

Draft: May 9, 2014

**PRIVATE & CONFIDENTIAL  
SUBJECT TO ONGOING LEGAL AND TAX REVIEW**

**SHARE PURCHASE AGREEMENT**

**[PURCHASER]**

- and -

**[GLOBALIVE INVESTMENT HOLDINGS CORP.]**

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**For the purchase of all of the outstanding  
shares in the capital of  
Globalive Wireless Management Corp.**

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May ■, 2014

**[Drafting note - Proposed structure of the transaction (including approach to vendor loans and shareholder loans) and the appropriate vendor and target is subject to review by the applicable tax and corporate teams.]**

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## PRIVATE &amp; CONFIDENTIAL

## SHARE PURCHASE AGREEMENT

THIS SHARE PURCHASE AGREEMENT, is made and entered into as of this [●] day of May, 2014, between [PURCHASER], a company organized and existing under the laws of the [●] (the "**Purchaser**"), and GLOBALIVE INVESTMENT HOLDINGS CORP., a company organized and existing under the laws of the Province of Ontario (the "**Seller**").

## RECITALS:

**WHEREAS** the Seller owns all of the issued and outstanding shares (the "**Purchased Shares**") of Globalive Wireless Management Corp. ("**GWMC**");

**AND WHEREAS** GWMC is engaged in providing voice, text and data services to the Canadian wireless telecom market (the "**Business**");

**AND WHEREAS** the Seller wishes to sell, and the Purchaser wishes to purchase from the Seller, all of the Purchased Shares, in accordance with the provisions of this Agreement (the "**Transaction**");

**NOW THEREFORE**, in consideration of the mutual promises and agreements contained herein, and for other good and valuable consideration (the receipt and sufficiency of which are acknowledged by each Party), the Parties hereto, intending to be legally bound, hereby agree as follows:

## 1. DEFINITIONS AND INTERPRETATION

### 1.1 Definitions

For the purposes of this Agreement, the following terms shall have the respective meanings specified below and grammatical variations of such terms shall have corresponding meanings:

"**Accountants**" has the meaning specified in Section 2.5(b);

"**Advance Ruling Certificate**" means an advance ruling certificate issued by the Commissioner of Competition pursuant to section 102 of the Competition Act;

"**Affiliate**" has the meaning attributed to such term in the *Business Corporations Act* (Ontario);

"**Agreement**" means this share purchase agreement and all schedules attached to this share purchase agreement;

"**Balance Sheet Dispute**" has the meaning specified in Section 2.5(b);

"**Base Purchase Price**" has the meaning specified in Section 2.2;

"**Business**" has the meaning specified in the recitals to this Agreement;

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"**Business Day**" means any day, other than a Saturday, Sunday or statutory holiday in the Province of Ontario on which commercial banks in Toronto, Ontario are open for business;

"**Claim**" means a claim for indemnification by the Purchaser or the Seller pursuant to Section 9.1 or 9.2, respectively;

"**Closing**" means completion of the Transaction pursuant to this Agreement at the Closing Time;

"**Closing Date**" means the second Business Day following the satisfaction or waiver of all conditions described in Sections 7.1, 7.2 and 7.3 (other than those conditions which, by their nature, are to be satisfied on the Closing Date) or such other date as the Parties hereto may agree upon in writing;

"**Closing Date Payment**" has the meaning specified in Section 2.3;

"**Closing Date Working Capital**" means an amount equal to the aggregate value of all Current Assets minus the aggregate value of all Current Liabilities as at the Closing Date calculated based on the Final Closing Date Balance Sheet;

"**Closing Time**" means 10:00 a.m. (Toronto time) on the Closing Date, or such other time as may be agreed upon in writing by the Parties;

"**Commissioner**" means the Commissioner of Competition appointed under subsection 7(1) of the Competition Act and includes any person designated by the Commissioner to act on her behalf;

"**Competition Act**" means the *Competition Act* (Canada), as amended, and includes the regulations promulgated thereunder;

"**Competition Act Approval**" means that:

- (i) the Commissioner has issued an Advance Ruling Certificate in respect of the Transaction;
- (ii) the requirement for the notice required under section 114 of the Competition Act with respect to the Transaction has been waived by the Commissioner pursuant to subsection 113(c) of the Competition Act, and the Commissioner has notified the Parties that the Commissioner does not, at that time, intend to make an application before the Competition Tribunal under Part VIII of the Competition Act in respect of the Transaction; or
- (iii) (a) the applicable waiting period under subsection 123(1) of the Competition Act has expired or been waived pursuant to subsection 123(2) of the Competition Act, and (b) the Commissioner has notified the Parties that the Commissioner does not, at that time, intend to make an application under Part VIII of the Competition Act in respect of the Transaction;

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"**Confidential Information**" means all confidential and proprietary information concerning the Globalive Entities, the Seller, their respective employees, customers, capital, operations and suppliers and the Business regardless of the form of such information (including information in the form of written or electronic information or information transmitted orally, visually or by any other means), including all reports, evaluations, forecasts, compilations, records, interpretations, notes, analyses and documents, concepts or data, trade secrets or client/subscriber contact lists;

"**Contracts**" means contracts, licences, leases, agreements, or other written commitments;

"**Current Assets**" means the aggregate of GWMC and WIND Distribution's cash, accounts receivable, prepaid expenses, inventory, prepaid income taxes and current income taxes receivable (if any), excluding receivables from related parties and Persons not acting at arm's length (all as defined in the Tax Act) of or to GWMC or WIND Distribution, determined in accordance with IFRS applied on a basis consistent with past practice;

"**Current Liabilities**" means the aggregate of GWMC and WIND Distribution's current liabilities, which includes accounts payable and accrued liabilities, obligations relating to property and equipment, obligations under financial leases due to related parties for the delivery of goods and services, determined in accordance with IFRS applied on a basis consistent with past practice. For the avoidance of doubt, Current Liabilities shall exclude bank overdrafts, bank lines of credit drawn and bank indebtedness;

"**Data Room**" means the virtual Data Room entitled "Khamseen";

"**Direct Claim**" means a Claim which originates pursuant to this Agreement between the Parties;

"**Estimated Closing Date Balance Sheet**" has the meaning specified in Section 2.4;

"**Final Closing Date Balance Sheet**" has the meaning specified in Section 2.5(a);

"**GAAP**" means the generally accepted accounting principles from time to time approved by the Canadian Institute of Chartered Accountants, or any successor institute, applicable on a consolidated basis to private enterprises as at the date on which a calculation is made or an action is taken in accordance with generally accepted accounting principles, as those principles may be amended, varied or replaced by the International Financial Reporting Standards (IFRS) then in effect and generally accepted in Canada and adopted or required to be adopted by GWMC;

"**Globalive Entities**" means, together, GWMC and WIND Distribution;

"**Governmental Authority**" means any national, provincial, federal, county, municipal or local government, foreign or domestic, or the government of any political subdivision of any of the foregoing, or any entity, authority, court, agency, ministry or other similar governmental or quasi governmental body of competent jurisdiction exercising executive, legislative, judicial, regulatory or administrative authority within its jurisdiction;

"**GTH**" means Global Telecom Holding S.A.E. (a successor of Orascom Telecom Holding S.A.E.), a company incorporated pursuant to the laws of Egypt;

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"**GTH (B.C.)**" means GTH Global Telecom Finance (B.C.) Limited, the successor to Orascom Telecom Finance (B.C.) Limited;

"**GTH Holdco**" means GTH Global Telecom Holding (Canada) Limited;

"**GTH Loan Agreement**" means the non-revolving term loan dated March 23, 2008 between GTH (B.C.), as assignee of GTH pursuant to an assignment agreement dated as of December 20, 2012, as lender and GWMC as borrower, as amended and restated on February 17, 2009, and as amended further by Amendment No. 1 dated December 15, 2009, Amendment Agreement dated December 15, 2009, Amendment Agreement No. 3 dated November 10, 2010, Amendment Agreement No. 4 dated October 31, 2011, Amendment Agreement No. 6 dated December 3, 2012, and Amendment Agreement No. 7 dated December 20, 2012, in the principal amount of \$805,101,781.63 plus accrued interest of \$125,677,462.33 as at May 1, 2013;

"**GTH Canada Loan Agreement**" means the non-revolving term loan dated July 31, 2008 between GTH (B.C.) as lender, as assignee of GTH (which was, in turn, the lender as assignee of GTH Holdco) and GWMC as borrower as amended and restated from time to time, in the principal amount of \$442,403,000 plus accrued interest of **\$256,831,611.93** as of May 1, 2013;

"**GWMC Financial Statements**" means the audited consolidated statement of financial position of GWMC for the year ending December 31, 2013 and the accompanying consolidated statements of comprehensive loss, retained earnings and changes in financial position, including the notes thereto, for the relevant period;

"**IFRS**" means International Financial Reporting Standards, which are issued by the International Financial Accounting Standards Board, as adopted in Canada;

"**Industry Canada**" means the federal Department of Industry and any successor agency thereto and includes the Minister of Industry;

"**Interim Period**" means the period from the date of this Agreement to the Closing;

"**Industry Canada Approval**" means the receipt of all approvals required from Industry Canada pursuant to the *Framework Relating to Transfers, Divisions and Subordinate Licensing of Spectrum Licences for Commercial Mobile Spectrum*, for the consummation of the Transactions at the Closing;

"**Investment Canada Act**" means the *Investment Canada Act*, as amended, and includes the regulations promulgated thereunder;

"**knowledge of GWMC**" means the actual knowledge of the Chairman, the Chief Operating Officer and the Chief Financial Officer of GWMC (presently being, Anthony Lacavera, Pietro Cordova and Brice Scheschuk) and without personal liability for any such knowledge;

"**Laws**" means all applicable laws, statutes, regulations, rules, by-laws, ordinances, protocols, regulatory policies, codes, guidelines, official directives, orders, rulings, judgments and decrees of any Governmental Authority;

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"**Liens**" means mortgages, liens, pledges, security interests, charges, claims, hypothecs, leasehold interests, tenancies, restrictions, privileges, easements, servitudes, pre-emptive rights or rights of first refusal, ownership or title retention agreements, restrictive covenants with respect to real property or conditional sale agreements, or any other encumbrance of any nature or any arrangement or condition which, in substance, secures payment or performance of an obligation;

"**Loss**" means any direct loss, injury, liability, damage, cost, expense (including reasonable legal expenses) or deficiency of any kind or nature, but excluding punitive damages and loss of profits, suffered or incurred by a Party indemnified pursuant to Article 9, in connection with any Claim made by it hereunder, including in respect of any proceeding, assessment, judgment, settlement or compromise relating thereto;

