

TRADEMARK ASSIGNMENT

Electronic Version v1.1
 Stylesheet Version v1.1

SUBMISSION TYPE:		NEW ASSIGNMENT	
NATURE OF CONVEYANCE:		ASSIGNS THE ENTIRE INTEREST AND THE GOODWILL	
CONVEYING PARTY DATA			
Name	Formerly	Execution Date	Entity Type
GoPets		09/22/2009	LIMITED LIABILITY COMPANY: REPUBLIC OF KOREA
RECEIVING PARTY DATA			
Name:	Zynga Game Network Inc.		
Street Address:	365 Vermont Street		
City:	San Francisco		
State/Country:	CALIFORNIA		
Postal Code:	94103		
Entity Type:	CORPORATION: DELAWARE		
PROPERTY NUMBERS Total: 1			
Property Type	Number	Word Mark	
Registration Number:	3167446	GOPETS	
CORRESPONDENCE DATA			
Fax Number:	(858)272-0221		
<i>Correspondence will be sent via US Mail when the fax attempt is unsuccessful.</i>			
Phone:	858-272-0220		
Email:	trademarks@ipla.com		
Correspondent Name:	John M. Kim		
Address Line 1:	1940 Garnet Avenue		
Address Line 2:	Suite 230		
Address Line 4:	San Diego, CALIFORNIA 92109		
NAME OF SUBMITTER:	John M. Kim		
Signature:	/John M. Kim/		
Date:	11/15/2010		

OP \$40.00 3167446

Total Attachments: 24

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ASSET PURCHASE AGREEMENT

This ASSET PURCHASE AGREEMENT (this "*Agreement*") is entered into as of September 22, 2009 (the "*Agreement Date*") by and among Zynga Game Network Inc., a Delaware corporation (the "*Purchaser*"), Erik Bethke ("*Bethke*"), Michael Todorovic ("*Todorovic*"), and Symbiosis Games, LLC, a Delaware limited liability company ("*Seller*"). Bethke and Todorovic are the holders of all of the membership units of Seller and are referred to herein individually as a "*Member*" or collectively as the "*Members*".

RECITALS

- A. Seller is the developer, distributor and owner of the software application "GoPets" for Facebook and other social-networking platforms (the "*Key Asset*" as described in more detail below).
- B. Seller desires to sell and assign to the Purchaser, and the Purchaser desires to purchase and acquire from Seller, all of Seller's right, title and interest in and to all tangible and intangible assets, owned, held or used in connection with the Key Asset, including, but not limited to, the use of the Key Asset on all social-networking platforms and on any other current or future platform (the "*Asset Purchase*"), all upon the terms and subject to the conditions set forth in this Agreement.
- C. The Purchaser, Seller and the Members desire to make certain representations, warranties, covenants and other agreements in connection with the transactions contemplated hereby.

NOW THEREFORE, in consideration of the above recitals and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto, intending to be legally bound, do hereby agree as follows:

1. SALE AND PURCHASE OF ASSETS

1.1 Agreement to Sell and Purchase Assets.

1.1.1 Purchased Assets. Subject to the terms and conditions of this Agreement, on the Closing Date (as defined below), Seller shall sell, assign, transfer, convey and deliver to Purchaser (or cause to be sold, assigned, transferred, conveyed and delivered to Purchaser) and Purchaser shall purchase and acquire from Seller, all of Seller's right, title and interest in and to all of the following tangible and intangible assets, properties, rights and interests owned, held or used in connection with the Key Asset described below, free and clear of any and all Encumbrances whatsoever (collectively, the "*Purchased Assets*");

1.1.1.1 the following Intellectual Property Rights to the extent owned by Seller (collectively, the "*Purchased IP*");

all of the Intellectual Property Rights in and to: (i) the application "GoPets" for Facebook and all other social networking platforms, in all formats, including Source Code, object code or any other code related to the operation and maintenance of the GoPets application, as well as any related analytics and other tools or data related to the GoPets application ("*GoPets*"); (ii) the GoPets application key and secret; (iii) any artwork related to GoPets, including all PSD source files in existence; (iv) any three-dimensional models related to GoPets, (v) the Internet domain name

GoPets.com and any other domain names registered against GoPets, including, but not limited to, any domain names with the extensions .net, .biz, or .org; (vi) the documentation related to GoPets, including (1) any copyrights, copyright registrations and copyright applications held for use or used in connection with GoPets, documentation and content (collectively, the "*Purchased Copyrights*"), and (2) all of the Trade Secrets held for use or used in connection with GoPets, documentation and content (the "*Purchased Trade Secrets*"); and (vii) all of the trademarks, service marks, trademark registrations, service mark registrations, trademark applications and service mark applications set forth on Schedule 1.1.1.1 (collectively, the "*Purchased Marks*");

1.1.1.2 All rights of the Seller under the contracts (including all leases of Internet servers) listed on Schedule 1.1.1.2 attached hereto (collectively, the "*Assumed Contracts*"), including all rights to receive revenue from any such Assumed Contracts from and after the Closing Date;

1.1.1.3 Seller's financial records, marketing and sales information, pricing, marketing plans, business plans, financial and business projections, Customer Lists, correspondence, developer accounts, bug reports, legal rulings, terms of service, and other files and records, including all copies thereof (whether in hard-copy, magnetic or electronic form) relating exclusively to the Purchased Assets (the "*Purchased Records*");

1.1.1.4 All goodwill associated with the Purchased Assets;

1.1.2 *Other Assets.* Should it be determined at any time after the Closing Date that any tangible or intangible assets that, pursuant to this Agreement, should have been transferred to the Purchaser, are still in the possession of Seller, then such assets will be held in trust for the benefit of the Purchaser and such assets (and related rights) shall be delivered to the Purchaser by Seller (or Seller shall cause them to be delivered) promptly without additional charge.

1.1.3 *Electronic Deliveries.* Seller shall electronically transfer or transfer in another manner reasonably calculated and legally permitted to minimize or avoid the incurrence of transfer and sales Taxes all of the Purchased IP to the Purchaser promptly following the Closing Date and shall not deliver any Purchased IP to the Purchaser on any tangible medium provided the method of delivery does not adversely affect the condition, operability or usefulness of any Purchased IP. In the event any tangible Purchased Asset is inadvertently transferred to the Purchaser together with any Purchased IP, such tangible asset shall be returned to Seller, the Purchased IP thereon shall be removed by Seller, Seller shall transfer such tangible Purchased Asset back to the Purchaser without such Purchased IP, and the Purchaser shall irretrievably remove such Purchased IP that was originally acquired on a tangible medium from the Purchaser's computers or other electronic media.

1.2 Assumed Liabilities.

1.2.1 *Assumed Liabilities.* Subject to the terms and conditions of this Agreement, on the Closing Date, the Purchaser will assume and pay, perform and discharge when due the following liabilities (other than Retained Liabilities) related to the Purchased Assets (collectively, the "*Assumed Liabilities*");

- 1.2.1.1 All liabilities under the Assumed Contracts for periods occurring after the Closing Date (other than liabilities attributable to any failure by Seller to comply with the terms thereof prior to the Closing or liabilities arising or accruing prior to the Closing with respect to the performance under the Assumed Contracts prior to the Closing); and
- 1.2.1.2 All liabilities related to the Purchased Assets arising or accruing after the Closing Date, subject to the provisions of Article 7.
- 1.2.2 No Other Liabilities Assumed. As a material consideration and inducement to the Purchaser to enter into this Agreement, Seller will retain, and will be solely responsible for paying, performing and discharging when due, and the Purchaser will not assume or otherwise have any responsibility or liability for, any and all obligations and liabilities of Seller (whether now existing or hereafter arising) other than the Assumed Liabilities (the "*Retained Liabilities*").

