

3609752

DATED 12 December 2003

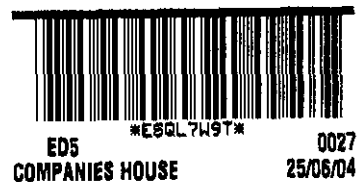
COLUMBIA PICTURES CORPORATION LIMITED (1)

- and -

YOOMEDIA PLC (2)

AGREEMENT

*relating to the acquisition of the entire issued share capital of
Goplay TV Limited*



FINERS STEPHENS INNOCENT
179 Great Portland Street
London W1W 5LS

Tel: 020 7323 4000
DX: 42739 (Oxford Circus North)
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Ref: C148/533849.13

AGREEMENT dated

12 December

2003



PARTIES:

- (1) COLUMBIA PICTURES CORPORATION LIMITED a company registered in England under company number 242372 whose registered office is at Sony Pictures Europe House, 25 Golden Square, London W1F 9LU (the "Vendor")
- (2) YOOMEDIA PLC a company registered in England under company number 3609752 whose registered office is at 1st Floor, Northumberland House, 155-157 Great Portland Street, London W1W 6QP (the "Purchaser")

RECITALS:

- (A) The Vendor is the legal and beneficial owner of and has agreed to sell to the Purchaser the whole of the issued share capital of Goplay TV Limited (the "Company").
- (B) Particulars of the Company are set out in Schedule 2.
- (C) All documents in the agreed form are listed in Schedule 4.

IT IS AGREED as follows:-

1. **DEFINITIONS AND INTERPRETATION**

In this Agreement (which expression shall be deemed to include the Schedules hereto):-

1.1 unless the context otherwise requires:

the "Act" means the Companies Act 1985, as amended;

"Admission" has the meaning set out in clause 4.1.2;

the "Admission Condition" means the condition contained in clause 4.1.2;

"agreed form" means in the form previously agreed by the parties to this Agreement and signed for the purpose of identification by or on their behalf;

"AIM" means the Alternative Investment Market of the London Stock Exchange;

"AIM Rules" means the rules of AIM published by the London Stock Exchange and the AIM trading rules set out in the Rules of the London Stock Exchange, as amended from time to time;

"Articles" means the articles of association of the Purchaser;

"ASA" means the Application Signing Agreement dated 7 May 2002 between Sky Subscribers Services Limited and the Company;

"associate" means, in relation to any person, an associated company of that person or a person who is connected with that person (and whether a person is an associated company or is so connected shall be determined in accordance with Sections 416 and 839 of ICTA save that in construing Section 839 the term 'control' shall have the meaning given by Section 840 or Section 416 of ICTA so

that there shall be control wherever either of the said Sections would so require);

the "Auditors" mean the auditors of the Company from time to time;

"business day" means a day on which clearing banks generally are open for business in the City of London;

the "Circular" means the circular in the agreed form relating, inter alia, to the acquisition of the Company proposed to be issued by the Purchaser to its shareholders on or immediately following the date hereof;

"Completion" means the performance by the parties of the obligations (to the extent not previously waived in accordance with the terms of this Agreement) assumed by them respectively under clause 6.2 and the satisfaction of the Escrow Condition;

the "Completion Date" means 6 January 2004 (or such later date as the parties may agree);

the "Compromise Agreement" means the agreement in substantially the same form as the agreed form to be entered into between Mathieu Fussman, the Vendor and the Company;

"Consideration Shares" means together the Initial Consideration Shares and the Further Consideration Shares; "Consultants" means each of Richard Moulton, Sharon Royston, Meric Pine and James Hayden;

"Contracts of Employment" means letters of assignment of the contracts of employment to be entered into between the Employees and the Company in substantially the same form as the letters of assignment in the agreed form;

the "Disclosure Letter" means the letter of even date from the Vendor to the Purchaser;

"Disclosed Schemes" means the Columbia Pictures Corporation Limited Pension Plan and the Columbia Pictures Corporation Limited Staff Pension and Life Assurance Scheme;

"Employees" means each of Ian Short, Peter Mossman and Heather Puttock who are to enter into the Contracts of Employment with the Company on or prior to Completion;

"Encumbrance" means a mortgage, charge, pledge, lien, option, restriction, right of first refusal, right of pre-emption or other third party right, interest or claim of any kind, or any other encumbrance or security interest of any kind (including, without limitation, any liability imposed or right conferred by or under any legislation) or any other type of preferential arrangement (including, without limitation, a title transfer or retention arrangement) having similar effect;

"Escrow Completion" means the performance by the parties of the obligations (to the extent not previously waived in accordance with the terms of this Agreement) assumed by them respectively under clause 6.2 (on and subject to the terms set out in clause 6.4);

the "Escrow Condition" means the Admission Condition;

the "First Allotment Date" means the date falling six months after the date of Completion;

the "Further Consideration Shares" means 5,400,000 new Purchaser Shares to be issued and allotted at the price calculated in accordance with the provisions of clause 3.3 of this Agreement;

"group" means, in relation to a company, that company and any company which is from time to time a holding company of that company or a subsidiary of that company or of such holding company;

"holding company" has the meaning set out in Section 736 of the Act and includes, where the context admits, a "parent undertaking" as defined in Section 258 of the Act;

"ICTA" means the Income and Corporation Taxes Act 1988;

"the Initial Consideration Shares" means the 12,600,000 new ordinary shares of 1 penny each in the capital of the Purchaser to be issued and allotted at the Issue Price as part of the consideration for the sale of the Shares;

"Interim Statement" means the unaudited consolidated profit and loss account of the Purchaser Group for the six months' period ended 30 June 2003 and the unaudited consolidated balance sheet of the Purchaser Group as at 30 June 2003 and the explanatory statements in connection with them;

"the Issue Price" means the price per Initial Consideration Share calculated in accordance with clause 3.2;

"Last Accounts" means the audited consolidated profit and loss account of the Purchaser Group for the twelve months' period ended on 31 December 2002 and the audited consolidated balance sheet of the Purchaser Group as at 31 December 2002 and the notes to and the directors' and auditor's reports on them;

"Last Accounts Date" means 31 December 2002;

the "Licence Agreement" means the licence agreement in the agreed form between Sony Pictures Digital Inc. and the Purchaser;

"the London Stock Exchange" means the London Stock Exchange Plc;

"the Management Accounts" has the meaning set out in Schedule 1;

"Net Working Capital Amount" shall mean a sum equal to the aggregate of all monies received by or on behalf of the Company during the period starting on the date of this Agreement and ending on Completion less the aggregate of all monies paid by or on behalf of the Company (including any payments made by the Vendor in respect of the salary or other benefits of the Employees and the Consultants) between the date of this Agreement and ending on Completion, such amount to be calculated in accordance with clause 6.13 of this Agreement;

"the Notice" means the notice of extraordinary general meeting of the Company to be held on 5 January 2004, set out at the end of the Circular;

the "Press Announcement" means the announcement regarding this Agreement to be made by the Purchaser in the agreed form;

"Purchaser Documents" means the bundle of documents disclosed by the Purchaser to the Vendor as listed in the agreed form index;

"Purchaser Group" means the Purchaser and its subsidiary undertakings and associated undertakings from time to time;

the "Purchaser Shares" means ordinary shares of 1 penny each in the capital of the Purchaser as may be subdivided and/or consolidated from time to time after the date of this Agreement, ignoring (in the case of any subdivision into ordinary and deferred shares) any deferred shares arising in that subdivision;

the "Purchaser's Solicitors" means Finers Stephens Innocent of 179 Great Portland Street, London W1W 5LS or their successors in business or any other firm of solicitors appointed by the Purchaser for the purposes of this Agreement;

the "Purchaser Warranties" means the warranties contained or referred to in clause 5.7 and Schedule 5;

"Reorganisation" means any rights or bonus issue of the Purchaser by way of capitalisation of profits or reserves or by way of rights, or a capital distribution on or in respect of the Purchaser's share capital (or any stocks or shares derived therefrom) announced or effected or any consolidation or reduction of the Purchaser's share capital and which in any event occur on or after the Completion Date;

the "Second Allotment Date" means the first anniversary of the date of Completion;

the "Shares" means the shares comprised in the whole of the issued share capital of the Company following the allotment set out in clause 6;

"subsidiary" has the meaning set out in Section 736 of the Act and includes, where the context admits, a "subsidiary undertaking" as defined in Section 258 of the Act;

"Taxation" has the meaning attributed thereto in the Taxation Deed;

the "Taxation Deed" means the deed of taxation proposed to be entered into between the Vendor and the Purchaser in the agreed form;

"the Transitional Services Agreement" means an agreement in the agreed form between Sony Pictures Digital Inc. and the Purchaser;

the "Vendor Reorganisation" means (i) the sale of the entire issued share capital of SPD Europe Limited to the Vendor and (ii) any settlement, capitalisation, waiver or novation of any debts owed by the Company to the Vendor between the date of this Agreement and Completion;

the "Vendor's Solicitors" means Olswang of 90 High Holborn, London WC1V 6XX or their successors in business or any other firm of solicitors appointed by the Vendor for the purposes of this Agreement;

the "Warranted Accounts" has the meaning set out in Schedule 1;

the "Warranties" means the warranties which are contained or referred to in clause 5.1 and Schedule 1; and

the "Warranty Claim" means a claim for any breach of any of the Warranties;

- 1.2 references to statutes or statutory provisions include those statutes or statutory provisions as amended, extended, consolidated, re-enacted or replaced from time to time and any orders, regulations, instruments or other subordinate legislation made thereunder except to the extent in any case increasing the liability of any party under this Agreement;
- 1.3 subject as herein otherwise expressly defined, words or phrases defined in the Act and in the relevant legislation relating to taxation bear the same respective meanings;
- 1.4 words and phrases defined in any part of this Agreement bear the same meanings throughout this Agreement;
- 1.5 unless otherwise specified, words importing the singular include the plural, words importing any gender include every gender and words importing persons include bodies corporate and unincorporate; and (in each case) vice versa;
- 1.6 references to clauses and other provisions are references to clauses and other provisions of this Agreement;
- 1.7 references to this Agreement or any other document shall, where the context admits, be construed as references to this Agreement or such other document as varied, supplemented, novated and/or replaced in any manner from time to time;
- 1.8 the terms "hereunder", "hereto", "herein", "hereof" and similar expressions relate to this entire Agreement and not to any particular provision thereof;
- 1.9 references to any English legal or accounting term for any action, remedy, method of judicial proceeding, legal or accounting document, legal or accounting status, court, governmental or administrative authority or agency, accounting body, official or any legal or accounting concept practice or principle or thing shall in respect of any jurisdiction other than England be deemed to include what most approximates in that jurisdiction to the English legal or accounting term concerned;
- 1.10 the clause headings shall not affect interpretation.

2. SALE AND PURCHASE

- 2.1 The Vendor shall sell with full title guarantee the Shares and the Purchaser shall purchase the same free from all claims, liens, charges, equities, options and encumbrances whatsoever and together with all rights now or hereafter

attaching thereto upon and subject to the terms and conditions of this Agreement.

- 2.2 The parties shall not be obliged to complete the purchase of any of the Shares unless the sale and purchase of all the Shares is completed simultaneously, but completion of the sale and purchase of some of the Shares will not affect the rights of the parties with respect to the others.
- 2.3 The Vendor hereby waives and agrees to procure the waiver of any restrictions on transfer (including pre-emption rights) which may exist in relation to the Shares under the existing articles of association of the Company or otherwise.

3. **CONSIDERATION**

- 3.1 The consideration for the sale of the Shares shall be the allotment and issue to the Vendor of the Consideration Shares, such shares to be allotted and issued as to the Initial Consideration Shares in accordance with clause 6.2.4.1. and as to the Further Consideration Shares in accordance with clause 6.5 and clause 7.
- 3.2 The value of each of the Initial Consideration Shares shall be a sum equal to the average of the middle market quotations on the London Stock Exchange (ascertained by reference to the AIM Appendix to the London Stock Exchange Daily Official List) of an ordinary share in the capital of the Purchaser for the 10 business days on which the London Stock Exchange is open for business immediately preceding the date of this Agreement.
- 3.3 The value of each of the Further Consideration Shares shall be a sum equal to the higher of (a) the Issue Price and (b) the highest subscription price at which any Ordinary Share is issued and allotted by the Company for cash on or prior to the Second Allotment Date.

4. **COMPLETION CONDITIONAL**

- 4.1 Completion is conditional upon the following conditions being satisfied on or before the Completion Date (or such later date as the parties may agree in writing):-
 - 4.1.1 the passing at a general meeting of the Purchaser of the resolution set out in the Notice to authorise the directors of the Purchaser to issue the Consideration Shares in accordance with section 80 of the Act;
 - 4.1.2 the Initial Consideration Shares being admitted to trading on AIM in accordance with the AIM Rules ("Admission"); and
 - 4.1.3 irrevocable voting undertakings in the agreed form being obtained from holders of more than 50% of the issued ordinary share capital of the Purchaser.
- 4.2 The Purchaser shall use all reasonable endeavours to ensure that the conditions specified in clause 4.1 are satisfied as soon as possible, and in any event not later than 5.30 pm on 6 January 2004 (or such later date as the parties may agree).
- 4.3 The Purchaser undertakes with the Vendor:-

- 4.3.1 to post the Circular not later than 15 December 2003 (or such later date as the parties may agree);
 - 4.3.2 to procure that the ordinary resolution set out in the Notice is proposed at and put to the said meeting duly convened by the Notice;
 - 4.3.3 at all times to recommend its members to vote in favour of the ordinary resolution set out in the Notice; and
 - 4.3.4 not to postpone the meeting convened by the Notice.
- 4.4 If any of the conditions set out in clause 4.1 shall not have been fully satisfied by the Completion Date (or such later date as shall have been agreed between the parties in accordance with clause 4.1) then this Agreement shall lapse and cease to have effect and no party shall have any claim against any other in respect hereof (save for any antecedent breach) save that clauses 9 and 10 shall remain binding on the parties in accordance with their terms.
- 4.5 If the meeting convened by the Notice is adjourned for any reason, the Purchaser shall use all reasonable endeavours to ensure that the adjourned meeting is reconvened as soon as possible and at a time which allows the conditions in clause 4.1 to remain capable of being satisfied.

5. **WARRANTIES**

- 5.1 The Vendor hereby warrants to the Purchaser in the terms of Schedule 1 except as fully and fairly disclosed in the Disclosure Letter.
- 5.2 The only Warranties given:
- 5.2.1 in respect of Taxation are those set out in paragraph 6 of Schedule 1 and the other Warranties shall be deemed not to be given in relation to Taxation;
 - 5.2.2 in respect of Intellectual Property (as defined in Schedule 1) are those set out in paragraph 14 of Schedule 1 and the other Warranties shall be deemed not to be given in relation to Intellectual Property;
 - 5.2.3 in respect of the employees of the Company and other employment matters are those set out in paragraphs 16 and 17 of Schedule 1 and the other Warranties shall be deemed not to be given in relation to such employees and other employment matters; and
 - 5.2.4 in respect of pensions matters are those set out in paragraphs 16 and 17 of Schedule 1 and the other Warranties shall be deemed not to be given in relation to pensions matters.
- 5.3 The Vendor acknowledges that the Purchaser is entering into this Agreement in reliance on the Warranties.
- 5.4 Except in the case of fraud by any director, employee or adviser, the Vendor waives any rights it may have against (and undertakes not to make any claims against) any of the Company or any of its directors, employees or advisers on whom the Vendor has or may have relied in giving the Warranties or preparing

the Disclosure Letter or otherwise before agreeing to any terms of this Agreement.

