

**ARRANGEMENT AGREEMENT**

**THIS ARRANGEMENT AGREEMENT** is dated as of the 28 day of February, 2017.

**AMONG:**

**KONA BAY TECHNOLOGIES INC**, a company incorporated under the *Business Corporations Act* (British Columbia)

**(“KBY”)**

**OF THE FIRST PART**

**AND:**

**ACT360 MEDIA LTD.**, a company incorporated under the *Business Corporations Act* (British Columbia)

**(“ACT360”)**

**OF THE FIRST PART**

**AND:**

**HAPUNA VENTURES INC.**, a company incorporated under the *Business Corporations Act* (British Columbia)

**(“Hapuna”)**

**OF THE SECOND PART**

**AND:**

**BEXAR VENTURES INC.**, a company incorporated under the *Business Corporations Act* (British Columbia)

**(“Bexar”)**

**OF THE THIRD PART**

**WHEREAS:**

- (A) KBY wishes to proceed with a corporate restructuring by way of a Plan of Arrangement whereby:

- (i) KBY and ACT360 will transfer certain assets of KBY and ACT360 to:
  - (a) Hapuna in exchange for (1) a cash payment of \$55,000 on closing of the Plan of Arrangement (the “**Hapuna Cash Payment**”), (2) a promissory note in the principal amount of \$325,000 in favour of ACT360 bearing interest at a rate of 6% per annum and due three years from the Closing Date (the “**Hapuna Promissory Note**”) and (3) common shares of Hapuna; and
  - (b) Bexar in exchange for (1) a cash payment of \$55,000 on closing of the Plan of Arrangement (the “**Bexar Cash Payment**”), (2) a promissory note in the principal amount of \$200,000 in favour of ACT360, bearing interest at 6% per annum and due three years from the Closing Date (the “**Bexar Promissory Note**”) and (3) common shares of Bexar; and
- (ii) KBY will change its authorized share structure by altering the identifying name of the existing KBY Shares as KBY Class A Shares and by creating an unlimited number of KBY New Shares and by issuing: (a) one KBY New Share in exchange for each KBY Class A Share; (b) one Hapuna Share in exchange for every one KBY Class A Share; and (c) one Bexar Share in exchange for every one KBY Class A Share;
- (iii) Each Option to acquire one KBY Share will be deemed to be exchanged for one KBY New Option to acquire one KBY New Share at an exercise price equal to the original exercise price of the Option;
- (iv) The Warrant will be amended to entitle the holder to receive, upon due exercise of the Warrant, for the original exercise price, one KBY New Share for each KBY Share that was issuable upon due exercise of the Warrants immediately prior to the Effective Time.
- (v) The Debentures will be amended to entitle the holder to receive, upon due conversion of the Debenture, for the original conversion price, one KBY New Share for each KBY Share that was issuable upon due conversion of the Debentures immediately prior to the Effective Time.
- (B) KBY proposes to convene a meeting of the KBY Shareholders to consider the Arrangement pursuant to Section 288 of the BCA, on the terms and conditions set forth in the Plan of Arrangement attached as Exhibit II hereto; and
- (C) Each of the parties to this Agreement has agreed to participate in and support the Arrangement.

**NOW THEREFORE**, in consideration of the premises and the respective covenants and agreements herein contained, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by each of the parties hereto, the parties hereto hereby covenant and agree as follows:

**ARTICLE 1**  
**DEFINITIONS, INTERPRETATION AND EXHIBIT**

**1.1 Definitions.** In this Agreement, unless there is something in the subject matter or context inconsistent therewith, the following capitalized words and terms shall have the following meanings:

- (a) **“ACT360”** means ACT360 Media Ltd., a company incorporated pursuant to and existing under the BCA and a wholly owned subsidiary of KBY;
- (b) **“Agreement”** means this agreement including the exhibits attached hereto as the same may be supplemented or amended from time to time;
- (c) **“Arrangement”** means the arrangement pursuant to Section 288 of the BCA as contemplated by the provisions of this Agreement and the Plan of Arrangement;
- (d) **“Arrangement Provisions”** means Part 9, Division 5 of the BCA;
- (e) **“Arrangement Resolutions”** means the special resolution in respect to the Arrangement and other related matters to be considered at the KBY Meeting;
- (f) **“Assets”** means the assets of KBY described in Exhibit I hereto which are to be transferred to the KBY Subsidiaries under the Arrangement;
- (g) **“BCA”** means the *Business Corporations Act* (British Columbia), and the regulations thereunder, as now in effect and as they may be promulgated or amended from time to time;
- (h) **“Bexar”** means Bexar Ventures Inc., a company incorporated pursuant to and existing under the BCA;
- (i) **“Bexar Cash Payment”** means a cash payment of \$55,000 from Bexar to KBY on the Closing Date;
- (j) **“Bexar Promissory Note”** means a promissory note in the principal amount of \$200,000 in favour of ACT360 bearing interest at a rate of 6% per annum and due three years from the Closing Date;
- (k) **“Bexar Shareholder”** means a holder of Bexar Shares;
- (l) **“Bexar Shares”** means the voting common shares without par value which Bexar is authorized to issue as the same are constituted on the date hereof;
- (m) **“Board of Directors”** means the current and existing Board of Directors of KBY;

