

Share Sale and Purchase Agreement

relating to

sale and purchase of shares in Tidal Gaming NZ Limited

Tidal Gaming Holdings Inc.

Vendor

and

Entain Holdings (UK) Limited

Purchaser

and

Tidal Gaming Group Corp.

Vendor Parent

Date

BELL GULLY

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This **Share Sale and Purchase Agreement** is made on March 13, 2023

- between** (1) **Tiidal Gaming Holdings Inc. (Vendor)**
- and** (2) **Entain Holdings (UK) Limited (Purchaser)**
- and** (3) **Tiidal Gaming Group Corp. (Vendor Parent)**

Introduction

- A. The Vendor has agreed to sell the Shares to the Purchaser, and the Purchaser has agreed to purchase the Shares, on the terms and conditions set out in this Agreement.
- B. The Vendor Parent has agreed to, amongst other things, provide various undertakings and covenants in favour of the Purchaser and to guarantee the Vendor's obligations under this Agreement, in each case on the terms and conditions set out in this Agreement.

It is agreed

1. Definitions and interpretation

1.1 Definitions

In this Agreement, unless the context otherwise requires:

ABC Warranties means the Vendor Warranties contained in paragraph 17 of Schedule 1;

Accounts Receivable means all amounts owing to the Company as at the Completion Date from trade debtors for the sale of products or services in connection with the conduct of the Business;

Actual Completion Consideration means an amount in CAD equal to:

- (a) the Enterprise Value; plus
- (b) the Actual Working Capital Amount; minus
- (c) the Target Working Capital Amount; plus
- (d) the Actual Cash; minus
- (e) the Actual Indebtedness.

Actual Completion Consideration Statement means the statement to be prepared in accordance with the requirements of clause 11 setting out:

- (a) the components of the Actual Working Capital Amount, the Actual Cash and the Actual Indebtedness established as at the Calculation Time;
- (b) the Actual Completion Consideration; and

(c) the Adjustment Amount,

subject to the Purchase Price Cap;

Actual Cash means the amount of Cash of the Company as at the Calculation Time as set out in the Actual Completion Consideration Statement or as otherwise agreed or determined under clause 11.7;

Actual Indebtedness means the amount of Indebtedness as at the Calculation Time as set out in the Actual Completion Consideration Statement or as otherwise agreed or determined under clause 11.7;

Actual Working Capital Amount means the amount of Working Capital as at the Calculation Time as set out in the Actual Completion Consideration Statement or as otherwise agreed or determined under clause 11.7;

Adjustment Amount means the difference between the Actual Completion Consideration and the Estimated Completion Consideration, as calculated in accordance with clause 11.4 and as otherwise confirmed pursuant to clause 11;

Adjustment Date means the date designated as such in clause 11.6;

Agent means, with respect to an entity:

- (a) any director, officer, employee or other representative of such entity;
- (b) any person for whose acts such entity may be vicariously liable; and
- (c) any other person that acts for or on behalf of, or performs services for or on behalf of, such entity,

in each case, whilst acting in their capacity as such;

Agreed Form means, in relation to a document, the form of that document which has been shared by email between the Purchaser and the Vendor and confirmed to be the "Agreed Form" version of that document for the purposes of this Agreement, for identification purposes only, in each case, with such amendments as may be agreed in writing by the Vendor and the Purchaser;

Agreement means this agreement, including the Introduction and the Schedules;

Agreement Date means the date of this Agreement;

Anti Bribery Laws means the US Foreign Corrupt Practices Act 1977 and any rules and regulations thereunder, the UK Bribery Act 2010 and any rules and regulations thereunder, any similar laws or regulations in any other jurisdiction and any other national and international laws enacted to implement the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions;

Assets means all assets used or owned by the Company as at the Completion Date;

Balance Date means January 31, 2023;

Bill Rate means the per annum rate equal to the bank bill reference rate (bid) (rounded upwards, if necessary, to the nearest four decimal places) administered by the New Zealand Financial Benchmark Facility (or any other person which takes over the administration of that rate) for a three month tenor as displayed at or about 10.45 a.m. on that day on page BKBM

(or its successor page) of the Thomson Reuters Monitor Screen or Bloomberg equivalent, provided that if the rate is in any case less than zero, it shall be deemed to be zero;

BOA Solutions Contract means the agreement between BOA Solutions Limited and the Company dated April 5, 2021 available in the Data Room;

Business means the business carried on by the Company known as “Sportsflare”, which develops and sells e-sports betting products and services;

Business Agreements means all written deeds, arrangements, agreements or understandings entered into by the Company prior to the Agreement Date, including:

- (a) the Material Agreements; and
- (b) any agreements entered into by the Company in the ordinary course of the operation of the Business and in compliance with clause 5.1 during the Pre-Completion Period,

in each case to the extent they have not been performed in full at Completion;

Business Names means:

- (a) Sportsflare; and
- (b) Tiidal;

Business Records means all of the books, records, documents, information, accounts and data (whether machine readable or in printed form) owned by or relating to the Company, the Business or the property of the Company and any source material used to prepare them;

Calculation Time means 5:00pm on the Completion Date;

Cash means the aggregate amount of those items specified as Cash in the Reference Balance Sheet, but excluding any amount of any current asset included in the calculation of Working Capital;

CCLA means the Contract and Commercial Law Act 2017;

Claim means any claim, demand, legal proceedings or cause of action under this Agreement or in any way relating to this Agreement or the Sale, and includes a claim, demand, legal proceedings or cause of action arising from a breach of a Vendor Warranty, and/or any indemnity given by the Vendor under this Agreement;

Companies Act means the Companies Act 1993;

Company means Tiidal Gaming NZ Limited;

Competing Transaction means any proposed direct or indirect:

- (a) acquisition of any equity capital in the Company, including any potential offer for the equity capital of the Vendor Parent, the Vendor or any of their Related Companies whether implemented through an acquisition, a takeover bid, a plan of arrangement or another analogous structure;
- (b) acquisition of any business or assets (or part thereof) of the Company, or an acquisition of any business or assets (or part thereof) of the Vendor Parent or the Vendor; or

- (c) other acquisition, merger, business combination or transaction similar to the foregoing or which is reasonably likely to frustrate the Sale;

Completion means the completion of the Sale in accordance with clause 9 and, where the context requires, also means the time at which Completion takes place or is to take place;

Completion Date means the date 10 business days after the Conditions (other than the Condition in clause 3.1(b)(ii)) have been satisfied or waived or such other date agreed in writing by the Vendor and the Purchaser;

Conditions means the conditions set out in clause 3.1, and **Condition** means any of them;

Confidential Information means the know-how, trade secrets, technical processes, information relating to products, finances, contractual arrangements with customers or suppliers, business development or planning, future projects and other information relating to the Company or the Business which by its nature (in whatever form held), or by the circumstances of its disclosure to the holder of the information, is or could reasonably be expected to be regarded as confidential;

CSE means the Canadian Securities Exchange, on which the Vendor Parent's common shares are listed and posted for trading;

Data Protection Legislation means all laws and regulations applicable to the processing of Personal Data and privacy, including:

- (a) the Privacy Act;
- (b) the General Data Protection Regulation (**GDPR**), the UK General Data Protection Regulation ("**UK GDPR**") and all applicable national implementing legislation and guidelines, decisions made by the Court of Justice of the European Union or any applicable analogous legislation in any jurisdiction, and other laws and regulations of the European Union, their member states and the United Kingdom and Gibraltar relating to the processing of Personal Data, privacy and interception of communications to the extent applicable in the United Kingdom or any jurisdiction in which the Company operates, in each case, as amended, revised or replaced from time to time;
- (c) the corresponding laws and regulations of each jurisdiction in which the Company operates, including any statutory instruments or any delegated or subordinated legislation including Network Rules, federal, state or local laws, rules, regulations, or ordinances applicable to a party, and the rules, regulations, orders, licenses or permits issued, and where applicable, the California Consumer Privacy Act as amended, revised or replaced from time to time; and
- (d) where applicable, the related guidance and codes of practice issued by the New Zealand Office of the Privacy Commissioner or any other regulator of each jurisdiction in which the Company operates;

Data Room means the virtual data room operated by Firmex in respect of the Sale comprising copies of documents and other information relating to the Company and the Business as listed in the Data Room Index and made available by the Vendor to the Purchaser and its Related Parties and advisers;

Data Room Index means the data room index produced by Firmex on or immediately prior to the Agreement Date listing the contents of the Data Room, in the Agreed Form;

Deed of Acknowledgement and Repayment of Debt means the deed of acknowledgement and repayment of debt in relation to the Intercompany Loans to be

entered into by the Purchaser, the Company and the Vendor on or shortly after Completion, in the Agreed Form;

Default Rate means, for any day, the Bill Rate for that day plus a margin of 5%;

Director Recommendation means the unanimous recommendation of the directors of the Vendor Parent that the shareholders of the Vendor Parent vote in favour of the Shareholder Approval Resolution;

Disclosure Information means the Disclosure Letter and the Due Diligence Information;

Disclosure Letter means the disclosure letter dated on the Agreement Date from the Vendor to the Purchaser containing certain disclosures against the Vendor Warranties;

Dispute Process means the dispute resolution process set out in clause 11.7;

Distribution has the meaning specified in section 2(1) of the Companies Act;

Domain Names means those domain names listed in Part A of Section 13.1 of the Disclosure Letter;

Due Diligence Information means the information which is identified in the Data Room Index and is disclosed in writing (whether in machine readable or printed form) in the Data Room;

Employees means the employees and contractors of the Company employed or engaged in the Business and listed in Section 18.1 of the Disclosure Letter together with any other employees or contractors employed or engaged by the Company in the Business after the Agreement Date but before Completion in accordance with clause 5.1(j), but excluding in each case any person:

- (a) who has given notice of their resignation that expires on or before Completion;
- (b) who has been given notice of termination that expires on or before Completion; or
- (c) whose employment or engagement with the Company otherwise terminates prior to Completion;

Encumbrance means an interest or power reserved in or over an interest in any asset created or otherwise arising:

- (a) under a mortgage, debenture, charge, lien, pledge, hypothecation, security interest (as that term is defined in the PPSA), title retention, preferential right, right of pre-emption or any other interest in property that legally or in substance secures any obligation of any person, or other arrangement of any nature of similar economic effect; or
- (b) by way of security for the payment of a debt or any monetary obligation,

and includes any agreement or arrangement to grant or create any of the above, and any easements, land covenants, consent notices or other restrictions or encumbrances affecting the title to the Leasehold Property;

Entain Loan Agreement means the loan agreement between the Lender, the Company, the Vendor and the Vendor Parent dated 2 February 2023 pursuant to which the Purchaser has agreed to provide the Company with a credit facility of up to NZD\$1,658,470;

Enterprise Value means CAD\$13,250,000;

Estimated Cash means the Vendor's good faith estimate of the Actual Cash as at the Calculation Time as set out in the Estimated Completion Consideration Statement;

Estimated Completion Consideration means an amount in CAD equal to:

- (a) the Enterprise Value; plus
- (b) the Estimated Working Capital Amount; minus
- (c) the Target Working Capital Amount; plus
- (d) the Estimated Cash; minus
- (e) the Estimated Indebtedness,

subject to the Purchase Price Cap;

Estimated Completion Consideration Statement means the statement to be prepared in accordance with the requirements of clause 11 setting out:

- (a) the components of the Estimated Working Capital Amount, the Estimated Cash and the Estimated Indebtedness established as at the Calculation Time; and
- (b) the Estimated Completion Consideration;

Estimated Indebtedness means the Vendor's good faith estimate of the Actual Indebtedness as at the Calculation Time as set out in the Estimated Completion Consideration Statement;

Estimated Working Capital Amount means the Vendor's good faith estimate of the Actual Working Capital Amount as at the Calculation Time as set out in the Estimated Completion Consideration Statement;

Event means any action, omission, transaction, or any other occurrence, whether actual or deemed, and whether or not the Company is a party to it and includes:

- (a) Completion; and
- (b) any Event which is a combination of Events that occur before and after Completion;

Exchange Rate means the NZD:CAD foreign exchange rate published by the Bank of Canada;

Expert means the independent accountant appointed under clause 11.7(b);

Financial Statements has the meaning given to that term in the Financial Reporting Act 2013;

Fundamental Warranties means the Vendor Warranties contained in paragraphs 1 and 2 of Schedule 1;

Goodwill means the goodwill of the Company including the benefit of all pending contracts, orders and engagements relating to the Company or the Business and the rights to all Intellectual Property;

Government Agency means:

- (a) any government or any public, statutory, governmental (including a local authority), semi-governmental, local governmental or judicial body, entity, department or authority;
- (b) any self-regulatory organisation established under statute;
- (c) any body that has legal power to require another person to act or not act in a particular way or to authorise a particular act in any part of the world;
- (d) a political party;
- (e) a public organisation, being an organisation whose members are (i) countries or territories; (ii) governments of countries or territories; and/or (iii) other public international organisations and includes, without limitation, the World Bank, the United Nations, the International Monetary Fund and the OECD;
- (f) any stock exchange, including the CSE; or
- (g) any company, association, organisation, business, enterprise or other entity which is owned, whether in whole or in part, or controlled by any person listed in (a) to (f) above;

GST means tax charged under the GST Act;

GST Act means the Goods and Services Tax Act 1985;

Holidays Act means the Holidays Act 2003;

IFRS means International Financial Reporting Standards as published by the International Accounting Standards Board;

Income Tax Act means the Income Tax Act 2007;

Indebtedness means, in respect of the Company, the aggregate amount (expressed as a positive amount) of:

- (a) the principal and accrued interest of any borrowing or indebtedness in the nature of borrowing incurred by the Company including bank debt, loans (including the Intercompany Loans) and overdrafts, but excluding all principal amounts and accrued interest outstanding under the Entain Loan Agreement other than as specified in limb (b) below;
- (b) NZD\$1,158,470 of the principal outstanding under the Entain Loan Agreement, but excluding, for the avoidance of doubt, the remaining amount of the principal outstanding of NZD\$500,000 and all accrued interest outstanding under the Entain Loan Agreement;
- (c) indebtedness arising under guarantees, letters of credit, notes, bonds, debentures, loan stock or other similar instruments;
- (d) the capitalised element of any lease or hire purchase contract which would, in accordance with IFRS, be treated as a finance or capital lease;
- (e) amounts payable by the Company (if any) in relation to the transactions contemplated by this Agreement;
- (f) declared and/or accrued but unpaid dividends of the Company;

- (g) all obligations of the Company to purchase or redeem or otherwise acquire for value any share capital of the Company;
- (h) all costs payable by the Company on termination of any interest rate swap or hedging arrangements to which the Company is party;
- (i) an amount equal to the accrued but unpaid liabilities of the Company for corporation tax in respect of all periods ending on or before Completion; and
- (j) the items specified as Indebtedness in the Reference Balance Sheet,

together with any interest, early repayment, prepayment or break costs, fees or penalties in respect of any such item and any legal costs and expenses (together with any irrecoverable GST charged thereon) payable by the Company in connection with the release of security in relation to any such item but excluding any amount of any current liability included in the calculation of Working Capital;

Intellectual Property means all Intellectual Property Rights owned by the Company or which are used or exercised in connection with the Business, including the Business Names, the Domain Names and the Unregistered Intellectual Property;

Intellectual Property Rights means:

- (a) all rights conferred by statute, common law or in equity and subsisting now or in the future anywhere in the world in relation to intellectual property, including:
 - (i) registered and unregistered copyright (including moral rights and neighbouring rights);
 - (ii) inventions (including patents, innovation patents, design patents, petty patents and utility models);
 - (iii) Confidential Information and the right to have Confidential Information kept confidential, trade secrets, technical data, source code and know-how;
 - (iv) registered and unregistered designs;
 - (v) registered and unregistered trade marks, including associated goodwill;
 - (vi) circuit layout designs, topography rights and rights in databases, and other sui generis rights, whether or not any of these is registered, registrable or patentable; and
 - (vii) brand names, domain names, product names, trading names, company names, service marks, logos, social media user names;
- (b) any other rights resulting from intellectual activity in the industrial, commercial, scientific, literary or artistic fields which subsist or may hereafter subsist;
- (c) any licence to use a domain name granted in the .nz, or .com or any other domain;
- (d) any licence or other similar right from a third party to use any of the above;
- (e) any applications and the right to apply for registration or renew or extend registration of, or claim priority from, any of the above; and

- (f) any rights of action against any third party for infringement in connection with the rights included in paragraphs (a) to (d) above;

Intellectual Property Warranties means the Vendor Warranties contained in paragraph 13 of Schedule 1;

Intercompany Loans means the loans in the aggregate principal amount of NZD\$2,099,368.92 advanced by the Vendor to the Company and the loans in the aggregate principal amount of NZD\$2,444,054.92 advanced by the Vendor Parent to the Company, each of which are interest free undocumented loans;

IP Assignment Deeds means the deeds of assignment of intellectual property to be entered into by each Employee in favour of the Company on Completion, in the Agreed Form;

IRD means the New Zealand Inland Revenue Department;

Key Employee IEAs means the individual employment agreements to be entered into between the Company and each Key Employee with effect from Completion, in the Agreed Form;

Key Employees means:

- (a) *[Redacted - personal information]* (Chief Executive Officer);
- (b) *[Redacted - personal information]* (Chief Technology Officer);
- (c) *[Redacted - personal information]* (Chief Product Officer);
- (d) *[Redacted - personal information]* (Chief Scientist); and
- (e) *[Redacted - personal information]* (Head of Trading);

Key Employees Condition has the meaning given to that term in clause 3.1(b);

Leasehold Property means all the rights, title and interest of the Company in the office premises located at Level 6, 5 Willeston Street, Wellington, New Zealand that is leased pursuant to the Lease and in all fixtures and fittings in that premises (but excluding any landlord's fixtures and fittings);

Lease means the lease of the Leasehold Property between the Company and Franklin Property Holdings Limited dated February 7, 2023 and includes any documents evidencing any variation, renewal, extension, review or assignment that is operative at Completion;

Lease Condition has the meaning given to that term in clause 3.1(c);

Lender means Ladbroke Group Finance plc (a Related Company of the Purchaser);

Longstop Date means 31 August 2023;

Loss means losses, liabilities, damages, compensation, costs, interest, fees, penalties, fines, assessments, and expenses and includes Taxes;

Management Accounts means the monthly unaudited management accounts for the Company for the period from November 2020 to the Balance Date as contained in folder SF Financials of the Data Room;

Material Agreements means those agreements listed in Section 6.4 of the Disclosure Letter;

Ontario Business Corporations Act means the Business Corporations Act (Ontario), R.S.O. 1990, c. B.16, as amended from time to time;

OSS means any software that is distributed, issued or made available as free software, open source software, copyleft software, or under similar licensing or distribution models, including any software licensed under the Apache License, the GNU General Public License, the GNU Library General Public License, the GNU Lesser General Public License, the Affero General Public License, the Mozilla Public License, the Common Development and Distribution License, the Eclipse Public License, any Creative Commons “sharealike” license or any other license that has been approved by the Open Source Initiative and listed on <https://opensource.org/licenses/alphabetical>;

Permitted Encumbrances means any Encumbrance in favour of a seller and/or financier of goods to the extent that it secures the obligation to pay all or part of the purchase price or sale price of those goods in the ordinary course of business and/or to repay all or part of the financing of those goods in the ordinary course of business;

- (a) any Encumbrance granted in connection with the Entain Loan Agreement;
- (b) any purchase money security interest (as that term is defined in the PPSA); and
- (c) any interest deemed to be a security interest solely by virtue of falling within section 17(1)(b) of the PPSA that does not secure the payment or performance of an obligation;

PPSA means the Personal Property Securities Act 1999;

PPSR means the Personal Property Securities Register established under section 139 of the PPSA;

Pre-Completion Period means the period commencing on the Agreement Date and ending on Completion;

Privacy Act means the Privacy Act 2020;

Public Official means:

- (a) an employee, officer or representative of, or any person otherwise acting in an official capacity for or on behalf of, a Government Agency;
- (b) a person holding a legislative, administrative or judicial position of any kind, regardless of whether elected or appointed, of a Government Agency;
- (c) an officer of, or individual who holds a position in, a political party;
- (d) a candidate for political office;
- (e) an individual who holds any other official, ceremonial or other appointed or inherited position with a Government Agency; or
- (f) an individual who exercises a public function for or on behalf of a country or territory, or any subdivision of a country or territory, or for any public agency or public enterprise of a country or territory.