- 5.5 Save as set out in clause 5.2, each of the Warranties shall be construed separately and none of the Warranties shall limit or govern the extent, application or construction of any other of them.
- 5.6 The provisions of Schedule 3 shall apply to limit or exclude, in accordance with their terms, any liability which the Vendor might otherwise have in respect of any Claim (as defined in Schedule 3) or any Tax Claim (as defined in Schedule 3) other than, in either case, in the circumstances of fraud by the Vendor.
- 5.7 The Purchaser hereby warrants to the Vendor in the terms of Schedule 5 except as fully and fairly disclosed in:
 - 5.7.1 the Last Accounts;
 - 5.7.2 the Interim Statement;
 - 5.7.3 in relation only to Purchaser Warranty 7.1, the contents of an email from Andrew Fearon of the Purchaser to Eric Gaynor of the Vendor dated 9 December 2003 and timed at 12:47p.m. setting out the position as regards potential litigation involving the Purchaser Group.
- 5.8 The Purchaser acknowledges that the Vendor is entering into this Agreement in reliance on the Purchaser Warranties.
- 5.9 Each of the Purchaser Warranties shall be construed separately and none of the Purchaser Warranties shall limit or govern the extent, application or construction of any other of them.
- 5.10 The provisions of Schedule 7 shall apply to limit or exclude, in accordance with their terms, any liability which the Purchaser might otherwise have in respect of any claim for breach of the Purchaser Warranties other than in the case of fraud by the Purchaser.
- 5.11 The Purchaser hereby acknowledges that it has been shown certain information by the Vendor, the completeness and accuracy of which is not warranted by the Vendor unless expressly the subject of one of the Warranties.
- 5.12 The Vendor hereby agrees to indemnify the Company and the Purchaser on demand against all third party liabilities, losses, claims, costs and expenses incurred by the Purchaser and the Company arising from or in connection with (i) the purported termination by the Vendor or the Company of the licence between the Company and Tetris Company LLC (the "Tetris Licence"); (ii) any liability arising as a result of the purported termination of the Tetris Licence being held to be ineffective. The Purchaser agrees not to engage in discussions with Tetris Company LLC concerning the Company and the Tetris Licence without the prior agreement of the Vendor. The provisions of paragraph 7 of Schedule 3 shall apply mutatis mutandis to any claim made against the Purchaser or the Company by Tetris Company LLC.
- 5.13 The Vendor shall indemnify the Company and the Purchaser against all actions, proceedings, costs, claims, damages, liabilities and expenses brought or made against or incurred by the Company or the Purchaser which arise in connection

with any obligation to make any contribution or other payment to the Pension Scheme (as defined in paragraph 17 of Schedule 1) or any other retirement benefits scheme in which it participated prior to Completion, whether under section 75 of the Pensions Act 1995, the governing documentation of the Pension Scheme or otherwise. The provisions of paragraph 7 of Schedule 3 shall apply mutatis mutandis to any claim so made against the Company and the Purchaser.

- 5.14 The Vendor shall indemnify the Company and the Purchaser against any liability which the Purchaser may suffer, incur, sustain, pay or be put to by reason of any claim any person (including for the avoidance of doubt Mathieu Fussman) may have against the Company as a result of their employment being transferred by reason of the sale of the Shares (or whose employment ought to have been transferred) to the Company in each case by virtue of the Transfer of Undertakings (Protection of Employment) Regulations 1981 as amended. The provisions of paragraph 7 of Schedule 3 shall apply mutatis mutandis to any claim made against the Company or the Purchaser by any such person.
- 5.15 The Vendor shall ensure that immediately following Completion there is no inter-company debt owed by the Company to any company controlled (within the meaning of section 416 ICTA) by Sony Corporation other than in the ordinary course of trade and shall indemnify the Purchaser and the Company on demand against all liabilities, losses, claims, costs and expenses incurred by the Purchaser and the Company as a result of any failure so to ensure.

6. COMPLETION

- 6.1 Escrow Completion shall take place at the offices of the Purchaser's Solicitors at 11.00 am on the first business day after the conditions in clause 4.1 (other than the Admission Condition) are satisfied (or such later date as the parties may agree in writing in accordance with clause 4.1).

6.2 On Escrow Completion:-

6.2.1 the Vendor shall deliver to the Purchaser's Solicitors:-

- 6.2.1.1 a transfer of the Shares duly executed by the Vendor in favour of the Purchaser or its nominees together with
- 6.2.1.2 the relative share certificates (or an indemnity in such form as the Purchaser shall reasonably require in relation to any missing certificates);
- 6.2.1.3 letters of resignation in the agreed form from the present directors and secretary of the Company;
- 6.2.1.4 this paragraph is left intentionally blank
- 6.2.1.5 a certified copy of the written resignation of the Auditors in the agreed form;
- 6.2.1.6 one original of the Taxation Deed duly executed by the Vendor;

- 6.2.1.7 one original of the Compromise Agreement duly executed;
- 6.2.1.8 one original of the Licence Agreement duly executed by Sony Pictures Digital Inc.;
- 6.2.1.9 the certificate of incorporation, (and, if applicable any certificates of incorporation on change of name) , statutory minute books and registers and share certificate book of the Company ;
- 6.2.1.10 a certified copy of any power of attorney under which any document delivered on Escrow Completion has been executed on behalf of the Vendor;
- 6.2.1.11 an irrevocable power of attorney in the agreed form executed by the Vendor in favour of the Purchaser and its directors to enable the Purchaser (pending registration of the transfer of such shares) to exercise all voting and other rights attaching to such shares and to appoint proxies for this purpose;
- 6.2.1.12 one original of the Transitional Services Agreement duly executed by Sony Pictures Digital Inc.;
- 6.2.1.13 one original Disclosure Letter duly executed by the Vendor;
- 6.2.1.14 a letter of application from the Vendor in respect of the issue and allotment of such number of new ordinary shares of £1 each, at par value, in the capital of the Company at an aggregate nominal amount to be determined in accordance with clause 6.12;
- 6.2.1.15 by payment to such bank account as may be notified by the Purchaser's Solicitors to the Vendor, a sum in cash equal to the allotment amount calculated in accordance with paragraph 6.2.1.14 above; to be held by the Purchaser on behalf of the Company subject to the provisions of clause 13;
- 6.2.1.16 evidence to the reasonable satisfaction of the Purchaser that the accounts of the Company for the year ended 31 March 2003 have been filed and received by the Registrar of Companies;
- 6.2.1.17 the Contracts of Employment duly executed by the Employees;
- 6.2.2 this paragraph is left intentionally blank ;
- 6.2.3 the Vendor shall procure that there shall be held a meeting of the directors of the Company attended by a quorum of the present directors thereof, at which (conditionally upon satisfaction of the Escrow Condition):-

- 6.2.3.1 allot and issue to the Vendor such new ordinary shares of £1 each in the capital of the Company at par value as shall be calculated in accordance with clause 6.2.1.14 above;
- 6.2.3.2 such persons as the Purchaser may nominate shall be appointed additional directors (but not so as to exceed any maximum number permitted by its articles of association);
- 6.2.3.3 the said resignations of the present secretary and auditors shall be accepted with immediate effect and such person and firm as the Purchaser may nominate shall be appointed secretary and auditors respectively in their places;
- 6.2.3.4 its registered office shall be changed to such address as the Purchaser may direct;
- 6.2.3.5 its accounting reference date shall be changed to 31 December;
- 6.2.3.6 the transfer referred to in 6.2.1.1 shall be approved for registration (subject to stamping);
- 6.2.3.7 such resolutions and actions regarding bankers as the Purchaser may require shall be passed and taken;
- 6.2.3.8 the said resignations of the present directors shall be accepted with immediate effect

and the Vendor shall deliver to the Purchaser certified copies of the minutes of such board meeting;

6.2.4 The Purchaser shall:

- 6.2.4.1 (subject only to satisfaction of the Escrow Condition) unconditionally allot to the Vendor the Initial Consideration Shares to be issued pursuant to clause 3.1;
- 6.2.4.2 (conditionally only upon satisfaction of the Escrow Condition and upon their being subsequently admitted to trading on AIM in accordance with the AIM Rules) resolve to allot and issue to the Vendor (i) on the First Allotment Date the Further Consideration Shares set out in clause 7.1.1, (ii) on the Second Allotment Date the Further Consideration Shares set out in clause 7.1.2 and (iii) the Further Consideration Shares (if any) referred to in clause 7.2;
- 6.2.4.3 execute the Taxation Deed and deliver one executed original thereof to the Vendor's Solicitors;

- 6.2.4.4 execute the Licence Agreement and deliver one executed original thereof to the Vendor's Solicitors;
- 6.2.4.5 execute the Transitional Services Agreement and deliver one executed original thereof to the Vendor's Solicitors;
- 6.2.4.6 execute the Disclosure Letter and deliver one executed original thereof to the Vendor's Solicitors;
- 6.2.4.7 procure the appointment of Nizar Allibhoy to its board of directors;
- 6.2.4.8 deliver the relevant share certificate in respect of the Initial Consideration Shares to the Vendor;
- 6.2.4.9 if not previously so delivered, deliver to the Vendor's Solicitors a certified copy in the agreed form of the minutes of a duly convened and held meeting of the board of directors of the Purchaser or a duly constituted committee of that board resolving that the Purchaser should enter into this Agreement and each other document to be signed by it at Escrow Completion and authorising or ratifying the execution of those documents by each person signing on behalf of the Purchaser;
- 6.2.4.10 deliver to the Vendor's Solicitors a certified copy in the agreed form of the minutes of a duly convened and held meeting of the directors of the Purchaser or a duly constituted committee of that board resolving in accordance with the terms of clauses 6.2.4.1 and 6.2.4.2;
- 6.2.4.11 deliver to the Vendor a certified copy of the application for Admission made on behalf of the Purchaser;
- 6.2.4.12 deliver to the Vendor evidence (in a form satisfactory to the Vendor) that the Purchaser has relevant insurance in place as required by the ASA and has directors' liability insurance in place with cover of not less than £1,000,000.

6.3 If any of the material provisions of clause 6.2 are not complied with on the date fixed for Escrow Completion the party not in default may by notice to the other party (without prejudice to its other rights and remedies including the right to claim damages for the breach):-

- 6.3.1 defer Escrow Completion to a date not more than five business days after such date (and so that the provisions of this clause 6.3 shall apply to Escrow Completion as so deferred); or
- 6.3.2 proceed to Escrow Completion so far as practicable (without prejudice to its rights hereunder); or

- 6.3.3 rescind this Agreement (without prejudice to its other rights and remedies including the right to claim damages for the breach); or
- 6.3.4 waive all or any of the obligations in question of the party or parties in default.
- 6.4 Once performed and completed, the obligations of the parties under clause 6.2 shall be deemed to have been so performed and completed in escrow subject to the satisfaction of the Escrow Condition and the parties agree that all documents and moneys deliverable on Escrow Completion to any party's solicitors shall be held by those solicitors in escrow pending and subject only to the satisfaction of the Escrow Condition. Wherever practicable, a party delivering a document pursuant to his obligations under Escrow Completion shall deliver it undated with authority for it to be dated with the date of Completion as mentioned below. Upon the satisfaction of the Escrow Condition, Completion shall be deemed to have occurred and the said documents may be delivered unconditionally by such solicitors to the relevant party or parties whom they represent free and clear of the Escrow Condition and such solicitors shall have full authority to date any such documents which remain undated with the date of Completion. If the Escrow Condition shall not be satisfied before 5.30 pm on the Completion Date then Escrow Completion shall be deemed to be null and void *ab initio* and the said documents shall thereafter be held immediately by such solicitors to the order of the solicitors acting for the party which delivered the same on Escrow Completion and shall be dealt with as they shall direct. The parties shall procure their respective solicitors to act in compliance with this clause 6.4.
- 6.5 The Purchaser shall ensure that the Further Consideration Shares are admitted to trading on AIM in accordance with the AIM Rules within 10 business days after such Further Consideration Shares being allotted and issued and that the relevant share certificates be issued to the Vendor promptly thereafter.
- 6.6 In the event of any variation in the Purchaser's share capital by way of either a consolidation and/or subdivision or the issue of fully paid bonus shares, the number and description of Further Consideration Shares shall, if appropriate, alter proportionally to reflect such variation. In such circumstances the Purchaser shall ensure that the required alterations to the number and description of Further Consideration Shares shall be determined by the auditors of the Purchaser at the Purchaser's cost in such manner as they shall confirm in writing as being in their opinion fair and reasonable provided always that in the event that the auditors of the Purchaser do not so determine within 15 business days of the relevant event the Vendor shall be entitled to appoint its own accountants to so determine, the reasonable costs of such determination to be borne by the Purchaser.
- 6.7 Conditional upon satisfaction of the Escrow Condition and subject to clause 6.8, the Vendor shall have the right from time to time to nominate one director to the board of directors of the Purchaser to hold office in accordance with, and subject to, the Articles which for the avoidance of doubt shall include the retirement by rotation of such director in accordance with the Articles and to remove such nominated director and to appoint another nominated director in his/her place provided that notice in writing be given to the Purchaser at its registered office not less than five business days prior to the date of the proposed removal and/or appointment of any such director. The director nominated by the Vendor pursuant to this clause 6.7 shall hold office as a non-

executive director of the Purchaser and shall not receive any remuneration or fees for holding such office although he/she shall be entitled to the reimbursement of all reasonable expenses properly incurred in relation to the holding of such office.

- 6.8 The right of the Vendor to nominate a director to the board of directors of the Purchaser as set out in clause 6.7 shall expire when the Vendor ceases to hold such number of Purchaser Shares as is equal to or greater than 5% of the entire issued ordinary share capital of the Purchaser. If the Vendor shall remove any nominated director or if such nominated director shall resign from office, the Vendor shall indemnify the Purchaser on demand against any claim made by such nominated director whether for unfair or wrongful dismissal or other compensation arising out of such removal.
- 6.9 The Purchaser shall at all times when an individual nominated by the Vendor holds office as a director of the Purchaser maintain in full force and effect and in favour of each such individual directors' liability insurance cover for no less than £1,000,000.
- 6.10 Any Consideration Shares allotted under this Agreement shall be allotted as fully paid and free from all Encumbrances and shall rank pari passu in all respects with the Purchaser Shares in issue at Completion.
- 6.11 The Purchaser hereby undertakes to procure that insurance cover in respect of the Company is maintained after Completion in accordance with the provisions set out in the ASA.
- 6.12 The aggregate nominal value of the new ordinary shares of £1 each in the capital of the Company to be issued and allotted in accordance with clause 6.2.1.14 shall be the sum of £1,110,790 plus the Net Working Capital Amount if positive or minus the Net Working Capital Amount if negative.
- 6.13 The Net Working Capital Amount shall be calculated by the Vendor on the business day prior to the anticipated date of Escrow Completion and the Vendor shall give the Purchaser all papers and working documents used in calculating such figure and all assistance in illustrating to the Purchaser how such amount was determined. The Purchaser and the Vendor shall use their respective best endeavours to agree the Net Working Capital Amount prior to 5.30p.m. on the day of Escrow Completion.

7. SET-OFF

- 7.1 Save in the event that the Vendor's liability in respect of any Relevant Claim is payable in damages by reason of notification by the Vendor to the Purchaser pursuant to paragraph 5.1 of Schedule 3, the Purchaser shall issue to the Vendor the following Further Consideration Shares on the following dates:
 - 7.1.1 on the First Allotment Date, 1,350,000 of the Further Consideration Shares less the number (rounded down to the nearest whole number) of Further Consideration Shares calculated by dividing by the Issue Price the aggregate of the amount of each Confirmed Claim made before the First Allotment Date by the Purchaser which is not on that date a Dropped Claim whether or not it is then a Settled Claim ; and

7.1.2 on the Second Allotment Date, all of the Further Consideration Shares not then issued to the Vendor:

7.1.2.1 less a number (rounded down to the nearest whole number) of Further Consideration Shares calculated by dividing by the Issue Price the aggregate of the amount of each Confirmed Claim made before the Second Allotment Date by the Purchaser which is not on that date a Dropped Claim whether or not it is then a Settled Claim, except to the extent that such Confirmed Claim has been taken into account in clause 7.1.1;

7.1.2.2 plus a number (rounded down to the nearest whole number) of Further Consideration Shares calculated by dividing by the Issue Price the aggregate of all Dropped Amounts arising after the First Allotment Date and on or before the Second Allotment Date where the Dropped Amount relates to a Confirmed Claim made on or before the First Allotment Date and which has been taken into account in clause 7.1.1 ; and

7.1.2.3 plus a number (rounded down to the nearest whole number) of Further Consideration Shares calculated by dividing by the Issue Price the aggregate of the amount of any claim made by the Vendor for breach of any of the Purchaser Warranties which claim shall have been Settled (as defined in clause 7.3, mutatis mutandis).

7.2 If after the Second Allotment Date a Confirmed Claim becomes a Dropped Claim, the Purchaser shall issue to the Vendor such number (rounded down to the nearest whole number) of Further Consideration Shares (if any) as is equal to the amount of any Dropped Amount in relation to that Dropped Claim divided by the Issue Price .