1.3 Purchase Price

- 1.3.1 Payment of Purchase Price. As full and complete consideration for the sale, assignment, assumption, transfer, conveyance and delivery of the Purchased Assets, the Purchaser shall pay to the Seller at Closing an aggregate of Two Hundred Seventy Thousand Dollars (\$270,000) (the "*Purchase Price*"), of which Twenty-Seven Thousand Dollars (\$27,000) shall be placed in escrow in order to secure the indemnification obligations set forth in Section 7.2 (the "*Escrow Amount*"). To the extent any payments under this Agreement are subject to any applicable withholding or backup withholding and to the extent of any such withholding, the parties agree that such amounts shall be treated as having been paid to the Seller.
- 1.3.2 Allocation and Characterization of Purchase Price
- 1.3.2.1 Purchase Price. The Purchaser and Seller agree to allocate the Purchase Price among the Purchased Assets in accordance with Schedule 1.3 attached hereto (the "*Purchase Price Allocation*"). The Purchase Price Allocation shall be made in accordance with Section 1060 of the Code and the Treasury regulations thereunder. Any subsequent adjustments to the allocable Purchase Price shall be reflected in the Purchase Price Allocation in a manner consistent with Treasury Regulation §1.1060-1.
- 1.3.2.2 Consistent Treatment and Characterization of Amounts. For all Tax purposes, the Purchaser and Seller agrees to report the Asset Purchase and the other transactions contemplated in this Agreement in a manner consistent with the Purchase Price Allocation, and will not take any position inconsistent therewith in any Tax return, in any refund claim, in any litigation or otherwise, unless required to do so by a Governmental Authority its own Section 1060 statements and forms in accordance with applicable Tax laws, and each shall execute and deliver to each other such statements and forms as are reasonably requested by the other party.

1.4 Closing; Payment

- 1.4.1 The closing of the Asset Purchase and the other transactions contemplated by this Agreement (the "*Closing*") shall take place at the Company's offices at 444 De Haro Street, San Francisco, CA at 1:00 p.m., local time, concurrently with the execution and

delivery of this Agreement. The date on which the Closing occurs shall be referred to herein as the "*Closing Date*."

1.4.1.1 As full and complete consideration for the sale, assignment, assumption, transfer, conveyance and delivery of the Purchased Assets by the Seller to the Purchaser, the Purchaser shall pay or cause to be paid the Purchase Price, less the Escrow Amount, by wire transfer in United States dollars of immediately available funds to such bank account or accounts specified by the Seller to the Purchaser in writing before the Closing Date.

1.5 **Further Assurances.** In case at any time after the Closing Date, any further action is necessary or desirable to carry out the purposes of this Agreement or the Ancillary Agreements, each of the parties hereto shall, at its own expense, execute and deliver such documents and other papers upon request and take such further actions as may be reasonably required to carry out the provisions of this Agreement including to effect fully and perfect the transfer or license, as the case may be, to the Purchaser of any and all of the Purchased Assets and the Assumed Contracts and to give effect to the Asset Purchase and the other transactions contemplated by this Agreement or the Ancillary Agreements. From and after the Closing Date, Seller agrees to convey, transfer, and assign to the Purchaser, free and clear of all Encumbrances, any tangible or intangible rights, properties or assets then held by Seller, the conveyance, transfer or assignment of which would have been necessary for representations and warranties of Seller herein to be true and correct as of the Closing Date, or the conveyance, transfer or assignment of which was or is required by the covenants of Seller contained in this Agreement. If, after the Closing Date, the Purchaser or Seller discovers a contract related to the Key Asset or the Purchased Assets that was not disclosed or assigned to the Purchaser or a Purchased Asset that was not transferred to the Purchaser pursuant to the Bill of Sale or otherwise, then, without limiting any of the Purchaser's other rights under this Agreement, the Purchaser may elect to assume such contract or receive such Purchased Asset. If the Purchaser elects to assume such contract or receive such Purchased Asset, then Seller shall use its commercially reasonable efforts to obtain the consents to the assignment of such contracts or transfer of such Purchased Assets. Notwithstanding anything in this Agreement or any Ancillary Agreement to the contrary, no party shall be required to make any additional representations or warranties or to incur any material expense or potential exposure to legal liability pursuant to this Section.

1.6 **Assignment of Contracts and Rights.** Notwithstanding anything in this Agreement to the contrary, this Agreement shall not constitute an agreement to assign any Purchased Asset or any claim or right or any benefit arising thereunder or resulting therefrom if an attempted assignment thereof, without consent of a third party thereto, would constitute a breach or other contravention thereof or in any way adversely affect the rights of the Purchaser or Seller thereunder. After the Closing, the Purchaser and Seller will use their commercially reasonable efforts (but without any payment of money by the Purchaser or Seller) to obtain the consent of the other parties to any such Purchased Asset or claim or right or any benefit arising thereunder for the assignment thereof to the Purchaser or as the Purchaser may otherwise reasonably request. If such consent is not obtained and if an attempted assignment without such consent would be ineffective or would constitute a breach of any contract, commitment, duty or obligation on the part of Seller, or would adversely affect the rights thereunder so that the Purchaser would not in fact receive all of the economic benefits of such rights, the Purchaser and Seller will cooperate in a mutually agreeable arrangement under which the Purchaser would obtain the benefits and assume the obligations thereunder in accordance with this Agreement, including subcontracting, sublicensing or subleasing to the Purchaser, or under which Seller would enforce for the benefit of the Purchaser, with the Purchaser assuming Seller's obligations, any and all rights of Seller against a third party

thereto (the "*Purchaser Subcontracts*"). Each party hereto will promptly pay to the other party or parties when received all monies received by the former party under any of the Assumed Contracts or Purchaser Subcontracts after the Closing that belong to the other party or parties.

1.7 **Tax Consequences.** No party makes any representations or warranties to the other parties regarding the Tax treatment of the Asset Purchase, or any of the Tax consequences to the other parties or to the other parties' stockholders or members, under this Agreement or any of the other transactions or agreements contemplated hereby. Each party acknowledges that it is relying solely on its own Tax advisors in connection with this Agreement and the other transactions and agreements contemplated hereby.

1.8 **Withholding Rights.** The Purchaser shall be entitled to deduct and withhold from the consideration otherwise deliverable under this Agreement, and from any other payments otherwise required pursuant to this Agreement, to Seller, such amounts as the Purchaser is required to deduct and withhold with respect to any such deliveries and payments under any provision of state, local, provincial or foreign Tax law. To the extent that amounts are so withheld, such withheld amounts shall be treated for all purposes of this Agreement as having been delivered and paid to such holders in respect of which such deduction and withholding was made.

2. REPRESENTATIONS AND WARRANTIES OF SELLER AND MEMBERS

Subject to the disclosures set forth in the disclosure letter of Seller delivered to the Purchaser concurrently with the parties' execution of this Agreement (the "*Seller Disclosure Letter*") (each of which disclosures, in order to be effective, shall clearly indicate the Section and, if applicable, the Subsection of this Article 2 to which it relates (provided, that if any fact or item disclosed in any section of the Seller Disclosure Letter shall be relevant to any other Section or Subsection of this Article 2, then such fact or item shall be deemed to be disclosed with respect to such other Section or Subsection of this Agreement, but only to the extent to which it is readily apparent on its face that such fact or item relates to such other Section or Subsection), and each of which disclosures shall also be deemed to be representations and warranties made by Seller to the Purchaser under this Article 2), each of Seller and each Member represents and warrants to the Purchaser that the following statements are true and correct as of the Agreement Date:

2.1 **Organization; Good Standing.** Seller is duly organized, validly existing and in good standing under the laws of the state of its formation.

