

*Total Annihilation Asset*

**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,

WARGAMING WORLD LIMITED,

as Buyer

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## ASSET PURCHASE AGREEMENT

THIS PURCHASE AGREEMENT, dated as of July 17, 2013 (the “**Agreement**”), is made and entered into 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, the “**Sellers**”) and Wargaming World Limited, a limited liability private company registered under the laws of the Republic of Cyprus with registration number HE 317029 (the “**Buyer**”).

### WITNESSETH:

**WHEREAS**, Sellers are engaged in the business of developing, licensing and selling Products with respect to the “Total Annihilation Franchise” (as described on Schedule 3 of the Bid Order and on Schedule 1.01(I) hereof) (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 and Wargaming America, Inc. dated February 19, 2013.

“**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, subject to the provisions of Section 2.01, 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.

**“Intellectual Property”** means, collectively, (a) all software, (b) all copyrights, (c) all patents, (d) all trademarks and (e) all domain names and (f) all other items, in each case, specifically listed on Schedule 1.01, and all rights in the foregoing.

**“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.

**“Products”** or **“Product”** means all interactive entertainment software and ancillary products and technology that are part of the Total Annihilation Franchise.

**“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:

<b><u>Term</u></b>	<b><u>Section</u></b>
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 2.07
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 2.01
Excluded Contracts	Section 2.02
Excluded Liabilities	Section 2.04
Final Allocation	Section 8.03
Good Faith Deposit	Section 2.07
Income Tax	Section 8.01
Marketing Assets	Section 2.01
Petition Date	Recitals
Purchased Assets	Section 2.01
Purchased Software	Section 2.01
Purchase Price	Section 2.06
Sale Order	Section 7.04
Seller	Preamble
Tax	Section 8.01
Taxing Authority	Section 8.01



<u>Term</u>	<u>Section</u>
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
Transferred Prepaid Expenses	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 (the "**Purchased Assets**"):

- (a) all Intellectual Property;
- (b) the Contracts listed or described on Schedule 2.01(b) as such Contracts pertain to the Purchased Assets (the "**Assumed Contracts**");
- (c) all books, records, files and papers, whether in hard copy or computer format that are specifically related to the Purchased Assets, including, but not limited to, financial and accounting records, and customer lists with respect to the Business (the "**Transferred Books and Records**");
- (d) all existing assets solely used or useful in exploiting, marketing or selling the Intellectual Property and/or marketing and selling the Products (the "**Marketing Assets**"); and
- (e) 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 for the purposes of this Agreement or any other Transaction Documents, 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) other than the Purchased Assets, all tangible personal property and interests therein (including leases thereof), including books, records, files and papers;

(c) all of Sellers' cash and cash equivalents on hand (including all undeposited checks) and in banks;

(d) all of Sellers' insurance policies and all claims, credits, causes of action or rights thereunder;

(e) all rights and obligations under any Contract that is not an Assumed Contract (collectively, the "**Excluded Contracts**");

(f) all rights of Sellers arising under this Agreement or the transactions contemplated hereby;

(g) all accounts, notes and other receivables, including Intercompany Receivables;

(h) 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;

(i) 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;

(j) all Causes of Action of Sellers other than those described in Section 2.01(e); and

(k) 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 Sections 2.01 and 5.04, Sellers shall transfer and assign all Assumed Contracts to Buyer, and Buyer shall assume all Assumed Contracts from Sellers, as of the Closing Date pursuant to the Sale Order. In connection with such assignment and assumption, Buyer shall cure all monetary defaults under such Assumed Contracts to the extent required by Section 365(b) of the Bankruptcy Code. 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 of the Bankruptcy Code, 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 \$960,000 (the “**Cash Consideration**”);
- (ii) the payment of all Cure Costs; 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 \$96,000 (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, the IP Assignment Agreement and each other Transaction Document to which Sellers are party, duly executed by Sellers;

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

(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); and

(v) all other tangible embodiments of Intellectual Property and Inventory (as defined in Schedule 1.01 hereto).

### 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 each Seller of this Agreement and each of the other Transaction Documents to which each Seller is a party and the consummation of the transactions contemplated hereby and thereby are within such Seller's corporate powers and has been duly authorized by all necessary corporate action on the part of such Seller.

