

EXHIBIT 1

**PROPOSED ORDER AUTHORIZING THE SALE
OF THE BACKYARD SPORTS FRANCHISE**

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

In re:)
) Chapter 11
ATARI, INC., *et al.*,)
) Case No. 13-10176 (JMP)
)
Debtors.¹) (Jointly Administered)
)

**ORDER AUTHORIZING THE SALE OF THE
BACKYARD SPORTS FRANCHISE AND GRANTING RELATED RELIEF**

Upon the Debtors’ motion, dated May 22, 2013 [Docket No. 222] (the “Motion”),² pursuant to sections 105, 363, and 365 of title 11 of the United States Code (the “Bankruptcy Code”)³ and rules 2002, 6004, 6006, 9008, and 9014 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”) for, among other things, (i) entry of an order (i) authorizing the sale (the “Sale Transaction”) of the Backyard Sports Franchise (the “Backyard Sports Assets”)⁴ to Epic Gear, LLC (the “Buyer”) free and clear of liens, claims, encumbrances, and other interests, except to the extent explicitly set forth in the APA, (ii) authorizing the assumption and assignment of certain executory contracts in connection with the Sale Transaction on terms consistent with the APA, and (iii) granting certain related relief, all as more fully described in the Motion; and the Court having entered an order on June 14, 2013 [Docket No. 260] (the “Bid Procedures Order”) approving, among other things, the (a) proposed procedures for submitting competing bids for the Backyard Sports Assets (the “Bid Procedures”), (b) procedures for the assumption and assignment of assumed contracts as provided in the APA (the “Assumed

¹ The “Debtors” are Atari, Inc., Atari Interactive, Inc., Humongous, Inc., and California U.S. Holdings, Inc.

² Capitalized terms not defined herein shall have the meaning given to them in the Motion.

³ Unless otherwise indicated, all section (§) references are to the Bankruptcy Code.

⁴ The term “Backyard Sports Assets” as used herein shall have the same meaning as the defined term “Purchased Assets” as set forth in that certain purchase agreement between the Debtors and the Buyer, dated as of July 17, 2013 and attached hereto as **Exhibit A** (the “APA”).

Contracts”), in connection with the Sale Transaction (the “Assumption and Assignment Procedures”); and (c) the date, time and place of the Sale Hearing; and the Sale Hearing having been held on July 24, 2013; and upon the record of the Sale Hearing and all of the proceedings had before the Court; and the Court having reviewed the Motion and all affidavits, declarations, responses, and objections thereto and found and determined that the relief requested in the Motion is in the best interests of the Debtors, their estates and creditors, and all parties in interest and that the legal and factual bases set forth in the Motion and at the Sale Hearing establish just cause for the relief granted herein; and after due deliberation and sufficient cause appearing therefor, it is hereby:

FOUND AND DETERMINED THAT:

A. Jurisdiction and Venue. The Court has jurisdiction to hear and determine and to grant the relief requested in the Motion pursuant to 28 U.S.C. §§ 157(b)(1) and 1334(b). Venue of these cases and the Motion in this district is proper under 28 U.S.C. §§ 1408 and 1409. This is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2).

B. Statutory Predicates. The statutory predicates for the relief requested in the Motion are §§ 105, 363, and 365 and Bankruptcy Rules 2002, 6004, 6006, 9008, and 9014.

C. Sufficiency of Notice. As evidenced by the affidavits and certificates of service and publication previously filed with the Court (and the Debtors’ extensive marketing efforts, as described below) in light of the exigent circumstances of these bankruptcy cases and based on the representations of counsel: (i) proper, timely, adequate, and sufficient notice of the Motion, the Bid Procedures, the Sale Transaction, the assumption and assignment of the Assumed Contracts, and the Sale Hearing (collectively, the “Noticed Items”) have been provided in accordance with Bankruptcy Rules 2002(a), 6004(a), 6006(c) and 9014, and all applicable provisions of the Bankruptcy Code and the Local Bankruptcy Rules for the Southern District of

New York and in compliance with the Bid Procedures Order; (ii) such notice was good, sufficient, reasonable, and appropriate under the particular circumstances of these chapter 11 cases, and reasonably calculated to reach and apprise all holders of liens, claims, encumbrances, and other interests, including, without limitation, any holder asserting any rights or claims based on any taxes or successor or transferee liability, about the Noticed Items; and (iii) no other or further notice of the Noticed Items, or any matters in connection therewith is or shall be required. With respect to entities whose identities are not reasonably ascertainable by the Debtors, publication of the Sale Notice in domestic and international editions of *The Wall Street Journal* on June 18, 2013 and June 19, 2013, respectively, was sufficient and reasonably calculated under the circumstances to reach such entities.

D. Objections. To the extent not withdrawn, resolved, or otherwise addressed by the terms of this Order, all objections to the Motion are overruled or resolved in connection with the purchase of the Backyard Sports Assets.

E. Assets Property of the Estate. The Backyard Sports Assets are property of the Debtors' estates and title thereto is vested in the Debtors' estates.

F. Sufficiency of Marketing. The Debtors and their professionals marketed the Backyard Sports Assets as set forth in and in accordance with the Motion and the Bid Procedures. Based upon the record of these proceedings, all creditors and other parties in interest and all prospective purchasers have been afforded a reasonable and fair opportunity to bid for the Backyard Sports Assets.

G. Bid Procedures. The Bid Procedures were substantively and procedurally fair to all parties and all potential bidders and afforded notice and a full, fair, and reasonable opportunity for any person to make a higher or otherwise better offer to purchase the Backyard

Sports Assets. The Debtors conducted the sale process, including the Auction, without collusion and in accordance with the Bid Procedures.

H. Sale Highest and Best Offer. After the conclusion of the Auction held on July 17, 2013, the Debtors determined in a valid and sound exercise of their business judgment that the highest and best Qualified Bid for the Backyard Sports Assets was that of the Buyer, and constitutes reasonably equivalent value and fair consideration under the Bankruptcy Code, the Uniform Fraudulent Transfer Act, the Uniform Fraudulent Conveyance Act and any other applicable laws, and may not be avoided under § 363(n). No other person or entity or group of persons or entities has offered to purchase the Backyard Sports Assets for an amount that would provide greater value to the Debtors than the Buyer. The Court's approval of the Sale Transaction is in the best interests of the Debtors, their estates, creditors and all other parties in interest.

I. Corporate Authority. Subject to the entry of this Order, the Debtors have full power and authority to: (i) transfer the Backyard Sports Assets to the Buyer and execute such bills of sale and other documents as may be appropriate in their discretion; (ii) take all company action necessary to authorize and approve the sale of the Backyard Sports Assets (the "Sale"), and (iii) take any action required in order to consummate the Sale. No consents or approvals, other than those expressly provided for in this Order, are required for the Debtors to consummate the Sale.

J. Arm's-Length Sale and Buyer's Good Faith. The Sale was undertaken by the Debtors and the Buyer at arm's-length without collusion or fraud, and in good faith within the meaning of § 363(m). The Buyer recognizes that the Debtors: (i) were free to deal with any other party interested in acquiring the Backyard Sports Assets; (ii) complied with the Bid

Procedures, (iii) subjected their bid to competitive bidding, and (iv) have disclosed all payments to be made by the Buyer and other agreements or arrangements entered into by the Buyer in connection with the Sale. The Buyer has not violated § 363(n) by any action or inaction, and no common identity of directors or controlling stockholders exists between the Debtors and the Buyer. As a result of the foregoing, the Buyer is entitled to the full protections of § 363(m), including in the event this Order or any portion thereof is reversed or modified on appeal, and otherwise has proceeded in good faith in all respects in connection with the proceeding.

K. Satisfaction of Section 363(f) Standards. The Debtors may sell, and the Buyer will acquire, the Backyard Sports Assets free and clear of any and all liens, claims and interests because, with respect to each creditor asserting a claim or interest, one or more of the standards set forth in § 363(f)(1)-(5) has been satisfied. Those holders of claims and interests who did not object or who withdrew their objections to the Sale or the Motion (as relates to the Sale) are deemed to have consented to the Motion and Sale pursuant to § 363(f)(2). Those holders of claims and interests who did object fall within one or more of the other subsections of § 363(f).

L. Free and Clear Findings Required by Buyer. The Buyer would not have bid at the Auction and would not consummate the Sale if the sale of the Backyard Sports Assets to the Buyer were not free and clear of all liens, claims and interests to the extent provided by Bankruptcy Code section 363(f).

M. No Liability Under Section 363(n). Neither the Debtors nor the Buyer engaged in any conduct that would cause or permit the Sale to be avoided, or costs or damages to be imposed, under § 363(n).

N. No Fraudulent Transfer. The Sale is not being consummated for the purpose of hindering, delaying or defrauding creditors of the Debtors under the Bankruptcy Code or under

the laws of the United States, any state, territory, possession thereof, or the District of Columbia, or any other applicable law. Neither the Debtors nor the Buyer are consummating the Sale with any fraudulent or otherwise improper purpose.

O. No Successor Liability. The Buyer is not holding itself out to the public as a continuation of the Debtors and is not an “insider” or “affiliate” of the Debtors, as those terms are defined in the Bankruptcy Code, and no common identity of incorporators, directors or stockholders exists between the Buyer and the Debtors. The Buyer is not purchasing all or substantially all of the Debtors’ assets and the Buyer is not holding itself out to the public as a continuation of the Debtors. The conveyance of the Backyard Sports Assets to the Buyer does not (and will not) amount to a consolidation, merger or *de facto* merger of the Buyer and the Debtors and/or Debtors’ estates, there is no substantial continuity between the Buyer and the Debtors, there is no continuity of enterprise between the Debtors and the Buyer and the Buyer does not constitute a successor to any of the Debtors’ estates. Upon the Closing (as defined in the APA), the Buyer shall be deemed to have assumed only the Assumed Liabilities (as defined in the APA). Except for the Assumed Liabilities, the Buyer’s acquisition of the Backyard Sports Assets shall be free and clear of any “successor liability” claims of any nature whatsoever, whether known or unknown and whether asserted or unasserted as of the Closing. The Buyer’s operations shall not be deemed a continuation of the Debtors’ businesses as a result of the acquisition of the Backyard Sports Assets. The Buyer would not have acquired the Backyard Sports Assets but for the foregoing protections.

