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**UNITED STATES**  
**SECURITIES AND EXCHANGE COMMISSION**  
WASHINGTON, D.C. 20549  
**AMENDMENT NO. 2 TO**  
**FORM S-1**  
**REGISTRATION STATEMENT**  
*UNDER*  
*THE SECURITIES ACT OF 1933*  
**DIGITAL TURBINE, INC.**  
(Exact name of registrant as specified in its charter)

Delaware  
(State or other jurisdiction of  
incorporation or organization)

22-2267658  
(I.R.S. Employer  
Identification Number)

**GUARANTORS LISTED ON SCHEDULE A HERETO**

1300 Guadalupe Street  
Suite #302  
Austin, Texas 78701  
(512) 387-7717

(Address, including zip code, and telephone number, including area code, of registrant's principal executive offices)

William Stone  
Chief Executive Officer  
Digital Turbine, Inc.  
1300 Guadalupe Street  
Suite #302  
Austin, Texas 78701  
(512) 387-7717

(Name, address, including zip code, and telephone number, including area code, of agent for service)

*With a copy to:*  
Ben D. Orlanski, Esq.  
Matthew S. O'Loughlin, Esq.  
Manatt, Phelps & Phillips, LLP  
11355 West Olympic Boulevard  
Los Angeles, CA 90064  
(310) 312-4000  
(310) 312-4224 Facsimile

**Approximate date of commencement of proposed sale to the public:** From time to time after the effective date of this Registration Statement.

If any of the securities being registered on this Form are to be offered on a delayed or continuous basis pursuant to Rule 415 under the Securities Act of 1933, check the following box:

If this Form is filed to register additional securities for an offering pursuant to Rule 462(b) under the Securities Act, please check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering:

If this Form is a post-effective amendment filed pursuant to Rule 462(c) under the Securities Act, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering:

If this Form is a post-effective amendment filed pursuant to Rule 462(d) under the Securities Act, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering:

Indicate by check mark whether the Registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, or a smaller reporting company. See the definitions of "large accelerated filer," "accelerated filer" and "smaller reporting company" in Rule 12b-2 of the Exchange Act.

Large accelerated filer  Accelerated filer   
Non-accelerated filer  (Do not check if a smaller reporting company) Smaller reporting company

**The Registrant hereby amends this Registration Statement on such date or dates as may be necessary to delay its effective date until the Registrant shall file a further amendment which specifically states that this Registration Statement shall thereafter become effective in accordance with Section 8(a) of the Securities Act of 1933 or until this Registration Statement shall become effective on such date as the Commission, acting pursuant to said Section 8(a), may determine.**

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## SCHEDULE A

The address for each of the guarantors listed below is 1300 Guadalupe Street, Suite #302, Austin, Texas 78701. The primary standard industrial classification code number for each of the guarantors listed below is 6794. The guarantors, the jurisdiction of incorporation or organization for each guarantor and the IRS employer identification number (or other organizational number for non-U.S. guarantors), for each guarantor is listed below.

<b>Exact name of registrant as specified in its charter (or equivalent)</b>	<b>Jurisdiction of incorporation or organization</b>	<b>IRS employer identification no. (Organizational no. for non-U.S. guarantors)</b>
Digital Turbine USA, Inc.	Delaware	45-3982329
Digital Turbine Media, Inc.	Delaware	26-2346340
Digital Turbine (EMEA) Ltd.	Israel	514802875
Digital Turbine Asia Pacific Pty Ltd.	Australia	TAX 791741061

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### **Explanatory Note**

This Amendment No. 2 to Registration Statement on Form S-1 (File No. 333-214321) of Digital Turbine, Inc. is being filed solely for the purpose of filing Exhibit 10.28, as indicated in Part II of this Amendment No. 2. This Amendment No. 2 does not modify any provision of the prospectus that forms a part of the Registration Statement. Accordingly, a preliminary prospectus has been omitted.

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**PART II**  
**INFORMATION NOT REQUIRED IN THE PROSPECTUS**

**Item 13. Other Expenses of Issuance and Distribution**

The following table sets forth various expenses that will be incurred in connection with this offering as it relates to this Registration Statement. All the amounts shown are estimates, except for the SEC registration fee.

	<b>Amount</b>
SEC registration fee	\$ 3,559.87
Accounting fees and expenses	\$ 12,000
Legal fees and expenses	\$ 75,000
Printing and miscellaneous fees and expenses	\$ 5,000
<b>Total</b>	<b>\$ 95,559.87</b>

**Item 14. Indemnification of Directors and Officers**

We are a Delaware corporation. Section 102(b)(7) of the Delaware General Corporation Law permits a corporation to eliminate the personal liability of its directors or its stockholders for monetary damages for a breach of fiduciary duty as a director, except where the director breached his or her duty of loyalty, failed to act in good faith, engaged in intentional misconduct or knowingly violated a law, authorized the payment of a dividend or approved a stock repurchase in violation of Delaware corporate law or obtained an improper personal benefit. Our certificate of incorporation provides that no director shall be personally liable to us or our stockholders for monetary damages for any breach of fiduciary duty as director, notwithstanding any provision of law imposing such liability, except to the extent that the Delaware General Corporation Law prohibits the elimination or limitation of liability of directors for breaches of fiduciary duty. Section 145 of the Delaware General Corporation Law provides that a corporation has the power to indemnify a director, officer, employee or agent of the corporation and certain other persons serving at the request of the corporation in related capacities against expenses (including attorneys' fees), judgments, fines and amounts paid in settlements actually and reasonably incurred by the person in connection with an action, suit or proceeding to which he or she is or is threatened to be made a party by reason of such position, if such person acted in good faith and in a manner he or she reasonably believed to be in or not opposed to the best interests of the corporation, and, in any criminal action or proceeding, had no reasonable cause to believe his or her conduct was unlawful, except that, in the case of actions brought by or in the right of the corporation, no indemnification shall be made with respect to any claim, issue or matter as to which such person shall have been adjudged to be liable to the corporation unless and only to the extent that the Court of Chancery or other adjudicating court determines that, despite the adjudication of liability but in view of all of the circumstances of the case, such person is fairly and reasonably entitled to indemnity for such expenses which the Court of Chancery or such other court shall deem proper. Section 145 of the Delaware Law provides that the provisions are not exclusive of other indemnification that may be granted by a corporation's charter, bylaws, disinterested director vote, stockholders vote, agreement or otherwise. The limitation of liability contained in our certificate of incorporation, as amended, and the indemnification provision included in our bylaws, as amended, are consistent with Delaware Law Sections 102(b)(7) and 145. We have purchased directors and officers liability insurance.

Section 145 of the Delaware Law authorizes courts to award, or a corporation's board of directors to grant, indemnity to directors and officers in terms sufficiently broad to permit such indemnification under certain circumstances for liabilities (including reimbursement for expenses incurred) arising under the Securities Act of 1933, as amended. Our certificate of incorporation, as amended, and our bylaws, as amended, provide for indemnification of our directors, officers, employees and other agents to the maximum extent permitted by the Delaware Law. In addition, we enter into indemnification agreements with our officers and directors in the ordinary course.

## Item 15. Recent Sales of Unregistered Securities

On September 28, 2016, the Company closed the private placement of \$16 million aggregate principal amount of the notes. BTIG, LLC was the initial purchaser under the Initial Purchaser 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.

### *Indenture*

The notes were issued under the indenture. 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.

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.

In July 2015, the Company issued 117,000 shares of common stock for the settlement of a liability.

In April 2015, the Company issued 452,974 shares of common stock of the Company to Peter Guber, in his capacity as a trustee of the Guber Family Trust, for the cashless exercise of 666,667 warrants granted in June 2010. The securities were issued in reliance upon the exemptions provided in Section 4(a)(2) of the Securities Act and Regulation D promulgated under the Securities Act since, among other things, the transaction did not involve a public offering.

On March 6, 2015, the Company entered into a securities purchase agreement with Appia, Inc., a Delaware corporation ("Appia") and North Atlantic SBIC IV, L.P. ("North Atlantic") whereby Appia issued to North Atlantic a subordinated debenture in the aggregate principal amount of \$8.0 million ("North Atlantic Debt"), retiring a like amount of outstanding debt to North Atlantic and, the Company issued a secured guaranty of the North Atlantic Debt whereby it guaranteed all of Appia's and the Company's obligations in connection with the North Atlantic Debt and pledged substantially all of its assets, including its intellectual property, to North Atlantic in support of the North Atlantic Debt. The Company also issued to North Atlantic 200,000 shares of its common stock and a common stock warrant to purchase 400,000 shares of common stock. The warrant has an exercise price of \$0.01 per share exercisable for 10 years, but it is not exercisable until the one year anniversary of the closing date of the merger between the Company and Appia and will terminate if the Company repays the North Atlantic Debt prior to such one year anniversary. The securities were issued in reliance upon the exemptions provided in Section 4(a)(2) of the Securities Act and Regulation D promulgated under the Securities Act since, among other things, the transaction did not involve a public offering.

In March 2015, the Company issued 15,000 shares of common stock of the Company to the sellers of DT EMEA as part of the settlement of its contingent liability to sellers pursuant to the Logia Settlement Agreement. The fair value of the shares on the date of issuance was \$60 thousand. The shares were issued to an accredited investor without any general solicitation pursuant to the exemption from registration afforded by Section 4(a)(2) under the Securities Act and/or Regulation D and/or Regulation S promulgated thereunder.

In September 2014, the Company issued 300,000 shares of common stock of the Company to a service provider for the exercise of 300,000 warrants granted in January 2011. We relied on Section 4(a)(2) and/or Section 3(a)(9) of the Securities Act, as providing an exemption from registering the sale of these shares of common stock under the Securities Act because, among other reasons, the offerees/issuees were accredited investors who were not subject to any general solicitation and/or the transactions met the requirements of Section 3(a)(9) of the Securities Act.

In April 2014, the Company issued 50,000 shares of common stock of the Company to the sellers of DT EMEA as part of the settlement of its contingent liability to sellers pursuant to the Logia Settlement Agreement. The fair value of the shares on the date of issuance was \$188 thousand. We relied on Section 4(a)(2) of the Securities Act, as providing an exemption from registering the sale of these shares of common stock under the Securities Act because, among other reasons, the offerees/issuees were accredited investors who were not subject to any general solicitation.

In December 2013, the Company issued 86,020 shares of common stock of the Company to directors of the Company for services. We relied on Section 4(a)(2) of the Securities Act, as providing an exemption from registering the sale of these shares of common stock under the Securities Act because, among other reasons, the offerees/issuees were accredited investors who were not subject to any general solicitation.

