

# SECURITIES AND EXCHANGE COMMISSION

## FORM 10QSB

Optional form for quarterly and transition reports of small business issuers under section 13 or 15(d)

Filing Date: **2004-11-19** | Period of Report: **2004-09-30**  
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### FILER

#### DWANGO NORTH AMERICA CORP

CIK: **1158134** | IRS No.: **841407365** | State of Incorp.: **NV** | Fiscal Year End: **1231**  
Type: **10QSB** | Act: **34** | File No.: **000-50533** | Film No.: **041157987**  
SIC: **4812** Radiotelephone communications

#### Mailing Address

5847 SAN FELIPE STREET  
SUITE 3220  
HOUSTON TX 77057-3000

#### Business Address

5847 SAN FELIPE STREET  
SUITE 3220  
HOUSTON TX 77057-3000  
(713) 914-9600

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

FORM 10-QSB

QUARTERLY REPORT UNDER SECTION 13 OR 15 (d) OF  
THE SECURITIES EXCHANGE ACT OF 1934

For the quarterly period ended September 30, 2004

Commission file number: 000-50533

DWANGO NORTH AMERICA CORP.  
(Exact name of small business issuer as specified in its charter)

NEVADA  
(State or other jurisdiction of incorporation or organization)

84-1407365  
(IRS Employer Identification No.)

200 WEST MERCER STREET SUITE 501 SEATTLE, WA 98119  
(Address of principal executive offices)

206-286-1440  
(Issuer's telephone number)

Check whether the issuer (1) filed all reports required to be filed by Section 13 or 15(d) of the Exchange Act during the past 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days. Yes  No

State the number of shares outstanding of each of the issuer's classes of common equity, as of the latest practicable date: 7,557,352 as of November 1, 2004.

Transitional Small Business Disclosure Format (Check one): Yes  No

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**PART I - FINANCIAL INFORMATION**

**ITEM 1. CONDENSED CONSOLIDATED FINANCIAL STATEMENTS**

**Dwango North America Corp. and Subsidiaries**

**Dwango North America Corp.**  
**Condensed Consolidated Balance Sheet**  
**(In Thousands)**

	<i>September 30,</i> <i>2004</i>
	<u><i>(unaudited)</i></u>
<b>ASSETS</b>	
<b>Current Assets:</b>	
<i>Cash</i>	<i>\$ 1,823</i>
<i>Prepaid Royalties</i>	<i>659</i>
<i>Prepaid expenses</i>	<i>188</i>
<i>Other current assets</i>	<i>27</i>
<i>Accounts Receivable</i>	<i>452</i>
<i>Total current assets</i>	<i>3,149</i>
<i>Fixed assets, (net)</i>	<i>283</i>
<i>Deferred financing costs</i>	<i>865</i>
<i>Intangibles, net</i>	<i>402</i>
<i>Prepaid License</i>	<i>339</i>
	<u><i>\$ 5,038</i></u>
<b>LIABILITIES AND STOCKHOLDERS' EQUITY</b>	
<b>Current Liabilities:</b>	
<i>Accounts payable and accrued expenses</i>	<i>\$ 680</i>
<i>Current portion of lease obligation</i>	<i>59</i>
<i>Total current liabilities</i>	<i>739</i>
<b>Long-Term Liabilities:</b>	
<i>Senior convertible notes payable, net of debt discount and deferred financing of \$4,776,000</i>	<i>1,479</i>
<i>Accrued interest - senior convertible notes</i>	<i>256</i>
<i>Long term portion of lease obligation</i>	<i>75</i>
<i>Total Liabilities</i>	<u><i>2,549</i></u>
<i>Redeemable Convertible Series A Preferred stock, \$.001 par value; issued and outstanding 1,250 shares; including \$33,000 of accrued dividends and net of debt discount and deferred financing of \$1,233,000</i>	<i>50</i>
<i>Redeemable Convertible Series B Preferred stock, \$.001 par value; issued and outstanding 3,000 shares; including \$34,000 of accrued dividends and net of debt discount and deferred financing of \$2,361,000 10,000,000 total shares of Preferred stock authorized</i>	<i>674</i>
<b>Stockholders' equity:</b>	

<i>Common stock, \$.001 par value; 50,000,000 shares authorized; issued and outstanding 7,412,000 shares</i>	<i>7</i>
<i>Additional paid-in capital</i>	<i>14,315</i>
<i>Deficit accumulated during development stage</i>	<i>(12,557)</i>
<b><i>Total stockholders' equity</i></b>	<b><i>1,765</i></b>
	<b><i>\$ 5,038</i></b>

See notes to the condensed consolidated financial statements

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**Dwango North America Corp.**  
**Condensed Consolidated Statement of Operations**  
(In Thousands, except for share data)  
(Unaudited)

	Three-Month Period Ended		Nine-Month Period Ended		Period from
	September 30,		September 30,		November 20,
	2004	2003	2004	2003	2000
					(Inception) to
					September
					30,
					2004
Revenue	\$545	\$4	\$781	\$10	\$804
Cost of Sales	381		468		468
Gross Profit	164	4	313	10	336
Expenses:					
Sales and Marketing	324	31	615	31	646
Research and Development	677	84	1,597	84	1,778
General and administrative	1,047	1,223	2,666	2,422	7,973
Operating loss	(1,884)	(1,334)	(4,565)	(2,527)	(10,061)
Interest expense, including amortization of debt issuance cost and net of interest income	679	187	1,647	247	2,278
<b>Net loss</b>	(2,563)	(1,521)	(6,212)	(2,774)	(12,339)
Accretion of redeemable preferred stock obligations	(212)	-	(218)	-	(218)
<b>Net Loss attributable to common stockholders</b>	<b><u>\$ (2,775)</u></b>	<b><u>\$ (1,521)</u></b>	<b><u>\$ (6,430)</u></b>	<b><u>\$ (2,774)</u></b>	<b><u>\$ (12,557)</u></b>

**Common share data:**

Basic and diluted loss per share	<u>\$ (0.39 )</u>	<u>\$ (0.30 )</u>	<u>\$ (0.94 )</u>	<u>\$ (0.55 )</u>
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Weighted average number of basic and diluted common shares outstanding	<u>7,116</u>	<u>5,074</u>	<u>6,869</u>	<u>5,052</u>
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See notes to the condensed consolidated financial statements

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**Dwango North America Corp. and Subsidiaries**  
**Statements of Stockholders Equity**  
(In Thousands, except for share data)

	Preferred Stock \$.001 Par Value		Common Stock \$.001 Par Value		Additional Paid-in Capital	Deficit Accumulated During Development Stage	Total
	Number of Shares	Amount	Number of Shares	Amount			
Shares issued in connection with the formation of the Company, November 20, 2000			3,408,000	\$4,000			\$4,000
Net loss for the year ended December 31, 2000						\$ (1,000 )	(1,000 )
Balance at December 31, 2000			3,408,000	4,000		(1,000 )	3,000
Capital contribution by majority stockholder in 2001					\$61,000		61,000
Sale of stock, December 27, 2001			125,000		100,000		100,000
Net loss for the year ended December 31, 2001						(206,000 )	(206,000 )
Balance at December 31, 2001			3,533,000	4,000	161,000	(207,000 )	(42,000 )
Common stock issued in payment for rent, June 1, 2002			45,000		54,000		54,000
Conversion of note payable, August 14, 2002			85,000		103,000		103,000
Warrant issued in connection with note payable					46,000		46,000
Sale of stock, August 14, 2002			335,000		370,000		370,000

Capital contribution by majority stockholder, August 14, 2002			57,000		57,000
Exercise of stock options, September 20, 2002	8,000		6,000		6,000
Common stock issued in October 2002, in connection with private financing, net	835,000	1,000	776,000		777,000
Net loss for the year ended December 31, 2002				(1,270,000 )	(1,270,000 )
Balance at December 31, 2002	4,841,000	5,000	1,573,000	(1,477,000 )	101,000
Warrants issued in connection with notes payable, net			2,059,000		2,059,000
Conversion of note payable from related party, July 7, 2003	83,000		100,000		100,000
Common stock issued in acquisition of SOMA Games	39,000		48,000		48,000
Options granted to consultant/director			198,000		198,000
Options granted to employee			25,000		25,000
Reverse merger stock issuance, September 29, 2003	660,000				
Purchase of 250,000 shares of stock December 15, 2003	250,000		276,000		276,000
Net loss for the nine-month period ended December 31, 2003			-	(4,650,000 )	(4,650,000 )
Balance at December 31, 2003	5,873,000	5,000	4,279,000	(6,127,000 )	(1,843,000 )
Conversion of cash advance from related party	369,000		442,000		442,000
Common stock issued in connection with purchase of software and covenants not to compete	681,000	1,000	529,000		530,000
Stock issued in connection with employment agreements	2,000		3,000		3,000
Warrants issued in connection with notes payable, and debt discount			2,269,000		2,269,000
Warrants issued in connection with brand licensing agreement			440,000		440,000
Common stock issued in connection with fees for investor relations services	50,000	-	68,000		68,000

Common stock issued in payment of interest on senior convertible notes	89,000	-	116,000	116,000
Warrants issued in connection with preferred stock and stock issuance costs			150,000	150,000
Warrants issued to investment bankers for fund raising services			71,000	71,000
Preferred stock issued in connection with private financing	250			-
Common stock issued in payment of interest on senior convertible notes	66,000	-	80,000	80,000
Warrants issued in connection with Series A preferred stock and stock issuance costs			533,000	533,000
Warrants issued to investment bankers for fund raising services in connection with Series A preferred stock			85,000	85,000
Preferred stock issued in connection with private financing	1,000			-
Warrants issued in connection with Series B preferred stock and stock issuance costs			2,384,000	2,384,000
Preferred stock issued in connection with private financing	3,000			-
Common stock issued for redemption of principal and interest on senior convertible notes	282,000	1,000	324,000	325,000
Warrants and convertible stock issued with ratchet affect of financing for Notes Payable			2,173,000	2,173,000
Warrants and convertible stock issued with ratchet affect of financing for Series A			369,000	369,000
Net Loss for the nine month period ended September 30, 2004				(6,430,000 ) (6,430,000 )
Balance at September 30, 2004 (unaudited)	4,250	\$-	7,412,000	\$7,000
			\$14,315,000	\$(12,557,000 ) \$1,765,000

See notes to the condensed consolidated financial statements

**Dwango North America Corp.**  
**Condensed Statement of Cash Flows**  
**(In Thousands)**

	Nine-Month Period Ended September 30,		Period from November 20,2000 (Inception) to September 30,
	2004	2003	2004
<b>Cash flows from operating activities:</b>			
Net loss	\$(6,430 )	\$(2,774 )	\$(12,557 )
Adjustments to reconcile net loss to net cash used in operating activities:			
Depreciation expense	68	48	158
Common stock issued for rent		17	54
Common stock issued as compensation	3	48	51
Option issued to consultant/director			198
Options granted to employee			25
Amortization of debt discount	1,206	207	1,597
Amortization of intangible assets	128		128
Amortization of prepaid licenses	102		102
Deferred financing cost	279	85	404
Changes in:			
Accounts Receivable	(443 )		(452 )
Prepaid expenses	(779 )	14	(779 )
Other assets	(7 )	(26 )	(27 )
Accounts payable and accrued expenses	(403 )	283	690
Accrued Interest	385		475
Net cash used in operating activities	<u>(5,891 )</u>	<u>(2,098 )</u>	<u>(9,933 )</u>
<b>Cash flows from investing activities:</b>			
Deferred acquisition cost	39	(34 )	0
Purchase of fixed assets	(28 )	(95 )	(293 )
Net cash provided by (used in) investing activities	<u>11</u>	<u>(129 )</u>	<u>(293 )</u>
<b>Cash flows from financing activities:</b>			
Cash Overdraft	(2 )		(0 )
Proceeds from line of credit	-	50	150
Repayment of line of credit	-	(50 )	(150 )
Repayment of capital lease	(14 )		(14 )
Proceeds from loan	-		54



Warrant issued in connection with note payable	-		46
Proceeds from related party loan	-		200
Repayment of related party loan	-		(50)
Proceeds from issuance of notes payable and warrants	3,625	2,057	5,683
Proceeds from issuance of Series A preferred stock and warrants	1,070		1,346
Proceeds from issuance of Series B preferred stock and warrants	2,957		2,957
Accrued dividend Series A preferred stock	33		33
Accrued dividend Series B preferred stock	34		34
Proceeds of related party advance			442
Proceeds from issuance of common stock, net of expenses			1,318
Net cash provided by financing activities	7,703	2,057	12,049
<b>Net increase (decrease) in cash</b>	1,823	(170)	1,823
Cash at beginning of period	-	293	-
<b>Cash at end of period</b>	<u>\$1,823</u>	<u>\$123</u>	<u>\$1,823</u>
<b>Supplementary disclosure of cash</b>			
<b>flow information:</b>			
Interest paid	\$2	\$2	7
<b>Noncash transactions:</b>			
Conversion of debt to common stock	442	100	645
Costs attributable to issuance of convertible notes and warrants			77
Warrants issued as financing cost	241	139	531
Common stock issued in connection with fees for investor relations services	68		68
Warrants issued in connection with Series A preferred stock and stock issuance costs	683		683
Warrants issued to investment bankers for fund raising services in connection with Series A preferred stock	156		156
Warrants issued in connection with brand licensing agreement	440		440
Common stock issued for purchase of software	440		440
Common stock issued for covenant not to compete	90		90
Common Stock issued in payment of interest on senior convertible notes	196		196
Debt discount recorded for warrants issued with convertible notes	2,028	1,920	3,948
Notes and accrued interest contributed as capital			57
Warrants issued in connection with Series B preferred stock and stock issuance costs	2,384		2,384
Common stock issued for redemption of principal on senior convertible notes	324		324
Warrants and convertible stock issued with ratchet affect of financing for Notes Payable	2,173		2,173
Warrants and convertible stock issued with ratchet affect of financing for Series A	369		369

See notes to the condensed consolidated financial statements

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## NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS

### Summary of Significant Accounting Policies

#### Note A - The Basis of Reporting

The accompanying unaudited condensed consolidated financial statements have been prepared in accordance with U.S. generally accepted accounting principles for interim financial information and with the instructions to Form 10-QSB. Accordingly, they do not include all of the information and footnotes required by U.S. generally accepted accounting principles for complete financial statements. In the opinion of management, such statements include all adjustments (consisting only of normal recurring items) which are considered necessary for a fair presentation of the financial position of Dwango North America Corp., formerly Woodland Hatchery, Inc. (the "Company"), as of September 30, 2004, the results of its operations for the three-months and nine-months ended September 30, 2004 and 2003, respectively and the period from November 20, 2000 (inception) to September 30, 2004 and cash flows for the nine-month period ended September 30, 2004 and 2003, respectively and the period from November 20, 2000 (inception) to September 30, 2004. The results of operations for the three-month and nine-month periods ended September 30, 2004 and 2003 are not necessarily indicative of the operating results for the full year.

The condensed consolidated financial statements have been prepared assuming the Company will continue as a going concern, contemplating continuity of operations, and realization of assets and satisfaction of liabilities in the ordinary course of business. The accompanying financial statements do not include any adjustments relating to the recoverability of assets and the classification of the carrying amount of recorded assets or the amount and classification of liabilities that might result from the Company's inability to continue as a going concern. These financial statements should be read in conjunction with the financial statements and related disclosures for the year ended December 31, 2003 included in the Company's annual report on Form 10-KSB, as amended, filed with the Securities and Exchange Commission.

Certain prior period balances have been reclassified for comparative purposes.

#### Note B - Loss per Share

The Company's basic and diluted net loss per share is computed by dividing net loss by the weighted average number of outstanding common shares. Potentially dilutive securities, which were excluded from the computation of diluted loss per share because to do so would have been anti-dilutive, are as follows:

	<b>September 30,</b>	
	<b>2004</b>	<b>2003</b>
	<b>(unaudited)</b>	<b>(unaudited)</b>
Options	<b>3,659,000</b>	<b>1,699,000</b>
Warrants	<b>11,085,000</b>	<b>2,628,000</b>
Convertible notes	<b>6,584,000</b>	<b>2,083,000</b>
Convertible Preferred stock	<b>4,474,000</b>	-
Shares issuable upon the exchange of outstanding Dwango North America, Inc. shares	-	<b>543,000</b>

**Note C - Stock Options**

The Company accounts for stock-based employee and directors compensation under Accounting Principles Board (“APB”) Opinion No. 25, “Accounting for Stock Issued to Employees,” and related interpretations. The Company has adopted the disclosure-only provisions of SFAS No. 123, “Accounting for Stock-Based Compensation,” and SFAS No. 148, “Accounting for Stock-Based Compensation - Transition and Disclosure”. The following table illustrates the effect on net loss and net loss per share if the fair value based method had been applied to all awards.

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Had compensation cost for the Company’s stock option grants been determined based on the fair value at the grant dates consistent with the methodology of SFAS No. 123, the Company’s net loss available to common stockholders and net loss per share for the periods indicated would have been increased to the pro forma amounts indicated as follows:

	<u>Three-Month Period Ended September 30,</u>		<u>Nine-Month Period Ended September 30,</u>		<u>Period from November 20, 2000 (Inception) to September 30, 2004</u>
	<u>2004</u>	<u>2003</u>	<u>2004</u>	<u>2003</u>	<u>2004</u>
Net Loss available to common shareholders	\$ (2,775,000 )	\$ (1,521,000 )	\$ (6,430,000 )	\$ (2,774,000 )	\$ (12,557,000 )
Stock-based employee compensation included in the net loss, net of related tax effect	-	-	-	-	25,000
Stock-based employee compensation determined under the fair value based method	<u>(170,000 )</u>	<u>(64,000 )</u>	<u>(801,000 )</u>	<u>(133,000 )</u>	<u>(1,549,000 )</u>
Pro forma net loss	<u>\$ (2,945,000 )</u>	<u>\$ (1,585,000 )</u>	<u>\$ (7,231,000 )</u>	<u>\$ (2,907,000 )</u>	<u>\$ (14,081,000 )</u>
Net loss per share (basic and diluted):					
As reported	<u>\$ (0.39 )</u>	<u>\$ (0.30 )</u>	<u>\$ (0.94 )</u>	<u>\$ (0.55 )</u>	
Pro forma	<u>\$ (0.41 )</u>	<u>\$ (0.31 )</u>	<u>\$ (1.05 )</u>	<u>\$ (0.58 )</u>	

**Note D - OTHER RELATED PARTY TRANSACTIONS**

From October through December 2003, Robert E. Huntley, and at that time chairman, president and chief executive officer, and Paul Eibeler, an outside director, advanced an aggregate of \$392,000 and \$50,000, respectively to the Company. In January, 2004, they elected to apply previously advanced funds of approximately \$442,000, toward the purchase of an aggregate of 368,594 shares of our common stock (\$1.20 per share) and warrants to purchase 368,594 shares of our common stock at an exercise price of \$1.20 per share, in full satisfaction of the amounts previously advanced. The warrants have a term of four years.

On August 26, 2004, as a result of the issuance of Series B (the preferred stock is convertible and the warrants are exercisable, at \$.95 per share) per the anti-dilution terms of the warrants, the exercise price was reduced to \$0.95 and the warrants to Messrs. Huntley and Eibeler became exercisable for 86,033 and 10,965 additional shares, respectively.

#### **Note E - Issuance of Senior Convertible Promissory Notes**

During the nine-month period ended September 30, 2004, the Company issued Senior Convertible Promissory Notes of \$1,700,000 and \$2,300,000, respectively.

The \$1,700,000 Note was issued to Alexandra Global Master Fund Ltd on January 8, 2004. In connection with the issuance of the note, the Company also issued warrants to the note holder to purchase 708,333 shares of common stock, exercisable at \$1.20 per share until January 8, 2008. The fair value of the warrants was approximately \$656,000 utilizing the Black Scholes option-pricing model with the following assumption: 88% volatility, three-year expected life, risk-free interest rate of 2.37% and a dividend yield ratio of 0%. In accordance with EITF00-27, "Application of Issue No. 98-5 to Certain Convertible Instruments," the Company allocated the net proceeds between the convertible note and the warrants based on the relative fair values. The proceeds allocated to the warrants of \$474,000 was recorded as debt discount. Additionally, the difference between the proceeds allocated to, and the relative fair value of the discount of \$474,000, is being amortized over the life of the convertible note. Upon the conversion of the note into common stock, the unamortized debt discount balance will be recognized as additional interest expense. The note bears interest at 9% and is convertible, at the option of the holder, at any time into shares of common stock at \$1.20 per share, subject to certain anti-dilution provisions. The full principal amount of the note and the related accrued interest are due on January 8, 2007. The note may be prepaid, and the warrants may be redeemed, for \$.01 per share of common stock underlying the warrants, on 30 days prior written notice to the holder thereof if the closing sales price (or closing bid price) of the Company's common stock on its principal trading market is at least twice the then current conversion or exercise price, as applicable, for a period of ten consecutive trading days ending within 20 days prior to the date of the notice of prepayment or redemption, as applicable and other conditions. In connection with the sale of this note, the Company incurred an aggregate of \$379,000 in costs consisting of: placement agent fees of approximately \$136,000 and warrants to the placement agent to purchase 212,500 shares of common stock at \$1.20 per share that expire on January 7, 2009, valued at \$197,000, legal expenses of approximately \$45,000; and other costs of approximately \$1,000. The warrants were valued by utilizing the Black Scholes option-pricing model with the following assumptions:

88% volatility, three-year expected life, risk-free interest rate of 2.37% and a dividend yield of 0%. Of the aggregate costs, \$328,000 has been allocated as deferred financing costs, to be amortized over 36 months or earlier if converted into common stock, and the remaining \$51,000 of costs has been allocated to additional paid-in capital. On August 26, 2004, as a result of the issuance of Series B convertible preferred stock (the preferred stock is convertible and the warrants are exercisable at \$.95 per share), per the terms of the note, the conversion and exercise prices have been adjusted to \$.95. In addition, the Company was required to issue additional warrants to the note holder to purchase 186,403 shares of common stock, exercisable at \$.95 per share until January 8, 2008. The fair value of the warrants was adjusted using the difference between the fair value of the warrants pre-adjustment and the fair value of the warrants post-adjustment amounting to an additional debt discount of \$144,546 to be amortized over the remaining life of the warrants. The fair value of the warrants pre-adjustment was approximately \$370,377 utilizing the Black Scholes option-pricing model with the following assumption: 99% volatility, two-year and four-month expected life, risk-free interest rate of 2.85% and a dividend yield ratio of 0%. The fair value of the warrants post-adjustment was approximately \$514,923 utilizing the Black Scholes option-pricing model with the following assumption: 99% volatility, two-year and four-month expected life, risk-free interest rate of 2.85% and a dividend yield ratio of 0%. The fair value of the conversion feature was adjusted using the difference between the fair value of the conversion feature pre-adjustment and the fair value of the conversion feature post-adjustment amounting to an additional debt discount in the amount of \$372,807 to be amortized over the remaining life of the note.