P. Sale as Exercise of Business Judgment. The Debtors’ selection of the Buyer as the Successful Bidder for the Backyard Sports Assets and consummation of the Sale constitute the exercise of the Debtors’ sound business judgment, and such acts are in the best interests of

the Debtors, their estates and creditors, and all parties in interest. The Court finds that the Debtors have articulated good and sufficient business reasons justifying the Sale of the Backyard Sports Assets.

Q. Compelling Reasons for an Immediate Sale. The Debtors have demonstrated compelling circumstances for the Sale outside: (a) the ordinary course of business, pursuant to § 363(b); and (b) a plan of reorganization, in that, among other things, the immediate consummation of the Sale to the Buyer is necessary and appropriate to maximize the value of the Debtors' estates and the Sale will provide the means for the Debtors to maximize distributions to the Debtors' creditors. To maximize the value of the Backyard Sports Assets, it is essential that the Sale occur promptly. Time is of the essence in consummating the Sale.

It is therefore:

ORDERED, ADJUDGED AND DECREED THAT:

1. Motion Granted. The Motion is GRANTED to the extent set forth herein.
2. Objections Overruled. All objections with regard to the relief sought in the Motion that relate to the Sale, and that have not been withdrawn, waived, previously overruled, settled or otherwise dealt with as expressly provided herein, or on the record at the Sale Hearing, including without limitation the *Objection of Microsoft to Notice of Attempt to Assume and Assign Certain Executory Contracts* [Docket No. 301], hereby are overruled or otherwise resolved.
3. Approval. Pursuant to §§ 105 and 363, the Sale is approved. Pursuant to §§ 105 and 363, the Debtors and the Buyer are each hereby authorized and directed to take any and all actions necessary or appropriate to: (i) consummate the Sale; and (ii) perform, consummate, implement and close fully the Sale and execute any and all instruments and documents that may be reasonably necessary or desirable to implement the Sale and to transfer the applicable Backyard Sports Assets to the Buyer.

4. Authorization to Assume and Assign. Pursuant to § 365(f), notwithstanding any provisions of any Assumed Contract or applicable non-bankruptcy law that prohibits, restricts, or conditions the assignment of the Assumed Contracts, the Debtors are authorized to assume the Assumed Contracts and to assign the Assumed Contracts to the Buyer, which assignment shall take place on and be effective as of the Closing or as otherwise provided by order of this Court. There shall be no accelerations, assignment fees, increases, or any other fees charged to the Buyer or the Debtors as a result of the assumption and assignment of the Assumed Contracts. Proper notice having been given with respect to the Debtors' proposed assumption and assignment of the Assumed Contracts, and no objections having been made that have not been overruled or withdrawn, all applicable counter-parties are deemed to consent to such assumption and assignment of the Assumed Contracts as contemplated by the APA.

5. Transfer Free and Clear. Upon the Closing: (a) the Debtors are hereby authorized and directed to consummate, and shall be deemed for all purposes to have consummated, the Sale, transfer and assignment of all of the Debtors' right, title and interest in the Backyard Sports Assets to the Buyer free and clear of: (i) any and all liens, including any lien (statutory or otherwise), mortgage, pledge, security interest, hypothecation, deed of trust, deemed trust, option, right of use, right of first offer or first refusal, servitude, encumbrance, handicap, hindrance, charge, prior claim or interest, lease, conditional sale arrangement or other similar restriction of any kind or consequence; (ii) any and all liabilities, including debts, liabilities and obligations, whether accrued or fixed, direct or indirect, liquidated or unliquidated, absolute or contingent, matured or unmatured, known or unknown or determined or undeterminable, including any tax liability; and (iii) any and all claims, including rights or causes of action, obligations, demands, restrictions, interests and matters of any kind or nature whatsoever,

whether arising prior to or subsequent to the commencement of these chapter 11 cases, and whether imposed by agreement, understanding, law, equity or otherwise (including, without limitation, any claims and encumbrances: (y) that purport to give to any party a right or option to effect a forfeiture, modification, right of first refusal or termination of the Debtors' or the Buyer's interest in the Backyard Sports Assets; or (z) in respect of taxes); and (b) all such claims and interests shall not be enforceable as against the Buyer or the Backyard Sports Assets.

6. Valid Transfer; Attachment to Sale Proceeds. The transfer to the Buyer of the Debtors' right, title and interest in the Backyard Sports Assets shall be, and hereby is deemed to be, a legal, valid and effective transfer of the Debtors' right, title and interest in the Backyard Sports Assets, free and clear of all claims and interests of any kind or nature whatsoever, to the extent provided by §363(f), with such claims and interests attaching to the sale proceeds in the same validity, extent and priority as immediately prior to the Sale, subject to any rights, claims and defenses of the Debtors and other parties in interest, as applicable, may possess with respect thereto.

7. Injunction. All persons and entities, including, but not limited to, all debt security holders, equity security holders, governmental, tax and regulatory authorities, lenders, vendors, suppliers, employees, trade creditors, litigation claimants and other persons, holding claims and interests of any kind or nature whatsoever against or in the Debtors or the Debtors' interests in the Backyard Sports Assets (whether known or unknown, legal or equitable, matured or unmatured, contingent or noncontingent, liquidated or unliquidated, asserted or unasserted, whether arising prior to or subsequent to the commencement of these chapter 11 cases, whether imposed by agreement, understanding, law, equity or otherwise) shall be and hereby are forever barred, estopped and permanently enjoined from asserting, prosecuting or otherwise pursuing

liens, claims and interests against the Buyer or its affiliates, successors and assigns, representatives, attorneys and investment managers, the Backyard Sports Assets, or the interests of the Debtors in the Backyard Sports Assets. Following the Closing, no person or entity shall interfere with the Buyer's title to or use and enjoyment of the Debtors' interests in the Backyard Sports Assets based on or related to any liens, claims and interests in the Debtors or the Debtors' interests in the Backyard Sports Assets. All persons are hereby enjoined from taking action that would interfere with or adversely affect the ability of the Debtors to transfer the Backyard Sports Assets in accordance with the terms of this Order.

8. Good Faith Buyer. The Buyer is a "good faith purchaser" for the purposes of §363(m). The Buyer is entitled to all of the protections afforded by § 363(m).

9. No Bulk Sales. No bulk sales law or any similar law of any state or other jurisdiction shall apply in any way to the Sale.

10. Transfer of Marketable Title. On the Closing Date, this Order shall be construed and shall constitute for any and all purposes a full and complete general assignment, conveyance and transfer of all of the Debtors' right, title and interest in the Backyard Sports Assets or a bill of sale transferring good and marketable title in Backyard Sports Assets to the Buyer on the Closing Date pursuant to the terms of this Order, free and clear of all claims and interests, to the extent provided by § 363(f).

11. Fair and Equivalent Value. The consideration provided by the Buyer for the Backyard Sports Assets shall be deemed for all purposes to constitute reasonably equivalent value and fair consideration under the Bankruptcy Code and any other applicable law, and the Sale may not be avoided, or costs or damages imposed or awarded, under § 363(n) or any other

provision of the Bankruptcy Code, the Uniform Fraudulent Transfer Act, the Uniform Fraudulent Conveyance Act or any other similar state laws.

12. No Successor Liability. Upon the Closing, the Buyer shall be deemed to have assumed only the Assumed Liabilities. Except for the Assumed Liabilities, the Buyer's acquisition of the Backyard Sports Assets shall be free and clear of any "successor liability" claims of any nature whatsoever, whether known or unknown and whether asserted or unasserted as of the time of Closing. The Buyer's operations shall not be deemed a continuation of the Debtors' business as a result of the acquisition of the Backyard Sports Assets.

13. Release of Liens, Claim and Interests. This Order: (a) is and shall be effective as a determination that, other than the Assumed Liabilities, all liens, claims and interests of any kind or nature whatsoever existing as to the Backyard Sports Assets prior to the Closing have been unconditionally released, discharged and terminated, and that the conveyances described herein have been effected; and (b) is and shall be binding upon and shall authorize all entities, including, all filing agents, filing officers, title agents, title companies, recorders of mortgages, recorders of deeds, registrars of deeds, administrative agencies or units, governmental departments or units, secretaries of state, federal, state and local officials and all other persons and entities who may be required by operation of law, the duties of their office, or contract to accept, file, register, or otherwise record or release any documents or instruments, or evidence of facilitate the transfer of the Backyard Sports Assets conveyed to the Buyer. All recorded liens, claims and interests against the Backyard Sports Assets shall be deemed stricken.

14. Approval to Release Liens, Claims and Interests. If any person or entity which has filed statements or other documents or agreements evidencing liens on, or claims or interests in, the Backyard Sports Assets shall not have delivered to the Debtors before the Closing, in

proper form for filing and executed by the appropriate parties, termination statements, instruments of satisfaction, releases of liens and easements, and any other documents necessary for the purpose of documenting the release of all liens which the person or entity has or may assert with respect to the Backyard Sports Assets, the Debtors and the Buyer are hereby authorized to execute and file such statements, instruments, releases and other documents on behalf of such person or entity with respect to the Backyard Sports Assets.

15. Inconsistencies with Prior Orders, Pleadings or Agreements. To the extent this Order is inconsistent with any prior order or pleading with respect to the Motion in these chapter 11 cases, other than the APA, the terms of this Order shall govern. To the extent this Order is inconsistent with the APA, the terms of the APA shall govern.

16. Subsequent Orders and Plan Provisions. This Order shall not be modified by any chapter 11 plan confirmed in these chapter 11 cases or any other subsequent order of this Court.

17. Binding Effect of Order. This Order shall be binding in all respects upon all creditors and interest holders of the Debtors, the Committee, all successors and assigns of the Debtors and their affiliates and subsidiaries, and any trustees, examiners, “responsible persons” or other fiduciaries appointed in the Debtors’ chapter 11 cases or upon a conversion to chapter 7 under the Bankruptcy Code.