In December 2013, the Company issued 9,750 shares of common stock of the Company to a vendor. The shares were issued as settlement for services. We relied on Section 4(a)(2) of the Securities Act, as providing an exemption from registering the sale of these shares of common stock under the Securities Act because, among other reasons, the offerees/issuees were accredited investors who were not subject to any general solicitation.

In August 2013, the Company converted \$1,000 of a noteholder's convertible debt into 285,714 shares of common stock of the Company. We relied on Section 4(a)(2) of the Securities Act, as providing an exemption from registering the sale of these shares of common stock under the Securities Act.

In September 2013, the Company issued 504,880 shares of common stock of the Company as consideration for the acquisition of MIA. We relied on Section 4(a)(2) of the Securities Act, as providing an exemption from registering the sale of these shares of common stock under the Securities Act.

In August 2013, the Company issued 7,632 shares of common stock of the Company as part of the cashless exercise of a warrant issued to a service provider in April 2011 to purchase 15,000 shares of common stock of the Company at a price of \$1.25. We relied on Section 4(a)(2) of the Securities Act, as providing an exemption from registering the sale of these shares of common stock under the Securities Act.

In August 2013, the Company issued 80,000 shares of common stock of the Company and 120,000 warrants to purchase shares of common stock of the Company to a noteholder as inducement to modify a debt. We relied on Section 4(a)(2) of the Securities Act, as providing an exemption from registering the sale of these shares of common stock under the Securities Act.

In July 2013, the Company issued 59,964 shares of common stock of the Company to a noteholder as consideration to extend the term of certain of the Company's debt. We relied on Section 4(a)(2) of the Securities Act, as providing an exemption from registering the sale of these shares of common stock under the Securities Act.

## Item 16. Exhibits and Financial Statement Schedules

See the Exhibit Index which is incorporated herein by reference.

## Item 17. Undertakings

The undersigned registrant hereby undertakes:

- (1) To file, during any period in which offers or sales are being made, a post-effective amendment to this registration statement:
  - (a) To include any prospectus required by Section 10(a)(3) of the Securities Act of 1933;
  - (b) To reflect in the prospectus any facts or events arising after the effective date of the registration statement (or the most recent post-effective amendment thereof) that, individually or in the aggregate, represent a fundamental change in the information set forth in the registration statement. Notwithstanding the foregoing, any increase or decrease in volume of securities offered (if the total dollar value of securities offered would not exceed that which was registered) and any deviation from the low or high end of the estimated maximum offering range may be reflected in the form of prospectus filed with the Commission pursuant to Rule 424(b) if, in the aggregate, the changes in volume and price represent no more than 20% change in the maximum aggregate offering price set forth in the "Calculation of Registration Fee" table in the effective registration statement.
  - (c) To include any material information with respect to the plan of distribution not previously disclosed in the registration statement or any material change to such information in the registration statement;
- (2) That, for the purpose of determining any liability under the Securities Act of 1933, each such post-effective amendment shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.
- (3) To remove from registration by means of a post-effective amendment any of the securities being registered that remain unsold at the termination of the offering.
- (4) That each prospectus filed pursuant to Rule 424(b) as part of a registration statement relating to an offering, other than registration statements relying on Rule 430B or other than prospectuses filed in reliance on Rule 430A, shall be deemed to be part of and included in the registration statement as of the date it is first used after effectiveness. *Provided, however,* that no statement made in a registration statement or prospectus that is part of the registration statement or made in a document incorporated or deemed incorporated by reference into the registration statement or prospectus that is part of the registration statement will, as to a purchaser with a time of contract of sale prior to such first use, supersede or modify any statement that was made in the registration statement or prospectus that was part of the registration statement or made in any such document immediately prior to such date of first use.

Insofar as indemnification for liabilities arising under the Securities Act of 1933 may be permitted to directors, officers and controlling persons of the registrant pursuant to the indemnification provisions described herein, or otherwise, the registrant has been advised that in the opinion of the Securities and Exchange Commission such indemnification is against public policy as expressed in the Securities Act of 1933 and is, therefore, unenforceable. In the event that a claim for indemnification against such liabilities (other than the payment by the registrant of expenses incurred or paid by a director, officer or controlling person of the registrant in the successful defense of any action, suit or proceeding) is asserted by such director, officer or controlling person in connection with the securities being registered, the registrant will, unless in the opinion of its counsel the matter has been settled by controlling precedent, submit to a court of appropriate jurisdiction the question whether such indemnification by it is against public policy as expressed in the Securities Act of 1933 and will be governed by the final adjudication of such issue.

## SIGNATURES

Pursuant to the requirements of the Securities Act of 1933, as amended, the registrant has duly caused this Amendment No. 2 to Registration Statement on Form S-1 to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of Austin, State of Texas, on January 6, 2017.

### DIGITAL TURBINE, INC.

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

Pursuant to the requirements of the Securities Act of 1933, as amended, this Amendment No. 2 to Registration Statement has been signed below by the following persons in the capacities and on the dates indicated.

<u>Name and Signature</u>	<u>Title</u>	<u>Date</u>
<u>/s/ William Stone</u> William Stone	Chief Executive Officer (Principal Executive Officer)	January 6, 2017
<u>/s/ Barrett Garrison</u> Barrett Garrison	Chief Financial Officer (Principal Financial Officer)	January 6, 2017
<u>/s/ *</u> David Wesch	Principal Financial Officer (Principal Accounting Officer)	January 6, 2017
<u>/s/ *</u> Rob Deutschman	Chairman of the Board	January 6, 2017
<u>/s/ *</u> Paul Schaeffer	Director	January 6, 2017
<u>/s/ *</u> Christopher Rogers	Director	January 6, 2017
<u>/s/ *</u> Mohan S. Gyani	Director	January 6, 2017
<u>/s/ *</u> Jeff Karish	Director	January 6, 2017
<u>/s/ *</u> Craig I. Forman	Director	January 6, 2017

\*By: /s/ William Stone  
William Stone  
Attorney-in-fact

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**SIGNATURES OF GUARANTORS**

Pursuant to the requirements of the Securities Act of 1933, as amended, the registrant has duly caused this Amendment No. 2 to Registration Statement on Form S-1 to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of Austin, State of Texas, on January 6, 2017.

**DIGITAL TURBINE USA, INC.  
DIGITAL TURBINE MEDIA, INC.  
DIGITAL TURBINE ASIA PACIFIC PTY LTD.**

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

**DIGITAL TURBINE (EMEA) LTD.**  
By: /s/ William Stone  
William Stone  
Chief Executive Officer

By: /s/ Revital Musalem  
Revital Musalem  
Controller

Pursuant to the requirements of the Securities Act of 1933, as amended, this Amendment No. 2 to Registration Statement has been signed below by the following persons in the capacities and on the dates indicated.

<b>Name and Signature</b>	<b>Title</b>	<b>Date</b>
<u>/s/ William Stone</u> William Stone	(1)	January 6, 2017
<u>/s/ Barrett Garrison</u> Barrett Garrison	(2)	January 6, 2017
<u>/s/ *</u> Jon Mooney	(3)	January 6, 2017
<u>/s/ *</u> Kirstie Brown	(4)	January 6, 2017

\*By: /s/ William Stone  
William Stone  
Attorney-in-fact

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- (1) In his capacity as a director of Digital Turbine USA, Inc., Digital Turbine Media, Inc., Digital Turbine (EMEA) Ltd. and Digital Turbine Asia Pacific Pty Ltd.
  - (2) In his capacity as a director of Digital Turbine USA, Inc. and Digital Turbine Asia Pacific Pty Ltd.
  - (3) In his capacity as a director of Digital Turbine Asia Pacific Pty Ltd.
  - (4) In her capacity as a director of Digital Turbine Asia Pacific Pty Ltd.
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## EXHIBIT INDEX

<b>Exhibit No.</b>	<b>Description</b>
2.1	Agreement and Plan of Merger, dated as of December 31, 2007, by and among NeuMedia Media, Inc., Twistbox Acquisition, Inc., Twistbox Entertainment, Inc. and Adi McAbian and Spark Capital, L.P., incorporated by reference to our Current Report on Form 8-K (File No. 000-10039), filed with the Commission on January 2, 2008.
2.2	Amendment to Agreement and Plan of Merger, dated as of February 12, 2008, by and among NeuMedia Media, Inc., Twistbox Acquisition, Inc., Twistbox Entertainment, Inc. and Adi McAbian and Spark Capital, L.P., incorporated by reference to our Current Report on Form 8-K (File No. 000-10039), filed with the Commission on February 12, 2008.
2.3	Agreement and Plan of Merger, dated November 13, 2014, by and among Mandalay Digital Group, Inc., DTM Merger Sub, Inc., and Appia, Inc., incorporated by reference to our Amended Current Report on Form 8-K/A (File No. 001-35958), filed with the Commission on November 18, 2014.
3.1	Certificate of Incorporation, incorporated by reference to our Current Report on Form 8-K (File No. 000-10039), filed with the Commission on November 14, 2007.
3.2	Certificate of Merger merging Mediavest, Inc., a New Jersey corporation, with and into NeuMedia Media, Inc., a Delaware corporation, as filed with the Secretary of State of the State of Delaware, incorporated by reference to our Current Report on Form 8-K (File No. 000-10039), filed with the Commission on November 14, 2007.
3.3	Certificate of Ownership merging Mandalay Digital Group, Inc. into Neumedia, Inc., dated February 2, 2012, incorporated by reference to our Annual Report on Form 10-K (File No. 000-10039), filed with the Commission on June 29, 2012.
3.4	Certificate of Amendment of Certificate of Incorporation, dated August 14, 2012, incorporated by reference to Appendix B of the Registrant's Definitive Information Statement on Schedule 14C (File No. 000-10039), filed with the Commission on July 10, 2012.
3.5	Certificate of Amendment of Certificate of Incorporation, dated March 28, 2013, incorporated by reference to our Current Report on Form 8-K (File No. 000-10039), filed with the Commission on April 18, 2013.
3.6	Certificate of Correction of Certificate of Amendment, dated April 9, 2013, incorporated by reference to our Current Report on Form 8-K (File No. 000-10039), filed with the Commission on April 18, 2013.
3.7	Certificate of Amendment of Certificate of Incorporation, as amended, filed with the Secretary of State of the State of Delaware on January 13, 2015, incorporated by reference to our Current Report on Form 8-K (File No. 000-35958), filed with the Commission on January 16, 2015.
3.8	Bylaws, incorporated by reference to our Current Report on Form 8-K (File No. 000-10039), filed with the Commission on November 14, 2007.
3.9	Certificate of Amendment of the Bylaws of NeuMedia, Inc., dated February 2, 2012, incorporated by reference to our Current Report on Form 8-K (File No. 000-10039), filed with the Commission on February 7, 2012.
3.10	Certificate of Amendment of the Bylaws dated March 6, 2015, incorporated by reference to our Current Report on Form 8-K (File No. 001-35958) filed with the Commission on March 11, 2015.