The \$2,300,000 Note was issued to Alexandra Global Master Fund Ltd on March 19, 2004. In connection with the issuance of the note, the Company also issued warrants to the note holder to purchase 958,333 shares of common stock, exercisable at \$1.20 per share until March 19, 2008. The fair value of the warrants was \$706,000, utilizing the Black Scholes option-pricing model with the following assumption: 91% volatility, three-year expected life, risk-free interest rate of 1.97% and a dividend yield ratio of 0%. In accordance with EITF00-27, "Application of Issue No. 98-5 to Certain Convertible Instruments," the Company allocated the net proceeds between the convertible note and the warrants based on the relative fair value based method. The proceeds allocated to the warrants of \$ 540,000 were recorded as debt discount. Additionally, the difference between the proceeds allocated to, and the relative fair value of the discount of \$ 540,000, is being amortized over the life of the note. Upon the conversion of the note into common stock, the unamortized debt discount balance will be recognized as additional interest expense. The note bears interest at 9% and is convertible, at the option of the holder, at any time into shares of common stock at \$1.20 per share, subject to certain anti-dilution provisions. The full principal amount of the note and the related accrued interest are due on March 19, 2007. The note may be prepaid, and the warrants may be redeemed for \$.01 per share of common stock underlying the warrants, on 30 days prior written notice to the holder thereof if the closing sales price (or closing bid price) of the Company's common stock on its principal trading market is at least twice the then current conversion or exercise price, as applicable, for a period of ten consecutive trading days ending within 20 days prior to the date of the notice of prepayment or redemption, as applicable and other conditions. In connection with the sale of this note, the Company incurred an aggregate of \$339,000 in costs consisting of: placement agent fees of approximately \$184,000, and warrants issued to the placement agent to purchase 191,666 shares of common stock at \$1.20 per share that expire on March 19, 2009, valued at \$141,000, legal expenses of approximately \$13,000, and other costs of approximately \$1,000. Of the aggregate costs, \$292,000 has been allocated as deferred financing costs, to be amortized over 36 months or earlier if converted into common stock, and the remaining \$47,000 of costs has been allocated to additional paid-in capital. On August 26, 2004, as a result of the issuance of Series B convertible preferred stock (the preferred stock is convertible and the warrants are exercisable at \$.95 per share), per the terms of the note, the conversion and exercise prices have been adjusted to \$.95. In addition, the Company was required to issue additional warrants to the note holder to purchase 186,403 shares of common stock, exercisable at \$.95 per share until January 8, 2008. The fair value of the warrants was adjusted using the difference between the fair value of the warrants pre-adjustment and the fair value of the warrants post-adjustment amounting to an additional debt discount of \$198,810 to be amortized over the remaining life of the warrants. The fair value of the warrants pre-adjustment was approximately \$526,161 utilizing the Black Scholes option-pricing model with the following assumption: 99% volatility, two-year and four-month expected life, risk-free interest rate of 2.85% and a dividend yield ratio of 0%. The fair value of the warrants post-adjustment was approximately \$724,971 utilizing the Black Scholes option-pricing model with the following assumption: 99% volatility, two-year and four-month expected life, risk-free interest rate of 2.85% and a dividend yield ratio of 0%. The fair value of the conversion feature was adjusted using the difference between the fair value of the conversion feature pre-adjustment and the fair value of the conversion feature post-adjustment amounting to an additional debt discount in the amount of \$504,386 to be amortized over the remaining life of the note.

#### **Note F - Series A Redeemable Convertible Preferred Stock**

As of September 30, 2004, there were 1,250 shares of Series A convertible preferred stock ("Series A") issued and outstanding. The material terms of the Series A are as follows:

*Dividends.* Holders of Series A are entitled to cumulative dividends at the rate of \$120 per annum per share. Such dividends may be paid in cash or, at our company's option and subject to certain limitations, accrued until the shares of Series A to which such dividends relate are redeemed or converted into shares of common stock.

*Liquidation preference.* Upon any liquidation, dissolution or winding up of the Company, the holders of Series A shall be entitled to payment of \$1,000 per share plus an amount equal to any accrued and unpaid dividends, before any distribution is made to the holders of our common stock. If the assets to be distributed are insufficient to permit such payment, then the assets to be so distributed shall be distributed ratably among the holders of Series A.

*Optional conversion.* A holder of shares of Series A may convert any or all of such shares and all accrued and unpaid dividends thereon, at the holder's option at any time, into shares of our common stock at the lower of \$1.20 per share or any of the sales prices of the common stock in the subsequent offerings by the Company. To exercise such conversion rights, a holder must give the Company acceptable notice and the Company is then obligated to issue the number of shares of common stock into which the Series A is being converted within five trading days after the conversion notice is given.

*Mandatory Redemption.* The Company is required to redeem the outstanding Series A on June 14, 2007. The Company must give a redemption notice to each holder not less than 30 or more than 35 business days prior to June 14, 2007. On such redemption date, or such later date as a holder shall surrender the certificate for the Series A being redeemed, the Company must pay to each holder \$1,000 per share plus the amount of any accrued but unpaid dividends.

*Optional Redemption.* Upon the occurrence of the following events, the holders of Series A have the right, at their option, to require our company to redeem all or part of their shares:

the consummation of a financing or financings pursuant to which we receive aggregate gross proceeds equal to or greater than \$3,000,000;

our common stock ceases to be listed for trading on certain markets or exchanges;

certain defaults by our company;

any fundamental change, defined as: (i) a consolidation or merger with another entity in which the stockholders of our company do not collectively own 51% of the voting securities of the surviving corporation, or the sale of all or substantially all of our assets, (ii) a transaction in which all or substantially all of our common stock shall be exchanged for, converted into, or acquired for consideration which is not common stock which is listed on a national securities exchange or Nasdaq, or (iii) the acquisition by a person or entity of ownership of securities representing 50% or more of the combined voting power of the outstanding voting securities of our company;

certain material misrepresentations by our company;

certain bankruptcy events;

the entry of one or more final judgments against our company in an aggregate amount in excess of \$500,000; and

the adoption of certain amendments to our company's Articles of Incorporation that adversely affect the rights of any holder of shares of Series A.

*Redemption Limitation.* If we are restricted from redeeming the Series A by reason of a restriction contained in the Nevada General Corporation Law, the redemption date for such shares shall be extended to the date that is 30 days after the date on which we are no longer so restricted from redeeming the shares.

*Anti-Dilution protection.* The Series A is protected against dilution upon the occurrence of certain events, including but not limited to, sales of shares of common stock for less than fair market value or the then conversion price per share.

*Voting Rights.* Except as otherwise provided by law, the holders of Series A are not entitled to vote on any matter.

The \$1,250,000 Series A was issued in three separate issuances and in connection with the issuance of the Series A, the Company also issued warrants to the Series A holder to purchase a total of 1,041,667 shares of common stock, exercisable at \$1.20 per share until June 14, 2007. The fair value of the warrants was approximately \$525,000 utilizing the Black Scholes option-pricing model with the following



assumptions: 93% and 94% volatility, three-year expected life, risk-free interest rate of 2.96% - 3.45% and a dividend yield ratio of 0%. In accordance with EITF00-27, "Application of Issue No. 98-5 to Certain Convertible Instruments," the Company allocated the net proceeds between the Series A and the warrants based on the relative fair values. The proceeds allocated to the warrants of \$369,000 was recorded as debt discount. Additionally, the difference between the proceeds allocated to, and the relative fair value of the discount of \$369,000, is being amortized over the life of the Series A.

On August 26, 2004, as a result of the issuance of Series B convertible preferred stock (the preferred stock is convertible and the warrants are exercisable at \$.95 per share), per the terms of the note, the conversion and exercise prices have been adjusted to \$.95. The fair value of the conversion feature was adjusted using the difference between the fair value of the conversion feature pre-adjustment and the fair value of the conversion feature post-adjustment amounting to an additional debt discount in the amount of \$381,240 to be amortized through June 2007.

#### **Note G - Series B Redeemable Convertible Preferred Stock**

As of September 30, 2004, there were 3,000 shares of Series B convertible preferred stock ("Series B") issued and outstanding. The material terms of the Series B are as follows:

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*Dividends.* Holders of series B convertible preferred stock are entitled to cumulative dividends at the rate of \$120 per annum per share. Such dividends may be paid in cash or, at our company's option and subject to certain limitations, accrued without interest until the shares of series B convertible preferred stock to which such dividends relate are redeemed or converted into shares of common stock.

*Liquidation preference.* Upon any liquidation, dissolution or winding up of our company, the holders of series B convertible preferred stock shall be entitled to payment of \$1,000 per share plus an amount equal to any accrued and unpaid dividends, before any distribution is made to the holders of our common stock. If the assets to be distributed are insufficient to permit such payment, then the entire assets available for distribution shall be distributed ratably among the holders of series B convertible preferred stock and series A convertible preferred stock.

*Optional conversion.* A holder of shares of series B convertible preferred stock may convert any or all of such shares and all accrued and unpaid dividends thereon, at the holder's option at any time, into shares of our common stock at \$.95 per share. To exercise such conversion rights, a holder must give us acceptable notice and we are then obligated to issue the number of shares of common stock into which the series B convertible preferred stock is being converted within five trading days after the conversion notice is given.

*Mandatory Redemption.* We are required to redeem the outstanding series B convertible preferred stock on August 26, 2007. We must give a redemption notice to each holder not less than 30 or more than 35 business days prior to August 26, 2007. On such redemption date, or such later date as a holder shall surrender the certificate for the series B convertible preferred stock being redeemed, we must pay to each holder \$1,000 per share plus the amount of any accrued but unpaid dividends.

*Optional Redemption.* Upon the occurrence of the following events, the holders of series B convertible preferred stock have the right, at their option, to require our company to redeem all or part of their shares of series B convertible preferred stock.

- our common stock ceases to be listed for trading on certain markets or exchanges;
- certain defined defaults by our company;
- any fundamental change, defined as: (i) a consolidation or merger with another entity in which the stockholders of our company do not collectively own 51% of the voting securities of the surviving corporation, or the sale of all or substantially all of our assets, (ii) a transaction in which all or substantially all of our common stock shall be exchanged for, converted into, or acquired for consideration which is not common stock which is listed on a national securities

exchange or Nasdaq, or (iii) the acquisition by a person or entity of ownership of securities representing 50% or more of the combined voting power of the outstanding voting securities of our company;

- certain material misrepresentations by our company;
- certain bankruptcy events;
- the entry of one or more final judgments against our company in an aggregate amount in excess of \$500,000; and
- the adoption of certain amendments to our company's Articles of Incorporation that adversely affect the rights of any holder of shares of series B convertible preferred stock.

*Redemption Limitation.* If we are restricted from redeeming the series B convertible preferred stock by reason of a restriction contained in the Nevada General Corporation Law, the redemption date for such shares shall be extended to the date that is 30 days after the date on which we are no longer so restricted from redeeming the shares.

*Anti-Dilution protection.* The series B convertible preferred stock is protected against dilution upon the occurrence of certain events, including but not limited to, sales of shares of common stock for less than fair market value or the then conversion price per share.

*Voting Rights.* Except as otherwise provided by law, the holders of series B convertible preferred stock are not entitled to vote on any matter.

In connection with the issuance of the \$3,000,000 Series B, the Company also issued warrants to the Series B holders to purchase a total of 1,041,667 shares of common stock, exercisable at \$0.95 per share until August 26, 2007. The fair value of the warrants was approximately \$2,001,938 utilizing the Black Scholes option-pricing model with the following assumptions: 99% volatility, three-year expected life, risk-free interest rate of 2.85% and a dividend yield ratio of 0%. In accordance with EITF00-27, "Application of Issue No. 98-5 to Certain Convertible Instruments," the Company allocated the net proceeds between the Series B and the warrants based on the relative fair values. The proceeds allocated to the warrants of \$2,384,000 was recorded as debt discount. Additionally, the difference between the proceeds allocated to, and the relative fair value of the discount of \$2,384,000, is being amortized over the life of the Series B.

## **Note H - Subsequent Events**

On November 18, 2004, the Company executed an agreement with Playboy.com, Inc. to bring customers mobile content under the Playboy brand. The Company has agreed to deliver a revolving irrevocable stand-by letter of credit in the amount of \$125,000 in favor of Playboy.com, Inc. which it will have the right to draw upon if the Company fails to make any payment when due under the agreement. The Company has agreed to pay minimum royalties of \$250,000 during the first year of the contract, \$125,000 of which has been paid and \$125,000 of which is due by January 30, 2005, \$250,000 during the second year of the contract, and \$350,000 during the third year of the contract. Additionally, the Company has agreed to spend a minimum of \$100,000 per contract year to market and promote the content to be distributed by the Company pursuant to the agreement.

## **ITEM 2. MANAGEMENT'S DISCUSSION AND ANALYSIS OR PLAN OF OPERATIONS**

Statements contained in this Quarterly Report on Form 10-QSB include "forward-looking statements". Forward-looking statements involve known and unknown risks, uncertainties and other factors which could cause the actual results, performance and achievements, whether expressed or implied by such forward-looking statements, not to occur or be realized. Such forward-looking statements generally are based upon our best estimates of future results, performance or achievement, based upon current conditions and the most recent results of operations.



Forward-looking statements may be identified by the use of forward-looking terminology such as “may,” “expect,” “believe,” “estimate,” “anticipate,” “continue,” or similar terms, variations of such terms or the negative of such terms. Potential risks and uncertainties include, among other things, such factors as:

The market acceptance and amount of sales of our products,

The Company’s expansion strategy,

The competitive environment within the wireless industry,

The Company’s ability to raise additional capital,

The Company’s ability to attract and retain qualified personnel, and

The other factors and information disclosed in our Annual Report on Form 10-KSB for the year ended December 31, 2003 filed with the Securities and Exchange Commission on April 15, 2004.

Investors should carefully consider such risks, uncertainties and other information, disclosures and discussions which contain cautionary statements identifying important factors that could cause actual results to differ materially from those provided in the forward-looking statements. We undertake no obligation to update or revise any forward-looking statements, whether as a result of new information, future events, or otherwise.

## Overview

We are a development stage company founded to provide content, network technology and application publishing through North American wireless carriers. Since inception, we have not had any significant revenues.

We earn revenue by distributing our content through major wireless carriers in North America. Our revenue model is driven by fees paid by consumers for wireless entertainment products and services. These fees may be collected by carriers, collected directly by our company, or some combination thereof. Currently, our revenue model is through collection by carriers. The revenue model does not rely on advertising or any other revenue source not directly related to the downloading of wireless entertainment content by consumers. A percentage of revenue is shared with the wireless carrier and the percentages vary for each carrier, depending upon the specific carrier agreement.

Currently, our content is sold for a download fee. The download fee model is based on a single fee per downloaded application or bundle of applications. Download fees are assessed on a per download basis for each game or bundle of games downloaded to a consumer’s wireless handset. Ringtones, images and other features operate on the same basis. Some of the download features will have expirations based on time.

Effective August 14, 2002, we entered into exclusive license agreements with Dwango Co., Ltd., which we refer to as Dwango Japan, which allow us to use Dwango Japan’s current and future wireless intellectual property and trademarks, subject to certain conditions and limitations. Currently, the wireless intellectual property licensed from Dwango Japan consists primarily of wireless games.

This year we expanded our business, in part by the acquisition of Over-the-Air Wireless, Inc., whereby we obtained: (i) software for the downloading of our games and ringtones and the billing of these downloads, (ii) the services of and employment agreements with three individuals, two of whom who currently hold the positions of chief executive officer and president, respectively, in our company, and (iii) two-year non-compete agreements. These individuals were formerly employed by Over-the-Air Wireless, Inc. and are proficient with the software acquired and have experience and contacts in the wireless industry. The consideration for the transaction was the issuance of 681,000 shares of our common stock. In addition, pursuant to the employment agreements with the three individuals referred to above, we issued options to purchase an aggregate of 964,913 shares of our common stock. One of such individuals is no longer employed by us.

We have also recently released our ringtone services. During the next twelve months, subject to the receipt of sufficient financing, we intend to continue expanding our business. To date, we have released three games that we have developed internally and have released eight games based upon technology we license from Dwango Japan. In addition, we have released four games that have been developed by third parties hired to develop games for us. We have three games currently under internal development. We plan to continue to develop and promote our own applications as well as applications based on the licensed technology and content from Dwango Japan and other third parties. In addition, as part of our expansion strategy, we intend to acquire businesses engaged in developing and marketing wireless technology and applications, including games, images and ringtones.

As of September 30, 2004 we had 49 full-time employees. In connection with the expansion of our business, and subject to the receipt of substantial additional financing, we anticipate that we will hire an additional 70 to 80 employees over the next twelve months.

We currently have agreements with AT&T Wireless, Verizon, T-Mobile USA, Alltel Communications, Boost Mobile, Cingular Wireless and Nextel Operations which provide the terms and conditions under which our applications may be made available to the subscribers of such carriers and which are material to the operation of our business. Currently, we have three stand alone games plus our multi-game arcade on AT&T Wireless; seven games are released on Nextel Operations, six games have been released on Boost Mobile and two games on Verizon. We have also released certain of our games on certain wireless handsets pursuant to agreements we have with NEC America and Motorola to “pre-load” a game onto a phone. A game is considered to be “pre-loaded” onto a phone if the game is already installed on the phone at the time of the customer's purchase. We anticipate introducing additional applications in the near future.

Our company has achieved \$804,000 in revenues from inception through September 30, 2004 and is not profitable. We anticipate that we will continue to incur net losses for the foreseeable future. The extent of these losses will depend, in part, on the amount of growth in our revenues from consumer acceptance and use of our games and ringtones and the number of wireless mobile carriers who agree to carry our games and ringtones. As of September 30, 2004, we had an accumulated deficit of \$12,551,000. Our operating expenses are currently approximately \$650,000 per month, approximately 50% of which is for payroll, 15% to 20% of which is for marketing, and 30% to 35% of which is for our general operations. Provided we raise the amount of financing we seek in a timely manner, we expect that our operating expenses will increase by approximately 10%-15% per month over the next several months, especially in the areas of product development and marketing. We believe we can satisfy our cash requirements only through December 31, 2004. We will seek to raise up to \$15,000,000 in additional financing during the next 12 months. The raising of \$15,000,000 is expected to fund a significant expansion of our operations, including expanding our existing operational and development capacity. Additionally, we anticipate expanding our business development and product development teams. Additional investments in operational infrastructure would be made by us. These expanded teams would focus on increased product development activities for existing brands licensed by us, as well as on acquisition of new licenses for consumer brands appropriate for the mobile marketplace. Acquisitions are also planned. We plan to identify companies that offer complementary mobile entertainment infrastructure services, such as ring-back services or multi-player gaming networks. Additionally, acquisition of other game studios and/or media development studios are anticipated to boost production capabilities. To the extent that less than \$15,000,000 is raised, we will reduce the scope of our intended activities. We will need to generate a significant amount of increased revenues to achieve profitability. We cannot give any assurance that we can achieve profitability or that our operating losses will not increase in the future.

### **Relationships with Wireless Carriers and Handset Manufacturers**

To date we have released various products through agreements with multiple wireless carriers: Verizon, AT&T Wireless, Nextel Operations, Boost Mobile, T-Mobile, and Cingular Wireless; and two handset manufacturers: NEC and Motorola. The handset manufacturers have pre-installed certain applications from our content library onto certain phone models, which we refer to as “pre-loading” of a game onto a phone. When a customer purchases a phone with our content on it, the customer gets a certain amount of free game play, often with more available for purchase. We are continually pursuing distribution agreements with the other major carriers and handset manufacturers. We also

have an agreement with Alltel Communications, Inc. which sets forth the terms and conditions under which our games may be made available to end-users of this wireless carrier. Accordingly, our company now has seven wireless carrier relationships.

### **Relationships with Content Providers and New Application Development**

We have entered into relationships with several companies, as described below, with respect to their development of game content on our behalf.

1464251 Ontario Inc. has produced three titles for us to date, BurnRate, Troika and Blink.

Through our reciprocal publishing agreement with Enorbus Technologies, we have plans to publish four of their titles; the game, Strike Force is now being published by Enorbus Technologies in Asian markets.

Three new original games are being produced through our Game Studio in San Francisco.

We have an agreement in place with ESPN and have developed and continue to promote the ESPN branded Bassmaster game which was launched in June 2004.