Purchase Price means the aggregate of:

- (a) the Estimated Completion Consideration; plus or minus
- (b) the Adjustment Amount; plus or minus
- (c) any other adjustments that are payable in accordance with this Agreement;

Purchase Price Cap has the meaning given to it in clause 4.3;

Purchaser Warranties means the warranties given by the Purchaser to the Vendor and the Vendor Parent in Schedule 2;

Purchaser's Solicitors means Bell Gully;

Reference Balance Sheet means the unaudited balance sheet of the Company as at the Balance Date set out in Section 1.1(a) of the Disclosure Letter;

Related Company has the meaning given to that expression in section 2(3) of the Companies Act provided that, for this purpose, references to "company" in that section shall extend to any body corporate wherever incorporated or registered;

Related Party means, in relation to a particular person, any of the following persons:

- (a) a Related Company of that person (or who would be a Related Company if both entities were body corporates);
- (b) any person which controls that first person, is controlled by that first person, or is controlled by the same person which controls that first person; and
- (c) where the first person is an individual:
 - (i) the spouse of that first person or any person with whom that first person is living in a relationship in the nature of marriage;
 - (ii) any parent, child or grandchild of that first person;
 - (iii) any trust established exclusively or principally for the benefit of that first person and/or for the benefit of one or more of the persons specified in paragraphs (c)(i) or (ii) of this definition; or
 - (iv) a company in which all of the shares (directly or indirectly) are held by or on behalf of that first person and/or by or on behalf of any of the persons specified in paragraphs (c)(i), (ii) or (iii) of this definition;

Relief includes:

- (a) any relief, loss, allowance, credit, deduction or set-off taken into account in computing any Tax liability, or any grant conferred on any person; or
- (b) any right to repayment of Tax (whether or not including interest or penalties) available to that person,

whether in New Zealand or elsewhere;

Sale means the sale and purchase of the Shares in accordance with this Agreement;

Shareholder Approval Condition has the meaning given to that term in clause 3.1(a);

Shareholder Approval Resolution means a special resolution approving the entry into and performance of this Agreement by the Vendor Parent in accordance with section 184(3) of the Ontario Business Corporations Act;

Shareholder Meeting has the meaning given to that term in clause 3.3(b)(i);

Shares means all of the ordinary shares in the capital of the Company on issue at Completion;

Software means any software (including software development tools and software embedded in hardware devices and all updates, upgrades, releases, enhancements and bug fixes) owned, developed (or currently being developed), used, marketed, distributed, licensed or sold by the Company at any time;

Supporting Shareholders means each of those persons set out in Section 1.1 of the Disclosure Letter;

TAA means the Tax Administration Act 1994;

Target Working Capital Amount means NZ\$40,093.19;

Tax includes:

- (a) all forms of taxation, withholding, duties, dues, imposts, levies, charges, fees, deductions and rates or other statutory government or local government impositions of whatever nature, imposed in New Zealand or elsewhere, including income tax, ancillary tax, withholding tax, approved issuer levy, fringe benefit tax, GST, customs or excise duties, gift duty, regional or local taxes, municipal taxes, accident compensation levies, KiwiSaver contributions, and any liability to repay any COVID-19 support payment;
- (b) loss of Relief;
- (c) all interest, penalties or fines relating to, or arising in connection with, the imposition of non or late or underpayment of, any such taxes or loss of Relief; and
- (d) all penalties, fines and interest relating to, or arising in connection with, any failure to comply with any obligation imposed under Tax Legislation, including without limitation any late filing penalty;

Tax Authority means a Government Agency that is responsible for administering or levying Tax, whether in New Zealand or elsewhere, including in particular (but without limitation), the IRD, the Customs Department, the Accident Compensation Corporation in New Zealand and any overseas bodies with similar functions or powers;

Tax Claim includes any notice, demand, assessment, letter or other document issued, audit or action taken, by or on behalf of any Tax Authority or other person (including any Tax audit), whereby the Purchaser or the Company may be, or may be sought to be, placed under any or any increased liability to Tax or may be deprived or sought to be deprived of any Relief which might otherwise have been available;

Tax Indemnity means the indemnity and related provisions contained in clause 17;

Tax Legislation means legislation imposing Tax in the relevant jurisdiction, and in the case of New Zealand includes the Inland Revenue Acts as defined in section 3 of the TAA;

Tax Memorandum Accounts means imputation credit accounts and any other tax memorandum accounts required to be maintained by the Company under any Tax Legislation;

Tax Saving means a Tax saving by the Purchaser or the Company in any past, current or future period and, without limiting the generality of the term includes:

- (a) where the amount of a loss, liability, cost or expense suffered or incurred is wholly or partly deductible for income tax purposes, the amount of the deduction to which the relevant person is entitled multiplied by the relevant Tax rate (and is deemed to arise when an actual saving in Tax is made by the Purchaser or the Company); and
- (b) the amount of any relevant GST input Tax credit or other deduction from output Tax;

Tax Warranties means the Vendor Warranties contained in paragraph 20 of Schedule 1;

Termination Fee means CAD\$500,000;

Third Party means any person or entity (including a Government Agency) other than the Vendor, Vendor Parent or the Purchaser or any of their Related Parties;

Transaction Announcement means the announcement to be released by the Vendor Parent in relation to the entry into this Agreement in the Agreed Form and disclosing the Director Recommendation and details of the Voting Agreements;

Unregistered Intellectual Property means the unregistered intellectual property set out in Part B of Section 13.1 of the Disclosure Letter;

USA Contracts means those agreements listed in Section 6.5 of the Disclosure Letter;

USA Contracts Condition has the meaning given to that term in clause 3.1(d);

Vendor Parent means Tiidal Gaming Group Corp.;

Vendor Parent Warranties means the warranties given by the Vendor Parent to the Purchaser in Schedule 3;

Vendor Shareholder Approval Resolution means a special resolution of the sole shareholder of the Vendor approving the entry into and performance of this Agreement by the Vendor in accordance with section 184(3) of the Ontario Business Corporations Act;

Vendor Warranties means the warranties given by the Vendor to the Purchaser in Schedule 1;

Voting Agreements means the voting agreements entered into by the Supporting Shareholders in favour of the Purchaser on the Agreement Date agreeing to vote in favour of the Shareholder Approval Resolution;

Warranty Claim means any Claim by the Purchaser (or any person making a claim through or on behalf of the Purchaser) against the Vendor or the Vendor Parent under the Vendor Warranties (other than, for the avoidance of doubt, a Claim made under the Tax Indemnity);

Website means any website owned or operated by the Company; and

Working Capital means an amount equal to:

- (a) the aggregate balance of the current assets of the Company specified as Working Capital amounts in the Reference Balance Sheet; less
- (b) the aggregate balance of the current liabilities of the Company specified as Working Capital amounts in the Reference Balance Sheet,

in each case excluding Actual Cash and Actual Indebtedness.

1.2 Construction of specific references

In this Agreement, unless the contrary intention appears, a reference to:

- (a) **agreement** includes a contract, deed, licence, undertaking and other document or legally enforceable arrangement (in each case, whether or not in writing, present and future) and includes that document as amended, assigned, novated or substituted from time to time;
- (b) **business day** means a day (other than a Saturday or Sunday) on which registered banks are open for general banking business in Auckland, New Zealand, London, United Kingdom and Toronto, Canada;
- (c) **claim** includes (as the context permits) a claim, notice, demand, action, proceeding, litigation, investigation, judgment, award, damage, loss, cost, expense or liability however arising, whether present, unascertained, immediate, future or contingent, whether based in contract, tort, equity, statute or otherwise and includes a claim under an indemnity unless expressly excluded;
- (d) **guarantee** includes an indemnity, letter of credit, legally binding letter of comfort, suretyship and other agreement the economic effect of which is to provide security, or otherwise assume responsibility, for the indebtedness or obligations of another person;
- (e) **indebtedness** means any obligation (whether present or future, actual or contingent, secured or unsecured, joint or several, as principal, surety or otherwise) relating to the payment or repayment of money and it includes indebtedness under or in respect of a redeemable share, finance or capital lease, hire purchase and the deferred purchase price of an asset or service;
- (f) **liquidation** of a person includes the dissolution, winding-up or bankruptcy of that person and any analogous procedure under the law of any jurisdiction in which that person is incorporated, domiciled, carries on business or has property;
- (g) **material adverse effect** on a person is a reference to something having a material adverse effect on that person's financial condition, or trading position, operations, assets or financial prospects of it, or on the consolidated financial condition or operations of it and its subsidiaries;
- (h) **obligation** to do anything promptly does not mean to do it instantaneously as soon as or at the exact moment that the obligation arises, but means to carry out that obligation as quickly as can be reasonably done in the circumstances and without delay, and not deferring, postponing or putting the matter off to a later time;
- (i) **ordinary course of business**, when used in relation to the Business, is a reference to the ordinary course of the Business as undertaken in the 12 months preceding the Agreement Date;
- (j) a **party** to a document includes that party's respective successors and permitted assigns;

- (k) **person** includes an individual, body corporate, an association of persons (whether corporate or not), a trust, a state, a Government Agency and any other entity (in each case, whether or not having separate legal personality);
- (l) **property** includes the whole and any part of the relevant person's business, assets, undertaking, revenues and rights (in each case, present and future), and reference to any property includes any legal or equitable interest in it and includes a reference to the person's executors, administrators, successors and substitutes (including persons taking by novation and permitted assigns);
- (m) **security interest** means any interest in or power over, or any agreement to grant or create an interest in or power over, an asset which provides security for, or protects against default by, a person for the payment or satisfaction of a debt, obligation or liability including a mortgage, charge, bill of sale, pledge, deposit, lien, encumbrance or hypothecation; and
- (n) **writing** includes an email communication and any means of reproducing words in a tangible and permanently visible form.

1.3 General references

In this Agreement, unless specified otherwise:

- (a) a reference to "**NZD\$**" or "**NZD**" is a reference to New Zealand currency
- (b) a reference to "**CAD\$**" or "**CAD**" is a reference to Canadian currency and all amounts payable by a party under this Agreement are to be paid in that currency;
- (c) a reference to a matter, information or a circumstance being **fairly disclosed** (or similar expression) means fairly disclosed to the Purchaser with sufficient clarity and detail to enable the Purchaser to identify the nature, scope and effect of the matter disclosed;
- (d) references to and expressions used in connection with financial calculations, valuations, accounting or financial reporting functions or their description in this Agreement bear the respective meanings ascribed to like expressions or expressions to similar intent in accordance with IFRS;
- (e) words denoting any gender include all genders;
- (f) specifying anything in this Agreement after the words "including", "includes" or "for example" or similar expressions does not limit what else is included unless there is express wording to the contrary;
- (g) an agreement, representation or warranty in favour of two or more persons is for the benefit of them jointly and severally;
- (h) a law:
 - (i) includes a reference to any constitutional provision, subordinate legislation, treaty, decree, convention, statute, regulation, rule, ordinance, proclamation, by-law, judgment, rule of common law or equity or rule of any applicable stock exchange;
 - (ii) is a reference to that law as amended, consolidated, re-enacted, supplemented or replaced (whether before or after the Agreement Date); and

- (iii) is a reference to any regulation, rule, ordinance, proclamation, by-law or judgment made under that law;
- (i) the singular includes the plural and *vice versa*;
- (j) a reference to a time of the day is to Ontario, Canada time unless specifically stated otherwise; and
- (k) a reference to any document or agreement includes a reference to that document or agreement as amended, novated, supplemented, varied or replaced from time to time.

1.4 General construction

The contra proferentem rule of interpretation shall not apply to this Agreement. Accordingly, no term or condition of this Agreement is to be construed adversely to a party solely on the ground that the party (or its relevant advisor) was responsible for the preparation of this Agreement or that provision (or any part of it).

1.5 Construction of references to Vendor's knowledge

A reference in the Disclosure Information or in this Agreement to the knowledge, belief or awareness (or similar expression) of the Vendor or the Vendor Parent is a reference to the knowledge, belief or awareness, as the case may be, of Thomas Hearne, Zachary Goldenberg, Maksymilian Polaczuk and Chris Herrmann, after making due and careful inquiry, whether or not that inquiry is undertaken and includes all additional matters of which those persons would be aware had those persons made due and careful inquiry.

1.6 Headings and table of contents

In this Agreement, the table of contents and headings (including headings in any table in any schedule) are inserted for convenience only and do not affect the interpretation of this Agreement.

2. Sale and purchase of Shares

2.1 Agreement to sell Shares

The Vendor will sell, and the Purchaser will purchase, legal and beneficial title to the Shares on the terms and conditions of this Agreement.

2.2 No Encumbrances

The Shares are to be purchased and sold free from any Encumbrances, other than any Encumbrances granted in connection with the Entain Loan Agreement.

2.3 Rights attaching to the Shares

The Vendor must transfer the Shares to the Purchaser at Completion together with all rights and entitlements which attach to the Shares on Completion.

2.4 Title and risk

- (a) The Vendor's title to the Shares passes from the Vendor to the Purchaser on Completion.

- (b) The risk of loss or damage to the value of the Shares passes to the Purchaser at Completion.

3. Conditions

3.1 Completion conditional

Completion of this Agreement is conditional on each of the following conditions being satisfied or waived in accordance with this clause 3:

(a) **Vendor Parent Shareholder Approval Condition**

the passing by the shareholders of the Vendor Parent of the Shareholder Approval Resolution at the Shareholder Meeting (the **Shareholder Approval Condition**);

(b) **Key Employees**

- (i) the Key Employees and the Company having entered into the Key Employee IEAs with effect from Completion; and
- (ii) each Key Employee continuing to be employed by the Company as at the Completion Date;

(together, the **Key Employees Condition**);

(c) **Lease**

the receipt by the Vendor, in writing on terms acceptable to the Purchaser, of the landlord's consent to the change of control of the Company which is required under the Lease (the **Lease Condition**); and

(d) **Termination of USA Contracts**

the Company having validly terminated the USA Contracts (the **USA Contracts Condition**).

3.2 Ability to waive the Conditions

The parties acknowledge and agree that:

(a) **Conditions not capable of waiver**

the Shareholder Approval Condition may not be waived by either the Vendor or the Purchaser; and

(b) **Conditions capable of waiver by the Purchaser**

the Key Employee Condition, the Lease Condition and the USA Contracts Condition have been inserted for the benefit of the Purchaser and may be waived in whole or in part only by the Purchaser.

3.3 Duties in relation to the Conditions

(a) **Vendor and Vendor Parent general obligations**

The Vendor and the Vendor Parent will use all reasonable endeavours to procure the satisfaction of the Conditions as expeditiously as possible, and in any event, in respect of each such Condition, no later than the Longstop Date.

(b) **Vendor Parent Shareholder Approval Condition obligations**

In relation to the Shareholder Approval Condition:

- (i) the Vendor Parent must lawfully call, convene and hold a special meeting of shareholders of the Vendor Parent (the **Shareholder Meeting**) to consider and approve the Shareholder Approval Resolution in accordance with the Vendor Parent's articles and by-laws and applicable law, including by virtual means if applicable, as soon as reasonably practicable after the execution of this Agreement and in any event, not later than 45 days after the execution of this Agreement, and will not, unless the Purchaser otherwise consents in writing, adjourn, postpone or cancel the Shareholder Meeting or propose to do any of the foregoing except for an adjournment as required for quorum purposes or by applicable law or a Government Agency;
- (ii) the Vendor Parent must consult with the Purchaser in fixing the date of the Shareholder Meeting, promptly provide the Purchaser with any written notice relating to the Shareholder Meeting and allow representatives of the Purchaser to attend the Shareholder Meeting (including by virtual means);
- (iii) the Vendor Parent must, as soon as reasonably practicable after the execution of this Agreement, promptly prepare a draft management information circular (including a notice of special meeting of shareholders) relating to the Shareholder Meeting (the **Circular**) together with any other documents required by the Ontario Business Corporations Act, other applicable law and the policies of the CSE in connection with the approval of the Sale by the Vendor Parent's shareholders at the Shareholder Meeting;
- (iv) the Vendor Parent must, provide the Purchaser and its legal counsel with a reasonable opportunity to review and comment on all drafts of the Circular and other documents related thereto prior to filing the Circular with applicable Government Agencies and printing and mailing the Circular to the Vendor Parent's shareholders and will give reasonable consideration to such comments, provided that all information relating solely to the Purchaser included in the Circular shall be in a form and content satisfactory to the Purchaser, acting reasonably;
- (v) the Vendor Parent must ensure that:
 - (A) the Circular contains the Director Recommendation and a statement that the directors of the Vendor Parent and parties to the Voting Agreements have entered into agreements in favour of the Purchaser agreeing to vote, or procure the voting of, all shares of the Vendor Parent held or controlled by them or their associates (if any) in favour of the Shareholder Approval Resolution;
 - (B) all disclosure in the Circular (other than information furnished by the Purchaser) complies in all material respects with applicable law, will not contain any untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements contained therein not misleading in light of the circumstances in which they are made and will provide the Vendor Parent's shareholders with information in sufficient detail to permit them to form a reasoned judgement concerning the Shareholder Approval Resolution; and

- (C) no director of the Vendor Parent changes, qualifies or withdraws, or makes any statement inconsistent with, the Director Recommendation, provided, if at any time following the date of this Agreement and prior to obtaining shareholder approval of the Shareholder Approval Resolution, the board of directors of the Vendor Parent concludes in good faith, after consultation with its financial and outside legal advisors, that failure by the board of directors of the Vendor Parent to change, qualify or withdraw, or make any statement inconsistent with, the Director Recommendation would be inconsistent with its fiduciary duties under applicable law, the board of directors of the Vendor Parent may make a change in, or statement inconsistent with, the Director Recommendation. For greater clarity, nothing contained in this Agreement shall prohibit the board of directors of the Vendor Parent from making a change in the Director Recommendation or from making any disclosure to its shareholders to comply with its fiduciary duties or as required by applicable securities laws;
- (vi) the Purchaser shall provide the Vendor Parent with all information concerning the Purchaser and its affiliates as reasonably requested by the Vendor Parent in the preparation of the Circular and other documents related thereto. The Purchaser shall ensure that no such information will include any untrue statement of a material fact or omit to state a material fact required to be stated in the Circular in order to make any information so furnished or any information concerning the Purchaser not misleading in light of the circumstances in which it is disclosed;
- (vii) the Purchaser shall indemnify and save harmless the Vendor Parent from and against any and all liabilities, claims, demands, losses, costs, damages and expenses to which the Vendor Parent may be subject or may suffer, that arise directly as a result of:
 - (A) any misrepresentation in any information included in the Circular regarding the Purchaser or its affiliates furnished to the Vendor Parent in writing by the Purchaser for inclusion in the Circular pursuant to clause 3.3(b)(vi); and
 - (B) any order, inquiry or proceeding made by any securities regulatory authority or other Government Agency, to the extent based on any misrepresentation in any information included in the Circular regarding the Purchaser or its affiliates furnished to the Vendor Parent in writing by the Purchaser for inclusion in the Circular pursuant to clause 3.3(b)(vi);
- (viii) each of the Vendor Parent and the Purchaser shall promptly notify the other party if it becomes aware that the Circular contains a misrepresentation, or otherwise requires an amendment or supplement. The Vendor Parent and the Purchaser shall, in a manner consistent with this clause 3.3(b), co-operate in the preparation of any such amendment or supplement, as required or appropriate, and the Vendor Parent shall promptly mail, file or otherwise publicly disseminate any such amendment or supplement to its shareholders and, if required by applicable law, file the same with the securities regulatory authorities or any other Government Agency, as required;
- (ix) the Vendor Parent must, as soon as reasonably practicable after the execution of this Agreement, cause the Circular to be sent to the Vendor Parent's shareholders in compliance with applicable law and in accordance with the abridged timelines contemplated by National Instrument 54-101 – Communication with Beneficial Owners of Securities of a Reporting Issuer;
- (x) the Vendor Parent must procure that the Shareholder Approval Resolution is put to the Vendor Parent's shareholders at the Shareholder Meeting;

- (xi) following the completion of the Shareholder Meeting, the Vendor Parent shall promptly notify the Purchaser in writing as to whether the Shareholder Approval Condition has been satisfied.

(c) **Vendor Parent CSE obligations**

The Vendor Parent shall provide the Purchaser with all material correspondence and copies of all filings made with the CSE and keep the Purchaser fully informed in a timely manner of any requests or comments made by the applicable securities regulatory authorities or the CSE in connection with the Circular, the Sale or the transactions otherwise contemplated in this Agreement.

(d) **Mutual obligations**

The Vendor and the Vendor Parent (on the one hand) and the Purchaser (on the other hand) will each from time to time:

- (i) upon request from the other, provide all reasonable assistance to the other as is necessary to satisfy the Conditions;
- (ii) keep the other informed as to progress in procuring satisfaction of its obligations under this clause 3.3; and
- (iii) promptly disclose in writing to the other anything which will or may prevent any of the Conditions from being satisfied on or prior to the relevant date for satisfaction of the Condition if it comes to the notice of any of them.

3.4 **Notification of satisfaction of Conditions**

As soon as reasonably practicable after the Vendor or the Vendor Parent (on the one hand) or the Purchaser (on the other hand) has become aware of the satisfaction of a Condition, it must notify the other in writing. Any notification delivered in accordance with this clause 3.4 must be accompanied by written evidence of satisfaction of the relevant Condition.

3.5 **Non-satisfaction of the Conditions**

(a) **Cancellation**

If any of the Conditions have not been satisfied (or to the extent that any Condition is capable of waiver, waived by the party for whose benefit it is inserted under this Agreement) by the Longstop Date, then this Agreement may be cancelled by either the Vendor or the Purchaser giving not less than five business days' notice in writing of cancellation to the other parties, provided that no party may cancel this Agreement if it relies on non-fulfilment of any Condition in relation to which it is in breach of its obligations under clause 3.3.

(b) **Consequences following cancellation**

On cancellation of this Agreement under clause 3.5(a), clause 10.2 will apply.

4. **Purchase Price and other payments**

4.1 **Consideration for the Shares**

In consideration for the sale of the Shares to the Purchaser, the Purchaser must pay the Purchase Price to the Vendor in accordance with this clause 4.

4.2 **Payment of Purchase Price**

The Purchase Price must be paid as follows:

(a) **Estimated Completion Consideration**

on Completion, the Purchaser must pay the Estimated Completion Consideration to the Vendor; and

(b) **Adjustment Date**

on the Adjustment Date, the Purchaser must pay to the Vendor or the Vendor must pay to the Purchaser, as applicable, the Adjustment Amount in accordance with clause 11.6.

4.3 **Purchase Price Cap**

The Purchase Price to be paid by the Purchaser to the Vendor shall not in any circumstance exceed CAD\$15,000,000 (**Purchase Price Cap**). The Vendor shall not be entitled to the amount of any payment from the Purchaser (including, if applicable, the Adjustment Amount) which, when aggregated with each other payment already made by the Purchaser to the Vendor under this Agreement, would be in excess of the Purchase Price Cap. For the avoidance of doubt, neither the Estimated Completion Consideration and the Actual Completion Consideration can exceed the Purchase Price Cap

4.4 **Payments**

(a) **Timing for payments**

All payments under this Agreement must be made before 3.00pm on the due date for payment unless this Agreement expressly provides otherwise.