7.3 For the purposes of this clause 7, the following words and expressions shall have the following meanings unless the context requires otherwise:

"Confirmed Claim" a Relevant Claim accompanied by a written opinion of counsel based on instructions sent in accordance with this clause 7 to the effect that such claim is based on reasonable grounds and is bona fide;

"Dropped Claim" (a) any claim for breach of any of the Warranties (excluding the Tax Warranties as defined in Schedule 3) agreed in writing by the Purchaser to be abandoned or which is settled in favour of the Vendor by written agreement between the Vendor and the Purchaser; or

(b) any claim for breach of any of the Warranties (excluding the Tax Warranties as defined in Schedule 3) being the subject of an order in favour of the Vendor as to liability made by a court of competent

jurisdiction where either no right of appeal lies or the parties are debarred (whether by the passage of time or otherwise) from exercising such a right;

(c) a Settled Claim where the terms of the Settlement provide that the Vendor is liable for less than the amount of the Confirmed Claim to which the Settled Claim relates (and "**Dropped Amount**" in relation to any such Dropped Claim shall mean the difference between the amount of the Vendor's liability in connection with that Dropped Claim and the amount of the Confirmed Claim to which the Dropped Claim relates);

"Relevant Claim"

any claim for breach of any of the Warranties (excluding the Tax Warranties as defined in Schedule 3) made before the Second Allotment Date in accordance with the provisions of this Agreement; and

"Settled Claim"

- (a) any claim for breach of any of the Warranties (excluding the Tax Warranties as defined in Schedule 3) being settled in favour of the Purchaser by written agreement between the Vendor and the Purchaser, or the subject of an acknowledgement by the Vendor that it accepts liability in respect of such claim; or
- (b) any claim for the breach of any of the Warranties (excluding the Tax Warranties as defined in Schedule 3) being the subject of an order in favour of the Purchaser as to both liability and quantum made by a court of competent jurisdiction where either no right of appeal lies or the parties are debarred (whether by the passage of time or otherwise) from exercising such a right; or
- (c) any claim for breach of any of the Warranties (excluding the Tax Warranties as defined in Schedule 3) being the subject of an order in favour of the Purchaser made by a court of competent jurisdiction for damages to be assessed and an order by such a court assessing the quantum of those damages where either no right of appeal lies against either order or the parties are debarred (by the passage of time or otherwise) from exercising such rights;

and "**Settlement**" and "**Settled**" shall be construed accordingly.

- 7.4 The Purchaser shall ensure that any instructions to be sent to counsel for the purposes of this clause 7 are sent to the Vendor not less than 14 business days in advance. The Vendor shall be permitted to submit comments in writing to the counsel instructed by the Purchaser .

8. **MATTERS PENDING COMPLETION**

- 8.1 The Vendor shall ensure that, during the period commencing on the date of this Agreement and ending on the date of Completion, the Purchaser shall have the ability to manage the day-to-day operational business of the Company and the Vendor shall use reasonable assistance to ensure that the Employees and Contractors follow the reasonable instructions of the Purchaser insofar as they relate to the operation of the Company and may exercise all the powers of the Company to do so, provided always that neither the Purchaser nor the Vendor shall without the other's prior written consent:

- 8.1.1 conduct the business of the Company other than in the ordinary course as carried on at the date of this Agreement;
- 8.1.2 enter into any material or long term contract or commitment or purchase or sell any fixed assets;
- 8.1.3 grant or agree to grant any Encumbrance over any of its assets and/or to take any action to allow any Encumbrance to be created to come into existence over all or any of its assets;
- 8.1.4 borrow (including any overdrafts) including, for the avoidance of doubt, by way of granting trade credit;
- 8.1.5 enter into any agreement or arrangement or permit any action whereby another company becomes its subsidiary or subsidiary undertaking;
- 8.1.6 enter into any transaction other than on arm's length terms and for full and proper consideration;
- 8.1.7 allot or issue or agree to allot or issue, or grant or agree to grant any share or loan capital or any option or other subscription right or warrant in respect of any share or loan capital;
- 8.1.8 offer, give or vary any guarantee or indemnity;
- 8.1.9 make any loan or advance;
- 8.1.10 commence any litigation or settle or compromise any claim or dispute;
- 8.1.11 enter into any consultancy agreements whatsoever or any service contracts with any employee or make or agree to make any change in the terms and conditions of employment of any such employee of the Company, or in the terms and conditions of employees generally;
- 8.1.12 make or agree to make any bonus or other payment to any director or person connected with any director of the Company;

- 8.1.13 do not omit to do anything that might reasonably be expected to adversely effect the reputation of any member of the Vendor's group;
 - 8.1.14 make any changes to the GoPlay TV service save to remedy any defects or errors or illegalities of which notice is given to the Vendor as soon as is reasonably practicable in the circumstances;
 - 8.1.15 save for contacting the Digital Interactive Television Group Limited, contact any providers of any services to the Company;
 - 8.1.16 fail to procure the fulfilment by the Company of any obligation of the Company to provide prizes; or
 - 8.1.17 fail to procure that the Company continues to provide any marketing or promotional services which it is contracted to provide.
- 8.2 The Vendor hereby undertakes to the Purchaser that it shall not between the date of this Agreement and Completion (both dates inclusive) negotiate or communicate with, or entertain or accept any invitation or offer from, any person other than the Purchaser relating to the sale of the Shares.
- 8.3 During the period starting on the date of this Agreement and ending on the date of Completion upon reasonable notice being given by the Purchaser to the Vendor, the Vendor shall allow representatives of the Purchaser access to the business premises of the Company during normal business hours provided always that such representatives of the Purchaser are at all time accompanied by a representative of the Vendor.
- 8.4 The Vendor shall provide the Purchaser with reasonable access to the Company's accounting records during business hours prior to Completion.

9. **CONFIDENTIALITY**

- 9.1 Save for the Press Announcement and subject to clauses 9.2 and 10 each party:
- 9.1.1 shall treat as strictly confidential the provisions of this Agreement and the process of their negotiation and all information about any other party obtained or received by it as a result of negotiating, entering into or performing its obligations under this Agreement ("Confidential Information"); and
 - 9.1.2 shall not, except with the prior written consent of each other party (which shall not be unreasonably withheld or delayed and which may be given either generally or in a specific case or cases and may be subject to conditions), publish or otherwise disclose to any person any Confidential Information.
- 9.2 Clause 9.1 shall not apply if and to the extent that the party disclosing Confidential Information can demonstrate that:
- 9.2.1 such disclosure is required by law or by any securities exchange or regulatory or governmental body having jurisdiction over it (including but not limited to the Financial Services Authority, the London Stock

Exchange, the Panel on Take-Overs and Mergers) and whether or not the requirement has the force of law; or

9.2.2 such disclosure is required to facilitate the satisfaction of any of the conditions set out in clause 4.1; or

9.2.3 the Confidential Information concerned was lawfully in its possession (as evidenced by written records) prior to its being obtained or received as described in clause 9.1.1; or

9.2.4 the Confidential Information concerned has come into the public domain other than through its fault or the fault of any person to whom such Confidential Information has been disclosed in accordance with clause 9.1.2.

9.3 The restrictions contained in this clause 9 shall survive Completion and shall continue without limit of time.

10. ANNOUNCEMENTS

10.1 Subject to clause 10.3 and whether or not any restriction contained in clause 9 applies, none of the parties shall make any announcement, (including, without limitation, the Press Announcement, any announcement relating to the day-to-day management of the Company during the period starting on the date of the Agreement and ending on Completion and any other communication to the public) concerning the provisions or subject matter of this Agreement or containing any information about any other party without the prior written approval of the other (which shall not be reasonably withheld or delayed and may be given either generally or in a specific case or cases and may be subject to conditions).

10.2 Clause 10.1 shall not apply if and to the extent that such announcement is required by law or by any securities exchange or regulatory or governmental body having jurisdiction over it (including but not limited to the Financial Services Authority, the London Stock Exchange and the Panel on Take-Overs and Mergers) and whether or not the requirement has the force of law and provided that any such announcement shall be made only after consultation with the other parties.

10.3 The restrictions contained in this clause 10 shall survive Completion and shall continue without limit of time.

11. VENDOR RESTRICTIONS

11.1 The Vendor hereby covenants with the Purchaser that it will not for a period of 12 months after Completion transfer, charge or otherwise dispose of any legal or beneficial interest in any Relevant Shares (as hereinafter defined) unless it receives the prior written consent of the Purchaser and that if the Purchaser's consent is obtained for such a disposal or if any disposal is contemplated at any time within 2 years after the expiry of the said period of 12 months, it will consult with the Purchaser prior to effecting any such disposal in order to allow a broker nominated by the Purchaser within a reasonable period of time to obtain a price for such Relevant Shares which is not less than the price per Relevant Share obtained by the Vendor or its agents, and if the broker so nominated is able to obtain any such price within a reasonable period of time, the Purchaser

or its agents shall be permitted to effect such sale on behalf of the Vendor; provided that the foregoing restrictions shall not apply to:

- 11.1.1 any disposal made by the Vendor in acceptance of a general or partial offer for the whole of the issued ordinary share capital of the Purchaser (not already held by the offeror or one of its subsidiaries if such be the case) to which the City Code on Take-Overs and Mergers applies or by way of the giving of any irrevocable undertaking to accept any such offer; or
- 11.1.2 a sale by the Vendor of any of the Relevant Shares to the extent necessary to raise sufficient moneys to satisfy any claim made against the Vendor under the Warranties or the Taxation Deed ; or
- 11.1.3 any transfer made by the Vendor to its holding company or any other company in the control of (within the meaning of section 416 of ICTA) Sony Corporation and provided that the transferee has entered into a direct covenant with the Purchaser in respect of the shares disposed of on the same terms, mutatis mutandis, as this clause 11 for the balance then outstanding for the period to which the restrictions on the Vendor then apply; or
- 11.1.4 any disposal effected by way of renunciation of any right to subscribe for Purchaser Shares derived from Purchaser Shares already held by the Vendor; or
- 11.1.5 any disposal made under an offer by the Purchaser to purchase its own shares in accordance with the Act or effected under a compromise or arrangement proposed under section 425 of the Act or any scheme of reconstruction under section 110 of the Insolvency Act 1986; or
- 11.1.6 required by the order of any court of competent jurisdiction,

and "Relevant Shares" means any of the Initial Consideration Shares, the Further Consideration Shares and any additional shares allotted or issued to the Vendor by virtue of the holding of those shares or any of them.

12. RELEASE OF GUARANTEES

- 12.1 The Vendor shall use its reasonable endeavours to secure the release of the Company with effect from Completion from any and all guarantees and indemnities which the Company] has given (whether alone or jointly with others) in respect of any obligations of any of the Vendor or the Vendor's holding company or any other company controlled (within the meaning of Section 416 of ICTA) by Sony Corporation and the Vendor shall, until such release be effected, indemnify the Purchaser (for itself and as agent and trustee for the Company), the Company on demand from and against all liabilities, costs and expenses which may arise under any such guarantee or indemnity or be incurred by reason of a requirement that such guarantee or indemnity be honoured or enforced.

13. UNDERTAKINGS

13.1 The Purchaser undertakes to ensure that the sum transferred to the Purchaser by the Vendor pursuant to clause 6.2.1.14 is to be used solely for the purposes of the business of the Company as carried on immediately prior to Completion and for any substantially identical business (except that such business may relate to the Telewest, NTL and Freeview platforms as well as the Sky Digital platform) then carried on by the Purchaser and for purposes ancillary thereto, including portal games, sponsorship activities comprising the contracting with an agency to sell advertising and branding opportunities on specific games, mobile activities comprising the sale of ring tones, logos, mobile content games and the sale of games/quizzes and Match Play (fixed-odds) gaming. The Purchaser undertakes to use all reasonable endeavours to ensure that the Company carries on business for not less than 12 months after Completion.

13.2 For so long as the Vendor shall be the holder of any of the Consideration Shares the Purchaser shall not engage in the supply of goods or services to or in activities within the "adult entertainment" sex industry or knowingly engage in the supply of goods or services to or in activities within the unlawful gaming industry.

14. **GENERAL**

14.1 Costs

Each party shall pay his own costs, charges and expenses incurred in relation to the negotiation, preparation and implementation of this Agreement and the documents referred to herein and everything ancillary or incidental thereto including, but not limited to, any commission payable to any broker.

14.2 Notices

Any notice required or permitted to be given hereunder shall be in writing and shall be sent to the registered offices of the parties from time to time. Any such notice may be delivered personally or by first class prepaid letter or facsimile transmission and shall be deemed to have been served if by delivery when delivered if by first class post 48 hours after posting (and proof that the envelope containing the notice was properly addressed and sent prepaid shall be sufficient evidence of service) and if by facsimile transmission when despatched. Any notice sent to the Vendor shall be copied to Eric Gaynor, SVP Business Affairs, 3960 Ince Boulevard, Culver City, CA 90232, USA (fax number 001 310 244 8102 or to any other address or number from time to time notified in accordance with this Agreement).

14.3 Assignment

This Agreement may not be assigned in whole or in part but is binding on and shall enure for the benefit of the parties' successors.

14.4 Continuing agreement

All obligations, representations and warranties of the parties shall continue in full force and effect notwithstanding Completion except for any obligations then already fully performed.

14.5 Further assurance

The parties shall, and shall procure that any necessary third parties over whom they have control, and shall use their respective reasonable endeavours to procure that any other necessary third parties shall do, execute and perform all such further deeds, documents, assurances, acts and things as any of the parties may reasonably require by notice in writing to transfer title to the Shares to the Purchaser and otherwise to give effect to the provisions of clause 6 of this Agreement.

14.6 Co-operation

Except as set out in the Transition Services Agreement, during the period starting on the date of this Agreement and ending on Completion, each party agrees to co-operate with and assist the other parties in the taking of all steps necessary or appropriate to complete the transactions contemplated by this Agreement, including, without limitation, the provision of information appropriate for submission to the London Stock Exchange, the Panel on Take-Overs and Mergers or any other relevant regulatory or governmental agencies provided always that the Vendor shall in no event be required to take any action whereby the Vendor may be liable for any obligation or liabilities of or relating to the Purchaser.

14.7 Time of the essence

Any date or period mentioned in this Agreement may be extended by agreement between the parties, but as regards any date or period (whether or not extended as aforesaid) time shall be of the essence of this Agreement.

14.8 Entire Agreement

14.8.1 This Agreement (together with the documents referred to herein) constitutes the entire agreement between the parties with respect to the matters dealt with herein and supersedes any previous agreement between the parties in relation to such matters.

14.8.2 There shall be deemed to be comprised in this Agreement all letters and acknowledgements exchanged between the parties contemporaneously with and expressed to be ancillary to this Agreement. Each party hereby acknowledges that in entering into this Agreement it has not relied on any representation, warranty or undertaking save as expressly set out herein or in any document referred to herein.

14.9 Variation

No variation or waiver of any provision of this Agreement or of any document in the agreed form (or any executed version thereof) shall be valid or effective unless made by an instrument in writing signed by such of the parties. Such instrument may consist of several instruments in the like form each executed by or on behalf of one or more of the parties. References herein to agreed form documents shall, where appropriate, be construed as references to such documents as so amended.

14.10 Law and Dispute Resolution

14.10.1 This Agreement shall be governed by English Law.

14.10.2 The parties shall use all reasonable endeavours to negotiate in good faith and settle amicably any dispute that may arise out of or in connection with this Agreement (a "Dispute"). If a Dispute cannot be settled through negotiations by appropriate representatives of each of the parties, either party may give to the other a notice in writing ("Dispute Notice"). Within five business days of the Dispute Notice being given the parties shall each refer the Dispute to their respective Chief Executive Officers/Chairmen who shall attempt to resolve the Dispute. If the Dispute is not settled by agreement in writing between the parties within 15 business days of the Dispute Notice then it shall be referred to an alternative dispute resolution procedure in accordance with Schedule 6.

14.11 Waiver

14.11.1 The failure by any party at any time to require performance by any other party or to claim a breach of any term of this Agreement shall not be deemed to be a waiver of any right under this Agreement.

14.11.2 Completion shall not constitute a waiver of any breach of this Agreement whether or not known at the time of Completion.

14.12 Counterparts

This Agreement may be executed in any number of counterparts all of which when taken together shall constitute a single instrument.

14.13 Severability

Each provision of this Agreement shall be construed separately and (save as otherwise expressly provided herein) none of the provisions hereof shall limit or govern the extent, application or construction of any other of them and notwithstanding that any provision of this Agreement may prove to be illegal or unenforceable in whole or in part the other provisions of this Agreement and the remainder of the provision in question shall continue in full force and effect.

14.14 Reductions in purchase consideration

In relation to any provision in this Agreement or the Taxation Deed whereby it is agreed that any payments by the Vendor to the Purchaser hereunder or thereunder shall be treated as a reduction in the purchase consideration for the Shares, such payments shall, to the extent that in aggregate they are less than or equal to such purchase consideration, constitute a repayment of and a reduction (or, as the case may be, a full return of) such consideration, but nothing in such provisions shall limit the liability of the Vendor to make such payments in circumstances where, in aggregate, they exceed the purchase consideration for the Shares.

14.15 Third Party Rights

No person who is not a party to this Agreement shall have any right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Agreement save that any individual nominated by the Vendor holds office as a director of the Purchaser shall be entitled to enforce clause 6.9 of this Agreement.

EXECUTED as a deed in two originals the day and year first before written.

