payment, the "Registration Statement" referenced in the Registration Rights Agreement applicable to such shares.

"**Regular Record Date**" means, with respect to the payment of interest on the Notes (including Additional Interest, if any) Close of Business on March 1 or September 1, as the case may be, immediately preceding the relevant Interest Payment Date.

"Required Minimum Securities Amount" has the meaning in the definition "Equity Conditions" above.

"**Resale Restriction Termination Date**" has the meaning specified in Section 3.08(b)(ii).

"**Restricted Global Note**" has the meaning specified in Section 3.08(b)(i).

"**Restricted Note**" has the meaning specified in Section 3.07(a)(i).

"**Restricted Payment**" means:

(a) any dividend or other distribution declared or paid on any of the Company's Capital Stock (other than dividends or distributions payable solely in Capital Stock), subject to clause (b) of this definition;

(b) any payment to purchase, redeem or otherwise acquire or retire for value any of the Company's Capital Stock (other than the repurchase of unvested shares held by employees, former employees or consultants at a price not greater than the price paid for the shares by such employees, former employees or consultants); and

(c) any payment to purchase, repay, redeem, or otherwise acquire or retire for value any of indebtedness for borrowed money incurred by the Company or any of its Subsidiaries that is subordinated in right of payment to the Notes (other than with the proceeds of indebtedness that is incurred substantially concurrently with such purchase, repayment, redemption, acquisition or retirement and that is subordinated in right of payment to the Notes on terms no less favorable to the Holders than the indebtedness being purchased, repaid, redeemed, acquired or retired).

"**Restricted Stock**" has the meaning specified in Section 3.07(b)(i).

"**Restricted Stock Legend**" means a legend substantially in the form set forth in Exhibit A hereto.

"**Rule 144**" means Rule 144 under the Securities Act (including any successor rule thereto), as the same may be amended from time to time.

"**Rule 144A**" means Rule 144A under the Securities Act (including any successor rule thereto), as the same may be amended from time to time.

"**Rule 144A Information**" has the meaning specified in the Notes.

"**Secured Debt**" means indebtedness for borrowed money incurred by the Company or any of its Subsidiaries (or guarantees thereof by the Company or any of its Subsidiaries), that is secured by a lien or security interest on the Company's assets or the assets of any of the Company's Subsidiaries. "Secured Debt" shall not include trade accounts and accrued expenses payable (including accrued revenue share and accrued license fees), obligations in respect of licenses and operating leases, payroll liabilities, deferred compensation and any purchase price adjustments, royalties, earn-outs, milestone payments, contingent payments of a similar nature in connection with any acquisition, license or collaboration agreement, and obligations for any taxes, fees, assessments or other governmental charges or levies being contesting in good faith .

"**Securities Act**" means the U.S. Securities Act of 1933, as amended, and the rules and regulations of the Commission promulgated thereunder.

"**Share Price**" has the meaning specified in Section 6.08(c).

"**Significant Subsidiary**" shall have the meaning given to such term in Rule 1-02(w) of Regulation S-X under the Exchange Act as in effect on the Issue Date of the Notes.

"**Spin-Off**" has the meaning specified in Section 6.05(d).

"**Subsidiary**" means, with respect to any Person, any corporation, association, partnership or other business entity of which more than 50% of the total voting power of shares of Capital Stock or other interests (including partnership interests) entitled (without regard to the occurrence of any contingency) to vote in the election of directors, managers, general partners or trustees thereof is at the time owned or controlled, directly or indirectly, by (i) such Person; (ii) such Person and one or more Subsidiaries of such Person; or (iii) one or more Subsidiaries of such Person.

"**Successor Company**" has the meaning specified in Section 9.01.

"**Trading Day**" means any day on which the Company's Common Stock is traded on the NASDAQ Capital Market, or, if the NASDAQ Capital Market is not the principal trading market for the Common Stock, then on the principal securities exchange or securities market on which its Common Stock is then traded; *provided* that "Trading Day" shall not include any day on which the Company's Common Stock is scheduled to trade on such exchange or market for less than 4.5 hours or any day that its Common Stock is suspended from trading during the final hour of trading on such exchange or market (or if such exchange or market does not designate in advance the closing time of trading on such exchange or market, then during the hour ending at 4:00:00 p.m., New York time).

"**Transfer Agent**" means American Stock Transfer in its capacity as transfer agent and registrar of the Common Stock and any successor Transfer Agent.

"**Trigger Event**" has the meaning specified in Section 6.05(d).

"**Trustee**" means the Person named as the "**Trustee**" in the first paragraph of this Indenture until a successor Trustee shall have become such pursuant to the applicable provisions of this Indenture, and thereafter "**Trustee**" shall mean such successor Trustee.

"**Trust Indenture Act**" means the Trust Indenture Act of 1939, as amended, as it was in force at the date of execution of this Indenture; *provided*, *however*, that in the event the Trust Indenture Act of 1939 is amended after the date hereof, the term "Trust Indenture Act" shall mean, to the extent required by such amendment, the Trust Indenture Act of 1939, as so amended.

"**Trust Officer**" means any officer of the Trustee within the Corporate Trust Office of the Trustee with direct responsibility for the administration of this Indenture and also, with respect to a particular matter relating to this Indenture, any other officer of the Trustee to whom such matter is referred because of such officer's knowledge and familiarity with the particular subject.

"**U.S.**" means the United States of America.

"**Unsecured Debt**" means (i) indebtedness for borrowed money incurred by the Company any of its Subsidiaries (or guarantees thereof by the Company or any of its Subsidiaries), that is unsecured and is *pari passu* or senior in right of payment to the Notes, and (ii) preferred stock issued by the Company that is mandatorily redeemable, or redeemable at the option of the holder, on a date that is prior to the Maturity Date. "Unsecured Debt" shall not include trade accounts and accrued expenses payable (including accrued revenue share and accrued license fees), obligations in respect of licenses and operating leases, payroll liabilities, deferred compensation and any purchase price adjustments, royalties, earn-outs, milestone payments, contingent payments of a similar nature in connection with any acquisition, license or collaboration agreement, and obligations for any taxes, fees, assessments or other governmental charges or levies being contested in good faith.

"**Valuation Period**" has the meaning set forth in Section 6.05(d).

"**Vice President**" means any vice president, whether or not designated by a number or a word or words added before or after the title "vice president."

"**Volume Failure**" means, with respect to a particular date of determination, the aggregate daily dollar trading volume (as reported on Bloomberg) of the Common Stock on the Principal Market on any Trading Day during the five (5) Trading Day period ending on the Trading Day immediately preceding such date of determination (such period, the "Volume Failure Measuring Period"), is less than $400,000 (as adjusted for any stock splits, stock dividends, stock combinations, recapitalizations or other similar transactions occurring after the Issue Date). All such determinations to be appropriately adjusted for any stock splits, stock dividends, stock combinations, recapitalizations or other similar transactions during such Volume Failure Measuring Period.

"**VWAP Market Disruption Event**" means (a) the relevant stock exchange fails to open for trading or (b) the occurrence or existence prior to 1:00 p.m., New York City time, on any scheduled Trading Day for the Common Stock for more than a one half-hour period in the aggregate during regular trading hours, of any suspension or limitation imposed on trading (by reason of movements in price exceeding limits permitted by the relevant stock exchange or otherwise) in the Common Stock or in any options contracts or future contracts relating to the Common Stock.

"**VWAP Trading Day**" means (a) a day on which (i) there is no VWAP Market Disruption Event and (ii) trading in the Common Stock generally occurs on the relevant stock exchange or (b) if the Common Stock (or any other security for which a Daily VWAP must be determined) is not listed or traded on any exchange or other market, a Business Day.

"**Warrants**" means those warrants issued pursuant to the Warrant Agreement.

"**Warrant Agreement**" means that certain Warrant Agreement of even date herewith between the Company and US Bank National Association as warrant agent.

Section 1.02 *Compliance Certificates and Opinions*. Upon any application or request by the Company to the Trustee to take any action under any provision of this Indenture, the Company shall furnish to the Trustee such certificates and opinions as may be required pursuant to Section 14.02, including each of (a) an Officers' Certificate stating that, in the opinion of the signers, all conditions precedent, if any, provided for in this Indenture relating to the proposed action have been complied with; and (b) an Opinion of Counsel stating that all such conditions precedent relating to the proposed action have been complied with.

Every certificate or opinion with respect to compliance with a condition or covenant provided for in this Indenture shall include:

(a) a statement that each individual signing such certificate or opinion has read such covenant or condition and the definitions herein relating thereto;

(b) a brief statement as to the nature and scope of the examination or investigation upon which the statements or opinions contained in such certificate or opinion are based;

(c) a statement that, in the opinion of each such individual, such individual has made such examination or investigation as is necessary to enable such individual to express an informed opinion as to whether or not such covenant or condition has been complied with; and

(d) a statement as to whether, in the opinion of each such individual, such condition or covenant has been complied with.

In giving such Opinion of Counsel, counsel may rely as to factual matters on an Officers' Certificate or certificates of public officials.

Section 1.03 *Form of Documents Delivered to Trustee.* In any case where several matters are required to be certified by, or covered by an opinion of, any specified Person, it is not necessary that all such matters be certified by, or covered by the opinion of, only one such Person, or that they be so certified or covered by only one document, but one such Person may certify or give an opinion with respect to some matters and one or more other such Persons as to other matters, and any such Person may certify or give an opinion as to such matters in one or several documents.

Any certificate or opinion of an officer of the Company may be based, insofar as it relates to legal matters, upon a certificate or opinion of, or representations by, counsel, unless such officer knows, or in the exercise of reasonable care should know, that the certificate or opinion or representations with respect to the matters upon which his certificate or opinion is based are erroneous. Any such certificate or Opinion of Counsel may be based, insofar as it relates to factual matters, upon a certificate or opinion of, or representations by, an officer or officers of the Company stating that the information with respect to such factual matters is in the possession of the Company.

Where any Person is required to make, give or execute two or more applications, requests, consents, certificates, statements, opinions or other instruments under this Indenture, they may, but need not, be consolidated and form one instrument.

Section 1.04 *Acts of Holders; Record Dates*.

(a) Subject to Section 4.13, any request, demand, authorization, direction, notice, consent, waiver or other action provided by this Indenture to be given or taken by Holders may be embodied in and evidenced by one or more instruments of substantially similar tenor signed by such Holders in person or by their agents duly appointed in writing and, except as herein otherwise expressly provided, such action shall become effective when such instrument or instruments are delivered to the Trustee and, where it is hereby expressly required, to the Company. Such instrument or instruments (and the action embodied therein and evidenced thereby) are herein sometimes referred to as an "**Act**" of the Holders signing such instrument or instruments. Proof of execution of any such instrument or of a writing appointing any such agent shall be sufficient for any purpose of this Indenture and (subject to Section 10.01) conclusive in favor of the Trustee and the Company, if made in the manner provided in this Section.

(b) The fact and date of the execution by any Person of any such instrument or writing may be proved by the affidavit of a witness of such execution or by a certificate of a notary public or other officer authorized by law to take acknowledgments of deeds, certifying that the individual signing such instrument or writing acknowledged to him the execution thereof. Where such execution is by a signer acting in a capacity other than his individual capacity, such certificate or affidavit shall also constitute sufficient proof of his authority. The fact and date of the execution of any such instrument or writing, or the authority of the Person executing the same, may also be proved in any other manner which the Trustee reasonably deems sufficient.

(c) The Company may, in the circumstances permitted by this Indenture, fix any day as the record date for the purpose of determining the Holders entitled to give or take any request, demand, authorization, direction, notice, consent, waiver or other action, or to vote on any action, authorized or permitted to be given or taken by Holders. If not set by the Company prior to the first solicitation of a Holder made by any Person in respect of any such action, or, in the case of any such vote, prior to such vote, the record date for any such action or vote shall be the 30th day (or, if later, the date of the most recent list of Holders required to be provided pursuant to Section 11.01) prior to such first solicitation or vote, as the case may be. With regard to any record date, only the Holders on such date (or their duly designated proxies) shall be entitled to give or take, or vote on, the relevant action.

(d) The ownership of Notes shall be proved by the Register.

(e) Any request, demand, authorization, direction, notice, consent (or deemed consent pursuant to Section 4.13), waiver or other Act of the Holder of any Note shall bind every future Holder of the same Note and the Holder of every Note issued upon the registration of transfer thereof or in exchange therefor or in lieu thereof in respect of anything done, omitted or suffered to be done by the Trustee or the Company in reliance thereon, whether or not notation of such action is made upon such Note.

Section 1.05 *Notices, Etc., to Trustee and Company*. Any request, demand, authorization, direction, notice, consent, waiver or Act of Holders or other document provided or permitted by this Indenture to be made upon, given or furnished to, or filed with:

(i) the Trustee by any Holder or by the Company shall be sufficient for every purpose hereunder if actually received by the Trustee at its applicable Corporate Trust Office; or

(ii) the Company by the Trustee or by any Holder shall be sufficient for every purpose hereunder (unless otherwise herein expressly provided) if in writing and either (a) emailed to the following email address without a "bounce back" or rejection notice having been received, with the subject line stating in substance "FORMAL NOTICE UNDER DIGITAL TURBINE INDENTURE": indentureandwarrantnotices@digitalturbine.com or (b) mailed, first-class postage prepaid, to the Company addressed to it at the address of its principal office specified in the first paragraph of this instrument, with a copy to the address specified in Section 14.01, or at any other address previously furnished in writing to the Trustee by the Company, Attention: Chief Financial Officer.

Section 1.06 *Notice to Holders; Waiver*. Where this Indenture provides for notice to Holders of any event, such notice shall be sufficiently given (unless otherwise herein expressly provided) if in writing and mailed, first-class postage prepaid, to each Holder affected by such event, at such Holder's address as it appears in the Register, not later than the latest date (if any), and not earlier than the earliest date (if any), prescribed for the giving of such notice. In any case where notice to Holders is given by mail, neither the failure to mail such notice, nor any defect in any notice so mailed, to any particular Holder shall affect the sufficiency of such notice with respect to other Holders. Where this Indenture provides for notice in any manner, such notice may be waived in writing by the Person entitled to receive such notice, either before or after the event, and such waiver shall be the equivalent of such notice. Waivers of notice by Holders shall be filed with the Trustee, but such filing shall not be a condition precedent to the validity of any action taken in reliance upon such waiver.

In case by reason of the suspension of regular mail service or by reason of any other cause it shall be impracticable to give such notice by mail, then such notification as shall be made with the approval of the Trustee shall constitute a sufficient notification for every purpose hereunder.

Whenever under this Indenture the Trustee is required to provide any notice by mail, in all cases the Trustee may alternatively provide notice by overnight courier, by facsimile, with confirmation of transmission, or by electronic means.

Notwithstanding any other provision of this Indenture or any Note, where this Indenture or any Note provides for notice of any event (including any notice of redemption or purchase) to a Holder of a Global Note (whether by mail or otherwise), such notice shall be sufficiently given if given to the Depositary for such Note (or its designee) pursuant to the standing instructions from such Depositary.

Section 1.07 *Effect of Headings and Table of Contents.* The Article and Section headings herein and the Table of Contents are for convenience only and shall not affect the construction hereof, and all Article and Section references are to Articles and Sections, respectively, of this Indenture unless otherwise expressly stated.

Section 1.08 *Successors and Assigns*. All covenants and agreements in this Indenture by the Company and the Guarantors shall bind their respective successors and assigns, whether so expressed or not.

Section 1.09 *Severability Clause.* In case any provision in this Indenture or in the Notes shall be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

Section 1.10 *Benefits of Indenture*. Nothing in this Indenture or in the Notes, express or implied, shall give to any Person, other than the parties hereto and their respective successors hereunder and the Holders of Notes, any benefit or any legal or equitable right, remedy or claim under this Indenture

Section 1.11 *No Recourse Against Others*. No director, officer, employee, shareholder or Affiliate of the Company from time to time shall have any liability for any obligations of the Company under the Notes or this Indenture. Each Holder by accepting a Note waives and releases such liability.

ARTICLE 2.
SECURITY FORMS

Section 2.01 *Forms Generally*. The Notes and the Trustee's certificates of authentication shall be in substantially the forms set forth in this Article, with such appropriate insertions, omissions, substitutions and other variations as are required or permitted by this Indenture, and may have such letters, numbers or other marks of identification and such legends or endorsements placed thereon as may be required to comply with the rules of any securities exchange or Depositary therefor, the Code and regulations thereunder, or as may, consistently herewith, be determined by the officers executing such Notes, as evidenced by their execution thereof.

The Notes (other than the Affiliate Notes) shall initially be issued in the form of permanent Global Notes in registered form in substantially the form set forth in this Article. The aggregate Principal Amount of the Global Notes may from time to time be increased or decreased by adjustments made on the records of the Trustee, as custodian for the Depositary, as hereinafter provided.

All Affiliate Notes shall be issued in the form of one or more Physical Notes.

Section 2.02 *Form of Face of Note*.

[*Include the following legend for Global Notes only (the "**Global Notes Legend**")*:]

[**NO AFFILIATE (AS DEFINED IN RULE 144 UNDER THE SECURITIES ACT) OF THE COMPANY OR PERSON THAT HAS BEEN AN AFFILIATE (AS DEFINED IN RULE 144 UNDER THE SECURITIES ACT) OF THE COMPANY DURING THE IMMEDIATELY PRECEDING THREE MONTHS MAY RESELL THIS NOTE OR A BENEFICIAL INTEREST HEREIN.**

THIS SECURITY IS A GLOBAL SECURITY WITHIN THE MEANING OF THE INDENTURE HEREINAFTER REFERRED TO AND IS REGISTERED IN THE NAME OF A DEPOSITARY OR A NOMINEE THEREOF. THIS SECURITY MAY NOT BE EXCHANGED IN WHOLE OR IN PART FOR A SECURITY REGISTERED, AND NO TRANSFER OF THIS SECURITY IN WHOLE OR IN PART MAY BE REGISTERED, IN THE NAME OF ANY PERSON OTHER THAN SUCH DEPOSITARY OR A NOMINEE THEREOF, EXCEPT IN THE LIMITED CIRCUMSTANCES DESCRIBED IN THE INDENTURE.

UNLESS THIS CERTIFICATE IS PRESENTED BY AN AUTHORIZED REPRESENTATIVE OF THE DEPOSITORY TRUST COMPANY ("DTC"), A NEW YORK CORPORATION, TO THE COMPANY OR ITS AGENT FOR REGISTRATION OF TRANSFER, EXCHANGE OR PAYMENT, AND ANY CERTIFICATE ISSUED IS REGISTERED IN THE NAME OF CEDE & CO. OR IN SUCH OTHER NAME AS IS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF DTC (AND ANY PAYMENT IS MADE TO CEDE & CO. OR TO SUCH OTHER ENTITY AS IS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF DTC), ANY TRANSFER, PLEDGE OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL IN AS MUCH AS THE REGISTERED OWNER HEREOF, CEDE & CO., HAS AN INTEREST HEREIN.]

[*Include the following legend on all Notes that are Restricted Notes (the "**Restricted Notes Legend**")*:]

[THIS SECURITY, THE ATTACHED GUARANTEE AND THE SHARES OF COMMON STOCK ISSUABLE UPON CONVERSION OF THIS SECURITY HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT"), AND MAY NOT BE OFFERED, SOLD, PLEDGED OR OTHERWISE TRANSFERRED EXCEPT IN ACCORDANCE WITH THE FOLLOWING SENTENCE. BY ITS ACQUISITION HEREOF OR OF A BENEFICIAL INTEREST HEREIN, THE ACQUIRER:

(1) **REPRESENTS THAT IT AND ANY ACCOUNT FOR WHICH IT IS ACTING IS A "QUALIFIED INSTITUTIONAL BUYER" (WITHIN THE MEANING OF RULE 144A UNDER THE SECURITIES ACT) AND THAT IT EXERCISES SOLE INVESTMENT DISCRETION WITH RESPECT TO EACH SUCH ACCOUNT, AND**

(2) **AGREES FOR THE BENEFIT OF DIGITAL TURBINE, INC. (THE "COMPANY") THAT IT WILL NOT OFFER, SELL, PLEDGE OR OTHERWISE TRANSFER THIS SECURITY OR ANY BENEFICIAL INTEREST HEREIN PRIOR TO THE RESALE RESTRICTION TERMINATION DATE (AS DEFINED BELOW), EXCEPT:**

(A) TO THE COMPANY OR ANY SUBSIDIARY THEREOF, OR

(B) PURSUANT TO A REGISTRATION STATEMENT WHICH HAS BECOME EFFECTIVE UNDER THE SECURITIES ACT, OR

(C) TO A QUALIFIED INSTITUTIONAL BUYER IN COMPLIANCE WITH RULE 144A UNDER THE SECURITIES ACT, OR

(D) PURSUANT TO AN EXEMPTION FROM REGISTRATION PROVIDED BY RULE 144 UNDER THE SECURITIES ACT OR ANY OTHER AVAILABLE EXEMPTION FROM THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT.

THE "RESALE RESTRICTION TERMINATION DATE" MEANS THE LATER OF: (1) THE DATE THAT A REGISTRATION STATEMENT UNDER THE SECURITIES ACT WITH RESPECT TO THIS SECURITY AND BENEFICIAL INTERESTS HEREIN HAS BECOME EFFECTIVE; AND (2) SUCH OTHER DATE AS MAY BE REQUIRED BY APPLICABLE LAW.

PRIOR TO THE REGISTRATION OF ANY TRANSFER IN ACCORDANCE WITH CLAUSE (2)(D) ABOVE, THE COMPANY AND THE TRUSTEE RESERVE THE RIGHT TO REQUIRE THE DELIVERY OF SUCH LEGAL OPINIONS, CERTIFICATIONS OR OTHER EVIDENCE AS MAY REASONABLY BE REQUIRED IN ORDER TO DETERMINE THAT THE PROPOSED TRANSFER IS BEING MADE IN COMPLIANCE WITH THE SECURITIES ACT AND APPLICABLE STATE SECURITIES LAWS. NO REPRESENTATION IS MADE AS TO THE AVAILABILITY OF ANY EXEMPTION FROM THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT.][1]

[*Include the following legend on all Notes that are Affiliate Notes (the "**Affiliate Notes Legend**")*:]

[THIS SECURITY, THE ATTACHED GUARANTEE AND THE SHARES ISSUABLE UPON CONVERSION OF THIS SECURITY HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT"), AND MAY NOT BE OFFERED, SOLD, PLEDGED OR OTHERWISE TRANSFERRED EXCEPT IN ACCORDANCE WITH THE FOLLOWING SENTENCE. BY ITS ACQUISITION HEREOF, THE ACQUIRER:

(1) **REPRESENTS THAT IT AND ANY ACCOUNT FOR WHICH IT IS ACTING IS A "QUALIFIED INSTITUTIONAL BUYER" (WITHIN THE MEANING OF RULE 144A UNDER THE SECURITIES ACT) AND THAT IT EXERCISES SOLE INVESTMENT DISCRETION WITH RESPECT TO EACH SUCH ACCOUNT, AND**

(2) **AGREES FOR THE BENEFIT OF DIGITAL TURBINE, INC. THAT IT WILL NOT OFFER, SELL, PLEDGE OR OTHERWISE TRANSFER THIS SECURITY OR ANY BENEFICIAL INTEREST HEREIN PRIOR TO THE RESALE RESTRICTION TERMINATION DATE (AS DEFINED BELOW), EXCEPT:**

(A) DIGITAL TURBINE, INC. OR ANY SUBSIDIARY THEREOF, OR

(B) PURSUANT TO A REGISTRATION STATEMENT WHICH HAS BECOME EFFECTIVE UNDER THE SECURITIES ACT.

THE "RESALE RESTRICTION TERMINATION DATE" MEANS THE LATER OF: (1) THE DATE THAT A REGISTRATION STATEMENT UNDER THE SECURITIES ACT WITH RESPECT TO THIS SECURITY AND BENEFICIAL INTERESTS HEREIN HAS BECOME EFFECTIVE; AND (2) SUCH OTHER DATE AS MAY BE REQUIRED BY APPLICABLE LAW.

THIS SECURITY AND THE COMMON STOCK ISSUABLE UPON CONVERSION OF THIS SECURITY ARE HELD BY AN AFFILIATE OF THE COMPANY AND ARE SUBJECT TO ADDITIONAL RESTRICTIONS ON TRANSFER UNDER RULE 144 UNDER THE SECURITIES ACT."][2]

[1] The restricted legend shall be deemed removed from the face of this security without further action of the Company, the Trustee, or the Holders of this security at such time as the Company instructs the Trustee to remove such legend pursuant to Section 3.08 of the Indenture and upon such removal, the CUSIP number shall be 25400W AB8.

[2] The restricted legend shall be deemed removed from the face of this security without further action of the Company, the Trustee, or the Holders of this security at such time as the Company instructs the Trustee to remove such legend pursuant to Section 3.08 of the Indenture.

8.75% Convertible Senior Notes due 2020

No. [ ] U.S. $[ ]

CUSIP NO. 25400W AA0

Digital Turbine, Inc., a company duly incorporated and validly existing under the laws of the state of Delaware in the United States of America (herein called the "**Company**"), which term includes any successor corporation under the Indenture referred to on the reverse hereof), for value received hereby promises to pay to [_____], or registered assigns, the principal sum of [_____] UNITED STATES DOLLARS (U.S. $[_____]) [(which amount may from time to time be increased or decreased by adjustments made on the records of the Trustee, as custodian for the Depositary, in accordance with the rules and procedures of the Depositary and in accordance with the below referred Indenture)][3] on September 23, 2020. The Principal Amount of Physical Notes and interest thereon (to the extent paid in cash), as provided on the reverse hereof, shall be payable at the Corporate Trust Office and at any other office or agency maintained by the Company for such purpose. In the case of cash payment, the Paying Agent will pay principal of any Note and interest thereon, as provided on the reverse hereof, in immediately available funds to [The Depository Trust Company or its nominee, as the case may be, as the registered holder of such global note,][4] [the Holder][5] on each Interest Payment Date, Fundamental Change Purchase Date or other payment date, as the case may be.

Reference is made to the further provisions of this Note set forth on the reverse hereof, including, without limitation, provisions giving the Holder the right to convert this Note into shares of Common Stock of the Company and to the ability and obligation of the Company to purchase this Note upon certain events, in each case, on the terms and subject to the limitations referred to on the reverse hereof and as more fully specified in the Indenture. Such further provisions shall for all purposes have the same effect as though fully set forth at this place. Capitalized terms used but not defined herein shall have such meanings as are ascribed to such terms in the Indenture. In the case of any conflict between this Note and the Indenture, the provisions of the Indenture shall control.

This Note shall not be valid or become obligatory for any purpose until the certificate of authentication hereon shall have been manually signed by the Trustee or a duly authorized authenticating agent under the Indenture.

IN WITNESS WHEREOF, the Company has caused this instrument to be duly executed.

DIGITAL TURBINE, INC.

By: _____
Name:
Title:

[3] Include for Global Note.

[4] Include for Global Note.

[5] Include for Physical Note.

By:
Name:
Title:

Date:

Section 2.03 *Form of Reverse of Note*.

DIGITAL TURBINE, INC.

8.75% Convertible Senior Notes due 2020

This Note is one of a duly authorized issue of Notes of the Company, designated as its 8.75% Convertible Senior Notes due 2020 (the "**Notes**"), limited in aggregate principal amount to Sixteen Million Dollars ($16,000,000), which amount may from time to time be increased or decreased by adjustments made on the records of the Trustee, as custodian for the Depositary, in accordance with the rules and procedures of the Depositary and in accordance with the below referred Indenture) all issued or to be issued under and pursuant to an Indenture dated as of September 28, 2016 (the "**Indenture**") between the Company and U.S. Bank National Association, as Trustee (the "**Trustee**"), to which the Indenture and all indentures supplemental thereto reference is hereby made for a description of the rights, limitations of rights, obligations, duties and immunities thereunder of the Trustee, the Company and the Holders of the Notes.

Interest. The Notes will bear interest at a rate of 8.75% per year. Interest on the Notes will accrue from, and including, September 28, 2016, or from the most recent date to which interest has been paid or duly provided for. Interest will be payable semiannually in arrears on each Interest Payment Date, beginning March 15, 2017.

Method of Payment. The Company shall pay interest entirely in cash in money of the United States of America that at the time of payment is legal tender for payment of public and private debts.

Pursuant to Section 8.03 of the Indenture and Section 6 of the Registration Rights Agreement, in certain circumstances, the Holders of Notes shall be entitled to receive Additional Interest. Payments of the Fundamental Change Repurchase Price, principal and interest that are not made when due will accrue interest per annum at the then-applicable interest rate for the Notes from the required date of payment.

Interest will be paid to the person in whose name a Note is registered at the Close of Business on March 1 or September 1 (whether or not such date is a Business Day), as the case may be, immediately preceding the relevant Interest Payment Date. Interest on the Notes will be computed on the basis of a 360-day year composed of twelve 30-day months.

Interest will cease to accrue on a Note upon its maturity, conversion or repurchase in connection with a Fundamental Change.

Ranking. The Notes constitute a general unsecured and unsubordinated obligation of the Company.

Redemption at the Option of the Company; No Sinking Fund. No sinking fund is provided for the Notes. The Company may redeem for cash all or any portion of the Notes, at the Redemption Price, if the Last Reported Sale Price of the Common Stock is equal to or greater than 200% of the Conversion Price in effect (but disregarding the effect on such price from certain anti-dilution adjustments) on the given Trading Day for at least 20 Trading Days (whether or not consecutive) during any 30 consecutive Trading Day period (including the last Trading Day of such period) ending within the five Trading Days immediately preceding the date on which the Company provides the Redemption Notice in accordance with Section 5.02(a) and for 15 consecutive Trading Days following the last Trading Day on which the Last Reported Sale Price of the Common Stock was equal to or greater than 200% of the Conversion Price in effect (but disregarding the effect on such price from certain anti-dilution adjustments) on such Trading Day for the purpose of the foregoing clause, the Last Reported Sale Price of the Common Stock remains equal to or greater than 150% of the Conversion Price in effect (but disregarding the effect on such price from certain anti-dilution adjustments) on the given Trading Day.

Make-Whole Fundamental Change. Subject to the terms and conditions of the Indenture, if a Make-Whole Fundamental Change occurs and a Holder elects to convert its Notes in connection with such Make-Whole Fundamental Change, the Company shall increase the Conversion Rate for the Notes so surrendered for conversion by a number of additional shares of Common Stock in accordance with Section 6.08 and Schedule A of the Indenture.

Purchase at the Option of the Holder Upon a Fundamental Change. Subject to the terms and conditions of the Indenture, the Company shall become obligated, at the option of the Holder, to repurchase the Notes if a Fundamental Change occurs at any time prior to the Maturity Date at 120% of the Principal Amount together with accrued and unpaid interest to, but excluding, the Fundamental Change Purchase Date, which amount will be paid in cash.

Withdrawal of Fundamental Change Purchase Notice. Holders have the right to withdraw, in whole or in part, any Fundamental Change Purchase Notice by delivering to the Paying Agent a written notice of withdrawal in accordance with the provisions of the Indenture, or in the case of Notes held in book entry form, in accordance with the Applicable Procedures of DTC. The right to withdraw the Fundamental Change Purchase Notice will terminate at the Close of Business on the Business Day immediately preceding the relevant Fundamental Change Purchase Date.

Payment of Fundamental Change Purchase Price. If money sufficient to pay the Fundamental Change Purchase Price of all Notes or portions thereof to be purchased on a Fundamental Change Purchase Date is deposited with the Paying Agent on the Fundamental Change Purchase Date, such Notes will cease to be outstanding and interest will cease to accrue on such Notes (or portions thereof) immediately after the Close of Business on such Fundamental Change Purchase Date, and the Holder thereof shall have no other rights as such (other than the right to receive the Fundamental Change Purchase Price upon surrender of such Note).

Conversion. Subject to and upon compliance with the provisions of the Indenture (including without limitation the conditions of conversion of this Note set forth in Article 6 thereof), the Holder hereof has the right, at its option, to convert the Principal Amount hereof or any portion of such principal which is $1,000 or an integral multiple of $1,000 in excess thereof, into shares of Common Stock at the Applicable Conversion Rate. The Conversion Rate is initially 733.14 shares of Common Stock per $1,000 Principal Amount of Notes (equivalent to an initial Conversion Price of approximately $1.364), subject to adjustment in certain events described in the Indenture. Upon conversion, the Company will deliver shares of Common Stock, and the Early Conversion Payment, if applicable, as set forth in the Indenture. No fractional shares will be issued upon any conversion, but a payment in cash will be made, as provided in the Indenture, in respect of any fraction of a share which would otherwise be issuable upon the surrender of any Notes for conversion. Notes in respect of which a Holder is exercising its right to require repurchase on a Fundamental Change Purchase Date may be converted only if such Holder withdraws the related election to exercise such right in accordance with the terms of the Indenture.

In the event of a deposit or withdrawal of an interest in this Note, including an exchange, transfer, repurchase or conversion of this Note in part only, the Trustee, as custodian of the Depositary, shall make an adjustment on its records to reflect such deposit or withdrawal in accordance with the rules and procedures of the Depositary.

Limitations on Issuance due to Market Regulation. Notwithstanding anything to the contrary in the Indenture or in the Notes, the Company shall not be obligated to issue shares of Common Stock upon conversion of the Notes in connection with an Early Conversion Payment or otherwise, and shall not be entitled to issue shares of Common Stock in connection with any anti-dilution terms described in the Indenture, to the extent (and only to the extent) the issuance of such shares of Common Stock, would exceed that aggregate number of shares of Common Stock which the Company may issue, in the aggregate, pursuant to the terms of all Notes and Warrants without breaching the Exchange Cap (subject to certain exceptions related to receiving shareholder approval or approval from the Principal Exchange). Until such approval is obtained, no Holder shall be issued in the aggregate, upon conversion or exercise (as the case may be) of any Notes or any of the Warrants or otherwise pursuant to the terms of this Note or under the Warrant Agreement, shares of Common Stock in an amount greater than the product of (i) the Exchange Cap multiplied by (ii) the quotient of (A) the aggregate number of shares of Common Stock underlying the Notes and Warrants initially purchased by such Holder from the Initial Purchaser on, and determined as of, the Issue Date divided by (B) the aggregate number of shares of Common Stock underlying the all Notes and all Warrants initially purchased by all Holders from the Initial Purchaser on, and determined as of, the Issue Date (with respect to each Holder, the "**Exchange Cap Allocation**"). In the event that any Holder shall sell or otherwise transfer any of such Holders Notes, the transferee shall be allocated a pro rata portion of such Holder's Exchange Cap Allocation based on the relative number of underlying shares determined as of the Issue Date with respect to such portion of such Notes and any Warrants so transferred, and the restrictions of the prior sentence shall apply to such transferee with respect to the portion of the Exchange Cap Allocation so allocated to such transferee. Upon conversion and exercise in full of a holder's Notes and Warrants, the difference (if any) between such holder's Exchange Cap Allocation and the number of shares of Common Stock actually issued to such holder upon such holder's conversion in full of such holder's Notes and exercise in full of such Warrants shall be allocated to the respective Exchange Cap Allocations of the remaining holders of Notes and Warrants on a pro rata basis in proportion to the shares of Common Stock then underlying the Notes and Warrants held by each such Holder and holders of Warrants at such time. In the event that the Company is prohibited from issuing shares of Common Stock pursuant to Section 6.04 of the Indenture (the "**Exchange Cap Shares**"), the Company shall pay cash in exchange for the cancellation of such shares of Common Stock at a price equal to the product of (x) such number of Exchange Cap Shares and (y) the simple average of the daily VWAP for Common Stock for the ten consecutive VWAP Trading Days ending on and included the VWAP Trading Day immediately prior to the Conversion Date (the "**Exchange Cap Share Cancellation Amount**"); provided, that no Exchange Cap Share Cancellation Amount shall be due and payable to the Holder to the extent that (x) on or prior to the applicable Conversion Share Delivery Date, the Exchange Cap Allocation of a Holder is increased (whether by assignment by a holder of Notes and/or Warrants or all, or any portion, of such holder's Exchange Cap Allocation or otherwise) (an "**Exchange Cap Allocation Increase**") and (y) after giving effect to such Exchange Cap Allocation Increase, the Company delivers the applicable Exchange Cap Shares to the Holder (or its designee) on or prior to the applicable Conversion Share Delivery Date. For the avoidance of any doubt, the term Holder includes any beneficial interest holder in the case of any Notes represented by a Global Note and any Warrants represented by a Global Warrant where such instruments are registered in the name of a Depository or a nominee thereof. BY ITS ACQUISITION HEREOF OR OF A BENEFICIAL INTEREST HEREIN, THE ACQUIRER AGREES IT WILL NOT CONVERT OR EXERCISE THE NOTES OR WARRANTS IN CONTRAVENTION OF THIS PARAGRAPH.

Beneficial Ownership Cap. Notwithstanding anything to the contrary contained herein, the Company shall not effect the exercise of any Note, and no Holder shall have the right to exercise any Note, and any such exercise shall be null and void and treated as if never made, and the Company shall not be entitled to issue shares of Common Stock in connection with any anti-dilution terms described hereunder, to the extent that after giving effect to such exercise, the Holder together with the other Attribution Parties collectively would beneficially own in excess of 4.99% (the "**Maximum Percentage**") of the shares of Common Stock outstanding immediately after giving effect to such exercise. Upon delivery of a written notice to the Company, a Holder may from time to time increase (with such increase not effective until the sixty-first (61st) day after delivery of such notice) or decrease the Maximum Percentage to any other percentage not in excess of 9.99% as specified in such notice; provided that (i) any such increase in the Maximum Percentage will not be effective until the sixty-first (61st) day after such notice is delivered to the Company and (ii) any such increase or decrease will apply only to such Holder and the other Attribution Parties and not to any other Holder that is not an Attribution Party of the Holder delivering such notice. The Trustee shall have no obligation to monitor the Company and each Warrantholder's compliance with this paragraph.

Acceleration of Maturity. Subject to certain exceptions in the Indenture, if an Event of Default shall occur and be continuing, the Principal Amount plus interest through such date on all the Notes may be declared due and payable in the manner and with the effect provided in the Indenture.

Supplement Indentures with Consent of Holders; Waiver of Past Defaults. The Indenture permits, with certain exceptions as therein provided, the amendment thereof and the modification of the rights and obligations of the Company and the rights of the Holders of the Notes under the Indenture at any time by the Company and the Trustee with the consent of the Holders (other than the Company and any Person controlled by the Company) of not less than a majority in aggregate Principal Amount of the outstanding Notes. The Indenture also contains provisions permitting the Holders (other than the Company and any Person controlled by the Company) of specified percentages in aggregate Principal Amount of the outstanding Notes, on behalf of the Holders of all the Notes, to waive compliance by the Company with certain provisions of the Indenture and certain past Defaults under the Indenture and their consequences. Any such consent or waiver by the Holder of any provision of or applicable to this Note shall be conclusive and binding upon such Holder and upon all future Holders of this Note and of any Note issued upon the registration of transfer hereof or in exchange herefor or in lieu hereof, whether or not notation of such consent or waiver is made upon this Note.

Registration of Transfer and Exchange. As provided in the Indenture and subject to certain limitations therein set forth, the transfer of this Note is registrable in the Register, upon surrender of this Note for registration of transfer at the office or agency of the Company in the United States, duly endorsed by, or accompanied by a written instrument of transfer in form satisfactory to the Company and the Registrar duly executed by, the Holder hereof or his attorney duly authorized in writing, and thereupon one or more new Notes, of authorized denominations and for the same aggregate Principal Amount, will be issued to the designated transferee or transferees.

No service charge shall be made for any such registration of transfer or exchange, but the Company and the Registrar may require payment of a sum sufficient to cover any tax or other governmental charge payable in connection therewith.

Prior to due presentment of this Note for registration of transfer, the Company, the Trustee and the Registrar and any agent of the Company or the Trustee may treat the Person in whose name this Note is registered as the owner hereof for all purposes, whether or not this Note be overdue, and neither the Company, the Trustee nor any such agent shall be affected by notice to the contrary.

Registration Rights. Holders of this Note (including any Person that has a beneficial interest in this Note) are entitled to the benefits of the Registration Rights Agreement, which applies (among other securities) to shares of Common Stock issued or issuable upon conversion of the Notes, including in connection with an Early Conversion Payment.

In accordance with the terms of the Registration Rights Agreement, during any period in which an Event (each, a "**Registration Default**") has occurred and is continuing, the Company will pay Additional Interest from and including the day of such Registration Default to but excluding the day on which such Registration Default has been cured. Additional Interest with respect to a Registration Default will be paid semiannually in arrears, with the first semiannual payment due on the first Interest Payment Date occurring after the Event Date and will accrue at a rate per annum equal to one percent (1.00%) of the principal amount of Notes outstanding.

Whenever in this Note there is a reference, in any context, to the payment of interest on, or in respect of, any Note as of any time, such reference shall be deemed to include reference to Additional Interest, if any, payable in respect of such Note to the extent that such Additional Interest, if any, is, was or would be so payable at such time, and express mention of Additional Interest, if any, in any provision of this Note shall not be construed as excluding Additional Interest, if any, so payable in those provisions of this Note when such express mention is not made.

Denominations. The Notes are issuable only in registered form in minimum denominations of $1,000 and any integral multiple of $1,000 in excess thereof, as provided in the Indenture and subject to certain limitations therein set forth. Notes are exchangeable for a like aggregate Principal Amount of Notes of a different authorized denomination, as requested by the Holder surrendering the same.

This Note and any claim, controversy or dispute arising under or related to this Note shall be governed by and construed in accordance with the laws of the State of New York.

All terms used in this Note that are defined in the Indenture shall have the meanings assigned to them in the Indenture.

ASSIGNMENT FORM

DIGITAL TURBINE, INC.

8.75% Convertible Senior Notes due 2020

For value received _____ hereby sell(s), assign(s) and transfer(s) unto _____ (Please insert social security or Taxpayer Identification Number of assignee) the within Note, and hereby irrevocably constitutes and appoints _____ attorney to transfer the said Note on the books of the Company, with full power of substitution in the premises.

In connection with any transfer of the within Note occurring prior to the Resale Restriction Termination Date, as defined in the Indenture governing such Note, the undersigned confirms that such Note is being transferred:

□To Digital Turbine, Inc. or a Subsidiary thereof; or

□Pursuant to a registration statement that has become or been declared effective under the Securities Act of 1933, as amended; or

□Pursuant to and in compliance with Rule 144A under the Securities Act of 1933, as amended; or

□Pursuant to and in compliance with Rule 144 (including Rule 144(i) and the current public information requirements thereof) under the Securities Act of 1933, as amended, or any other available exemption from the registration requirements of the Securities Act of 1933, as amended.

TO BE COMPLETED BY PURCHASER IF THE THIRD BOX ABOVE IS CHECKED

The undersigned represents and warrants that it is purchasing this Note for its own account or an account with respect to which it exercises sole investment discretion and that it and any such account is a "qualified institutional buyer" within the meaning of Rule 144A under the Securities Act and is aware that the sale to it is being made in reliance on Rule 144A and acknowledges that it has received such information regarding the Company as the undersigned has requested pursuant to Rule 144A or has determined not to request such information and that it is aware that the transferor is relying upon the undersigned's foregoing representations in order to claim the exemption from registration provided by Rule 144A.

Date: _____ Signed: _____

Unless one of the above boxes is checked, the Trustee will refuse to register any of the Notes evidenced by this certificate in the name of any Person other than the registered Holder thereof, *provided that* if the fourth box is checked, the Company or the Trustee may require, prior to registering any such transfer of the Notes, in its sole discretion, such legal opinions, certifications and other information as the Company or the Trustee may reasonably request to confirm that such transfer is being made pursuant to an exemption from, or in a transaction not subject to, the registration requirements of the Securities Act.

If none of the foregoing boxes is checked, the Trustee or Registrar shall not be obligated to register this Note in the name of any Person other than the Holder hereof unless and until the conditions to any such transfer of registration set forth herein and in Section 3.11 of the Indenture shall have been satisfied.

Dated: _____

_____

_____

Signature(s)

_____

Signature Guarantee

Signature(s) must be guaranteed by an eligible Guarantor Institution (banks, stock brokers, savings and loan associations and credit unions) with membership in an approved signature guarantee medallion program pursuant to Securities and Exchange Commission

Rule 17Ad-15 if Notes are to be delivered, other than to and in the name of the registered holder.

NOTICE: The signature on the assignment must correspond with the name as written upon the face of the Note in every particular without alteration or enlargement or any change whatever.

AFFILIATE NOTE ASSIGNMENT FORM

DIGITAL TURBINE, INC.

8.75% Convertible Senior Notes due 2020

For value received _____ hereby sell(s), assign(s) and transfer(s) unto _____ (Please insert social security or Taxpayer Identification Number of assignee) the within Note, and hereby irrevocably constitutes and appoints _____ attorney to transfer the said Note on the books of the Company, with full power of substitution in the premises.

In connection with any transfer of the within Note occurring prior to the Resale Restriction Termination Date, as defined in the Indenture governing such Note, the undersigned confirms that such Note is being transferred:

□To Digital Turbine, Inc. or a Subsidiary thereof; or

□Pursuant to a registration statement that has become or been declared effective under the Securities Act of 1933, as amended.

Date: _____ Signed: _____

Unless one of the above boxes is checked, the Trustee will refuse to register any of the Notes evidenced by this certificate in the name of any Person other than the registered Holder thereof.

If none of the foregoing boxes is checked, the Trustee or Registrar shall not be obligated to register this Note in the name of any Person other than the Holder hereof unless and until the conditions to any such transfer of registration set forth herein and in Section 3.11 of the Indenture shall have been satisfied.

Dated: _____

_____

_____

Signature(s)

_____

Signature Guarantee

Signature(s) must be guaranteed by an eligible Guarantor Institution (banks, stock brokers, savings and loan associations and credit unions) with membership in an approved signature guarantee medallion program pursuant to Securities and Exchange Commission

Rule 17Ad-15 if Notes are to be delivered, other
than to and in the name of the registered holder.

NOTICE: The signature on the assignment must correspond with the name as written upon the face of the Note in every particular without alteration or enlargement or any change whatever.

CONVERSION NOTICE

DIGITAL TURBINE, INC.

8.75% Convertible Senior Notes due 2020

If you want to convert this Note into Common Stock of the Company, check the box: [_]

To convert only part of this Note, state the Principal Amount to be converted (which must be $1,000 or an integral multiple of $1,000 in excess thereof):

$_____

If you want the share certificate, if any, made out in another person's name, fill in the form below:

_____

(Insert other person's social security or tax ID no.)

_____

_____

_____

(Print or type other person's name, address and zip code)

Signature Guarantee: _____

Note: Signatures must be guaranteed by an "eligible guarantor institution" meeting the requirements of the Registrar, which requirements include membership or participation in the Security Transfer Agent Medallion Program ("**STAMP**") or such other "signature guarantee program" as may be determined by the Registrar in addition to, or in substitution for, STAMP, all in accordance with the Securities Exchange Act of 1934, as amended.

[Form of Fundamental Change Repurchase Notice]

DIGITAL TURBINE, INC.

8.75% Convertible Senior Notes due 2020

To: U.S. Bank National Association
633 West Fifth Street, 24th Floor
Los Angeles, California 90071
Attention: Bradley Scarbrough, Vice President
Re: Digital Turbine Indenture
Fax: (213) 615-6197

The undersigned registered owner of this Note hereby acknowledges receipt of a notice from Digital Turbine, Inc. (the "**Company**") as to the occurrence of a Fundamental Change with respect to the Company and specifying the Fundamental Change Purchase Date and requests and instructs the Company to pay to the registered holder hereof in accordance with the applicable provisions of the Indenture referred to in this Note (1) the entire principal amount of this Note, or the portion thereof (that is $1,000 principal amount or an integral multiple thereof) below designated, and (2) if such Fundamental Change Purchase Date does not fall during the period after a Regular Record Date and on or prior to the corresponding Interest Payment Date, accrued and unpaid interest, if any, thereon to, but excluding, such Fundamental Change Purchase Date.

In the case of Physical Notes, the certificate numbers of the Notes to be repurchased are as set forth below:

Dated: _____

_____
Signature(s)

_____
Social Security or Other Taxpayer
Identification Number

Principal amount to be repaid (if less than all): $_____,000

NOTICE: The above signature(s) of the Holder(s) hereof must correspond with the name as written upon the face of the Note in every particular without alteration or enlargement or any change whatever.

ARTICLE 3.
THE SECURITIES

Section 3.01 *Title and Terms; Payments*. The aggregate Principal Amount of Notes that may be authenticated and delivered under this Indenture is limited to Sixteen Million Dollars ($16,000,000), except for Notes authenticated and delivered upon registration or transfer of, or in exchange for, or in lieu of, other Notes pursuant to Sections 3.05, 3.06, 3.07, 3.08, 3.09, 3.11 or 3.12.

The Notes shall be known and designated as the "8.75% Convertible Senior Notes due 2020" of the Company. The Principal Amount shall be payable on the Maturity Date.

The Principal Amount of Physical Notes shall be payable at the Corporate Trust Office and at any other office or agency maintained by the Company for such purpose. The Company shall pay interest on the Notes (including Additional Interest) in cash. Interest on Physical Notes, will be payable (i) to Holders having an aggregate Principal Amount of $1,000,000 or less of Notes, by check mailed to such Holders at the address set forth in the Register and (ii) to Holders having an aggregate Principal Amount of more than $1,000,000 of Notes, either by check mailed to such Holders or, upon application by a Holder to the Registrar not later than the relevant Regular Record Date for such interest payment, by wire transfer in immediately available funds to such Holder's account within the United States, which application shall remain in effect until the Holder notifies the Registrar to the contrary in writing. The Paying Agent will pay principal of, and interest on, Global Notes in immediately available funds to The Depository Trust Company or its nominee, as the case may be, as the registered holder of such global note, on each Interest Payment Date, Fundamental Change Purchase Date or other payment date, as the case may be.

Any Notes repurchased by the Company will be retired and no longer outstanding hereunder.

Section 3.02 *Ranking*. The Notes constitute a general unsecured and unsubordinated obligation of the Company.

Section 3.03 *Denominations*. The Notes shall be issuable only in registered form without coupons and in minimum denominations of $1,000 and any integral multiple of $1,000 in excess thereof.

Section 3.04 *Execution, Authentication, Delivery and Dating*. The Notes shall be executed on behalf of the Company (a) by its Chief Executive Officer, its President, its Chief Financial Officer or any of its Vice Presidents and (b) by its Treasurer, any Assistant Treasurer, the Secretary or any of its Vice Presidents.

Notes bearing the manual or facsimile signatures of individuals who were at any time the proper officers of the Company shall bind the Company, notwithstanding that such individuals or any of them have ceased to hold such offices prior to the authentication and delivery of such Notes or did not hold such offices at the date of such Notes.

At any time and from time to time after the execution and delivery of this Indenture, the Company may deliver Notes executed by the Company to the Trustee for authentication, together with a Company Order for the authentication and delivery of such Notes. The Company Order shall specify the amount of Notes to be authenticated, and shall further specify the amount of such Notes to be issued as a Global Notes or as Physical Notes, and whether any such Notes to be authenticated are Affiliate Notes. The Trustee in accordance with such Company Order shall authenticate and deliver such Notes as in this Indenture provided and not otherwise.

Each Note shall be dated the date of its authentication.

No Note shall be entitled to any benefit under this Indenture or be valid or obligatory for any purpose unless there appears on such Note a certificate of authentication substantially in the form provided for herein executed by the Trustee by manual signature, and such certificate upon any Note shall be conclusive evidence, and the only evidence, that such Note has been duly authenticated and delivered hereunder.

Section 3.05 *Temporary Notes.* Pending the preparation of definitive Notes, the Company may execute, and upon Company Order the Trustee shall authenticate and deliver, temporary Notes that are printed, lithographed, typewritten, mimeographed or otherwise produced, in any authorized denomination, substantially of the tenor of the definitive Notes in lieu of which they are issued and with such appropriate insertions, omissions, substitutions and other variations as the officers executing such Notes may determine, as evidenced by their execution of such Notes; *provided*, that any such temporary Notes shall bear legends on the face of such Notes as set forth in Section 2.02.

If temporary Notes are issued, the Company will cause definitive Notes to be prepared without unreasonable delay. After the preparation of definitive Notes, the temporary Notes shall be exchangeable for definitive Notes upon surrender of the temporary Notes at any office or agency of the Company designated pursuant to Section 4.02, without charge to the Holder. Upon surrender for cancellation of any one or more temporary Notes, the Company shall execute and the Trustee shall authenticate and deliver in exchange therefor a like Principal Amount of Physical Notes of authorized denominations. Until so exchanged, the temporary Notes shall in all respects be entitled to the same benefits under this Indenture as Physical Notes.

Section 3.06 *Registration; Registration of Transfer and Exchange.*

(a) The Company shall cause to be kept at the applicable Corporate Trust Office of the Trustee a register (the register maintained in such office and in any other office or agency designated pursuant to Section 4.02 being herein sometimes collectively referred to as the "**Register**") in which, subject to such reasonable regulations as it may prescribe, the Company shall provide for the registration of Notes and of transfers of Notes. The Trustee is hereby appointed "Registrar" (the "**Registrar**") for the purpose of registering Notes and transfers of Notes as herein provided.

Upon surrender for registration of transfer of any Note at an office or agency of the Company designated pursuant to Section 4.02 for such purpose, the Company shall execute, and the Trustee shall authenticate and deliver, in the name of the designated transferee or transferees, one or more new Notes of any authorized denominations and of a like aggregate Principal Amount and tenor, each such Note bearing such restrictive legends as may be required by this Indenture (including Sections 2.02, 3.07 and 3.11).

At the option of the Holder and subject to the other provisions of Section 3.07 and to Section 3.11, Notes may be exchanged for other Notes of any authorized denominations and of a like aggregate Principal Amount and tenor, upon surrender of the Notes to be exchanged at such office or agency. Whenever any Notes are so surrendered for exchange, the Company shall execute, and the Trustee shall authenticate and deliver, the Notes which the Holder making the exchange is entitled to receive.

All Notes issued upon any registration of transfer or exchange of Notes shall be the valid obligations of the Company, evidencing the same debt, and entitled to the same benefits under this Indenture, as the Notes surrendered upon such registration of transfer or exchange.

Every Note presented or surrendered for registration of transfer or for exchange shall (if so required by the Company or the Trustee) be duly endorsed, or be accompanied by a written instrument of transfer in form satisfactory to the Company and the Registrar duly executed, by the Holder thereof or his attorney duly authorized in writing. As a condition to the registration of transfer of any Restricted Notes, the Company or the Trustee may require evidence satisfactory to them as to the compliance with the restrictions set forth in the legend on such Notes.

No service charge shall be made for any registration of transfer or exchange of Notes, but the Company and the Registrar may require payment of a sum sufficient to cover any tax or other governmental charge that may be imposed in connection with any registration of transfer or exchange of Notes, other than exchanges pursuant to Section 3.05 not involving any transfer.

Neither the Company nor the Registrar shall be required to exchange or register a transfer of any Note in the circumstances set forth in Section 3.11(a)(iv).

(b) Neither any members of, or participants in, the Depositary (collectively, the "**Agent Members**") nor any other Persons on whose behalf any Agent Member may act shall have any rights under this Indenture with respect to any Global Note registered in the name of the Depositary or any nominee thereof, or under any such Global Note, and the Depositary or such nominee, as the case may be, may be treated by the Company, the Trustee and any agent of the Company or the Trustee as the absolute owner and Holder of such Global Note for all purposes whatsoever. The Trustee shall have no responsibility or obligation to any Agent Members or any other Person on whose behalf Agent Members may act with respect to (i) any ownership interests in the Global Note, (ii) the accuracy of the records of the Depositary or its nominee, (iii) any notice required hereunder or (iv) any payments under or with respect to the Global Note. Notwithstanding the foregoing, nothing herein shall prevent the Company, the Trustee or any agent of the Company or the Trustee from giving effect to any written certification, proxy or other authorization furnished by the Depositary or such nominee, as the case may be, or impair, as between the Depositary, its Agent Members and any other Person on whose behalf an Agent Member may act, the operation of customary practices of such Persons governing the exercise of the rights of a Holder of any Note. The registered Holder of a Global Note may grant proxies and otherwise authorize any Person, including Agent Members and persons that may hold interests through Agent Members, to take any action that a Holder is entitled to take under this Indenture or the Notes.

Section 3.07 *Transfer Restrictions.*

(a) *Restricted Notes*.

(i) Every Note (and all securities issued in exchange therefor or substitution thereof, except any shares of Common Stock issued upon conversion thereof) that bears, or that is required under this Section 3.07 to bear, the Restricted Notes Legend will be deemed to be a "**Restricted Note**." Each Restricted Note will be subject to the restrictions on transfer set forth in this Indenture (including in the Restricted Notes Legend) and will bear the restricted CUSIP number for the Notes unless such restrictions on transfer are eliminated or otherwise waived by written consent of the Company, and each Holder of a Restricted Note, by such Holder's acceptance of such Restricted Note, will be deemed to be bound by the restrictions on transfer applicable to such Restricted Note.

(ii) Until the Resale Restriction Termination Date, any Note (or any security issued in exchange therefor or substitution thereof, except any shares of Common Stock issued upon the conversion thereof) will bear the Restricted Notes Legend unless:

(A) such Note, since last held by the Company or an affiliate of the Company (within the meaning of Rule 144), if ever, was transferred (1) to a Person other than (x) the Company or (y) an affiliate of the Company (within the meaning of Rule 144) or a Person that was an Affiliate of the Company within the three months immediately preceding such transfer and (2) pursuant to a registration statement that was effective under the Securities Act at the time of such transfer;

(B) such Note was transferred (1) to a Person other than (x) the Company or (y) an affiliate of the Company (within the meaning of Rule 144) or a Person that was an Affiliate of the Company within the three months immediately preceding such transfer and (2) pursuant to the exemption from registration provided by Rule 144 or any similar provision then in force under the Securities Act; or

(C) the Company delivers written notice to the Trustee and the Registrar stating that the Restricted Notes Legend may be removed from such Note.

(iii) In addition, until the Resale Restriction Termination Date:

(A) no transfer of any Note will be registered by the Registrar prior to the Resale Restriction Termination Date unless the transferring Holder delivers the form of assignment set forth on the Note, with the appropriate box checked, to the Trustee; and

(B) the Registrar will not register any transfer of any Note that is a Restricted Note to a Person that is an affiliate of the Company (within the meaning of Rule 144) or has been an Affiliate of the Company within the three months immediately preceding the date of such proposed transfer.

(iv) On and after the Resale Restriction Termination Date, any Note (or any security issued in exchange therefor or substitution thereof, except any shares of Common Stock issued upon the conversion thereof) will bear the Restricted Notes Legend at any time the Company reasonably determinates that, to comply with law, such Note (or such securities issued in exchange for or substitution of a Note) must bear the Restricted Notes Legend.

(b) *Restricted Stock*.

(i) Every share of Common Stock that bears, or that is required under this Section 3.07 to bear, the Restricted Stock Legend will be deemed to be "**Restricted Stock**." Each share of Restricted Stock will be subject to the restrictions on transfer set forth in this Indenture (including in the Restricted Stock Legend) and will bear a restricted CUSIP number unless such restrictions on transfer are eliminated or otherwise waived by written consent of the Company, and each Holder of Restricted Stock, by such Holder's acceptance of Restricted Stock, will be deemed to be bound by the restrictions on transfer applicable to such Restricted Stock.

(ii) Until the Resale Restriction Termination Date, any share of Common Stock issued upon the conversion of a Note will be issued in definitive form and will bear the Restricted Stock Legend unless:

(A) such share of Common Stock was transferred (1) to a Person other than (x) the Company or (y) an affiliate of the Company (within the meaning of Rule 144) or a Person that was an Affiliate of the Company within the three months immediately preceding such transfer and (2) pursuant to a registration statement that was effective under the Securities Act at the time of such conversion;

(B) such share of Common Stock was transferred (1) to a Person other than (x) the Company or (y) an affiliate of the Company (within the meaning of Rule 144) or a Person that was an Affiliate of the Company within the three months immediately preceding such transfer and (2) pursuant to the exemption from registration provided by Rule 144 or any similar provision then in force under the Securities Act;

(C) such Note, regardless of whether bearing the Restricted Notes Legend, was not, at the time of its conversion, required to bear the Restricted Notes Legend pursuant to Section 3.07(a) and such Common Stock was issued to a Person other than (1) the Company or (2) an Affiliate of the Company; or

(D) the Company delivers written notice to the Trustee, the Registrar and the Transfer Agent for the Common Stock stating that such share of Common Stock need not bear the Restricted Stock Legend.

(iii) On and after the Resale Restriction Termination Date, any share of Common Stock will be issued in definitive form and will bear the Restricted Stock Legend at any time the Company reasonably determinates that, to comply with law, such share of Common Stock must bear the Restricted Stock Legend, but shall not otherwise bear the Restricted Stock Legend, and in connection with any sale, assignment or transfer of any shares of Common Stock that is eligible to be sold, assigned or transferred under Rule 144, it shall be sufficient for a Holder to provide the Company with reasonable assurances that such Restricted Stock are eligible for sale, assignment or transfer under Rule 144 and will be resold prior to the filing of the earliest of the Company's next Quarterly Report on Form 10-Q or Annual Report on Form 10-K, as applicable, and need not provide an opinion of a Holder's counsel.

(c) *Affiliate Notes*.

(i) Every Affiliate Note (and all securities issued in exchange therefor or substitution thereof, except any shares of Common Stock issued upon conversion thereof) that bears, or that is required under this Section 3.07 to bear, the Affiliate Notes Legend will be deemed to be a "**Restricted Affiliate Note**." Each Restricted Affiliate Note will be subject to the restrictions on transfer set forth in this Indenture (including in the Affiliate Notes Legend) and will be a Physical Note unless such restrictions on transfer are eliminated or otherwise waived by written consent of the Company, and each Holder of a Restricted Affiliate Note, by such Holder's acceptance of such Restricted Affiliate Note, will be deemed to be bound by the restrictions on transfer applicable to such Restricted Affiliate Note.

(ii) Any Affiliate Note (or any security issued in exchange therefor or substitution thereof, except any shares of Common Stock issued upon the conversion thereof) will bear the Affiliate Notes Legend unless:

(A) such Affiliate Note, since last held by the Company or an affiliate of the Company (within the meaning of Rule 144), if ever, was transferred (1) to a Person other than (x) the Company or (y) an affiliate of the Company (within the meaning of Rule 144) or a Person that was an affiliate of the Company within the three months immediately preceding such transfer and (2) pursuant to a registration statement that was effective under the Securities Act at the time of such transfer;

(B) such Affiliate Note, since last held by the Company or an affiliate of the Company (within the meaning of Rule 144), if ever, was transferred (1) to a Person other than (x) the Company or (y) an affiliate of the Company (within the meaning of Rule 144) or a Person that was an affiliate of the Company within the three months immediately preceding such transfer and (2) pursuant to the exemption from registration provided by Rule 144 or any similar provision then in force under the Securities Act; or

(C) the Company delivers written notice to the Trustee and the Registrar stating that the Restricted Notes Legend may be removed from such Note.

(iii) In addition no transfer of any Affiliate Note will be registered by the Registrar unless the transferring Holder delivers the form of assignment set forth on the Affiliate Note, with the appropriate box checked, to the Trustee.

(iv) Any Affiliate Note (or any security issued in exchange therefor or substitution thereof, except any shares of Common Stock issued upon the conversion thereof) will bear the Affiliate Notes Legend at any time the Company reasonably determinates that, to comply with law, such Note (or such securities issued in exchange for or substitution of a Note) must bear the Restricted Notes Legend.

(v) Any share of Common Stock issued upon the conversion of an Affiliate Note will be issued in definitive form and will bear the Restricted Stock Legend unless:

(A) such share of Common Stock was transferred (1) to a Person other than (x) the Company or (y) an affiliate of the Company (within the meaning of Rule 144) or a Person that was an Affiliate of the Company within the three months immediately preceding such transfer and (2) pursuant to a registration statement that was effective under the Securities Act at the time of such conversion;

(B) such share of Common Stock was transferred (1) to a Person other than (x) the Company or (y) an affiliate of the Company (within the meaning of Rule 144) or a Person that was an affiliate of the Company within the three months immediately preceding such transfer and (2) pursuant to the exemption from registration provided by Rule 144 or any similar provision then in force under the Securities Act; or

(C) the Company delivers written notice to the Trustee, the Registrar and the Transfer Agent for the Common Stock stating that such share of Common Stock need not bear the Restricted Stock Legend.

(d) As used in this Section 3.07, the term "**transfer**" means any sale, pledge, transfer, loan, hypothecation or other disposition whatsoever of any Restricted Note, any interest therein or any Restricted Stock.

Section 3.08 *Expiration of Restrictions.*

(a) *Physical Notes.* Any Physical Note (or any security issued in exchange or substitution therefor) (other than an Affiliate Note) that does not constitute a Restricted Note may be exchanged for a new Note or Notes of like tenor and aggregate Principal Amount that do not bear the Restricted Notes Legend required by Section 3.07. To exercise such right of exchange, the Holder of such Note must surrender such Note in accordance with the provisions of Section 3.11 and deliver any additional documentation reasonably required by the Company, the Trustee or the Registrar in connection with such exchange. Notwithstanding the foregoing, the Company will not be required to exchange a Restricted Note for a Note or Notes of like tenor and aggregate Principal Amount that do not bear the Restricted Notes Legend if, in the written opinion of counsel, removal of the Restricted Notes Legend or the changes to the CUSIP numbers for the Notes could result in or facilitate transfers of the Notes in violation of applicable law.

(b) *Global Notes; Resale Restriction Termination Date.*

(i) If, on the Resale Restriction Termination Date, or the next succeeding Business Day if the Resale Restriction Termination Date is not a Business Day, any Notes are represented by a Global Note that is a Restricted Note (any such Global Note, a "**Restricted Global Note**"), as promptly as practicable, the Company will automatically exchange every beneficial interest in each Restricted Global Note for beneficial interests in Global Notes that are not subject to the restrictions set forth in the Restricted Notes Legend and in Section 3.07 hereof.

(ii) To effect such automatic exchange, the Company will (A) deliver to the Depositary an instruction letter for the Depositary's exchange process at least 15 days immediately prior to the Resale Restriction Termination Date and (B) deliver to each of the Trustee and the Registrar a duly completed Free Transferability Certificate promptly after the Resale Restriction Termination Date.

(A) Immediately upon receipt of the Free Transferability Certificate by each of the Trustee and the Registrar the Restricted Notes Legend will be deemed removed from each of the Global Notes specified in such Free Transferability Certificate and the restricted CUSIP number will be deemed removed from each of such Global Notes and deemed replaced with an unrestricted CUSIP number.

(B) Promptly after the Resale Restriction Termination Date, the Company will provide Bloomberg LLP with a copy of the Free Transferability Certificate and will use reasonable efforts to cause Bloomberg LLP to adjust its screen page for the Notes to indicate that the Notes are no longer Restricted Notes and are now identified by an unrestricted CUSIP number.

(iii) Prior to the Company's delivery of the Free Transferability Certificate and afterwards, the Company and the Trustee will comply with the Applicable Procedures and otherwise use reasonable efforts to cause each Global Note to be identified by an unrestricted CUSIP number in the facilities of the Depositary by the date the Free Transferability Certificate is delivered to the Trustee and the Registrar or as promptly as possible thereafter.

(iv) Notwithstanding anything to the contrary in Sections 3.08(b)(i), (ii) or (iii), the Company will not be required to deliver the Free Transferability Certificate if, in the written opinion of counsel, removal of the Restricted Notes Legend or the changes to the CUSIP numbers for the Notes could result in or facilitate transfers of the Notes in violation of applicable law.

Section 3.09 *Mutilated, Destroyed, Lost and Stolen Notes*. If any mutilated Note is surrendered to the Trustee, the Company shall execute and the Trustee shall authenticate and deliver in exchange therefor a new Note of like tenor and Principal Amount and bearing a number not contemporaneously outstanding.

If there shall be delivered to the Company and the Trustee (i) evidence to their satisfaction of the destruction, loss or theft of any Note and (ii) such security or indemnity as may be required by them to save each of them and any agent of either of them harmless, then, in the absence of notice to the Company or the Trustee that such Note has been acquired by a bona fide purchaser, the Company shall execute and the Trustee shall authenticate and deliver, in lieu of any such destroyed, lost or stolen Note, a new Note of like tenor and Principal Amount and bearing a number not contemporaneously outstanding.

In case any such mutilated, destroyed, lost or stolen Note has become or is about to become due and payable, the Company in its discretion may, instead of issuing a new Note, pay such Note.

Upon the issuance of any new Note under this Section 3.09, the Company may require payment by the Holder of a sum sufficient to cover any tax or other governmental charge that may be imposed in relation thereto and any other expenses (including the fees and expenses of the Trustee) connected therewith.

Every new Note issued pursuant to this Section 3.09 in lieu of any destroyed, lost or stolen Note shall constitute an original additional contractual obligation of the Company, whether or not the destroyed, lost or stolen Note shall be at any time enforceable by anyone, and shall be entitled to all the benefits of this Indenture equally and proportionately with any and all other Notes duly issued hereunder.