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- 3.11 Amendment of Bylaws of Digital Turbine, Inc., adopted March 17, 2015, incorporated by reference to our Current Report on Form 8-K (File No. 000-35958), filed with the Commission on March 20, 2015.
  - 4.1 Form of Warrant Relating to Equity Financing Binding Term Sheet, dated as of March 1, 2012, incorporated by reference to our Annual Report on Form 10-K (File No. 000-10039), filed with the Commission on June 29, 2012.
  - 4.2 Form of Warrant Relating to Equity Financing Binding Term Sheets, dated as of March 5, 2012, incorporated by reference to our Annual Report on Form 10-K (File No. 000-10039), filed with the Commission on June 29, 2012.
  - 4.3 Indenture, dated as of September 28, 2016. \*
  - 4.4 Supplemental Indenture.\*\*
  - 4.5 Form of 8.75% Convertible Notes due 2020 (included in the Indenture referenced as Exhibit 4.3 above).
  - 4.6 Warrant Agreement, dated as of September 28, 2016, incorporated by reference to our Current Report on Form 8-K (File No. 001-35958) filed with the Commission on September 29, 2016.
  - 4.7 Registration Rights Agreement, dated as of September 28, 2016, incorporated by reference to our Current Report on Form 8-K (File No. 001-35958) filed with the Commission on September 29, 2016.
  - 4.8 Form of Common Stock Certificate. \*
  - 5.1 Opinion of Manatt, Phelps & Phillips, LLP. \*
  - 5.2 Opinion of Corrs Chambers Westgarth. \*
  - 5.3 Opinion of Herzog Fox & Neeman. \*
  - 10.1 2007 Employee, Director and Consultant Stock Plan, incorporated by reference to our Current Report on Form 8-K (File No. 000-10039), filed with the Commission on November 14, 2007. †
  - 10.1.1 Form of Non-Qualified Stock Option Agreement, incorporated by reference to our Current Report on Form 8-K (File No. 000-10039), filed with the Commission on November 14, 2007. †
  - 10.1.2 Amendment to 2007 Employee, Director and Consultant Stock Plan, incorporated by reference to our Current Report on Form 8-K (File No. 000-10039), filed with the Commission on February 12, 2008. †
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- 10.1.3 Second Amendment to 2007 Employee, Director and Consultant Stock Plan., incorporated by reference to our Current Report on Form 8-K (File No. 000-10039), filed with the Commission on March 28, 2008. †
  - 10.2 Warrant, dated December 23, 2011, made by NeuMedia, Inc. in favor of Adage Capital Management L.P., incorporated by reference to our Quarterly Report on Form 10-Q (File No. 000-10039), filed with the Commission on February 24, 2012. †
  - 10.3 Form of Indemnification with Directors and Executive Officers, incorporated by reference to our Current Report on Form 8-K (File No. 000-10039), filed with the Commission on May 10, 2012. †
  - 10.4 Amended and Restated 2011 Equity Incentive Plan of Mandalay Digital Group, Inc., incorporated by reference to our Current Report on Form 8-K (File No. 000-10039), filed with the Commission on May 30, 2012.
  - 10.4.1 Amended and Restated 2011 Equity Incentive Plan Notice of Grant and Restricted Stock Agreement of Mandalay Digital Group, Inc, incorporated by reference to our Current Report on Form 8-K (File No. 000-10039), filed with the Commission on May 30, 2012.
  - 10.4.2 Amended and Restated 2011 Equity Incentive Plan Notice of Grant and Stock Option Agreement of Mandalay Digital Group, Inc., incorporated by reference to our Current Report on Form 8-K (File No. 000-10039), filed with the Commission on May 30, 2012.
  - 10.5 Share Purchase Agreement, dated August 11, 2012, as amended by a first amendment thereto, dated September 13, 2012 among Mandalay Digital Group, Inc., MDG Logia Holdings, Ltd., Logia Group, Ltd., and S.M.B.P. IGLOO Ltd., incorporated by reference to the Registrant's Quarterly Report on Form 10-Q (File No. 000-10039), filed with the Commission on November 19, 2012.
  - 10.6 Share Sale Agreement, dated April 12, 2013, among Digital Turbine Australia Pty Ltd, Digital Turbine, Inc., the Company, and certain other parties set forth therein, incorporated by reference to our Current Report on Form 8-K/A (File No. 000-10039) filed with the Commission on April 17, 2013.
  - 10.7 Registration Rights & Lock Up Agreement, dated April 12, 2013 between the Company and various shareholders set forth therein, incorporated by reference to our Current Report on Form 8-K/A (File No. 000-10039) filed with the Commission on April 17, 2013.
  - 10.8 Form of Equity Financing Binding Term Sheet dated May 23, 2013 with Windsor Media, Inc., incorporated by reference to our Current Report on Form 10-Q (File No. 001-35958) filed with the Commission on August 14, 2013.
  - 10.9 Support Agreement, dated November 13, 2014, between Mandalay Digital Group, Inc. and its Stockholders, incorporated by reference Registrant's Amended Current Report on Form 8-K/A (File No. 001-35958), filed with the Commission on November 18, 2014.
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- 10.10 Unconditional Secured Guaranty and Pledge Agreement entered into by Digital Turbine, Inc. in favor of Silicon Valley Bank as of March 6, 2015, incorporated by reference to our Current Report on Form 8-K (File No. 001-35958) filed with the Commission on March 11, 2015.
- 10.11 API Service Agreement dated July 5, 2011 with Vodafone Hutchison Australia Pty Limited, incorporated by reference to Amendment No. 2 to our Registration Statement on Form S-4/A (File No. 333-200695) filed with the Commission on January 27, 2015.
- 10.12 IT & Content Services Agreement dated October 11, 2011 with Telstra Corporation Limited, incorporated by reference to Amendment No. 2 to our Registration Statement on Form S-4/A (File No. 333-200695) filed with the Commission on January 27, 2015.
- 10.13 Employment Agreement, effective July 8, 2014, between the Company and Andrew Schleimer, incorporated by reference to our Current Report on Form 8-K (File No. 000-35958), filed with the Commission on July 9, 2014. †
- 10.14 Employment Agreement, effective September 9, 2014, between the Company and William Stone, incorporated by reference to our Current Report on Form 8-K (File No. 001-35958), filed with the Commission on September 15, 2014. †
- 10.14.1 Amendment, effective May 26, 2016, to Employment Agreement between the Company and William Stone, incorporated by reference to our Current Report on Form 8-K (File No. 000-35988), filed with the Commission on June 1, 2016. †
- 10.15 Employment Agreement, effective February 10, 2015, between the Company and James Alejandro, incorporated by reference to our Current Report on Form 8-K (File No. 000-35988), filed with the Commission on February 11, 2015. †
- 10.16 Employment Agreement, effective August 31, 2016, between the Company and Barrett Garrison, incorporated by reference to our Current Report on Form 8-K (File No. 001-35958), filed with the Commission on August 31, 2016. †
- 10.17 Separation Agreement between Mandalay Digital Group, Inc. and Peter A. Adderton, dated January 15, 2015, incorporated by reference to our Current Report on Form 8-K (File No. 000-35958), filed with the Commission on January 16, 2015.
- 10.18 Board Equity Ownership Policy, as amended, incorporated by reference to our Current Report on Form 8-K (File No. 001-35958) filed with the Commission on June 25, 2014. †
- 10.19 Commercial Lease Agreement commencing on October 1, 2015, and ending on December 31, 2022 between Thomas C. Calhoun (Landlord) and Digital Turbine, Inc. (Tenant), incorporated by reference to our Annual Report on Form 10-K (File No. 001-35958), filed with the Commission on June 15, 2015.
- 10.20 Third Amended and Restated Loan and Security Agreement effective June 11, 2015 between Digital Turbine Media and Silicon Valley Bank, incorporated by reference to our Annual Report on Form 10-K (File No. 001-35958), filed with the Commission on June 15, 2015.
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- 10.20.1 First Amendment dated November 30, 2015 to Third Amended and Restated Loan and Security Agreement with Silicon Valley Bank, incorporated by reference to our Current Report on Form 8-K (File No. 000-35958), filed with the Commission on December 4, 2015.
- 10.20.2 Consent and Second Amendment dated March 1, 2016 to Third Amended and Restated Loan and Security Agreement with Silicon Valley Bank, incorporated by reference to our Quarterly Report on Form 10-Q (File No. 001-35958), filed with the Commission on August 9, 2016.
- 10.20.3 Third Amendment dated June 28, 2016 to Third Amended and Restated Loan and Security Agreement with Silicon Valley Bank, incorporated by reference to our Current Report on Form 8-K (File No. 001-35958), filed with the Commission on June 30, 2016.
- 10.21 Intellectual Property License Agreement dated as of December 28, 2015 between Digital Turbine Media, Inc. and Sift Media, Inc., incorporated by reference to our Quarterly Report on Form 10-Q (File No. 000-35958), filed with the Commission on February 9, 2016.
- 10.22 Publisher Agreement dated as of December 28, 2015 between Digital Turbine Media, Inc. and Sift Media, Inc., incorporated by reference to our Quarterly Report on Form 10-Q (File No. 000-35958), filed with the Commission on February 9, 2016.
- 10.23 Sift Media, Inc. Series Seed Convertible Preferred Stock Purchase Agreement dated as of December 28, 2015, incorporated by reference to our Quarterly Report on Form 10-Q (File No. 000-35958), filed with the Commission on February 9, 2016.
- 10.24 Employment Agreement between Sift Media, Inc. and Judson S. Bowman dated as of December 28, 2015, incorporated by reference to our Quarterly Report on Form 10-Q (File No. 000-35958), filed with the Commission on February 9, 2016.
- 10.25 Restricted Stock Purchase Agreement between Sift Media, Inc. and Judson S. Bowman dated as of December 28, 2015, incorporated by reference to our Quarterly Report on Form 10-Q (File No. 000-35958), filed with the Commission on February 9, 2016.
- 10.26 2008 Equity Incentive Plan for Appia, Inc., incorporated by reference to our Registration Statement on Form S-8 (File No. 333-202863), filed with the Commission on March 19, 2015.
- 10.27 Initial Purchaser Agreement, dated as of September 23, 2016, incorporated by reference to our Current Report on Form 8-K (File No. 001-35958) filed with the Commission on September 29, 2016.
- 10.28 Software As A Services Agreement between Celco Partnership d/b/a Verizon Wireless, a Delaware general partnership, on behalf of itself and for the benefit of its Affiliates and Digital Turbine, Inc., a Delaware corporation, effective as of August 14, 2014. ❖ +
- 12.1 Statement Regarding Computation of Ratio of Earnings to Fixed Charges. \*
- 21.1 List of Subsidiaries, incorporated by reference to our Annual Report on Form 10-K (File No. 001-35958), filed with the Commission on June 14, 2016.
- 23.1 Consent of SingerLewak LLP. \*
- 23.2 Consent of Manatt, Phelps & Phillips, LLP is contained in Exhibit 5.1 to this Registration Statement. \*
- 23.3 Consent of Corrs Chambers Westgarth is contained in Exhibit 5.2 to this Registration Statement. \*
- 23.4 Consent of Herzog Fox & Neeman is contained in Exhibit 5.3 to this Registration Statement. \*
- 24 Powers of Attorney is contained on the signature page. \*
- 25 Form T-1 of U.S. Bank, N.A. (with respect to the indenture governing the notes). \*

❖ Filed herewith.