18. Retention of Jurisdiction. The Court retains jurisdiction with respect to all matters arising from or related to the implementation of this Order, including, without limitation, the authority to: (i) interpret, implement and enforce the terms and provisions of this Order; (ii) protect the Buyer, or the Backyard Sports Assets, from and against any of the claims or interests; (iii) compel the Buyer to perform all of its obligations under the Bid Procedures and this Order; and (iv) resolve any disputes arising under or related to the Sale.

19. No Material Modifications. The terms of the Sale and any related agreements, documents or other instruments may be modified, amended, or supplemented through a written document signed by the parties thereto in accordance with the terms thereof without further order of the Court; provided, however, that any such modification, amendment or supplement does not materially change the economic substance of the transactions contemplated hereby.

20. Immediate Effect. This Order constitutes a final order within the meaning of 28 U.S.C. § 158(a). Notwithstanding any provision in the Bankruptcy Rules to the contrary, the Court expressly finds there is no reason for delay in the implementation of this Order and, accordingly: (i) the terms of this Order shall be immediately effective and enforceable upon its entry; (ii) the Debtors are not subject to any stay in the implementation, enforcement or realization of the relief granted in this Order; and (iii) the Debtors may, in their discretion (but subject to the APA) , and without further delay, take any action and perform any act authorized under this Order.

21. Provisions Non-Severable. The provisions of this Order are nonseverable and mutually dependent.

Dated: _____, 2013
New York, New York

THE HONORABLE JAMES M. PECK
UNITED STATES BANKRUPTCY JUDGE

Exhibit A

Asset Purchase Agreement

Backyard Sports Assets

ASSET PURCHASE AGREEMENT

dated as of

July 17, 2013

by and among

ATARI, INC.

ATARI INTERACTIVE, INC.

HUMONGOUS, INC.

CALIFORNIA U.S. HOLDINGS, INC.

as Sellers,

and

EPIC GEAR, LLC,

as Buyer

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ASSET PURCHASE AGREEMENT

THIS PURCHASE AGREEMENT dated as of July 17, 2013 (the “**Agreement**”) by and among Atari, Inc., a Delaware corporation, Atari Interactive, Inc., a Delaware corporation, Humongous, Inc., a Delaware corporation, and California U.S. Holdings, Inc., a California corporation (each, a “**Seller**”, and collectively, “**Sellers**”), on the one hand, and Epic Gear, LLC (“**Buyer**”), on the other hand.

WITNESSETH:

WHEREAS, Sellers are engaged in the business of developing, licensing and selling Products with respect to the “Backyard Sports Franchise” (as described on Schedule 3 of the Bid Order) (the “**Business**”);

WHEREAS, Sellers have sought relief under Chapter 11 of Title 11, §§ 101-1330 of the United States Code (as amended, the “**Bankruptcy Code**”) by filing a case (the “**Chapter 11 Cases**”) in the United States Bankruptcy Court for the Southern District of New York (the “**Bankruptcy Court**”) on January 21, 2013 (the “**Petition Date**”);

WHEREAS, the Bankruptcy Court entered the Order Approving (A) Bid Procedures in Connection with the Sale(s) of Substantially All of the Debtors’ Assets, (B) Procedures Related to the Assumption and Assignment of Executory Contracts and Unexpired Leases in Connection with Such Sale(s), (C) the Form and Manner of Notice Thereof, (D) Scheduling the Hearing to Consider Approval of the Sale(s), (E) Granting Certain Related Relief and (F) Procedures to Sell the Remaining De Minimis Assets Without Further Court Approval on June 14, 2013 [Docket No. 620] (the “**Bid Order**”);

WHEREAS, in accordance with the procedures and requirements set forth by the Bid Order, on July 10, 2013 Buyer delivered to Sellers a “Qualified Bid” (as defined in the Bid Order) for the Purchased Assets;

WHEREAS, in accordance with the procedures and requirements set forth by the Bid Order, on July 17, 2013, Buyer participated in the Auction for the Purchased Assets;

WHEREAS, in accordance with the procedures and requirements set forth by the Bid Order, on or about July 17, 2013, Sellers determined that Buyer had submitted the “Successful Bid” (as defined in the Bid Order) with respect to the Purchased Assets, and filed electronic notice with the Bankruptcy Court thereof, thus concluding the Auction; and

WHEREAS, Buyer desires to purchase the Purchased Assets and to assume the Assumed Liabilities, in each case, upon the terms and subject to the conditions set forth herein.

NOW, THEREFORE, in consideration of the foregoing and the respective representations, warranties, covenants and agreements set forth herein, the parties hereto agree as follows:

ARTICLE 1

DEFINITIONS

SECTION 1.01 *Definitions.*

(a) The following terms, as used herein, have the following meanings:

“**Affiliate**” means, with respect to any Person, any other Person directly or indirectly controlling, controlled by, or under common control with such other Person.

“**Auction**” means the auction for the sale of Sellers’ assets as ordered by the Bankruptcy Court pursuant to the Bid Order.

“**Business Day**” means a day other than Saturday, Sunday or other day on which commercial banks in New York, New York are authorized or required by law to close.

“**Claim**” means a claim as defined in Section 101 of the Bankruptcy Code.

“**Closing Date**” means the date of the Closing.

“**Confidentiality Agreement**” means that certain non-disclosure agreement by and between Sellers or their Affiliates and Buyer or its Affiliates.

“**Contract**” means any contract, agreement, insurance policy, capitalized lease, license, sublicense, sales order, purchase order, instrument or other commitment, whether written or oral, that is binding on any Person or any part of its property under applicable law.

“**Cure Costs**” means the liabilities and obligations of Sellers that must be paid or otherwise satisfied to cure all of Sellers’ defaults under the Assumed Contracts at the time of the assumption thereof and assignment to Buyer as provided herein.

“**Final Order**” means an order or judgment, entered by a court of competent jurisdiction, that remains in full force and effect and has not been reversed, or amended or modified in a manner that is materially inconsistent with the terms and conditions set forth in this Agreement, and as to which (a) no stay is in effect, (b) the time to seek rehearing, file a notice of appeal, or seek other review has expired, and (c) no appeal or request for rehearing or other review is pending.

“**Governmental Authority**” means any (a) multinational, federal, state, municipal, local or other governmental or public department, central bank, court, commission, commissioner, tribunal, board, bureau, agency or instrumentality, domestic or foreign, (b) any subdivision or authority of any of the foregoing, (c) any quasi-governmental or private body exercising any regulatory, expropriation or taxing authority under or for the account of any of the above, or (d) stock exchange, automated quotation system, self-regulatory authority or securities regulatory authority.

“Governmental Order” means any order, writ, judgment, injunction, decree, stipulation, determination or award entered by or with any Governmental Authority.

“Intellectual Property” means, collectively, (a) all software, (b) all copyrights, (c) all patents, (d) all trademarks (including the goodwill associated therewith) and (e) all domain names, in each case, specifically listed on Schedule 1.01.

“Intercompany Receivables” means all accounts, notes and other receivables owed to Seller by any other Seller.

“Lien” means, with respect to any property or asset, any mortgage, lien, pledge, charge, security interest or encumbrance in respect of such property or asset.

“Material Adverse Effect” means (i) any material adverse effect on the Purchased Assets, taken as a whole, or (ii) any material adverse effect on the ability of Sellers to consummate the transactions contemplated by this Agreement; *provided that* the following shall not constitute a Material Adverse Effect and shall not be taken into account in determining whether or not there has been or would reasonably be expected to be a Material Adverse Effect: (A) changes in general economic conditions or securities or financial markets in general that do not disproportionately impact Sellers; (B) general changes in the industry in which Sellers operates and not specifically relating to, or having a disproportionate effect on, Sellers (relative to the effect on other persons operating in such industry); (C) any changes in law applicable to Sellers or any of their respective properties or assets or interpretations thereof by any Governmental Authority which do not have a disproportionate effect on Seller; (D) any outbreak or escalation of hostilities or war (whether declared or not declared) or any act of terrorism which do not have a disproportionate effect on Sellers; (E) any changes to the extent resulting from the announcement or the existence of, or compliance with, this Agreement and the transactions contemplated hereby (including without limitation any lawsuit related thereto or the impact on relationships with suppliers, customers, employees or others); (F) any accounting regulations or principles or changes in accounting practices or policies that Sellers are required to adopt; (G) matters occurring in, or arising from the Chapter 11 Cases, including any events, occurrences, or other actions taken as a result thereof, and (H) any changes resulting from actions of Sellers expressly agreed to or requested in writing by Buyer.

“Ordinary Course of Business” means the operation of the Business in the ordinary and usual course consistent with past practice and custom of Seller, including taking any action in accordance with any Contract to which Sellers are a party on the date hereof.

“Permitted Liens” means (i) Liens permitted by the Sale Order and (ii) Liens created pursuant to any Assumed Contracts.

“Person” means an individual, corporation, partnership, limited liability company, association, trust or other entity or organization, including a government or political subdivision, or an agency or instrumentality thereof.

“Regulatory Approvals” means those sanctions, rulings, consents, orders, exemptions, permits and other approvals (including the lapse, without objection, of a prescribed time under a statute or regulation that states that a transaction may be implemented if a prescribed time lapses

following the giving of notice without an objection being made), waivers, early termination authorizations, clearances or written confirmation of no intention to initiate legal proceedings from Governmental Entities as required.

“**Sale Hearing**” means the hearing conducted by the Bankruptcy Court to approve the transactions contemplated by this Agreement.

“**Transaction Document**” means this Agreement and any other agreements, instruments or documents entered into pursuant to this Agreement.