"**Material Adverse Change**" or "**Material Adverse Effect**" means any event, change or effect that has had a materially adverse effect on the Business, assets, liabilities, operations or condition (financial or otherwise) of GWMC and WIND Distribution, taken as a whole; provided, however, that in no event shall any of the following be taken into account in determining whether there has been a Material Adverse Change or Material Adverse Effect: (i) any change in general economic conditions in Canada or globally or any change in Canadian or global financial, banking or currency exchange markets, (ii) any event, change or effect resulting in any action required to be taken pursuant to the provisions of this Agreement, (iii) any event, change or effect resulting from a change in the industry in which the Globalive Entities operate, (iv) any adverse effect resulting from any change in applicable Law or in accounting requirements or principles required under GAAP, (v) any failure to meet internal revenue or earnings projections, budgets or forecasts, (vi) any event, change or effect resulting from any acts of terrorism, war or natural disaster, or (viii) any event, change or effect resulting from or relating to the announcement, negotiation, execution or performance of this Agreement or the transactions contemplated hereby; provided, however, that any such event, change or effect does not primarily relate only to GWMC and WIND Distribution, taken as a whole;

"**NDA**" has the meaning specified in Section 10.4;

"**Network Assets**" means all of GWMC's related network infrastructure and other related assets in respect of the Business, including information technologies and leased network infrastructure;

"**Notifying Party**" has the meaning specified in Section 6.10(a);

"**Orders**" means orders, decisions, injunctions, judgments, administrative complains, decrees, rulings, awards, assessments, directions, instructions, penalties or sanctions issued, filed or imposed by and Governmental Authority or arbitrator;

"**Parties**" means collectively, the Purchaser and the Seller and "**Party**" means any one of them;

"**Permitted Liens**" means:

- (i) Liens for Taxes, rates, assessments, duties, levies or other charges payable to any Governmental Authority not yet due and payable or for which installments have been paid based on reasonable estimates pending final

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assessments, or if due, the validity of which is being contested in good faith if GWMC or WIND Distribution shall have made on its books adequate provision therefor;

- (ii) statutory Liens of landlords or rights reserved in any lease for rent, which is not yet due and payable, or for compliance after the Closing Date with the terms of such leases;
- (iii) any and all statutory Liens, charges, adverse claims, prior claims, security interests, deemed trusts or other Liens of any nature whatsoever claimed or held by Her Majesty the Queen in Right of Canada, Her Majesty the Queen in Right of the Province of Ontario, or by any other Governmental Authority under or pursuant to any applicable legislation, statute or regulation;
- (iv) any undetermined or inchoate Lien arising by statute for claims arising in the ordinary course of business, which have not at the time been filed pursuant to Laws and any Lien arising by statute which although filed, relates to obligations not overdue or to obligations the validity of which is under contest if GWMC or WIND Distribution shall have made on its books adequate provision therefor;
- (v) a deposit made in the ordinary course of business to secure worker's compensation or unemployment insurance, when required by Law, and warehousemen's, carriers' and other similar liens arising in the ordinary course of business;
- (vi) security given in the ordinary course of business to a public utility or any municipality or other Governmental Authority when required by such utility or municipality or other Governmental Authority in connection with the operations of GWMC or WIND Distribution;
- (vii) mechanic's, workmen's, materialmen's and repairmen's liens for claims arising in the ordinary course of business; and
- (viii) those Liens described in Schedule 1.1(A);

**"Person"** or **"person"** means any individual, partnership, firm, corporation, limited liability company, unlimited company, association, trust, unincorporated organization, Governmental Authority or other legal or business entity;

**"Pre-Closing Reorganization"** has the meaning specified in Section 6.6;

**"Proceeding"** means any court, administrative, regulatory or similar proceeding (whether civil, criminal, quasi criminal, investigative or informal), arbitration or other dispute settlement procedure, investigation or inquiry by any governmental, administrative, regulatory or similar body;

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"**Purchase Price**" has the meaning specified in Section 2.2;

"**Purchased Shares**" has the meaning specified in the recitals to this Agreement;

"**Purchaser**" has the meaning specified in the recitals to this Agreement;

"**Response Period**" has the meaning specified in Section 6.1(c);

"**Seller**" has the meaning specified in the recitals to this Agreement;

"**Seller Tax Period**" means and includes any and all periods ending before the Closing Date and, in addition, the portion of any period that includes, but does not end on or before, the Closing Date that consists of a partial period deemed to end before the Closing Date; provided that in the case of any Seller Tax Period that does not end before the Closing Date, for purposes hereof the books and records of the Globalive Entities shall be deemed to have been closed at and as of the beginning of the Closing Date;

"**Settlement Date**" has the meaning set out in Section 2.6(a);

"**Spectrum Licenses**" means the spectrum licenses for advanced wireless held by and registered in the name of GWMC as set out and described in Schedule 4.9;

"**Tax**" or "**Taxes**" means all federal, state, provincial, local, foreign and other taxes, charges, fees, imposts, levies or other assessments, including, without limitation, all net income, franchise, profits, gross receipts, capital, sales, use, ad valorem, value added, transfer, gains, inventory, capital stock, license, withholding, payroll, employment, unemployment, workers' compensation, social security, excise, goods and services, harmonized sales, severance, stamp, occupation, real or personal property, customs duties, fees, assessments and charges of any kind whatsoever, together with any interest and any penalties, fines, additions to tax or additional amounts thereon, imposed by any Tax Authority and shall include any transferee liability in respect of Taxes;

"**Tax Act**" means the *Income Tax Act* (Canada) as may be amended from time to time;

"**Tax Authority**" means any Governmental Authority having jurisdiction over the assessment, collection or imposition of Taxes, including the Canada Revenue Agency;

"**Tax Return**" means any return, report, declaration, designation, election, notice, filing, form, claim for refund, information return or other document (including any related or supporting schedule, statement or information) filed or required to be filed in connection with the determination, assessment or collection of any Tax or the administration of any Laws, regulations or administrative requirements relating to any Tax (including any amendment thereof);

"**Transaction**" has the meaning specified in the recitals to this Agreement;

"**Transaction Documents**" means this Agreement, ■ and all documents ancillary thereto;

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"**Vendor Loan Facilities**" means the financing arrangements between GWMC and its principal vendors as set out in the agreements dated August 18, 2009 (Electro Banque), December 22, 2009 (Nokia Siemens Networks Finance BV as assigned to the "TCP Lenders" and "ING Capital LLC" (each as described in the various assignment documentation)) and March 9, 2010 (Industrial and Commercial Bank of China (Macau) Limited), as each of the foregoing may be respectively amended or assigned from time to time;<sup>1</sup>

"**VimpelCom Loan Agreements**" means, collectively, the GTH Loan Agreement, the GTH Canada Loan Agreement and the VimpelCom Parent Loan Agreement;<sup>2</sup>

"**VimpelCom Parent Loan Agreement**" means the non-revolving term loan dated December 3, 2012 between VimpelCom Amsterdam B.V. as lender and GWMC as borrower, in the principal amount of \$■ plus accrued interest of \$■ as at May 1, 2013;

"**WIND Distribution**" means WIND Mobile Distribution Corp., a wholly-owned subsidiary of GWMC; and

"**Working Capital Target**" means an amount equal to the aggregate value of all Current Assets minus the aggregate value of all Current Liabilities as at the Closing Date calculated based on the Estimated Closing Date Balance Sheet.

## 1.2 Schedules

- (a) The following Schedules are attached to and form part of this Agreement:

Schedule	Description
Schedule 1.1(A)	— Permitted Liens
Schedule 3.2(b)	— Form of Resignation and Release
Schedule 3.2(c)	— Form of Seller's Closing Certificate
Schedule 3.2(d)	— Form of GWMC 's Closing Certificate
Schedule 3.2(e)	— Seller's Required Consents
Schedule 3.3(d)(A)	— Form of Release of the Seller by GWMC
Schedule 3.3(d)(B)	— Form of Release of the GWMC Directors by GWMC
Schedule 4.5	— Capital Structure of the Globalive Entities
Schedule 4.6(a)	— Compliance with Other Instruments
Schedule 4.6(b)	— Filings with Governmental Authorities
Schedule 4.7	— GWMC Financial Statements
Schedule 4.8	— Taxes
Schedule 4.9	— Spectrum Licenses

<sup>1</sup> Approach to Vendor Loan Facilities to be discussed.

<sup>2</sup> Approach to VimpelCom Loan Agreements to be discussed.



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<b>Schedule</b>	<b>Description</b>
Schedule 5.3(b)	— Filings, Consents and Approvals of Governmental Authorities and Other Persons to be Obtained by the Purchaser
Schedule 5.10	— Partnership Arrangements
Schedule 6.6	— Pre-Closing Reorganization
Schedule 7.1	— Form of the Seller's Closing Conditions Certificate
Schedule 7.2(a)	— Form of Purchaser Closing Conditions Certificate

- (b) When any provision of Article 4 states that a document or thing has been delivered to the Purchaser, the Parties intend for the availability of that document or thing via the electronic Data Room established for the Purchaser's review, to constitute delivery thereof.

### 1.3 Interpretation

In this Agreement:

- (a) Accounting Terms. Unless otherwise specified, whenever reference is made in this Agreement to a calculation to be made or an action to be taken in accordance with GAAP, such calculation shall be made or action taken in accordance with GAAP, as applicable, as at the time such calculation is required to be made or action is to be taken, consistently applied.
- (b) Headings, Table of Contents and Schedules. The division of this Agreement into Articles, Sections, Subsections, Paragraphs and Clauses and the inclusion of headings and a table of contents are for convenience of reference only and do not affect the construction or interpretation of this Agreement. Unless otherwise specified to the contrary, all references to Articles and Sections are references to Articles and Sections of this Agreement and all references to Schedules are references to Schedules to this Agreement. All Schedules hereto are hereby incorporated into this Agreement and are hereby made a part hereof as if set out in full in this Agreement.
- (c) Gender and Number. Except where the context requires otherwise, words in this Agreement importing the singular include the plural and vice versa and words importing gender include all genders.
- (d) Including. Where the word "including" or "includes" is used in this Agreement, it means including or includes "without limitation".
- (e) No Strict Construction. The language used in this Agreement is the language chosen by the Parties to express their mutual intent, and no rule of strict construction shall be applied against any Party proposing any such language.

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- (f) Statutory References. A reference in this Agreement to a statute includes all rules and regulations made pursuant to such statute and, unless expressly provided otherwise, the provisions of any statute, rule or regulation which amends, supplements or supersedes any such statute, rule or regulation in force as of the date of this Agreement and, in the case of the Tax Act, all proposed amendments publicly announced by the Minister of Finance (Canada) on or before the date of this Agreement.
- (g) Currency. Unless otherwise specified, any reference to currency is to Canadian currency and any amount advanced, paid or calculated is to be advanced, paid or calculated in Canadian currency.
- (h) Time. Time is of the essence of this Agreement and of every part of this Agreement, and no extension or variation of this Agreement shall operate as a waiver of this provision.
- (i) Time Periods. Except where expressly provided otherwise herein, time periods within or following which any payment is to be made or act is to be done shall be calculated by excluding the day on which the period commences and including the day on which the period ends and by extending the period to the following Business Day if the last day of the period is not a Business Day.