(b) **Bank account**

Any payment to be made to the Vendor under this Agreement must be made to the bank account notified by the Vendor to the Purchaser in writing.

Any payment to be made to the Purchaser under this Agreement must be made to the bank account notified by the Purchaser to the Vendor in writing.

The recipient of any payment under this Agreement must notify the payer of any changes to the details of the bank account set out above into which the payment is to be made not later than 10 business days prior to the date that payment is to be received.

4.5 **Default interest**

If a party fails to pay on the due date any amount which that party is obliged to pay under this Agreement, then that party must, on demand, pay the recipient interest on that amount at the Default Rate for each day during the period from and including the date on which the default was made until, but excluding, the day that amount (and all interest on that amount) has been paid in full.

4.6 **Calculation of interest**

Any interest payable under this Agreement will be calculated and accrue on a daily basis and will be capitalised every 30 days.

4.7 Other rights not affected

A party's right to require payment of interest does not affect any other rights or remedies it may have in respect of a failure to pay an amount due under this Agreement.

4.8 Retention of Purchase Price

- (a) The Vendor must:
- (i) deposit, promptly following receipt of such amounts:
 - (A) 100% of the Estimated Completion Consideration; and
 - (B) 100% of the funds received by the Vendor from the Company pursuant to clause 5.3 as repayment of the Intercompany Loans; and
 - (C) 100% of the Adjustment Amount, if the Purchaser is required to pay the Adjustment Amount to the Vendor on the Adjustment Date in accordance with clause 11.6,

into a separate interest-bearing bank account controlled by the Vendor which shall contain only the funds required to be held in escrow by the Vendor under this clause 4.8 (**Holding Account**);

- (ii) not, for a period of 180 days following Completion (Holding Period), make any payment from the Holding Account or use or distribute any of the funds held in the Holding Account in any way or for any purpose other than:
 - (A) to fund any Claims made by the Purchaser under this Agreement;
 - (B) if applicable, to pay the Adjustment Amount to the Purchaser on the Adjustment Date in accordance with clause 11.6;
 - (C) to pay bona fide and reasonable transaction costs incurred by the Vendor, Vendor Parent and the Company in relation to the Sale and/or ongoing operational costs of the Vendor, Vendor Parent or the Company, provided that no such payments may be made if, at the time of the proposed payment, the balance remaining in the Holding Account is less than 80% of the aggregate amount deposited into the Holding Account under clause 4.8(a)(i) or the proposed payment would result in the balance remaining in the Holding Account being less than 80% of the aggregate amount deposited under clause 4.8(a)(i); or
 - (D) to invest such amounts in the Holding Account in cash equivalents, guaranteed investment certificates, certificates of deposit, term deposits and similar instruments of the Holding Account bank provided that, in any case, such amounts are able to be called on by the Vendor without a delay of more than 20 business days; and
 - (iii) provide to the Purchaser monthly account statements during the Holding Period evidencing the Vendor's compliance with this clause 4.8.
- (b) Any interest earned on the funds deposited in the Holding Account shall be for the account, and be the property, of the Vendor.
- (c) Subject to the following sentence and clause 4.8(d), at the end of the Holding Period, the Vendor shall be permitted to release, use or distribute any of the funds remaining

in the Holding Account in its sole and absolute discretion. Notwithstanding the foregoing, if prior to the end of the Holding Period:

- (i) the Purchaser has made a *bona fide* Claim under this Agreement against the Vendor; or
- (ii) the Vendor has received notice in writing from the Purchaser in accordance with this Agreement that it intends to make a Claim under this Agreement,

(such Claim or potential Claim being the **Relevant Claim**), the Vendor will be required to retain an amount equal to the amount of the Claim (or estimated amount, as applicable) (the **Claim Amount**) in the Holding Account and will not be permitted to release, use or distribute such from the Holding Account until such time as determined in accordance with clause 4.8(d). For the avoidance of doubt, the Vendor may release, use or distribute any residual funds in the Holding Account in excess of Claim Amounts.

- (d) The Vendor shall be permitted to release, use or distribute the Claim Amount, or any portion of it remaining in the Holding Account following the earlier of:
 - (i) final determination of the Relevant Claim by a court of competent jurisdiction with no appeal rights or with any period for appeal having expired (after having paid any amount required to the Purchaser);
 - (ii) full and final settlement of the Relevant Claim (after having paid any amount agreed to the Purchaser);
 - (iii) receipt of written notice from the Purchaser that it has withdrawn or discontinued the Relevant Claim; or
 - (iv) the expiry of any applicable time period during which the Purchaser was required to bring the Relevant Claim.

5. Period before Completion

5.1 Operations pending Completion

During the Pre-Completion Period, subject to clause 5.2, the Vendor and the Vendor Parent must ensure that:

(a) **Operate the Business**

- (i) the Company operates and conducts the Business in accordance with the business practices employed by the Company in the ordinary course of business as at the Agreement Date; and
- (ii) the Company does not make any substantial change in the nature or organisation of its business or discontinue or cease to operate all or a material part of its business;

(b) **Preserve goodwill**

all reasonable efforts are used to preserve intact the good name and reputation of the Company and the Business as well as its customer, supplier and employee relationships;

(c) **Intellectual Property maintenance**

the Company takes all actions reasonably necessary to defend, enforce, maintain and preserve its rights to any Intellectual Property and not knowingly allow any of its Intellectual Property to be abandoned or surrendered;

(d) **Notify Purchaser**

the Purchaser is promptly notified of any events which may reasonably result in a material adverse effect on the Business;

(e) **Not acquire or dispose of assets**

the Company does not acquire or dispose of any of its assets, including the disposal by the Company of any of the source code or other Intellectual Property Rights in its products and/or services, except in respect of Material Contracts;

(f) **Intellectual Property licences**

the Company does not grant any exclusive or perpetual licence to its products and/or services or its Intellectual Property;

(g) **Business Agreements, Lease, tenancies or licences**

the Company does not terminate, cancel, amend, waive, replace or otherwise alter any of the Business Agreements, the Lease or any other tenancy or licence entered into by the Company other than:

- (i) due to the expiry of the term of a Business Agreement, the Lease or any other licence in the ordinary course of business; or
- (ii) due to replacement or rolling over of a Business Agreement in the ordinary course of business; or
- (iii) any termination of a Business Agreement or any other licence required in order to satisfy the US Arrangements Condition;

(h) **New lease arrangements**

the Company does not:

- (i) agree to any new rental amount or fee payable under the Lease or any other tenancy or licence entered into by the Company; or
- (ii) agree to any amendment to the terms of the Lease or any other tenancy or licence entered into by the Company or enter into a new lease, tenancy or licence in respect of any real property;

(i) **Insurance**

the Company maintains (and does not in any way prejudice) all current insurance policies in respect of the Business and/or Assets, other than any changes to insurance policies or new policies entered into in the ordinary course of business provided such changes or new policies do not provide less coverage than the Company's current insurance policies;

(j) **Employees**

the Company does not:

- (i) employ any new employees or engage any new contractors with an annual remuneration package in excess of NZ\$100,000;
- (ii) make any material change to the terms and conditions of employment, or the engagement terms and conditions of any contractor, of any of the employees and contractors listed in Section 18.1 of the Disclosure Letter;
- (iii) terminate the employment of any employee listed in Section 18.1 of the Disclosure Letter, except for the termination of any such employee's employment for cause;
- (iv) employ or engage any person on any terms which are unusual in any material respect by reference to the existing employment and contractor terms applicable to the Company (in each case as disclosed in the Disclosure Information); or
- (v) employ any new employees or engage any new contractors who are located or resident in countries other than New Zealand;

(k) **Capital expenditure**

the Company does not enter into or incur any capital commitment greater than NZ\$20,000;

(l) **Major transactions**

the Company does not enter into any major transaction (as that term is defined in section 129 of the Companies Act), other than such transactions contemplated by this Agreement;

(m) **Statutory compliance**

the Company does not commit any breach of any statute, order, by-law or regulation binding on or applicable to it;

(n) **Altered structure**

the Company does not:

- (i) issue or purport to issue any shares, options or other securities;
- (ii) declare or pay any Distribution;
- (iii) effect any distribution of any Assets;
- (iv) buy back any of its own shares, redeem any shares or transfer or purport to transfer any shares;
- (v) alter or purport to alter the rights attaching to any shares; or
- (vi) changes its constitution or name;

(o) **Tax matters**

the Company does not:

- (i) alter its jurisdiction of residence for Tax purposes or establish a taxable presence in any jurisdiction where the Company is not currently subject to Tax;
- (ii) make any claim, disclaimer, surrender, election or consent for Tax purposes, or agree any matter or enter into any agreement or arrangement with a Tax Authority, which in each case is either material to the business of the Company or is reasonably likely to materially affect the Tax profile of the Company; or
- (iii) settle or compromise any Tax dispute with a Tax Authority;

(p) Not incur any liability or indebtedness

the Company:

- (i) pays all creditors in accordance with past practice and any payment terms agreed with particular creditors;
- (ii) does not create or agree to create any Encumbrances (other than Permitted Encumbrances) or redeem or agree to redeem an existing Encumbrance; or
- (iii) does not incur any financial obligation, whether direct, contingent, deferred or otherwise, except in the ordinary course of business or in connection with the Entain Loan Agreement;
- (iv) does not make any payment other than in the normal and ordinary course of its business;

(q) Other agreements, commitments and transactions

the Company does not enter into, vary, terminate, or cause a violation, breach or default under, any agreement, arrangement or other commitment or transaction:

- (i) with the Vendor, the Vendor Parent or any other Related Party;
- (ii) which provides over its term for the payment or receipt of any amount exceeding NZ\$100,000;
- (iii) which contains any non-solicit of customers, non-compete or exclusivity restrictions or performance milestones;
- (iv) which imposes any onerous or material terms or commitments on it; or
- (v) which is material to the Business, other than in order to satisfy the US Contracts Condition;

(r) Changes in products and services

the Company does not make any change to any of its products or services or to the terms or conditions of any selling prices or other material terms and conditions of sale or provision of any products or services;

(s) Accounting policies

the Company does not modify any of its accounting policies or procedures;

(t) Legal matters

the Purchaser is promptly notified by the Vendor of any lawsuits, claims, proceedings or investigations which may be threatened, brought, asserted or commenced by or against the Company, or any officer or employee of the Company involving or affecting the Business, and the Company must not commence, admit, settle, or compromise with any such matter except in consultation with the Purchaser and with the Purchaser's prior written consent (such consent not to be unreasonably withheld, delayed or conditioned);

(u) **Not cause a warranty breach**

no act is to be performed or omission permitted by the Company which would, or would be likely to, result in any of the Vendor Warranties being breached, untrue or misleading at Completion; and

(v) **Similar matters**

the Company does not do, or agree (whether conditional or otherwise) to do, any matter or thing similar to, or having a similar effect to, the matters specified in clauses 5.1(a) to 5.1(u).

5.2 Permitted acts

During the Pre-Completion Period, the Vendor and the Vendor Parent may, notwithstanding clause 5.1, do or omit to do anything, insofar as it relates to the Company or the Business:

- (a) which is necessary to respond to an emergency, act of God or other disaster, provided the Vendor and the Vendor Parent must take reasonable steps in the circumstances to consult with the Purchaser and endeavour to agree with the Purchaser on whether to take such action (or inaction); or
- (b) which is expressly permitted or required by this Agreement;
- (c) which is necessary for the Company to meet its legal or existing contractual obligations, statutory obligations or obligations at law; or
- (d) with the Purchaser's express prior written consent.

5.3 Repayment of intercompany loans

- (a) The parties acknowledge and agree that:
 - (i) the Intercompany Loans are items of Indebtedness and will be deducted from the Purchase Price;
 - (ii) the Purchaser must, within five business days of Completion, pay an amount of funds equal to the aggregate amount of the Intercompany Loans to the Vendor's bank account in accordance with clause 4.4 to repay the Intercompany Loans on behalf of the Company as recorded in the Deed of Acknowledgement and Repayment of Debt; and
 - (iii) the Purchaser, the Company and the Vendor will enter into the Deed of Acknowledgement and Repayment of Debt to record the terms and repayment of the Intercompany Loans.
- (b) In relation to any other intercompany receivables and payables (other than the Intercompany Loans), the Vendor and the Vendor Parent must take all steps during the Pre-Completion Period to ensure that at Completion:

- (i) there is no money owing to the Company by the Vendor, the Vendor Parent or any of their Related Parties; and
- (ii) there is no money owing to the Vendor, the Vendor Parent or any their Related Parties by the Company.

5.4 Pre-Completion access and information

- (a) During the Pre-Completion Period, the parties will co-operate with each other so that the Purchaser and its representatives have such access as the Purchaser may reasonably request to the Business Records (including the statutory books, minute books, leases, licences, contracts, details of receivables, Intellectual Property, supplier lists and customer lists in the possession or control of the Company) and to the Employees, including for the purpose of inspection, to plan for the transition of ownership of the Company and the Business, to ensure the efficient continuation of management and operations of the Company after Completion and/or to prepare for the introduction of the Purchaser's normal working procedures in readiness for Completion.
- (b) The Purchaser and its representatives must not unreasonably interfere with the operation of the Business when exercising the access rights under clause 5.4(b).

5.5 Exclusivity

- (a) The Vendor and the Vendor Parent each represent and warrant that, other than in relation to the discussions with the Purchaser in relation to the Sale, it is not (whether directly or indirectly through any advisor, intermediary or other person) currently in negotiations or discussions with any third party in relation to a Competing Transaction.
- (b) The Vendor and the Vendor Parent will not, and will procure that none of their respective representatives, directly or indirectly:
 - (i) solicit, invite, encourage or initiate any offer, proposal, expression of interest, enquiry, negotiation or discussion with any third party in relation to, or for the purpose of, or that may reasonably be expected to encourage or lead to, a Competing Transaction during the Pre-Completion Period;
 - (ii) enter into, permit, continue or participate in negotiations or discussions with any third party in relation to a Competing Transaction, or for the purpose of or that may reasonably be expected to encourage or lead to a Competing Transaction; or
 - (iii) make available to any third party, or cause or permit any Third Party to receive, any non-public information relating to the Company or any of its Related Companies that may reasonably be expected to assist such third party in formulating, developing or finalising a Competing Transaction.
- (c) The Vendor will promptly (and in any event within 48 hours) notify the Purchaser in writing if the Vendor Parent, the Vendor, the Company or any of their representatives receives:
 - (i) a proposal for a Competing Transaction, or an inquiry or approach from a third party to initiate any discussions or negotiations that could reasonably be expected to lead to a Competing Transaction; or
 - (ii) any request for information or access to any non-public information relating to the Vendor Parent, the Vendor, the Company or its Business in connection with a current or future Competing Transaction.

5.6 Change of control consent

- (a) The Vendor must, as soon as reasonably practicable after the Agreement Date, use all reasonable endeavours to obtain the consent to the change of control of the Company which are required under the BOA Solutions Agreement, in writing on terms acceptable to the Purchaser.
- (b) The Purchaser must promptly provide to Vendor, following the Vendor's request, such assistance and cooperation as may be reasonably required by the Vendor in order to obtain the consent to the change of control of the Company under clause 5.6(a).

6. Purchaser's rights before Completion

6.1 Disclosure of breach

The Vendor undertakes to the Purchaser that it will promptly disclose in writing to the Purchaser any matter or circumstance which may arise or become known to the Vendor or the Vendor Parent before Completion which:

- (a) required the express consent of the Purchaser under clause 5.1 and such consent was not obtained;
- (b) does or may constitute a breach by the Vendor or the Vendor Parent of clauses 3.3(b)(v) or 5.5;
- (c) does or may constitute a breach of, or is inconsistent with, any of the Vendor Warranties; or
- (d) does or may constitute a breach by the Vendor or the Vendor Parent of any other representations, warranties, indemnities, covenants, undertakings and other agreements required to be complied with by the Vendor and/or the Vendor Parent pursuant to this Agreement.

6.2 Cancellation rights before Completion

If before Completion, the Purchaser becomes aware that:

- (a) the Vendor or the Vendor Parent has breached its obligations under 5.1 and, in the Purchaser's opinion (acting reasonably) such breach:
 - (i) is a material breach; or
 - (ii) has resulted in the failure or inability to satisfy one or more of the Conditions; or
- (b) the Vendor or the Vendor Parent has breached its obligations under clause 3.3(b)(v)(A) or any director of the Vendor Parent has changed, qualified, withdrawn or made a statement that is inconsistent with the Director Recommendation (including, for the avoidance of doubt, as permitted pursuant to clause 3.3(b)(v)(C)); or
- (c) the Vendor or the Vendor Parent has breached its obligation under clause 5.5; or
- (d) a Vendor Warranty was at the Agreement Date, or has since become, untrue or misleading or has been breached that will have, or will be reasonably likely to have, a material adverse effect on the Company; or

- (e) the Vendor or the Vendor Parent has taken a deliberate action, the primary purpose of which is to frustrate the satisfaction of one or more of the Conditions,

and such breach (to the extent capable of remedy) has not been remedied to the Purchaser's reasonable satisfaction within 10 business days of the Purchaser having notified the Vendor in writing of the relevant breach, the Purchaser is entitled to immediately cancel this Agreement by serving notice in writing on the Vendor.

6.3 Effect of cancellation during the Pre-Completion Period

If this Agreement is cancelled under clause 6.2, then clause 10.2 will apply.

7. Vendor's rights before Completion

7.1 Disclosure of breach

The Purchaser undertakes with the Vendor that it will disclose immediately in writing to the Vendor any matter or circumstance which may arise or become known to the Purchaser before Completion which:

- (a) does or may constitute a breach of, or is inconsistent with, any of the Purchaser Warranties; or
- (b) does or may constitute a breach by the Purchaser of any other representations, warranties, indemnities, covenants, undertakings and other agreements required to be complied with by the Purchaser pursuant to this Agreement.

7.2 Cancellation rights before Completion

If before Completion, the Vendor becomes aware that:

- (a) any of the Purchaser Warranties was at the Agreement Date, or has since become, untrue or misleading or has been breached that will have, or will be reasonably likely to have, a material adverse effect on the Purchaser's ability to complete the Sale; or
- (b) the Purchaser has taken deliberate action, the primary purposes of which is to frustrate the satisfaction of one or more of the Conditions,

and such breach (to the extent capable of remedy) has not been remedied to the Vendor's reasonable satisfaction within 10 business days of the Vendor having notified the Purchaser in writing of the relevant breach, the Vendor is entitled to immediately cancel this Agreement by serving notice in writing on the Purchaser.

7.3 Effect of cancellation during the Pre-Completion Period

If this Agreement is cancelled under clause 7.2, then clause 10.2 will apply.

8. Termination Fee

- (a) If this Agreement is terminated:
 - (i) by either the Vendor or the Purchaser under clause 3.5(a) due to the Shareholder Approval Condition not being satisfied and prior to the Shareholder Meeting, the Company, the Vendor or the Vendor Parent receives a proposal for a Competing Transaction and either:

- (A) such Competing Transaction is completed within 12 months following termination of this Agreement; or
 - (B) the Vendor or the Vendor Parent enters into an agreement in respect of any such Competing Transaction within 12 months following termination of this Agreement, which Competing Transaction is subsequently completed (whether before or after the expiry of such 12-month period),

then the Vendor must pay the Termination Fee to the Purchaser within one business day following the completion of the applicable Competing Transaction;
or
- (ii) by the Purchaser under clause 6.2(a)(ii), 6.2(b), 6.2(c) or 6.2(e), then the Vendor must pay the Termination Fee to the Purchaser within 10 business days after the date of termination of this Agreement.
- (b) The Vendor acknowledges and agrees that:
 - (i) the Purchaser has incurred and will continue to incur significant costs and expenses in pursuing the Sale, including advisory costs, costs of management and directors' time, out-of-pocket expenses and opportunity costs of pursuing the Sale or not pursuing alternative transactions or business opportunities with other parties;
 - (ii) the costs and expenses actually incurred by the Purchaser are of such nature that they cannot accurately be ascertained;
 - (iii) the Purchaser has negotiated the inclusion of this clause 8 and would not have entered into this Agreement without it;
 - (iv) the Termination Fee protects the Purchaser's legitimate interest; and
 - (v) it has received external independent legal and financial advice in relation to this clause 8 and has concluded that it is reasonable and appropriate for it to agree to payment of the Termination Fee in the circumstances described in clause 8(a) in order to secure the Purchaser's entry into this Agreement.
 - (c) The Purchaser's right to receive the Termination Fee will not limit or otherwise affect the Purchaser's right to:
 - (i) subject to the terms of this Agreement, sue the Vendor and/or the Vendor Parent for damages (the amount of which it is acknowledged will be reduced by the amount of any Termination Fee actually paid to the Purchaser); or
 - (ii) seek specific performance, provided that in no event shall the Purchaser be entitled to receive both:
 - (A) specific performance and payment of the Termination Fee; or
 - (B) specific performance and payment of any damages.

9. Completion

9.1 Time and place

Completion must occur:

- (a) electronically by no later than 3.00pm on the Completion Date; or
- (b) at such other time or place the Vendor and the Purchaser agree in writing.