- (n) **“Business Day”** means a day which is not a Saturday, Sunday or statutory holiday in Vancouver, British Columbia;
- (o) **“Closing Date”** means April 1, 2017 or such other date agreed to by KBY and the KBY Subsidiaries but in any event no later than June 30, 2017;
- (p) **“Computershare”** means Computershare Trust Company of Canada;
- (q) **“Constating Documents”** means, in respect of KBY, the Notice of Articles and Articles under the BCA;
- (r) **“Court”** means the Supreme Court of British Columbia;
- (s) **“CSE”** means the Canadian Securities Exchange;
- (t) **“Debentures”** means the 17% convertible debentures of KBY whereby the principal amount may be converted into KBY Shares that are outstanding immediately prior to the Effective Time;
- (u) **“Debentureholder”** means a holder of Debentures;
- (v) **“Dissenting Shareholders”** means a KBY Shareholder who validly exercises rights of dissent under the Arrangement and who will be entitled to be paid fair value for his, her or its KBY Shares in accordance with the Interim Order and the Plan of Arrangement;
- (w) **“Dissenting Shares”** means the KBY Shares in which the KBY Dissenting Shareholders have exercised a right of dissent;
- (x) **“Effective Date”** means either (i) the date of the Final Order or (ii) such other date as the directors of KBY may determine, which election is made when the KBY directors have done so by resolution of the directors;
- (y) **“Effective Time”** means 9:00 a.m. (Vancouver time) on the Effective Date or such other time as KBY and the KBY Subsidiaries shall agree;
- (z) **“Final Order”** means the final order of the Court approving the Arrangement;
- (aa) **“Hapuna”** means Hapuna Ventures Inc., a company incorporated pursuant to and existing under the BCA;
- (bb) **“Hapuna Cash Payment”** means a cash payment of \$55,000 from Hapuna to KBY on the Closing Date;

- (cc) **“Hapuna Promissory Note”** means a promissory note in the principal amount of \$325,000 in favour of ACT360 bearing interest at a rate of 6% per annum and due three years from the Closing Date;
- (dd) **“Hapuna Shareholder”** means a holder of Hapuna Shares;
- (ee) **“Hapuna Shares”** means the voting common shares without par value which Hapuna is authorized to issue as the same are constituted on the date hereof;
- (ff) **“Information Circular”** means the management information circular of KBY to be sent to the KBY Shareholders in connection with the Meeting;
- (gg) **“Interim Order”** means the interim order of the Court providing advice and directions in connection with the Meeting and the Arrangement;
- (hh) **“KBY”** means Kona Bay Technologies Inc., a company existing under the BCA;
- (ii) **“KBY Class A Shares”** means the renamed and redesignated KBY Shares as described in section 3.1(a)(i) of the Plan of Arrangement;
- (jj) **“KBY New Shares”** means the new class of common shares without par value which KBY will create pursuant to section 3.1 of the Plan of Arrangement and which, immediately after the Effective Date, will be identical in every relevant respect to the KBY Shares;
- (kk) **“KBY Shareholders”** means holders of KBY Shares;
- (ll) **“KBY Shares”** means the common shares without par value which KBY is authorized to issue as the same are constituted on the date hereof;
- (mm) **“KBY Subsidiaries”** means Hapuna and Bexar;
- (nn) **“Meeting”** means the special meeting of the KBY Shareholders and any adjournments thereof to be held to, among other things, consider and, if deemed advisable, approve the Arrangement;
- (oo) **“Option Plan”** means the stock option plan of KBY;
- (pp) **“Options”** means the stock options granted pursuant to the Option Plan that are outstanding immediately prior to the Effective Time, and thereafter adjusted in accordance with the terms of the Plan of Arrangement, as the context so requires;
- (qq) **“Person”** means and includes an individual, sole proprietorship, partnership, unincorporated association, unincorporated syndicate, unincorporated organization, trust, body corporate, a trustee, executor, administrator or other legal representative and the Crown or any agency or instrumentality thereof;

- (rr) **“Plan of Arrangement”** means the plan of arrangement attached to this Agreement as Exhibit II as the same may be amended from time to time;
- (ss) **“Registrar”** means the British Columbia Registrar of Companies;
- (tt) **“TSX-V”** means the TSX Venture Exchange;
- (uu) **“Warrants”** means the share purchase warrants of KBY exercisable to acquire KBY Shares that are outstanding immediately prior to the Effective Time; and
- (vv) **“Warrantholder”** means a holder of Warrants.

**1.2 Currency.** All amounts of money which are referred to in this Agreement are expressed in lawful money of Canada unless otherwise specified.

**1.3 Interpretation Not Affected by Headings.** The division of this Agreement into articles, sections, subsection, paragraphs and subparagraphs and the insertion of headings are for convenience of reference only and shall not affect the construction or interpretation of the provisions of this Agreement. The terms “this Agreement”, “hereof”, “herein”, “hereunder” and similar expressions refer to this Agreement and the exhibits hereto as a whole and not to any particular article, section, subsection, paragraph or subparagraph hereof and include any agreement or instrument supplementary or ancillary hereto.

**1.4 Number and Gender.** In this Agreement, unless the context otherwise requires, words importing the singular shall include the plural and vice versa and words importing the use of either gender shall include both genders and neuter and words importing persons shall include firms and corporations.

**1.5 Date for any Action.** In the event that any date on which any action is required to be taken hereunder by KBY and the KBY Subsidiaries is not a Business Day in the place where the action is required to be taken, such action shall be required to be taken on the next succeeding day which is a Business Day in such place.