2.2 **Authority; Validity.**

2.2.1 Each of Seller and such Member has full power and authority to execute and deliver this Agreement and the Ancillary Agreements to which it is a party and to perform its obligations under this Agreement and such Ancillary Agreements.

2.2.2 All corporate action on the part of Seller, its officers, directors, and members that is necessary for the due authorization, execution, delivery of and the performance of all obligations of Seller under this Agreement and each of the Ancillary Agreements has been taken.

2.2.3 This Agreement and the Ancillary Agreements to which Seller or such Member is a party have been duly executed and delivered by Seller or such Member, as applicable, and, assuming due execution and delivery by the Purchaser, constitute valid and binding

obligations of such party enforceable against such party in accordance with their respective terms, except as may be limited by (i) applicable bankruptcy, insolvency, reorganization or other laws of general application relating to or affecting the enforcement of creditors' rights generally and (ii) the effect of rules of law governing the availability of equitable remedies.

2.3 **No Violations or Required Consents.** Neither the execution and delivery of this Agreement and the Ancillary Agreements, nor the consummation of any of the Asset Purchase and the other transactions contemplated hereby or thereby, will: (a) conflict with or (with or without notice or lapse of time, or both) result in a violation of (i) any provision of the certificate or articles of incorporation, bylaws or other organizational documents of Seller, as currently in effect, or (ii) any Law applicable to Seller, including without limitation Laws relating to privacy, except for such violations that would not, individually or in the aggregate, have a material adverse effect on the ability of Seller to consummate the Asset Purchase and the other transactions contemplated hereby or thereby; (b) result in the imposition or creation of any Encumbrance upon or with respect to any of the Purchased Assets; or (c) result (with or without notice or lapse of time, or both) in any breach of or constitute a default under, or give to others any rights of termination, amendment, acceleration or cancellation of any provision of any Assumed Contract.

2.4 **Litigation.** There is no Litigation (as defined below) now pending before any court, federal, state, provincial or local administrative agency, or other Governmental Authority, or, to the knowledge of Seller or any Member, threatened, against or involving Seller, relating to the Key Asset or the Purchased Assets. As used in this Agreement, the term "***Litigation***" shall mean any litigation, legal action, arbitration, proceeding, material demand, claim, cause of action or investigation heard in law or equity before any Governmental Authority or arbitrator or arbitration panel.

To the knowledge of Seller and each Member, there is no basis for any Person to assert a claim against Seller based upon: (a) Seller entering into this Agreement or any Ancillary Agreement or consummating any of the Asset Purchase and the other transactions contemplated by this Agreement or any Ancillary Agreement; (b) any confidentiality or similar agreement entered into by Seller; or (c) any claim that Seller has agreed to sell or dispose of all or any substantial portion of the Purchased Assets or the Key Asset to any party other than the Purchaser; (d) any challenge or contest to Seller's right, title or ownership of any of the Purchased Assets, or seeks to impose an Encumbrance on, or a transfer of title or ownership of, any Purchased Asset; (e) any claim that seeks to enjoin, prevent or hinder operation of the Key Asset, the sale, license, marketing or distribution of the Key Asset or the consummation of any of the Asset Purchase and the other transactions contemplated by this Agreement or any of the Ancillary Agreements; or (f) any claim that would impair or have an adverse affect on the Purchaser's right or ability to use or exploit the Key Asset or any of the Purchased Assets or impair or have an adverse effect on the value of the Key Asset or any Purchased Asset.

There is no Litigation initiated by Seller currently pending involving the Key Asset or any of the Purchased Assets or any Litigation that Seller intends to initiate involving the Key Asset or any of the Purchased Assets.

2.5 **Title to and Condition of Purchased Assets**

2.5.1 Seller has good, valid and marketable title to the Key Asset and the Purchased Assets, and the Key Asset and all of the Purchased Assets are free and clear of all Encumbrances. Neither the Key Asset nor any of the Purchased Assets is licensed from any third party,

and neither the Key Asset nor any of the Purchased Assets is licensed to any third party, other than under contracts (including online terms of use and terms of service) entered into with users in the ordinary course of business, and granting such users the right to use and display the Key Asset, pursuant to Seller's standard unmodified form of such contracts (copies of which have been made available to counsel to the Purchaser).

2.5.2 Title to the Key Asset and all of the Purchased Assets is freely transferable from Seller to the Purchaser free and clear of all Encumbrances without obtaining the consent or approval of any Person, and without payment to any third party.

2.5.3 The Purchased Assets constitute all assets, properties, rights and Intellectual Property Rights that are necessary and desirable to enable the Purchaser to own, conduct, operate and continue the Key Asset and to sell and otherwise enjoy full rights to commercial exploitation of the Key Asset and the Purchased Assets without: (i) the need for the Purchaser to acquire or license any other asset, property or Intellectual Property Right, and (ii) the breach or violation of any contract or commitment.

2.6 Taxes.

2.6.1 Seller has no unpaid Taxes that relate to the Key Asset or any of the Purchased Assets for which the Purchaser would be liable as a transferee of such assets.

2.6.2 There is no pending dispute or claim concerning any liability for Taxes of Seller relating to the Purchased Assets claimed or raised by any Governmental Entity.

2.7 Assumed Contracts.

2.7.1 All of the Assumed Contracts are valid and in full force and effect, and true, correct and complete copies of each has been delivered to the Purchaser.

2.7.2 Seller has performed in all material respects all of the obligations required to be performed by it to date under the Assumed Contracts. To the knowledge of Seller and each Member, no other party to any Assumed Contract is in material breach or default thereunder. No event has occurred, and no circumstance or condition exists, that (with or without notice or lapse of time, or both) will, or would reasonably be expected to, (i) result in a material breach or default on the part of Seller or, to the knowledge of Seller and each Member, on the part of any other party, to any Assumed Contract, that is continuing unremedied, or (ii) give any third party, (A) the right to declare a default or exercise any remedy under any Assumed Contract, (B) the right to a refund, rebate, chargeback or penalty under any Assumed Contract, (C) the right to accelerate the maturity or performance of any obligation of Seller under any Assumed Contract, or (D) the right to cancel, terminate or modify any Assumed Contract. Neither Seller nor any Member has received any notice or other communication regarding any actual or possible violation or breach of, or default under, any Assumed Contract and, to the knowledge of Seller and each Member, no other party to any such Assumed Contract is in breach thereof or has failed to perform thereunder. Seller has paid all amounts owing under the Assumed Contracts that are currently due and payable.