\* Previously filed.

\*\* To be filed by amendment.

† Management contract or compensatory plan or arrangement.

+ Confidential treatment has been requested for certain confidential portions of this exhibit pursuant to Rule 406 under the Securities Act. In accordance with Rule 406, these confidential portions have been omitted from this exhibit and filed separately with the Securities and Exchange Commission.

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CONFIDENTIAL PORTIONS OF THIS EXHIBIT MARKED AS [\*\*\*] HAVE BEEN OMITTED PURSUANT TO A REQUEST FOR CONFIDENTIAL TREATMENT AND HAVE BEEN FILED SEPARATELY WITH THE SECURITIES AND EXCHANGE COMMISSION.

**CONFIDENTIAL TREATMENT REQUESTED BY DIGITAL TURBINE, INC.**

**SOFTWARE AS A SERVICE AGREEMENT**

This Software As A Service Agreement (“Agreement”) is between Celco Partnership d/b/a Verizon Wireless, a Delaware general partnership, having a place of business at One Verizon Way, Basking Ridge, New Jersey 07920 on behalf of itself and for the benefit of its Affiliates (individually and collectively “Verizon”) and Digital Turbine, Inc., a Delaware corporation with offices located at 2811 Cahuenga Blvd. W., Los Angeles, CA 90068 (“Digital Turbine”). Verizon and Digital Turbine may be referred to individually as a “Party” and collectively as the “Parties.” This Agreement shall become effective on and as of the date of execution by the last signing Party hereto (“Effective Date”).

**1. Definitions.**

- 1.1 Affiliate. An entity that Controls, is Controlled by, or is under common Control with a Party. As used in this definition, “Control” means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a corporation, partnership, person or other entity, whether through the ownership of voting securities, or by contract or otherwise.
- 1.2 CPI Inventory. An application placed in the Digital Turbine App for which an application developer, distributor, advertiser or other party pays a fee to Digital Turbine or to Verizon when a Subscriber installs, downloads, opens, or activates such application or otherwise responds to an advertising call-to-action. All applications placed by Digital Turbine into the Digital Turbine App shall be CPI Inventory. Any application that meets the definition of Verizon Non-CPI Inventory below is excluded from the definition of CPI Inventory.
- 1.3 Digital Turbine App. Digital Turbine’s mobile application named Ignite, and all updates thereto, that allows for the retrieval and installation of pre-selected applications at the initial setup of an Interactive Wireless Device. The Digital Turbine App shall also include, for purposes of this Agreement, the IQ Widget, defined below.
- 1.4 Interactive Wireless Devices. Any and all wireless devices approved by Verizon for use on the Verizon network.
- 1.5 IQ Widget. An interactive widget, and all updates thereto, residing in the Digital Turbine App, that highlights applications for customers to download or activate on an Interactive Wireless Device.

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- 1.6 Preload. A method of distributing applications by Verizon via pre-install, preload, virtual preload, smartlink or upload on Interactive Wireless Devices. As used in this definition, “virtual preload” means an application for which an icon appears on an Interactive Wireless Device and, when the icon is activated, the application is automatically downloaded to the Interactive Wireless Device.
- 1.7 Subscribers. Any persons, including natural persons, corporations, partnerships, or other entities, who subscribe to Verizon services.
- 1.8 Unauthorized Code. Unauthorized Code means any virus, Trojan horse, worm, back door, trap door, time bomb, drop-dead device, timer, clock, counter or other limiting routine, as well as any other instructions, designs, software routines, or hardware components designed to: (a) disable, erase, or otherwise harm software, hardware, data, text or any other information stored in electronic form; (b) cause any of the foregoing with the passage of time; or (c) place a program or hardware under the positive control of a person other than an owner or licensee of the program or hardware. Unauthorized Code does not include software routines in a computer program, if any, designed to permit the owner or licensor of the program, or any other person acting by authority of the owner, or licensor, to obtain access to a licensee’s computer system(s) for purposes of maintenance or technical support.
- 1.9 Verizon LTE Services. The package of wireless communications, entertainment, and/or voice services, including data, messaging, voice, and web access services, offered by Verizon that let Subscribers use their Interactive Wireless Devices on the Verizon LTE network.
- 1.10 Verizon Non-CPI Inventory. Any Verizon-branded application, any application developed for Verizon by a third party, any third-party application that is used in whole or in part to deliver a service for which Verizon directly bills a Subscriber, and any other application that may be placed in the Digital Turbine App by Verizon for which no installation or activation fee must be paid by an application developer for the installation or download of such application by a Subscriber.

## **2. The Service.**

- 2.1 The Service. Subject to the terms of this Agreement, Digital Turbine shall provide the service and hosting, administration and maintenance services described herein, including Digital Turbine’s obligations as set forth in Sections 4.1, 4.6 and 4.7 (the “Service”), to Verizon and its Affiliates, agents, distributors, and suppliers, including a non-exclusive, assignable, sublicensable (except to a mobile virtual network operator), and royalty-free license, for an unlimited number of Interactive Wireless Devices, to: (i) copy, reproduce, reformat, display, and perform the Digital Turbine App, including any related documentation provided by Digital Turbine to Verizon, for Preload onto Interactive Wireless Device models; and (ii) store, exploit, use, integrate, distribute, transmit, and sublicense an unlimited number of copies of the Digital Turbine App, including any related documentation provided by Digital Turbine to Verizon, to Subscribers in object code format only. All rights in the Digital Turbine App not granted in this Agreement are reserved by Digital Turbine.

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- 2.2 Scope and Duration. The Service shall be provided to Verizon pursuant to Section 2.1 for an unlimited number of Interactive Wireless Devices selected in Verizon's sole and absolute discretion. Termination of the Agreement shall not affect the rights or licenses of Verizon and its Affiliates, agents, distributors, suppliers, and Subscribers to continue to use the Digital Turbine App if it were Preloaded on an Interactive Wireless Device prior to termination of the Agreement. If Verizon in its sole and absolute discretion decides to cease preloading the Digital Turbine App on any new devices prior to termination of this Agreement, such action will not affect the rights or licenses of Verizon and its Affiliates, agents, distributors, suppliers, and Subscribers to continue to use the copies of the Digital Turbine App previously Preloaded. Digital Turbine acknowledges that Verizon cannot remove the Digital Turbine App from Verizon Interactive Wireless Devices once it has been Preloaded on an Interactive Wireless Device that has been sold to a Subscriber.
- 2.3 Except as provided in Sections 2.1 and 2.2, this Agreement does not grant either Party any express or implied right or license in any of the other Party's patents, copyrights, trade secrets, trademarks, trade names, service marks, logos, or other property. Neither Party may use the marks or other trade indicia of the other Party except as otherwise agreed in writing in advance. Subject to the licenses granted herein, Digital Turbine is and will remain the owner of all right, title, and interest in and to the Digital Turbine App, including but not limited to, all trade secret, confidential, and proprietary information Digital Turbine supplies to Verizon in connection with the Digital Turbine App.

### **3. Use of the Digital Turbine**

- 3.1 Correction of Errors. For any version of the Digital Turbine App that Digital Turbine or Verizon plans to Preload on an Interactive Wireless Device, Digital Turbine must comply, at its sole expense, with standard testing required by Verizon and the supplier of the applicable Interactive Wireless Device. Verizon or the supplier of the applicable Interactive Wireless Device may notify Digital Turbine of any bugs or errors associated with the use of the Digital Turbine App on such Interactive Wireless Device by providing Digital Turbine a prioritized list, as testing is performed in accordance with standard testing processes. Digital Turbine will correct such bugs or errors at Digital Turbine's own expense within the time specified by Verizon or the supplier of the Interactive Wireless Device.
- 3.2 Schedules and Milestones. Verizon will specify, in consultation with Digital Turbine and with Verizon's suppliers, the delivery schedule and the project milestones that must be met to enable the Digital Turbine App to be Preloaded on each Interactive Wireless Device. However, even if Digital Turbine meets the specified schedule or project milestones and corrects any reported bugs and errors, as provided in Section 3.1 above, Verizon may still elect in its sole and absolute discretion, at any time, not to Preload the Digital Turbine App on particular Interactive Wireless Devices, or to cease Preloading the Digital Turbine App on Interactive Wireless Devices on which it had previously been Preloaded.

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- 3.3 Unauthorized Code. The Digital Turbine App will contain no Unauthorized Code. Digital Turbine will not use the Digital Turbine App to engage in any fraudulent, illegal, or unauthorized use. Digital Turbine will continuously monitor the Digital Turbine App for the presence of any Unauthorized Code. In the event Digital Turbine detects the presence of any Unauthorized Code, it will: (a) notify Verizon in writing the same day the Unauthorized Code is detected; (b) promptly remove the Unauthorized Code; and (c) promptly remedy any condition caused by the Unauthorized Code.