The provisions of this Section are exclusive and shall preclude (to the extent lawful) all other rights and remedies with respect to the replacement or payment of mutilated, destroyed, lost or stolen Notes.

Section 3.10 *Persons Deemed Owners*. Prior to due presentment of a Note for registration of transfer, the Company, the Trustee, the Registrar and any agent of the Company, the Trustee or the Registrar may treat the Person in whose name such Note is registered as the owner of such Note for the purpose of receiving payment of the principal of such Note and for all other purposes whatsoever, whether or not such Note be overdue, and neither the Company, the Trustee, the Registrar nor any agent of the Company, the Trustee or the Registrar shall be affected by notice to the contrary.

Section 3.11 *Transfer and Exchange.*

(a) *Provisions Applicable to All Transfers and Exchanges.*

(i) Subject to the restrictions set forth in this Section 3.11, Physical Notes and beneficial interests in Global Notes may be transferred or exchanged from time to time as desired, and each such transfer or exchange will be noted by the Registrar in the Register.

(ii) All Notes issued upon any registration of transfer or exchange in accordance with this Indenture will be the valid obligations of the Company, evidencing the same debt, and entitled to the same benefits under this Indenture as the Notes surrendered upon such registration of transfer or exchange.

(iii) No service charge will be imposed on any Holder of a Physical Note or any owner of a beneficial interest in a Global Note for any exchange or registration of transfer, but each of the Company, the Trustee or the Registrar may require such Holder or owner of a beneficial interest to pay a sum sufficient to cover any transfer tax, assessment or other governmental charge imposed in connection with such registration of transfer or exchange.

(iv) Unless the Company specifies otherwise, none of the Company, the Trustee, the Registrar or any co-Registrar will be required to exchange or register a transfer of any Note (i) that has been surrendered for conversion, (ii) after the Company has delivered a Redemption Notice pursuant to Section 5.02 hereof, except to the extent the Company fails to pay the applicable Redemption Price when due or (iii) as to which a Fundamental Change Purchase Notice has been delivered and not withdrawn, in each case, except to the extent any portion of such Note is not subject to the foregoing.

(v) The Trustee will have no obligation or duty to monitor, determine or inquire as to compliance with any restrictions on transfer imposed under this Indenture or under applicable law with respect to any transfer of any interest in any Note (including any transfers between or among Depositary participants or beneficial owners of interests in any Global Note) other than to require delivery of such certificates and other documentation or evidence as are expressly required by, and to do so if and when expressly required by the terms of, this Indenture, and to examine the same to determine substantial compliance as to form with the express requirements hereof.

(b) *In General; Transfer and Exchange of Beneficial Interests in Global Notes.* So long as the Notes are eligible for book-entry settlement with the Depositary, unless otherwise required by law, except to the extent required by Section 3.11(c):

(i) all Notes (other than Affiliate Notes) will be represented by one or more Global Notes;

(ii) every transfer and exchange of a beneficial interest in a Global Note will be effected through the Depositary in accordance with the Applicable Procedures and the provisions of this Indenture (including the restrictions on transfer set forth in Section 3.07); and

(iii) each Global Note may be transferred only as a whole and only (A) by the Depositary to a nominee of the Depositary, (B) by a nominee of the Depositary to the Depositary or to another nominee of the Depositary, or (C) by the Depositary or any such nominee to a successor Depositary or a nominee of such successor Depositary.

(c) *Transfer and Exchange of Global Notes.*

(i) Notwithstanding any other provision of this Indenture, each Global Note will be exchanged for Physical Notes if the Depositary delivers notice to the Company that:

(A) the Depositary is unwilling or unable to continue to act as Depositary; or

(B) the Depositary is no longer registered as a clearing agency under the Exchange Act;

and, in each case, the Company promptly delivers a copy of such notice to the Trustee and the Company fails to appoint a successor Depositary within 90 days after receiving notice from the Depositary.

In each such case, each Global Note will be deemed surrendered to the Trustee for cancellation, and the Trustee will cause each Global Note to be cancelled in accordance with the Applicable Procedures, and the Company, in accordance with Section 3.04, will promptly execute, and, upon receipt of a Company Order, the Trustee will, in accordance with Section 3.04, will promptly authenticate and deliver, for each beneficial interest in each Global Note so exchanged, an aggregate principal amount of Physical Notes equal to the aggregate principal amount of such beneficial interest, registered in such names and in such authorized denominations as the Depositary specifies, and bearing any legends that such Physical Notes are required to bear under Section 3.07.

(ii) In addition, if (x) the Company, in its sole discretion, determines that any Global Note will be exchangeable for Physical Notes or (y) an Event of Default has occurred and is continuing, in each case, any owner of a beneficial interest in a Global Note may exchange such beneficial interest for Physical Notes by delivering a written request to the Registrar.

In such case, (A) the Depositary will deliver notice of such request to the Company and the Trustee, which notice will identify the owner of the beneficial interest to be exchanged, the aggregate principal amount of such beneficial interest and the CUSIP of the relevant Global Note; (B) the Company will, in accordance with Section 3.04, promptly execute, and, upon receipt of a Company Order, the Trustee, in accordance with Section 3.04, will promptly authenticate and deliver, to such owner, for the beneficial interest so exchanged by such owner, Physical Notes registered in such owner's name having an aggregate principal amount equal to the aggregate principal amount of such beneficial interest and bearing any legends that such Physical Notes are required to bear under Section 3.07, and (C) the Registrar, in accordance with the Applicable Procedures, will cause the principal amount of such Global Note to be decreased by the aggregate principal amount of the beneficial interest so exchanged. If all of the beneficial interests in a Global Note are so exchanged, such Global Note will be deemed surrendered to the Trustee for cancellation, and the Trustee will cause such Global Note to be cancelled in accordance with the Applicable Procedures.

(d) *Transfer and Exchange of Physical Notes.*

(i) If Physical Notes are issued, a Holder may transfer a Physical Note by: (A) surrendering such Physical Note for registration of transfer to the Registrar, together with any endorsements or instruments of transfer required by any of the Company, the Trustee or the Registrar; (B) if such Physical Note is a Restricted Note or Affiliate Note, delivering any documentation that the Company, the Trustee or the Registrar reasonably require to ensure that such transfer complies with Section 3.07 and any applicable securities laws; and (C) satisfying all other requirements for such transfer set forth in this Section 3.11 and Section 3.07. Upon the satisfaction of conditions (A), (B) and (C), the Company, in accordance with Section 3.04, will promptly execute and deliver to the Trustee, and the Trustee, upon receipt of a Company Order, will, in accordance with Section 3.04, promptly authenticate and deliver, in the name of the designated transferee or transferees, one or more new Physical Notes, of any authorized denominations, having like aggregate Principal Amount and bearing any restrictive legends required by Section 3.07.

(ii) If Physical Notes are issued, a Holder may exchange a Physical Note for other Physical Notes of any authorized denominations and aggregate Principal Amount equal to the aggregate Principal Amount of the Notes to be exchanged by surrendering such Notes, together with any endorsements or instruments of transfer required by any of the Company, the Trustee or the Registrar, at any office or agency maintained by the Company for such purposes pursuant to Section 4.02. Whenever a Holder surrenders Notes for exchange, the Company, in accordance with Section 3.04, will promptly execute and deliver to the Trustee, and the Trustee, upon receipt of a Company Order, will, in accordance with Section 3.04, promptly authenticate and deliver the Notes that such Holder is entitled to receive, bearing registration numbers not contemporaneously outstanding and any restrictive legends that such Physical Notes are to bear under Section 3.07.

(iii) If Physical Notes are issued, a Holder may transfer or exchange a Physical Note for a beneficial interest in a Global Note by (A) surrendering such Physical Note for registration of transfer or exchange, together with any endorsements or instruments of transfer required by any of the Company, the Trustee or the Registrar, at any office or agency maintained by the Company for such purposes pursuant to Section 4.02; (B) if such Physical Note is a Restricted Note or Affiliate Note, delivering any documentation the Company, the Trustee or the Registrar reasonably require to ensure that such transfer complies with Section 3.07 and any applicable securities laws; (C) satisfying all other requirements for such transfer set forth in this Section 3.11 and Section 3.07; and (D) providing written instructions to the Trustee to make, or to direct the Registrar to make, an adjustment in its books and records with respect to the applicable Global Note to reflect an increase in the aggregate Principal Amount of the Notes represented by such Global Note, which instructions will contain information regarding the Depositary account to be credited with such increase. Upon the satisfaction of conditions (A), (B), (C) and (D), the Trustee will cancel such Physical Note and cause, or direct the Registrar to cause, in accordance with the Applicable Procedures, the aggregate Principal Amount of Notes represented by such Global Note to be increased by the aggregate Principal Amount of such Physical Note, and will credit or cause to be credited the account of the Person specified in the instructions provided by the exchanging Holder in an amount equal to the aggregate Principal Amount of such Physical Note. If no Global Notes are then outstanding, the Company, in accordance with Section 3.04, will promptly execute and deliver to the Trustee, and the Trustee, upon receipt of a Company Order, will, in accordance with Section 3.04, authenticate, a new Global Note in the appropriate aggregate Principal Amount.

Section 3.12 *Cancellation*. The Company at any time may deliver to the Trustee for cancellation any Notes previously authenticated and delivered hereunder that the Company may have acquired in any manner whatsoever, and may deliver to the Trustee for cancellation any Notes previously authenticated hereunder which the Company has not issued and sold. The Trustee shall cancel all Notes surrendered for registration of transfer, exchange, payment, purchase, repurchase, conversion (pursuant to Article 6 hereof) or cancellation in accordance with its customary practices. If the Company shall acquire any of the Notes, such acquisition shall not operate as a redemption or satisfaction of the indebtedness represented by such Notes unless and until the same are delivered to the Trustee for cancellation. The Notes so acquired, while held by or on behalf of the Company or any of its Subsidiaries, shall not entitle the Holder thereof to convert the Notes. The Company may not issue new Notes to replace Notes it has paid in full or delivered to the Trustee for cancellation.

The Registrar shall retain, in accordance with its customary procedures, copies of all letters, notices and other written communications received pursuant to this Section 3.12. The Company shall have the right to inspect and make copies of all such letters, notices or other written communications at any reasonable time upon the giving of reasonable written notice to the Registrar.

Section 3.13 *CUSIP Numbers*. In issuing the Notes, the Company may use "CUSIP" numbers (if then generally in use), and, if so, the Trustee shall use "CUSIP" numbers in notices as a convenience to Holders; *provided* that any such notice may state that no representation is made as to the correctness of such numbers either as printed on the Notes or as contained in any notice and that reliance may be placed only on the other identification numbers printed on the Notes, and any such notice shall not be affected by any defect in or omission of such numbers. The Company will promptly notify the Trustee of any change in the "CUSIP" numbers.

ARTICLE 4.
PARTICULAR COVENANTS OF THE COMPANY

Section 4.01 *Payment of Principal and Interest*. The Company covenants and agrees that it shall duly and punctually pay or cause to be paid the principal of and interest on each of the Notes at the places, at the respective times and in the manner provided herein and in the Notes. If any Interest Payment Date, the Maturity Date or any Fundamental Change Purchase Date is not a Business Day, payment will be made on the next succeeding Business Day, and no additional interest will accrue thereon in respect of such delay. The Company will pay all Additional Interest, if any, in the same manner on the dates and in the amounts set forth in Section 8.03 hereof and Section 2(c) of the Registration Rights Agreement.

Section 4.02 *Maintenance of Office or Agency*. The Company shall maintain an office or agency in the United States, where the Notes may be surrendered for registration of transfer or exchange or for presentation for payment or for conversion and where notices and demands to or upon the Company in respect of the Notes and this Indenture may be served. The Company shall give prompt written notice to the Trustee of the location, and any change in the location, of such office or agency not designated or appointed by the Trustee. If at any time the Company shall fail to maintain any such required office or agency or shall fail to furnish the Trustee with the address thereof, such presentations, surrenders, notices and demands may be made or served at the Corporate Trust Office, and the Company hereby appoints the Trustee as its agent to receive all such presentations, surrenders, notices and demands; *provided that*, the Corporate Trust Office of the Trustee shall not be an office or agency of the Company for the purpose of effecting service of legal process on the Company.

The Company may also from time to time designate co-Registrars and one or more offices or agencies where the Notes may be presented or surrendered for any or all such purposes and may from time to time rescind such designations.

The Company will give prompt written notice of any such designation or rescission and of any change in the location of any such other office or agency.

The Company hereby initially designates the Trustee as Paying Agent, Registrar and Conversion Agent.

So long as the Trustee is the Registrar, the Trustee agrees to send, or cause to be sent, the notices set forth in Section 10.11(a) and the third paragraph of Section 10.12. If co-Registrars have been appointed in accordance with this Section, the Trustee shall send such notices only to the Company and the Holders of Notes it can identify from its records.

Section 4.03 *Appointments to Fill Vacancies in Trustee's Office.* The Company, whenever necessary to avoid or fill a vacancy in the office of Trustee, will appoint, in the manner provided in Section 10.12, a Trustee, so that there shall at all times be a Trustee hereunder.

Section 4.04 *Provisions as to Paying Agent.*

(a) The Company may designate additional Paying Agents, rescind the designation of any Paying Agent, or approve a change in the office through which any Paying Agent acts. If the Company shall appoint a Paying Agent other than the Trustee, or if the Trustee shall appoint such a Paying Agent, the Company will cause such Paying Agent to execute and deliver to the Trustee an instrument in which such agent shall agree with the Trustee, subject to the provisions of this Section 4.04:

(i) that it will hold all sums held by it as such agent for the payment of the principal of or interest on the Notes (whether such sums have been paid to it by the Company or by any other obligor on the Notes) in trust for the benefit of the Holders of the Notes;

(ii) that it will give the Trustee notice of any failure by the Company (or by any other obligor on the Notes) to make any payment of the principal of or interest on the Notes when the same shall be due and payable; and

(iii) that at any time during the continuance of an Event of Default, upon request of the Trustee, it will forthwith pay to the Trustee all sums so held in trust.

The Company shall, on or before each due date of the principal of or interest on the Notes, deposit with the Paying Agent a sum (in funds which are immediately available on the due date for such payment) sufficient to pay such principal or interest, and (unless such Paying Agent is the Trustee) the Company will promptly notify the Trustee of any failure to take such action; *provided*, *however*, that if such deposit is made on the due date, such deposit shall be received by the Paying Agent by 10:00 a.m. New York City time, on such date.

(b) If the Company shall act as its own Paying Agent, it will, on or before each due date of the principal of or interest on the Notes, set aside, segregate and hold in trust for the benefit of the Holders of the Notes a sum sufficient to pay such principal or interest so becoming due and will promptly notify the Trustee of any failure to take such action and of any failure by the Company (or any other obligor under the Notes) to make any payment of the principal of or interest on the Notes when the same shall become due and payable.

(c) Anything in this Section 4.04 to the contrary notwithstanding, the Company may, at any time, for the purpose of obtaining a satisfaction and discharge of this Indenture, or for any other reason, pay or cause to be paid to the Trustee all sums held in trust by the Company or any Paying Agent hereunder as required by this Section 4.04, such sums to be held by the Trustee upon the trusts herein contained and upon such payment by the Company or any Paying Agent to the Trustee, the Company or such Paying Agent shall be released from all further liability with respect to such sums.

(d) Anything in this Section 4.04 to the contrary notwithstanding, the agreement to hold sums in trust as provided in this Section 4.04 is subject to Section 12.03 and Section 12.04.

The Trustee shall not be responsible for the actions of any other Paying Agents (including the Company if acting as its own Paying Agent) and shall have no control of any funds held by such other Paying Agents.

Section 4.05 *Existence*. Subject to Article 9, the Company will do or cause to be done all things necessary to preserve and keep in full force and effect its existence and rights (charter and statutory); *provided*, *however*, that the Company shall not be required to preserve any such right if the Company shall determine that the preservation thereof is no longer desirable in the conduct of the business of the Company.

Section 4.06 *Rule 144A Information Requirement.* The Company covenants and agrees that it shall, during any period in which it is not subject to Section 13 or 15(d) under the Exchange Act, so long as any of the Notes or shares of Common Stock delivered upon conversion of the Notes will, at such time, constitute "restricted securities" within the meaning of Rule 144(a)(3) under the Securities Act, promptly provide to the Trustee and will, upon written request, provide to any Holder or beneficial owner of such Notes or such shares of Common Stock and any prospective purchaser of such Notes or such shares of Common Stock, the information required pursuant to Rule 144A(d)(4) under the Securities Act to facilitate the resale of such Notes or such shares of Common Stock pursuant to Rule 144A under the Securities Act, and it will take such further action as any Holder or beneficial owner of such Notes or such shares of Common Stock may reasonably request from time to time to enable such Holder or beneficial owner to sell such Notes or such shares of Common Stock in accordance with Rule 144A, as such rule may be amended from time to time.

Section 4.07 *Resale of Certain Notes*. The Company shall not, and shall not permit any of its Subsidiaries to, resell any Notes that have been reacquired by the Company or any such Subsidiary. The Trustee shall have no responsibility in respect of the Company's performance of its agreement in the preceding sentence.

Section 4.08 *Commission Filings and Reports.* The Company covenants that any documents or reports that the Company is required to file with the Commission pursuant to Section 13 or 15(d) of the Exchange Act (other than any portion thereof subject to confidential treatment pursuant to applicable Commission rules and regulations) shall be filed by the Company with the Trustee within 15 calendar days after the same is filed with the Commission pursuant to its rules and regulations (giving effect to any grace period provided by Rule 12b-25 under the Exchange Act); *provided that* in each case the delivery of materials to the Trustee by electronic means or filing of documents pursuant to the Commission's "EDGAR" system (or any successor electronic filing system) shall be deemed to constitute "filing" with the Trustee for purposes of this Section 4.08, it being understood that the Trustee shall not be responsible for determining whether such filings have been made. Delivery of such reports, information and documents to the Trustee is for informational purposes only and the Trustee's receipt of such shall not constitute constructive notice of any information contained therein or determinable from information contained therein, including the Company's compliance with any of its covenants hereunder (as to which the Trustee is entitled to rely exclusively on Officers' Certificates).

Section 4.09 *Book-Entry System*. If the Notes cease to trade in the Depositary's book-entry settlement system, the Company covenants and agrees that it shall use reasonable efforts to make such other book entry arrangements that it determines are reasonable for the Notes.

Section 4.10 *Additional Interest*. If at any time Additional Interest become payable by the Company pursuant to Section 8.03 hereof or Section 6 of the Registration Rights Agreement, the Company shall promptly deliver to the Trustee a certificate to that effect and stating (i) the amount of such Additional Interest that is payable and (ii) the date on which such Additional Interest is payable. Unless and until a Trust Officer of the Trustee receives such a certificate, the Trustee may assume without inquiry that no Additional Interest is payable. If the Company has paid Additional Interest directly to the Persons entitled to such Additional Interest, the Company shall deliver to the Trustee a certificate setting forth the particulars of such payment.

Section 4.11 *Stay; Extension and Usury Laws.* 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 stay, extension or usury law or other law which would prohibit or forgive the Company from paying all or any portion of the principal of or interest on the Notes as contemplated herein, wherever enacted, now or at any time hereafter in force, or which may affect the covenants or the performance of this Indenture and the Company (to the extent it may lawfully do so) hereby expressly waives all benefit or advantage of any such law, and covenants that it will not, by resort to any such law, hinder, delay or impede the execution of any power herein granted to the Trustee, but will suffer and permit the execution of every such power as though no such law had been enacted.

Section 4.12 *Compliance Certificate.* The Company shall deliver to the Trustee, within one hundred twenty (120) days after the end of each fiscal year of the Company (commencing with the fiscal year ending March 31, 2017), an Officers' Certificate, stating whether or not to the knowledge of the signer thereof the Company is in default in the performance and observance of any of the terms, provisions and conditions of this Indenture (without regard to any period of grace or requirement of notice provided hereunder) and, if the Company shall be in default, specifying all such defaults and the nature and the status thereof of which the signer may have knowledge.

The Company shall deliver to the Trustee, within 30 days after the Company becomes aware of the occurrence of any Event of Default or an event which, with notice or the lapse of time or both, would constitute an Event of Default, an Officers' Certificate setting forth the details of such Event of Default or Default, its status and the action which the Company proposes to take with respect thereto.

Any notice required to be given under this Section 4.12 shall be delivered to a Trust Officer of the Trustee at its Corporate Trust Office.

Section 4.13 *Limitation on Indebtedness and Restricted Payments*. For such time as there is any aggregate outstanding principal amount of the Notes, the Company and its Subsidiaries shall not incur:

(1) Secured Debt (other than Permitted Debt); and

(2) Unsecured Debt (other than Permitted Debt).

For such time as there is any aggregate outstanding principal amount of the Notes, the Company or its Subsidiaries may not make any Restricted Payments.

The limitations on the ability to incur Secured Debt or Unsecured Debt, or make Restricted Payments, may be waived by the Holders of two-thirds of the aggregate principal amount of Notes then outstanding.

Section 4.14 *Additional Note Guarantees*. If the Company or any Guarantor acquires or creates another Subsidiary after the date of this Indenture and that newly acquired or created Subsidiary is a wholly-owned Significant Subsidiary and is not prohibited by law or regulation from providing a Note Guarantee, such Subsidiary will become a Guarantor and execute a Note Guarantee pursuant to a supplemental indenture in form satisfactory to the Trustee and deliver an Opinion of Counsel to the Trustee within 10 Business Days of the date on which it was acquired or created to the effect that such supplemental indenture has been duly authorized, executed and delivered by that Subsidiary and constitutes a valid and binding agreement of that Subsidiary enforceable in accordance with its terms (subject to customary exceptions). The form of such Note Guarantee is attached as Exhibit C hereto.

Section 4.15 *Prohibition on Variable Rate Transactions*. Prior to September 23, 2017, the Company shall not in any manner issue or sell or enter into any agreement to issue or sell, any Common Stock, options, warrants or convertible securities, after the Issue Date, that are issuable pursuant to such agreement or convertible into or exchangeable or exercisable for shares of Common Stock at a price which varies or may vary with the market price of the shares of Common Stock, including by way of one or more reset(s) to a fixed price, but exclusive of such formulations reflecting customary anti-dilution provisions (such as share splits, share combinations, share dividends and similar transactions) and also exclusive of such formulations reflecting customary price-based anti-dilution provisions. For avoidance of doubt, the Company's obligations to adjust the Conversion Price pursuant to the terms of this Indenture shall not be prohibited by this Section 4.15.

ARTICLE 5.
OPTIONAL REDEMPTION

Section 5.01 *Optional Redemption*. No sinking fund is provided for the Notes. At any time after September 23, 2018, and from time to time, the Company may redeem (an "**Optional Redemption**") for cash all or any portion of the Notes, at the Redemption Price, if (i) the Last Reported Sale Price of the Common Stock is equal to or greater than 200% of the Conversion Price in effect (but without giving effect to any changes to the Conversion Price pursuant to Section 6.05(b) or 6.05(c)) on the given Trading Day for at least 20 Trading Days (whether or not consecutive) during any 30 consecutive Trading Day period (including the last Trading Day of such period) ending within the five Trading Days immediately preceding the date on which the Company provides the Redemption Notice in accordance with Section 5.03, (ii) for 15 consecutive Trading Days following the last Trading Day on which the Last Reported Sale Price of the Common Stock was equal to or greater than 200% of the Conversion Price in effect (but without giving effect to any changes to the Conversion Price pursuant to Section 6.05(b) or 6.05(c)) on such Trading Day for the purpose of the foregoing Section 5.01(i), the Last Reported Sale Price of the Common Stock remains equal to or greater than 150% of the Conversion Price in effect (but without giving effect to any changes to the Conversion Price pursuant to Section 6.05(b) or 6.05(c)) on the given Trading Day and (iii) there is no Equity Conditions Failure.

Section 5.02 *Notice of Optional Redemption; Selection of Notes.*

(a) In case the Company exercises its Optional Redemption right to redeem all or, as the case may be, any portion of the Notes pursuant to Section 5.01, it shall fix a date for redemption (each, a "**Redemption Date**") and it shall deliver a notice of such Optional Redemption (a "**Redemption Notice**") not less than 30 calendar days nor more than 70 calendar days prior to the Redemption Date to the Trustee, the Conversion Agent (if other than the Trustee), the Paying Agent (if other than the Trustee) and each Holder of Notes. The Redemption Date must be a Business Day.

(b) The Redemption Notice, if given in the manner herein provided, shall be conclusively presumed to have been duly given, whether or not the Holder receives such notice. In any case, failure to give such Redemption Notice or any defect in the Redemption Notice to the Holder of any Note designated for redemption as a whole or in part shall not affect the validity of the proceedings for the redemption of any other Note.

(c) Each Redemption Notice shall specify:

(i) the Redemption Date;

(ii) the Redemption Price, including any fraction thereof to be paid in shares of common stock as a Redemption/Early Exercise Share Payment;

(iii) that on the Redemption Date, the Redemption Price will become due and payable upon each Note to be redeemed, and that interest thereon, if any, shall cease to accrue on and after the Redemption Date;

(iv) the place or places where such Notes are to be surrendered for payment of the Redemption Price;

(v) that Holders may surrender their Notes for conversion at any time prior to the close of business on the Business Day immediately preceding the Redemption Date;

(vi) the current Applicable Conversion Rate;

(vii) the CUSIP, ISIN or other similar numbers, if any, assigned to such Notes; and

(viii) in case any Note is to be redeemed in part only, the portion of the principal amount thereof to be redeemed and on and after the Redemption Date, upon surrender of such Note, a new Note in principal amount equal to the unredeemed portion thereof shall be issued.

A Redemption Notice shall be irrevocable. After the Company has delivered a Redemption Notice, each Holder will have the right to receive payment of the Redemption Price for its Notes on the later of (i) the Redemption Date and (ii)(a) if the Notes are Physical Notes, delivery of its Notes to the Paying Agent or (b) if the Notes are Global Notes, compliance with the Applicable Procedures relating to the redemption and delivery of the beneficial interests to be redeemed to the Paying Agent; provided, however, that, until the Close of Business on the Business Day immediately preceding such Redemption Date, Holders may convert their Notes, regardless of whether they have been delivered to the Paying Agent for redemption, by complying with the requirements for conversion set forth in Article 6.

At the Company's request, the Trustee shall give the notice of redemption in the name of and at the Company's expense; *provided, however*, that the Company has delivered to the Trustee, at least five Business Days prior to the date that the Company requests such notice of redemption to be delivered to the Holders (unless a shorter notice period shall be agreed to by the Trustee), an Officer's Certificate requesting that the Trustee give such notice, setting forth the information to be stated in such notice as provided in the preceding paragraph and providing a form of such notice.

(d) If fewer than all of the Outstanding Notes are to be redeemed, the Notes to be redeemed shall be selected: (i) if the Notes are listed on any national securities exchange, in compliance with the requirements of the principal national securities exchange on which the Notes are listed; (ii) if the Notes are not so listed but are represented by a Global Note, then by lot or otherwise in accordance with the Depositary's applicable procedures; or (iii) if the Notes are not so listed and are not represented by a Global Note, then (in principal amounts of $1,000 or multiples thereof) on a *pro rata* basis, by lot or by such other method as the Trustee in its sole discretion shall deem fair and appropriate (it being understood that as long as Notes are held by DTC, notice will be given by the rules of the Depositary). If any Note selected for partial redemption is submitted for conversion in part after such selection, the portion of the Note submitted for conversion shall be deemed (so far as may be possible) to be the portion selected for redemption.

(e) In the event of any redemption in part, neither the Company nor the Registrar shall be required to register the transfer of or exchange any Note so selected for redemption, in whole or in part, except the unredeemed portion of any Note being redeemed in part.

Section 5.03 *Payment of Notes Called for Redemption.*

(a) If any Redemption Notice has been given in respect of the Notes in accordance with Section 5.02, the Notes shall become due and payable on the Redemption Date at the place or places stated in the Redemption Notice and at the applicable Redemption Price. On presentation and surrender of the Notes at the place or places stated in the Redemption Notice, the Notes shall be paid and redeemed by the Company at the applicable Redemption Price.

(b) Prior to 11:00 a.m. New York City time on the Redemption Date, the Company shall deposit with the Paying Agent or, if the Company or a Subsidiary of the Company or an Affiliate of either of them is acting as the Paying Agent, shall segregate and hold in trust as provided in Section 7.04 an amount of cash (in immediately available funds if deposited on the Redemption Date), sufficient to pay the Redemption Price of all of the Notes to be redeemed on such Redemption Date. Subject to receipt of funds by the Paying Agent, payment for the Notes to be redeemed shall be made on the Redemption Date for such Notes. The Paying Agent shall, promptly after such payment and upon written demand by the Company, return to the Company any funds in excess of the Redemption Price.

(c) With respect to any portion of the Redemption Price that is a Redemption/Early Exercise Share Payment, the shares of Common Stock to be delivered in satisfaction of such amount shall be delivered as if the Company was making an Early Conversion Payment in shares of Common Stock, and using the same procedures as provided for such payment in shares as set forth in Section 6.01(c).

Section 5.04 *Restrictions on Redemption.* The Company may not redeem any Notes on any date if the principal amount of the Notes has been accelerated in accordance with the terms of the Indenture, and such acceleration has not been rescinded, on or prior to the Redemption Date (except in the case of an acceleration resulting from a Default by the Company in the payment of the Redemption Price with respect to such Notes).

ARTICLE 6.
CONVERSION

Section 6.01 *Right to Convert; Early Conversion Payment*.

(a) Subject to and upon compliance with the provisions of this Indenture, each Holder shall have the right, at such Holder's option, at any time prior to the Close of Business on the Business Day immediately preceding the Maturity Date, to convert the Principal Amount of any such Notes, or any portion of such Principal Amount, into shares of Common Stock, provided that any portion of such Principal Amount that a Holder elects to convert is equal to $1,000 or an integral multiple of $1,000 in excess thereof. Upon any conversion, the Trustee shall provide to the Company notice of such conversion by electronic transmission, to such addresses as may be specified from time to time by the Company, promptly after the Conversion Notice is received.

(b) If a Holder has already delivered a Fundamental Change Purchase Notice with respect to a Note under Section 6.01, such Holder may convert such Note only if such Holder first withdraws the related Fundamental Change Purchase Notice pursuant to Section 6.03. If a Holder has surrendered such Holder's Note for required purchase in connection with a Fundamental Change, such Holder's right to withdraw the related Fundamental Change Purchase Note and convert each Note that is subject thereto will terminate at the Close of Business on (i) the Business Day immediately preceding the relevant Fundamental Change Purchase Date or (ii) in the case of a Default by the Company in the payment of the Fundamental Change Purchase Price with respect to such Note, the Business Day immediately preceding the day on which such Default is no longer continuing.

(c) Upon any conversion of Notes prior to September 23, 2019, in addition to the shares deliverable upon conversion, a Holder will be entitled to receive a payment equal to the Early Conversion Payment. Neither the Trustee nor the Conversion Agent shall have any duty to calculate or verify the calculation of the Early Conversion Payment. The Company may pay an Early Conversion Payment either in cash or in Common Stock, or a combination thereof, at its election; *provided*, that the Company may only make such payment in Common Stock if there is no Equity Conditions Failure. In the case of an Early Conversion Payment in shares of Common Stock, the number of shares issuable will be based upon a price equal to 92.5% of the simple average of the Daily VWAP per share for Common Stock for the 10 Trading Days ending on and including the Trading Day immediately preceding the Conversion Date. Five Trading Day following the applicable Conversion Date, the Company shall (X) provided that the Transfer Agent is participating in the DTC Fast Automated Securities Transfer Program and the Holder or its designee has an account with DTC, credit the number of shares to which each Holder is entitled to such Holder's or its designee's balance account with DTC through its Deposit/Withdrawal at Custodian system, or (Y) if the Transfer Agent is not participating in the DTC Fast Automated Securities Transfer Program or the Holder or its designee does not have an account with DTC, issue and dispatch by overnight courier to each Holder, a certificate, registered in the Company's share register in the name of such Holder or its designee, for the number of shares to which such Holder is entitled pursuant to such exercise. No fractional shares of Common Stock are to be issued upon the issuance of shares in connection with the Early Conversion Payment, but rather the number shares to be issued shall be rounded up or down to the nearest whole share. The Company shall pay any and all taxes which may be payable with respect to the issuance and delivery of Dividend Shares. Accrued interest on Notes surrendered for conversion in connection with an Early Conversion Payment shall be paid in the form of cash, regardless of the payment method chosen by the Company for the Early Conversion Payment. Notwithstanding the foregoing, if a Holder elects to convert Notes on or after the effective time of a Make-Whole Fundamental Change, such Holder will not be entitled to receive the Early Conversion Payment but instead shall receive Additional Shares, if any, pursuant to Section 6.08. However, on conversion of the Notes prior to the effective time of the Make-Whole Fundamental Change, the Holder shall be entitled to receive the Early Conversion Payment.

(d) At or before each Interest Payment Date, the Company shall provide notice to the Trustee, the Conversion Agent and the Holders of its election to pay the Early Conversion Payment either in cash or in shares of Common Stock for future conversions of the Notes in the period between such Interest Payment Date and the next Interest Payment Date.

(e) Provisions of this Indenture that apply to conversion of all of a Note also apply to conversion of a portion of a Note.

(f) A Holder of Notes is not entitled to any rights of a holder of shares of Common Stock until such Holder has converted its Notes, and only to extent such Notes are deemed to have been converted into shares of Common Stock pursuant to this Article 6.

Section 6.02 *Conversion Procedure*.

(a) Each Note shall be convertible at the office of the Conversion Agent.

(b) In order to exercise the conversion right with respect to any interest in Global Notes, the Holder must complete the appropriate instruction form for conversion pursuant to the Depositary's book-entry conversion program, furnish appropriate endorsements and transfer documents if required by the Company or the Trustee or Conversion Agent, and pay the funds, if any, required by Section 6.03(c) and any transfer taxes or duties if required pursuant to Section 6.09. However, no service charge will be imposed by the Company, the Trustee or the Registrar for any registration of transfer or exchange of notes except in compliance with the below provisions governing exercise of conversion rights. In order to exercise the conversion right with respect to any Physical Notes, the Holder of any such Notes to be converted, in whole or in part, shall:

(i) complete and manually sign the conversion notice provided on the back of the Note (the "**Conversion Notice**") facsimile of the conversion notice, or an electronic version of the conversion notice, each of which shall be irrevocable, and deliver such notice to a Conversion Agent;

(ii) surrender the Note to a Conversion Agent;

(iii) furnish appropriate endorsements and transfer documents,

(iv) if required pursuant to Section 6.09, pay any transfer taxes or duties; and

(v) if required, pay funds equal to interest payable on the next Interest Payment Date to which the Holder is not entitled as required by Section 6.03(c).

The date on which the Holder satisfies all of the applicable requirements set forth above is the "**Conversion Date**."

(c) On the third Trading Day immediately following the Conversion Date (the "**Conversion Share Delivery Date**"), the Company shall issue and shall deliver to the converting Holder, a certificate or certificates for the number of shares of Common Stock issuable in respect of such conversion in accordance with the provisions of this Article 6, the Early Conversion Payment, if applicable, and cash in lieu of any fractional share. In case any Notes of a denomination greater than $1,000 shall be surrendered for partial conversion, the Company shall execute and the Trustee shall authenticate and deliver to the Holder of the Notes so surrendered, without charge to such Holder, new Notes in authorized denominations in an aggregate Principal Amount equal to the unconverted portion of the surrendered Notes.

Each conversion shall be deemed to have been effected as to any such Notes (or portion thereof) on the date on which the requirements set forth above in Section 6.01(b) have been satisfied as to such Notes (or portion thereof) and the Person in whose name any certificate or certificates for shares of Common Stock shall be issuable upon such conversion shall be deemed to have become, as of the Close of Business on the relevant Conversion Date that such Holder converted the Notes, the holder of record of the shares of Common Stock represented thereby.

(d) Upon the conversion of an interest in a Global Note, the Trustee shall make a notation on such Global Note as to the reduction in the Principal Amount represented thereby. The Company shall notify the Trustee in writing of any conversions of Notes effected through any Conversion Agent other than the Trustee.

(e) Each share certificate representing Common Stock issued upon conversion of the Notes that are Restricted Notes shall bear the Restricted Stock Legend as set forth in Section 3.07.

Section 6.03 *Settlement upon Conversion*.

(a) With respect to any conversion of Notes, if any, the Company shall, subject to the provisions of this Article 6 (including Section 6.04(a)), deliver to converting Holders, in respect of each $1,000 Principal Amount of Notes being converted, a number of shares of Common Stock equal to the Applicable Conversion Rate, on the third Trading Day immediately following the relevant Conversion Date, together with the Early Conversion Payment, if applicable.

(b) Upon conversion, Holders shall receive a payment for accrued and unpaid interest, and Additional Interest, if any, on each Holder's Note to, but excluding, the Conversion Date (in the form of shares of Common Stock or cash based on the payment method chosen by the Company for the Early Conversion Payment).

(c) Notwithstanding anything to the contrary, the payment of accrued interest shall be made solely in cash (1) in connection with any Make-Whole Fundamental Change, if the related repurchase date is after a Regular Record Date and on or prior to the scheduled Trading Day immediately following the date on which the corresponding interest payment is made, (2) with respect to all Notes, if any, surrendered for conversion for which an Early Conversion Payment shall be received in the form of cash and (3) on the final Interest Payment Date. For the avoidance of doubt, all Holders on the Regular Record Date immediately preceding an Interest Payment Date (or any repurchase date related to a Make-Whole Fundamental Change) will receive the full interest payment on the Interest Payment Date or date of repurchase related to a Make-Whole Fundamental Change regardless of whether their Notes have been converted following such Regular Record Date.

(d) The Company shall not issue fractional shares upon conversion of Notes. If multiple Notes shall be surrendered for conversion at one time by the same Holder, the number of full shares which shall be issuable upon conversion shall be computed on the basis of the aggregate Principal Amount of the Notes (or specified portions thereof to the extent permitted hereby) so surrendered. If any fractional share would be issuable upon the conversion of any Notes, the Company shall round up or down, as appropriate, to the nearest whole number.

(e) By delivery to the Holder of the full number of shares of Common Stock and the Early Conversion Payment, if applicable, issuable upon conversion, the Company will be deemed to satisfy in full its obligation to pay the Principal Amount of the Notes. In addition to the Early Conversion Payment, on conversion of a Note, the Holder will receive a payment of accrued and unpaid interest, and Additional Interest, if any, on such Holder's Note to, but excluding, the Conversion date (in the form of shares of Common Stock or cash based on the payment method chosen by the Company for the Early Conversion Payment).

Section 6.04 *Limitations on Issuance of Shares Due to Market Regulation*.

(a) Notwithstanding anything to the contrary in this Indenture or in the Notes, the Company shall not be obligated to issue shares of Common Stock upon conversion of the Notes in connection with an Early Conversion Payment or otherwise, and shall not be entitled to issue shares of Common Stock in connection with any anti-dilution terms described hereunder, to the extent (and only to the extent) the issuance of such shares of Common Stock, would exceed that aggregate number of shares of Common Stock which the Company may issue, in the aggregate, pursuant to the terms of all Notes and Warrants without breaching the Company's obligations under the rules or regulations of the Principal Market (the number of shares which may be issued without violating such rules and regulations, including rules related to the aggregate of offerings under NASDAQ Listing Rule 5635(d), the "**Exchange Cap**"), except that such limitation shall not apply in the event that the Company (A) obtains and delivers written notice to the Trustee and the Conversion Agent of the approval of its stockholders as required by the applicable rules of the Principal Market for issuances of shares of Common Stock upon conversion or exercise (as the case may be) of the Notes and the Warrants or otherwise pursuant to the terms of this Indenture and the Warrant Agreement in excess of such amount or (B) obtains and delivers written notice to the Trustee and the Conversion Agent of a written confirmation from the Principal Market that such approval is not required. Until such approval or such written confirmation is obtained, no Holder shall be issued in the aggregate, upon conversion or exercise (as the case may be) of any Notes or any of the Warrants or otherwise pursuant to the terms of this Note or under the Warrant Agreement, shares of Common Stock in an amount greater than the product of (i) the Exchange Cap multiplied by (ii) the quotient of (A) the aggregate number of shares of Common Stock underlying the Notes and Warrants initially purchased by such Holder from the Initial Purchaser on, and determined as of, the Issue Date (for clarity, as if the Notes and Warrants had been converted and exercised in full on the Issue Date, prior to any adjustments that may later occur with respect to the applicable conversion or exercise price) divided by (B) the aggregate number of shares of Common Stock underlying the all Notes and all Warrants initially purchased by all Holders from the Initial Purchaser on, and determined as of, the Issue Date (for clarity, as if the Notes and Warrants had been converted and exercised in full on the Issue Date, prior to any adjustments that may later occur with respect to the applicable conversion or exercise price) (with respect to each Holder, the "**Exchange Cap Allocation**"). In the event that any Holder shall sell or otherwise transfer any of such Holders Notes, the transferee shall be allocated a pro rata portion of such Holder's Exchange Cap Allocation based on the relative number of underlying shares determined as of the Issue Date with respect to such portion of such Notes and any Warrants so transferred, and the restrictions of the prior sentence shall apply to such transferee with respect to the portion of the Exchange Cap Allocation so allocated to such transferee. Upon conversion and exercise in full of a Holder's Notes and Warrants, the difference (if any) between such Holder's Exchange Cap Allocation and the number of shares of Common Stock actually issued to such Holder upon such Holder's conversion in full of such Holder's Notes and exercise in full of such Warrants shall be allocated to the respective Exchange Cap Allocations of the remaining holders of Notes and Warrants on a pro rata basis in proportion to the shares of Common Stock then underlying the Notes and Warrants held by each such Holder and holders of Warrants at such time. In the event that the Company is prohibited from issuing shares of Common Stock pursuant to this Section 6.04 or as a result of lacking sufficient authorized capital stock (the "**Exchange Cap/Underauthorized Shares**"), the Company shall pay cash in exchange for the cancellation of such shares of Common Stock at a price equal to the product of (x) such number of Exchange Cap/Underauthorized Shares and (y) the simple average of the daily VWAP for Common Stock for the ten consecutive VWAP Trading Days ending on and included the VWAP Trading Day immediately prior to the Conversion Date (the "**Exchange Cap Share Cancellation Amount**"); provided, that no Exchange Cap Share Cancellation Amount shall be due and payable to the Holder to the extent that (x) (i) on or prior to the applicable Conversion Share Delivery Date in the case of an issuance being prohibited due to the Exchange Cap under this Section 6.04, the Exchange Cap Allocation of a Holder is increased (whether by assignment by a holder of Notes and/or Warrants or all, or any portion, of such holder's Exchange Cap Allocation or otherwise) (an "**Exchange Cap Allocation Increase**") or (ii) in the case of a failure to have sufficient authorized capital stock, such failure is cured ("**Authorized Capital Increase**"), (y) after giving effect to such Exchange Cap Allocation Increase or Authorized Capital Increase, as applicable, the Company delivers the applicable Exchange Cap/Underauthorized Shares to the Holder (or its designee) on or prior to the applicable Conversion Share Delivery Date or (z) in connection with an Early Conversion Payment (or a Redemption/Early Exercise Share Payment) that was required to be paid in cash because the Exchange Cap (or Redemption/Early Exercise Share Payment) precluded a payment in stock (and therefore the payment was due in cash pursuant to the Early Conversion Payment. For the avoidance of any doubt, the term Holder for the purposes of this Section 6.04(a) includes any beneficial interest holder in the case of any Notes represented by a Global Note and any Warrants represented by a Global Warrant where such instruments are registered in the name of a Depositary or a nominee thereof. BY ITS ACQUISITION HEREOF OR OF A BENEFICIAL INTEREST HEREIN, THE ACQUIRER AGREES IT WILL NOT CONVERT OR EXERCISE THE NOTES OR WARRANTS IN CONTRAVENTION OF THIS PARAGRAPH.

(b) The Company shall provide each stockholder entitled to vote at a special or annual meeting of stockholders of the Company (the "**Stockholder Meeting**"), which shall be promptly called and held not later than January 15, 2017 (the "**Stockholder Meeting Deadline**"), a proxy statement soliciting each such stockholder's affirmative vote at the Stockholder Meeting for approval of resolutions ("**Stockholder Resolutions**") providing for issuance of the Conversion Shares and shares underlying the Warrants in compliance with the rules and regulations of the Principal Market (collectively, the "**Stockholder Approval**", and the date the Stockholder Approval is obtained, the "**Stockholder Approval Date**"), and the Company shall use its reasonable best efforts to solicit its stockholders' approval of such resolutions and to cause the Board of Directors of the Company to recommend to the stockholders that they approve such resolutions. The Company shall be obligated to seek to obtain the Stockholder Approval by the Stockholder Meeting Deadline. If, despite the Company's reasonable best efforts the Stockholder Approval is not obtained on or prior to the Stockholder Meeting Deadline, the Company shall cause an additional Stockholder Meeting to be held on or prior to May 15, 2017. If, despite the Company's reasonable best efforts the Stockholder Approval is not obtained after such subsequent stockholder meetings, the Company shall cause an additional Stockholder Meeting to be held annually thereafter until such Stockholder Approval is obtained.

(c) Notwithstanding anything to the contrary contained herein, the Company shall not effect the exercise of any Note, and no Holder shall have the right to exercise any Note, and any such exercise shall be null and void and treated as if never made, and the Company shall not be entitled to issue shares of Common Stock in connection with any anti-dilution terms described hereunder, to the extent that after giving effect to such exercise, the Holder together with the other Attribution Parties collectively would beneficially own in excess of 4.99% (the "**Maximum Percentage**") of the shares of Common Stock outstanding immediately after giving effect to such exercise. For purposes of the foregoing sentence, the aggregate number of shares of Common Stock beneficially owned by such Holder and the other Attribution Parties shall include the number of shares of Common Stock held by the Holder and all other Attribution Parties plus the number of shares of Common Stock issuable upon exercise of all such Holder's Notes with respect to which the determination of such sentence is being made, but shall exclude shares of Common Stock which would be issuable upon (A) exercise of the remaining, unconverted portion of this Note beneficially owned by the Holder or any of the other Attribution Parties and (B) exercise or conversion of the unexercised or unconverted portion of any Warrants or any other securities of the Company (including, without limitation, any convertible notes or convertible preferred stock or warrants, including other Notes) beneficially owned by the Holder or any other Attribution Party subject to a limitation on conversion or exercise analogous to the limitation contained in this Section 6.04(c). For purposes of this Section 6.04(c), beneficial ownership shall be calculated in accordance with Section 13(d) of the Exchange Act.

(d) For purposes of determining the number of outstanding shares of Common Stock the Holder may acquire upon the conversion of a Note without exceeding the Maximum Percentage, such Holder may rely on the number of outstanding shares of Common Stock as reflected in (x) the Company's most recent Annual Report on Form 10-K, Quarterly Report on Form 10-Q, Current Report on Form 8-K or other public filing with the SEC, as the case may be, or (y) any other written notice by the Company, if any, setting forth the number of shares of Common Stock outstanding (the "**Reported Outstanding Share Number**"). If the Company receives an Conversion Notice from a Holder at a time when the actual number of outstanding shares of Common Stock is less than the Reported Outstanding Share Number, the Company shall (i) notify the Holder in writing of the number of shares of Common Stock then outstanding and, to the extent that such Conversion Notice would otherwise cause the Holder's beneficial ownership, as determined pursuant to this Section 6.04(d), to exceed the Maximum Percentage, the Holder must notify the Company of a reduced number of shares of Common Stock to be acquired pursuant to such Conversion Notice (the number of shares by which such purchase is reduced, the "**Reduction Shares**") and (ii) as soon as reasonably practicable, the Company shall return to the Holder any Notes that were to be converted into the Reduction Shares. For any reason at any time, upon the written or oral request of a Holder the Company shall within one (1) Business Day confirm orally and in writing or by electronic mail to such Holder the number of shares of Common Stock then outstanding. In any case, the number of outstanding shares of Common Stock shall be determined after giving effect to the conversion or exercise of securities of the Company, including any Warrants and Notes, by the Holder and any other Attribution Party since the date as of which the Reported Outstanding Share Number was reported. In the event that the issuance of shares of Common Stock to the Holder upon conversion of a Note results in the Holder and the other Attribution Parties being deemed to beneficially own, in the aggregate, more than the Maximum Percentage of the number of outstanding shares of Common Stock (as determined under Section 13(d) of the Exchange Act), the number of shares so issued by which the Holder's and the other Attribution Parties' aggregate beneficial ownership exceeds the Maximum Percentage (the "**Excess Shares**") shall be deemed null and void and shall be cancelled ab initio, and the Holder shall not have the power to vote or to transfer the Excess Shares. As soon as reasonably practicable after the issuance of the Excess Shares has been deemed null and void, the Company shall return to the Holder the Notes that were to be converted into the Excess Shares.

(e) Upon delivery of a written notice to the Company, a Holder may from time to time increase (with such increase not effective until the sixty-first (61st) day after delivery of such notice) or decrease the Maximum Percentage to any other percentage not in excess of 9.99% as specified in such notice; provided that (i) any such increase in the Maximum Percentage will not be effective until the sixty-first (61st) day after such notice is delivered to the Company and (ii) any such increase or decrease will apply only to such Holder and the other Attribution Parties and not to any other Holder that is not an Attribution Party of the Holder delivering such notice.

(f) For purposes of clarity, the shares of Common Stock issuable pursuant to the terms of any Warrant in excess of the Maximum Percentage shall not be deemed to be beneficially owned by the Holder for any purpose including for purposes of Section 13(d) or Rule 16a-1(a)(1) of the Exchange Act. No prior inability to convert this Note pursuant to this Section 6.04(c) through (g) shall have any effect on the applicability of the provisions of Section 6.04(c) through (g) with respect to any subsequent determination of exercisability. The provisions of Section 6.04(c) through (g) shall be construed and implemented in a manner otherwise than in strict conformity with the terms of this Section 6.04(c) through (g) to the extent necessary to correct this Section 6.04(c) through (g) or any portion of Section 6.04(c) through (g) which may be defective or inconsistent with the intended beneficial ownership limitation contained in this Section 6.04(c) through (g) or to make changes or supplements necessary or desirable to properly give effect to such limitation.

(g) For the avoidance of any doubt, the term Holder for the purposes of Section 6.04(a) includes any beneficial interest holder in the case of any Notes represented by a Global Note where such instrument is registered in the name of a Depositary or a nominee thereof.

(h) Neither the Trustee nor the Conversion Agent shall have any duty to monitor whether the Exchange Cap has been reached or to monitor the Company's or any Holder's compliance with this Section 6.04.

Section 6.05 *Adjustment of Conversion Rate.* The Conversion Rate shall be adjusted from time to time by the Company if any of the following events occurs as described below, except that the Company will not make any adjustment to the Conversion Rate if Holders of Notes participate (other than in the case of a share split or share combination), at the same time and on the same terms as holders of shares of Common Stock, solely as a result of holding the Notes, in any of the transactions described in this Section 6.05, without having to convert their Notes, as if such Holders held a number of shares of Common Stock equal to the Applicable Conversion Rate in effect immediately prior to the adjustment thereof in respect of such transaction, *multiplied by* the Principal Amount of Notes held by such Holders, *divided by* $1,000; provided, in no case under this Section 6.05 will the Conversion Price be reduced to a price that would result in shares of Common Stock being issued below the par value per share thereof.

(a) If the Company issues shares of Common Stock as a dividend or distribution on the Common Stock, or the Company effects a share split or share combination, the Conversion Rate will be adjusted based on the following formula:

$$CR_1 = CR_0 \times \frac{OS_1}{OS_0}$$

where,

CR_0 = the Conversion Rate in effect immediately prior to the Open of Business on the Ex-Dividend Date of such dividend or distribution, or immediately prior to the Open of Business on the effective date of such share split or share combination, as applicable;

CR_1 = the Conversion Rate in effect immediately after the Open of Business on such Ex-Dividend Date or effective date;

OS_0 = the number of shares of Common Stock outstanding immediately prior to the Open of Business on such Ex-Dividend Date or effective date; and

OS_1 = the number of shares of Common Stock outstanding immediately after giving effect to such dividend, distribution, share split or share combination.

Any adjustment made pursuant to this Section 6.05(a) will become effective immediately after the Open of Business on the Ex-Dividend Date for such dividend or distribution, or immediately after the Open of Business on the effective date for such share split or share combination, as applicable. If any dividend or distribution of the type described in this Section 6.05(a) is declared but not so paid or made, the Conversion Rate will be immediately readjusted, effective as of the date the Board of Directors determines not to pay such dividend or distribution, to the Conversion Rate that would then be in effect if such dividend or distribution had not been declared or announced. For the avoidance of doubt, if the application of the foregoing formula would result in a decrease in the Conversion Rate, no adjustment to the Conversion Rate will be made (other than (i) as a result of a reverse share split or share combination or (ii) with respect to the Company's right to readjust the Conversion Rate as described in the immediately preceding sentence).

(b) If the Company issues or sells shares of Common Stock (including shares of Common Stock deemed to be issued pursuant to the fourth paragraph of this Section 6.05(b)) in a Qualified Financing at a price per share less than the Applicable Conversion Price on the Trading Day immediately preceding such issuance or sale, the Conversion Rate will be adjusted based on the following formula:

$$CR1 = CR0 \times \frac{(OS0 + X)}{(OS0 + Y)}$$

where,

CR_0 = the Conversion Rate in effect immediately prior to the Open of Business on the date of such issuance or sale (or deemed issuance);

CR_1 = the Conversion Rate in effect immediately after the Open of Business on the date of such issuance or sale (or deemed issuance);

OS = the number of shares of Common Stock outstanding immediately prior to the Open of Business on the date of such issuance or sale (or deemed issuance);

X = the total number of shares of Common Stock issued or sold (or deemed issued) on such date; and

Y = the number of shares of Common Stock equal to the quotient of (A) the aggregate purchase price of the shares of Common Stock issued or sold (or deemed issued) and (B) the Conversion Price of the Notes on the Trading Day immediately preceding such issuance or sale (or deemed issuance).

For the purpose of the above calculation, the number of shares of Common Stock outstanding immediately prior to the Open of Business on the date of such issuance or sale shall be calculated on a fully diluted basis, as if all then outstanding options, warrants and other convertible securities had been fully exercised or converted (and the resulting securities fully converted into shares of Common Stock, if so convertible) as of such date.

Any adjustment made pursuant to this Section 6.05(b) shall become effective immediately following the Open of Business on the date of such issuance or sale. If Section 6.05(a), (c) or (d) applies to any distribution of shares of Common Stock or Notes, this Section 6.05(b) shall not apply to such distribution. In no event shall the Conversion Rate be decreased pursuant to this Section 6.05(b).

In the event the Company at any time or from time to time after the Issue Date shall issue any options or convertible securities or shall fix a record date for the determination of holders of any class of securities then entitled to receive any such options or convertible securities, then the maximum number of shares (as set forth in the instrument relating thereto without regard to any provisions contained therein designed to protect against dilution) of Common Stock issuable upon the exercise of such options or, in the case of convertible securities and options therefor, the conversion or exchange of such convertible securities, shall be deemed to be shares of Common Stock issued as of the time of such issuance or, in case such a record date shall have been fixed, as of the Close of Business on such record date *provided*, *however*, that in any such case in which shares of Common Stock are deemed to be issued no further adjustments to the Conversion Rate shall be made upon the subsequent issue of shares of Common Stock upon the exercise of such options or conversion or exchange of such convertible securities. The consideration per share received by the Company for shares of Common Stock deemed to have been issued pursuant to this paragraph relating to options and convertible securities shall be determined by dividing:

(1) the total amount, if any, received or receivable by the Company as consideration for the issuance of such options or convertible securities, plus the minimum aggregate amount of additional consideration (as set forth in the instruments relating thereto, without regard to any provision contained therein designed to protect against dilution) payable to the Company upon the exercise of such options or the conversion or exchange of such convertible securities, or in the case of options for convertible securities, the exercise of such options for convertible securities and the conversion or exchange of such convertible securities, by

(2) the maximum number of shares of Common Stock (as set forth in the instruments relating thereto, without regard to any provision contained therein designed to protect against the dilution) issuable upon the exercise of such options or conversion or exchange of such convertible securities, or in the case of options for convertible securities, the exercise of such options for convertible securities and the conversion or exchange of such convertible securities.

Notwithstanding the foregoing, if the terms of any option or convertible security, the issuance of which resulted in an adjustment to the Conversion Rate of the Notes pursuant to this subsection 6.05(b), are revised as a result of an amendment to such terms or any other adjustment pursuant to the provisions of such option or convertible security (but excluding automatic adjustments to such terms pursuant to anti-dilution or similar provisions of such option or convertible security) to provide for either (i) any increase or decrease in the number of shares of Common Stock issuable upon the exercise, conversion and/or exchange of any such option or convertible security or (ii) any increase or decrease in the consideration payable to the Company upon such exercise, conversion and/or exchange, then effective upon such increase or decrease becoming effective, the conversion rate of the notes computed upon the original issue of such option or convertible security (or upon the occurrence of a record date with respect thereto) shall be readjusted to such Conversion Rate as would have obtained had such revised terms been in effect upon the original date of issuance of such option or convertible security; *provided*, *however*, that any adjustments to the conversion rate pursuant to this paragraph shall not be effective with respect to any Notes that have been converted prior to the date of any of the actions described in this paragraph.

(c) If the Company distributes to all or substantially all holders of shares of Common Stock any rights, options or warrants entitling them for a period of not more than 60 calendar days after the date of such distribution to subscribe for or purchase shares of Common Stock, at a price per share less than the average of the Last Reported Sale Prices of the Common Stock over the 10 consecutive Trading Day period ending on, and including, the Trading Day immediately preceding the date of announcement of such distribution, the Conversion Rate will be increased based on the following formula:

$$CR_1 = CR_0 \times \frac{OS_0 + X}{OS_0 + Y}$$

where,

CR_0 = the Conversion Rate in effect immediately prior to the Open of Business on the Ex-Dividend Date for such distribution;

CR_1 = the Conversion Rate in effect immediately after the Open of Business on such Ex-Dividend Date;

OS = the number of shares of Common Stock outstanding immediately prior to the Open of Business on such Ex-Dividend Date;

X = the total number of shares of Common Stock issuable pursuant to such rights, options or warrants; and

Y = the number of shares of Common Stock equal to the aggregate price payable to exercise such rights, options or warrants *divided by* the average of the Last Reported Sale Prices of the Common Stock over the 10 consecutive Trading Day period ending on, and including, the Trading Day immediately preceding the date of announcement of the distribution of such rights, options or warrants.

The foregoing increase in the Conversion Rate will be successively made whenever any such rights, options or warrants are distributed and will become effective immediately after the Open of Business on the Ex-Dividend Date for such distribution. If such rights, options or warrants are not so distributed, the Conversion Rate will be immediately decreased to the Conversion Rate that would then be in effect if such Ex-Dividend Date for such distribution had not occurred. In addition, to the extent that shares of Common Stock are not delivered after the expiration of such rights, options or warrants, the Conversion Rate will be immediately decreased to the Conversion Rate that would then be in effect had the increase made for the distribution of such rights, options or warrants been made on the basis of delivery of only the number of shares of Common Stock actually delivered. For the avoidance of doubt, if the application of the foregoing formula would result in a decrease in the Conversion Rate, no adjustment to the Conversion Rate will be made (other than with respect to the Company's right to readjust the Conversion Rate as described in the two immediately preceding sentences).

In determining whether any rights, options or warrants entitle the holders of shares of Common Stock to subscribe for or purchase shares of Common Stock at less than such average of the Last Reported Sale Prices of Common Stock over the 10 consecutive Trading Day period ending on, and including, the Trading Day immediately preceding the date of announcement of such distribution, and in determining the aggregate offering price of such shares of Common Stock, there will be taken into account any consideration received by the Company for such rights, options or warrants and any amount payable upon exercise or conversion thereof, the value of such consideration, if other than cash, to be determined by the Board of Directors.

(d) If the Company distributes shares of its Capital Stock, evidences of its indebtedness, other assets or property of the Company or rights, options or warrants to acquire the Company's Capital Stock or other securities (the "**Distributed Property**"), to all or substantially all holders of shares of Common Stock, excluding:

(i) dividends or distributions of Common Stock or rights, options or warrants as to which an adjustment was effected pursuant to Section 6.05(a) or Section 6.05(b), as the case may be;

(ii) dividends or distributions paid exclusively in cash as to which an adjustment was effected pursuant to Section 6.05(e); and

(iii) Spin-Offs to which the provisions set forth below in this Section 6.05(d) will apply;

then the Conversion Rate will be increased based on the following formula:

$$CR_1 = CR_0 \times \frac{SP_0}{SP_0 - FMV}$$

where,

CR_0 = the Conversion Rate in effect immediately prior to the Open of Business on the Ex-Dividend Date for such distribution;

CR_1 = the Conversion Rate in effect immediately after the Open of Business on such Ex-Dividend Date;

SP_0 = the average of the Last Reported Sale Prices of the Common Stock over the 10 consecutive Trading Day period ending on, and including, the Trading Day immediately preceding the Ex-Dividend Date for such distribution; and

FMV= the Fair Market Value (as determined by the Board of Directors) of the Distributed Property distributed with respect to each outstanding share of Common Stock on the Ex-Dividend Date for such distribution;

provided that if "FMV" as set forth above is equal to or greater than "SP_0" as set forth above, in lieu of the foregoing increase, adequate provision will be made so that each Holder of a Note will receive on the date on which the Distributed Property is distributed to holders of the Common Stock, for each $1,000 Principal Amount of the Notes, the amount and kind of Distributed Property that such Holder would have received had such Holder owned a number of shares of Common Stock equal to the Conversion Rate on the Ex-Dividend Date for such distribution; *provided further* that if the Board of Directors determines "FMV" for purposes of the foregoing increase by reference to the actual or when-issued trading market for any securities, it must in doing so consider the prices in such market over the same period used in computing the average of the Last Reported Sale Prices of the Common Stock for purposes of determining "SP_0" as set forth above.

Such increase in the Conversion Rate made pursuant to the immediately preceding paragraph will become effective immediately after the Open of Business on the Ex-Dividend Date for such distribution. If such distribution is not so paid or made, the Conversion Rate will be decreased to be the Conversion Rate that would then be in effect if such dividend or distribution had not been declared. For the avoidance of doubt, if the application of the foregoing formula would result in a decrease in the Conversion Rate, no adjustment to the Conversion Rate will be made (other than with respect to the Company's right to readjust the Conversion rate as described in the immediately preceding sentence).

With respect to an adjustment pursuant to this Section 6.05(d) where there has been a payment of a dividend or other distribution on the Common Stock of shares of Capital Stock of any class or series, or similar equity interest, of or relating to a Subsidiary, or other business unit or Affiliate, of the Company, where such Capital Stock or similar equity interest is listed or quoted (or will be listed or quoted upon consummation of the Spin-Off) on a major U.S. or non-U.S. securities exchange (a "**Spin-Off**"), the Conversion Rate will be increased based on the following formula:

$$CR_1 = CR_0 \times \frac{FMV_0 + MP_0}{MP_0}$$

where

CR_0 = the Conversion Rate in effect immediately prior to the end of the Valuation Period;

CR_1 = the Conversion Rate in effect immediately after the end of the Valuation Period;

FMV_0 = the average of the Last Reported Sale Prices of the Capital Stock or similar equity interest distributed to holders of shares of Common Stock applicable to one share of Common Stock (determined for purposes of the definition of "Last Reported Sale Price" (i) as if such Capital Stock or similar equity interest were Common Stock, (ii) by reference to such major non-U.S. securities exchange, if applicable, and (iii) by converting such Last Reported Sales Price into U.S. dollars, if applicable) over the first 10 consecutive Trading Day period after, and including, the Ex-Dividend Date of the Spin-Off (the "**Valuation Period**"); and

MP_0 = the average of the Last Reported Sale Prices of the Common Stock over the Valuation Period.

The adjustment to the Conversion Rate under the preceding paragraph will occur on the last Trading Day of the Valuation Period; *provided* that in respect of any conversion during the Valuation Period, references with respect to 10 consecutive Trading Days will be deemed replaced with such lesser number of Trading Days as have elapsed from, and including, the Ex-Dividend Date of such Spin-Off to, and including, and the Conversion Date in determining the Applicable Conversion Rate. If any dividend or distribution that constitutes a Spin-Off is declared but not so paid or made, the Conversion Rate will be immediately decreased, effective as of the date the Board of Directors determines not to pay such dividend or distribution, to the Conversion Rate that would then be in effect if such dividend or distribution had not been declared. For the avoidance of doubt, if the application of the foregoing formula would result in a decrease in the Conversion Rate, no adjustment to the Conversion Rate will be made (other than with respect to the Company's right to readjust the Conversion Rate as described in the immediately preceding sentence).

For purposes of this Section 6.05(d) (and subject in all respect to Section 6.13), rights, options or warrants distributed by the Company to all holders of the Common Stock entitling them to subscribe for or purchase shares of the Company's Capital Stock, including Common Stock (either initially or under certain circumstances), which rights, options or warrants, until the occurrence of a specified event or events ("**Trigger Event**"): (i) are deemed to be transferred with such Common Stock; (ii) are not exercisable; and (iii) are also issued in respect of future issuances of Common Stock, shall be deemed not to have been distributed for purposes of this Section 6.05(d) (and no adjustment to the Conversion Rate under this Section 6.05(d) will be required) until the occurrence of the earliest Trigger Event, whereupon such rights, options or warrants shall be deemed to have been distributed and an appropriate adjustment (if any is required) to the Conversion Rate shall be made under this Section 6.05. If any such right, option or warrant, including any such existing rights, options or warrants distributed prior to the date of this Indenture, are subject to events, upon the occurrence of which such rights, options or warrants become exercisable to purchase different securities, evidences of indebtedness or other assets or property, then the date of the occurrence of any and each such event shall be deemed to be the date of distribution and Ex-Dividend Date with respect to new rights, options or warrants with such rights (in which case the existing rights, options or warrants shall be deemed to terminate and expire on such date without exercise by any of the holders thereof). In addition, in the event of any distribution (or deemed distribution) of rights, options or warrants, or any Trigger Event or other event (of the type described in the immediately preceding sentence) with respect thereto that was counted for purposes of calculating a distribution amount for which an adjustment to the Conversion Rate under this Section 6.05(d) was made, (1) in the case of any such rights, options or warrants that shall all have been redeemed or purchased without exercise by any holders thereof, upon such final redemption or purchase (x) the Conversion Rate shall be readjusted as if such rights, options or warrants had not been issued and (y) the Conversion Rate shall then again be readjusted to give effect to such distribution, deemed distribution or Trigger Event, as the case may be, as though it were a cash distribution, equal to the per share of Common Stock redemption or purchase price received by a holder or holders of shares of Common Stock with respect to such rights, options or warrants (assuming such holder had retained such rights, options or warrants), made to all holders of shares of Common Stock as of the date of such redemption or purchase, and (2) in the case of such rights, options or warrants that shall have expired or been terminated without exercise by any holders thereof, the Conversion Rate shall be readjusted as if such rights, options and warrants had not been issued.

For purposes of Section 6.05(a), Section 6.05(c) and this Section 6.05(d), any dividend or distribution to which this Section 6.05(d) is applicable that also includes one or both of:

(A) a dividend or distribution of shares of Common Stock to which Section 6.05(a) is applicable (the "**Clause A Distribution**"); or

(B) a dividend or distribution of rights, options or warrants to which Section 6.05(c) is applicable (the "**Clause B Distribution**"), then (1) such dividend or distribution, other than the Clause A Distribution and the Clause B Distribution, shall be deemed to be a dividend or distribution to which this Section 6.05(d) is applicable (the "**Clause C Distribution**") and any adjustment to the Conversion Rate required by this Section 6.05(d) with respect to such Clause C Distribution shall then be made, and (2) the Clause A Distribution and Clause B Distribution shall be deemed to immediately follow the Clause C Distribution and any adjustment to the Conversion Rate required by Section 6.05(a) and Section 6.05(c) with respect thereto shall then be made, except that, if determined by the Company (I) the "Ex-Dividend Date" of the Clause A Distribution and the Clause B Distribution shall be deemed to be the Ex-Dividend Date of the Clause C Distribution and (II) any shares of Common Stock included in the Clause A Distribution or Clause B Distribution shall be deemed not to be "outstanding immediately prior to the Open of Business on such Ex-Dividend Date or immediately prior to the Open of Business on such effective date, as applicable" within the meaning of Section 6.05(a) or "outstanding immediately prior to the Open of Business on such Ex-Dividend Date" within the meaning of Section 6.05(c).

(e) If any cash dividend or distribution is paid or made to all or substantially all holders of shares of Common Stock, the Conversion Rate shall be increased based on the following formula:

$$CR_1 = CR_0 \times \frac{SP_0}{SP_0 - C}$$

where,

CR_0 = the Conversion Rate in effect immediately prior to the Open of Business on the Ex-Dividend Date for such dividend or distribution;

CR_1 = the Conversion Rate in effect immediately after the Open of Business on the Ex-Dividend Date for such dividend or distribution;

SP_0 = the average of the Last Reported Sale Prices of the Common Stock over the 10 consecutive Trading Day period ending on, and including, the Trading Day immediately preceding the Ex-Dividend Date for such dividend or distribution; and

C = the amount in cash per share the Company distributes to holders of shares of Common Stock.