**1.6 Meaning.** Words and phrases used herein and defined in the BCA shall have the same meaning herein as in the BCA unless the context otherwise requires.

**1.7 Exhibits.** Attached hereto and deemed to be incorporated into and form part of this Agreement as Exhibit I is a description of the Assets and as Exhibit II is the Plan of Arrangement.

## **ARTICLE 2 ARRANGEMENT**

**2.1 Arrangement.** The parties agree to effect the Arrangement pursuant to the Plan of Arrangement and the Arrangement Provisions.

**2.2 Effective Date of Arrangement.** The Arrangement shall become effective on the Effective Date as set out in the Plan of Arrangement.

**2.3 Commitment to Effect.** Subject to termination of this Agreement pursuant to Article 6 hereof, the parties shall each use all commercially reasonable efforts and do all things reasonably required to cause the Plan of Arrangement to become effective by no later than June 30, 2017, or by such other date as KBY and the KBY Subsidiaries may determine, and in conjunction therewith to cause the conditions described in section 5.1 to be complied with prior to the Effective Date. Without limiting the generality of the foregoing, the parties shall proceed forthwith to apply for the Interim Order and KBY shall call the Meeting and mail the Information Circular to the KBY Shareholders.

**2.4 Filings.** Subject to the rights of termination contained in Article 6 hereof, upon the KBY Shareholders approving the Arrangement by special resolution in accordance with the provisions of the Interim Order and the BCA, KBY obtaining the Final Order and the other conditions contained in Article 5 hereof being complied with or waived, KBY on its behalf and on behalf of KBY shall file with the Registrar such information required to give effect to the Arrangement pursuant to the Arrangement Provisions, whereupon the transactions comprising the Arrangement shall occur and shall be deemed to have occur in the order set out therein without any act or formality.

### **ARTICLE 3 REPRESENTATIONS AND WARRANTIES**

**3.1 Representations and Warranties.** Each of the parties hereby represents and warrants to each of the other parties that:

- (a) it is a corporation duly incorporated and validly subsisting under the laws of its jurisdiction of incorporation, and has full capacity and authority to enter into this Agreement and to perform its covenants and obligations hereunder;
- (b) it has taken all corporate actions necessary to authorize the execution and delivery of this Agreement and this Agreement has been duly executed and delivered by it;
- (c) neither the execution and delivery of this Agreement nor the performance of any of its covenants and obligations hereunder will constitute a material default under, or be in any material contravention or breach of (i) any provision of its Constatng Documents or other governing corporate documents, (ii) any judgment, decree, order, law, statute, rule or regulation applicable to it, or (iii) any agreement or instrument to which it is a party or by which it is bound; and
- (d) no dissolution, winding up, bankruptcy, liquidation or similar proceedings has been commenced or are pending or proposed in respect of it.

## **ARTICLE 4 COVENANTS**

**4.1 Covenants.** Each of the parties covenants with the others that it will do and perform all such acts and things, and execute and deliver all such agreements, assurances, notices and other documents and instruments, as may reasonably be required to facilitate the carrying out of the intent and purpose of this Agreement.

**4.2 Interim Order and Final Order.** The parties acknowledge that KBY will apply to and obtain from the Court, pursuant to the Arrangement Provisions, the Interim Order providing for, among other things, the calling and holding of the Meeting for the purpose of considering and, if deemed advisable, approving and adopting the Arrangement and that the KBY Shareholders shall approve the Arrangement. The parties each covenant and agree that if the approval of the Arrangement by the KBY Shareholders as set out in section 5.1(b) hereof is obtained, KBY will thereafter (subject to the exercise of any discretionary authority granted to KBY's directors by the KBY Shareholders) take the necessary actions to submit the Arrangement to the Court for approval and apply for the Final Order and, subject to compliance with any of the other conditions provided for in section 5 hereof and to the rights of termination contained in section 6 hereof, file the material described in section 2.4.

**4.3 Options.** The parties agree that pursuant to the Arrangement, each Option to acquire one KBY Share will be deemed to be exchange for one KBY New Option to acquire one KBY New Share at an exercise price equal to the original exercise price of the Option.

**4.4 Warrants.** The Parties agree that pursuant to the Arrangement the Warrants will be amended to entitle the holder to receive, upon due exercise of the Warrant, for the original exercise price, one KBY New Share for each KBY Share that was issuable upon due exercise of the Warrants immediately prior to the Effective Time.

**4.5 Debentures.** The Parties agree that pursuant to the Arrangement the Debentures will be amended to entitle the holder to receive, upon due conversion of the Debenture, for the original conversion price, one KBY New Share for each KBY Share that was issuable upon due conversion of the Debentures immediately prior to the Effective Time.