In addition to games, we have developed our ringtone and media service, which allows consumers to download ringtones and images to their phones. We have our own catalog of over 2,000 polyphonic ringtones, with ongoing production and licensing of new ringtones every month. We have an agreement with Rolling Stone and Real Networks to develop mobile content (games, ringtones and other media offerings and applications) using the Rolling Stone brand. Our first product launched under the agreement was a ringtone browser, which was launched in June 2004. Our primary target market for ringtones and media is broader than for games in North America. Ringtones and images for phones are attractive to older consumers as well as the targeted youth market. The resulting demographic includes youth, but expands beyond to encapsulate those between the ages of 14 to 35, although the heaviest users are still expected to be in the 14 to 24 age segment.

Our delivery platform incorporates a mobile ringtone catalog application that allows users to browse, search, sample and download the newest as well as the most popular ringtones, sorted by title, artist and category. Ringtone downloads are initiated through either a WAP browser or a downloadable BREW ringtone client, allowing for customers to purchase new ringtones directly from their phones.

In September 2004, we executed an agreement with Beliefnet, Inc., a multi-faith media company and online community, to bring customers mobile media content under the Beliefnet Mobile brand. Under the Beliefnet Mobile brand, we will provide premium polyphonic and audio ringtones, alert tones, images, spiritual-themed mobile games, and subscription-based content from a variety of faiths. Beliefnet Mobile will feature a ringtone service enabling consumers to download ringtones of the latest religious and spiritual-themed musical hits including rock, hip-hop, classical and gospel to their mobile phones. The agreement duration is one year from the time of the launch of the service. We have agreed to pay minimum royalty payments of \$162,500 over the life of the contract. Additionally, we have agreed to advertise through Beliefnet a minimum of \$150,000 over the term of the contract. We anticipate launching the first Beliefnet Mobile application late in the fourth quarter.

### **RESULTS OF OPERATIONS**

**Revenue.** During the three-month and nine-month periods ended September 30, 2004, revenues were \$545,000 and \$781,000, respectively. During the comparable periods in 2003 revenues were \$4,000 and \$10,000, respectively.

Revenues increased substantially in the quarter due to the first full quarter effect of the Rolling Stone Ringtone service which is sold through AT&T Wireless, Cingular and Nextel. We also have the full quarter effect of sales of our ESPN Bassmaster game on Nextel and we launched in the quarter the ESPN Bassmaster game on Verizon. We still sell wireless game applications on Nextel, Verizon and AT&T Wireless.

**Cost of Sales.** During the three-month and nine-month periods ended September 30, 2004, we incurred cost of sales expenses totaling \$381,000 and \$468,000, respectively. These expenses consist primarily of royalty obligations with respect to our ringtone service. During the comparable periods in 2003 we incurred cost of sales expenses of \$0 and \$0, respectively.

**Research and Development Expense.** During three-month and nine-month periods ended September 30, 2004, we incurred research and development expenses totaling \$677,000 and \$1,597,000, respectively. These expenses consist principally of salaries and related expenses. During the comparable periods in 2003 we incurred research and expenses of \$84,000 and \$84,000, respectively.

The increase in research and development expenses is driven primarily by the hiring of additional personnel to assist in the development of games and ringtones. R&D expenses are expected to continue to increase as we enhance the features and functionality of our software platform, build and port to wireless handsets additional in house games, images libraries and ringtones, and manage outside application production from other software development companies.

**Sales and Marketing Expense.** During the three-month and nine-month periods ended September 30, 2004, we incurred sales and marketing expenses totaling \$324,000 and \$615,000, respectively. During the comparable periods in 2003 we incurred only minimal sales and marketing expense.

**General and Administrative Expense.** During the three-month and nine-month periods ended September 30, 2004, we incurred general and administrative expenses totaling \$1,047,000 and \$2,666,000, respectively. During the comparable period in 2003, we incurred general and administrative expenses totaling \$1,223,000 and \$2,422,000, respectively.

This decrease in general and administrative expenses is due to consolidation of operations from Houston to Seattle and the breakout of sales and marketing expense previously included in general and administrative. We have, however, hired new employees in administration and incurred increased legal and accounting fees as a result of being a public company. We anticipate that such expenses will continue to increase as we expand our business.

**Interest Expense.** During the three-month and nine-month periods ended September 30, 2004, we incurred interest expense totaling \$679,000 and \$1,647,000, respectively. During the comparable period in 2003, we incurred interest expense of \$187,000 and \$247,000 respectively.

This increase in interest expense is directly attributable to the interest on Senior Subordinated Convertible Notes issued in 2003, Senior Subordinated Convertible Notes issued in first quarter 2004 and the amortization of deferred financing cost and the beneficial conversion related to the debt.

## **LIQUIDITY AND CAPITAL RESOURCES**

As of September 30, 2004 we had a cash balance of \$1,823,000 and working capital of \$2,410,000. As a result of financings subsequent to September 30, 2004, we believe that we have sufficient funds to operate through the December 2004. We will need to raise additional capital before our funds are exhausted. There can be no assurance that any such funds will be available to us. If funds are not available on a timely basis, we may be forced to reduce or cease operations.

We have historically funded our operations primarily through the sale of our securities, including sales of common stock, convertible notes, preferred stock and warrants. In January 2004, we completed a \$1,700,000 financing of a Senior Convertible Note and warrants. In March 2004, we completed a \$2,300,000 financing of a Senior Convertible Note and warrants. In June 2004, we completed a \$250,000 financing of Preferred Stock and warrants.

During the quarter, we raised an additional \$1 million through the issuance of 1,000 shares of Series A and \$3 million through the issuance of 3,000 shares of Series B. We anticipate that we will continue to issue equity securities as the primary source of liquidity until we generate positive cash flow from operations. Funding is currently being discussed with various investment groups. There can be no assurance that the necessary capital will be raised or that, if funds are raised, that it will be on favorable terms. Any future sales of securities to finance we will dilute existing shareholders' ownership. Continuation as a going concern depends on the ability to obtain additional financing and ultimately to generate positive cash flow and attain profitability.

During the nine-month period ended September 30, 2004, net cash used in operating activities totaled \$5,891,000. During the comparable period in 2003, net cash used in operating activities totaled \$2,098,000. The increase in operating activities is primarily related to prepaid royalties paid as a result of the License Agreement with Rolling Stone, LLC and RealNetworks and increased operating expenses.

During the nine-month period ended September 30, 2004, cash inflows from investing activities totaled \$11,000. During the comparable period in 2003, cash outflows from investing activities totaled \$129,000. The cash used for investing is primarily workstations for employees and servers for development and delivering of our applications.

During the nine-month period ended September 30, 2004, cash inflows from financing activities totaled \$7,703,000. During the comparable period in 2003, cash inflows from financing activities totaled \$2,057,000. The increase in cash from financing activities is primarily from financings with Alexandra Global Master Fund Ltd. (Convertible notes for \$4,000,000 and Series A for \$1,250,000), the Series B \$3,000,000 financing with five investment funds affiliated with Weiss Peck & Greer and the proceeds from advances from related parties which were converted to paid-in-capital.

The success and growth of our business is dependent in large part on our ability to partner and develop relationships within the wireless industry. In order for us to execute on our business plan, we anticipate that this will require approximately \$15,000,000 in additional funding within the next 12 months to continue the rollout of our operations in North America and to acquire related companies.

The following table summarizes, as of September 30, 2004, our obligations and commitments to make future payments under debt and operating leases and pursuant to our agreements with Rolling Stone and Beliefnet (for royalty and advertising):

	<b>Payments Due by Period</b>			
	<b>Total</b>	<b>Less Than 1 Year</b>	<b>1 - 3 Years</b>	<b>After 3 -Years</b>
Long-Term Debt	\$6,255,000	-	\$6,255,000	-
Capital Leases	148,469	59,821	88,648	
Operating Leases*	195,086	113,209	81,877	-
Series A	1,250,000	-	1,250,000	-
Series B	3,000,000	-	3,000,000	-
Royalty Expense	1,412,500	1,117,500	295,000	-
Advertising Expense	900,000	626,000	274,000	-

<b>Total</b>	<u>\$13,161,055</u>	<u>\$1,916,530</u>	<u>\$11,244,525</u>	<u>-</u>
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\*Houston office is currently subleased for the duration of the lease term relieving \$57,226 from Less Than 1 Year and \$57,226 from 1 - 3 Years.

Our outstanding long-term debt as of September 30, 2004 consists of:

1. \$2,255,000 Senior Subordinated Convertible Promissory Notes bearing interest at the rate of 8% per annum. The principal balance of these notes, together with all interest accrued thereon, is due and payable on September 15, 2006.
2. \$1,700,000 Senior Convertible Promissory Note bearing interest at the rate of 9% per annum. The principal balance of this note, together with all interest accrued thereon, is due and payable on January 8, 2007.
3. \$2,300,000 Senior Convertible Promissory Note bearing interest at the rate of 9% per annum. The principal balance of this note, together with all interest accrued thereon, is due and payable on March 19, 2007.

## CRITICAL ACCOUNTING POLICIES

### Software Development Costs

The Company accounts for software development costs in accordance with Statement of Financial Accounting Standards No. 86, Accounting for the Costs of Computer Software to Be Sold, Leased, or Otherwise Marketed. SFAS No. 86 specifies that costs incurred internally in creating a software product should be charged to expense when incurred as research and development costs until technological feasibility has been established for the product. Once technological feasibility is established, all development costs should be capitalized until the product is available for general release to customers. Judgment is required in determining when the technological feasibility of a product is established, in estimating the life of the product for which the capitalized costs will be amortized and in estimating if the carrying value of capitalized software costs is equal to or less than future operating profits from the associated products. To date, the Company has capitalized software purchased from Over-The-Air Wireless.

### Revenue Recognition

Revenue from wireless applications is recognized in the month in which delivery and acceptance by the end-user as a purchase occurs. Our company identifies such delivery and acceptance and therefore revenue is accrued upon the occurrence of a download of an application. Both persuasive evidence of an arrangement occurs and delivery and acceptance occur when the carrier is notified of the end-user transaction and they place a charge on the end-user's bill. The carrier reports to our company the product and dollar amount of revenue earned by our company which establishes that delivery and performance have occurred. The carriers report to our company provides evidence of collectibility and subsequent to the issuance of the carrier reports, the carrier remits the agreed upon price for each download.

### Principles of Consolidation

The accompanying consolidated financial statements include the accounts of Dwango North America Corp. and its wholly owned subsidiaries OTA Acquisition Corp. and Dwango North America, Inc. All significant inter-company transactions and balances have been eliminated in consolidation.

## ITEM 3. CONTROLS AND PROCEDURES

**Evaluation of Disclosure Controls and Procedures.** Disclosure controls and procedures are designed to ensure that information required to be disclosed in the reports filed or submitted under the Exchange Act is recorded, processed, summarized and reported within the



time periods specified in the SEC's rules and forms. Disclosure controls and procedures include, without limitation, controls and procedures designed to ensure that information required to be disclosed in the reports filed under the Exchange Act is accumulated and communicated to management, including the Chief Executive Officer and Chief Financial Officer, as appropriate, to allow timely decisions regarding required disclosure. The Company's management has carried out an evaluation, with the participation of the Company's Chief Executive Officer and Chief Financial Officer, of the effectiveness of the design and operation of the Company's disclosure controls and procedures as of September 30, 2004. Based upon and as of the date of that evaluation, the Chief Executive Officer and Chief Financial Officer concluded that the Company's disclosure controls and procedures are effective to ensure that information required to be disclosed in the reports the Company files under the Exchange Act are recorded, processed, summarized and reported as and when required.

**Changes in Internal Controls.** There were no changes in the Company's internal controls over financial reporting that occurred during the Company's most recent fiscal quarter that have materially affected, or are reasonably likely to materially affect, the Company's internal control over financial reporting.

## **PART II - OTHER INFORMATION**

### **ITEM 2. CHANGES IN SECURITIES AND SMALL BUSINESS ISSUER PURCHASE OF EQUITY SECURITIES**

In January 2004, we concluded a private placement pursuant to which we issued, in consideration of \$1,700,000, to one accredited investor a \$1,700,000 principal amount 9% senior convertible note due 2007, convertible into 1,416,667 shares of common stock, and warrants to purchase 708,333 shares of common stock. In connection with such issuance, we issued to the placement agents warrants to purchase 212,500 shares of common stock which are now exercisable at \$.95 per share. The issuance of these securities was exempt from registration pursuant to Rule 506 promulgated under Section 4(2) of the Securities Act. No general solicitation or advertising was made in connection with the offering, and the offering was made to one accredited investor with access to all material information regarding our company.

In January 2004, our former chairman and an outside director of our company converted advances they had made to our company from October through December 2003 into an aggregate of 368,594 shares of common stock and warrants to purchase an aggregate of 368,594 shares of common stock, which are now exercisable at \$.95 per share. The issuance of these securities was exempt from registration pursuant to Rule 506 promulgated under Section 4(2) of the Securities Act. No general solicitation or advertising was made in connection with the offering, and the offering was made to two accredited investors with access to all material information regarding our company.

In February 2004, we issued an aggregate of 681,000 shares of our common stock to the former shareholders of Over-the-Air Wireless, Inc. in connection with our transaction with their company. The issuance of these shares was exempt from registration pursuant to section 4(2) of the Securities Act and Rule 506 of Regulation D promulgated thereunder. No general solicitation or advertising was made in connection with the offering. The investors had access to all material information regarding our company.

In March 2004, we concluded a private placement pursuant to which we issued, in consideration of \$2,300,000, to one accredited investor a \$2,300,000 principal amount 9% senior convertible note due 2007, convertible into 1,916,667 shares of common stock, and four-year warrants to purchase 958,333 shares of common stock which are now exercisable at \$.95 per share. In connection with such issuance, we issued to the placement agents warrants to purchase 287,500 shares of common stock which are now exercisable at \$.95 per share. The issuance of these securities was exempt from registration pursuant to Rule 506 promulgated under Section 4(2) of the Securities Act. No general solicitation or advertising was made in connection with the offering, and the offering was made to one accredited investor with access to all material information regarding our company.

In March 2004, we issued 2,090 shares of common stock to one individual pursuant to an employment agreement between our company and such individual. The issuance of these shares was exempt from registration pursuant to Rule 506 promulgated under Section 4(2) of the Securities Act. No general solicitation or advertising was made in connection with the offering.

In May 2004, the Company issued 50,000 shares of common stock to an investor relations firm which, in addition to cash fees paid monthly, as advance compensation for investor relations services to be provided over twelve months. The issuance of these shares was exempt from registration pursuant to Rule 506 promulgated under Section 4(2) of the Securities Act. No general solicitation or advertising was made in connection with the offering.

In June 2004, the Company issued 88,861 shares of common stock to Alexandra Global Master Fund Ltd. as payment for accrued interest, through May 31, 2004, on its \$1.7 million and \$2.3 million 9% senior convertible notes due 2007. The issuance of these shares was exempt from registration pursuant to Rule 506 promulgated under Section 4(2) of the Securities Act. No general solicitation or advertising was made in connection with the offering.

In June 2004, we completed a private placement pursuant to which we issued to Alexandra Global Master Fund Ltd. 250 shares of our series A convertible preferred stock initially convertible into 208,333 shares of our common stock and four-year warrants to purchase 208,333 shares of common stock for an aggregate purchase price of \$250,000. The preferred stock is convertible and the warrants are now exercisable at \$.95 per share. The issuance of these shares was exempt from registration pursuant to Rule 506 promulgated under Section 4(2) of the Securities Act. No general solicitation or advertising was made in connection with the offering.

In July 2004, we completed a private placement with Alexandra Global Master Fund Ltd. to which we issued 500 shares of our series A convertible preferred stock and four year warrants to purchase 526,316 shares of common stock for an aggregate purchase price of \$500,000. The preferred stock is convertible and the warrants are now exercisable at \$.95 per share. The issuance of these shares was exempt from registration pursuant to Rule 506 promulgated under Section 4(2) of the Securities Act. No general solicitation or advertising was made in connection with the offering.

In August 2004, we completed a private placement with Alexandra Global Master Fund Ltd. to which we issued 500 shares of our series A convertible preferred stock and four year warrants to purchase 526,316 shares of common stock for an aggregate purchase price of \$500,000. The preferred stock is convertible and the warrants are now exercisable, at \$.95 per share. The issuance of these shares was exempt from registration pursuant to Rule 506 promulgated under Section 4(2) of the Securities Act. No general solicitation or advertising was made in connection with the offering.

In August 2004, we completed a private placement with five accredited investors pursuant to which we issued to such investors an aggregate of our 3,000 shares of our series B convertible preferred stock and four year warrants to purchase an aggregate of 3,157,894 shares of common stock for an aggregate purchase price of \$3,000,000. The preferred stock is convertible and the warrants are exercisable, at \$.95 per share. The issuance of these shares was exempt from registration pursuant to Rule 506 promulgated under Section 4(2) of the Securities Act. No general solicitation or advertising was made in connection with the offering.

In August 2004, as a result of the Series B financing, each of Alexandra Global Master Fund Ltd.'s financings in 2004 had their conversion and exercise prices reduced to \$.95, in addition, the number of shares, of common stock underlying the notes, warrants, and preferred stock, of the financings described in the preceding paragraphs of this discussion have been adjusted based upon anti-dilution provisions triggered by this financing.



## ITEM 6. EXHIBITS

(a) Exhibits

### Exhibit No. Description

10.36 *	Digital Item License and Distribution Agreement, dated October 15, 2004, by and between Nextel Operations, Inc. and its Affiliates and Dwango North America Corp.
31.1	Section 302 Certification of Chief Executive Officer
31.2	Section 302 Certification of Chief Financial Officer
32	Certification pursuant to 18 U.S.C. Section 1350 as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002

\*             
Requested  
confidential treatment

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## SIGNATURES

In accordance with the requirements of the Exchange Act, the registrant caused this report to be signed on its behalf by the undersigned, thereunto duly authorized.

DWANGO NORTH AMERICA  
CORP

Dated: November 19, 2004

By: /s/ Rick Hennessey  
Rick Hennessey  
Chief Executive Officer  
(principal executive officer)

Dated: November 19, 2004

By: /s/ J. Paul Quinn  
J. Paul Quinn  
Chief Financial Officer  
(principal financial officer)

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## EXHIBIT INDEX

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\* Requested confidential treatment

NOTE: Confidential Treatment has been requested for certain portions of this document. Material that has been omitted from this document as filed on EDGAR is marked as follows: [\*\*\*\*\*]

## Digital Item License and Distribution Agreement

### DIGITAL ITEM LICENSE AND DISTRIBUTION AGREEMENT

This Digital Item License and Distribution Agreement (with its Exhibits, the "Agreement") dated as of October 15, 2004 (the "Effective Date"), is made and entered into by and between Nextel Operations, Inc., a Delaware corporation, with offices at 2001 Edmund Halley Drive, Reston, Virginia 20191 ("Nextel"), on behalf of itself and its Affiliates, as defined below, and Dwango North America Corp., a Nevada corporation, with offices at 200 West Mercer, Suite 501, Seattle, WA 98119 ("Company"). Nextel and Company may be referred to individually as a "Party" and collectively as the "Parties."

**WHEREAS**, Nextel, together with various subsidiaries and affiliated companies, owns and/or operates systems to provide wireless telecommunications (the "Systems"), and provides access to such Systems to its and their customers (each a "Nextel User"), unless otherwise provided in the definition of "Nextel User" set forth below) over handsets and other devices ("Devices");

**WHEREAS**, Company has developed and/or has the right to license or sublicense specific Digital Items (as defined in Section 1) to be made available to Nextel Users.

**WHEREAS**, Nextel desires to license certain Digital Items from Company on a non-exclusive basis for distribution to Nextel Users through various Distribution Channels (as defined in Section 1), and Company desires to grant such a license to Nextel;

**WHEREAS**, once certified by Nextel as a Trusted Publisher (as defined in Section 1), Company may bypass certain testing requirements and self-publish to certain Distribution Channels;

**NOW THEREFORE**, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

#### 1. DEFINITIONS. In addition to as defined herein:

- a. "Affiliate" of a Party shall mean any entity that controls, is controlled by, or is under common control with, such Party. For the purposes of clarification, Nextel's Affiliates shall have the right to make available the Digital Items via Devices and distribution channels in the same manner as Nextel is permitted to do so hereunder, subject, in each such instance, to the terms of this Agreement, including the payment obligations set forth in Exhibit E-1 and/or E-2, as applicable.
- b. "Boost Mobile" shall mean Boost Mobile, LLC, a Delaware limited liability corporation that is an Affiliate of Nextel.
- c. "Boost Mobile Trusted Publisher" shall mean the certification that may be given to Company by Boost Mobile upon satisfaction of the requirements contained in Section 6 enabling Company to bypass certain testing requirements and self-publish to certain Distribution Channels.
- d. "Boost User" shall mean a customer of the Systems through Boost Mobile-branded Devices.

- e. “Change” shall include, but shall not be limited to: (i) Any alteration of the manner in which a Digital Item operates with the Systems or Devices; (ii) any change to the call flow or the amount of data transferred to and from Systems by a Digital Item, including the time associated with such data transfer; (iii) any material change or upgrade of a Digital Item or the features or functionalities thereof; or (iv) any new release, version bug fixes or software patches to a Digital Item.
- f. “Demonstration Version” shall mean the version of a Digital Item that has limited functionality, requiring subscription or further licensing to fully functional, and may be made available at no charge to Nextel Users.
- g. “Derivative Device Group” shall mean, for the purpose of the Payments to be made pursuant to Exhibit E, Devices which are indistinguishable from each other from an operational standpoint (i.e. i730, i733 and i736, Devices), as identified by Nextel. Derivative Device Groups are subsets of Device Groups.