SCHEDULE 1

(The Warranties)

1. **DEFINITIONS**

In this Schedule, unless the context otherwise requires:

the "Accounting Date" means 31 March 2003 being the date to which the last audited accounts of the Company were made up;

"Encumbrance" means, for the purpose of this Schedule 1, and includes any interest or equity of any person (including without prejudice to the generality of the foregoing, any right to acquire, option, right of pre-emption or right of conversion) or any mortgage, charge, pledge, lien or assignment or any other encumbrance, priority or security interest or arrangement of whatsoever nature over or in the relevant property;

"Intellectual Property" means patents, trade marks and service marks (whether or not registered), registered designs, applications for any of the foregoing, copyright, know-how, design rights, database rights, confidential information, trade and business names and any other similar protected rights in any country;

the "Management Accounts" means the management accounts of the Company for the period ended on 30 November 2003, a true copy of which is annexed to the Disclosure Letter;

the "Management Accounts Date" means 30 November 2003;

"Taxation Authority" means the Inland Revenue, the Customs and Excise and any other authority competent to impose any Taxation (whether within or without the United Kingdom);

the "Taxes Act" means the Income and Corporation Taxes Act 1988;

"taxation" has the meaning attributed thereto in the Taxation Deed;

"TCGA" means the Taxation of Chargeable Gains Act 1992;

"VATA" means the Value Added Tax Act 1994;

"Vendor's Controlled Group" means the Vendor and any company which is or has within the last six years been controlled by it. For this purpose "control", shall be construed in accordance with Section 416 of the Taxes Act as modified by sub-Sections (5) and (6) of Section 767B of the Taxes Act;

the "Warranted Accounts" means in relation to the Company, the audited balance sheet of the Company at the Accounting Date and the audited profit and loss account of the Company for the year ended on the Accounting Date, including all notes and reports on such balance sheet and profit and loss account;

2. **INFORMATION**

2.1 The information contained in the Disclosure Letter is true, accurate and complete in all material respects.

2.2 The facts set out in the Recitals and in Schedule 2 are accurate in all respects.

3. **SHARE CAPITAL AND CONSTITUTION**

3.1 The Shares will at Completion constitute the whole of the issued and allotted share capital of the Company.

3.2 Apart from this Agreement, there is no Encumbrance on, over or affecting the issued or unissued share or loan capital of the Company and there is no agreement or commitment to give or create any such and no claim has been made by any person to be entitled to any such.

3.3 The register of members and other statutory books of the Company have been properly kept in all material respects and contain an accurate and complete record of the matters with which they should deal and, so far as the Vendor is aware, no notice or allegation that any of them is incorrect or should be rectified has been received.

3.4 So far as the Vendor is aware, all material returns, particulars, resolutions and documents required by the Act to be filed with the Registrar of Companies in respect of the Company have been correctly made up and duly filed.

3.5 The copy of the memorandum and articles of association of the Company annexed to the Disclosure Letter is true and complete and the Company has at all times carried on its business and affairs in accordance with its memorandum and articles of association.

4. **ACCOUNTS**

4.1 The Warranted Accounts have been prepared in accordance with the historical cost convention and the bases and policies of accounting adopted for the purpose of preparing the Warranted Accounts are the same as those adopted in preparing the audited accounts of the Company in respect of the three last preceding accounting reference periods; and no changes in the basis of accounting were made during the accounting reference period ended on the Accounting Date or have been made since that date.

4.2 The Warranted Accounts show a true and fair view of the state of affairs of the Company at the Accounting Date and its profits or losses for the accounting reference period ended on that date comply with all applicable Statements of Standard Accounting Practice and Financial Reporting Standards applicable to a United Kingdom company and with the requirements of the Act and, to the extent required to be disclosed in the Warranted Accounts, the profits or losses of the Company were not affected by any extraordinary, exceptional or non-recurring item.

4.3 The copy of the Management Accounts annexed to the Disclosure Letter is a true and complete copy and the Management Accounts:

4.3.1 have been prepared on bases and in accordance with practices, policies and principles consistent with those adopted in preparing the previous management accounts of the Company; and

4.3.2 have been carefully prepared in good faith.

5. POSITION SINCE THE ACCOUNTING DATE

Since the Management Accounts Date, so far as the Vendor is aware:

- 5.1 the Company has carried on its business in the ordinary course and so as to maintain the same as a going concern and without any interruption or alteration in the nature, scope or method of carrying on the same;
- 5.2 there has been no material adverse change in the Company's financial or trading position excluding changes relating to general market conditions;
- 5.3 the Company has not assumed or incurred any liabilities (including contingent liabilities) otherwise than in the ordinary course of carrying on its business;
- 5.4 the Company has not disposed of or acquired any fixed assets nor, save in the ordinary course of business, has it disposed of or acquired any current assets;
- 5.5 there has been no destruction of or substantial damage to any of the Company's material fixed assets;
- 5.6 no debtor has been released on terms that he pays materially less than the full book value of his debt (except for settlement discounts on the usual terms which have been disclosed to the Purchaser) and no material debt owing to the Company has been deferred, subordinated or written off or has proved to any extent irrecoverable or is now regarded as irrecoverable;
- 5.7 the Company has not materially accelerated the collection of trade debts or decelerated the payment of trade creditors;
- 5.8 no loan or loan capital or redeemable share capital of the Company has been repaid in whole or in part or has become liable to be repaid.

6. TAXATION

6.1 Accounts, returns and information

- 6.1.1 The Warranted Accounts make appropriate provision for all taxation for which the Company was at the Accounting Date or thereafter became or may hereafter become liable or accountable in respect of or by reference to any income, profit, receipt, gain, transaction, agreement, distribution or event which was earned, accrued, received, realised, entered into, paid or made on or occurred before the Accounting Date and proper provision was made therein for deferred taxation in accordance with generally accepted accounting principles.
- 6.1.2 In all material respects, all returns, computations and payments which should have been made by the Company for any taxation purpose have been made within the requisite periods and are up-to-date, correct and on a proper basis.
- 6.1.3 Since the Accounting Date no further liability or contingent liability for Taxation on the Company has arisen or is likely to arise otherwise

then as a result of transactions (not including distributions) entered into by the Company in the ordinary course of trading after the Accounting Date.

6.1.4 The Company has not within the past six years paid or become liable to pay, and there are no circumstances by reason of which it is likely to become liable to pay, any penalty, fine, surcharge or interest whether charged by virtue of the provisions of the Taxes Management Act 1970 or VATA or otherwise.

6.1.5 The Vendor is not aware of any circumstance which will or may, whether by lapse of time or the issue of any notice of assessment or otherwise, give rise to any dispute with any relevant taxation authority in relation to its liability or accountability for taxation, any claim made by it, any relief, deduction, or allowance afforded to it, or in relation to the status or character of the Company (whether as to its status as an unquoted company or as a trading company or as a member of any group) under or for the purpose of any provision of any legislation relating to taxation.

6.1.6 All clearances obtained by the Company have been properly obtained and all information supplied to the Inland Revenue or other appropriate authority in connection with such clearances was complete and accurate in all material respects and any transaction for which such clearance was obtained has been carried out in accordance only with the terms of the clearance given therefor and the application on which the clearance was based.

6.1.7 No Tax Authority has agreed to operate any special arrangement (being an arrangement which is not based on a strict and detailed application of the relevant legislation) in relation to the Company's affairs, whether in respect of benefits provided by the Company to its officers or employees, or in relation to the valuation of stocks or in respect of any administrative or other matter whatsoever.

6.1.8

6.2 Employees, payment of tax and withholdings

6.2.1 The Company has duly deducted and accounted for all amounts which it has been obliged to deduct or withhold in respect of taxation and, in particular, has properly operated the PAYE system, by deducting tax, as required by law, from all payments made, or treated as made, to its employees or former employees (including, for the avoidance of doubt, any sums payable in respect of benefits provided), and has accounted to the Inland Revenue for all tax so deducted and for all tax chargeable on benefits provided for its employees or former employees.

6.2.2 The Company has complied fully with its obligations under the provisions of Section 421J ITEPA and Section 85 of the Finance Act 1988.

6.2.3 The Disclosure Letter contains full details of all share option or profit sharing schemes arrangements established by the Company whether

approved by the Inland Revenue under the provisions of ITEPA or otherwise.

- 6.2.4 The Company has not established a qualifying employee share ownership trust within the meaning of Section 74 of and Schedule 5 to the Finance Act 1989 and no chargeable event within the meaning of Section 69 of the Finance Act 1989 has occurred.
- 6.2.5 The Disclosure Letter contains full details of all profit-related pay schemes which provided for the payment to any employee of the Company of emoluments calculated by reference to profits, which have ever been registered under Chapter III Part V of the Taxes Act.
- 6.2.6 The Company is not nor will it become liable to pay or make reimbursement or indemnity in respect of any taxation (or amounts corresponding thereto) in consequence of the failure by any person to discharge that taxation within any specified period or otherwise, where such taxation relates to a profit, income or gain, transaction, event, omission or circumstance arising, occurring or deemed to arise or occur (whether wholly or partly) prior to Completion.
- 6.2.7 The Company is a "large company" within the meaning of regulation 3 of the Corporation Tax (Instalment Payments) Regulations 1998 (Statutory Instrument 1998/3175) .

6.3 Distributions, payments and share capital

- 6.3.1 Since the Accounting Date the Company has not paid or declared any dividend nor has it made any payment which is (or is treated as) a distribution for taxation purposes.
- 6.3.2 The Company has not at any time issued any share capital as paid up otherwise than by the receipt of new consideration after repaying any share capital, as mentioned in Section 210 of the Taxes Act.
- 6.3.3 The Company has not been concerned with or in any distribution for the purposes of Sections 213 to 218 of the Taxes Act (demergers).

6.4 Loan relationships, foreign exchange etc

- 6.4.1 No amount in relation to which the Company is a debtor or creditor and is existing at the date hereof constitutes a loan relationship of the Company within the meaning of the Finance Act 1996 which has an unallowable purpose as defined in paragraph 13 of Schedule 9 to the Finance Act 1996, so far as the Vendor is aware.
- 6.4.2 No taxation liability or non-trading deficit would arise from any loan relationship of the Company as a result of any debt under such loan relationship being settled in full or in part at the Completion Date.
- 6.4.3 In relation to each of its loan relationships, the Company operates and has operated an accruals basis of accounting authorised under Section 85 Finance Act 1996.

- 6.4.4 No interest or other amount treated as a debit in relation to any loan relationship remains unpaid and each such debit can be deducted in computing the taxable profits of the Company.
- 6.4.5 The Company is not and never has been a party to any interest rate contract or option, or currency contract or option which is or may become a qualifying contract as described in Chapter 2 Part 3 of the Finance Act 2002.
- 6.4.6 No waiver, release or other forgiveness of any amount owing by the Company as part of the Vendor Reorganisation will give rise to a liability under Section 94 of the Taxes Act.

6.5 Close company provisions

- 6.5.1 The Company is not a close company as defined in Sections 414 and 415 of the Taxes Act.
- 6.5.2 The Company is not a participator in a company which is not resident in the United Kingdom and which would be a close company if it were resident in the United Kingdom in circumstances such that a chargeable gain accruing to the company not resident in the United Kingdom could be apportioned to the Company pursuant to Section 13 of the TCGA.
- 6.5.3 There is no outstanding Inland Revenue charge (as defined in Section 237 of the IHTA) over any asset of the Company or over any of the Shares.
- 6.5.4 There are in existence no circumstances by virtue of which any such power as is mentioned in Section 212 IHTA could be exercised in relation to any asset of the Company or to any of the Shares or by virtue of which any such power could be exercised but for the provisions of Section 204(6) of the IHTA.
- 6.5.5 The Company has not been a party to associated operations in relation to a transfer of value within the meaning of Section 268 of the IHTA.
- 6.5.6 The Company has not received any asset by way of gift as mentioned in Section 282 of the TCGA.
- 6.5.7 No expenditure incurred by the Company on the acquisition of any Shares is liable to be reduced under the provisions of Section 125 of the TCGA.
- 6.5.8 The Company has not at any time made a transfer of value which is or may be liable to taxation under the provisions of Section 94 of the IHTA.

6.6 Group transactions

The Company has not at any time:-

- 6.6.1 acquired any asset from any company which at the time of the acquisition was a member of the same group of companies as defined in Section 170 of the TCGA.
 - 6.6.2 entered into or been otherwise involved in any transaction to which Section 774 of the Taxes Act applies.
 - 6.6.3 joined in the making of any election pursuant to Section 247 of the Taxes Act or paid any dividend without paying ACT or made any payment without deduction of income tax in circumstances such that ACT ought to have been paid or income tax ought to have been deducted as mentioned in Section 247(6) of the Taxes Act.
 - 6.6.4 been a party to any such reconstruction as is described in Section 343 of the Taxes Act.
 - 6.6.5 acquired an asset as trading stock from a member of the same group where the asset did not form part of the trading stock of any trade carried on by the other member, as mentioned in Section 173(1) of the TCGA, or disposed of an asset which formed part of the trading stock of any trade carried on by the Company to another member of the same group which acquired the asset otherwise than as trading stock of a trade carried on by the other member, as mentioned in Section 173(2) of the TCGA;
 - 6.6.6 been, and there are no circumstances by virtue of which the Company could be, assessed or charged to corporation tax by virtue of the provisions of Sections 179(11), 190 or 191 of the TCGA and the Company is not entitled to recover or liable to have recovered from it any sums paid pursuant to any of those sections;
 - 6.6.7 entered into an election under Section 179A of the TCGA to assume liability for a profit or gain originally accruing to another company; or
 - 6.6.8 ceased to be a member of a group of companies in such circumstances that a profit or gain was deemed to accrue to the Company by virtue of Section 179 of the TCGA and neither the execution of this Agreement nor Completion will result in any profit or gain being deemed to accrue to the Company for any taxation purpose whether pursuant to Section 179 of the TCGA or otherwise.
- 6.7 General
- 6.7.1 There are no circumstances under which the Company is or could become liable under Sections 767A or 767AA of the Taxes Act to pay any amount in respect of any taxation liability of a member of the Vendor's Controlled Group.
 - 6.7.2 The Company has not given or been required to give any security for taxation.
- 6.8 Chargeable gains
- 6.8.1 If each of the capital assets of the Company was disposed of for a consideration equal to the book value of that asset in or adopted for

the purpose of the Warranted Accounts no liability to corporation tax on chargeable gains would arise (and for this purpose there shall be disregarded any relief or allowance available to the Company other than amounts falling to be deducted from the consideration receivable under Section 38 of the TCGA).

6.8.2 Neither the Company nor any other person has made any claim for relief under Sections 152-160, Section 175 or Section 179B of the TCGA ("roll-over reliefs") or any other claim which affects or could affect the amount of the chargeable gains or allowable losses which would, but for such claim, arise on a disposal by the Company of any of its assets.

6.8.3 The Company has not made an election under Section 35(5) of the TCGA nor has the Company made its first relevant disposal for the purposes of Section 35(6) of the TCGA.

6.8.4 No debt (other than a debt on a security) owed to the Company would on its disposal give rise to a liability to taxation by reason of Section 251 of the TCGA (disposals otherwise than as original creditor).

6.9 Capital allowances

6.9.1 No balancing charge under the Capital Allowances Act 2001 (or other legislation relating to any capital allowances) would be made on the Company on the disposal of any asset, or of any pool of assets (that is to say all those assets expenditure relating to which would be taken into account in computing whether or not a balancing charge would arise on a disposal of any other of those assets), on the assumption that the disposals are made for a consideration equal to the book value shown in or adopted for the purpose of the Warranted Accounts for each of the assets.

6.9.2 The Company has not made any election under Chapter 9 of Part 2 of the Capital Allowances Act 2001 nor is it taken to have made any such election under Section 89(4) of the Capital Allowances Act 2001.

6.9.3 The Company has not obtained any capital allowances under Chapter 14 of Part 2 of the Capital Allowances Act 2001 (fixtures).

6.9.4 The Company does not own any asset which is, or is capable of being a long-life asset as defined in Chapter 10 of Part 2 of the Capital Allowances Act 2001.