(b) Each of the following terms is defined in the Section set forth opposite such term:

<u>Term</u>	<u>Section</u>
Agreement	Preamble
Assumed Contracts	Section 2.01
Assumed Liabilities	Section 2.03
Assumption Agreement	Section 2.08
Bankruptcy Code	Recitals
Bankruptcy Court	Recitals
Bid Order	Recitals
Bid Procedures	Section 2.06
Business	Recitals
Bankruptcy Period	Section 12.05
Bill of Sale	Section 2.08
Buyer	Preamble
Cash Consideration	Section 2.06
Causes of Action	Section 3.07
Chapter 11 Cases	Recitals
Closing	Section 2.08
Code	Section 8.01
Contract Consents	Section 5.04
End Date	Section 11.01
Excluded Assets	Section 2.02
Excluded Contracts	Section 2.02
Excluded Liabilities	Section 2.04
Existing Atari Logo Licenses	Section 5.05
Existing Atari Logos	Section 5.05
Final Allocation	Section 8.03
Further Actions	Section 7.01
Good Faith Deposit	Section 2.07
Income Tax	Section 8.01
Marketing Assets	Section 2.01
Petition Date	Recitals
Purchased Assets	Section 2.01
Purchase Price	Section 2.06
Sale Order	Section 7.04
Sellers	Preamble

<u>Term</u>	<u>Section</u>
Tax	Section 8.01
Taxing Authority	Section 8.01
Tax Return	Section 8.01
Total Allocable Price	Section 8.03
Transfer Consent	Section 2.05
Transfer Taxes	Section 8.02
Transferred Books and Records	Section 2.01

SECTION 1.02 *Other Definitions and Interpretative Matters.* Unless otherwise indicated to the contrary in this Agreement by the context or use thereof:

(a) When calculating the period of time before which, within which or following which any act is to be done or step taken pursuant to this Agreement, the date that is the reference date in calculating such period shall be excluded. If the last day of such period is a day other than a Business Day, the period in question shall end on the next succeeding Business Day. Any reference in this Agreement to days (but not Business Days) means to calendar days.

(b) Any reference in this Agreement to \$ means U.S. dollars.

(c) Unless the context otherwise requires, all capitalized terms used in the Exhibits and Schedules shall have the respective meanings assigned in this Agreement. All Exhibits and Schedules attached or annexed hereto or referred to herein are hereby incorporated in and made a part of this Agreement as if set forth in full herein.

(d) Any reference in this Agreement to gender includes all genders, and words importing the singular number also include the plural and vice versa.

(e) The provision of a table of contents, the division of this Agreement into Articles, Sections and other subdivisions and the insertion of headings are for convenience of reference only and shall not affect or be utilized in the construction or interpretation of this Agreement. All references in this Agreement to any “**Section**” or “**Article**” are to the corresponding Section or Article of this Agreement unless otherwise specified.

(f) Words such as “**herein**,” “**hereof**” and “**hereunder**” refer to this Agreement as a whole and not merely to a subdivision in which such words appear, unless the context otherwise requires.

(g) The word “**including**” or any variation thereof means “including, without limitation,” and shall not be construed to limit any general statement that it follows to the specific or similar items or matters immediately following it.

(h) References to laws, rules and regulations shall include such laws, rules and regulations as they may from time to time be amended, modified or supplemented.

(i) Reference to a given agreement or instrument shall be a reference to that agreement or instrument as modified, amended, supplemented or restated through the date as of which such reference is made.

(j) References to any Person shall include its permitted successors and assigns and, in the case of any Governmental Authority, any Person succeeding to its functions and capacities.

ARTICLE 2

PURCHASE AND SALE

SECTION 2.01 *Purchase and Sale.* Except as otherwise provided herein, upon the terms and subject to the conditions of this Agreement, Buyer agrees to purchase from Sellers and Sellers agree to sell, convey, transfer, assign, and deliver, or cause to be sold, conveyed, transferred, assigned, and delivered, to Buyer at the Closing, free and clear of all Liens and Claims, other than Assumed Liabilities and Permitted Liens, all of Sellers' right, title and interest in, to and under the following, in each case, with respect to the Business (the "**Purchased Assets**"):

- (a) all Intellectual Property;
- (b) the Contracts listed or described on Schedule 2.01(b) as such Contracts pertain to the Business (the "**Assumed Contracts**");
- (c) all books, records, files and papers, whether in hard copy or computer format that are specifically related to the Business, including, but not limited to, financial and accounting records and customer lists (the "**Transferred Books and Records**");
- (d) all existing assets solely used or useful in exploiting, marketing or selling the Intellectual Property and/or exploiting, marketing and selling products produced and/or sold in connection with the Business; (the "**Marketing Assets**");
- (e) all goodwill associated with the Business; and
- (f) all Causes of Action for past or present infringement or misappropriation of Intellectual Property as of the Closing, including Sellers' rights of indemnity, warranty rights, rights of contribution, rights to refunds, rights of reimbursement and other rights of recovery, but excluding insurance proceeds (regardless of whether such rights are currently exercisable).

At any time at least three (3) Business Days prior to the Sale Hearing, Buyer, in its discretion by written notice to Sellers, may exclude from being assigned pursuant hereto any Contracts, and such Contracts shall not constitute Assumed Contracts, and Buyer shall not acquire any rights or assume any liabilities with respect thereto. Upon Buyer's reasonable request, Sellers shall provide additional detailed information as to the liabilities under the Contracts sufficient for Buyer to make an informed assessment whether to accept an assignment and assumption of such Contract hereunder. Notwithstanding any other provision hereof, no

exclusion of a Contract under this paragraph shall affect the amount of the Cash Consideration payable by Buyer to Sellers.

SECTION 2.02 *Excluded Assets.* Notwithstanding any provision to the contrary set forth in this Agreement, Buyer expressly understands and agrees that any assets and properties of Sellers not set forth in Section 2.01 (the “**Excluded Assets**”) shall be excluded from the Purchased Assets, including the following:

- (a) all real property and leases of, and other interests in, real property, in each case, together with all buildings, fixtures and improvements erected thereon;
- (b) all tangible personal property and interests therein (including leases thereof), including books, records, files and papers (other than the Purchased Assets);
- (c) all prepaid expenses;
- (d) all of Sellers’ cash and cash equivalents on hand (including all undeposited checks) and in banks;
- (e) all of Sellers’ insurance policies and all claims, credits, causes of action or rights thereunder;
- (f) all rights and obligations under any Contract that is not an Assumed Contract (collectively, the “**Excluded Contracts**”);
- (g) all rights of Sellers arising under this Agreement or the transactions contemplated hereby;
- (h) all accounts, notes and other receivables, including Intercompany Receivables;
- (i) all shares of capital stock or other equity interests of any of the Seller or securities convertible into or exchangeable or exercisable for shares of capital stock or other equity interest of any of Seller;
- (j) all rights and claims of Sellers for any action under the Bankruptcy Code, including avoidance actions available to it under Sections 544 through 551 of the Bankruptcy Code, of whatever kind or nature;
- (k) all Causes of Action of Sellers other than those described in Section 2.01(d), except to the extent such Cause(s) of Action would be available as offset(s) against any Assumed Liabilities;
- (l) any asset that would otherwise be a Purchased Asset that is sold or otherwise disposed of in compliance with Section 5.01(a) prior to the Closing Date; and
- (m) any Tax refund or reimbursement due to any Sellers to the extent related to any liability that would not be an Assumed Liability.

SECTION 2.03 *Assumed Liabilities.* Upon the terms and subject to the conditions of this Agreement, Buyer agrees, effective at the time of the Closing, to assume the following liabilities and obligations, and only such liabilities and obligations, of Sellers (the “**Assumed Liabilities**”):

(a) all liabilities and obligations of Sellers relating to all Assumed Contracts arising after the Closing; and

(b) all liabilities and obligations arising from the Purchased Assets (including their ownership and sale) arising after the Closing.

SECTION 2.04 *Excluded Liabilities.* Notwithstanding any provision in this Agreement or any other writing to the contrary, Buyer is assuming only the Assumed Liabilities and is not assuming any other liability or obligation of Sellers of whatever nature, whether presently in existence or arising hereafter. All such other liabilities and obligations shall be retained by and remain obligations and liabilities of Sellers (all such liabilities and obligations not being assumed being herein referred to as the “**Excluded Liabilities**”).

SECTION 2.05 *Assignment of Contracts and Rights.* Subject to Section 5.04, Sellers shall transfer and assign all Assumed Contracts to Buyer, and Buyer shall assume all Assumed Contracts from Seller, as of the Closing Date pursuant to the Sale Order. In connection with such assignment and assumption, Buyers shall cure all monetary defaults under such Assumed Contracts to the extent required by Section 365(b) of the Bankruptcy Code in an amount not to exceed \$75,000. Except as to Assumed Contracts assigned pursuant to Section 365 of the Bankruptcy Code, anything in this Agreement to the contrary notwithstanding, this Agreement shall not constitute an agreement to assign any Purchased Asset or any right thereunder if an attempted assignment, without the consent of a third party or Governmental Authority (each, a “**Transfer Consent**”), would constitute a breach or in any way adversely affect the rights of Buyer or any Seller thereunder. If such Transfer Consent is not obtained or such assignment cannot be made pursuant to Section 365, to the extent permitted and subject to any approval of the Bankruptcy Court that may be required, Sellers and Buyer will cooperate in a mutually agreeable arrangement under which Buyer would obtain the benefits and assume the obligations thereunder in accordance with this Agreement.

SECTION 2.06 *Purchase Price.*

(a) On the terms and subject to the conditions contained herein, the purchase price (the “**Purchase Price**”) for the Purchased Assets shall consist of:

- (i) cash in the amount of \$1,000,000 (the “**Cash Consideration**”);
- (ii) the payment of all Cure Costs in an amount not to exceed \$75,000; and
- (iii) the assumption of the Assumed Liabilities.

(b) At the Closing, Buyer shall pay to Sellers the Cash Consideration less the Good Faith Deposit, by wire transfer of immediately available funds to an account designated by Sellers at least three (3) Business Days prior to the Closing Date.

(c) Not later than 30 days prior to the filing of their respective Forms 8594 relating to this transaction, and subject to Section 8.03 each party shall deliver to the other party a copy of its Form 8594.

SECTION 2.07 *Good Faith Deposit.*

(a) In accordance with the bid procedures set forth in the Bid Order (the “**Bid Procedures**”), Buyer has deposited with Sellers cash in the amount of \$75,000 (the “**Good Faith Deposit**”) to be applied as provided in Section 2.07(b).