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Digital Item License and Distribution Agreement

- h. “Device Group” shall mean handsets or devices that have the same or similar virtual machine (VM), screen color, screen resolution and processor, as further described in the Trusted Publisher Guide.
- i. “Digital Items” shall include, but shall not be limited to, ring tones, ring tones, wallpapers, screen savers, games, audio files, MP3 files, video clips and streaming video files. Digital Items include those which reside solely on a Device (“Local Digital Item”), and those which utilize the Systems to transmit data between a Device and a remote server (“Network Aware Digital Item”). Ring Tones and Wallpapers shall be considered Digital Items.
- j. “Distribution Channel” shall mean the channels or methods for distribution of the Digital Items, including but not limited to those listed in Exhibit D.
- k. “Full Version” shall mean the version of a Digital Item which is fully functional.
- l. “Nextel User” shall have the meaning set forth in the first whereas clause in this Agreement and shall include Boost Users except as otherwise provided in Exhibits D-1, D-2, E-1, I-1 and I-2
- m. “Preload” shall mean the embedment or pre-installation of Digital Items on Devices.
- n. “Ring Tones” shall mean mono or polyphonic musical instrument digital interface (“MIDI”) or other format ring tones offered for license and download to Nextel Users from a Distribution Channel.
- o. “Trusted Publisher” shall mean the certification that may be given to Company by Nextel upon satisfaction of the requirements contained in Section 6, enabling Company to bypass certain testing requirements and self-publish to certain Distribution Channels.
- p. “Trusted Ring Tone Provider” shall mean a Nextel approved provider of ring tone Digital Item types that may be eligible to bypass certain testing requirements and to self-publish, as determined by Nextel and/or Boost Mobile, as applicable, in their sole discretion.
- q. “Trusted Wallpaper Provider” shall mean a Nextel approved provider of wallpaper Digital Item types that may be eligible to bypass certain testing requirements and to self-publish, as determined by Nextel and/or Boost Mobile, as applicable, in their sole discretion.

- r. “User Data” shall mean any information about an existing or Prospective Nextel User that Company obtains in any manner pursuant to this Agreement. Without limiting the foregoing, User Data shall include any information that relates to (i) a Nextel User’s identity, account information, billing or credit information; (ii) Nextel User’s usage of Nextel’s services, the Systems or the Digital Items and all information derived from such usage (including but not limited to page views, numbers of page views, and purchase information); (iii) information about the geographic location of Devices or Nextel Users (“Location Information”); and (iv) any information that Company obtains once a visitor to Company’s website clicks on a link that directs that visitor to any website of Nextel or any Affiliate of Nextel (“Prospective Nextel User”).
- s. “Wallpapers” shall mean the background setting of the Device display offered for license and download to Nextel Users from a Distribution Channel.

## 2. LICENSE GRANT.

- License. Company grants to Nextel and its Affiliates, during the Term, a nonexclusive, worldwide (excluding Japan, except as otherwise noted in Section 2(b)(ii) and (iii) below), royalty-free, fully paid-up right and license (with the right to sublicense) to:

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### Digital Item License and Distribution Agreement

- i) Use, copy, store, test and evaluate the Digital Items;
  - ii) Modify and create derivative works from the Digital Items solely to support billing for and distribution of such Digital Items;
  - iii) Publicly display, perform, market, advertise, promote and demonstrate the Digital Items;
  - iv) Distribute the Digital Items, copies thereof and/or modified or derivative works thereof to and through the Distribution Channels; and
  - v) Provide a right to use the Digital Items, copies thereof and/or modified or derivative works thereof to one or more Nextel Users to and through the Distribution Channels.
- b. Acknowledgement. Company acknowledges and agrees that:
- i) Nextel (or its agents or Affiliates) may present to Nextel Users (to whom a Digital Item is distributed) an end user license agreement between Company and such Nextel User (to which Nextel shall not be a party and to which Company shall be bound), which may contain provisions concerning: Restricting use of the Digital Item to the Nextel User’s own use solely in connection with the Devices; prohibiting reverse engineering of the Digital Item; indicating copyright in the Digital Item; and requiring the Nextel User to cease using the Digital Item if the Nextel User fails to comply with the terms and conditions of such license agreement.
  - ii) The entities to whom the Digital Items are sublicensed for distribution via Preload under Section 2(a)(iv) above may undertake such Preload on a worldwide basis.
  - iii) Nextel Users to whom a Digital Item is licensed and/or distributed under Sections 2(a)(iv) and (v) above may use the Digital Item on a worldwide basis for the term indicated in the license to the Nextel User, and such Nextel Users shall have the right to continue to use the Digital Item notwithstanding any termination or expiration of this Agreement.

Except for Ring Tones and Wallpapers, If the Digital Item license contains a perpetual right to refresh the Digital Item iv) (“Refresh Digital Item”), Nextel and its Affiliates shall have the right to continue to license and/or distribute such Refresh Digital Item to such Nextel Users, notwithstanding any termination or expiration of this Agreement.

**3. DESCRIPTION OF DIGITAL ITEMS.** The Digital Items and their features and functionalities are described in Exhibit A-1 and/or Exhibit A-2 (and such other consecutively numbered Exhibit A` s as may be added to this Agreement from time to time upon the mutual agreement of the Parties), or shall subsequently be described in a form substantially similar to and containing substantially the same information as listed in Exhibit A-1 or Exhibit A-2, such form to be received by Company following submission of a Digital Item to Nextel. Upon Nextel` s request, and without limitation of the warranties provided by Company under this Agreement, Company shall supply evidence of intellectual property rights to Digital Items and/or identify all parties who own or hold licenses to intellectual property associated with the Digital Item and any other information necessary to respond to any third party intellectual property infringement claims.

**4. AUTHORIZATION/ CHANGES.**

Authorization. On and after but not before the availability, through a Distribution Channel, of a Digital Item to Nextel a. Users, Company, Nextel and its Affiliates are hereby authorized to market or present such Digital Item as being compatible with the Systems and/or the Devices in accordance with the terms and conditions of this Agreement.

i) This Agreement does not authorize Company to market and/or present any other application or digital item (or Change thereto) as compatible with the Systems and/or Devices other than those that meet the terms and conditions of this Agreement (“Unauthorized Digital Item”), even if such Unauthorized Digital Item purports to be compatible or usable with Nextel products or services.

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Digital Item License and Distribution Agreement

ii) In the event Nextel or an Affiliate of Nextel has knowledge of Company marketing and/or presenting an Unauthorized Digital Item, or Nextel or an Affiliate of Nextel determines that a Digital Item is causing or is likely to cause disruption or interference with the Systems, Nextel and such Affiliate has the right, in its sole discretion, not to be unreasonably exercised, to immediately: (1) Except for Ring Tones and Wallpapers, Disable access to the Unauthorized Digital Item or Digital Item without notice; (2) remove the Unauthorized Digital Item or Digital Item from a Distribution Channel without notice; (3) revoke certification as a Trusted Publisher (and/or Boost Mobile Trusted Publisher) without notice; and/or (4) terminate this Agreement upon written notice.

b. Changes. Company shall provide to Nextel, Nextel` s Affiliates and Nextel Users, at no charge, Changes to a Digital Item as become necessary, as arise out of issues identified by Nextel during acceptance testing, or as are necessary to meet Company` s obligations under this Agreement. Such Changes shall be tested in accordance with Exhibit B.

**5. SUBMISSION AND TESTING.** Company shall follow the procedures for submission and testing of Digital Items as contained in Exhibit B. Unless otherwise stated herein, Nextel and its Affiliates shall have no obligation to accept, review, test or distribute any Digital Item. Local Digital Items shall not have hidden or non-disclosed network aware functionality. Except for Ring Tones and Wallpapers, Company shall include a “help” section for every Digital Item, which shall include instructions as well as Company customer care contact information (e.g., email address). Except for Ring Tones and Wallpapers, Digital Items shall also include an “about” section (or equivalent) that includes version (if applicable) and copyright information.

**6. TRUSTED PUBLISHER AND BOOST MOBILE TRUSTED PUBLISHER.**

General. Upon satisfaction of the requirements concerning Trusted Publisher certification contained in Exhibit C-1, and written notice from Nextel, in Nextel' s sole discretion, of such certification, Company may be considered a Trusted Publisher, able to bypass certain testing requirements of Exhibit B and distribute the Digital Items by self-publishing to certain Distribution Channels pursuant to Exhibit D-1. Trusted Publisher procedures are further described in the Trusted Publisher Guide (which shall be made available to Company).

a. Upon satisfaction of the requirements concerning Boost Mobile Trusted Publisher certification contained in Exhibit C-2, and written notice from Nextel or Boost Mobile, in their sole discretion, of such certification, Company may be considered a Boost Mobile Trusted Publisher, able to bypass certain testing requirements of Exhibit B and distribute the Digital Items by self-publishing to certain Distribution Channels pursuant to Exhibit D-2. Boost Mobile Trusted Publisher procedures are further described in the Nextel Trusted Publisher Guide (which shall be made available to Company).

b. Nextel shall have sole discretion over whether to certify Company as a Trusted Publisher, and such certification shall follow the procedures outlined in the Trusted Publisher Guide. Certification of Company as a Trusted Publisher shall only be effective upon written notification from Nextel. Nextel may revoke certification of a Company as a Trusted Publisher at any time in its sole discretion, not to be unreasonably exercised, without notice. If certification as a Trusted Publisher is revoked, Company shall not be entitled to bypass certain testing and self-publish until such time Nextel reinstates Company' s Trusted Publisher status, in its sole discretion, or the Agreement terminates or expires, whichever is sooner.

c. Boost Mobile shall have sole discretion over whether to certify Company as a Boost Mobile Trusted Publisher, and such certification shall follow the procedures outlined in the Nextel Trusted Publisher Guide. Certification of Company as a Boost Mobile Trusted Publisher shall only be effective upon written notification from Boost Mobile. Boost Mobile may revoke certification of a Company as a Boost Mobile Trusted Publisher at any time in its sole discretion, not to be unreasonably exercised, without notice. If certification as a Boost Mobile Trusted Publisher is revoked, Company shall not be entitled to bypass certain testing and self-publish until such time as Boost Mobile reinstates Company' s Boost Mobile Trusted Publisher status, in its sole discretion, or the Agreement terminates or expires, whichever is sooner.

## **6A. TRUSTED RING TONE PROVIDER AND TRUSTED WALLPAPER PROVIDER.**

General. Upon satisfaction of the requirements concerning Trusted Ring Tone Provider or Trusted Wallpaper Provider certification contained in Exhibit C-1 and/or C-2, as applicable, and written notice from Nextel and/or Boost Mobile, in Nextel' s or Boost' s sole discretion, of such certification, Company may be considered a Trusted Ring Tone Provider or

a. Trusted Wallpaper Provider, able to bypass certain testing requirements of Exhibit B, as applicable, and distribute the Digital Items by self-publishing (when such self-publishing is made available) to certain Distribution Channels pursuant to Exhibit D. Trusted Ring Tone Provider and Trusted Wallpaper Provider procedures are further described in the Trusted Provider Guide (which shall be made available to Company).

b. Nextel, and/or Boost Mobile, as applicable, shall have sole discretion over whether to certify Company as a Trusted Ring Tone Provider or Trusted Wallpaper Provider, and such certification shall follow the procedures outlined in the Trusted Provider Guide. Certification of Company as a Trusted Ring Tone Provider or Trusted Wallpaper Provider shall only be effective upon written notification from Nextel and/or Boost Mobile, as applicable. Nextel (and/or Boost Mobile, as applicable) may revoke certification of a Company as a Trusted Ring Tone Provider or Trusted Wallpaper Provider at any time in its sole discretion, not to be unreasonably exercised, without notice. If certification as a Trusted Ring Tone Provider or Trusted Wallpaper Provider is revoked, Company shall not be entitled to bypass certain testing and self-

publish until such time Nextel reinstates Company' s Trusted Ring Tone Provider or Trusted Wallpaper Provider status, in its sole discretion, or the Agreement terminates or expires, whichever is sooner.

## 7. ORDERING AND BILLING.

Ordering. Except in the case of Preloaded Digital Items, the Digital Items shall be ordered by Nextel Users via the

- a. Distribution Channels. Company acknowledges that Nextel Users and may incur data charges to download and/or use a Digital Item and must be provisioned with a Nextel data rate plan or a Boost Mobile data rate plan.

Billing. Nextel, an Affiliate of Nextel and/or a third party service provider(s) for Nextel or an Affiliate of Nextel shall bill Nextel Users for the Digital Items. Where Company is involved in the process of billing Nextel Users for Digital Items,

- b. Company will abide by all rules and requirements for billing Nextel Users for the Digital Items, including but not limited to those requiring presentation of all necessary notices and proper recording and posting of transactions.

**DISTRIBUTION.** Distribution of the Digital Items to and through the Distribution Channels shall occur as set forth in Exhibit D-1 and/or Exhibit D-2, as applicable. As further described in Exhibit D-1 or Exhibit D-2, except for the distribution of Preload Digital Items, which shall occur only upon the mutual agreement of the Parties, distribution of a Digital Item to a particular Distribution Channel shall be at sole discretion of Nextel or an Affiliate of Nextel. Upon such distribution, Nextel or such Affiliate may notify Company of the particular Distribution Channel. At any time in its sole discretion, not to be unreasonably exercised, without notice, Nextel may disable or remove any Digital Item from any Distribution Channel. Nextel may exercise its sole discretion for reasons including but not limited to the following: Violation of the terms of this Agreement or of the Trusted Publisher Guide; marketing of an Unauthorized Digital Item; disruption or interference with the Systems; alleged or actual infringement of intellectual property rights of a third party; violation of the SLA' s or the Content Standards; underperformance of a Digital Item from a sales perspective; or excessive care complaints regarding a Digital Item.

8.

**PAYMENTS AND PRICING.** The Payments shall be made as set forth in Exhibit E-1 and/or Exhibit E-2, as applicable.

Company may suggest a retail price for a Digital Item and Nextel and its Affiliates may accept such suggested retail price,

9. however, Nextel and its Affiliates will retain complete and sole discretion regarding the pricing of the Digital Items and their products and services. Each Party shall be responsible for its own costs and expenses in performing its obligations under this Agreement, and neither Party shall be entitled to reimbursement for such costs or expenses from the other Party.

**CO-MARKETING.** Each Party shall perform its co-marketing obligations as set forth in Exhibit F. Company agrees to treat

10. Nextel and Boost Mobile as prominently as other carriers, wireless service providers or device manufacturers if a relationship with another carrier, wireless service provider or device manufacturers is established.

## 11. ADVERTISING.

Company shall not, without Nextel' s prior written consent, cause or permit any advertising to be served to or displayed

- a. on any Device of any Nextel User, and shall ensure that no advertising is served to or displayed on any Device of any Nextel User.

Splash Screen. Notwithstanding the foregoing, except for Ring Tones or Wallpapers, Company may serve an initial page

- b. while the Digital Item is activated ("Splash Screen") only (i) in accordance with the then-current guidelines provided by Nextel to Company; and (ii) after Company has received prior written consent from Nextel for such Splash Screen.



However, prior written consent shall not be required where (iii) written consent has already been obtained for a substantially similar Splash Screen; and (iv) such substantially similar Splash Screen contains only the name of the Digital Item, Company' s name and/or the name of the developer or owner/original licensor of the Digital Item.

## 12. SERVICE LEVEL AGREEMENTS AND CONTENT STANDARDS.

- a. Customer Care SLA. Except for Ring Tones or Wallpapers Company shall provide at its sole expense customer care to all Nextel Users to whom a Digital Item is licensed as set forth in Exhibit G-1.
- b. Availability/ Hosting SLA. The Parties shall comply with the obligations concerning operational issues as set forth in Exhibit G-2, and, where Company has hosting obligations regarding a Network Aware Digital Item, Company shall comply with the hosting obligations set forth in therein.
- c. Content Standards. Company shall comply with the content standards set forth in Exhibit G-3 ("Content Standards"), or as may otherwise be provided by Nextel from time to time.

- POINTS OF CONTACT.** Company shall assign and maintain at all times during the Term the points of contact set forth in Exhibit H attached hereto, which shall act as either the primary liaison between Company and Nextel or the contact for the purpose of receipt of process. Company shall notify Nextel of any changes to such points of contact in writing at least seven (7) days prior to such change becoming effective.

- 14. REPORTING.** The Parties shall provide reports as set forth in Exhibit I-1 and/or Exhibit I-2, as applicable.

## 15. PRIVACY POLICIES AND USER DATA.

User Data. All User Data is and will remain the exclusive property of Nextel or its Affiliates. Company agrees that it shall collect, access, use, maintain, disclose or share User Data only to the extent necessary to deliver its services or fulfill its obligations under this Agreement. If Nextel Users become customers of Company independent of the activities contemplated under this Agreement, nothing in this Agreement shall restrict Company' s use of information it obtains through such separate activities.

- b. Purging of Information. Unless preservation is required by law, Company shall permanently purge any communication content (including but not limited to chat room discussion) obtained and stored by Company when no longer necessary for the Nextel User' s purposes.

- c. Privacy Laws. Company' s collection, access, use, security, and disclosure of User Data shall comply with all applicable laws, rules and regulations, including without limitation the requirements of 47 U.S.C. § 222 and the Federal Communication Commission' s implementing Customer Proprietary Network Information rules and regulations (the "CPNI Rules"), as may be amended from time to time. Company shall at all times perform its obligations hereunder in such a manner as not to cause Nextel to be in material violation of any applicable laws or regulations.

- d. Security. Company shall employ administrative, physical, and technical safeguards that prevent the unauthorized collection, access, use, and disclosure of User Data ("Security"). With respect to User Data, Company shall (i) provide at least as much Security as it does for its most highly sensitive and secret information, but in no event less than the highest

standards of best industry practice for information security, as they may change from time to time (the "Security Standard"); (ii) encrypt, for transport and storage, all User Data in a manner that meets or exceeds the Security Standard; (iii) train its employees, agents, and contractors who have a need to access and use User Data for the purposes enumerated herein (each an "Authorized Employee") on privacy, security, and confidentiality obligations hereunder; (iv) ensure that only Authorized Employees may access User Data, on a need-to-know basis, and only if such Authorized Employees are bound in writing by confidentiality obligations that are no less stringent than those contained in this Agreement; and (v) logically or physically separate User Data from other data, without commingling any data that is not necessary for the fulfillment of Company's obligations under this Agreement. During the term of each Authorized Employee's employment by Company, Company shall at all times ensure that such Authorized Employee strictly abides by his/her obligations hereunder and, after the termination of his/her employment, Company shall use at least the same level of effort to enforce the Security obligations of such Authorized Employee as Company uses to enforce such obligations with respect to its own similarly confidential information, provided that Company shall not use less than reasonable efforts in such enforcement.

Customer Contact. Company may only contact a Nextel User to deliver the services or products contemplated under this Agreement. Notwithstanding any other provision in this Agreement, Company shall not use User Data to contact a Nextel User through a Nextel handset in any manner (including but not limited to voice or text messaging).

Company Direct Marketing. Company may contact a Nextel User to market its own products and services provided it first obtains a Nextel User's Prior Consent. "Prior Consent" shall mean an affirmative act by a Nextel User to agree, either electronically or in writing, to receive Company's own marketing material ("Marketing Material") in response to a clear and conspicuous solicitation ("Solicitation") that explains in plain English the purpose and scope of the Solicitation, and the method by which Company will communicate with the Nextel User—such method to exclude wireless messaging of any kind. Company shall store any Solicitation and Prior Consent for a period of three (3) years. Company shall not include in any Solicitation or Marketing Material any reference to Nextel or its products and services. Company shall enable each Nextel User to rescind Prior Consent at any time, without charge (via a toll-free telephone call and e-mail) and Company shall make such rescission effective within twenty-four (24) hours of the rescission.

Location-Based Services. Notwithstanding any other provision of this Agreement, Company shall not collect, access, use or disclose any User Data (including Location Information) to provide any location-based services or Location Information to anyone, and Nextel shall not be obligated to perform under this Agreement, unless the location based service in question integrates fully with Nextel's location notice and consent regime to Nextel's complete satisfaction ("Notice" and "Consent" regime). Company shall delete Location Information immediately, when it is no longer necessary for Nextel User's purposes. Without limiting the foregoing, Company shall ensure that each Nextel User may rescind Consent at any time, without charge (e.g., via a toll-free telephone call) pursuant to a rescission method approved in writing by Nextel ("Rescission"), and Company shall make such Rescission effective within twenty-four (24) hours of a Nextel User's Rescission. Company must maintain records of any Notice, Consent, and Rescission for as long as a Nextel User subscribes to Company's services or application, plus an additional two (3) years. Company shall not make any statement about the accuracy of Location Information, unless Nextel approves such statement in writing.

Disclosure and Return. Except in response to a valid court order or otherwise to the extent legally required in response to a request from a law enforcement agency, in no event shall Company disclose any User Data to any third party. Company must notify Nextel prior to, or as soon as practicable following, the disclosure of User Data pursuant to a valid governmental or law enforcement request. Nextel reserves the right to seek a protective order or to take other

appropriate action to prevent or limit such disclosure. Company agrees to cooperate with Nextel' s efforts to obtain a protective order or other reasonable assurance that confidential treatment will be afforded the User Data in question. Company agrees to return, or at Nextel' s election, to destroy (and certify in writing such destruction) all User Data upon the termination or expiration of this Agreement or earlier if requested to do so in writing by Nextel.