The increase in the Conversion Rate under this Section 6.05(e) will become effective immediately after the Open of Business on the Ex-Dividend Date for such dividend or distribution. If such dividend or distribution is not so paid or made, the Conversion Rate will be immediately decreased, effective as of the date the Board of Directors determined not to pay or make such dividend or distribution, to the Conversion Rate that would then be in effect if such dividend or distribution had not been declared. For the avoidance of doubt, if the application of the foregoing formula would result in a decrease in the Conversion Rate, no adjustment to the Conversion Rate will be made (other than with respect to the Company's right to readjust the Conversion Rate as described in the immediately preceding sentence).

Notwithstanding the foregoing, if "C" (as defined above) is equal to or greater than "SP_0" (as defined above), in lieu of the foregoing increase, each Holder of a Note will receive, for each $1,000 Principal Amount of Notes, at the same time and upon the same terms as holders of shares of Common Stock, the amount of cash that such Holder would have received if such Holder owned a number of shares of Common Stock equal to the Conversion Rate in effect on the Ex-Dividend Date for such dividend or distribution.

(f) If the Company or any of its Subsidiaries makes a payment in respect of a tender offer or exchange offer for shares of Common Stock, to the extent that the cash and value of any other consideration included in the payment per share of Common Stock exceeds the average of the Last Reported Sale Prices of the Common Stock over the first 10 consecutive Trading Day period immediately following, and including, the Trading Day next succeeding the last date on which tenders or exchanges may be made pursuant to such tender offer or exchange offer, the Conversion Rate will be increased based on the following formula:

$$CR_1 = CR_0 \times \frac{AC + (SP_1 \times OS_1)}{OS_0 \times SP_1}$$

where

CR_0 = the Conversion Rate in effect immediately prior to the Close of Business on the 10th Trading Day immediately following, and including, the Trading Day next succeeding the date such tender offer or exchange offer expires;

CR_1 = the Conversion Rate in effect immediately after the Close of Business on the 10th Trading Day immediately following, and including, the Trading Day next succeeding the date such tender offer or exchange offer expires;

AC = the aggregate value of all cash and any other consideration (as determined by the Board of Directors) paid or payable for shares of Common Stock purchased in such tender offer or exchange offer;

OS_0 = the number of shares of Common Stock outstanding immediately prior to the date such tender offer or exchange offer expires (prior to giving effect to the purchase of all shares of Common Stock accepted for purchase or exchange in such tender offer of exchange offer);

OS_1 = the number of shares of Common Stock outstanding immediately after the date such tender offer or exchange offer expires (after giving effect to the purchase of all shares of Common Stock accepted for purchase or exchange in such tender offer or exchange offer); and

SP_1 = the average of the Last Reported Sale Prices of Common Stock over the first 10 consecutive Trading Day period immediately following, and including, on the Trading Day next succeeding the date such tender offer or exchange offer expires.

The increase in the Conversion Rate under this Section 6.05(f) shall occur at the Close of Business on the 10th Trading Day immediately following, and including, the Trading Day next succeeding the date such tender offer or exchange offer expires but will be given effect immediately after the Close of Business on the date such tender offer or exchange offer expires; *provided that* in respect of any conversion within the first 10 consecutive Trading Day period immediately following, and including, the date any such tender offer or exchange offer expires, references to 10 consecutive Trading Days will be deemed replaced with such lesser number of Trading Days as have elapsed from, and including, the date such tender offer or exchange offer expires to, and including, the Conversion Date in determining the Applicable Conversion Rate.

If the Company is obligated to purchase shares of Common Stock pursuant to any such tender offer or exchange offer, but the Company is ultimately prevented by applicable law from effecting all or any portion of such purchases or all such purchases are rescinded, the Conversion Rate will immediately be readjusted to the Conversion Rate that would then be in effect if such tender offer or exchange offer had not been made or had been made only in respect of the purchases that had been effected. For the avoidance of doubt, if the application of the foregoing formula would result in a decrease in the Conversion Rate, no adjustment to the Conversion Rate will be made (other than with respect to the Company's right to readjust the Conversion Rate as described in the immediately preceding sentence).

(g) In addition to those Conversion Rate adjustments required by Sections 6.05(a), 6.05(c), 6.05(d), 6.05(e) and 6.05(f), and to the extent permitted by the Exchange Cap and applicable law and subject to the applicable rules of The NASDAQ Global Select Market (including Market Rule 5635) or, if applicable, any securities exchange on which the Company's securities are then listed, the Company from time to time (i) may increase the Conversion Rate by any amount for a period of at least 20 Business Days if the Board of Directors determines that such increase would be in the Company's best interest and (ii) may also (but is not required to) increase the Conversion Rate to avoid or diminish any income tax to holders of shares of Common Stock or rights to purchase shares of Common Stock in connection with any dividend or distribution of shares of Common Stock (or rights to acquire shares of Common Stock) or similar event. Whenever the Conversion Rate is increased pursuant to this Section 6.05(g), the Company shall send to Holders of record of the Notes (with a copy to the Trustee and the Conversion Agent as set forth in Section 6.05(j)) a notice of the increase at least 5 days prior to the date the increased Conversion Rate takes effect, and such notice shall state the increased Conversion Rate and the period during which it will be in effect.

(h) The Conversion Rate will not be adjusted, among other things:

(i) upon the issuance of any shares of Common Stock pursuant to any present or future plan providing for the reinvestment of dividends or interest payable on the Company's securities and the investment of additional optional amounts in shares of Common Stock under any plan;

(ii) upon the issuance of any shares of Common Stock or options or rights to purchase those shares pursuant to any present or future employee or director benefit plan or program of the Company, or assumed by the Company, or any of the Company's Subsidiaries;

(iii) upon the issuance of any shares of Common Stock pursuant to any option, warrant, right or exercisable, exchangeable or convertible security not described in clause (ii) above and outstanding as of the date the Notes were first issued, except as set forth in Section 6.13;

(iv) upon the repurchase of any shares of Common Stock pursuant to an open-market share repurchase program or other buy-back transaction that is not a tender offer or exchange offer of the nature described in Section 6.05(f);

(v) for a change in the par value of the Common Stock; or

(vi) for accrued and unpaid interest, and Additional Interest, if any.

(i) Adjustments to the Conversion Rate under this Article 6 shall be calculated to the nearest cent or to the nearest one-ten thousandth (1/10,000th) of a share of Common Stock. No adjustment shall be made to the Conversion Rate unless such adjustment would require a change of at least 1% in the Applicable Conversion Rate. Any adjustment that would otherwise be required to be made shall be carried forward and taken into account in any future adjustment. Notwithstanding the foregoing, upon any conversion of the Notes (solely with respect to the Notes to be converted), the Company shall give effect to all adjustments that Company otherwise has deferred pursuant to the immediately preceding sentence, and those adjustments will no longer be carried forward and taken into account in any future adjustment.

(j) Whenever the Conversion Rate is adjusted as herein provided, the Company shall promptly file with the Trustee and any Conversion Agent an Officers' Certificate setting forth the Conversion Rate after such adjustment and setting forth a brief statement of the facts requiring such adjustment. Unless and until a Trust Officer of the Trustee shall have received such Officers' Certificate, the Trustee shall not be deemed to have knowledge of any adjustment of the Conversion Rate and may assume without inquiry that the last Conversion Rate of which it has knowledge is still in effect. Promptly after delivery of such certificate, the Company shall prepare a notice of such adjustment of the Conversion Rate setting forth the adjusted Conversion Rate and the date on which each adjustment became effective and shall send such notice of such adjustment of the Conversion Rate to each Holder at such Holder's last address appearing in the Register, within 20 days after execution thereof. Failure to deliver such notice shall not affect the legality or validity of any such adjustment.

(k) In any case in which this Section 6.05 provides that an adjustment shall become effective immediately after a Record Date for an event, the Company may defer until the occurrence of such event (i) issuing to the Holder of any Notes converted after such Record Date and before the occurrence of such event the additional shares of Common Stock issuable upon such conversion by reason of the adjustment required by such event over and above the Common Stock issuable upon such conversion before giving effect to such adjustment and (ii) paying to such Holder any amount in cash in lieu of any fraction pursuant to Section 6.03.

(l) For purposes of this Section 6.05, the number of shares of Common Stock at any time outstanding shall not include shares held in the treasury of the Company, so long as the Company does not pay any dividend or make any distribution on shares of Common Stock held in the treasury of the Company, but shall include shares issuable in respect of scrip certificates issued in lieu of fractions of shares of Common Stock.

Section 6.06 *Effect of Reclassification, Consolidation, Merger or Sale*. In the case of (i) any recapitalization, reclassification or change of the Common Stock (other than changes resulting from a subdivision or combination), (ii) any consolidation, merger or combination involving the Company, (iii) any sale, lease or other transfer to a third party of the consolidated assets of the Company and its Subsidiaries substantially as an entirety, or (iv) any statutory share exchange, in each case, as a result of which the Common Stock would be converted into, or exchanged for, stock, other securities, other property or assets (including cash or any combination thereof) (any such event, a "**Merger Event**"), then, at the effective time of the Merger Event, the Company or the successor or purchasing company, as the case may be, shall execute with the Trustee a supplemental indenture permitted under Section 13.01 providing for the right to convert each $1,000 Principal Amount of Notes into the kind and amount of shares of stock, other securities or other property or assets (including cash or any combination thereof) that a holder of a number of shares of Common Stock equal to the Conversion Rate immediately prior to such Merger Event would have owned or been entitled to receive (the "**Reference Property**") upon such Merger Event. If such Merger Event causes the Common Stock to be converted into the right to receive more than a single type of consideration (determined based in part upon any form of shareholder election), the Reference Property into which the Notes will be convertible will be deemed to be (i) the weighted average of the types and amounts of consideration received by the holders of shares of Common Stock that affirmatively make such an election or (ii) if no holders of Common Stock affirmatively make such an election, the types and amounts of consideration actually received by holders of Common Stock. The Company shall notify Holders of the Notes of such weighted average (with a copy to the Trustee and Conversion Agent) as soon as practicable after such determination is made. The Company shall not become a party to any Merger Event unless its terms are consistent with the foregoing.

The Company shall cause notice of the execution of such supplemental indenture to be mailed to each Holder, at the address of such Holder as it appears on the Register of the Notes maintained by the Registrar, within 20 days after execution thereof. Failure to deliver such notice shall not affect the legality or validity of such supplemental indenture. The above provisions of this Section shall similarly apply to successive reclassifications, changes, consolidations, mergers, combinations, sales and conveyances. If this Section 6.06 applies to any event or occurrence, Section 6.05 shall not apply.

Section 6.07 *Adjustments of Prices*. Whenever any provision of this Indenture requires a calculation of the Last Reported Sale Prices or the Daily VWAP over a span of multiple days (including with respect to the Share Price for purposes of a Make-Whole Fundamental Change), the Company will make appropriate adjustments (to the extent no corresponding adjustment is otherwise made pursuant to the provisions described in Section 6.05) determined by the Company or its agents to account for any adjustment to the Conversion Rate that becomes effective, or any event requiring an adjustment to the Conversion Rate where the Ex-Dividend Date, Record Date, effective date or expiration date, as the case may be, of the event occurs, at any time during the period during when Last Reported Sale Prices or the Daily VWAP are to be calculated. Such adjustments will be effective as of the Ex-Dividend Date, Record Date, effective date or expiration date, as the case may be, of the event causing the adjustment to the Conversion Rate.

Section 6.08 *Adjustment upon a Make-Whole Fundamental Change.*

(a) If a Make-Whole Fundamental Change occurs and a Holder elects to convert its Notes in connection with such Make-Whole Fundamental Change, the Company shall increase the Conversion Rate for the Notes so surrendered for conversion by a number of additional shares of Common Stock (the "**Additional Shares**") as described below. A conversion of Notes shall be deemed for these purposes to be "in connection with" such Make-Whole Fundamental Change if the notice of conversion of the Notes is received by the Conversion Agent during the period from, and including, the Effective Date of the Make-Whole Fundamental Change up to, and including, the Business Day immediately prior to the related Fundamental Change Purchase Date (or, in the case of a Make-Whole Fundamental Change that would have been a Fundamental Change but for the proviso in clause (2) of the definition thereof, the 35th Trading Day immediately following the Effective Date of such Make-Whole Fundamental Change).

(b) Upon surrender of Notes for conversion in connection with a Make-Whole Fundamental Change, the Company shall deliver shares of Common Stock, including the Additional Shares, as provided under Section 6.03, and subject to Section 6.04. If the consideration for the shares of Common Stock in any Make-Whole Fundamental Change described in clause (2)(A) of the definition of Fundamental Change is comprised entirely of cash, for any conversion of the Notes following the Effective Date of such Make-Whole Fundamental Change, the conversion obligation will be calculated based solely on the Share Price for the transaction and will be deemed to be, per $1,000 Principal Amount of Notes, an amount equal to the Applicable Conversion Rate (including any adjustment as described in this Section 6.08) *multiplied by* such Share Price.

(c) The number of Additional Shares, if any, by which the Conversion Rate will be increased will be determined by reference to the table attached as Schedule A hereto, based on the date on which the Make-Whole Fundamental Change occurs or becomes effective (the "**Effective Date**") and the price (the "**Share Price**") paid (or deemed paid) per share of Common Stock in the Make-Whole Fundamental Change. If the holders of the shares of Common Stock receive only cash in a Make-Whole Fundamental Change described in clause (2)(A) of the definition of Fundamental Change, the Share Price shall be the cash amount paid per share of Common Stock. Otherwise, the Share Price shall be the average of the Last Reported Sale Prices of the Common Stock over the five consecutive Trading Day period ending on, and including, the Trading Day immediately preceding the Effective Date of such Make-Whole Fundamental Change.

(d) The Share Prices set forth in the column headings of the table in Schedule A hereto shall be adjusted as of any date on which the Conversion Rate of the Notes is otherwise adjusted. The adjusted Share Prices shall equal the Share Prices immediately prior to such adjustment, *multiplied by* a fraction, the numerator of which is the Conversion Rate immediately prior to such adjustment giving rise to the Share Price adjustment and the denominator of which is the Conversion Rate as so adjusted. The number of Additional Shares set forth in such table shall be adjusted in the same manner as the Conversion Rate as set forth in Section 6.05.

(e) The exact Share Prices and Effective Dates may not be set forth in the table inSchedule A, in which case:

(i) If the Share Price is between two Share Prices in the table or the Effective Date is between two Effective Dates in the table, the number of Additional Shares by which the Conversion Rate will be increased will be determined by a straight-line interpolation between the number of Additional Shares set forth for the higher and lower Share Prices and the earlier and later Effective Dates, as applicable, based on a 365-day year.

(ii) If the Share Price is greater than $20.0 per share (subject to adjustment in the same manner and at the same time as the Share Prices pursuant to Section 6.08(d)), no Additional Shares will be added to the Conversion Rate.

(iii) If the Share Price is less than $1.25 per share (subject to adjustment in the same manner and at the same time as the Share Prices pursuant to Section 6.08(d)), no Additional Shares will be added to the Conversion Rate.

(f) If a Holder of Notes elects to convert its Notes prior to the Effective Date of any Make-Whole Fundamental Change, and the Make-Whole Fundamental Change does not occur, such Holder shall not be entitled to an increased Conversion Rate in connection with such conversion.

(g) The Company shall notify Holders (with a copy to the Trustee and the Conversion Agent) of the Effective Date of any Make-Whole Fundamental Change and issue a press release announcing such Effective Date no later than five Business Days after such Effective Date.

Section 6.09 *Taxes on Shares Issued*. Any issue of share certificates on conversions of Notes shall be made without charge to the converting Holder for any documentary, transfer, stamp or any similar tax in respect of the issue thereof, and the Company shall pay any and all documentary, stamp or similar issue or transfer taxes or duties that may be payable in respect of the issue or delivery of shares of Common Stock on conversion of Notes pursuant hereto. The Company shall not, however, be required to pay any such tax which may be payable in respect of any transfer involved in the issue and delivery of shares in any name other than that of the Holder of any Notes converted, and the Company shall not be required to issue or deliver any such share certificate unless and until the Person or Persons requesting the issue thereof shall have paid to the Company the amount of such tax or shall have established to the satisfaction of the Company that such tax has been paid.

Section 6.10 *Reservation of Shares; Shares to be Fully Paid; Compliance with Governmental Requirements*. The Company shall provide, free from preemptive rights, out of its authorized but unissued shares or shares held in treasury, sufficient shares of Common Stock to provide for the conversion of the Notes from time to time as such Notes are presented for conversion (assuming that, at the time of the computation of such number of shares or securities, all such Notes would be held by a single Holder).

The Company covenants that all shares of Common Stock that may be issued upon conversion of Notes shall be newly issued shares or treasury shares, shall be duly authorized, validly issued, fully paid and non-assessable and shall be free from preemptive rights and free from any lien or adverse claim.

The Company shall use its reasonable efforts to list or cause to have quoted any shares of Common Stock to be issued upon conversion of Notes on each national securities exchange or over-the-counter or other domestic market on which the Common Stock is then listed or quoted.

Section 6.11 *Responsibility of Trustee and Conversion Agent.* The Trustee and any other Conversion Agent shall not at any time be under any duty or responsibility to any Holder to determine the Conversion Rate or whether any facts exist which may require any adjustment of the Conversion Rate, or with respect to the nature or extent or calculation of any such adjustment when made, or with respect to the method employed, or herein or in any supplemental indenture provided to be employed, in making the same. The Trustee and any other Conversion Agent shall not be accountable with respect to the validity or value (or the kind or amount) of any Common Stock, or of any securities or property, which may at any time be issued or delivered upon the conversion of any Notes; and the Trustee and any other Conversion Agent make no representations with respect thereto. Neither the Trustee nor any Conversion Agent shall be responsible for any failure of the Company to issue, transfer or deliver any shares of Common Stock or share certificates or other securities or property or cash upon the surrender of any Notes for the purpose of conversion, with respect to Common Stock paid in connection with any Interest Payment Date, or to comply with any of the duties, responsibilities or covenants of the Company contained in this Article 6. Without limiting the generality of the foregoing, neither the Trustee nor any Conversion Agent shall be under any responsibility to determine the correctness of any provisions contained in any supplemental indenture entered into pursuant to Section 6.06 relating either to the kind or amount of shares of stock or securities or property (including cash) receivable by Holders upon the conversion of their Notes after any event referred to in such Section 6.06 or to any adjustment to be made with respect thereto, but, subject to the provisions of Section 10.01, may accept as conclusive evidence of the correctness of any such provisions, and shall be protected in relying upon, the Officers' Certificate (which the Company shall be obligated to file with the Trustee prior to the execution of any such supplemental indenture) with respect thereto.

Section 6.12 *Notice to Holders Prior to Certain Actions.* In case:

(a) the Company shall declare a dividend (or any other distribution) on Common Stock that would require an adjustment in the Conversion Rate pursuant to Section 6.05; or

(b) the Company shall authorize the granting to the holders of all or substantially all of the shares of Common Stock of options, rights or warrants to subscribe for or purchase any share of any class or any other options, rights or warrants; or

(c) of any reclassification or reorganization of the Common Stock (other than a subdivision or combination of its outstanding Common Stock, or a change in par value, or from par value to no par value, or from no par value to par value), or of any consolidation or merger to which the Company is a party and for which approval of any shareholders of the Company is required, or of the sale, lease or transfer of all or substantially all of the assets of the Company; or

(d) of the voluntary or involuntary dissolution, liquidation or winding up of the Company or any of its Significant Subsidiaries;

then, in each case, the Company shall cause to be filed with the Trustee and the Conversion Agent and to be mailed to each Holder at such Holder's address appearing in the Register, as promptly as practicable, a notice stating (x) the date on which a record is to be taken for the purpose of such dividend, distribution or rights or warrants, or, if a record is not to be taken, the date as of which the holders of shares of Common Stock of record to be entitled to such dividend, distribution or rights are to be determined, or (y) the date on which such reclassification, reorganization, consolidation, merger, sale, lease, transfer, dissolution, liquidation or winding up is expected to become effective or occur, and the date as of which it is expected that holders of shares of Common Stock of record shall be entitled to exchange their shares of Common Stock for securities or other property deliverable upon such reclassification, reorganization, consolidation, merger, sale, transfer, dissolution, liquidation or winding up. Failure to give such notice, or any defect therein, shall not affect the legality or validity of such dividend, distribution, reclassification, reorganization, consolidation, merger, sale, transfer, dissolution, liquidation or winding up.

Section 6.13 *Shareholder Rights Plan*. Each share of Common Stock issued upon conversion of Notes pursuant to this Article 6, including in connection with an Early Conversion Payment, shall be entitled to receive the appropriate number of rights, if any, and the certificates representing the shares of Common Stock issued upon such conversion shall bear such legends, if any, in each case as may be provided by the terms of any current or subsequent shareholder rights agreement adopted by the Company, as any such agreement may be amended from time to time. Notwithstanding the foregoing, if prior to any conversion such rights have separated from the Common Stock in accordance with the provisions of the applicable shareholder rights agreement, the Conversion Rate shall be adjusted at the time of separation as if the Company had distributed, to all holders of the Common Stock, Distributed Property as described in Section 6.03(c) above, subject to readjustment in the event of the expiration, termination or redemption of such rights.

Section 6.14 *Company Determination Final*. Any determination that the Company or its Board of Directors must make pursuant to this Article 6 shall be conclusive if made in good faith and in accordance with the provisions of this Article 6, absent manifest error, and set forth in a Board Resolution.

ARTICLE 7.
PURCHASE AT OPTION OF HOLDERS UPON A FUNDAMENTAL CHANGE

Section 7.01 *Purchase at Option of Holders upon a Fundamental Change.*

(a) *Generally*. If a Fundamental Change occurs at any time prior to the Maturity Date of the Notes, then each Holder shall have the right, at such Holder's option, to require the Company to purchase any or all of such Holder's Notes or any portion thereof that is equal to $1,000 or an integral multiple of $1,000 in excess thereof, on a date specified by the Company that is no earlier than the 15th and not later than the 35th calendar day following the date of the Fundamental Change Company Notice, subject to extension to comply with applicable law (the "**Fundamental Change Purchase Date**"), at a purchase price in cash equal to One Hundred Twenty Percent (120%) of the Principal Amount thereof, together with accrued and unpaid interest thereon to, but excluding, the Fundamental Change Purchase Date or, in the case of a Default by the Company in the payment of the Fundamental Change Purchase Price with respect to such Notes, the day on which such Default is no longer continuing (the "**Fundamental Change Purchase Price**"); *provided*, *however*, if the Fundamental Change Purchase Date occurs after a Regular Record Date and on or prior to the Interest Payment Date to which it relates, the Company will pay accrued and unpaid interest to the Holder of record on such Regular Record Date, subject to DTC's applicable procedures, and the Fundamental Change Purchase Price will be equal to 100% of the Principal Amount of the Notes to be purchased.

Purchases of Notes under this Section 7.01 shall be made, at the option of the Holder thereof upon:

(i) delivery to the Paying Agent of a duly completed notice (the "**Fundamental Change Purchase Notice**") in the form set forth on the reverse of the Notes on or prior to the Business Day immediately preceding the Fundamental Change Purchase Date, subject to extension to comply with applicable law, which must specify:

(A) if the Notes are Physical Notes, the certificate numbers of the Holder's Notes to be delivered for purchase;

(B) the portion of the Principal Amount of the Holder's Notes to be purchased, which must be $1,000 or an integral multiple in excess thereof; and

(C) that the Holder's Notes are to be purchased by the Company pursuant to the applicable provisions of the Notes and this Indenture; and

(ii) delivery or book-entry transfer of the Notes to the Trustee (or other Paying Agent appointed by the Company) (together with all necessary endorsements) at any time on or prior to the Business Day immediately preceding the Fundamental Change Purchase Date, subject to extension to comply with applicable law, at the applicable Corporate Trust Office of the Trustee (or other Paying Agent appointed by the Company), such delivery being a condition to receipt by the Holder of the Fundamental Change Purchase Price therefor; *provided* that such Fundamental Change Purchase Price shall be so paid pursuant to this Section 7.01 only if the Notes so delivered to the Trustee (or other Paying Agent appointed by the Company) shall conform in all respects to the description thereof in the related Fundamental Change Purchase Notice; *provided* that, if such Holder's Notes are not Physical Notes, such Holder must comply with the Applicable Procedures.

Any purchase by the Company contemplated pursuant to the provisions of this Section 7.01 shall be consummated by the delivery of the Fundamental Change Purchase Price to be received by the Holder promptly following the later of the Fundamental Change Purchase Date or the time of the book-entry transfer or delivery of the Notes.

Notwithstanding anything herein to the contrary, any Holder delivering to the Trustee (or other Paying Agent appointed by the Company) the Fundamental Change Purchase Notice contemplated by this Section 7.01 shall have the right to withdraw such Fundamental Change Purchase Notice (in whole or in part) at any time prior to the Close of Business on (i) the Business Day prior to the Fundamental Change Purchase Date or (ii) in the case of a Default by the Company in the payment of the Fundamental Change Purchase Price with respect to such Notes, the Business Day immediately preceding the day on which such Default is no longer continuing, in either case, by delivery of a written notice of withdrawal to the Trustee (or other Paying Agent appointed by the Company) in accordance with Section 7.03 below.

The Paying Agent shall promptly notify the Company of the receipt by it of any Fundamental Change Purchase Notice or written notice of withdrawal thereof.

(b) *Fundamental Change Company Notice.* On or before the 20th day after the occurrence of a Fundamental Change, the Company shall provide to all Holders of record of the Notes and the Trustee and Paying Agent a notice (the "**Fundamental Change Company Notice**") of the occurrence of such Fundamental Change and of the purchase right at the option of the Holders arising as a result thereof. Such mailing shall be by first class mail or otherwise sent electronically in accordance with the applicable procedures of the Depositary in the case of Global Notes. Simultaneously with providing such Fundamental Change Company Notice, the Company shall publish a notice containing the information included therein once in a newspaper of general circulation in The City of New York or publish such information on the Company's website or through such other public medium as the Company may use at such time.

Each Fundamental Change Company Notice will specify:

(i) the events causing the Fundamental Change;

(ii) the date of the Fundamental Change;

(iii) the last date on which a Holder may exercise the purchase right;

(iv) the Fundamental Change Purchase Price;

(v) the Fundamental Change Purchase Date;

(vi) the name and address of the Paying Agent and the Conversion Agent, if applicable;

(vii) if applicable, the Applicable Conversion Rate and any adjustments to the Applicable Conversion Rate;

(viii) if applicable, that the Notes with respect to which a Fundamental Change Purchase Notice has been delivered by a Holder may be converted only if the Holder withdraws the Fundamental Change Purchase Notice in accordance with Section 7.03; and

(ix) the procedures that Holders must follow to require the Company to purchase their Notes.

No failure of the Company to give the foregoing notices and no defect therein shall limit any Holder's purchase rights or affect the validity of the proceedings for the purchase of the Notes pursuant to this Section 7.01.

(c) *No Payment During an Acceleration*. Notwithstanding the foregoing, no Notes may be purchased by the Company at the option of the Holders pursuant to this Section 7.01 if the Principal Amount of the Notes has been accelerated, and such acceleration has not been rescinded, on or prior to the Fundamental Change Purchase Date (except in the case of an acceleration resulting from a Default by the Company in the payment of the Fundamental Change Purchase Price with respect to such Notes).

(d) *Payment of Fundamental Change Purchase Price.* The Notes to be purchased pursuant to this Section 7.01 shall be paid for in cash.

Section 7.02 *Effect of Fundamental Change Purchase Notice.* Upon receipt by the Paying Agent of the Fundamental Change Purchase Notice specified in Section 7.01(a), the Holder of the Note in respect of which such Fundamental Change Purchase Notice was given shall (unless such Fundamental Change Purchase Notice is withdrawn as specified in Section 7.03) thereafter be entitled to receive solely the Fundamental Change Purchase Price with respect to such Note. Such Fundamental Change Purchase Price shall be payable to such Holder promptly following the later of (x) the Fundamental Change Purchase Date with respect to such Note (provided the conditions in Section 7.01(a) have been satisfied) and (y) the time of delivery or book-entry transfer of such Note to the Paying Agent by the Holder thereof in the manner required by Section 7.01(a).

Section 7.03 *Withdrawal of Fundamental Change Purchase Notice.*

(a) A Fundamental Change Purchase Notice may be withdrawn (in whole or in part) by means of a written notice of withdrawal delivered to the Paying Agent in accordance with the Fundamental Change Company Notice prior to the Close of Business on (i) the Business Day immediately preceding the relevant Fundamental Change Purchase Date or (ii) in the case of a Default by the Company in the payment of the Fundamental Change Purchase Price with respect to such Notes, the Business Day immediately preceding the day on which such Default is no longer continuing, specifying:

(i) the Principal Amount of the withdrawn Notes;

(ii) if the Notes are Physical Notes, the certificate numbers of the withdrawn Notes; and

(iii) the Principal Amount, if any, of such Notes that remains subject to the original Fundamental Change Purchase Notice, which must be $1,000 or an integral multiple of $1,000 in excess thereof;

provided that, if such Holder's Notes are not Physical Notes, such Holder must comply with the Applicable Procedures.

Section 7.04 *Deposit of Fundamental Change Purchase Price.* Prior to 10:00 a.m. (local time in The City of New York) on the Fundamental Change Purchase Date, the Company shall deposit with the Paying Agent (or, if the Company or a Subsidiary or an Affiliate of either of them is acting as the Paying Agent, shall segregate and hold in trust as provided herein) an amount of money (in immediately available funds if deposited on such Business Day) sufficient to pay the Fundamental Change Purchase Price, of all the Notes or portions thereof that are to be purchased as of the Fundamental Change Purchase Date. The Company shall promptly notify the Trustee in writing of the amount of any deposits of cash made pursuant to this Section 7.04. If the Paying Agent holds money sufficient to pay the Fundamental Change Purchase Price of any Note surrendered for purchase and not withdrawn in accordance with this Indenture as of the Close of Business on the Fundamental Change Purchase Date, then immediately following the Close of Business on the Fundamental Change Purchase Date, (a) any such Note will cease to be outstanding and interest will cease to accrue thereon on the Fundamental Change Purchase Date (whether or not book-entry transfer of the Notes is made or whether or not the Notes are delivered to the Paying Agent) and (b) all other rights of the Holder in respect thereof will terminate (other than the right to receive the Fundamental Change Purchase Price and previously accrued and unpaid interest (including Additional Interest, if any) upon delivery or book-entry transfer of such Note).

Section 7.05 *Notes Purchased in Whole or in Part.* Any Note that is to be purchased, whether in whole or in part, shall be surrendered at the office of the Paying Agent (with, if the Company or the Trustee so requires, due endorsement by, or a written instrument of transfer in form satisfactory to the Company and the Trustee duly executed by, the Holder thereof or such Holder's attorney duly authorized in writing) and the Company shall execute and the Trustee shall authenticate and deliver to the Holder of such Note, without service charge, a new Note or Notes, of any authorized denomination as requested by such Holder in aggregate Principal Amount equal to, and in exchange for, the portion of the Principal Amount of the Note so surrendered which is not purchased.

Section 7.06 *Covenant to Comply With Securities Laws upon Purchase of Notes.* In connection with any offer to purchase Notes under Section 7.01, the Company shall, if required, comply with the provisions of the tender offer rules under the Exchange Act that may then be applicable, file a Schedule TO or any other required schedule under the Exchange Act and otherwise comply with all federal and state securities laws.

Section 7.07 *Repayment to the Company.* Subject to the requirements of any applicable abandoned property laws, regardless of who acts as Paying Agent, the Paying Agent shall return to the Company any cash that remains unclaimed, together with interest, if any, thereon, held by them for the payment of the Fundamental Change Purchase Price; provided that to the extent that the aggregate amount of cash deposited by the Company pursuant to Section 7.04 exceeds the aggregate Fundamental Change Purchase Price of the Notes or portions thereof which the Company is obligated to purchase as of the Fundamental Change Purchase Date, then as soon as practicable following the Fundamental Change Purchase Date, the Paying Agent shall return any such excess to the Company.

ARTICLE 8.
EVENTS OF DEFAULT; REMEDIES

Section 8.01 *Events of Default.* "**Event of Default**," wherever used herein, means any one of the following events (whatever the reason for such Event of Default and whether it shall be voluntary or involuntary or be effected by operation of law or pursuant to any judgment, decree or order of any court or any order, rule or regulation of any administrative or governmental body):

(a) default by the Company in any payment of interest on any Notes when due and payable and such default continues for a period of fifteen (15) days;

(b) default by the Company in the payment of the Principal Amount of any Note when due and payable on the Maturity Date, upon required purchase in connection with a Fundamental Change, upon declaration of acceleration or otherwise;

(c) failure by the Company to comply with its obligation to convert the Notes in accordance with this Indenture upon exercise of a Holder's conversion right, including the delivery of shares of Common Stock and Early Conversion Payment, if applicable, and such failure continues for a period of three Business Days;

(d) failure by the Company to provide the Fundamental Change Company Notice to Holders required pursuant to Section 7.01(b) hereof when due, and such failure continues for five Business Days;

(e) failure by the Company to comply with its obligations under Article 9 hereof;

(f) failure by the Company in the performance of any other covenant or agreement of the Company in the Notes or in this Indenture that continues for a period of 60 days after receipt by the Company of a Notice of Default;

(g) default by the Company or any Subsidiary of the Company with respect to any mortgage, indenture or instrument under which there may be issued or by which there may be secured or evidenced any indebtedness for money borrowed (or the payment of which is guaranteed by the Company or any of its Subsidiaries), whether such indebtedness or guarantee now exists, or will hereafter be created, which default (i) is caused by a failure to pay principal of or premium, if any, or interest on such indebtedness prior to the expiration of the grace period provided in such indebtedness on the date of such default or (ii) results in the acceleration of such indebtedness prior to its express maturity, and in each case in clause (i) or (ii), the principal amount of any such indebtedness, together with the principal amount of any other such indebtedness that has not been paid when due, or the maturity of which has been so accelerated, aggregates $1.5 million or more;

(h) a final judgment for the payment of $1.5 million or more (excluding any amounts covered by insurance or bond) rendered against the Company or any Subsidiary of the Company by a court of competent jurisdiction, which judgment is not discharged, stayed, vacated, paid or otherwise satisfied within 30 days after (i) the date on which the right to appeal thereof has expired if no such appeal has commenced, or (ii) the date on which all rights to appeal have been extinguished;

(i) the entry by a court having jurisdiction in the premises of (i) a decree or order for relief in respect of the Company or any Significant Subsidiary of the Company of a voluntary case or proceeding under any applicable federal, state or foreign bankruptcy, insolvency, reorganization or other similar law, (ii) a decree or order adjudging the Company or a Significant Subsidiary of the Company as bankrupt or insolvent, or approving as properly filed a petition seeking reorganization, arrangement, adjustment or composition of or in respect of the Company or any Significant Subsidiary of the Company under any applicable federal, state or foreign law or (iii) appointing a custodian, receiver, liquidator, assignee, trustee, sequestrator or other similar official of the Company or of a Significant Subsidiary of the Company of any substantial part of its property, or ordering the winding up or liquidation of its affairs, and the continuance of any such decree or order for relief or any such other decree or order unstayed and in effect for a period of 60 consecutive days;

(j) the commencement by the Company or by a Significant Subsidiary of the Company of a voluntary case or proceeding under any applicable federal, state or foreign bankruptcy, insolvency, reorganization or other similar law or of any other case or proceeding to be adjudicated a bankrupt or insolvent, or the consent by it to the entry of a decree or order for relief in respect of the Company or of a Significant Subsidiary of the Company in an involuntary case or proceeding under any applicable federal, state or foreign bankruptcy, insolvency, reorganization or other similar law or to the commencement of any bankruptcy or insolvency case or proceeding against it, or the filing by it of a petition or answer or consent seeking reorganization or relief under any applicable federal, state or foreign law, or the consent by it to the filing of such petition or to the appointment of or taking possession by a custodian, receiver, liquidator, assignee, trustee, sequestrator or other similar official of the Company or of a Significant Subsidiary of the Company or of any substantial part of such entity's property, or the making by it of an assignment for the benefit of creditors, or the admission by it in writing of its inability to pay its debts generally as they become due, or the taking of corporate action by the Company or by a Significant Subsidiary of the Company in furtherance of any such action; and

(k) except as permitted by this Indenture, any Note Guarantee is held in any judicial proceeding to be unenforceable or invalid or ceases for any reason to be in full force and effect, or any Guarantor, or any Person acting on behalf of any Guarantor, denies or disaffirms its obligations under its Note Guarantee.

The Trustee will not be charged with knowledge of any fact, Default or Event of Default unless either (1) a Trust Officer has actual knowledge of such fact, Default or Event of Default or (ii) written notice thereof will have be given to a Trust Officer at the Corporate Trust Office of the Trustee by the Company or any Holders of not less than 25% in aggregate Principal Amount of the outstanding Notes.

Section 8.02 *Acceleration of Maturity: Waiver of Past Defaults and Rescission*.

(a) If an Event of Default (other than those specified in Section 8.01(i) and Section 8.01(j) involving the Company, and as otherwise provided in Section 8.03) occurs and is continuing, then and in every such case the Trustee or the Holders of not less than 25% in aggregate Principal Amount of the outstanding Notes may declare 100% of the Principal Amount *plus* accrued and unpaid interest on all the outstanding Notes to be due and payable immediately, by a notice in writing to the Company (and to the Trustee if given by Holders), and upon any such declaration such Principal Amount *plus* accrued and unpaid interest *plus,* except to the extent prohibited by applicable law, a payment equal to the remaining scheduled payments of interest that would have been made on the Notes from the date of the Event of Default (or, in the case of an Event of Default between a Regular Record Date and the following Interest Payment Date, from such Interest Payment Date) until the first to occur of the Maturity Date and September 23, 2019, shall become immediately due and payable.

Notwithstanding the foregoing, in the case of an Event of Default specified in Section 8.01(i) or Section 8.01(j) with respect to the Company (but not with respect to any Significant Subsidiary of the Company or any group of Subsidiaries of the Company that, in the aggregate, would constitute a Significant Subsidiary of the Company), 100% of the Principal Amount *plus* accrued and unpaid interest on all outstanding Notes *plus,* except to the extent prohibited by applicable law, a payment equal to the remaining scheduled payments of interest that would have been made on the Notes from the date of the Event of Default (or, in the case of an Event of Default between a Regular Record Date and the following Interest Payment Date, from such Interest Payment Date) until the first to occur of the Maturity Date and September 23, 2019, will automatically become due and payable without any declaration or other act on the part of the Trustee or any Holder.

(b) The Holders of a majority in aggregate Principal Amount of the outstanding Notes, by written notice to the Company and the Trustee, may (x) waive any past Default and its consequences and (y) at any time after a declaration of acceleration has been made and before a judgment or decree for payment of the money due has been obtained by the Trustee as hereinafter in this Article 8 provided, rescind any such acceleration with respect to the Notes and its consequences, except, in each case, with respect to a Default described in Section 8.01(a), Section 8.01(b) or Section 8.01(c), or in respect of a covenant or provision hereof which under Article 13 cannot be modified or amended without the consent of the Holder of each outstanding Note affected, if:

(i) such rescission will not conflict with any judgment or decree of a court of competent jurisdiction; and

(ii) all existing Events of Default have been cured or waived.

Upon any such waiver, the Default which has been waived shall cease to exist and any Event of Default arising therefrom shall be deemed to have been cured, for every other purpose of this Indenture; but no such waiver shall extend to any subsequent or other Default or impair any right consequent.

No such rescission shall affect any subsequent default or impair any right consequent thereon.

Section 8.03 *Additional Interest*.

(a) If, at any time during the six-month period beginning on, and including, the date which is six months after the Issue Date, the Company fails to timely file any document or report that the Company is required to file with the Commission pursuant to Section 13 or 15(d) of the Exchange Act, as applicable (after giving effect to all applicable grace periods thereunder and other than current reports on Form 8-K), or the Notes (other than Affiliate Notes) are not otherwise Freely Tradable (as a result of restrictions pursuant to U.S. securities law or the terms of this Indenture or the Notes), the Company shall pay Additional Interest on the Notes which shall accrue at the rate of 0.50% per annum of the Principal Amount of Notes outstanding for each day during such period for which the Company's failure to file has occurred and is continuing or for which the Notes are not Freely Tradable (ending on the date that is one year from the Issue Date).

Further, if, and for so long as, the Restrictive Notes Legend has not been removed from the Notes (other than Affiliate Notes), the Notes are assigned a restricted CUSIP number or the Notes are not otherwise Freely Tradable as of the 375th day after the Issue Date, the Company shall pay Additional Interest on the Notes. Such Additional Interest will accrue on the Notes at the rate of 0.50% per annum of the Principal Amount of Notes outstanding until the Restrictive Notes Legend has been removed in accordance with Section 3.08, the Notes are assigned an unrestricted CUSIP number and the Notes are Freely Tradable.

Notwithstanding anything to the contrary in this Indenture, in no event shall the aggregate amount of Additional Interest payable pursuant to this Section 8.03(a), Section 8.03(b) hereof and Section 6 of the Registration Rights Agreement exceed 1.00% per annum.

The obligations of the Company pursuant to this Section 8.03(a) are separate and distinct from, and in addition to, the obligations of the Company pursuant to Section 8.03(b), subject to proviso to the first paragraph of this Section 8.03(a). Any Additional Interest payable pursuant to this Section 8.03(a) will be payable in arrears on each Interest Payment Date following accrual in the same manner as ordinary interest is payable pursuant to Section 2.03. The Company shall notify the Trustee and the Holders in writing of any Additional Interest due under Section 8.03 (a) at least 15 days prior to each Interest Payment Date, as applicable.

(b) Notwithstanding anything to the contrary in this Indenture, if so elected by the Company, the sole remedy for an Event of Default relating to the failure to comply with Section 4.08 hereof will (i) for the first 180 days after the occurrence of such an Event of Default (which, for the avoidance of doubt, will not occur until the Notice of Default has been provided, and the related 60-day period has passed) consist exclusively of the right to receive Additional Interest on the Notes at an annual rate equal to 0.25% of the Principal Amount of outstanding Notes and (ii) from the 181st day until the 360th day following the occurrence of such an Event of Default consist exclusively of the right to receive Additional Interest on the Notes at an annual rate equal to 0.50% of the Principal Amount of outstanding Notes. The Additional Interest payable pursuant to this Section 8.03(b) will be in addition to any Additional Interest that may accrue pursuant to Section 8.03(a) (subject to the proviso to the first paragraph of such Section). If the Company so elects, the Additional Interest payable under this Section 8.03(b) will be payable on all outstanding Notes from and including the date on which such Event of Default first occurs to, but excluding, the 360th day thereafter, or such earlier date on which such Event of Default has been cured or waived or ceases to exist. On the 361st day after such Event of Default, if such Event of Default has not been cured or waived prior to such 361st day, Additional Interest payable pursuant to this Section 8.03(b) will cease to accrue and the Notes will be subject to acceleration as provided in Section 8.02. In the event the Company does not elect to pay the Additional Interest payable pursuant to this Section 8.03(b) upon an Event of Default in accordance with this paragraph, the Notes will be subject to acceleration as provided in Section 8.02. Any Additional Interest payable pursuant to this Section 8.03(b) will be payable in arrears on each Interest Payment Date following accrual in the same manner as ordinary interest is payable pursuant to Section 2.03, except that payment shall be in cash on the final Interest Payment Date.

In order to elect to pay the Additional Interest payable pursuant to this Section 8.03(b) as the sole remedy during the first 360 days after the occurrence of an Event of Default relating to the failure to comply with Section 4.08 in accordance with the immediately preceding paragraph, the Company must notify all Holders, the Trustee and Paying Agent in writing of such election on or before the Close of Business on the date on which such Event of Default first occurs (which, for the avoidance of doubt, will not occur until the Notice of Default has been provided, and the related 60-day period has passed). Upon the failure to timely give all Holders, the Trustee and Paying Agent such notice, the Notes will be immediately subject to acceleration as provided in Section 8.02. For avoidance of doubt, the Trustee shall send the Notice of Default under this Section 8.03(b) only if it is directed to do so by the Holders in accordance with this Indenture.

Section 8.04 *Collection of Indebtedness and Suits for Enforcement by Trustee.* The Company covenants that if a Default is made in the payment of the Principal Amount plus accrued and unpaid interest on the Maturity Date therefor or in the payment of the Fundamental Change Purchase Price in respect of any Note, the Company will, upon demand of the Trustee, pay to it, for the benefit of the Holders of such Notes, the whole amount then due and payable on such Notes, and, in addition thereto, such further amount as shall be sufficient to cover the costs and expenses of collection, including the compensation, expenses, disbursements and advances of the Trustee, its agents and counsel.

If an Event of Default occurs and is continuing, the Trustee may, but shall not be obligated to, pursue any available remedy to collect the payment of the Principal Amount plus accrued but unpaid interest on the Notes or to enforce the performance of any provision of the Notes or this Indenture. The Trustee may maintain a proceeding even if the Trustee does not possess any of the Notes or does not produce any of the Notes in the proceeding. A delay or omission by the Trustee or any Holder in exercising any right or remedy accruing upon an Event of Default shall not impair the right or remedy or constitute a waiver of, or acquiescence in, the Event of Default. No remedy is exclusive of any other remedy. All available remedies are cumulative.

Section 8.05 *Trustee May File Proofs of Claim.* In case of any judicial proceeding relative to the Company (or any other obligor upon the Notes), its property or its creditors, the Trustee shall be entitled and empowered, by intervention in such proceeding or otherwise, to take any and all actions authorized under this Indenture and applicable law in order to have claims of the Holders and the Trustee allowed in any such proceeding. In particular, the Trustee shall be authorized to collect and receive any moneys or other property payable or deliverable on any such claims and to distribute the same; and any custodian, receiver, assignee, trustee, liquidator, sequestrator or other similar official in any such judicial proceeding is hereby authorized by each Holder to make such payments to the Trustee and, in the event that the Trustee shall consent to the making of such payments directly to the Holders, to pay to the Trustee any amount due it for the compensation, expenses, disbursements and advances of the Trustee, its agents and counsel and any other amounts due the Trustee under Section 10.07.

No provision of this Indenture shall be deemed to authorize the Trustee to authorize or consent to or accept or adopt on behalf of any Holder any plan of reorganization, arrangement, adjustment or composition affecting the Notes or the rights of any Holder thereof or to authorize the Trustee to vote in respect of the claim of any Holder in any such proceeding.

Section 8.06 *Application of Money Collected*. Any money collected by the Trustee pursuant to this Article shall be applied in the following order, at the date or dates fixed by the Trustee and, in case of the distribution of such money to Holders, upon presentation of the Notes and the notation thereon of the payment if only partially paid and upon surrender thereof if fully paid:

FIRST: To the payment of all amounts due the Trustee under Section 10.07;

SECOND: To the payment of the amounts then due and unpaid on the Notes for the Principal Amount, Redemption Price, Fundamental Change Purchase Price or interest (including Additional Interest, if any) as the case may be, in respect of which or for the benefit of which such money has been collected, ratably, without preference or priority of any kind, according to the amounts due and payable on such Notes; and

THIRD: To the payment of the remainder, if any, to the Company or any other Person lawfully entitled thereto.

Section 8.07 *Limitation on Suits*. No Holder of any Note shall have any right to institute any proceeding, judicial or otherwise, with respect to this Indenture or the Notes, or for the appointment of a receiver or trustee, or for any other remedy hereunder (other than in the case of an Event of Default specified in Section 8.01(a), Section 8.01(b) or Section 8.01(c)) unless:

(i) such Holder has previously given written notice to the Trustee of a continuing Event of Default;

(ii) the Holder or Holders of not less than 25% in aggregate Principal Amount of the outstanding Notes shall have made written request to the Trustee to institute proceedings in respect of such Event of Default in its own name as Trustee hereunder;

(iii) such Holder or Holders have offered to the Trustee security or indemnity satisfactory to it against any loss, liability or expense;

(iv) the Trustee for 60 days after its receipt of such request and offer of security or indemnity has failed to institute any such proceeding; and

(v) no direction, in the opinion of the Trustee, inconsistent with such written request has been given to the Trustee during such 60-day period by the Holders of a majority in aggregate Principal Amount of the outstanding Notes;

it being understood and intended that no one or more Holders shall have any right in any manner whatever by virtue of, or by availing itself of, any provision of this Indenture to affect, disturb or prejudice the rights of any other Holders, or to obtain or to seek to obtain priority or preference over any other Holders or to enforce any right under this Indenture, except in the manner herein provided and for the equal and ratable benefit of all the Holders.

Section 8.08 *Unconditional Right of Holders to Receive Payment.* Notwithstanding any other provision of this Indenture, the right of any Holder to receive payment of the Principal Amount (including the Redemption Price or the Fundamental Change Purchase Price or interest in respect of the Notes held by such Holder, on or after the respective due dates expressed in the Notes, or any Fundamental Change Purchase Date or otherwise, as applicable), any accrued and unpaid interest (including Additional Interest, if any) and to convert the Notes in accordance with Article 6 (including the receipt of the Early Conversion Payment), or to bring suit for the enforcement of any such payment on or after such respective dates or the right to convert, shall not be impaired or affected without the consent of such Holder.

Section 8.09 *Restoration of Rights and Remedies*. If the Trustee or any Holder has instituted any proceeding to enforce any right or remedy under this Indenture and such proceeding has been discontinued or abandoned for any reason, or has been determined adversely to the Trustee or to such Holder, then and in every such case, subject to any determination in such proceeding, the Company, the Trustee and the Holders shall be restored severally and respectively to their former positions hereunder and thereafter all rights and remedies of the Trustee and the Holders shall continue as though no such proceeding had been instituted.

Section 8.10 *Rights and Remedies Cumulative*. Except as otherwise provided with respect to the replacement or payment of mutilated, destroyed, lost or stolen Notes in the last paragraph of Section 3.07, no right or remedy herein conferred upon or reserved to the Trustee or to the Holders is intended to be exclusive of any other right or remedy, and every right and remedy shall, to the extent permitted by law, be cumulative and in addition to every other right and remedy given hereunder or now or hereafter existing at law or in equity or otherwise. The assertion or employment of any right or remedy hereunder shall not prevent the concurrent assertion or employment of any other appropriate right or remedy.

Section 8.11 *Delay or Omission Not Waiver*. No delay or omission of the Trustee or of any Holder of any Note to exercise any right or remedy accruing upon any Event of Default shall impair any such right or remedy or constitute a waiver of any such Event of Default or an acquiescence therein. Every right and remedy given by this Article or by law to the Trustee or to the Holders may be exercised from time to time, and as often as may be deemed expedient, by the Trustee or by the Holders, as the case may be.

Section 8.12 *Control by Holders*. The Holders of a majority in aggregate Principal Amount of the outstanding Notes may direct the time, method and place of conducting any proceeding for any remedy available to the Trustee or of exercising any trust or power conferred on the Trustee. However, if an Event of Default has occurred and is continuing, the Trustee will be required in the exercise of its powers to use the degree of care and skill that a prudent person would use under the circumstances in the conduct of its own affairs. Furthermore, the Trustee may refuse to follow any direction that conflicts with applicable law or this Indenture or that the Trustee determines is unduly prejudicial to the rights of any other Holder or that would involve the Trustee in personal liability. Prior to taking any action under this Indenture, the Trustee will be entitled to indemnification or security satisfactory to it against all losses, liability and expenses caused by taking or not taking such action.

Section 8.13 *Undertaking for Costs*. In any suit for the enforcement of any right or remedy under this Indenture or in any suit against the Trustee for any action taken or omitted by it as Trustee, in either case in respect of the Notes, a court may require any party litigant in such suit to file an undertaking to pay the costs of the suit, and the court may assess costs, including attorney's fees and expenses, against any party litigant in the suit having due regard to the merits and good faith of the claims or defenses made by the party litigant; but the provisions of this Section 8.13 shall not apply to any suit instituted by the Company, to any suit instituted by the Trustee, to any suit instituted by any Holder, or group of Holders, holding in the aggregate more than 10% in Principal Amount of the outstanding Notes, or to any suit instituted by any Holder for the enforcement of the payment of the Principal Amount on any Note on or after the Maturity Date of such Note or the Fundamental Change Purchase Date.

Section 8.14 *Violations of Certain Covenants*. A violation of Section 4.08 or any other covenant or agreement in this Indenture that expressly provides that a violation of such covenant or agreement shall not constitute an Event of Default may only be enforced by the Trustee by instituting a legal proceeding against the Company for enforcement of such covenant or agreement.

ARTICLE 9.
MERGER, CONSOLIDATION OR SALE OF ASSETS

Section 9.01 *Company May Consolidate, etc., only on Certain Terms*. The Company shall not, in a single transaction or through a series of related transactions, consolidate or merge with or into any other Person, or, directly or indirectly, sell, convey, transfer, lease or otherwise dispose of all or substantially all of Company's assets to another Person or group of affiliated Persons, except that the Company may consolidate or merge with or into, or sell, convey, transfer, lease or otherwise dispose of all or substantially all of its assets to another Person if:

(i) the Company is the surviving Person or the resulting, surviving, transferee or successor Person (the "**Successor Company**") (if other than the Company) is a corporation organized and existing under the laws of the United States of America, any State of the United States of America or the District of Columbia and such Successor Company (if not the Company) expressly assumes by an indenture supplemental hereto all obligations of the Company under this Indenture, including payment of the Principal Amount and interest on the Notes, and the performance and observance of all of the covenants and conditions of this Indenture to be performed by the Company, and expressly assumes by a supplement all obligations of the Company under the Registration Rights Agreement, and the performance and observance of all of the covenants and conditions of the Registration Rights Agreement to be performed by the Company;

(ii) immediately after giving effect to such transaction, no Default under this Indenture has occurred and is continuing;

(iii) if, upon the occurrence of any such consolidation, merger, sale, conveyance, transfer, lease or other disposal, (x) the Notes would become convertible pursuant to the terms of this Indenture into securities issued by an issuer other than the Successor Company, and (y) such Successor Company is a wholly owned Subsidiary of the issuer of such securities into which the Notes have become convertible, such other issuer will fully and unconditionally guarantee on a senior basis the Successor Company's obligations under the Notes; and

(iv) the Company shall have delivered to the Trustee an Officers' Certificate and Opinion of Counsel stating that such consolidation, merger, sale, conveyance, transfer lease or other disposal and, if a supplemental indenture is required in connection with such transaction, such supplemental indenture, comply with this Article 9 and that all conditions precedent herein provided for relating to such transaction have been satisfied.

Section 9.02 *Successor Substituted*. Upon any consolidation of the Company with, or merger of the Company into, any other Person or any sale, conveyance, transfer, lease or other disposal of all or substantially all of the Company's assets to another Person in accordance with Section 9.01, the Successor Company formed by such consolidation or into which the Company is merged or to which such sale, conveyance, transfer, lease or other disposal is made will succeed to, and may exercise every right and power of, the Company under this Indenture and the Registration Rights Agreement with the same effect as if such Successor Company had been named as the Company herein and therein, and thereafter. If the predecessor is still in existence after such transaction, it will be released from its obligations and covenants under this Indenture, the Registration Rights Agreement and the Notes, except in the case of a lease of all or substantially all of its properties and assets.

ARTICLE 10.
THE TRUSTEE

Section 10.01 *Duties and Responsibilities of Trustee.*

(a) The Trustee, prior to the occurrence of an Event of Default and after the curing of all Events of Default which may have occurred, undertakes to perform such duties and only such duties as are specifically set forth in this Indenture. In case an Event of Default has occurred (which has not been cured or waived), the Trustee shall exercise such of the rights and powers vested in it by this Indenture, and use the same degree of care and skill in their exercise, as a prudent person would exercise or use under the circumstances in the conduct of his own affairs.

(b) No provision of this Indenture shall be construed to relieve the Trustee from liability for its own negligent action, its own negligent failure to act or its own willful misconduct, except that:

(i) prior to the occurrence of an Event of Default and after the curing or waiving of all Events of Default which may have occurred:

(A) the duties and obligations of the Trustee shall be determined solely by the express provisions of this Indenture and applicable law, and the Trustee shall not be liable except for the performance of such duties and obligations as are specifically set forth in this Indenture and no implied covenants or obligations shall be read into this Indenture against the Trustee; and

(B) in the absence of gross negligence and willful misconduct on the part of the Trustee, the Trustee may conclusively rely as to the truth of the statements and the correctness of the opinions expressed therein, upon any certificates or opinions furnished to the Trustee and conforming to the requirements of this Indenture; but, in the case of any such certificates or opinions which by any provisions hereof are specifically required to be furnished to the Trustee, the Trustee shall be under a duty to examine the same to determine whether or not they conform to the requirements of this Indenture (but need not confirm or investigate the accuracy of any mathematical calculations or other facts stated therein);

(ii) the Trustee shall not be liable for any error of judgment made in good faith by a Trust Officer or Officers of the Trustee, unless the Trustee was grossly negligent in ascertaining the pertinent facts;

(iii) the Trustee shall not be liable with respect to any action taken or omitted to be taken by it in good faith in accordance with the written direction of the Holders of not less than a majority in Principal Amount of the Notes at the time outstanding determined as provided in Section 1.04 relating to the time, method and place of conducting any proceeding for any remedy available to the Trustee, or exercising any trust or power conferred upon the Trustee, under this Indenture;

(iv) whether or not therein provided, every provision of this Indenture relating to the conduct or affecting the liability of, or affording protection to, the Trustee shall be subject to the provisions of this Section;

(v) the Trustee shall not be liable in respect of any payment (as to the correctness of amount, entitlement to receive or any other matters relating to payment) or notice effected by the Company or any Paying Agent or any records maintained by any co-Registrar with respect to the Notes;

(vi) if any party fails to deliver a notice relating to an event the fact of which, pursuant to this Indenture, requires notice to be sent to the Trustee, the Trustee may conclusively rely on its failure to receive such notice as reason to act as if no such event occurred;

(vii) The Trustee shall have no responsibility with respect to any information, statement or recital in any private placement memorandum or other disclosure material prepared or distributed with respect to the Notes or for compliance with any securities laws in connection with the issuance, sale, or conversion of the Notes, which shall be the sole responsibility of the Company;

(viii) In no event shall the Trustee be responsible or liable for any special, indirect, punitive or consequential loss or damage of any kind whatsoever (including, but not limited to, loss of profit), irrespective of whether the Trustee has been advised of the likelihood of such loss or damage and regardless of the form of action;

(ix) The Trustee shall not be required to give any bond or surety in respect of the performance of its powers or duties hereunder;

(x) Under no circumstances shall the Trustee be liable in its individual capacity for the obligations evidenced by the Notes; and

(xi) In the absence of written investment direction from the Company, all cash received by the Trustee shall be placed in a non-interest bearing trust account, and in no event shall the Trustee be liable for the selection of investments or for investment losses incurred thereon or for losses incurred as a result of the liquidation of any such investment prior to its maturity date or the failure of the party directing such investments prior to its maturity date or the failure of the party directing such investment to provide timely written investment direction, and the Trustee shall have no obligation to invest or reinvest any amounts held hereunder in the absence of such written investment direction from the Company.

None of the provisions contained in this Indenture shall require the Trustee to expend or risk its own funds or otherwise incur personal financial liability in the performance of any of its duties or in the exercise of any of its rights or powers, if there is reasonable ground for believing that the repayment of such funds or adequate indemnity against such risk or liability is not reasonably assured to it.

The rights, privileges, protections, immunities and benefits given to the Trustee, including, without limitation, its right to be indemnified, are extended to, and shall be enforceable by, the Trustee in each of its capacities hereunder (including, without limitation, as Custodian, Registrar, Paying Agent, Conversion Agent, or transfer agent hereunder), and to each agent, custodian and other Person employed to act hereunder.

Section 10.02 *Notice of Defaults*. The Trustee shall give the Holders notice of any Default of which a Trust Officer has actual knowledge or is deemed to have notice under Section 10.03(i) within 90 days after the knowledge thereof so long as such Default is continuing; *provided*, that (except in the case of any Default in the payment of Principal Amount of, or interest on, any of the Notes or Fundamental Change Purchase Price or a default in the delivery of the consideration due upon conversion), the Trustee shall be protected in withholding such notice if and so long as the Trustee in good faith determines that the withholding of such notice is in the interest of the Holders of Notes.

Section 10.03 *Reliance on Documents, Opinions, Etc*. Except as otherwise provided in Section 10.01:

(a) the Trustee may rely and shall be protected in acting upon any resolution, certificate, statement, instrument, opinion, report, notice, request, consent, order, bond, debenture, note, coupon or other paper or document (whether in its original, facsimile or electronic form) believed by it in good faith to be genuine and to have been signed or presented by the proper party or parties;

(b) any request, direction, order or demand of the Company mentioned herein shall be sufficiently evidenced by an Officers' Certificate (unless other evidence in respect thereof be herein specifically prescribed); and any resolution of the Board of Directors may be evidenced to the Trustee by a copy thereof certified by the Secretary, any Assistant Secretary or the General Counsel of the Company;

(c) the Trustee may consult with counsel of its own selection and any advice or Opinion of Counsel shall be full and complete authorization and protection in respect of any action taken or omitted by it hereunder in good faith and in accordance with such advice or Opinion of Counsel;

(d) the Trustee shall be under no obligation to exercise any of the rights or powers vested in it by this Indenture at the request, order or direction of any of the Holders pursuant to the provisions of this Indenture (including upon the occurrence and during the continuance of an Event of Default), unless such Holders shall have offered to the Trustee security or indemnity satisfactory to it against any loss, expenses and liabilities which may be incurred therein or thereby;

(e) the Trustee shall not be bound to make any investigation into the facts or matters stated in any resolution, certificate, statement, instrument, opinion, report, notice, request, direction, consent, order, bond, debenture or other paper or document, but the Trustee, in its discretion, may make such further inquiry or investigation into such facts or matters as it may see fit, and, if the Trustee shall determine to make such further inquiry or investigation, it shall be entitled to examine the books, records and premises of the Company, personally or by agent or attorney (at the reasonable expense of the Company and shall incur no liability of any kind by reason of such inquiry or investigation);

(f) the Trustee may execute any of the trusts or powers hereunder or perform any duties hereunder either directly or by or through agents or attorneys and the Trustee shall not be responsible for any misconduct or negligence on the part of any agent or attorney appointed by it with due care hereunder;

(g) the Trustee shall not be liable for any action taken, suffered, or omitted to be taken by it in good faith and reasonably believed by it to be authorized or within the discretion or rights or powers conferred upon it by this Indenture;

(h) in no event shall the Trustee be responsible or liable for special, indirect, or consequential loss or damage of any kind whatsoever (including, but not limited to, loss of profit) irrespective of whether the Trustee has been advised of the likelihood of such loss or damage and regardless of the form of action;

(i) the Trustee shall not be deemed to have notice of any Default or Event of Default unless a Trust Officer of the Trustee has actual knowledge thereof or unless written notice of any event which is in fact such a default is received by the Trustee at the Corporate Trust Office of the Trustee, and such notice references the Notes and this Indenture;

(j) the rights, privileges, protections, immunities and benefits given to the Trustee, including, without limitation, its right to be indemnified, are extended to, and shall be enforceable by, the Trustee in each of its capacities hereunder, and each agent, custodian and other Person employed to act hereunder;

(k) the permissive rights of the Trustee enumerated herein shall not be construed as duties; and

(l) the Trustee shall not be obligated to take possession of any Common Stock, whether upon conversion or in connection with any discharge of this Indenture pursuant to Article 12 hereof, but shall satisfy its obligation as Conversion Agent by working through the stock transfer agent of the Company from time to time as directed by the Company.

Section 10.04 *No Responsibility for Recitals, Etc*. The recitals contained herein and in the Notes (except in the Trustee's certificate of authentication) shall be taken as the statements of the Company, and the Trustee assumes no responsibility for the correctness of the same. The Trustee makes no representations as to the validity or sufficiency of this Indenture or of the Notes. The Trustee shall not be accountable for the use or application by the Company of any Notes or the proceeds of any Notes authenticated and delivered by the Trustee in conformity with the provisions of this Indenture.

Section 10.05 *Trustee, Paying Agents, Conversion Agents or Registrar May Own Notes*. The Trustee, any Paying Agent, any Conversion Agent or Registrar, in its individual or any other capacity, may become the owner or pledgee of Notes with the same rights it would have if it were not Trustee, Paying Agent, Conversion Agent or Registrar.

Section 10.06 *Monies to be Held in Trust.* Subject to the provisions of Section 12.04, all monies and properties received by the Trustee shall, until used or applied as herein provided, be held in trust for the purposes for which they were received. Money held by the Trustee in trust hereunder need not be segregated from other funds except to the extent required by law. The Trustee shall be under no liability for interest on any money received by it hereunder except as may be agreed in writing from time to time by the Company and the Trustee.

Section 10.07 *Compensation and Expenses of Trustee*. The Company covenants and agrees to pay to the Trustee from time to time, and the Trustee shall be entitled to, compensation for all services rendered by it hereunder in any capacity (which shall not be limited by any provision of law in regard to the compensation of a trustee of an express trust) as mutually agreed to from time to time in writing between the Company and the Trustee, and the Company will pay or reimburse the Trustee upon its request for all expenses, disbursements and advances reasonably incurred or made by the Trustee in accordance with any of the provisions of this Indenture (including the compensation and the expenses and disbursements of its counsel and of all Persons not regularly in its employ) except any such expense, disbursement or advance as may arise from its gross negligence or willful misconduct. The Company also covenants to indemnify the Trustee (or any officer, director or employee of the Trustee), in any capacity under this Indenture and its agents and any authenticating agent for, and to hold them harmless against, any and all loss, liability, claim or expense incurred without negligence or willful misconduct on the part of the Trustee or such officers, directors, employees and agent or authenticating agent, as the case may be (as determined by a final, non-appealable order of a court of competent jurisdiction), and arising out of or in connection with the acceptance or administration of this trust or in any other capacity hereunder, including the costs and expenses of defending themselves against any claim of liability in the premises. The obligations of the Company under this Section 10.07 to compensate or indemnify the Trustee and to pay or reimburse the Trustee for expenses, disbursements and advances shall be secured by a lien prior to that of the Notes upon all property and funds held or collected by the Trustee as such, except funds held in trust for the benefit of the Holders of particular Notes. The obligation of the Company under this Section shall survive the satisfaction and discharge of this Indenture and the resignation or removal of the Trustee.

When the Trustee and its agents and any authenticating agent incur expenses or render services after an Event of Default specified in Section 8.01(i) or Section 8.01(j) with respect to the Company occurs, the expenses and the compensation for the services are intended to constitute expenses of administration under any bankruptcy, insolvency or similar laws.

Section 10.08 *Officers' Certificate as Evidence*. Except as otherwise provided in Section 10.01, whenever in the administration of the provisions of this Indenture the Trustee shall deem it necessary or desirable that a matter be proved or established prior to taking or omitting any action hereunder, such matter (unless other evidence in respect thereof be herein specifically prescribed) may, in the absence of negligence or willful misconduct on the part of the Trustee, be deemed to be conclusively proved and established by an Officers' Certificate delivered to the Trustee.

Section 10.09 *Conflicting Interests of Trustee.* If the Trustee has or shall acquire a conflicting interest within the meaning of the Trust Indenture Act, the Trustee shall either eliminate such interest or resign, to the extent and in the manner provided by, and subject to the provisions of, this Indenture.

Section 10.10 *Eligibility of Trustee*. There shall at all times be a Trustee hereunder which shall be a Person that is eligible pursuant to the Trust Indenture Act to act as such and has a combined capital and surplus of at least $50,000,000 (or if such Person is a member of a bank holding company system, its bank holding company shall have a combined capital and surplus of at least $50,000,000). If such Person publishes reports of condition at least annually, pursuant to law or to the requirements of any supervising or examining authority, then for the purposes of this Section the combined capital and surplus of such Person shall be deemed to be its combined capital and surplus as set forth in its most recent report of condition so published. If at any time the Trustee shall cease to be eligible in accordance with the provisions of this Section 10.10, it shall resign immediately in the manner and with the effect hereinafter specified in this Article.

Section 10.11 *Resignation or Removal of Trustee*.

(a) The Trustee may at any time resign by giving written notice of such resignation to the Company and to the Holders of Notes. Upon receiving such notice of resignation, the Company shall promptly appoint a successor trustee by written instrument, in duplicate, executed by order of the Board of Directors, one copy of which instrument shall be delivered to the resigning Trustee and one copy to the successor trustee. If no successor trustee shall have been so appointed and have accepted appointment 60 days after the mailing of such notice of resignation to the Holders, the resigning Trustee may, upon 10 Business Days' notice to the Company and the Holders, appoint a successor identified in such notice or may petition, at the expense of the Company, any court of competent jurisdiction for the appointment of a successor trustee, or, if any Holder who has been a bona fide Holder of a Note or Notes for at least six (6) months may, subject to the provisions of Section 8.13, on behalf of himself and all others similarly situated, petition any such court for the appointment of a successor trustee. Such court may thereupon, after such notice, if any, as it may deem proper and prescribe, appoint a successor trustee.