2.8 Intellectual Property.

- 2.8.1 Seller owns free and clear of all Encumbrances whatsoever and has good, valid and exclusive title to all of the Purchased IP. The Purchased IP and the Assumed Contracts will provide the Purchaser with all Intellectual Property Rights necessary to use the Key Asset as presently being used by Seller (*provided, however*, with respect to patents, the representation in this sentence is made only to the knowledge of Seller and each Member). The execution, delivery and performance of this Agreement will not, in accordance with its terms, cause the forfeiture or termination of, or give rise to a right of forfeiture or termination of, any Purchased IP right, or impair the right of Purchaser to use, possess, sell or license the Purchased IP or portion thereof.
- 2.8.2 Schedule 2.8.2 of the Seller Disclosure Letter lists any and all Seller Registered Intellectual Property included in the Purchased IP including the jurisdictions in which each such item of intellectual property has been issued or registered or in which any application for such issuance and registration has been filed, or in which any other filing or recordation has been made. To the knowledge of Seller and each Member, all Seller Registered Intellectual Property, if any, is valid and enforceable. True, correct and complete copies of all forms of non-disclosure or confidentiality agreements utilized to protect the Purchased IP have been provided to the Purchaser.
- 2.8.3 Seller owns or has the unrestricted right to use, sell, license and dispose of, and without limitation otherwise exercise all Purchased IP without payment of any kind to any third party. Seller has taken commercially reasonable steps to preserve its legal rights in, and the value and secrecy of, any Purchased Trade Secrets. Seller has not granted, and there are not outstanding, any options, licenses or agreements of any kind relating to any Purchased IP nor is Seller bound by or a party to any option, license or agreement of any kind with respect to any Purchased IP other than non-exclusive licenses entered into in the ordinary course of business with users, pursuant to Seller's standard unmodified form of license agreement (copies of which have been made available to counsel to the Purchaser). Seller has not licensed any of the Purchased IP to any third party on an exclusive basis or allowed any third party the right to sublicense any Purchased IP. Seller is not obligated to pay any royalties or other payments to third parties with respect to the marketing, sale, distribution, development, manufacture, license or use of any Purchased IP. To the extent that any third party Intellectual Property Rights are incorporated into, integrated or bundled with, or used by Seller in the development, manufacture or compilation of any of the Purchased IP, Seller has a written agreement (which may include online terms of use or terms of service and/or unsigned open source licenses) with such third party pursuant to which Seller (i) has obtained complete, unencumbered and unrestricted ownership of, and is the exclusive owner of such Intellectual Property Rights by operation of law or by valid assignment, or (ii) has obtained licenses (sufficient for the conduct of his business as currently conducted by Seller) to all such third party Intellectual Property Rights.
- 2.8.4 (i) When used in the manner currently used in the Key Asset, the Purchased IP has not, does not and will not infringe, misappropriate or violate any of the Intellectual Property Rights of any other Person, and (ii) there is no substantial basis for a claim that the design, development, manufacturing, reproduction, marketing, licensing, sale, offer for sale, importation, distribution, provision, maintenance, support and/or use of the Purchased IP as used in the manner currently used in or in connection with the operation of the Key Asset as currently conducted is infringing or has infringed or misappropriated

any Intellectual Property Rights of any third party. Seller has not been sued in any suit or proceeding, or received any written claim or notice of infringement or potential infringement of the Intellectual Property Rights of any other Person by the Purchased IP or which contests the validity, ownership or right of Seller to exercise or exploit any Purchased IP.

- 2.8.5 No current or former employee, consultant or independent contractor of Seller has any right, license, claim or interest whatsoever in or with respect to any of the Purchased IP. No third party has assigned ownership of any technology, software or other copyrightable, patentable or otherwise proprietary work product to Seller that is included in the Purchased IP.
- 2.8.6 Neither Seller nor, to the knowledge of Seller or any Member, any other Person then acting on Seller's behalf, has disclosed, delivered or licensed to any Person, agreed to disclose, deliver or license to any Person, any Source Code included in the Purchased IP (the "*Seller Source Code*").
- 2.9 **Compliance with Laws.** Seller is in compliance with all requirements of Law, including without limitation any applicable privacy and data security Laws relating to the use, collection, storage, disclosure and transfer of any personally identifiable information, but only with respect to the Key Asset and the Purchased Assets, or by which the Purchased Assets or the Key Asset are bound or affected. Neither Seller nor any Member has received a complaint regarding Seller's collection, use or disclosure of personally identifiable information in connection with the Key Asset or the Purchased Assets.
- 2.10 **Seller Records.** Seller has made available to the Purchaser for examination all records and all documents and information listed in the Schedules and Exhibits to this Agreement and the Seller Disclosure Letter.
- 2.11 **No Brokers.** Seller is not obligated for the payment of fees or expenses of any investment banker, broker or finder in connection with the origin, negotiation or execution of this Agreement or the Ancillary Agreements or in connection with the Asset Purchase or any of the other transactions contemplated hereby or thereby.
- 2.12 **No Other Agreements to Sell the Purchased Assets.** Seller does not have any legal obligation, absolute or contingent, to any Person to sell the Purchased Assets or to enter into any agreement with respect thereto.
- 2.13 **Full Disclosure.** Seller and each Member have disclosed all facts known to Seller and such Member that are material to the Key Asset and/or the Purchased Assets to the Purchaser. No representation or warranty by Seller or any Member in this Agreement or any Ancillary Agreement, or other certificate or document delivered or to be delivered by Seller or any Member under this Agreement or any Ancillary Agreement, contains any untrue statement of a material fact or omits to state any material fact necessary, in order to make the statement made herein or therein, in light of the circumstances under which they were made, not misleading.

3. **REPRESENTATIONS AND WARRANTIES OF THE PURCHASER**

The Purchaser represents and warrants to Seller as follows:

- 3.1 **Organization; Good Standing.** The Purchaser is duly organized, validly existing and in good standing under the laws of the State of Delaware.
- 3.2 **Authority; Validity.**
- 3.2.1 The Purchaser has the right, power and authority to enter into and perform its obligations under this Agreement and the Ancillary Agreements to which it is a party and to perform its obligations under this Agreement and such Ancillary Agreements.
- 3.2.2 All corporate action on the part of the Purchaser, its officers, directors and stockholders that is necessary for the due authorization, execution, delivery of and the performance of all obligations of the Purchaser under this Agreement and each of the Ancillary Agreements to which it is a party has been taken.
- 3.2.3 Purchaser is not required to obtain any consent, approval, order or authorization of, or registration, qualification, designation, declaration or filing with, any Governmental Authority or any third party in connection with the Asset Purchase and the other transactions contemplated hereby, except for such consents, approvals, orders, authorizations, registrations, qualifications, designations, declarations or filings, which if not obtained or made, would not adversely affect the ability of the Purchaser to consummate the transactions contemplated hereby or under any of the Ancillary Agreements to which it is a party.
- 3.2.4 This Agreement and the Ancillary Agreements to which the Purchaser is a party have been duly executed and delivered by the Purchaser and, assuming due execution and delivery by Seller and each Member (if applicable) constitute valid and binding obligations of the Purchaser enforceable against the Purchaser in accordance with their respective terms, except as may be limited by (a) applicable bankruptcy, insolvency, reorganization or other laws of general application relating to or affecting the enforcement of creditors' rights generally and (b) the effect of rules of law governing the availability of equitable remedies.
- 3.3 **No Violations.** Neither the execution and delivery of this Agreement or any of the Ancillary Agreements, nor the consummation of any of the Asset Purchase and the other transactions contemplated hereby or thereby, will conflict with or (with or without notice or lapse of time, or both) result in a violation of (i) any provision of the certificate of incorporation, bylaws or other organizational documents of the Purchaser, as currently in effect, or (ii) any Law applicable to the Purchaser including without limitation Laws relating to privacy, except for such violations that would not, individually or in the aggregate, have a material adverse effect on the ability of the Purchaser to consummate the Asset Purchase and the other transactions contemplated hereby or thereby.
- 3.4 **No Brokers.** The Purchaser is not obligated for the payment of fees or expenses of any investment banker, broker or finder in connection with the origin, negotiation or execution of this Agreement or the Ancillary Agreements or in connection with the Asset Purchase or any of the other transactions contemplated hereby or thereby.
- 3.5 **Payment of Purchase Price.** As of the Closing, the Purchaser has sufficient assets and resources to pay the Purchase Price and to perform its obligations hereunder, and the Purchaser will not be rendered insolvent by its payment of the Purchase Price or the consummation of any other transaction contemplated by this Agreement.