Compliance with Surveillance Orders. Company shall ensure that it: (i) enables Nextel to comply in a timely manner with any legal process, such as a subpoena ("Legal Process") that is served on Nextel or an Affiliate of Nextel and which involves a request or order of any kind by any government, government agency, or any court as a result of any such government request(s) of User Data, e.g., content communicated via or stored via Company' s service or application, as well as associated information such as routing or identifying information ("Surveillance Information"); and (ii) complies with any Legal Process that is served on Company and which involves a request or order for Surveillance Information. Accordingly, Company shall maintain a contact, available 24 hours per day, 7 days per week ("24-7") for responding to

- i. Legal Process. Company' s 24-7 contact information is listed in Exhibit H; Company shall update Nextel of any change in its 24-7 contact information by informing the Nextel contact listed in Exhibit H prior to any such change. Company shall fully comply with any statutory or regulatory requirement, applicable to Nextel or an Affiliate of Nextel by virtue of this Agreement, which governs the surveillance of communications (including without limitation the Communications Assistance for Law Enforcement Act ("CALEA"), the Electronic Communications Privacy Act ("ECPA"), and 18 U.S.C. § 2518); and Company shall cooperate with Nextel to ensure Nextel' s compliance with such requirements.

Notwithstanding anything to the contrary in this Agreement, Nextel may terminate this Agreement immediately if in its sole discretion it determines that it cannot meet any of its surveillance requirements due to Company.

Miscellaneous. Company shall immediately notify Nextel of any activity, including but not limited to marketing activity that may result in the violation of the Privacy Laws, and any breach of Security. Company shall make all reasonable efforts to assist Nextel in relation to the investigation and remedy of any such violation or breach, and any claim, allegation, action, suit, proceeding or litigation related thereto. Company acknowledges and agrees that a breach of any obligation set forth

- j. in this Section 15 may result in irreparable harm for which monetary damages may not provide a sufficient remedy and, as a result, Nextel may seek both monetary damages and equitable relief. Neither Section 25 of this Agreement nor the NDAs referenced therein shall govern the obligations and rights that relate to User Data; rather, this Section 15 and the balance of this Agreement (with the exception of Section 25 and the NDAs referenced therein) shall govern the obligations and rights that relate to User Data.

## 16. TERM OF AGREEMENT.

The initial term of this Agreement shall commence on the Effective Date and end twelve (12) months later (the "Initial Term"). This Agreement shall automatically renew for additional twelve (12) month periods (each twelve (12) month period is referred to as an "Extension Term") unless one Party provides written notice to the other Party at least sixty (60) days prior to the expiration of the Initial Term or an Extension Term that it does not want to renew the Agreement, provided that each Party also shall have the option to terminate this Agreement in part (i.e. to cause it to be deemed

- a. amended as provided in Section 17d(i) or (ii) below) as of such automatic renewal by providing written notice to the other Party at least sixty (60) days prior to the expiration of the Initial Term or an Extension Term that it desires the definition of Nextel User to be modified as specified in Section 17d(i) or Section 17d(ii), as the case may be, in which case the Agreement shall be deemed amended as provided in such Section as of the date of the automatic renewal following such notice. Each Extension Term, together with the Initial Term, is referred to as the "Term."

Acknowledgement. The Parties acknowledge and agree that the Digital Item License and Distribution Agreement executed by Company on or about June 4, 2004, as amended by Amendment No. 1 executed by Company on or about June 18, 2004, (the "Former Agreement") is terminated, and that this Agreement shall replace the Former Agreement as of the Effective Date. On and after the Effective Date, the Agreement shall govern and Digital Items that were licensed under the Former Agreement and the relationship of the Parties regarding the subject matter noted herein.

**17. TERMINATION.** In addition to as otherwise stated herein:

a. Either Party may terminate this Agreement immediately upon written notice if the other Party: (i) Except for the reasons giving cause for immediate termination as set forth below, fails to cure a breach of its obligations hereunder within fifteen (15) days of the delivery of written notice thereof; or (ii) ceases to do business in the normal course; becomes or is declared insolvent or bankrupt; is the subject of any proceeding related to its liquidation or insolvency (whether voluntary or involuntary) which is not dismissed within ninety (90) days of its filing; makes an assignment for the benefit of its creditors; or elects to or otherwise dissolves.

b. Nextel may terminate this Agreement immediately upon written notice to Company if Company: (i) Is not certified as either (i) a Trusted Publisher, Trusted Ring Tone Provider or Trusted Wallpaper Provider by Nextel or (ii) as a Boost Mobile Trusted Publisher, Trusted Ring Tone Provider or Trusted Wallpaper Provider by Boost Mobile, in each case within six (6) months of the later of the Effective Date or the (Company commencing the process for such certification); (ii) is or has been the subject of a change in control transaction where more than fifty percent (50%) of Company' s voting securities are transferred or Company sells or transfers all or substantially all of its assets; (iii) fails to comply with its obligations with respect to confidentiality and/or user data and privacy as set forth in the Agreement; (iv) utilizes any Nextel intellectual property without Nextel's prior written consent or in an unauthorized manner; or (v) infringes or is alleged to infringe on the intellectual property rights of any third party.

c. Company may terminate this Agreement immediately upon written notice to Nextel if Nextel: (i) fails to comply with its obligations with respect to confidentiality and/or user data and privacy as set forth in the Agreement; or (ii) utilizes any Company intellectual property without Company's prior written consent or in an unauthorized manner.

d. If a Party is entitled to terminate this Agreement pursuant to Sections 17(a), (b) or (c) above, then such party also shall be entitled to terminate this Agreement in part by notifying the other Party to this Agreement in writing of the following:

To Limit Scope to Exclude Boost Users: That it desires the definition of Nextel User to be modified to eliminate Boost Users from such definition, in which event commencing as of the 60<sup>th</sup> day following such written notice (or such later date specified in such notice), (a) this Agreement shall be deemed amended by inserting "not" immediately before "include Boost Users" in the definition of "Nextel User" in Section 1.m; (b) Company shall cease the use of Boost Mobile Trademarks immediately following such change in the definition of "Nextel Users" and eliminate any mention of a relationship between Boost Mobile and Company in sales, marketing and/or other materials, including electronic media; (c) Company' s license to use, reproduce, distribute and display the Boost Mobile Trademarks shall automatically terminate; (d) the provisions in the Agreement relating to Boost Mobile Trusted Publisher shall be deemed deleted from the Agreement; (e) "and Boost Mobile" shall be deleted from Section 10; (f) Exhibits A-2, C-2, D-2, E-2, and I-2 shall no longer be applicable during the remaining Term except to the extent applicable as a result of a Party' s exercise of the rights provided under Section 18(c); and (g) Boost Mobile shall no longer be a Party to the Agreement for purposes of the remaining Term after the end of any applicable Sell-Off Period under Section 18(c). Notwithstanding such change in the definition of "Nextel User", Nextel and its Affiliates shall continue to have, with respect to Boost Users, the rights provided in Section 2 for the same periods of time that they would have had under Section 18(c) of this Agreement if the Agreement had expired or terminated on the effective date of such change in definition.

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 Digital Item License and Distribution Agreement

- To Limit Scope to Boost Users Only: That it desires the definition of Nextel Users to be modified to eliminate persons other than Boost Users from the definition pursuant to the partial termination rights granted in Section 17(d), in which event commencing as of the 60<sup>th</sup> day following such written notice (or such later date specified in such notice) (a) this Agreement shall be deemed amended by deleting from such definition “and shall include Boost Users” and inserting in its place the following: “except that it shall only include Boost Users and not include any non-Boost Users”; (b) Company shall cease the use of Nextel Trademarks immediately following such change in the definition of “Nextel Users”, and eliminate any mention of a relationship between Nextel and Company in sales, marketing and/or other materials, including electronic media, except to the extent related to Boost Mobile or Boost Mobile products and services; (c) Company’s license to use, reproduce, distribute and display the Nextel Trademarks shall automatically terminate; (d) the provisions in the Agreement relating to Trusted Publisher shall be deemed deleted from the Agreement; and (e) “Nextel and” shall be deleted from Section 10; (f) Exhibits A-1, C-1, D-1, E-1, and I-1 shall no longer be applicable during the remaining Term except to the extent applicable as a result of a Party’s exercise of the rights provided under Section 18(c). Notwithstanding such a change in the definition of “Nextel User”, Nextel and its Affiliates shall continue to have, with respect to Nextel Users who are not Boost Users, the rights provided in Section 2 for the same periods of time that they would have had under Section 18(c) of this Agreement if the Agreement had expired or terminated on the effective date of such change in definition.

**18. RIGHTS AND OBLIGATIONS UPON TERMINATION OR EXPIRATION.** Upon the termination or expiration of this Agreement:

- a. Company shall immediately (i) eliminate any mention of a relationship between Nextel and Company in all sales, marketing and/or other literature or other materials, including electronic media; (ii) cease the use of any Nextel Trademarks or Boost Mobile Trademarks (each as defined in Section 19); and (iii) return to Nextel, destroy or permanently erase without retaining copies thereof, all Nextel Information (as defined in Section 25).

- b. Nextel shall, within thirty (30) days of such termination or expiration: (i) eliminate any mention of a relationship between Nextel and Company in all sales, marketing and/or other literature or other materials, including electronic media; (ii) cease the use of any Company Trademarks (as defined in Section 19); and (iii) return to Company, destroy or permanently erase without retaining copies thereof, all Company Information (as defined in Section 25).

- c. **Sell-Off Periods.** Except for Preloaded Digital Items and Refresh Digital Items, for a period of thirty (30) calendar days following the effective date of termination or expiration, Nextel and its Affiliates shall continue to have the rights contained in Section 2 (“Regular Sell-Off Period”). In the case of Preloaded Digital Items, for a period of sixty (60) calendar days following the effective date of termination or expiration, Nextel and its Affiliates shall continue to have the rights contained in Section 2 herein solely for the purpose of sublicensing and distributing the Digital Items for Preload (“Preload Digital Item Sell-Off Period”). Company acknowledges that Devices upon which Digital Items were Preloaded during the Preload Digital Item Sell-Off Period may subsequently be distributed to Nextel Users following the conclusion of the Preload Digital Item Sell-Off Period.

- Sections 15, 18, 21-25, 27, 28-29 and any other Sections in the Agreement, including the Exhibits which by their nature
- d. refer to obligations of a Party applicable beyond the Term shall survive this Agreement. Both Parties shall continue to perform their obligations under this Agreement during any notice period prior to the actual termination of this Agreement.

## 19. TRADEMARKS.

- Each Party hereby grants to the other Party a non-exclusive, nontransferable, royalty-free license to use, reproduce, distribute and display the trademarks, service marks and logos of the other Party, and of third parties to which such Party has sufficient rights, such trademarks, service marks and logos set forth in Exhibit J (the "Trademark(s)"), except that if any trademarks, services marks or logos on such Exhibit J are designated as Boost Mobile trademarks, then Boost Mobile grants to Company a non-exclusive, nontransferable, royalty-free license to use, reproduce, distribute and display such trademarks, service marks and logos. Such license shall be effective during the Term and solely in connection with the performance of a Party' s obligations under this Agreement, provided that (except with regard to Nextel' s use of Company' s Trademarks in marketing and promoting the availability of the Digital Items, which shall be subject to Nextel' s reasonable discretion in the determination of placement and size), each use of a Trademark shall be approved
- a. by the Trademark owner in writing and in advance of such use. Except as provided in this Section 19, neither Party shall have any rights to use the Trademarks or trade names of the other Party or its Affiliate, and neither Party shall acquire any right to any goodwill, trademark, service mark, copyright, or other form of intellectual property of the other Party or its Affiliate. Each Party agrees (a) that each and all use(s) of the other Party' s Trademarks (including the Trademarks of such other Party' s Affiliates) will not alter such Trademarks in any way; and (b) to use the Trademarks of the other Party (or such other Party' s Affiliates) such that each such Trademark creates a separate and distinct impression from any other trademark that may be used by such Party. Each Party agrees that all uses of the other Party' s Trademarks, including the goodwill and reputation associated therewith, will inure to the benefit of the other Party. Each Party may, but is not obligated to provide additional trademarks to the other Party for use in connection with this Agreement. In addition, each Party shall have the right to amend such Trademarks in its sole discretion.

- Additionally, Company hereby grants Nextel and its Affiliates a non-exclusive, nontransferable, royalty-free license to use, reproduce, distribute and display, with regard to Ring Tones, the artist name and title to which Company has
- b. sufficient rights, and with regard to Wallpapers, the brand and artist to which Company has sufficient rights, as such names, titles, brands and artists are provided by Company to Nextel and/or its Affiliates from time to time, such names, titles, brands and artists to be considered Trademarks for the purposes of this Section 19.

## 20. TAXES.

- The Parties shall comply with all federal, state, and local tax laws applicable to transactions occurring under this
- a. Agreement. Company shall provide Nextel with a completed Form W-9, W-8 or 8233, as appropriate, for federal income tax reporting purposes.

- All goods and services purchased by Nextel or its Affiliates under this Agreement are being purchased for resale to
- b. Nextel Users and/or potential Nextel Users in the ordinary course of Nextel's or such Affiliate' s business. Company recognizes and shall extend all applicable resale exemptions.

- The Parties will cooperate as to the extent reasonable and practicable to minimize or avoid, whenever legally
- c. permissible, any applicable taxes relating to the transactions between the Parties under this Agreement or the transactions between a Party and a Nextel User.



## 21. REPRESENTATIONS, WARRANTIES AND COVENANTS.

- Nextel hereby represents, warrants and covenants that Nextel has the full power and authority to enter into and perform its obligations under this Agreement (including to grant the rights and licenses provided for herein), without any
- a. restrictions that would impair its ability to perform its obligations under this Agreement, except that such representation, warranty and covenant is made by Boost Mobile with respect to the license grant made by Boost Mobile hereunder.

- Company hereby represents, warrants and covenants to Nextel and its parents, subsidiaries and Affiliates that: (i) Company has the full power and authority to enter into and perform its obligations under this Agreement, without any restrictions that would impair its ability to perform its obligations under this Agreement; (ii) Company' s activities in connection with this Agreement do not and will not constitute a default or breach of any agreement or order of any court or governmental agency by which Company is bound and Company has not and will not enter into any agreement that is inconsistent with its obligations under this Agreement; (iii) Company has all rights, titles, licenses, intellectual property, permissions and approvals necessary in connection with its performance under this Agreement to grant the rights granted hereunder; (iv) neither the Digital Items nor their use, distribution, sale or license do or will infringe, violate or misappropriate any patent, copyright, trademark, trade secret rights, rights of privacy, rights of publicity or any other
- b. property or proprietary rights of any third party; (v) the Digital Items and their use, distribution, sale and license does and shall continue to comply with all applicable foreign, federal, state, and local laws, rules and regulations, including but not limited to those relating to privacy and consumer protection; (vi) Company will not breach any privacy or consumer protection right in carrying out its obligations under this Agreement; (vii) the Digital Items do not and will not contain any viruses, worms, Trojan horses, time bombs, keys or other software routines that may allow access to or negatively impact the operation of any Digital Item, the Systems and/or the products and services of Nextel or an Affiliate of Nextel, including, but not limited to Devices, or damage interfere with, intercept, or expropriate any Nextel System data or any User Data; (viii) Company shall comply with the Content Standards; and (ix) the Digital Items will be free from any material defects and will perform in accordance with their specifications.

- DISCLAIMER.** EXCEPT AS OTHERWISE SPECIFICALLY PROVIDED IN THIS AGREEMENT, THE FOREGOING WARRANTIES ARE THE ONLY WARRANTIES GIVEN BY EITHER PARTY AND ALL OTHER WARRANTIES, WHETHER
22. EXPRESS OR IMPLIED BY STATUTE OR OTHERWISE, ARE SPECIFICALLY EXCLUDED BY THE PARTIES, INCLUDING WITHOUT LIMITATION, IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

- LIMITATION OF LIABILITY.** EXCEPT FOR (I) A PARTY' S BREACH OF SECTION 15 AND/OR OTHER PRIVACY OR CONSUMER PROTECTION OBLIGATIONS; (II) A PARTY' S INDEMNIFICATION OBLIGATIONS UNDER SECTION 24; OR (III) A PARTY' S BREACH OF ITS CONFIDENTIALITY OBLIGATIONS UNDER SECTION 25, NEITHER PARTY SHALL BE LIABLE FOR SPECIAL, INDIRECT, INCIDENTAL, CONSEQUENTIAL OR PUNITIVE DAMAGES OF ANY KIND, INCLUDING WITHOUT LIMITATION, LOST PROFITS, WHETHER OR NOT ANY SUCH DAMAGES ARE WITHIN A
23. PARTY' S CONTROL OR DUE TO NEGLIGENCE OR OTHER FAULT ON THE PART OF SUCH PARTY, ITS AGENTS, AFFILIATES, EMPLOYEES OR OTHER REPRESENTATIVES. EXCEPT FOR (I) A PARTY' S BREACH OF SECTION 15 AND/OR OTHER PRIVACY OR CONSUMER PROTECTION OBLIGATIONS; (II) A PARTY' S INDEMNIFICATION OBLIGATIONS UNDER SECTION 24; OR (III) A PARTY' S BREACH OF ITS OBLIGATIONS OF CONFIDENTIALITY UNDER SECTION 25, IN NO EVENT SHALL EITHER PARTY' S TOTAL LIABILITY UNDER THIS AGREEMENT EXCEED \$100,000.

## 24. INDEMNIFICATION.

Nextel shall indemnify, defend and hold harmless Company, its subsidiaries and Affiliates, and its and their respective officers, directors, employees, agents, successors and assigns (each an "Indemnified Party") from and against any claims, judgments, losses, damages, liabilities, costs and expenses (including, but not limited to, reasonable attorneys' fees and legal expenses) of any kind (collectively "Losses") arising out of or related to: (i) any breach or claimed breach of Section 21; (ii) any third party claim or action brought against an Indemnified Party alleging that the portions of the Systems owned and controlled by Nextel infringe, misappropriate or violate in any manner, any patent, copyright, trademark, trade secret or any other intellectual property or proprietary right of a third party; and (iii) any breach of Section 15 of this Agreement. The foregoing indemnity will be in addition to, and not in lieu of, all other legal rights and remedies that Company may have.

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Digital Item License and Distribution Agreement

Company shall indemnify, defend and hold harmless Nextel, its parents, subsidiaries and Affiliates, and its and their respective officers, directors, employees, agents, successors and assigns (each an "Indemnified Party") from and against any claims, judgments, losses, damages, liabilities, costs and expenses (including, but not limited to, reasonable attorneys' fees and legal expenses) of any kind (collectively "Losses") arising out of or related to any use, distribution, sale or license of any Digital Item, including but not limited to Losses arising out of or related to: (i) any breach or claimed breach of Section 21; (ii) damage to the Systems, Devices or Nextel's products and services, or any portion thereof, as a result of or arising out of the use of any of the Digital Items; (iii) warranty or Nextel User support services performed by Nextel for the Digital Items, Systems, Devices or any other products or services damaged or impaired as a result of or arising out of the use of the Digital Items; (iv) the recall of defective Digital Items; (v) any third party claim or action brought against an Indemnified Party alleging that any Digital Item or any portion thereof (a) infringes, misappropriates or violates in any manner, any patent, copyright, trademark, trade secret, right of privacy, right of publicity or any other intellectual property or proprietary right of a third party; or (b) contains material or information that is fraudulent, deceptive, misleading, obscene, defamatory, libelous, slanderous, or unlawfully harassing or injurious, or is in violation of personal or property rights, regulation or law, or other common law or statutory rights; and (vi) any breach of Section 15 of this Agreement. The foregoing indemnity will be in addition to, and not in lieu of, all other legal rights and remedies that Nextel may have.

With respect to any Losses to which Section 24(a) or (b) apply, the Indemnified Party shall promptly notify the other Party ("Indemnifying Party"), and the Indemnified Party shall permit the Indemnifying Party to assume and control the defense with counsel reasonably acceptable to the Indemnified Party. The Indemnified Party shall have the right to employ separate counsel (at the expense of the Indemnified Party) and participate in the defense. The Indemnifying Party may not settle under this Section 24 on the Indemnified Party's behalf without first obtaining the Indemnified Party's written permission, not to be unreasonably withheld. In the event the Parties agree to settle under this Section 24, the Indemnifying Party agrees not to publicize the settlement without first obtaining the Indemnified Party's written permission. This indemnity shall continue in effect even after, and notwithstanding, this Agreement's expiration or termination.

**NON-DISCLOSURE AGREEMENT.** The Parties acknowledge the existence of a mutual Non-Disclosure Agreement ("NDA" or "Confidentiality Agreement") dated May 14, 2004, which NDA shall remain in full force and effect during the Term. All aspects of this Agreement shall be subject to the terms and conditions of the NDA. The terms and conditions of this Agreement and all Exhibits hereto shall be considered "Information" as such term is defined in the NDA. Further, the Parties hereby agree that the Purpose (as defined in the NDA) for which Information may be used pursuant to the NDA shall be deemed to include each Party's performance of its obligations under this Agreement. Notwithstanding the foregoing, Nextel may disclose the terms and conditions of this Agreement pursuant to Section 26 herein.



## 26. NEXTEL PARTNERS, NII HOLDINGS INC., AND EXTEND AMERICA, INC.

Company understands and agrees that Nextel Partners (as defined below), NII Holdings Inc. (“NII”), and/or Extend America, Inc. (“Extend America”) may need to enter into a separate agreement with Company, and any separate agreement between Company and Nextel Partners, NII, or Extend America shall be at prices and on terms and conditions in the aggregate no less favorable than those in effect between Company and Nextel. Company agrees not to

- a. sue or take any other action against Nextel for a breach by Nextel Partners, NII, or Extend America of any agreement between Company and Nextel Partners, NII, or Extend America, but rather to proceed directly against Nextel Partners, NII, or Extend America. “Nextel Partners” means Nextel Partners, Inc., a Delaware corporation in which Nextel Communications, Inc. (“NCI”) indirectly holds a minority ownership interest and which deploys a network compatible with NCI’s network.