## 2. PURCHASE AND SALE OF PURCHASED SHARES

### 2.1 Purchase and Sale

Subject to the provisions of this Agreement, the Seller shall sell, transfer, assign, convey, and deliver to the Purchaser, and the Purchaser shall purchase and acquire from the Seller, all of the Purchased Shares, free and clear of all Liens other than Permitted Liens. All amounts paid pursuant to this Agreement shall be paid by wire transfer in immediately available funds to the recipient of such payment.

### 2.2 Purchase Price

The amount payable by the Purchaser for the Purchased Shares (the "**Purchase Price**") shall be \$[■] (the "**Base Purchase Price**") *plus* the amount, if any, by which the amount of the Closing Date Working Capital is greater than the amount of the Working Capital Target, or *less* the amount, if any, by which the amount of the Working Capital Target is greater than the amount of the Closing Date Working Capital, as the case may be.

### 2.3 Closing Date Payment

The Purchaser and the Seller agree that, at the Closing, the Purchaser shall pay to the Seller an amount (the "**Closing Date Payment**") equal to the Base Purchase Price.

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**2.4 Estimated Closing Date Balance Sheet**

- (a) Not less than five Business Days before the Closing Date, the Seller shall cause a consolidated balance sheet of GWMC and WIND Distribution as at the Closing Date to be prepared and delivered to the Purchaser, which balance sheet shall be prepared in accordance with IFRS applied on a consistent basis and which reflects an estimate by the Seller and GWMC of the consolidated financial position of GWMC as at the Closing Date (the "**Estimated Closing Date Balance Sheet**").
- (b) Not less than two Business Days before the Closing Date, the Seller shall deliver to the Purchaser a calculation of the Working Capital Target based upon the Estimated Closing Date Balance Sheet.

**2.5 Final Closing Date Balance Sheet**

- (a) Not later than 30 days after the Closing Date, the Purchaser shall cause a consolidated balance sheet of GWMC and WIND Distribution as at the Closing Date to be prepared and delivered to the Seller, which balance sheet shall be prepared in accordance with IFRS applied on a consistent basis, together with a calculation of Closing Date Working Capital based on such balance sheet (the "**Final Closing Date Balance Sheet**"). The Purchaser shall provide the Seller with reasonable access to GWMC's financial records and working papers to assist in its review of the Final Closing Date Balance Sheet.
- (b) If the Seller notifies the Purchaser that it agrees with the Final Closing Date Balance Sheet within 15 days after receipt thereof or fails to deliver notice to the Purchaser of its disagreement therewith within such 15-day period, the Final Closing Date Balance Sheet shall be conclusive and binding upon the Purchaser, and the Seller shall be deemed to have agreed thereto, in the first case, on the date the Purchaser receives the notice and, in the second case, on such 15<sup>th</sup> day. If the Seller notifies the Purchaser of its disagreement with the Final Closing Date Balance Sheet within such 15-day period, then the Purchaser and the Seller shall attempt, in good faith, to resolve their differences within 15 days after the Purchaser's receipt of the Seller's notice of disagreement. Any disagreement over the Final Closing Date Balance Sheet (a "**Balance Sheet Dispute**") not resolved by the Purchaser and the Seller within such 15-day period shall be submitted to ■ or such other nationally recognized accounting firm as the Purchaser and the Seller may agree (the "**Accountants**"). The Accountants shall act as experts, not as arbitrators, and the determination of the Accountants shall, in the absence of manifest error, be final and binding on the Purchaser and the Seller. The fees and disbursements of the Accountants, including the legal expenses of the Purchaser and the Seller, shall be in the discretion of the Accountants, which determination shall be final and binding upon the Purchaser and the Seller.

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**2.6 Adjustment of Purchase Price**

- (a) On the second Business Day following the date on which the Purchaser and the Seller agree to the Final Closing Date Balance Sheet (or are deemed to have agreed to the Final Closing Date Balance Sheet, or on the second Business Day following the date on which a determination of Balance Sheet Dispute is made pursuant to Section 2.5, whichever is later (the "**Settlement Date**"), the Purchase Price shall be determined using the Final Closing Balance Sheet.
- (b) If the Purchase Price, as determined in accordance with this Section 2.6, is greater than the Closing Date Payment, the Purchaser shall not later than the fifth Business Day following the Settlement Date pay by wire transfer in immediately available funds to or to the order of the Purchaser an amount equal to the difference.
- (c) If the Purchase Price, as adjusted in accordance with this Section 2.6, is less than the Closing Date Payment, the Seller shall not later than the fifth Business Day following the Settlement Date pay by wire transfer in immediately available funds to or to the order of the Seller an amount equal to the difference.

**3. CLOSING****3.1 Closing**

The Closing shall be held at the offices of Bennett Jones LLP located at Suite 3400, 1 First Canadian Place, Toronto, Ontario, M5X 1A4, Canada or such other place as the Parties agree, at the Closing Time on the Closing Date.

**3.2 Items To Be Delivered by the Seller at Closing**

At the Closing, the Seller shall deliver to the Purchaser the following:

- (a) share certificates representing the Purchased Shares duly endorsed in blank for transfer or accompanied by duly signed powers of attorney for transfer in blank;
- (b) resignations from such directors of the Globalive Entities and releases from such directors of the Globalive Entities as may be requested by the Purchaser in favour of the Globalive Entities effective as of the Closing Time, in the form as set out in Schedule 3.2(b);
- (c) a certificate in the form as set out in Schedule 3.2(c) executed by a duly authorized officer of the Seller, dated the Closing Date, as to (i) the articles and by-laws of the Seller, (ii) the incumbency of the Seller's officers executing the Transaction Documents, as applicable, and (iii) the resolutions of the board of directors of the Seller, authorizing execution, delivery and performance of the Transaction Documents, as applicable, by the Seller passed in connection herewith and the transactions contemplated by the Transaction Documents;

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- (d) a certificate in the form as set out in Schedule 3.2(d) executed by a duly authorized officer of GWMC, dated the Closing Date, as to (i) the articles and by-laws of GWMC, (ii) the incumbency of GWMC's officers executing the Transaction Documents, as applicable, and (iii) the resolutions of the board of directors of GWMC authorizing the transfer of the Purchased Shares by the Seller to the Purchaser as contemplated hereby and the execution, delivery and performance of the Transaction Documents, as applicable, by GWMC passed in connection herewith and the transactions contemplated by the Transaction Documents;
- (e) evidence of the obtaining of the approvals, consents and releases set forth on Schedule 3.2(e); and
- (f) a certificate of the Seller in the form as set out in Schedule 7.1 executed by a duly authorized officer of such Seller, dated as of the Closing Date, certifying, without personal liability, as to the Seller's compliance with the conditions set forth in Sections 7.1(a) and 7.1(b).

For greater certainty, in the event that a required consent, waiver or notice is disclosed on Schedule 4.6(a) or Schedule 4.6(b), and the Purchaser does not require that such consent be obtained prior to the Closing pursuant to Schedule 3.2(c), or if any consent, waiver or notice is not required to be disclosed on Schedule 4.6(a) or Schedule 4.6(b), no Party shall have any liability to the Purchaser hereunder for the failure to obtain such consent, waiver or notice.

### 3.3 Items To Be Delivered by the Purchaser

At the Closing, the Purchaser shall deliver the following to the Seller:

- (a) the Purchase Price by wire of immediately available funds;
- (b) a certificate executed by a duly authorized officer of the Purchaser, dated the Closing Date, as to (i) the Purchaser's articles and by-laws, (ii) the incumbency of the Purchaser's officers executing the Transaction Documents, as applicable, and (iii) the resolutions of the board of directors of the Purchaser authorizing the execution, delivery and performance of the Transaction Documents, as applicable, by the Purchaser passed in connection herewith and the transactions contemplated by the Transaction Documents;
- (c) evidence of the corporate or other existence of the Purchaser as of the Closing Date, or such other date as agreed by the Seller, from the appropriate Governmental Authorities of the jurisdiction of the Purchaser's formation;
- (d) a release from the Purchaser, executed by the Purchaser's elected director(s) or appointed officer(s), in favour of the Seller and each of the directors of the Globalive Entities in office immediately prior to the Closing in the forms set out in Schedule 3.3(d)(A) and Schedule 3.3(d)(B);

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- (e) evidence of the obtaining of the approvals, consents and releases set forth on Schedule 5.3(b); and
- (f) a certificate in the form set out in Schedule 7.2(a) executed by a duly authorized officer of the Purchaser, dated as of the Closing Date, certifying, without personal liability, as to compliance by the Purchaser with the conditions set forth in Sections 7.2(a) and 7.2(b).

**4. REPRESENTATIONS AND WARRANTIES OF THE SELLER**

Except as set forth in the Schedules (with specific reference to the Section of this Agreement to which the information stated in such Schedule relates; provided that, the information contained in any Schedule shall be deemed to be disclosed with respect to any other Section of this Agreement to the extent it is reasonably apparent from the face of such Schedule that such information is applicable to such other Section of this Agreement), the Seller hereby represents and warrants to the Purchaser as follows and acknowledges that each of the following representations and warranties have been relied upon by the Purchaser in connection with its execution and delivery of this Agreement and the consummation of the Transaction, and unless otherwise specified, are made as of the date hereof:

**4.1 Organization and Good Standing**

The Seller is duly formed, in existence and in good standing under the laws of the Province of Ontario.

**4.2 Ownership of Purchased Shares**

The Seller is the owner of record and the beneficial owner of the Purchased Shares and will have good and valid title to such Purchased Shares, free and clear of any Liens other than Permitted Liens as of the Closing Date.

**4.3 Authority and Binding Effect**

The Seller has the power and authority to enter into the Transaction Documents, to perform its obligations under the Transaction Documents, as applicable, and, subject to satisfaction of the conditions precedent set forth in Section 7.2, to consummate the transactions to be consummated by it thereunder, including the power and authority to execute and deliver each Transaction Document to which it is a party and any other certificate, document, agreement or other instrument to be executed and delivered by it in connection with the Transaction and to perform its obligations hereunder and thereunder. The execution and delivery of the Transaction Documents by the Seller and the performance by the Seller of its obligations thereunder and the consummation of the transactions contemplated thereunder to be consummated by the Seller have been validly authorized by all necessary formal action by the Seller. Each Transaction Document to which the Seller is a party has been, and each Transaction Document to which the Seller is a party as of the Closing Date will be, duly executed and delivered by the Seller and constitutes or will constitute upon delivery, a legal, valid and binding obligation of the Seller, enforceable against it in accordance with its terms, subject to the usual exceptions as to

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bankruptcy, winding-up, insolvency, arrangement, reorganization or other laws of general application affecting creditors' rights and the availability of equitable remedies.

#### 4.4 Litigation and Government Claims

With the exception of Taxes, which are the subject of the representations and warranties in Section 4.8, and except as disclosed in the Data Room, there is no claim, suit, action or litigation, or administrative, arbitration or other Proceeding or, to the knowledge of the Seller, any governmental investigation or inquiry pending against, relating to or affecting the Seller to the extent related to any of the Globalive Entities, the Transaction Documents or any of the transactions contemplated thereby that would reasonably be expected to result in a Material Adverse Effect.