**4. Application Features.**

- 4.1 Digital Turbine shall host the Digital Turbine App in the United States.
- 4.2 Verizon may elect, in its sole and absolute discretion, to mediate the data usage charges incurred by Subscribers who download applications via the Digital Turbine App; in other words, Verizon may elect to not apply data charges against a Subscriber's data plan or allowance if such charges were incurred 'as the direct result of downloading or installing an application via the Digital Turbine App.
- 4.3 Placement of the applications distributed to an Interactive Wireless Device via the Digital Turbine App within the application tray will be determined by the Interactive Wireless Device's default setting. In the event that Verizon elects, in its sole and absolute discretion, to include the IQ Widget on any Interactive Wireless Device, the IQ Widget "will be placed on a side screen.
- 4.4 Any branding of the Digital Turbine App will be determined by Verizon in its sole and absolute discretion.
- 4.5 The Digital Turbine App must complete the installation and delivery of each Verizon Non-CPI Inventory application to at least [\*\*\*] of Interactive Wireless Devices within [\*\*\*] of such Interactive Wireless Device's initial setup. [\*\*\*]. The [\*\*\*] target rate does not include failures stemming from a lack of network connectivity or device failure.
- 4.6 Digital Turbine shall provide first tier customer support to Verizon for any customer-facing issues stemming from the installation, delivery or hosting of applications by the Digital Turbine App. Verizon shall provide first-tier customer support for all network and device related issues.
- 4.7 Digital Turbine agrees to comply with the requirements set forth in Exhibit B [Omitted] when scheduling maintenance windows to provide maintenance to the Digital Turbine App.

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- 4.8 This Agreement does not provide for carrier billing, however, the Parties agree in good faith to discuss and work toward the future implementation of carrier billing, either directly through Verizon by integrating Verizon's Direct Carrier Billing API into the Digital Turbine App or through a third party billing vendor. The Parties further agree to discuss in good faith the possibility of integrating the Digital Turbine App with Verizon's VIG system.

**5. Submission, Testing, and Acceptance of Applications.**

- 5.1 Application Submission. Digital Turbine will submit the Digital Turbine App to Verizon for testing and certification in accordance with the standard procedure set forth in the Verizon Development Community ("VDC") website, currently available at <http://developer.verizon.com>, or as otherwise agreed by the Parties.
- 5.2 Application Testing and Certification. Verizon, or the manufacturer of an Interactive Wireless Device, will test and certify the version of the Digital Turbine App to be included with each Interactive Wireless Device. In connection with testing and certification, the Parties will agree to plan for testing the functionality and features of the Digital Turbine App., The Parties acknowledge that any information and tools provided by the other Party under this Section 5.2 are Confidential Information subject to the confidentiality obligations in Section 12 below.

**6. CPI Inventory and Revenue Shares.**

- 6.1 Verizon, in its sole and absolute discretion, shall have the right to designate any number of inventory spots for use by Digital Turbine to place its CPI Inventory into the Digital Turbine App on Interactive Wireless Devices ("DT Sold CPI Inventory"). Verizon, in its sole and absolute discretion, shall also have the right to review and approve the applications selected by Digital Turbine prior to their inclusion in CPI Inventory. Digital Turbine will be responsible for securing all necessary rights, including licensing rights and IP clearances, to display and distribute the applications included in DT Sold CPI Inventory. The developers of any DT Sold CPI Inventory must execute a separate commercial agreement with Verizon prior to the inclusion of their applications in the Digital Turbine App.
- 6.2 Verizon, in its sole and absolute discretion, shall have the right to place, deliver and distribute on Interactive Wireless Devices via the Digital Turbine App applications that it has sold as CPI Inventory ("Verizon Sold CPI Inventory").

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- 6.3 Verizon shall have the right to place, deliver and distribute, at no cost to Verizon and subject to [\*\*\*] revenue share set forth in Section 6.4, an unlimited quantity of Verizon Non-CPI Inventory on an Interactive Wireless Device via the Digital Turbine App (with the exception of third-party applications for which Verizon receives a revenue share, which shall be limited to [\*\*\*] such applications per Interactive Wireless Device), provided that Verizon authorizes on that Interactive Wireless Device at least [\*\*\*] slots for applications to be offered as CPI Inventory (except for the Samsung Galaxy Note 4, where the number of slots shall be [\*\*\*]). The Parties agree to discuss in good faith a fee for the distribution of Verizon Non-CPI Inventory that would apply in those instances where Verizon does not authorize the required number of slots for applications to be offered as CPI Inventory, or where Verizon seeks to distribute through the Digital Turbine App more than [\*\*\*] third-party applications for which Verizon receives a revenue share. Verizon shall not be obligated to pay any such fee, and shall have the right to place, deliver and distribute, at no cost to Verizon and subject to no revenue share set forth in Section 6.4, an unlimited quantity of Verizon Non-CPI Inventory on an Interactive Wireless Device via the Digital Turbine App in the event that Digital Turbine does not present to Verizon at least [\*\*\*] applications for possible inclusion as CPI Inventory for that Interactive Wireless Device.
- 6.4 In consideration for the Service provide by Digital Turbine to Verizon hereunder, the Parties shall pay to one another the following share of all revenues generated from CPI Inventory until the end-of-life of the Interactive Wireless Devices on which the Digital Turbine App is installed:

<u>DT Sold CPI Inventory</u> <u>Digital Turbine CPI Inventory Revenue Share (%)</u>	<u>Verizon CPI Inventory Revenue Share (%)</u>	<u>Verizon Sold CPI Inventory</u> <u>Digital Turbine CPI Inventory Revenue Share (%)</u>	<u>Verizon CPI Inventory Revenue Share (%)</u>
[***] on the first \$[***]	[***] on the first \$[***]	[***] on the first \$[***]	[***] on the first \$[***]
[***] on \$[***] to \$[***]	[***] on \$[***] to \$[***]	[***] on \$[***] to \$[***]	[***] on \$[***] to \$[***]
[***] on greater than \$[***]	[***] on greater than \$[***]	[***] on greater than \$[***]	[***] on greater than \$[***]

**7. Taxes.**

- 7.1 If taxes are legally required to be withheld on any amounts to be paid by one Party to the other, the paying Party will deduct such taxes from the amount otherwise owed and pay the tax directly to the appropriate taxing authority. The paying Party will furnish the other Party with a tax certificate or other appropriate documentation evidencing such payment. The Parties will use reasonable efforts to help ensure that any taxes withheld are minimized to the extent possible under applicable law.

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- 7.2 If Digital Turbine is obligated to make payment to a third party content provider (“Provider”) for content or services provided on Interactive Wireless Devices, Digital Turbine shall not make payment to any Provider, unless it first obtains valid withholding exemption documentation (e.g. US Form W-9 and California withholding exemption forms). Unless prior approval is obtained from Verizon, Digital Turbine shall not make payment to Providers outside the United States that could be subject to income tax withholding under 26 U.S.C. § 1441 or § 1442. Should Digital Turbine fail to remit any withholding tax on payments made to a Provider, Digital Turbine shall indemnify Verizon for any resulting liability, including tax, penalty, interest, and reasonable litigation expenses.
- 7.3 If any product or service provided by Digital Turbine is subject to a transaction tax imposed on Verizon and required to be collected by Digital Turbine, then Digital Turbine shall bill Verizon such tax and Verizon shall pay such tax, unless Verizon has provided valid exemption documentation to Digital Turbine. If any product or service provided by Verizon is subject to a transaction tax imposed on Digital Turbine and required to be collected by Verizon, then Verizon shall bill Digital Turbine such tax and Digital Turbine shall pay such tax, unless Digital Turbine has provided valid exemption documentation to Verizon. As to any other tax, such as income, payroll, property, privilege, excise, occupation, franchise, or gross receipts tax, the Party with the legal incidence of such tax shall pay such tax. Each Party will bear financial responsibility for and penalties resulting from its own failure to comply with applicable law. Both Parties agree that the delivery location of any good and the location of beneficial enjoyment of any service is the address shown on the first page of this Agreement, unless advance written notice of a substitute location is provided.
- 7.4 Digital Turbine shall be responsible for any sales, use, excise, value added, service, consumption, property, franchise, income, or other taxes and duties based upon or measured by Digital Turbine’s cost in acquiring goods or services furnished or used by Digital Turbine in performing its obligations under this Agreement.
- 7.5 If either Party is audited by a taxing authority or other governmental entity the other Party agrees to reasonably cooperate with the Party being audited in order to respond to any audit inquiries in a proper and timely manner so that the audit and/or any resulting controversy may be resolved expeditiously.
- 7.6 If applicable law places the responsibility on Digital Turbine to collect a Tax from Verizon and Digital Turbine fails to do so, Verizon will not be responsible for any interest or penalties associated with Digital Turbine’s failure to collect such Tax. Furthermore, Digital Turbine shall not invoice a Tax to Verizon on products and/or services under this Agreement which are, by law, not taxable. Any rebate, refund or other credit for any Taxes paid by Verizon shall be credited, refunded, or otherwise returned to Verizon within 30 days of Digital Turbine’s receipt of such rebate, refund or credit.

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7.7 Both Parties shall endeavor to avoid cross border payments (across US borders) and all payments to a Party shall be made in US dollars from an account in the United States to an account in the United States.

**8. Payments and Charges.**

8.1 Fee for Deliverables. Subject to Digital Turbine's delivery to Verizon of each of the defined Deliverables (as set forth below), Verizon will pay Digital Turbine a fee of [\*\*\*] within sixty (60) days of delivery (the "Deliverables Fee"). This amount is non-refundable and deemed earned as of the final delivery of the Deliverables.

8.1.1 Documentation: (i) Solution Design, (ii) Technical Architecture, (iii) Test Cases, (iv) Load testing results, and (iv) Campaign management guidelines;

8.1.2 Software: (i) Customization of Ignite software (including ability to deliver multiple campaigns across multiple devices) and (ii) Delivery of customized Ignite APK file to Verizon;

8.1.3 Infrastructure: (i) Design of full solution, (ii) Configuration of infrastructure, (iii) Testing of infrastructure based on Verizon load requirements, and (iv) Deployment of new configuration to production;

8.1.4 Campaign: (i) Provide updated media plan (for multiple campaigns and across multiple devices) and configuration within the management console; and

8.1.5 Reporting: Configuration of reports based on Verizon requirements

(together, the "Deliverables").

8.2 Charges for Verizon LTE Services. The amounts charged by Verizon to Subscribers for their use of Verizon LTE Services needed to use the Digital Turbine App will be determined by Verizon in its sole discretion. Verizon will be responsible for billing Subscribers, as well as for all associated collection activity for such charges.

8.3 Application Cost. The Digital Turbine App shall be at no cost to Subscribers for download and use.

8.4 No Additional Fees. There shall be no additional fee or royalties paid to Digital for the Digital Turbine App and Service provided pursuant to this Agreement.