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## Digital Item License and Distribution Agreement

The Parties agree that users of the Systems through Nextel Partners and Extend America and its and their Affiliates may

- b. be able to access, license, download and/or use the Digital Items through the Distribution Channels. Such access, licensing, download and/or use shall be subject to Section 9 herein.

Notwithstanding any other provision contained in this Agreement (or the NDA), Nextel may disclose the existence,

- c. contents and/or terms of this Agreement and provide a copy of this Agreement to Nextel Partners, NII and/or Extend America and their subsidiaries and Affiliates, direct or indirect, without Company’s prior written consent.

- RECORDS AND INSPECTION RIGHTS.** Both Parties shall keep and maintain proper records and books of account relating to the obligations contained in this Agreement, including but not limited to those contained in Section 15 and those regarding the Payments and/or billing of Nextel Users hereunder. Each Party may inspect such records of the other, but not more than twice in any twelve (12) month period. Any such inspection (an “Audit”) will be conducted after reasonable notice and during regular business hours at the offices of the Party to be audited in a manner that does not unreasonably interfere with the
27. business activities of the Party to be audited. With regard to an Audit regarding the obligations contained in Section 15 of this Agreement, without limiting any other rights or remedies of Nextel under this Agreement or at law, upon notice from Nextel regarding a breach of this Agreement, Company shall promptly develop a corrective action plan in cooperation with Nextel, such plan to be subject to Nextel’s approval, and shall promptly thereafter implement such plan. With regard to the Payment obligations contained in this Agreement, the audited Party shall immediately pay the auditing Party the amount of any underpayment revealed by an Audit.

- INSURANCE.** At all times during the Term, each Party shall maintain a general liability insurance policy or policies adequate in amount to insure such Party against all liability associated with this Agreement, including potential liability pursuant to the indemnification obligations contained herein, but in no event shall such insurance coverage be less than Three Million and No/100 Dollars (\$3,000,000.00) (“Minimum Insurance Coverage”). The coverage amounts set forth herein may be met by a
28. combination of underlying and umbrella policies so long as, in combination, the limits equal or exceed those stated. Company will not be deemed to be in breach of this provision provided that it maintains the Minimum Insurance Coverage. Additionally, both Parties shall maintain workers’ compensation insurance in statutorily required amounts. For the avoidance of doubt, nothing in this Section is intended to limit the liability of either Party.

## 29. MISCELLANEOUS.

a. Independent Contractors/ Non-Exclusivity/ Performance. Nextel and Operator are independent contracting parties, and nothing in this Agreement shall be construed as creating an employer-employee relationship, a partnership, a franchise, or a joint venture between the Parties. The relationship provided for in this Agreement is non-exclusive with respect to either Party. Unless otherwise stated herein, Company may not delegate or assign performance under this Agreement.

b. Section 365(n). All rights and licenses granted under or pursuant to this Agreement by Company are, and shall otherwise be deemed to be, for purposes of Section 365(n) of the United States Bankruptcy Code (the "Code"), licenses to rights to "intellectual property" as defined in the Code. The Parties agree that Nextel and its Affiliates, as licensees of such rights under this Agreement, shall retain and may fully exercise all of their rights and elections under the Code. The Parties further agree that, in the event of the commencement of bankruptcy proceeding by or against Company under the Code, Nextel and its Affiliates shall be entitled to retain all of their rights under this Agreement.

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Digital Item License and Distribution Agreement

c. Governing Law. This Agreement will be governed by and construed in accordance with the laws of the Commonwealth of Virginia and Company consents to the jurisdiction and venue of the courts sitting in Fairfax County, Virginia. Company waives all defenses of lack of personal jurisdiction and forum nonconveniens. Process may be served on either Party in the manner authorized by applicable law or court rule.

d. Assignment. This Agreement shall not be assignable by Company without the prior written consent of Nextel. This Agreement shall be freely assignable by Nextel and Boost Mobile.

e. Entire Agreement/ Interpretation and Construction/ Waiver. This Agreement constitutes the entire agreement and understanding between the Parties. No waiver, amendment or modification of any provision of this Agreement shall be valid unless in writing and signed by the Parties. The captions contained herein are for the convenience of the Parties and shall not be construed to amend or modify any of the provisions in the Agreement. If for any reason a court of competent jurisdiction finds any provision of this Agreement, or portion thereof, to be unenforceable, that provision of the Agreement will be enforced to the maximum extent permissible so as to affect the intent of the Parties, and the remainder of this Agreement will continue in full force and effect. This Agreement has been negotiated by the Parties and their respective counsel and will be interpreted fairly in accordance with its terms and without any strict construction in favor of or against either Party. In the event of a conflict between this Agreement and its Exhibits, the Agreement shall govern. The failure of a Party to object to, or to take affirmative action with respect to, any conduct of the other which is in violation of the terms of this Agreement shall not be construed as a waiver of the violation or breach or of any future violation, breach, or wrongful conduct. Any waiver, in whole or in part, of any provision hereof shall not be construed as a waiver of any other provision hereof, or as a future waiver of any subsequent breach by Company.

f. Headings/ Binding Effect/ Counterparts. The headings of the Sections of this Agreement are for convenience and shall not be used to interpret this Agreement. This Agreement shall bind and inure to the benefit of the Parties and their respective heirs, legal representatives, successors and permitted assigns. This Agreement may be executed in multiple counterparts, each of which shall be deemed an original and which together shall be deemed the same Agreement.

g. Notices. Unless otherwise provided for in this Agreement, all notices and other communications provided for or permitted under the Agreement shall be in writing and shall be made by hand delivery, telex, telecopier, or reliable overnight courier addressed as follows:

If to Company to:

If to Nextel to:

Dwango North America Corp.  
200 West Mercer, Suite 501  
Seattle, WA 98119  
Attn: Alexander U. Conrad  
Title: President and COO  
Fax Number: 206-286-1442

Nextel Operations, Inc.  
2001 Edmund Halley Drive  
Reston, VA 20191  
Attn: Tim Dunne  
Title: VP Business Development  
Fax: 703-4338018

With a copy to:  
Dwango North America Corp.  
200 West Mercer St., Ste. 501  
Seattle, WA 98119  
Attention: Paul Quinn

With a copy to:  
Nextel Operations, Inc.  
2001 Edmund Halley Drive  
Reston, VA 20191-3436  
Attention: Vice President and Assistant General  
Counsel - Commercial  
Fax: 703-433-4034

Fax: 206.286.1442  
If to Boost Mobile to:  
Boost Mobile, LLC  
2001 Edmund Halley Drive  
Reston, VA 20191  
Attn: Christopher Wuhler  
Title: Sr. Product Manager  
Fax: 703-592-2896

With a copy to:  
Nextel Operations, Inc.  
2001 Edmund Halley Drive  
Reston, VA 20191-3436  
Attention: Boost Counsel  
Fax: 703-433-8202

All such notices and communications shall be deemed to have been duly given when delivered by hand, if personally delivered; when answered back, if telexed; when receipt is acknowledged, if telecopied, or the next business day if by overnight courier.

**IN WITNESS WHEREOF**, each Party has caused this Agreement to be executed by its duly authorized representative.

**DWANGO NORTH AMERICA CORP.**

**NEXTEL OPERATIONS, INC.**

By: (signature) /s/ Alexander U. Conrad

By: (signature) /s/ Timothy Dunne

Name: Alexander U. Conrad

Name: Timothy Dunne

Title: President, COO

Title: Vice President

Date: 10/15/04

Date: 10/19/04

**BOOST MOBILE, LLC hereby agrees to be bound by the provisions of Sections 6(c), 6(A), 19(a) and 21(a) of the Agreement**

By: (signature) /s/ Dan Girsleis

Name: Dan Girsleis

Title: Authorized Signer

Date: 10/22/2004

**Exhibit A-1  
DESCRIPTION OF DIGITAL ITEMS FOR NEXTEL USERS**

1. Preloaded Digital Items:

a. ESPN Bass Master Legendary Lunkers

- The Preloaded version of ESPN Bass Masters is a Demonstration Version Digital Item. The Demonstration Version is limited to recreational play, no tournament. Nextel Users have access to 'cast-n-wait' and 'reel-time' play modes.
- i) They are, however, limited to catching 4 fish, at which point the playable aspect of the Demonstration Version, and a feature slide show begins.

- Digital Item Description / Features / Functionalities: Legendary Lunkers features the Cast 'n Wait system, a mobile gameplay breakthrough - which emulates real fishing by surprising the player with a call back when a fish is biting. Whether competing against the top online scores or fishing in the recreational mode, virtual anglers will be challenged by actual Bassmaster tournament locales and real-time weather conditions. Bassmaster Mobile offers the definitive fishing experience for mobile games. The Demonstration Version consists of two play paths, one for consumers with a TotalConnect data plan, the other for consumers without. Both paths allow consumers to play
- ii) 'reel-time' mode (an action game where you catch fish), and 'cast-n-wait' mode (a passive game where you cast your line, and the application shuts down, calling you back when you get a 'bite' on the line)

2. Non-Preloaded Digital Items

- a. Nextel Users may subsequently download the Full Local Version or Full Network Aware Version of ESPN Bass Master Legendary Lunkers.

- i) **LOCAL:** All the features of the Network Aware version of the game, EXCEPT: No real time weather feed from the National Weather Service. No up-loadable tournament scores, for competition against other mobile fishermen.
- ii) **NETWORK AWARE:** All designed features of the game, including real time weather and on-line leader board for tournament scores.

3. Trusted Publishers:

- a. General description and suggested categories of Digital Items to be published: Sports, Action

4. Trusted Ring Tone Provider and Trusted Wallpaper Provider:

- a. Company shall submit to Nextel for each Ring Tone and Wallpaper a completed content submission form as further described in the Trusted Provider Guide. An example of the type of information contained within the form is as follows:

Digital Item License and Distribution Agreement

Item	Description	Example
Submit Information to Nextel:	Company submits information to Nextel. Method of submission	Company emails to Nextel' s Main Point of Contact
Information submitted by Nextel:	Nextel information submitted by whom at Nextel. Method of submission	emailed from Nextel' s Main Point of Contact.
Time Submitted to Company	Date and time of day submitted (MM/DD/YY 00:00 am/pm)	02/02/04 10:00am
Type	RT (Poly, Mono, Voice, Music) or WP	Poly RT
Filename	Full Submitted Filename with format (1 file per line. Multiple file sizes/types for same WP/Track should be on separate lines)	Beatles - Eight Days a Week.MIDI
Device Type and Family:	Note phone(s) file has been tested for	i730, i90
WP/Track Title	Exact title as it is to appear on Device	Eight Days a Week
Artist	For Ring Tones only - Exact name to appear on Device (first name, last name OR group name)	The Beatles
Deck Position(s) / Categorization	Note categories and positions (if applicable). If new category, promotion or user flow please note and specify in separate communication	Rock, 60s. Also in upcoming British Invasion promotion (see email)
Projected WAP Launch Date	MM/DD/YY. Also note corresponding events, promotions or changes that impact timing	02/20/04. Part of British Invasion promo on 2/20/04
Projected Nextel.com Launch Date	MM/DD/YY. Also note corresponding events, promotions or changes that impact timing	02/20/2004
Content Provider or Company	Name of Company providing the content.	Name of Company.
Technical support contact #1	name, title, email, phone #, mobile #	Bobby Flay, CTO, Bobby.Flay@content.com, 555-555-5555 (o), 555-555-5556 (m)

Technical support contact #2	name, title, email, phone #, mobile #	Big Poppa, Dir of Tech, Biggie@content.com, 555-555-5555 (o), 555-555-5556 (m)
Content Provider BD contact	name, title, email, phone #, mobile #	Courtney Love, VP of BizDev, missworld@content.com, 555-555-5555 (o), 555-555-5556 (m)
Suggested retail price		RT2
Qpass ID	If none available, please note and send request under separate email	RT2
Qdesk	Note qdesk description if applicable	N/A
Replace Existing	If this file replaces existing content in the DB, please note (Y/N)	N

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Digital Item License and Distribution Agreement

**Exhibit A-2**  
**DESCRIPTION OF DIGITAL ITEMS FOR BOOST MOBILE USERS**

1. Preloaded Digital Items: To be mutually agreed upon.
2. Boost Trusted Publishers:
  - a. General description and suggested categories of Digital Items to be published: Sports, Action
3. Trusted Ring Tone Provider and Trusted Wallpaper Provider:
  - a. Company shall submit to Boost Mobile for each Ring Tone and Wallpaper a completed content submission form. An example of the type of information contained within the form is as follows:

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Digital Item License and Distribution Agreement

Item	Description	Example
Submit Information to Nextel:	Company submits information to Nextel. Method of submission	Company emails to Nextel' s Main Point of Contact
Submit information to Boost Mobile. Method of submission	Company submits information to Boost Mobile. Method of submission	Company emails to Boost Mobile' s Main Point of Contact
Time Submitted to Company	Date and time of day submitted (MM/DD/YY 00:00 am/pm)	02/02/04 10:00am
Type	RT (Poly, Mono, Voice, Music) or WP	Poly RT
Filename	Full Submitted Filename with format (1 file per line. Multiple file sizes/types for same WP/Track should be on separate lines)	Beatles - Eight Days a Week.MIDI

Device Type and Family:	Note phone(s) file has been tested for	i730, i90
WP/Track Title	Exact title as it is to appear on Device	Eight Days a Week
Artist	For Ring Tones only - Exact name to appear on Device (first name, last name OR group name)	The Beatles
Deck Position(s) / Categorization	Note categories and positions (if applicable). If new category, promotion or user flow please note and specify in separate communication	Rock, 60s. Also in upcoming British Invasion promotion (see email)
Projected WAP Launch Date	MM/DD/YY. Also note corresponding events, promotions or changes that impact timing	02/20/04. Part of British Invasion promo on 2/20/04
Projected Boost Mobile.com Launch Date	MM/DD/YY. Also note corresponding events, promotions or changes that impact timing	02/20/2004
Content Provider or Company	Name of Company providing the content.	Name of Company.
Technical support contact #1	name, title, email, phone #, mobile #	Bobby Flay, CTO, Bobby.Flay@content.com, 555-555-5555 (o), 555-555-5556 (m)
Technical support contact #2	name, title, email, phone #, mobile #	Big Poppa, Dir of Tech, Biggie@content.com, 555-555-5555 (o), 555-555-5556 (m)
Content Provider BD contact	name, title, email, phone #, mobile #	Courtney Love, VP of BizDev, missworld@content.com, 555-555-5555 (o), 555-555-5556 (m)
Suggested retail price		RT2
Qpass ID	If none available, please note and send request under separate email	RT2
Qdesk	Note qdesk description if applicable	N/A
Replace Existing	If this file replaces existing content in the DB, please note (Y/N)	N

**Exhibit B**  
**TESTING**

1. General.

- a. Concept Submission. Prior to commencement of testing, Company may submit concepts for Digital Items to Nextel for Nextel to review in Nextel' s sole discretion

- b. Company acknowledges and agrees that the Digital Item testing and approval process is not a guarantee or assurance that the Digital Item(s) are compatible, or if compatible, will continue to be compatible with, Nextel's Systems, Devices or any of its product or service offerings. If Nextel or an Affiliate of Nextel approves a Digital Item, such approval shall not be



construed as an endorsement of such Digital Item or a commitment on the part of Nextel or such Affiliate that there will not be a similar application or digital item developed and/or deployed on the Systems at any time in the future.

Test Accounts. Where applicable, Company shall provide, maintain and make available to Nextel during the Term at no cost to Nextel five (5) accounts of the then most current version of each Digital Item for use by Nextel or an Affiliate of Nextel to test the Digital Item and/or Ring Tone / Wallpaper test content, which test accounts or content shall operate and access the Digital Item in the same manner as an active account for a Nextel User. Nextel agrees that Nextel and any Affiliate of Nextel shall use these accounts and/or Ring Tone/Wallpaper test content solely for the purpose of testing.

## 2. Testing Procedures.

a. Preloads and Preload Changes - Initial and Final Acceptance Testing. All Preload Digital Items (and Changes thereto) must undergo both initial and final acceptance testing as follows:

Initial Acceptance. Following submission to Nextel, Nextel or an Affiliate of Nextel may perform initial acceptance testing to determine whether the Preload Digital Item is interoperable with both the Systems and the Devices.

i) Company acknowledges that any Digital Item selected for Preload on a new Device may need several iterations of testing as new Device software versions are finalized. Such initial acceptance testing, including whether Initial Acceptance (as defined below) is achieved, shall be at Nextel' s or such Affiliate' s sole discretion. Upon completion of initial acceptance testing, Nextel or such Affiliate shall notify Company in writing of either:

(1) Initial acceptance of the Preload Digital Item(s) (“Initial Acceptance”); or

Any problems or issues with the Preload Digital Item(s). Should the Preload Digital Item not receive Initial  
(2) Acceptance and Nextel notes problems or issues therewith, Company shall recommence the above-procedures regarding initial acceptance testing.

Final Acceptance. Nextel or an Affiliate of Nextel may perform final acceptance testing to determine whether the Preload Digital Item is interoperable with both the Systems and the Devices. Such Final Acceptance testing,

ii) including whether Final Acceptance (as defined below) is achieved, shall be at Nextel' s or such Affiliate' s sole discretion. Upon completion of final acceptance testing, Nextel or such Affiliate shall notify Company in writing of either:

(1) Final acceptance of the Preload Digital Item(s) (“Final Acceptance”); or

Any problems or issues with the Preload Digital Item(s). Should the Preload Digital Item(s) not receive Final  
(2) Acceptance and Nextel or an Affiliate notes problems or issues therewith, Company shall recommence the above-procedures regarding final acceptance testing.

b. ALL OTHER Digital Items - Final Acceptance Testing. All other Digital Items must undergo final acceptance testing as follows:

i) Final Acceptance. Nextel or an Affiliate of Nextel may perform final acceptance testing to determine whether the Digital Item is interoperable with both the Systems and the Devices. Such Final Acceptance testing, including

whether Final Acceptance (as defined below) is achieved, shall be at Nextel' s or such Affiliate' s sole discretion. Upon completion of final acceptance testing, Nextel or such Affiliate shall notify Company in writing of either:

(1) Final acceptance of the Digital Item(s) ("Final Acceptance"); or

Any problems or issues with the Digital Item(s). Should the Digital Item(s) not receive Final Acceptance and (2) Nextel or an Affiliate notes problems or issues therewith, Company shall recommence the above-procedures regarding final acceptance testing.

Changes. Additionally, with regard to testing of Changes, Company shall provide sufficient information about the Change to allow testing, including details of all new feature functionality and/or changes associated therewith.

ii) Company shall compile and maintain a list of changes to the Digital Item, test scripts and an open problem list of key critical issues and shall make such information available to Nextel (or any Affiliate of Nextel) at Nextel' s request prior to and as part of testing. Company shall ensure that all Changes are compatible with all current and previous versions (at least two prior versions) of each Digital Item.

Preload Network Aware Digital Items. All Preloaded and Network Aware Digital Items shall be submitted to Nextel for testing pursuant to the terms of Sections 1 and 2 of this Exhibit B, regardless of whether Company is certified as a Trusted Publisher or a Boost Mobile Trusted Publisher.

d. Trusted Publisher and Boost Mobile Trusted Publisher Testing.

i) Pre-Certification. Prior to being certified as a Trusted Publisher or a Boost Mobile Trusted Publisher, Company shall follow the procedures outlined in Sections 1 and 2 of this Exhibit B.

ii) Upon Certification as a Trusted Publisher or a Boost Mobile Trusted Publisher. Upon certification as a Trusted Publisher or a Boost Mobile Trusted Publisher, except for Preload and Network Aware Digital Items, such Trusted Publisher or a Boost Mobile Trusted Publisher may bypass the testing requirements of Section 2(b) of this Exhibit B, and may self-test (as a prerequisite to self-publishing to the Distribution Channels) as described in the Trusted Publisher Guidelines.

e. Trusted Ring Tone Provider and Trusted Wallpaper Provider Testing.

i) Pre-Certification. Prior to being certified as a Trusted Ring Tone Provider or a Trusted Wallpaper Provider, Company shall follow the procedures outlined in Sections 1 and 2 of this Exhibit B.

ii) Upon certification as a Trusted Ring Tone Provider or a Trusted Wallpaper Provider, except for Preloads, Company may bypass the testing requirements of Section 2(b) of this Exhibit B, and may self-test (as a prerequisite to self-publishing to the Distribution Channels) as described in the Trusted Provider Guidelines.

1. Certification as a Trusted Publisher. Trusted Publisher certification is at Nextel' s sole discretion. As more completely described in the Trusted Publisher Guide, in order to be certified as a Trusted Publisher by Nextel, Company shall:

- a. Submit a minimum of three (3) Digital Item titles to Nextel for testing, one (1) of which shall be a Network Aware Digital Item. Each Digital Item title shall function on at least two (2) Nextel color Device Groups, where applicable, resulting in a total of six (6) Digital Items, and;
  - b) All six (6) Digital Item titles must:
    - i) Be accepted, in writing, by Nextel in Nextel' s sole discretion; and
    - ii) Successfully pass Nextel' s testing process described in Exhibit B and the Trusted Publisher Guide.
- (1) If all six (6) Digital Items are accepted, in writing, by Nextel, and pass Nextel acceptance testing, the Company may be certified as a Trusted Publisher and shall be notified by Nextel in writing thereof.