#### 4.5 Authorized and Issued Capital

- (a) Schedule 4.5 sets out the authorized and issued capital of each of the Globalive Entities as of the date of this Agreement. As of the Closing Date, all of the issued and outstanding shares in the capital of each of the Globalive Entities (i) will be authorized, validly issued and fully paid, (ii) will be held of record as set forth on Schedule 4.5, and will be free and clear of all Liens and (iii) were not issued in violation of the preemptive rights of any Person, or any agreement or Law.
- (b) Except as set forth in Schedule 4.5, as of the Closing Time, (i) no shares of any of the Globalive Entities will be reserved for issuance; (ii) there will be no shareholders agreements, pooling agreements, voting trusts or other agreements with respect to the voting of the shares, or any of them, of any of the Globalive Entities other than the amended and restated shareholders' agreement dated December 15, 2009 among the shareholders of the Seller; (iii) there will be no outstanding options, warrants, rights, calls, conversion rights, rights of exchange or other commitments, contingent or otherwise, relating to the shares of any of the Globalive Entities; (iv) there will be no outstanding agreements of any of the Globalive Entities or the Seller, permitting the Seller or any other Person to purchase, redeem or otherwise acquire any outstanding shares of any of the Globalive Entities or securities or obligations of any kind convertible into any shares of any of the Globalive Entities; (v) there will be no dividends that have accrued or been declared but are unpaid on the shares of any of the Globalive Entities; and (vi) there will be no outstanding or authorized share appreciation, phantom stock, stock option plans or similar rights with respect to any of the Globalive Entities. None of the Globalive Entities is a reporting issuer (as such term is defined in the *Securities Act* (Ontario)) and there is no published market for the Purchased Shares.

#### 4.6 Consents; Compliance with Other Instruments

- (a) Except as set forth in Schedule 4.6(a), none of the execution, delivery and performance by the Seller of any Transaction Document to which it is a party, the consummation by the Seller of the transactions contemplated thereby, nor the

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fulfillment of and compliance with the terms and conditions thereof violates, breaches, is in conflict with, or constitutes a breach or default under (or an event that with notice, lapse of time or both would result in any such breach or default), results in the loss of any contractual benefit under, permits the termination, modification or cancellation of or the acceleration or maturity of any obligation under, or requires the consent or approval of any Person under (i) any provision of any of the Globalive Entities articles, by-laws, or constating documents, or (ii) any Laws applicable to the Globalive Entities (to the extent such breach or violation of such Law would have a Material Adverse Effect).

- (b) Except as set forth in Schedule 4.6(b), none of the Globalive Entities are required to submit any notice, declaration, report or other filing or registration with, or obtain any exemption, waiver, consent, approval, authorization, licence, permit or franchise from, any Governmental Authority in connection with the execution and delivery of any of the Transaction Documents or the consummation of the transactions contemplated thereby where the failure to make such submission would have a Material Adverse Effect.

**4.7 Financial Statements and Records of GWMC**

A true and complete copy of the GWMC Financial Statements (including the respective notes thereto) is attached hereto as Schedule 4.7.

**4.8 Taxes**

Except as disclosed in Schedule 4.8,

- (a) All Tax Returns required by applicable Law to be filed by the Globalive Entities have been timely filed and all such Tax Returns are true, complete and correct, except as would not have a Material Adverse Effect.
- (b) No audit or other Proceeding by any Tax Authority is pending or, to the knowledge of GWMC, threatened with respect to any Taxes due from or with respect to the Globalive Entities, and, to the knowledge of the Seller, no Tax Authority has given written notice of any intention to assert any deficiency or claim for additional Taxes against the Globalive Entities. There are no matters under discussion, audit or appeal with any Governmental Authority relating to Taxes.
- (c) No Tax Authority of a jurisdiction in which GWMC or WIND Distribution does not file Tax Returns has made any written claim that such entity is or may be subject to taxation by such jurisdiction. To the knowledge of GWMC, there is no basis for a claim that GWMC or WIND Distribution is subject to Tax in a jurisdiction in which it does not file Tax Returns.
- (d) There are no outstanding agreements, waivers, objections or arrangements extending the statutory period of limitations applicable to any claim for Taxes due by GWMC or WIND Distribution for any taxable period, nor has any such



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agreement, waiver, objection or arrangement been requested. To the knowledge of the Seller, none of GWMC or WIND Distribution is bound by any tax sharing, allocation or indemnification or similar agreement.

- (e) To the knowledge of the Seller, there are no Liens for Taxes upon any property or assets of GWMC or WIND Distribution, except for Permitted Liens.

**4.9 Spectrum Licenses**

- (a) The Spectrum Licenses are in good standing in all respects and the Spectrum Licenses are accurately and completely described in Schedule 4.9. GWMC has good and marketable title to the Spectrum Licenses, free and clear of any and all Liens, other than Permitted Liens. GWMC has the exclusive right to use and dispose of the Spectrum Licenses.
- (b) No Person other than the Purchaser has any written or oral agreement or option or any right or privilege, whether by law, pre-emptive or contractual, capable of becoming a Contract or option for the purchase or acquisition, directly or indirectly, of any of the Spectrum Licenses or any rights therein. There are no agreements which in any way limit or restrict the transfer to the Purchaser of the Spectrum Licenses.
- (c) GWMC has complied with the Industry Canada terms and conditions of license attaching to the Spectrum Licenses and have not received any notice or other communication (whether oral or written) from Industry Canada or any other Governmental Authority regarding any actual or alleged failure to so comply with any of the terms and conditions of license attaching to the Spectrum Licenses, except where such non-compliance would not reasonably be expected to have a Material Adverse Effect.
- (d) No Order is outstanding against GWMC relating to or involving the Spectrum Licenses that will, or would reasonably be expected to materially impair or otherwise materially and adversely affect the Purchaser's interest in and right to control, use and operate the Network Assets.

**4.10 Completeness of Information**

Neither the Seller nor any Person on behalf of the Seller makes any representation or warranty, express or implied, of any kind, including without limitation any representation or warranty as to the accuracy or completeness of any information regarding the Seller or the Globalive Entities furnished or made available to the Purchaser and its representatives, in each case except as expressly set forth in Article 4 (as qualified by any applicable Schedule attached to this Agreement).

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

Except as set forth in the Schedules (with specific reference to the Section of this Agreement to which the information stated in such Schedule relates; provided that, the information contained

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in any Schedule shall be deemed to be disclosed with respect to any other Section of this Agreement to the extent it is reasonably apparent from the face of such Schedule that such information is applicable to such other Section of this Agreement), the Purchaser hereby represents and warrants to the Seller as follows and acknowledges that each of the following representations and warranties have been relied upon by the Seller in connection with its execution and delivery of this Agreement and the consummation of the Transaction, and unless otherwise specified, are made as of the date hereof and as of the Closing Date:

**5.1 Organization and Good Standing**

The Purchaser is duly incorporated, amalgamated or organized, validly existing and in good standing under the laws of the jurisdiction of its incorporation, amalgamation or organization, as the case may be.

**5.2 Authority and Binding Effect**

The execution and delivery of the Transaction Documents by the Purchaser and the performance by the Purchaser of their obligations thereunder and the consummation of the transactions contemplated thereunder to be consummated by the Purchaser have been duly and validly authorized by all necessary corporate action on the part of the Purchaser. Each Transaction Document executed by the Purchaser, as of the date hereof, has been, and each Transaction Document executed as of the Closing Date, will be, duly executed and delivered by the Purchaser and constitutes or will constitute upon delivery, the legal, valid and binding obligation of the Purchaser, enforceable against the Purchaser in accordance with their respective terms, subject to the usual exceptions as to bankruptcy, winding-up, insolvency, arrangement, reorganization or other laws of general application affecting creditors' rights and the availability of equitable remedies.

**5.3 Consents; Compliance with Other Instruments**

- (a) None of the execution, delivery and performance by the Purchaser of the Transaction Documents, the consummation by the Purchaser of the transactions contemplated thereby, nor the fulfillment of and compliance with the terms and conditions thereof violates, breaches, is in conflict with, or constitutes a breach or default under (or an event that with notice, lapse of time or both would result in any such breach or default), permits the termination, modification or cancellation of or the acceleration or maturity of any obligation under (i) any provision of any of the Purchaser's articles, by-laws, constating documents or other organizational documents, as applicable, (ii) to the extent that any such violation, breach, default or conflict would reasonably be expected to materially affect the transactions contemplated under the Transaction Documents, any instrument, contract, agreement, note, bond, indenture, mortgage, deed of trust, evidence of indebtedness, loan or lease agreement to which the Purchaser or any of the Purchaser's assets or properties, are bound or subject, or (iii) any applicable Laws.

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- (b) Except as set forth in Schedule 5.3(b):
- (i) the Purchaser is not required to submit any notice, declaration, report or other filing or registration with any Governmental Authority in connection with the execution and delivery of the Transaction Documents or the consummation of the transactions contemplated thereby where the failure to make such submission would reasonably be expected to materially affect the transactions contemplated by the Transaction Documents; and
  - (ii) no exemption, waiver, consent, approval, authorization, licence, permit or franchise is required to be obtained from any Governmental Authority or any other Person by the Purchaser in connection with the execution and delivery of the Transaction Documents or the consummation of the transactions contemplated thereby, the absence of which would reasonably be expected to materially affect the transactions contemplated by the Transaction Documents.

**5.4 Business Advisors, Brokers and Finders**

Neither the Purchaser nor any of their respective officers, directors, employees, agents, Affiliates or shareholders of the Purchaser has engaged any Person to act or render services as a business advisor, broker, finder, investment banker or in any similar capacity in connection with the transactions contemplated by the Transaction Documents, and no Person has, as a result of any agreement or action by the Purchaser or any of its Affiliates, any right or valid claim for any commission, fee or other compensation as a business advisor, broker, finder, investment banker or in any similar capacity in connection with the transactions contemplated by the Transaction Documents that would result in any liability to the Seller.

**5.5 Litigation and Government Claims**

There is no claim, suit, action or litigation, or administrative, arbitration or other Proceeding or governmental investigation or inquiry pending against, relating to or affecting the Purchaser to the extent related to the Transaction Documents or the transactions contemplated thereby. There is no such Proceeding, investigation or inquiry threatened, relating to or affecting the Purchaser to the extent related to the Transaction Documents or the transactions contemplated thereby, in each case which might be commenced with a reasonable likelihood of success.