(b) The Good Faith Deposit (and any interest accrued thereon) shall be retained by Sellers in the following circumstances: (i) at the Closing as a credit against the Cash Consideration and (ii) if this Agreement is terminated pursuant to Section 11.01(d). Except as described in the previous sentence, the Good Faith Deposit (and any interest accrued thereon) shall be returned to Buyer no later than two (2) Business Days after any termination of this Agreement.

SECTION 2.08 *Closing.* The closing (the “**Closing**”) of the purchase and sale of the Purchased Assets and the assumption of the Assumed Liabilities hereunder shall take place at the offices of Akin Gump Strauss Hauer & Feld LLP, One Bryant Park, New York, New York, as soon as possible, but in no event later than three (3) Business Days, after satisfaction of the conditions set forth in Article 9, or at such other time or place as Buyer and Sellers may agree. At the Closing:

(a) Buyer shall deliver to Sellers:

(i) the Cash Consideration less the Good Faith Deposit as described in Section 2.06; and

(ii) the assignment and assumption agreement, in substantially the form attached hereto as Exhibit A (the “**Assumption Agreement**”) and the instrument for the assignment for the Intellectual Property, in substantially the form attached hereto as Exhibit C (the “**IP Assignment**”), and each other Transaction Document to which Buyer is a party, duly executed by Buyer.

(b) Sellers shall deliver to Buyer:

(i) a bill of sale substantially in the form attached hereto as Exhibit B for Sellers (the “**Bill of Sale**”), duly executed by Sellers, transferring their right, title and interest in and to all items of tangible personal property that are Purchased Assets to Buyer;

(ii) the Assumption Agreement and IP Assignment Agreement duly executed by Sellers;

(iii) the Transferred Books and Records and the Marketing Assets; and

(iv) certificate of non-foreign status executed by Sellers (or, if applicable, a direct or indirect owner of Seller), prepared in accordance with Treasury Regulation Section 1.1445-2(b).

ARTICLE 3

REPRESENTATIONS AND WARRANTIES OF SELLERS

Sellers represents and warrants to Buyer:

SECTION 3.01 *Organization and Qualification.* Each Seller has been duly organized and is validly existing and in good standing under the laws of its respective jurisdiction of incorporation, with the requisite power and authority to own its properties and conduct its business as currently conducted. Each Seller, as applicable, has been duly qualified as a foreign corporation or organization for the transaction of business and is in good standing under the laws of each other jurisdiction in which it owns or leases properties or conducts any business so as to require such qualification, except to the extent that the failure to be so qualified or be in good standing has not had and would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect.

SECTION 3.02 *Corporate Authorization.* The execution, delivery and performance by Sellers of this Agreement and each of the other Transaction Documents to which Sellers are a party and the consummation of the transactions contemplated hereby and thereby are within Sellers' corporate powers and have been duly authorized by all necessary corporate action on the part of Sellers.

SECTION 3.03 *Execution and Delivery; Enforceability.* This Agreement and each of the other Transaction Documents to which Sellers are a party have been duly and validly executed and delivered by Seller, and, subject to the Bankruptcy Court's entry of the Sale Order order which, among other things, approves this Agreement (the "**Sale Order**"), will constitute the valid and binding obligation of Sellers, enforceable against Sellers in accordance with their respective terms.

SECTION 3.04 *No Conflict.* The execution, delivery and performance by Sellers of this Agreement and each of the other Transaction Documents to which Sellers are a party and the consummation of the transactions contemplated hereby and thereby do not and will not (i) conflict with, violate, breach or cause a default under (A) the certificate of incorporation, bylaws or other organizational documents of any of the Sellers, (B) any provision of law, statute, rule or regulation, (C) any applicable order of any court or any rule, regulation or order of any Governmental Authority or (D) subject to Section 5.04, any Contract where any such conflict, violation, breach or default would reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect, or (ii) result in the creation or imposition of any Lien upon or with respect to any property or assets now owned or hereafter acquired by Sellers, other than the Permitted Liens.

SECTION 3.05 *Consents and Approvals.* No consent, approval, authorization, order, registration or qualification of or with any third party, court, Governmental Authority or body

having jurisdiction over Sellers or any of their properties is required for the execution and delivery by Sellers of this Agreement or any of the other Transaction Document and performance of and compliance by Sellers with all of the provisions hereof and thereof and the consummation of the transactions contemplated herein and therein, except (i) the entry of the Sale Order and the expiration, or waiver by the Bankruptcy Court, of the 14-day period set forth in Bankruptcy Rules 6004(h) and 3020(e), as applicable, (ii) such consents, approvals, authorizations, registrations or qualifications the absence of which will not have or would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect.

SECTION 3.06 *Assumed Contracts.* Except as may have occurred solely as a result of the commencement of the Chapter 11 Cases, each of the Assumed Contracts is in full force and effect and, to the knowledge of Sellers, there are no material defaults thereunder on the part of any other party thereto which are not subject to an automatic stay or which would reasonably be expected to have a Material Adverse Effect, and Sellers are not in default in any material respect in the performance, observance or fulfillment of any of its obligations, covenants or conditions contained in any Assumed Contract which are not subject to an automatic stay or which would reasonably be expected to have a Material Adverse Effect.

SECTION 3.07 *Litigation.* As of the date hereof, except for the Chapter 11 Cases, to the knowledge of Sellers, there are no legal, governmental or regulatory actions, suits, proceedings, investigations, arbitrations or actions (“**Causes of Action**”), pending to which Sellers are or may be a party or to which any property of Sellers is or may be the subject.

SECTION 3.08 *Compliance with Laws and Court Orders.* To the knowledge of Sellers, Sellers are not, and has not been at any time since January 1, 2012, in violation of any law or statute or any judgment, order, rule or regulation of any court or arbitrator or governmental or regulatory authority, except for any such violation that has not had and would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect.

SECTION 3.09 *Title to the Purchased Assets.* Upon delivery to Buyer on the Closing Date of the instruments of transfer contemplated by Section 2.08, and subject to the terms of the Sale Order, Sellers will thereby transfer to Buyer, all of Sellers’ right, title and interest in and to the Purchased Assets free and clear of all Liens, except (a) for the Assumed Liabilities, (b) for Permitted Liens, and (c) subject to the limitation that certain transfers, assignments, licenses, sublicenses, as the case may be, of Purchased Assets and Assumed Contracts, and any claim or right or benefit arising thereunder or resulting therefrom, may require a Transfer Consent, which has not been obtained.

SECTION 3.10 *Intellectual Property.*

(a) The Intellectual Property included in the Purchased Assets collectively constitutes all the intellectual property of a type similar to the Intellectual Property that is required by Buyer to use or exploit the Intellectual Property immediately following the Closing, in the same manner, as such Intellectual Property was used or exploited by Sellers immediately prior to the Closing.

(b) Sellers own or holds valid licenses to use all Intellectual Property and, to the knowledge of Sellers, such Intellectual Property is free and clear of any Liens (other than (x) Liens that will be removed at or prior to the Closing and (y) restrictions or limitations pursuant to written nonexclusive license agreements entered into in the Ordinary Course of Business).

(c) To the knowledge of Sellers, the Intellectual Property is valid and enforceable. Within the past three (3) years, none of the Intellectual Property has been or is the subject of (i) any actual or, to Sellers' knowledge, threatened litigation, adverse claim, judgment, injunction, order, decree or agreement restricting its use in connection with any of the Purchased Assets or (ii) to Sellers' knowledge, any threatened litigation or claim of infringement.

SECTION 3.11 *Exclusivity of Representations and Warranties.* The representations and warranties made by Sellers in this Agreement are in lieu of and are exclusive of all other representations and warranties, including, without limitation, any implied warranties. Sellers hereby disclaims any such other or implied representations or warranties, notwithstanding the delivery or disclosure to Sellers or any of their officers, directors, employees, agents or representatives of any documentation or other information (including any financial projections or other supplemental data not included in this Agreement).

ARTICLE 3

REPRESENTATIONS AND WARRANTIES OF BUYER

Buyer represents and warrants to Sellers that:

SECTION 4.01 *Corporate Existence and Power.* Buyer is a limited liability company, duly organized, validly existing and in good standing under the laws of Delaware.

SECTION 4.02 *Corporate Authorization.* The execution, delivery and performance by Buyer of this Agreement and each of the other Transaction Documents to which it is a party and the consummation of the transactions contemplated hereby and thereby are within the limited liability powers of Buyer and have been duly authorized by all necessary corporate action on the part Buyer.

SECTION 4.03 *Execution and Delivery; Enforceability.* This Agreement and each of the other Transaction Documents to which Buyer is a party have been duly and validly executed and delivered by Buyer, and, subject to the Bankruptcy Court's entry of the Sale Order, will constitute the valid and binding obligations of Buyer, enforceable against Buyer in accordance with their respective terms, except as such enforceability may be limited by (a) bankruptcy, insolvency, reorganization, moratorium or similar laws of general applicability affecting the enforcement of creditors' rights and (b) the application of general principles of equity.

SECTION 4.04 *Governmental Authorization.* The execution, delivery and performance by Buyer of this Agreement and the consummation of the transactions contemplated hereby require no material action by or in respect of, or material filing with, any Governmental Authority other than filings with respect to and any consents, approvals or expiration or termination of any waiting period, under any antitrust or foreign investment laws.

SECTION 4.05 *Noncontravention.* The execution, delivery and performance by Buyer of this Agreement and each of the other Transaction Documents to which it is a party and the consummation of the transactions contemplated hereby and thereby do not and will not (i) violate any organizational document of Buyer or (ii) assuming compliance with the matters referred to in Section 3.05, materially violate any applicable law, rule, regulation, judgment, injunction, order or decree.

SECTION 4.06 *Financing.* Buyer has, and will have at the Closing, sufficient cash, available lines of credit or other sources of immediately available funds to enable it to make payment of the Cash Consideration.

SECTION 4.07 *Litigation.* There are no Causes of Action, or to the knowledge of Buyer, any Causes of Action threatened, against Buyer before any court or arbitrator or any governmental body, agency or official which in any manner challenges or seeks to prevent, enjoin, alter or materially delay the transactions contemplated by this Agreement.