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- 8.5 Activity Reports. Within ten (10) calendar days after the end of each calendar month, each Party that has received revenue subject to the sharing obligations of Section 6.4 shall provide a monthly report that allows the receiving Party to properly and independently validate the revenue share to be paid pursuant to Section 6.4 (each an "Activity Report"). The Activity Reports will include the following information at a minimum, or such other information as the Parties may agree to in writing: month and year that is covered by the report, total monthly revenue, identity of each CPI Inventory application on which revenue was received, number of units on which payment was made for each CPI Revenue application, per-unit payment amount for each CPI Revenue application, and revenue share due to the other Party. The Parties will provide Activity Reports in .csv file format (or such other format as both Parties may agree in writing to use). If an Activity Report needs to be adjusted, the sending Party must revise the report and resubmit it within five (5) calendar days of receiving notice that a change is required.
- 8.6 Payment Process. In the event that both Parties submit an Activity Report to the other in a given month, the Parties shall, within five (5) days of the receipt of these reports, determine the net amount due to the Party that is owed the larger payment for that month. The net owing Party shall make payment to the other Party of the net owed amount within [\*\*\*] calendar days of the date on which reconciliation is completed. In the event that only one Party submits an Activity Report to the other in a given month, that Party shall make payment to the other Party of the owed amount within [\*\*\*] calendar days of the date on which the Activity Report was sent.
- 8.7 Payment. Digital Turbine is responsible for keeping remittance and address information up-to-date. Payments to Verizon shall be made by wire as follows, unless Verizon designates an alternative preferred method of payment: [omitted]

After the wire is sent, Digital Turbine must notify Verizon by email that a payment from Digital Turbine been sent, with the amount specified, at:

[Corporatebilling\\_collections@hq.verizonwireless.com](mailto:Corporatebilling_collections@hq.verizonwireless.com)

## 9. Reporting Records and Audit.

- 9.1 Testing. From time to time, with reasonable frequency and in a manner that is not disruptive to the business of Digital Turbine, Verizon may perform testing to ensure that any qualifying actions that qualify for the revenue share are properly captured by the processes Digital Turbine uses to compile Activity Reports and make payment to Verizon. Digital Turbine will support Verizon's test scenarios to verify proper reporting of these transactions.

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9.2 **Audit.** Digital Turbine will allow a nationally recognized accounting firm (“Auditor”) upon thirty (30) days prior written notice to audit Digital Turbine’s books and records (in whatever form kept) solely to verify Digital Turbine’s compliance with all payment provisions of this Agreement. At Verizon’s request and not more than twice during any 12-month period during which Digital Turbine is required to maintain records, the Auditor shall have access to Digital Turbine’s books and records at reasonable times and in such a manner as to not unreasonably interfere with Digital Turbine’s business operations. Verizon agrees that it will require any such Auditor to be subject to a written confidentiality agreement requiring such Auditor and its agents to treat all books and records and any other materials necessary for the Auditor to conduct the audit as confidential information of Digital Turbine and not to disclose any such confidential information to any party and to use all such confidential information solely for the purposes of performing the audit. Digital Turbine shall maintain complete records of all charges payable to Verizon under the terms of this agreement for one year after termination of the Agreement. All such records shall be maintained in accordance with recognized accounting practices. The correctness of Digital Turbine’s payments shall be determined by such audits. This audit right will survive for the one (1) year period following expiration or termination of this Agreement. Prompt adjustments shall be made to compensate for any errors or omissions disclosed by such review or examination. If such review or examination reveals an underpayment by Digital Turbine with respect to the revenue share of more than ten percent (10%) and at least twenty-five thousand dollars (\$25,000) for any calendar month, then Digital Turbine will promptly reimburse Verizon for all reasonable, third-party audit fees.

**10. Limitation of Obligations.** Neither Party is under any obligation by this Agreement to develop or post any content for the use with the Digital Turbine App, or ensure that Subscribers use the Digital Turbine App.

**11. Network Usage Guidelines.** The Digital Turbine App shall be designed, given its intended functions, to make as efficient use of Verizon network resources as possible, Verizon will make a set of network usage guidelines available on the VDC website that establish baseline parameters for the operation of applications. The network usage guidelines will be subject change from time to time by Verizon.

**12. Confidentiality and Publicity.**

12.1 **Confidentiality.** The Parties have entered into a Non-Disclosure Agreement (“NDA”) dated as of October 14, 2013, attached as Exhibit A [omitted] and incorporated herein by reference. The terms of this Agreement will be deemed Confidential Information under the terms of the NDA.

12.2 **Subscriber Information.** Verizon will not provide Digital Turbine with any individualized information about Subscribers under this Agreement. Digital Turbine may not collect any information about Subscribers from the Digital Turbine App for any purpose without Verizon’s prior written approval.

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12.3 Publicity. Verizon and Digital Turbine agree to announce the nature of the business relationship between the Parties at the time of the commercial launch, using mutually-agreed upon language and distribution. Digital Turbine may not issue any further marketing or other communications intended for public disclosure, including press releases, advertisements and web sites, which reference Verizon without Verizon's prior written consent. Similarly, Digital Turbine may not use the Verizon logo or Verizon's trademarks, trade names, service marks or other proprietary indicia without Verizon's prior written consent. Verizon may not issue any marketing or other communications intended for public disclosure, including press releases, advertisements and websites, which reference Digital Turbine without Digital Turbine's prior written consent. Similarly, Verizon may not use the Digital Turbine logo or Digital Turbine's trademarks, trade names, service marks or other proprietary indicia without Digital Turbine's prior written consent. Notwithstanding the foregoing, any Party may disclose information concerning this Agreement as required by the rules, orders, regulations, subpoenas or directives of a court, government or governmental agency, after giving prior notice to the other Party.

### 13. Insurance.

13.1 Digital Turbine shall maintain, during the Term of this Agreement, at its own expense, the following insurance:

13.1.1 Professional Liability (Errors and Omissions), with limits of not less than \$[\*\*\*] per occurrence; and

13.1.2 Commercial general liability insurance (including, but not limited to, premises operations, broad-form property damage, products/completed operations, contractual liability, independent contractors, personal injury) and, if the use of automobiles is required, comprehensive automobile liability insurance, each with limits of at least \$[\*\*\*] for combined single limit per occurrence.

13.2 The insuring carriers shall be rated AM Best A- or better. Such policies shall be primary and non-contributory by Verizon. Verizon shall be named as an additional insured on all such policies. Digital Turbine shall furnish to Verizon certificates shall provide (10) days of the execution of this Agreement. The certificate shall provide that ten (10) days prior written notice of cancellation or material change of the insurance to which the certificates relate shall be given to Verizon. The fulfillment of the obligations hereunder in no way modifies any indemnification obligations under this Agreement.

13.3 Digital Turbine shall also require Digital Turbine's subcontractors, if any, who may upon Verizon's premises to maintain insurance policies with the same coverage and limits as those listed in Section 13.1 above, and to agree to furnish Verizon, if requested, certificates or adequate proof of such insurance. Certificates furnished by Digital Turbine's subcontractors shall contain a clause stating that Verizon is to be notified in writing at least ten (10) days prior to cancellation of, or any material change in, the policy.

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**14. Representations and Warranties.**

- 14.1 General Representations and Warranties. Digital Turbine represents and warrants that: (i) Digital Turbine has the full right, power, and authority to enter into this Agreement; (ii) Digital Turbine's acceptance of this Agreement, as well as Digital Turbine's performance of the obligations set forth in this Agreement, do not and will not violate any other agreement to which Digital Turbine is a party; and (iii) any and all activities that Digital Turbine undertakes in connection with this Agreement will be performed in compliance with all applicable laws, rules, and regulations. Verizon represents and warrants that: (i) Verizon has the full right, power, and authority to enter into this Agreement; (ii) Verizon's acceptance of this Agreement, as well as Verizon's performance of the obligations set forth in this Agreement, do not and will not violate any other agreement to which Verizon is a party; and (iii) any and all activities that Verizon undertakes in connection with this Agreement will be performed in compliance with all applicable laws, rules, and regulations.
- 14.2 Application Representation and Warranty. Digital Turbine represents and warrants that, for as long as the Digital Turbine App continues to be available for Preload on Interactive Wireless Devices, the Digital Turbine App will perform as described by Digital Turbine at the time that the Digital Turbine App was submitted to Verizon, and that the Digital App will comply with other applicable documentation and standards, including any specifications and guidelines posted by Verizon to the VDC prior to the that the Digital Turbine App was submitted for testing to Verizon. If Verizon believed that this representation and warranty is breached, Verizon will so notify Digital Turbine in writing and, within 10 days, Digital Turbine will: (i) repair the Digital Turbine App to conform its performance with applicable documentation and standards; or (ii) replace such Digital Turbine App with a version that performs in accordance with applicable documentation and Standards.
- 14.3 Digital Turbine Representations and Warranties. Digital Turbine represents and warrants that the Digital Turbine App does not violate or infringe any copyright, patent, trademark or trade secret or right of privacy or publicity or any other personal or proprietary right of any third parties, will not contain any Unauthorized Code, and will not be used for any fraudulent, illegal or unauthorized use. Digital Turbine represents and warrants that it has the authority to license the Digital Turbine App, as well as any content, material or services that Digital Turbine makes available in or with the Digital Turbine App, for use by Verizon and Subscribers in accordance with this Agreement.
- 14.4 Verizon Representations and Warranties. Verizon represents and warrants that it has the authority to provide any Verizon Sold Inventory, any Verizon Non-CPI Inventory, as well as any content, material or services that Verizon makes available in or with the Digital Turbine App, for use by Verizon and Subscribers in accordance with this Agreement.
- 14.5 EXCEPT FOR THE EXPRESS REPRESENTATIONS AND WARRANTIES SET FORTH IN THIS AGREEMENT OR THE NDA, NEITHER DIGITAL TURBINE NOR VERIZON MAKE ANY OTHER REPRESENTATIONS OR WARRANTIES. EACH PARTY EXPRESSLY DISCLAIMS ALL OTHER REPRESENTATIONS AND WARRANTIES, WHETHER EXPRESS, IMPLIED, OR STATUTORY, INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

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**15. Indemnification.**

- 15.1 Indemnification by Digital Turbine. Digital Turbine shall defend, indemnify and hold harmless Verizon, Verizon's Affiliates, the officers, and representatives of Verizon and Verizon's Affiliates, and all Subscribers (each a "Verizon Indemnified Party") against any and all claims, demand, causes of action, damages, costs, expenses, penalties, losses and liabilities, whether under a theory of negligence, strict liability, contract, or otherwise incurred or to be incurred by a Verizon Indemnified Party (each a "Claim"), including, but not limited to, reasonable attorneys' fees, arising out of, resulting from or related to: (i) the Digital Turbine App, including any third party claim that the Digital Turbine App contains Unauthorized Code or any other code that is alleged to disrupt, disable, harm or otherwise impede the operation of any software, firmware, hardware, Interactive Wireless Device, computer system or network; (ii) a breach by Digital Turbine of any of the representations or warranties contained in this Agreement or the NDA; (iii) any actual or alleged infringement or misappropriation of any patent, trademark, copyright, trade secret or any actual or alleged violation of any other intellectual property or proprietary rights arising from or in connection with the Digital Turbine App; (iv) any copying, reproduction, display, performance, storage, exploitation, use, distribution, transmission, sublicensing transfer, or assignment of the Digital Turbine App or related documentation permitted under this Agreement that allegedly causes harm or infringement of any patent, copyright, trademark, trade secret, or other property rights of one or more third parties arising in any jurisdiction throughout the world; (v) a claim that the Digital Turbine App infringes any right of publicity or right of privacy or (vi) any failure by Digital Turbine to obtain rights or licenses to content, services, or material made material made available in or through the Digital Turbine App.
- 15.2 Without limitation of Section 15.1, if sale, use or distribution of the Digital Turbine App becomes subject to a Claim for infringement of any intellectual property right, Digital Turbine shall, at Verizon's option and Digital Turbine's expense:
- 15.2.1 Procure for Verizon the right to use the Digital Turbine App (including related products furnished hereunder);
- 15.2.2 Replace the Digital Turbine App with equivalent, non-infringing products and/or services; or
- 15.2.3 Modify the Digital Turbine App so it becomes non-infringing.