(b) In case at any time any of the following shall occur:

(i) the Trustee shall fail to comply with Section 10.09 after written request therefor by the Company or by any Holder who has been a bona fide Holder of a Note or Notes for at least six (6) months; or

(ii) the Trustee shall cease to be eligible in accordance with the provisions of Section 10.10 and shall fail to resign after written request therefor by the Company or by any such Holder; or

(iii) the Trustee shall become incapable of acting, or shall be adjudged a bankrupt or insolvent, or a receiver of the Trustee or of its property shall be appointed, or any public officer shall take charge or control of the Trustee or of its property or affairs for the purpose of rehabilitation, conservation or liquidation;

then, in any such case, the Company may remove the Trustee and appoint a successor trustee by written instrument, in duplicate, executed by order of the Board of Directors, one copy of which instrument shall be delivered to the Trustee so removed and one copy to the successor trustee, or, subject to the provisions of Section 8.13, any Holder who has been a bona fide Holder of a Note or Notes for at least six (6) months may, on behalf of himself and all others similarly situated, petition any court of competent jurisdiction for the removal of the Trustee and the appointment of a successor trustee; *provided, however*, that if no successor Trustee shall have been appointed and have accepted appointment sixty (60) days after either the Company or the Holders has removed the Trustee, the Trustee so removed may petition at its own expense any court of competent jurisdiction for an appointment of a successor trustee. Such court may thereupon, after such notice, if any, as it may deem proper and prescribe, remove the Trustee and appoint a successor trustee.

(c) The Holders of a majority in aggregate Principal Amount of the Notes at the time outstanding may at any time remove the Trustee and nominate a successor trustee which shall be deemed appointed as successor trustee unless, within 10 days after notice to the Company of such nomination, the Company objects thereto, in which case the Trustee so removed or any Holder, or if such Trustee so removed or any Holder fails to act, the Company, upon the terms and conditions and otherwise as in Section 10.11(a) provided, may petition any court of competent jurisdiction for an appointment of a successor trustee.

(d) Any resignation or removal of the Trustee and appointment of a successor trustee pursuant to any of the provisions of this Section 8.11 shall become effective upon acceptance of appointment by the successor trustee as provided in Section 10.12.

Section 10.12 *Acceptance by Successor Trustee.* Any successor trustee appointed as provided in Section 10.11 shall execute, acknowledge and deliver to the Company and to its predecessor trustee an instrument accepting such appointment hereunder, and thereupon the resignation or removal of the predecessor trustee shall become effective and such successor trustee, without any further act, deed or conveyance, shall become vested with all the rights, powers, duties and obligations of its predecessor hereunder, with like effect as if originally named as trustee herein; but, nevertheless, on the written request of the Company or of the successor trustee, the trustee ceasing to act shall, upon payment of any amount then due it pursuant to the provisions of Section 10.07, execute and deliver an instrument transferring to such successor trustee all the rights and powers of the trustee so ceasing to act. Upon request of any such successor trustee, the Company shall execute any and all instruments in writing for more fully and certainly vesting in and confirming to such successor trustee all such rights and powers. Any trustee ceasing to act shall, nevertheless, retain a lien upon all property and funds held or collected by such trustee as such, except for funds held in trust for the benefit of Holders of particular Notes, to secure any amounts then due it pursuant to the provisions of Section 10.07. The obligation of the Company under Section 10.07 shall survive the satisfaction and discharge of this Indenture and the resignation or removal of the Trustee.

No successor trustee shall accept appointment as provided in this Section 10.12 unless, at the time of such acceptance, such successor trustee shall be qualified under the provisions of Section 10.09 and be eligible under the provisions of Section 10.10.

Upon acceptance of appointment by a successor trustee as provided in this Section 10.12, the Company (or the former trustee, at the written direction of the Company) shall mail or cause to be mailed notice of the succession of such trustee hereunder to the Holders of Notes at their addresses as they shall appear on the Register (or otherwise send in accordance with the applicable procedures of the Depositary in the case of Global Notes). If the Company fails to mail such notice within 10 days after acceptance of appointment by the successor trustee, the successor trustee shall cause such notice to be mailed at the expense of the Company.

Section 10.13 *Succession by Merger, Etc*. Any corporation into which the Trustee may be merged or converted or with which it may be consolidated, or any corporation resulting from any merger, conversion or consolidation to which the Trustee shall be a party, or any corporation succeeding to all or substantially all of the corporate trust business of the Trustee (including any trust created by this Indenture), shall be the successor to the Trustee hereunder without the execution or filing of any paper or any further act on the part of any of the parties hereto, provided that in the case of any corporation succeeding to all or substantially all of the corporate trust business of the Trustee, such corporation shall be qualified under the provisions of Section 10.09 and eligible under the provisions of Section 10.10.

In case at the time such successor to the Trustee shall succeed to the trusts created by this Indenture, any of the Notes shall have been authenticated but not delivered, any such successor to the Trustee may adopt the certificate of authentication of any predecessor trustee or authenticating agent appointed by such predecessor trustee, and deliver such Notes so authenticated; and in case at that time any of the Notes shall not have been authenticated, any successor to the Trustee or any authenticating agent appointed by such successor trustee may authenticate such Notes in the name of the successor trustee; and in all such cases such certificates shall have the full force that is provided in the Notes or in this Indenture; *provided*, *however*, that the right to adopt the certificate of authentication of any predecessor Trustee or authenticate Notes in the name of any predecessor Trustee shall apply only to its successor or successors by merger, conversion or consolidation.

Section 10.14 *Preferential Collection of Claims*. If and when the Trustee shall be or become a creditor of the Company (or any other obligor upon the Notes), the Trustee shall be subject to the provisions of the Trust Indenture Act regarding the collection of the claims against the Company (or any such other obligor).

Section 10.15 *Trustee's Application for Instructions from the Company*. Any application by the Trustee for written instructions from the Company (other than with regard to any action proposed to be taken or omitted to be taken by the Trustee that affects the rights of the Holders of the Notes under this Indenture) may, at the option of the Trustee, set forth in writing any action proposed to be taken or omitted by the Trustee under this Indenture and the date on and/or after which such action shall be taken or such omission shall be effective. The Trustee shall not be liable for any action taken by, or omission of, the Trustee in accordance with a proposal included in such application on or after the date specified in such application (which date shall not be less than three (3) Business Days after the date any officer of the Company actually receives such application, unless any such officer shall have consented in writing to any earlier date) unless prior to taking any such action (or the effective date in the case of an omission), the Trustee shall have received written instructions in response to such application specifying the action to be taken or omitted.

ARTICLE 11.
HOLDERS' LISTS AND REPORTS BY TRUSTEE

Section 11.01 *Company to Furnish Trustee Names and Addresses of Holders*. The Company will furnish or cause to be furnished to the Trustee:

(i) semiannually, not more than 15 days after each Regular Record Date, a list, in such form as the Trustee may reasonably require, of the names and addresses of the Holders as of such Regular Record Date; and

(ii) at such other times as the Trustee may request in writing, within 30 days after the receipt by the Company of any such request, a list of similar form and content as of a date not more than 15 days prior to the time such list is furnished;

excluding from any such list names and addresses received by the Trustee in its capacity as Registrar; *provided, however*, that no such list need be furnished so long as the Trustee is acting as Registrar.

Section 11.02 *Preservation of Information; Communications to Holders*

(a) The Trustee shall preserve, in as current a form as is reasonably practicable, the names and addresses of Holders contained in the most recent list furnished to the Trustee as provided in Section 11.01 and the names and addresses of Holders received by the Trustee in its capacity as Registrar. The Trustee may destroy any list furnished to it as provided in Section 11.01 upon receipt of a new list so furnished.

(b) The rights of Holders to communicate with other Holders with respect to their rights under this Indenture or under the Notes, and the corresponding rights and duties of the Trustee, shall be as provided under applicable law.

Every Holder, by receiving and holding the same, agrees with the Company and the Trustee that neither the Company nor the Trustee nor any agent of either of them shall be held accountable by reason of any disclosure of information as to names and addresses of Holders made pursuant to applicable law.

ARTICLE 12.
SATISFACTION AND DISCHARGE

Section 12.01 *Discharge of Indenture*. When (a) the Company shall deliver to the Trustee for cancellation all Notes theretofore authenticated (other than any Notes that have been destroyed, lost or stolen and in lieu of or in substitution for which other Notes shall have been authenticated and delivered) and not theretofore canceled, or (b) all the Notes not theretofore canceled or delivered to the Trustee for cancellation shall have become due and payable, and the Company shall deposit with the Trustee, in trust, cash or shares of Common Stock (in the case of any conversion) sufficient to pay on the Maturity Date, upon any Fundamental Change Date or upon any conversion (other than any Notes that shall have been mutilated, destroyed, lost or stolen and in lieu of or in substitution for which other Notes shall have been authenticated and delivered) not theretofore canceled or delivered to the Trustee for cancellation, including principal and interest or shares of Common Stock and Early Conversion Payment, if applicable (in the case of any conversion) due to such Maturity Date, Fundamental Change Purchase Date or upon conversion, as the case may be, accompanied by a verification report, as to the sufficiency of the deposited amount, from an independent certified accountant or other financial professional satisfactory to the Trustee, and if the Company shall also pay or deliver or cause to be paid or delivered all other sums payable or deliverable hereunder by the Company, then this Indenture shall cease to be of further effect (except as to (i) remaining rights of registration of transfer, substitution and exchange and conversion of Notes, (ii) rights hereunder of Holders to receive payments of principal of and interest or (in the case of any conversion) shares of Common Stock and Early Conversion Payment, if applicable, on, the Notes and the other rights, duties and obligations of Holders, as beneficiaries hereof with respect to the amounts, if any, so deposited with the Trustee and (iii) the rights, obligations and immunities of the Trustee hereunder), and the Trustee, on written demand of the Company accompanied by an Officers' Certificate and an Opinion of Counsel as required by Section 1.02 and at the cost and expense of the Company, shall execute such instruments reasonably requested by the Company acknowledging satisfaction of and discharging this Indenture; the Company, however, hereby agrees to reimburse the Trustee for any costs or expenses thereafter reasonably and properly incurred by the Trustee and to compensate the Trustee for any services thereafter reasonably and properly rendered by the Trustee in connection with this Indenture or the Notes. The obligation of the Company under Section 10.07 shall survive the satisfaction and discharge of this Indenture and the resignation or removal of the Trustee.

Section 12.02 *Deposited Monies to be Held in Trust by Trustee*. Subject to Section 12.04, all monies and shares of Common Stock deposited with the Trustee pursuant to Section 12.01 shall be held in trust for the sole benefit of the Holders, and such monies and shares of Common Stock shall be applied by the Trustee to the payment, either directly or through any Paying Agent (including the Company if acting as its own Paying Agent), to the Holders of the particular Notes for the payment or delivery upon conversion thereof have been deposited with the Trustee, of all sums and amounts due thereon for principal and interest or upon conversion.

Section 12.03 *Paying Agent to Repay Monies Held.* Upon the satisfaction and discharge of this Indenture, all monies then held by any Paying Agent of the Notes (other than the Trustee) shall, upon written request of the Company, be repaid to it or paid to the Trustee, and thereupon such Paying Agent shall be released from all further liability with respect to such Monies.

Section 12.04 *Return of Unclaimed Monies*. Subject to the requirements of applicable abandoned property laws, any monies or shares of Common Stock deposited with or paid to the Trustee for payment of the principal of or interest on Notes and not applied but remaining unclaimed by the Holders of Notes for two years after the date upon which the principal of or interest on such Notes or shares of Common Stock, as the case may be, shall have become due and payable, shall be repaid to the Company by the Trustee on demand and all liability of the Trustee shall thereupon cease with respect to such monies or shares of Common Stock; and the Holder of any of the Notes shall thereafter look only to the Company for any payment or delivery that such Holder may be entitled to collect unless an applicable abandoned property law designates another Person.

Section 12.05 *Reinstatement*. If the Trustee or the Paying Agent is unable to apply any money or shares of Common Stock in accordance with Section 12.02 by reason of any order or judgment of any court or governmental authority enjoining, restraining or otherwise prohibiting such application, the Company's obligations under this Indenture and the Notes shall be revived and reinstated as though no deposit had occurred pursuant to Section 12.01 until such time as the Trustee or the Paying Agent is permitted to apply all such money or shares of Common Stock in accordance with Section 12.02; *provided, however*, that if the Company makes any payment of interest on or principal of any Note or delivery of shares of Common Stock due upon conversion following the reinstatement of its obligations, the Company shall be subrogated to the rights of the Holders of such Notes to receive such payment from the money, or delivery from the shares of Common Stock, as the case may be, held by the Trustee or Paying Agent.

ARTICLE 13.
SUPPLEMENTAL INDENTURES

Section 13.01 *Supplemental Indentures without Consent of Holders.* Without the consent of any Holders, the Company, when authorized by a Board Resolution, the Guarantors and the Trustee, at any time and from time to time, may enter into one or more indentures supplemental hereto, in form satisfactory to the Trustee, for any of the following purposes:

(i) to cure any ambiguity, omission, defect or inconsistency, as determined in good faith by the Company and evidenced in an Officers' Certificate;

(ii) to provide for the assumption by a Successor Company of the obligations of the Company or Guarantors contained herein and the Note Guarantees;

(iii) to add additional guarantees with respect to the Notes;

(iv) to secure the Notes;

(v) to add to the covenants of the Company for the benefit of the Holders, or to surrender any right or power herein conferred upon the Company;

(vi) make any change that does not adversely affect the rights of any Holder, as determined in good faith by the Company and evidenced in an Officers' Certificate;

(vii) increase the Conversion Rate or provide for a change to Reference Property as provided herein;

(viii) provide for the acceptance of appointment by a successor trustee or facilitate the administration of the trust under this Indenture by more than one trustee;

(ix) complying with the requirements of the SEC in order to effect or maintain the qualification of this Indenture under the Trust Indenture Act;

(x) to allow any Guarantor to execute a supplemental indenture and/or Note Guarantee with respect to the Notes; or

(xi) to conform the provisions of this Indenture to the "Description of Notes" section in the Private Placement Memorandum, as evidenced in an Officers' Certificate.

Section 13.02 *Supplemental Indentures with Consent of Holders.* With the consent of the Holders (other than the Company and any Person controlled by the Company (within the meaning of the definition of the term "Affiliate")) of not less than a majority in Principal Amount of the outstanding Notes, including, without limitation, consents obtained in connection with a purchase of, or tender offer or exchange offer for, Notes, by Act of said Holders delivered to the Company and the Trustee, the Company, when authorized by a Board Resolution, and the Trustee may enter into an indenture or indentures supplemental hereto for the purpose of adding any provisions to or changing in any manner or eliminating any of the provisions of this Indenture or of modifying in any manner the rights of the Holders under this Indenture; *provided, however*, that no such supplemental indenture shall, without the consent of the Holder of each outstanding Note affected thereby, among other things:

(i) reduce the percentage in Principal Amount of Notes whose Holders must consent to an amendment of this Indenture or to waive any past default;

(ii) reduce the rate of, or extend the stated time of payment of, any interest on any Note;

(iii) reduce the Principal Amount of, or extend the Maturity Date of, any Note;

(iv) make any change that impairs or adversely affects the conversion rights of any Note as determined in good faith by the Company;

(v) reduce the Fundamental Change Purchase Price of any Note or amend or modify in any manner adverse to the Holders of Notes the Company's obligation to make such payment, whether through an amendment or waiver of provisions in the covenants, definitions or otherwise;

(vi) make any Note payable in a currency other than that stated in the Notes;

(vii) impair the right of any Holder to receive payment of principal of, and interest on such Holder's Notes on or after the due dates therefor or to institute suit for the enforcement of any payment on or with respect to such Holder's Notes;

(viii) change the ranking of the Notes;

(ix) release any Guarantor from any of its obligations under its Note Guarantee or this Indenture, except in accordance with the terms hereof; or

(x) modify any of the provisions of this Section 13.02 or Section 8.02(b).

In addition, Section 6.04 (a) may not, regardless of the consent of any Holders, be amended or waived in any respect unless (A) the amendment provisions of this Section 13.02 as to non-enumerated amendments is complied with and (B) the Company receives an approval from the NASDAQ Stock Market, delivered to the Trustee, confirming that such amendment or waiver would not result in a violation of Rule 5635 of the NASDAQ Stock Market or if applicable any equivalent rule of any other Principal Market.

Sections. 6.04(c), (d), (e), (f) and (g) may not be amended or waived by any party hereunder, regardless of the consent of any Holders or the Company.

In addition, the limitations in Section 4.13 hereof may not be amended or waived without the prior consent of the Holders of at least two-thirds of the aggregate principal amount of Notes then outstanding. Additionally, the Trustee shall be entitled to conclusively rely on the consents, Acts of Holders and calculations delivered by the Company to the Trustee.

It shall not be necessary for any Act of Holders under this Section 13.02 to approve the particular form of any proposed supplemental indenture, but it shall be sufficient if such Act shall approve the substance thereof.

Section 13.03 *Execution of Supplemental Indentures.* In executing, or accepting the additional trusts created by, any supplemental indenture permitted by this Article 13 or the modifications thereby of the trusts created by this Indenture, the Trustee shall be provided with, and (subject to Section 10.01) shall be fully protected in conclusively relying upon, in addition to the documents required by Section 1.02, an Opinion of Counsel stating that the execution of such supplemental indenture is authorized or permitted by this Indenture and constitutes the legal, valid and binding obligation of the Company, enforceable against it in accordance with its terms. Subject to the preceding sentence, the Trustee shall sign such supplemental indenture if the same does not adversely affect the Trustee's own rights, duties or immunities under this Indenture or otherwise. The Trustee may, but shall not be obligated to, enter into any such supplemental indenture that adversely affects the Trustee's own rights, duties or immunities under this Indenture or otherwise.

Section 13.04 *Effect of Supplemental Indentures.* Upon the execution of any supplemental indenture under this Article 13, this Indenture shall be modified in accordance therewith, and such supplemental indenture shall form a part of this Indenture for all purposes; and every Holder theretofore or thereafter authenticated and delivered hereunder shall be bound thereby.

Section 13.05 *Reference in Notes to Supplemental Indentures.* Notes authenticated and delivered after the execution of any supplemental indenture pursuant to this Article 13 shall bear a notation in form approved by the Trustee as to any matter provided for in such supplemental indenture. If the Company shall so determine, new Notes so modified as to conform, in the opinion of the Trustee and the Company, to any such supplemental indenture may be prepared and executed by the Company and authenticated and delivered by the Trustee in exchange for outstanding Notes.

Section 13.06 *Notice to Holders of Supplemental Indentures.* The Company shall cause notice of the execution of any supplemental indenture to be delivered to each Holder, at such Holder's address appearing on the Register provided for in this Indenture, within 20 days after execution thereof. Failure to deliver such notice, or any defect in such notice, shall not impair or affect the legality or validity of such supplemental indenture.

ARTICLE 14.
MISCELLANEOUS

Section 14.01 *Notices*. Any notice or communication shall be in writing (including telecopy promptly confirmed in writing) and delivered in person or mailed by first-class mail addressed as follows:

if to the Company and/or any Guarantor:

Digital Turbine, Inc.
300 Guadalupe Street, Suite 302
Austin, TX 78701
Attention: Chief Executive Officer
Facsimile: (737) 210-8855

with a copy to:

Manatt, Phelps & Phillips, LLP
11355 W. Olympic Blvd.
Los Angeles, CA 90064
Attention: Ben D. Orlanski
Facsimile: (310) 312-4000

if to the Trustee:

U.S. Bank National Association
633 West Fifth Street, 24th Floor
Los Angeles, California 90071
Attention: Bradley Scarbrough, Vice President (Digital Turbine Convertible Notes)
Facsimile: (213) 615-6197

The Company or the Trustee by notice to the other may designate additional or different addresses for subsequent notices or communications.

Any notice or communication mailed to a registered Holder shall be mailed to the Holder at the Holder's address as it appears on the registration books of the Registrar and shall be sufficiently given if so mailed within the time prescribed.

Failure to mail a notice or communication to a Holder or any defect in it shall not affect its sufficiency with respect to other Holders. If a notice or communication is mailed in the manner provided above, it is duly given, whether or not the addressee receives it, except that notices to the Trustee shall be effective only upon receipt.

Notwithstanding any other provision of this Indenture or any Note, where this Indenture or any Note provides for notice of any event (including any notice of redemption or purchase) to a Holder of a Global Note (whether by mail or otherwise), such notice shall be sufficiently given if given to the Depositary for such Note (or its designee) pursuant to the Applicable Procedures.

Section 14.02 *Certificate and Opinion as to Conditions Precedent*. Upon any request or application by the Company to the Trustee to take or refrain from taking any action under this Indenture, the Company shall furnish to the Trustee:

(a) an Officers' Certificate in form reasonably satisfactory to the Trustee stating that, in the opinion of the signers, all conditions precedent, if any, provided for in this Indenture relating to the proposed action have been complied with; and

(b) if requested by the Trustee, an Opinion of Counsel in form reasonably satisfactory to the Trustee stating that, in the opinion of such counsel, all such conditions precedent have been complied with.

Section 14.03 *When Notes Are Disregarded.* In determining whether the Holders of the required Principal Amount of Notes have concurred in any direction, waiver or consent, Notes owned by the Company or by any Affiliate of the Company shall be disregarded and deemed not to be outstanding, except that, for the purpose of determining whether the Trustee shall be protected in relying on any such direction, waiver or consent, only Notes which a Trust Officer of the Trustee actually knows are so owned shall be so disregarded. Also, subject to the foregoing, only Notes outstanding at the time shall be considered in any such determination.

Section 14.04 *Rules by Trustee, Paying Agent and Registrar*. The Trustee may make reasonable rules for action by, or a meeting of, Holders. The Registrar and the Paying Agent may make reasonable rules for their functions.

Section 14.05 *Legal Holidays.* If an Interest Payment Date is a Legal Holiday, payment shall be made on the next succeeding day that is not a Legal Holiday, and no interest shall accrue for the intervening period. If a Regular Record Date is a Legal Holiday, the Regular Record Date shall not be affected. In any case where the Maturity Date or Fundamental Change Purchase Date, as the case may be, of any Note is a Legal Holiday, then (notwithstanding any other provision of this Indenture or of the Notes) payment of principal need not be made on such date, but may be made on the next succeeding day that is not a Legal Holiday, with the same force and effect as if made on such Maturity Date or Fundamental Change Purchase Date, as the case may be.

Section 14.06 *Governing Law*. THIS INDENTURE AND THE NOTES, AND ANY CLAIM, CONTROVERSY OR DISPUTE ARISING UNDER OR RELATED TO THIS INDENTURE OR THE NOTES, SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK.

Section 14.07 *No Recourse against Others*. An incorporator, director, officer, employee, Affiliate or shareholder of the Company or any Guarantor, solely by reason of this status, shall not have any liability for any obligations of the Company under the Notes, the Note Guarantees, this Indenture or for any claim based on, in respect of or by reason of such obligations or their creation. By accepting a Note, each Holder shall waive and release all such liability. The waiver and release shall be part of the consideration for the issue of the Notes.

Section 14.08 *Successors*. All agreements of the Company in this Indenture and the Notes shall bind their respective successors. All agreements of the Trustee in this Indenture shall bind its successors.

Section 14.09 *Multiple Originals*. The parties may sign any number of copies of this Indenture. Each signed copy shall be an original, but all of them together represent the same agreement. One signed copy is enough to prove this Indenture. Delivery of an executed counterpart by facsimile or by electronic means shall be effective as delivery of a manually executed counterpart thereof.

Section 14.10 *Table of Contents; Headings*. The table of contents, cross-reference sheet and headings of the Articles and Sections of this Indenture have been inserted for convenience of reference only, are not intended to be considered a part hereof and shall not modify or restrict any of the terms or provisions hereof.

Section 14.11 *Severability Clause.* In case any provision in this Indenture shall be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby and such provision shall be ineffective only to the extent of such invalidity, illegality or unenforceability.

Section 14.12 *Calculations*. Except as otherwise provided herein, the Company (or its agents) will be responsible for making all calculations called for under this Indenture or the Notes. These calculations include, but are not limited to, determinations of the Last Reported Sale Price, VWAPs, the Exchange Cap, the Fundamental Change Repurchase Price, the Redemption Price, Additional Interest, accrued interest payable on the Notes and the conversion rate of the Notes. The Company (or its agents) will make all such calculations in good faith and, absent manifest error, its calculations will be final and binding on Holders. The Company (or its agents) upon request will provide a schedule of its calculations to each of the Trustee and the Conversion Agent, and each of the Trustee and Conversion Agent is entitled to rely conclusively upon the accuracy of such calculations without independent verification. The Trustee will deliver a copy of such schedule to any Holder upon the written request of such Holder.

Section 14.13 *Waiver of Jury Trial.* EACH OF THE COMPANY AND THE TRUSTEE HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY LEGAL PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT, THE SECURITIES OR THE TRANSACTION CONTEMPLATED THEREBY.

Section 14.14 *Consent to Jurisdiction.*

(a) The Company hereby irrevocably and unconditionally submits, for itself and its property, to the nonexclusive jurisdiction of any New York State court or federal court of the United States sitting in the State and City of New York, County and Borough of Manhattan, and any appellate court from any thereof, in any action or proceeding arising out of or relating to this Indenture or the Notes, 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 state court sitting in the State and City of New York, County and Borough of Manhattan or, to the extent permitted by law, in such federal court sitting in the State and City of New York, County and Borough of Manhattan.

(b) 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 proceeding arising out of or relating to this Indenture or the Notes in any New York State or federal court. 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.

Section 14.15 *Force Majeure*. In no event shall the Trustee be responsible or liable for any failure or delay in the performance of its obligations hereunder arising out of or caused by, directly or indirectly, forces beyond its control, including, without limitation, strikes, work stoppages, accidents, acts of war or terrorism, civil or military disturbances, nuclear or natural catastrophes or acts of God, and interruptions, loss or malfunctions of utilities, communications or computer (software or hardware) services; it being understood that the Trustee shall use reasonable efforts which are consistent with accepted practices in the banking industry to resume performance as soon as practicable under the circumstances.

Section 14.16 *U.S.A. Patriot Act*. The parties hereto acknowledge that in accordance with Section 326 of the U.S.A. Patriot Act, the Trustee, like all financial institutions and in order to help fight the funding of terrorism and money laundering, is required to obtain, verify, and record information that identifies each person or legal entity that establishes a relationship or opens an account with the Trustee. The parties to this Indenture agree that they will provide the Trustee with such information as it may request in order for the Trustee to satisfy the requirements of the U.S.A. Patriot Act.

ARTICLE 15.
NOTE GUARANTEES

Section 15.01 Guarantee.

(a) Subject to this Article 15, each of the Guarantors hereby, jointly and severally, unconditionally guarantees to each Holder of a Note authenticated and delivered by the Trustee and to the Trustee and its successors and assigns, irrespective of the validity and enforceability of this Indenture, the Notes or the obligations of the Company hereunder or thereunder, that:

(i) the principal of, Additional Interest, if any, and interest on, and any other payment due to Holders pursuant to, the Notes or this Indenture will be promptly paid in full when due, whether at maturity, by acceleration, redemption or otherwise, and interest on the overdue principal of and interest on the Notes, if any, if lawful, and all other obligations of the Company to the Holders or the Trustee hereunder or thereunder will be promptly paid in full or performed, all in accordance with the terms hereof and thereof; and

(ii) in case of any extension of time of payment or renewal of any Notes or any of such other obligations, that same will be promptly paid in full when due or performed in accordance with the terms of the extension or renewal, whether at stated maturity, by acceleration or otherwise.

Failing payment when due of any amount so guaranteed or any performance so guaranteed for whatever reason, the Guarantors will be jointly and severally obligated to pay the same immediately. Each Guarantor agrees that this is a guarantee of payment and not a guarantee of collection.

(b) The Guarantors hereby agree that their obligations hereunder are unconditional, irrespective of the validity, regularity or enforceability of the Notes or this Indenture, the absence of any action to enforce the same, any waiver or consent by any Holder of the Notes with respect to any provisions hereof or thereof, the recovery of any judgment against the Company, any action to enforce the same or any other circumstance which might otherwise constitute a legal or equitable discharge or defense of a Guarantor. Each Guarantor hereby waives diligence, presentment, demand of payment, filing of claims with a court in the event of insolvency or bankruptcy of the Company, any right to require a proceeding first against the Company, protest, notice and all demands whatsoever and covenant that this Note Guarantee will not be discharged except by complete performance of the obligations contained in the Notes and this Indenture.

(c) If any Holder or the Trustee is required by any court or otherwise to return to the Company, the Guarantors or any custodian, trustee, liquidator or other similar official acting in relation to either the Company or the Guarantors, any amount paid either to the Trustee or such Holder, the Note Guarantees, to the extent theretofore discharged, will be reinstated in full force and effect.

(d) Each Guarantor agrees that it will not be entitled to any right of subrogation in relation to the Holders in respect of any obligations guaranteed hereby until payment in full of all obligations guaranteed hereby. Each Guarantor further agrees that, as between the Guarantors, on the one hand, and the Holders and the Trustee, on the other hand:

(i) the maturity of the obligations guaranteed hereby may be accelerated as provided in Article 8 hereof for the purposes of the Note Guarantees, notwithstanding any stay, injunction or other prohibition preventing such acceleration in respect of the obligations guaranteed hereby, and

(ii) in the event of any declaration of acceleration of such obligations as provided in Article 8 hereof, such obligations (whether or not due and payable) will forthwith become due and payable by the Guarantors for the purpose of the Note Guarantees.

The Guarantors will have the right to seek contribution from any non-paying Guarantor so long as the exercise of such right does not impair the rights of the Holders under the Note Guarantees.

Section 15.02 Limitation on Guarantor Liability.

Each Guarantor, and by its acceptance of Notes, each Holder, hereby confirms that it is the intention of all such parties that the Note Guarantee of such Guarantor not constitute a fraudulent transfer or conveyance for purposes of applicable federal, state or foreign bankruptcy, insolvency, reorganization or other similar law or any similar federal, state, provincial or other applicable law to the extent applicable to any Note Guarantee. To effectuate the foregoing intention, the Trustee, the Holders and the Guarantors hereby irrevocably agree that the obligations of such Guarantor will be limited to the maximum amount that will, after giving effect to such maximum amount and all other contingent and fixed liabilities of such Guarantor that are relevant under such laws, and after giving effect to any collections from, rights to receive contribution from or payments made by or on behalf of any other Guarantor in respect of the obligations of such other Guarantor under this Article 15, result in the obligations of such Guarantor under its Note Guarantee not constituting a fraudulent transfer or conveyance.

Section 15.03 Execution and Delivery of Note Guarantee.

To evidence its Note Guarantee set forth in Section 15.01 hereof, each Guarantor hereby agrees that a notation of such Note Guarantee substantially in the form attached as Exhibit C hereto will be endorsed by an Officer of such Guarantor on each Note authenticated and delivered by the Trustee and that this Indenture will be executed on behalf of such Guarantor by one of its Officers.

Each Guarantor hereby agrees that its Note Guarantee set forth in Section 15.01 hereof will remain in full force and effect notwithstanding any failure to endorse on each Note a notation of such Note Guarantee.

If an Officer whose signature is on this Indenture or on the Note Guarantee no longer holds that office at the time the Trustee authenticates the Note on which a Note Guarantee is endorsed, the Note Guarantee will be valid nevertheless.

The delivery of any Note by the Trustee, after the authentication thereof hereunder, will constitute due delivery of the Note Guarantee set forth in this Indenture on behalf of the Guarantors.

In the event that the Company or any Guarantor acquires or creates another Subsidiary after the date of this Indenture, if required by Section 4.14 hereof, the Company will cause such Subsidiary to comply with the provisions of Section 4.14 hereof and this Article 15, to the extent applicable.

Section 15.04 Guarantors May Consolidate, etc., on Certain Terms.

A Guarantor may not sell or otherwise dispose of all or substantially all of their assets (other than assets determined to be held by such Guarantor as a qualified intermediary on behalf of third-party taxpayers pursuant to Internal Revenue Code Section 1031) to, or amalgamate or consolidate with or merge with or into (whether or not such Guarantor is the surviving Person) another Person, other than the Company, unless:

(i) immediately after giving effect to that transaction, no Default or Event of Default exists; and

(ii) the Person acquiring the assets in any such sale or disposition or the Person formed by or surviving any such amalgamation, consolidation or merger assumes all the obligations of such Guarantor under this Indenture and a Note Guarantee pursuant to a supplemental indenture reasonably satisfactory to the Trustee.

In case of any such consolidation, merger, sale or conveyance and upon the assumption by the successor Person, by supplemental indenture, executed and delivered to the Trustee and satisfactory in form to the Trustee, of the Note Guarantee endorsed upon the Notes and the due and punctual performance of all of the covenants and conditions of this Indenture to be performed by the Guarantor, such successor Person will succeed to and be substituted for the Guarantor with the same effect as if it had been named herein as a Guarantor. Such successor Person thereupon may cause to be signed any or all of the Note Guarantees to be endorsed upon all of the Notes issuable hereunder which theretofore shall not have been signed by the Company and delivered to the Trustee. All of the Note Guarantees so issued will in all respects have the same legal rank and benefit under this Indenture as the Note Guarantees theretofore and thereafter issued in accordance with the terms of this Indenture as though all of such Note Guarantees had been issued at the date of the execution hereof.

Section 15.05 Releases.

Upon satisfaction and discharge of this Indenture in accordance with Article 12 hereof, each Guarantor will be released and relieved of any obligations under its Note Guarantee.

Any Guarantor, not released from its obligations under its Note Guarantee as provided in Section 15.04 or this Section 15.05, will remain liable for the full amount of principal of, Additional Interest, if any, and interest on, and any other payment due to Holders pursuant to, the Notes or this Indenture and for the other obligations of any Guarantor under this Indenture as provided in this Article 15.

[Remainder of the page intentionally left blank]

IN WITNESS WHEREOF, the parties hereto have caused this Indenture to be duly executed as of the day and year first above written.

DIGITAL TURBINE, INC.

By: _____
Name: William Stone
Title: Chief Executive Officer

By: _____
Name: Barrett Garrison
Title: Chief Financial Officer

GUARANTORS:

Digital Turbine USA, Inc., a Delaware corporation

By: _____
Name:
Title:

Digital Turbine Media, Inc., a Delaware corporation

By: _____
Name:
Title:

Digital Turbine (EMEA) Ltd., a company formed under the laws of Israel

By: _____
Name:
Title:

By: _____
Name:
Title:

Digital Turbine Asia Pacific Pty Ltd., a company formed under the laws of Australia

By: _____
Name:
Title:

[Trustee Signature Follows]

U.S. Bank National Association
as Trustee

By: _____
Name:
Title:

SCHEDULE A

Share Price

Effective Date	$ 1.25	$ 1.56	$ 2.00	$ 2.50	$ 3.00	$ 3.50	$ 4.00	$ 5.00	$ 7.50	$ 10.00	$ 15.00	$ 20.00
23-Sep-16	160.000	137.528	122.927	110.849	100.840	85.207	73.564	57.386	36.135	25.770	15.844	11.222
23-Sep-17	132.007	110.253	98.225	88.380	80.288	67.747	58.465	45.616	28.734	20.461	12.485	8.770
23-Sep-18	104.013	80.313	70.355	62.570	56.399	47.172	40.545	31.544	19.806	14.016	8.358	5.711
23-Sep-19	76.020	44.327	34.464	28.428	24.566	19.866	16.941	13.181	8.313	5.887	3.468	2.287
23-Sep-20	48.027	0.000	0.000	0.000	0.000	0.000	0.000	0.000	0.000	0.000	0.000	0.000

EXHIBIT A

[FORM OF RESTRICTED LEGEND]

THIS SECURITY, THE ATTACHED GUARANTEE AND THE SHARES OF COMMON STOCK ISSUABLE UPON CONVERSION OF THIS SECURITY HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT"), AND MAY NOT BE OFFERED, SOLD, PLEDGED OR OTHERWISE TRANSFERRED EXCEPT IN ACCORDANCE WITH THE FOLLOWING SENTENCE. BY ITS ACQUISITION HEREOF OR OF A BENEFICIAL INTEREST HEREIN, THE ACQUIRER:

(1) **REPRESENTS THAT IT AND ANY ACCOUNT FOR WHICH IT IS ACTING IS A "QUALIFIED INSTITUTIONAL BUYER" (WITHIN THE MEANING OF RULE 144A UNDER THE SECURITIES ACT) AND THAT IT EXERCISES SOLE INVESTMENT DISCRETION WITH RESPECT TO EACH SUCH ACCOUNT, AND**

(2) **AGREES FOR THE BENEFIT OF DIGITAL TURBINE, INC. (THE "COMPANY") THAT IT WILL NOT OFFER, SELL, PLEDGE OR OTHERWISE TRANSFER THIS SECURITY OR ANY BENEFICIAL INTEREST HEREIN PRIOR TO THE RESALE RESTRICTION TERMINATION DATE (AS DEFINED BELOW), EXCEPT:**

(A) TO THE COMPANY OR ANY SUBSIDIARY THEREOF, OR

(B) PURSUANT TO A REGISTRATION STATEMENT THAT HAS BECOME EFFECTIVE UNDER THE SECURITIES ACT THAT COVERS RESALE THIS SECURITY, OR

(C) TO A QUALIFIED INSTITUTIONAL BUYER IN COMPLIANCE WITH RULE 144A UNDER THE SECURITIES ACT, OR

THE "RESALE RESTRICTION TERMINATION DATE" MEANS THE LATER OF: (1) THE DATE THAT A REGISTRATION STATEMENT UNDER THE SECURITIES ACT WITH RESPECT TO THIS SECURITY AND BENEFICIAL INTERESTS HEREIN HAS BECOME EFFECTIVE; AND (2) SUCH OTHER DATE AS MAY BE REQUIRED BY APPLICABLE LAW.

(D) PURSUANT TO AN EXEMPTION FROM REGISTRATION PROVIDED BY RULE 144 UNDER THE SECURITIES ACT OR ANY OTHER AVAILABLE EXEMPTION FROM THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT.

PRIOR TO THE REGISTRATION OF ANY TRANSFER IN ACCORDANCE WITH CLAUSE (2)(D) ABOVE, THE COMPANY AND THE TRUSTEE RESERVE THE RIGHT TO REQUIRE THE DELIVERY OF SUCH LEGAL OPINIONS, CERTIFICATIONS OR OTHER EVIDENCE AS MAY REASONABLY BE REQUIRED IN ORDER TO DETERMINE THAT THE PROPOSED TRANSFER IS BEING MADE IN COMPLIANCE WITH THE SECURITIES ACT AND APPLICABLE STATE SECURITIES LAWS. NO REPRESENTATION IS MADE AS TO THE AVAILABILITY OF ANY EXEMPTION FROM THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT.

NO AFFILIATE (AS DEFINED IN RULE 144 UNDER THE SECURITIES ACT) OF THE COMPANY OR PERSON THAT HAS BEEN AN AFFILIATE (AS DEFINED IN RULE 144 UNDER THE SECURITIES ACT) OF THE COMPANY DURING THE IMMEDIATELY PRECEDING NINETY DAYS MAY RESELL THIS SECURITY OR A BENEFICIAL INTEREST HEREIN.

EXHIBIT B

[FORM OF FREE TRANSFERABILITY CERTIFICATE]

Officers' Certificate

[NAME OF OFFICER], the [TITLE] of Digital Turbine, Inc., a Delaware corporation (the "**Company**") and [NAME OF OFFICER], the [TITLE] of the Company do hereby certify, in connection with the sale of $16 million of the Company's 8.75% Convertible Senior Notes due 2020 (the "**Notes**") pursuant to the terms of the Indenture, dated as of September 28, 2016 (as may be amended or supplemented from time to time, the "**Indenture**"), by and among the Company and U.S. Bank, National Association (the "**Trustee**"), that:

The undersigned are permitted to sign this "Officers' Certificate" on behalf of the Company, as the term "Officers' Certificate" is defined in the Indenture.

The undersigned have read, and thoroughly examined, the Indenture and the definitions therein relating thereto. Any capitalized terms used but not defined herein have the meanings given to them in the Indenture.

In the opinion of the undersigned, the undersigned have made such examination as is necessary to enable the undersigned to express an informed opinion as to whether or not all conditions precedent to the removal of the Restricted Notes Legend described herein as provided for in the Indenture have been complied with.

All conditions precedent described herein as provided for in the Indenture have been complied with.

The Notes have become Freely Tradable.

In accordance with Section 3.08 of the Indenture, the Company hereby instructs you as follows:

1. To take those actions necessary so that the Restricted Notes Legend and set forth on the Restricted Global Notes shall be deemed removed from the Global Notes in accordance with the terms and conditions of the Notes and as provided in the Indenture, without further action on the part of the Holders.

2. To take those actions necessary so that the restricted CUSIP number for the Notes shall be removed from the Global Notes and replaced with an unrestricted CUSIP number, which unrestricted CUSIP number shall be 25400W AB8, in accordance with the terms and conditions of the Global Notes and as provided in the Indenture, without further action on the part of the Holders.

[Signature page follows.]

IN WITNESS WHEREOF, we have signed this certificate as of [ ].

DIGITAL TURBINE, INC.,

By: _____
Name:
Title:

EXHIBIT C

[FORM OF NOTATION OF NOTE GUARANTEE]

NOTATION OF NOTE GUARANTEE

For value received, each Guarantor (which term includes any successor Person under the Indenture) has, jointly and severally, unconditionally guaranteed, to the extent set forth in the Indenture and subject to the provisions in the Indenture dated as of September 28, 2016 (the *"Indenture'")* among Digital Turbine, Inc., (the *"Company"),* the Guarantors party thereto and U.S. Bank N.A., as trustee (the *"Trustee"),* (a) the due and punctual payment of the principal of, Additional Interest, if any, and interest on, the Notes, whether at maturity, by acceleration, redemption or otherwise, the due and punctual payment of interest on the overdue principal of and interest on the Notes, if any, if lawful, and the due and punctual performance of all other obligations of the Company to the Holders and the Trustee all in accordance with the terms of the Indenture and (b) in case of any extension of time of payment or renewal of any Notes or any of such other obligations, that the same will be promptly paid in full when due or performed in accordance with the terms of the extension or renewal, whether at stated maturity, by acceleration or otherwise. The obligations of the Guarantors to the Holders of Notes and to the Trustee pursuant to the Note Guarantee and the Indenture are expressly set forth in Article 15 of the Indenture and reference is hereby made to the Indenture for the precise terms of the Note Guarantee. Each Holder of a Note, by accepting the same, agrees to and shall be bound by such provisions. Capitalized terms used but not defined herein have the meanings given to them in the Indenture.

[Signature Pages Follow]

GUARANTORS:

Digital Turbine USA, Inc., a Delaware corporation

By: _____
Name:
Title:

Digital Turbine Media, Inc., a Delaware corporation

By: _____
Name:
Title:

Digital Turbine (EMEA) Ltd., a company formed under the laws of Israel

By: _____
Name:
Title:

By: _____
Name:
Title:

Digital Turbine Asia Pacific Pty Ltd., a company formed under the laws of Australia

By: _____
Name:
Title:

Exhibit 4.2

WARRANT AGREEMENT

dated as of September 28, 2016

between

Digital Turbine, Inc. and

U.S. Bank National Association
as Warrant Agent

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WARRANT AGREEMENT

This Warrant Agreement ("**Warrant Agreement**") dated as of September 28, 2016 is between Digital Turbine, Inc., a corporation organized under the laws of Delaware (the "**Company**"), and U.S. Bank National Association (the "**Warrant Agent**").

WITNESSETH THAT:

WHEREAS, pursuant to the Convertible Note Initial Purchaser Agreement (as may be amended, modified or supplemented in accordance with its terms, the "**Initial Purchaser Agreement**") dated as of September 23, 2016, by and between BTIG, LLC (the "**Initial Warrantholder**") and the Company, the Company has agreed to issue to the Initial Warrantholder an aggregate initial Number of Warrants (as defined below) issued hereunder equal to 4,105,600 warrants together with an additional 250,000 warrants issued to the Initial Purchaser, each of which is exercisable for one share of Common Stock (as defined below);

WHEREAS, this Warrant Agreement is the Warrant Agreement referenced in the Initial Purchaser Agreement; and

WHEREAS, the Company desires that the Warrant Agent act on behalf of the Company, and the Warrant Agent is willing to act, in connection with the issuance, exchange, transfer, substitution and exercise of Warrants.

NOW THEREFORE in consideration of the mutual agreements herein contained, the Company and the Warrant Agent agree as follows:

ARTICLE 1

DEFINITIONS

Section 1.01. *Certain Definitions*. As used in this Warrant Agreement, the following terms shall have their respective meanings set forth below:

"**Adjustment Event**" has the meaning set forth in Section 4.07.

"**Affiliate**" of any specified Person means any other Person directly or indirectly controlling or controlled by or under direct or indirect common control with such specified Person. For the purposes of this definition, "control" when used with respect to any specified Person means the power to direct the management and policies of such Person, directly or indirectly, whether through the ownership of voting securities, by contract or otherwise; and the terms "controlling" and "controlled" have meanings correlative to the foregoing

"**Agent Members**" has the meaning set forth in Section 2.06(b).

"**Applicable Procedures**" means, with respect to any transfer or transaction involving a Global Warrant or any beneficial interest therein, the rules and procedures of the Depositary for such Warrant, in each case to the extent applicable to such transfer or transaction and as in effect from time to time.

"**Approved Stock Plan**" means any and all currently existing or future equity incentive plans or agreements providing for issuance, upon approval by the Board of Directors or a duly authorized committee or delegee thereof, of shares of Common Stock, options to purchase Common Stock or other securities of, or exchangeable for, the Company to the employees, officers, directors and/or consultants of the Company or its Subsidiaries, in each case, that are approved by shareholders or are inducement plans under the rules and regulations of the Principal Market. For clarity, the Company's 2011 Equity Incentive Plan, as amended to date, and all shares issued and issuable thereunder now or in the future, is included as an Approved Stock Plan.

"**Attribution Parties**" means, collectively, the following Persons and entities: (i) any investment vehicle, including, any funds, feeder funds or managed accounts, directly or indirectly managed or advised by the Warrantholder's investment manager or any of its Affiliates or principals, (ii) any direct or indirect Affiliates of the Warrantholder or any of the foregoing, and (iii) any other Persons whose beneficial ownership of the Company's Common Stock would or could be aggregated with the Warrantholder's and the other Attribution Parties for purposes of Section 13(d) of the Exchange Act. For clarity, the purpose of the foregoing is to subject, collectively, the Warrantholder and all other Attribution Parties to the Maximum Percentage.

"**Authentication Order**" means a Company Order for authentication and delivery of Warrants.

"**Authorized Share Allocation**" has the meaning set forth in Section 4.11(a).

"**Authorized Share Failure**" has the meaning set forth in Section 4.11(b).

"**Black Scholes Value**" means the value of the unexercised portion of a Warrant remaining, which value shall be determined by an independent nationally recognized investment bank or other qualified financial institution selected by the Board of Directors and shall be calculated using the Black Scholes Option Pricing Model obtained from the "OV" function on Bloomberg utilizing (i) an underlying price per share of Common Stock equal to the greater of (1) the weighted average Closing Sale Price of the Common Stock during the period beginning on the Trading Day immediately preceding the public announcement of the applicable Fundamental Transaction and ending on the third Trading Day immediately prior to the date of the consummation of the applicable Fundamental Transaction (*provided, however,* that if the consummation of the applicable Fundamental Transaction occurs prior to any public announcement of the applicable Fundamental Transaction, then such period shall be the twenty (20) Trading Day period immediately preceding the third Trading Day prior to the consummation of the applicable Fundamental Transaction) and (2) the sum of the price per share being offered in cash in the applicable Fundamental Transaction (if any) plus the value of the non-cash consideration being offered in the applicable Fundamental Transaction (if any), (ii) a strike price equal to the Exercise Price in effect on the first Business Day immediately following the period referenced in the foregoing clause (i), (iii) a risk-free interest rate corresponding to the U.S. Treasury rate for a period equal to seven years, (iv) a zero cost of borrowing, (v) an expected volatility equal to the 100 day volatility obtained from the "HVT" function on Bloomberg (determined utilizing a 365 day annualization factor) as of the Trading Day immediately following the earliest to occur of (A) the public disclosure of the applicable Fundamental Transaction or (B) the consummation of the applicable Fundamental Transaction and (vi) such other assumptions as may be determined by such independent investment bank.

"**Board of Directors**" means the board of directors of the Company or any authorized committee thereof.

"**Business Day**" means any day other than a Saturday, a Sunday or a day on which the Federal Reserve Bank of New York or the Warrant Agent is authorized or required by law or executive order to close or be closed.

"**Capital Stock**" means any and all shares, interests, participations or other equivalents (however designated) of capital stock of the Company and all warrants or options to acquire such capital stock.

"**Cash**" or "**$**" means such coin or currency of the United States as at any time of payment is legal tender for the payment of public and private debts.

"Certificated Warrant" means a Warrant represented by a Warrant Certificate, in definitive, fully registered form.

"**Close of Business**" means 5:00 p.m. New York City time.

"**Closing Date**" has the meaning given thereto in the Initial Purchaser Agreement.

"**Closing Sale Price**" means, as of any date, the last reported per share sales price of a share of Common Stock or any other security on such date (or, if no last reported sale price is reported, the average of the bid and ask prices or, if more than one in either case, the average of the average bid and the average ask prices on such date) as reported on the Nasdaq Capital Market, or if the Common Stock or such other security is not listed on the Nasdaq Capital Market, as reported by the principal U.S. national securities exchange or quotation system on which the Common Stock or such other security is then listed or quoted; *provided*, *however*, that in the absence of such quotations, the Board of Directors will make a good faith determination of the Closing Sale Price. The Closing Sale Price will be determined without regard to pre-open or after hours trading outside of such regular trading session.

If during a period applicable for calculating Closing Sale Price, an issuance, distribution, subdivision, combination or other transaction or event occurs that requires an adjustment to the Exercise Price or Number of Warrants pursuant to Article 4 hereof, Closing Sale Price shall be calculated for such period in a manner determined by the Company to appropriately reflect the impact of such issuance, distribution, subdivision or combination on the price of the Common Stock during such period.

"**Common Stock**" means the Company's common stock, par value $0.0001 per share as such stock may be constituted from time to time.

"**Company Order**" means a written order signed in the name of the Company by its president, chief executive officer, chief financial officer, treasurer, an assistant treasurer, or controller, and delivered to the Warrant Agent.

"**Current Market Price**" means, in connection with a dividend, issuance or distribution, the volume weighted average price per share of Common Stock for the twenty (20) Trading Days ending on, but excluding, the earlier of the date in question and the Trading Day immediately preceding the Ex-Date for such dividend, issuance or distribution, in each case, for the regular trading session (including any extensions thereof, without regard to pre-open or after hours trading outside of such regular trading session) as reported on the Nasdaq Capital Market, or if the Common Stock or such other security is not listed on the Nasdaq Capital Market, as reported by the principal U.S. national securities exchange or quotation system on which the Common Stock or such other security is then listed or quoted, whichever is applicable, as published by Bloomberg at 4:15 P.M., New York City time (or 15 minutes following the end of any extension of the regular trading session), on such Trading Day, on Bloomberg page "[APPS <equity> AQR]", or if such volume weighted average price is unavailable or in manifest error, the market value of one share of Common Stock during such twenty (20) Trading Day period determined using a volume weighted average price method by an independent nationally recognized investment bank or other qualified financial institution selected by the Board of Directors. If the Common Stock is not traded on the Nasdaq Capital Market or any U.S. national securities exchange or quotation system, the Current Market Price shall be the price per share of Common Stock that the Company could obtain from a willing buyer for shares of Common Stock sold by the Company from authorized but unissued shares of Common Stock, as such price shall be reasonably determined in good faith by the Company's Board of Directors.

"**Daily VWAP**" means the per share volume-weighted average price of the Common Stock as displayed under the heading "Bloomberg VWAP" on Bloomberg page "[APPS <equity> AQR]" (or any successor thereto if such page it not available) in respect of the period from the scheduled open of trading until the scheduled close of trading of the primary trading session on such VWAP Trading Day (or if such volume-weighted average price is unavailable, the market value of one share of the Common Stock on such VWAP Trading Day, determined, if practicable, using a volume-weighted average method, by an independent, nationally recognized investment banking firm retained by the Company for this purpose). The Daily VWAP shall be determined without regard to after-hours trading or any other trading outside of the regular trading session trading hours.

"**Depositary**" means The Depository Trust Company, its nominees, and their respective successors.

"**Determination Date**" has the meaning set forth in Section 4.08.

"**Excess Shares**" has the meaning set forth in Section 3.09(b).

"**Exchange Act**" means the Securities Exchange Act of 1934, as amended.

"**Exchange Cap**" has the meaning set forth in Section 3.08(a).

"**Exchange Cap Allocation**" has the meaning set forth in Section 3.08(a).

"**Exchange Cap Allocation Increase**" has the meaning set forth in Section 3.08(b).

"**Exchange Cap Share Cancellation Amount**" has the meaning set forth in Section 3.08(b).

"**Exchange Cap Shares**" has the meaning set forth in Section 3.08(b).

"**Ex-Date**" means, in connection with any dividend, issuance or distribution, the first date on which the shares of Common Stock trade on the applicable exchange or in the applicable market, regular way, without the right to receive such dividend, issuance or distribution.

"**Qualified Financing**" means the sale by the Company of shares of Common Stock or securities convertible into, or exercisable or exchangeable for, Common Stock, provided that a Qualified Financing shall not include any of the following issuances by the Company: (i) shares of Common Stock or options to purchase Common Stock issued to directors, officers, employees of or consultants to the Company or its Subsidiaries for services rendered to the Company in their capacity as such pursuant to an Approved Stock Plan, provided that the exercise price of any such options is not lowered, none of such options are amended to increase the number of shares issuable thereunder and none of the terms or conditions of any such options are otherwise materially changed in any manner that adversely affects any of the Warrantholders; (ii) shares of Common Stock issued upon the conversion or exercise of convertible securities or warrants (other than options to purchase Common Stock issued pursuant to an Approved Stock Plan that are covered by clause (i) above) issued prior to the Issue Date, provided that the conversion price of any such convertible securities or warrants (other than options to purchase Common Stock issued pursuant to an Approved Stock Plan that are covered by clause (i) above) is not lowered other than pursuant to anti-dilution (including price-based anti-dilution) features that are currently in existence as of the Issue Date and are not amended after the Issue Date, none of such convertible securities or warrants (other than options to purchase Common Stock issued pursuant to an Approved Stock Plan that are covered by clause (i) above) are amended to increase the number of shares issuable thereunder and none of the terms or conditions of any such convertible securities or warrants (other than options to purchase Common Stock issued pursuant to an Approved Stock Plan that are covered by clause (i) above) are otherwise materially changed in any manner that adversely affects any of the Warrantholders; (iii) the shares of Common Stock issuable upon conversion of the Notes or otherwise pursuant to the terms of the Notes; (iv) the shares of Common Stock issuable upon exercise of the Warrants; and (v) shares of Common Stock, options, warrants and convertible securities issued pursuant to equipment purchases, strategic mergers or acquisitions of other assets or businesses, or strategic licensing or development transactions; provided that (x) the primary purpose of such issuance is not to raise capital as determined in good faith by the Board of Directors of the Company, (y) the purchaser or acquirer of such shares of Common Stock in such issuance solely consists of either (1) the actual participants in such strategic licensing or development transactions, (2) the actual owners of such assets or securities acquired in such merger or acquisition or (3) the shareholders, partners or members of the foregoing Persons, and (z) the number or amount (as the case may be) of such shares of Common Stock issued to such Person by the Company shall not be disproportionate to such Person's actual participation in such strategic licensing or development transactions or ownership of such assets or securities to be acquired by the Company (as applicable).

"**Exercise Date**" has the meaning set forth in Section 3.02(b).

"**Exercise Notice**" means, for any Warrant, the exercise notice set forth on the reverse of the Warrant Certificate, substantially in the form set forth in Exhibit D hereto.

"**Exercise Price**" means initially $1.364 per Warrant, subject to adjustment pursuant to Article 4.

"**Expiration Date**" means September 23, 2020.

"**Freely Tradable**" means, with respect to any Warrants, that such Warrants are eligible to be sold by a Person who is not an "affiliate" of the Company (within the meaning of Rule 144) and has not been an affiliate of the Company (within the meaning of Rule 144) during the immediately preceding three months either (1) without any volume or manner of sale restrictions under the Securities Act or (2) because a registration statement under the Securities Act with respect to the resale of such Notes has been declared effective under the Securities Act.

"**Free Transferability Certificate**" means a certificate substantially in the form of Exhibit G.

"**Full Physical Settlement**" means the settlement method pursuant to which an exercising Warrantholder shall be entitled to receive from the Company, for each Warrant exercised, a number of shares of Common Stock equal to the Full Physical Share Amount in exchange for payment by the Warrantholder of the Exercise Price.

"**Full Physical Share Amount**" has the meaning set forth in Section 3.03(b).

"**Fundamental Transaction**" has the meaning set forth in Section 4.09(a).

"**Global Warrant**" means a Warrant in the form of a permanent global Warrant Certificate, in definitive, fully registered form in the name of a Depositary or a nominee thereof.

"**Global Warrant Legend**" means a legend substantially in the form set forth in Exhibit C hereto.

"**Initial Purchaser Agreement**" has the meaning set forth in the Recitals.

"**Initial Warrantholder**" has the meaning set forth in the Recitals.

"**Maximum Percentage**" has the meaning set forth in Section 3.09.

"**Net Share Amount**" has the meaning set forth in Section 3.03(c).

"**Net Share Settlement**" means the settlement method pursuant to which an exercising Warrantholder shall be entitled to receive from the Company, for each Warrant exercised, a number of shares of Common Stock equal to the Net Share Amount without any Cash payment therefor.

"**Net Share Settlement Price**" means, as of any date, the volume weighted average price per share of Common Stock for the twenty (20) Trading Days prior to the date of determination of the Net Share Settlement Price for the regular trading session (including any extensions thereof, without regard to pre-open or after hours trading outside of such regular trading session) as reported on the Nasdaq Capital Market, or if the Common Stock or such other security is not listed on the Nasdaq Capital Market, as reported by the principal U.S. national securities exchange or quotation system on which the Common Stock or such other security is then listed or quoted, whichever is applicable, as published by Bloomberg at 4:15 P.M., New York City time (or 15 minutes following the end of any extension of the regular trading session), on such Trading Day, on Bloomberg page "[APPS <equity> AQR]", or if such volume weighted average price is unavailable or in manifest error, the market value of one share of Common Stock during such twenty (20) Trading Day period determined using a volume weighted average price method by an independent nationally recognized investment bank or other qualified financial institution selected by the Board of Directors. If the Common Stock is not traded on the Nasdaq Capital Market or any U.S. national Securities exchange or quotation system, the Net Share Settlement Price shall be the price per share of Common Stock that the Company could obtain from a willing buyer for shares of Common Stock sold by the Company from authorized but unissued shares of Common Stock, as such prices shall be reasonably determined in good faith by the Company's Board of Directors.

If during a period applicable for calculating Net Share Settlement Price, an issuance, distribution, subdivision, combination or other transaction or event occurs that requires an adjustment to the Exercise Price or Number of Warrants pursuant to Article 4 hereof, the Net Share Settlement Price shall be calculated for such period in a manner determined by the Company to appropriately reflect the impact of such issuance, distribution, subdivision or combination on the price of the Common Stock during such period.

"**Notes**" means the 8.75% convertible notes due September 23, 2020 issued under the Initial Purchaser Agreement.

"**Number of Warrants**" means, for a Warrant Certificate, the "Number of Warrants" specified on the face of such Warrant Certificate (or, in the case of a Global Warrant, on Schedule A to such Warrant Certificate), subject to adjustment pursuant to Article 4.

"**Officer**" means the Chief Executive Officer, the President, the Chief Financial Officer, any of the Vice Presidents of the Company, the Treasurer, any Assistant Treasurer, the Secretary, any Assistant Secretary or any of the Vice Presidents of the Company.

"**Officers' Certificate**" means a certificate signed (a) by the Chief Executive Officer, the President, the Chief Financial Officer or any of the Vice Presidents of the Company, and (b) by the Treasurer, any Assistant Treasurer, the Secretary, any Assistant Secretary or any of the Vice Presidents of the Company, and delivered to the Warrant Agent.

"**Open of Business**" means 9:00 a.m., New York City time.

"**Person**" means an individual, partnership, firm, corporation, limited liability company, business trust, joint stock company, trust, unincorporated association, joint venture, governmental authority or other entity of whatever nature.

"**Principal Market**" means, as of the date hereof, the Nasdaq Capital Market or from time to time the principal national securities exchange or over-the-counter market where the Common Stock is then traded.

"**Record Date**" means the date fixed for determination of holders of Common Stock entitled to receive Cash, securities or other property (whether such date is fixed by the Board of Directors or by statute, contract or otherwise).

"**Reduction Shares**" has the meaning set forth in Section 3.09(b).

"**Registrar**" has the meaning set forth in Section 2.05.

"**Required Reserve Amount**" has the meaning set forth in Section 4.11(a).

"**Reported Outstanding Share Number**" has the meaning set forth in Section 3.09.

"Resale Restriction Termination Date" means the later of (1) the date that a registration statement under the Securities Act with respect to the Warrants and beneficial interests therein has become effective; and (2) such other date as may be required by applicable law.

"Restricted Stock Legend" means a legend substantially in the form set forth in Exhibit B hereto.

"Restricted Warrants Legend" means a legend substantially in the form set forth in Exhibit A hereto.

"**SEC**" means the United States Securities and Exchange Commission.

"**Securities Act**" means the Securities Act of 1933, as amended.

"**Settlement Date**" means, in respect of a Warrant that is exercised hereunder, the third Trading Day immediately following the Exercise Date for such Warrant.

"**Subsidiary"** with respect to any Person, any corporation, association, partnership or other business entity of which more than 50% of the total voting power of shares of Capital Stock or other interests (including partnership interests) entitled (without regard to the occurrence of any contingency) to vote in the election of directors, managers, general partners or trustees thereof is at the time owned or controlled, directly or indirectly, by (i) such Person; (ii) such Person and one or more Subsidiaries of such Person; or (iii) one or more Subsidiaries of such Person.

"**Successor Entity**" has the meaning set forth in Section 4.08(c).

"**Trading Day**" means (i) if the applicable security is listed on the Nasdaq Capital Market, a day on which trades may be made thereon or (ii) if the applicable security is listed or admitted for trading on the American Stock Exchange, the NASDAQ Global Select Market, the NASDAQ Global Market or other national securities exchange or market, a day on which the American Stock Exchange, the NASDAQ Global Select Market, the NASDAQ Global Market or such other national securities exchange or market is open for business or (iii) if the applicable security is not so listed, admitted for trading or quoted, any Business Day.

"**Transfer Agent**" means the Company's transfer agent for the Common Stock.

"**Trigger Event**" has the meaning set forth in Section 4.03.

"**VWAP Market Disruption Event** " means (a) the relevant stock exchange fails to open for trading or (b) the occurrence or existence prior to 1:00 p.m., New York City time, on any scheduled Trading Day for the Common Stock for more than a one half-hour period in the aggregate during regular trading hours, of any suspension or limitation imposed on trading (by reason of movements in price exceeding limits permitted by the relevant stock exchange or otherwise) in the Common Stock or in any options contracts or future contracts relating to the Common Stock.

"**VWAP Trading Day**" means (a) a day on which (i) there is no VWAP Market Disruption Event and (ii) trading in the Common Stock generally occurs on the relevant stock exchange or (b) if the Common Stock (or any other security for which a Daily VWAP must be determined) is not listed or traded on any exchange or other market, a Business Day.

"**Warrant**" means a warrant of the Company exercisable for one share of Common Stock as provided herein, and issued pursuant to this Warrant Agreement with the terms, conditions and rights set forth in this Warrant Agreement.

"**Warrant Agent**" means U.S. Bank National Association, in its capacity as warrant agent hereunder.

"**Warrant Certificate**" means any certificate representing Warrants satisfying the requirements set forth in Section 2.03.

"**Warrant Register**" has the meaning set forth in Section 2.05.

"**Warrantholder**" means each Person in whose name Warrants are registered in the Warrant Register.

ARTICLE 2

ISSUANCE, EXECUTION AND TRANSFER OF WARRANTS

Section 2.01. *Issuance of Warrants*. The Warrants shall initially be issued in the form of a permanent Global Warrant in registered form in substantially the form set forth in this Article. The initial aggregate Number of Warrants will be equal to 4,105,600 warrants together with an additional 250,000 warrants issued to the Initial Purchaser (such Number of Warrants subject to adjustment from time to time as described herein). All Warrants issued under this Warrant Agreement shall in all respects be equally and ratably entitled to the benefits hereof, without preference, priority, or distinction on account of the actual time of the issuance and authentication or any other terms thereof.

Section 2.02. *Execution and Authentication of Warrants*. (a) At any time and from time to time after the execution and delivery of this Warrant Agreement, the Company may execute and deliver a Global Warrant, together with an Authentication Order with respect thereto, evidencing the initial aggregate Number of Warrants, to the Warrant Agent. The Warrant Agent shall, upon receipt of such Global Warrant and Authentication Order, authenticate and deliver such Global Warrant as provided in this Warrant Agreement and not otherwise. Each Warrant shall be dated the date of its authentication.

(b) Warrants shall be executed on behalf of the Company by any Officer of the Company and attested by its secretary or any one of its assistant secretaries. The signature of any of these officers on Warrants may be manual or facsimile. Typographical and other minor errors or defects in any such signature shall not affect the validity or enforceability of any Warrant that has been duly authenticated and delivered by the Warrant Agent.

(c) Warrants bearing the manual or facsimile signatures of individuals, each of whom was, at the time he or she signed such Warrant or his or her facsimile signature was affixed to such Warrant, as the case may be, a proper officer of the Company, shall bind the Company, notwithstanding that such individuals or any of them have ceased to hold such offices prior to the authentication and delivery of such Warrants or did not hold such offices at the date of such Warrants.

(d) No Warrant shall be entitled to any benefit under this Warrant Agreement or be valid or obligatory for any purpose unless there appears on such Warrant a certificate of authentication substantially in the form provided for herein executed by the Warrant Agent by manual signature, and such certificate upon any Warrant shall be conclusive evidence, and the only evidence, that such Warrant has been duly authenticated and delivered hereunder.

Section 2.03. *Form of Warrant Certificates*. Each Warrant Certificate shall be in substantially the form set forth in Exhibit D hereto and shall have such insertions as are appropriate or required by this Warrant Agreement and may have such letters, numbers or other marks of identification and such legends and endorsements, stamped, printed, lithographed or engraved thereon, as the Company may deem appropriate and as are not inconsistent with the provisions of this Warrant Agreement, such as may be required to comply with this Warrant Agreement, any law or any rule of any securities exchange on which Warrants may be listed, and such as may be necessary to conform to customary usage.

Section 2.04. *Transfer Restrictions and Legends.*

(a) *Restricted Warrants.*

(i) Every Warrant (and all securities issued in exchange therefor or substitution thereof, except any shares of Common Stock issued upon exercise thereof) that bears, or that is required under this Section 2.04 to bear, the Restricted Warrants Legend, will be deemed to be a "**Restricted Warrant**." Each Restricted Warrant will be subject to the restrictions on transfer set forth in this Warrant Agreement (including in the Restricted Warrants Legend) and will bear the restricted CUSIP number for the Warrants unless such restrictions on transfer are eliminated or otherwise waived by written consent of the Company, and each Warrantholder of a Restricted Warrant, by such Warrantholder's acceptance of such Restricted Warrant, will be deemed to be bound by the restrictions on transfer applicable to such Restricted Warrant.

(ii) Until the Resale Restriction Termination Date, the Warrants may not be reoffered, sold, assigned, transferred, pledged, encumbered or otherwise disposed of by a Warrantholder except (A) pursuant to a registration statement that has become effective under the Securities Act or (B) pursuant to an exemption from the registration requirements of the Securities Act, including Rule 144 under the Securities Act.

(iii) In addition, until the Resale Restriction Termination Date, any Warrant that is purchased or owned by the Company or any "affiliate" thereof (as defined under Rule 144 under the Securities Act) may not be resold by the Company or such affiliate unless registered under the Securities Act or resold pursuant to an exemption from the registration requirements of the Securities Act in a transaction that results in such Warrants no longer being "restricted securities" (as defined in Rule 144 under the Securities Act).

(iv) On and after the Resale Restriction Termination Date, any Warrant (or any security issued in exchange therefor or substitution thereof, except any shares of Common Stock issued upon the exercise thereof) will bear the Restricted Warrants Legend at any time the Company reasonably determinates that, to comply with law, such Warrant (or such securities issued in exchange for or substitution of a Warrant) must bear the Restricted Warrants Legend.

(b) *Restricted Common Stock.*

(i) Every share of Common Stock that bears, or that is required under this Section 2.04 to bear, the Restricted Stock Legend will be deemed to be "**Restricted Stock**." Each share of Restricted Stock will be subject to the restrictions on transfer set forth in this Warrant Agreement and will bear a restricted CUSIP number unless such restrictions on transfer are eliminated or otherwise waived by written consent of the Company, and each Warrantholder of Restricted Stock, by such Warrantholder's acceptance of Restricted Stock, will be deemed to be bound by the restrictions on transfer applicable to such Restricted Stock.