4. COVENANTS

4.1 Confidentiality.

4.1.1 The Purchaser, Seller and each Member recognize that the parties to this Agreement have received and will receive Confidential Information (as defined below) concerning the other during the course of the Asset Purchase negotiations and preparations. Accordingly, the parties agree: (i) to maintain the other party's Confidential Information in strict confidence; (ii) to direct their respective directors, officers, employees, agents or advisors (including, without limitation, attorneys, accountants, consultants, bankers, financial advisors and members of advisory boards) (collectively, "*Representatives*") not to disclose or use to the detriment of the disclosing party, any Confidential Information (iii) not to disclose such Confidential Information to any third parties; and (iv) not to use any such Confidential Information for any purpose except to consummate the Asset Purchase and related transactions. Each party may disclose the Confidential Information of another party to its Representatives who have a bona fide need to know such Confidential Information for the purpose of consummating the Asset Purchase and related transactions, but solely to the extent necessary to consummate the Asset Purchase and related transactions and for no other purpose. The provisions of this Section 4.1 will not restrict a party from disclosing another party's Confidential Information to the extent required by any law or regulation; *provided that* the party required to make such a disclosure uses reasonable efforts to give the other party reasonable advance notice of such required disclosure in order to enable the other party to prevent or limit such disclosure.

4.1.2 For purposes of this Agreement, "*Confidential Information*" means (i) all trade secrets or confidential or proprietary information designated as such in writing by the disclosing party, whether by letter or by the use of an appropriate proprietary stamp or legend, prior to or at the time any such trade secret or confidential or proprietary information is disclosed by the disclosing party to the recipient or (ii) information which is orally or visually disclosed to the recipient by the disclosing party and is received under circumstances that the Recipient knows or should reasonably be expected to understand the confidential and proprietary nature of such information. In addition, the term "*Confidential Information*" shall be deemed to include: (a) any notes, analyses, compilations, studies, interpretations, memoranda or other documents prepared by the recipient or its Representatives which contain, reflect or are based upon, in whole or in part, any Confidential Information furnished to the recipient or its Representatives pursuant hereto; and (b) the existence or status of, and any information concerning, the discussions between the parties concerning the Asset Purchase; *provided, however*, that Confidential Information will not include information that (i) is now or hereafter becomes generally known or available to the public, through no act or omission on the part of the receiving party; (ii) was known by the receiving party prior to receiving such information from the disclosing party and without restriction as to use or disclosure; (iii) is rightfully acquired by the receiving party from a third party who has the right to disclose it and who provides it without restriction as to use or disclosure; or (iv) is independently developed by the receiving party without access to any Confidential Information of the disclosing party.

4.1.3 Without limitation of the foregoing, the recipient shall not cause or permit reverse engineering of any Confidential Information or decompilation or disassembly of any software programs which are part of the Confidential Information.

4.2 Noncompetition and Nonsolicitation

- 4.2.1 For a period of eighteen (18) months following the Closing Date, except as otherwise agreed to by Purchaser, neither Seller nor any Member shall, directly or indirectly, solicit, induce, recruit or encourage any of Purchaser's employees or full-time equivalent consultants to terminate their relationship with Purchaser, or take away, hire, or otherwise engage the services of such employees or full-time equivalent consultants, or attempt to solicit, induce, recruit, encourage or take away employees or full-time equivalent consultants of Purchaser, either for itself or for any other Person; *provided, however*, that this Section 4.2.1 shall not prohibit any solicitation through the placement of general employment advertising.
- 4.2.2 For a period of eighteen (18) months following the Closing Date, neither Seller nor any Member will, without the prior written consent of the Purchaser, develop or maintain any application that (a) is substantially similar to GoPets and (b) utilizes a social graph. For purposes of this Section 4.2.2, "social graph" shall mean tools that track users and their relationships to other users. Seller and each Member also agree to not engage in any development of games similar to any of the Purchaser's games that are in existence or in development as of the date of this Agreement; *provided, however*, that the foregoing shall not prevent Seller or any Member from engaging in any academic research, teaching or related activity.
- 4.2.3 Any Person to whom all or part of the Purchased Assets is sold if this Agreement is assigned shall be entitled to enforce each of the covenants contained in this Section 4.2.
- 4.2.4 Each of Seller and each Member acknowledges and agrees that the covenants set forth in Section 4.2.2 are reasonable and necessary for the protection of the goodwill of the Purchased Assets, the Purchaser and its Affiliates. Seller and each Member therefore agree that the Purchaser shall be entitled, in addition to any other right or remedy, to a temporary, preliminary and permanent injunction enjoining or restraining Seller or such Member, as applicable, from any violation or threatened violation of the restrictive covenants contained herein, without the necessity of proving actual damages or posting a bond or other undertaking.
- 4.2.5 The Purchaser, Seller and each Member intend the provisions of Section 4.2.2 to be enforced as written. If any provision, or part thereof, however, is held to be unenforceable because of the duration thereof or the area covered thereby, all parties agree that the court making such determination shall have the power to reduce the duration and/or area of such provision, and/or to delete specific words or phrases and in its reduced form such provision shall then be enforceable.

4.3 Notice to Premium Subscribers

No later than seventy-two (72) hours following the Closing Date, Seller shall notify each GoPets premium member that the GoPets application is being turned off, and that such member is entitled to receive credits for use in Purchaser's FarmVille™ game in consideration of the termination of such premium membership prior to its expiration. Purchaser shall have no liability or obligation to any premium member of Seller except for the obligation to provide up to an aggregate of 70,600 Farm Coins™ or 250 Farm Cash™, or any combination

thereof with a total dollar value of \$40, for distribution to each premium member, up to an aggregate of 300 premium members.

5. TAX MATTERS

5.1 **Cooperation.** At all times following the Closing Date, Seller and the Purchaser agree, as reasonably requested by another party hereto, to cooperate in good faith with and provide all requested information to the requesting party (a) in preparing and filing all Tax Returns with regards to the Purchased Assets, including maintaining and making available to the requesting party all records necessary in connection with such Taxes and (b) in resolving all examinations, disputes, audits or other tax proceeding with respect to all taxable periods relating to Taxes with regards to the Purchased Assets.

5.2 **Taxes Arising From the Asset Purchase.** The Purchaser shall be responsible for any and all excise, value added, registration, stamp, property, documentary, transfer, sales, use and similar Taxes, levies, charges and fees (including all real estate transfer taxes) incurred, or that may be payable to any taxing authority, in connection with, the transactions (including without limitation the sale, transfer, and delivery of the Purchased Assets) contemplated by this Agreement. Notwithstanding the foregoing or anything else to the contrary in this Agreement, each party shall be responsible for its own income, capital gain or other similar taxes due in connection with the transactions (including without limitation the sale, transfer, and delivery of the Purchased Assets) contemplated by this Agreement.

6. CLOSING

6.1 **Closing Deliverables of the Purchaser.** The Purchaser shall have satisfied or delivered the following at the Closing:

6.1.1 **Agreement: Ancillary Agreements.** The Purchaser shall have executed and delivered to Seller and the Members this Agreement and counterparts of each of the Ancillary Agreements to which the Purchaser is a party and provided all deliverables and performed all obligations required to be completed by the Purchaser prior to or at the Closing under this Agreement and all of the Ancillary Agreements.