6.10 Value Added Tax - General

6.10.1 The Company is a member of a VAT group and the representative member of the group of which the Company is a member:-

6.10.1.1 is duly registered and is a taxable person for the purposes of value added tax;

- 6.10.1.2 has complied in all respects with all statutory requirements, orders, provisions, directions or conditions relating to value added tax;
 - 6.10.1.3 maintains complete, correct and up-to-date records for the purposes of all legislation relating to value added tax and is not subject to any condition imposed by the Commissioners of Customs and Excise under paragraph 6 of Schedule 11 VATA;
 - 6.10.1.4 is not in arrears with any payment or returns under legislation relating to value added tax, or liable to any abnormal or non-routine payment, or any forfeiture or penalty, or to the operation of any penal provision; and
 - 6.10.1.5 has not been required by the Commissioners of Customs and Excise to give security under paragraph 4 of Schedule 11 VATA.
- 6.10.2 All supplies of goods and services made by the Company are taxable supplies for the purposes of VATA and the Company has not been and, so far as the Vendor is aware, will not be denied credit for any input tax by reason of the operation of Section 26 VATA.
 - 6.10.3 All goods or services supplied to the Company, or goods imported by the Company, in respect of which the Company has claimed credit for input tax under Section 25 VATA, are used or to be used wholly for the purposes of the Company's business.
 - 6.10.4 No supplies of relevant services have been made to the Company to which Section 8 VATA applied.
 - 6.10.5 The Company is not, and has not agreed to become, an agent, manager or factor for the purposes of Section 47 VATA of any person who is not resident in the United Kingdom or the VAT representative of any such person for the purposes of Section 48 VATA.
 - 6.10.6 The Disclosure Letter contains full particulars of any claim for bad debt relief made, or which may be made, by the Company under Section 36 VATA.
 - 6.10.7 The Disclosure Letter contains full particulars of any asset in respect of which Part XV of the Value Added Tax Regulations 1995 (Statutory Instrument 1995/2518) (capital goods scheme) applies.
 - 6.10.8 The Company has never disposed of or acquired any business or assets in the circumstances mentioned in Section 49 VATA or Article 5 of the Value Added Tax (Special Provisions) Order 1995.
- 6.11 Value Added Tax - Property transactions
- 6.11.1 The Company has not incurred any liability in respect of value added tax (whether to H. M. Customs and Excise or to any other person) by reason of the provisions of paragraph 2(1) of Schedule 10 to the VATA.

- 6.11.2 The Company has not been involved in arrangements falling within paragraphs 2(3AA) or 3A of Schedule 10 to the VATA.

6.12 Stamp duty

- 6.12.1 The Company has not obtained any exemption or relief from stamp duty which has become liable to forfeiture or obtained such exemption or relief in respect of a transaction carried out within the period in which it may become liable to forfeiture.
- 6.12.2 All documents in the possession or under the control of the Company or to the production of which the Company is entitled which are necessary to establish the title of the Company to any asset and which, in the United Kingdom or elsewhere, attract either stamp duty or require to be stamped with a particular stamp denoting that no duty is chargeable or that the document has been produced to the appropriate authority, have been properly stamped; and no such documents which are outside the United Kingdom would attract stamp duty if they were brought into the United Kingdom.
- 6.12.3 The Company has complied in all respects with the provisions of Part IV of the Finance Act 1986 (stamp duty reserve tax) and any regulations made thereunder.
- 6.12.4 All land transaction returns that are required to be submitted to the Inland Revenue for stamp duty land tax purposes under the provisions of Part 4 of the Finance Act 2003 have been prepared accurately and submitted within the relevant time limits and the correct amount of stamp duty land tax has been paid on time in accordance with such land transaction returns.

6.13 Residence and offshore interests

- 6.13.1 The Company is and has at all times been resident in the United Kingdom for United Kingdom Taxation purposes and has not at any time been resident outside the United Kingdom for Taxation purposes outside the United Kingdom or for the purposes of any double taxation arrangements.
- 6.13.2 The Company is not, and has never been, a dual-resident investing company within the meaning of Section 404 of the Taxes Act.
- 6.13.3 The Company has not at any time entered into any transaction falling within Section 765 of the Taxes Act or failed to comply with the requirements of Section 765A of the Taxes Act.
- 6.13.4 The Company has not at any time been subject to taxation in any jurisdiction outside the United Kingdom or had a branch outside the United Kingdom or any permanent establishment (as that expression is defined in Section 148 of the Finance Act 2003) outside the United Kingdom.
- 6.13.5 No assessment in respect of a capital gain on the disposal of any asset situated outside the United Kingdom or of overseas income which is temporarily or permanently incapable of remittance to the

United Kingdom has been postponed under the provisions of Section 279 of the TCGA (foreign assets: delayed remittances) or Section 584 of the Taxes Act (relief for non-remittable overseas income).

6.13.6 The Company does not own and has not at any time owned a material interest in an offshore fund which is or has at any material time been a non-qualifying offshore fund within the meaning of Section 760 of the Taxes Act.

6.13.7 The Company does not own and has not at any time owned any interest in a controlled foreign company within the meaning of Chapter IV of Part XVII of the Taxes Act.

6.13.8 The Company is not, and has not at any time since 1 April 1985 been, a company which has, or an associated company of a company which has, a qualifying presence in a unitary state for the purposes of Sections 812 to 814 of the Taxes Act.

6.13.9 The Company is not assessable and has not at any time been assessed to tax under Section 126 of the Finance Act 1995.

6.14 Anti-avoidance

6.14.1 The Company has not been and is not now a party to any transaction or arrangement containing steps inserted without any commercial or business purpose and designed partly or wholly to reduce a liability to Taxation.

6.14.2 The Company has not in the six years ended on the date of this Agreement carried out or been engaged in any transaction or arrangement in respect of which there may be substituted for the actual consideration given or received by the Company a different consideration for any taxation purposes.

7. DIVIDENDS AND DISTRIBUTIONS

7.1 The Company has not, in respect of any accounting period, declared or paid any dividend or made any other distribution including, for the avoidance of doubt, any capital distribution, (as defined in Section 832 of the Taxes Act) other than those (if any) provided for in its audited accounts for that period.

8. INTERESTS OF THE VENDOR, DIRECTORS AND EMPLOYEES

8.1 There are:

8.1.1 no loans made by the Company to the Vendor and/or any of the directors of the Company and/or any associate of any of them which are outstanding;

8.1.2 no debts owing to the Company by the Vendor and/or any of the directors of the Company and/or any associate of any of them are outstanding; and

8.1.3 no securities for any such loans or debts as aforesaid.

8.2 There are no existing material contracts, engagements, guarantees or indemnities to which the Company is a party and in which the Vendor and/or any of the directors of the Company and/or any associate of any of them is directly or indirectly interested and, save as set out in the Disclosure Letter [or provided under the Transitional Services Agreement], the Company does not depend upon or derive any benefit from any assets, facilities or services owned or supplied by the Vendor.

8.3 Neither the Vendor nor, as far as the Vendors are aware, any of the officers or employees (or former officers or employees) of the Company have any material claim, demand or right of action against the Company (whether actual, contingent or prospective) otherwise than for remuneration accrued (but not yet due for payment) or for reimbursement of business expenses in each case in accordance with their contracts of employment and none of them is entitled to accrued holiday pay other than in respect of the Company's current holiday year.

9. **TITLE, ENCUMBRANCES AND ASSETS**

9.1 So far as the Vendor is aware, the equipment used in connection with the business of the Company is accurately recorded in the asset register annexed to the Disclosure Letter.

9.2 The Company has possession and control of and a good and marketable title to all the assets listed in the asset register dated 11 December 2003 annexed to the Disclosure Letter and no distress, execution or other process has been levied on any of such assets nor, far as the Vendor is aware, do any circumstances exist whereby any person may claim entitlement to possession of any of such assets in competition with or in priority to the Company.

9.3 No Encumbrance (or agreement or commitment to grant any Encumbrance) is outstanding against any of the assets used in its business (except for retention of title agreements (as defined in Section 251 of the Insolvency Act 1986) arising in the ordinary course of business) and no claim has been made by any person to be entitled to any such.

10. **FINANCIAL MATTERS**

10.1 So far as the Vendor is aware, the Company's accounting records comply with the requirements of section 221 of the Act.

10.2 Save as disclosed in the Warranted Accounts:-

10.2.1 save in respect of the contracts referred to in paragraph 13.1 of this Schedule 1, the Company has no material outstanding capital commitments and is not engaged in any scheme or project requiring the expenditure of capital;

10.2.2 the Company has no material outstanding loan capital, has no arrangements with its bankers or others relating to overdraft, borrowing or other financial facilities, has not factored its debts and has not borrowed any money which it has not repaid;

10.2.3 the Company has not engaged in financing of a type which would not require to be shown or reflected in its audited accounts;

- 10.2.4 the Company has not lent any money which has not been repaid to it and does not own the benefit of any debt other than debts accrued to it in the ordinary course of its business or owing to it by its bankers.
- 10.3 Full details of all overdraft, loan and other financial facilities available to the Company and of the amounts outstanding under such facilities are set out in the Disclosure Letter.
- 10.4 The Company has no bank accounts.
- 10.5 As far as the Vendor is aware, the Company is not in material default under any instrument constituting any indebtedness or under any guarantee of any indebtedness and, as far as the Vendor is aware, there is no reason why any such indebtedness or guarantee should be called or the liabilities thereunder accelerated before their due date (if any) or any loan or other financial facilities terminated.
- 10.6 Annexed to the Disclosure Letter is a list complete in all material respects of the trade debtors of the Company unpaid at 60 days after invoice.
- 10.7 Annexed to the Disclosure Letter is a list complete in all material respects of trade creditors of the Company unpaid 60 days after invoice.
- 10.8 Full details of all grants, allowances and other financial assistance provided to the Company or due to be made to it are disclosed in the Disclosure Letter and the Company has not done or failed to do any act or thing which could result in all or any part of such grants, allowances or assistance becoming repayable or being forfeited by it in whole or in part.
- 10.9 So far as the Vendor is aware, the Company is not liable to make any payment to any of its professional advisers in respect of services rendered at any time prior to Completion.
- 10.10 No material expenses or liabilities have been incurred or assumed by the Company otherwise than exclusively for the purposes of the Company's business.
- 10.11 All material costs incurred by the Company have been charged to the Company and not borne by any other person.

11. THE PROPERTIES

- 11.1 The Company has not at any time in the past, nor currently, owned or leased any leasehold or freehold property or entered into any licence or tenancy or had any interest in respect thereof.

12. THE COMPANY'S BUSINESS

- 12.1 So far as the Vendor is aware, the business of the Company has not since the Management Accounts Date been materially and adversely affected by the loss of any important contract or customer or source of supply.
- 12.2 Save as expressly mentioned in this Agreement or set out in the Disclosure Letter, the Company is not and has not since its incorporation been the holder or beneficial owner of any share, debenture, mortgage or security (or interest

therein) or a member of any joint venture, consortium, partnership or other unincorporated association or a party to any arrangement for sharing commissions or income.

- 12.3 The Company does not have any branch office, agency, place of business or permanent establishment outside England nor does it have any significant assets outside the United Kingdom.
- 12.4 So far as the Vendor is aware, the Company has not carried on business under or used on or in its notepaper, advertising, documents or vehicles any name other than its full corporate name.
- 12.5 Save as the Vendor is aware, the Company has not at any time disclosed to any person (other than the Purchaser and members of the Vendor's Group of Companies) any of its know-how, trade secrets, confidential information, price lists or lists of customers or suppliers relating to its business save in the ordinary course of business of the Company and/or upon the Company having secured the confidential nature of such disclosure.
- 12.6 So far as the Vendor is aware, none of the activities, contracts or rights of the Company is ultra vires, unauthorised, invalid or unenforceable or in material breach of any contract, covenant or third party rights .
- 12.7 The assets held under hire purchase, credit sale, leasing, rental or similar agreements listed in the Disclosure Letter and the assets owned by the Company comprise all the assets (together with the services to be provided under the Transitional Services Agreement) necessary for the continuation of the business of the Company substantially as now carried on.
- 12.8 All the standard terms and conditions on which the Company provides its services are attached to the Disclosure Letter.
- 12.9 So far as the Vendor is aware, the Company has not since the Management Accounts Date agreed to give and is not in the habit of giving to any customer any discount (whether present, future or retrospective), price reductions or other financial incentives dependent on the level of purchases from the Company other than those specified in the Disclosure Letter.

13. CONTRACTS AND OTHER OBLIGATIONS

- 13.1 So far as the Vendor is aware, with the exception of confidentiality non-disclosure agreements, the Disclosure Letter contains copies or summaries of all material subsisting contracts to which the Company is a party.
- 13.2 So far as the Vendor is aware, the Company has not, as at the date of this Agreement, given any guarantee, indemnity or security for or otherwise agreed to become directly or contingently liable for any material present or future obligation of any other person and no person has given any guarantee of or indemnity or security for any material obligation of the Company.
- 13.3 The Company is not a party to any agency, distributorship franchising, marketing or similar agreement.

- 13.4 So far as the Vendor is aware, no event has occurred regarding the Company which would entitle any third party to terminate any contract or benefit enjoyed by the Company or to call in any money before the due date therefor.
- 13.5 So far as the Vendor is aware, the Company has received no written notice of any intention to terminate any contract referred to in paragraph 13.1 and has received no notice of any intention to terminate any such agreement or to repudiate or disclaim any other transaction.
- 13.6 So far as the Vendor is aware the Company has received no written notice of termination of the agreement dated 7 May 2002 between Sky Subscriber Services Limited (1) and the Company (2) and has received no written notice of any intention to terminate any such agreement and so far as the Vendor is aware there are no circumstances which are likely to give rise to such notice to terminate.
- 13.7 There are in force no powers of attorney given by the Company (other than to the holder of an encumbrance solely to facilitate its enforcement).
- 13.8 So far as the Vendor is aware, no tender or offer which is capable of being converted into an obligation of the Company by an acceptance or other act of some other person is outstanding.

14. INTELLECTUAL PROPERTY

- 14.1 Save as disclosed in the Disclosure Letter, the Company does not own, use or require the use any Intellectual Property.
- 14.2 All Intellectual Property registered in the name of the Company or used or required to be used by the Company is beneficially owned by it or licensed to it and so far as the Vendor is aware is valid and subsisting and not subject to revocation and all requisite registration and renewal fees in respect thereof have been duly and timeously paid.
- 14.3 All agreements and licences for the use by the Company of any Intellectual Property not registered in its name or owned by the Company or in which the Company has a beneficial interest are disclosed in the Disclosure Letter and, so far as the Vendor is aware, are valid and subsisting and, so far as the Vendor is aware, the Company is not in breach of any of the provisions thereof.
- 14.4 So far as the Vendor is aware, no person is infringing or threatening to infringe any Intellectual Property registered in the Company's name or in which the Company owns or has a beneficial interest.
- 14.5 So far as the Vendor is aware no right of paternity has been asserted over the Intellectual Property.
- 14.6 So far as the Vendor is aware, the Company has to a material extent obtained assignments of all Intellectual Property rights created or developed for the Company by independent contracts to the Company and the Company is first owner, assignee or licensee of all other material Intellectual Property.
- 14.7 So far as the Vendor is aware, the full enjoyment and use of the Intellectual Property by the Company in connection with the business of the Company does

not infringe any Intellectual Property of any third party and is not otherwise unlawful or illegal.

15. DISPUTES AND LITIGATION

- 15.1 There are no court orders or unsatisfied judgments outstanding against the Company and the Company is not party to any undertaking or assurance given to a court, tribunal, regulatory authority, governmental agency or any other person in connection with the determination or settlement of any claim or proceedings.
- 15.2 Apart from normal trade debt collection involving debts not exceeding £5,000 in the aggregate, neither the Company nor, as far as the Vendor is aware, any of its officers is involved in any civil, criminal or arbitration proceedings and, so far as the Vendor is aware, no such proceedings and no claims of any nature are pending or threatened by or against the Company or any such person or in respect whereof the Company is liable to indemnify any party concerned and, so far as the Vendor is aware, there are no facts likely to give rise to any such proceedings.
- 15.3 The Company is not the subject of or engaged in and, so far as the Vendor is aware there are no facts or circumstances likely to cause it to be the subject of the or engaged in, any proceedings, investigations or enquiries by or before any governmental or municipal department, commission, board, tribunal or other administrative, judicial or quasi-judicial agency (whether in the United Kingdom or elsewhere) wherein any unfavourable judgment, decision, ruling or finding could adversely affect the Company in any way.

16. EMPLOYEES AND CONSULTANTS

- 16.1 The Disclosure Letter fully sets out particulars of the identities, dates of commencement of employment or engagement and dates of birth of all the employees and officers of the Company (and of any persons whom the Company has agreed to employ or engage as an employee or an officer) and all remuneration payable and other benefits provided or which the Company is bound to provide (whether now or in the future) to each such person.
- 16.2 The Disclosure Letter contains copies of all employment contracts of employees of the Company.
- 16.3 Since the Management Accounts Date or (where employment or holding of office commenced after that date) since the commencement of such employment or holding of office, no change has been made in the emoluments or other terms of employment of any of the Company's officers or of any of its employees who on the Accounting Date or on the date of such commencement were in receipt of remuneration at a rate in excess of £30,000 per annum.
- 16.4 No employee of the Company whose gross remuneration exceeded or exceeds £30,000 per annum has been dismissed in the last six months or has given or been given notice of termination of his employment or has indicated that he wishes to leave the Company's employ.
- 16.5 The Company is not bound or accustomed to pay any moneys other than remuneration or emoluments of employment or pension contributions to or for the benefit of any officer or employee of the Company.