## **ARTICLE 5 CONDITIONS**

**5.1 Conditions Precedent.** The respective obligations of the parties to complete the transactions contemplated by this Agreement shall be subject to the satisfaction of the following conditions:

- (a) the Interim Order shall have been granted in form and substance satisfactory to KBY and the KBY Subsidiaries;



- (b) the Arrangement and this Agreement, with or without amendment, shall have been approved and ratified at the Meeting by the KBY Shareholders in accordance with the Arrangement Provisions, the Constating Documents of KBY the Interim Order and the requirements of any applicable regulatory authorities;
- (c) the Final Order shall have been obtained in form and substance satisfactory to KBY and the KBY Subsidiaries;
- (d) the TSX-V shall have conditionally approved the Arrangement, including the listing of the KBY Class A Shares in substitution for the KBY Shares, the delisting of the KBY Class A Shares and in substitution the listing of the KBY New Shares, and either the CSE or the TSX-V shall have conditionally approved the listing of the Hapuna Shares and Bexar Shares issuable under the Arrangement, as of the Effective Date, subject to compliance with the requirements of either the CSE or the TSX-V;
- (e) all other consents, orders and approvals, including regulatory and judicial approvals and orders required or necessary or desirable for the completion of the transactions provided for in this Agreement and the Plan of Arrangement shall have been obtained or received from the Persons, authorities or bodies having jurisdiction in the circumstances each in form acceptable to KBY and the KBY Subsidiaries;
- (f) there shall not be in force any order or decree restraining or enjoining the consummation of the transactions contemplated by this Agreement and the Arrangement;
- (g) notices of dissent pursuant to section 5 of the Plan of Arrangement shall not have been delivered by KBY Shareholders holding greater than 5% of the outstanding KBY Shares; and
- (h) this Agreement shall not have been terminated under section 6 hereof.

Any of the conditions in this section 5.1 may be waived by KBY and the KBY Subsidiaries.

**5.2 Pre-Closing.** Unless this Agreement is terminated earlier pursuant to the provisions hereof, the parties shall meet at the offices of Northwest Law Group, Suite 704, 595 Howe Street, Vancouver, British Columbia V6C 2T5, at 5:00 a.m. on the Closing Date, or at such other location or at such other time or on such other date as they may mutually agree, and each of them shall deliver to the other of them:

- (a) the documents required to be delivered by it hereunder to complete the transactions contemplated hereby, provided that each such document required to be dated the Effective Date shall be dated as of, or become effective on, the Effective Date and shall be held in escrow to be released upon the occurrence of the Effective Date; and

- (b) written confirmation as to the satisfaction or waiver by it of the conditions in its favour contained in this Agreement.

**5.3 Merger of Conditions.** The conditions set out in section 5.1 hereof shall be conclusively deemed to have been satisfied, waived or released upon the occurrence of the Effective Date.

**5.4 Merger of Representations, Warranties and Covenants.** The representations and warranties in section 3.1 shall be conclusively deemed to be correct as of the Effective Date and the covenants in section 4.1 hereof shall be conclusively deemed to have been complied with in all respects as of the Effective Date, and each shall accordingly merge in and not survive the effectiveness of the Arrangement.

## **ARTICLE 6 AMENDMENT AND TERMINATION**

**6.1 Amendment.** Subject to any mandatory applicable restrictions under the Arrangement Provisions or the Final Order, this Agreement, including the Plan of Arrangement, may at any time and from time to time before or after the holding of the Meeting, but prior to the Effective Date, be amended by the written agreement of the parties hereto without, subject to applicable law, further notice to or authorization on the part of the KBY Shareholders.

**6.2 Termination.** Subject to section 6.3, this Agreement may at any time before or after the holding of the Meeting, and before or after the granting of the Final Order, but in each case prior to the Effective Date, be terminated by direction of the Board of Directors of KBY without further action on the part of the KBY Shareholders and nothing expressed or implied herein or in the Plan of Arrangement shall be construed as fettering the absolute discretion by the Board of Directors of KBY to elect to terminate this Agreement and discontinue efforts to effect the Arrangement for whatever reasons it may consider appropriate.

**6.3 Cessation of Right.** The right of KBY or any other party to amend or terminate the Plan of Arrangement pursuant to section 6.1 and section 6.2 shall be extinguished upon the occurrence of the Effective Date.

## **ARTICLE 7 GENERAL**

**7.1 Notices.** All notices which may or are required to be given pursuant to any provision of this Agreement shall be given or made in writing and shall be delivered or telecopies, addressed as follows:

in the case of KBY:

Suite 1116 – 207 West Hastings Street  
Vancouver, BC V6B 1H7  
Attention: Vincent Wong  
Facsimile: (604) 638-1553

in the case of ACT360:

Suite 1116 – 207 West Hastings Street  
Vancouver, BC V6B 1H7  
Attention: Vincent Wong  
Facsimile: (604) 638-1553

in the case of Hapuna:

Suite 1116 – 207 West Hastings Street  
Vancouver, BC V6B 1H7  
Attention: Vincent Wong  
Facsimile: (604) 638-1553

in the case of Bexar:

Suite 1116 – 207 West Hastings Street  
Vancouver, BC V6B 1H7  
Attention: Vincent Wong  
Facsimile: (604) 638-1553

in each case with a copy to:

Northwest Law Group  
Suite 704, 595 Howe Street  
Vancouver, BC V6C 2T5  
Attention: Charles C. Hethey  
Facsimile: (604) 687-5792

**7.2 Assignment.** None of the parties may assign its rights or obligations under this Agreement or the Arrangement without the prior written consent of the others of them.

**7.3 Binding Effect.** This Agreement and the Arrangement shall be binding upon and shall enure to the benefit of the parties and their respective successors and permitted assigns.

**7.4 Waiver.** Any waiver or release of the provisions of this Agreement, to be effective, must be in writing and executed by the party granting such waiver or release.

**7.5 Governing Law.** This Agreement shall be governed by and be construed in accordance with the laws of the Province of British Columbia and the laws of Canada applicable therein.