SECTION 4.08 *Finders' Fees.* There is no investment banker, broker, finder or other intermediary which has been retained by or is authorized to act on behalf of Buyer who might be entitled to any fee or commission from Sellers or any of its Affiliates upon consummation of the transactions contemplated by this Agreement.

SECTION 4.09 *Inspections; No Other Representations.* Buyer is an informed and sophisticated purchaser, and has engaged expert advisors, experienced in the evaluation and purchase of property and assets such as the Purchased Assets as contemplated hereunder. Buyer has undertaken such investigation and has been provided with and has evaluated such documents and information as it has deemed necessary to enable it to make an informed and intelligent decision with respect to the execution, delivery and performance of this Agreement. Buyer acknowledges that Sellers has given Buyer complete and open access to the key employees, documents and facilities of Sellers with respect to the Purchased Assets. Buyer agrees, warrants and represents that, except as set forth in this Agreement, (a) Buyer is purchasing the Purchased Assets on an “**AS IS**” and “**WITH ALL FAULTS**” basis based solely on Buyer’s own investigation of the Purchased Assets and (b) none of Sellers or any director, officer, manager, employee, agent, consultant, or representative of Sellers have made any warranties, representations or guarantees, express, implied or statutory, written or oral, respecting the Purchased Assets, any part of the Purchased Assets, the financial performance of the Purchased Assets, or the physical condition of the Purchased Assets. Except as set forth in this Agreement, Buyer further acknowledges that the consideration for the Purchased Assets specified in this Agreement has been agreed upon by Sellers and Buyer after good-faith, arms’-length negotiation in light of Buyer’s agreement to purchase the Purchased Assets “**AS IS**” and “**WITH ALL FAULTS.**” Buyer agrees, warrants and represents that, except as set forth in this Agreement, Buyer has relied, and shall rely, solely upon its own investigation of all such matters, and that Buyer assumes all risks with respect thereto. **Except as set forth in this Agreement, Seller hereby disclaims all liability and responsibility for any representation, warranty, projection, forecast, statement, or information made, communicated, or furnished (orally or in writing) to Buyer or its Affiliates or representatives (including any opinion, information, projection, or advice that may have been or may be provided to Buyer by any director, officer, manager, employee, agent, consultant, or representative of Seller). Seller**

makes no representations or warranties to Buyer regarding the probable success, profitability or value of any of the Purchased Assets.

ARTICLE 5

COVENANTS OF SELLERS

SECTION 5.01 *Conduct of the Business.* Except as may be approved or required by the Bankruptcy Court and except as may occur as part of the Chapter 11 Cases, from the date hereof until the Closing Date, Sellers shall use their reasonable efforts to preserve intact the Purchased Assets and the Business. Except as may be approved or required by the Bankruptcy Court and except as may occur as part of the Chapter 11 Cases, Sellers shall not enter into any transaction relating to the Purchased Assets outside the Ordinary Course of Business without obtaining prior written consent of Buyer at least five (5) Business Days prior to the consummation of such transaction, which consent shall be within Buyer's sole discretion. Without limiting the generality of the foregoing, from the date hereof until the Closing Date, Sellers shall not:

- (a) sell, lease, license or otherwise dispose of any of the Purchased Assets except to the extent Buyer provides its prior written consent to any such transfer;
- (b) agree or commit to do any of the foregoing; or
- (c) take any action that would reasonably be expected to cause the failure of the conditions contained in Section 9.02(b).

SECTION 5.02 *Access to Information.*

From the date hereof and after the Closing Date, Sellers will afford Buyer and its agents reasonable access to their books of account, financial and other records (including, without limitation, accountant's work papers), information, employees and auditors to the extent necessary or useful for Buyer in connection with any audit, investigation, dispute or litigation or any other reasonable business purpose relating to the Purchased Assets; *provided that* any such access by Buyer shall not unreasonably interfere with the conduct of the business of Sellers; and *provided further* that Sellers shall only be required to maintain such information for a period of 12 months after the Closing Date.

SECTION 5.03 *Notices of Certain Events.* Sellers shall promptly notify Buyer of:

- (a) any notice or other communication from any Person alleging that the consent of such Person is or may be required in connection with the transactions contemplated by this Agreement; and
- (b) the occurrence of any event, which would be reasonably likely to cause any condition set forth in Article 9 to be unsatisfied at any time from the date hereof to the End Date.

SECTION 5.04 *Contract Consents.* Without limiting the provisions set forth in Section 7.01:

(a) Buyer and Sellers acknowledge and agree that certain of the Assumed Contracts may, under applicable law, require the consent of the applicable counterparty thereto prior to the Closing (the “**Contract Consents**”). Sellers hereby agree to cooperate and use their commercially reasonable best efforts to receive the Contract Consents prior to the Closing, and Buyer agrees to reasonably cooperate with Sellers in respect thereof.

(b) Buyer and Sellers acknowledge and agree that certain of the Assumed Contracts may pertain to assets of the Sellers or their respective Affiliates other than the Purchased Assets. From and after the date hereof, Sellers shall use their reasonable best efforts to arrange for the Assumed Contracts to be replaced, as of the Closing, with new contracts for the Purchased Assets with the same counterparty and substantially the same terms as the Assumed Contracts but not pertaining to such other assets, and Buyer agrees to reasonably cooperate with Seller’s efforts to arrange the same.

SECTION 5.05 *Use of Existing Atari Logos.* Sellers acknowledge that certain titles and games and collateral with respect thereto within each category of Intellectual Property will contain certain logos, trademarks, artwork and other intellectual property belonging to or licensed to Sellers and/or their respective Affiliates which are not Intellectual Property and which are not otherwise removable from the Intellectual Property by Buyer through commercially reasonable efforts (the “**Existing Atari Logos**”). At the Closing, Sellers shall, and shall cause their respective Affiliates to, grant Buyer a royalty-free, worldwide and perpetual written license to use, retain and display all of the Existing Atari Logos in the Intellectual Property acquired by Buyer, in the same manner as such Existing Atari Logos are currently used, retained or displayed (the “**Existing Atari Logo Licenses**”). In addition, Sellers shall cause the Existing Atari Logo Licenses to be assigned to and assumed by the purchasers of such Existing Atari Logos (through the bankruptcy proceedings with respect to the Chapter 11 Cases) at the closing of the applicable sales of such Existing Atari Logos, or, alternatively, Sellers shall cause such purchasers to grant new licenses to Buyer with respect to the applicable Existing Atari Logos, effective as of the closing of the applicable sales, on substantially the same terms as the corresponding Existing Atari Logo Licenses granted by Sellers.

ARTICLE 6

COVENANTS OF BUYER

Buyer agrees that:

SECTION 6.01 *Confidentiality.* Prior to the Closing Date and after any termination of this Agreement, the Confidentiality Agreement shall remain in full force and effect. After the Closing has occurred, the Confidentiality Agreement shall be terminated to the extent relating to the Purchased Assets and Assumed Liabilities and the employees of Sellers, and shall, with respect to any of the Excluded Assets and Excluded Liabilities, remain in full force and effect.

SECTION 6.02 *Notices of Certain Events.* Buyer shall promptly notify Sellers of the occurrence of any event, which would be reasonably likely to cause any condition set forth in Article 9 to be unsatisfied at any time from the date hereof to the End Date.

ARTICLE 7

COVENANTS OF BUYER AND SELLERS

Buyer and Sellers agree that:

SECTION 7.01 *Reasonable Best Efforts; Further Assurances.* Subject to the terms and conditions of this Agreement, Buyer and Sellers will use their reasonable best efforts to take, or cause to be taken, all actions and to do, or cause to be done, all things necessary or desirable under applicable laws and regulations to consummate the transactions contemplated by this Agreement. Sellers and Buyer agree to execute and deliver such other documents, certificates, agreements and other writings and to take such other actions as may be necessary or desirable in order to consummate or implement expeditiously the transactions contemplated by this Agreement and to vest in Buyer good title to the Purchased Assets, including, subject to Section 2.05 and Section 11.03, assistance by Sellers with the transfer of Intellectual Property (including with respect to making all appropriate filings and submissions with the United States Patent and Trademark Office and United States Copyright Office promptly after Closing, and in any event within 30 days of Closing, as well as such filings and submissions that may be required by Governmental Authorities in other jurisdictions promptly following Buyer's request therefor) (collectively, the "**Further Actions**"). In addition, from and after the earlier of (a) the conversion of the Chapter 11 Cases to proceedings under Chapter 7 of the Bankruptcy Code, and (b) the effective date of a plan of liquidation for the Sellers under Chapter 11 of the Bankruptcy Code, each Seller hereby authorizes Buyer and its respective managers, officers, representatives, successors and assigns, as such Seller's true and lawful attorney, with the full power of substitution, to take the Further Actions on such Seller's behalf. Each Seller hereby declares that the foregoing powers are coupled with an interest and are and shall be irrevocable.

SECTION 7.02 *Certain Filings.* Sellers and Buyer shall cooperate with one another (i) in determining whether any action by or in respect of, or filing with, any Governmental Authority is required, or any actions, consents, approvals or waivers are required to be obtained from parties to any material contracts, in connection with the consummation of the transactions contemplated by this Agreement and (ii) in taking such actions or making any such filings, furnishing information required in connection therewith and seeking timely to obtain any such actions, consents, approvals or waivers.

SECTION 7.03 *Public Announcements.* Absent the prior written consent of the other party, such consent to not be unreasonably withheld, delayed or conditioned, neither Sellers nor Buyer shall make any press release, public announcement, securities filing or public statement concerning this Agreement or the transactions contemplated hereby, except as and to the extent that any such party shall be required to make any such disclosure by applicable law, and then only after giving the other party hereto adequate time to review, under the circumstances, such disclosure and consider in good faith the comments of the other party hereto and consultation as to such comments with such party as to the content of such disclosure. For the avoidance of doubt, nothing herein shall be construed to prohibit any disclosure or announcement which Sellers make in connection with the Chapter 11 Cases. Following any public statement concerning this Agreement or the transactions contemplated hereby after the entry of the Approval Order, this Section 7.03 shall be of no further force or effect.