- 16.6 There is not in existence any contract or service with any employee or officer of the Company (or any contract for services with any individual) which cannot be terminated by three months' notice or less or (where not reduced to writing) by reasonable notice without giving rise to any claim for damages or compensation (other than a statutory redundancy payment or statutory compensation for unfair dismissal).
- 16.7 The Company is not in dispute with any of its employees or former employees or any trade union or other body representing its employees or former employees.
- 16.8 So far as the Vendor is aware, the Company has, in relation to its employees, complied, in all material respects, with all customs, collective agreements, codes of practice and the like whether legally binding or not; and save as disclosed there is no agreement or arrangement in existence between the Company and any trade union or any other body representing its employees.
- 16.9 The Company does not have in existence nor is it proposing to introduce any share option scheme, share incentive scheme or profit sharing scheme for any of its officers or employees.
- 16.10 So far as the Vendor is aware, no payments are due by the Company and no person has or may have a right to return to work or a right to be reinstated or re-engaged by the Company under the provisions of the Employment Rights Act 1996.
- 16.11 The Company has not given notice of any redundancies to any employee or government department or started consultations with any trade union pursuant to any statute or regulation.
- 16.12 So far as the Vendor is aware, no employee or officer or former employee or officer of the Company is in breach of any obligation or duty which he owes to the Company.
- 16.13 So far as the Vendor is aware the Consultants are the only consultants engaged or persons whose services are contracted by the Company at the date of this Agreement.

17. PENSIONS

- 17.1 Two of the Employees were active members of the Columbia Pictures Corporation Limited Staff Pension and Life Assurance Scheme ("the Pension Scheme") immediately prior to their entry into employment with the Company but the Company is not a party to nor participates in nor contributes to the Pension Scheme or any other scheme, arrangement or agreement (whether legally enforceable or not) for the provision of any relevant benefits (as defined in section 612 of the Taxes Act 1988 and called "Relevant Benefits") for any past or present employee or officer of the Company or of any predecessor to all or part of its business (each a "Relevant Employee") or for the widow, widower, child or dependant of any Relevant Employee nor has it been a party to, participated in or contributed to the Pension Scheme or any other such scheme, arrangement or agreement.
- 17.2 The Company has not given any undertaking or assurance (whether legally enforceable or not) to any Relevant Employee or to any widow, widower, child or dependant of any Relevant Employee as to the continuance, introduction,

improvement or increase of any Relevant Benefits nor is it paying or has in the last two years paid any Relevant Benefits to any Relevant Employee or to any widow, widower, child or dependant of any Relevant Employee.

- 17.3 All material details relating to the Pension Scheme are contained in or annexed to the Disclosure Letter including (without limitation) the following, namely (i) a true and complete copy of the deed or other instrument by which the Pension Scheme is governed and all deeds and other instruments supplemental thereto, (ii) a true and complete copy of all announcements, explanatory literature and the like of current effect which have been issued to any Relevant Employee in connection with the Pension Scheme.
- 17.4 Neither the Pension Scheme nor the Company nor any member of the Vendor's group is engaged or involved in any proceedings which relate to or are in connection with the Pension Scheme or the benefits thereunder and no such proceedings are pending or threatened and so far as the Vendor is aware there are no facts likely to give rise to any such proceedings. In this sub-paragraph "proceedings" includes any litigation or arbitration and also includes any investigation or determination by the Pension Ombudsman.
- 17.5 The Company has no obligation to pay any contributions or other sums to the Scheme or pay any fines or penalties in relation to the Pension Scheme.
- 17.6 The Company shall have no liability in relation to the Pension Scheme after Completion.
- 17.7 None of the employees of the Company has any contractual right to the provision of retirement or death benefits by the Company after Completion whether under the Pension Scheme or otherwise.
- 17.8 All Relevant Employees who are members of the Pension Scheme, shall be entitled to preserved benefits under the Pension Scheme regardless of the length of their qualifying service.
- 17.9 The Pension Scheme is an exempt approved scheme and has been administered in relation to the employees and former employees of the Company, in accordance with all applicable legal requirements, including the requirements for equal treatment under the Pensions Act 1995 and Article 141 of the Treaty of Rome and equal treatment of fixed contract workers.
- 17.10 The Pension Scheme is contracted-out of the State Second Pension and the Company is named on a current contracting-out certificate.

18. **CONSENTS AND COMPLIANCE WITH LAWS**

- 18.1 The Company has and there are now in force, in all material respects, all permits, authorities, licences and consents necessary for the Company to carry on its business in the manner and in the places in which its business is now carried on and, so far as the Vendor is aware, there are no circumstances which might lead to the suspension, alteration or cancellation of any such permits, authorities, licences or consents (full details of which are set out in the Disclosure Letter).
- 18.2 So far as the Vendor is aware, the Company has performed all material obligations required to be performed by it with respect to or affecting its

business, employees and assets and is not in material default under any laws, regulations, orders, decrees, judgments, contracts, agreements, licences, obligations or restrictions of whatsoever nature binding upon it or which affect its assets or employees or the operations of its business.

- 18.3 So far as the Vendor is aware, all documents to which the Company is a party (other than those which have ceased to have any legal effect) and all transfers of or assignments in respect of any share in the capital of the Company which attract stamp duty or stamp duty reserve tax have been duly and timeously stamped or the relative stamp duty or stamp duty reserve tax has been paid.

19. **SUBSIDIARIES**

- 19.1 The Company has no subsidiaries.

20. **EFFECT OF AGREEMENT**

- 20.1 In the event that Compliance with the terms of this Agreement:-

- 20.1.1 requires the consent or agreement of any person who is not a party to this Agreement;
- 20.1.2 will cause the Company to lose any interest in or the benefit of any asset, right, licence or privilege it presently owns or enjoys;
- 20.1.3 will relieve any person of any material obligation to the Company;
- 20.1.4 will cause the Company or the Vendor to be in material breach of any of their respective obligations;
- 20.1.5 will result in any present or future indebtedness of the Company becoming due prior to its stated maturity;
- 20.1.6 will give rise to or cause to become exercisable any option or right of pre-emption; and
- 20.1.7 will result in the creation or imposition of any Encumbrance on or over any of the assets of the Company or the Shares,

this will not have a material adverse effect on the business of the Company.

- 20.2 There are no agreements or arrangements concerning the Company which can be terminated or are terminable or the terms of which can be varied or are in any way variable as a result of any change in the control of the Company or in the composition of the board of directors of the Company.

21. **INSOLVENCY**

- 21.1 No administrative receiver or manager has been appointed in respect of the whole or any part of the assets or undertaking of the Company or the Vendor.
- 21.2 No meeting has been convened at which a resolution is to be proposed, no resolution has been passed, no petition has been presented of which the Vendor is aware and no order has been made for the winding up or administration of the Company or the Vendor.

- 21.3 So far as the Vendor is aware, no unsatisfied judgment, order or award is outstanding against the Company and no written demand under section 123(1)(a) of the Insolvency Act 1986 has been made against the Company and no distress or execution has been levied on, or other process commenced against, any of the assets of the Company.
- 21.4 The Company has not entered into any arrangement, assignment, reconstruction or composition with any of its creditors.
- 21.5 So far as the Vendor is aware, there are no circumstances which would entitle any person to present a petition for the winding up or administration of the Company or to appoint a receiver or manager over the whole or any part of the Company's undertaking or assets.
- 21.6 So far as the Vendor is aware, no action is being taken by the Registrar of Companies to strike the Company off the Register under Section 652 of the Act.
- 21.7 So far as the Vendor is aware, the Company has not at any time during the two years immediately prior to the date of this Agreement:
- 21.7.1 entered into a transaction with any person at an undervalue within the meaning of Section 238 of the Insolvency Act 1986; or
- 21.7.2 been given a preference by any other person within the meaning of Section 239 of the Insolvency Act 1986

22. **GENERAL**

- 22.1 The Vendor and the Company have full power to enter into and perform their obligations under this Agreement and the agreements and deeds to be entered into pursuant hereto which will, when executed, constitute binding obligations on the Vendor and the Company in accordance with their terms.
- 22.2 The Vendor is the beneficial owner of or is otherwise entitled to sell and transfer to the Purchaser the full legal and beneficial ownership of the Shares on the terms of this Agreement.

23. **DATA PROTECTION**

- 23.1 The Disclosure Letter sets out details of certain procedures the Company has put in place to ensure compliance with the Data Protection Act 1998.
- 23.2 So far as the Vendor is aware, no individual has claimed compensation from the Company under the applicable data protection legislation for loss or unauthorised disclosure of data or for any contravention of any of the requirements of the Data Protection Act 1998.
- 23.3 The Vendor has not received a notice or allegation from either the Information Commissioner or a data subject alleging non-compliance with the data protection principles or any other provisions of the applicable data protection legislation, or prohibiting the transfer of data to a country or territory outside the United Kingdom or the European Economic Area.

24. **QUALIFIED WARRANTIES**

Where any of the statements set out above in this Schedule is qualified by the expression "to the best of the knowledge, information and belief of the Vendor" or "so far as the Vendor is aware" or any similar expression that statement shall be deemed to include an additional statement that it has been made after due and careful enquiry of :

- | | | |
|--------|-------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------|
| 24.1.1 | Mathieu Fussman | (in relation to the Warranties contained at paragraphs 12, 13, 14 and 15 of this Schedule 1 only); |
| 24.1.2 | Nizar Allibhoy | (in relation to the Warranties contained at paragraphs 2, 3, 5, 9, 11, 12, 13, 14, 15, 18, 19, 20, 21, 22 and 23 of this Schedule 1 only); |
| 24.1.3 | Bryan Robertson and Julie Lee | (in relation to the Warranties contained at paragraphs 4, 5, 7, 8, 10 of this Schedule 1 only; |
| 24.1.4 | Debbie Morritt | (in relation to the Warranties contained at paragraphs 16 and 17 of this Schedule 1 only); and |
| 24.1.5 | Andrew Bailey | (in relation to the Warranties contained at paragraph 6 only); |

and the knowledge, information, belief and/or (as the case may be) awareness of the Vendor shall be limited to the actual knowledge, information, belief and/or awareness of those individuals on the date of this Agreement those individuals having made reasonable and proper enquiry.

SCHEDULE 2

(Particulars of the Company)

- | | | |
|-----|-------------------------------------------------|-----------------------------------------------------------------------------------------------------------------|
| 1. | Registered Number: | 4211249 |
| 2. | Place of Incorporation: | England and Wales |
| 3. | Date of Incorporation: | 26.04.01 |
| 4. | Authorised and issued share capital: | Authorised: £100 divided into
100 ordinary shares of £1 each

Issued: £1 - one ordinary
share of £1 |
| 5. | Registered holders of the issued share capital: | Columbia Pictures Corporation
Limited |
| 6. | Registered office: | Sony Pictures Europe House
25 Golden Square
London W1F 9LU |
| 7. | Directors: | Sukhjeet Kaur Gill
Antony Brian Robertson |
| 8. | Secretary: | Sukhjeet Kaur Gill |
| 9. | Accounting Reference Date: | 31 March |
| 10. | Auditors: | PriceWaterhouseCoopers |
| 11. | Date of latest accounts filed: | 31.03.02 |
| 12. | Date of latest annual return filed: | 18.11.02 |

SCHEDULE 3

(Vendor's Limitations)

1. **Liabilities to which the schedule is applicable**

- 1.1 This schedule applies to limit or exclude the liability of the Vendor in respect of any claim under or in connection with this Agreement other than (unless expressly stated to the contrary) a Tax Claim (a "**Claim**").
- 1.2 Nothing in this schedule applies to any liability of the Vendor for fraud.
- 1.3 In this schedule references to the "**Tax Warranties**" are references to the Warranties contained in paragraph 6 of Schedule 1 and references to a "**Tax Claim**" are references to a claim under the Taxation Deed or the Tax Warranties or in respect of any other matter so far as it relates to Taxation (as such term is defined in the Taxation Deed).

2. **Financial limits**

- 2.1 The Vendor shall not be liable in respect of any Claim except to the extent the Claim is for an amount in excess of £25,000, excluding any liability for costs and interest, in which circumstances it shall be liable for the whole and not merely the excess amount of the Claim.
- 2.2 The Vendor shall not be liable in respect of any Claim except to the extent that the liability of the Vendor in respect of all Claims (excluding all Claims for which the Vendor has no liability by reason of paragraph 2.1) is in excess of £250,000, excluding any liability for costs and interest, in which circumstances it shall be liable for the whole and not merely the excess amount of the Claim.
- 2.3 The total aggregate liability of the Vendor in respect of any Claim shall be limited to the right of set-off set out in clause 7 of this Agreement or, in the event that the Vendor gives notice to the Purchaser pursuant to clause 5.1 that it elects, at its sole discretion, that the Purchaser shall have a remedy in damages, the sum of £1,900,000.
- 2.4 The Vendor shall not be liable in respect of any Tax Claim except to the extent the Claim is for an amount in excess of £7,500, excluding any liability for costs and interest, in which circumstances it shall be liable for the whole and not merely the excess amount of such Tax Claim.
- 2.5 The Vendor shall not be liable in respect of any Tax Claim except to the extent that the liability of the Vendor in respect of all Tax Claims (excluding all Tax Claims for which the Vendor has no liability by reason of paragraph 2.4) is in excess of £30,000,

excluding any liability for costs and interest, in which circumstances it shall be liable for the whole and not merely the excess amount of such Tax Claim.

2.6 The total aggregate liability of the Vendor in respect of any Tax Claims, other than in relation to the Vendor Reorganisation, shall be the sum equal to the greater of £500,000 and the sum of:

2.6.1 the net proceeds of sale (if any) previously received by the Vendor in respect of any Consideration Shares sold prior to the date on which the Tax Claim is settled, determined or in respect of which judgment is given; and

2.6.2 the net proceeds of sale of all of the Consideration Shares not previously sold by the Vendor on such date, and the Vendor hereby covenants and undertakes to the Purchaser to permit the Purchaser to effect such sale unless the Vendor is able to obtain a greater price for the sale of such Consideration Shares within a reasonable period of time;

PROVIDED that for the avoidance of doubt the total aggregate liability of the Vendor in relation to any Tax Claims in relation to the Vendor Reorganisation shall be unlimited.

3. **Notices**

If the Purchaser becomes aware of any matter giving rise or likely to give rise to a Claim, including a Tax Claim (other than a claim under the Taxation Deed), it shall give written notice, specifying in as much detail as is reasonably practicable the matter giving rise to the Claim and the nature and amount of such Claim, to the Vendor as soon as reasonably practicable and in any event on or before the date falling 60 days after the date on which it becomes aware of that matter.

4. **Time limits**

4.1 The Vendor shall not be liable in respect of any Claim (including a Tax Claim) unless notice of that Claim, given in accordance with paragraph 3, is received by it:

4.1.1 in the case of a Tax Claim, on or before 6 years from the end of the corporation tax accounting period of the Company current at the date of the Agreement; and

4.1.2 in the case of any other Claim, on or before the Second Allotment Date .

4.2 The Vendor shall not be liable in respect of any Claim, including a Tax Claim, if, on or before the date falling 30 days after the date on which notice of that Claim is received by the Vendor, the Vendor has remedied the relevant breach in all material respects or otherwise prevented the Purchaser from suffering any material loss in respect of the subject matter of that Claim. The Purchaser shall comply with all reasonable requests made by the Vendor during that period for the purposes of remedying any such breach or preventing any such loss.