**5.6 Independent Investigation**

The Purchaser has conducted its own independent investigation, review and analysis of the business, operations, assets, liabilities, results of operations, financial and other condition and prospects of the Globalive Entities, which investigation, review and analysis was done by the Purchaser and its Affiliates and representatives. The Purchaser acknowledges that it and its representatives have been provided adequate access to the personnel and records of the Globalive Entities for such purpose. In entering into this Agreement, the Purchaser acknowledges that it has relied solely upon the aforementioned investigation, review and analysis and not on any factual representations or opinions of any of the Seller or the Globalive Entities or any of their

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respective Affiliates or representatives (except the specific representations and warranties of the Seller set forth in Article 4).

**5.7 Funds**

The Purchaser has on the date hereof, and shall have at the Closing, sufficient available funds to pay the Purchase Price and all other necessary fees, expenses and other amounts in connection with the consummation of the transactions contemplated by this Agreement.

**5.8 No Breach**

The Purchaser has no knowledge of (i) any facts or circumstances which would constitute a breach by the Globalive Entities or the Seller of any of their representations and warranties herein or (ii) a Material Adverse Effect.

**5.9 Investment Canada Act**

The Purchaser is not a non-Canadian within the meaning of the Investment Canada Act.<sup>3</sup>

**5.10 Partnership Arrangements**

Except as set forth in Schedule 5.10, no Person is acting jointly or in concert with the Purchaser in connection with the acquisition of the Purchased Shares pursuant to this Agreement.<sup>4</sup>

**6. COVENANTS****6.1 Conduct of Business Prior to Closing**

- (a) Subject to Section 6.1(b), during the Interim Period, the Seller shall cause GWMC to do the following:
  - (i) use commercially reasonable efforts to preserve intact the Business and the material properties and physical assets of GWMC and WIND Distribution used in the operation of the Business; and
  - (ii) maintain the books, records and accounts of GWMC and WIND Distribution in the ordinary course of business on a basis consistent with past practice.
- (b) Except as permitted or required by this Agreement or as required by applicable Law or in the ordinary course of business or as required by the Pre-Closing Reorganization (as defined herein), the Seller shall not cause the Globalive Entities to, during the Interim Period, do any of the following without the prior written consent of the Purchaser, which consent shall not be unreasonably withheld or delayed (provided, however, that notwithstanding anything to contrary contained in this Agreement, no consent shall be required from the

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<sup>3</sup> Representations, warranties and covenants to be revised throughout to the extent that the Purchaser will not be a Canadian resident.

<sup>4</sup> Seller requires this representation for regulatory purposes.

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Purchaser for the Seller to take an action to cure a representation or warranty and/or enable compliance with any covenant in this Agreement provided that such action would not be materially adverse to the Business or the Purchaser):

- (i) amend the articles of incorporation, by-laws or other equivalent organizational documents, or otherwise alter the corporate structure, as applicable, through merger, liquidation, reorganization, restructuring or otherwise, of any of the Globalive Entities;
  - (ii) declare or pay any dividends (including stock dividends), or make any other payments or distributions upon any of the capital stock of any of the Globalive Entities;
  - (iii) issue, sell, transfer, pledge, dispose of or encumber any shares of capital stock of any class, or any options, warrants, convertible securities or other rights of any kind to acquire any shares of capital stock, or any other ownership interest of any of the Globalive Entities;
  - (iv) sell, transfer or dispose of any material assets other than in the ordinary course of business;
  - (v) make any change to its accounting policies or procedures;
  - (vi) waive, release, grant, transfer, exercise, modify or amend, in whole or in part, the Spectrum Licenses;
  - (vii) except as required to address any matters set forth in Schedule 4.8, change any method of Tax accounting, make any new, or change any existing Tax election or settle or compromise any Tax liability, enter into any closing agreement with respect to any Tax or surrender any right to claim a Tax refund; or
  - (viii) waive, assign or release any rights or claims with respect to litigation involving the Globalive Entities.
- (c) Where the Seller seeks to obtain the consent of the Purchaser with respect to any action which if taken without consent would result in a breach of Section 6.1(b), the Seller shall provide written notice to the Purchaser requesting such consent and setting forth in reasonable detail the particulars of the action being contemplated. The Purchaser shall have five Business Days (the "**Response Period**") in which to communicate the granting or withholding of such consent. Any failure by the Purchaser to respond within the Response Period shall be deemed to constitute the granting of the requested consent.
- (d) During the period from the date of this Agreement to the Closing, the Purchaser and its Affiliates shall not contact any third party on behalf of any of the Globalive Entities or the Seller or purportedly on behalf of any of the Globalive Entities or the Seller without the prior written consent of the Seller (provided that

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the Seller shall provide a response to any request from the Purchaser for such consent within a reasonable period of time).

**6.2 Actions to Satisfy Closing Conditions**

Subject to the other provisions of this Agreement, each of the Seller and the Purchaser agrees to use commercially reasonable efforts to take all such actions as are within its power to control, and to use its commercially reasonable efforts to cause other actions to be taken which are not within its power to control, so as to ensure compliance with any conditions set forth in Article 7 which are for the benefit of the other or mutually beneficial.

**6.3 Regulatory and Third Party Approvals**

- (a) The Purchaser shall, as promptly as practicable (i) give all notices to, make all filings and applications with, obtain all consents and approvals of and take any action in respect of, any Persons and Governmental Authorities that are required of the Purchaser to consummate the transactions contemplated by this Agreement; and (ii) provide such other information and communications to such Governmental Authorities or other Persons as such Governmental Authorities or other Persons may reasonably request in connection therewith. The Purchaser shall provide prompt notification to the Seller when any such consent, approval, action, filing or notice referred to in clause (i) above is obtained, taken, made or given, as applicable, and shall advise the Seller of any communications (and, unless precluded by Law, provide copies of any such communications that are in writing to the Seller and its outside counsel) with any Governmental Authority or other Person regarding any of the transactions contemplated by this Agreement.
- (b) The Purchaser shall cooperate and assist the Seller in giving any notices to third parties and obtaining consents from third parties as are required to consummate the Transaction as set forth in Schedule 3.2(e), provided that the Seller shall not have any obligation to expend any monies in connection with the obtaining of such third party consents or oblige the Seller to give any guarantee or other consideration of any nature in connection therewith.
- (c) Without limiting the generality of the foregoing, the Purchaser shall consult and cooperate with the Seller in connection with all notices, filings, applications, analyses, appearances, presentations, memoranda, briefs, arguments, opinions and proposals made or submitted by or on behalf of the Purchaser in connection with obtaining all consents and approvals from any Governmental Authorities necessary to consummate the transactions contemplated hereby. The Purchaser will not make any notification, filing, application or other submission in relation to the transactions contemplated hereby without first providing the Seller with a copy of such notification, filing, application or other submission in draft form (subject to reasonable redactions or limiting the sharing of such draft, or parts thereof, to an outside-counsel-only basis where appropriate) and giving the Seller a reasonable opportunity to consider its content before it is filed with the relevant Governmental Authority, and the Purchaser shall consider and take account of all

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reasonable comments timely made in this respect. The Purchaser shall promptly notify the Seller of any substantive communications from or with any Governmental Authority with respect to the transactions contemplated by this Agreement and will use its reasonable best efforts to ensure, to the extent permitted by Law, that the Seller, or its outside counsel where appropriate, are involved in any substantive communications or invited to attend meetings with, or other appearances before, any Governmental Authority with respect to the transactions contemplated by this Agreement.

- (d) Subject to Section 6.4, the obligations of the Purchaser under this Section 6.3 shall include committing to any and all undertakings, divestitures, licenses or hold separate or similar arrangements with respect to its assets or the assets of the Globalive Entities and committing to any undertakings or other arrangements relating to conduct of its business or the business of the Globalive Entities as a condition to obtaining any and all approvals or clearances from any Governmental Authority or Person necessary to consummate the transactions contemplated hereby, including taking any and all actions necessary in order to ensure the receipt of the necessary consents, approvals, clearances or forbearances, or the termination, waiver or expiration of the necessary waiting periods, under applicable Law. In addition, subject to Section 6.4, the Purchaser shall not knowingly take or cause to be taken any action which would be expected to prevent or delay the obtaining of any consent or approval required hereunder, including entering into any timing or other agreements with any Governmental Authority without the express written consent of the Seller, for the consummation of the transactions contemplated hereby. No action taken under this Section 6.3 shall entitle the Purchaser to any reduction to the Purchase Price.

**6.4 Competition Matters**

- (a) The Purchaser and the Seller shall promptly, but in no event later than that date which is five Business Days after the date of signing of this Agreement by all Parties hereto, or as soon thereafter as is reasonably practicable, submit the notice required under section 114 of the Competition Act with respect to the transactions contemplated by this Agreement and the Purchaser shall promptly, but in no event later than that date which is five Business Days after the date of signing of this Agreement by all Parties hereto, or as soon as reasonably practicable, submit an application for an Advance Ruling Certificate to the Commissioner. The Parties shall coordinate and cooperate in exchanging such information and assistance as may be reasonably requested by each other in order to prepare the notice required under section 114 of the Competition Act, the application for an Advance Ruling Certificate and as otherwise may be necessary in order to obtain the Competition Act Approval. The Parties shall promptly notify each other of any material communication from the Commissioner or her staff and supply as promptly as practicable to the Commissioner or her staff any additional information and documentary material that may be requested or required. Each Party shall permit the other Parties or their external counsel, as appropriate, to review in advance any proposed written communication to the Commissioner or her staff and shall

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discuss with the other Parties any material verbal communication to the Commissioner or her staff. None of the Parties shall participate in any meeting with the Commissioner or her staff in relation to the transactions contemplated by this Agreement unless it consults with the other Parties in advance and, to the extent permitted by Law, provides the other Party the opportunity to attend and participate thereat.

- (b) The Purchaser shall use its best efforts to secure the necessary approval and consent of the Commissioner to successfully consummate the transactions contemplated by this Agreement as soon as practicable.

**6.5 Industry Canada Approval Matters**

The Purchaser shall use its best efforts to obtain the Industry Canada Approval. The Seller shall co-operate with the Purchaser and render all necessary assistance required by the Purchaser in connection with any application, notification or filing of the Purchaser to or with Industry Canada.

**6.6 Pre-Closing Reorganization**

**[The Seller shall cause the pre-closing reorganization steps set out in Schedule 6.6 (the "Pre-Closing Reorganization") to be completed prior to the Closing. The Purchaser agrees to use its best efforts to assist the Seller in completing the Pre-Closing Reorganization. The Seller's representations and warranties in Article 4 and the covenants of the Seller in Article 6 shall be read as modified to the extent necessary to give effect to the Pre-Closing Reorganization.<sup>5</sup>]**

**6.7 Confidentiality**

The Purchaser acknowledges that it has had access to Confidential Information, the disclosure of which would be detrimental to the interests of the Seller and the Globalive Entities. Accordingly, the Purchaser covenants and agrees, prior to the Closing or if this Agreement is terminated for any reason, to keep, and cause its Affiliates to keep, the Confidential Information in strict confidence and not disclose any of such Confidential Information to any Person or use or attempt to use such Confidential Information. Notwithstanding the foregoing, the Purchaser will not have liability for any information that is required to be disclosed pursuant to applicable Law or pursuant to any regulatory or judicial authority having jurisdiction over the Seller or the Globalive Entities, provided that the Purchaser first gives prior written notice to the Seller of such disclosure and the Purchaser requests in writing confidentiality in respect of such disclosure.