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

SECTION 3.04 *No Conflict.* The execution, delivery and performance by each Seller of this Agreement and each of the other Transaction Documents to which each Seller is 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 such Seller, (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) 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 such Seller, 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 any Seller or any Seller's property is required for the execution and delivery by such Seller of this Agreement or any of the other Transaction Documents and performance of and compliance by such Seller 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, and (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 no Seller is 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 any Seller is 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, each Seller is 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, each Seller will thereby transfer to Buyer, all of such Seller’s 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 Company 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 rights and technology owned by the Seller of a type similar to the Intellectual Property that is required by Buyer to operate the Business immediately following the Closing, in the same manner, as the Business was operated immediately prior to the Closing.

(b) Sellers own or hold valid licenses to all Intellectual Property and 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 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 3.13 *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 4

#### REPRESENTATIONS AND WARRANTIES OF BUYER

Buyer represents and warrants to Sellers that:

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

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 corporate 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 have 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 nor 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, Sellers hereby disclaim 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 Sellers). Sellers 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 not materially diminish the economic value of the Purchased Assets.

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 the Assumed Contracts may, under applicable law or the terms of such Assumed Contract, require the consent of the applicable counterparty thereto prior to the Closing (the "**Contract Consents**"). Buyer and Sellers hereby agree to cooperate and use their commercially reasonable efforts to receive the Contract Consents prior to the Closing.
- (b) Buyer and Sellers acknowledge and agree that certain of the Assumed Contracts may pertain to assets of the Sellers or their affiliates other than the Purchased Assets. From and after the date hereof, Buyer and Sellers shall use their commercially reasonable 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.

SECTION 5.05 *Use Rights Agreements.* Sellers acknowledge that certain titles and games within each category of the Purchased Assets will contain certain logos, trademarks and artworks belonging to or licensed to Sellers and/or its Affiliates which are not otherwise removable by Buyer through commercially reasonable efforts (the "**Exiting Atari Logos**") due to a lack of source code. Sellers shall grant Buyer with a royalty-free, worldwide and perpetual license in writing from Sellers to reasonably use, retain and display the Existing Atari Logos in the Purchased Assets acquired by Buyer, in the same manner as such Existing Atari Logos are currently used, retained or displayed.

## 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, the United States Copyright Office or their foreign equivalents, as applicable, promptly after Closing, and in any event within 30 days of Closing).

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 Assumed 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 Sale 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, which Sale Order shall not be 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.* The methodology according to which the Purchase Price (and all other capitalized costs) (the "**Total Allocable Price**") shall be allocated among the Purchased Assets as mutually agreed upon in good faith by Sellers and Buyer. Sellers and Buyer agree that the allocation of 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 (90<sup>th</sup>) 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
- (d) all Contract Consents shall have been received.

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 all of its obligations hereunder required to be performed by them on or prior to the Closing Date; and
- (b) the representations and warranties of Sellers contained in Article 4 shall be true and correct, in all material respects, at and as of the Closing Date as if made and as of such date (with the exception of those representations and warranties which address matters only as of a particular date need only to be true and correct as of such date), except where the failure of such representations and warranties to be true and correct would not have a Material Adverse Effect; and

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; and
- (b) the representations and warranties of Buyer contained in Article 4 shall be true and correct, in all material respects, at and as of the Closing Date as if made and as of such date (with the exception of those representations and warranties which address matters only as of a particular date need only to be true and correct as of such date), except where the failure of such representations and warranties to be true and correct would not have a material adverse effect.

## 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 before 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 after Closing 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 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 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 and 12.11 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 and 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:

Wargaming World Limited  
105 Agion Omologiton Avenue  
Nicosia, 1080, Cyprus  
Attention: Sean Lee  
Email: Sean@wargaming.net

with a copy to:



Wilson, Sonsini, Goodrich & Rosati  
650 Page Mill Road  
Palo Alto, CA 94304  
Attention: Robert Latta, Mark Baudler, Kira Kimhi  
Fax: 650-493-6811  
Email: RLatta@wsgr.com, MBaudler@wsgr.com, KKimhi@wsgr.com

if to Sellers, to:

Humongous, Inc.  
c/o Atari, Inc.  
475 Park Avenue South  
12<sup>th</sup> 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 which 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.

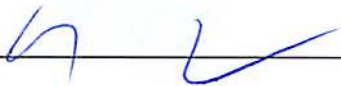
*[Signatures Pages Follow.]*

**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:

WARGAMING WORLD LIMITED

By:   
Name: Nick Katselapov  
Title: Director