- 4.3 The Vendor shall not be liable in respect of any Claim, including a Tax Claim, (if not previously satisfied, settled or withdrawn) unless *legal proceedings have been issued and served on the Vendor on or before the date falling 180 days after the date of service of notice of that Claim under paragraph 3.*

5. Exclusion of liability: General

- 5.1 The Purchaser acknowledges that (unless the Vendor, at its sole discretion, notifies the Purchaser in accordance with clause 14.2 of this Agreement that the Purchaser shall have a remedy in damages) *its sole remedy in the event of any Claim arising during the period commencing on Completion and ending on the Second Allotment Date shall be pursuant to its rights set out in clause 7 of this Agreement and, without limitation, that in respect of any such Claim (subject to any notification referred to above) it shall have no remedy in damages.*
- 5.2 The Vendor shall not be liable in respect of a Claim to the extent that the Warranted Accounts include any provision, accrual or other liability, *reserve or allowance for any matter relating to the subject of the Claim (or in the absence of which the Claim would not arise or would be reduced), or any such matter is the subject of a note in the Warranted Accounts.*
- 5.3 The Vendor shall not be liable in respect of a Claim to the extent that the matter giving rise to the Claim results from:
- 5.3.1 *any act or omission or arrangement before Completion carried out or omitted at the request of or with the approval or acquiescence of the Purchaser or any other member of the Purchaser Group save for any matter arising as a result of or consequence of the Vendor Reorganisation whether or not the Vendor Reorganisation shall occur on or after the date of this Agreement; or*
 - 5.3.2 *any act or omission or arrangement on or after Completion carried out or omitted by or on behalf of the Purchaser or any member of the Purchaser's group (including the Company) or the Purchaser's successors in title to the Shares including a breach by the Purchaser of its obligations under this Agreement; or*
 - 5.3.3 *any change after Completion in the accounting policies or practice used in preparing the Company's accounts or in the accounting reference date of the Company; or*
 - 5.3.4 *any reorganisation or change after Completion in the ownership of the Company; or*
 - 5.3.5 *an act, event, occurrence or omission after the date of this Agreement compelled by law, or from the enactment, amendment or change in the interpretation after that date of any statute or regulation, or in the practice of any*

governmental, regulatory or other body, whether or not having retrospective effect.

- 5.4 The Vendor shall not be liable in respect of any Claim to the extent that the matter giving rise to the Claim constitutes a contingent liability of the Company or relates to a liability which is not capable of being quantified until such liability becomes an actual liability of the Company or becomes capable of being quantified and, in either case, unless this occurs on or before the relevant date set out in paragraph 4.1.
- 5.5 The Vendor shall not be liable for any consequential loss of any kind incurred by the Purchaser or any member of the Purchaser Group or any loss calculated by reference to prospective loss of profit.
- 5.6 The Vendor shall not be liable in respect of any Tax Claim pursuant to the Tax Warranties to the extent that the Taxation Liability in question of the Company is not or could not give rise to a Claim for Taxation pursuant to the Taxation Deed by virtue of any of paragraphs A to M of the definition of "Relevant Taxation Claim" in clause 1.1 of the Taxation Deed.

6. Recovery from third parties

- 6.1 If the Purchaser or a member of the Purchaser Group becomes aware of any matter which would or might give rise to a Claim (taking no account of paragraph 2.2 for these purposes) and the Purchaser or a member of the Purchaser Group has a right to make recovery or claim indemnity from any third party (including under any policy of insurance) in relation to that matter, then the Purchaser shall promptly notify the Vendor in writing of the right, and shall comply with the provisions of paragraphs 6.3 and 6.4 before pursuing the Vendor in relation to such Claim.
- 6.2 If any sum is paid by or on behalf of the Vendor in satisfaction of a Claim, and the Purchaser or any member of the Purchaser Group has or subsequently acquires a right to make recovery or claim indemnity from any third party (including under any policy of insurance) in respect of any matter giving rise to that Claim, the Purchaser shall promptly notify the Vendor in writing of the right and the provisions of paragraphs 6.3 and 6.4 shall apply.
- 6.3 The Purchaser shall, and shall ensure that the member of the Purchaser Group shall, at the Vendor's cost:
 - 6.3.1 take all reasonable and necessary steps to enforce against the relevant third party the rights of the Purchaser or the relevant member of the Purchaser Group in respect of the matter giving rise or which might give rise to that Claim, keeping the Vendor fully informed of any material action taken; and
 - 6.3.2 on request by the Vendor, allow the Vendor to assume conduct of all proceedings, negotiations, settlements,

compromises and appeals relating to the enforcement of the right against that third party in the name of the Purchaser but in any event none of the aforesaid actions shall be taken without the prior written consent of the Purchaser (such consent not to be unreasonably withheld or delayed) and upon any such action being taken the Vendor will keep the Purchaser fully informed of the progress of the matter.

- 6.4 To the extent that the Purchaser or a member of the Purchaser Group receives any sum or other benefit by reason of the enforcement of any rights such as are referred to in paragraph 6.3, then either the Vendor's liability in relation to such Claim or potential Claim shall be reduced by the Amount Recovered, or if any sum has already been paid by or on behalf of the Vendor in satisfaction of a Claim, then the Purchaser shall pay the Amount Recovered to the Vendor on or before the date falling seven days after the date on which that receipt or saving is made. For the purposes of paragraph 2.2, the Vendor shall be deemed never to have been liable to the Purchaser in respect of the Amount Recovered.
- 6.5 For the purposes of paragraph 6.4, the **"Amount Recovered"** shall be equal to so much of the sum or benefit received by reason of the enforcement of any rights such as are referred to in paragraph 6.3 as does not exceed the amount claimed by the Purchaser in relation to such Claim or (as the case may be) the payment by or on behalf of the Vendor in satisfaction of the relevant Claim, less any Taxation payable by the Purchaser or a member of the Purchaser Group in respect of that receipt and less all reasonable costs and expenses of the Purchaser and any member of the Purchaser Group in recovering that receipt or saving including the amount of any excess payable by the Purchaser under any policy of insurance.
- 6.6 Unless the Vendor has requested the Purchaser to make the waiver or release in question, the Vendor shall not be liable in respect of any Claim to the extent that the Purchaser waives or releases or has waived or released any right to make recovery or claim indemnity from any third party (including under any policy of insurance) in respect of the facts or circumstances giving rise to that Claim and if the Vendor has paid any sum in respect of such a Claim the Purchaser shall repay such sum if and to the extent that it could have made recovery or claimed indemnity from a third party but for such waiver or release.

7. Conduct of third party claims

- 7.1 If the Purchaser or any member of the Purchaser Group becomes aware of any claim, action or demand which would or might give rise to a Claim (taking no account of paragraph 2.2 for these purposes), the Purchaser shall, and shall procure that the relevant member of the Purchaser Group shall promptly (and in any event on or before the date falling five business days from the date on which the Purchaser becomes aware of it) notify the Vendor in

writing of the claim, action or demand, specifying in as much detail as is possible its nature and amount.

7.2 Save for any circumstance which may in the reasonable opinion of the Purchaser have a material and detrimental effect on the business or goodwill of the Company, the Purchaser or any member of the Purchaser Group, the Purchaser shall not admit liability in respect of or settle or compromise any such claim, action or demand as is referred to in paragraph 7.1 without the prior written consent of the Vendor (such consent not to be unreasonably withheld or delayed), and shall, at the Vendor's option, either:

7.2.1 take all reasonable and necessary steps at the Vendor's cost to mitigate or remedy the matters complained of or to dispute, defend, appeal, settle or compromise the claim, action or demand and any adjudication in respect of it, and to enforce the rights of the Purchaser or relevant member of the Purchaser Group in respect of the claim, action or demand against any relevant third party, as the Vendor may from time to time reasonably request, consulting with the Vendor and keeping the Vendor fully informed of any material action taken and, if the Vendor so elects:

7.2.1.1 no solicitors or other professional advisers may be instructed by the Purchaser or relevant member of the Purchaser Group in connection with the claim, action or demand without the prior written consent of the Vendor, such consent not to be unreasonably withheld or delayed;

7.2.1.2 the Purchaser shall provide the Vendor with a status report in writing at the end of each calendar month setting out the progress of the matter;

7.2.1.3 the Purchaser shall notify the Vendor as soon as reasonably practicable if it materially alters its position or tactics in relation to such matter; and

7.2.1.4 no offer or counter-offer of settlement or acceptance of an offer of settlement shall be made without the prior approval of the Vendor in writing (such approval not to be unreasonably withheld); or

7.2.2 at the Vendor's cost, allow the Vendor to assume conduct of all proceedings, negotiations, settlements, compromises and appeals in relation to the claim, action or demand in the name of the Purchaser or relevant member of the Purchaser's group but in any event none of the aforesaid actions shall be taken without the prior written consent of the Purchaser (such consent not to be unreasonably withheld or delayed) and that for that purpose the Purchaser shall instruct such solicitors and other professional advisers nominated by or on behalf of the Vendor to act on behalf of the Purchaser or the relevant member of the Purchaser

Group but on the basis of instructions given solely by the Vendor or on its behalf).

- 7.3 References in this paragraph 7 to any claim, action or demand against the Purchaser or any member of the Purchaser's group include the assertion of any right to the same, including a right of termination.

8. Vendor's rights to information

- 8.1 If the Purchaser gives notice under paragraph 3 or is required to give notice under paragraph 7.1, or if at any time after the date of this Agreement the Vendor wishes to take out insurance against potential liabilities in respect of any Claim or Claims, the Purchaser shall and shall ensure that each member of the Purchaser's group shall:

8.1.1 allow the Vendor and its duly authorised representatives and advisers access, during normal business hours and on reasonable notice, to the premises and personnel of the Purchaser and each member of the Purchaser's group and to any relevant records or information of the Purchaser and each member of the Purchaser's group, and shall permit the Vendor and those representatives and advisers to make copies (at the Vendor's cost) of those records and information; and

8.1.2 (at the Vendor's cost) give the Purchaser and those representatives and advisers any other information and assistance which any of them may reasonably require in connection with the matter in question.

9. Purchaser's Remedies

- 9.1 Save for the right of rescission contained in clause 6.3 of this Agreement, the Purchaser irrevocably and unconditionally waives any right it may have to rescind this Agreement for any non-fraudulent misrepresentation, whether or not contained in this Agreement or to terminate this Agreement for any other reason.

- 9.2 The Purchaser irrevocably and unconditionally waives any right it may have to sue the Vendor for misrepresentation, whether in equity, tort or under the Misrepresentation Act 1967, in respect of any non-fraudulent misrepresentation, whether or not contained in this Agreement. The Purchaser's sole remedy in respect of any such misrepresentation shall be an action for breach of contract if and to the extent that the misrepresentation in question constitutes a breach of the Warranties.

- 9.3 The Purchaser acknowledges that the Purchaser's Solicitors have explained to it the effect of paragraphs 9.1 and 9.2 and accepts that those paragraphs are reasonable in all the circumstances.

10. General

- 10.1 Any payment made in respect of any Claim, including a Claim pursuant to the Tax Warranties, by the Vendor shall be deemed (as between the Purchaser and the Vendor) to be a reduction in the consideration payable by the Purchaser to the Vendor for the Shares under this Agreement.
- 10.2 The Purchaser shall not be entitled to recover more than once in respect of the same loss under this Agreement. For this purpose, recovery by the Purchaser or any member of the Purchaser Group shall be deemed to be a recovery by each of them.
- 10.3 If in respect of any one matter a Claim (including a Tax Claim) may be made under the Warranties (including the Tax Warranties) and under the Taxation Deed:
- 10.3.1 the Claim under the Taxation Deed shall be made before the Claim is made under the Warranties; and
- 10.3.2 to the extent that the Claim is satisfied under the Taxation Deed, any amount payable under the Warranties in respect of the same matter shall be reduced accordingly.
- 10.4 Without limiting any obligations it may have at law or in equity, the Purchaser shall mitigate, and shall cause each member of the Purchaser Group to mitigate, any loss in respect of which a Claim may arise.

SCHEDULE 4

(Documents in the agreed form)

1. Circular.
2. Taxation Deed.
3. Compromise Agreement.
4. The Licence Agreement.
5. Letters of resignation of directors and secretary.
6. Irrevocable power of attorney from the Vendor regarding the Shares.
7. Auditors' resignation letter.
8. Irrevocable undertakings of members of the Purchaser.
9. Transitional Services Agreement.
10. Disclosure Letter.
11. Press Announcement.
12. Contracts of Employment

SCHEDULE 5

Purchaser Warranties

1. **Authority to allot Consideration Shares**

- 1.1 Save to the extent such authority has been sought by the Notice, the Purchaser has power under its memorandum and articles of association and the requisite share capital authorities to allot and issue the Consideration Shares in the manner proposed in this Agreement and all reasonable steps have been taken (subject only to Admission) to permit and implement the issue of the Consideration Shares so as to enable full effect to be given to the terms of this Agreement.
- 1.2 The allotment and issue of the Consideration Shares will not infringe any limits, powers or restrictions to which the Purchaser is subject or the terms of any contract, obligation or commitment whatsoever of the Purchaser nor give rise to any obligation or commitment whatsoever of the Purchaser nor give rise to any obligation under any such contract, obligation or commitment which is inconsistent with the allotment to the Vendor of valid unencumbered title to the Consideration Shares or any of them.

2. **Share Capital and Shares Under Option**

- 2.1 As at 10 December 2003, the issued ordinary share capital of the Purchaser was 112,678,072 ordinary shares of 1 penny each, issued fully paid.
- 2.2 As at 10 December 2003, there are options outstanding and exercisable in respect of 10,342,179 new ordinary shares of 1 penny each of the Purchaser by the directors or the employees of the Purchaser or the Purchaser Group.

3. **Last Accounts**

The Last Accounts:

- (1) give a true and fair view of the assets and liabilities and state of affairs of the Purchaser Group as at 31 December 2002 and of the profits and losses and cash flows of the Purchaser Group for the financial year ended on that date; and
- (2) have been prepared and audited in accordance with the Act and all applicable statements of standard accounting practice and United Kingdom generally accepted accounting principles and practices consistently applied save to the extent disclosed in the Last Accounts.

4. **Interim Statement**

The Interim Statement (which is not audited) was prepared in accordance with the United Kingdom generally accepted accounting principles applied consistently with the manner in which those principles were applied in the preparation of the Last Accounts and fairly reflects the profits and losses, assets and liabilities and cashflows as at and up to the date to which it was drawn up.

5. **Position since Last Accounts Date**

Since the Last Accounts Date and save as subsequently disclosed in the Interim Statement and in any announcement made through the Regulatory News Service of the London Stock Exchange by or on behalf of the Purchaser before the date of this Agreement:

- 5.1.1 the business of each member of the Purchaser Group has been carried on in the ordinary and usual course;
- 5.1.2 there has been no adverse change, nor any development likely to give rise to an adverse change, in the financial or trading position or prospects of the Purchaser Group; and
- 5.1.3 no contracts or commitments of an unusual or unduly onerous nature have been entered into by any member of the Purchaser Group,
- 5.1.4 no member of the Purchaser Group has entered into or assumed or incurred any contract, commitment, borrowings, indebtedness in the nature of borrowing, guarantee, liability (including contingent liability) or other obligation which, in any such case, has not been discharged at the date of this Agreement or will not be discharged prior to Admission save for bank overdraft in the ordinary course of business;
- 5.1.5 no dividend or other distribution has been, or is treated as having been, declared, paid or made by any member of the Purchaser Group;
- 5.1.6 no debtor has been released by the Purchaser or any other member of the Purchaser Group to an extent which is material in relation to the Purchaser Group on terms that he pays less than the book value of his debt and no debt of such material amount owing to the Purchaser or any other member of the Purchaser Group has been deferred, subordinated or written-off or is now thought likely to prove to any material extent irrevocable;
- 5.1.7 the Purchaser has not entered into any memorandum of understanding, heads of terms or similar arrangements in respect of the issue or transfer of any shares in the capital of the Purchaser or offer for the same;
- 5.1.8 the business of the Purchaser Group has not been adversely affected by the loss of any important customer or source of supply or any abnormal factor not affecting similar businesses to a similar extent and to the best of the information, knowledge and belief of the Purchaser there are no facts or circumstances likely to give rise to any such effect before Admission.

6. **Accounting Records**

All accounts, books, ledgers, financial and other records of the Purchaser have been fully and accurately maintained in all material respects and contain true and accurate records of all matters required to be entered therein.

7. **Litigation and proceedings**

- 7.1 No member of the Purchaser Group has any claims outstanding against it or is engaged in, or has within the last twelve months been engaged in, any litigation or arbitration or similar proceedings, or in any governmental, regulatory or similar investigation or enquiry, which individually or collectively may have or, during the last twelve months, has had a significant effect on the financial or trading position or prospects of the Purchaser Group. So far as the Purchaser is aware there is no such claim, litigation, proceeding, investigation or enquiry pending or threatened. There are no circumstances known or which, on reasonable enquiry, could have been known to the Purchaser which are likely to give rise to any such claim, litigation, proceeding, investigation or enquiry. No member of the Purchaser Group has taken any action and no other steps have been taken or legal proceedings started or threatened against any of them for any of their administration, winding up or dissolution, or for any of them to enter into any compromise, arrangement or composition for the benefit of creditors, or for the appointment of a receiver (including an administrative receiver), administrator, provisional liquidator, trustee or similar officer of any of them, or of any of their respective properties, revenues or assets and there are no circumstances known, or which could on reasonable enquiry have been known, to the Purchaser which are likely to give rise to any of the foregoing. No member of the Purchaser Group is unable to pay its debts within the meaning of s.123 of the Insolvency Act 1986.