9.2 Vendor's Completion obligations

At Completion, the Vendor must deliver, or cause to be delivered, to the Purchaser:

(a) Share transfers and certificates

a transfer of the Shares in favour of the Purchaser, or the Purchaser's nominee, duly executed by the Vendor and in registrable form together with the relevant share certificates or, if there are no share certificates, a certificate from a director of the Company certifying that no share certificates have been issued;

(b) Vendor director certificate

a certificate in Agreed Form signed by a director or officer of the Vendor and a director or officer of the Vendor Parent, confirming on behalf of the Vendor and the Vendor Parent, to the best of his or her knowledge (without personal liability), that as at the Completion Date:

- (i) there has been no breach of the kind described in clause 6.1(a) to 6.1(d) (inclusive); and
- (ii) confirming compliance with clause 5.1;

(c) Resignations

the written resignations (each with effect from the time Completion has occurred) of all the directors of the Company (other than those directors who the Purchaser has notified the Vendor, no later than five business days prior to the Completion Date, are not required to resign) from their respective offices as director with written confirmation that they are owed no money by the Company and have no outstanding claim against the Company;

(d) Board resolutions

- (i) a copy of the minutes or resolutions evidencing a unanimous resolution of the board of directors of the Company (passed prior to the taking effect of the resignations referred to in clause 9.2(c)):
 - (A) approving the registration of the transfer of the Shares in the name of the Purchaser or its nominee (such resolution being all necessary authority to approve the registration of such transfers);
 - (B) accepting the resignations of all resigning directors of the Company with effect on and from Completion; and
 - (C) giving authority to operate the Company's bank accounts in favour of persons nominated by the Purchaser (such nominations having been provided by the Purchaser at least five business days prior to the Completion Date) and cancelling all existing authorities to operate the Company's bank accounts to signatories who are appointees of the Company (other than those signatories who the Purchaser has notified the Vendor in writing, no later than five business days prior to the Completion Date, are not required to cease as signatories);

- (ii) a copy of the minutes or resolutions evidencing a unanimous resolution of the board of directors of the Vendor approving the Sale and entry into this Agreement;
- (iii) a copy of the minutes or resolutions evidencing a resolution of the shareholder of the Company appointing as directors of the Company with effect from Completion those persons nominated by the Purchaser no later than five business days prior to the Completion Date, subject to the new directors having first provided to the Company the required written consent to become a director of the Company;
- (iv) a copy of the minutes or resolution evidencing the approval of the Shareholder Approval Resolution; and
- (v) a copy of the resolutions evidencing the Vendor Shareholder Approval Resolution;

(e) **Share register**

the share register of the Company updated to show the Purchaser as the registered holder of the Shares;

(f) **Releases of Encumbrances**

if applicable, unconditional releases of the Shares and the Assets from all Encumbrances over or affecting them (other than Permitted Encumbrances), in a form acceptable to the Purchaser acting reasonably;

(g) **Change of Control Consent**

copy of the consent, in writing on terms acceptable to the Purchaser, to the change of control of the Company which is required under the BOA Solutions Agreement, to the extent obtained prior to Completion;

(h) **IP Assignment Deeds**

copies of the IP Assignment Deeds duly executed by the Company and each Employee;

(i) **Deed of Acknowledgement and Repayment of Debt**

a copy of the Deed of Acknowledgement and Repayment of Debt duly executed by the Company and the Vendor;

(j) **Assets and Business Records**

any Assets and Business Records or other records relating to the Company in the possession or under the control of the Vendor or the Vendor Parent; and

(k) **Statutory documents**

the certificate of incorporation, directors and shareholder resolutions, share register, register of directors and interests register of the Company (or certified copies of those documents), except to the extent that such documents or records are in the possession, or under the control, of the Company.

9.3 Deemed delivery

Where the parties reasonably agree that delivery to the Purchaser of an item at Completion is impractical or inconvenient, the requirement for the delivery may be satisfied by the Vendor placing that item under the control of the Purchaser.

9.4 Purchaser's Completion obligations

At Completion the Purchaser must:

(a) **Estimated Completion Consideration**

pay the Estimated Completion Consideration to the Vendor's bank account in accordance with clause 4.4. Such payment by the Purchaser shall be an effective discharge of the Purchaser's payment obligation of the Estimated Completion Consideration and the Purchaser shall not be concerned with, nor have any liability whatsoever to the Vendor with respect to, the further transmission of funds in respect of the Estimated Completion Consideration; and

(b) **Other deliverables**

deliver to the Vendor:

(i) **Deed of Acknowledgement and Repayment of Debt**

a copy of the Deed of Acknowledgement and Repayment of Debt duly executed by the Purchaser; and

(ii) **Purchaser director certificate**

an unqualified certificate signed by a director of the Purchaser confirming on behalf of the Purchaser that as at the Completion Date there has been no breach of the kind described in clause 7.2.

(iii) **Board Resolutions**

a copy of the minutes or resolutions evidencing a unanimous resolution of the board of directors of the Purchaser approving the Sale and entry into this Agreement.

9.5 Completion simultaneous

(a) **Actions interdependent**

Subject to clause 9.5(b):

(i) the actions of the Vendor contemplated by clause 9.2; and

(ii) the actions of the Purchaser contemplated by clause 9.4,

are interdependent and are to take place, as nearly as possible, simultaneously. If one action does not take place, then without prejudice to any rights available to any party as a consequence:

(iii) there is no obligation on any party to undertake or perform any of the other actions;

(iv) to the extent that such actions have already been undertaken, the parties are to do everything reasonably required to reverse those actions; and

- (v) the Vendor and the Purchaser are to each return to the other all documents delivered to it under this clause 9 and are to each repay to the other all payments received by it under this clause 9, without prejudice to any other rights any party may have in respect of that failure.

(b) **Waiver of actions**

The Purchaser may, in its sole discretion, waive any or all of the actions that the Vendor is required to perform under clause 9.2 and the Vendor may, in its sole discretion, waive any or all of the actions that the Purchaser is required to perform under clause 9.4.

10. Default at Completion

10.1 Non-Defaulting Party's rights on default

If, without the written agreement of the Vendor and the Purchaser, Completion does not take place on the Completion Date due to the Vendor not complying with clause 9.2 or the Purchaser not complying with clause 9.4 (the non-complying party being the **Defaulting Party**, the other party being the **Non-Defaulting Party**), then the Non-Defaulting Party may, without prejudice to any of their other rights or remedies available under this Agreement or at law:

(a) **Defer Completion**

defer Completion, being not more than 10 business days after that date (in which case clause 9 and this clause 10 apply to Completion as so deferred); or

(b) **Specific performance**

bring a claim against the Defaulting Party for specific performance; or

(c) **Cancel and claim damages**

cancel this Agreement by giving notice in writing to the Defaulting Party and bring a claim against the Defaulting Party for damages.

10.2 Effect of cancellation of this Agreement

If this Agreement is cancelled under clauses 3.5(a), 6.2, 7.2 or 10.1(c), then:

(a) **Retention of accrued rights**

each party retains the rights it has against the other in respect of any breach of this Agreement occurring before cancellation; and

(b) **Clauses not affected by cancellation**

each party is released from its obligations to further perform its obligations under this Agreement, except for those under each of the following clauses (which will continue independently from the other obligations of the parties and survive cancellation of this Agreement without limitation in time):

- (i) this clause 10.2;

- (ii) clause 21 (*Public announcements and confidentiality*); and

(iii) clauses 1, 22 and 24 (*Definitions, Interpretation, Notices and General*).

11. Completion Statements and Adjustment Amount

11.1 Vendor to prepare Estimated Completion Consideration Statement

- (a) The Vendor is to prepare and deliver to the Purchaser the Estimated Completion Consideration Statement by no later than 10 business days before the expected Completion Date.
- (b) The Vendor will ensure that the Estimated Completion Consideration Statement is prepared on the same basis as the Actual Completion Consideration Statement as set out in clauses 11.3(a) and 11.3(b).
- (c) All amounts to be included in the Estimated Completion Consideration Statement (including each of the components of the Estimated Completion Consideration) that are in NZD must be converted to CAD by applying the Exchange Rate as at the date that the Estimated Completion Consideration Statement is delivered to the Purchaser.

11.2 Purchaser to prepare Actual Completion Consideration Statement

The Purchaser is to prepare and deliver to the Vendor the Actual Completion Consideration Statement within 60 business days after Completion.

11.3 Basis of preparation of Actual Completion Consideration Statement

- (a) The Purchaser will ensure that the Actual Completion Consideration Statement is prepared as follows:
 - (i) in the format set out in Schedule 4; and
 - (ii) on a basis consistent with the basis of preparation and accounting policies of the Management Accounts; and
- (b) All amounts to be included in the Actual Completion Consideration Statement (including each of the components of the Actual Completion Consideration) that are in NZD must be converted to CAD by applying the Exchange Rate as at the Calculation Time.
- (c) The Vendor must provide all assistance requested by the Purchaser (acting reasonably) for the purpose of preparing the Actual Completion Consideration Statement.

11.4 Adjustment Amount

The Adjustment Amount is:

(a) **Positive**

the amount by which the Actual Completion Consideration exceeds the Estimated Completion Consideration, in which case the Adjustment Amount will be expressed as a positive amount; or

(b) **Negative**

the amount by which the Estimated Completion Consideration exceeds the Actual Completion Consideration, in which case the Adjustment Amount will be expressed as a negative amount; or

(c) **Zero**

zero, if the Estimated Completion Consideration is equal to the Actual Completion Consideration.

11.5 Establishing the Adjustment Amount

(a) **Vendor notification**

Within 20 business days of receipt of the Actual Completion Consideration Statement, the Vendor is to notify the Purchaser in writing either that it:

(i) **No dispute**

agrees with the Adjustment Amount; or

(ii) **Objection**

objects to the Adjustment Amount, setting out the specific details of the calculation it does not accept or any other issue arising out of the relevant documentation and stating the amount which it considers should be the Adjustment Amount (the **Objection Notice**).

If no Objection Notice is given, the Vendor is deemed to have accepted the Adjustment Amount.

(b) **Procedure for objection**

If the Vendor disputes the Purchaser's determination of the Adjustment Amount in accordance with clause 11.5(a)(ii), the Vendor and the Purchaser must:

(i) **Negotiation**

negotiate for a period of 20 business days from the date of receipt of the Objection Notice in order to attempt to resolve the dispute and determine the further adjusting payment that is necessary (if any); and

(ii) **Referral to dispute process**

where the dispute is not resolved in accordance with clause 11.5(b)(i), then either the Vendor or the Purchaser may, by notice in writing to the other, require the dispute to be determined under the Dispute Process set forth in clause 11.7.

(c) **Final determination of Adjustment Amount**

(i) **Parties' agreement**

If prior to the matter being referred to the Dispute Process either:

(A) the Purchaser and the Vendor agree to the calculation of the Adjustment Amount; or

(B) the Purchaser and the Vendor agree to an alternative Adjustment Amount,

then the amount so agreed becomes the Adjustment Amount.

(ii) **Expert**

If the matter is referred for resolution under the Dispute Process, then the amount determined by the Expert becomes the Adjustment Amount.

11.6 **Payment of the Adjustment Amount**

Subject to clause 4.3, if the Adjustment Amount is:

(a) **Purchaser to pay positive amount**

a positive amount, the Purchaser will pay an amount equal to the Adjustment Amount to the Vendor; or

(b) **Vendor to pay negative amount**

a negative amount, the Vendor will pay an amount equal to the Adjustment Amount to the Purchaser,

with payment to be made, in either case, within five business days of:

(c) **Vendor's acceptance**

the Vendor's agreement or deemed agreement to the Adjustment Amount pursuant to clause 11.5(a); or

(d) **Mutual agreement**

the parties' agreement to the Adjustment Amount pursuant to clause 11.5(c)(i); or

(e) **Expert's determination**

receipt of the Expert's determination pursuant to clause 11.7,

whichever is the earlier (the **Adjustment Date**).

11.7 **Dispute Process**

(a) **Process**

Any dispute referred by the parties under clause 11.5(b)(ii) is to be determined in accordance with this clause 11.7.

(b) **Appointment of Expert**

The Vendor and the Purchaser are to appoint an independent accountant as the Expert, but failing agreement within five business days of service of the notice of dispute under clause 11.5(b)(ii) the independent accountant will be appointed at the request of either the Vendor or the Purchaser by the president for the time being of the Arbitrators' and Mediators' Institute of New Zealand Inc. (or his or her nominee). The person appointed will act as an expert and not as an arbitrator.

(c) **Parties may make submissions**

The Vendor and the Purchaser are entitled to make written submissions to the Expert within 10 business days of the appointment of the Expert. Any party making a submission must submit a copy of the submission to the other party at the same time as such submission is submitted to the Expert.

(d) **Process for expert determination**

(i) **Provision of information**

The Vendor and the Purchaser must provide the Expert with all information the Expert reasonably requires to make a determination.

(ii) **Principles, policies and practices**

The Expert is to apply the principles, policies and practices referred to in clause 11.3.

(iii) **Process**

The dispute is to be resolved as reasonably practicable in accordance with the guidelines determined by the Expert.

(iv) **Draft**

The parties shall take all reasonable steps to procure that the Expert provides them with a draft of his, her or its determination for discussion and comment prior to the Expert's final determination being given.

(v) **Binding effect**

The Vendor and the Purchaser agree to be bound by the decision of the Expert, in the absence of manifest error or fraud.

(e) **Arbitration rules inapplicable**

Reference to the Expert is not a submission to arbitration for the purposes of arbitration statutes and those statutes do not apply to or govern a dispute's resolution.

(f) **Costs of the expert**

The Vendor and Purchaser are to pay the Expert's costs and expenses in connection with the Dispute Process in proportion to the amounts by which their respective calculations of the Adjustment Amount differ from the Adjustment Amount as finally determined by the Expert.

12. **Post-Completion obligations**

12.1 **Retention of Business Records**

The Purchaser is to retain all Business Records of the Company for a period of at least six years after the Completion Date.

12.2 **Access to Business Records**

Subject to the Vendor entering into such obligations of confidentiality as the Purchaser may reasonably require, the Purchaser will ensure that, following Completion, the Vendor is afforded reasonable access to all Business Records and relevant Employees on request by the Vendor for the purpose of:

(a) **Compliance matters**

enabling the Vendor, Vendor Parent or any Related Party of the Vendor to comply with any applicable law, the rules of any stock exchange, or to ascertain or deal with a matter in relation to Tax;

(b) **Financial statements and tax returns**

the preparation of any accounting information, financial statements or Tax returns for the Vendor, Vendor Parent or any Related Party of the Vendor; and

(c) **Claims**

defending or dealing with any claim (including a contractual or a regulatory claim) against the Vendor, Vendor Parent or any Related Party of the Vendor.

12.3 **Wrong pockets**

If, after Completion, the Vendor identifies any asset in its or any of its Related Persons' possession which relates to the Business, the Vendor must promptly transfer or procure the transfer of, and the Purchaser will agree to accept the transfer of, such asset, for consideration of CAD\$1.00 and free of any Encumbrances.

13. **Vendor Warranties**

13.1 **Warranties by the Vendor**

Subject to the qualifications and limitations in this clause 13 and clause 14, the Vendor warrants and represents to the Purchaser that each of the Vendor Warranties is true and accurate at the Agreement Date and will be so at Completion (except that a Vendor Warranty which refers to only one of those dates is given only as at that date).

13.2 **Each Vendor Warranty separate**

Each Vendor Warranty is to be construed separately and independently from each other Vendor Warranty and will not be limited or restricted by reference to or reference from any other Vendor Warranty.

13.3 **Reduction of Purchase Price**

Any monetary compensation received by the Purchaser as a result of any breach of any Vendor Warranty is to be in reduction and refund of the Purchase Price.

13.4 **Indemnity**

(a) **Indemnity**

Subject to the provisions, qualifications and limitations of this clause 13 and clause 14, which are to apply as though a requirement under this clause 13.4 were a Claim for breach of a Vendor Warranty, if there is a breach of any Vendor Warranty (other than a Tax Warranty), the Vendor must indemnify the Purchaser in respect of such breach,

which shall require the Vendor to pay the Purchaser on demand a sum equal to the amount required to put the Purchaser into the position that it would have been in if the Vendor Warranty had been true and accurate.

(b) **Other claims**

Nothing in clause 13.4(a) limits the rights of the Purchaser to claim for any loss or damage, in contract or otherwise, in respect of any of the Vendor Warranties or under the other provisions of this Agreement, in connection with the subject matter of this Agreement, to the extent that this may exceed the amount the Purchaser are entitled to receive under clause 13.4(a). Nothing in this clause shall negate or limit in any way any of the limitations of liability of the Vendor under this Agreement.

13.5 **Tax Claims**

Claims in respect of Tax or Tax Claims are to be made in accordance with the procedures and subject to the limitations applying to the Tax Indemnity under clause 17.

13.6 **Company's loss is Purchaser's loss**

For the purpose of any Claim made by the Purchaser under this Agreement, Loss will be deemed to accrue to the Purchaser to the extent that that Loss is suffered or incurred by the Company. It will not be necessary for the Purchaser to establish loss or damage to itself whether by way of diminution of the value of the Shares or otherwise, and the amount of the Loss to the Purchaser will be deemed to be equal to the Loss suffered or incurred by the Company.

13.7 **35 to 49 of the CCLA do not apply**

Except where this Agreement specifically provides otherwise:

- (a) each party's sole and exclusive remedy in respect of a warranty claim under this agreement (other than in relation to a Tax Warranty) shall be the right to damages for breach of warranty and (if applicable) indemnification under and in accordance with this Agreement; and
- (b) no party is not entitled to any other or separate course of action for damages, any right of cancellation of this Agreement or any other relief arising from any alleged misrepresentation, breach of warranty or otherwise.

Accordingly, sections 35 to 49 of the CCLA shall not apply to the Sale.

13.8 **No duty of care**

The Purchaser agrees that the Vendor does not accept or owe any duty of care (including for negligent misstatement) or fiduciary obligation to the Purchaser in respect of any information provided to the Purchaser in connection with the Company, the Business, the Shares or otherwise.

13.9 **Tax effect of Claims**

If:

(a) **Deduction**

the Vendor is required by law to make any deduction or withholding from any sum payable by the Vendor under or in respect of any Claim; or

(b) **Payment**

the Purchaser is required by law to make any payment or suffers any Tax on or in relation to any amount received or receivable by the Purchaser in respect of any Claim,

then the sum payable by the Vendor will be increased to the extent necessary to ensure that after making the deduction, withholding or payment, or suffering the Tax, the Purchaser receives and retains (free of any liability for any such deduction, withholding or payment, or loss of tax credits or relief) a net sum equal to the sum that the Purchaser would have received and so retained had no such deduction, withholding or payment been made, and no such Tax been suffered.

13.10 **Notice of Claims**

If the Purchaser considers that any Vendor Warranty has been breached and wishes to make a Claim, then that Claim by the Purchaser must:

(a) **timing**

be notified in writing to the Vendor as soon as reasonably practicable, but in any event not later than 15 business days, after the Purchaser discovers or becomes aware of the existence of the Claim (being both the matter, information, event or circumstance giving rise to, or that is the subject of, the Claim and the fact that that matter, information, event or circumstance gave rise to a claim). This obligation is subject to the time limitation set out at clause 14.1(a). Delay in delivery of such notice shall only relieve the Vendor of liability to the extent that the Vendor liability is prejudiced as a result of the delay;

(b) **details of the breach**

specify in reasonable detail (having regard to such details as are available to the Purchaser at the time of giving the notice) the matter, information, event or circumstance giving rise to, or that is the subject of, the Claim; and

(c) **Loss estimate**

include, if and as far as reasonably practicable, an estimate of the Loss that will be suffered by the Purchaser and an explanation of how that estimate has been calculated or quantified.

14. **Limitations on claims**

14.1 **Period for Vendor Warranty Claims**

The Purchaser may not:

(a) **Vendor Warranty Claims**

make any Warranty Claim (other than a Warranty Claim for breach of a Tax Warranty) unless the Purchaser gives the Vendor notice of the Claim (in accordance with clause 13.10) prior to the end of the period of two years after the Completion Date; or

(b) **Tax Warranty and Tax Indemnity claims**

make any Warranty Claim for breach of a Tax Warranty or any Claim under the Tax Indemnity unless the Purchaser gives the Vendor notice of the Claim (in accordance with clause 17.5) prior to the end of the period six years after the Completion Date.

14.2 Threshold limits for Warranty Claims

(a) Limits

The Purchaser must not make a Warranty Claim (except for a Warranty Claim for breach of a Tax Warranty), and the Vendor is not liable to make any payment in respect of a Warranty Claim (whether by way of damages or otherwise):

(i) Minimum amount

unless the amount claimed is in excess of an amount in CAD equal to 0.1% of Enterprise Value in respect of any individual Warranty Claim or series of related Warranty Claims;

(ii) Aggregate amount

unless the aggregate of the amount then claimed and of all other Warranty Claims made, or which would but for the provisions of this clause 14.2 have previously been made, exceed an amount in CAD equal to 1% of Enterprise Value on the basis that, once such threshold has been exceeded, all amounts may be recovered and not merely the excess above such amount; and

(iii) Maximum amount

if and to the extent the total aggregate amount of such Warranty Claims accepted by or finally determined against the Vendor in total is not more than:

- (A) in respect of Warranty Claims for breach of the Fundamental Warranties, the Intellectual Property Warranties or the ABC Warranties, an amount equal to Enterprise Value; or
- (B) in respect of Warranty Claims for breach of any Vendor Warranties other than the Fundamental Warranties, the Intellectual Property Warranties or the ABC Warranties, an amount equal to 50% of Enterprise Value.

(b) Interpretation

For the purposes of this clause 14.2:

- (i) Warranty Claims arising out of separate sets of facts, matters or circumstances are not to be treated as one Warranty Claim, even if each set of facts, matters or circumstances are a breach of the same Vendor Warranty; and
- (ii) Warranty Claims of the same or similar nature arising out of the same or similar facts, matters and circumstances will be aggregated and treated as one Warranty Claim.

14.3 Qualifications

Each of the Vendor Warranties (other than the Fundamental Warranties and the Tax Warranties) is given subject to:

(a) Purchaser's request or agreement

anything done, or omitted to be done, either under any express provision of this Agreement or after the Agreement Date at the request in writing, or with the prior written approval, of the Purchaser; or

(b) **Disclosure**

any matter, information or circumstance to the extent that it is fairly disclosed in the Disclosure Letter.