**6.8 No Solicitation**

The Purchaser agrees and acknowledges that, if this Agreement is terminated, for a period of two years, it shall not, and shall not cause its Affiliates to, directly or indirectly, induce or solicit,

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<sup>5</sup> Pre-Closing Reorganization steps are to be determined once the appropriate transaction structure has been determined from a tax and corporate perspective.



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attempt to induce or solicit or assist any third party in inducing or soliciting any employee or consultant of any of the Globalive Entities or the Seller, to leave such Person or to accept employment or engagement elsewhere. Notwithstanding the foregoing, the Purchaser shall be permitted to recruit through the posting of a general advertisement or through an employment agency, provided that the Purchaser shall not encourage or advise such agency to approach any specific employee or consultant of the Globalive Entities and the Seller.

**6.9 Notice of Certain Events**

- (a) From the date hereof until the Closing, each Party hereto (the "**Notifying Party**") shall promptly notify the other in writing of:
  - (i) any fact, circumstance, event or action the existence, occurrence or taking of which would prevent the Notifying Party from delivering the certificates contemplated by Sections 7.1 or 7.2, respectively;
  - (ii) any notice or other communication from any Person alleging that the consent of such Person is or may be required in connection with the Transaction; and
  - (iii) any notice or other communication from any Governmental Authority that threatens to enjoin the consummation of the Transaction.
- (b) The receipt by a Party of information pursuant to this Section 6.9 shall not operate as a waiver or otherwise affect any representation, warranty or agreement given or made by the Notifying Party in this Agreement.

**6.10 Tax and Financial Matters**

- (a) The Purchaser shall prepare, or cause to be prepared, all Tax Returns required to be filed by the Globalive Entities after the Closing Date. The Seller shall be given the opportunity to review, comment upon and suggest changes or corrections to, any Tax Returns required to be filed by the Globalive Entities after the Closing Date which include any Seller Tax Period and any amendments to such Tax Returns or any Tax Returns filed by any of the Globalive Entities prior to the Closing (and the work papers of the Globalive Entities and its and their accountants used in the preparation thereof), in each case, prior to the filing thereof (but in no event less than thirty days prior to such filing). The Purchaser shall, and shall cause the Globalive Entities to, fully cooperate with and assist the Seller (including allowing access by the Seller and its representatives to the books and records (written and electronic) of the Globalive Entities and allowing the Seller (and its representatives) to make copies thereof) in connection with the review by the Seller of any such Tax Returns or amendments, and the Seller (and its representatives) shall not be charged with any cost or expense for the assistance rendered by the Purchaser, the Globalive Entities in connection therewith.

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- (b) The Purchaser and the Seller shall for all Canadian and foreign Tax purposes report the purchase and sale hereunder and the transactions contemplated herein in accordance with their form as set out herein (and none of them shall make any available Tax elections inconsistent therewith).
- (c) For any period ending on or before the Closing Date (including, without limitation, for the period from the prior quarter-end or year-end through and as of the Closing Date), the Purchaser agrees to provide and cause each of the Globalive Entities to provide all financial and other information and documentation (including, without limitation, balance sheet, income statement, variance analysis, reporting package, detailed supporting schedules of accounts, tax provision for financial reporting purposes, fluctuation analysis, detailed trial balance up-load files, ultimates, etc.), which each of the Globalive Entities has provided to the Seller in the ordinary course of business for each quarter-end, and do and cause each of the Globalive Entities to do any and all acts related to the foregoing, including but not limited to:
  - (i) provide any detailed data reporting, including through all electronic systems, in a manner consistent with past practice and past time frames;
  - (ii) provide support and responses to the Seller's questions, as reasonably required, in respect of such information and documentation for quarterly or year-end periods prior to the Closing Date and for the period from the last quarterly or year-end period through and as of the Closing Date, in a manner consistent with past practice and past time frames; and
  - (iii) provide any required assistance to the Seller for financial reporting purposes, including without limitation, the projections of financial performance of each of the Globalive Entities.

**6.11 Cooperation**

Each of the Parties hereto shall, at all times after the Closing Date and upon any reasonable request of the other, promptly do, execute, deliver or cause to be done, executed and delivered, at the expense of the requesting Party, other than in respect of the cost or expense of preparing, drafting or negotiating any agreement, document or instrument reasonably necessary for the consummation of the Transaction at the Closing, for which each Party shall be solely responsible for its own costs and expenses in relation thereto, all further acts, documents and things as may be required or necessary for the purposes of giving effect to this Agreement, including such other instruments of sale, transfer, conveyance, assignment, confirmation, certificates and other instruments as may be reasonably requested in order to more effectively transfer, convey and assign the Purchased Shares and to effectuate the transactions contemplated herein.

**6.12 Officers' and Directors' Insurance and Indemnification**

The Purchaser shall, or shall cause each of the Globalive Entities to purchase, for the period from the Closing Date until six years after the Closing Date, as an extension to the current insurance policy of each the Globalive Entities, prepaid non-cancellable run off directors' and officers'

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liability insurance providing coverage for the present and former directors and officers of each of the Globalive Entities with respect to any claims arising from facts or events that occurred on or prior to the Closing (including in connection with this Agreement or the transactions contemplated hereby) on terms comparable to those contained in the current insurance policy of each of the Globalive Entities.

## 7. CONDITIONS PRECEDENT TO THE PERFORMANCE BY THE PURCHASER AND THE SELLERS OF THEIR OBLIGATIONS UNDER THIS AGREEMENT

### 7.1 Purchaser's Conditions

The obligation of the Purchaser to complete the Transaction shall be subject to the satisfaction of, or compliance with, at or before the Closing, the following conditions precedent (each of which is hereby acknowledged to be inserted for the exclusive benefit of the Purchaser and may be waived by it in whole or in part):

- (a) Seller's Representations and Warranties Certificate. The Seller shall have delivered a certificate, in the form as set out in Schedule 7.1, confirming that the representations and warranties of the Seller set forth in Article 4 of this Agreement (i) if qualified in any respect as to materiality or Material Adverse Effect or Material Adverse Change, are true and correct, and (ii) if not qualified as to materiality or Material Adverse Effect or Material Adverse Change, are true and correct, except to the extent that the failure of such representations and warranties to be true and correct would not have a Material Adverse Effect, as of the Closing Date, as though made on the Closing Date (provided that, to the extent any such representation or warranty expressly relates to an earlier date, the accuracy of such representation and warranty shall be determined as of such earlier date and that all representations and warranties of the Seller are modified as necessary to account for the Pre-Closing Reorganization).
- (b) Seller's Covenants Certificate. The Seller shall have delivered a certificate, in the form as set out in Schedule 7.1, confirming that the Seller has duly performed all of the covenants, acts and undertakings to be performed by it on or prior to the Closing Date, except where the failure to so perform would not, in the aggregate, be material.
- (c) No Injunction. No preliminary or permanent injunction (initiated pursuant to an action commenced by a third party) or other order, decree, or ruling issued by a Governmental Authority which restrains, enjoins, prohibits, or otherwise makes illegal the consummation of the Transaction shall be in effect.
- (d) Deliveries. The Seller shall have made or stand willing to make all the deliveries to the Purchaser described in Section 3.2.

### 7.2 Seller's Conditions

The obligations of the Seller to complete the Transaction shall be subject to the satisfaction of, or compliance with, at or before the Closing, each of the following conditions precedent (each of

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which is hereby acknowledged to be inserted for the exclusive benefit of the Seller and may be waived by the Seller in whole or in part):

- (a) Purchaser's Representations and Warranties Certificate. The Purchaser shall have delivered a certificate, in the form as set out in Schedule 7.2(a), confirming that the representations and warranties of the Purchaser set forth in Article 5 of this Agreement (i) if qualified in any respect as to materiality, shall be true and correct, and (ii) if not qualified as to materiality, shall be true and correct in all material respects, as of the Closing Date, as though made on the Closing Date (provided that, to the extent any such representation or warranty expressly relates to an earlier date, the accuracy of such representation and warranty shall be determined as of such earlier date).
- (b) Purchaser's Covenants Certificate. The Purchaser shall have delivered a certificate, in the form as set out in Schedule 7.2(a), confirming that the Purchaser has duly performed all of the covenants, acts and undertakings to be performed by it on or prior to the Closing Date (except to the extent any breach of any covenant has been cured prior to the Closing), except where the failure to so perform would not, in the aggregate, be material.
- (c) No Injunction. No preliminary or permanent injunction (initiated pursuant to an action commenced by a third party) or other order, decree, or ruling issued by a Governmental Authority which restrains, enjoins, prohibits, or otherwise makes illegal the consummation of the Transaction shall be in effect.
- (d) Deliveries. The Purchaser shall have made or stand willing to make all of the deliveries to the Seller described in Section 3.3.

**7.3 General Conditions**

The obligation of the Parties to complete the Transaction is subject to the following conditions, which are for the benefit of all of the Parties:

- (a) Competition Act Approval. Without limiting the Purchaser's obligations herein, including in Section 6.4, the Purchaser having obtained Competition Act Approval.
- (b) Industry Canada Approval. Without limiting the Purchaser's obligations herein, including in Section 6.5, the Purchaser having obtained Industry Canada Approval.

**8. TERMINATION****8.1 Termination**

This Agreement may be terminated at any time prior to the Closing:

- (a) by the mutual written consent of the Purchaser and each of the Seller;

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- (b) by the Purchaser by written notice to the Seller if any of the conditions set forth in Sections 7.1 and 7.3 shall not have been fulfilled by ■, unless such failure shall be due to the failure of the Purchaser to perform or comply with any of the covenants, agreements or conditions hereof to be performed or complied with by it prior to the Closing; or
- (c) by the Seller by written notice to the Purchaser if any of the conditions set forth in Sections 7.2 and 7.3 shall not have been fulfilled by ■, unless such failure shall be due to the failure of the Seller to perform or comply with any of the covenants, agreements or conditions hereof to be performed or complied with by it prior to the Closing; or
- (d) by the Purchaser or by the Seller in the event that any injunction (initiated pursuant to an action commenced by a third party) or other order, decree, or ruling is issued by a Governmental Authority, in each case that is final and non-appealable, or any statute, rule, regulation or executive order is promulgated or enacted by a Governmental Authority restraining, enjoining, prohibiting, or otherwise making illegal the consummation of the Transaction.

**8.2 Effect of Termination**

In the event of termination of this Agreement in accordance with this Agreement prior to the Closing, this Agreement shall forthwith become void and there shall be no liability on the part of any Party hereto, provided that nothing herein shall relieve any Party hereto from liability for a breach of any obligation contained in Sections 6.2, 6.4(a), 6.4(b) or Article 7 and in each case only to the extent such breach caused or contributed to the failure of the Closing.