8. **Borrowings**

- 8.1 No event has occurred nor have any circumstances arisen (and the Acquisition and the allotment and issue of the Consideration Shares will not give rise to any such event or circumstance) such that any person is or would be entitled or could, with the giving of notice or lapse of time or the fulfilment of any condition or the making of any determination, become entitled, to require repayment before its stated maturity of, or to take any step to enforce any security for, any indebtedness of any member of the Purchaser Group which is payable on demand, is owed nor has any such person demanded or threatened to demand repayment of or to take any step to enforce any security for the same.
- 8.2 All of the Purchaser Group's borrowing facilities are in full force and effect. All undrawn amounts under such facilities are capable of drawdown and all conditions precedent to such drawdown have been met or can (in the absence of any occurrences which the Purchaser is neither aware of nor expects to occur) be met by the Purchaser during the twelve month period commencing on the date of this Agreement. There is nothing known, or which could on reasonable enquiry be known, to the Purchaser that might give cause to believe that undrawn amounts under any facilities might not be available for drawing as and when required.

9. **Financial Reporting Procedures**

- 9.1 The Purchaser has established procedures which provide a reasonable basis for them to make proper judgements as to the financial position and prospects of the Purchaser Group.

10. **Taxation**

- 10.1 Since 30 June 2003, the Purchaser has not incurred any liability in respect of any taxation which is material in the context of the Acquisition, other than any such liabilities arising in the ordinary course of the business of the Purchaser since that date.
- 10.2 All corporation tax returns made by the Purchaser Group since 31 December 2002 have been made correctly in all material respects and there are no material questions of taxation which are or, so far as the Purchaser is aware, are likely to become the subject of dispute with the Inland Revenue or other taxing authorities.
- 10.3 All necessary information, notices, computations and returns which ought to have been made properly and duly submitted by each member of the Purchaser Group to the Inland Revenue and any other relevant taxation or excise authorities and such information, notices, computations and returns are true and accurate in all material respects and are not the subject of any material dispute with the Inland Revenue or other taxation or excise authorities and all taxation of any nature whatsoever whether of the United Kingdom or elsewhere for which any member of the Purchaser Group is liable or is liable to account has been duly paid (insofar as such taxation ought to have been paid) or in so far as the same is not yet payable, has been provided for in the Last Accounts.

11. **Property**

- 11.1 The Purchaser has good and marketable title to each of the properties owned or leased by the Purchaser and so far as the Purchaser is aware there is no fact or circumstance as a result of which any person may validly require the Purchaser to vacate prematurely any of the properties or to cease to carry on the business which it presently carries on at any of the properties.

12. **The Business**

- 12.1 So far as the Purchaser is aware, each member of the Purchaser Group carries adequate insurance cover (having regard to the levels and the risks normally insured against by persons carrying on the same or similar business or business(es) as that/those carried on by the relevant member of the Purchaser Group) and all such insurances are in full force and effect and not voidable and there is no material insurance claim made by or against the Purchaser pending, threatened or outstanding and all premiums due and payable in respect of all insurances have been duly paid.
- 12.2 So far as the Purchaser is aware, each member of the Purchaser Group has conducted its business in all material respects in accordance with all applicable laws and regulations of the United Kingdom and all relevant foreign countries or authorities and there is no order, decree or judgment of any court or any governmental or other competent authority or agency of the United Kingdom or any foreign country outstanding against any member of the Purchaser.
- 12.3 So far as the Purchaser is aware, all licences, consents, permits, approvals and authorisations (public and private) necessary or desirable for utilising any of the assets of each member of the Purchaser Group or carrying on effectively any aspect of the business of such company in the places and in the manner in which such business is now carried on have been obtained by such company and all such licences, consents, permits, approvals and authorisations are in full force and effect and are not limited in duration or subject to onerous conditions,

and there is no circumstance which indicates that any such licence, consent, permit, approval or authorisation is likely to be suspended, cancelled or revoked in whole or in part.

- 12.4 So far as the Purchaser is aware, no services supplied, no goods or articles manufactured or distributed or currently proposed to be manufactured or distributed by any member of the Purchaser Group and no method or process employed by it (or by any licensee under any licence granted by it) infringe or are likely to infringe any valid and enforceable patent, trade mark, registered design or other industrial, intellectual or commercial monopoly rights of any third party and so far as aforesaid no claim has been made against any member of the Purchaser Group or any such licensee in respect of such infringement.
- 12.5 So far as the Purchaser is aware, all Intellectual Property rights in connection with any software produced or enhanced by an employee or consultant of any member of the Purchaser Group has properly vested in or been validly assigned to each member of the Purchaser Group or such member of the Purchaser Group. All rights in Intellectual Property required for the business of the Purchaser Group are vested in or validly granted and are not subject to any limit as to time or any other limitation, right of termination or restriction and all registration and renewal fees and steps required for the maintenance or protection thereof have been taken.
- 12.6 So far as the Purchaser is aware, nothing has been done or omitted to be done whereby any of the Intellectual Property of any member of the Purchaser Group has ceased, or might cease, to be valid and enforceable or whereby any person is able to seek cancellation, rectification or revocation or any material modification of any such Intellectual Property and there are no such proceedings pending or threatened against any member of the Purchaser Group.
- 12.7 All the agency, distributorship, marketing, purchasing, manufacturing and licensing agreements to which each member of the Purchaser Group is a party are valid and subsisting and so far as the Purchaser is aware nothing has been done or omitted to be done by the Purchaser which would enable any such agreement to be terminated validly for material breach of the terms of any such agreement.
- 12.8 Each member of the Purchaser Group is duly incorporated and has the requisite power and authority to carry on its respective businesses.
- 12.9 The Purchaser is not and has not been engaged in supplying goods or services to the "adult entertainment" industry or the unlawful gaming industry.

13. **Conflicts of Interest**

Save for contracts of employment or service agreements between the Purchaser and the directors of the Purchaser there are no agreements, arrangements or understandings (whether legally enforceable or not) between the Purchaser and any person who is a director of the Purchaser (or connected party) or shareholders or the beneficial owner of any interest in the Purchaser or any company in which the Purchaser is interested relating to the management of the Purchaser's business or the appointment or removal of the directors of the Purchaser or the ownership or transfer of ownership or the letting of any assets to or by the Purchaser or the provision of finance, goods, services or other facilities to or by the Purchaser or otherwise howsoever relating to its affairs.

14. **General**

- 14.1 Neither the Purchaser nor so far as the Purchaser is aware any of its officers, agents or employees has committed or omitted to do any act or thing the commission or omission of which is in contravention of any Act, Order or Regulation or the like giving rise to any fine, penalty, default proceedings or other liability on the part of the Purchaser and the Purchaser has not committed any breach of any of the provisions of the Act, or any anti-trust or anti-monopoly legislation and no officer has committed any such breach in relation to the Purchaser and which is material in the context of the Purchaser Group or adversely affects or is likely to have an adverse effect on the financial position of any member of the Purchaser Group.
- 14.2 The Purchaser has not been a party to any transaction to which any of the provisions of Sections 320 or 330 of the Act may apply.
- 14.3 The contents of the email sent by Andrew Fearon of the Purchaser to Eric Gaynor of the Vendor referred to in clause 5.7.3 of this Agreement, are so far as the Purchaser is aware, an accurate summary of the position as regards its subject matter as at the date of this Agreement.

SCHEDULE 6

Alternative Dispute Resolution

The parties agree that any and all disputes or controversies of any nature arising between them at any time shall be submitted to the International Chamber of Commerce (the "ICC") for binding arbitration under its Rules of Arbitration (the "Rules") by a sole arbitrator. The arbitration shall be conducted in London, in the English language and shall be governed by the laws of the England. Within 30 days after the petition for arbitration is filed by either party, the parties shall attempt to agree on an arbitrator. If the parties cannot agree within that time period, each party has 10 days to appoint its own arbitrator. These party arbitrators in turn shall, within 60 days after the petition is filed, select a third arbitrator who will serve as the sole arbitrator. If these party arbitrators are unable to select this sole arbitrator within this 60 day time period (or within a mutually agreed extension thereof) the sole arbitrator will be selected by the ICC in accordance with its Rules. The arbitrator shall have a minimum of five (5) years experience in the interactive television industry. The fees of the Arbitrator shall be borne equally by the parties, provided that the Arbitrator may require such fees be borne in such other manner as the Arbitrator determines is required in order for this arbitration clause to be enforceable under applicable law. There shall be a record of the proceedings at the arbitration hearing and the Arbitrator shall issue a Statement of Decision setting forth the factual and legal basis for the Arbitrator's decision. If neither party gives written notice requesting an appeal within ten (10) business days after the issuance of the Statement of Decision, the Arbitrator's decision shall be final and binding as to all matters of substance and procedure. If either party gives written notice requesting an appeal within ten (10) business days after the issuance of the Statement of Decision, the award of the Arbitrator shall be appealed to three (3) neutral arbitrators (the "Appellate Arbitrators"), each of whom shall have the same qualifications and be selected through the same procedure as the Arbitrator. The appealing party shall file its appellate brief within thirty (30) days after its written notice requesting the appeal and the other party shall file its brief within thirty (30) days thereafter. The Appellate Arbitrators shall thereupon review the decision of the Arbitrator and the Appellate Arbitrators shall in all cases issue a final award and shall not remand the matter to the Arbitrator. The decision of the Appellate Arbitrators shall be final and binding on the parties as to all matters of substance and procedure. The party appealing the decision of the Arbitrator shall pay all costs and expenses of the appeal, including the fees of the Appellate Arbitrators and the reasonable outside attorneys' fees of the opposing party, unless the decision of the Arbitrator is reversed, in which event the expenses of the appeal shall be borne as determined by the Appellate Arbitrators. The Arbitrator shall have the power to enter temporary restraining orders, preliminary and permanent injunctions. All arbitration proceedings (including proceedings before the Appellate Arbitrators) shall be closed to the public and confidential and all records relating thereto shall be permanently sealed, except as necessary to obtain court confirmation of the arbitration award. The provisions of this Schedule shall supersede any inconsistent provisions of any prior agreement between the parties. The parties hereby waive their right to jury trial with respect to all claims and issues arising out of or relating to this Agreement whether sounding in contract or tort and including any claim for fraudulent inducement thereof.

SCHEDULE 7

(Purchaser's Limitations)

1. **Liabilities to which the schedule is applicable**

1.1 This schedule applies to limit or exclude the liability of the Purchaser in respect of any claim which relates to a breach of any of the Purchaser Warranties (a "**Purchaser Claim**").

1.2 Nothing in this schedule applies to any liability of the Purchaser for fraud.

2. **Financial limits**

2.1 The Purchaser shall not be liable in respect of any Purchaser Claim except to the extent the Purchaser Claim is for an amount in excess of £25,000, excluding any liability for costs and interest, in which circumstances it shall be liable for the whole and not merely the excess amount of the Purchaser Claim.

2.2 The Purchaser shall not be liable in respect of any Purchaser Claim except to the extent that the liability of the Purchaser in respect of all Purchaser Claims (excluding all Purchaser Claims for which the Purchaser has no liability by reason of paragraph 2.1) is in excess of £250,000, excluding any liability for costs and interest, in which circumstances it shall be liable for the whole and not merely the excess amount of the Purchaser Claim.

2.3 The total aggregate liability of the Purchaser in respect of any Purchaser Claim shall be limited to the sum referred to in clause 6.12 of this Agreement provided that the Purchaser shall at its sole discretion have the right of set-off as set out in paragraph 7 of this Agreement.

3. **Notices**

If the Vendor becomes aware of any matter giving rise or likely to give rise to a Purchaser Claim, it shall give written notice, specifying in as much detail as is reasonably practicable the matter giving rise to the Purchaser Claim and the nature and amount of such Purchaser Claim, to the Purchaser as soon as reasonably practicable and in any event on or before the date falling 60 days after the date on which it becomes aware of that matter.

4. **Time limits**

4.1 The Purchaser shall not be liable in respect of any Purchaser Claim unless notice of that Purchaser Claim, given in accordance with paragraph 3, is received by it on or before the Second Allotment Date.

4.2 The Purchaser shall not be liable in respect of any Purchaser Claim if, on or before the date falling 30 days after the date on which

notice of that Purchaser Claim is received by the Purchaser, the Purchaser has remedied the relevant breach in all material respects or otherwise prevented the Vendor from suffering any material loss in respect of the subject matter of that Purchaser Claim. The Vendor shall comply with all reasonable requests made by the Purchaser during that period for the purposes of remedying any such breach or preventing any such loss.

- 4.3 The Purchaser shall not be liable in respect of any Purchaser Claim (if not previously satisfied, settled or withdrawn) unless legal proceedings have been issued and served on the Purchaser on or before the date falling 180 days after the date of service of notice of that Purchaser Claim under paragraph 3.

5. Exclusion of liability: General

- 5.1 The Purchaser shall not be liable in respect of a Purchaser Claim to the extent that the Last Accounts include any provision, accrual or other liability, reserve or allowance for any matter relating to the subject of the Purchaser Claim (or in the absence of which the Purchaser Claim would not arise or would be reduced), or any such matter is the subject of a note in the Last Accounts.
- 5.2 The Purchaser shall not be liable in respect of a Purchaser Claim to the extent that the matter giving rise to the Purchaser Claim results from an act, event, occurrence or omission after the date of this Agreement compelled by law, or from the enactment, amendment or change in the interpretation after that date of any statute or regulation, or in the practice of any governmental, regulatory or other body, whether or not having retrospective effect.
- 5.3 The Purchaser shall not be liable in respect of any Purchaser Claim to the extent that the matter giving rise to the Purchaser constitutes a contingent liability of the Purchaser or relates to a liability which is not capable of being quantified until such liability becomes an actual liability of the Purchaser or becomes capable of being quantified and, in either case, unless this occurs on or before the relevant date set out in paragraph 4.1.
- 5.4 The Purchaser shall not be liable for any consequential loss of any kind incurred by the Vendor or any member of the Vendor's group or any loss calculated by reference to prospective loss of profit.

6. Vendor's Remedies

- 6.1 The Vendor irrevocably and unconditionally waives any right it may have to rescind this Agreement for any non-fraudulent misrepresentation, whether or not contained in this Agreement.
- 6.2 The Vendor irrevocably and unconditionally waives any right it may have to sue the Purchaser for misrepresentation, whether in equity, tort or under the Misrepresentation Act 1967, in respect of any non-fraudulent misrepresentation, whether or not contained in this Agreement. The Vendor's sole remedy in respect of any such misrepresentation shall be an action for breach of contract if and to

the extent that the misrepresentation in question constitutes a breach of the Purchaser Warranties.

- 6.3 The Vendor acknowledges that the Vendor's Solicitors have explained to it the effect of paragraphs 6.1 and 6.2 and accepts that those paragraphs are reasonable in all the circumstances.

7. General

- 7.1 The Vendor shall not be entitled to recover more than once in respect of the same loss under this Agreement. For this purpose, recovery by the Vendor or any member of the Vendor's group shall be deemed to be a recovery by each of them.

- 7.2 Without limiting any obligations it may have at law or in equity, the Vendor shall mitigate, and shall cause each member of the Vendor group to mitigate, any loss in respect of which a Purchaser Claim may arise.

EXECUTED as a Deed by COLUMBIA)
PICTURES CORPORATION LIMITED)
by signature of two duly authorised officers)

Director)

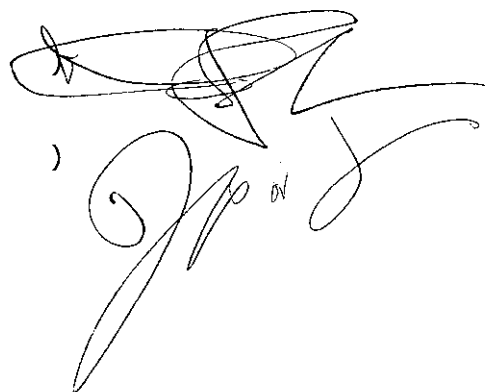
Director/Secretary)



EXECUTED as a Deed by YOOMEDIA PLC)
by signature of two duly authorised officers)

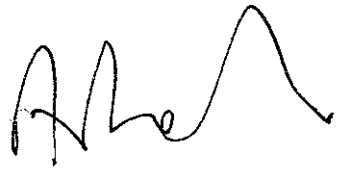
Director

Director/Secretary)



EXECUTED as a Deed by COLUMBIA)
PICTURES CORPORATION LIMITED)
by signature of two duly authorised officers)

Director

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Director/Secretary

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EXECUTED as a Deed by YOOMEDIA PLC)
by signature of two duly authorised officers)

Director

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Director/Secretary

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PICTURES CORPORATION LIMITED)
by signature of two duly authorised officers)

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