6.1.2 **Payment of Closing Consideration.** The Purchaser shall have delivered the Purchase Price, less the Escrow Amount, to Seller by wire transfer in United States dollars of immediately available funds to such bank accounts specified by Seller to the Purchaser in writing before the Closing Date.

6.2 **Closing Deliverables of Seller.** Seller shall have satisfied or delivered the following at the Closing:

6.2.1 **Consents.** All Governmental Consents and all consents, waivers and approvals from any other Person necessary to effect the assignment and transfer of good and marketable title to the Purchaser of the Purchased Assets free and clear of any Encumbrances, for which such consents, waivers and approvals are required to sell, assign, license or otherwise transfer such Purchased Assets to the Purchaser as contemplated by this Agreement and the Ancillary Agreements, including, but not limited to, any consents, waivers and approvals that may be required pursuant to Sections 2.3, shall have been obtained and a copy thereof delivered to the Purchaser at or prior to the Closing, with no conditions attached thereto and no expense imposed on the Purchaser.

- 6.2.2 Agreement; Ancillary Agreements. Seller and each Member shall have executed and delivered to the Purchaser this Agreement and counterparts of each of the Ancillary Agreements to which Seller or such Member is a party and provided all deliverables and performed all obligations required to be completed by Seller or such Member prior to or at the Closing under this Agreement and all of the Ancillary Agreements.
- 6.2.3 Delivery. The Purchaser and its legal counsel shall be reasonably satisfied that all Purchased Assets required to be delivered as of the Closing shall have been duly delivered to the Purchaser as required by this Agreement.
- 6.2.4 Other Documentation. Seller shall have furnished the Purchaser with such other instruments and documents as may be reasonably requested by the Purchaser to evidence its purchase of the Purchased Assets and the consummation of the Asset Purchase and the other transactions contemplated hereby.

7. INDEMNIFICATION

7.1 Survival of Representations.

- 7.1.1 Each of the representations and warranties made by Seller and the Members in this Agreement, including the Schedules and Exhibits hereto, and in any Ancillary Agreement, certificate, document or instrument delivered by or on behalf of Seller or any Member pursuant hereto, will remain operative and in full force and effect, regardless of any investigation or disclosure made by or on behalf of any of the parties to this Agreement, until the Expiration Date; *provided, however,* that the representations or warranties shall not terminate with respect to any claim for Damages (as defined below) based upon any misrepresentation or breach of a representation or warranty that is submitted in accordance with this Agreement prior to the Expiration Date until such claim is fully resolved; *provided, further,* that any Purchaser Indemnified Party will be entitled to seek recovery for (i) fraud, willful breach and/or intentional misrepresentation or (ii) any breach of Section 2.8, until the expiration of the applicable statute of limitations for any such claim.
- 7.1.2 Each of the representations and warranties made by the Purchaser in this Agreement, including the Schedules and Exhibits hereto, and in any Ancillary Agreement, certificate, document or instrument delivered by or on behalf of the Purchaser pursuant hereto, will remain operative and in full force and effect, regardless of any investigation or disclosure made by or on behalf of any of the parties to this Agreement, until the Expiration Date.
- 7.1.3 All covenants and agreements of the parties will survive in accordance with their respective terms.

7.2 Indemnification by Seller and the Members.

- 7.2.1 Seller and each Member shall jointly and severally indemnify and hold harmless the Purchaser, its successors, assigns and Affiliates and its and their respective directors, officers, employees, agents and Affiliates (the "*Purchaser Indemnified Parties*") from and against any and all claims, demands, actions, causes of actions, losses, costs, damages, liabilities and expenses including, without limitation, reasonable legal and expert fees ("*Damages*"), asserted against, imposed on or suffered or anticipated by any of the Purchaser Indemnified Parties, directly or indirectly, by reason of, resulting from,

arising out of, or incurred with respect to, or (in the case of claims asserted against any of the Purchaser Indemnified Parties by a third party) alleged to result from, arise out of or have been incurred with respect to, (a) any breach of any representation or warranty of Seller or a Member contained in this Agreement or the Seller Disclosure Letter, (b) any breach of any covenant or agreement made by Seller or any Member in this Agreement or the Seller Disclosure Letter, (c) any Retained Liabilities or (d) any claim made by a GoPets premium member for any consideration other than the right to receive FarmVille coins as set forth in Section 4.3.

- 7.2.2 Any claim for Damages made by a Purchaser Indemnified Party under Section 7.2.1 must be raised in a Claim Notice (as defined in Section 7.3) delivered in accordance with Section 7.3 no later than the applicable Expiration Date and, if raised by such Expiration Date, such claim shall survive the Expiration Date until final resolution thereof.
- 7.2.3 On the Expiration Date, the Purchaser shall release from escrow to Seller the Escrow Amount, less (i) any amounts already paid claims pursuant to Section 7.3 and (ii) any liability associated with a Contested Claim (as defined below). Any portion of the Escrow Amount so held shall be released to Seller or to Purchaser, as appropriate, promptly upon resolution of each Contested Claim involved.
- 7.2.4 After the Closing, except in the case of (i) fraud, willful misrepresentation or willful misconduct by Seller or a Member or (ii) a breach of Section 2.8, the indemnification provisions of this Article 7 shall be the exclusive remedy with respect to the matters specified in Section 7.2.1(a) and (c).
- 7.2.5 Notwithstanding anything herein to the contrary, the aggregate liability of Seller and the Members to any and all of the Purchaser Indemnified Parties for any and all claims described in Section 7.2.1(a) or (c) shall not exceed the Escrow Amount; *provided that* any claims for breaches of Section 2.8 or any claims described in Section 7.2.1(d) shall not be subject to such limitation.

7.3 **Notice of Claims; Third-Party Claims.** A Purchaser Indemnified Party under this Agreement shall give written notice to the Indemnifying Party (a "*Claim Notice*") prior to the applicable Expiration Date of: (a) any claim such Purchaser Indemnified Party has against the Indemnifying Party not involving a third-party claim or litigation as to which indemnification may be sought under this Article 7; or (b) any claim or litigation brought by a third party against such Purchaser Indemnified Party as to which indemnification may be sought against the Indemnifying Party under this Article 7, in either case describing the claim or litigation, the aggregate amount of Damages arising from such claim or litigation and the basis for indemnification. The Purchaser Indemnified Party shall determine and conduct the defense of any third-party claim, and the costs and expenses incurred by the Purchaser Indemnified Party in connection with such defense or settlement (including reasonable attorneys' fees, other professionals' and experts' fees and court or arbitration costs) shall be included in the Damages for which the Purchaser Indemnified Party may seek indemnification pursuant to a claim made by any Purchaser Indemnified Party hereunder. The Indemnifying Party shall have the right to receive copies of all pleadings, notices and communications with respect to any third-party claim and may participate in, but not to determine or conduct any defense of such third-party claim or settlement negotiations with respect to such third-party claim. The Indemnifying Party shall take all commercially reasonable steps to cooperate and provide reasonable assistance to the Purchaser Indemnified Party in the defense of any third-party claim or litigation under this Article 7.

7.4 Resolution of Claims.

7.4.1 If, within 20 calendar days after a Claim Notice is received by the Indemnifying Party, the Indemnifying Party does not contest such Claim Notice in writing to the Purchaser Indemnified Party (pursuant to Section 8.6), then the Indemnifying Party will be conclusively deemed to have consented, on behalf of all Indemnifying Parties, to the recovery by the Purchaser Indemnified Party on the full amount of the Damages specified in the Claim Notice and, without further notice, to have stipulated to the entry of a final judgment for Damages against the Indemnifying Parties for such amount in any court having jurisdiction over the matter where venue is proper.