The parties agree that the intent and effect of this clause 14.3 is that the Vendor shall not be liable for any Claim to the extent that the matter, information, facts or circumstances giving rise to, or that are the subject of, the Claim arise as a result of either of the qualifications set out in this clause 14.3.

14.4 **No double claims**

(a) **No liability for a double claim**

The Vendor is not liable under any Claim to the extent that the Purchaser has already recovered that amount under any other Claim, including under a Warranty Claim.

(b) **Repayment required**

This clause 14.4 does not prevent the Purchaser from commencing a Claim it is entitled to make under this Agreement. However, if for any reason more than one amount is paid by the Vendor in respect of the same Loss, the Purchaser must procure that the additional amount is immediately repaid to the Vendor so as to give full effect to clause 14.4(a).

14.5 **No contingent Claims**

The Vendor will not be liable for any contingent Loss in connection with a Claim unless and until it becomes an actual Loss.

14.6 **Mitigation**

The Purchaser must take reasonable steps to mitigate any loss, liabilities, costs or other damage suffered as a result of a breach of a Vendor Warranty and the Vendor must take reasonable steps to mitigate any loss, liabilities, costs or other damage suffered as a result of a breach of a Purchaser Warranty; provided, the Purchaser will not be required to pay any pre-Completion Tax (as defined in clause 17.1(a)) as a means of mitigating any loss, liabilities, costs or other damage suffered as a result of a breach of a Tax Warranty.

14.7 **General limitations**

The Purchaser shall not be permitted to make any Claim (other than a Claim for breach of any Tax Warranty or under the Tax Indemnity), and the Vendor will not be liable for any such Claim, to the extent that:

(a) **remedied with no Loss**

it has been remedied, made good or rectified without any cost, liability or Loss to the Purchaser;

(b) **change in law or NZ GAAP**

it occurs or arises or, if such Claim has already arisen, is increased as a result of the passing or change after the Completion Date of any applicable laws or regulations or NZ GAAP (or the interpretation of any of the foregoing);

(c) **forecasts and projections**

the Claim is in respect of any forecast, estimate, projection, prospects or other statement which relates to the future;

(d) **Accounts**

it has had allowance, provision or reserve made for it in the Accounts and/or the Actual Completion Consideration Statement in respect of the matter to which such Claim relates;

(e) **Purchase Price adjustment**

the matter, information or circumstance is provided for under the adjustment in clause 11;

(f) **acts of the Purchaser**

it would not have arisen or occurred but for, or is increased as a result of, any voluntary act, event, default, omission, transaction or arrangement after Completion by the Purchaser;

(g) **insurance policy**

the Loss is recovered by the Company from by an insurance policy in force at the date of the Loss; and

(h) **special, indirect or other consequential loss or damage**

the Claim is for special, indirect or other consequential loss or damage or if the Claim is otherwise too remote to be recoverable as damages for breach of contract at law; or

(i) **public information**

the matter, information, facts or circumstances giving rise to, or that are the subject of, the Claim are recorded in or clearly evident from, information in the following publicly searchable databases on the business day immediately prior to the Agreement Date:

- (i) the New Zealand Companies Office;
- (ii) the Personal Property Securities Register (PPSR); and
- (iii) the Intellectual Property Office of New Zealand (IPONZ).

14.8 **Undertaking not to make claims**

(a) **No claim against officers**

The Vendor undertakes to the Purchaser and any current or former director, officer or employee of the Purchaser or the Company who was at the Agreement Date a director, officer or employee of the Vendor or the Company (**Officer**) that the Vendor will not make a claim against any Officer in respect of any matter arising in connection with this Agreement, including any breach of a Vendor Warranty.

(b) **Benefit of clause**

The undertakings contained in this clause 14.8 are (for the purposes of Part 2, Subpart 1 of the CCLA) intended to create a benefit in favour of, and to be enforceable by, the Purchaser and each Officer.

14.9 Fraud

Nothing in this clause 14 prevents the Purchaser from bringing a claim based on the fraud of the Vendor or limits any such claim.

15. Indemnity for pre-Completion liabilities

From Completion, the Vendor will indemnify and hold harmless the Purchaser and the Company from and against any claim, demand, legal proceedings or cause of action or Loss (including accountants', lawyers' and other professional advisers' fees) suffered or incurred by the Purchaser or the Company, where such claim, demand, legal proceedings or cause of action or Loss arises out of or in connection with the conduct of the Business prior to Completion, except to the extent that such claim, demand, legal proceedings or cause of action or Loss is specifically provided for in the Management Accounts or Actual Completion Consideration Statement.

16. Third Party Claims

16.1 Procedure for dealing with Third Party Claims

If after Completion the Purchaser becomes aware of a matter that may give rise to a Claim (other than a Claim under the Tax Indemnity or for breach of any Tax Warranty to which clause 17 applies) as a result of a claim made or threatened by a Third Party against the Purchaser or the Company (**Third Party Claim**), then:

(a) **Notify Vendor**

the Purchaser must, within 10 days of becoming aware of the relevant matter, notify the Vendor giving reasonable details as far as they are known to the Purchaser, of the relevant facts and circumstances relating to the Third Party Claim provided that:

- (i) failure by the Purchaser to provide such notice will not prejudice the Purchaser's right to make the Claim under this Agreement;
- (ii) all information disclosed by the Purchaser to the Vendor shall be treated as confidential information that is subject to clause 21.2; and
- (iii) the Purchaser will not be required to disclose any legally privileged information to the Vendor.

(b) **Defend claim**

if the Vendor accepts full liability for all Loss in respect of the Third Party Claim, the Purchaser must, at the Vendor's discretion (by notice to the Purchaser):

- (i) enable the Vendor to defend or otherwise deal with the Third Party Claim in the Purchaser's name as against the Third Party, but in full consultation at all times with the Purchaser so that the reputation and business of the Purchaser or the Company is not unfairly harmed, conduct all negotiations and prosecute or defend at the Vendor's cost any proceedings relating to any such liability or

claim, provided that the Vendor must not settle the Third Party Claim without the Purchaser's prior written consent; and

- (ii) take or not take any action, in each case as the Vendor reasonably requests, to defend or otherwise deal with the Third Party Claim as against the Third Party and keep the Vendor informed about the Purchaser's actions or proposed actions in connection with the Third Party Claim;

(c) **Vendor access**

if the Vendor accepts full liability for all Loss in respect of the Third Party Claim, the Purchaser will procure that the Company will, make available to the Vendor on a confidential basis, all information, books and records of the Purchaser or the Company as the Vendor may reasonably require for the purposes of defending or otherwise dealing with the Third Party Claim; and

(d) **Indemnify Purchaser**

if the Vendor accepts full liability for all Loss in respect of the Third Party Claim, the Vendor must also indemnify the Purchaser for the reasonable costs and expenses incurred by the Purchaser in complying with clause 16.1(b), and undertakes to pay to the Purchaser such costs and expenses on receipt of copies of relevant invoices or other evidence of incurrence of costs or expenses by the Purchaser.

16.2 Reimbursement for benefits received

(a) **Purchaser to reimburse**

If, after the Vendor has made a payment in respect of a Claim (other than a Claim under the Tax Indemnity to which clause 17 applies), the Purchaser recovers from a Third Party, or is compensated for by any means for any Loss which gave rise to the Claim, the Purchaser must promptly pay to the Vendor, as an increase in the Purchase Price, an amount calculated in accordance with clause 16.2(b).

(b) **Amount of reimbursement**

The amount the Purchaser must pay to the Vendor is equal to the lesser of:

- (i) the amount of the Loss which was recovered from the relevant Third Party, or the amount of the compensation for that Loss (less, in either case, any costs reasonably incurred in obtaining the amount), whichever is less; and
- (ii) the amount paid by the Vendor in respect of that Claim (less any costs reasonably incurred in obtaining the amount from the Vendor),

provided the obligation to reimburse the Vendor will only arise if and to the extent that, after the payment, the Purchaser has still been made whole for the loss resulting from the relevant Claim.

17. Tax Indemnity

17.1 Tax Indemnity

The Vendor indemnifies the Purchaser and the Company and undertakes to keep the Purchaser at all times fully and effectively indemnified from and against any Tax, whether claimed against the Company, or the Purchaser or any other person in respect of the Company, to the extent that the Tax:

(a) **Arising before Completion Date**

wholly or partly (in which case the liability of the Vendor is limited to that part) relates to any period ending on or before the Completion Date (**pre-Completion Tax**); or

(b) **Event before Completion Date**

is wholly or partly (in which case the liability of the Vendor is limited to that part) attributable to any Event occurring or situation existing (or deemed by law to occur or exist) on or before the Completion Date; or

(c) **Breach of Tax Warranty**

would not have occurred but for a breach of a Tax Warranty,

except to the extent that the Tax has been met on or before Completion or specific reserve or provision is made for that Tax liability in the Actual Completion Consideration Statement.

17.2 **Limitation relating to Tax**

The Vendor is not required to meet any claim under the Tax Indemnity to the extent that:

(a) **Relief**

any Relief not taken into account in the provision for Tax in the Actual Completion Consideration Statement is available to the Company in relation to any period ending before Completion to reduce that liability for Tax, in which case the Vendor's liability will be reduced by the amount of that Relief;

(b) **Offset between periods**

an increased liability for Tax in one period ending prior to Completion is or will be offset by a reduced liability for Tax in another period after Completion;

(c) **Tax Saving**

the Company makes a Tax Saving in relation to the same matters giving rise to a claim under the Tax Indemnity within the period specified in clause 14.1(b);

(d) **Omission**

the Tax would not have arisen, or would have been reduced or eliminated, but for a failure or omission on the part of the Purchaser after Completion to make a claim or election or to give any notice or consent, the making or giving of which was notified by the Vendor to the Purchaser in writing prior to Completion;

(e) **Amended Tax return**

the liability for Tax would not have arisen but for the Company amending or requesting an amendment to, or filing, any Tax return relating to any period prior to Completion with any Tax Authority, except as required to ensure compliance with law;

(f) **Transfer of Shares**

the liability for Tax would not have arisen but for the Sale or any other change in ownership (including by reference to direct or indirect voting interests or market value

interests) in the Company on or after the Completion Date, or if any Relief available to the Company is lost as a result of the transfer of the Shares;

(g) **Disposals**

the liability for Tax has arisen from the disposal of assets after Completion resulting in depreciation recovery income under section CG 1 of the Income Tax Act and depreciation in respect of such assets has been correctly claimed prior to Completion, or in respect of the disposal of trading stock as defined in section EB 2 of the Income Tax Act;

(h) **Change in accounting principles**

the liability for Tax arises or is increased as a result of any voluntary change in accounting principles, or any voluntary change in the treatment of any item for Tax purposes, agreed to by the Company after the Completion Date;

(i) **Change in balance date**

the liability for Tax results from or relates to the change after Completion of the tax balance date of the Company;

(j) **Other saving**

the Tax relates to an amount of income or an asset that was not taken into account or consideration in the Accounts or the Actual Completion Consideration Statement and that income or the value of that asset exceeds the Tax payable in respect of that income or asset; or

(k) **Change in law after the Agreement Date**

it arises as a result of any change in law, including any increase in rates of Tax, announced after the Agreement Date.

17.3 **Filing of Tax returns for period**

- (a) The Vendor will prepare, sign and file all Tax returns and Tax computations for the Company for all Tax periods ending prior to the Completion Date and will procure that such returns:
- (i) subject to (ii) below, are prepared in a manner that is consistent with the past practice of the Company;
 - (ii) do not make and are not prepared in reliance upon the making of claim, disclaimer, surrender, election or consent that may give rise to any reduction in Relief available to the Company, except as required by law; and
 - (iii) are filed in time to comply with the Company's obligations under the relevant Tax Legislation.
- (b) The Purchaser is to allow the Vendor a reasonable time to review the Tax return of the Company for the period which includes Completion, and the Purchaser is to take into account any reasonable comments of the Vendor prior to filing such a Tax return.

17.4 **Payment for loss of Relief**

For the purposes of calculating the Vendor's liability under the Tax Indemnity, to the extent that the Tax Claim causes the Purchaser or the Company to suffer a loss of Relief, the quantum of the loss suffered by the Purchaser or the Company as a result of the Tax Claim is deemed to be an amount equal to the liability for Tax arising as a result of the loss of Relief, which amount will be payable when such liability for Tax becomes payable by the Purchaser or the Company (as the case may be).

17.5 Dispute of Tax Claim

If the Purchaser or the Company receives a Tax Claim or becomes aware of any other event which may give rise to a claim for a breach of Tax Warranty or under the Tax Indemnity against the Vendor, the Purchaser is to give written notice of that Tax Claim or that other event to the Vendor in writing as soon as reasonably practicable after receiving notice of the Tax Claim or becoming aware of that other event. Where and to the extent that the Vendor has confirmed in writing to the Purchaser that the matter to which the Tax Claim or other event relates will fall within clause 17.1 if the relevant Tax Authority was successful and subject to the Vendor meeting any payments as they fall due under clause 17.7:

(a) No prejudice of defence

the Purchaser is to ensure that no payment (except to the extent required by law) or admission of liability in respect of the Tax Claim is made or other steps are taken which may in any way prejudice any rejection of, any challenge to or any defence to that Tax Claim without the prior written consent of the Vendor, which consent is not to be unreasonably withheld or delayed;

(b) Vendor may defend

the Purchaser or the Company will permit the Vendor to take such steps (including without limitation the appointment of any legal or other adviser) as the Vendor may see fit, in the name of the Company, to challenge or defend the Tax Claim in negotiations or dealings with any Tax Authority, in any court or tribunal or otherwise, provided that:

- (i) to the extent that the Vendor is unable to take any step of the nature referred to in this 17.5 in the name of the Company, the Purchaser or the Company will cause the Company to take that step at the direction of the Vendor; and
- (ii) the Vendor shall not defend or challenge a Tax Claim in any court or tribunal unless:
 - (A) the Tax Claim has been referred to a lawyer nominated by the Vendor and approved by the Purchaser (such approval not to be unreasonably withheld, delayed or conditioned) and experienced in Tax matters (Counsel) for an opinion on the likelihood of the defence or challenge of the Tax Claim being reasonably successful if the Vendor requires such action to be taken; and
 - (B) the opinion of Counsel is that defence or challenge of the Tax Claim by the Purchaser or the Company is more likely than not to be successful;

(c) Repayment of Tax refund

if the disputes resolution procedures, challenge or appeal (in respect of which the Purchaser has previously received a payment under the Tax Indemnity) is ultimately successful in whole or in part and the Purchaser or the Company receives any Tax credit, refund or reimbursement of costs, the Purchaser or the Company will promptly pay to the Vendor (to the extent that it does not exceed that amount previously paid by the Vendor) an amount equal to the amount of that Tax credit, refund or costs together

with any interest (net of Tax) which the Purchaser or the Company has received from any Tax Authority on such Tax credit, refund or reimbursement.

17.6 Consultation

The Vendor is to, at all times prior to taking any action relating to any Tax Claim, act in consultation with the Purchaser and its professional advisers in relation to the conduct and progress of all dispute resolution procedures, challenges or court proceedings and any related correspondence and negotiations, and keep the Purchaser and its professional advisers fully informed on this progress and provide the Purchaser and its professional advisers with copies of all relevant documents, including drafts. The Vendor, following such consultation, must take into account all concerns and issues raised by the Purchaser in all action that is taken by the Vendor following consultation.

17.7 Payment and expenses

(a) Vendor's obligation to pay

Any payment the Vendor is required to make in relation to any claim under the Tax Indemnity or for a breach of a Tax Warranty:

- (i) if it relates to a Tax liability on which use of money interest is then accruing, is to be made by the date that is two business days after the day on which the Purchaser requests payment;
- (ii) if it relates to any other Tax liability, is to be made at least three business days before the last date on which payment may be made by the Purchaser or the Company of the relevant liability to the relevant Tax Authority without incurring any liability to pay any penalty or interest in respect of that Tax liability;
- (iii) otherwise is to be paid to the Purchaser two business days following demand being made by the Purchaser,

provided that if any date so determined precedes Completion, then payment is to be made two business days after the date on which the Purchaser notifies the Vendor of the relevant claim;

- (iv) is to be made to the Purchaser in reduction and refund of the Purchase Price;
- (v) is to be included in the Purchaser's Tax return on the basis:
 - (A) that it is not income; and
 - (B) that the Vendor is not required to make any withholding or deduction from the payment.

(b) Failure to pay

In the event that the Vendor fails to make a payment required under this clause 17.7 to the Purchaser within 30 days of request for payment, then the provisions of clauses 17.5, 17.6 and 17.7 do not apply and the Purchaser and the Company may act as they think fit in relation to the matters referred to in clauses 17.5, 17.6 and 17.7.

17.8 Vendor to pay expenses

All reasonable out of pocket costs and expenses (including reasonable legal fees and disbursements) properly incurred by the Purchaser or the Company:

- (i) in connection with any consultation, dispute resolution procedure, challenge or appeal or other matter required under clause 17.5 or clause 17.6 or in connection with the enforcement by the Purchaser of this clause 17.7; or
- (ii) which would not be incurred but for a Tax Claim being made in relation to the Company,

are to be promptly paid or reimbursed by the Vendor.

17.9 **Benefit of clause**

The undertakings contained in this clause 17 are (for the purposes of Part 2, Subpart 1 of the CCLA) intended to create a benefit in favour of, and to be enforceable by, the Company notwithstanding that is not a party to this Agreement.

18. **Purchaser Warranties and acknowledgements**

18.1 **Purchaser Warranties**

In consideration of the Vendor and the Vendor Parent entering into this Agreement, the Purchaser warrants and represents to the Vendor and the Vendor Parent that each of the Purchaser Warranties is true and accurate at the Agreement Date and will be so at Completion (except that a Purchaser Warranty which refers to only one of those dates is given only as at that date). No claim for breach of a Purchaser Warranty will be valid unless the claim is notified to the Purchaser within 24 months of the Completion Date.

18.2 **Purchaser's acknowledgements**

The Purchaser acknowledges and agree that:

(a) **No additional warranties**

the Vendor has not made any representation or warranty in connection with the Sale other than the Vendor Warranties; and

(b) **Relied on own judgement**

in entering into this Agreement and proceeding to Completion, the Purchaser relies on its own judgement, investigations and professional advice received and does not rely on any statement, undertaking, representation or warranty of any kind, other than the Vendor Warranties.

19. **Vendor Parent Guarantee and Warranties**

19.1 **Unconditional guarantee and indemnity**

In consideration of the Purchaser agreeing to purchase the Shares from the Vendor on the terms and conditions set out in this Agreement, the Vendor Parent guarantees by way of continuing obligation to the Purchaser as primary obligor, and not merely as surety, the due performance by the Vendor of all of its obligations under this Agreement and indemnifies the Purchaser against any loss or damage which it may suffer as a direct or indirect result of the breach by the Vendor of any of its obligations under this Agreement.

19.2 No discharge

The Vendor Parent is not to be discharged, nor are the Vendor Parent's obligations to be affected, by any matter or thing which, but for this clause 19.2, would or might have discharged the Vendor Parent or affected its obligations, including:

(a) **Grant of concession**

the giving of time, credit or other indulgence or concession to the Vendor, the Vendor Parent or any other person or any other dealings, transactions or arrangements between the Vendor and the Purchaser; or

(b) **Exercise of powers**

anything done or omitted to be done by the Purchaser in the exercise or non-exercise of its right and powers; or

(c) **Variation of contract**

any variation in the terms of any contract between the Purchaser and the Vendor (whether or not this might increase the liability of the Vendor Parent); or

(d) **Legal incompetence**

the Vendor or the Vendor Parent or other person being incompetent to enter this Agreement or failing to be legally bound in whole or in part by it or the validity, regularity and enforceability of any provisions of this Agreement; or

(e) **Release**

any release, discharge, compromise, or other arrangement given to or made with the Vendor, the Vendor Parent or any other person; or

(f) **Agreements not on foot**

any clause in this Agreement or any other security, guarantee, indemnity or other agreement not having been provided, or being void, defective or informal, or being released or discharged (in whole or in part); or

(g) **Status of Purchaser**

the dissolution of the Purchaser, any change in the status, function, control or ownership of the Purchaser, or any consolidation, merger or conveyance of the Purchaser; or

(h) **Other circumstances**

any other circumstances which might otherwise constitute a legal or equitable discharge of or defence to a surety and the Vendor Parent remains liable irrespective of whether any present or other obligations would be enforceable against the Vendor,

it being the intention of the parties that the guarantee and obligations of the Vendor Parent are to be absolute and unconditional in all circumstances, and the Purchaser is under no liability to the Vendor Parent in respect of the items listed in this clause 19.2 even though the Vendor Parent's rights in subrogation may be prejudiced as a result.

19.3 Void payment

If any payment made by or on behalf of the Vendor to the Purchaser is avoided by law, that payment is not to be deemed to have discharged the liability of the Vendor or the Vendor Parent in respect of it.

19.4 Rights cumulative

The rights of the Purchaser under this clause 19 are cumulative and not exclusive of any rights provided by law and are to remain in full force until the discharge by the Vendor of all of its obligations under this Agreement.

19.5 Vendor Parent Warranties

The Vendor Parent warrants and represents to the Purchaser that each of the Vendor Parent Warranties is true and accurate at the Agreement Date and will be so at Completion (except that a Vendor Parent Warranty which refers to only one of those dates is given only as at that date).