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- 15.3 Indemnification by Verizon. Verizon shall defend, indemnify and hold harmless Digital Turbine, Digital Turbine's Affiliates, the officers, directors, employees and representatives of Digital Turbine and Digital Turbine's Affiliates, (each a "DT Indemnified Party") against any and all claims, demands, causes of action, damages, costs, expenses, penalties, losses and liabilities, whether under a theory of negligence, strict liability, contract, or otherwise, incurred or to be incurred by a DT Indemnified Party (each a "Claim"), including, but not limited to, reasonable attorneys' fees, arising out of, resulting from or related to a breach by Verizon of the representations or warranties set forth in Section 14.4 of this Agreement.
- 15.4 An indemnified Party receiving a Claim will provide the Indemnifying Party with prompt, written notice of any written Claim covered by this indemnification and will cooperate appropriately with the indemnifying Party in connection with the indemnifying Party's evaluation of such Claim. The Indemnifying Party shall defend any indemnified Party, at the indemnified Party's request, against any Claim. Promptly after receipt of such request, the Indemnifying Party shall assume the defense of such Claim with counsel reasonably satisfactory to the indemnified Party. The Indemnifying Party shall not settle or compromise any such Claim or consent to the entry of any judgment without the prior written consent of each indemnified Party and without an unconditional release of all claims by each claimant or plaintiff in favor of each indemnified Party.

**16. Liability Limitations.**

- 16.1 EXCEPT FOR THE INDEMNIFICATION OBLIGATIONS ARISING UNDER SECTION 15, IN NO EVENT WILL EITHER PARTY BE LIABLE TO THE OTHER PARTY IN ANY MANNER, UNDER ANY THEORY OF LIABILITY, WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHER THEORY, FOR ANY CONSEQUENTIAL, SPECIAL, INCIDENTAL, INDIRECT, PUNITIVE, OR STATUTORY DAMAGES, INCLUDING WITHOUT LIMITATION, LOSS OF DATA, REVENUES, BUSINESS OR PROFITS. THE PARTIES ACKNOWLEDGE AND AGREE THAT THE LIMITATIONS CONTAINED IN THIS SECTION APPLY REGARDLESS OF WHETHER THEY ARE ADVISED OF OR WERE AWARE OF THE POSSIBILITY OF THE DAMAGES SET FORTH IN THE PRECEDING SENTENCE.
- 16.2 THE LIMITATIONS SET FORTH IN THIS SECTION WILL APPLY TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, RULE AND REGULATION, NOTWITHSTANDING THE FAILURE OF THE ESSENTIAL PURPOSE OF ANY LIMITED REMEDIES SET FORTH IN THIS AGREEMENT. THE PARTIES ACKNOWLEDGE AND AGREE THAT THEY HAVE FULLY CONSIDERED THE FOREGOING ALLOCATION OF RISK AND FIND IT REASONABLE, AND THAT THE LIMITATIONS SET FORTH IN THIS SECTION ARE AN ESSENTIAL BASIS OF THE BARGAIN BETWEEN THE PARTIES.

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**17. Term and Termination.**

- 17.1 Term. This Agreement shall, unless terminated as otherwise provided herein, continue in effect for a period of four (4) years from the Effective Date.
- 17.2 Termination by Verizon. Verizon may terminate this Agreement immediately, upon written notice to Digital Turbine, if any of the following events occurs: (i) Digital Turbine files a voluntary petition in bankruptcy; (ii) Digital Turbine is adjudged bankrupt; (iii) a court assumes jurisdiction of the assets of Digital Turbine under a federal reorganization act; (iv) a trustee or receiver is appointed by a court for all or a substantial portion of the assets of Digital Turbine; (v) Digital Turbine becomes insolvent or suspends its business; (vi) Digital Turbine makes an assignment of its assets for the benefit of its creditors except as required in the ordinary course of business; or (vii) Digital Turbine's business is materially changed by sale of its business, transfer of control of its outstanding stock, merger or otherwise.
- 17.3 Termination by Either Party for Cause. Each Party shall have the right to terminate this Agreement for cause in the event the other Party is in material breach of its obligations hereunder and fails to cure such material breach within thirty (30) days from receipt of written notice by the non-breaching Party.
- 17.4 Cessation of Distribution: Upon termination of this Agreement, Verizon shall cease Preloading the Digital Turbine App on Verizon Interactive Wireless Devices.
- 17.5 Survival. The respective obligations of the Parties under this Agreement that by their nature would continue beyond the termination, cancellation or expiration, shall survive any termination, cancellation or expiration, including, but not limited to Section 1, 9, 12, 14-16, 17.5, 18-20, 21.1-21.2, and 21.5-21.11. In addition, the terms of Sections 6.4, 7, and 8.5-8.7 shall remain in effect until the end-of-life for an Interactive Wireless Device that was loaded with the Digital Turbine App.

**18. Offshore Restrictions.**

- 18.1 Except with Verizon's advance written consent, in no event shall Confidential Information regarding or pertaining to Verizon's systems, infrastructure, employees, or customers be stored, transmitted, or accessed at, in, through, or from a site located outside the United States nor made available to any person who is located outside the United States unless such Confidential Information relates solely, directly and independently: (i) to Verizon employees or customers located outside of the United States, (ii) to voice or data communications of Verizon or its customers that originate and terminate outside the United States, (iii) to Verizon systems and/or infrastructure dedicated to the provision of Verizon's voice or data services outside the United States, or (iv) to necessary storage or access outside the United States in connection with security, back-up, disaster recovery, or related purposes that have been expressly required and authorized by Verizon through services specifications, security and/or technical requirements. This Section shall not apply to Verizon Wireless Customer Data, which shall be governed by the provisions of Section 18.2.

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- 18.2 Unless Digital Turbine secures Verizon Wireless' prior written consent, in no event: (i) shall Digital Turbine provide, direct, control, supervise, or manage any voice or data communication with regard to Verizon Wireless customers that occurs between United States locations (or the United States portion of any international communication that may originate or terminate Within the United States) from a location outside of the United States, nor (ii) shall Verizon Wireless Customer Data be stored, transmitted, or accessed from, at, in, or through a site located outside the United States. "Verizon Wireless Customer Data" shall include: (a) any subscriber information, including without limitation, name, address, telephone phone number or other personal information of the Verizon Wireless subscriber; (b) any call-associated data, including without limitation, the telephone number, internet address or other similar identifying designator associated with a communication; (c) any billing records; (d) the time, date, size, duration of a communication or physical location of equipment used in connection with a communication; or (e) the content of any Verizon Wireless customer communication.

**19. Work Rules and Access Requirements.**

- 19.1 Digital Turbine shall comply with Verizon security rules as well as all governmental security regulations. Digital Turbine shall perform in compliance with the security requirements set forth in Exhibit C ("Information Security Requirements") [omitted].
- 19.2 If Digital Turbine is given access, whether on-site or through remote facilities, to any Verizon computer or electronic data storage system, Digital Turbine shall limit such access and use solely to perform actions within the scope of this Agreement, shall not without prior written authorization of Verizon export or transmit any Verizon computer system, electronic file, software or other electronic services, or data contained therein, to entities or locations other than those specified in this Agreement, and shall not access or attempt to access any computer system, electronic file, software or other electronic services other than those specifically required to accomplish the work required under this Agreement and only as permitted in this Agreement. Digital Turbine shall limit such access to those of its employees who are qualified and required, subject to Verizon requiring written authorization, to have such access in connection with this Agreement, and shall strictly follow all Verizon's security rules for use of Verizon's electronic resources. All user identification numbers and passwords disclosed to Digital Turbine and any information obtained by Digital Turbine as a result of Digital Turbine's access to and use of Verizon's computer and electronic data storage systems shall be deemed to be, and shall be treated as, Verizon Confidential Information under applicable provisions of this Agreement. Verizon reserves the right to monitor such actions by Digital Turbine and Digital Turbine agrees to cooperate with Verizon in the investigation of any apparent unauthorized access by Digital Turbine to Verizon's computer or electronic data storage systems or unauthorized release of Confidential Information by Digital Turbine.

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- 19.3 If Digital Turbine is given such access to any Verizon computer or electronic storage system, or if Digital Turbine otherwise exchanges electronic messages or communications with Verizon (including but not limited to Verizon accessing any of Digital Turbine's data bases or systems on-site or remotely), or if Digital Turbine furnishes software or other electronic transmissions to Verizon; (i) Digital Turbine shall not transmit or introduce any Unauthorized Code to Verizon or into its network, computers, electronic storage systems or other systems, and (ii) any software provided to Verizon by Digital Turbine for use by Digital Turbine or Verizon shall: (a) contain no hidden files; (b) not replicate, transmit, or activate itself without control of a person operating computing equipment on which it resides; (c) not alter, damage, or erase any data or computer programs without control of a person operating the computing equipment on which it resides; and (d) contain no encrypted imbedded key unknown to Verizon, node lock, time-out or other function, whether implemented by electronic, mechanical or other means, which restricts or may restrict use or access to any programs or data developed under this Agreement, based on residency on a specific hardware configuration, frequency of duration of use, or other limiting criteria.
- 19.4 Verizon reserves the right to request at any time and for any reason that specific employees, subcontractors, and agents of Digital Turbine be removed from and not assigned by Digital Turbine to perform Services for Verizon, and Digital Turbine acknowledges, agrees and understands that Digital Turbine will immediately comply with such request by Verizon.
- 19.5 Digital Turbine agrees to comply with Verizon's Supplier Code of Conduct located at <http://www22.verizon.com/ethics>, which may be updated from time to time.