**7.6 Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original but all of which together shall constitute one and the same instrument.

**7.7 Expenses.** All expenses incurred by a party in connection with this Agreement, the Arrangement and the transactions contemplated hereby and thereby shall be borne by the party that incurred the expense or as otherwise mutually agreed by the parties.

**7.8 Entire Agreement.** This Agreement constitutes the entire agreement between the parties with respect to the subject matter of this Agreement and supersedes all prior and contemporaneous agreements, understandings, negotiations and discussions, whether oral or written, of the parties.

**7.9 Time of Essence.** Time is of the essence of this Agreement.

**IN WITNESS WHEREOF** the parties have executed this Agreement as of the date first above written.

**KONA BAY TECHNOLOGIES INC.**

Per: */s/“Vincent Wong”*

\_\_\_\_\_  
Authorized Signatory

**ACT360 MEDIA LTD.**

Per: */s/“Vincent Wong”*

\_\_\_\_\_  
Authorized Signatory

**HAPUNA VENTURES INC.**

Per: */s/“Vincent Wong”*

\_\_\_\_\_  
Authorized Signatory

**BEXAR VENTURES INC.**

Per: */s/“Vincent Wong”*

\_\_\_\_\_  
Authorized Signatory

**EXHIBIT I**

**TO THE ARRANGEMENT AGREEMENT DATED AS OF THE 28 DAY OF  
FEBRUARY, 2017 AMONG KONA BAY TECHNOLOGIES INC., ACT360 MEDIA  
LTD., HAPUNA VENTURES INC. AND BEXAR VENTURES INC.**

**ASSETS OF KONA BAY TECHNOLOGIES INC. AND ACT360 MEDIA LTD. TO BE  
TRANSFERRED TO THE KBY SUBSIDIARIES**

1. The transfer to Hapuna of all of KBY and ACT360's right, title and interest in any of the assets and intellectual property relating to the online advertising business of KBY and ACT360 (the "**Online Advertising Assets**").
2. The transfer to Bexar of all of KBY and ACT360's right, title and interest in any of the assets and intellectual property relating to the software as a service business of KBY and ACT360 (the "**SaaS Assets**").

## EXHIBIT II

### TO THE ARRANGEMENT AGREEMENT DATED AS OF THE 28 DAY OF FEBRUARY, 2017 AMONG KONA BAY TECHNOLOGIES INC., ACT360 MEDIA LTD., HAPUNA VENTURES INC. AND BEXAR VENTURES INC.

#### PLAN OF ARRANGEMENT UNDER PART 9, DIVISION 5 OF THE *BUSINESS CORPORATIONS ACT*

#### ARTICLE 1 DEFINITIONS AND INTERPRETATION

**1.1 Definitions.** In this Agreement, unless there is something in the subject matter or context inconsistent therewith, the following capitalized words and terms shall have the following meanings:

- (a) **“ACT360”** means ACT360 Media Ltd., a company incorporated pursuant to and existing under the BCA and a wholly owned subsidiary of KBY;
- (b) **“Arrangement”** means the arrangement pursuant to the Arrangement Provisions on the terms and conditions set out herein;
- (c) **“Arrangement Agreement”** means this arrangement agreement dated as of February 28, 2017 among KBY, Hapuna and Bexar to which this Exhibit is attached, as may be supplemented or amended from time to time;
- (d) **“Arrangement Provisions”** means Part 9, Division 5 of the BCA;
- (e) **“Assets”** means the Online Advertising Assets and the SaaS Assets;
- (f) **“Bexar”** means Bexar Ventures Inc., a company incorporated pursuant to and existing under the BCA;
- (g) **“Bexar Cash Payment”** means a cash payment of \$55,000 from Bexar to KBY on the Closing Date;
- (h) **“Bexar Promissory Note”** means a promissory note in the principal amount of \$200,000 in favour of ACT360 bearing interest at a rate of 6% per annum and due three years from the Closing Date;
- (i) **“Bexar Shareholder”** means a holder of Bexar Shares;
- (j) **“Bexar Shares”** means the voting common shares without par value which Bexar is authorized to issue as the same are constituted on the date hereof;

- (k) **“Board of Directors”** means the current and existing Board of Directors of KBY;
- (l) **“Business Day”** means a day which is not a Saturday, Sunday or statutory holiday in Vancouver, British Columbia;
- (m) **“BCA”** means the *Business Corporations Act* (British Columbia), as amended, and the regulations thereunder, as now in effect and as they may be promulgated or amended from time to time;
- (n) **“Closing Date”** means April 1, 2017 or such other date agreed to by KBY and the KBY Subsidiaries but in any event no later than June 30, 2017;
- (o) **“Computershare”** means Computershare Trust Company of Canada;
- (p) **“Court”** means the Supreme Court of British Columbia;
- (q) **“CSE”** means the Canadian Securities Exchange;
- (r) **“Debenture”** means the 17% convertible debentures of KBY whereby the principal amount may be converted into KBY Shares that are outstanding immediately prior to the Effective Time;
- (s) **“Debentureholder”** means a holder of Debentures;
- (t) **“Effective Date”** means either (i) the date of the Final Order or (ii) such other date as the directors of KBY and the may determine, which election is made when the KBY directors have done so by resolution of the directors;
- (u) **“Effective Time”** means 9:00 a.m. (Vancouver time) on the Effective Date or such other time as KBY and the KBY Subsidiaries shall agree;
- (v) **“Final Order”** means the final order of the Court approving the Arrangement;
- (w) **“Hapuna”** means Hapuna Ventures Inc., a company incorporated pursuant to and existing under the BCA;
- (x) **“Hapuna Cash Payment”** means a cash payment of \$55,000 from Hapuna to KBY on the Closing Date;
- (y) **“Hapuna Promissory Note”** means a promissory note in the principal amount of \$325,000 in favour of ACT360 bearing interest at a rate of 6% per annum and due three years from the Closing Date;
- (z) **“Hapuna Shareholder”** means a holder of Hapuna Shares;