20. Protection of the Business

20.1 Vendor's and Vendor Parent's general obligations

As further consideration for the Purchaser entering into this Agreement and for the protection of the Goodwill, each of the Vendor and the Vendor Parent agree for the benefit of the Purchaser and the Company, that for a period of 24 months from Completion, it will not and will ensure that no Related Party of the Vendor or the Vendor Parent will, (without first obtaining the written consent of the Purchaser) either directly or indirectly:

(a) **No competition**

carry on, engage in or be concerned with a Specified Business within the Specified Area, whether on its own account or as a consultant or other contractor to or a partner, agent, employee, shareholder or director of, or equity participant with, any other person; or

(b) **Not to assist competitors**

provide financial or other assistance, to any person carrying on, engaged in, competing with, or concerned with the Specified Business within the Specified Area; or

(c) **Not to solicit customers or suppliers**

induce or endeavour to induce any customer or suppliers to cease doing business with or reduce its level of business with the Company; or

(d) **Not to solicit Employees**

employ or solicit the services of, or offer employment to, any Employee; or

(e) **Not to use name**

at any time after Completion directly or indirectly use any name used by the Company or the Business prior to Completion (including the Business Names other than "Tiidal") or in any way hold itself out as being associated with any business using any such name; or

(f) **Confidential Information and other Intellectual Property**

at any time after Completion use or disclose to any other person any Confidential Information or other Intellectual Property except as required by law; or

(g) **Not to disparage**

at any time after Completion act in a manner which brings or could bring the Purchaser, the Company or any of their Related Companies into disrepute or which might adversely affect the goodwill or reputation of the Purchaser, the Company or any of their Related Companies, and will refrain from making any statement to any person, organisation or to the general public that is or which may be disparaging or reflects negatively on Purchaser, the Company or any of their Related Companies.

20.2 **Exception**

Nothing in clause 20.1 prevents the Vendor, the Vendor Parent or any of their Related Parties from holding securities quoted on a recognised stock exchange in New Zealand or elsewhere so long as the securities holding does not exceed 10 percent of the issued share capital of any such listed company and provided such holding is only a passive portfolio holding for investment purposes (where the Vendor, the Vendor Parent or their Related Party (as applicable) does not exercise an active role in the operational direction or management of the relevant company).

20.3 **Undertakings independent**

Each undertaking contained in clause 20.1 must be read and construed independently of the other undertakings contained in that clause so that if one or more is held to be invalid or otherwise unenforceable as an unreasonable restraint of trade or for any other reason whatsoever then the remaining undertakings are to be valid and will remain in full force and effect to the extent that they are not held to be so invalid or unenforceable.

20.4 **Reasonable undertakings**

The Vendor and the Vendor Parent acknowledge that:

- (a) the value of the Shares upon which the Purchase Price has been set and accepted by the Purchaser is dependent upon the Vendor and the Vendor Parent giving the undertakings contained in clause 20.1;
- (b) the undertakings contained in clause 20.1 are fair and reasonable in all the circumstances; and
- (c) the undertakings contained in clause 20.1 have been given for the protection of the Goodwill.

20.5 **Modification**

If any undertaking contained in clause 20.1 is held to be invalid as an unreasonable restraint of trade or for any other reason, but would have been valid if part of its wording had been deleted or the period reduced or the range of activities or area dealt with reduced in scope, that undertaking must apply with those modifications necessary to make it valid and effective. Specifically, if a court determines that the geographical restraint set out in the definition of Specified Area, combined with the temporal restraint set out in clause 20.1, is unreasonable and therefore invalid or unenforceable, the invalidity or unenforceability of those combinations will not affect the validity or enforceability of any other combinations.

20.6 Equitable relief

The Vendor and the Vendor Parent acknowledge that, if there is an alleged breach of this clause 20, the Purchaser may seek equitable relief in addition to damages. In any proceedings brought by the Purchaser against the Vendor or the Vendor Parent seeking equitable relief for a breach of this clause 20, neither the Vendor, the Vendor Parent nor any person directly or indirectly under their direction or control may claim that the breach is one which may not or should not be the subject of equitable relief.

20.7 Interpretation

For the purposes of this clause 20:

- (a) **Specified Business** means any business or activity which is the same as or substantially similar to or in competition with the Business or any part of the Business as conducted by the Company at Completion; and
- (b) **Specified Area** means New Zealand, Canada and any other jurisdiction in which customers of the Company are located as at the Completion Date.

21. Public announcements and confidentiality

21.1 Making announcements

- (a) Subject to clause 21.1(b) and, if applicable, clause 21.4, a party must not make, or authorise or cause to be made, any public announcement relating to the negotiations between the parties or the subject matter of this Agreement unless:
 - (i) it has the prior written consent of the other parties; or
 - (ii) it is required to do so by law or to fulfil any obligation of the disclosing party under this Agreement; or
 - (iii) it is required to do so by law or the rules of any relevant stock exchange.
- (b) The parties agree that the Vendor Parent will release the Transaction Announcement promptly following execution of this Agreement.

21.2 Parties to keep information confidential

Subject to clause 21.3, each party must treat, and must cause each of its Related Parties to treat, this Agreement, all information made available by or on behalf of the parties in connection with this Agreement and the terms of this Agreement as strictly confidential.

21.3 Exceptions

The obligations of confidentiality under clause 21.2 do not apply:

- (a) **Information in the public domain**
 - to information that is generally available to the public at the Agreement Date or subsequently becomes so available other than by reason of breach of this Agreement; or
- (b) **Disclosures required by law**

to any disclosure of information that is necessary to comply with any court order, law or the rules of any relevant stock exchange, subject to compliance with clause 21.4; or

(c) **Associated persons and advisers**

to information disclosed to any Related Party, employee, agent, contractor, officer, professional adviser, banker, auditor or other consultant of the relevant party (each a **Recipient**) only if the disclosure is made to the Recipient strictly on a “need to know basis” and, prior to the disclosure the relevant party notifies the Recipient of the confidential nature of the information to be disclosed.

21.4 Procedure for disclosures required by law

- (a) If a party anticipates or becomes aware that it must make a disclosure under clauses 21.1(a)(ii), 21.1(a)(iii) or 21.3(b), that party must:
- (i) as soon as practicable thereafter, and before making such disclosure, inform the other parties in writing of the required disclosure and the information which the party proposes to disclose;
 - (ii) before making such disclosure, to the extent possible under the relevant law, order or requirement:
 - (A) consult with the other parties as to the form, content and timing of the disclosure and use its reasonable endeavours to comply with any reasonable request by any other party concerning the proposed disclosure; and
 - (B) use its best endeavours to oppose or restrict disclosure (or to permit or assist the relevant other party and comply with any reasonable directions of such other party to oppose or restrict disclosure); and
- (b) if disclosure cannot be avoided, disclose only the minimum information required to comply with the applicable law, order or requirement and use its reasonable endeavours to make disclosure on terms which will preserve as far as possible the confidentiality of the information.

21.5 After Completion

- (a) From Completion, the Purchaser may disclose Confidential Information relating to the Business as is necessary to carry on the Business.
- (b) From Completion, the Vendor and the Vendor Parent must:
- (i) keep confidential, Confidential Information relating to the Business (to the extent retained by the Vendor and/or the Vendor Parent); and
 - (ii) use commercially reasonable endeavours to erase from its computer systems any information containing, reflecting or generated from any Confidential Information relating to the Business, other than any information it is required by law to retain.

22. Notices

22.1 General requirements

Any notice or other communication (including any request, demand, consent or approval) to or by a party to this Agreement:

(a) **Method**

may be given by personal service, registered post or email;

(b) **In writing**

must be in writing, legible and in English addressed as shown below:

(i) **Vendor or Vendor Parent**

if to the Vendor or Vendor Parent:

Address: 365 Bay Street, Suite 800, Toronto, Ontario, Canada M5H 2V1
 Attention: Thomas Hearne
 Email: [Redacted – personal information]

(ii) **Purchaser**

if to the Purchaser:

Address: 3rd Floor One New Change, London, United Kingdom, EC4M 9AF
 Attention: Kiri Flutter
 Email: [Redacted – personal information]

with a copy provided to:

Address: Bell Gully, Level 22 Vero Centre, 48 Shortland Street, Auckland, New Zealand
 Attention: Toby Sharpe
 Email: [Redacted – personal information]

or to any replacement address last notified by the party to the sender by notice given in accordance with this clause 22;

(c) **Receipt**

is deemed to be given by the sender and received by the addressee:

- (i) if delivered in person, when delivered to the addressee;
- (ii) if sent by registered post, on the third business day after posting if posted in New Zealand, or on the seventh business day if posted to or from a place outside New Zealand, in each case from and including the date of postage;
- (iii) if sent by email, on the date and time at which it enters the addressee's information system (as shown in a confirmation of delivery report from the sender's information system, which indicates that the email was sent to the email address of the addressee notified for the purposes of this clause),

but if the delivery or receipt is on a day which is not a business day or is after 4:00pm (addressee's time), it is deemed to have been received at 9:00am on the next business day.

22.2 References to addressees

In this clause 22, reference to an addressee includes a reference to an addressee's officers, agents or employees.

22.3 Reliance on notice

A notice or communication given in accordance with clause 22.1 can be relied on by the addressee and the addressee is not liable to any other person for any consequences of that reliance if the addressee believes it to be genuine, correct and authorised by the sender.

23. Assignment

23.1 Successors and assigns

This Agreement is to be binding on and enure for the benefit of the parties and their respective successors and permitted assignees or transferees under this clause 23.

23.2 No assignment

No party may assign or transfer, or create any security interest over or deal in any manner with, its rights and obligations under this Agreement without the consent in writing of the other parties.

24. General

24.1 Time of the essence

Time is of the essence in relation to the parties' respective obligations under this Agreement and no extension of time for the making of any payment or the doing of any acts required by those clauses will be deemed to be a waiver, or modification, or affect this provision.

24.2 Entire understanding

This Agreement and the other agreements contemplated by this Agreement, contain the entire understanding between the parties concerning the subject matter of this Agreement and supersede all prior communications between the parties.

24.3 Contracting out of Fair Trading Act 1986

The parties acknowledge and agree for the purposes of section 5D of the Fair Trading Act 1986 (FTA) that:

- (a) the Shares are being supplied and acquired in trade;
- (b) the parties are all in trade;
- (c) sections 9, 12A, 13 and 14(1) of the FTA do not apply to this Agreement or to any matters, information, representations or circumstances covered by this Agreement;

- (d) it is fair and reasonable that the parties are bound by this clause; and
- (e) the parties have each been able to fully negotiate the terms of this Agreement, and have each been represented by and received advice from a lawyer during the negotiations leading to this Agreement.

24.4 Further assurances

A party must, at its own expense and within a reasonable time of being requested by another party to do so, do all things and execute all documents that are reasonably necessary to give full effect to this Agreement.

24.5 Consents and approvals

Where anything depends on the consent or approval of a party then, unless this Agreement provides otherwise, that consent or approval may be given conditionally or unconditionally or withheld, in the absolute discretion of that party.

24.6 Waiver

(a) **Waiver must be in writing**

A waiver of any term, provision or condition of, or consent granted under, this Agreement is effective only if given in writing and signed by the waiving or consenting party.

(b) **Delay not a waiver**

A failure, delay, relaxation or indulgence by a party in exercising any power or right conferred on the party by this Agreement does not operate as a waiver of the power or right.

(c) **Partial exercise**

A single or partial exercise of the power or right does not preclude a further exercise of it or the exercise of any other power or right under this Agreement.

(d) **Waiver specific**

A waiver of a breach does not operate as a waiver of any other breach.

24.7 Amendments

This Agreement cannot be amended or varied except if agreed by the parties in writing.

24.8 Severability

If any provision of this Agreement offends any law applicable to it and is as a consequence illegal, invalid or unenforceable then:

(a) **Read down to minimum extent**

where the offending provision can be read down so as to give it a valid and enforceable operation of a partial nature, it must be read down to the minimum extent necessary to achieve that result; and

(b) **Sever offending provision**

in any other case the offending provision must be severed from this Agreement, in which event the remaining provisions of this Agreement operate as if the severed provision had not been included.

24.9 Conflicting provisions

If there is any conflict between the main body of this Agreement and any schedules or appendices to this Agreement, then the provisions of the main body of this Agreement prevail.

24.10 Non merger

A term or condition of, or act done in connection with, this Agreement does not operate as a merger of any of the rights or remedies of the parties under this Agreement and those rights and remedies continue unchanged.

24.11 Costs

Except as otherwise specified in this Agreement (including where the Termination Fee is payable by the Vendor in accordance with clause 8), each party must pay its own legal and other costs of and incidental to the preparation, negotiation, execution and completion of this Agreement and the transactions contemplated herein.

24.12 Counterparts

This Agreement may be executed in any number of counterparts, each of which, when executed is an original. Those counterparts together make one instrument.

24.13 Electronic signing

For the purposes of Part 4 of the CCLA each party irrevocably consents to this Agreement, and any other document contained or referred to in this Agreement, being signed via the application of each Party's electronic signature.

24.14 Governing law and jurisdiction

(a) **Governing law**

This Agreement is governed by and must be construed in accordance with the laws of New Zealand.

(b) **Jurisdiction**

The parties submit to the non-exclusive jurisdiction of the courts of New Zealand in respect of all matters arising out of or relating to this Agreement, its performance or subject matter.

(c) **Agent for service**

The Vendor and the Vendor Parent appoints Nick Kovacevich at Couch Harlow Kovacevich, The General Building, Level 3, 29 Shortland Street, Auckland 1010, PO Box 583, Shortland Street, Auckland 1140, New Zealand or by email at [*Redacted – personal information*] as its agent to accept service of process and other documents in any proceedings commenced in the Courts of New Zealand.

Execution

Executed as an agreement.

Entain Holdings (UK) Limited by

“Brian Brady” (Signed)

Director

Robert Wood

Print Name

“Robert Hoskin” (Signed)

Director

Robert Hoskin

Print Name

Tiidal Gaming Holdings Inc.

“Thomas Hearne” (Signed)

Name: Thomas Hearne

Thomas Hearne

Title: President

Tiidal Gaming Group Corp.

“Thomas Hearne” (Signed)

Name: Thomas Hearne

Thomas Hearne

Title: Chief Executive Officer

Schedule 1: Vendor Warranties

1. Vendor's power and authority

1.1 Due incorporation

The Vendor is validly incorporated, organised and subsisting in accordance with the laws of the jurisdiction of incorporation.

1.2 Corporate authorisation and power

The Vendor:

- (a) has, subject to clause 3, obtained, or will obtain before Completion, all necessary authorisations for the execution, delivery and performance of its obligations under this Agreement in accordance with its terms;
- (b) has full corporate power and lawful authority, without any further consent of any other person, to execute and deliver this Agreement and to perform or cause to be performed its obligations under this Agreement; and
- (c) will not contravene any law by entering into or performing its obligations under this Agreement.

1.3 Legal and binding document

The Vendor's obligations under this Agreement are valid and binding and enforceable against it in accordance with their terms, except as such enforceability may be limited by equitable principles, bankruptcy, insolvency, liquidation or other laws relating to creditors' rights and statutory limitations.

1.4 Solvency

The Vendor:

- (a) is able to pay its debts as and when they fall due in the normal course of business; and
- (b) has assets the value of which is greater than the value of its liabilities, including contingent liabilities.

1.5 No insolvency action

No administrator, receiver or statutory or official manager has been appointed in respect of the Vendor and no application or other process for the appointment of an administrator, interim liquidator or liquidator has been made, or resolution passed, for the administration, liquidation or dissolution of the Vendor.

1.6 No insolvency circumstances

The Vendor is not aware of any fact, matter or circumstance which with the passing of time, or giving of notice, or making of any court order, may result in the administration, liquidation, or the appointment of a receiver or statutory manager of the Vendor.

1.7 No arrangements

The Vendor has not entered into, or taken any steps to implement, a scheme of arrangement or other compromise or arrangement for the benefit of its creditors or any class of them.

1.8 Not a trustee

The Vendor enters into and performs this Agreement on its own account and not as trustee or nominee of any other person.

2. The Shares

2.1 Title

The Vendor is the sole legal and beneficial owner of, and can transfer, the Shares and the Shares are free of all Encumbrances (other than any Encumbrances granted in connection with the Entain Loan Agreement).

2.2 Fully paid

The Shares have been validly issued and are fully paid and no money is owing in respect of them. All contributions on the Shares have been made in compliance with applicable law and have not been repaid or returned, in whole or in part, whether open or disguised, directly or indirectly. There are no obligations to make further contributions on the Shares.

2.3 Power

The Vendor has the right and power to sell the Shares on the terms set out in this Agreement without the consent of any other person and free of any pre-emptive rights, option rights, conversion rights, rights of first refusal or similar rights.

2.4 No breach

The transfer of the Shares does not breach any obligation, agreement or court order binding on the Vendor.

2.5 No other shares or rights

- (a) The Shares comprise all the issued shares in the capital of the Company and there are no other rights over or securities convertible into or exchangeable for (or which may become convertible into or exchangeable for) shares in the Company.
- (b) There are no agreements, arrangements or understandings in force that call for the present or future issue, disposal or transfer of, or grant to any person the right at any time to require the issue or transfer of, any security (as defined in the Financial Markets Conduct Act 2013) in the Company.
- (c) The Company does not have any voting agreements or arrangements with respect to the Shares.

3. Information

3.1 Disclosure Letter

The Disclosure Letter is materially accurate, is not materially misleading in its context and there has been no omission of material information from the Disclosure Letter, having regard to the totality of the information. The warranty contained in this paragraph 3.1 does not apply to information that is a forecast, projection, prospective statement, opinion, estimate or expectation.

3.2 No omission

There are no material circumstances, and there is no material information relating to the Company and/or the Business that the Vendor is aware of that has not been fairly disclosed in the Disclosure Letter or this Agreement and which, if fairly disclosed, might reasonably be expected to:

- (a) be material to a reasonable purchaser proposing to enter into and complete the transactions contemplated by this Agreement; or
- (b) lead a proposing purchaser for value of the Shares to reduce materially its assessment of the value of the Shares.

4. The Company

4.1 Incorporation

The Company is validly incorporated, organised and subsisting in accordance with the laws of New Zealand.

4.2 Power

The Company has full corporate power and authority to own its assets and business and to carry on its business as conducted at the Agreement Date and at Completion.

4.3 No constitution

The Company has not adopted a constitution.

4.4 No subsidiaries or other interests

- (a) The Company does not:
 - (i) have any subsidiaries and does not have any legal or beneficial right in, and has not agreed to acquire, subscribe for or take up, any shares or other securities in any company, unit trust or other entity; or
 - (ii) control any company or other entity.
- (b) The Company is not:
 - (i) a party to any arrangement, the effect of which is or will be to render that other company in substance or effect a subsidiary of the Company, or vice versa;

- (ii) a member of or party to any joint venture, consortium, partnership or unincorporated association (other than its membership of the Esports Integrity Commission); or
- (iii) party to any agreement for participation with any other person in any business activity deriving profits, commissions or other income.

4.5 Solvency

The Company is solvent and is able to satisfy the solvency test set out in section 4 of the Companies Act.

4.6 No insolvency action

None of the following has occurred or is continuing in relation to the Company:

- (a) a meeting convened or resolution passed or proposed, or statement of claim or other proceedings served or notified, or an application or order made, for the liquidation or statutory management of the Company; or
- (b) the levy of distress, execution or other similar order or process on any of the property of the Company; or
- (c) the Company has entered into an arrangement with, or assignment for the benefit of, any creditor of the Company; or
- (d) the appointment of a receiver, liquidator, administrator, statutory manager or other statutory officer or officer of the Court in relation to the Company; or
- (e) the Company:
 - (i) being (or taken to be under applicable legislation) unable to pay its debts, other than as the result of a failure to pay a debt or claim the subject of a good faith dispute; or
 - (ii) stopping or suspending, or threatening to stop or suspend, payment of all or a class of its indebtedness.

4.7 No events of default

There are no circumstances existing which will, or with the passing of time or giving of notice or making of any Court order are reasonably likely to, result in the administration, liquidation or removal of the Company from the Companies Register or the appointment of a receiver, liquidator, administrator or statutory manager of the Company or any of its assets.

4.8 Power of attorney

The Company has not granted any power of attorney (which is still in force) or conferred on any person, other than its directors and employees, any subsisting authority to bind the Company in any way.

5. Financial matters

5.1 Management Accounts

The Management Accounts:

- (a) have been prepared in accordance with IFRS, consistently applied, and are complete and accurate in all respects;
- (b) have been prepared on a basis consistent with the basis on which all financial statements of the Company have been prepared in respect of the preceding annual financial periods;
- (c) give a true and fair view of the assets and liabilities and the state of affairs, financial position and results of the Company as at the Balance Date and the financial performance of the Company for the financial period ending on the Balance Date;
- (d) are not affected by any abnormal, extraordinary or non-recurring item;
- (e) does not understate any liabilities, including liabilities for long service leave and annual leave entitlements; and
- (f) give accurate particulars in the notes of all contingent liabilities and commitments and any other liabilities which cannot be quantified under IFRS.

5.2 Management Accounts

The Management Accounts:

- (a) were properly prepared in a manner materially consistent with that adopted in the preparation of the management accounts of the Company in respect of the preceding annual financial periods; and
- (b) are complete and accurate in all material respects, taking into account the purposes for which they were prepared, and do not materially overstate the assets or profits of the Company, have not been affected by any material unusual or non-recurring items or transactions not on an arm's length basis, and do not materially understate the liabilities or losses of the Company, for the period in which they are prepared or as at the date of such Management Accounts.

5.3 No revaluation

Since the Balance Date there has been no revaluation of any Asset.

5.4 Financing

The Company has not and is not engaged in financing of a type which is not required to be shown or reflected in its financial statements.

6. Business operations

6.1 Conduct of Business

Since the Balance Date, none of the events or actions set out in clause 5.1 of the Agreement have occurred which would require the express consent of the Purchaser under clause 5.1 if it had occurred after the Agreement Date.