(ii) Until the Resale Restriction Termination Date, the shares of Common Stock issued to a Warrantholder upon exercise of a Warrant may not be reoffered, sold, assigned, transferred, pledged, encumbered or otherwise disposed of by such Warrantholder except (A) pursuant to a registration statement that has become effective under the Securities Act or (B) pursuant to an exemption from the registration requirements of the Securities Act, including Rule 144 under the Securities Act.

(iii) On and after the Resale Restriction Termination Date, any share of Common Stock will be issued in definitive form and will bear the Restricted Stock Legend at any time the Company reasonably determinates that, to comply with law, such share of Common Stock must bear the Restricted Stock Legend, but shall not otherwise bear the Restricted Stock Legend; *provided, however,* that in connection with any sale, assignment or transfer of any shares of Common Stock that are eligible to be sold, assigned or transferred under Rule 144, it shall be sufficient for the Warrantholder of such Common Stock to provide the Company with reasonable assurances that such Common Stock are eligible for sale, assignment or transfer under Rule 144 and will be resold prior to the filing of the earliest of the Company's next Quarterly Report on Form 10-Q or Annual Report on Form 10-K, as applicable, and need not provide an opinion of such Warrantholder's counsel.

Section 2.05. *Registration of Transfer, Exchange and Substitution.* (a) The Company shall cause to be kept at the office of the Warrant Agent, and the Warrant Agent shall maintain, a register (the "**Warrant Register**") in which, subject to such reasonable regulations as the Company may prescribe, the Company shall provide for the registration of Warrants and transfers, exchanges or substitutions of Warrants as herein provided. The Warrant Agent his hereby appointed "Registrar" (the " **Registrar**") for the purpose of registering Warrants and transfers of Warrants as herein provided. All Warrants issued upon any registration of transfer or exchange of or substitution for Warrants shall be valid obligations of the Company, evidencing the same obligations, and entitled to the same benefits under this Warrant Agreement, as Warrants surrendered for such registration of transfer, exchange or substitution.

(b) A Warrantholder may transfer a Warrant only upon surrender of such Warrant for registration of transfer. Warrants may be presented for registration of transfer and exchange at the offices of the Warrant Agent with a written instruction of transfer in the form annexed to Exhibit D hereto, duly executed by such Warrantholder or by such Warrantholder's attorney, duly authorized in writing. Such Warrantholder will also provide a written certificate (substantially in the form of Exhibit E hereto) to the effect that such transfer will comply with the appropriate transfer restrictions applicable to such Warrants. The Warrant Agent shall be entitled to conclusively rely upon any such certification in connection with the transfer of a Warrant hereunder and shall have no responsibility to monitor or verify whether any such transfer complies with the requirements hereunder or otherwise complies with the Securities Act. No such transfer shall be effected until, and the transferee shall succeed to the rights of a Warrantholder only upon, final acceptance and registration of the transfer in the Warrant Register by the Warrant Agent. Prior to the registration of any transfer of a Warrant by a Warrantholder as provided herein, the Company, the Warrant Agent, and any agent of the Company or the Warrant Agent may treat the Person in whose name Warrants are registered as the owner thereof for all purposes and as the Person entitled to exercise the rights represented thereby, any notice to the contrary notwithstanding.

(c) Every Warrant presented or surrendered for registration of transfer or for exchange or substitution shall (if so required by the Company or the Warrant Agent) be duly endorsed, or be accompanied by a duly executed instrument of transfer in form satisfactory to the Company and the Warrant Agent, by the holder thereof or such Warrantholder's attorney duly authorized in writing.

(d) When Warrants are presented to the Warrant Agent with a request to register the transfer of, or to exchange or substitute, such Warrants, the Warrant Agent shall register the transfer or make the exchange or substitution as requested if its requirements for such transactions and any applicable requirements hereunder are satisfied. To permit registrations of transfers, exchanges and substitutions, the Company shall execute Warrant Certificates at the Warrant Agent's request and the Warrant Agent, upon receipt of an Authentication Order, shall countersign and deliver such Warrant Certificates. No service charge shall be made for any registration of transfer or exchange of or substitution for Warrants, but the Company may require payment of a sum sufficient to cover any tax or other governmental charge that may be imposed in connection with any registration of transfer of Warrants.

Section 2.06. *Global Warrants.*

(a) Any Global Warrant shall bear the legend substantially in the form set forth in Exhibit C hereto (the "**Global Warrant Legend**").

(b) So long as a Global Warrant is registered in the name of the Depositary or its nominee, members of, or participants in, the Depositary ("**Agent Members**") shall have no rights under this Warrant Agreement with respect to the Global Warrant held on their behalf by the Depositary or the Warrant Agent as its custodian, and the Depositary may be treated by the Company, the Warrant Agent and any agent of the Company or the Warrant Agent as the absolute owner of such Global Warrant for all purposes. Accordingly, any such owner's beneficial interest in such Global Warrant will be shown only on, and the transfer of such interest shall be effected only through, records maintained by the Depositary or its nominee or its Agent Members, and neither the Company nor the Warrant Agent shall have any responsibility with respect to such records maintained by the Depositary or its nominee or its Agent Members. Notwithstanding the foregoing, nothing herein shall prevent the Company, the Warrant Agent or any agent of the Company or the Warrant Agent from giving effect to any written certification, proxy or other authorization furnished by the Depositary or impair, as between the Depositary and its Agent Members, the operation of customary practices governing the exercise of the rights of a Warrantholder.

(c) Any holder of a Global Warrant registered in the name of the Depositary or its nominee shall, by acceptance of such Global Warrant, agree that transfers of beneficial interests in such Global Warrant may be effected only through a book-entry system maintained by the holder of such Global Warrant (or its agent), and that ownership of a beneficial interest in Warrants represented thereby shall be required to be reflected in book-entry form.

(d) Transfers of a Global Warrant registered in the name of the Depositary or its nominee shall be limited to transfers in whole, and not in part, to the Company, the Depositary, their successors, and their respective nominees. Interests of beneficial owners in a Global Warrant registered in the name of the Depositary or its nominee shall be transferred in accordance with the rules and procedures of the Depositary.

(e) The holder of a Global Warrant registered in the name of the Depositary or its nominee may grant proxies and otherwise authorize any Person, including Agent Members and Persons that may hold interests through Agent Members, to take any action which a Warrantholder is entitled to take under this Warrant Agreement or the Warrant.

Section 2.07. *Expiration of Restrictions.*

(a) Any Warrants as to which such restrictions on transfer shall no longer be applicable in accordance with their terms such that they can be freely sold without limits under the Securities Act and any applicable state securities law may, upon surrender of the Warrant Certificates representing such Warrants for exchange pursuant to Section 2.05 in accordance with the procedures of the Warrant Agent (together with any legal opinions, certifications or other evidence as may reasonably be required by the Company or the Warrant Agent in order to determine that the proposed transfer is being made in compliance with the Securities Act and applicable state securities laws), be exchanged for a new Warrant Certificate for a like Number of Warrants, which shall not bear such Restricted Warrants Legend.

(b) Any such shares of Common Stock as to which such restrictions on transfer shall no longer be applicable in accordance with their terms such that the shares of Common Stock can be freely sold without limits under the Securities Act and any applicable state securities law may, upon surrender of the certificates representing such shares of Common Stock for exchange in accordance with the procedures of the Transfer Agent (together with any legal opinions, certifications or other evidence as may reasonably be required by the Company or the Transfer Agent in order to determine that the proposed transfer is being made in compliance with the Securities Act and applicable state securities laws), be exchanged for a new certificate or certificates for a like number of shares of Common Stock, which shall not bear such Restricted Stock Legend.

(c) *Global Warrants; Resale Restriction Termination Date.*

(i) If, on the Resale Restriction Termination Date, or the next succeeding Business Day if the Resale Restriction Termination Date is not a Business Day, any Warrants are represented by a Global Warrant that is a Restricted Warrant (any such Global Warrant, a "**Restricted Global Warrant**"), as promptly as practicable, the Company will automatically exchange every beneficial interest in each Restricted Global Warrant for beneficial interests in Global Warrants that are not subject to the restrictions set forth in the Restricted Warrants Legend and in Section 2.04 hereof.

(ii) To effect such automatic exchange, the Company will (A) deliver to the Depositary an instruction letter for the Depositary's exchange process at least 15 days immediately prior to the Resale Restriction Termination Date and (B) deliver to each of the Warrant Agent and the Registrar a duly completed Free Transferability Certificate, promptly after the Resale Restriction Termination Date.

(A) Immediately upon receipt of the Free Transferability Certificate by each of the Warrant Agent and the Registrar the Restricted Warrants Legend will be deemed removed from each of the Global Warrants specified in such Free Transferability Certificate and the restricted CUSIP number will be deemed removed from each of such Global Warrants and deemed replaced with an unrestricted CUSIP number.

(B) Promptly after the Resale Restriction Termination Date, the Company will provide Bloomberg LLP with a copy of the Free Transferability Certificate and will use reasonable efforts to cause Bloomberg LLP to adjust its screen page for the Warrants to indicate that the Warrants are no longer Restricted Warrants and are now identified by an unrestricted CUSIP number.

(iii) Prior to the Company's delivery of the Free Transferability Certificate and afterwards, the Company and the Warrant Agent will comply with the Applicable Procedures and the Company will use reasonable efforts to cause each Global Warrant to be identified by an unrestricted CUSIP number in the facilities of the Depositary by the date the Free Transferability Certificate is delivered to the Warrant Agent and the Registrar or as promptly as possible thereafter (and the Warrant Agent will reasonably cooperate with the Company in connection with such efforts).

(iv) Notwithstanding anything to the contrary in Sections 2.07(c)(i), (ii) and (iii), the Company will not be required to deliver the Free Transferability Certificate if, in the written opinion of counsel, removal of the Restricted Warrants Legend or the changes to the CUSIP numbers for the Warrants could result in or facilitate transfers of the Warrants in violation of applicable law.

Section 2.08. *Transfer and Exchange.*

(a) *Provisions Applicable to All Transfers and Exchanges.*

(i) Subject to the restrictions set forth in this Section 2.08, Certificated Warrants and beneficial interests in Global Warrants may be transferred or exchanged from time to time as desired, and each such transfer or exchange will be noted by the Registrar in the Warrant Register.

(ii) All Warrants issued upon any registration of transfer or exchange in accordance with this Warrant Agreement will be the valid obligations of the Company, evidencing the same equity, and entitled to the same benefits under this Warrant Agreement as the Warrants surrendered upon such registration of transfer or exchange.

(iii) No service charge will be imposed on any Warrantholder of a Certificated Warrant or any owner of a beneficial interest in a Global Warrant for any exchange or registration of transfer, but each of the Company, the Warrant Agent or the Registrar may require such Warrantholder or owner of a beneficial interest to pay a sum sufficient to cover any transfer tax, assessment or other governmental charge imposed in connection with such registration of transfer or exchange.

(iv) Unless the Company specifies otherwise, none of the Company, the Warrant Agent, the Registrar or any co-Registrar will be required to exchange or register a transfer of any Warrant (i) that has been exercised and surrendered or (ii) as to which a notice has been delivered in connection with a Fundamental Transaction pursuant to Section 4.09(c) and not withdrawn, in each case, except to the extent any portion of such Warrant is not subject to the foregoing.

(v) The Warrant Agent will have no obligation or duty to monitor, determine or inquire as to compliance with any restrictions on transfer imposed under this Warrant Agreement or under applicable law with respect to any transfer of any interest in any Warrant (including any transfers between or among Depositary participants or beneficial owners of interests in any Global Warrant) other than to require delivery of such certificates and other documentation or evidence as are expressly required by, and to do so if and when expressly required by the terms of, this Warrant Agreement, and to examine the same to determine substantial compliance as to form with the express requirements hereof.

(b) *In General; Transfer and Exchange of Beneficial Interests in Global Warrants.* So long as the Warrants are eligible for book-entry settlement with the Depositary, unless otherwise required by law, except to the extent required by Section 2.08(c):

(i) all Warrants will be represented by one or more Global Warrants;

(ii) every transfer and exchange of a beneficial interest in a Global Warrant will be effected through the Depositary in accordance with the Applicable Procedures and the provisions of this Warrant Agreement (including the restrictions on transfer set forth in Section 2.04); and

(iii) each Global Warrant may be transferred only as a whole and only (A) by the Depositary to a nominee of the Depositary, (B) by a nominee of the Depositary to the Depositary or to another nominee of the Depositary, or (C) by the Depositary or any such nominee to a successor Depositary or a nominee of such successor Depositary.

(c) *Transfer and Exchange of Global Warrants.*

(i) Notwithstanding any other provision of this Warrant Agreement, each Global Warrant will be exchanged for Certificated Warrants if the Depositary delivers notice to the Company that:

(A) the Depositary is unwilling or unable to continue to act as Depositary; or

(B) the Depositary is no longer registered as a clearing agency under the Exchange Act;

and, in each case, the Company promptly delivers a copy of such notice to the Warrant Agent and the Company fails to appoint a successor Depositary within 90 days after receiving notice from the Depositary.

In each such case, each Global Warrant will be deemed surrendered to the Warrant Agent for cancellation, and the Warrant Agent will cause each Global Warrant to be cancelled in accordance with the Applicable Procedures, and the Company, in accordance with Section 2.02, will promptly execute, and, upon receipt of an Authentication Order, the Warrant Agent will, in accordance with Section 2.02, will promptly authenticate and deliver, for each beneficial interest in each Global Warrant so exchanged, an aggregate amount of Warrants of Certificated Warrants equal to the aggregate amount of Warrants of such beneficial interest, registered in such names and in such authorized denominations as the Depositary specifies, and bearing any legends that such Certificated Warrants are required to bear under Section 2.04

(ii) In addition, if the Company, in its sole discretion, determines that any Global Warrant will be exchangeable for Certificated Warrants, any owner of a beneficial interest in a Global Warrant may exchange such beneficial interest for Certificated Warrants by delivering a written request to the Registrar.

In such case, (A) the Depositary will deliver notice of such request to the Company and the Warrant Agent, which notice will identify the owner of the beneficial interest to be exchanged, the aggregate amount of Warrants of such beneficial interest and the CUSIP of the relevant Global Warrant; (B) the Company will, in accordance with Section 2.02, promptly execute, and, upon receipt of an Authentication Order, the Warrant Agent, in accordance with Section 2.02, will promptly authenticate and deliver, to such owner, for the beneficial interest so exchanged by such owner, Certificated Warrants registered in such owner's name having an aggregate amount of Warrants equal to the aggregate amount of Warrants of such beneficial interest and bearing any legends that such Certificated Warrants are required to bear under Section 2.04, and (C) the Registrar, in accordance with the Applicable Procedures, will cause the amount of Warrants represented by such Global Warrant to be decreased by the aggregate amount of Warrants of the beneficial interest so exchanged. If all of the beneficial interests in a Global Warrant are so exchanged, such Global Warrant will be deemed surrendered to the Warrant Agent for cancellation, and the Warrant Agent will cause such Global Warrant to be cancelled in accordance with the Applicable Procedures.

(d) *Transfer and Exchange of Certificated Warrants*.

(i) If Certificated Warrants are issued, a Warrantholder may transfer a Certificated Warrant by: (A) surrendering such Certificated Warrant for registration of transfer to the Registrar, together with any endorsements or instruments of transfer required by any of the Company, the Warrant Agent or the Registrar; (B) if such Certificated Warrant is a Restricted Warrant, delivering any documentation that the Company, the Warrant Agent or the Registrar reasonably require to ensure that such transfer complies with Section 2.04 and any applicable securities laws; and (C) satisfying all other requirements for such transfer set forth in this Section 2.08 and Section 2.04. Upon the satisfaction of conditions (A), (B) and (C), the Company, in accordance with Section 2.02 will promptly execute and deliver to the Warrant Agent, and the Warrant Agent, upon receipt of an Authentication Order, will, in accordance with Section 2.02, promptly authenticate and deliver, in the name of the designated transferee or transferees, one or more new Certificated Warrants, of any authorized denominations, having like aggregate Number of Warrants and bearing any restrictive legends required by Section 2.04.

(ii) If Certificated Warrants are issued, a Warrantholder may exchange a Certificated Warrant for other Certificated Warrants of any authorized denominations and Number of Warrants equal to the aggregate Number of Warrants to be exchanged by surrendering such Warrants, together with any endorsements or instruments of transfer required by any of the Company, the Warrant Agent or the Registrar, at any office or agency maintained by the Company for such purposes. Whenever a Warrantholder surrenders Warrants for exchange, the Company, in accordance with Section 2.02, will promptly execute and deliver to the Warrant Agent, and the Warrant Agent, upon receipt of an Authentication Order, will, in accordance with Section 2.02, promptly authenticate and deliver the Warrants that such Warrantholder is entitled to receive, bearing registration numbers not contemporaneously outstanding and any restrictive legends that such Certificated Warrants are to bear under Section 2.04.

(iii) If Certificated Warrants are issued, a Warrantholder may transfer or exchange a Certificated Warrant for a beneficial interest in a Global Warrant by (A) surrendering such Certificated Warrant for registration of transfer or exchange, together with any endorsements or instruments of transfer required by any of the Company, the Warrant Agent or the Registrar, at any office or agency maintained by the Company for such purposes; (B) if such Certificated Warrant is a Restricted Warrant, delivering any documentation the Company, the Warrant Agent or the Registrar reasonably require to ensure that such transfer complies with Section 2.04 and any applicable securities laws; (C) satisfying all other requirements for such transfer set forth in this Section 2.08 and Section 2.04; and (D) providing written instructions to the Warrant Agent to make, or to direct the Registrar to make, an adjustment in its books and records with respect to the applicable Global Warrant to reflect an increase in the aggregate Number of Warrants represented by such Global Warrant, which instructions will contain information regarding the Depositary account to be credited with such increase. Upon the satisfaction of conditions (A), (B), (C) and (D), the Warrant Agent will cancel such Certificated Warrant and cause, or direct the Registrar to cause, in accordance with the Applicable Procedures, the aggregate Number of Warrants represented by such Global Warrant to be increased by the aggregate Number of Warrants of such Certificated Warrant, and will credit or cause to be credited the account of the Person specified in the instructions provided by the exchanging Warrantholder in an amount equal to the aggregate Number of Warrants of such Certificated Warrant. If no Global Warrants are then outstanding, the Company, in accordance with Section 2.02, will promptly execute and deliver to the Warrant Agent, and the Warrant Agent, upon receipt of an Authentication Order, will, in accordance with Section 2.02, authenticate, a new Global Warrant in the appropriate aggregate Number of Warrants.

Section 2.09. *Surrender of Warrant Certificates.* Any Warrant Certificate surrendered for registration of transfer, exchange, substitution or exercise of Warrants represented thereby shall, if surrendered to the Company, be delivered to the Warrant Agent, and all Warrant Certificates surrendered or so delivered to the Warrant Agent shall be promptly cancelled by the Warrant Agent and shall not be reissued by the Company and, except as provided in this Article 2 in case of an exchange, transfer or substitution, or Article 3 in case of the exercise of less than all Warrants represented thereby, or Section 5.02 in case of mutilation, no Warrant Certificate shall be issued hereunder in lieu thereof. The Warrant Agent shall deliver to the Company, upon the Company's written request or otherwise dispose of such cancelled Warrant Certificates as the Company may direct.

Section 2.10. *CUSIP Numbers*. In issuing the Warrants, the Company may use "CUSIP" numbers (if then generally in use), and, if so, the Warrant Agent shall use "CUSIP" numbers in notices as a convenience to Warrantholders; *provided* that any such notice may state that no representation is made as to the correctness of such numbers either as printed on the Warrants or as contained in any notice and that reliance may be placed only on the other identification numbers printed on the Warrants, and any such notice shall not be affected by any defect in or omission of such numbers. The Company will promptly notify the Warrant Agent of any change in the "CUSIP" numbers.

ARTICLE 3

EXERCISE AND SETTLEMENT OF WARRANTS

Section 3.01. *Exercise of Warrants*. At any time prior to 5:00 p.m., New York City time, on the Expiration Date, a Warrantholder shall be entitled to exercise, in accordance with this Article 3, the full Number of Warrants represented by any Warrant Certificate then registered in such Warrantholder's name (which may include fractional Warrants) or any portion thereof (which shall not include any fractional Warrants). Any Warrants not exercised prior to such time shall expire unexercised.

Section 3.02. *Procedure for Exercise*. (a) To exercise a Warrant (i) in the case of a Certificated Warrant, the Warrantholder must surrender the Warrant Certificate evidencing such Warrant at the principal office of the Warrant Agent (or successor warrant agent), with the Exercise Notice set forth on the reverse of the Warrant Certificate duly completed and executed, together with any applicable transfer taxes as set forth in Section 6.01(b), or (ii) in the case of a Global Warrant, the Warrantholder must comply with the procedures established by the Depositary for the exercise of Warrants.

(b) The date on which a Warrantholder complies with the requirements for exercise set forth in this Section 3.02 in respect of a Warrant is the "**Exercise Date**" for such Warrant. However, if such date is not a Trading Day or the Warrantholder satisfies such requirements after the Close of Business on a Trading Day, then the Exercise Date shall be the immediately succeeding Trading Day, unless that Trading Day falls after the Expiration Date, in which case the Exercise Date shall be the immediately preceding Trading Day.

Section 3.03. *Settlement of Warrants.* (a) Full Physical Settlement shall apply to each Warrant unless the Warrantholder elects for Net Share Settlement to apply upon exercise of such Warrant. Such election shall be made (i) in the case of a Certificated Warrant, in the Exercise Notice for such Warrant, or (ii) in the case of a Global Warrant, in accordance with the procedures established by the Depositary for the exercise of Warrants.

(b) If Full Physical Settlement is applicable with respect to the exercise of a Warrant, then, for each Warrant exercised hereunder, (i) the Warrantholder shall pay the Exercise Price (determined as of such Exercise Date) prior to 11:00 a.m., New York City time, on the Settlement Date for such Warrant, by federal wire or other immediately available funds payable to the order of the Company to the account maintained by the Warrant Agent (*provided*, *however,* that if the Warrantholder shall pay the Exercise Price after 11:00., New York City time, on the scheduled Settlement Date, then the Settlement Date shall thereafter be deemed to be, for purposes of clause (ii) of this Section 3.03(b), the first Trading Day following completion of such payment), and (ii) on the Settlement Date, following receipt by the Warrant Agent of such Exercise Price, the Company shall cause to be delivered to the Warrantholder one share of Common Stock (the "**Full Physical Share Amount**"), together with Cash in respect of any fractional Warrant as provided in Section 3.05. All funds received by the Warrant Agent upon exercise of such Warrant shall be deposited by the Warrant Agent for the account of the Company in accordance with the instructions set forth on Annex A to this Warrant Agreement (which may be updated from time to time by mutual agreement between the Company and the Warrant Agent) or in accordance with such other instructions as may be otherwise agreed in writing between the Company and the Warrant Agent (subject to the Warrant Agent's customary procedures).

(c) If Net Share Settlement is applicable with respect to the exercise of a Warrant, then, for each Warrant exercised hereunder, on the Settlement Date for such Warrant, the Company shall cause to be delivered to the Warrantholder a number of shares of Common Stock (which in no event will be less than zero) (the "**Net Share Amount**") equal to (i) the Net Share Settlement Price as of the relevant Exercise Date, minus the Exercise Price (determined as of such Exercise Date), divided by (ii) such Net Share Settlement Price, together with Cash in respect of any fractional shares or fractional Warrants as provided in Section 3.05.

Section 3.04. *Delivery of Common Stock.* (a) In connection with the delivery of shares of Common Stock to an exercising Warrantholder pursuant to Section 3.03(b) or Section 3.03(c), as the case may be, the Warrant Agent shall:

(i) (A) inform the Company of the number of Warrants which the Warrantholder desires to exercise and (A) if such shares of Common Stock are in book-entry form at the Depositary, the Company shall (or shall cause the Transfer Agent to) deliver Common Stock to which the Warrantholder is entitled by electronic transfer (with the assistance of the Company and the Transfer Agent, if necessary) to such Warrantholder's account, or any other account as such Warrantholder may designate, at the Depositary or at an Agent Member, or (B) if such shares of Common Stock are not in book-entry form at the Depositary, the Company shall (or cause the Transfer Agent to) deliver to or upon the order of such Warrantholder a certificate or certificates, in each case with legends thereon as appropriate (as determined by the Company) and for the number of full shares of Common Stock to which such Warrantholder is entitled, registered in such name or names as may be directed by such Warrantholder;

(ii) deliver Cash from the Company to such Warrantholder in respect of any fractional shares as provided in Section 3.05; and

(iii) if the Number of Warrants represented by a Warrant Certificate shall not have been exercised in full, deliver a new Warrant Certificate, including any applicable legends required by this Warrant Agreement, countersigned by the Warrant Agent, for the balance of the number of Warrants represented by the surrendered Warrant Certificate.

(b) Each Person in whose name any shares of Common Stock are issued shall for all purposes be deemed to have become the holder of record of such shares as of the Exercise Date or, in the case of a Warrant subject to Full Physical Settlement only, the date of payment by the Warrantholder of the Exercise Price in accordance with Section 3.03(b), if later. However, if any such date is a date when the stock transfer books of the Company are closed, such Person shall be deemed to have become the holder of such shares at the Close of Business on the next succeeding date on which the stock transfer books are open.

(c) Each share certificate representing Common Stock issued upon conversion of the Warrants that are Restricted Warrants shall bear the Restricted Stock Legend as set forth in Section 2.04.

(d) Promptly after the Warrant Agent shall have taken the action required above (or at such later time as may be mutually agreeable to the Company and the Warrant Agent), the Warrant Agent shall account to the Company with respect to any Warrants exercised (including, without limitation, with respect to any Exercise Price paid to the Warrant Agent). The Company shall reimburse the Warrant Agent for any amounts paid by the Warrant Agent in respect of a fractional share or fractional Warrant upon such exercise in accordance with Section 3.05 hereof.

(e) The Company shall, or shall cause the Transfer Agent to, deliver any shares of Common Stock required to be delivered by the Company in accordance with Section 3.04(a)(i) or pursuant to a Net Share Settlement by no later than the third Trading Day following the related Exercise Date. The Company acknowledges and agrees that the timely delivery of Common Stock in accordance with this Section 3.04(e) is a material term of this Warrant Agreement.

Section 3.05. *No Fractional Shares to Be Issued*. (a) Notwithstanding anything to the contrary in this Warrant Agreement, the Company shall not be required to issue any fraction of a share of Common Stock upon exercise of any Warrants.

(b) If any fraction of a Warrant shall be exercised hereunder, the Company shall pay the relevant Warrantholder Cash in lieu of the corresponding fraction of a share of Common Stock valued at the Net Share Settlement Price as of the Exercise Date. However, if more than one Warrant shall be exercised hereunder at one time by the same Warrantholder, the number of full shares which shall be issuable upon exercise thereof shall be computed on the basis of all Warrants (including any fractional Warrants) so exercised. If any fraction of a share of Common Stock would, except for the provisions of this Section 3.05, be issuable on the exercise of any Warrant or Warrants (including any fractional Warrants), the Company shall pay the Warrantholder Cash in lieu of such fractional shares valued at the Net Share Settlement Price as of the Exercise Date.

(c) Each Warrantholder, by its acceptance of a Warrant Certificate, expressly waives its right to receive any fraction of a share of Common Stock or a stock certificate representing a fraction of a share of Common Stock.

Section 3.06. *Acquisition of Warrants by Company*. The Company shall have the right, except as limited by law, to purchase or otherwise to acquire Warrants at such times, in such manner and for such consideration as it may deem appropriate and shall have agreed with the holder of such Warrants. The Company agrees that it will not, and will not permit its Subsidiaries to, resell any Warrants that they reacquire, if any.

Section 3.07. *Direction of Warrant Agent*. (a) The Company shall be responsible for performing all calculations required in connection with the exercise and settlement of the Warrants and the payment or delivery, as the case may be, of Cash and/or Common Stock as described in this Article 3. In connection therewith, the Company shall provide prompt written notice to the Warrant Agent of the amount of Cash and the number of shares of Common Stock payable or deliverable, as the case may be, upon exercise and settlement of the Warrants, including, without limitation, the Net Share Amount and the Full Physical Share Amount.

(b) Any Cash to be paid, or Common Stock to be delivered, to the Warrantholders hereunder shall be delivered to the Warrant Agent no later than the Business Day immediately preceding the date such consideration is required to be delivered to the Warrantholders.

(c) The Warrant Agent shall have no liability for any failure or delay in performing its duties hereunder caused by any failure or delay of the Company in providing such calculations or items to the Warrant Agent. The Warrant Agent shall not be accountable with respect to the validity or value (or the kind or amount) of any shares of Common Stock or other consideration that may at any time be issued or delivered upon the exercise of any Warrant, and it makes no representation with respect thereto. The Warrant Agent shall not be responsible for any failure of the Company to make any Cash payment or to issue, transfer or deliver any shares of Common Stock or stock certificates or other consideration, or to comply with any of the covenants of the Company contained in this Article 3.

Section 3.08. *Exchange Cap.* (a) Notwithstanding anything to the contrary in this Warrant Agreement or in the Warrants, the Company shall not be obligated to issue shares of Common Stock upon exercise of the Notes hereunder, and shall not be entitled to issue shares of Common Stock in connection with any anti-dilution terms described hereunder, to the extent (and only to the extent) the issuance of such shares of Common Stock, would exceed that aggregate number of shares of Common Stock which the Company may issue, in the aggregate, pursuant to the terms of all Warrants and the Notes without breaching the Company's obligations under the rules or regulations of the Principal Market (the number of shares which may be issued without violating such rules and regulations, including rules related to the aggregate of offerings under NASDAQ Listing Rule 5635(d), the "**Exchange Cap**"), except that such limitation shall not apply in the event that the Company obtains and delivers written notice to the Warrant Agent of (A) the approval of its stockholders as required by the applicable rules of the Principal Market for issuances of shares of Common Stock upon conversion or exercise (as the case may be) of the Notes and the Warrants or otherwise pursuant to the terms of the Indenture and this Warrant Agreement in excess of such amount or (B) a written confirmation from the Principal Market that such approval is not required. Until such approval or such written confirmation is obtained, no Warrantholder shall be issued in the aggregate, upon conversion or exercise (as the case may be) of any Warrants or any of the Notes or otherwise pursuant to the terms of the Note or this Warrant Agreement, shares of Common Stock in an amount greater than the product of (i) the Exchange Cap multiplied by (ii) the quotient of (A) the aggregate number of shares of Common Stock underlying the Notes and Warrants initially purchased by such Holder from the Initial Purchaser on, and determined as of, the Closing Date (for clarity, as if the Notes and Warrants had been converted and exercised in full on the Closing Date, prior to any adjustments that may later occur with respect to the applicable conversion or exercise price) divided by (B) the aggregate number of shares of Common Stock underlying the all Notes and all Warrants initially purchased by all Holders from the Initial Purchaser on, and determined as of, the Closing Date (for clarity, as if the Notes and Warrants had been converted and exercised in full on the Closing Date, prior to any adjustments that may later occur with respect to the applicable conversion or exercise price) (with respect to each Warrantholder, the "**Exchange Cap Allocation**"). In the event that any Warrantholder shall sell or otherwise transfer any of such Warrantholders Warrants, the transferee shall be allocated a pro rata portion of such Warrantholder's Exchange Cap Allocation based on the relative number of underlying shares determined as of the Closing Date with respect to such portion of such Warrants and any Notes so transferred, and the restrictions of the prior sentence shall apply to such transferee with respect to the portion of the Exchange Cap Allocation so allocated to such transferee. Upon conversion and exercise in full of a holder's Notes and Warrants, the difference (if any) between such holder's Exchange Cap Allocation and the number of shares of Common Stock actually issued to such holder upon such holder's conversion in full of such holder's Notes and exercise in full of such Warrants shall be allocated to the respective Exchange Cap Allocations of the remaining holders of Notes and Warrants on a pro rata basis in proportion to the shares of Common Stock then underlying the Notes and Warrants held by each such holders of Notes and Warrantholders at such time.

(b) In the event that the Company is prohibited from issuing shares of Common Stock pursuant to Section 3.08(a) (the "**Exchange Cap Shares**"), the Company shall pay cash in exchange for the cancellation of such shares of Common Stock at a price equal to the sum of the product of (x) such number of Exchange Cap Shares and (y) the simple average of the Daily VWAP for Common Stock for the ten consecutive VWAP Trading Days ending on and included the VWAP Trading Day immediately prior to the Exercise Date (the "**Exchange Cap Share Cancellation Amount**"); provided, that no Exchange Cap Share Cancellation Amount shall be due and payable to the Warrantholder to the extent that (x) on or prior to the applicable Warrant Share Delivery Date, the Exchange Cap Allocation of a Warrantholder is increased (whether by assignment by a holder of Notes and/or Warrants or all, or any portion, of such holder's Exchange Cap Allocation or otherwise) (an "**Exchange Cap Allocation Increase**") and (y) after giving effect to such Exchange Cap Allocation Increase, the Company delivers the applicable Exchange Cap Shares to the Warrantholder (or its designee) on or prior to the applicable Warrant Share Delivery Date. For the avoidance of any doubt, the term Warrantholder includes any beneficial interest holder in the case of any Notes represented by a Global Note and any Warrants represented by a Global Warrant where such instruments are registered in the name of a Depositary or a nominee thereof. BY ITS ACQUISITION HEREOF OR OF A BENEFICIAL INTEREST HEREIN, THE ACQUIRER AGREES IT WILL NOT CONVERT OR EXERCISE THE NOTES OR WARRANTS IN CONTRAVENTION OF THIS PARAGRAPH.

Section 3.09. *Beneficial Ownership Limitation on Exercises.* (a) Notwithstanding anything to the contrary contained herein, the Company shall not effect the exercise of any Warrant, and no Warrantholder shall have the right to exercise any Warrant, and any such exercise shall be null and void and treated as if never made, and the Company shall not be entitled to issue shares of Common Stock in connection with any anti-dilution terms described hereunder, to the extent that after giving effect to such exercise, the Warrantholder together with the other Attribution Parties collectively would beneficially own in excess of 4.99% (the "**Maximum Percentage**") of the shares of Common Stock outstanding immediately after giving effect to such exercise. For purposes of the foregoing sentence, the aggregate number of shares of Common Stock beneficially owned by such Warrantholder and the other Attribution Parties shall include the number of shares of Common Stock held by the Warrantholder and all other Attribution Parties plus the number of shares of Common Stock issuable upon exercise of this Warrant with respect to which the determination of such sentence is being made, but shall exclude shares of Common Stock which would be issuable upon (A) exercise of the remaining, unexercised portion of this Warrant beneficially owned by the Warrantholder or any of the other Attribution Parties and (B) exercise or conversion of the unexercised or unconverted portion of any Notes or any other securities of the Company (including, without limitation, any convertible notes or convertible preferred stock or warrants, including other Warrants) beneficially owned by the Warrantholder or any other Attribution Party subject to a limitation on conversion or exercise analogous to the limitation contained in this Section 3.09. For purposes of this Section 3.09, beneficial ownership shall be calculated in accordance with Section 13(d) of the Exchange Act.

(b) For purposes of determining the number of outstanding shares of Common Stock the Warrantholder may acquire upon the exercise of a Warrant without exceeding the Maximum Percentage, such Warrantholder may rely on the number of outstanding shares of Common Stock as reflected in (x) the Company's most recent Annual Report on Form 10-K, Quarterly Report on Form 10-Q, Current Report on Form 8-K or other public filing with the SEC, as the case may be, or (y) any other written notice by the Company, if any, setting forth the number of shares of Common Stock outstanding (the "**Reported Outstanding Share Number**"). If the Company receives an Exercise Notice from a Warrantholder at a time when the actual number of outstanding shares of Common Stock is less than the Reported Outstanding Share Number, the Company shall (i) notify the Warrantholder in writing of the number of shares of Common Stock then outstanding and, to the extent that such Exercise Notice would otherwise cause the Warrantholder's beneficial ownership, as determined pursuant to this Section 3.09, to exceed the Maximum Percentage, the Warrantholder must notify the Company of a reduced number of shares of Common Stock to be acquired pursuant to such Exercise Notice (the number of shares by which such purchase is reduced, the "**Reduction Shares**") and (ii) as soon as reasonably practicable, the Company shall return to the Warrantholder any exercise price paid by the Warrantholder for the Reduction Shares. For any reason at any time, upon the written or oral request of a Warrantholder the Company shall within one (1) Business Day confirm orally and in writing or by electronic mail to such Warrantholder the number of shares of Common Stock then outstanding. In any case, the number of outstanding shares of Common Stock shall be determined after giving effect to the conversion or exercise of securities of the Company, including any Warrants and Notes, by the Warrantholder and any other Attribution Party since the date as of which the Reported Outstanding Share Number was reported. In the event that the issuance of shares of Common Stock to the Warrantholder upon exercise of a Warrant results in the Warrantholder and the other Attribution Parties being deemed to beneficially own, in the aggregate, more than the Maximum Percentage of the number of outstanding shares of Common Stock (as determined under Section 13(d) of the Exchange Act), the number of shares so issued by which the Warrantholder's and the other Attribution Parties' aggregate beneficial ownership exceeds the Maximum Percentage (the "**Excess Shares**") shall be deemed null and void and shall be cancelled ab initio, and the Warrantholder shall not have the power to vote or to transfer the Excess Shares. As soon as reasonably practicable after the issuance of the Excess Shares has been deemed null and void, the Company shall return to the Warrantholder the Exercise Price paid by the Warrantholder for the Excess Shares.

(c) Upon delivery of a written notice to the Company, a Warrantholder may from time to time increase (with such increase not effective until the sixty-first (61^{st}) day after delivery of such notice) or decrease the Maximum Percentage to any other percentage not in excess of 9.99% as specified in such notice; provided that (i) any such increase in the Maximum Percentage will not be effective until the sixty-first (61^{st}) day after such notice is delivered to the Company and (ii) any such increase or decrease will apply only to such Warrantholder and the other Attribution Parties and not to any other Warrantholder that is not an Attribution Party of the Warrantholder delivering such notice.

(d) For purposes of clarity, the shares of Common Stock issuable pursuant to the terms of any Warrant in excess of the Maximum Percentage shall not be deemed to be beneficially owned by the Warrantholder for any purpose including for purposes of Section 13(d) or Rule 16a-1(a)(1) of the Exchange Act. No prior inability to exercise this Warrant pursuant to this Section 3.09 shall have any effect on the applicability of the provisions of Section 3.09 with respect to any subsequent determination of exercisability. The provisions of Section 3.09 shall be construed and implemented in a manner otherwise than in strict conformity with the terms of this Section 3.09 to the extent necessary to correct this Section 3.09 or any portion of Section 3.09 which may be defective or inconsistent with the intended beneficial ownership limitation contained in this Section 3.09 or to make changes or supplements necessary or desirable to properly give effect to such limitation.

(e) For the avoidance of any doubt, the term Warrantholder for the purposes of this Section 3.09 includes any beneficial interest holder in the case of any Warrants represented by a Global Warrant where such instrument is registered in the name of a Depositary or a nominee thereof.

(f) The limitation contained in Section 3.09 may not be waived and shall apply to any successor holders of each Warrant.

(g) The Warrant Agent shall have no obligation to monitor the Company and each Warrantholder's compliance with this Section 3.09.

ARTICLE 4

ADJUSTMENTS; FUNDAMENTAL TRANSACTION

Section 4.01. *Adjustments to Exercise Price*. The Exercise Price for the Warrants then remaining outstanding and unexercised shall be subject to adjustment (without duplication) upon the occurrence of any of the following events; provided, in no case under this Section 4.01 will the Exercise Price be reduced to a price that would result in shares of Common Stock being issued below the par value per share of Common Stock thereof:

(a) The issuance of Common Stock as a dividend or distribution to all holders of Common Stock, or a subdivision or combination of Common Stock, in which event the Exercise Price shall be adjusted based on the following formula:

$$EP_1 = EP_0 \times \frac{OS_0}{OS_1}$$

where:

EP_0 = the Exercise Price in effect immediately prior to the Close of Business on the Record Date for such dividend or distribution, or immediately prior to the Open of Business on the effective date for such subdivision or combination, as the case may be;

EP_1 = the Exercise Price in effect immediately after the Close of Business on the Record Date for such dividend or distribution, or immediately after the Open of Business on the effective date for such subdivision or combination, as the case may be;

OS_0= the number of shares of Common Stock outstanding immediately prior to the Close of Business on the Record Date for such dividend or distribution, or immediately prior to the Open of Business on the effective date for such subdivision or combination, as the case may be; and

OS_1= the number of shares of Common Stock that would be outstanding immediately after, and solely as a result of, such dividend, distribution, subdivision or combination.

Such adjustment shall become effective immediately after the Close of Business on the Record Date for such dividend or distribution, or immediately after the Open of Business on the effective date for such subdivision or combination, as the case may be. If any dividend or distribution or subdivision or combination of the type described in this Section 4.01(a) is declared or announced but not so paid or made, the Exercise Price shall again be adjusted to the Exercise Price that would then be in effect if such dividend or distribution or subdivision or combination had not been declared or announced, as the case may be.

(b) The dividend or distribution to all holders of Common Stock of (i) shares of the Company's Capital Stock (other than Common Stock), (ii) evidences of the Company's indebtedness, (iii) rights or warrants to purchase the Company's securities or the Company's assets or (iv) property or Cash (excluding any ordinary cash dividends declared by the Board of Directors and excluding any dividend, distribution or issuance covered by clauses (a) or (b) above), in which event the Exercise Price will be adjusted based on the following formula:

$$EP_1 = EP_0 \times \frac{SP_0 - FMV}{SP_0}$$

where:

EP_0 = the Exercise Price in effect immediately prior to the Close of Business on the Record Date for such dividend or distribution;

EP_1 = the Exercise Price in effect immediately after the Close of Business on the Record Date for such dividend or distribution;

SP_0 = the Current Market Price; and

FMV = the fair market value (as determined in good faith by the Board of Directors), on the Record Date for such dividend or distribution, of the shares of Capital Stock, evidences of indebtedness or property, rights or warrants so distributed or the amount of Cash (other than in the case of ordinary cash dividends declared by the Board of Directors) expressed as an amount per share of outstanding Common Stock.

Such decrease shall become effective immediately after the Close of Business on the Record Date for such dividend or distribution. In the event that such dividend or distribution is declared or announced but not so paid or made, the Exercise Price shall again be adjusted to be the Exercise Price which would then be in effect if such distribution had not been declared or announced.

However, if the transaction that gives rise to an adjustment pursuant to this clause (b) is one pursuant to which the payment of a dividend or other distribution on Common Stock consists of shares of capital stock of, or similar equity interests in, a Subsidiary of the Company or other business unit of the Company (i.e., a spin-off) that are, or, when issued, will be, traded or quoted on the Nasdaq Capital Market or any other national securities exchange or market, then the Exercise Price will instead be adjusted based on the following formula:

$$EP_1 = EP_0 \times \frac{MP_0}{MP_0 + FMV_0}$$

where:

EP_0 = the Exercise Price in effect immediately prior to the Close of Business on the Record Date for such dividend or distribution;

EP_1 = the Exercise Price in effect immediately after the Close of Business on the Record Date for such dividend or distribution;

FMV_0= the average of the Closing Sale Prices of the Capital Stock or similar equity interests distributed to holders of Common Stock applicable to one share of Common Stock over the 10 consecutive Trading Days commencing on, and including, the third Trading Day after the Ex-Date for such dividend or distribution; and

MP_0= the average of the Closing Sale Prices of the Common Stock over the 10 consecutive Trading Days commencing on, and including, the third Trading Day after the Ex-Date for such dividend or distribution.

Such decrease shall become effective immediately after the Ex-Date for such dividend or distribution. In the event that such dividend or distribution is declared or announced but not so paid or made, the Exercise Price shall again be adjusted to be the Exercise Price which would then be in effect if such distribution had not been declared or announced.

(c) If the Company issues or sells shares of Common Stock (including shares of Common Stock deemed to be issued pursuant to the fourth paragraph of this Section 4.01(c)) in a Qualified Financing at a price per share less than the applicable Exercise Price on the Trading Day immediately preceding such issuance or sale, the Exercise Price will be adjusted based on the following formula:

$$EP_1 = EP0 \times \frac{(OS_0 + Y)}{(OS_0 + X)}$$

where,

EP_0= the Exercise Price in effect immediately prior to the Open of Business on the date of such issuance or sale (or deemed issuance);

EP_1= the Exercise Price in effect immediately after the Open of Business on the date of such issuance or sale (or deemed issuance);

OS = the number of shares of Common Stock outstanding immediately prior to the Open of Business on the date of such issuance or sale (or deemed issuance);

X = the total number of shares of Common Stock issued or sold (or deemed issued) on such date; and

Y = the number of shares of Common Stock equal to the quotient of (A) the aggregate purchase price of the shares of Common Stock issued or sold (or deemed issued) and (B) the Exercise Price of the Warrants on the Trading Day immediately preceding such issuance or sale (or deemed issuance).

For the purpose of the above calculation, the number of shares of Common Stock outstanding immediately prior to the Open of Business on the date of such issuance or sale shall be calculated on a fully diluted basis, as if all then outstanding options, warrants and other convertible securities had been fully exercised or converted (and the resulting securities fully converted into shares of Common Stock, if so convertible) as of such date.

Any adjustment made pursuant to this Section 4.01(c) shall become effective immediately following the Open of Business on the date of such issuance or sale. If Section 4.01(a) or (b) applies to any distribution of shares of Common Stock or Notes, this Section 4.01(c) shall not apply to such distribution. In no event shall the Exercise Price be increased pursuant to this Section 4.01(c).

In the event the Company at any time or from time to time after the Closing Date shall issue any options or convertible securities or shall fix a record date for the determination of holders of any class of securities then entitled to receive any such options or convertible securities, then the maximum number of shares (as set forth in the instrument relating thereto without regard to any provisions contained therein designed to protect against dilution) of Common Stock issuable upon the exercise of such options or, in the case of convertible securities and options therefor, the conversion or exchange of such convertible securities, shall be deemed to be shares of Common Stock issued as of the time of such issuance or, in case such a record date shall have been fixed, as of the Close of Business on such record date *provided*, *however*, that in any such case in which shares of Common Stock are deemed to be issued no further adjustments to the Exercise Price shall be made upon the subsequent issue of shares of Common Stock upon the exercise of such options or conversion or exchange of such convertible securities. The consideration per share received by the Company for shares of Common Stock deemed to have been issued pursuant to this paragraph relating to options and convertible securities shall be determined by dividing:

(1) the total amount, if any, received or receivable by the Company as consideration for the issuance of such options or convertible securities, plus the minimum aggregate amount of additional consideration (as set forth in the instruments relating thereto, without regard to any provision contained therein designed to protect against dilution) payable to the Company upon the exercise of such options or the conversion or exchange of such convertible securities, or in the case of options for convertible securities, the exercise of such options for convertible securities and the conversion or exchange of such convertible securities, by

(2) the maximum number of shares of Common Stock (as set forth in the instruments relating thereto, without regard to any provision contained therein designed to protect against the dilution) issuable upon the exercise of such options or conversion or exchange of such convertible securities, or in the case of options for convertible securities, the exercise of such options for convertible securities and the conversion or exchange of such convertible securities.

Notwithstanding the foregoing, if the terms of any option or convertible security, the issuance of which resulted in an adjustment to the Exercise Price of the Warrants pursuant to this subsection 4.01(c), are revised as a result of an amendment to such terms or any other adjustment pursuant to the provisions of such option or convertible security (but excluding automatic adjustments to such terms pursuant to anti-dilution or similar provisions of such option or convertible security) to provide for either (i) any increase or decrease in the number of shares of Common Stock issuable upon the exercise, conversion and/or exchange of any such option or convertible security or (ii) any increase or decrease in the consideration payable to the Company upon such exercise, conversion and/or exchange, then effective upon such increase or decrease becoming effective, the Exercise Price of the Warrants computed upon the original issue of such option or convertible security (or upon the occurrence of a record date with respect thereto) shall be readjusted to such Exercise Price as would have obtained had such revised terms been in effect upon the original date of issuance of such option or convertible security; *provided*, *however*, that any adjustments to the Exercise Price pursuant to this paragraph shall not be effective with respect to any Warrants that have been exercised prior to the date of any of the actions described in this paragraph.

(d) For the purposes of Section 4.01(a), (b) and (c), any dividend or distribution to which Section 4.01(b) is applicable that also includes shares of Common Stock, or rights or warrants to subscribe for or purchase shares of Common Stock (or both), shall be deemed instead to be a dividend or distribution of the indebtedness, assets or shares of Capital Stock other than such shares of Common Stock or rights or warrants (and any Exercise Price adjustment required by Section 4.01(b) with respect to such dividend or distribution shall be made in respect of such dividend or distribution (without regard to the parenthetical in Section 4.01(b) that begins with the word "excluding")) immediately followed by a dividend or distribution of such shares of Common Stock or such rights or warrants (and any further Exercise Price adjustment required by Section 4.01 with respect to such dividend or distribution shall then be made), except, for purposes of such adjustment, any shares of Common Stock included in such dividend or distribution shall not be deemed "outstanding immediately prior to the Close of Business on the Record Date."

(e) Prior to September 28, 2017, the Company shall not in any manner issue or sell or enter into any agreement to issue or sell, any Common Stock, options, warrants or convertible securities, after the Closing Date, that are issuable pursuant to such agreement or convertible into or exchangeable or exercisable for shares of Common Stock at a price which varies or may vary with the market price of the shares of Common Stock, including by way of one or more reset(s) to a fixed price, but exclusive of such formulations reflecting customary anti-dilution provisions (such as share splits, share combinations, share dividends and similar transactions) and also exclusive of such formulations reflecting customary price-based anti-dilution provisions. For avoidance of doubt, the Company's obligations to adjust the Exercise Price pursuant to the terms of this Section 4.01 shall not be prohibited by this Section 4.01(e).

Section 4.02. *Adjustments to Number of Warrants*. Concurrently with any adjustment to the Exercise Price under Section 4.01, the Number of Warrants for each Warrant Certificate will be adjusted such that the Number of Warrants for each such Warrant Certificate in effect immediately following the effectiveness of such adjustment will be equal to the Number of Warrants for each such Warrant Certificate in effect immediately prior to such adjustment, *multiplied* by a fraction, (i) the numerator of which is the Exercise Price in effect immediately prior to such adjustment and (ii) the denominator of which is the Exercise Price in effect immediately following such adjustment.

Section 4.03. *Certain Distributions of Rights and Warrants; Stockholder Rights Plan*. (a) Rights or warrants distributed by the Company to all holders of Common Stock (including under any Stockholder Rights Plan in existence on the date hereof or hereafter put into effect) entitling the holders thereof to subscribe for or purchase shares of the Company's Capital Stock (either initially or under certain circumstances), which rights or warrants, until the occurrence of a specified event or events (a "**Trigger Event**"):

(i) are deemed to be transferred with such shares of Common Stock;

(ii) are not exercisable; and

(iii) are also issued in respect of future issuances of Common Stock,

shall be deemed not to have been distributed for purposes of Article 4 (and no adjustment to the Exercise Price or the Number of Warrants under this Article 4 will be made) until the occurrence of the earliest Trigger Event, whereupon such rights and warrants shall be deemed to have been distributed and an appropriate adjustment (if any is required) to the Exercise Price and the Number of Warrants for each Warrant Certificate shall be made under this Article 4 (subject in all respects to Section 4.03(d)).

(c) If any such right or warrant is subject to events, upon the occurrence of which such rights or warrants become exercisable to purchase different securities, evidences of indebtedness or other assets, then the date of the occurrence of any and each such event shall be deemed to be the date of distribution and Record Date with respect to new rights or warrants with such rights (subject in all respects to Section 4.03(d)).

(d) In addition, except as set forth in Section 4.03(d), in the event of any distribution (or deemed distribution) of rights or warrants, or any Trigger Event or other event (of the type described in Section 4.03) with respect thereto that was counted for purposes of calculating a distribution amount for which an adjustment to the Exercise Price and the Number of Warrants for each Warrant Certificate under Article 4 was made (including any adjustment contemplated in Section 4.03(d)):

(i) in the case of any such rights or warrants that shall all have been redeemed or repurchased without exercise by the holders thereof, the Exercise Price and the Number of Warrants for each Warrant Certificate shall be readjusted upon such final redemption or repurchase to give effect to such distribution or Trigger Event, as the case may be, as though it were a Cash distribution, equal to the per share redemption or repurchase price received by a holder or holders of Common Stock with respect to such rights or warrants (assuming such holder had retained such rights or warrants), made to all holders of Common Stock as of the date of such redemption or repurchase; and

(ii) in the case of such rights or warrants that shall have expired or been terminated without exercise by the holders thereof, the Exercise Price and the Number of Warrants for each Warrant Certificate shall be readjusted as if such rights and warrants had not been issued.

(e) If a Company stockholders rights plan under which any rights are issued provides that each share of Common Stock issued upon exercise of Warrants at any time prior to the distribution of separate certificates representing such rights shall be entitled to receive such rights, prior to the separation of such rights from the Common Stock, the Exercise Price and the Number of Warrants for each Warrant Certificate shall not be adjusted pursuant to Section 4.01. If, however, prior to any exercise of a Warrant, such rights have separated from the Common Stock, the Exercise Price and the Number of Warrants for each Warrant Certificate shall be adjusted at the time of separation as if the Company dividended or distributed to all holders of Common Stock, the Company's Capital Stock, evidences of the Company's indebtedness, certain rights or warrants to purchase the Company's securities or other of the Company's assets as described in Section 4.01(b), subject to readjustment in the event of the expiration, termination or redemption of such rights.

Section 4.04. *No Impairment*. The Company will not, by amendment of its Certificate of Incorporation 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 to be observed or performed hereunder by the Company, but will at all times in good faith assist in the carrying out of all the provisions of this Warrant and in taking of all such action as may be necessary or appropriate in order to protect the rights of the Warrantholder.

Section 4.05. *Discretionary Adjustments*. The Company may from time to time, to the extent permitted by law and subject to applicable rules of the Nasdaq Capital Market, decrease the Exercise Price and/or increase the Number of Warrants for each Warrant Certificate by any amount for any period of at least 20 days. In that case, the Company shall give the Warrantholders at least 15 days' prior notice of such increase or decrease, and such notice shall state the decreased Exercise Price and/or increased Number of Warrants for each Warrant Certificate and the period during which the decrease and/or increase will be in effect. The Company may make such decreases in the Exercise Price and/or increases in the Number of Warrants for each Warrant Certificate, in addition to those set forth in this Article 4, as the Company's Board of Directors deems advisable, including to avoid or diminish any income tax to holders of the Common Stock resulting from any dividend or distribution of stock (or rights to acquire stock) or from any event treated as such for income tax purposes.

Section 4.06. *Restrictions on Adjustments*. (a) Except in accordance with Section 4.01, the Exercise Price and the Number of Warrants for any Warrant Certificate will not be adjusted for the issuance of Common Stock or any securities convertible into or exchangeable for Common Stock or carrying the right to purchase any of the foregoing.

(b) Neither the Exercise Price nor the Number of Warrants for any Warrant Certificate will be adjusted:

(i) upon the issuance of any shares of Common Stock pursuant to any present or future plan providing for the reinvestment of dividends or interest payable on the Company's securities and the investment of additional optional amounts in shares of Common Stock under any plan;

(ii) for a change in the par value of the Common Stock.

(c) In no event will the Company adjust the Exercise Price or make a corresponding adjustment to the Number of Warrants for any Warrant Certificate to the extent that the adjustment would reduce the Exercise Price below the par value per share of Common Stock.

(d) No adjustment shall be made to the Exercise Price or the Number of Warrants for any Warrant Certificate for any of the transactions described in Section 4.01 if the Company makes provisions for Warrantholders to participate in any such transaction without exercising their Warrants on the same basis as holders of Common Stock and with notice that the Board of Directors determines in good faith to be fair and appropriate.

(e) No adjustment shall be made to the Exercise Price, nor will any corresponding adjustment be made to the Number of Warrants for any Warrant Certificate, unless the adjustment would result in a change of at least 1% of the Exercise Price; *provided that,* any adjustments that are less than 1% of the Exercise Price shall be carried forward and such carried forward adjustments, regardless of whether the aggregate adjustment is less than 1% of the Exercise Price, shall be made (i) annually, on each anniversary of the Closing Date, (ii) immediately prior to the time of any exercise, and (iii) five Business Days prior to the Expiration Date, unless, in each case, such adjustment has already been made.

(f) If the Company takes a record of the holders of Common Stock for the purpose of entitling them to receive a dividend or other distribution, and thereafter (and before the dividend or distribution has been paid or delivered to stockholders) legally abandons its plan to pay or deliver such dividend or distribution, then thereafter no adjustment to the Exercise Price or the Number of Warrants for any Warrant Certificate then in effect shall be required by reason of the taking of such record.

Section 4.07. *Deferral of Adjustments*. In any case in which Section 4.01 provides that an adjustment shall become effective immediately after (a) a Record Date for an event or (b) the effective date (in the case of a subdivision or combination of the Common Stock) (each a "**Determination Date**"), the Company may elect to defer, until the later of the date the adjustment to the Exercise Price and Number of Warrants for each Warrant Certificate can be definitively determined and the occurrence of the applicable Adjustment Event (as hereinafter defined), (i) issuing to the Warrantholder of any Warrant exercised after such Determination Date and before the occurrence of such Adjustment Event, the additional shares of Common Stock or other securities or assets issuable upon such exercise by reason of the adjustment required by such Adjustment Event over and above the Common Stock issuable upon such exercise before giving effect to such adjustment and (ii) paying to such Warrantholder any amount in Cash in lieu of any fractional share of Common Stock or fractional Warrant pursuant to Section 3.05. For the purposes of this Section 4.07, the term "**Adjustment Event**" shall mean in any case referred to in clause (a) or clause (b) hereof, the occurrence of such event.

Section 4.08. *Consolidation, Merger and Sale of Assets*.

(b) Subject to Section 4.09, the Company may, without the consent of the Warrantholders, consolidate with, merge into or sell, lease or otherwise transfer in one transaction or a series of related transactions the consolidated assets of the Company and its Subsidiaries substantially as an entirety to any corporation, limited liability company, partnership or trust organized under the laws of the United States or any of its political subdivisions so long as:

(i) the Company complies with, or the Company causing the successor to assume all of the Company's obligations under this Warrant Agreement and the Warrants; and

(ii) the Company provides written notice of such assumption to the Warrant Agent.

(c) In case of any such consolidation, merger, sale, lease or other transfer that does not constitute a Fundamental Transaction and upon any such assumption by the successor corporation, limited liability company, partnership or trust, such successor entity (the "**Successor Entity**") shall succeed to and be substituted for the Company with the same effect as if it had been named herein as the Company. Such Successor Entity thereupon may cause to be signed, and may issue any or all of the Warrants issuable pursuant to this Warrant Agreement which theretofore shall not have been signed by the Company; and, upon the order of such Successor Entity, instead of the Company, and subject to all the terms, conditions and limitations in this Warrant Agreement prescribed, the Warrant Agent shall authenticate and deliver, as applicable, any Warrants that previously shall have been signed and delivered by the Officers of the Company to the Warrant Agent for authentication, and any Warrants which such Successor Entity thereafter shall cause to be signed and delivered to the Warrant Agent for such purpose.

Section 4.09. *Fundamental Transaction*. (a) If, at any time while any Warrants remain outstanding and unexercised any of the following occur: (i) a "person" or "group" within the meaning of Section 13(d) of the Exchange Act other than the Company, the Company's Subsidiaries or the Company's or the Company's Subsidiaries' employee benefit plans files a Schedule TO or any schedule, form or report under the Exchange Act disclosing that such person or group has become the direct or indirect "beneficial owner," as defined in Rule 13d-3 under the Exchange Act, of the Company's common equity representing more than 50% of the voting power of all outstanding classes of the Company's common equity entitled to vote generally in the election of the Company's directors; (ii) the consummation of (A) any share exchange, consolidation or merger involving the Company pursuant to which the Common Stock will be converted into cash, securities or other property or (B) any sale, lease or other transfer in one transaction or a series of transactions of all or substantially all of the consolidated assets of the Company and the Company's Subsidiaries, taken as a whole, to any person other than one or more of the Company's Subsidiaries; *provided*, *however*, that a share exchange, consolidation or merger transaction described in clause (A) above in which the holders of more than 50% of all shares of Common Stock entitled to vote generally in the election of the Company's directors immediately prior to such transaction own, directly or indirectly, more than 50% of all shares of Common Stock entitled to vote generally in the election of the directors of the continuing or surviving entity or the parent entity thereof immediately after such transaction in substantially the same proportions (relative to each other) as such ownership immediately prior to such transaction will not, in either case, be a Fundamental Transaction (*provided, however,* that if a transaction occurs that constitutes a Fundamental Transaction under both clause (i) and clause (ii) above, such transaction will be treated solely as a Fundamental Transaction under clause (ii) above) or (iii) the Company's stockholders approve any plan or proposal for the liquidation or dissolution of the Company (each under clause (i) through (iii), a "**Fundamental Transaction**"), then, and in such event only if such Fundamental Transaction is consummated and in full satisfaction of any and all amounts otherwise payable upon exercise of such unexercised Warrant, the Company or the Successor Entity (as the case may be) shall be obligated to redeem, and the Warrantholder shall have the right to receive, an amount equal to the Black Scholes Value of such unexercised Warrant less the Exercise Price. Payment of such amounts shall be made by the Company or such Successor Entity (or at their direction) to the Warrantholder on or prior to the third Business Day after the later to occur of (x) the date of the consummation of such Fundamental Transaction or (y) the date that the Black Scholes Value has been determined in accordance with the terms of this Warrant Agreement (but in no event later than ten Business Days after the date of the consummation of such Fundamental Transaction.

(b) Nothing in Section 3.09(a) shall limit the right of a Warrantholder to exercise (together with the payment of the Exercise Price or by means of a Net Share Settlement) any Warrant in connection with, and contingent upon, such Fundamental Transaction and to receive the consideration payable to holders of the Common Stock in lieu of not exercising such Warrant and receiving the Black Scholes Value for such Warrant. In furtherance of the foregoing, the Company shall ensure that if holders of Common Stock are given any choice as to the securities, cash or property to be received in a Fundamental Transaction, then the Warrantholder, if such Warrantholder does timely exercise a Warrant on or prior to the closing of such Fundamental Transaction shall be given the same choice as to the consideration available to holders of Common Stock, subject to the same terms and conditions, if any, otherwise applicable to holders of Common Stock.

(c) The Company shall provide each Warrantholder and the Warrant Agent with written notice of any Fundamental Transaction no later than 20 days prior to the anticipated closing date of such Fundamental Transaction.

(d) The Company shall cause any Successor Entity in a Fundamental Transaction in which the Company is not the survivor to assume in writing all of the obligations of the Company under this Section 4.09.

Section 4.10. *Common Stock Outstanding.* For the purposes of this Article 4, the number of shares of Common Stock at any time outstanding shall not include shares held, directly or indirectly, by the Company, but shall include shares issuable in respect of scrip certificates issued in lieu of fractions of shares of Common Stock.

Section 4.11. *Covenant to Reserve Shares for Issuance on Exercise*. (a) So long as any Warrants remain outstanding, the Company shall at all times keep reserved for issuance under such Warrant a number of shares of Common Stock at least equal to 100% of the maximum number of shares of Common Stock as shall be necessary to satisfy the Company's obligation to issue shares of Common Stock under such Warrants then outstanding (without regard to any limitations on exercise) (the "**Required Reserve Amount**"); provided that at no time shall the number of shares of Common Stock reserved pursuant to this Section 4.11 be reduced other than proportionally in connection with any exercise or redemption of any Warrants or such other event covered by Section 4.01. The Required Reserve Amount (including, without limitation, each increase in the number of shares so reserved) shall be allocated pro rata among the Warrantholders of the Warrants based on number of shares of Common Stock issuable upon exercise of Warrants held by each Warrantholder on the Closing Date (without regard to any limitations on exercise) or increase in the number of reserved shares, as the case may be (the "**Authorized Share Allocation**"). In the event that a Warrantholder shall sell or otherwise transfer any of such Warrantholder's Warrants, each transferee shall be allocated a pro rata portion of such Warrantholder's Authorized Share Allocation.

(b) If, notwithstanding Section 4.11(a), and not in limitation thereof, at any time while any Warrants remain outstanding, the Company does not have a sufficient number of authorized and unreserved shares of Common Stock to satisfy its obligation to reserve the Required Reserve Amount (an "**Authorized Share Failure**"), then (i) the Company shall immediately take all action necessary to increase the Company's authorized shares of Common Stock to an amount sufficient to allow the Company to reserve the Required Reserve Amount for all the Warrants then outstanding and (ii), without limiting clause (i), upon any exercise of a Warrant to the extent as would be limited as to the issuance of Common Stock due to the Authorized Share Failure, the Company shall, in addition to a settlement of the Warrant in Common Stock to the extent not limited by an Authorized Share Failure, pay, within three (3) Business Days of the Exercise Date, an amount of Cash in exchange for the cancellation of such Warrants for shares of Common Stock that cannot be issued to the Warrantholder due to the Authorized Share Failure at a price equal to the sum of the product of (x) such number of Common Stock that cannot be issued due to the Authorized Share Failure and (y) the simple average of the Daily VWAP for Common Stock for the ten consecutive VWAP Trading Days ending on and included the VWAP Trading Day immediately prior to the Exercise Date net of the related Exercise Price for such related shares of Common Stock that would have otherwise been issued (as may be adjusted to give effect for any related Net Share Settlement in lieu of a full exercise of such Warrant). Without limiting the generality of the foregoing clause (i), as soon as practicable after the date of the occurrence of an Authorized Share Failure, but in no event later than sixty (60) days after the occurrence of such Authorized Share Failure, the Company shall hold a meeting of its stockholders for the approval of an increase in the number of authorized shares of Common Stock. In connection with such meeting, the Company shall provide each stockholder with a proxy statement and shall use its best efforts to solicit its stockholders' approval of such increase in authorized shares of Common Stock and to cause its board of directors to recommend to the stockholder that they approve such proposal.

(c) The Company agrees to authorize and direct its Transfer Agent to reserve for issuance the number of shares of Common Stock specified in this Section 4.11. The Company shall instruct the Transfer Agent to deliver to the Warrant Agent, upon written request from the Warrant Agent substantially in the form of Exhibit F (or as separately agreed between the Warrant Agent and the Transfer Agent), stock certificates (or beneficial interests therein) required to honor outstanding Warrants upon exercise thereof in accordance with the terms of this Warrant Agreement. The Company shall pay to the Warrant Agent, as agent for the Warrantholders, any Cash that may be payable as provided in this Article 4. Promptly after the date of expiration of Warrants and upon written request of the Company, the Warrant Agent shall certify to the Company the aggregate Number of Warrants then outstanding, and thereafter no shares shall be required to be reserved in respect of such Warrants.

Section 4.12. *Calculations Final*. The Company shall be responsible for making all calculations called for under this Warrant Agreement. These calculations include, but are not limited to, the Exercise Date, the Current Market Price, the Closing Sale Price, the Net Share Settlement Price, the Exercise Price, the Number of Warrants for each Warrant Certificate and the number of shares of Common Stock or other consideration, if any, to be issued upon exercise of any Warrants. The Company shall make the foregoing calculations in good faith and, absent manifest error, the Company's calculations shall be final and binding on Warrantholders. The Company shall provide a schedule of the Company's calculations to the Warrant Agent, and the Warrant Agent is entitled to rely upon the accuracy of the Company's calculations without independent verification.

Section 4.13. *Notice of Adjustments*. Whenever the Exercise Price or the Number of Warrants for each Warrant Certificate is adjusted, the Company shall promptly mail to Warrantholders in accordance with Section 6.15 a notice of the adjustment. The Company shall file with the Warrant Agent such notice and an Officers' Certificate briefly stating the facts requiring the adjustment and the manner of computing it. The certificate shall be conclusive evidence that the adjustment is correct, and the Warrant Agent shall not be deemed to have any knowledge of any adjustments unless and until it has received such certificate. The Warrant Agent shall not be under any duty or responsibility with respect to any such certificate except to exhibit the same to any Warrantholder desiring inspection thereof.

Section 4.14. *Warrant Agent Not Responsible for Adjustments or Validity* . The Warrant Agent shall at no time be under any duty or responsibility to any Warrantholder to determine whether any facts exist that may require an adjustment of the Exercise Price and the Number of Warrants for each Warrant Certificate, or with respect to the nature or extent of any such adjustment when made, or with respect to the method employed, herein or in any supplemental agreement provided to be employed, in making the same. The Warrant Agent shall have no duty to verify or confirm any calculation called for hereunder. The Warrant Agent shall have no liability for any failure or delay in performing its duties hereunder caused by any failure or delay of the Company in providing such calculations to the Warrant Agent. The Warrant Agent shall not be accountable with respect to the validity or value (or the kind or amount) of any shares of Common Stock or of any securities or property which may at any time be issued or delivered upon the exercise of any Warrant or upon any adjustment pursuant to this Article 4, and it makes no representation with respect thereto. The Warrant Agent shall not be responsible for any failure of the Company to make any Cash payment or to issue, transfer or deliver any shares of Common Stock or stock certificates or other securities or property or scrip upon the surrender of any Warrant for the purpose of exercise or upon any adjustment pursuant to this Article 4, or to comply with any of the covenants of the Company contained in this Article 4.