- (aa) **“Hapuna Shares”** means the voting common shares without par value which Hapuna is authorized to issue as the same are constituted on the date hereof;
- (bb) **“Information Circular”** means the management information circular to be sent to the KBY Shareholders in connection with the Meeting;
- (cc) **“Interim Order”** means the interim order of the Court providing advice and directions in connection with the Meeting and the Arrangement;
- (dd) **“KBY”** means Kona Bay Technologies Inc., a company existing under the BCA;
- (ee) **“KBY Class A Shares”** means the renamed and redesignated KBY Shares as described in section 3.1(a)(i) of the Plan of Arrangement;
- (ff) **“KBY New Shares”** means the new class of common shares without par value which KBY will create pursuant to section 3.1 of the Plan of Arrangement and which, immediately after the Effective Date, will be identical in every relevant respect to the KBY Shares;
- (gg) **“KBY Shareholders”** means holders of KBY Shares;
- (hh) **“KBY Shares”** means the common shares without par value which KBY is authorized to issue as the same are constituted on the date hereof;
- (ii) **“KBY Subsidiaries”** means Hapuna and Bexar;
- (jj) **“Meeting”** means the special meeting of the KBY Shareholders and any adjournments thereof to be held to, among other things, consider and, if deemed advisable, approve the Arrangement;
- (kk) **“Online Advertising Assets”** means the assets comprising of KBY and ACT360’S online advertising business, as more particularly described in Exhibit I to the Arrangement Agreement;
- (ll) **“Option Plan”** means the stock option plan of KBY;
- (mm) **“Options”** means the stock options granted pursuant to the Option Plan that are outstanding immediately prior to the Effective Time, and thereafter adjusted in accordance with the terms of the Plan of Arrangement, as the context so requires;
- (nn) **“Plan of Arrangement”** means this plan of arrangement, as the same may be amended from time to time;
- (oo) **“SaaS Assets”** means the assets comprising of KBY and ACT360’S software as a service business, as more particularly described in Exhibit I to the Arrangement Agreement;



- (pp) “**Tax Act**” means the *Income Tax Act* (Canada), R.S.C. 1985 (5th Supp.) c.1, as amended;
- (qq) “**TSX-V**” means the TSX Venture Exchange;
- (rr) “**Warrants**” means the share purchase warrants of KBY exercisable to acquire KBY Shares that are outstanding immediately prior to the Effective Time; and
- (ss) “**Warrantholder**” means a holder of Warrants.

**1.2 Interpretation Not Affected by Headings.** The division of this Plan of Arrangement into articles, sections, subsections, paragraphs and subparagraphs and the insertion of headings are for convenience of reference only and shall not affect the construction or interpretation of this Plan of Arrangement. Unless otherwise specifically indicated, the terms “this Plan of Arrangement”, “hereof”, “hereunder” and similar expressions refer to this Plan of Arrangement as a whole and not to any particular article, section, subsection, paragraph or subparagraph and include any agreement or instrument supplementary or ancillary hereto.

**1.3 Number and Gender.** Unless the context otherwise requires, words importing the singular number only shall include the plural and vice versa, words importing the use of either gender shall include both genders and neuter and words importing persons shall include firms and corporations.

**1.4 Meaning.** Words and phrases used herein and defined in the BCA shall have the same meaning herein as in the BCA unless the context otherwise requires.

## **ARTICLE 2 ARRANGEMENT AGREEMENT**

**2.1 Arrangement Agreement.** This Plan of Arrangement is made pursuant and subject to the provisions of the Arrangement Agreement.

## **ARTICLE 3 THE ARRANGEMENT**

**3.1 The Arrangement.** On the Effective Date, the following shall occur and be deemed to occur in the following chronological order without further act or formality notwithstanding anything contained in the provisions attaching to any of the securities of KBY or KBY Subsidiaries, but subject to the provisions of Article 5:

- (a) at the Effective Time, the authorized share structure of KBY shall be changed by:
  - (i) altering the identifying name of all of the issued and unissued KBY Shares as Class A Shares; and
  - (ii) creating the KBY New Shares;

- (b) five (5) minutes after the Effective Time, KBY and ACT360 will transfer:
- (i) the Online Advertising Assets to Hapuna in exchange for (A) the Hapuna Cash Payment, (2) the Hapuna Promissory Note, and (C) that number of Hapuna Shares necessary to satisfy the obligation to issue Hapuna Shares to the KBY Shareholders pursuant to (c) below and having an aggregate fair market value equal to the fair market value of the Online Advertising Assets (less the amount of related liabilities of KBY being assumed by Hapuna); and
  - (ii) the SaaS Assets to Bexar in exchange for (A) the Bexar Cash Payment, (2) the Bexar Promissory Note, and (C) that number of Bexar Shares necessary to satisfy the obligation to issue Bexar Shares to the KBY Shareholders pursuant to (c) below and having an aggregate fair market value equal to the fair market value of the SaaS Assets (less the amount of related liabilities of KBY being assumed by Bexar), and

and KBY and each of Hapuna and Bexar will jointly elect pursuant to the terms of section 85 of the Tax Act at elected amounts to be determined by KBY within the limits set out in the Tax Act;