6.2 Material adverse effect

Since the Balance Date there has not been any event or circumstance which might reasonably be expected to have a material adverse effect on the Company.

6.3 Ability to operate business

The rights, assets, capabilities and resources owned by or validly licensed to the Company and the employees of the Company, are sufficient to enable the Company to operate the Business immediately following Completion in all material respects in a manner consistent with the way in which the Company operates the Business as at the Agreement Date and in which it has operated the Business in the six months prior to the Agreement Date.

6.4 No material contracts

The Company is not a party to any material contract that has not been disclosed in Section 6.4 of the Disclosure Letter or that:

- (a) is of an unusual or abnormal nature having regard to the nature of the Business; or
- (b) is incapable of performance by the Company in accordance with its terms; or
- (c) restricts or prevents the Company from carrying on the Business in the manner in which the Business is being conducted at the Agreement Date; or
- (d) will trigger liability on the part of the Company for incentives, fees or other additional liabilities as a consequence of Completion; or
- (e) is, to the Vendor's knowledge, likely to result in a material Loss to the Business on completion of performance.

6.5 No US arrangements

Except for the USA Contracts disclosed in Section 6.5 of the Disclosure Letter, as at the Agreement Date, the Company is not party to any contract or other arrangement that involves the direct sale or supply of the Company's products or services into the United States of America or party to any contract or other arrangement with any third party pursuant to which the third party may onsell or onward supply the Company's products or services for use in the United States of America and, as at the Completion Date, the Company will not be party to any such contracts or other arrangements in the United States of America.

6.6 Previous acquisition

Neither the Company nor the Vendor Parent has any ongoing obligation under the sale and purchase agreement between the Company, the Vendor Parent and Sportsflare NZ Limited dated 14 December 2020, as amended on September 24, 2021, in relation to the previous acquisition by the Company of the property and assets of the Business (**Previous Acquisition SPA**) and no claim has been made or is outstanding by the Company, the Vendor Parent or Sportsflare NZ Limited under the Previous Acquisition SPA.

7. No adverse rights

Neither the execution of this Agreement, nor the transfer of the Shares to the Purchaser (or its nominee) under this Agreement, nor any other aspect of this Agreement:

- (a) constitutes a breach of any agreement to which the Company is a party; or
- (b) entitles any person to cancel, terminate earlier than would otherwise have been the case, or adversely modify any material contract or any right or benefit available to the Company, or any material provision of any material contract; or

- (c) entitles any person to acquire, or to require the Company to dispose of, all or any interest in, any right or benefit to which the Company is entitled; or
- (d) to the Vendor's knowledge, is likely to cause any supplier or customer of the Business to discontinue or substantially reduce its trade with or patronage of the Business; or
- (e) otherwise causes, or is likely to cause, any right or benefit of or relating to the Company to be cancelled, terminated, lost, adversely qualified or impaired, except as a result of any unlawful act or omission by any Third Party.

8. Liabilities

8.1 Guarantees and other indebtedness

At Completion, the Company will not:

- (a) be a party to (or have agreed to be a party to) any guarantee or indemnity in respect of, or will be otherwise liable or contingently liable in any way for the obligations of, any other person;
- (b) be indebted (or will have agreed to be indebted) to any person, except to the extent that liability for their indebtedness is recognised in the Actual Completion Consideration Statement; or
- (c) owe any money to the Vendor or a Related Party of the Vendor.

8.2 Employee and shareholder loans

Neither the Vendor, the Vendor Parent, any employee of the Company or Related Party of any such person owes any indebtedness to the Company.

8.3 Management incentives

The Company does not have any liability in respect of management (or other employee) incentives payable in respect of, or as a consequence of, the Sale.

9. Business Agreements

9.1 Nature of Business Agreements

Each Business Agreement is on arm's length terms and was entered into in the ordinary course of business.

9.2 No breach or terminations

The Company:

- (a) is not, nor will on Completion be, in material breach of any Business Agreement, where such default will, or would reasonably be likely to, have an adverse effect on the Business; or
- (b) has not received any notice from a counterparty alleging any material breach of or default under any Business Agreement that will, or would reasonably be likely to, have an adverse effect on the Business; or

- (c) has not received, or given, any notice of termination of any Business Agreement that will, or would reasonably be likely to, have a material adverse effect on the Business.

9.3 Other contracts and arrangements

The Company has not made nor become a party to any material offer, tender or similar arrangement which is capable of being converted after Completion into a material obligation, by an acceptance or other act of some Third Party, except as disclosed in the Section 9.3 of the Disclosure Letter.

9.4 Related Party agreements

The Company is not a party to any agreement with a Related Party of the Company or the Vendor or a Related Party of a Vendor.

10. Assets

10.1 No Encumbrances

- (a) The Company has legal and beneficial title to all of its Assets free from Encumbrances, except for Permitted Encumbrances.
- (b) The Company has not created, or agreed to create, any Encumbrance in respect of any of its Assets, except for Permitted Encumbrances.

10.2 No other interest

No person is entitled to possession of, or any interest in, any Asset, except for Permitted Encumbrances or licenses granted in contracts fairly disclosed in the Disclosure Letter.

10.3 Fixed assets

Section 10.3 of the Disclosure Letter sets out all fixed assets of the Company and there are no other fixed assets used in the operations of the Company.

10.4 Accounts Receivable

All Accounts Receivable of the Company represent monies due for services rendered or products sold in the ordinary course of business and are collectible in a manner consistent with the Company's past practice.

11. Records and corporate matters

11.1 Accounting records

The books of account of the Company are up to date, in the Company's possession and are true and complete in accordance with the law and applicable standards, principles and practices generally accepted in New Zealand.

11.2 Business Records

All Business Records (other than accounting records):

- (a) have been properly maintained;

- (b) do not contain or reflect any material inaccuracies or material discrepancies; and
- (c) for employee records, contain adequate and suitable records regarding the service of each of the Employees.

11.3 Rectification of registers

The Company has not received notice or any application or, so far as the Vendor is aware, any intended application for the rectification of its share register or any other register that it is required by law to maintain.

11.4 Filings

All documents required to be registered with the New Zealand Registrar of Companies by the Company under any relevant legislation have been duly registered where failure to do so would prejudice the conduct of the Business as carried on at Completion.

11.5 Documents of title

All material documents of title, or material documents that otherwise evidence title, to the Assets are in the Company's possession or control.

12. Leased Property

12.1 Complete list

The Leasehold Property comprises all land and buildings occupied by the Company or in which the Company has any interest.

12.2 No owned or freehold properties

The Company does not own or have any freehold interest in any property.

12.3 Valid lease or tenancy

The Company holds the Leasehold Property under a valid and subsisting lease with no restrictions in any lease documents which prevent the Leasehold Property being used for its present use.

12.4 No complaints

The Company has not received any complaint from any landlord of any breach of the terms of any of lease or tenancy that is unresolved.

12.5 Compliance with lease or tenancy

The Company has complied with all material terms of those leases and tenancies.

12.6 No material defects

To the Vendor's knowledge, there are no material defects in the construction or condition of the Leasehold Property.

12.7 Enforcement action

To the Vendor's Knowledge, there are no outstanding enforcement or other notices, requisitions, or proceedings issued in respect of the Leasehold Property.

13. Intellectual property

13.1 Full disclosure

Complete and accurate details of all material Intellectual Property owned by the Company is listed in Section 13.1 of the Disclosure Letter.

13.2 Ownership of intellectual property

- (a) Apart from software used by the Company under standard end user licence arrangements, the Company owns absolutely the legal and beneficial title to all of the Intellectual Property, free and clear of any Encumbrances.
- (b) The Company is the registrant of the Domain Names and the details set out in Part A Section 13.1 of the Disclosure Letter are true and accurate.
- (c) The Company has taken all actions reasonably necessary to defend, enforce, maintain and preserve its rights to all Intellectual Property owned by it and has not knowingly allowed any such Intellectual Property to be abandoned or surrendered.
- (d) The Company has submitted all applications for registration and renewal and paid all renewal and other fees required for the maintenance and protection of all registered Intellectual Property owned by it.
- (e) No action is required to be taken by the Company within 30 days of the Completion Date to maintain or preserve or, so far as the Company is aware, defend or enforce the Company's rights to its owned Intellectual Property.

13.3 Licences

Details of all written licences of Intellectual Property Rights granted to or by the Company are contained in Section 13.3 of the Disclosure Letter and in relation to each such licence:

- (a) the licence is valid, binding and enforceable;
- (b) the Company is not in breach of the licence and has not received any notice alleging breach of the licence;
- (c) the licensor under that licence has not given any notice terminating or purporting to or advising of an intention to terminate that licence and as far as the Vendor is aware no circumstance exists that may entitle the licensor to do so; and
- (d) to the Vendor's knowledge, no circumstance exists that may affect the validity or ownership of the Intellectual Property Rights the subject of that licence or the use by the Company of the Intellectual Property Rights.

13.4 Validity of Intellectual Property

- (a) All Intellectual Property owned by the Vendor is valid, subsisting and enforceable and no action has been taken or not taken and no matter has occurred or not occurred that has resulted, or could result, in any Intellectual Property owned by the Vendor ceasing to be valid, subsisting and enforceable.

- (b) There has not been:
 - (i) to the Vendor's knowledge, any infringement or threatened infringement of any Intellectual Property;
 - (ii) any act or omission which may affect the validity or enforceability of any Intellectual Property; or
 - (iii) any claim by any Third Party relating to any Intellectual Property; or
 - (iv) to the Vendor's knowledge, any wrongful use of the Intellectual Property by any Third Party.
- (c) To the Vendor's knowledge, no mark, trade name or domain name identical or similar to the Intellectual Property Rights owned by the Vendor (including the Business Names) has been registered and/or used by a person in the same or similar business to that of the Company in any countries in which the Company is using that mark, trade name or domain name.

13.5 No infringement

The Company does not infringe, has not infringed, and, to the Vendor's knowledge, is not reasonably likely to infringe any trade mark, domain name, patent, registered design or copyright or other Intellectual Property Right of a Third Party, and none of the Company's activities constitute, have constituted or, to the Vendor's knowledge, are reasonably likely to constitute the tort of passing-off, and the Company has not given an indemnity in respect of any such infringement or passing-off to any Third Party.

13.6 Adequacy of Intellectual Property Rights

The Company owns or has licensed to it all Intellectual Property Rights necessary to enable the Company to conduct the Business in the manner in which it is operated as at the Agreement Date and as at Completion and to fulfil any currently existing plans or proposals.

13.7 Material Intellectual Property

The Company is not a party to any material user licence, know-how, information, assistance or development agreement or under any liability to make payments to any person in respect of any Intellectual Property Rights that is not disclosed in Section 13.3 of the Disclosure Letter.

13.8 Assignments

Each contractor or consultant engaged by the Company for the purpose of undertaking any activity that has given rise to or may give rise to the creation of any Intellectual Property Right has executed, or its relevant contract with the Company provides for, an assignment or vesting of that Intellectual Property Right in favour of the Company and any present or former employee of the Company who has devised any invention which is or may become the subject of an application for a patent or registered design has executed, or its relevant contract with the Company provides for, an assignment or vesting of that invention, and the right to be granted a patent in relation to the invention, in favour of the Company.

13.9 Disclosure of Confidential Information

- (a) The Company has not, and to the Vendor's knowledge no other person has, disclosed to any person other than the Purchaser, any Confidential Information regarding the Company except:

- (i) where such disclosure was made in the ordinary course of business and where the recipient is either an employee of the Company or a person who has acknowledged the confidentiality of the Confidential Information in writing and has agreed neither to use that Confidential Information nor disclose that Confidential Information to any person except for the purpose for which that Confidential Information was disclosed, and all such confidentiality agreements have been disclosed in Section 13.9 the Disclosure Letter;
 - (ii) to professional advisers of the Company who are bound by obligations of confidentiality by reason of their role as adviser; or
 - (iii) where required or compelled by law.
- (b) The Company has at all times maintained the confidentiality of the Confidential Information. Neither the Company nor any of its Related Companies nor any of their respective directors or employees has, to the Vendor's knowledge, disclosed any Confidential Information or any other matters or information which could jeopardise or otherwise compromise the validity or enforceability of the Intellectual Property.

13.10 No notice of challenges

- (a) The Company has not received notice of any disputes, challenges, litigation, opposition, revocation or invalidity proceedings in respect of the Intellectual Property.
- (b) There are no disputes or claims between the Company and any other person which, to the Vendor's knowledge, are reasonably likely to give rise to any disputes, challenges, litigation, opposition, revocation or invalidity proceedings in respect of the Intellectual Property and the Company has not received notice of the threat of any such claim.

13.11 Effect of Sale

The Sale will not invalidate or materially affect any Intellectual Property, or increase the costs to the Purchaser of retaining such Intellectual Property.

13.12 Employee rights

- (a) All former and current employees and independent contractors of the Company have executed valid and enforceable written agreements with the Company that irrevocably assign to or vest in the Company all rights to any Intellectual Property created in the course of employment and confidentiality provisions protecting the Intellectual Property Rights.
- (b) No former or current employee or independent contractor of the Company has any claim, right (whether or not currently exercisable) or interest to or in any Intellectual Property Rights.

14. Information Technology

14.1 Ownership

The Company is the owner or licensee of all information technology (including software) which the Company uses in respect of the Business.

14.2 Information technology requirements

All the information technology, telecommunications infrastructure, networks, computers and computer systems, programs and applications owned or used by the Company for the benefit of or in connection with the Business as at Completion are sufficient for the reasonable requirements of the Business as conducted as at the Agreement Date.

14.3 Licensed technology

To the extent that the Company uses any information technology (including software, hardware, services, business processes, documentation and data storage devices) in the operation of the Business which is not owned by the Company:

- (a) such information technology has been and is currently being lawfully and validly used in all material respects by the Business and such use is in all material respects in accordance with its contractual, lease or licence terms, including any terms or conditions on the validity of warranties or the provision of maintenance and support services; and
- (b) the Company has not received notice of termination of any material contract, lease or licence held by the Company giving it rights to use such information technology.

14.4 Website

- (a) No Website contains, displays or is directly linked to another website that contains and displays, any material that:
 - (i) is defamatory of any person;
 - (ii) contains any statement that is misleading or deceptive or likely to mislead or deceive;
 - (i) infringes or misuses any Intellectual Property Rights of any person; or
 - (ii) breaches any applicable law.
- (b) Each Website displays:
 - (i) all copyright and other notices required to be displayed under copyright or any other law, or which a prudent owner or operator of a similar website would display; and
 - (i) reasonable disclaimers applicable to the Business.

14.5 Viruses

To the Vendor's knowledge, none of the Company's Software products contain any bug, defect or error:

- (a) designed to disrupt, disable, harm, distort or otherwise impede in any manner the operation of such Software, or any other associated Software, firmware, hardware, computer system or network (including any "viruses" or "worms" as such terms are commonly understood in the software industry);
- (b) that is known, or that would have been known had the Company undertaken reasonable security scanning procedures, would permit any Third Party to access such Software to intentionally corrupt data;

- (c) that would disable such Software or impair in any way its operation based on the elapsing of a period of time, advancement of a particular date or other numeral (including any “time bombs”, “back door”, “Trojan horse”, “time clocks” or “drop dead” devices as such terms are commonly understood in the software industry); or
- (d) that is known, or that would have been known had the Company undertaken reasonable security scanning procedures, would permit any Third Party to access such software to intentionally cause such disablement or impairment (including any “lockups”, “traps”, “access codes”, or “trap door” devices as such terms are commonly understood in the software industry), or any other similar harmful, malicious or hidden procedures, routines or mechanisms which would cause the software to cease functioning or to damage, destroy or corrupt data, storage media, programs, equipment or communications, or otherwise interfere with operations.

14.6 Open Source

- (a) No Software contains, incorporates, is derived from, links to or otherwise interacts with any OSS in any manner that requires any Software, when it is licensed, distributed, conveyed or made available to other persons, to be:
 - (i) disclosed or distributed (or offered to be made available) in source code form;
 - (ii) licensed under terms that permit other persons to make derivative works;
 - (iii) redistributed at no charge to subsequent licensees or subject to any restriction
 - (iv) on the consideration to be charged for the distribution thereof;
 - (v) subject to any requirement that any patents related to such Software are either licensed to or may not be asserted against recipients or licensees of such Software; or
 - (vi) comply with any requirements that are inconsistent with the Company’s use of such Software.
- (b) The Company is compliant with all obligations pursuant to any OSS contained or incorporated in any Software, or from which any Software is derived.
- (c) The Company maintains a system of industry best practices, tools and processes that are sufficient to assure that all OSS-related vulnerabilities are tracked and promptly remediated.

14.7 Source code

The source code for all Software contains clear and accurate annotations and programmer’s comments, and otherwise has been documented in a reasonable manner that is both:

- (a) consistent with customer code annotation conventions and generally accepted practices in the software industry; and
- (b) sufficient to independently enable a programmer of reasonable skill and competence to understand, analyse and interpret program logic, correct errors and improve, enhance, modify and support the Software.

14.8 Outages

- (a) In the 24 months prior to the Agreement Date, the Company has not suffered, and the Vendor does not know that any other person has suffered, any major failure, breakdowns or continued substandard performance of any computer hardware or Software used in connection with the Business, which has caused any substantial disruption, interference, interruption or adverse effect in or to its use or performance.
- (b) The Vendor does not know of anything which may so disrupt, interfere with, interrupt or affect the Company's use of any of the computer hardware or Software in the Business.

14.9 Security

So far as the Vendor is aware, in the 24 months prior to the Agreement Date, the IT Systems and data stored on the IT Systems, and any data held by a third party on behalf of the Company, have not been subject to any:

- (a) unauthorised or accidental access (including hacking, ransomware and other similar events), use, disclosure, alternation, destruction or loss; or
- (b) action that prevents the Company from accessing its IT Systems or data on either a temporary or permanent basis,

whether involving any officer, employee, or contractor of the Company or any other person.

15. Compliance with laws

15.1 Compliance

The Company is not in breach of any statute, order, by-law or regulation binding on or applicable to it where such breach might reasonably be expected to have a material adverse effect on it.

15.2 No consents required

The Company is not required to hold any consent, permit or other authorisation from a Government Agency for the carrying on of the Business.

16. Legal proceedings

16.1 No litigation

The Company is not, and has not been, involved in any investigation, prosecution, litigation, arbitration, proceedings or any other form of mediation or dispute resolution or other legal proceedings.

16.2 No claims

There are no claims or disputes against or involving the Company which, to the Vendor's knowledge, are reasonably likely to give rise to any investigation or legal proceedings.

16.3 No proceedings

- (a) There are no enquiries pending before or, to the Vendor's knowledge, threatened by, any Government Agency in relation to the Company, and in particular the Company is not involved in any dispute with the Commissioner of Inland Revenue.
- (b) There are no unsatisfied judgments, awards, claims, demands or orders against the Vendor affecting its right to sell the Shares or against the Company.

17. Anti-bribery and corruption

17.1 Investigations

There is not and has not since the incorporation of the Company been any enquiry or disciplinary proceeding by a Government Agency, or any internal investigation, report, enquiry or proceeding, concerning any alleged breach of any Anti-Bribery Laws by the Company or connected with the Business and none is pending or threatened. To the Vendor's knowledge, no fact or circumstance exists which might be reasonably likely to give rise to an investigation, enquiry or proceeding of that type. The Company has not made any voluntary or involuntary disclosure to any Government Agency with respect to any alleged act or omission arising under or relating to any Anti Bribery Laws.

17.2 Sanctions

- (a) The Company, the Vendor and each Related Company of the Vendor, or, to the Vendor's knowledge, any of their respective directors, officers, agents, employees or affiliates, is not and has never been a designated target of, or otherwise a subject of, any export control or economic or financial sanctions laws, regulations, trade embargoes or other restrictive measures enacted, administered, implemented and/or enforced by the United States of America, the United Kingdom, the European Union (or any Member State thereof), the United Nations or any other jurisdiction in which it operates or to which it is subject (**Sanctions**), including, without limitation, the US Export Administration Regulations, the US International Traffic in Arms Regulations, the US Department of Treasury Office of Foreign Asset Control's economic sanctions regulations, sanctions programmes maintained by Her Majesty's Treasury of the United Kingdom and any applicable European Union restrictive measure that has been implemented pursuant to any European Council or Commission Regulation or Decision adopted pursuant to a Common Position in furtherance of the European Union's Common Foreign and Security Policy.
- (b) The Company has not, and to the Vendor's knowledge, the Company's Agents have not engaged in any activity or conduct which would violate any applicable Sanctions.

17.3 Making unlawful payments

The Company has not, and to the Vendor's knowledge, the Company's Agents have not paid, offered, promised, given or authorised the payment of money or anything of value directly or indirectly to any person:

- (a) intending to induce a person to improperly perform a function or activity or to reward a person for any such performance; or
- (a) while knowing or believing that the acceptance by that person would constitute the improper performance of a function or activity.

17.4 Receiving unlawful payments

- (a) The Company has not, and to the Vendor's knowledge, the Company's Agents have not directly or indirectly requested, agreed to receive or accepted money or anything of value:
 - (i) as a reward for the improper performance of a function or activity by any person;
 - (ii) in circumstances which amount to an improper performance of a function or activity; or
 - (iii) intending that as a consequence of any such request, agreement to receive or acceptance a function or activity will be performed improperly.
- (b) The Company has not, and to the Vendor's knowledge, the Company's Agents have not improperly performed a function or activity in anticipation of, or in consequence of, the Company or any of its Agents requesting, agreeing to receive or accepting money or anything of value.