SECTION 7.04 *Bankruptcy Court Approvals.* Following the execution of this Agreement and in accordance with the Bid Procedures, Sellers shall seek entry of an order reasonably acceptable to Buyer (the “**Sale Order**”) at the Sale Hearing by August 1, 2013, or such later date as shall be agreed to in writing by Buyer, which, among other things, (i) approves this Agreement, (ii) authorizes the sale of the Purchased Assets to Buyer pursuant to Section 363 of the Bankruptcy Code, (iii) authorizes the assumption and assignment to Buyer of the Assumed Contracts pursuant to Section 365 of the Bankruptcy Code and (iv) authorizes the other transactions contemplated by this Agreement, and which Sale Order shall not be materially inconsistent with the terms of this Agreement.

ARTICLE 8

TAX MATTERS

SECTION 8.01 *Tax Definitions.* The following terms, as used herein, have the following meanings:

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

“**Income Tax**” means any federal, state, local or non-U.S. tax based on or measured by reference to net income, including any interest, penalties, or additions thereto, whether disputed or not.

“**Tax or Taxes**” means (i) any tax, governmental fee, levy, duty, tariff, impost, custom, license, payroll, employment, excise, severance, premium, windfall profits, environmental (including taxes under Code § 59A), sales, franchise, profits, pension, social security (or similar), unemployment, capital stock, or other like assessment, charge or premium of any kind whatsoever (including, but not limited to, withholding on amounts paid to or by any Person), together with any interest, penalty, addition to tax or additional amount imposed by any Governmental Authority (a “**Taxing Authority**”) responsible for the imposition of any such tax (federal, state, local or non-U.S.), or (ii) liability for the payment of any amounts of the type described in (i) as a result of being party to any agreement or any express or implied obligation to indemnify any other Person, or as transferee, successor, guarantor or surety.

“**Tax Return**” means any return, declaration, report, claim for return, or information return or statement relating to Taxes; including any schedule or attachment thereto, and including any amendment thereof.

SECTION 8.02 *Tax Cooperation; Allocation of Taxes.*

(a) Buyer and Sellers agree to furnish or cause to be furnished to each other, upon request, as promptly as practicable, such information and assistance relating to the Purchased Assets (including, without limitation, access to books and records) as is reasonably necessary for the preparation and filing of all Tax Returns, the making of any election relating to Taxes, the preparation for any audit by any Taxing Authority, and the prosecution or defense of any claim, suit or proceeding relating to any Tax. Buyer shall retain all books and records with respect to Taxes pertaining to the Purchased Assets for a period of at least six years following the Closing Date. At the end of such period, Buyer shall provide Sellers with at least ten days prior written

notice before destroying any such books and records, during which period Sellers can elect to take possession, at its own expense, of such books and records. Sellers and Buyer shall cooperate with each other in the conduct of any audit or other proceeding relating to Taxes involving the Purchased Assets

(b) To the extent not exempt under Section 1146(a) of the Bankruptcy Code in connection with the Chapter 11 Cases, all excise, sales, use, value added, registration stamp, recording, documentary, conveyance, franchise, property, transfer and similar Taxes, levies, charges and fees, whether federal, state, local or non-U.S., including any interest and penalties (collectively, “**Transfer Taxes**”) incurred in connection with the transactions contemplated by this Agreement shall be borne by Buyer when due, and Buyer will, at its own expense, file all necessary Tax Returns and other documentation with respect to all such Transfer Taxes. Buyer and Seller shall cooperate in providing each other with any appropriate resale exemption certifications and other similar documentation. If Sellers, as agent for any Taxing Authority, is required to collect such Transfer Taxes, Buyer shall pay the aggregate amount of such Transfer Taxes to Sellers as soon as reasonably practicable upon Sellers’ demand and provision to Buyer of reasonable documentation of any such required collection, and, in such case, Sellers shall remit such amount to the appropriate Taxing Authorities in accordance with applicable legislation. Buyer and Sellers shall cooperate in providing each other with any appropriate resale exemption certifications and other similar documentation, relating to Transfer Taxes. Buyer shall indemnify and hold Sellers harmless from and against any Transfer Taxes, penalty, interest or other amounts which may be payable by or assessed against Sellers as a result of any incorrect statement or breach of the obligations of Buyer, together with all loss, costs and expenses.

(c) Transfer Taxes shall be timely paid by Buyer, and all applicable filings, reports and returns shall be filed by Buyer, as provided by applicable law.

SECTION 8.03 *Purchase Price Allocation.* Sellers and Buyer agree that the allocation of the Purchase Price (and all other capitalized costs) (the “**Total Allocable Price**”) among the Purchased Assets shall reflect the fair market value of each category of the Purchased Assets in accordance with Code §1060 and the applicable regulations thereunder (and any similar provision of state, local, or non-U.S. law, as appropriate). Sellers and Buyer will act in good faith and reasonably cooperate with each other to agree on the final allocation of the Total Allocable Price (the “**Final Allocation**”) on or before the ninetieth (90th) day after the Closing Date. Sellers and Buyer and their respective Affiliates shall report, act, and file Tax Returns (including, but not limited to Internal Revenue Service Form 8594) in all respects and for all purposes consistent with the Final Allocation. Neither Sellers nor Buyer shall take any position (whether in audits, Tax Returns, or otherwise) that is inconsistent with the Final Allocation unless required to do so by applicable law.

ARTICLE 9

CONDITIONS TO CLOSING

SECTION 9.01 *Conditions to Obligations of Buyer and Sellers.* The obligations of Buyer and Sellers to consummate the Closing are subject to the satisfaction of the following conditions:

- (a) all Regulatory Approvals shall have been obtained;
- (b) no provision of any applicable law or regulation and no judgment, injunction, order or decree shall prohibit the consummation of the Closing;
- (c) the Bankruptcy Court shall have entered the Sale Order and the Sale Order shall have become a Final Order; and

SECTION 9.02 *Conditions to Obligation of Buyer.* The obligation of Buyer to consummate the Closing is subject to the satisfaction of the following further conditions:

- (a) Sellers shall have performed in all material respects (and solely with respect to Section 5.05 in all respects) all of their obligations hereunder required to be performed by them on or prior to the Closing Date;
- (b) the representations and warranties of Seller contained in this Agreement shall be true and correct, in all material respects (except with respect to those representations and warranties of Seller that are qualified by materiality or Material Adverse Effect, which shall be true and correct in all respects), at and as of the Closing Date, as if made at and as of such date (except that those representations and warranties which address matters only as of a particular date need only be true and correct as of such date);
- (c) from the date of this Agreement, there shall not have occurred a Material Adverse Effect or any event that would be reasonably likely to result in a Material Adverse Effect; and
- (d) all Contract Consents shall have been received.

SECTION 9.03 *Conditions to Obligation of Sellers.* The obligation of Sellers to consummate the Closing is subject to the satisfaction of the following further conditions:

- (a) Buyer shall have performed in all material respects all of its obligations hereunder required to be performed by it at or prior to the Closing Date;
- (b) the representations and warranties of Buyer contained in Article 4 shall be true and correct, in all material respects, except where the failure of such representations and warranties to be true and correct would not have a material adverse effect; and

ARTICLE 10

SURVIVAL

SECTION 10.01 *Survival.* The (a) representations and warranties of Sellers and (b) covenants and agreements of Sellers that by their terms are to be performed in full before the Closing, contained in this Agreement or in any certificate or other writing delivered in connection herewith shall not survive the Closing. The covenants and agreements contained herein that by their terms are to be performed (or continued to be performed) after the Closing, including, without limitation, Section 7.01, shall survive the Closing indefinitely except the covenants, agreements, representations and warranties contained in Article 8 shall survive until

expiration of the statute of limitations applicable to the matters covered thereby (giving effect to any waiver, mitigation or extension thereof).

ARTICLE 11

TERMINATION

SECTION 11.01 *Grounds for Termination.* This Agreement may be terminated at any time prior to the Closing:

- (a) by mutual written agreement of Sellers and Buyer;
- (b) by either Sellers or Buyer, if the Closing shall not have been consummated on or before September 15, 2013 (the “**End Date**”), unless the party seeking termination is in material breach of its obligations hereunder;
- (c) by either Sellers or Buyer, if any condition set forth in Section 9.01 is not satisfied, and such condition is incapable of being satisfied by the End Date, unless the party seeking termination is in material breach of its obligations hereunder;
- (d) by Sellers, if a material breach by Buyer of, or failure to perform any covenant or agreement on the part of Buyer set forth in, this Agreement shall have occurred that would cause the conditions set forth in Sections 9.01 or 9.03 to be incapable of being satisfied by the End Date and any such breach or failure to perform (if capable of cure) has not been cured by Buyer within ten (10) days of Buyer’s receipt of written notice of such breach or failure to perform, or if Buyer shall have failed to consummate the Closing as required by this Agreement; and
- (e) by Buyer, if (i) Seller fails to obtain entry of the Sale Order by August 7, 2013 on terms consistent with this Agreement and otherwise in form and substance reasonably acceptable to Buyer, or (ii) a material breach by Sellers of, or failure to perform any covenant or agreement on the part of Sellers set forth in, this Agreement shall have occurred that would cause the conditions set forth in Sections 9.01 or 9.02 to be incapable of being satisfied by the End Date and any such breach or failure to perform (if capable of cure) has not been cured by Sellers within ten (10) days of Sellers’ receipt of written notice of such breach or failure to perform, or if Sellers shall have failed to consummate the Closing as required by this Agreement.

The party desiring to terminate this Agreement pursuant to this Section 11.01 (other than pursuant to Section 11.01(a)) shall give notice of such termination to the other parties in accordance with Section 12.01.

SECTION 11.02 *Effect of Termination.* If this Agreement is validly terminated as permitted by Section 11.01, such termination shall be without liability of the parties to this Agreement (or any stockholder, director, officer, employee, agent, Affiliate, attorney, fund, manager, consultant or other representative of such party) except as provided in Section 2.07; *provided that* nothing in this Agreement will relieve any party from liability arising as a result of any intentional breach of this Agreement prior to such termination or as a result of fraud, criminal activity or willful misconduct. The provisions of Sections 2.07, 6.01, 11.03, 12.01,

12.04, 12.05, 12.06, 12.09, 12.11 and 12.13 shall survive any termination pursuant to Section 11.01.