2. Maintenance of Certification. As more completely described in the Trusted Publisher Guidelines, in order to maintain certification as a Trusted Publisher, Company shall:

- a. Successfully post or have posted at least twenty (20) Digital Items per calendar year to a Distribution Channel.

Testing and Quality. Trusted Publishers shall self-test all Digital Items pursuant to the Trusted Publisher Guide. Additionally, all Digital Items posted on a Distribution Channel may be subject to periodic and random testing by Nextel.

- b. Any Digital Item that fails such periodic and random testing, as determined by Nextel in its sole discretion, may immediately be disabled or removed from a Distribution Channel without notice. Nextel may exercise its sole discretion and revoke Trusted Publisher certification for reasons including but not limited to three (3) Digital Items failing such periodic and random testing within any three (3) month period.
- c. Maintenance of Digital Items.
  - i) A Trusted Publisher shall ensure that the Digital Item information posted on a Distribution Channel is accurate.
  - ii) Trusted Publishers shall provide new versions of existing Digital Items within thirty (30) days after commercial launch of a new Device.

3. Certification as a Trusted Ring Tone or Trusted Wallpaper Provider. Trusted Ring Tone or Trusted Wallpaper Provider certification is at Nextel' s sole discretion. As more completely described in the Trusted Provider Guide, in order to be certified as a Trusted Ring Tone Provider or a Trusted Wallpaper Provider by Nextel, Company shall:

- a. Submit 150 Ring Tone titles for certification as Trusted Ring Tone Provider and/or 150 Wallpaper titles for certification as Trusted Wallpaper Provider. Each Wallpaper and Ring Tone must run on all addressable Nextel commercially available/ supported Devices to be considered for certification.

- b. Trusted Ring Tone Provider candidates and Trusted Wallpaper Provider candidates are required to test their titles to ensure that they meet the technical requirements per the specifications outlined in the Trusted Ring Tone Provider and Trusted Wallpaper Provider Guide.

4. Maintenance of Trusted Ring Tone Provider and Trusted Wallpaper Provider Certification. As more completely described in the Trusted Provider Guide:
- a. In order to maintain certification as a Trusted Ring Tone Provider, Company shall successfully submit a minimum of 500 Ring Tones per calendar year to a Distribution Channel.
  - b. In order to maintain certification as a Trusted Wallpaper Provider, Company shall successfully submit a minimum of 250 Wallpapers per calendar year to a Distribution Channel.
  - c. Maintenance of Ring Tones and Wallpapers.
    - i. Trusted Ring Tone Providers and Trusted Wallpaper Providers shall ensure that the Ring Tone or Wallpaper information posted on a Distribution Channel is accurate.
    - ii. Trusted Ring Tone Providers and Trusted Wallpaper Providers shall provide new versions of existing Ring Tones or Wallpapers within thirty (30) days after commercial launch of a new Device.

**Exhibit C-2**  
**BOOST MOBILE PUBLISHING**

- Certification as a Boost Mobile Trusted Publisher. Boost Mobile Trusted Publisher certification is at the sole discretion of
1. Nextel (or Boost Mobile or other Affiliate of Nextel designated by Nextel). As more completely described in the Boost Mobile Trusted Publisher Guide, in order to be certified as a Boost Mobile Trusted Publisher by Nextel, Company shall:

- Submit a minimum of three (3) Digital Item titles to Nextel for testing, one (1) of which shall be a Network Aware Digital
- a. Item. Each Digital Item title shall function on at least two (2) Nextel color Device Groups, where applicable, resulting in a total of six (6) Digital Items, and;
  - b. All six (6) Digital Item titles must:
    - i) Be accepted, in writing, by Nextel or an Affiliate of Nextel in Nextel' s or such Affiliate' s sole discretion; and
    - ii) Successfully pass Nextel' s testing process described in Exhibit B and the Boost Mobile Trusted Publisher Guide.

If all six (6) Digital Items are accepted, in writing, by Nextel or an Affiliate of Nextel, and pass Nextel acceptance (1) testing, the Company may be certified as a Boost Mobile Trusted Publisher and shall be notified by Nextel or such Affiliate in writing thereof.

2. Maintenance of Certification. As more completely described in the Boost Mobile Trusted Publisher Guidelines, in order to maintain certification as a Boost Mobile Trusted Publisher, Company shall:

a. Successfully post or have posted at least twenty (20) Digital Items per calendar year to a Distribution Channel.

Testing and Quality. Boost Mobile Trusted Publishers shall self-test all Digital Items pursuant to the Trusted Publisher Guide. Additionally, all Digital Items posted on a Distribution Channel may be subject to periodic and random testing by Nextel or any Affiliate of Nextel. Any Digital Item that fails such periodic and random testing, as determined by Nextel or

b. such Affiliate in its sole discretion, may immediately be disabled or removed from a Distribution Channel without notice. Nextel or an Affiliate may exercise its sole discretion and revoke Boost Mobile Trusted Publisher certification for reasons including but not limited to three (3) Digital Items failing such periodic and random testing within any three (3) month period.

c. Maintenance of Digital Items.

i) A Boost Mobile Trusted Publisher shall ensure that the Digital Item information posted on a Distribution Channel is accurate.

ii) Boost Mobile Trusted Publishers shall provide new versions of existing Digital Items within thirty (30) days after commercial launch of a new Device.

3. Certification as a Trusted Ring Tone Provider or Trusted Wallpaper Provider. Trusted Ring Tone Provider certification or Trusted Wallpaper Provider certification is at the sole discretion of Boost Mobile. As more completely described in the Trusted Provider Guide, in order to be certified as a Trusted Ring Tone Provider or a Trusted Wallpaper Provider by Boost Mobile, Company shall:

Submit 150 Ring Tone titles for certification as Trusted Ring Tone Provider and/or 150 Wallpaper titles for certification as

a. Trusted Wallpaper Provider. Each Wallpaper and Ring Tone must run on all addressable Boost Mobile commercially available/supported Devices to be considered for certification.

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#### Digital Item License and Distribution Agreement

b. Trusted Ring Tone Provider candidates and Trusted Wallpaper Provider candidates are required to test their titles to ensure that they meet the technical requirements per the specifications outlined in the Trusted Provider Guide.

4. Maintenance of Trusted Ring Tone Provider Certification and Trusted Wallpaper Provider Certification. As more completely described in the Trusted Provider Guide:

a. In order to maintain certification as a Trusted Ring Tone Provider, Company shall successfully submit a minimum of 500 Ring Tones per calendar year to a Distribution Channel, except that in the calendar year of such certification, they shall successfully submit a prorated portion of such amount (not including the Ring Tones submitted to obtain such certification) based on the number of days in the year following such certification.

b. In order to maintain certification as a Trusted Wallpaper Provider, Company shall successfully submit a minimum of 250 Wallpapers per calendar year to a Distribution Channel, except that in the calendar year of such certification, they shall

successfully submit a prorated portion of such amount (not including the Wallpapers submitted to obtain such certification) based on the number of days in the year following such certification.

c. Maintenance of Ring Tones and Wallpapers.

- i. Trusted Ring Tone Providers and Trusted Wallpaper Providers shall ensure that the Ring Tone or Wallpaper information posted on any Distribution Channel is accurate when posted and is promptly revised, removed, or supplemented as necessary from time to time to ensure that it remains accurate.
- ii. Trusted Ring Tone Providers and Trusted Wallpaper Providers shall provide new versions of existing Ring Tones or Wallpapers within thirty (30) days after commercial launch of a new Device.

**Exhibit D-1**  
**DISTRIBUTION**

For the purposes of Exhibit D-1, Nextel Users shall not include Boost Users.

Except for distribution of Preload Digital Items, which shall occur only upon the mutual agreement of the Parties, Nextel shall determine in its sole discretion the Distribution Channels through which the Digital Items may be made available, and, upon mutual agreement to Preload a Digital Item (as described below), the specific Devices upon which a Digital Item may be Preloaded. Upon such distribution, Nextel may notify Company of the particular Distribution Channel. Such Distribution Channels may include the following:

1. Preload Digital Item Distribution Channels.

Nextel may only Preload a Digital Item onto Devices upon the mutual agreement of the Parties.

2. Wireless Web Site Distribution Channels.

Nextel may make Company' s Digital Items available for distribution to Nextel Users via wireless web sites owned, controlled or authorized by Nextel or any of its Affiliates. Placement of Digital Items on such wireless web sites shall be determined by Nextel or any such Affiliate in its sole discretion.

3. Web Site Distribution Channels.

Nextel may make Company' s Digital Items available for distribution to Nextel Users via web sites owned, controlled or authorized by Nextel or any of its Affiliates. Placement of Digital Items on such web sites shall be determined by Nextel or any such Affiliate in its sole discretion.

4. Trusted Publisher.

Trusted Publishers may be able to self-publish to certain Distribution Channels as approved by Nextel and as further described in the Trusted Publisher Guide.

5. Trusted Ring Tone Provider or Trusted Wallpaper Provider Distribution.

- Trusted Ring Tone Providers and Trusted Wallpaper Providers may be able to self-publish to certain Distribution Channels at a time when that capability is made available and at Nextel' s sole discretion, as further described in the Trusted Provider Guide.
- a. Channels at a time when that capability is made available and at Nextel' s sole discretion, as further described in the Trusted Provider Guide.
  - b. Upon the mutual agreement of the Parties, the Parties may utilize alternative distribution channels, including but not limited to the hosting of Company provided Ring Tones and Wallpapers on Company servers.

**Exhibit D-2**  
**DISTRIBUTION TO BOOST USERS**

For the purposes of Exhibit D-2, Nextel Users shall mean Boost Users only.

Except for distribution of Preload Digital Items, which shall occur only upon the mutual agreement of the Parties, Nextel shall determine in its sole discretion the Distribution Channels through which the Digital Items may be made available, and, upon mutual agreement to Preload a Digital Item (as described below), the specific Devices upon which a Digital Item may be Preloaded. Upon such distribution, Nextel may notify Company of the particular Distribution Channel. Such Distribution Channels may include the following:

1. Preload Digital Item Distribution Channels.

Nextel or an Affiliate may only Preload a Digital Item onto Devices upon the mutual agreement of the Parties.

2. Wireless Web Site Distribution Channels.

Nextel or an Affiliate may make Company' s Digital Items available for distribution to Nextel Users via wireless web sites owned, controlled or authorized by Nextel or any of its Affiliates. Placement of Digital Items on such wireless web sites shall be determined by Nextel or any such Affiliate in its sole discretion.

3. Web Site Distribution Channels.

Nextel or an Affiliate may make Company' s Digital Items available for distribution to Nextel Users via web sites owned, controlled or authorized by Nextel or any of its Affiliates. Placement of Digital Items on such web sites shall be determined by Nextel, or any such Affiliate, in its sole discretion.

4. Boost Mobile Trusted Publisher.

Boost Mobile Trusted Publishers may be able to self-publish to certain Distribution Channels as approved by Boost Mobile and as further described in the Trusted Publisher Guide.

5. Trusted Ring Tone Provider or Trusted Wallpaper Provider Distribution.



- Trusted Ring Tone Providers and Trusted Wallpaper Providers may be able to self-publish to certain Distribution Channels at a time when that capability is made available and at the sole discretion of Nextel or Nextel's Affiliates, as further described in the Trusted Provider Guide.
- a.
  - b. Upon the mutual agreement of the Parties, the Parties may utilize alternative distribution channels, including but not limited to the hosting of Company provided Ring Tones and Wallpapers on Company servers.

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Digital Item License and Distribution Agreement

**Exhibit E-1**  
**PAYMENTS - NEXTEL**

For the purposes of Exhibit E-1, Nextel Users shall not include Boost Users.

**1. Preloaded Digital Items.**

Regarding the Preload of a Digital Item, prior to any subscription, licensing and/or download of such Digital Item, the following shall apply:

- i) Demonstration Version Digital Items. Company shall not receive any payments for Preload of a Demonstration Version Digital Item on a Device. A Demonstration Version Digital Item may be a Local or Network Aware Digital Item.
- ii) Full Version Digital Items. The Parties shall mutually agree on payment terms regarding any Full Version Local or Network Aware Digital Item prior to Preload.

- 2. Subsequent Subscription, licensing and/or Download of a Previously Preloaded Digital Item.** Regarding subsequent subscription, licensing and/or download of a previously Preloaded Digital Item to a Device, such Device being within a Derivative Device Group where at least one Device of such Derivative Device Group was previously Preloaded with such Digital Item, where Nextel bills the Nextel User for such Digital Item, the following shall apply:

- a. Full Version Digital Items Except for Ring Tones and Wallpapers. Except for Ring Tones and Wallpapers Nextel will pay to Company [\*\*\*\*\*] ("Payment Percent 1") of the sums actually collected from Nextel Users for use of such Digital Item ("Payment 1").
- b. Full Version Digital Items Which Are Ring Tones and Wallpapers. For Ring Tones and Wallpapers, the Parties shall mutually agree on payment terms.

- 3. Non-Preloaded Digital Items.** Regarding subscription, licensing and/or download of a Digital Item to a Device, such Device NOT being within a Derivative Device Group where at least one Device of such Derivative Device Group was previously Preloaded with such Digital Item, where Nextel bills the Nextel User for such Digital Item, the following shall apply:

- a. Digital Items Except for Ring Tones and Wallpapers, Except for Ring Tones and Wallpapers, Nextel will pay to Company [\*\*\*\*\*] ("Payment Percent 2") of the sums actually collected from such Nextel User for use of such Digital Item ("Payment 2").

- Non-Preloaded Ring Tones and Wallpapers - For each Ring Tone or Wallpaper that is not Preloaded on ANY Device, upon subscription, licensing and/or download of such Ring Tone or Wallpaper Item by a Nextel User, where Nextel bills such Nextel User for such Ring Tone or Wallpaper, Nextel will pay to Company [\*\*\*\*\*] (“Payment Percent 3”) of the sums actually collected from such Nextel User for licensing and/or use of such Digital Item (“Payment 3”).
- b.

4. General.

- a. Payment Percent 1, Payment Percent 2, and Payment Percent 3 are, collectively, the ‘ Payment Percents.’ Payment 1, Payment 2, and Payment 3 are, collectively, the ‘ Payments’ .

- The Payments will be made based on sums actually collected from Nextel User and shall be subject to adjustments or charge backs due to bad debt, credits, refunds, cancellations and other adjustments and charge backs to reflect fees actually collected from Nextel Users.. The sums subject to the Payment Percents shall not include access, airtime, wireless data transport, shipping fees, taxes or any other charges payable by Nextel Users to Nextel.
- b.

[\*\*\*\*\*] Confidential treatment requested

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Digital Item License and Distribution Agreement

- Bundling. In the event that Nextel offers other Digital Items, services and/or products in conjunction with a Digital Item as a “bundled service,” and those “bundled services” are offered at a discounted price, Company shall receive the Payment calculated from a price, which for the purpose of calculation is the price for the Digital Item at the time minus the discount, which discount is the overall discount of the bundle equally spread across each component of the bundle. Thus, if one Digital Item is priced at \$10.00 and a customer purchases another application with a stand-alone price of \$5.00,
- c. Nextel may price the bundled services (Digital Item and the \$5 stand-alone application) at \$13.50 (a 10% discount on the bundle). For purposes of calculating the Payment, the price of each service billed to the Nextel User would be reduced by the rate of discount for the bundle as a whole (10% discount). Hence, the allocation for the individual components of the bundle would be \$9.00 for the Digital Item (\$10.00 minus 10%) and \$4.50 for the other stand-alone application (\$5.00 minus 10%).

- Initial Implementation Fee. Company shall pay a one-time set up fee (the “Set Up Fee”) of five hundred dollars (\$500) for incorporating Company into Nextel’ s enhanced data billing platform, which allows Nextel to bill Nextel Users for Company-provided Digital Items. Nextel shall set-off from the Payments to Company such Set Up Fee.
- 5.

5. Payment Process.

- a. The Payments shall be due and payable within forty-five (45) days following the end of each calendar month. Nextel shall from time to time evaluate internal processes to expedite the overall payment process to Company.
- b. Nextel shall remit all Payments to:

Dwango North America  
200 West Mercer  
Suite 501  
Seattle, WA 98119

**Exhibit E-2**  
**PAYMENTS - BOOST MOBILE**

**1. Preloaded Digital Items.**

- a. Following Preload of a Digital Item, but prior to any subsequent subscription, licensing and/or download of such Digital Item, the following shall apply:

- i) Demonstration Version Digital Items. Company shall not receive any payments for Preload of a Demonstration Version Digital Item on a Device. A Demonstration Version Digital Item may be a Local or Network Aware Digital Item.
- ii) Full Version Digital Items. The Parties shall mutually agree on payment terms regarding any Full Version Local or Network Aware Digital Item prior to Preload on a Device.

**2. Digital Items.**

- Except for Ring Tones and Wallpapers, for each Digital Item, irrespective of whether the Digital Item was initially Preloaded, upon subscription, licensing and/or download of such Digital Item by a Boost User, where Nextel or an Affiliate bills such Boost User for such Digital Item, Nextel or an Affiliate of Nextel will pay to Company [\*\*\*\*\*] ("Boost Mobile Payment Percent 1") of the sums actually collected from such Boost User for licensing and/or use of such Digital Item ("Boost Mobile Payment 1").

- b. Ring Tones. For each Ring Tone that is not Preloaded on ANY Device, upon subscription, licensing and/or download of such Ring Tone Item by a Boost User, where Nextel or an Affiliate bills such Boost User for such Ring Tone, Nextel or an Affiliate will pay to Company [\*\*\*\*\*] ("Boost Mobile Payment Percent 2") of the sums actually collected from such Boost User for licensing and/or use of such Digital Item ("Boost Mobile Payment 2"). Master tones (real music in either .wav or mp3 format) from third-party company "INGrooves" shall be subject to the Boost Mobile Payment Percent 2.

- c. Wallpapers. The Parties shall mutually agree on payment terms regarding any Wallpapers.

**3. General.**

- a. Boost Mobile Payment Percent 1 and Boost Mobile Payment Percent 2 are, collectively, the "Boost Mobile Payment Percents." Boost Mobile Payment 1 and Boost Mobile Payment 2 are, collectively, the "Boost Mobile Payments."

- b. The Boost Mobile Payments will be made based on sums actually collected from Boost Users by Nextel or an Affiliate of Nextel and shall be subject to adjustments or charge backs due to credits, refunds, cancellations and other adjustments and charge backs to reflect fees actually collected from Boost Users. The sums subject to the Boost Mobile Payment Percents shall not include access, airtime, wireless data transport, shipping fees, taxes or any other charges payable by Boost Users to Nextel.

- c. Bundling. In the event that Nextel or an Affiliate of Nextel offers other digital items, services and/or products in conjunction with a Digital Item as a "bundled service," and those "bundled services" are offered at a discounted price, Company shall receive the Boost Payment calculated from a price, which for the purpose of calculation is the price for the Digital Item at the time minus the discount, which discount is the overall discount of the bundle equally spread across

each component of the bundle. For example, if one Digital Item is priced at \$10.00 and a customer purchases another application with a stand-alone price of \$5.00, Nextel or such Affiliate may price the bundled services (Digital Item and the \$5 stand-alone application) at \$13.50 (a 10% discount on the bundle). For purposes of calculating the Boost Payment, the price of each service billed to the Boost User would be reduced by the rate of discount for the bundle as a whole (10% discount). Hence, the allocation for the individual components of the bundle would be \$9.00 for the Digital Item (\$10.00 minus 10%) and \$4.50 for the other stand-alone application (\$5.00 minus 10%).

[\*\*\*\*\*] Confidential treatment requested

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Digital Item License and Distribution Agreement

4. Payment Process.

- a. The Boost Payments shall be due and payable within forty-five (45) days following the end of each calendar month.
- b. Nextel or an Affiliate of Nextel shall remit all Boost Payments to:

Dwango North America  
200 West Mercer  
Suite 501  
Seattle, WA 98119

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Digital Item License and Distribution Agreement

**Exhibit F**  
**CO-MARKETING**

1. **Press releases.** The Parties may not issue a press release disclosing the existence of the relationship or the availability of the Digital Item(s) on the Systems without prior written consent from the other Party after that Party's review and approval of the form and content of any publicity release or other press announcement and in accordance; provided, however, that the foregoing will not restrict either Party from making press releases about their respective products and services that do not include a reference to the other Party.

2. Nextel listed on Company's web site. Company shall, within ten (10) days of the availability of a Digital Item via a Distribution Channel, or, if a Trusted Publisher or a Boost Mobile Trusted Publisher or a Trusted Ring Tone Provider or a Trusted Wallpaper Provider, within ten (10) days of certification as such in accordance with this Agreement, feature Nextel (and/or Boost Mobile, in Nextel's sole discretion) on Company's web site. Information to be included in such posting shall include, but is not limited to: Nextel logo (and/or Boost Mobile logo, as determined by Nextel its sole discretion), and information (to be supplied by Nextel) regarding how to use the Distribution Channels and/or download a Digital Item, which may include the URL of the applicable Distribution Channel. Listing of Nextel and/or Boost Mobile on Company's web site is contingent upon Nextel's prior written approval of such listing.

3. Promotion.

General. Nextel and its Affiliates may advertise and market the Distribution Channel(s) from which the Digital Item(s) will be distributed and/or advertise and market the Digital Item(s) by other means as Nextel and its Affiliates determine in their sole discretion, and will create appropriate links to enable Nextel Users of the Devices to download the Digital Item(s).