**9. INDEMNIFICATION****9.1 Indemnification by the Seller**

The Seller shall indemnify and save the Purchaser harmless for and from any Loss of the Purchaser as a result of any breach of representation, warranty or covenant on the part of the Seller contained in this Agreement or in any certificate or document delivered pursuant to or contemplated by this Agreement.

**9.2 Indemnification by the Purchaser**

The Purchaser shall indemnify and save the Seller harmless for and from any Loss of the Seller as a result of any breach of representation, warranty or covenant or agreement on the part of the Purchaser contained in this Agreement or in any certificate or document delivered pursuant to or contemplated by this Agreement.

**9.3 Knowledge of Claim**

No Party shall be liable under this Article 9 for any Loss resulting from or relating to any inaccuracy in or breach of any representation or warranty in this Agreement if the Party seeking

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indemnification for such Loss had knowledge of such Loss or the ability to make a Claim with respect to such Loss prior to the Closing.

**9.4 Notice of Claim**

If the Purchaser or the Seller wishes to make a Claim, such Party shall promptly, and in any event within 15 days of the matter coming to the Party's attention, give notice to the other of the Claim. Notice of any Claim shall specify with reasonable particularity (to the extent that the information is available):

- (a) the factual basis for the Claim, and any provisions of the Agreement, or of any Laws, relied upon; and
- (b) the amount of the Claim or, if an amount is not then determinable, an approximate and reasonable estimate of the potential amount of the Claim.

**9.5 Procedure for Indemnification by the Seller**

Following receipt of notice of a Direct Claim, the Seller shall have 30 days to make such investigation of the Direct Claim as the Seller considers necessary or desirable. For the purpose of such investigation, the Purchaser shall make available to the Seller and its representatives the information relied upon by the Purchaser to substantiate the Direct Claim. If the Purchaser and the Seller agree at or prior to the expiration of such 30 day period (or any extension thereof agreed upon by the Purchaser and the Seller) as to the validity and amount of the Direct Claim, the Seller shall immediately pay to the Purchaser the full agreed upon amount of the Direct Claim. If the Purchaser and the Seller do not agree within such period (or any mutually agreed upon extension thereof), the Seller and the Purchaser agree that the Purchaser shall be entitled to bring an action in a court of law to recover the full amount of the Direct Claim and any costs incidental to the action.

**9.6 Procedure for Indemnification by the Purchaser**

Following receipt of notice of a Claim, the Purchaser shall have 30 days to make such investigation of the Claim as the Purchaser considers necessary or desirable. For the purpose of such investigation, the Seller shall make available to the Purchaser and its representatives the information relied upon by the Seller to substantiate the Claim. If the Seller and the Purchaser agree at or prior to the expiration of such 30 day period (or any extension thereof agreed upon by the Seller and the Purchaser) as to the validity and amount of the Claim, the Purchaser shall immediately pay to the Seller the full agreed upon amount of the Claim. If the Seller and the Purchaser do not agree within such period (or any mutually agreed upon extension thereof), the Parties agree that the Seller shall be entitled to bring an action in a court of law to recover the full amount of the Claim and any costs incidental to the action.

**9.7 Additional Rules and Procedures**

The obligation of the Seller to indemnify the Purchaser, and the Purchaser to indemnify the Seller, pursuant to this Article 9 shall also be subject to the following:

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- (a) notice of any Claim arising as a result of a breach of a representation or warranty referred to in Articles 4 or 5 shall be given not later than the date on which, pursuant to Section 10.1, such representation or warranty terminates;
- (b) the Seller's obligation to indemnify the Purchaser in accordance with Section 9.1, and the Purchaser's obligation to indemnify the Seller in accordance with Section 9.2, shall only apply to the extent that Claims in respect of which the relevant Party is required to indemnify exceed, in the aggregate, \$[10,000,000] (provided that each individual Claim forming part of such aggregate amount shall be no less than \$[1,000,000]), in which event such amount shall be deducted from any amount found to be payable hereunder;
- (c) the aggregate liability of the Seller for its indemnification obligations pursuant to Section 9.1 shall be limited to the amount of [10]% of the Purchase Price, except that, in cases where a Claim arises out of a breach of a representation and warranty of the Seller contained in Sections 4.1 (Organization and Good Standing), 4.2 (Ownership of Purchased Shares), 4.3 (Authority and Binding Effect), 4.5 (Authorized and Issued Capital) and 4.6 (Consents; Compliance with Other Instruments), the aggregate liability of the Seller for its indemnification obligations pursuant to Section 9.1 shall be limited to the amount of the Purchase Price; and
- (d) the aggregate liability of the Purchaser for their collective indemnification obligations pursuant to Section 9.2 shall be limited to the amount of the Purchase Price.

**9.8 Indemnification Claim**

Article 9 sets out the sole and exclusive manner by which the Purchaser may seek monetary compensation from the Seller, or by the Seller may seek monetary compensation from the Purchaser, for indemnification Claims pursuant to this Agreement.

**10. MISCELLANEOUS****10.1 Survival of Representations, Warranties and Covenants**

- (a) The representations and warranties of the Seller contained in this Agreement and in any Contract, instrument, certificate or other document executed or delivered pursuant to this Agreement shall continue in full force and effect until the date that is six months following the Closing Date, except that the representations and warranties of the Seller contained in Sections 4.1 (Organization and Good Standing), 4.2 (Ownership of Purchased Shares), 4.3 (Authority and Binding Effect), 4.5 (Authorized and Issued Capital), 4.6 (Consents; Compliance with Other Instruments) and 4.8 (Taxes) shall continue in full force and effect until the date that is 24 months following the Closing Date.
- (b) The representations and warranties of the Purchaser contained in this Agreement and in any Contract, instrument, certificate or other document executed or

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delivered pursuant to this Agreement shall survive the Closing Date and shall survive and continue in full force and effect for the longest period permitted under applicable Law.

- (c) Notwithstanding Section 10.1(a) and 10.1(b), the Parties hereto agree that a Party may bring a cause of action against any other Party for fraud (whether arising out of a breach of any of the representations and warranties set forth herein or otherwise). This Section 10.1 shall not limit any covenant or agreement of the Parties which by its terms contemplates performance after the Closing or the bringing of any cause of action claiming, based upon or arising out of a breach thereof.
- (d) The Parties hereby waive, effective upon the expiration of the survival period for the representations and warranties contained in this Agreement, to the fullest extent permitted by applicable Law, any and all rights, claims and causes of action (including rights of contribution, if any, and claims for rescission) known or unknown, foreseen or unforeseen, which exist or may arise in the future, that it may have against any other Parties hereto or any of their respective Affiliates, directors, managers, officers, employees, agents, attorneys, consultants, advisors or other representatives or any member of the board of directors of the Seller arising under or based upon any Law for any breach of the representations and warranties contained in this Agreement.

**10.2 Publicity**

Each of the Purchaser, the Seller and their respective Affiliates shall not be entitled to disclose, reveal, divulge, or make known to any Person, the fact that the Transaction exists or the terms of any Transaction Document, including any description of the Transaction or any press release, without the prior written consent of the other Party, except (i) by way of a public filing or as required by applicable Law, and such disclosure shall only be to the extent necessary and such determination shall be made in good faith and based on the advice from the disclosing Party's legal counsel; (ii) in the ordinary course of business to its professional advisors, lenders, shareholders or other representatives who have a need to know such information; or (iii) to the extent necessary to obtain any consent, waiver or approval or to file any notice contemplated by this Agreement.

**10.3 Expenses**

Each of the Purchaser and the Seller shall pay their own expenses incurred in connection with this Agreement and the Transaction (including legal, accounting, investment banking and financial advisory fees and expenses).

**10.4 Entire Agreement**

This Agreement and the Transaction Documents contain the complete agreement among the Parties with respect to the transactions contemplated thereby and supersede all prior agreements and understandings, oral or written, among the Parties with respect to such transactions, other than the confidentiality agreement dated ■ between ■ and the Purchaser (the "NDA"), which



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shall survive the execution and delivery of this Agreement in accordance with its terms. The Parties hereto have not made any representation or warranty except as expressly set forth in this Agreement or in any document, certificate or Schedule delivered pursuant hereto.

**10.5 Copies; Counterparts; and Facsimiles**

This Agreement may be executed in any number of counterparts, and may be delivered originally, by facsimile or by Portable Document Format ("**PDF**") and each such original, facsimile copy, or PDF copy, when so executed and delivered shall be deemed to be an original and all of which together shall constitute one and the same instrument.

**10.6 Notices**

All notices, demands, requests or other communications that may be or are required to be given, served or sent by any Party to any other Party pursuant to this Agreement shall be deemed to have been duly given and made if in writing and delivered to the Party, either (a) if served by personal delivery upon the Party for whom it is intended, (b) if delivered by first class, registered or certified mail, return receipt requested, postage prepaid, or transmitted by a reputable overnight courier service, or (c) if sent by facsimile transmission or e-mail; provided that each such facsimile transmission or e-mail is promptly confirmed by facsimile or e-mail confirmation thereof and followed with a hard copy by first class, registered or certified mail, return receipt requested, postage prepaid, addressed as follows:

## (a) If to the Purchaser:

- 
- 
- 
- 

Attention: ■

Fax: ■

E-mail: ■

With a copy to:

- 

Attention: ■

Fax: ■

E-mail: ■

## (b) If to the Seller:

Globalive Investment Holdings Corp.

- 

- 

Attention: ■

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Fax: ■  
E-mail: ■

With a copy to (which shall not constitute notice):

Bennett Jones LLP  
Suite 3400, 1 First Canadian Place  
Toronto, Ontario M5X 1A4

Attention: Mark Rasile and Christian Gauthier  
Fax: 416-863-1716  
E-mail: rasilem@bennettjones.com and  
gauthierc@bennettjones.com

Each Party may designate by notice in writing a new address to which any notice, demand, request or communication may thereafter be so given, served or sent. Each notice, demand, request or communication that is mailed, delivered or transmitted in the manner described above shall be deemed sufficiently given, served, sent and received for all purposes on the date of personal delivery, the date of facsimile or e-mail confirmation, or after mailing in accordance with the foregoing or delivering overnight by nationally recognized courier service that guarantees overnight delivery, on the date delivered, or at such time as delivery is refused by the addressee upon presentation.