Section 4.15. *Statements on Warrants*. The form of Warrant Certificate need not be changed because of any adjustment made pursuant to this Article 4, and Warrant Certificates issued after such adjustment may state the same information (other than the adjusted Exercise Price and the adjusted Number of Warrants for such Warrant Certificates) as are stated in the Warrant Certificates initially issued pursuant to this Warrant Agreement. However, the Company may at any time in its sole discretion (which shall be conclusive) make any change in the form of Warrant Certificate that it may deem appropriate and that does not materially adversely affect the interest of the Warrantholders; and any Warrant Certificates thereafter issued or countersigned, whether in exchange or substitution for an outstanding Warrant Certificate or otherwise, may be in the form as so changed.

ARTICLE 5

OTHER PROVISIONS RELATING TO RIGHTS OF WARRANTHOLDERS

Section 5.01. *No Rights as Stockholders*. Warrantholders shall not be entitled, by virtue of holding Warrants, to vote, to consent, to receive dividends, to receive notice as stockholders with respect to any meeting of stockholders for the election of the Company's directors or any other matter, or to exercise any rights whatsoever as the Company's stockholders unless, until and only to the extent such holders become holders of record of shares of Common Stock issued upon settlement of the Warrants.

Section 5.02. *Mutilated or Missing Warrant Certificates* . If any Warrant at any time is mutilated, defaced, lost, destroyed or stolen, then on the terms set forth in this Warrant Agreement, such Warrant may be replaced at the cost of the applicant (including legal fees of the Company and the Warrant Agent) at the office of the Warrant Agent. The applicant for a new Warrant shall, in the case of any mutilated or defaced Warrant, surrender such Warrant to the Warrant Agent and, in the case of any lost, destroyed or stolen Warrant, furnish evidence satisfactory to the Company of such loss, destruction or theft, and, in each case, furnish evidence satisfactory to the Company of the ownership and authenticity of the Warrant together with such indemnity as the Company and the Warrant Agent may require. Any such new Warrant Certificate shall constitute an original contractual obligation of the Company, whether or not the allegedly lost, stolen, mutilated or destroyed Warrant Certificate shall be at any time enforceable by anyone. An applicant for such a substitute Warrant Certificate shall also comply with such other reasonable regulations and pay such other reasonable charges as the Company or the Warrant Agent may prescribe. All Warrant Certificates shall be held and owned upon the express condition that the foregoing provisions are exclusive with respect to the substitution for lost, stolen, mutilated or destroyed Warrant Certificates, and shall preclude any and all other rights or remedies notwithstanding any law or statute existing or hereafter enacted to the contrary with respect to the substitution for and replacement of negotiable instruments or other securities without their surrender.

Section 5.03. *Modification, Waiver and Meetings*. (a) This Warrant Agreement may be modified or amended by the Company and the Warrant Agent, without the consent of the holder of any Warrant, for the purposes of curing any ambiguity or correcting or supplementing any defective provision contained in this Warrant Agreement; provided that such modification or amendment does not adversely affect the interests of the Warrantholders in any respect.

(b) Modifications and amendments to this Warrant Agreement or to the terms and conditions of Warrants may also be made by the Company and the Warrant Agent, and noncompliance with any provision of the Warrant Agreement or Warrants may be waived, with the written consent of the Warrantholders of Warrants representing at least two-thirds of the aggregate Number of Warrants at the time outstanding.

(c) However, no such modification, amendment or waiver may, without the written consent or the affirmative vote of each Warrantholder affected:

(i) change the Expiration Date;

(ii) increase the Exercise Price or decrease the Number of Warrants (except as explicitly set forth in Article 4);

(iii) impair the right to institute suit for the enforcement of any payment or delivery with respect to the exercise and settlement of any Warrant;

(iv) impair or adversely affect the exercise rights of Warrantholders, including any change to the calculation or payment of the Full Physical Share Amount or the Net Share Amount, as applicable;

(v) deprive any Warrantholder of any economic rights that are expressly provided pursuant to this Warrant Agreement; or

(vi) reduce the percentage of Warrants outstanding necessary to modify or amend this Warrant Agreement.

Prior to executing any such amendment, the Warrant Agent shall receive an Officers' Certificate and opinion of counsel stating that such amendment is permitted or authorized by this Warrant Agreement.

(d) In addition, Section 3.08(a) may not, regardless of the consent of any Warrantholders or the Company, be amended or waived in any respect unless (A) the amendment provisions of this Section 5.03 as to non-enumerated amendments is complied with and (B) the Company receives an approval from the Nasdaq Stock Market, delivered to the Warrant Agent, confirming that such amendment or waiver would not result in a violation of Rule 5635 of the Nasdaq Stock Market or if applicable any equivalent rule of any other Principal Market.

(e) In addition, Sections 3.09(a) through (f) may not be amended or waived by any party hereunder, regardless of the consent of any Warrantholders or the Company.

ARTICLE 6

CONCERNING THE WARRANT AGENT AND OTHER MATTERS

Section 6.01. *Payment of Certain Taxes*. (a) The Company shall pay any and all documentary, stamp or similar issue or transfer taxes that may be payable upon the initial issuance of the Warrants hereunder.

(b) The Company shall pay any and all documentary, stamp or similar issue or transfer taxes that may be payable upon the issuance of Common Stock upon the exercise of Warrants hereunder and the issuance of stock certificates in respect thereof in the respective names of, or in such names as may be directed by, the exercising Warrantholders; *provided, however,* that the Company shall not be required to pay any tax that may be payable in respect of any transfer involved in the issuance and delivery of any such stock certificate, any Warrant Certificates or other securities in a name other than that of the registered holder of the Warrant Certificate surrendered upon exercise of the Warrant, and the Company shall not be required to issue or deliver such certificates or other securities unless and until the Person or Persons requesting the issuance thereof shall have paid to the Company the amount of such tax or shall have established to the satisfaction of the Company that such tax has been paid.

Section 6.02. *Change of Warrant Agent*. (a) The Warrant Agent, or any successor to it hereafter appointed, may resign its duties and be discharged from all further duties and liabilities hereunder after giving 60 days' notice in writing to the Company, except that such shorter notice may be given as the Company shall, in writing, accept as sufficient. If the office of the Warrant Agent becomes vacant by resignation or incapacity to act or otherwise, the Company shall appoint in writing a successor warrant agent in place of the Warrant Agent. If the Company shall fail to make such appointment within a period of 60 days after it has been notified in writing of such resignation or incapacity by the resigning or incapacitated warrant agent or by any holder of Warrants (who shall, with such notice, submit his Warrant Certificate for inspection by the Company), then the holder of any Warrants may apply to any court of competent jurisdiction for the appointment of a successor warrant agent.

(b) The Warrant Agent may be removed by the Company at any time upon 30 days' written notice to the Warrant Agent; *provided*, *however*, that the Company shall not remove the Warrant Agent until a successor warrant agent meeting the qualifications hereof shall have been appointed.

(c) Any successor warrant agent, whether appointed by the Company or by such a court, shall be a corporation or banking association organized, in good standing and doing business under the laws of the United States of America or any state thereof or the District of Columbia, and authorized under such laws to exercise corporate trust powers and subject to supervision or examination by Federal or state authority and having a combined capital and surplus of not less than $50,000,000. The combined capital and surplus of any such successor warrant agent shall be deemed to be the combined capital and surplus as set forth in the most recent report of its condition published prior to its appointment; *provided* that such reports are published at least annually pursuant to law or to the requirements of a Federal or state supervising or examining authority. After appointment, any successor warrant agent shall be vested with all the authority, powers, rights, immunities, duties and obligations of its predecessor warrant agent with like effect as if originally named as warrant agent hereunder, without any further act or deed; but if for any reason it becomes necessary or appropriate, the predecessor warrant agent shall execute and deliver, at the expense of the Company, an instrument transferring to such successor warrant agent all the authority, powers and rights of such predecessor warrant agent hereunder; and upon request of any successor warrant agent, the Company shall make, execute, acknowledge and deliver any and all instruments in writing to more fully and effectually vest in and conform to such successor warrant agent all such authority, powers, rights, immunities, duties and obligations. Upon assumption by a successor warrant agent of the duties and responsibilities hereunder, the predecessor warrant agent shall deliver and transfer, at the expense of the Company, to the successor warrant agent any property at the time held by it hereunder. As soon as practicable after such appointment, the Company shall give notice thereof to the predecessor warrant agent, the Warrantholders and the Transfer Agent. Failure to give such notice, or any defect therein, shall not affect the validity of the appointment of the successor warrant agent.

(d) Any entity into which the Warrant Agent may be merged or with which it may be consolidated, or any corporation resulting from any merger or consolidation to which the Warrant Agent shall be a party, shall be the successor Warrant Agent under this Warrant Agreement without any further act. In case at the time such successor to the Warrant Agent shall succeed to the agency created by this Warrant Agreement, any of the Warrant Certificates shall have been countersigned but not delivered, any such successor to the Warrant Agent may adopt the countersignature of the original Warrant Agent and deliver such Warrant Certificates so countersigned, and in case at that time any of the Warrant Certificates shall not have been countersigned, any successor to the Warrant Agent may countersign such Warrant Certificates either in the name of the predecessor Warrant Agent or in the name of the successor Warrant Agent; and in all such cases Warrant Certificates shall have the full force provided in the Warrant Certificates and in this Warrant Agreement.

(e) In case at any time the name of the Warrant Agent shall be changed and at such time any of the Warrant Certificates shall have been countersigned but not delivered, the Warrant Agent may adopt the countersignatures under its prior name and deliver such Warrant Certificates so countersigned; and in case at that time any of the Warrant Certificates shall not have been countersigned, the Warrant Agent may countersign such Warrant Certificates either in its prior name or in its changed name; and in all such cases such Warrant Certificates shall have the full force provided in the Warrant Certificates and in this Warrant Agreement.

Section 6.03. *Compensation; Further Assurances*. The Company agrees that it will (a) pay the Warrant Agent reasonable compensation for its services as Warrant Agent hereunder and, except as otherwise expressly provided, will pay or reimburse the Warrant Agent upon demand for all reasonable expenses, disbursements and advances incurred or made by the Warrant Agent in accordance with any of the provisions of this Warrant Agreement (including the reasonable compensation, expenses and disbursements of its agents and counsel) except any such expense, disbursement or advance as may arise from its or any of their negligence or bad faith, and (b) perform, execute, acknowledge and deliver or cause to be performed, executed, acknowledged and delivered all such further and other acts, instruments and assurances as may reasonably be required by the Warrant Agent for the carrying out or performing of the provisions of this Warrant Agreement. The agreements of the Company in this Section 6.03 shall survive any termination of this Warrant Agreement or the earlier resignation or removal of the Warrant Agent.

Section 6.04. *Reliance on Counsel*. The Warrant Agent may consult with legal counsel (who may be legal counsel for the Company), and the written opinion of such counsel or any advice of legal counsel subsequently confirmed by a written opinion of such counsel shall be full and complete authorization and protection to the Warrant Agent as to any action taken or omitted by it in good faith and in accordance with such written opinion or advice.

Section 6.05. *Proof of Actions Taken*. Whenever in the performance of its duties under this Warrant Agreement the Warrant Agent shall deem it necessary or desirable that any matter be proved or established by the Company prior to taking or suffering or omitting any action hereunder, such matter (unless other evidence in respect thereof be herein specifically prescribed) may, in the absence of bad faith on the part of the Warrant Agent, be deemed to be conclusively proved and established by an Officers' Certificate delivered to the Warrant Agent; and such Officers' Certificate shall, in the absence of bad faith on the part of the Warrant Agent, be full warrant to the Warrant Agent for any action taken, suffered or omitted in good faith by it under the provisions of this Warrant Agreement in reliance upon such certificate; but in its discretion the Warrant Agent may in lieu thereof accept other evidence of such fact or matter or may require such further or additional evidence as to it may seem reasonable.

Section 6.06. *Correctness of Statements*. The Warrant Agent shall not be liable for or by reason of any of the statements of fact or recitals contained in this Warrant Agreement or in the Warrant Certificates (except its countersignature thereof) or be required to verify the same, and all such statements and recitals are and shall be deemed to have been made by the Company only.

Section 6.07. *Validity of Agreement*. The Warrant Agent shall not be under any responsibility in respect of the validity of this Warrant Agreement or the execution and delivery hereof or in respect of the validity or execution of any Warrant Certificates (except its countersignature thereof); nor shall it be responsible for any breach by the Company of any covenant or condition contained in this Warrant Agreement or in any Warrant Certificate; nor shall it by any act hereunder be deemed to make any representation or warranty as to the authorization or reservation of any shares of Common Stock to be issued pursuant to this Warrant Agreement or any Warrants or as to whether any shares of Common Stock will, when issued, be validly issued and fully paid and nonassessable.

Section 6.08. *Use of Agents*. The Warrant Agent may execute and exercise any of the rights or powers hereby vested in it or perform any duty hereunder either itself or by or through its attorneys or agents and the Warrant Agent shall not be responsible for the misconduct or negligence of any agent or attorney, provided due care had been exercised in the appointment and continued employment thereof.

Section 6.09. *Liability of Warrant Agent*. The Warrant Agent shall incur no liability or responsibility to the Company or to any holder of Warrants for any action taken in reliance on any notice, resolution, waiver, consent, order, certificate, or other paper, document or instrument believed by it to be genuine and to have been signed, sent or presented by the proper party or parties. The Company agrees to indemnify the Warrant Agent and save it harmless against any and all losses, expenses and liabilities, including judgments, costs and reasonable counsel fees, for anything done or omitted in good faith by the Warrant Agent in the execution of this Warrant Agreement or otherwise arising in connection with this Warrant Agreement, except as a result of the Warrant Agent's gross negligence or willful misconduct, as determined by a final, nonappealable order of a court of competent jurisdiction. The Warrant Agent is entering into this Warrant Agreement solely as an agent to the Company, and nothing herein shall create a fiduciary duty of the Warrant Agent to either the Company or the Warrantholders. The agreements of the Company in this Section 6.09 shall survive termination of this Warrant Agreement or the earlier resignation or removal of the Warrant Agent.

Section 6.10. *Legal Proceedings*. The Warrant Agent shall be under no obligation to institute any action, suit or legal proceeding or to take any other action likely to involve expense unless the Company or one or more Warrantholders shall furnish the Warrant Agent with security and indemnity satisfactory to the Warrant Agent for any costs and expenses which may be incurred, but this provision shall not affect the power of the Warrant Agent to take such action as the Warrant Agent may consider proper, whether with or without any such security or indemnity.

Section 6.11. *Other Transactions in Securities of the Company*. The Warrant Agent in its individual or any other capacity may become the owner of Warrants or other securities of the Company, or become pecuniarily interested in any transaction in which the Company may be interested, or contract with or lend money to the Company or otherwise act as fully and freely as though it were not Warrant Agent under this Warrant Agreement. Nothing herein shall preclude the Warrant Agent from acting in any other capacity for the Company or for any other legal entity.

Section 6.12. *Actions as Agent*. The Warrant Agent shall act hereunder solely as agent and not in a ministerial or fiduciary capacity, and its duties shall be determined solely by the provisions hereof. The duties and obligations of the Warrant Agent shall be determined solely by the express provisions of the Warrant Agreement, and the Warrant Agent shall not be liable except for the performance of such duties and obligations as are specifically set forth in the Warrant Agreement. No implied covenants or obligations shall be read into the Warrant Agreement against the Warrant Agent. No provision of the Warrant Agreement shall require the Warrant Agent to expend or risk its own funds or otherwise incur any financial liability in the performance of any of its duties hereunder, or in the exercise of any of its rights or powers, if it shall have reasonable grounds for believing that repayment of such funds or adequate indemnity against such risk or liability is not reasonably assured to it. The Warrant Agent shall not be liable for anything that it may do or refrain from doing in good faith in connection with this Warrant Agreement except for its own gross negligence or willful misconduct, as determined by a final, non-appealable order of a court of competent jurisdiction. In no event shall the Warrant Agent be liable for any consequential loss or damage of any kind whatsoever (including but not limited to lost profits), even if the Warrant Agent has been advised of the likelihood of such loss or damage and regardless of the form of action.

Section 6.13. *Force Majeure.* In no event shall the Warrant Agent be responsible or liable for any failure or delay in the performance of its obligations hereunder arising out of or caused by, directly or indirectly, forces beyond its control, including, without limitation, strikes, work stoppages, accidents, acts of war or terrorism, civil or military disturbances, nuclear or natural catastrophes or acts of God, and interruptions, loss or malfunctions of utilities, communications or computer (software and hardware) services; it being understood that the Warrant Agent shall use reasonable efforts that are consistent with accepted practices in the banking industry to resume performance as soon as practicable under the circumstances.

Section 6.14. *Appointment and Acceptance of Agency.* The Company hereby appoints the Warrant Agent to act as agent for the Company in accordance with the instructions set forth in this Warrant Agreement, and the Warrant Agent hereby accepts the agency established by this Warrant Agreement and agrees to perform the same upon the terms and conditions herein set forth.

Section 6.15. *Successors and Assigns*. All the covenants and provisions of this Warrant Agreement by or for the benefit of the Company or the Warrant Agent shall bind and inure to the benefit of their respective successors and assigns hereunder.

Section 6.16. *Notices*. Any notice or demand authorized by this Warrant Agreement to be given or made by the Warrant Agent or by any Warrantholder to or on the Company shall be sufficiently given or made if either (a) emailed to the following email address without a "bounce back" or rejection notice having been received, with the subject line stating in substance "FORMAL NOTICE UNDER DIGITAL TURBINE WARRANT AGREEMENT" or (b) sent by mail first-class, postage prepaid, addressed (until another address is filed in writing by the Company with the Warrant Agent), as follows:

Digital Turbine, Inc.
1300 Guadalupe, Street, Suite 302
Austin, TX 78701
Attention: Chief Financial Officer
Telephone: (512) 387-7717
Facsimile: (737) 210-8855
Email: indentureandwarrantnotices@digitalturbine.com

With a copy (that shall not constitute notice) to:

Manatt, Phelps & Phillips, LLP
11355 W. Olympic Blvd
Los Angeles, CA 90064
Attention: Ben Orlanski, Esq.
Telephone: (310) 312-4000
Facsimile: (310) 312-4224
Email: BOrlanski@manatt.com

Any notice or demand authorized by this Warrant Agreement to be given or made by any Warrantholder or by the Company to or on the Warrant Agent shall be sufficiently given or made if sent by mail first-class, postage prepaid, addressed (until another address is filed in writing by the Warrant Agent with the Company), as follows:

U.S. Bank National Association
633 West Fifth Street, 24th Floor
Los Angeles, California 90071
Attention: Bradley Scarbrough, Vice President
Re: Digital Turbine Warrant Agreement
Fax: (213) 615-6197

Any notice of demand authorized by this Warrant Agreement to be given or made to any Warrantholder shall be sufficiently given or made if sent by first-class mail, postage prepaid to the last address of such Warrantholder as it shall appear on the Warrant Register.

Section 6.17. *Applicable Law*. The validity, interpretation and performance of this Warrant Agreement and of the Warrant Certificates shall be governed by the law of the State of New York without giving effect to the principles of conflicts of laws thereof.

Section 6.18. *Benefit of this Warrant Agreement*. Nothing in this Warrant Agreement expressed and nothing that may be implied from any of the provisions hereof is intended, or shall be construed, to confer upon, or give to, any Person or corporation other than the parties hereto and the Warrantholders any right, remedy or claim under or by reason of this Warrant Agreement or of any covenant, condition, stipulation, promise or agreement hereof, and all covenants, conditions, stipulations, promises and agreements in this Warrant Agreement contained shall be for the sole and exclusive benefit of the parties hereto and their successors and of the Warrantholders.

Section 6.19. *Registered Warrantholders*. Prior to due presentment for registration of transfer, the Company and the Warrant Agent may deem and treat the Person in whose name any Warrants are registered in the Warrant Register as the absolute owner thereof for all purposes whatever (notwithstanding any notation of ownership or other writing thereon made by anyone other than the Company or the Warrant Agent) and neither the Company nor the Warrant Agent shall be affected by any notice to the contrary or be bound to recognize any equitable or other claim to or interest in any Warrants on the part of any other Person and shall not be liable for any registration of transfer of Warrants that are registered or to be registered in the name of a fiduciary or the nominee of a fiduciary unless made with actual knowledge that a fiduciary or nominee is committing a breach of trust in requesting such registration of transfer or with such knowledge of such facts that its participation therein amounts to bad faith.

Section 6.20. *Inspection of this Warrant Agreement*. A copy of this Warrant Agreement shall be available at all reasonable times for inspection by any registered Warrantholder at the principal office of the Warrant Agent (or successor warrant agent). The Warrant Agent may require any such holder to submit his Warrant Certificate for inspection by it before allowing such holder to inspect a copy of this Warrant Agreement.

Section 6.21. *Headings*. The Article and Section headings herein are for convenience only and are not a part of this Warrant Agreement and shall not affect the interpretation thereof.

Section 6.22. *Counterparts*. This Warrant Agreement may be executed in any number of counterparts on separate counterparts, each of which so executed shall be deemed to be an original, but all such counterparts shall together constitute one and the same instrument. The exchange of copies of this Warrant Agreement and of signature pages by facsimile or PDF transmission shall constitute effective execution and delivery of this Warrant Agreement as to the parties hereto and may be used in lieu of the original Warrant Agreement for all purposes. Signatures of the parties hereto transmitted by facsimile or PDF shall be deemed to be their original signatures for all purposes.

[remainder of page intentionally left blank]

IN WITNESS WHEREOF, this Warrant Agreement has been duly executed by the parties hereto as of the day and year first above written.

Digital Turbine, Inc.

By: _____
Name:
Title:

U.S. Bank National Association, as Warrant Agent

By: _____
Name:
Title:

SIGNATURE PAGE TO WARRANT AGREEMENT

ANNEX A

COMPANY WIRE INSTRUCTIONS

[see attached]

EXHIBIT A

FORM OF RESTRICTIVE LEGEND FOR WARRANTS

THIS SECURITY AND THE SHARES ISSUABLE UPON EXERCISE OF THIS SECURITY HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT"), AND MAY NOT BE OFFERED, SOLD, PLEDGED OR OTHERWISE TRANSFERRED EXCEPT IN ACCORDANCE WITH THE FOLLOWING SENTENCE. BY ITS ACQUISITION HEREOF OR OF A BENEFICIAL INTEREST HEREIN, THE ACQUIRER:

(1) REPRESENTS THAT IT AND ANY ACCOUNT FOR WHICH IT IS ACTING IS A "QUALIFIED INSTITUTIONAL BUYER" (WITHIN THE MEANING OF RULE 144A UNDER THE SECURITIES ACT) OR AN INSTITUTIONAL ACCREDITED INVESTOR (AS DEFINED IN RULE 501(A)(1), (2), (3) OR (7) OF REGULATION D UNDER THE SECURITIES ACT) AND THAT IT EXERCISES SOLE INVESTMENT DISCRETION WITH RESPECT TO EACH SUCH ACCOUNT, AND

(2) AGREES FOR THE BENEFIT OF DIGITAL TURBINE, INC. THAT IT WILL NOT OFFER, SELL, PLEDGE OR OTHERWISE TRANSFER THIS SECURITY OR ANY BENEFICIAL INTEREST HEREIN PRIOR TO THE RESALE RESTRICTION TERMINATION DATE (AS DEFINED BELOW), EXCEPT:

(a) TO DIGITAL TURBINE OR ANY SUBSIDIARY THEREOF, OR

(b) PURSUANT TO A REGISTRATION STATEMENT WHICH HAS BECOME EFFECTIVE UNDER THE SECURITIES ACT, OR

(c) TO A QUALIFIED INSTITUTIONAL BUYER IN COMPLIANCE WITH RULE 144A UNDER THE SECURITIES ACT, OR

(d) PURSUANT TO AN EXEMPTION FROM REGISTRATION PROVIDED BY RULE 144 UNDER THE SECURITIES ACT OR ANY OTHER AVAILABLE EXEMPTION FROM THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT.

THE "RESALE RESTRICTION TERMINATION DATE" MEANS THE LATER OF: (1) THE DATE THAT A REGISTRATION STATEMENT UNDER THE SECURITIES ACT WITH RESPECT TO THIS SECURITY AND BENEFICIAL INTERESTS HEREIN HAS BECOME EFFECTIVE; AND (2) SUCH OTHER DATE AS MAY BE REQUIRED BY APPLICABLE LAW.

PRIOR TO THE REGISTRATION OF ANY TRANSFER IN ACCORDANCE WITH (2)(d) ABOVE, DIGITAL TURBINE AND THE WARRANT AGENT RESERVE THE RIGHT TO REQUIRE THE DELIVERY OF SUCH LEGAL OPINIONS, CERTIFICATIONS OR OTHER EVIDENCE AS MAY REASONABLY BE REQUIRED IN ORDER TO DETERMINE THAT THE PROPOSED TRANSFER IS BEING MADE IN COMPLIANCE WITH THE SECURITIES ACT AND APPLICABLE STATE SECURITIES LAWS. NO REPRESENTATION IS MADE AS TO THE AVAILABILITY OF ANY EXEMPTION FROM THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT.

EXHIBIT B

FORM OF RESTRICTIVE LEGEND FOR COMMON STOCK

THESE SHARES OF COMMON STOCK HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT"), AND MAY NOT BE OFFERED, SOLD, PLEDGED OR OTHERWISE TRANSFERRED EXCEPT IN ACCORDANCE WITH THE FOLLOWING SENTENCE. BY ITS ACQUISITION HEREOF OR OF A BENEFICIAL INTEREST HEREIN, THE ACQUIRER:

(1) REPRESENTS THAT IT AND ANY ACCOUNT FOR WHICH IT IS ACTING IS A "QUALIFIED INSTITUTIONAL BUYER" (WITHIN THE MEANING OF RULE 144A UNDER THE SECURITIES ACT) OR AN INSTITUTIONAL ACCREDITED INVESTOR (AS DEFINED IN RULE 501(A)(1), (2), (3) OR (7) OF REGULATION D UNDER THE SECURITIES ACT) AND THAT IT EXERCISES SOLE INVESTMENT DISCRETION WITH RESPECT TO EACH SUCH ACCOUNT, AND

(2) AGREES FOR THE BENEFIT OF DIGITAL TURBINE, INC. THAT IT WILL NOT OFFER, SELL, PLEDGE OR OTHERWISE TRANSFER THIS SECURITY OR ANY BENEFICIAL INTEREST HEREIN PRIOR TO THE RESALE RESTRICTION TERMINATION DATE (AS DEFINED BELOW), EXCEPT:

(a) TO DIGITAL TURBINE OR ANY SUBSIDIARY THEREOF, OR

(b) PURSUANT TO A REGISTRATION STATEMENT WHICH HAS BECOME EFFECTIVE UNDER THE SECURITIES ACT, OR

(c) TO A QUALIFIED INSTITUTIONAL BUYER IN COMPLIANCE WITH RULE 144A UNDER THE SECURITIES ACT, OR

(d) PURSUANT TO AN EXEMPTION FROM REGISTRATION PROVIDED BY RULE 144 UNDER THE SECURITIES ACT OR ANY OTHER AVAILABLE EXEMPTION FROM THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT.

THE "RESALE RESTRICTION TERMINATION DATE" MEANS THE LATER OF: (1) THE DATE THAT A REGISTRATION STATEMENT UNDER THE SECURITIES ACT WITH RESPECT TO THIS SECURITY AND BENEFICIAL INTERESTS HEREIN HAS BECOME EFFECTIVE; AND (2) SUCH OTHER DATE AS MAY BE REQUIRED BY APPLICABLE LAW.

PRIOR TO THE REGISTRATION OF ANY TRANSFER IN ACCORDANCE WITH (2)(d) ABOVE, DIGITAL TURBINE AND THE WARRANT AGENT RESERVE THE RIGHT TO REQUIRE THE DELIVERY OF SUCH LEGAL OPINIONS, CERTIFICATIONS OR OTHER EVIDENCE AS MAY REASONABLY BE REQUIRED IN ORDER TO DETERMINE THAT THE PROPOSED TRANSFER IS BEING MADE IN COMPLIANCE WITH THE SECURITIES ACT AND APPLICABLE STATE SECURITIES LAWS. NO REPRESENTATION IS MADE AS TO THE AVAILABILITY OF ANY EXEMPTION FROM THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT.

EXHIBIT C

FORM OF GLOBAL WARRANT LEGEND

UNLESS THIS GLOBAL WARRANT IS PRESENTED BY AN AUTHORIZED REPRESENTATIVE OF THE DEPOSITORY TRUST COMPANY, A NEW YORK CORPORATION (" **DTC**"), TO DIGITAL TURBINE, INC. (THE "**ISSUER**"), THE CUSTODIAN OR ITS AGENT FOR REGISTRATION OF TRANSFER, EXCHANGE, OR PAYMENT, AND ANY CERTIFICATE ISSUED IS REGISTERED IN THE NAME OF CEDE & CO. OR IN SUCH OTHER NAME AS IS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF DTC (AND ANY PAYMENT IS MADE TO CEDE & CO. OR TO SUCH OTHER ENTITY AS IS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF DTC), ANY TRANSFER, PLEDGE, OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL INASMUCH AS THE REGISTERED OWNER HEREOF, CEDE & CO., HAS AN INTEREST HEREIN.

TRANSFER OF THIS GLOBAL WARRANT SHALL BE LIMITED TO TRANSFERS IN WHOLE, AND NOT IN PART, TO THE COMPANY, DTC, THEIR SUCCESSORS AND THEIR RESPECTIVE NOMINEES.

EXHIBIT D

FORM OF WARRANT CERTIFICATE

[FACE]

No. _____

CUSIP No. _____

[UNLESS THIS GLOBAL WARRANT IS PRESENTED BY AN AUTHORIZED REPRESENTATIVE OF THE DEPOSITORY TRUST COMPANY, A NEW YORK CORPORATION (" **DTC**"), TO DIGITAL TURBINE, INC. (THE "**ISSUER**"), THE CUSTODIAN OR ITS AGENT FOR REGISTRATION OF TRANSFER, EXCHANGE, OR PAYMENT, AND ANY CERTIFICATE ISSUED IS REGISTERED IN THE NAME OF CEDE & CO. OR IN SUCH OTHER NAME AS IS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF DTC (AND ANY PAYMENT IS MADE TO CEDE & CO. OR TO SUCH OTHER ENTITY AS IS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF DTC), ANY TRANSFER, PLEDGE, OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL INASMUCH AS THE REGISTERED OWNER HEREOF, CEDE & CO., HAS AN INTEREST HEREIN.][1]

[TRANSFER OF THIS GLOBAL WARRANT SHALL BE LIMITED TO TRANSFERS IN WHOLE, AND NOT IN PART, TO THE COMPANY, DTC, THEIR SUCCESSORS AND THEIR RESPECTIVE NOMINEES.][2]

THIS SECURITY AND THE SHARES ISSUABLE UPON EXERCISE OF THIS SECURITY HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT"), AND MAY NOT BE OFFERED, SOLD, PLEDGED OR OTHERWISE TRANSFERRED EXCEPT IN ACCORDANCE WITH THE FOLLOWING SENTENCE. BY ITS ACQUISITION HEREOF OR OF A BENEFICIAL INTEREST HEREIN, THE ACQUIRER:

(1) REPRESENTS THAT IT AND ANY ACCOUNT FOR WHICH IT IS ACTING IS A "QUALIFIED INSTITUTIONAL BUYER" (WITHIN THE MEANING OF RULE 144A UNDER THE SECURITIES ACT) OR AN INSTITUTIONAL ACCREDITED INVESTOR (AS DEFINED IN RULE 501(A)(1), (2), (3) OR (7) OF REGULATION D UNDER THE SECURITIES ACT) AND THAT IT EXERCISES SOLE INVESTMENT DISCRETION WITH RESPECT TO EACH SUCH ACCOUNT, AND

[1] For Warrant Certificate for Global Warrant only.

[2] For Warrant Certificate for Global Warrant only

(2) AGREES FOR THE BENEFIT OF DIGITAL TURBINE, INC. THAT IT WILL NOT OFFER, SELL, PLEDGE OR OTHERWISE TRANSFER THIS SECURITY OR ANY BENEFICIAL INTEREST HEREIN PRIOR TO THE RESALE RESTRICTION TERMINATION DATE (AS DEFINED BELOW), EXCEPT:

(a) TO DIGITAL TURBINE OR ANY SUBSIDIARY THEREOF, OR

(b) PURSUANT TO A REGISTRATION STATEMENT WHICH HAS BECOME EFFECTIVE UNDER THE SECURITIES ACT, OR

(c) TO A QUALIFIED INSTITUTIONAL BUYER IN COMPLIANCE WITH RULE 144A UNDER THE SECURITIES ACT, OR

(d) PURSUANT TO AN EXEMPTION FROM REGISTRATION PROVIDED BY RULE 144 UNDER THE SECURITIES ACT OR ANY OTHER AVAILABLE EXEMPTION FROM THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT.

THE "RESALE RESTRICTION TERMINATION DATE" MEANS THE LATER OF: (1) THE DATE THAT A REGISTRATION STATEMENT UNDER THE SECURITIES ACT WITH RESPECT TO THIS SECURITY AND BENEFICIAL INTERESTS HEREIN HAS BECOME EFFECTIVE; AND (2) SUCH OTHER DATE AS MAY BE REQUIRED BY APPLICABLE LAW.

PRIOR TO THE REGISTRATION OF ANY TRANSFER IN ACCORDANCE WITH (2)(d) ABOVE, DIGITAL TURBINE AND THE WARRANT AGENT RESERVE THE RIGHT TO REQUIRE THE DELIVERY OF SUCH LEGAL OPINIONS, CERTIFICATIONS OR OTHER EVIDENCE AS MAY REASONABLY BE REQUIRED IN ORDER TO DETERMINE THAT THE PROPOSED TRANSFER IS BEING MADE IN COMPLIANCE WITH THE SECURITIES ACT AND APPLICABLE STATE SECURITIES LAWS. NO REPRESENTATION IS MADE AS TO THE AVAILABILITY OF ANY EXEMPTION FROM THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT.

Digital Turbine, Inc.

[Designation of Warrants]

NUMBER OF WARRANTS: Initially, [•] Warrants, subject to adjustment as described in the Warrant Agreement dated as of September 28, 2016 between Digital Turbine, Inc. and U.S. Bank National Association, as Warrant Agent (the "**Warrant Agreement**"), each of which is exercisable for one share of Common Stock.

EXERCISE PRICE: Initially, $1.364 per Warrant, subject to adjustment as described in the Warrant Agreement (the "**Exercise Price**").

FORM OF PAYMENT OF EXERCISE PRICE: Cash; *provided, however,* that the Warrantholder shall be entitled to elect a Net Share Settlement method of exercise (in lieu of a Full Physical Settlement for Cash).

LIMITATIONS ON EXERCISE: Any exercise of a Warrant shall be subject to the limitations on the maximum number of shares of Common Stock that may be issued by the Company and the beneficial ownership limitations applicable to the Warrantholder set forth in Sections 3.08 and 3.09, respectively, of the Warrant Agreement.

FORM OF SETTLEMENT: Upon exercise of any Warrants represented hereby, the Warrantholder shall be entitled to receive, at the Warrantholder's election, either (a) upon payment to the Warrant Agent of the Exercise Price (determined as of the relevant Exercise Date), one share of Common Stock per Warrant exercised, together with Cash in lieu of any fractional Warrants, or (b) without any Cash payment therefor, a number of shares of Common Stock equal to the Net Share Amount, together with Cash in lieu of any fractional shares or fractional Warrants, in each case, as described in the Warrant Agreement.

DATES OF EXERCISE: At any time, and from time to time, prior to 5:00 p.m., New York City time, on the Expiration Date, the Warrantholder shall be entitled to exercise all Warrants then represented hereby and outstanding (which may include fractional Warrants) or any portion thereof (which shall not include any fractional Warrants).

PROCEDURE FOR EXERCISE: Warrants may be exercised by (a) in the case of a Certificated Warrant, surrendering the Warrant Certificate evidencing such Warrant at the principal office of the Warrant Agent (or successor warrant agent), with the Exercise Notice set forth on the reverse of the Warrant Certificate duly completed and executed, together with any applicable transfer taxes, or (b) in the case of a Global Warrant, complying with the procedures established by the Depositary for the exercise of Warrants.

EXPIRATION DATE: September 23, 2020 ("**Expiration Date**").

This Warrant Certificate certifies that _____, or its registered assigns, is the Warrantholder of the Number of Warrants (the "**Warrants**") specified above[, as modified in Schedule A hereto,] (such number subject to adjustment from time to time as described in the Warrant Agreement).

In connection with the exercise of any Warrants, (a) the Company shall determine the Full Physical Share Amount or Net Share Amount, as applicable, for each Warrant, and (b) the Company shall, or shall cause the Warrant Agent to, deliver to the exercising Warrantholder, on the applicable Settlement Date, for each Warrant exercised, a number of Shares of Common Stock equal to the relevant Full Physical Share Amount or Net Share Amount, as applicable, together with Cash in lieu of any fractional shares or fractional Warrants as described in the Warrant Agreement.

Prior to the relevant Exercise Date as described more fully in the Warrant Agreement, Warrants will not entitle the Warrantholder to any of the rights of the holders of shares of Common Stock.

Reference is hereby made to the further provisions of this Warrant Certificate set forth on the reverse hereof, and such further provisions shall for all purposes have the same effect as though fully set forth in this place.

This Warrant Certificate shall not be valid unless countersigned by the Warrant Agent.

In the event of any inconsistency between the Warrant Agreement and this Warrant Certificate, the Warrant Agreement shall govern.

IN WITNESS WHEREOF, Digital Turbine, Inc. has caused this instrument to be duly executed.

Dated: _____

Digital Turbine, Inc.

By: _____
Name:
Title:

Attest

By: _____
[Secretary][Assistant Secretary]

Countersigned as of the date above written:

U.S. Bank National Association, as Warrant Agent

By: _____
Authorized Officer

[FORM OF REVERSE OF WARRANT CERTIFICATE]

Digital Turbine, Inc.

The Warrants evidenced by this Warrant Certificate are part of a duly authorized issue of Warrants issued by the Company pursuant to a Warrant Agreement, dated as of September 28, 2016 (the "**Warrant Agreement**"), between the Company and U.S. Bank National Association (the "**Warrant Agent**"), and are subject to the terms and provisions contained in the Warrant Agreement, to all of which terms and provisions each Warrantholder consents by acceptance of this Warrant Certificate or a beneficial interest therein. Without limiting the foregoing, all capitalized terms used herein and not otherwise defined shall have the meanings set forth in the Warrant Agreement. A copy of the Warrant Agreement is on file at the Warrant Agent's Office.

The Warrant Agreement and the terms of the Warrants are subject to amendment as provided in the Warrant Agreement.

This Warrant Certificate shall be governed by, and interpreted in accordance with, the laws of the State of New York without regard to the conflicts of laws principles thereof.

[To be attached if Warrant is a Certificated Warrant]

Exercise Notice

U.S. Bank National Association
633 West Fifth Street, 24th Floor
Los Angeles, California 90071
Attention: Bradley Scarbrough, Vice President
Re: Digital Turbine Warrant Agreement
Fax: (213) 615-6197

The undersigned (the "**Registered Warrantholder**") hereby irrevocably exercises _____ Warrants (the "**Exercised Warrants**") and delivers to you herewith a Warrant Certificate or Warrant Certificates, registered in the Registered Warrantholder's name, representing a Number of Warrants at least equal to the number of Exercised Warrants.

The Registered Warrantholder hereby either:

elects for Full Physical Settlement to apply to the Exercised Warrants pursuant to Section 3.03 of the Warrant Agreement and confirms that it will, prior to 11:00 a.m., New York City time, on the Settlement Date, pay an amount equal to the Exercise Price (determined as of the relevant Exercise Date), multiplied by the number of Exercised Warrants, by federal wire or other immediately available funds payable to the order of the Company to the account maintained by the Warrant Agent and notified to the Registered Warrantholder as required under Section 3.03(b) of the Warrant Agreement; or

elects for Net Share Settlement to apply to the Exercised Warrants pursuant to Section 3.03 of the Warrant Agreement.

The Registered Warrantholder hereby directs the Warrant Agent to:

(a) deliver the Full Physical Share Amount or Net Share Amount, as applicable, for each of the Exercised Warrants as follows:

_____; and

(b) if the number of Exercised Warrants is less than the Number of Warrants represented by the enclosed Warrant Certificates, to deliver a Warrant Certificate representing the unexercised Warrants to:

_____

Dated: _____

_____
(Registered Warrantholder)

By: _____
Authorized Signature
Address:
Telephone:

[To Be Attached if Warrant is a Global Warrant]

SCHEDULE A

SCHEDULE OF INCREASES OR DECREASES IN WARRANTS

The initial Number of Warrants represented by this Global Warrant is _____. In accordance with the Warrant Agreement dated as of September 28, 2016 among the Company and U.S. Bank National Association, as Warrant Agent, the following increases or decreases in the Number of Warrants represented by this certificate have been made:

Date	Amount of increase in Number of Warrants evidenced by this Global Warrant	Amount of decrease in Number of Warrants evidenced by this Global Warrant	Number of Warrants evidenced by this Global Warrant following such decrease or increase	Signature of authorized signatory

FORM OF ASSIGNMENT AND TRANSFER

FOR VALUE RECEIVED, the undersigned assigns and transfers the Warrant(s) represented by this Certificate to:

_____

Name, Address and Zip Code of Assignee

and irrevocably appoints _____

Name of Agent

as its agent to transfer this Warrant Certificate on the books of the Warrant Agent.

[Signature page follows]

Date: _____

_____
Name of Transferee

By: _____
Name:
Title:

(Sign exactly as your name appears on the other side of this Certificate)

NOTICE: The signature(s) should be guaranteed by an eligible guarantor institution (banks, stockbrokers, savings and loan associations and credit unions with membership in an approved signature guarantee medallion program), pursuant to S.E.C. Rule 17Ad-15.

EXHIBIT E

FORM OF CERTIFICATE OF COMPLIANCE WITH TRANSFER RESTRICTIONS

In connection with the sale, assignment and transfer of _____ Warrants by _____ unto _____ (Please insert social security or other Taxpayer Identification Number of assignee) prior to the expiration of the holding period applicable to sales thereof under Rule 144 under the Securities Act of 1933, as amended (the "**Securities Act**") (or any successor provision), the undersigned confirms that such Warrants are being transferred:

To Digital Turbine, Inc. (the "**Issuer**") or any Subsidiaries thereof; or

Pursuant to a registration statement that has become effective under the Securities Act; or

Pursuant to an exemption from registration provided by Rule 144 under the Securities Act or any other available exemption from the registration requirements of the Securities Act.

Prior to the registration of any transfer in accordance with the third box above, the Issuer and the Warrant Agent reserve the right to require the delivery of such legal opinion, certifications or other evidence as may reasonably be required in order to determine that the proposed transfer is being made in compliance with the Securities Act and applicable state securities laws.

Unless one of the boxes is checked, the Warrant Agent will refuse to register any of the Warrants evidenced by this certificate in the name of any person other than the registered holder thereof.

Date: [_____]

[Insert name of transferee]

By: _____
Name:
Title:

EXHIBIT F

FORM OF COMMON STOCK REQUISITION ORDER

[Date]

Via Facsimile [_____]

Digital Turbine, Inc.
1300 Guadalupe, Street, Suite 302
Austin, TX 78701
Attention: Chief Financial Officer

Re: DWAC Issuance
Control No. _____

Ladies and Gentlemen:

You are hereby authorized to issue and deliver the shares of Common Stock as indicated below via DWAC. The shares are being issued to cover the exercise of Warrants under the Warrant Agreement, dated as of September 28, 2016, between Digital Turbine, Inc. and U.S. Bank National Association, as Warrant Agent (the "**Warrant Agreement**"). Defined terms used but not defined herein have the meaning assigned to them in the Warrant Agreement.

Number of Shares:	
_____	Original Issue or Transfer from Treasury Account
Broker Name:	
Broker's DTC Number:	
Contact and Phone:	

The Broker will initiate the DWAC transaction on (date).

Sincerely,

U.S. Bank National Association,
as Warrant Agent

By: _____
Name:
Title:

cc: [*Insert name*] via facsimile [*insert fax number*]
Broker

EXHIBIT G

FORM OF FREE TRANSFERABILITY CERTIFICATE

Officers' Certificate

[NAME OF OFFICER], the [TITLE] of Digital Turbine, Inc., a Delaware corporation (the "**Company**") and [NAME OF OFFICER], the [TITLE] of the Company do hereby certify, in connection with the sale of $● of the Company's 8.75% Convertible Senior Notes due 2020 (the "**Notes**") pursuant to the terms of the Indenture, dated as of September ●, 2016 (as may be amended or supplemented from time to time, the "**Indenture**"), by and among the Company and U.S. Bank, National Association (the "**Trustee**" or "**Warrant Agent**"), each purchaser of Notes will receive warrants (the "**Warrants**") to purchase ● shares of our Common Stock for each $1,000 in Notes purchased, or up to ● warrants pursuant to the terms of the Warrant Agreement, dated as of September ●, 2016 (as may be amended or supplemented from time to time, the "**Warrant Agreement**"), by and among the Company and the Warrant Agent, and that:

1. The undersigned are permitted to sign this "Officers' Certificate" on behalf of the Company.

2. The undersigned have read, and thoroughly examined, the Warrant Agreement and the definitions therein relating thereto.

3. In the opinion of the undersigned, the undersigned have made such examination as is necessary to enable the undersigned to express an informed opinion as to whether or not all conditions precedent to the removal of the Restricted Warrants Legend described herein as provided for in the Indenture have been complied with.

4. All conditions precedent described herein as provided for in the Warrant Agreement have been complied with.

5. The Warrants have become Freely Tradable.

In accordance with Section 3.07 of the Warrant Agreement, the Company hereby instructs you as follows:

1. To take those actions necessary so that the Restricted Warrants Legend and set forth on the Restricted Warrants shall be deemed removed from the Global Warrants in accordance with the terms and conditions of the Warrants and as provided in the Warrant Agreement, without further action on the part of the Warrantholders.

2. To take those actions necessary so that the restricted CUSIP number for the Warrants shall be removed from the Global Warrants and replaced with an unrestricted CUSIP number, which unrestricted CUSIP number shall be 25400W 128, in accordance with the terms and conditions of the Global Warrants and as provided in the Warrant Agreement, without further action on the part of the Warrantholders.

IN WITNESS WHEREOF, we have signed this certificate as of [ ].

DIGITAL TURBINE, INC.,

By: _____
Name:
Title:

Exhibit 4.3

DIGITAL TURBINE, INC.

8.75% CONVERTIBLE NOTES DUE 2020

Registration Rights Agreement

Digital Turbine, Inc., a Delaware corporation (the "**Company**"), proposes to issue and sell to BTIG, LLC (the "**Initial Purchaser**") $16,000,000 principal amount of its 8.75% convertible notes due 2020 (the "**Notes**"), pursuant to the terms set forth in the initial purchaser agreement dated September 23, 2016 (the "**Initial Purchaser Agreement**") between the Company, the Guarantors (as defined below) and the Initial Purchaser. The Notes will be unconditionally guaranteed as to the payment of principal, premium, if any, and interest on a senior unsecured basis (the "**Guarantee**") by the wholly-owned subsidiaries of the Company listed on the signature pages hereto as guarantors (the "**Guarantors**"). The Notes and the Guarantee will be issued pursuant to the provisions of an indenture dated September 28, 2016 (the "**Indenture**") between the Company, the Guarantors and U.S. Bank National Association, as trustee (the "**Trustee**"). The Notes will be convertible into shares of common stock of the Company (the "**Convertible Note Shares**") as set forth in the Indenture. The Company and U.S. Bank National Association, as warrant agent, have also entered into a warrant agreement dated September 28, 2016 (the "**Warrant Agreement**"), pursuant to which the Company will issue and sell 4,105,600 warrants together with an additional 250,000 warrants issued to the Initial Purchaser (the "**Warrants**" and together with the Notes and the Guarantee, the "**Initial Securities**"), each of which Warrant is exercisable for one share of the common stock of the Company (these shares together with the Convertible Note Shares, the "**Underlying Shares**").

To induce the Initial Purchaser to enter into the Initial Purchaser Agreement and to satisfy obligations thereunder, the holders of the Registrable Securities (as defined below) will have the benefit of this registration rights agreement by and among the Company, the Guarantors and the Initial Purchaser whereby the Company and the Guarantors agree with the Initial Purchaser, for the benefit of the Initial Purchaser and the benefit of the holders from time to time of the Registrable Securities (including the Initial Purchaser) (each a "**Holder**" and, collectively, the "**Holders**"), as follows:

1. *Definitions.* Capitalized terms used herein without definition shall have their respective meanings set forth in the Initial Purchaser Agreement. As used in this Agreement, the following capitalized defined terms shall have the following meanings:

"**Act**" shall mean the Securities Act of 1933, as amended, and the rules and regulations of the Commission promulgated thereunder.

"**Affiliate**" shall have the meaning specified in Rule 405 under the Act.

"**Agreement**" shall mean this Registration Rights Agreement.

"**Business Day**" shall mean any day other than a Saturday, a Sunday or a legal holiday or a day on which banking institutions or trust companies are authorized or obligated by law to close in New York City.

"**Closing Date**" shall have the meaning set forth in the Initial Purchaser Agreement.

"**Commission**" shall mean the Securities and Exchange Commission.

"**Control**" shall have the meaning specified in Rule 405 under the Act and the terms "controlling" and "controlled" shall have meanings correlative thereto.

"**Deferral Period**" shall have the meaning indicated in Section 3(g) hereof.

"**Exchange Act**" shall mean the Securities Exchange Act of 1934, as amended, and the rules and regulations of the Commission promulgated thereunder.

"**Majority Holders**" shall mean, on any date, Holders of a majority of the aggregate number of Underlying Shares converted or exercised under, or remaining convertible or exercisable under, the Registrable Securities.

"**Notice and Questionnaire**" shall mean a written notice in a customary form provided by, or acceptable to, the Company and delivered to the Company by a Holder.

"**Notice Holder**" shall mean, on any date, any Holder that has delivered a Notice and Questionnaire, and such other information as the Company shall reasonably request in connection with naming a holder as a Selling Securityholder, to the Company on or prior to such date.

"**Prospectus**" shall mean a prospectus included in the Shelf Registration Statement (including, without limitation, a prospectus that discloses information previously omitted from a prospectus filed as part of an effective registration statement in reliance upon Rule 430A or Rule 430B under the Act), as amended or supplemented by any prospectus supplement, with respect to the terms of the offering of any portion of the Registrable Securities covered by the Shelf Registration Statement, and all amendments and supplements thereto, including any and all exhibits thereto and any information incorporated by reference therein.

"**Registrable Securities**" shall mean, collectively, the Initial Securities, the Underlying Shares and the shares of common stock of the Company issuable in connection with an Early Conversion Payment (as defined in the Indenture) on the Notes; *provided, however,* that any such Initial Securities, Underlying Shares or shares of common stock of the Company issuable in connection with an Early Conversion Payment on the Notes shall cease to be Registrable Securities upon the earlier to occur of (i) the date on which such securities are not outstanding, or (ii) such securities have been sold pursuant to the Shelf Registration Statement or pursuant Rule 144 under the Act.

"**Selling Securityholder**" shall have the meaning set forth in Section 2(e) hereof.

"**Shelf Registration Statement**" shall mean a "shelf" registration statement of the Company pursuant to the provisions of Section 2 hereof which covers the Registrable Securities on Form S-1 or Form S-3 or on any other appropriate form under Rule 415 under the Act, or any similar rule that may be adopted by the Commission, amendments and supplements to such registration statement, including post-effective amendments, in each case including the Prospectus contained therein, all exhibits thereto and all material incorporated by reference therein.

2. *Shelf Registration.*

(a) The Company and the Guarantors shall, within 30 days of the Closing Date, file with the Commission a Shelf Registration Statement providing for the registration of, and the sale on a continuous or delayed basis by the Holders of, all of the Registrable Securities, from time to time in accordance with the methods of distribution set forth therein, pursuant to Rule 415 under the Act or any similar rule that may be adopted by the Commission.

(b) The Company and the Guarantors shall use commercially reasonable efforts to cause the Shelf Registration Statement to be declared effective under the Act within 60 days of the Closing Date; *provided, however*, that if such Shelf Registration Statement is reviewed by the Commission, then the Company and the Guarantors shall use commercially reasonable efforts to cause the Shelf Registration Statement to be declared effective by the Commission within 90 days of the Closing Date.

(c) The Company and the Guarantors shall use reasonable best efforts to keep the Shelf Registration Statement continuously effective, supplemented and amended as required by the Act, in order to permit the Prospectus forming part thereof to be usable by Holders for a period (the "**Shelf Registration Period**") from the date the Shelf Registration Statement is declared effective by the Commission until the earlier of (i) the date on which there are no outstanding Registrable Securities, (ii) all of the Registrable Securities have been sold pursuant to the Shelf Registration Statement or pursuant Rule 144 under the Act or (iii) the date that is four years and six months following the date of this Agreement. The Company and the Guarantors shall be deemed not to have used its reasonable best efforts to keep the Shelf Registration Statement effective during the Shelf Registration Period if it voluntarily takes any action that would result in Holders of Registrable Securities not being able to offer and sell such Registrable Securities at any time during the Shelf Registration Period, unless such action is (x) required by applicable law or otherwise undertaken by the Company or the Guarantors in good faith and for valid business reasons (not including avoidance of the Company's or the Guarantors' obligations hereunder), including the acquisition or divestiture of assets, or (y) permitted by Section 3(g) hereof.

(d) The Company and the Guarantors shall cause the Shelf Registration Statement and the related Prospectus and any amendment or supplement thereto, as of the effective date of the Shelf Registration Statement or such amendment or supplement: (i) to comply as to form in all material respects with the applicable requirements of the Act; and (ii) not to contain any untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary in order to make the statements therein (in the case of the Prospectus, in the light of the circumstances under which they were made) not misleading (other than as to information provided by a Holder that is subject to Section 5(b) hereof).

(e) Subject to applicable law, the Company shall mail a Prospectus and a Notice and Questionnaire announcing the anticipated effective date of the Shelf Registration Statement to each holder of Registrable Securities at least 30 days prior to the date on which the Company anticipates in good faith that the Shelf Registration Statement will become effective. Each Holder of Registrable Securities agrees that if it wishes to be named as a selling securityholder ("**Selling Securityholder**") in the Prospectus and use the Prospectus for resales of the Registrable Securities, it must in connection with naming such Holder as a Selling Securityholder in the Shelf Registration Statement deliver a completed Notice and Questionnaire and such other information as the Company may reasonably request in writing, if any, in connection with naming such Holder as a Selling Securityholder in the Shelf Registration Statement to the Company at least ten Business Days prior to the anticipated effective date of the Shelf Registration Statement. From and after the effective date of the Shelf Registration Statement, the Company and the Guarantors shall use reasonable best efforts, as promptly as is practicable after the date a Notice and Questionnaire is delivered, and in any event within 15 Business Days after such date, (i) if required by applicable law, to file with the Commission a post-effective amendment to the Shelf Registration Statement or to prepare and, if permitted or required by applicable law, to file a supplement to the related Prospectus or an amendment or supplement to any document incorporated therein by reference or file any other required document (including a report filed under the Exchange Act, if permitted by applicable law) so that the Holder delivering such Notice and Questionnaire is named as a Selling Securityholder in the Shelf Registration Statement and the related Prospectus, and so that such Holder is permitted to deliver such Prospectus to purchasers of the Registrable Securities in accordance with applicable law and, if the Company and the Guarantors shall file a post-effective amendment to the Shelf Registration Statement, use commercially reasonable efforts to cause such post-effective amendment to be declared effective under the Act as promptly as is practicable; and (ii) notify such Holder as promptly as practicable after the effectiveness under the Act of any post-effective amendment filed pursuant to Section 2(e)(i) hereof; *provided*, *however*, that if such Notice and Questionnaire is delivered during a Deferral Period, the Company shall so inform the Holder delivering such Notice and Questionnaire and shall take the actions set forth in clauses (i) and (ii) above upon expiration of the Deferral Period in accordance with Section 3(g) hereof. The Company shall be under no obligation to name any Holder that is not a Notice Holder as a Selling Securityholder in the Shelf Registration Statement or related Prospectus; *provided, however*, that any Holder that becomes a Notice Holder pursuant to the provisions of this Section 2(e) (whether or not such Holder was a Notice Holder at the effective date of the Shelf Registration Statement) shall be named as a Selling Securityholder in the Shelf Registration Statement or related Prospectus in accordance with the requirements of this Section 2(e). Notwithstanding the foregoing, if the Notes are called for redemption, then the Company shall use reasonable best efforts to file the post-effective amendment or supplement within five Business Days after the redemption date, or if such Notice and Questionnaire is delivered during a Deferral Period, upon expiration of the Deferral Period.

(f) the Company shall mail an additional Notice and Questionnaire upon request to any Holder.

3. *Registration Procedures.* The following provisions shall apply in connection with the Shelf Registration Statement.

(a) The Company and the Guarantors shall:

(i) furnish to the Initial Purchaser, not less than seven Business Days prior to the initial filing thereof with the Commission, a copy of the draft Shelf Registration Statement and shall use commercially reasonable efforts to reflect in each such document, when so filed with the Commission, such comments as the Initial Purchaser reasonably proposes; and

(ii) include information regarding the Notice Holders and the methods of distribution for the Registrable Securities provided to the Company in Notices and Questionnaires as necessary to permit such distribution by the methods specified therein; and

(iii) promptly amend any post-effective amendment or supplement filed with respect to the Shelf Registration Statement upon being notified of material inaccuracies in Notice Holder information if such inaccuracies would adversely affect the ability of any Notice Holder to use the Shelf Registration Statement for the offer and sale of the Registrable Securities.

(b) The Company shall advise the Initial Purchaser and the Notice Holders that have provided in writing to the Company an email address, telephone or facsimile number and/or address for notices, and confirm such advice in writing, if requested (which notice pursuant to clauses (ii) through (v) hereof shall be accompanied by an instruction to suspend the use of the Prospectus until the Company shall have remedied the basis for such suspension):

(i) within one day after the Shelf Registration Statement and any amendment thereto (other than an incorporated document or as a result of filing an incorporated document) become effective;

(ii) of any request by the Commission for any amendment or supplement to the Shelf Registration Statement or the Prospectus after it has become effective;

(iii) of the issuance by the Commission of any stop order suspending the effectiveness of the Shelf Registration Statement or the institution or threatening of any proceeding for that purpose;

(iv) of the receipt by the Company or any of the Guarantors of any notification with respect to the suspension of the qualification of the Registrable Securities included therein for sale in any jurisdiction or the institution or threatening of any proceeding for such purpose; and

(v) of the happening of any event that requires any change in the Shelf Registration Statement or the Prospectus so that, as of such date, they (A) do not contain any untrue statement of a material fact, and (B) do not omit to state a material fact required to be stated therein or necessary to make the statements therein (in the case of the Prospectus, in the light of the circumstances under which they were made) not misleading.

(c) The Company and the Guarantors shall use commercially reasonable efforts to prevent the issuance of any order suspending the effectiveness of the Shelf Registration Statement or the qualification of the securities therein for sale in any jurisdiction and, if issued, to obtain as soon as possible the withdrawal thereof.

(d) During the Shelf Registration Period, the Company shall promptly deliver to each Notice Holder, without charge, as many copies of the Prospectus (including the preliminary Prospectus, if any) included in the Shelf Registration Statement and any amendment or supplement thereto as any such person may reasonably request. The Company and the Guarantors consent to the use of the Prospectus or any amendment or supplement thereto by each of the foregoing in connection with the offering and sale of the Registrable Securities.

(e) Prior to any offering of the Registrable Securities pursuant to the Shelf Registration Statement, the Company and the Guarantors shall arrange for the qualification of the Registrable Securities for sale under the laws of such U.S. jurisdictions as any Notice Holder shall reasonably request and shall maintain such qualification in effect so long as required for such Registrable Securities; *provided, however,* that in no event shall the Company or the Guarantors be obligated pursuant to this Section 3(e) to qualify to do business in any jurisdiction where it is not then so qualified or to take any action that would subject it to service of process in suits in any jurisdiction it is not then so subject.

(f) Upon the occurrence of any event contemplated by Section 3(b)(ii) through (v) above, the Company shall promptly (or within the time period provided for by Section 3(h) hereof, if applicable) prepare a post-effective amendment to the Shelf Registration Statement or an amendment or supplement to the related Prospectus or file any other required document so that, as thereafter delivered to subsequent purchasers of the securities included therein, the Prospectus will not include an untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading.

(g) For prescribed periods of time during which the Company or the Guarantors possess material non-public information, the disclosure of which would have a material adverse effect on the Company, and during which it is appropriate to suspend the availability of the Shelf Registration Statement and the related Prospectus in order to comply with applicable law, the Company shall give notice (without notice of the nature or details of such events) to the Notice Holders that the availability of the Shelf Registration Statement is suspended and, upon receipt of any such notice, each Notice Holder agrees (i) not to sell any Registrable Securities pursuant to the Shelf Registration Statement until such Notice Holder's receipt of copies of the supplemented or amended Prospectus provided for in Section 3(f) hereof, or until it is advised in writing by the Company that the Prospectus may be used, and has received copies of any additional or supplemental filings that are incorporated or deemed incorporated by reference in such Prospectus, and (ii) to hold such notice in confidence. Except in the case of a suspension of the availability of the Shelf Registration Statement and the related Prospectus solely as the result of the filing of a post-effective amendment or supplement to the Prospectus to add additional Selling Securityholders therein, the period during which the availability of the Shelf Registration Statement and any Prospectus is suspended (the "**Deferral Period**") shall not exceed 20 consecutive days or more than 60, in aggregate, during any 360-day period.

(h) The Company and the Guarantors shall comply with all applicable rules and regulations of the Commission and shall make generally available to their respective securityholders an earnings statement satisfying the provisions of Section 11(a) of the Act as soon as practicable after the effective date of the Shelf Registration Statement and in any event no later than 45 days after the end of a twelve-month period (or 90 days, if such period is a fiscal year) beginning with the first month of the Company's first fiscal quarter commencing after the effective date of the Shelf Registration Statement.

(i) The Company may require each Holder of Registrable Securities to be sold pursuant to the Shelf Registration Statement to furnish to the Company such information regarding the Holder and the distribution of such Registrable Securities as the Company may from time to time reasonably require for inclusion in the Shelf Registration Statement. The Company may exclude from the Shelf Registration Statement the Registrable Securities of any Holder that fails to furnish such information within a reasonable time after receiving such request.

(j) The Company and the Guarantors agree to take reasonable customary actions in connection with a Holder's sale or transfer of Registrable Securities pursuant to the Shelf Registration Statement to the extent consistent with this Agreement.

4. *Registration Expenses.* The Company shall bear all expenses incurred in connection with the performance of its obligations under Sections 2 and 3 hereof and shall reimburse the Holders for the reasonable fees and disbursements of a single counsel to the Holders, which counsel shall be selected by the Majority Holders. Each Holder shall be responsible for its respective share of any underwriting discounts and commissions (or similar costs) and transfer taxes, if any.

5. *Indemnity and Contribution*.

(a) The Company and the Guarantors, jointly and severally, agree to indemnify and hold harmless each Holder covered by the Shelf Registration Statement, the Initial Purchaser, and the directors, officers and, employees of each such Holder or Initial Purchaser, each person, if any, who controls any such Holder or the Initial Purchaser within the meaning of either Section 15 of the Act or Section 20 of the Exchange Act, and each Affiliate of each Holder and of the Initial Purchaser, from and against any and all losses, claims, damages and liabilities (including, without limitation, reasonable attorneys' fees and other expenses reasonably incurred in connection with defending or investigating any such action or claim) caused by any untrue statement or alleged untrue statement of a material fact contained in the Shelf Registration Statement as originally filed or in any amendment thereof, or in any preliminary prospectus or the Prospectus, or in any amendment or supplement thereto, or caused by any omission or alleged omission to state therein a material fact necessary to make the statements therein (in the case of any preliminary prospectus or the Prospectus, in the light of the circumstances under which they were made) not misleading, and agrees to reimburse each such indemnified party, as incurred, for any legal or other expenses reasonably incurred by it in connection with investigating or defending any such loss, claim, damage, liability or action; *provided, however,* that the Company and the Guarantors will not be liable in any such case to the extent that such losses, claims, damages or liabilities are caused by any such untrue statement or omission or alleged untrue statement or omission based upon information relating to the party claiming indemnification and furnished to the Company or any of the Guarantors in writing by such party claiming indemnification expressly for use therein.

(b) Each Holder of securities covered by the Shelf Registration Statement (including the Initial Purchaser in its capacity as a Holder) severally and not jointly agrees to indemnify and hold harmless the Company and the Guarantors, their directors and officers who sign the Shelf Registration Statement and each person, if any, who controls the Company within the meaning of either Section 15 of the Act or Section 20 of the Exchange Act to the same extent as the foregoing indemnity from the Company and the Guarantors to each such Holder, but only with reference to information relating to such Holder furnished to the Company or the Guarantors in writing by or on behalf of such Holder expressly for use in the documents referred to in the foregoing indemnity; *provided, however,* that the liability of any Holder pursuant to the indemnity in this Section 5(b) shall not be greater than the proceeds received by such Holder upon sale of the Registrable Securities giving rise to the indemnity. This indemnity agreement shall be acknowledged by each Notice Holder that is not an Initial Purchaser in such Notice Holder's Notice and Questionnaire and shall be in addition to any liability that any such Notice Holder may otherwise have.

(c) In case any proceeding (including any governmental investigation) shall be instituted involving any person in respect of which indemnity may be sought pursuant to Section 5(a) or 5(b), such person (the "**indemnified party**") shall promptly notify the person against whom such indemnity may be sought (the "**indemnifying party**") in writing and the indemnifying party, upon request of the indemnified party, shall retain counsel reasonably satisfactory to the indemnified party to represent the indemnified party and any others the indemnifying party may designate in such proceeding and shall pay the fees and disbursements of such counsel related to such proceeding. In any such proceeding, any indemnified party shall have the right to retain its own counsel, but the fees and expenses of such counsel shall be at the expense of such indemnified party unless (i) the indemnifying party and the indemnified party shall have mutually agreed to the retention of such counsel, (ii) the actual or potential defendants in, or targets of, any such action include both the indemnified party and the indemnifying party and the indemnified party shall have reasonably concluded that there may be legal defenses available to it and/or other indemnified parties that are different from or additional to those available to the indemnifying party, (iii) the indemnifying party shall not have employed counsel satisfactory to the indemnified party to represent the indemnified party within a reasonable time after notice of the institution of such action or (iv) the named parties to any such proceeding (including any impleaded parties) include both the indemnifying party and the indemnified party and representation of both parties by the same counsel shall have been reasonably concluded (based on the advice of counsel) to be inappropriate due to conflicts between them. It is understood that the indemnifying party shall not, in respect of the legal expenses of any indemnified party in connection with any proceeding or related proceedings in the same jurisdiction, be liable for the fees and expenses of more than one separate firm (in addition to any local counsel) for all such indemnified parties and that all such fees and expenses shall be reimbursed as they are incurred. Such firm shall be designated in writing by the relevant indemnified party. The indemnifying party shall not be liable for any settlement of any proceeding effected without its written consent, but if settled with such consent or if there be a final judgment for the plaintiff, the indemnifying party agrees to indemnify the indemnified party from and against any loss or liability by reason of such settlement or judgment. Notwithstanding the foregoing sentence, if at any time an indemnified party shall have requested an indemnifying party to reimburse the indemnified party for fees and expenses of counsel as contemplated by the second and third sentences of this paragraph, the indemnifying party agrees that it shall be liable for any settlement of any proceeding effected without its written consent if (i) such settlement is entered into more than 30 days after receipt by such indemnifying party of the aforesaid request and (ii) such indemnifying party shall not have reimbursed the indemnified party in accordance with such request prior to the date of such settlement. No indemnifying party shall, without the prior written consent of the indemnified party, effect any settlement of any pending or threatened proceeding in respect of which any indemnified party is or could have been a party and indemnity could have been sought hereunder by such indemnified party, unless such settlement includes an unconditional release of such indemnified party from all liability on claims that are the subject matter of such proceeding.