7.4.2 If the Indemnifying Person gives the Purchaser Indemnified Party (pursuant to Section 8.6) written notice contesting all or any portion of a Claim Notice (such contested portion, a "*Contested Claim*") within such 20 calendar day period, then such Contested Claim will be resolved either (i) by a written settlement agreement executed by the Purchaser and Seller or (ii) in the absence of such a written settlement agreement, pursuant to the arbitration provisions of Section 8.3.

8. MISCELLANEOUS

8.1 Certain Definitions. As used in the Agreement, the following terms shall have the meanings set forth below:

"*Affiliate*" means an "affiliate" within the meaning of Rule 144 or Rule 405 promulgated under the U.S. Securities Act of 1933, as amended.

"*Ancillary Agreements*" means the Employment Offer Letters and the Bill of Sale.

"*Assumed Liabilities*" means the obligations and liabilities set forth in Section 1.2.1 hereof.

"*Bill of Sale*" means the Bill of Sale and Assignment and Assumption Agreement between the Purchaser and Seller, a copy of which is attached hereto as Exhibit A.

"*Business Day*" means any day other than a Saturday, a Sunday or a day on which banks in the State of California are authorized or obligated by Law to close.

"*Code*" means the United States Internal Revenue Code of 1986, as amended, and the Treasury regulations (final and temporary) promulgated thereunder and the administrative pronouncements issued by the Internal Revenue Service relating thereto.

"*Customer Lists*" means all customer lists (whether current or prior) and customer account histories for customers or prospective customers of the Key Asset, as the case may be, including all data regarding such customers (including but not limited to all data related to such customers' use of the Seller Products), and all other marketing, promotional and sales information, whether stored in written form, magnetic or electronic media or in any other form of Seller, that have been or now are related to the Key Asset developed or purchased in connection with the Key Asset.

"*Encumbrance*" means, with respect to any asset, any mortgage, deed of trust, lien, pledge, charge, security interest, title retention device, conditional sale or other security arrangement, collateral assignment, claim, charge, adverse claim of title, ownership or right to use, restriction or other encumbrance of any kind in respect of such asset (including any restriction on (i) the

transfer or receipt of any income derived from any asset, (ii) the use of any asset, and (iii) the possession, exercise or transfer of any other attribute of ownership of any asset).

"Expiration Date" means: (a) the six (6) month anniversary of the Closing Date with respect to claims described in Section 7.2.1(a) (other than claims of any breach of any representation or warranty contained in Section 2.8 hereof); (b) the term of the obligation with respect to claims described in Section 7.2.1(b); or (c) the date of the expiration of the applicable statute of limitations with respect to claims described in Section 7.2.1(c), Section 7.2.1(d) or claims of any breach of any representation and warranty contained in Section 2.8 hereof.

"Indemnifying Party" means the Person against whom indemnification pursuant to Article 7 hereof is sought.

"Intellectual Property Rights" means, collectively, all of the following intangible worldwide legal rights, whether or not filed, perfected, registered or recorded: (i) patents, patent applications, patent disclosures and related patent rights, including any and all continuations, continuations-in-part, divisions, reissues, reexaminations or extensions thereof, whether now existing or hereafter filed, issued or acquired; (ii) trademarks, trademark registrations, trademark applications, trade dress rights, trade names, service marks, service mark registrations and service mark applications; (iii) copyrights, copyright registrations and copyright applications; (iv) mask work rights, mask work applications and mask work registrations; (v) Internet domain names, Internet and World Wide Web URLs or addresses and registrations or applications therefor; (vi) inventions, unfiled invention disclosures, improvements, trade secrets, know-how and proprietary processes and formulae (collectively, *"Trade Secrets"*); (vii) moral and economic rights of authors and inventors, however denominated; and (viii) rights to sue or make any claims for any past, present or future infringement, misappropriation or unauthorized use of any of the foregoing rights and the right to all income, royalties, damages and other payments that are now or may hereafter become due or payable with respect to any of the foregoing rights. The term *"Intellectual Property Rights"* does not refer to tangibles or tangible embodiments of Intellectual Property Rights.

"knowledge" means with respect to any fact, circumstance, event or other matter in question, the actual knowledge of such fact, circumstance, event or other matter after reasonable inquiry of (a) an individual, if used in reference to an individual and (b) with respect to the Purchaser or Seller, each of the officers and directors of the Purchaser or Seller, as applicable.

"Law" means any federal, state, local, municipal, foreign or other law, statute, constitution, principle of common law, resolution, ordinance, code, order, judgment, edict, decree, rule, regulation, ruling or requirement issued, enacted, adopted, promulgated, implemented or otherwise put into effect by or under the authority of any Governmental Authority.

"Person" means an individual, corporation, partnership, limited liability company, limited liability partnership, association, trust or any other entity or organization.

"Purchased Assets" shall have the meaning set forth in Section 1.1.1 hereof.

"Retained Liabilities" shall have the meaning set forth in Section 1.2.2 hereof.

"Seller Registered Intellectual Property" means all United States, international and foreign: (i) patents and patent applications (including provisional applications); (ii) registered trademarks and service marks, applications to register trademarks and service marks, intent-to-use applications, or

other registrations or applications related to trademarks and service marks, (iii) registered Internet domain names, (iv) registered copyrights and applications for copyright registration; and (v) Intellectual Property Rights that are the subject to an application, certificate, filing, registration or other document issued, filed with or recorded by any Governmental Authority, in each case, owned by, or registered or filed in the name of, Seller and included in the Purchased IP.

"Source Code" means the software programming code (including flash .swf source code, server source code and JAVA source code) expressed in human readable language, including complete maintenance documentation, procedures, flow charts, schematic diagrams and annotations which comprise the precoding detail design specification, and all other material necessary to allow a reasonably skilled programmer or analyst to build, maintain and enhance the software.

"Tax" means (i) any federal, state, local or foreign tax, or other governmental assessment, impost or duty including, but not limited to, capital, franchise, excise, estimated, value-added, replacement, stamp, occupation, successor or similar taxes as well as taxes based on income, employment, property, sales or use tax (whether imposed directly or through withholding), including any interest, additions to tax, or penalties applicable thereto, (ii) any Liability for the payment of any amounts of the type described in clause (i) of this sentence as a result of being a member of an affiliated, consolidated, combined, unitary or aggregate group for any Taxable period, and (iii) any Liability for the payment of any amounts of the type described in clause (i) or (ii) of this sentence as a result of being a transferee of or successor to any Person or as a result of any express or implied obligation to assume such Taxes or to indemnify any other Person.

"Tax Return" means any federal, state, provincial, local or foreign Tax return, declaration, report, statement, schedule, attachment, notice, form, or information return (including any amendment to any of the foregoing) required to be filed with respect to Taxes including, but not limited to, any return, declaration, report, statement, schedule, attachment, notice, form, or information return related to taxes based on income, employment, property, sales or use tax.

8.2 **Assignment; Binding upon Successors and Assigns.** Neither Seller nor any Member may assign any of its rights or obligations hereunder without the prior written consent of the Purchaser, which consent may be withheld for any reason. The Purchaser may assign any of its rights hereunder to any Affiliate thereof without obtaining the consent of Seller or any Member; *provided that* the Purchaser shall remain primarily liable for its obligations hereunder, and provided that the assignment shall not be effective until the Purchaser shall have provided Seller and the Members with notice of such assignment which notice must include the full corporate name of the assignee, the nature of the assignee's relationship with the Purchaser and address of the assignee. The terms and conditions of this Agreement shall inure to the benefit of and be binding upon the successors and permitted assigns of the parties.