#### 10.7 Disclaimer of Other Representations; Projections.

The Purchaser acknowledges and agrees that (a) except for the representations and warranties made by the Seller expressly set forth in Article 4 none of the Seller or any of its Affiliates or representatives has made, and shall not be construed as having made, to the Purchaser or any of its respective Affiliates or representatives, any representation or warranty of any kind, express or implied, at law or in equity, in respect of the Seller, the Globalive Entities or the Purchased Shares, including with respect to (i) merchantability or fitness for any particular purpose, (ii) the operation of the Globalive Entities by the Purchaser after the Closing, or (iii) the probable success or profitability of the Globalive Entities after the Closing and (b) none of the Globalive Entities, the Seller or any of their respective Affiliates or representatives shall have or be subject to any liability to the Purchaser or to any other Person resulting from the distribution to Purchaser or its Affiliates or representatives of, or the Purchaser's use of:

- (i) any projections, financial models, estimates, forecasts or budgets contained in the Data Room, or any projections, financial models, estimates, forecasts or budgets relating to the Business, the Globalive Entities otherwise heretofore or hereafter delivered to, presented to (including, for greater certainty, in any management presentation) or made available to the Purchaser or its representatives or Affiliates; and
- (ii) any other information, statement or documents heretofore or hereafter delivered to, presented to (including, for greater certainty, in any management presentation) or made available to the Purchaser or its

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representatives or Affiliates, whether orally or in writing (including in the Data Room, functional "break-out" discussions, responses to questions submitted on behalf of the Purchaser or otherwise), with respect to the Seller, the Globalive Entities, the Purchased Shares or the Business, operations or affairs of the Globalive Entities, except to the extent and as expressly covered by a representation and warranty contained in Article 4.

Without limiting the foregoing, with respect to any projections, financial models, estimates, forecasts or budgets relating to the Business of the Globalive Entities, the Purchaser acknowledges and agrees that (i) there are uncertainties inherent in attempting to make any projections, financial models, estimates, forecasts or budgets, (ii) it is familiar with such uncertainties, (iii) it is taking full responsibility for making its own evaluation of the adequacy and accuracy of all such projections, financial models, estimates, forecasts or budgets so furnished to it, (iv) planned efficiencies or business opportunities may not materialize for a number of reasons, and (v) the Purchaser shall have no claim against the Globalive Entities, the Seller or any of their Affiliates, representatives, shareholders or partners with respect thereto. Any such other representation or warranty is hereby expressly disclaimed.

**10.8 Assignment; Successors and Assigns**

This Agreement may not be assigned by any Party hereto without the written consent of the other Parties. Any purported assignment or transfer by a Party of any of its rights and/or obligations under this Agreement, other than pursuant to and in accordance with this Section shall be void *ab initio*. Subject to the foregoing, this Agreement and the rights, interests and obligations hereunder shall be binding upon and shall enure to the benefit of the Parties hereto and their respective successors and assigns.

**10.9 Amendment**

This Agreement may be amended, modified or supplemented only by a written instrument executed by the Parties.

**10.10 Severability**

If any provision of this Agreement is held to be illegal, invalid, or unenforceable, such provision shall be fully severable, and this Agreement shall be construed and enforced as if such illegal, invalid or unenforceable provision were never a part hereof; the remaining provisions hereof shall remain in full force and effect and shall not be affected by the illegal, invalid or unenforceable provision or by its severance; and in lieu of such illegal, invalid or unenforceable provision, there shall be added automatically as part of this Agreement, a provision as similar in its terms to such illegal, invalid or unenforceable provision as may be enforceable.

**10.11 Enforcement of Agreement**

The Parties agree that irreparable damage to the Seller for which monetary damages, even if available, would not be an adequate remedy would occur in the event that any of the provisions of this Agreement (including the failure by any Party to take such actions as are required of it hereunder to consummate the transactions contemplated by this Agreement) was not performed

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in accordance with its specified terms or was otherwise breached. It is accordingly agreed that the Seller shall be entitled to an injunction or other equitable relief to prevent breaches of this Agreement and to enforce specifically the terms and provisions hereof in any court of competent jurisdiction, this being in addition to any other remedy to which the Seller are entitled at Law or in equity, and any requirement for the securing or posting of any bond in connection with the obtaining of any such injunctive or other equitable is hereby waived.

**10.12 Governing Law**

This Agreement shall be governed by, and construed in accordance with, the Laws of the Province of Ontario and the federal Laws of Canada applicable therein, without giving effect to the conflict of Laws principles thereof.

**10.13 Choice of Forum and Consent to Jurisdiction**

Any action arising out of or under this Agreement, any other document, instrument or agreement contemplated herein or delivered pursuant hereto, or the transactions contemplated by this Agreement or any of such other documents, instruments or agreements, shall be brought only in a federal or provincial court having jurisdiction and venue in Ontario, Canada, and each of the Parties hereby irrevocably submits to the exclusive jurisdiction of such courts and agrees that venue in Ontario is proper. Each of the Parties hereby irrevocably waives and agrees not to assert, by way of motion, as a defense, or otherwise, in any legal action or Proceeding, any defense or any claim that it is not personally subject to the jurisdiction of the above-named Ontario courts for any reason, including claims that such Party may be immune from the above-described legal process (whether through service or notice, attachment prior to judgment, attachment in aid of execution, or otherwise), or that such Proceeding is brought in an inconvenient or otherwise improper forum or that this Agreement or any of the other aforementioned documents, instruments or agreements, or the subject matter hereof or thereof, may not be enforced in or by such courts, or that the same are governed by the Laws of a jurisdiction other than Ontario. Each of the Parties hereby specifically agrees that it shall not bring any actions, suits or Proceedings arising out of or under this Agreement, any other document, instrument or agreement contemplated herein or delivered pursuant hereto, or the transactions contemplated by this Agreement or any of such other documents, instruments or agreements, in the courts of any jurisdiction other than the above-named courts of Ontario, that any such action brought by any Party shall be dismissed upon the basis of the agreements, terms and provisions set forth in this Section 10.13, and that any order or judgment obtained in any such action from a court other than the courts of Ontario shall be void *ab initio* provided that, notwithstanding the foregoing provisions of this Section 10.13, any Party may bring and enforce an action seeking injunctive or other equitable relief in any court of competent jurisdiction.

*[Signatures contained on the next page]*

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**IN WITNESS WHEREOF**, the Parties hereto have executed this Agreement as of the day and year first above written.

**[PURCHASER]**

By: \_\_\_\_\_  
Name:  
Title:

**GLOBALIVE INVESTMENT HOLDINGS  
CORP.**

By: \_\_\_\_\_  
Name:  
Title:

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**SCHEDULE 1.1(A)**  
**PERMITTED LIENS**

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**SCHEDULE 3.2(B)**

**FORM OF RESIGNATION AND RELEASE**

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**SCHEDULE 3.2(C)**

**FORM OF SELLER'S CLOSING CERTIFICATE**



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**SCHEDULE 3.2(D)**

**FORM OF GWMC 'S CLOSING CERTIFICATE**

**PRIVATE & CONFIDENTIAL**

**SCHEDULE 3.2(E)**

**SELLER'S REQUIRED CONSENTS**

**PRIVATE & CONFIDENTIAL**

**SCHEDULE 3.3(D)(A)**

**FORM OF RELEASE OF THE SELLER BY GWMC**

**PRIVATE & CONFIDENTIAL**

**SCHEDULE 3.3(D)(B)**

**FORM OF RELEASE OF GWMC DIRECTORS BY GWMC**

**PRIVATE & CONFIDENTIAL**

**SCHEDULE 4.5**

**CAPITAL STRUCTURE OF THE GLOBALIVE ENTITIES**

**PRIVATE & CONFIDENTIAL**

**SCHEDULE 4.6(A)**

**COMPLIANCE WITH OTHER INSTRUMENTS**

**PRIVATE & CONFIDENTIAL**

**SCHEDULE 4.6(B)**

**FILINGS WITH GOVERNMENTAL AUTHORITIES**

**PRIVATE & CONFIDENTIAL**

**SCHEDULE 4.7**

**GWMC FINANCIAL STATEMENTS**



**PRIVATE & CONFIDENTIAL**

**SCHEDULE 4.8**

**TAXES**

## PRIVATE &amp; CONFIDENTIAL

## SCHEDULE 4.9

## SPECTRUM LICENSES

Spectrum License Number	Effective Date	Expiry Date	Service Area	Megahertz
5079769	3/13/2009	3/12/2019	Southern Ontario	20
5079770	3/13/2009	3/12/2019	Yukon, North West Territories & Nunavut	20
5079771	3/13/2009	3/12/2019	New Brunswick	10
5079772	3/13/2009	3/12/2019	Northern Ontario	5
5079773	3/13/2009	3/12/2019	Alberta	10
5079774	3/13/2009	3/12/2019	British Columbia	10
5079775	3/13/2009	3/12/2019	Yukon, Northwest Territories & Nunavut	10
5079776	3/13/2009	3/12/2019	Newfoundland & Labrador	10
5079777	3/13/2009	3/12/2019	Prince Edward Island	10
5079778	3/13/2009	3/12/2019	Mainland Nova Scotia	10
5079779	3/13/2009	3/12/2019	Cape Breton	10
5079780	3/13/2009	3/12/2019	Ottawa/Outaouais	10
5079781	3/13/2009	3/12/2019	Pembroke	10
5079782	3/13/2009	3/12/2019	Cornwall	10
5079783	3/13/2009	3/12/2019	Brockville	10
5079784	3/13/2009	3/12/2019	Kingston	10
5079785	3/13/2009	3/12/2019	Belleville	10
5079786	3/13/2009	3/12/2019	Cobourg	10
5079787	3/13/2009	3/12/2019	Peterborough	10
5079788	3/13/2009	3/12/2019	Winnipeg	10
5079789	3/13/2009	3/12/2019	Brandon	10
5079790	3/13/2009	3/12/2019	Yukon, North West Territories & Nunavut	10
5079791	3/13/2009	3/12/2019	Regina	10
5079792	3/13/2009	3/12/2019	Moose Jaw	10

## PRIVATE &amp; CONFIDENTIAL

<b>Spectrum License Number</b>	<b>Effective Date</b>	<b>Expiry Date</b>	<b>Service Area</b>	<b>Megahertz</b>
5079793	3/13/2009	3/12/2019	Saskatoon	10
5079794	3/13/2009	3/12/2019	Newfoundland & Labrador	10
5079795	3/13/2009	3/12/2019	Northern Quebec	10
5079796	3/13/2009	3/12/2019	Yukon, Northwest Territories & Nunavut	10
5079797	3/13/2009	3/12/2019	Northern Quebec	5
5079798	3/13/2009	3/12/2019	Northern Ontario	5

**PRIVATE & CONFIDENTIAL**

**SCHEDULE 5.3(B)**

**FILINGS, CONSENTS AND APPROVALS OF GOVERNMENTAL AUTHORITIES  
AND OTHER PERSONS TO BE OBTAINED BY THE PURCHASER**

**PRIVATE & CONFIDENTIAL**

**SCHEDULE 5.10**

**PARTNERSHIP ARRANGEMENTS**

**PRIVATE & CONFIDENTIAL**

**SCHEDULE 6.6**

**PRE-CLOSING REORGANIZATION**

**PRIVATE & CONFIDENTIAL**

**SCHEDULE 7.1**

**FORM OF THE SELLER'S CLOSING CONDITIONS CERTIFICATE**

**PRIVATE & CONFIDENTIAL**

**SCHEDULE 7.2(A)**

**FORM OF PURCHASER CLOSING CONDITIONS CERTIFICATE**