(d) To the extent the indemnification provided for in Section 5(a) or 5(b) of is unavailable to an indemnified party or insufficient in respect of any losses, claims, damages or liabilities referred to therein, then each indemnifying party under such paragraph shall have a joint and several obligation to contribute to the aggregate losses, claims, damages and liabilities (including legal or other expenses reasonably incurred in connection with investigating or defending loss, claim, liability, damage or action) (collectively "**Losses**") to which such indemnified party may be subject in such proportion as is appropriate to reflect the relative benefits received by such indemnifying party, on the one hand, and such indemnified party, on the other hand, from the initial offering of the Registrable Securities and the Shelf Registration Statement which resulted in such Losses; *provided, however,* that in no event shall the Initial Purchaser be responsible, in the aggregate, for any amount in excess of the purchase discount or commission applicable to the Registrable Securities, as set forth in the Final Memorandum, nor shall any underwriter be responsible for any amount in excess of the underwriting discount or commission applicable to the securities purchased by such underwriter under the Shelf Registration Statement which resulted in such Losses. If the allocation provided by the immediately preceding sentence is unavailable for any reason, the indemnifying party and the indemnified party shall contribute in such proportion as is appropriate to reflect not only such relative benefits but also the relative fault of such indemnifying party, on the one hand, and such indemnified party, on the other hand, in connection with the statements or omissions which resulted in such Losses as well as any other relevant equitable considerations; *provided*, *however,* that (A) in no event shall the benefits received by any Holder be deemed to exceed, and no Holder shall be required to contribute, in the aggregate, any amount in excess of, the amount by which the net proceeds actually received by such Holder from the sale of the Registrable Securities exceeds the amount of any damages that such Holder has otherwise been required to pay, (B) in no event shall the benefits received by the Initial Purchaser be deemed to exceed, and the Initial Purchaser shall not be required to contribute, in the aggregate, any amount in excess of, the amount by which the total discounts and commissions received by the Initial Purchaser as set forth in the Final Memorandum exceeds the amount of any damages that the Initial Purchaser has otherwise been required to pay, and (C) in no event shall the benefits received by any underwriter be deemed to exceed, and such underwriter shall not be required to contribute, in the aggregate, any amount in excess of, the amount by which the total underwriting discounts and commissions, as set forth on the cover page of the Prospectus (including any related prospectus supplement) forming a part of the Shelf Registration Statement Prospectus (including any related prospectus supplement) related to such Losses exceeds the amount of any damages that such underwriter has otherwise been required to pay. Relative fault shall be determined by reference to, among other things, whether the untrue or alleged untrue statement of a material fact or the omission or alleged omission to state a material fact relates to information supplied by the indemnifying party, on the one hand, or by the indemnified party, on the other hand, and the parties' relative intent, knowledge, access to information and opportunity to correct or prevent such statement or omission.

(e) The parties agree that it would not be just or equitable if contribution pursuant to this Section 5 were determined by *pro rata* allocation (even if the Holders were treated as one entity for such purpose) or by any other method of allocation that does not take account of the equitable considerations referred to in Section 5(d). Notwithstanding the provisions of this Section 5, the Initial Purchaser shall not be required to contribute any amount in excess of the amount by which the total price at which the Registrable Securities resold by it in the initial placement of such Registrable Securities were offered to investors exceeds the amount of any damages that the Initial Purchaser has otherwise been required to pay by reason of such untrue statement or alleged untrue statement or omission or alleged omission. No person guilty of fraudulent misrepresentation (within the meaning of Section 11(f) of the Act) shall be entitled to contribution from any person who was not guilty of such fraudulent misrepresentation. The remedies provided for in this Section 5 are not exclusive and shall not limit any rights or remedies which may otherwise be available to any indemnified party at law or in equity. For purposes of this Section 5, each person who controls the Initial Purchaser within the meaning of either Section 15 of the Act or Section 20 of the Exchange Act and each director, officer and employee of Initial Purchaser shall have the same rights to contribution as the Initial Purchaser; each person who controls a Holder within the meaning of either Section 15 of the Act or Section 20 of the Exchange Act and each director, officer and employee of such Holder shall have the same rights to contribution as such Holder; and each person who controls the Company within the meaning of either Section 15 of the Act or Section 20 of the Exchange Act and each director, officer and employee of the Company who shall have signed the Shelf Registration Statement shall have the same rights to contribution as the Company.

(f) The indemnity and contribution provisions contained in this Section 5 shall remain operative and in full force and effect regardless of (i) any termination of this Agreement, (ii) any investigation made by or on behalf of any Holder or the Company or of any of the indemnified persons referred to in this Section 5 and (iii) the sale by a Holder of securities covered by the Shelf Registration Statement.

6. *Registration Defaults.* Each of the following events shall constitute a Registration Default:

(a) if the Shelf Registration Statement is not filed with the Commission within 30 days following the Closing Date;

(b) if the Shelf Registration Statement is not declared effective by the Commission within 60 days following the Closing Date, or within 90 days following the Closing Date if such Shelf Registration Statement is reviewed by the Commission;

(c) if the Shelf Registration Statement has been declared or becomes effective but ceases to be effective or usable for the offer and sale of the Registrable Securities (other than in connection with (A) a Deferral Period or (B) as a result of a requirement to file a post-effective amendment or supplement to the Prospectus to make changes to the information regarding Selling Securityholders or the plan of distribution provided for therein at any time during the Shelf Registration Period) and the Company and the Guarantors do not cure the lapse of effectiveness or usability within ten Business Days;

(d) if, at any time during the six-month period beginning on, and including, the date which is six months after the Closing Date, the Company or the Guarantors fail to timely file any document or report that is required to be filed with the Commission pursuant to Section 13 or 15(d) of the Exchange Act, as applicable, after giving effect to all applicable grace periods thereunder and other than reports to be filed on Form 8-K; or

(e) if the aggregate duration of Deferral Periods in any period exceeds the number of days permitted in respect of such period pursuant to Section 3(g) hereof;

provided, however, that a Registration Default will be deemed to end upon the day before the earlier of (i) the day on which such Registration Default has been cured or waived, and (ii) the date the Shelf Registration Statement is no longer required to be kept effective for the Registrable Securities.

If a Registration Default occurs, subject to the provisions of the Indenture, the Company will pay additional interest on the Notes to those entitled to interest payments semi-annually in arrears on each interest payment date ("**Additional Interest**"), which Additional Interest will accrue at a rate equal to 1.00% per annum of the principal amount of Notes outstanding for each day during such period that such Registration Default has occurred and is continuing. In no event will any Additional Interest payable pursuant to a Registration Default exceed 1.00% per year. The Company shall notify the Trustee in writing of any Additional Interest due prior to the applicable interest payment date. If a Note ceases to be outstanding during any period for which Additional Interest is accruing, the Additional Interest to be paid with respect to that Note will be prorated.

The occurrence and continuance of a Registration Default shall not have any effect on the Company's and Guarantors' rights under the Indenture in respect to the right to redeem the Notes and Guarantee.

7. *No Resale of Reacquired Registrable Securities.* The Company and the Guarantors agree that they will not, and will not permit their respective subsidiaries to, resell any Notes or Warrants that they reacquire, if any.

8. *No Inconsistent Agreements.* The Company and the Guarantors have not entered into, and agree not to enter into, any agreement with respect to securities that is inconsistent with the registration rights granted to the Holders herein.

9. *Rule 144A and Rule 144.* So long as any Registrable Securities remain outstanding, the Company and the Guarantors shall file the reports required to be filed by them under Rule 144A(d)(4) under the Act and the Exchange Act in a timely manner and, if at any time the Company is not required to file such reports, it will, upon the written request of any Holder of Registrable Securities, make available other information so long as necessary to permit sales of such Holder's Registrable Securities pursuant to Rule 144A of the Act. The Company covenants that it will take such further action as any Holder of Registrable Securities may reasonably request, all to the extent required from time to time to enable such Holder to sell Registrable Securities without registration under the Act within the exemptions provided by Rules 144 and 144A of the Act (including, without limitation, the requirements of Rule 144A(d)(4)). Upon the written request of any Holder of Registrable Securities, the Company shall deliver to such Holder a written statement as to whether the Company and the Guarantors have complied with such requirements.

10. *Listing.* The Company shall use best efforts to maintain the approval of the Underlying Shares for listing on NASDAQ.

11. *Amendments and Waivers.* The provisions of this Agreement may not be amended, qualified, modified or supplemented, and waivers or consents to departures from the provisions hereof may not be given, unless the Company has obtained the written consent of the Majority Holders; *provided, however,* that, with respect to any matter that directly or indirectly affects the rights of the Initial Purchaser hereunder, the Company shall obtain the written consent of the Initial Purchaser; *provided, further,* that no amendment, qualification, modification, supplement, waiver or consent with respect to Section 6 hereof shall be effective as against any Holder unless consented to in writing by such Holder; and *provided, further,* that the provisions of this Section 11 may not be amended, qualified, modified or supplemented, and waivers or consents to departures from the provisions hereof may not be given, unless the Company has obtained the written consent of the Initial Purchaser and each Holder.

12. *Notices.* All notices and other communications provided for or permitted hereunder shall be made in writing:

(a) if to a Holder, at the most current address given by such Holder to the Company in accordance with the provisions of the Notice and Questionnaire or, if no Notice and Questionnaire has been provided by such Holder, to the address on file for such Holder in the register of ownership of the Notes;

(b) if to the Initial Purchaser, initially at the addresses set forth in the Initial Purchaser Agreement; and

(c) if to the Company or any of the Guarantors, initially at the addresses set forth in the Initial Purchaser Agreement.

All such notices and communications shall be deemed to have been duly given when received. The Initial Purchaser and the Company, on behalf of itself and of the Guarantors, by notice to the other parties may designate additional or different addresses for subsequent notices or communications.

Notwithstanding the foregoing, notices given to Holders holding Notes in book-entry form may be given through the facilities of DTC or any successor depository.

13. *Remedies.* The Initial Purchaser and each Holder, in addition to being entitled to exercise all rights provided to them in this Agreement, the Indenture, the Warrant Agreement or the Initial Purchaser Agreement or granted by law, will be entitled to specific performance of their respective rights under this Agreement. The Company and the Guarantors agree that monetary damages would not be adequate compensation for any loss incurred by reason of a breach by them of the provisions of this Agreement and hereby agree to waive in any action for specific performance the defense that a remedy at law would be adequate.

14. *Successors.* This Agreement shall inure to the benefit of and be binding upon the parties hereto, their respective successors and assigns, including, without the need for an express assignment or any consent by the Company or the Guarantors thereto, subsequent Holders of Registrable Securities, and the indemnified persons referred to in Section 5 hereof. The Company and the Guarantors hereby agree to extend the benefits of this Agreement to any Holder of Registrable Securities, and any such Holder may specifically enforce the provisions of this Agreement as if an original party hereto.

15. *Counterparts.* This Agreement may be signed in one or more counterparts, each of which shall constitute an original and all of which together shall constitute one and the same agreement.

16. *Headings.* The section headings used herein are for convenience only and shall not affect the construction hereof.

17. *Applicable Law.* This Agreement shall be governed by and construed in accordance with the laws of the State of New York. The parties hereto each hereby waive any right to trial by jury in any action, proceeding or counterclaim arising out of or relating to this Agreement.

18. *Severability.* In the event that any one of more of the provisions contained herein, or the application thereof in any circumstances, is 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 hereof shall not be in any way impaired or affected thereby, it being intended that all of the rights and privileges of the parties shall be enforceable to the fullest extent permitted by law.

[*Signature Pages Follow*]

IN WITNESS WHEREOF, the Company and each of the Guarantors have caused this Agreement to be duly executed by its authorized person as of this 28th day of September, 2016.

The Company

DIGITAL TURBINE, INC.

By: _____
Name:
Title:

Guarantors

DIGITAL TURBINE USA, INC., a Delaware corporation

By: _____
Name:
Title:

DIGITAL TURBINE MEDIA, INC., a Delaware corporation

By: _____
Name:
Title:

DIGITAL TURBINE (EMEA) LTD., a company formed under the laws of Israel

By: _____
Name:
Title:

DIGITAL TURBINE ASIA PACIFIC PTY LTD., a company formed under the laws of Australia

By: _____
Name:
Title:

IN WITNESS WHEREOF, the undersigned Initial Purchaser has caused this Agreement to be duly executed by its authorized person as of this 28th day of September, 2016.

Initial Purchaser
BTIG, LLC

By: _____
Name:
Title:

Initial Purchaser Signature Page to Registration Rights Agreement

Exhibit 10.1

DIGITAL TURBINE, INC.

A Delaware corporation

8.75% CONVERTIBLE NOTES DUE 2020

INITIAL PURCHASER AGREEMENT

September 23, 2016

CONVERTIBLE NOTE INITIAL PURCHASER AGREEMENT

Digital Turbine, Inc., a Delaware corporation (the "**Company**"), proposes to issue and sell to BTIG, LLC (the "**Initial Purchaser**") $16,000,000 principal amount of its 8.75% convertible notes due September 23, 2020 (the "**Notes**"). The Notes will be unconditionally guaranteed as to the payment of principal, premium, if any, and interest on a senior unsecured basis (the "**Guarantee**" and together with the Notes, the "**Securities**") by the wholly-owned subsidiaries of the Company listed on the signature pages hereto as guarantors (the "**Guarantors**"). The Securities will be issued pursuant to the provisions of an Indenture, which will be substantially in the form attached hereto as Exhibit A (the "**Indenture**"), to be entered into on the Closing Date (as defined below), among the Company, the Guarantors and U.S. Bank National Association, as trustee (the "**Trustee**"). The Notes will be convertible into shares of common stock of the Company (the "**Underlying Securities**"). On the Closing Date, the Company and U.S. Bank National Association, as warrant agent (the "**Warrant Agent**") will also enter into a warrant agreement, which will be substantially in the form attached hereto as Exhibit B (the "**Warrant Agreement**").

The Securities will be offered to the Initial Purchaser without being registered under the Securities Act of 1933, as amended (the "**Securities Act**"), in reliance on the exemption from the registration requirements of the Securities Act provided by Section 4(a)(2) thereof. The Initial Purchaser has advised the Company that it will make offers and resales of the Securities purchased from the Company to qualified institutional buyers in compliance with the exemption from registration provided by Rule 144A under the Securities Act and to institutional accredited investors (as defined in Rule 501(a)(1), (2), (3) or (7) under the Securities Act).

The Initial Purchaser and its direct and indirect transferees will be entitled to the benefits of a Registration Rights Agreement, which will be substantially in the form attached hereto as Exhibit C (the "**Registration Rights Agreement**"), to be entered into on the Closing Date, among the Company, the Guarantors and the Initial Purchaser.

In connection with the sale of the Securities, the Company and the Guarantors have prepared a preliminary offering memorandum dated September 22, 2016 (the "**Preliminary Memorandum**") and will prepare a final offering memorandum (the "**Final Memorandum**") including or incorporating by reference a description of the terms of the Securities and the Underlying Securities, the terms of the offering and a description of the Company and the Guarantors. For purposes of this Agreement, "**Additional Written Offering Communication**" means any written communication (as defined in Rule 405 under the Securities Act) that constitutes an offer to sell or a solicitation of an offer to buy the Securities other than the Preliminary Memorandum or the Final Memorandum, and "**Time of Sale Memorandum**" means the Preliminary Memorandum together with the Additional Written Offering Communications, if any, each identified in Schedule I hereto. As used herein, the terms Preliminary Memorandum, Time of Sale Memorandum and Final Memorandum shall include the documents, if any, incorporated by reference therein on the date hereof. The terms "**supplement**", "**amendment**" and "**amend**" as used herein with respect to the Preliminary Memorandum, the Time of Sale Memorandum, the Final Memorandum or any Additional Written Offering Communication shall include all documents subsequently filed by the Company or the Guarantors with the Securities and Exchange Commission (the "**Commission**") pursuant to the Securities Exchange Act of 1934, as amended (the "**Exchange Act**"), that are deemed to be incorporated by reference therein.

1. *Representations and Warranties.* The Company and the Guarantors, jointly and severally, represent and warrant to, and agree with, the Initial Purchaser that:

(a) (i) Each document, if any, filed or to be filed pursuant to the Exchange Act and incorporated by reference in the Preliminary Memorandum, the Time of Sale Memorandum or the Final Memorandum complied with, or will comply with, when filed in all material respects with the Exchange Act and the applicable rules and regulations of the Commission thereunder, (ii) the Time of Sale Memorandum does not at the time of each sale of the Securities in connection with the offering when the Final Memorandum is not yet available to prospective purchasers and at the Closing Date (as defined in Section 4), the Time of Sale Memorandum, as then amended or supplemented by the Company and the Guarantors, if applicable, will not, contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading, (iii) the Preliminary Memorandum does not contain and the Final Memorandum, in the form used by the Initial Purchaser to confirm sales and on the Closing Date (as defined in Section 4), will not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading, except that the representations and warranties set forth in this paragraph do not apply to statements or omissions in the Preliminary Memorandum, the Time of Sale Memorandum or the Final Memorandum based upon information relating to the Initial Purchaser furnished to the Company in writing by such Initial Purchaser expressly for use therein.

(b) Except for the Additional Written Offering Communications, if any, identified in Schedule I hereto, and electronic road shows, if any, furnished to the Initial Purchaser before first use, the Company and the Guarantors have not prepared, used or referred to, and will not, without the prior consent of the Initial Purchaser, prepare, use or refer to, any Additional Written Offering Communication.

(c) The Company has been duly incorporated, is validly existing as a corporation in good standing under the laws of the State of Delaware, has the corporate power and authority to own its property and to conduct its business as described in the Time of Sale Memorandum and is duly qualified to transact business and is in good standing in each jurisdiction in which the conduct of its business or its ownership or leasing of property requires such qualification, except to the extent that the failure to be so qualified or be in good standing would not have a material adverse effect on the Company and its subsidiaries, taken as a whole.

(d) Each subsidiary of the Company has been duly incorporated, is validly existing as a corporation or a limited liability company, as applicable, in good standing under the laws of the jurisdiction of its incorporation, has the corporate power and authority to own its property and to conduct its business as described in the Time of Sale Memorandum and is duly qualified to transact business and is in good standing in each jurisdiction in which the conduct of its business or its ownership or leasing of property requires such qualification, except to the extent that the failure to be so qualified or be in good standing would not have a material adverse effect on the Company and its subsidiaries, taken as a whole; all of the issued shares of capital stock of each subsidiary of the Company have been duly and validly authorized and issued, are fully paid and non-assessable and are owned directly by the Company, and at the Closing Date will be free and clear of all liens, encumbrances, equities or claims.

(e) This Agreement has been duly authorized, executed and delivered by the Company and the Guarantors.

(f) The authorized capital stock of the Company conforms as to legal matters to the description thereof contained in each of the Time of Sale Memorandum and the Final Memorandum.

(g) The shares of common stock of the Company outstanding prior to the issuance of the Securities have been duly authorized and are validly issued, fully paid and non-assessable.

(h) The common stock of the Company is registered pursuant to the Exchange Act and is listed on NASDAQ, and the Company has taken no action designed to terminate the registration of its common stock under the Exchange Act or to delist its common stock from NASDAQ, nor has the Company received any notification that the Commission or NASDAQ is contemplating terminating such registration or listing.

(i) The Securities have been duly authorized and, when executed and authenticated in accordance with the provisions of the Indenture and the Warrant Agreement and delivered to and paid for by the Initial Purchaser in accordance with the terms of this Agreement, will be valid and binding obligations of the Company or the Guarantors, as applicable, enforceable in accordance with their terms, subject to applicable bankruptcy, insolvency and similar laws affecting creditors' rights generally and equitable principles of general applicability, and will be entitled to the benefits of the Indenture, the Registration Rights Agreement and the Warrant Agreement pursuant to which such Securities are to be issued. The Guarantee conforms to the description thereof in the Time of Sale Memorandum and the Final Memorandum.

(j) The Underlying Securities issuable upon conversion of the Securities have been duly authorized and reserved and, when issued upon conversion of the Securities in accordance with the terms of the Securities, will be validly issued, fully paid and non-assessable, and the issuance of the Underlying Securities will not be subject to any preemptive or similar rights.

(k) Each of the Indenture, the Registration Rights Agreement and the Warrant Agreement has been duly authorized, and, as of the Closing Date, will be duly executed and delivered by, and will be a valid and binding agreement of, the Company, enforceable in accordance with its terms, subject to applicable bankruptcy, insolvency and similar laws affecting creditors' rights generally and equitable principles of general applicability.

(l) Each of the Indenture and the Registration Rights Agreement has been duly authorized, and, as of the Closing Date, will be duly executed and delivered by, and will be a valid and binding agreement of, each of the Guarantors, enforceable in accordance with its terms, subject to applicable bankruptcy, insolvency and similar laws affecting creditors' rights generally and equitable principles of general applicability.

(m) The execution and delivery by the Company of, and the performance by the Company of its obligations under, this Agreement, the Indenture, the Registration Rights Agreement, the Warrant Agreement and the Securities will not contravene any provision of applicable law or the certificate of incorporation or by-laws of the Company or any agreement or other instrument binding upon the Company or any of its subsidiaries that is material to the Company and its subsidiaries, taken as a whole, or any judgment, order or decree of any governmental body, agency or court having jurisdiction over the Company or any subsidiary, and no consent, approval, authorization or order of, or qualification with, any governmental body or agency is required for the performance by the Company of its obligations under this Agreement, the Indenture, the Registration Rights Agreement, the Warrant Agreement or the Securities, except such as may be required by the securities or Blue Sky laws of the various states in connection with the offer and sale of the Securities and by federal and state securities laws with respect to the Company's obligations under the Registration Rights Agreement.

(n) The execution and delivery by the Guarantors of, and the performance by the Guarantors of their respective obligations under, this Agreement, the Indenture, the Registration Rights Agreement and the Securities will not contravene any provision of applicable law or the certificates of incorporation or by-laws of the various Guarantors or any agreement or other instrument binding upon the Guarantors or any of their subsidiaries that is material to a given Guarantor and its subsidiaries, taken as a whole, or any judgment, order or decree of any governmental body, agency or court having jurisdiction over the Guarantors or any of their subsidiaries, and no consent, approval, authorization or order of, or qualification with, any governmental body or agency is required for the performance by the Guarantors of their respective obligations under this Agreement, the Indenture, the Registration Rights Agreement or the Securities, except such as may be required by the securities or Blue Sky laws of the various states in connection with the offer and sale of the Securities and by federal and state securities laws with respect to the Guarantors' obligations under the Registration Rights Agreement.

(o) There has not occurred any material adverse change, or development involving a reasonably likely prospective material adverse change, in the condition, financial or otherwise, or in the earnings, business or operations of the Company and its subsidiaries, taken as a whole, from that set forth in the Time of Sale Memorandum provided to prospective purchasers of the Securities.

(p) Other than proceedings accurately described in all material respects in the Time of Sale Memorandum, there are no legal or governmental proceedings pending or threatened to which the Company or any of its subsidiaries is a party or to which any of the properties of the Company or any of its subsidiaries is subject that would have a material adverse effect on the Company and its subsidiaries, taken as a whole, or on the power or ability of the Company or the Guarantors to perform their respective obligations under this Agreement, the Indenture, the Registration Rights Agreement, the Warrant Agreement or the Securities or to consummate the transactions contemplated by the Time of Sale Memorandum.

(q) The Company and its subsidiaries (i) are in compliance with any and all applicable foreign, federal, state and local laws and regulations relating to the protection of human health and safety, the environment or hazardous or toxic substances or wastes, pollutants or contaminants, (ii) have received all permits, licenses or other approvals required of them under applicable laws to conduct their respective businesses and (iii) are in compliance with all terms and conditions of any such permit, license or approval, except where under any of the foregoing such noncompliance, failure to receive required permits, licenses or other approvals or failure to comply with the terms and conditions of such permits, licenses or approvals would not, singly or in the aggregate, have a material adverse effect on the Company and its subsidiaries, taken as a whole.

(r) The Company is not, and after giving effect to the offering and sale of the Securities and the application of the proceeds thereof as described in the Final Memorandum will not be, required to register as an "investment company" as such term is defined in the Investment Company Act of 1940, as amended (the "**Investment Company Act**").

(s) Neither the Company, any of the Guarantors nor any of their respective affiliates (as defined in Rule 501(b) of Regulation D under the Securities Act, an "**Affiliate**") has directly, or through any agent, (i) sold, offered for sale, solicited offers to buy or otherwise negotiated in respect of, any security (as defined in the Securities Act) which is or will be integrated with the sale of the Securities in a manner that would require the registration under the Securities Act of the Securities or (ii) offered, solicited offers to buy or sold the Securities by any form of general solicitation or general advertising (as those terms are used in Regulation D under the Securities Act) or in any manner involving a public offering within the meaning of Section 4(a)(2) of the Securities Act.

(t) It is not necessary in connection with the offer, sale and delivery of the Securities to the Initial Purchaser in the manner contemplated by this Agreement to register the Securities under the Securities Act or to qualify the Indenture under the Trust Indenture Act of 1939, as amended.

(u) The Securities satisfy the requirements set forth in Rule 144A(d)(3) under the Securities Act.

(v) Neither the Company, any of the Guarantors nor any of their respective subsidiaries or affiliates, nor to the Company's knowledge, any director, officer, employee, agent or representative of the Company, the Guarantors or of any of their respective subsidiaries or affiliates, has taken or will take any action in furtherance of an offer, payment, promise to pay, or authorization or approval of the payment or giving of money, property, gifts or anything else of value, directly or indirectly, to any "government official" (including any officer or employee of a government or government-owned or controlled entity or of a public international organization, or any person acting in an official capacity for or on behalf of any of the foregoing, or any political party or party official or candidate for political office) to influence official action or secure an improper advantage; and the Company, the Guarantors and their respective subsidiaries and affiliates have conducted their businesses in compliance with applicable anti-corruption laws and have instituted and maintain and will continue to maintain policies and procedures designed to promote and achieve compliance with such laws and with the representation and warranty contained herein.

(w) The operations of the Company and its subsidiaries are and have been conducted at all times in material compliance with all applicable financial recordkeeping and reporting requirements, including those of the Bank Secrecy Act, as amended by Title III of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (USA PATRIOT Act), and the applicable anti-money laundering statutes of jurisdictions where the Company and its subsidiaries conduct business, the rules and regulations thereunder and any related or similar rules, regulations or guidelines, issued, administered or enforced by any governmental agency (collectively, the "**Anti-Money Laundering Laws**"), and no action, suit or proceeding by or before any court or governmental agency, authority or body or any arbitrator involving the Company or any of its subsidiaries with respect to the Anti-Money Laundering Laws is pending or, to the best knowledge of the Company, threatened.

(x) (i) Neither the Company, nor any of its subsidiaries nor, to the Company's knowledge, any of their respective directors, officers, employees, agents, affiliates or representatives, is an individual or entity ("**Person**") that is, or is owned or controlled by a Person that is:

(A) the subject of any sanctions administered or enforced by the U.S. Department of Treasury's Office of Foreign Assets Control ("**OFAC**"), the United Nations Security Council ("**UNSC**"), the European Union ("**EU**"), Her Majesty's Treasury ("**HMT**"), or other relevant sanctions authority (collectively, "**Sanctions**"); nor

(B) located, organized or resident in a country or territory that is the subject of Sanctions (including, without limitation, Burma/Myanmar, Cuba, Iran, Libya, North Korea, Sudan and Syria).

(ii) The Company and its subsidiaries will not, directly or indirectly, use the proceeds of the offering, or lend, contribute or otherwise make available such proceeds to any subsidiary, joint venture partner or other Person:

(A) to fund or facilitate any activities or business of or with any Person or in any country or territory that, at the time of such funding or facilitation, is the subject of Sanctions; or

(B) in any other manner that will result in a violation of Sanctions by any Person (including any Person participating in the offering, whether as underwriter, advisor, investor or otherwise).

(iii) For the past five years, the Company and its subsidiaries have not knowingly engaged in, are not now knowingly engaged in, and will not engage in, any dealings or transactions with any Person, or in any country or territory, that at the time of the dealing or transaction is or was the subject of Sanctions.

(y) The Company and each of its subsidiaries have filed all federal, state, local and foreign tax returns required to be filed through the date of this Agreement or have requested extensions thereof (except where the failure to file would not, individually or in the aggregate, have a material adverse effect) and have paid all taxes required to be paid thereon (except for cases in which the failure to file or pay would not have a material adverse effect, or, except as currently being contested in good faith and for which reserves required by U.S. GAAP have been created in the financial statements of the Company or the Guarantors, as applicable), and no tax deficiency has been determined adversely to the Company or any of its subsidiaries which has had (nor does the Company or any of its subsidiaries have any notice or knowledge of any tax deficiency which could reasonably be expected to be determined adversely to the Company or its subsidiaries and which could reasonably be expected to have) a material adverse effect.

(z) The Company and each of its 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 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. Except as described in the Time of Sale Prospectus, since the end of the Company's most recent audited fiscal year, there has been (i) no material weakness in the Company's or Guarantors' internal control over financial reporting (whether or not remediated) and (ii) no change in the Company's or Guarantors' internal control over financial reporting that has materially affected, or is reasonably likely to materially affect, the Company's or Guarantors' internal control over financial reporting.

2. *Agreements to Sell and Purchase*. The Company hereby agrees to sell to the Initial Purchaser, and the Initial Purchaser, upon the basis of the representations and warranties herein contained, but subject to the conditions hereinafter stated, agrees to purchase from the Company $16,000,000 principal amount of Notes at a purchase price of 92.75% of the principal amount thereof (the "**Purchase Price**") plus accrued interest, if any, to the Closing Date, and the Guarantors agree to issue the Guarantee to be affixed to the Notes.

3. *Terms of Offering.* The Initial Purchaser has advised the Company that the Initial Purchaser will make an offering of the Securities purchased by the Initial Purchaser hereunder as soon as practicable after this Agreement is entered into as, in the Initial Purchaser's judgment, is advisable.

4. *Payment and Delivery.* Payment for the Securities shall be made by the Initial Purchaser to the Company in federal or other funds immediately available in New York City against delivery of such Securities for the account of the Initial Purchaser at 10:00 a.m., New York City time, on September 28, 2016, or at such other time on the same or such other date, not later than September 30, 2016, as shall be designated in writing by the Initial Purchaser. The time and date of such payment are hereinafter referred to as the "**Closing Date**."

The Securities shall be delivered in global form, with the Guarantee affixed to the Notes, not later than one full business day prior to the Closing Date. The Securities shall be deposited with the Trustee as custodian for The Depository Trust Company ("**DTC**") and registered in the name of Cede & Co., as nominee for DTC, for the account of the Initial Purchaser, with any transfer taxes payable in connection with the transfer of the Securities to the Initial Purchaser duly paid, against payment of the Purchase Price therefor plus accrued interest, if any, to the date of payment and delivery.

5. *Conditions to the Initial Purchaser's Obligation.* The obligation of the Initial Purchaser to purchase and pay for the Securities on the Closing Date is subject to the following conditions:

(a) Subsequent to the execution and delivery of this Agreement and prior to the Closing Date, there shall not have occurred any actual event, circumstance or change having a material adverse effect, or a development involving a reasonably likely prospective material adverse effect, on the business, condition (financial or otherwise) or results of operations of the Company and its subsidiaries, taken as a whole, from that set forth in the Time of Sale Memorandum provided to the prospective purchasers of the Securities that, in the Initial Purchaser's reasonable determination, is material and adverse and that makes it, in the Initial Purchaser's reasonable determination, impracticable to market the Securities on the terms and in the manner contemplated in the Time of Sale Memorandum.

(b) The Initial Purchaser shall have received on the Closing Date a certificate, dated the Closing Date and signed by an executive officer of each of the Company and the Guarantors, to the effect set forth in Section 5(a) and to the effect that the representations and warranties of the Company and the Guarantors contained in this Agreement are true and correct as of the Closing Date (except to the extent that such representations and warranties speak as of another date, in which case, such representations and warranties shall be true and correct as of such other date) and that the Company and the Guarantors have complied with all of the agreements and satisfied all of the conditions on its part to be performed or satisfied hereunder on or before the Closing Date.

The officer signing and delivering such certificate may rely upon the best of his or her knowledge as to proceedings threatened.

(c) The Initial Purchaser shall have received on the Closing Date, the following:

(i) the Indenture, duly executed and delivered by the Company, the Guarantors and the Trustee;

(ii) the Warrant Agreement, duly executed and delivered by the Company and the Warrant Agent; and

(iii) the Registration Rights Agreement, duly executed and delivered by the Company and the Guarantors.

(d) The Initial Purchaser shall have received on the Closing Date an opinion and negative assurance statement of Manatt, Phelps & Phillips, LLP, outside counsel for the Company and the Guarantors, dated the Closing Date, to the effect set forth in Exhibit D. Such opinion and negative assurance statement shall be rendered to the Initial Purchaser at the request of the Company and the Guarantors and shall so state therein.

(e) The Initial Purchaser shall have received on the Closing Date an opinion of O'Melveny & Myers LLP, counsel for the Initial Purchaser, dated the Closing Date, to the effect set forth in Exhibit E.

(f) The Initial Purchaser shall have received on each of the date hereof and the Closing Date a letter, dated the date hereof or the Closing Date, as the case may be, in form and substance satisfactory to the Initial Purchaser, from SingerLewak LLP, independent public accountants, containing statements and information of the type ordinarily included in accountants' "comfort letters" to underwriters with respect to the financial statements and certain financial information contained in or incorporated by reference into the Time of Sale Memorandum and the Final Memorandum; *provided that* the letter delivered on the Closing Date shall use a "cut-off date" not earlier than the date hereof.

6. *Covenants of the Company and the Guarantors.* The Company and the Guarantors, jointly and severally, covenant with the Initial Purchaser as follows:

(a) To furnish to the Initial Purchaser in New York City, without charge, prior to 10:00 a.m. New York City time on the business day next succeeding the date of this Agreement and during the period mentioned in Section 6(d) or (e), as many copies of the Final Memorandum and any supplements and amendments thereto as the Initial Purchaser may reasonably request.

(b) Before amending or supplementing the Preliminary Memorandum, the Time of Sale Memorandum or the Final Memorandum, to furnish to the Initial Purchaser a copy of each such proposed amendment or supplement and not to use any such proposed amendment or supplement to which the Initial Purchaser objects.

(c) To furnish to the Initial Purchaser a copy of each proposed Additional Written Offering Communication to be prepared by or on behalf of, used by, or referred to by the Company or the Guarantors and not to use or refer to any proposed Additional Written Offering Communication to which the Initial Purchaser reasonably objects.

(d) If the Time of Sale Memorandum is being used to solicit offers to buy the Securities at a time when the Final Memorandum is not yet available to prospective purchasers and any event shall occur or condition exist as a result of which it is necessary to amend or supplement the Time of Sale Memorandum in order to make the statements therein, in the light of the circumstances, not misleading, or if, in the opinion of counsel for the Initial Purchaser, it is necessary to amend or supplement the Time of Sale Memorandum to comply with applicable law, forthwith to prepare and furnish, at its own expense, to the Initial Purchaser and to any dealer upon request, either amendments or supplements to the Time of Sale Memorandum so that the statements in the Time of Sale Memorandum as so amended or supplemented will not, in the light of the circumstances when delivered to a prospective purchaser, be misleading or so that the Time of Sale Memorandum, as amended or supplemented, will comply with applicable law.

(e) If, during such period after the date hereof and prior to the date on which all of the Securities shall have been sold by the Initial Purchaser, any event shall occur or condition exist as a result of which it is necessary to amend or supplement the Final Memorandum in order to make the statements therein, in the light of the circumstances when the Final Memorandum is delivered to a purchaser, not misleading, or if, in the opinion of counsel for the Initial Purchaser, it is necessary to amend or supplement the Final Memorandum to comply with applicable law, forthwith to prepare and furnish, at its own expense, to the Initial Purchaser, either amendments or supplements to the Final Memorandum so that the statements in the Final Memorandum as so amended or supplemented will not, in the light of the circumstances when the Final Memorandum is delivered to a purchaser, be misleading or so that the Final Memorandum, as amended or supplemented, will comply with applicable law.

(f) To furnish such information as may be reasonably required and otherwise to cooperate with the Initial Purchaser to qualify the Securities for offer and sale under the securities or Blue Sky laws of such jurisdictions as the Initial Purchaser shall reasonably request; *provided, however*, that the Company shall not be required to qualify as a foreign corporation or to consent to the service of process under the laws of, or subject itself to taxation as doing business in, any such state or other jurisdiction (except service of process with respect to the offering and sale of the Securities).

(g) To apply the net proceeds from the sale of the Securities in accordance with the statements under the caption "Use of Proceeds" in the Preliminary Memorandum, the Time of Sale Memorandum and the Final Memorandum.

(h) Whether or not the transactions contemplated in this Agreement are consummated or this Agreement is terminated, to pay or cause to be paid all expenses incident to the performance of its obligations under this Agreement, including: (i) the fees, disbursements and expenses of the Company's and Guarantors' counsel and the Company's and Guarantors' accountants in connection with the issuance and sale of the Securities and all other fees or expenses in connection with the preparation of the Preliminary Memorandum, the Time of Sale Memorandum, the Final Memorandum, any Additional Written Offering Communication prepared by or on behalf of, used by, or referred to by the Company or the Guarantors and any amendments and supplements to any of the foregoing, including all printing costs associated therewith, and the delivering of copies thereof to the Initial Purchaser, in the quantities herein above specified, (ii) all costs and expenses related to the transfer and delivery of the Securities to the Initial Purchaser, including any transfer or other taxes payable thereon, (iii) the cost of printing or producing any Blue Sky or legal investment memorandum in connection with the offer and sale of the Securities under state securities laws and all expenses in connection with the qualification of the Securities for offer and sale under state securities laws as provided in Section 6(f) hereof, including filing fees and the reasonable fees and disbursements of counsel for the Initial Purchaser, in connection with such qualification and in connection with the Blue Sky or legal investment memorandum, (iv) any fees charged by rating agencies for the rating of the Securities, (v) the fees and expenses, if any, incurred in connection with the admission of the Securities for trading any appropriate market system, (vi) the costs and charges of the Trustee and any transfer agent, registrar or depositary, (vii) the cost of the preparation, issuance and delivery of the Securities, (viii) the costs and expenses of the Company and the Guarantors relating to investor presentations on any "road show" undertaken in connection with the marketing of the offering of the Securities, including, without limitation, expenses associated with the preparation or dissemination of any electronic road show, expenses associated with production of road show slides and graphics, fees and expenses of any consultants engaged in connection with road show presentations with the prior approval of the Company or the Guarantors, travel and lodging expenses of the representatives and officers of the Company and the Guarantors and any such consultants, and the cost of any aircraft chartered in connection with any road show, (ix) the document production charges and expenses associated with printing this Agreement and (x) all other cost and expenses incident to the performance of the obligations of the Company and the Guarantors hereunder for which provision is not otherwise made in this Section 6. It is understood, however, that except as provided in this Section 6 (and subject to the aggregate limit of $100,000 for out-of-pocket expenses reimbursed by the Company to the Initial Purchaser pursuant to this Section 6), Section 8, and the last paragraph of Section 10, the Initial Purchaser will pay all of their costs and expenses, including fees and disbursements of their counsel, transfer taxes payable on resale of any of the Securities by them and any advertising expenses connected with any offers they may make.

(i) Neither the Company, the Guarantors nor any of their respective Affiliates will sell, offer for sale or solicit offers to buy or otherwise negotiate in respect of any security (as defined in the Securities Act) which could be integrated with the sale of the Securities in a manner which would require the registration under the Securities Act of the Securities.

(j) Not to solicit any offer to buy or offer or sell the Securities or the Underlying Securities by means of any form of general solicitation or general advertising (as those terms are used in Regulation D under the Securities Act) or in any manner involving a public offering within the meaning of Section 4(a)(2) of the Securities Act.

(k) While any of the Securities or the Underlying Securities remain "restricted securities" within the meaning of the Securities Act, to make available, upon request, to any seller of such Securities the information specified in Rule 144A(d)(4) under the Securities Act, unless the Company is then subject to Section 13 or 15(d) of the Exchange Act.

(l) During the period of two years after the Closing Date, the Company will not be, nor will it become, an open-end investment company, unit investment trust or face-amount certificate company that is or is required to be registered under Section 8 of the Investment Company Act.

(m) Not to take any action prohibited by Regulation M under the Exchange Act in connection with the distribution of the Securities contemplated hereby.

The Company also agrees that, without the prior written consent of the Initial Purchaser, it will not, during the period ending 90 days after the date of the Final Memorandum (the "**Restricted Period**"), (1) 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 to purchase, lend, or otherwise transfer or dispose of, directly or indirectly, any shares of common stock of the Company or any securities convertible into or exercisable or exchangeable for common stock of the Company or (2) enter into any swap or other arrangement that transfers to another, in whole or in part, any of the economic consequences of ownership of the common stock of the Company, whether any such transaction described in clause (1) or (2) above is to be settled by delivery of common stock or such other securities, in cash or otherwise. The foregoing sentence shall not apply to (a) the sale of the Securities under this Agreement, (b) the issuance by the Company of any shares of common stock upon the exercise of an option or warrant or the conversion of a security outstanding on the date hereof as disclosed in the Company's filings with the Commission, (c) issuances of options or grants of restricted stock under the Company's stock option and incentive plans, or (d) the establishment of a trading plan pursuant to Rule 10b5-1 under the Exchange Act for the transfer of shares of common stock, *provided that* (i) such plan does not provide for the transfer of common stock during the Restricted Period and (ii) to the extent a public announcement or filing under the Exchange Act, if any, is required of or voluntarily made by the Company regarding the establishment of such plan, such announcement or filing shall include a statement to the effect that no transfer of common stock may be made under such plan during the Restricted Period.

7. *Offering of Securities; Restrictions on Transfer.* The Initial Purchaser represents and warrants that the Initial Purchaser is a qualified institutional buyer as defined in Rule 144A under the Securities Act (a "**QIB**"). The Initial Purchaser agrees with the Company that (i) it will not solicit offers for, or offer or sell, such Securities by any form of general solicitation or general advertising (as those terms are used in Regulation D under the Securities Act) or in any manner involving a public offering within the meaning of Section 4(a)(2) of the Securities Act and (ii) it will solicit offers for such Securities only from, and will offer such Securities only to, persons that it reasonably believes to be (1) QIBs or (2) other institutional accredited investors (as defined in Rule 501(a)(1), (2), (3) or (7) under the Securities Act ("**institutional accredited investors**") that, prior to their purchase of the Securities, deliver to the Initial Purchaser a letter containing the representations and agreements set forth in a representational letter that, in either case, in purchasing such Securities are deemed to have represented and agreed as provided in the Final Memorandum under the caption "Transfer Restrictions".

8. *Indemnity and Contribution*. (a) The Company and the Guarantors, jointly and severally, agree to indemnify and hold harmless the Initial Purchaser, each person, if any, who controls the Initial Purchaser within the meaning of either Section 15 of the Securities Act or Section 20 of the Exchange Act, and each affiliate of the Initial Purchaser within the meaning of Rule 405 under the Securities Act from and against any and all losses, claims, damages and liabilities (including, without limitation, any legal or other expenses reasonably incurred in connection with defending or investigating any such action or claim) caused by any untrue statement or alleged untrue statement of a material fact contained in the Preliminary Memorandum, the Time of Sale Memorandum or any amendment or supplement thereto, any Additional Written Offering Communication prepared by or on behalf of, used by, or referred to by the Company or any of the Guarantors, any "road show" as defined in Rule 433(h) under the Securities Act (a "road show") or the Final Memorandum or any amendment or supplement thereto, or caused by any omission or alleged omission to state therein a material fact necessary to make the statements therein in the light of the circumstances under which they were made not misleading, except insofar as such losses, claims, damages or liabilities are caused by any such untrue statement or omission or alleged untrue statement or omission based upon information relating to the Initial Purchaser furnished to the Company or any of the Guarantors in writing by the Initial Purchaser expressly for use therein.

(b) The Initial Purchaser agrees to indemnify and hold harmless the Company and the Guarantors, their directors, their officers and each person, if any, who controls the Company within the meaning of either Section 15 of the Securities Act or Section 20 of the Exchange Act to the same extent as the foregoing indemnity from the Company and the Guarantors to the Initial Purchaser, but only with reference to information relating to the Initial Purchaser furnished to the Company or the Guarantors in writing by the Initial Purchaser expressly for use in the Preliminary Memorandum, the Time of Sale Memorandum, any Additional Written Offering Communication prepared by or on behalf of, used by or referred to by the Company, Guarantors, road show, or the Final Memorandum or any amendment or supplement thereto.

(c) In case any proceeding (including any governmental investigation) shall be instituted involving any person in respect of which indemnity may be sought pursuant to Section 8(a) or 8(b), such person (the "**indemnified party**") shall promptly notify the person against whom such indemnity may be sought (the "**indemnifying party**") in writing and the indemnifying party, upon request of the indemnified party, shall retain counsel reasonably satisfactory to the indemnified party to represent the indemnified party and any others the indemnifying party may designate in such proceeding and shall pay the fees and disbursements of such counsel related to such proceeding. In any such proceeding, any indemnified party shall have the right to retain its own counsel, but the fees and expenses of such counsel shall be at the expense of such indemnified party unless (i) the indemnifying party and the indemnified party shall have mutually agreed to the retention of such counsel or (ii) the named parties to any such proceeding (including any impleaded parties) include both the indemnifying party and the indemnified party and representation of both parties by the same counsel shall have been reasonably concluded (based on the advice of counsel) to be inappropriate due to an actual conflict between them. It is understood that the indemnifying party shall not, in respect of the legal expenses of any indemnified party in connection with any proceeding or related proceedings in the same jurisdiction, be liable for the fees and expenses of more than one separate firm (in addition to any local counsel) for all such indemnified parties and that all such fees and expenses shall be reimbursed as they are incurred. Such firm shall be designated in writing by the Initial Purchaser, in the case of parties indemnified pursuant to Section 8(a), and by the Company, in the case of parties indemnified pursuant to Section 8(b). The indemnifying party shall not be liable for any settlement of any proceeding effected without its written consent, but if settled with such consent or if there be a final judgment for the plaintiff, the indemnifying party agrees to indemnify the indemnified party from and against any loss or liability by reason of such settlement or judgment. Notwithstanding the foregoing sentence, if at any time an indemnified party shall have requested an indemnifying party to reimburse the indemnified party for fees and expenses of counsel as contemplated by the second and third sentences of this paragraph, the indemnifying party agrees that it shall be liable for any settlement of any proceeding effected without its written consent if (i) such settlement is entered into more than 30 days after receipt by such indemnifying party of the aforesaid request and (ii) such indemnifying party shall not have reimbursed the indemnified party in accordance with such request prior to the date of such settlement. No indemnifying party shall, without the prior written consent of the indemnified party, effect any settlement of any pending or threatened proceeding in respect of which any indemnified party is or could have been a party and indemnity could have been sought hereunder by such indemnified party, unless such settlement includes an unconditional release of such indemnified party from all liability on claims that are the subject matter of such proceeding.

(d) To the extent the indemnification provided for in Section 8(a) or 8(b) is unavailable to an indemnified party or insufficient in respect of any losses, claims, damages or liabilities referred to therein, then each indemnifying party under such paragraph, in lieu of indemnifying such indemnified party thereunder, shall contribute to the amount paid or payable by such indemnified party as a result of such losses, claims, damages or liabilities (i) in such proportion as is appropriate to reflect the relative benefits received by the Company and the Guarantors on the one hand and the Initial Purchaser on the other hand from the offering of the Securities or (ii) if the allocation provided by Section 8(d)(i) above is not permitted by applicable law, in such proportion as is appropriate to reflect not only the relative benefits referred to in Section 8(d)(i) above but also the relative fault of the Company and the Guarantors on the one hand and of the Initial Purchaser on the other hand in connection with the statements or omissions that resulted in such losses, claims, damages or liabilities, as well as any other relevant equitable considerations. The relative benefits received by the Company and the Guarantors on the one hand and the Initial Purchaser on the other hand in connection with the offering of the Securities shall be deemed to be in the same respective proportions as the net proceeds from the offering of the Securities (before deducting expenses) received by the Company and the Guarantors and the total discounts and commissions received by the Initial Purchaser bear to the aggregate offering price of the Securities. The relative fault of the Company and the Guarantors on the one hand and of the Initial Purchaser on the other hand shall be determined by reference to, among other things, whether the untrue or alleged untrue statement of a material fact or the omission or alleged omission to state a material fact relates to information supplied by the Company or the Guarantors on the one hand, or by the Initial Purchaser on the other hand, and the parties' relative intent, knowledge, access to information and opportunity to correct or prevent such statement or omission.

(e) The Company, the Guarantors and the Initial Purchaser agree that it would not be just or equitable if contribution pursuant to this Section 8 were determined by *pro rata* allocation or by any other method of allocation that does not take account of the equitable considerations referred to in Section 8(d). The amount paid or payable by an indemnified party as a result of the losses, claims, damages and liabilities referred to in Section 8(d) shall be deemed to include, subject to the limitations set forth above, any legal or other expenses reasonably incurred by such indemnified party in connection with investigating or defending any such action or claim. Notwithstanding the provisions of this Section 8, the Initial Purchaser shall not be required to contribute any amount in excess of the amount by which the total price at which the Securities resold by it in the initial placement of such Securities were offered to investors exceeds the amount of any damages that the Initial Purchaser has otherwise been required to pay by reason of such untrue statement or alleged untrue statement or omission or alleged omission. No person guilty of fraudulent misrepresentation (within the meaning of Section 11(f) of the Securities Act) shall be entitled to contribution from any person who was not guilty of such fraudulent misrepresentation. The remedies provided for in this Section 8 are not exclusive and shall not limit any rights or remedies which may otherwise be available to any indemnified party at law or in equity.

(f) The indemnity and contribution provisions contained in this Section 8 and the representations, warranties and other statements of the Company and the Guarantors contained in this Agreement shall remain operative and in full force and effect regardless of (i) any termination of this Agreement, (ii) any investigation made by or on behalf of the Initial Purchaser, any person controlling the Initial Purchaser or any affiliate of the Initial Purchaser or by or on behalf of the Company, the Guarantors, their respective officers or directors or any person controlling the Company or the Guarantors and (iii) acceptance of and payment for any of the Securities.

9. *Termination.* The Initial Purchaser may terminate this Agreement by notice given to the Company, if after the execution and delivery of this Agreement and prior to the Closing Date (i) trading generally shall have been suspended or materially limited on, or by, as the case may be, the NASDAQ Global Market, (ii) a material disruption in securities settlement, payment or clearance services in the United States or other relevant jurisdiction shall have occurred, (iii) any moratorium on commercial banking activities shall have been declared by federal, New York State or California State authorities, (iv) the Company shall have received, on or after the date of this Agreement, any inquiry, notice, complaint or any other communication from a governmental body that, in the reasonable judgment of the Initial Purchaser, is material and adverse to the Company, or (v) there shall have occurred any event, circumstance or change having a material adverse effect on the business, condition (financial or otherwise) or results of operations of the Company and its subsidiaries, taken as a whole, from that set forth in the Time of Sale Memorandum provided to the prospective purchasers of the Securities that, in the Initial Purchaser's reasonable determination, is material and adverse and that makes it, in the Initial Purchaser's reasonable determination, impracticable to market and sell the Securities on the terms and in the manner contemplated in the Time of Sale Memorandum.

10. *Effectiveness*. This Agreement shall become effective upon the execution and delivery hereof by the parties hereto.

If this Agreement shall be terminated by the Initial Purchaser prior to closing because of any inability, failure or refusal on the part of the Company or any of the Guarantors to comply with the terms or to fulfill any of the conditions of this Agreement, the Company and the Guarantors will reimburse the Initial Purchaser for up to $50,000 of out-of-pocket expenses (including the fees and disbursements of its counsel) reasonably incurred by the Initial Purchaser in connection with this Agreement or the offering contemplated hereunder.

11. *Entire Agreement*.

(a) This Agreement, together with any contemporaneous written agreements and any prior written agreements (to the extent not superseded by this Agreement) that relate to the offering of the Securities, represents the entire agreement between the Company, the Guarantors and the Initial Purchaser with respect to the preparation of the Preliminary Memorandum, the Time of Sale Memorandum, the Final Memorandum, the conduct of the offering, and the purchase and sale of the Securities.

(b) The Company and the Guarantors acknowledge that in connection with the offering of the Securities: (i) the Initial Purchaser has acted at arms'-length, is not an agent of, and owes no fiduciary duties to, the Company, the Guarantors or any other person, (ii) the Initial Purchaser owes the Company and the Guarantors only those duties and obligations set forth in this Agreement and prior written agreements (to the extent not superseded by this Agreement) if any, and (iii) the Initial Purchaser may have interests that differ from those of the Company or the Guarantors. The Company and the Guarantors waive to the full extent permitted by applicable law any claims it may have against the Initial Purchaser arising from an alleged breach of fiduciary duty in connection with the offering of the Securities.

12. *Counterparts.* This Agreement may be signed in two or more counterparts, each of which shall be an original, with the same effect as if the signatures thereto and hereto were upon the same instrument.

13. *Applicable Law.* This Agreement shall be governed by and construed in accordance with the internal laws of the State of New York.

14. *Headings.* The headings of the sections of this Agreement have been inserted for convenience of reference only and shall not be deemed a part of this Agreement.

15. *Notices.* All communications hereunder shall be in writing and effective only upon receipt and:

(a) if to the Initial Purchaser shall be delivered, mailed or sent to BTIG, LLC, 600 Montgomery Street, 6th Floor, San Francisco, CA 94111, Attn: Steve Druskin, Esq., with a copy to O'Melveny & Myers LLP, 2 Embarcadero Center, 27th Floor, San Francisco, CA 94111, Attn: Peter T. Healy, Esq.

(b) if to the Company or any of the Guarantors shall be delivered, mailed or sent to Digital Turbine, Inc., 1300 Guadalupe Street, Suite 302, Austin, TX 78701, Attn: Chief Executive Officer, with a copy to Manatt, Phelps & Phillips, LLP, 11355 W. Olympic Blvd., Los Angeles, CA 90064, Attn: Ben Orlanski, Esq.

[*Signature Pages Follow*]

IN WITNESS WHEREOF, the Company and each of the Guarantors have caused this Agreement to be duly executed by its authorized person as of this _____ day of September, 2016.

The Company

DIGITAL TURBINE, INC.

By: _____
Name: William Stone
Title: Chief Executive Officer

Guarantors

DIGITAL TURBINE USA, INC., a Delaware corporation

By: _____
Name:
Title:

DIGITAL TURBINE ASIA PACIFIC PTY LTD., a company formed under the laws of Australia

By: _____
Name:
Title:

DIGITAL TURBINE MEDIA, INC., a Delaware corporation

By: _____
Name: William Stone
Title: Chief Executive Officer

DIGITAL TURBINE (EMEA) LTD., a company formed under the laws of Israel

By: _____
Name:
Title:

By: _____
Name:
Title:

IN WITNESS WHEREOF, the undersigned Initial Purchaser has caused this Agreement to be duly executed by its authorized person as of this _____ day of September, 2016.

Initial Purchaser
BTIG, LLC

By: _____
Name:
Title:

Initial Purchaser Signature Page to Convertible Note Initial Purchaser Agreement

SCHEDULE I

Time of Sale Memorandum

1. Preliminary Memorandum issued September 23, 2016

2. orally communicated pricing information, as follows:

   - Closing price of Company's common stock on September 22, 2016: $1.24 (the latest market value of the Company's common stock prior to the time of pricing)

   - Interest rate of Notes: 8.75%

   - Conversion price of Notes: $1.364

   - Purchasers of Notes to receive warrants subject to the Warrant Agreement to purchase 256.60 shares of common stock for every $1,000 of Note purchased at an exercise price of $1.364 per share.

EXHIBIT A

FORM OF INDENTURE

EXHIBIT B

FORM OF WARRANT AGREEMENT

EXHIBIT C

FORM OF REGISTRATION RIGHTS AGREEMENT

EXHIBIT D

OPINION OF MANATT, PHELPS & PHILLIPS, LLP

EXHIBIT E

OPINION OF O'MELVENY & MYERS LLP

Exhibit 99.1

Digital Turbine Announces Pricing of $16 Million Offering of 8.75% Convertible Senior Notes Due 2020

AUSTIN, Texas, Sept. 23, 2016 /PRNewswire/ — Digital Turbine, Inc. (Nasdaq: APPS) today announced the pricing of $16 million aggregate principal amount of its 8.75% Convertible Senior Notes due 2020 (the "Notes") in a private placement. The sale of the Notes to the initial purchaser is expected to settle on September 28, 2016, subject to customary closing conditions.

The Notes and the accompanying warrants described below will be offered by the initial purchaser only to qualified institutional buyers pursuant to Rule 144A under the Securities Act, as amended (the "Securities Act") and to a limited number of institutional accredited investors within the meaning of subparagraph (a)(1), (2), (3) or (7) of Rule 501 under the Securities Act.

The net proceeds of the offering, after deducting the initial purchaser's discounts and commissions and the estimated offering expenses payable by Digital Turbine, are expected to be approximately $14.3 million, and will be used to repay approximately $11 million of secured indebtedness and for general corporate purposes.

The Notes will be senior unsecured obligations of Digital Turbine, and will bear interest at a rate of 8.75% per year, payable semiannually in arrears on September 15th and March 15th of each year, beginning on March 15, 2017. The Notes will be unconditionally guaranteed by certain of Digital Turbine's wholly-owned domestic and foreign subsidiaries, and will mature onSeptember 23, 2020, unless converted, repurchased or redeemed in accordance with their terms prior to such date.

The Notes will be convertible by the holders at their option at any time prior to the close of business on the business day immediately preceding the stated maturity date, and upon conversion, the holders will receive shares of Digital Turbine common stock. The initial conversion rate for the Notes will be 733.14 shares per $1,000 principal amount of Notes, which is equivalent to an initial conversion price of $1.364 per share of common stock and represents a 10% conversion premium over the last reported sale price of the Company's common stock on The NASDAQ Capital Market on September 22, 2016, which was $1.24per share. The conversion rate and the conversion price will be subject to adjustment in certain events.

Each purchaser of the Notes will also receive warrants to purchase 256.60 shares of the Company's common stock for each$1,000 in Notes purchased, or up to 4.2 million warrants, in aggregate. The warrants will be immediately exercisable on the date of issuance at an initial exercise price of $1.364 per share and will expire on September 23, 2020.

The Notes, accompanying warrants, and shares of the Company's common stock issuable upon conversion of the Notes or issuable upon exercise of the warrants are not registered under the Securities Act or the securities laws of any state or other jurisdiction's securities laws and may not be offered or sold in the United States absent registration or an applicable exemption from the registration requirements of the Securities Act and applicable state or other jurisdictions' securities laws.

This press release shall not constitute an offer to sell or the solicitation of an offer to buy the Notes, warrants or any other securities, nor shall there be any offer, solicitation or sale of the Notes, warrants or any other securities in any state or other jurisdiction in which such an offer, solicitation or sale would be unlawful.

About Digital Turbine, Inc.

Digital Turbine works at the convergence of media and mobile communications, delivering end-to-end products and solutions for mobile operators, device OEMs, app advertisers and publishers, that enable efficient user acquisition, app management and monetization opportunities. The company's products include Ignite™, a mobile device management solution with targeted app distribution capabilities, Marketplace™, an application and content store, and Pay™, a content management and mobile payment solution. Digital Turbine Media encompasses a leading independent user acquisition network as well as an advertiser solution for unique and exclusive carrier inventory. Digital Turbine has delivered more than 150 million app installs for hundreds of advertisers. In addition, more than 31 million customers use Digital Turbine's solutions each month across more than 30 global operators. The company is headquartered in Austin, Texas with global offices in Durham, Berlin, San Francisco, Singapore,Sydney and Tel Aviv. For additional information visit http://www.digitalturbine.com/ or connect with Digital Turbine on Twitter at @DigitalTurbine.

Forward-Looking Statements

This press release contains forward-looking statements made pursuant to the safe harbor provisions of the Private Securities Litigation Reform Act of 1995, as amended, including statements about the anticipated closing of the offering, and the potential effects of such transactions, and the anticipated use of the proceeds from the offering. Actual results or developments may differ materially from those projected or implied in these forward-looking statements. Factors that may cause such a difference include, without limitation, risks and uncertainties related to whether or not we will be able to raise capital through the sale of the Notes, market and other conditions, the satisfaction of customary closing conditions related to the offering and the impact of general economic, industry or political conditions in the United States or internationally. There can be no assurance that we will be able to complete the offering on the anticipated terms, or at all. You should not place undue reliance on these forward-looking statements, which apply only as of the date of this press release. Additional risks and uncertainties relating to the offering, Digital Turbine, and our business can be found under the heading "Risk Factors" in the filings that we periodically make with the Securities and Exchange Commission. In addition, the forward-looking statements included in this press release represent our views as of the date of this press release. We anticipate that subsequent events and developments will cause our views to change. However, while we may elect to update these forward-looking statements at some point in the future, we specifically disclaim any obligation to do so. These forward-looking statements should not be relied upon as representing our views as of any date subsequent to the date of this press release. The forward-looking statements included in this press release are made only as of the date of this release, and except as otherwise required by U.S. federal securities law, we do not have any obligation to publicly update or revise any forward-looking statements to reflect subsequent events or circumstances.

For more information, contact:

Investor relations contact:
Brian Bartholomew
Digital Turbine
ir@digitalturbine.com
(512) 800-0274

Carolyn Capaccio/Sanjay M. Hurry
LHA
(212) 838-3777
digitalturbine@lhai.com

Exhibit 99.2

RISK FACTORS

Investing in the offered securities and our common stock involves a high degree of risk. In addition, our business, operations and financial condition are subject to various risks. You should carefully consider the risks described below with all of the other information included or incorporated by reference in this document before making an investment decision. If any of the adverse events described below were to actually occur, our business, results of operations or financial condition would likely suffer. In such an event, the trading price of the offered securities and our common stock could decline or our ability to make payments on the notes could be impaired and you could lose all or part of your investment. Additionally, this section does not attempt to describe all risks applicable to our industry, our business or investment in the offered securities or our common stock. Risks not presently known to us or that we currently deem immaterial may also impair our business operations. References to our "Notes" and "Warrants" mean our 8.75% convertible notes due September 23, 2020 and our warrants exercisable through September 23, 2020, respectively, issued in our September 2016 private placement.

Risks Related to Our Business

General Risks

The Company 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 losses and we will not become profitable. Our revenue growth in past periods should not be considered indicative of our future performance. In fact, in future periods, our revenues could decline as they have in past years. Accordingly, we may not be able to achieve profitability in the future.

If there are delays in the distribution of our products or if we are unable to successfully negotiate with advertisers, application developers, carriers, mobile operators or OEMs or if these negotiations cannot occur on a timely basis, we may not be able to generate revenues sufficient to meet the needs of the business in the foreseeable future or at all.

We have a limited operating history for our current portfolio of assets, which may make it difficult to evaluate our business.

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 application and content 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 and OEM relationships, in both international and domestic markets;
- maintain and expand our current, and develop new, relationships with compelling content owners;
- retain or improve our current revenue-sharing arrangements with carriers and content owners;
- continue to develop new high-quality products and services that achieve significant market acceptance;
- 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;
- 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 are not 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 and OEM relationships, represent meaningful portions of our revenues and margins in any quarter.

In addition to other risk factors discussed in this section, factors that may contribute to the variability of our 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, and intangible assets;
- 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;
- changes in the mix of direct versus indirect advertising sales, which have varying margin profiles;
- changes in the mix of CPI, CPP and CPA advertising sales, which have varying revenue profiles
- 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;
- decisions by one or more of our partners and/or customers to terminate our business relationship(s);
- foreign exchange fluctuations;
- accounting rules governing recognition of revenue;
- general economic, political and market conditions and trends;
- 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, including seasonality attributable to the holiday seasons, our operating results may not meet the expectations of investors or public market analysts who choose to follow our company. Our failure to meet market expectations would likely result in decreases in the trading price of our common stock.

Our GAAP operating results could fluctuate substantially due to the accounting for the early conversion, anti-dilution and other features of the notes.

We expect the notes will be accounted for under Accounting Standards Codification 815, Derivatives and Hedging (or ASC 815) as an embedded derivative. For instance, the early conversion payment feature of the notes is accounted for under ASC 815 as an embedded derivative. ASC 815 requires companies to bifurcate conversion options from their host instruments and account for them as free standing derivative financial instruments according to certain criteria. The fair value of the derivative is remeasured to fair value at each balance sheet date, with a resulting non-cash gain or loss related to the change in the fair value of the derivative being charged to earnings (loss). Although we have not finalized our accounting treatment, we expect that we must bifurcate and account for the Early Conversion Payment feature of the notes as an embedded derivative in accordance with ASC 815. We expect to have to record this embedded derivative liability as a non-current liability on our consolidated balance sheet with a corresponding debt discount at the date of issuance that is netted against the principal amount of the notes. The derivative liability is remeasured to fair value at each balance sheet date, with a resulting non-cash gain or loss related to the change in the fair value of the derivative liability being recorded in other income and loss. There is no current observable market for this type of derivative and, as such, we determine the fair value of the embedded derivative using the binomial lattice model. The valuation model uses the stock price, conversion price, maturity date, risk-free interest rate, estimated stock volatility and estimated credit spread. Changes in the inputs for these valuation models may have a significant impact on the estimated fair value of the embedded derivative liabilities. For example, an increase in the Company's stock price results in an increase in the estimated fair value of the embedded derivative liabilities. The embedded derivative liability may have, on a GAAP basis, a substantial effect on our balance sheet from quarter to quarter and it is difficult to predict the effect on our future GAAP financial results, since valuation of these embedded derivative liabilities are based on factors largely outside of our control and may have a negative impact on our earnings and balance sheet.

We also expect to have a material derivative liability recorded on our consolidated balance sheet as a result of the anti-dilution and other embedded derivative features in the warrants and/or the notes. Under applicable accounting rules, we may be required to "mark to market" this liability each reporting period and record changes in the fair value associated with this liability in our consolidated statement of operations. As such, when our stock price increases, the fair value of this liability would increase, and we recognize an expense associated with this change in fair value. Similarly, when our stock price decreases, the fair value of this liability decreases, and we recognize a gain associated with this change in fair value. As such, though there is no cash flow impact to us caused by the volatility of our stock price, applicable accounting rules have a direct impact on our reported profit or loss as per Generally Accepted Accounting Principles.

We have also not finalized the impact on our ability to use the treasury method to calculate diluted earnings per share as a result of the conversion option and warrant transactions. Our ability to use the treasury method may differ before and after shareholder approval of the issuance of the maximum shares in this offerings, assuming such approval is granted. We cannot be sure that the accounting standards will permit the use of the treasury stock method. If we are unable to use the treasury stock method in accounting for the shares issuable upon conversion of the Notes, then our diluted earnings per share would be adversely affected.

We have not completed our analysis of other features of the notes and warrants and it is possible that the complex accounting rules applicable to these instruments may require us to record other material non-cash charges to earnings and/or non-cash derivative liabilities. These affects may significantly impact our reported results.

Placement of our products, or the failure of the market to accept our products, 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 their mobile handsets. The inherent limitation on the volume of products available on the handset is a function of the screen size of handsets and carriers' perceptions of the depth of menus and numbers of choices end users will generally utilize. If carriers choose to give our products less favorable placement or reduce our slot count on the phone, 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. In addition, if carriers or other participants in the market favor another competitor's products over our products, or opt not to enable and implement our technology to unify operating systems, our future growth could suffer and our revenues could be negatively affected.

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, OEMs, advertisers, content licensors, and mobile publishers 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 attracts 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 is dependent on the continued growth in usage of smartphones, tablets and other mobile connected devices.

Our business depends on the continued proliferation of mobile connected devices, such as smartphones and tablets, which can connect to the Internet over a cellular, wireless or other network, as well as the increased consumption of content through those devices. Consumer usage of these mobile connected devices may be inhibited for a number of reasons, such as:

- inadequate network infrastructure to support advanced features beyond just mobile web access;
- users' concerns about the security of these devices;
- inconsistent quality of cellular or wireless connection;
- unavailability of cost-effective, high-speed Internet service;
- changes in network carrier pricing plans that charge device users based on the amount of data consumed; and
- new technology which is not compatible with our products and offerings.

For any of these reasons, users of mobile connected devices may limit the amount of time they spend on these devices and the number of applications or amount of content they download on these devices. If user adoption of mobile connected devices and consumer consumption of content on those devices do not continue to grow, our total addressable market size may be significantly limited, which could compromise our ability to increase our revenue and our ability to become profitable.

If mobile connected devices, their operating systems or content distribution channels, including those controlled by our competitors, develop in ways that prevent advertising from being delivered to their users, our ability to grow our business will be impaired.

A portion of our business model depends upon the continued demand for mobile advertising on connected devices, as well as the major operating systems that run on them and the thousands of applications that are downloaded onto them.

The design of mobile devices and operating systems is controlled by third parties with whom we do not have any formal relationships. These parties frequently introduce new devices, and from time to time they may introduce new operating systems or modify existing ones. Network carriers may also affect the ability of users to download applications or access specified content on mobile devices.

In some cases, the parties that control the development of mobile connected devices and operating systems include companies that we regard as our competitors. For example, Google controls the Android™ platform operating system. If our mobile software platform were unable to work on this operating systems, either because of technological constraints or because the developer of this operating systems wishes to impair our ability to provide ads on the operating system, our ability to generate revenue could be significantly harmed.

If we fail to deliver our products and services ahead of the commercial launch of new mobile handset models, our sales may suffer.

Our business is dependent, in part, on the commercial sale of smartphone handsets. We do not control the timing of these handset launches. Some new handsets are sold by carriers with certain of our products and applications pre-loaded, and many end users who use our services do so after they purchase their new handsets to experience the new features of those handsets. Some of our products require 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 seasonal increases in handset sales, our revenues would likely decline and our business, operating results and financial condition would likely suffer.