8.3 **Governing Law; Arbitration.** This Agreement shall be governed by and construed under the internal laws of the United States and the State of California as applied to agreements among California residents entered into and to be performed entirely within California, without reference to principles of conflict of laws or choice of laws. The parties agree that any dispute arising out of, or in connection with, this Agreement shall be resolved solely and exclusively by confidential binding arbitration with the San Francisco, California branch of JAMS ("**JAMS**") to be governed by JAMS' Commercial Rules of Arbitration applicable at the time of the commencement of the arbitration (the "**JAMS Rules**") and heard before one arbitrator. The parties shall attempt to mutually select the arbitrator. In the event they are unable to mutually agree, the arbitrator shall be selected by the procedures prescribed by the JAMS Rules.

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

8.5 **Construction of Agreement.** This Agreement has been negotiated by the respective parties hereto and their attorneys and, therefore, waive the application of any law, regulation, holding or rule of construction providing that ambiguities in an agreement or other document will be construed against the party drafting such agreement or document. Unless otherwise explicitly set forth, a reference to a Section, a Schedule or an Exhibit will mean a Section in, or Schedule or Exhibit to, this Agreement, all of which Schedules and Exhibits are incorporated herein by this reference. The words “include,” “includes” and “including” when used herein shall be deemed in each case to be followed by the words “without limitation.” The titles and headings herein are for reference purposes only and will not in any manner limit the construction of this Agreement which will be considered as a whole.

8.6 **Notices.** Any notice or other communication required or permitted to be given under this Agreement shall be in writing, shall be delivered by hand or overnight courier service, by certified mail, postage prepaid, or by facsimile, and will be deemed given upon delivery, if delivered personally, one Business Day after deposit with a national courier service for overnight delivery, or one Business Day after transmission by facsimile or electronic mail with confirmation of receipt, and three days after deposit in the mails, if mailed, to the following addresses:

(a) If to the Purchaser:

Zynga Game Network Inc.
444 De Haro Street, Suite 132
San Francisco, CA 94107
Attention: General Counsel
Email: legal@zynga.com

(b) If to Seller or a Member, to such party's attention at the address set forth for such Seller on the signature page hereto.

or to such other address as a party may have furnished to the other parties in writing pursuant to this Section 8.6, except that notices of change of address shall only be effective upon receipt.

8.7 **Attorneys' Fees.** If any action at law or in equity (including any arbitration pursuant to Section 8.3 above) is necessary to enforce or interpret the terms of this Agreement, the prevailing party shall be entitled to recover, as an element of the costs of suit and not as damages, reasonable attorneys' fees, expert witness fees, costs and necessary disbursements in addition to any other relief to which such party may be entitled. The prevailing party in any final judgment or arbitration award, or the non-dismissing party in the event of a voluntary dismissal by the party instituting the action, will be entitled to recover such full reasonable expenses incurred in good faith.

8.8 **Amendments and Waivers.** Any term of this Agreement may be amended and the observance of any term of this Agreement may be waived (either generally or in a particular instance and either retroactively or prospectively), only with the written consent of the Purchaser and each Seller or, in the case of a waiver, by written consent of the party providing the waiver. Any

amendment or waiver effected in accordance with this Section 8.8 shall be binding upon all of the parties hereto and their successors and permitted assigns.

- 8.9 **No Waiver.** The failure of any party to enforce any of the provisions hereof will not be construed to be a waiver of the right of such party thereafter to enforce such provisions. The waiver by a party of any breach hereof or default in the performance hereof will not be deemed to constitute a waiver of any other default or any succeeding breach or default.
- 8.10 **Severability.** If any provision of this Agreement, or the application thereof, will for any reason and to any extent be invalid or unenforceable, the remainder of this Agreement and application of such provision to other Persons or circumstances will be interpreted so as reasonably to effect the intent of the parties hereto. The parties further agree to replace such void or unenforceable provision of this Agreement with a valid and enforceable provision that will achieve, to the extent possible, the economic, business and other purposes of the void or unenforceable provision.
- 8.11 **Specific Performance.** Seller and the Members recognize and agree that if for any reason any of the provisions of this Agreement are not performed in accordance with their terms or are otherwise breached, immediate and irreparable harm or injury would be caused for which money damages would not be an adequate remedy. Accordingly, each of Seller and each Member agrees that in addition to other remedies, the Purchaser shall be entitled to an injunction restraining any violation or threatened violation by Seller or such Member of the provisions of this Agreement, without the need to post a bond or fulfill any other undertaking.
- 8.12 **Remedies.** Except as otherwise provided herein, any and all remedies herein expressly conferred upon a party will be deemed cumulative with and not exclusive of any other remedy conferred hereby or by law on such party, and the exercise of any one remedy will not preclude the exercise of any other.
- 8.13 **Absence of Third Party Beneficiary Rights.** No provisions of this Agreement are intended, nor will be interpreted, to provide or create any third party beneficiary rights or any other rights of any kind in any client, customer, Affiliate, employee, stockholder or partner of any party hereto or any other Person unless specifically provided otherwise herein except that Article 7 is intended to benefit the Indemnified Parties.
- 8.14 **No Joint Venture.** Nothing contained in this Agreement will be deemed or construed as creating a joint venture or partnership between any of the parties hereto. No party is by virtue of this Agreement authorized as an agent, employee or legal representative of any other party. No party will have the power to control the activities and operations of any other and their status is, and at all times will continue to be, that of independent contractors with respect to each other, except as provided for in the Employment Offer Letters. No party will have any power or authority to bind or commit any other party. No party will hold itself out as having any authority or relationship in contravention of this Section 8.14.
- 8.15 **Expenses.** Each party will bear its respective legal, auditors', investment bankers' and financial advisors' fees and other expenses incurred with respect to this Agreement, the Asset Purchase and the other transactions contemplated hereby.
- 8.16 **Entire Agreement.** This Agreement, the Schedules and Exhibits hereto, the other written agreements explicitly referred to herein and the exhibits thereto, when taken together, constitute the entire understanding and agreement of the parties hereto with respect to the subject matter hereof and supersede all prior and contemporaneous agreements or understandings, inducements

or conditions, express or implied, written or oral, between the parties with respect hereto. The express terms hereof control and supersede any course of performance or usage of the trade inconsistent with any of the terms hereof.

[remainder of page intentionally left blank]

IN WITNESS WHEREOF, the parties hereto have entered into this Agreement effective as of the Agreement Date.

The Purchaser:
ZYNGA GAME NETWORK INC.

By: [Signature]
Name: MARK RANBERT
Title: CEO

The Seller:
SYMBIOSIS GAMES LLC

By: [Signature]
Erik Bethke, Chief Executive Officer
Address: 40 Claremont Ave
Long Beach CA 90803

Approved as to form by Legal Dept.
X [Signature]
Date: 01/27/09

The Members:

By: [Signature]
Erik Bethke
Address: 40 Claremont Ave
Long Beach CA 90803
By: [Signature]
Michael Todorovic
Address: 229 Argonne Ave #12
Long Beach CA 90803

[Signature Page to Asset Purchase Agreement]

LIST OF EXHIBITS

Exhibit A Bill of Sale and Assignment and Assumption Agreement

Exhibit B Form of Employment Offer Letter

LIST OF SCHEDULES

Schedule 1.1.1.1 List of Purchased Trademarks

Schedule 1.1.1.2 List of Assumed Contracts

Schedule 1.3 Purchase Price Allocation

Schedule L.1.1.1

List of Purchased Trademarks

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