Company authorizes Nextel and its Affiliates to refer, in Nextel' s online, print or other advertising and promotional materials, to the fact that Company' s Digital Item(s) are accessible through Nextel and/or certain Affiliates and that Nextel and/or such Affiliates are a distributor of Company' s Digital Item(s), provided that any such materials use Company' s Trademarks only as permitted in Section 19 of the Agreement.

Company shall use commercially reasonable efforts to market and promote the Digital Item(s), and Nextel (or its Affiliates, as determined by Nextel in its sole discretion) shall use commercially reasonable efforts to market and promote the Devices, provided that Nextel may determine to market and promote the Devices to all or just a portion of Nextel Users, such as only to Boost Users or only to Nextel Users that are not Boost Users. However, neither Party will conduct any "Direct Co-Marketing Campaign" (a direct marketing campaign that features the identities, products, and/or services of both Parties in one promotion) without the other Party' s written approval of both form and content. The Party conducting any Direct Co-Marketing Campaign shall coordinate with the other Party to promptly communicate any opt-out requests (i.e., requests by contacted individuals not to be contacted). Company shall comply with all laws and the Direct Marketing Association' s requirements in conducting any Direct Co-Marketing Campaign.

Each Party, in its sole discretion, may offer the other Party and its Affiliates opportunities to jointly demonstrate, market and promote the Digital Item(s) at trade or other shows, seminars and/or wireless or electronic industry events.

Nextel may, in its sole discretion, provide Company with opportunities to participate in select co-marketing activities that may or may not be available to any other companies. These activities will be negotiated on an as-needed basis throughout the Term.

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#### Digital Item License and Distribution Agreement

Promotional Licenses. Company shall provide to Nextel (and to Boost Mobile) at no cost one hundred (100) licenses for each version (Local and Network Aware) of each Digital Item posted on a Distribution Channel for Nextel to allocate and use in its own discretion.

Network Aware Digital Items. In the event a Network Aware Digital Item is available on a Distribution Channel, if requested by Nextel, Company shall (i) create and make available to Nextel (or any Affiliate of Nextel designated by Nextel) at no cost a demonstration version of the Network Aware Digital Item, which (1) shall be a Local Digital Item and (2) shall show all features and functionalities of such Network Aware Digital Item, and (ii) provide an unlimited number of licenses for such demonstration version to Nextel and any such Affiliate at no cost.

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#### Digital Item License and Distribution Agreement

**Exhibit G-1  
CUSTOMER CARE SERVICE LEVEL AGREEMENT**

1. Customer Care Process.

Company. Company shall provide customer care for the Digital Item(s) to all Nextel Users. Company shall provide and maintain at a minimum the customer care contacts listed in Section 1(c) for Nextel Users experiencing problems with a Digital Item, and shall respond to such customer inquiries in person during the hours which are set forth below. If Company determines that the problem is due to a Digital Item issue, Company shall take action to resolve such issue. If

- a. Company determines the problem is due to a Nextel User' s error, a Company customer service representative shall walk the Nextel User through the necessary steps to use the Digital Items. If Company has eliminated the possibility of a problem with the Digital Items(s) or a Nextel User' s error, and determines the problem might be due to a Device or the Systems, Company may refer the Nextel User to Nextel and may provide the Nextel User with Nextel' s customer care number.

Nextel. Nextel shall provide, either directly or through a third party, customer care for Devices and the Systems. Nextel shall provide and maintain a toll-free telephone number for Nextel Users experiencing problems, which shall be answered in person during the applicable hours which are set forth below. In the case of Devices that are distributed only to Boost Users, the applicable hours for receiving answers in person shall be those set forth for Boost Customer Care

- b. below. If Nextel or an Affiliate of Nextel determines that the problem is due to a Device or Systems issue, Nextel or such Affiliate shall take action to resolve such issue. If Nextel or an Affiliate of Nextel determines the problem is due to a Nextel User' s error, a Nextel customer service representative shall walk the Nextel User through the necessary steps to use the Device and/or Systems. If Nextel has ruled out the possibility of a problem with a Devices or the Systems and determines the problem might be due to a Digital Item error, Nextel may refer the Nextel User to Company and may provide the Nextel User with Company' s customer care number or email.

- c. Nextel, Boost and Company Customer Care Contact Information.

Department	Contact Information for Customers to Use	Hours of Operation
Nextel Customer Care	1-800-639-6111	Business Hours: Monday - Friday, 7:00 AM - 10:00 PM; Saturday, 8:00 AM - 5:00 PM
Boost Customer Care	888-BOOST-4U or 888-266-7848	Business Hours: Monday - Friday, 7:00 AM - 9:00 PM;
Company Customer Care	Enter phone number:(206) 286-1440 Email Address:support@dwango.com	Business Hours: Monday-Friday, 8:00 AM - 6:00 PM

Each Party shall notify the other Party of any changes to its respective customer care contact information (including, in the case of Nextel, any change to Boost Customer Care contact information) ten (10) business days before such change becomes effective.

- d. Discontinuation of Support of Digital Item by Company. In the event that Company at any time intends to discontinue support for any Digital Item, Company shall provide Nextel with at least sixty (60) days prior written notice and, if the Digital Item is distributed to Boost Users, Company shall provide Boost Mobile with at least sixty (60) days prior written notice.

- Nextel acknowledges and agrees that Company may perform such customer care obligations through the developer of the Digital Item provided Company has an agreement with such developer containing obligations, including but not limited to those regarding privacy and consumer protection, that are equal to or greater than those contained in this Agreement. Company shall ensure that such developer complies with all obligations of Company contained in this Agreement. In the event of any non-compliance thereof Nextel reserves the right to treat any breaches by developers as breaches by Company.

**Exhibit G-2**  
**AVAILABILITY/ HOSTING SERVICE LEVEL AGREEMENT**

- Operational Issues. In case operational issues arise which require the assistance of the other Party to be resolved, each Party may contact the other Party to obtain, and each Party commits to a joint issue resolution. Both Parties shall provide and maintain a phone number, which phone number is set forth in the table below, and which shall be answered by technical skilled personnel during the business hours which are set forth in the table below. In the event that the Company's Operations Center does not operate 24 hours each day, 7 days a week, Company shall link the phone number provided below to a pager and shall return Nextel's and its Nextel's Affiliates call(s) no later than 15 minutes after the time the pager message was left by Nextel during all hours outside of the business hours as set forth below for Company. The contact information below for operational issues is intended solely for communication between Nextel or its Affiliates and Company and shall not be provided to third parties. Each Party shall notify the other Party of any changes to the operations contact information provided in the operations contact table below ten (10) business days before such change becomes effective.
1. Network Aware Digital Items: Availability.

Each Network Aware Digital Item shall be available to applicable Nextel Users a minimum of 99.5% of the time during any 24 hour period, 7 day period, and 30 day period. Calculation of this availability shall exclude Maintenance/Planned Outages but shall include any outages which exceed the Maintenance Window, Unplanned Outages and Emergency Maintenance (as defined below). Upon Nextel's request, Company shall provide Nextel with a report showing Digital Item availability.

Upon a violation of the above standards of availability and/or any violation of this Exhibit G-2, in addition to any other applicable remedies, Nextel may, in its sole discretion, without notice, immediately disable access to any effected Digital Item, remove any effected Digital Item from a Distribution Channel, revoke certification of Company as a Trusted Publisher or a Boost Mobile Trusted Publisher, a Trusted Ring Tone Provider, and/or a Trusted Wallpaper Provider or terminate this Agreement.
  2. Network Aware Application: Hosting. In the event Company is responsible for hosting a Network Aware Digital Item or any portion thereof, Company shall comply with the following:
    - a. Maintenance/ Outages.



- Maintenance/Planned Outages. Company shall perform any work which requires the unavailability of the Digital Item or key functionalities of the Digital Item (“Maintenance/Planned Outage”) on Friday or Saturday evenings between 11:00 PM and 5:00 AM local time (“Maintenance Window”).

In the event the time required to perform such work will unexpectedly exceed the Maintenance Window

- (1) Company shall notify the NDSS at the telephone number set forth below forty-five (45) minutes before the end of the Maintenance Window, and such unavailability shall be considered an Unplanned or Emergency Outage for the purposes of Section 2 of this Exhibit G-2.

Unplanned Outages. Company shall notify the NDSS at the telephone number set forth below of any material Digital Item impairment (including but not limited to Digital Item or key functionalities of the Digital Item not available or

- ii) malfunctioning) (“Unplanned Outage”) within thirty (30) minutes after such Unplanned Outage commences. Company shall provide a short description of the impairment causing the Unplanned Outage (e.g. service affected, extent of impairment) and a status for resolution.

Digital Item License and Distribution Agreement

- iii) Emergency Maintenance. In the event Company needs to perform work which is required to correct any potentially service impacting conditions or prevent Unplanned Outages, and such work needs to be performed outside of the Maintenance Window (“Emergency Maintenance”), Company shall notify the NDSS at the telephone number set forth below of such Emergency Maintenance forty-five (45) minutes prior to the start of the Emergency Maintenance. Company shall provide an estimated timeframe for resolution and a status of such Emergency Maintenance every two (2) hours until resolved.

b. Nextel and Company Operations Center Contact Information.

Department	Phone Numbers for Nextel and Company to Use	Hours of Operation
Nextel Data Solution Support (NDSS)	Phone number: 1- 866-539-8924	M - F 5am to 8pm MST; S -S 6am to 3pm MST After hours support: Email <a href="mailto:www.NextelDSS@nextel.com">www.NextelDSS@nextel.com</a>
Company Operations Center	Phone number: (206) 286-1440, press - menu option 3 or ext. 222 Email Address:support@dwango.com	Business Hours: M-F 7am-7pm. After hours: The phone number is linked to a pager. Company commits to immediate response.

c. Internet Connection.

- i) If data volume during the busiest hour (that hour with the most volume of data traffic on the Nextel data network) of a twenty-four (24) hour day is greater than 64 kilobits per second (Kbps), Company **SHOULD** provide a dedicated network link (“Internet Connection”) between the site where the Network Aware Digital Item(s) resides and the nearest Nextel network point of presence.
- ii) If data volume during the busiest hour (that hour with the most volume of data traffic on the Nextel data network) of a twenty-four (24) hour day is greater than 128 kilobits per second (Kbps), Company **SHALL** provide an Internet

Connection between the site where the Network Aware Digital Item(s) resides and the nearest Nextel network point of presence.

- iii) Any such Internet Connection shall be set up as follows: Company shall maintain a multi-home Internet Connection with a minimum of two (2) Tier 1 ISPs and shall ensure that traffic from Company through such ISPs remains under 90% of capacity. Company shall ensure that the committed information rate (CIR) on at least two Internet Connections exceeds the actual traffic rate of the two highest traffic Internet Connections combined.

- Bandwidth Provider. Company shall provide such Internet Connections by utilizing a bandwidth provider approved, in writing, by Nextel or an Affiliate of Nextel, prior to commencement of an Internet Connection. Such Internet Connection shall be configured to utilize the protocols and operating parameters specified by Nextel or an Affiliate of Nextel. Company shall bear all costs of implementing the Internet Connection, including but not limited to, obtaining the connection and maintenance of the connection.

- Third Party Servers. Company agrees that portions of Network Aware Digital Items hosted by Company may not be hosted on any server or other hosting device not owned and controlled by Company ("Third Party Server"), except in accordance with the following:

- Company shall promptly provide Nextel (and Boost Mobile, if any of such Network Aware Digital Items are distributed to Boost Users and not other Nextel Users, as provided in Section 1.d of Exhibit G-1 with written notice of such proposal, which written notice shall include at a minimum the name and address of the person or entity that owns and controls the Third Party Server ("Host"), the name of a contact person for the Host and the proposed date of the transfer of each portion of such Network Aware Digital Item. No portion of a Network Aware Digital Item shall be hosted on a Third Party Server without the prior written consent of Nextel. Such consent shall not be unreasonably withheld; however, in no case shall any Host be a competitor of Nextel or any Affiliate of Nextel;

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Digital Item License and Distribution Agreement

- Company shall not install any portion of a Network Aware Digital Item on any Third Party Server or disclose any documentation related to a Network Aware Digital Item to any proposed Host until the proposed Host and Company have executed a hosting agreement under which Host has agreed to be bound by terms and conditions that are consistent with and no less restrictive than the terms and conditions of this Agreement as if the Host were Company hereunder, including but not limited to the confidentiality obligations contained in Section 25 of the Agreement. Company will enforce and police compliance of Host with the terms of any such hosting agreement; and Company shall impose the same standards of service upon Host as set forth in this Agreement.

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Digital Item License and Distribution Agreement

### **Exhibit G-3 CONTENT STANDARDS**

1. Content, in any format, that violates any applicable local, state, federal, or international law is prohibited.

2. Content, in any format, that is related to any of the following categories is prohibited:

- a. Illegal drugs (including but not limited to marijuana, cocaine, ecstasy etc...).
- b. Sexually explicit images, pornographic content, or child pornography.
- c. Comments, communications and/or content that facilitates or promotes illegal activity.

Prejudiced related comments, communications and/or content that facilitates or promotes unlawful violence, and/or

- d. discrimination based upon gender, ancestry, race, sexual orientation, religion, marital status, age, disability, national origin, veteran status, creed or color.

Digital Item License and Distribution Agreement

**Exhibit H  
MAIN POINT OF CONTACT**

**The main point of contact for Company is:**

Name	Brad David
Title	Vice President Business Development
Phone number	(206) 286-1440 ext -736
Mobile number	
Email address	brad.david@dwango.com
Address	200 West Mercer, Suite 501, Seattle, WA 98115
Fax number	(206) 286-1442
Pager	

**The main point of contact for Nextel is:**

Name	Dan Silberberger
Title	Sr. Product Manager
Phone number	
Mobile number	571-436-6370
Email address	dan.silberberger@Nextel.com
Address	2003 Edmund Halley Drive, Reston, VA 20191
Fax number	703-433-8887
Pager	N/A

**The main point of contact for Boost Mobile is:**

Name	Christopher Wuhrer
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Title	Sr. Product Manager
Phone number	703-433-8754
Mobile number	703-926-2047
Email address	<a href="mailto:Christopher.wuhrer@boostmobile.com">Christopher.wuhrer@boostmobile.com</a>
Address	2001 Edmund Halley Drive, Reston, VA 20191
Fax number	703-433-8996
Pager	N/a

**Company 24-7 contact for receipt of legal process is:**

Name:	Paul Quinn
Address:	200 West Mercer St., Ste. 501
	Seattle, WA 98119
Email:	paul.quinn@dwango.com
Office #:	206.286.1440 ext - 729
Fax#:	206.286.1442
Mobile #:	425.281.1695
Central Office #:	206.286.1440

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Digital Item License and Distribution Agreement

**In addition to the POC above, Company shall contact the following person at Nextel regarding any change in the above 24-7 contact:**

Address:               Nextel Communications  
                              Security and Fraud Department  
                              2001 Edmund Halley, Drive  
                              Reston, Virginia 20194

Telephone:     Dan Washington, 703-433-8425  
                              Mark Harley, 703-433-8708  
                              Christopher Fitzpatrick, 703-433-8033  
                              Sheila Dedeaux, 703-433-8411  
                              Bob Holliday, 703-433-8559

Fax:                 877-293-9824

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Digital Item License and Distribution Agreement

**Exhibit I-1**  
**REPORTING- NEXTEL USERS OTHER THAN BOOST USERS**

For the purposes of Exhibit I-1, Nextel Users shall not include Boost Users.

## 1. Company Reports.

- Roadmap. Within ten (10) business days of the end of each calendar quarter, Company shall provide to Nextel the title, description, target submission and availability dates of the Digital Items Company intends to make available on the Distribution Channels used by Nextel or an Affiliate pursuant to Exhibit D-1 during the upcoming three (3) months, except
- a. for Trusted Ring Tone Providers and Trusted Wallpaper Providers, whom shall provide such information within ten (10) business days of the end of each calendar month and shall be available for at least two (2) Digital Item roadmap calls a month with Nextel.
  - b. Care reports. Within ten (10) business days of the end of each calendar month, Company shall submit to Nextel a report in electronic format containing the following information regarding such just-completed calendar month:
    - i) Number of Nextel User support calls fielded by Company' s support representatives by day.
    - ii) Accounting of the 10 most common Nextel User issues and number of daily calls received for each issue.

## 2. Nextel Reports.

- Final Payment Report. Within thirty (30) calendar days of the end of each calendar month, Nextel shall submit to
- a. Company a report in electronic format containing the following information regarding such just-completed calendar month:
    - i) Number of Digital Item licensed/ distributed
    - ii) Total sales of Digital Items in U.S. dollars, less any adjustments.

- Nextel may provide access to online reporting information for the Distribution Channels where Company may have
- c. access to the following reports and queries. It is understood that online sales reporting is provided for informational purposes only and shall not reflect actual payments due to Company:
    - i) sales and orders by Digital Item title by day of week.
    - ii) sales and orders by Digital Item title by hour of day (15 minute increments).
    - iii) top 10 Items by sales.
    - iv) top 10 Items by orders.
    - v) sales and orders by Device.
    - vi) sales and orders by category.
    - vii) sales and order by promotion.

### Exhibit I - 1 REPORTING - BOOST USERS

## 1. Company Reports.

- Roadmap. Within ten (10) business days of the end of each calendar quarter, Company shall provide to Boost Mobile the
- a. title, description, target submission and availability dates of the Digital Items Company intends to make available on the Distribution Channels used by Nextel or an Affiliate pursuant to Exhibit D-2 during the upcoming three (3) months.
  - b. Care reports. Within ten (10) business days of the end of each calendar month, Company shall submit to Boost Mobile a report in electronic format containing the following information regarding such just-completed calendar month:
    - i) Number of Boost User support calls fielded by Company' s support representatives by day.
    - ii) Accounting of the 10 most common Boost User issues and number of daily calls received for each issue.

## 2. Nextel Reports.

- Payment Report. Within thirty (30) calendar days of the end of each calendar month, Nextel or a Nextel Affiliate shall
- a. submit to Company a report in electronic format containing the following information regarding such just-completed calendar month:

- i) Number of Digital Item licensed/ distributed to Boost Users.
- ii) Total sales of Digital Items to Boost Users in U.S. dollars, less any adjustments.

- Nextel and/or any Nextel Affiliate may provide access to online reporting information regarding Boost Users for the
- b. Distribution Channels where Company may have access to the following reports and queries. It is understood that online sales reporting is provided for informational purposes only and shall not reflect actual payments due to Company:

- i) sales and orders by Digital Item title by day of week.
- ii) sales and orders by Digital Item title by hour of day (15 minute increments).
- iii) top 10 Items by sales.
- iv) top 10 Items by orders.
- v) sales and orders by Device.
- vi) sales and orders by category.
- vii) sales and order by promotion.

## Exhibit J TRADEMARKS

### 1. Nextel Trademarks

- a. Nextel®
- b. Nextel logo only as follows:

NEXTEL

NEXTEL

c. Nextel Compatible Product logo only as follows:



2. Boost Mobile Trademarks

a. Boost Mobile™

b. Boost Mobile logos provided below, plus those other graphic logos (if any) as provided to Company for the purposes of this Agreement:



3. Company Trademarks - Any additional trademarks will be communicated to Nextel from time to time.



(for purposes of clarification, no trademark attribution shall be given to this trademark)





## CERTIFICATION

I, Rick Hennessey, certify that:

1. I have reviewed this quarterly report on Form 10-QSB of Dwango North America Corp.;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the small business issuer as of, and for, the periods presented in this report;
4. The small business issuer's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) for the small business issuer and have:
  - a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the small business issuer, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
  - b) Evaluated the effectiveness of the small business issuer's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
  - c) Disclosed in this report any change in the small business issuer's internal control over financial reporting that occurred during the small business issuer's most recent fiscal quarter (the small business issuer's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the small business issuer's internal control over financial reporting; and
5. The small business issuer's other certifying officer(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the small business issuer's auditors and the audit committee of the small business issuer's board of directors (or persons performing the equivalent functions):
  - a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the small business issuer's ability to record, process, summarize and report financial information; and
  - b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the small business issuer's internal control over financial reporting.

Date: November 19, 2004

/s/ Rick Hennessey

Rick Hennessey

Chief Executive Officer (principal executive officer)



## CERTIFICATION

I, J. Paul Quinn, certify that:

1. I have reviewed this quarterly report on Form 10-QSB of Dwango North America Corp.;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the small business issuer as of, and for, the periods presented in this report;
4. The small business issuer's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) for the small business issuer and have:
  - a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the small business issuer, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
  - b) Evaluated the effectiveness of the small business issuer's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
  - c) Disclosed in this report any change in the small business issuer's internal control over financial reporting that occurred during the small business issuer's most recent fiscal quarter (the small business issuer's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the small business issuer's internal control over financial reporting; and
5. The small business issuer's other certifying officer(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the small business issuer's auditors and the audit committee of the small business issuer's board of directors (or persons performing the equivalent functions):
  - a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the small business issuer's ability to record, process, summarize and report financial information; and
  - b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the small business issuer's internal control over financial reporting.

Date: November 19, 2004

/s/ J. Paul Quinn  
J. Paul Quinn  
Chief Financial Officer



CERTIFICATION PURSUANT TO  
18 U.S.C. SECTION 1350  
AS ADOPTED PURSUANT TO  
SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002

In connection with the Quarterly Report on Form 10-QSB of Dwango North America Corp. (the "Company") as filed with the Securities and Exchange Commission on the date hereof (the "Report"), each of the undersigned certify, pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that:

- (1) The Report fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934; and
- (2) The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

/s/ Rick Hennessey

Rick Hennessey  
Chief Executive Officer

Dated: November 19, 2004

/s/ J. Paul Quinn

J. Paul Quinn  
Chief Financial Officer

Dated: November 19, 2004