17.5 Dealings with Public Officials

The Company has not, and to the Vendor's knowledge, the Company's Agents have not paid, offered, promised, given or authorised the payment of money or anything of value, directly or indirectly, to a Public Official (or any other person at a Public Official's request or with their assent or acquiescence) intending to:

- (a) influence any act or decision of any such Public Official in their official capacity, including the failure to perform an official function, in order to assist the Company or any other person in obtaining or retaining business or a business advantage, or in directing business to any third party;
- (b) secure an improper advantage;
- (c) induce any such Public Official to use their influence to affect or influence any act, omission or decision of a Government Agency in order to assist the Company or any other person in obtaining or retaining business, or in directing business to any third party;
- (d) provide an unlawful personal gain or benefit, of financial or other value, to any such Public Official; or
- (e) assist the Company or any other person in obtaining or retaining business or a business advantage, or in directing business to the Company or any other person,

in each case, with the exception of payments or benefits by which the Public Official is permitted or required by written law to be influenced.

17.6 Compliance with Anti-Bribery Laws and Money Laundering Laws

- (a) The Company has not, and to the Vendor's knowledge, the Company's Agents have not, at any time since its incorporation, taken any action directly or indirectly, in violation of Anti-Bribery Laws and the Company conducts and has at all times since its incorporation conducted its business in all respects in compliance with Anti-Bribery Laws.
- (b) The Company has instituted and maintained policies and procedures designed to ensure, and which do ensure, compliance by the Company and each of its Agents with

Anti-Bribery Laws and to prevent any breach of Anti Bribery Laws by the Company or any of its Agents occurring (together, the Anti-Corruption Compliance Programme). Neither the Company nor any of its Agents have done anything or omitted to do anything which amounts to a breach of the Anti-Corruption Compliance Programme.

- (c) The operations of the Company are, and have at all times since its incorporation been, conducted in compliance with all anti-money laundering and prevention of terrorist financing laws and with all applicable financial record keeping and reporting and legal and administrative requirements, rules, regulations laws and/or guidelines (collectively, Money Laundering Laws) and no investigation, action, suit or proceeding by or before any court or governmental agency, authority or body or any arbitrator involving the Company with respect to Money Laundering Laws is pending and no such actions, suits or proceedings are threatened or contemplated.

17.7 Public Officials and Government Agency

- (a) No officer, director, employee or Agent of the Company is a Public Official.
- (b) No Public Official or Government Agency owns or holds any interest, whether direct or indirect, in the Company or has any interest, whether direct or indirect, in the receipt of any payments to be made by the Purchaser under this Agreement.

18. Employees

18.1 Terms and conditions

All material terms and conditions of employment of the Employees (including all bonus, commission, and incentive schemes, and redundancy policies) have been disclosed in Section 18.1 of the Disclosure Letter.

18.2 Compliance

The Company complies with all obligations under each employment contract between it and each of the Employees, and under its statutory or other legal obligations to the Employees.

18.3 No termination benefits

There is no agreement or liability to pay a termination benefit to any Employee or former employee of the Business.

18.4 No employee disputes

The Company is not involved in any personal grievance, unjustified dismissal claim, dispute or any other material claim with any of its Employees, or former employees, or any person representing any Employee or former employee. To the Vendor's knowledge, no event has occurred which might give rise to such a claim.

18.5 ACC rating

- (a) **Workplace safety management reduction and risk of upwards adjustment**

To the Vendor's knowledge, there are no circumstances or events that are reasonably likely to:

- (i) adversely affect any downwards adjustments currently applicable to the employer levy payable by the Company;

- (ii) adversely affect any discount currently provided to the Company as an accredited employer; or
- (iii) result in an upwards adjustment to the employer levy payable by the Company, under the Accident Compensation Act 2001 or any related regulation made under that Act.

(b) **Miscellaneous obligations**

To the Vendor's Knowledge, the Company has not done or permitted anything to be done, or omitted to do anything, which is reasonably likely to give rise to any action under, or violation of, the Accident Compensation Act 2001 or any related regulation made under that Act.

18.6 **Payments / accruals made**

The Company has:

- (a) paid all amounts due and payable by the Company to the Employees and all amounts due and payable by the Company to any Third Party for or in respect of the Employees; and
- (b) accrued entitlements for annual leave, public holidays and alternative holidays, sick leave and bereavement leave for the Employees in respect of their employment for the period prior to the Completion Date in accordance with the Holidays Act 2003.

18.7 **No increases promised**

Except as disclosed in Section 18.7 of the Disclosure Letter, the Company has not given any commitment (whether legally binding or not) to increase or supplement the wages, salaries, annual leave, long service leave, sick leave or any other remuneration, compensation or benefits of any Employee.

18.8 **Termination provisions**

Subject to an employer's obligations under the Employment Relations Act 2000, all contracts of employment between the Company and any Employee can be terminated on three months' notice or less under the terms of the relevant contract (other than any terms which may be unilaterally imposed by any court or tribunal of competent jurisdiction).

18.9 **Health and safety**

The Company has not had or received any complaints, investigations or claims relating to health and safety issues affecting the Employees. The Company is not and has not been involved in any health and safety audit or investigation by any Government Agency nor have any events occurred which might give rise to any audit, prosecution, investigation or claim related to health and safety.

18.10 **Superannuation**

The Company is not under any present or future obligation to make any contribution to, or other payment on account of, any superannuation, pension, retirement or similar scheme or arrangement, except for contributions payable under the KiwiSaver Act 2006 and the Superannuation Guarantee (Administration) Act 1992.

18.11 KiwiSaver

With respect to the Company's obligations pursuant to the KiwiSaver Act 2006:

- (a) the minimum employer contributions in respect of each Employee who participates in the scheme operated pursuant to the KiwiSaver Act 2006 have been made in compliance with that Act; and
- (b) as at Completion, there are no outstanding or unpaid contributions or payments on the part of the Company.

18.12 Bonus or share schemes

The Company does not have any share incentive scheme, share option scheme, profit-sharing scheme, bonus incentive scheme, or scheme of providing benefits of any other nature, for all or any of its directors or employees.

18.13 Commission arrangements

Except as disclosed in Section 18.13 of the Disclosure Letter, there are no schemes in operation in relation to the Business under which any Employee, or any other person, is entitled to a commission or remuneration of any sort calculated by reference to the whole or part of the turnover, profits or gross assets of the Company.

18.14 Union agreements

The Company is not a party to any workplace agreement, or agreement (including any collective agreement) with a trade union or industrial organisation in respect of the Employees and their employment.

18.15 Effect of Sale

The Sale will not:

- (a) create any redundancies; or
- (b) entitle any employee of the Company to resign and be paid any special, redundancy compensation or enhanced payment associated with the Sale or a change of control.

19. Insurance

19.1 Disclosure

Section 19.1 of the Disclosure Letter contains complete and accurate particulars of all current insurance policies and cover notes taken out in respect of the Company or the Business as at the Agreement Date (**Insurance**).

19.2 Coverage

The Insurance is current and in force and so far as the Vendor is aware, no fact or circumstance exists that would render any such Insurance void or unenforceable.

19.3 Effectiveness

The Company has at all times promptly paid all premiums in relation to each insurance policy and has not done or omitted to be done any thing that might render any such policy void or unenforceable or otherwise limit, prejudice or reduce recovery under any such policy and, to the Vendor's knowledge, no other circumstance exists that might render any such policy void or unenforceable or otherwise limit, prejudice or reduce recovery under any such policy.

19.4 Claims

There is no claim outstanding under any policy of insurance held by or for the benefit of the Company and so far as the Vendor is aware no circumstance exists that is likely to give rise to such a claim.

19.5 Claims not refused

Since the Balance Date, no insurance claims by the Company have been refused.

19.6 No notice

The Company has not been notified by any insurer that it is required or it is advisable for it to carry out any maintenance, repairs or other works in relation to any of its assets.

20. Tax

20.1 Full provision

The Estimated Completion Consideration Statement will make full provision or reserve for all Tax liable to be assessed on the Company or for which it may become liable, with respect to Tax on profits, gains, income and receipts, benefits and other items subject to Tax for any period ending on or before, and for any transactions, or Events or situations occurring (or deemed by law to occur) on or before, the Completion Date.

20.2 No income on disposal of capital assets

No income would arise if any asset of the Company were treated as having been disposed of on the Completion Date, except for any income or deemed income from the sale of trading stock within the meaning of section EB 2 of the Income Tax Act, any depreciation recovery income under section CG 1 of the Income Tax Act, or any income arising from a base price adjustment under section EW 31 of the Income Tax Act.

20.3 All returns made

The Company has made and filed all Tax returns with, and has made or supplied all registrations, elections, notices and information to the relevant Tax Authorities as is required by law. All such Tax returns, registrations, elections, notices and information supplied were correct, disclosed all material items, were consistent with the Tax return filing position, were made on a proper and timely basis and are not the subject of any dispute.

20.4 All tax payments and withholdings made

All Tax payments or withholdings of Tax required to be made by the Company before the Completion Date and each instalment of provisional tax of the Company in respect of periods commencing on or before Completion, will have been made, or will be made by the Completion Date and the Company (where required by law to do so before Completion Date)

has accounted, or will by the Completion Date account, to the relevant Tax Authority for any Tax so withheld by it on a timely basis

20.5 Loss offsets

Where any Tax liability of the Company for any period up to and including Completion Date is to be satisfied by a loss offset with another company the amount to be offset will not exceed the profit of the company in the group for the relevant period and:

- (a) the amount to be paid for those losses will not exceed the amount of Tax otherwise payable on the profits to be offset; and
- (b) the balance of any losses to be made available will be transferred by election by the loss company for no additional payment; and
- (c) the losses so transferred are and will remain available for offset by that company.

20.6 Records

The Company has kept those records and documents which it has been required by applicable Tax Legislation to keep, including:

- (a) copies of all information, declarations, certificates, notices, tax returns and any other documents submitted to the relevant Tax Authority;
- (b) tax invoices, and debit and credit notes;
- (c) all records required in relation to the Tax accounts;
- (d) all records necessary to support withholding tax positions adopted by or in respect of the Company, including without limited any certificates of residence or withholding tax relief claim forms; and
- (e) all records necessary for ascertaining the available subscribed capital of the Company and the available capital distribution amounts as defined in section CD 44 of the Income Tax Act

20.7 Binding rulings

All binding rulings received by the Company or which have been applied for by the Company have been disclosed to the Purchaser. The relevant arrangement entered into is not materially different from the arrangement identified in the binding ruling. There were no material omissions or misrepresentations in, or in connection with, the application for the binding ruling. Any assumption made by the Tax Authority about future events or a matter that is material to the ruling will not subsequently prove to be incorrect. Any conditions stipulated by the Tax Authority are satisfied.

20.8 No disputes

No Tax Authority has issued to the Company a Tax Claim or other written advice regarding or relating to the payment of or liability for any Tax or the reduction in any Relief which is unresolved as at the Agreement Date, and no Tax audit, review or investigation by any Tax Authority is being undertaken, or to the Vendor's knowledge, is pending, against or involving the Company.

20.9 Residence and place of business

The Company is resident in New Zealand for Tax purposes and is not resident in any other country or jurisdiction by operation of any double tax agreement or otherwise and:

- (a) has and has had no branch, agency, place of business or permanent establishment in a country outside New Zealand;
- (a) is not and has not been party to any arrangement pursuant to which the Company has engaged the services of any individual in a country outside New Zealand,

which may, in either case, result in the Company being subject to Tax in that other country.

20.10 Tax Memorandum Accounts

To the extent that the Company is required or elects to maintain a Tax Memorandum Account, those Tax Memorandum Accounts have been correctly maintained as required by the relevant Tax Legislation and none of those Tax Memorandum Accounts will have a credit or debit balance on the Completion Date which gives rise to a Tax liability or loss of or delay in any refund of Tax otherwise payable to the Company.

20.11 Goods and Services Tax

For the purposes of GST:

- (a) the Company has complied with all of the requirements of the applicable Tax Legislation;
- (b) the Company has not been a member of a GST group in New Zealand at any time;
- (c) all GST for which the Company was liable to account in respect of any taxable supply made (for GST purposes) on or before the day before the Completion Date, after taking account of any available GST input tax credits:
 - (i) has been properly accounted for, within the relevant legislative timeframe; or
 - (ii) has, if required, been retained in full by, and is available to, the Company pending payment to the relevant Tax Authority by the applicable due date (where such due date is after the Completion Date);
 - (iii) any change of use adjustment required to be made by the Company has been accounted for within the legislative timeframe; and
- (d) no GST input tax credit has been incorrectly claimed by the Company.

20.12 No tax consolidated group

The Company will not have any Tax liability in relation to another company as a result of being part of a consolidated group for income tax purposes (including a consolidated imputation group) or a GST group. No deemed income will arise to the Company under the income tax consolidated group regime as a consequence of the transactions contemplated by this Agreement.

20.13 Transfer pricing

The Company has complied in all respects with all of the requirements of the applicable Tax legislation relating to transfer pricing and cross border transactions between related parties and no adjustments under those regimes will be made by a Tax Authority in relation to any period or part period ending on or before Completion.

20.14 Depreciable property

The Company has properly claimed depreciation on all of its depreciable property, and the adjusted tax values and cost prices of all such depreciable property are as stated in the Company's asset register.

20.15 No sham, avoidance or evasion

The Company has not at any time entered into any sham transaction or arrangement, undertaking or scheme in order to obtain a Tax advantage through a Tax avoidance arrangement as defined in section YA 1 of the Income Tax Act or in section 76 of the GST Act. The Company has not obtained a Tax advantage through any fraud or evasion or committed any act or made any omission for which a shortfall penalty may be imposed under the TAA.

21. Data protection

(a) In this paragraph 21:

(i) **Data Protection Losses** means all liabilities and amounts, including all:

(A) costs (including legal costs), claims, demands, actions, settlements, ex-gratia payments, charges, procedures, expenses, losses and damages (including relating to material or non-material damage, which includes emotional distress);

(B) loss or damage to reputation, brand or goodwill;

(A) administrative fines, penalties, sanctions, liabilities or other remedies imposed by a Supervisory Authority, compensation paid to a Data Subject and the costs of compliance with investigations by a Supervisory Authority, in each case to the extent permitted by applicable laws and regulations.

(ii) **Data Subject** has the meaning given to it and the term 'individual' in the Data Protection Legislation;

(iii) **Personal Data** means 'personal information' or 'personal data', as defined in the Data Protection Legislation;

(iv) **Personal Data Breach** means a 'privacy breach' or a 'personal data breach', as defined in the Data Protection Legislation; and

(v) **Supervisory Authority** has the meaning given to it in the Data Protection Legislation and for the purposes of this Agreement includes any other regulator of each jurisdiction in which the Company operates and **Supervisory Authorities** shall be construed accordingly.

(b) To the Vendor's knowledge, the collection, use, storage, processing and disclosure of Personal Data by the Business:

(i) complies and has complied for the 24 months prior to the Agreement Date with the Data Protection Legislation and any other requirement applicable to the Company under any law, industry code or standard, guidelines, policy, contract or statement relating to privacy, data protection, surveillance and direct marketing, data security or the handling of personal information (**Privacy Requirements**);

- (ii) is consistent with the privacy policy and any notification of collection of personal information issued by the Company; and
- (iii) is documented by data protection policies and procedures managed and updated by the Company, which evidences compliance with the Privacy Requirements,

and, to the Vendor's knowledge, there are no facts, matters or circumstances that could reasonably be expected to give rise to unauthorised access to Personal Data controlled or processed by the Company or a breach of any Privacy Requirements or privacy policy.

- (c) There are no unresolved complaints about the Company's personal information handling practices or processing activities, nor is the Vendor aware of any facts, internal or external audits, internal investigations, business decisions or any other circumstances which would permit any Supervisory Authority or other third party to bring any claim with respect to, or resulting in, any Data Protection Losses. So far as the Vendor is aware, there is no fact or circumstance that may lead to any such complaint or investigation by a Supervisory Authority.
- (d) The Company holds all consents from individuals and other authorisations necessary to allow them to collect, hold, use, process and disclose personal information for the conduct of the Business as carried on as at the Agreement Date and at Completion and, so far as the Vendor is aware, no grounds exist for any person to claim compensation from the Company for breaches of applicable Privacy Requirements.
- (e) The Company has not received any notice from a Supervisory Authority claiming or asserting that it has failed to comply with any Privacy Requirements.
- (f) The Company has implemented the appropriate technical and organisational measures in line with globally recognised standards to ensure a high level of security appropriate to maintain Personal Data secured under the Privacy Requirements.
- (g) There have been no Personal Data Breaches.

Schedule 2: Purchaser Warranties

1. Authority

The Purchaser:

- (a) has obtained all necessary authorisations for the execution, delivery and performance of its obligations under this Agreement in accordance with its terms;
- (b) has full power to and capacity to enter into and perform its obligations under this Agreement; and
- (c) will not contravene any law by entering into or performing its obligations under this Agreement.

2. Binding effect

The Purchaser's obligations under this Agreement are valid and binding and enforceable against it in accordance with its terms, except as such enforceability may be limited by equitable principles, bankruptcy, insolvency, liquidation or other laws relating to creditors' rights and statutory limitations.

3. Solvency

The Purchaser:

- (a) is able to pay its debts as and when they fall due in the normal course of business; and
- (b) has assets the value of which is greater than the value of its liabilities, including contingent liabilities.

4. No insolvency action

No administrator, receiver or statutory or official manager has been appointed in respect of the Purchaser and no application or other process for the appointment of an administrator, interim liquidator or liquidator has been made, or resolution passed, for the administration, liquidation or dissolution of the Purchaser.

5. No insolvency circumstances

The Purchaser is not aware of any fact, matter or circumstance which with the passing of time, or giving of notice, or making of any court order, may result in the administration, liquidation, or the appointment of a receiver or statutory manager of the Purchaser.

6. No arrangements

The Purchaser has not entered into, or taken any steps to implement, a scheme of arrangement or other compromise or arrangement for the benefit of its creditors or any class of them.

7. Due incorporation

The Purchaser is validly incorporated, organised and subsisting in accordance with the laws of its place of incorporation.

8. Funds

At Completion the Purchaser will have available cash or available loan facilities which will at Completion provide the necessary cash resources to pay the Purchase Price and meet its other obligations under this Agreement.

9. Government Agency

No consent or approval by any Government Agency is required on the part of the Purchaser prior to Completion in connection with the execution and delivery of this Agreement or Completion.

10. Litigation

There are no:

- (a) proceedings that are pending or, to the knowledge of the Purchaser, threatened, and, to the knowledge of the Purchaser, claims or investigations; or
- (b) outstanding judgments,

in each case against or involving the Purchaser or any of its assets, as to which there is a reasonable possibility of adverse determination and, if so determined, would be reasonably expected to affect the ability of the Purchaser to enter into and perform its obligations under this Agreement.

Schedule 3: Vendor Parent Warranties

1. Due incorporation

The Vendor Parent is validly incorporated, organised and subsisting in accordance with the laws of its place of incorporation.

2. Corporate authorisation and power

The Vendor Parent:

- (a) has, subject to clause 3, obtained, or will obtain before Completion, all necessary authorisations for the execution, delivery and performance of its obligations under this Agreement in accordance with its terms;
- (b) has full corporate power and lawful authority, without any further consent of any other person, to execute and deliver this Agreement and to perform or cause to be performed its obligations under this Agreement; and
- (c) will not contravene any law by entering into or performing its obligations under this Agreement.

3. Legal and binding document

The Vendor Parent's obligations under this Agreement are valid and binding and enforceable against it in accordance with their terms, except as such enforceability may be limited by equitable principles, bankruptcy, insolvency, liquidation or other laws relating to creditors' rights and statutory limitations.

4. Solvency

The Vendor Parent:

- (a) is able to pay its debts as and when they fall due in the normal course of business; and
- (b) has assets the value of which is greater than the value of its liabilities, including contingent liabilities.

5. No insolvency action

No administrator, receiver or statutory or official manager has been appointed in respect of the Vendor Parent and no application or other process for the appointment of an administrator, interim liquidator or liquidator has been made, or resolution passed, for the administration, liquidation or dissolution of the Vendor Parent.

6. No insolvency circumstances

The Vendor Parent is not aware of any fact, matter or circumstance which with the passing of time, or giving of notice, or making of any court order, may result in the administration, liquidation, or the appointment of a receiver or statutory manager of the Vendor Parent.

7. No arrangements

The Vendor Parent has not entered into, or taken any steps to implement, a scheme of arrangement or other compromise or arrangement for the benefit of its creditors or any class of them.

8. Not a trustee

The Vendor Parent enters into and performs this Agreement on its own account and not as trustee or nominee of any other person.

9. Government Agency

No consent or approval by, notice to or registration with any Government Agency, is required on the part of the Vendor Parent prior to Completion in connection with the execution and delivery of this Agreement or Completion other than notice to the CSE.

10. Litigation

There are no:

- (a) proceedings that are pending or, to the knowledge of the Vendor Parent, threatened, and, to the knowledge of the Vendor Parent, claims or investigations; or
- (b) outstanding judgments,

in each case against or involving the Vendor Parent or any of its assets, as to which there is a reasonable possibility of adverse determination and, if so determined, would be reasonably expected to affect the ability of the Vendor Parent to enter into and perform its obligations under this Agreement.

Schedule 4: Form of Estimated Completion Consideration Statement and Actual Completion Consideration Statement

Estimated Completion Consideration Statement

Item	+ / -	Amount (CAD)
Enterprise Value		13,250,000
plus the Estimated Working Capital	+	[•]
less the Target Working Capital	-	[(•)]
plus the Estimated Cash	+	[•]
less the Estimated Indebtedness	-	[(•)]

Actual Completion Consideration Statement

Item	+ / -	Amount (CAD)
Enterprise Value		13,250,000
plus the Actual Working Capital	+	[•]
less the Target Working Capital	-	[(•)]
plus the Actual Cash	+	[•]
less the Actual Indebtedness	-	[(•)]