- (c) ten (10) minutes after the Effective Time, the KBY Shareholders will receive:
- (i) one KBY New Share in exchange for each KBY Class A Share outstanding on the Effective Date;
  - (ii) one Hapuna Share in exchange for each KBY Class A Share outstanding on the Effective Date;
  - (iii) one Bexar Share in exchange for each KBY Class A Share outstanding on the Effective Date,

and such KBY Shareholders shall cease to be the holders of the KBY Class A Shares so exchanged.

No fractional shares will be issued and KBY Shareholders will not receive any compensation in lieu thereof. The name of each Shareholder who is so deemed to exchange his, her or its KBY Class A Shares, shall be removed from the central securities register of KBY Class A Shares with respect to the KBY Class A Shares so exchanged and shall be added to the central securities registers of KBY New Shares, Hapuna Shares and Bexar Shares as the holder of the number of KBY New Shares, Hapuna Shares and Bexar Shares, deemed to have been received on the exchange. The aggregate paid up capital of the KBY New Shares will be equal to the paid up capital of the KBY Class A Shares immediately prior to the reorganization less the fair market value of the Hapuna Shares and Bexar Shares.

- (d) fifteen (15) minutes after the Effective Time, each Option to acquire one KBY Share will be deemed to be exchanged for one KBY New Option to acquire one KBY New Share at an exercise price equal to the original exercise price of the Option;
- (e) twenty (20) minutes after the Effective Time, the Warrants shall be deemed to be amended to entitle the Warrantholder to receive, upon due exercise of the Warrant, for the original exercise price, one KBY New Share for each KBY Share that was issuable upon due exercise of the Warrants immediately prior to the Effective Time;
- (f) twenty five (25) minutes after the Effective Time, the Debentures shall be deemed to be amended to entitle the Debentureholder to receive, upon due conversion of the Debenture, for the original conversion price, one KBY New Share for each KBY Share that was issuable upon due conversion of the Debentures immediately prior to the Effective Time;
- (g) the KBY Class A Shares, none of which will be allotted or issued once the steps referred to in Section 3.1(b) and (c) above are completed, will be cancelled and the authorized share structure of KBY will be changed by eliminating, if the KBY directors so chooses, the KBY Class A Shares.
- (h) KBY's Notice of Articles and Articles will be amended to reflect the change to its authorized share structure made pursuant to this Plan of Arrangement.

**3.2 No Fractional Shares.** Notwithstanding any other provision of this Arrangement, no fractional Hapuna Shares and Bexar Shares shall be distributed to the KBY Shareholders.

**3.3 Effective Date.** In section 3.1(c) the reference to a KBY Shareholder shall mean a person who is a KBY Shareholder on the Effective Date, subject to the provisions of Article 5.

**3.4 Deemed Time for Redemption.** In addition to the chronological order in which the transactions and events set out in section 3.1 shall occur and shall be deemed to occur, the time on the Effective Date for the exchange of each of Hapuna Shares and Bexar Shares for KBY Class A Shares set out in section 3.1(c) shall occur and shall be deemed to occur immediately after the time of listing of each of the Hapuna Shares and Bexar Shares on either the CSE or the TSX-V on the Effective Date.

**3.5 Deemed Fully Paid and Non-Assessable Shares.** All KBY New Shares, Hapuna Shares and Bexar Shares issued pursuant hereto shall be deemed to be validly issued and outstanding as fully paid and non-assessable shares for all purposes.

**3.6 Arrangement Effectiveness.** The Arrangement shall become final and conclusively binding on the KBY Shareholders, Hapuna Shareholders and Bexar Shareholders and each of KBY, Hapuna and Bexar on the Effective Date.

**3.7 Supplementary Actions.** Notwithstanding that the transactions and events set out in section 3.1 shall occur and shall be deemed to occur in the chronological order therein set out without any act or formality, each of KBY, Hapuna and Bexar shall be required to make, do and execute or cause and procure to be made, done and executed all such further acts, deeds, agreements, transfers, assurances, instruments or documents as may be require to give effect to, or further document or evidence, any of the transactions or events set out in section 3.1, including, without limitation, any resolutions of directors authorizing the issue, transfer or redemption of shares, any share transfer powers evidencing the transfer of shares and any receipt therefor, and any necessary additions to or deletions from share registers.

**3.8 Withholding Rights.** KBY, Hapuna and Bexar shall be entitled to deduct and withhold from the consideration or other amount payable to any KBY Shareholder, including to dissenting shareholders pursuant to Article 5, such amounts as KBY, Hapuna or Bexar is required, entitled or permitted to deduct and withhold with respect to such payment under the Tax Act, the United States Internal Revenue Code of 1986, as amended, or any provisions of any applicable federal, provincial, state, local or foreign tax law, in each case, as amended. To the extent that amounts are so withheld, such withheld amounts shall be treated for all purposes hereof as having been paid to the shareholder in respect of which such deduction and withholding was made, provided that such withheld amounts are actually remitted to the appropriate taxing authority.