**20. Background Check**

- 20.1 For each of the Employees that Digital Turbine wishes to assign to perform tasks associated with this Agreement, Digital Turbine shall certify to Verizon that it has conducted (or caused to be conducted) a background check as described herein (collectively referred to as "Background Checking"). For purposes of this Section, "Employee" shall include Digital Turbine's employees and any of Digital Turbine's contract personnel.

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- 20.2 Where permitted by law, the criminal history check shall consist of a federal and state check for felony and misdemeanor criminal convictions (or the equivalent thereof under relevant law) in all locations where the assigned Employee has resided, has been employed, or has attended school in the immediately preceding seven (7) years, and a check of U.S. Government Specially Designated National (OFAC) and export denial lists. This criminal history check shall include, to the extent available and permitted by law, a check for outstanding warrants and a check for pending felony charges in all such locations. Statewide county searches shall be performed in all states where such search mechanism is available without requiring specialized data (such as fingerprints or DNA), and the National Criminal File database shall also be searched. Employment history shall be verified for at least the previous seven (7) years of employment and military service, or less if the employee was a full-time student during that period. The name to which Employee's Social Security Number is attributed shall be verified. The Employee's citizenship, most recent country of permanent residence, and legal right to work in the jurisdiction in which the Employee will be performing Services for Verizon shall be verified.
- 20.3 For any period of time encompassed in the foregoing background check requirement when the Employee was resident outside of the United States, such background checking shall be conducted by a reputable investigative agency that conducts background checking in the relevant country(ies) for transnational technology firms comparable to Verizon, utilizing database checking, field checking and interviews as needed. The criminal convictions check shall include the equivalent, under relevant non-US law, of those convictions described in Section 20.2.
- 20.4 Digital Turbine shall comply with all applicable laws in conducting the background check specified in this Section 20 including but not limited to securing from each Employee who performs tasks under this Agreement such Employee's written consent to perform the background checking specified in this Section 20 and to disclose the results thereof to Verizon upon Verizon's request. Without limitation of the foregoing, Digital Turbine will make all written disclosures to and obtain written consent from each Employee to obtain consumer reports as defined in and required by the Fair Credit Reporting Act. Digital Turbine shall provide such results and written consent to Verizon upon request from Verizon. Digital Turbine may be required to recertify on an annual basis that such background checks were performed. Digital Turbine shall indemnify and hold Verizon harmless from any loss or damage arising from Digital Turbine's violation of this Section?
- 20.5 Without prior review with and consent of Verizon, Digital Turbine shall not assign any Employee to tasks related to this Agreement if such employee has been convicted of a felony or misdemeanor (or the equivalent thereof under relevant law) within the last seven (7) years if such felony or misdemeanor has any bearing on the Employee's honesty and integrity, or for whom a warrant is outstanding, or for whom a felony or misdemeanor charge is currently pending, or is on a U.S. Government Specially Designated National or export denial list. The foregoing shall not apply to a minor traffic violation (a moving traffic violation other than reckless driving, hit and run, driving to endanger, vehicular homicide, driving while intoxicated or other criminal offense involving gross negligence, recklessness, intentional or willful misconduct while operating a motor vehicle), to a conviction that has been legally expunged, or to a conviction for a misdemeanor that occurred while the Employee was under the age of twenty-one (21) years.

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20.6 Digital Turbine shall certify to Verizon that Digital Turbine has caused the foregoing Background Checking to be performed for each Employee involved in the work to be done pursuant to this Agreement within thirty (30) days of the Effective Date; further, Digital Turbine shall annually certify no later than the anniversary of the Effective Date that it has met the foregoing Background Checking requirements for all Employees involved in work done pursuant to this Agreement.

**21. General.**

21.1 Governing Law/Jurisdiction. This Agreement will be construed and controlled by the laws of the State of New York, excluding New York's choice of law provisions, and both Parties consent to the exclusive jurisdiction and venue in the federal courts sitting in the Southern District of New York, unless no federal subject matter jurisdiction exists, in which case both Parties consent to exclusive jurisdiction and venue in the state courts located in the Borough of Manhattan, New York. Both Parties waive all defenses of lack of personal jurisdiction and forum non-conveniens. Process may be served on either Party in the manner authorized by applicable law or court rule.

21.2 Compliance with Law. Each Party and its Affiliates will comply with all applicable laws, rules, and regulations in fulfilling its obligations under this Agreement, including, without limitation, the U.S. Export Administration Regulations, as well as applicable securities laws, end-user, end use, and destination restrictions by U.S. and other governments. Each Party acknowledges that the proprietary data, know-how, software, or other materials or information obtained from the other Party under this Agreement are commodities and/or technical data that may be subject to the Export Administration Regulations ("EAR") of the United States Department of Commerce, and that any export or re-export thereof must be in compliance with the EAR. Each Party agrees that it will not export or re-export, directly or indirectly, any commodities and/or technical data provided under this Agreement in any form to destinations in Country Groups D:1 or E:2, as specified in Supplement No. 1 to Part 740 of the EAR, and as modified from time to time by the U.S. Department of Commerce, or to destinations that are otherwise controlled or embargoed under U.S. law.

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- 21.3 Portal. Digital Turbine's access to, and use of, the VDC will be governed by the Verizon Developer Community Terms and Conditions. The Verizon Developer Community Terms and Conditions are posted in the VDC. In addition to any other rights or remedies set forth in the Verizon Developer Community Terms and Conditions, Verizon may, at any time, suspend or terminate Digital Turbine's access to the VDC if Digital Turbine breaches any of the obligations, representations, or warranties set forth in this Agreement. Digital Turbine's access to and use of the VDC shall cease upon termination or expiration of this Agreement. In the event of a conflict between the Verizon Developer Community Terms and Conditions and this Agreement, this Agreement will control to the extent of such conflict.
- 21.4 Force Majeure. Neither Party shall be responsible for any delay or failure in performance of any part of this Agreement to the extent that such delay is caused by reason of acts of God, wars, revolution, civil commotion, acts, of public enemy, embargo, acts of government in its sovereign capacity, or any other circumstances beyond the reasonable control and not involving any fault or negligence of the Delayed Party ("Condition"). If any such Condition occurs, the Party delayed or unable to perform ("Delayed Party"), upon giving prompt noticed Party, shall be excused from such performance on a day-to-day basis during the continuance of such Condition (and the other Party shall likewise be excused from performance of its obligations on a day-to-day basis during the same period); provided, however, that the Party so affected shall use its best reasonable efforts to avoid or remove such Condition, and both parties shall proceed immediately with the performance of their obligations under this agreement whenever such causes are removed or cease. Labor difficulties, including without limitation, strikes, slowdowns, work stoppage, picketing or boycotts, shall not constitute a Condition that excuses Digital Turbine from performance of its obligations under this Agreement. In the event of such labor Difficulties, Digital Turbine shall use all lawful means to perform Services agreed to under this Agreement.
- 21.5 Severability. If any provision of this Agreement is found to be invalid, illegal, or unenforceable, the validity, legality and enforceability, legality, and enforceability of any of the remaining provisions will not in any way be affected or impaired, and a valid, legal, and enforceable provision of similar intent and economic impact will be substituted therefore.
- 21.6 Waiver. The failure by either Party to require the performance of the other Party under any provision of this Agreement will not affect the right of such Party to require performance under such provision at any time thereafter. No waiver by either Party of a breach of any provision of this Agreement be taken or held to be a waiver of the provision itself.
- 21.7 Construction. The headings and captions of this Agreement are inserted only for convenience and identification and are in no way intended to define, limit, or expand the scope and/or intent of this Agreement.
- 21.8 Relationship of Parties. Digital Turbine and Verizon are independent contractors under this Agreement, and nothing in this Agreement shall be deemed to establish any relationship of partnership, joint venture, employment, franchise, or agency between Digital Turbine and Verizon. Neither Digital Turbine nor Verizon will have the power to bind the other or incur obligations on the other's behalf without the other's prior written consent.

CONFIDENTIAL PORTIONS OF THIS EXHIBIT MARKED AS [\*\*\*] HAVE BEEN OMITTED PURSUANT TO A REQUEST FOR CONFIDENTIAL TREATMENT AND HAVE BEEN FILED SEPARATELY WITH THE SECURITIES AND EXCHANGE COMMISSION.

- 21.9 Assignment. Verizon may assign this Agreement in whole without Digital Turbine's consent to any of its Affiliates. Otherwise, a Party may not assign this Agreement in whole or in part without the prior written consent of the other Party, which shall not be unreasonably withheld or delayed. This Agreement will bind and inure to the benefit of the respective successors and permitted assigns of Verizon.
- 21.10 Notices. All notices required by this Agreement must be in writing and delivered, via United States mail, postage prepaid, courier, or facsimile. Unless otherwise indicated, notices to Verizon will be delivered to the following address: [Omitted]. Unless otherwise indicated, notices to Digital Turbine will be delivered to Bill Stone, CEO, Digital Turbine, Inc., 1300 Guadalupe Austin, TX 78701, bill@digitalturbine.com, With a courtesy copy to: Legal Department, Digital Turbine, Inc., 2811 Blvd. W., Los Angeles, CA 90068. Notice will be deemed effective upon receipt.
- 21.11 Counterparts. This Agreement may be executed (including by electronic transmission of scanned signature pages) in one or more counterparts with the same effect as if the Parties had signed the same document. Each counterpart so executed shall be deemed to be an original, and all such counterparts shall be construed together and, shall constitute one agreement.
- 21.12 Entire Agreement and Amendment. This Agreement completely and exclusively states the agreement between Digital Turbine and Verizon regarding its subject matter. This Agreement supersedes and replaces all prior or contemporaneous understandings, representations, agreements, or other communications between Digital Turbine and Verizon, whether oral or written, regarding its subject matter, and supercedes the Application License Agreement, as amended, that was entered into between the Parties on January 20, 2014, except that the revenue share terms set forth in that agreement shall continue to apply for the Interactive Wireless Devices that were the subject of that agreement (LG G3, LG G Pad, and HTC A3qHD). No modification of this Agreement will be valid except in writing signed by Digital Turbine and Verizon.

[signature page follows]

CONFIDENTIAL PORTIONS OF THIS EXHIBIT MARKED AS [\*\*\*] HAVE BEEN OMITTED PURSUANT TO A REQUEST FOR CONFIDENTIAL TREATMENT AND HAVE BEEN FILED SEPARATELY WITH THE SECURITIES AND EXCHANGE COMMISSION.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed by their duly authorized officers or representatives.

**Cellco Partnership d/b/a Verizon Wireless**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**Digital Turbine, Inc.**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_