SECTION 11.03 *Costs and Expenses.* Except as otherwise provided in Section 8.02, whether or not the transactions contemplated by this Agreement are consummated, all costs and expenses incurred in connection with this Agreement shall be paid by the party incurring such cost or expense; provided, however, that Buyer shall be responsible for all transfer, registration, recordation or other similar fees payable in connection with any filings, transfers or assignments with respect to domain name registrations or assign Intellectual Property.

SECTION 11.04 *Exclusive Remedies.* Except as specifically set forth in this Agreement, effective as of Closing, each party hereto waives any rights and claims it may have against the any other party hereto, whether in law or in equity, relating to (i) any breach of representation, warranty, covenant or agreement contained herein occurring on or prior to the Closing or (ii) the Purchased Assets or Assumed Liabilities. Buyer and Sellers acknowledge and agree that if this Agreement is validly terminated in accordance with its terms, the provisions that survive this Agreement in accordance with Section 11.02 shall provide for and govern the sole and exclusive remedies of the parties for any breach of the representations, warranties, covenants or agreements contained herein; *provided that*, notwithstanding the foregoing, in the event of a termination of this Agreement by either of the parties that has not either (i) been agreed upon by the parties or (ii) finally adjudicated by a court of competent jurisdiction to be a valid termination made in accordance with Section 11.01, nothing shall prohibit a non-terminating party from seeking specific performance by the terminating party in accordance with Section 12.08.

ARTICLE 12

MISCELLANEOUS

SECTION 12.01 *Notices.* All notices, requests and other communications to any party hereunder shall be in writing (including facsimile or email transmission with delivery confirmation) and shall be given,

if to Buyer:

c/o The Evergreen Group Ventures, LLC
Media Center, 4th Floor
1600 Rosecrans Ave.
Manhattan Beach, CA 90266
Attention: Jim Wagner
Facsimile: (310) 321-7810
E-mail: jw@tegmb.com

with a copy to:

Kirkland & Ellis LLP
601 Lexington Avenue
New York, NY 10022
Attention: Jonathan Henes and Brian Schartz

Facsimile: (212) 446-4900
Email: jonathan.henes@kirkland.com and brian.schartz@kirkland.com

and

Sutton, Pakfar and Courtney LLP
450 N. Roxbury Drive
Suite 700
Beverly Hills, CA 90210
Attention: Keith Sutton
Facsimile: (310) 275-0801
E-mail: ksutton@spcllp.com

if to Sellers, to:

Humongous, Inc.
c/o Atari, Inc.
475 Park Avenue South
12th Floor
New York, NY
Attention: Kristen Keller
Fax: (212) 726-4214
Email: kristen.keller@atari.com

with a copy to:

Akin Gump Strauss Hauer & Feld LLP
One Bryant Park
Bank of America Tower
New York, NY 10036-6745
Attention: Ira Dizengoff
Fax: (212) 872-1002
Email: idizengoff@akingump.com

and

Akin Gump Strauss Hauer & Feld LLP
1333 New Hampshire Avenue, N.W.
Washington, DC 20036-1564
Attention: Scott Alberino
Fax: (202) 887-4288
Email: salberino@akingump.com

All such notices, requests and other communications shall be deemed received on the date of receipt by the recipient thereof if received prior to 5:00 p.m. in the place of receipt and such day is a business day in the place of receipt. Otherwise, any such notice, request or communication

shall be deemed not to have been received until the next succeeding business day at the place of receipt.

SECTION 12.02 *Amendments and Waivers.*

(a) Any provision of this Agreement may be amended or waived if, but only if, such amendment or waiver is in writing and is signed, in the case of an amendment, by each party to this Agreement or, in the case of a waiver, by the party against whom the waiver is to be effective.

(b) No failure or delay by any party in exercising any right, power or privilege hereunder shall operate as a waiver thereof nor shall any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any other right, power or privilege. The rights and remedies herein provided shall be cumulative and not exclusive of any rights or remedies provided by law.

SECTION 12.03 *Successors and Assigns.* The provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns; *provided that* no party may assign, delegate or otherwise transfer any of its rights or obligations under this Agreement without the consent of each other party hereto; provided, however, that prior to the Closing Date, Buyer may, without the prior written consent of any of Sellers, assign all or any portion of its rights under this Agreement to one or more of its Affiliates.

SECTION 12.04 *Governing Law.* This Agreement shall be governed by and construed in accordance with the law of the State of New York, without regard to the conflicts of law rules of such state.

SECTION 12.05 *Jurisdiction.* The parties hereto agree that, during the period from the date hereof until the date on the Chapter 11 Cases are closed or dismissed (the “**Bankruptcy Period**”), any suit, action or proceeding seeking to enforce any provision of, or based on any matter arising out of or in connection with, this Agreement or the transactions contemplated hereby shall be brought exclusively in the Bankruptcy Court. The parties further agree that, following the Bankruptcy Period, any suit, action or proceeding with respect to this Agreement or the transactions contemplated hereby shall be brought against any of the parties exclusively in either the United States District Court for the Southern District of New York or any state court of the State of New York located in such district, and each of the parties hereby irrevocably consents to the jurisdiction of such court and the Bankruptcy Court (and of the appropriate appellate courts therefrom) in any such suit, action or proceeding and irrevocably waives, to the fullest extent permitted by law, any objection that it may now or hereafter have to the laying of the venue of any such suit, action or proceeding in the such courts or that any such suit, action or proceeding which is brought in such courts has been brought in an inconvenient forum. Process in any such suit, action or proceeding may be served on any party anywhere in the world, whether within or without the jurisdiction of the Bankruptcy Court, the United States District Court for the Southern District of New York or any state court of the State of New York. Without limiting the foregoing, each party agrees that service of process on such party as provided in Section 12.01 shall be deemed effective service of process on such party.

SECTION 12.06 *WAIVER OF JURY TRIAL*. EACH OF THE PARTIES HERETO HEREBY IRREVOCABLY WAIVES ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY LEGAL PROCEEDING ARISING OUT OF OR RELATED TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY.

SECTION 12.07 *Counterparts; Third Party Beneficiaries*. This Agreement may be signed in any number of counterparts, each of which shall be an original, with the same effect as if the signatures thereto and hereto were upon the same instrument. This Agreement shall become effective when each party hereto shall have received a counterpart hereof signed by the other party hereto. No provision of this Agreement is intended to confer upon any Person other than the parties hereto any rights or remedies hereunder.

SECTION 12.08 *Specific Performance*. It is understood and agreed by the parties that money damages may be an insufficient remedy for any breach of this Agreement by either of the parties, and as a consequence thereof, subject to the Bankruptcy Court's entry of the Sale Order, each party hereto shall be entitled to seek specific performance and injunctive or other equitable relief as a remedy for such breach, including, without limitation, an order of the Bankruptcy Court or other court of competent jurisdiction requiring the breaching party to comply promptly with any of its obligations hereunder. The party seeking relief shall be entitled to an injunction to enforce specifically the consummation of the transactions contemplated herein in a proceeding instituted in any court in the State of New York having jurisdiction over the parties and the matter.

SECTION 12.09 *Entire Agreement*. This Agreement, the other Transaction Documents, and the Confidentiality Agreement constitute the entire agreement between the parties with respect to the subject matter of this Agreement and supersede all prior agreements and understandings, both oral and written, between the parties with respect to the subject matter of this Agreement.

SECTION 12.10 *Bulk Sales Laws*. Buyer hereby waives compliance by Sellers and Sellers hereby waive compliance by Buyer with the provisions of the "bulk sales", "bulk transfer" or similar laws of any jurisdiction other than any laws which would exempt any of the transactions contemplated by this Agreement from any Tax liability which would be imposed but for such compliance.

SECTION 12.11 *No Strict Construction*. Buyer, on the one hand, and Sellers, on the other hand, participated jointly in the negotiation and drafting of this Agreement, and, in the event an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as jointly drafted by Buyer, on the one hand, and Sellers, on the other hand, and no presumption or burden of proof shall arise favoring or disfavoring any party by virtue of the authorship of any provision of this Agreement. Without limitation as to the foregoing, no rule of strict construction construing ambiguities against the draftsman shall be applied against any Person with respect to this Agreement.

SECTION 12.12 *Non-Recourse*. No past, present or future director, manager, officer, employee, incorporator, member, unitholder, partner or equityholder of any party hereto shall have any liability for any obligations or liabilities of the parties under this Agreement or any


other Transaction Document, for any claim based on, in respect of, or by reason of the transactions contemplated hereby and thereby, and each party hereby covenants not to sue any past, present or future director, manager, officer, employee, incorporator, member, unitholder, partner or equityholder of any other party for any such claim.

SECTION 12.13 *Severability*. The provisions of this Agreement shall be deemed severable, and the invalidity or unenforceability of any provision shall not affect the validity or enforceability of the other provisions hereof. If any provision of this Agreement, or the application thereof to any Person or any circumstance, is invalid or unenforceable, (a) a suitable and equitable provision shall be substituted therefor in order to carry out, so far as may be valid and enforceable, the intent and purpose of such invalid or unenforceable provision and (b) the remainder of this Agreement and the application of such provision to other Persons or circumstances shall not be affected by such invalidity or unenforceability.

[Signatures Pages Follow.]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed by their respective authorized officers as of the day and year first above written.

HUMONGOUS, INC.
a debtor and debtor-in-possession

By: 
Name: _____
Title:


ATARI INTERACTIVE, INC.
a debtor and debtor-in-possession

By: 
Name: _____
Title:

CALIFORNIA U.S HOLDINGS, INC.
a debtor and debtor-in-possession

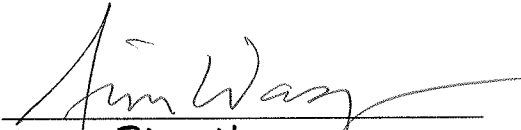
By: 
Name: _____
Title:

ATARI, INC.
a debtor and debtor-in-possession

By: 
Name: _____
Title:

EPIC GEAR, LLC

By:


Name: Tim Wagner
Title: managing Director

[Signature Page to Asset Purchase Agreement]