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 our offerings to a broad array of mobile operating systems, our attractiveness to wireless carriers, application developers and branded content owners will be impaired, and our sales could suffer.

Changes to our design and development processes to address new features or functions of mobile operating systems or networks might cause inefficiencies that might result in more labor-intensive software integration processes. In addition, we anticipate that in the future we will be required to update existing and new products and applications to a broader array of mobile operating systems. If we utilize more labor intensive processes, our margins could be significantly reduced and it might take us longer to integrate our products and applications to additional mobile operating systems. This, in turn, could harm our business, operating results and financial condition.

A majority of our revenues are currently being derived from a limited number of wireless carriers, advertisers and application developers; if any one of these customers were to terminate or curtail their relationships with us or if they were unable to fulfill their payment obligations, our financial condition and results of operations would suffer.

If any of our primary customers were to terminate, or curtail, their commercial relationship with us or if they are unable to fulfill their payment obligations to us under our agreements with them, our revenues could decline significantly and our financial condition will be harmed.

We may be subject to legal liability associated with providing mobile and online services or content.

We provide a variety of products and services that enable carriers, content providers and users to engage in various mobile and online activities both domestically and internationally. The law relating to the liability of providers of these mobile and online services and products for such activities is still unsettled and constantly evolving in the U.S. and internationally. Claims have been threatened and have been brought against us in the past for breaches of contract, copyright or trademark infringement, tort or other theories based on the provision of these products and services. In addition, we are and have been and may again in the future be subject to domestic or international actions alleging that certain content we have generated or third-party content that we have made available within our services violates laws in domestic and international jurisdictions. We also arrange for the distribution of third-party advertisements to third-party publishers and advertising networks, and we offer third-party products, services, or content. We may be subject to claims concerning these products, services, or content by virtue of our involvement in marketing, branding, broadcasting, or providing access to them, even if we do not ourselves host, operate, provide, own, or license these products, services, or content. While we routinely insert indemnification provisions into our contracts with these parties, such indemnities to us, when obtainable, may not cover all damages and losses suffered by us and our customers from covered products and services. In addition, recorded reserves and/or insurance coverage may be exceeded by unexpected results from such claims which directly impacts profits. Defending such actions could be costly and involve significant time and attention of our management and other resources, may result in monetary liabilities or penalties, and may require us to change our business in an adverse manner.

Our business is dependent on our ability to maintain and scale our infrastructure, including our employees and third parties; and any significant disruption in our service could damage our reputation, result in a potential loss of customers and adversely affect our financial results.

Our reputation and ability to attract, retain, and serve customers is dependent upon the reliable performance of our products and services and the underlying infrastructure, both internal and from third party providers. Our systems may not be adequately designed with the necessary reliability and redundancy to avoid performance delays or outages that could be harmful to our business. If our products and services are unavailable, or if they do not load as quickly as expected, customers may not use our products as often in the future, or at all. As our customer base is anticipated to continue to grow, we will need an increasing amount of infrastructure, including network capacity, to continue to satisfy the needs of our customers. It is possible that we may fail to effectively scale and grow our infrastructure to accommodate these increased demands. In addition, our business may be subject to interruptions, delays, or failures resulting from earthquakes, adverse weather conditions, other natural disasters, power loss, terrorism, ineffective business execution or other catastrophic events.

A substantial portion of our network infrastructure is provided by third parties. Any disruption or failure in the services we receive from these providers could harm our ability to handle existing or increased traffic and could significantly harm our business. Any financial or other difficulties these providers face may adversely affect our business, and we exercise little control over these providers, which increases our vulnerability to problems with the services they provide.

Our products, services and systems rely on software that is highly technical, and if it contains undetected errors, our business could be adversely affected.

Our products, services and systems rely on software, including software developed or maintained internally and/or by third parties, that is highly technical and complex. In addition, our products, services and systems depend on the ability of such software to transfer, store, retrieve, process, and manage large amounts of data. The software on which we rely has contained, and may now or in the future contain, undetected errors, bugs, or vulnerabilities. Some errors may only be discovered after the code has been released for external or internal use. Errors or other design defects within the software on which we rely may result in a negative experience for customers and marketers who use our products, delay product introductions or enhancements, result in measurement or billing errors, or compromise our ability to protect the data of our users and/or our intellectual property. Any errors, bugs, or defects discovered in the software on which we rely could result in damage to our reputation, loss of users, loss of revenue, or liability for damages, any of which could adversely affect our business and financial results.

We plan to continue to review opportunities and possibly make acquisitions, which could require significant management attention, disrupt our business, result in dilution to our stockholders, and adversely affect our financial condition and results of operations.

As part of our business strategy, we have made and intend to continue to review opportunities and possibly make acquisitions to add specialized employees and complementary companies, products, technologies or distribution channels. In some cases, these acquisitions may be substantial and our ability to acquire and integrate such companies in a successful manner is unproven.

Any acquisitions we announce could be viewed negatively by mobile network operators, users, marketers, developers, or investors. In addition, we may not successfully evaluate, integrate, or utilize the products, technology, operations, or personnel we acquire. The integration of acquisitions may require significant time and resources, and we may not manage these integrations successfully. In addition, we may discover liabilities or deficiencies that we did not identify in advance associated with the companies or assets we acquire. The effectiveness of our due diligence with respect to acquisitions, and our ability to evaluate the results of such due diligence, is dependent upon the accuracy and completeness of statements and disclosures made or actions taken by the companies we acquire or their representatives. We may also fail to accurately forecast the financial impact of an acquisition transaction, including accounting charges. In the future, we may not be able to find suitable acquisition candidates, and we may not be able to complete acquisitions on favorable terms, if at all.

We may also incur substantial costs in making acquisitions. We may pay substantial amounts of cash or incur debt to pay for acquisitions, which could adversely affect our liquidity. The incurrence of indebtedness would also result in increased fixed obligations, interest expense, and could also include covenants or other restrictions that would impede our ability to manage our operations. Additionally, we may issue equity securities to pay for acquisitions or to retain the employees of the acquired company, which could increase our expenses, adversely affect our financial results, and result in dilution to our stockholders. In addition, acquisitions may result in our recording of substantial goodwill and amortizable intangible assets on our balance sheet upon closing, which could adversely affect our future financial results and financial condition. These factors related to acquisitions may require significant management attention, disrupt our business, result in dilution to our stockholders, and adversely affect our financial results and financial condition.

The Company's business is highly dependent on decisions and developments in the mobile device industry over which the Company has no control.

The Company's ability to maintain and grow its business will be impaired if mobile connected devices, their operating systems or content distribution channels, including those controlled by the primary competitors of the Company, develop in ways that prevent the Company's advertising from being delivered to their users.

The Company's business model will depend upon the continued compatibility of its mobile advertising platform with most mobile connected devices, as well as the major operating systems that run on them and the thousands of apps that are downloaded onto them.

The design of mobile devices and operating systems is controlled by third parties. These parties frequently introduce new devices, and from time to time they may introduce new operating systems or modify existing ones. Network carriers, such as Verizon, AT&T, Sprint, as well as other domestic and global operators, as well as OEMs, such as Samsung, may also affect the ability of users to download apps or access specified content on mobile devices. The Company also has some relationships with various other mobile carriers with relationships that are specific and subject to contractual performance which may not be achieved.

In some cases, the parties that control the development of mobile connected devices and operating systems include companies that the Company would regard as its most significant competitors. For example, Apple controls two of the most popular mobile devices, the iPhone® and the iPad®, as well as the iOS operating system that runs on them. Apple also controls the App Store for downloading apps that run on Apple® mobile devices. Similarly, Google controls the Google Play and Android™ platform operating system. If the Company's mobile advertising platform were unable to work on these devices or operating systems, either because of technological constraints or because a maker of these devices or developer of these operating systems wished to impair the Company's ability to provide ads on them or its ability to fulfill advertising space, or inventory, from developers whose apps are distributed through their controlled channels, the Company's ability to maintain and grow its business will be impaired.

The Company's business may depend in part on its ability to collect and use location-based information about mobile connected device users.

The Company's business model will depend in part upon its ability to collect data about the location of mobile connected device users when they are interacting with their devices, and then to use that information to provide effective targeted advertising on behalf of its advertising clients. The Company's ability to either collect or use location-based data could be restricted by a number of factors, including new laws or regulations, technology or consumer choice. Limitations on its ability to either collect or use location data could impact the effectiveness of the Company's platform and its ability to target ads.

The Company does not have long-term agreements with its advertiser clients, and it may be unable to retain key clients, attract new clients or replace departing clients with clients that can provide comparable revenue to the Company.

The Company's success will depend on its ability to maintain and expand its current advertiser client relationships and to develop new relationships. The Company's contracts with its advertiser clients does not generally include long-term obligations requiring them to purchase the Company's services and are cancelable upon short or no notice and without penalty. As a result, the Company may have limited visibility as to its future advertising revenue streams. The Company will not be able to provide assurance that its advertiser clients will continue to use its services or that it will be able to replace, in a timely or effective manner, departing clients with new clients that generate comparable revenue. If a major advertising client representing a significant portion of the Company's business decides to materially reduce its use of the Company's platform or to cease using the Company's platform altogether, it is possible that the Company may not have a sufficient supply of ads to fill its developers' advertising inventory, in which case the Company's revenue could be significantly reduced. Revenue derived from performance advertisers in particular is subject to fluctuation and competitive pressures. Such advertisers, which seek to drive app downloads, are less consistent with respect to their spending volume, and may decide to substantially increase or decrease their use of the Company's platform based on seasonality or popularity of a particular app.

Advertisers in general may shift their business to a competitor's platform because of new or more compelling offerings, strategic relationships, technological developments, pricing and other financial considerations, or a variety of other reasons. Any non-renewal, renegotiation, cancellation or deferral of large advertising contracts, or a number of contracts that in the aggregate account for a significant amount of revenue, could cause an immediate and significant decline in the Company's revenue and harm its business.

The Company's business practices with respect to data could give rise to liabilities or reputational harm as a result of governmental regulation, legal requirements or industry standards relating to consumer privacy and data protection.

In the course of providing its services, the Company will transmit and store information related to mobile devices and the ads it places, which may include a device's geographic location for the purpose of delivering targeted location-based ads to the user of the device, with that user's consent. Federal, state and international laws and regulations govern the collection, use, retention, sharing and security of data that the Company will collect across its mobile advertising platform. The Company will strive to comply with all applicable laws, regulations, policies and legal obligations relating to privacy and data protection. However, it is possible that these requirements may be interpreted and applied in a manner that is inconsistent from one jurisdiction to another and may conflict with other rules or its practices. Any failure, or perceived failure, by it to comply with U.S. federal, state, or international laws, including laws and regulations regulating privacy, data security, or consumer protection, could result in proceedings or actions against the Company by governmental entities or others. Any such proceedings could hurt the Company's reputation, force it to spend significant amounts in defense of these proceedings, distract its management, increase its costs of doing business, adversely affect the demand for its services and ultimately result in the imposition of monetary liability. The Company may also be contractually liable to indemnify and hold harmless its clients from the costs or consequences of inadvertent or unauthorized disclosure of data that it stores or handles as part of providing its services.

The regulatory framework for privacy issues worldwide is evolving, and various government and consumer agencies and public advocacy groups have called for new regulation and changes in industry practices, including some directed at the mobile industry in particular. For example, in early 2012, the State of California entered into an agreement with several major mobile application platforms under which the platforms have agreed to require mobile applications to meet specified standards to ensure consumer privacy. Subsequently, in January 2013, the State of California released a series of recommendations for privacy best practices for the mobile industry. In January 2014, a California law also became effective amending the required disclosures for online privacy policies. It is possible that new laws and regulations will be adopted in the United States and internationally, or existing laws and regulations may be interpreted in new ways, that would affect the Company's business, particularly with regard to location-based services, collection or use of data to target ads, and communication with consumers via mobile devices.

The U.S. government, including the Federal Trade Commission, or FTC, and the Department of Commerce, is focused on the need for greater regulation of the collection of consumer information, including regulation aimed at restricting some targeted advertising practices. In December 2012, the FTC adopted revisions to the Children's Online Privacy Protection Act, or COPPA, that went into effect on July 1, 2013. COPPA imposes a number of obligations on operators of websites and online services including mobile applications, such as obtaining parental consent, if the operator collects specified information from users and either the site or service is directed to children under 13 years old or the site or service knows that a specific user is a child under 13 years old. The changes broaden the applicability of COPPA, including the types of information that are subject to these regulations, and may apply to information that the Company will collect through mobile devices or apps that, prior to the adoption of these new regulations, was not subject to COPPA. These revisions will impose new compliance burdens on the Company. In February 2013, the FTC issued a staff report containing recommendations for best practices with respect to consumer privacy for the mobile industry. To the extent that the Company or its clients choose to adopt these recommendations, or other regulatory or industry requirements become applicable to the Company, it may have greater compliance burdens.

As the Company expands its operations globally, compliance with regulations that differ from country to country may also impose substantial burdens on its business. In particular, the European Union has traditionally taken a broader view as to what is considered personal information and has imposed greater obligations under data privacy regulations. In addition, individual EU member countries have had discretion with respect to their interpretation and implementation of the regulations, which has resulted in variation of privacy standards from country to country. Complying with any new regulatory requirements could force it to incur substantial costs or require us to change its business practices in a manner that could compromise its ability to effectively pursue its growth strategy.

The Company's business may involve the use, transmission and storage of confidential information, and the failure to properly safeguard such information could result in significant reputational harm and monetary damages.

The Company may at times collect, store and transmit information of, or on behalf of, its clients that may include certain types of confidential information that may be considered personal or sensitive, and that are subject to laws that apply to data breaches. The Company intends to take reasonable steps to protect the security, integrity and confidentiality of the information it collects and stores, but there is no guarantee that inadvertent or unauthorized disclosure will not occur or that third parties will not gain unauthorized access to this information despite the Company's efforts to protect this information. If such unauthorized disclosure or access does occur, the Company may be required to notify persons whose information was disclosed or accessed. Most states have enacted data breach notification laws and, in addition to federal laws that apply to certain types of information, such as financial information, federal legislation has been proposed that would establish broader federal obligations with respect to data breaches. The Company may also be subject to claims of breach of contract for such disclosure, investigation and penalties by regulatory authorities and potential claims by persons whose information was disclosed. The unauthorized disclosure of information may result in the termination of one or more of its commercial relationships or a reduction in client confidence and usage of its services. The Company may also be subject to litigation alleging the improper use, transmission or storage of confidential information, which could damage its reputation among its current and potential clients, require significant expenditures of capital and other resources and cause it to lose business and revenue.

Changes to current accounting principles could have a significant effect on the Company's reported financial results or the way in which it conducts its business.

We prepare our financial statements in conformity with U.S. GAAP, which are subject to interpretation by the Financial Accounting Standards Board, the American Institute of Certified Public Accountants, the SEC, and various other authorities formed to interpret, recommend, and announce appropriate accounting principles, policies, and practices. A change in these principles could have a significant effect on our reported financial results and related financial disclosures, and may even retroactively affect the accounting for previously reported transactions. Our accounting policies that recently have been or may in the future be affected by changes in the accounting principles are as follows:

- business consolidation;
- revenue recognition;
- leases;
- stock-based compensation;
- disclosure of uncertainties about an entity's ability to continue as a going concern; and
- accounting for goodwill and other intangible assets.

Changes in these or other rules may have a significant adverse effect on our reported financial results, disclosures, or in the way in which we conduct our business. See the discussion in "Summary of Significant Accounting Policies" set forth in Note 4 to our consolidated financial statements under Item 8 of our Annual Report on Form 10-K/A for the year ended March 31, 2016, for additional information about our accounting policies and estimates and associated risks.

System failures could significantly disrupt the Company's operations and cause it to lose advertiser clients or advertising inventory.

The Company's success will depend on the continuing and uninterrupted performance of its own internal systems, which the Company will utilize to place ads, monitor the performance of advertising campaigns and manage its inventory of advertising space. Its revenue will depend on the technological ability of its platforms to deliver ads. Sustained or repeated system failures that interrupt its ability to provide services to clients, including technological failures affecting its ability to deliver ads quickly and accurately and to process mobile device users' responses to ads, could significantly reduce the attractiveness of its services to advertisers and reduce its revenue. The combined systems are vulnerable to damage from a variety of sources, including telecommunications failures, power outages, malicious human acts and natural disasters. In addition, any steps the Company takes to increase the reliability and redundancy of its systems may be expensive and may not ultimately be successful in preventing system failures.

System security risks, data protection breaches, cyber attacks and systems integration issues could disrupt our internal operations or information technology services provided to customers, and any such disruption could reduce our expected revenue, increase our expenses, damage our reputation and adversely affect our stock price.

Experienced computer programmers and hackers may be able to penetrate our network security and misappropriate or compromise our confidential information or that of third-parties, create system disruptions or cause shutdowns. Computer programmers and hackers also may be able to develop and deploy viruses, worms, and other malicious software programs that attack our products or otherwise exploit any security vulnerabilities of our products. In addition, sophisticated hardware and operating system software and applications that we produce or procure from third-parties may contain defects in design or manufacture, including ''bugs'' and other problems that could unexpectedly interfere with the operation of the system. The costs to us to eliminate or alleviate cyber or other security problems, bugs, viruses, worms, malicious software programs and security vulnerabilities could be significant, and our efforts to address these problems may not be successful and could result in interruptions, delays, cessation of service and loss of existing or potential customers that may impede our sales or other critical functions. We manage and store various proprietary information and sensitive or confidential data relating to our business. Breaches of our security measures or the accidental loss, inadvertent disclosure or unapproved dissemination of proprietary information or sensitive or confidential data about us, our clients or customers, including the potential loss or disclosure of such information or data as a result of fraud, trickery or other forms of deception, could expose us, our customers or the individuals affected to a risk of loss or misuse of this information, result in litigation and potential liability for us, damage our brand and reputation or otherwise harm our business. In addition, the cost and operational consequences of implementing further data protection measures could be significant. Portions of our IT infrastructure also may experience interruptions, delays or cessations of service or produce errors in connection with systems integration or migration work that takes place from time to time. We may not be successful in implementing new systems and transitioning data, which could cause business disruptions and be more expensive, time-consuming, disruptive and resource intensive. Such disruptions could adversely impact our ability to provide services and interrupt other processes. Delayed sales, lower margins, increased cost, or lost customers resulting from these disruptions could reduce our expected revenue, increase our expenses, damage our reputation and adversely affect our stock price.

If our goodwill or amortizable intangible assets become impaired, we may be required to record a significant charge to earnings.

We review our amortizable intangible assets for impairment when events or changes in circumstances indicate the carrying value may not be recoverable. We test goodwill for impairment at least annually or sooner if an indicator of impairment is present. If such goodwill or intangible assets are deemed impaired, an impairment loss would be recognized. We may be required to record a significant charge in our financial statements during the period in which any impairment of our goodwill or amortizable intangible assets is determined, which would negatively affect our results of operations.

Advertising and Content Risks

Our revenues may fluctuate significantly based on mobile device sell-through, over which we have no control.

A significant portion of our revenue is impacted by the level of sell-through of mobile devices on which our software is installed. Demand for mobile devices sold by carriers varies materially by device, and if our software is installed on devices for which demand is lower than our expectations – a factor over which we have no control as we do not market mobile devices – our revenues will be impacted negatively, and this impact may be significant. As our software is deployed on a diversified universe of devices, this risk will be mitigated, as the relative performance of one device over another device will have less impact on us, but until we achieve diversification in our device installations, we will continue to be subject to revenue fluctuations based on device sell-through, and such fluctuations can be material. Further, it is difficult to predict the level of demand for a particular device, making our revenue projections correspondingly difficult. These issues can be ameliorated as we gain more significant carrier relationships and conversely these issues can be exacerbated with, as presently, a limited number of such relationships.

Our revenues may fluctuate significantly based on level of advertiser spend, over which we have no control, and ability to sign up publishers for our Advertising business.

A significant portion of our revenue is impacted by the level of advertising spend and our ability to sign up publishers for our advertising business. If we are unable to sign up and retain publishers and advertising spend is lower than our expectations – a factor over which we have no control as we do not determine our customers' advertising budgets – our revenues will be impacted negatively, and this impact may be significant.

Activities of the Company's advertiser clients could damage the Company's reputation or give rise to legal claims against it.

The Company's advertiser clients' promotion of their products and services may not comply with federal, state and local laws, including, but not limited to, laws and regulations relating to mobile communications. Failure of its clients to comply with federal, state or local laws or its policies could damage its reputation and expose it to liability under these laws. The Company may also be liable to third parties for content in the ads it delivers if the artwork, text or other content involved violates copyrights, trademarks or other intellectual property rights of third parties or if the content is defamatory, unfair and deceptive, or otherwise in violation of applicable laws. Although the Company will generally receive assurance from its advertisers that their ads are lawful and that they have the right to use any copyrights, trademarks or other intellectual property included in an ad, and although it will normally be indemnified by the advertisers, a third party or regulatory authority may still file a claim against the Company. Any such claims could be costly and time-consuming to defend and could also hurt the Company's reputation. Further, if it is exposed to legal liability as a result of the activities of its advertiser clients, the Company could be required to pay substantial fines or penalties, redesign its business methods, discontinue some of its services or otherwise expend significant resources.

Loss or reduction of business from the Company's large advertiser clients could have a significant impact on the Company's revenues, results of operations and overall financial condition.

From time to time, a limited number of the Company's advertiser clients will be expected to account for a significant share of its advertising revenue. This customer concentration increases the risk of quarterly fluctuations in the Company's revenues and operating results. The Company's advertiser clients may reduce or terminate their business with it at any time for any reason, including changes in their financial condition or other business circumstances. If a large advertising client representing a substantial portion of its business decided to materially reduce or discontinue its use of its platform, it could cause an immediate and significant decline in its revenue and negatively affect its results of operations and financial condition.

The Company's customer concentration also increases the concentration of its accounts receivable and its exposure to payment defaults by key customers. The Company will generate significant accounts receivable for the services that it provides to its key advertiser clients, which could expose it to substantial and potentially unrecoverable costs if it does not receive payment from them.

Mobile applications and advertising are relatively new, as are our products are evolving and growth in revenues from those areas is uncertain and changes in the industry may negatively affect our revenue and financial results.

While we anticipate that mobile usage will continue to be the primary driver of revenues related to applications and advertising for the foreseeable future, there could be changes in the industry of mobile carriers and OEM's that could have a negative impact on these growth prospects for our business and our financial performance. Additionally, advertising CPI (Cost per Install) revenue realized could be negatively impacted by end user application "open-rates". The open-rates realized on advertising campaigns in the marketplace today could vary compared to the open-rates realized for applications distributed via our products. Reduced open-rates could have a negative impact on the success of our products and our potential revenues earned from CPI. Mobile advertising market remains a new and evolving market and if we are unable to grow revenues or successfully monetize our customer and potential customer relationships, or if we incur excessive expenses in these efforts, our financial performance and ability to grow revenue would be negatively affected.

Our growth and monetization on mobile devices depend upon effective operation with mobile operating systems, networks, and standards that we do not control as we are largely an Android-based technology provider.

There is no guarantee that mobile carriers and devices will use our products and services rather than competing products. We are dependent on the interoperability of our products and services with popular mobile operating systems that we do not control, such as Android and any changes in such systems and terms of service that degrade our products' functionality, reduce or eliminate our ability to distribute applications, give preferential treatment to competitive products, limit our ability to target or measure the effectiveness of applications, or impose fees or other charges related to our delivery of applications could adversely affect our monetization on mobile devices. Currently, our product offerings are primarily compatible with Android only, and would require developmental modifications to support other operating platforms. Additionally, in order to deliver high quality user experience, it is important that our products and services work well with a range of mobile technologies, systems, networks, and standards that we do not control. We may not be successful in developing relationships with key participants in the mobile industry or in developing products that operate effectively with these technologies, systems, networks, or standards. In the event that our relationships with network operators, mobile operating systems or other business partners deteriorate, our growth and monetization could be adversely affected and our business could be harmed.

We currently rely on wireless carriers and OEMs to distribute some of our products and services and thus to generate some of 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.

The future success of our business is highly dependent upon maintaining successful relationships with the wireless carriers and OEMs with which we currently work and establishing new carrier and OEM 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 portion of our revenues going forward through relationships with a limited number of carriers and publishers for the foreseeable future. Our failure to maintain our relationships with these carriers, establish relationships with new carriers and publishers, or a loss or change of terms would materially reduce our revenues and thus harm our business, operating results and financial condition.

We have both exclusive and non-exclusive carrier and OEM agreements. Historically, our carrier and OEM agreements have had terms of one or two years with automatic renewal provisions upon expiration of the initial term, absent a contrary notice from either party, but going forward, terms in carrier and OEM agreements may vary. In addition, some carrier and OEM agreements provide that the parties 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 and OEMs 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, with regard to our Content products 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, or rejects the content we provide, 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 or OEM, including the following:

- the carrier or OEM's preference for our competitors' products and services rather than ours;
- the carrier or OEM's decision not to include or highlight our products and services on the deck of its mobile handsets;
- the carrier or OEM'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 or OEM's decision to require market development funds from publishers;
- the carrier or OEM's decision to restrict or alter subscription or other terms for downloading our products and services;
- a failure of the carrier or OEM's merchandising, provisioning or billing systems;
- the carrier or OEM's decision to offer its own competing products and services;
- the carrier or OEM's decision to transition to different platforms and revenue models; and
- consolidation among carriers or OEMs.

If any of our carriers or OEMs 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.

We currently rely on mobile web and mobile application publishers to distribute our advertising services and thus to generate some of our revenues. The loss of or a change in any of these significant publisher relationships could cause us to materially reduce our revenues.

The future success of our business is highly dependent upon maintaining successful publisher relationships and establishing new publisher relationships in geographies where we have not yet established a significant presence. We expect that we will continue to generate a substantial portion of our revenues going forward through relationships with our publisher base for the foreseeable future. Our failure to maintain our relationships with these publishers, establish relationships with new publishers, or a loss or change of terms would materially reduce our revenues and thus 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.

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 licenses that are both 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 our licenses, and such termination 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, shopping or mobile preferences of our end users when making choices about which brands or other content to license. If the entertainment, shopping or mobile 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.

The mobile advertising business is an intensely competitive industry, and we may not be able to compete successfully.

The mobile advertising market is highly competitive, with numerous companies providing mobile advertising services. The Company's mobile advertising platform will compete primarily with Facebook, Twitter, and Google, all of which are significantly larger than us and have far more capital to invest in their mobile advertising businesses. The Company will also compete with in-house solutions used by companies who choose to coordinate mobile advertising across their own properties, such as Yahoo!, Pandora, and other independent publishers. They, or other companies that offer competing mobile advertising solutions, may establish or strengthen cooperative relationships with their mobile operator partners, application developers or other parties, thereby limiting the Company's ability to promote its services and generate revenue. Competitors could also seek to gain market share from us by reducing the prices they charge to advertisers or by introducing new technology tools for developers. Moreover, increased competition for mobile advertising space from developers could result in an increase in the portion of advertiser revenue that we must pay to developers to acquire that advertising space. The Company's business will suffer to the extent that its developers and advertisers purchase and sell mobile advertising directly from each other or through other companies that are able to become intermediaries between developers and advertisers. For example, companies may have substantial existing platforms for developers who had previously not heavily used those platforms for mobile advertising campaigns. These companies could compete with us to the extent they expand into mobile advertising. Other companies, such as large application developers with a substantial mobile advertising business, may decide to directly monetize some or all of their advertising space without utilizing the Company's services. Other companies that offer analytics, mediation, exchange or other third party services may also become intermediaries between mobile advertisers and developers and thereby compete with us. Any of these developments would make it more difficult for the Company to sell its services and could result in increased pricing pressure, reduced profit margins, increased sales and marketing expenses or the loss of market share.

The mobile advertising market may develop more slowly than expected, which could harm the business of the Company.

Advertisers have historically spent a smaller portion of their advertising budgets on mobile media as compared to traditional advertising methods, such as television, newspapers, radio and billboards, or online advertising over the internet, such as placing banner ads on websites. Future demand and market acceptance for mobile advertising is uncertain. Many advertisers still have limited experience with mobile advertising and may continue to devote larger portions of their advertising budgets to more traditional offline or online personal computer-based advertising, instead of shifting additional advertising resources to mobile advertising. If the market for mobile advertising deteriorates, or develops more slowly than we expect, the Company may not be able to increase its revenue.

The Company does not control the mobile networks over which it provides its advertising services.

The Company's mobile advertising platform are dependent on the reliability of network operators and carriers who maintain sophisticated and complex mobile networks, as well as its ability to deliver ads on those networks at prices that enable it to realize a profit. Mobile networks have been subject to rapid growth and technological change, particularly in recent years. The Company does not control these networks.

Mobile networks could fail for a variety of reasons, including new technology incompatibility, the degradation of network performance under the strain of too many mobile consumers using the network, a general failure from natural disaster or a political or regulatory shut-down. Individuals and groups who develop and deploy viruses, worms and other malicious software programs could also attack mobile networks and the devices that run on those networks. Any actual or perceived security threat to mobile devices or any mobile network could lead existing and potential device users to reduce or refrain from mobile usage or reduce or refrain from responding to the services offered by the Company's advertising clients. If the network of a mobile operator should fail for any reason, the Company would not be able to effectively provide its services to its clients through that mobile network. This, in turn, could hurt the Company's reputation and cause it to lose significant revenue.

Mobile carriers may also increase restrictions on the amounts or types of data that can be transmitted over their networks. The Company anticipates generating different amounts of revenue from its advertiser clients based on the kinds of ads the Company delivers, such as display ads, rich media ads or video ads. In most cases, the Company will be paid by advertisers on a cost-per-install basis, when a user downloads an advertised app. In other cases, the Company will be paid on a cost-per-thousand basis depending on the number of ads shown, or on a cost-per-click, or cost-per-action, basis depending on the actions taken by the mobile device user. Different types of ads consume differing amounts of bandwidth and network capacity. If a network carrier were to restrict the amounts of data that can be delivered on that carrier's network, or otherwise control the kinds of content that may be downloaded to a device that operates on the network, it could negatively affect the Company's pricing practices and inhibit its ability to deliver targeted advertising to that carrier's users, both of which could impair the Company's ability to generate revenue. Mobile connected device users may choose not to allow advertising on their devices.

The success of the Company's advertising business model will depend on its ability to deliver targeted, highly relevant ads to consumers on their mobile connected devices. Targeted advertising is done primarily through analysis of data, much of which is collected on the basis of user-provided permissions. This data might include a device's location or data collected when device users view an ad or video or when they click on or otherwise engage with an ad. Users may elect not to allow data sharing for targeted advertising for a number of reasons, such as privacy concerns, or pricing mechanisms that may charge the user based upon the amount or types of data consumed on the device. Users may also elect to opt out of receiving targeted advertising from Company's platform. In addition, the designers of mobile device operating systems are increasingly promoting features that allow device users to disable some of the functionality, which may impair or disable the delivery of ads on their devices, and device manufacturers may include these features as part of their standard device specifications. Although we are not aware of any such products that are widely used in the market today, as has occurred in the online advertising industry, companies may develop products that enable users to prevent ads from appearing on their mobile device screens. If any of these developments were to occur, the Company's ability to deliver effective advertising campaigns on behalf of its advertiser clients would suffer, which could hurt its ability to generate revenue and become profitable.

The Company may not be able to enhance its mobile advertising platform to keep pace with technological and market developments.

The market for mobile advertising services is characterized by rapid technological change, evolving industry standards and frequent new service introductions. To keep pace with technological developments, satisfy increasing advertiser and developer requirements, maintain the attractiveness and competitiveness of the Company's mobile advertising solutions and ensure compatibility with evolving industry standards and protocols, the Company will need to regularly enhance its current services and to develop and introduce new services on a timely basis. We have invested significant resources in building and developing real-time bidding, or RTB, infrastructure to provide access to large amounts of advertising inventory and publishers. If the Company's RTB platform is not attractive to its customers or is not able to compete with alterative mobile advertising solutions, the Company will not have access to as much advertising inventory and may experience increased pressure on margins.

In addition, advances in technology that allow developers to generate revenue from their apps without assistance from the Company could harm its relationships with developers and diminish its available advertising inventory within their apps. Similarly, technological developments that allow third parties to better mediate the delivery of ads between advertisers and developers by introducing an intermediate layer between the Company and its developers could impair its relationships with those developers. The Company's inability, for technological, business or other reasons, to enhance, develop, introduce and deliver compelling mobile advertising services in response to changing market conditions and technologies or evolving expectations of advertisers or mobile device users could hurt its ability to grow its business and could result in its mobile advertising platform becoming obsolete.

The Company will depend on publishers, developers and distribution partners for mobile advertising space to deliver its advertiser clients' advertising campaigns, and any decline in the supply of advertising inventory could hurt its business.

The Company will depend on publishers, developers and distribution partners to provide it with space within their applications, which we refer to as "advertising inventory," on which the Company will deliver ads. We anticipate that a significant portion of the Company's revenue will derive from the advertising inventory provided by a limited number of publishers, developers and distribution partners. The Company will have minimum or fixed commitments for advertising inventory with some but not all of its publishers, developers and distribution partners, including certain wireless carriers in the United States and internationally. The Company intends to expand the number of publishers, developers and distribution partners subject to minimum or fixed arrangements. Outside of those relationships however, the publishers, developers and distribution partners that will sell their advertising inventory to the Company are not required to provide any minimum amounts of advertising space to the Company, nor are they contractually bound to provide the Company with a consistent supply of advertising inventory. Such publishers, developers and distribution partners can change the amount of inventory they make available to the Company at any time. They may also change the price at which they offer inventory to the Company, or they may elect to make advertising space available to its competitors who offer ads to them on more favorable economic terms. In addition, publishers, developers and distribution partners may place significant restrictions on the Company's use of their advertising inventory. These restrictions may prohibit ads from specific advertisers or specific industries, or they could restrict the use of specified creative content or format. They may also use a fee-based or subscription-based business model to generate revenue from their content, in lieu of or to reduce their reliance on ads.

If publishers, developers and distribution partners decide not to make advertising inventory available to the Company for any of these reasons, decide to increase the price of inventory, or place significant restrictions on the Company's use of their advertising space, the Company may not be able to replace this with inventory from others that satisfy the Company's requirements in a timely and cost-effective manner. If this happens, the Company's revenue could decline or its cost of acquiring inventory could increase.

The Company's advertising business depends on its ability to collect and use data to deliver ads, and any limitation on the collection and use of this data could significantly diminish the value of the Company's services and cause it to lose clients and revenue.

When the Company delivers an ad to a mobile device, it will often be able to collect anonymous information about the placement of the ad and the interaction of the mobile device user with the ad, such as whether the user visited a landing page or installed an application. As the Company collects and aggregates this data provided by billions of ad impressions, it intends to analyze it in order to optimize the placement and scheduling of ads across the advertising inventory provided to it by developers. For example, the Company may use the collected information to limit the number of times a specific ad is presented to the same mobile device, to provide an ad to only certain types of mobile devices, or to provide a report to an advertiser client on the number of its ads that were clicked.

Although the data the Company will collect is not personally identifiable information, its clients might decide not to allow it to collect some or all of this data or might limit its use of this data. For example, application developers may not agree to provide the Company with the data generated by interactions with the content on their applications, or device users may not consent to having information about their device usage provided to the developer. Any limitation on the Company's ability to collect data about user behavior and interaction with mobile device content could make it more difficult for the Company to deliver effective mobile advertising programs that meet the demands of its advertiser clients.

Although the Company's contracts with advertisers will generally permit it to aggregate data from advertising campaigns, these clients might nonetheless request that the Company discontinue using data obtained from their campaigns that have already been aggregated with other clients' campaign data. It would be difficult, if not impossible, to comply with these requests, and responding to these kinds of requests could also cause the Company to spend significant amounts of resources. Interruptions, failures or defects in its data collection, mining, analysis and storage systems, as well as privacy concerns and regulatory restrictions regarding the collection of data, could also limit its ability to aggregate and analyze mobile device user data from its clients' advertising campaigns. If that happens, the Company may not be able to optimize the placement of advertising for the benefit of its advertiser clients, which could make its services less valuable, and, as a result, it may lose clients and its revenue may decline.

If the Company fails to detect click fraud or other invalid clicks on ads, it could lose the confidence of its advertiser clients, which would cause its business to suffer.

The Company's business will rely on delivering positive results to its advertiser clients. The Company will be exposed to the risk of fraudulent and other invalid clicks or conversions that advertisers may perceive as undesirable. Because of their smaller sizes as compared to personal computers, mobile device usage could result in a higher rate of accidental or otherwise inadvertent clicks by a user. Invalid clicks could also result from click fraud, where a mobile device user intentionally clicks on ads for reasons other than to access the underlying content of the ads. If fraudulent or other malicious activity is perpetrated by others, and the Company is unable to detect and prevent it, the affected advertisers may experience or perceive a reduced return on their investment. High levels of invalid click activity could lead to dissatisfaction with its advertising services, refusals to pay, refund demands or withdrawal of future business. Any of these occurrences could damage the Company's brand and lead to a loss of advertisers and revenue.

The Company's business depends on its ability to maintain the quality of its advertiser and developer content.

The Company must be able to ensure that its clients' ads are not placed in developer content that is unlawful or inappropriate. Likewise, its developers will rely upon the Company not to place ads in their apps that are unlawful or inappropriate. If the Company is unable to ensure that the quality of its advertiser and developer content does not decline as the number of advertisers and developers it works with continues to grow, then the Company's reputation and business may suffer.

Risks Related to Our Market

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

The distribution of applications, mobile advertising, development, distribution and sale of mobile products and services is a highly competitive business. We compete for end users primarily on the basis of positioning, brand, quality and price. We compete for wireless carriers 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 compete for platform deployment contracts amongst other mobile platform companies. We also compete for experienced and talented employees.

Our primary competition for application and content distribution comes from the traditional application store businesses of Apple and Google, existing operator solutions built internally, as well as companies providing app install products and services as offered by Facebook, Twitter, Yahoo!, Pandora and other ad networks such as RocketFuel. These companies can be both customers and publishers for Digital Turbines products, as well as competitors in certain cases. For the Discover product, there is some competition in the space by EverythingMe, Quixey, and Aviate, but our main competitors are OEM launchers and Android launchers. With Ignite, we see some smaller competitors, such as IronSource, Wild Tangent, and Sweet Labs, but the more material competition is internally developed operator solutions and specific mobile application management solutions built in-house by OEMs and Wireless Operators. Some of our existing wireless operators could make a strategic decision to develop their own solutions rather than continue to use our Discover and Ignite products.

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 (or, in DT's case, inhibit generation of sales), our margins could decline and we could lose market share (or in DT's case, fail to penetrate the market), any of which would 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 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. Historically, the majority of our revenues were derived via content purchases through traditional carrier application stores, which are in decline with momentum shifting towards third parties (Google and Apple). If our products and services are not responsive to the requirements of our carriers or the entertainment preferences of end users, are not marketed effectively through our direct-to-consumer operations, or 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, marketed effectively, and initially adopted, a subsequent shift in our carriers, the entertainment, shopping, and mobile preferences of end users, or our relationship with third-party billing aggregators could cause a decline in the popularity of, or access to, our offerings and could materially reduce our revenues and harm our business, operating results, and financial condition.

Wireless carriers generally control the price charged for our products and services related to our Content products, 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 related to content 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 related to content. 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 a 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 some of 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 rely on the current state of the law in certain territories where we operate our business and any adverse change in such laws may significantly adversely impact our revenues and thus our operating results and financial condition.

Decisions that regulators or governing bodies make with regard to the provision and marketing of mobile applications, content and/or billing can have a significant impact on the revenues generated in that market. Although most of our markets are mature with regulation clearly defined and implemented, there remains the potential for regulatory changes that would have adverse consequences on the business and subsequently our revenue.

We rely on our current understanding of regional regulatory requirements pertaining to the marketing, advertising and promotion of our products and services, and any adverse change in such regulations, or a finding that we did not properly understand such regulations, may significantly impact our ability to market, advertise and promote our products and services and thereby adversely impact our revenues, our operating results and our financial condition.

Some portions of our business rely extensively on marketing, advertising and promoting our products and services requiring it to have an understanding of the local laws and regulations governing our business. Additionally, we rely on the policies and procedures of wireless carriers and should those change, there could be an adverse impact on our products. In the event that we have relied on inaccurate information or advice, and engage in marketing, advertising or promotional activities that are not permitted, we may be subject to penalties, restricted from engaging in further activities or altogether prohibited from offering our products and services in a particular territory, all or any of which will adversely impact our revenues and thus our operating results and financial condition.

The strategic direction of the Company's businesses is in early stages and not completely proven or certain.

The business model that the Company is pursuing, mobile advertising and application installations, is in the early stages and not completely proven. There are many different types of models including, but not limited to, set-up fees, Cost per Installation (CPI) Cost per Placement (CPP), Cost per Action (CPA), up-front fees (including licensing), revenue shares, per device fees, as well as hybrids of each. Initial feedback from customers shows preference for different types of models. This could lead to risk in predicting future revenues and profits by individual customers. In particular, the 'free' download market is reliant upon mobile advertising, and the mobile advertising market is still in a nascent phase of monetization.

In addition, our strategy for the Company entails offering its platform to existing and new customers. There can be no assurance that we will be able to successfully market new services and offerings to existing and new customers. Moreover, in order to credibly offer the Ignite and Discover platform, we will need to achieve additional operational and technical achievements to further develop the products. Both Ignite and Discover are compatible with Android, and should the market shift to a different operating system there would need to be modifications to our products to adapt to such a change. While we remain optimistic about our ability to complete this change and build out, it will be subject to all of the risks attendant to these development efforts as well as the need to provide additional capital to the effort.

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 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 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, application developers, mobile entertainment publishers and white label storefront providers we 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 content 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 we develop and distribute. New or different mobile content 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 content industry, any of which could significantly harm our operating results.

Our business is subject to risks that are generally associated with the content 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 operating systems capable of running applications, products and services such as ours. Our development resources are concentrated in today's most popular operating systems, and we have experience developing applications for these operating systems. Specifically our Ignite and Discover products currently are compatible with the Android and iOS operating system, with the iOS operating system now compatible through our Ignite Direct product. If this operating system falls 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 applications and content 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 or third party 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 fail 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.

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.

A number of laws and regulations have been and likely will continue to 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 Related to Our Management, Employees and Acquisitions

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. We have had three people fill the position of Chief Financial Officer in the past three years. The loss of the services of any of our executive officers or other key employees could harm our business. Because not all of our executive officers and key employees are under employment agreements or are under agreement with short terms, their future employment with the Company is uncertain. Additionally, our workforce is comprised of a relatively small number of employees operating in different countries around the globe who support our existing and potential customers. Given the size and geographic dispersion of our workforce, we could experience challenges with execution as our business matures and expands.

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. Further, we conduct international operations in Germany, Israel, Singapore and Australia, 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. Some 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 (except as otherwise disclosed within this document), 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, even in instances where acquisition negotiations are unsuccessful. 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.

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.

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 Securities and Exchange Commission ("SEC" or 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 restricted stock and stock options grants as a fundamental component of our employee compensation packages. We believe that such grants 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 or restricted stock 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.

As we pursue and complete strategic acquisitions, divestitures or joint ventures, including our completed acquisitions of XYO and Appia, Inc, we may not be able to successfully integrate acquired businesses.

We completed the acquisition of XYO and Appia, Inc. in fiscal 2015, and we continue to evaluate potential acquisitions, or joint ventures with third parties. These transactions create risks such as:

- disruption of our ongoing business, including loss of management focus on existing businesses;
- problems retaining key personnel of the companies involved in the transactions;
- operating losses and expenses of the businesses we acquire or in which we invest;
- the potential impairment of tangible assets, intangible assets and goodwill acquired in the acquisitions;
- the difficulty of incorporating an acquired business into our business and unanticipated expenses related to such integration;
- potential operational deficiencies in the acquired business and personnel inexperienced in preparing and delivering disclosure information required for a U.S. public company; and
- potential unknown liabilities associated with a business we acquire or in which we invest.

In the event of any future acquisitions, we might need to issue additional equity securities, spend our cash, incur debt, or take on contingent liabilities, any of which could reduce our profitability and harm our business.

Risks Related to the Economy in the United States and Globally

The effects of the past recession in the United States and general downturn in the global economy, including financial market disruptions, could have an adverse impact on our business, operating results or financial condition.

Our operating results also may be affected by uncertain or changing economic conditions such as the challenges that are currently affecting economic conditions in the United States and the global economy. If global economic and market conditions, or economic conditions in the United States or other key markets, remain uncertain or persist, spread, or deteriorate further, we may experience material impacts on our business, operating results, and financial condition in a number of ways including negatively affecting our profitability and causing our stock price to decline.

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 taxes;
- 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, including relating to the current European sovereign debt crisis;
- 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.

The Company is expanding and developing internationally, and our increasing foreign operations and exposure to fluctuations in foreign currency exchange rates may increase.

We have expanded, and we expect that we will continue to expand, our international operations. International operations inherently subject us to a number of risks and uncertainties, including:

- changes in international regulatory and compliance requirements that could restrict our ability to develop, market and sell our products;
- social, political or economic instability or recessions;

- diminished protection of intellectual property in some countries outside of the United States;
- difficulty in hiring, staffing and managing qualified and proficient local employees and advisors to run international operations;
- the difficulty of managing and operating an international enterprise, including difficulties in maintaining effective communications with employees and customers due to distance, language and cultural barriers;
- differing labor regulations and business practices;
- higher operating costs due to local laws or regulations;
- fluctuations in foreign economies and currency exchange rates;
- difficulty in enforcing agreements; and
- potentially negative consequences from changes in or interpretations of tax laws, post-acquisition.

Any of these factors may, individually or as a group, have a material adverse effect on our business and results of operations.

Risks Related to Potential Liability, our Intellectual Property and our Content

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 obtained patent protection; however, applications have been submitted. Consequently, we may not be able to protect our technologies from independent invention by third parties.

We also seek to maintain certain intellectual property as trade secrets. The secrecy could be compromised by outside parties, or by our employees, which could cause us to lose the competitive advantage resulting from these trade secrets.

We also face risks associated with our trademarks. For example, there is a risk that our international trademark applications may be considered too generic or that the words “Digital” or “Turbine” could be separately or compositely trademarked by third parties with competitive products who may try and block our applications or sue us for trademark dilution which could have adverse effects on our financial status.

Despite our efforts to protect our intellectual property rights, unauthorized parties may attempt to copy or otherwise to obtain and use our intellectual property. Monitoring unauthorized use of our intellectual property is difficult and costly, and we cannot be certain that the steps we have taken will prevent infringement, piracy, and other unauthorized uses of our intellectual property, 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.

Litigation may harm our business.

Substantial, complex or extended litigation could cause us to incur significant costs and distract our management. For example, lawsuits by employees, stockholders, collaborators, distributors, customers, competitors, end-users or others could be very costly and substantially disrupt our business. Disputes from time to time with such companies, organizations or individuals are not uncommon, and we cannot assure you that we will always be able to resolve such disputes or on terms favorable to us. Unexpected results could cause us to have financial exposure in these matters in excess of recorded reserves and insurance coverage, requiring us to provide additional reserves to address these liabilities, therefore impacting profits. Carriers or other customers have and may try to include us as defendants in suits brought against them by their own customers or third parties. In such cases, the risks and expenses would be similar to those where we are the party directly involved in the litigation.

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.

We face risks associated with currency exchange rate fluctuations.

We currently transact a significant portion of our revenues in foreign currencies, namely the Australian dollar. 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.

Government regulation of our marketing methods could restrict our ability to adequately advertise and promote our content, products and services available in certain jurisdictions.

The governments of some countries have sought to regulate the methods and manner in which certain of our products and services may be marketed to potential end-users. Regulation aimed at prohibiting, limiting or restricting various forms of advertising and promotion we use to market our products and services could also increase our cost of operations or preclude the ability to offer our products and services altogether. As a result, government regulation of our marketing efforts could have a material adverse effect on our business, financial condition or results of operations.

Risks Related to Our Common Stock

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;
- 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 SEC has sent us a letter regarding an informal inquiry requesting information and documents generally related to the Company's internal controls over financial reporting and disclosure controls and procedures.

On May 19, 2016, the Company received an informal inquiry from the staff of the Securities and Exchange Commission's Division of Enforcement requesting the voluntary provision of documents and information generally related to the Company's internal controls over financial reporting and disclosure controls and procedures. The correspondence from the SEC provides that the fact that there has been an informal inquiry commenced should not be construed as an indication that there have been any violations of federal securities laws, nor considered a reflection upon any person, company or securities. We have been, and intend to continue, cooperating fully with the SEC inquiry. It is too early to determine the significance or likely outcome or impact of this matter at this time.

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, requires us to evaluate and report on our internal control over financial reporting. Our management concluded that our internal controls over financial reporting were ineffective as of March 31, 2016; refer to Item 9A of our Annual Report on Form 10-K/A for the year ended March 31, 2016, for more information about management's assessment of internal controls. We are in the process of strengthening and testing our internal controls. The process of implementing our internal controls and complying with Section 404 is expensive and time consuming and requires 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 were to conclude in the future 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 discover additional material weaknesses or a significant deficiencies in our internal controls, 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, if we fail to comply with the applicable portions of Section 404, we could be subject to a variety of civil and administrative sanctions and penalties, including ineligibility for short form resale registration, action by the SEC, 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. Refer to Item 9A of our Annual Report on Form 10-K/A for the year ended March 31, 2016, for more information about management's assessment of internal controls. See also the risk factor above entitled "Risks Related to Our Business—General Risks —*The SEC has sent us a letter regarding an informal inquiry requesting information and documents generally related to the Company's internal controls over financial reporting and disclosure controls and procedures*."

If we fail to comply with the continued listing requirements of the NASDAQ Capital Market, our common stock may be delisted and the price of our common stock and our ability to access the capital markets could be negatively impacted.

Our common stock is listed for trading on the NASDAQ Capital Market ("NADSAQ"). On September 22, 2016, the last reported sale price for our common stock on the NASDAQ Capital Market was $1.24 per share and the closing price of our common stock has traded in a range from a low of $0.75 per share to a high of $1.39 per share during fiscal 2016. We must continue to satisfy NASDAQ's continued listing requirements, including, among other things, a minimum closing bid price requirement of $1.00 per share for 30 consecutive business days. If a company trades for 30 consecutive business days below the $1.00 minimum closing bid price requirement, NASDAQ will send a deficiency notice to the company, advising that it has been afforded a "compliance period" of 180 calendar days to regain compliance with the applicable requirements. Thereafter, if such a company does not regain compliance with the bid price requirement, a second 180-day compliance period may be available.

A delisting of our common stock from NADSAQ could materially reduce the liquidity of our common stock and result in a corresponding material reduction in the price of our common stock. In addition, delisting could harm our ability to raise capital through alternative financing sources on terms acceptable to us, or at all, and may result in the potential loss of confidence by investors, employees and fewer business development opportunities.

The sale of securities by us in any equity or debt financing, or the issuance of new shares related to an acquisition, could result in dilution to our existing stockholders and have a material adverse effect on our earnings.

Any sale or issuance of common stock by us in a future offering or acquisition 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 complimentary 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.

We may choose to raise additional capital to accelerate the growth of our business, and we may not be able to raise capital to grow our business on terms acceptable to us or at all.

Should we choose to pursue alternatives to accelerate the growth or enhance our existing business, we may 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 may 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 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 our business or us. 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.

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.

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 are subject to the reporting requirements of the Exchange Act and the Sarbanes-Oxley Act. Additionally, the time and effort required to maintain communications with stockholders and the public markets can be demanding on senior management, which can divert focus from operational and strategic efforts. The requirements of the public markets and the related regulatory requirements has resulted in an increase in our legal, accounting and financial compliance costs, may make some activities more difficult, time-consuming and costly and may 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 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 makes it more difficult and more expensive for us to maintain directors' and officers' liability insurance, and we may be required in the future 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.

Risks Related to an Investment in the offered securities

The notes are unsecured, are effectively subordinated to all of our future secured indebtedness and are structurally subordinated to all liabilities of our subsidiaries (other than the guarantors), including trade credit.

The notes are unsecured, are effectively subordinated to all of our future secured indebtedness (although we are not permitted to incur any secured or unsecured indebtedness subject to limited exceptions) and are structurally subordinated to all indebtedness and liabilities of our subsidiaries (other than the guarantors), including trade payables. The notes will rank equally with all our future general unsecured and unsubordinated obligations, and senior to all our future subordinated debt. In the event of our bankruptcy, liquidation, reorganization or other winding up, although we are not permitted to incur any secured or unsecured indebtedness subject to limited exceptions, our assets that secure debt ranking senior in right of payment to the notes will be available to pay obligations on the notes only after the secured debt has been repaid in full from these assets, and subject to the guarantees discussed below, the assets of our subsidiaries will be available to pay obligations on the notes only after all claims senior to the notes which includes all liabilities of such subsidiary, including trade payables have been repaid in full. There may not be sufficient assets remaining to pay amounts due on any or all of the notes then outstanding.

The notes do not contain restrictive financial covenants, other than debt incurrence and restrictions on payments, and we may take actions which may affect our ability to satisfy our obligations under the notes.

The indenture governing the notes does not contain any financial or operating covenants (other than restrictions on our incurrence of certain other indebtedness (including secured debt) and restrictions on certain payments) by us or any of our subsidiaries. In addition, the limited covenants applicable to the notes do not require us to achieve or maintain any minimum financial results relating to our financial position or results of operations. Further, the restrictions contained in the indenture governing the notes on our incurrence of certain indebtedness and the making of restricted payments is subject to a waiver provision that differs from the provisions in the indenture applicable to other waivers.

Our ability to recapitalize and take a number of other actions that are not limited by the terms of the notes could have the effect of diminishing our ability to make payments on the notes when due, including interest payments, payments of principal and payments due upon the election of a holder to require us to purchase notes upon the occurrence of a fundamental change, and require us to dedicate a substantial portion of our cash flow from operations to payments on our indebtedness, which would reduce the availability of cash flow to fund our operations, working capital and capital expenditures.

Recent regulatory actions may adversely affect the trading price and liquidity of the notes and of the warrants and our common stock.

We expect that many investors in, and potential purchasers of, the offered securities will employ, or seek to employ, a convertible arbitrage strategy with respect to the offered securities. Investors would typically implement such a strategy by selling short the common stock underlying the offered securities and dynamically adjusting their short position while continuing to hold the offered securities. Investors may also implement this type of strategy by entering into swaps on our common stock in lieu of or in addition to short selling the common stock. As a result, any specific rules regulating equity swaps or short selling of securities or other governmental action that interferes with the ability of market participants to effect short sales or equity swaps with respect to our common stock could adversely affect the ability of investors in, or potential purchasers of, the offered securities to conduct the convertible arbitrage strategy with respect to the offered securities.

The SEC and other regulatory and self-regulatory authorities have implemented various rules and taken certain actions, and may in the future adopt additional rules and take other actions, that may impact those engaging in short selling activity involving equity securities (including our common stock). Such rules and actions include Rule 201 of SEC Regulation SHO, the adoption by the Financial Industry Regulatory Authority, Inc. and the national securities exchanges of a “Limit Up-Limit Down” program, the imposition of market-wide circuit breakers that halt trading of securities for certain periods following specific market declines, and the implementation of certain regulatory reforms required by the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010. Any governmental or regulatory action that restricts the ability of investors in, or potential purchasers of, the offered securities to effect short sales of our common stock, borrow our common stock or enter into swaps on our common stock could adversely affect the trading price and the liquidity of the offered securities.

The adjustment to the conversion rate for notes converted in connection with a make-whole fundamental change (including a redemption) may not adequately compensate you for any lost value of your notes as a result of such transaction.

If a make-whole fundamental change (as defined herein) occurs prior to maturity, under certain circumstances, we will increase the conversion rate by a number of additional shares of our common stock for notes converted in connection with such make-whole fundamental change. The increase in the conversion rate will be determined based on the date on which the specified corporate transaction becomes effective and the price paid (or deemed paid) per share of our common stock in such transaction, as described in the indenture for the Notes. The adjustment to the conversion rate for notes converted in connection with a make-whole fundamental change may not adequately compensate you for any lost value of your notes as a result of such transaction. In addition, if the price paid (or deemed paid) per share of our common stock in the transaction is greater than $1.25 per share of our common stock or less than $20 per share of our common stock (in each case, subject to adjustment), no adjustment will be made to the conversion rate. In addition, you will not be entitled to an Early Conversion Payment for any conversion on or after the effective time of a make-whole fundamental change.

Our obligation to increase the conversion rate upon the occurrence of a make-whole fundamental change could be considered a penalty, in which case the enforceability thereof would be subject to general principles of reasonableness of economic remedies.

Our GAAP operating results could fluctuate substantially due to the accounting for the early conversion payment features of the notes.

Holders who convert their notes prior to the September 23, 2019 will receive an Early Conversion Payment. The Early Conversion Payment feature of the notes is expected to be accounted for under Accounting Standards Codification 815, Derivatives and Hedging ("ASC 815") as an embedded derivative.

ASC 815 requires companies to bifurcate conversion options from their host instruments and account for them as free standing derivative financial instruments according to certain criteria. The fair value of the derivative is remeasured to fair value at each balance sheet date, with a resulting non-cash gain or loss related to the change in the fair value of the derivative being charged to earnings (loss). We have tentatively determined that we must bifurcate and account for the Early Conversion Payment feature of the notes as an embedded derivative in accordance with ASC 815. We tentatively will record this embedded derivative liability as a non-current liability on our consolidated balance sheet with a corresponding debt discount at the date of issuance that is netted against the principal amount of the notes. The derivative liability is expected to be remeasured to fair value at each balance sheet date, with a resulting non-cash gain or loss related to the change in the fair value of the derivative liability being recorded in other income and loss. We expect we will estimate the fair value of these liabilities using a Monte Carlo simulation model.

We cannot predict the effect that the accounting for the notes will have on our future GAAP financial results, the trading of our common stock and the trading price of the notes, which could be material.

The conversion rate of the notes and/or exercise price for the warrants may not be adjusted for all dilutive events.

The conversion rate of the notes and the exercise price for the warrants are each subject to separate adjustments for certain events, including, but not limited to, the issuance of shares of our common stock without consideration or at a price per share less than the applicable conversion rate, subject to certain exceptions, the issuance of stock dividends on our common stock, the issuance of certain rights, options, or warrants, subdivisions, combinations, distributions of capital stock, evidences of indebtedness, assets or property, cash dividends and certain issuer tender offers or exchange offers as described in the indenture for the Notes. However, the conversion rate and exercise price, as applicable, will not be adjusted for all possible events, such as a third-party tender offer or exchange offer, that may adversely affect the trading price of the notes or the market price of our common stock. An event that adversely affects the value of the notes may occur, and that event may not result in an adjustment to the conversion rate.

Some significant restructuring transactions may not constitute a fundamental change, in which case we would not be obligated to purchase the notes at the option of the holder.

Upon the occurrence of a fundamental change, subject to certain conditions, you will have the right, at your option, to require us to purchase for cash all or any portion of your notes with a principal amount equal to $1,000 or an integral multiple of $1,000 in excess thereof. However, the fundamental change provisions will not afford protection to holders of notes in the event of other transactions that do not constitute a fundamental change but that could nevertheless adversely affect the notes. For example, transactions such as leveraged recapitalizations (subject to the limitations in the indenture to incur new debt), refinancings, restructurings or acquisitions initiated by us may not constitute a fundamental change requiring us to purchase the notes. In the event of any such transaction, holders would not have the right to require us to purchase their notes, even though each of these transactions could increase the amount of our indebtedness or otherwise adversely affect our capital structure or any credit ratings, thereby adversely affecting holders of the notes.

We may not have the ability to raise the funds necessary to repurchase the notes when required.

Holders of the notes will have the right to require us to repurchase the notes upon the occurrence of a fundamental change at 120% of their principal amount, plus accrued and unpaid interest (including additional interest), if any, as described in the indenture for the Notes. However, we may not have enough available cash or be able to obtain financing at the time we are required to make repurchases of the notes surrendered therefor. Our failure to repurchase surrendered notes at a time when the repurchase is required by the indenture would constitute a default under the indenture. A default under the indenture or the fundamental change itself could also lead to a default under the agreements governing other indebtedness. If the repayment of the related indebtedness were to be accelerated after any applicable notice or grace periods, we may not have sufficient funds to repay the indebtedness and repurchase the notes.

We are not providing pro-forma capitalization or income statement information.

Due to the complex accounting for the notes and warrants, which is still being finalized and determined by us, we have not provided any pro-forma financial information with respect to the impact of the Notes and Warrants. Accordingly, although we provide information about the amount of indebtedness we had at June 30, 2016 and the amount we will repay at the closing of this offering, you will not have available estimates of the impact of such transactions on our GAAP balance sheet.

We will not seek a rating on the notes.

We do not intend to seek a rating on the notes. However, if a rating service were to rate the notes and if such rating service were to lower its rating on the notes below the rating initially assigned to the notes or otherwise announce its intention to put the notes on credit watch, the trading price of the notes could decline.

We have not registered the notes, the warrants or the shares of our common stock issuable upon conversion or exercise, which will limit your ability to resell them.

The notes, the warrants and the shares of our common stock issuable upon conversion of the notes or exercise of the warrants, have not been, and, other than as contemplated by the registration rights agreement we are entering into with the initial purchaser, will not be, registered under the Securities Act or any state securities laws. Accordingly, until a registration statement with respect to the notes, the warrants and the shares of common stock issuable upon conversion of the notes or exercise of the warrants is effective, the notes, the warrants, and the shares of our common stock issuable upon conversion of the notes and exercise of the common stock, if any, may not be transferred or resold except in a transaction exempt from or not subject to the registration requirements of the Securities Act and applicable state securities laws.

There is no public market for the notes or for the warrants, which could limit their respective trading price or your ability to sell them.

The notes and warrants are new issues of securities for which there currently is no respective trading market. As a result, a market may not develop for the notes or for the warrants and you may not be able to sell your offered securities. Any offered securities that are traded after their initial issuance may trade at a discount from their initial offering price. Future trading prices of the notes and of the warrants will depend on many factors, including prevailing interest rates, the market for similar securities, general economic conditions and our financial condition, performance and prospects. Accordingly, you may be required to bear the financial risk of an investment in the offered securities for an indefinite period of time. We do not intend to apply for listing or quotation of the notes or the warrants on any securities exchange or automated quotation system. While the initial purchaser may make a market in the notes and in the warrants, they are not required to do so and, consequently, any market making with respect to the offered securities may be discontinued at any time without notice. Even if the initial purchaser make a market in the notes and in the warrants, the liquidity of such markets may be limited.

Conversion of the notes and exercise of the warrants will dilute the ownership interest of existing stockholders, including holders who had previously converted their notes, or may otherwise depress the market price of our common stock.

The conversion of some or all of the notes and the exercise of some or all of the warrants will dilute the ownership interests of existing stockholders. Any sales in the public market of the shares of our common stock issuable upon such conversion or such exercise could adversely affect prevailing market prices of our common stock. In addition, the existence of the offered securities may encourage short selling by market participants because the anticipated conversion of the notes or upon exercise of the warrants into shares of our common stock could depress the market price of our common stock.

U.S. holders will recognize income for U.S. federal income tax purposes significantly in excess of interest payments on the notes, and gains, if any, recognized on a disposition of notes will generally be taxed as ordinary income.

For U.S. federal income tax purposes, we intend to treat the notes as contingent payment debt obligations under the contingent payment debt regulations and the rest of this discussion so assumes. Accordingly, all payments on the notes, including stated interest, will be taken into account under the contingent payment debt regulations and actual cash payments of interest on the notes will not be reported separately as taxable income. As discussed more fully below, the effect of the contingent payment debt regulations will be to require a holder, regardless of such holder's usual method of tax accounting, to use the accrual method with respect to the notes. There is some uncertainty as to the proper application of the Treasury Regulations governing contingent payment debt instruments and, if the treatment described herein were to be successfully challenged by the Internal Revenue Service (IRS) (the "IRS"), it might be determined that, among other things, you should have accrued interest income at a lower or higher rate, or should have recognized capital gain or loss, rather than ordinary income or loss, upon the conversion or taxable disposition of the notes.

You may be subject to tax if we make or fail to make certain adjustments to the conversion rate of the notes, even though you will not receive a corresponding cash distribution.

The conversion rate of the notes is subject to adjustment in certain circumstances, including the payment of cash dividends. If the conversion rate is adjusted as a result of a distribution that is taxable to our common stockholders, such as a cash dividend, you may be deemed to have received a dividend subject to U.S. federal income tax without the receipt of any cash. In addition, a failure to adjust (or to adjust adequately) the conversion rate after an event that increases your proportionate interest in us could be treated as a deemed taxable dividend to you. If a make-whole fundamental change occurs on or prior to the maturity date of the notes, under some circumstances, we will increase the conversion rate for notes converted in connection with the make-whole fundamental change. Such increase also may be treated as a dividends subject to U.S. federal income tax. If you are a non-U.S. holder, such a deemed dividend may be subject to U.S. federal withholding tax at a 30% rate, or such lower rate as may be specified by an applicable treaty, or to backup withholding, both of which may be set off against subsequent payments of cash and common stock payable on the notes.

Holders of offered securities will not be entitled to any rights with respect to our common stock, but will be subject to all changes made with respect to our common stock.

Holders of offered securities will not be entitled to any rights with respect to our common stock (including, without limitation, voting rights and rights to receive any dividends or other distributions on our common stock), but holders of offered securities will be subject to all changes affecting our common stock. For example, if an amendment is proposed to our amended and restated certificate of incorporation requiring stockholder approval and the record date for determining the stockholders of record entitled to vote on the amendment occurs prior to the relevant conversion date, such holder will not be entitled to vote on the amendment, although such holder will nevertheless be subject to any changes in the powers, preferences or special rights of our common stock.

Volatility in the market price and trading volume of our common stock could adversely impact the trading price of the notes and of the warrants.

The stock market in recent years has experienced significant price and volume fluctuations that have often been unrelated to the operating performance of companies. The market price of our common stock could fluctuate significantly for many reasons, including in response to the risks described in this section or for reasons unrelated to our operations, such as reports by industry analysts, investor perceptions or negative announcements by our customers, competitors or suppliers regarding their own performance, as well as industry conditions and general financial, economic and political instability. A decrease in the market price of our common stock would likely adversely impact the trading price of the notes and of the warrants. The market price of our common stock could also be affected by possible sales of our common stock by investors who view the offered securities as a more attractive means of equity participation in us and by hedging or arbitrage trading activity that we expect to develop involving our common stock. This trading activity could, in turn, affect the respective trading prices of the offered securities.

Future sales of our common stock in the public market could lower the market price for our common stock and adversely impact the trading price of the notes and of the warrants.

In the future, we may sell additional shares of our common stock or securities convertible into our common stock to raise capital. In addition, a substantial number of shares of our common stock is reserved for issuance upon the exercise of stock options, the vesting of restricted stock units and restricted stock pursuant to our employee benefit plans, for purchase by employees under our employee stock purchase plan, and upon conversion of the notes offered hereby and in relation to the convertible note hedge and warrant transactions we expect to enter into in connection with the pricing of the notes. We cannot predict the size of future issuances or the effect, if any, that they may have on the market price for our common stock. The issuance and sale of substantial amounts of common stock, or the perception that such issuances and sales may occur, could adversely affect the trading price of the notes and of the warrants, and the market price of our common stock and impair our ability to raise capital through the sale of additional equity securities.

Federal and state statutes allow courts, under specific circumstances, to void the guarantees. In such event, holders of the notes could be structurally subordinated to creditors of the guarantor.

Federal and state statutes allow courts, under specific circumstances, to void guarantees, subordinate claims under the guarantee to the guarantor's other debt or take other action detrimental to holders of the guarantee of notes. Under the federal bankruptcy law and comparable provisions of state fraudulent transfer laws, the guarantees made by the Digital Turbine's subsidiaries could be voided or subordinated to other debt for a variety of reasons. To the extent that a subsidiary guarantee were to be voided as a fraudulent conveyance or was held to be unenforceable for any other reason, holders of the notes would cease to have any claim in respect of such guarantor.

We could lose access to our NOLs as a result of the conversion of the notes and exercises of the warrants.

We have significant net operating losses which could be lost or impaired if delivery of shares upon conversion or exercise of notes or warrants causes an "ownership change" under Section 382 of the Internal Revenue Code.

Provisions in the indenture for the notes and/or warrant agreement for the warrants may deter or prevent a business combination that may be favorable to you.

If a fundamental change occurs prior to the maturity date of the notes, holders of the notes will have the right, at their option, to require us to repurchase all or a portion of their notes. In addition, if a make-whole fundamental change occurs prior to the maturity date of the notes, we will in some cases be required to increase the conversion rate for a holder that elects to convert its notes in connection with such fundamental change. Furthermore, the indenture for the notes prohibits us from engaging in certain mergers or acquisitions unless, among other things, the surviving entity assumes our obligations under the notes. These and other provisions in the indenture with respect to the notes and in the warrant agreement with respect to the warrants could deter or prevent a third party from acquiring us even when the acquisition may be favorable to you.