## **ARTICLE 4 CERTIFICATES**

**4.1 KBY Class A Shares.** Recognizing that the KBY Shares shall be renamed and redesignated as KBY Class A Shares pursuant to section 3.1(d) and that the KBY Class A Shares shall be exchanged partially for KBY New Shares pursuant to section 3.1(c), KBY shall not issue replacement share certificates representing the KBY Class A shares.

**4.2 Hapuna and Bexar Shares.** Recognizing that each of the Hapuna Shares and Bexar Shares issued to KBY under section 3.1(b) shall be distributed by KBY to the KBY Shareholders pursuant to the provisions of section 3.1(c), each of Hapuna and Bexar shall issue one share certificate representing all of the Hapuna Shares and Bexar Shares registered in the name of KBY, which share certificate shall be held by KBY until such shares are distributed by KBY to the KBY Shareholders and such certificate shall then be cancelled.

**4.3 Hapuna and Bexar Share Certificates.** As soon as practicable following the Effective Date, each of Hapuna and Bexar shall cause to be issued to the registered holders of KBY Shares as of the Effective Date, share certificates representing the Hapuna Shares and Bexar Shares of which each such KBY Shareholder will be the registered holder at the close of business on the Effective Date, and shall cause such share certificates to be delivered or mailed to such registered shareholders.

**4.4 New Share Certificates.** From and after the Effective Date, share certificates representing KBY Shares not deemed to have been cancelled pursuant to Article 5 shall for all purposes be deemed to be share certificates representing KBY New Shares, and no new share certificates shall be issued with respect to the KBY New Shares issued in connection with the Arrangement.

**4.5 Interim Period.** Any KBY Shares traded after the Effective Date will represent KBY New Shares as of the Effective Date and shall not carry any rights to receive Hapuna Shares and Bexar Shares.

## **ARTICLE 5 RIGHTS OF DISSENT**

**5.1 Dissent Right.** Notwithstanding section 3.1 hereof, holders of KBY Shares may exercise rights of dissent (the “**Dissent Right**”) in connection with the Arrangement pursuant to the Interim Order and in the manner set forth in sections 237 to 247 of the BCA (the “**Dissent Procedures**”).

**5.2 Dealing with Dissenting Shares.** KBY Shareholders who duly exercise Dissent Rights with respect to their KBY Shares (“**Dissenting Shares**”) and who:

- (a) are ultimately entitled to be paid fair value for their Dissenting Shares shall be deemed to have transferred their Dissenting Shares to KBY for cancellation immediately before the Effective Date; or
- (b) for any reason are ultimately not entitled to be paid for their Dissenting Shares, shall be deemed to have participated in the Arrangement on the same basis on a non-dissenting KBY Shareholder and shall receive KBY New Shares, Hapuna Shares and Bexar Shares on the same basis as every other non-dissenting KBY Shareholder;

but in no case shall KBY be required to recognize such persons as holding KBY Shares on or after the Effective Date.

**5.3 Reservation of Hapuna and Bexar Shares.** If a KBY Shareholder exercises the Dissent Right, KBY shall on the Effective Date set aside and not distribute that portion of the Hapuna Shares and Bexar Shares which is attributable to the KBY Shares for which Dissent Rights have been exercised. If the dissenting KBY Shareholder is ultimately not entitled to be paid for the Dissenting Shares, KBY shall distribute to such KBY Shareholder his or her pro rata portion of the Hapuna Shares and Bexar Shares. If a KBY Shareholder duly complies with the Dissent Procedures and is ultimately entitled to be paid for their Dissenting Shares, then KBY shall retain the portion of the Hapuna Shares and Bexar Shares attributable to such KBY Shareholder and such shares will be dealt with as determined by the Board of Directors of KBY in its discretion.

## **ARTICLE 6 AMENDMENTS**

**6.1 General.** The Parties may amend, modify and/or supplement this Plan of Arrangement at any time and from time to time prior to the Effective Date, provided that each such amendment, modification and/or supplement must be:

- (i) set out in writing;

- (ii) filed with the Court and, if made following the Meeting, approved by the Court; and
- (iii) communicated to holders of KBY Shares, Hapuna Shares and Bexar Shares, as the case may be, if and as required by the Court.

**6.2 Prior to Meeting.** Any amendment, modification or supplement to this Plan of Arrangement may be proposed by KBY at any time prior to the Meeting with or without any other prior notice or communication, and if so proposed and accepted by the persons voting at the Meeting (other than as may be required under the Interim Order), shall become part of this Plan of Arrangement for all purposes.

**6.3 After Meeting.** KBY, with the consent of the other parties, may amend, modify and/or supplement this Plan of Arrangement at any time and from time to time after the Meeting and prior to the Effective Date with the approval of the Court.

**6.4 After Effective Date.** Any amendment, modification or supplement to this Plan of Arrangement may be made following the Effective Date but shall only be effective if it is consented to by the Parties, provided that such amendment, modification or supplement concerns a matter which, in the reasonable opinion of the Parties, is of an administrative nature required to better give effect to the implementation of this Plan of Arrangement and is not adverse to the financial or economic interests of any of the Parties or any former holder of KBY Shares, Hapuna Shares or Bexar Shares, as the case may be

## **ARTICLE 7 REFERENCE DATE**

**7.1 Reference Date.** This plan of arrangement is dated for reference February 28, 2017.