

UNITED STATES SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

FORM 8-K

CURRENT REPORT

Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934

Date of Report (Date of earliest event reported): September 20, 2021

iMedia Brands, Inc.

(Exact name of registrant as specified in its charter)

Minnesota
(State or other jurisdiction
of incorporation)

001-37495
(Commission
File Number)

41-1673770
(IRS Employer
Identification No.)

6740 Shady Oak Road
Eden Prairie, Minnesota 55344-3433
(Address of principal executive offices)

(952) 943-6000
(Registrant's telephone number, including area code)

Not applicable
(Former name or former address, if changed since last report)

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions:

- Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
- Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
- Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
- Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))

Securities registered pursuant to Section 12(b) of the Act:

Title of each class	Trading Symbol(s)	Name of each exchange on which registered
Common Stock, \$0.01 par value	IMBI	The Nasdaq Stock Market, LLC

Indicate by check mark whether the registrant is an emerging growth company as defined in Rule 405 of the Securities Act of 1933 (§230.405 of this chapter) or Rule 12b-2 of the Securities Exchange Act of 1934 (§240.12b-2 of this chapter).

Emerging growth company

If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 13(a) of the Exchange Act.

Item 1.01 Entry into a Material Definitive Agreement

Acquisition of 1-2-3.tv Group

On September 22, 2021, iMedia Brands, Inc. (the “*Company*”) and its wholly-owned subsidiary SCUR-Alpha 1359 GmbH (to be renamed iMedia&123tv Holding GmbH) (the “*Subsidiary*”), entered into a Sale and Purchase Agreement relating to 1-2-3.tv Group (the “*Purchase Agreement*”) with Emotion Invest GmbH & Co. KG, BE Beteiligungen Fonds GmbH & Co. geschlossene Investmentkommanditgesellschaft and Iris Capital Fund II (collectively, the “*Sellers*”). Pursuant to the Purchase Agreement, upon the terms and subject to the conditions thereof, the Subsidiary intends to purchase and acquire from the Sellers (the “*Acquisition*”) all of the issued and outstanding equity interests of 123tv Invest GmbH, a limited liability company organized under the laws of Germany, and 123tv Holding GmbH, a limited liability company organized under the laws of Germany (collectively with their direct and indirect subsidiaries, the “*1-2-3.tv Group*”).

The purchase price for the enterprise value of the 1-2-3.tv Group is EUR 80.0 million (\$94.5 million based on the September 13, 2021 exchange rate) (the “*Enterprise Value*”). The Company also agreed to pay the Sellers for the EUR 3.9 million (\$4.6 million based on the September 13, 2021 exchange rate) for the 1-2-3.tv Group's cash on-hand as of July 31, 2021 and EUR 2.3 million (\$2.7 million based on the September 13, 2021 exchange rate) for the 1-2-3.tv Group's excess working capital above the 1-2-3.tv Group's trailing twelve-month average as of July 31, 2021. The Enterprise Value consideration consists of paying the Sellers EUR 62.0 million in cash at closing (\$73.3 million based on the September 13, 2021 exchange rate) and the Company entering into a vendor loan agreement in the principal amount of EUR 18.0 million (\$21.2 million based on the September 13, 2021 exchange rate) (“*Vendor Loan Agreement*”).

The Purchase Agreement provides that the Sellers may receive additional consideration from the Subsidiary, if earned, in the form of earn-out payments in the amount of up to EUR 14.0 million (\$16.5 million based on the September 13, 2021 exchange rate) based on revenues of the 1-2-3.tv Group during 2022, and up to an additional EUR 14.0 million per year for 2023 and 2024 based on revenues of the 1-2-3.tv Group during each of 2023 and 2024, with the ability of the Sellers to earn amounts in excess of the EUR 14.0 million in 2023 and 2024 in the event the maximum earn-out payments are not earned in either 2022 or 2023, respectively; provided, that in no event shall the total earn-out amount exceed EUR 42.0 million (\$49.6 million based on the September 13, 2021 exchange rate). The Company has agreed to guarantee all obligations of the Subsidiary under the Purchase Agreement and the Vendor Loan. A description of the form of Vendor Loan Agreement is included in Item 2.03 herein (and incorporated into this Item 1.01 by reference), does not purport to be complete and is qualified in its entirety by reference to the Purchase Agreement, which is attached as Exhibit 10.1 to this Current Report on Form 8-K and is incorporated herein by reference.

The Purchase Agreement contains customary representations, warranties and covenants by each of the parties. The Purchase Agreement also provides that the parties will indemnify each other for certain liabilities arising under the Purchase Agreement, subject to various limitations, including, among other things, thresholds, caps and time limitations. The Subsidiary has obtained representation and warranty insurance that provides exclusive coverage for certain breaches of, and inaccuracies in, representations and warranties made by Sellers in the Purchase Agreement, subject to exclusions, deductibles and other terms and conditions.

The closing of the Acquisition is subject to certain closing conditions, including German and Austrian regulatory approvals and the completion of a financing in the amount of not less than EUR 62.0 million. The Company expects to close the Acquisition in the fourth quarter of 2021. The Company anticipates approximately \$2,000,000 in transaction expenses in connection with the Acquisition.

This description of the Purchase Agreement does not purport to be complete and is qualified in its entirety by reference to the Purchase Agreement, which is attached as Exhibit 2.1 to this Current Report on Form 8-K and is incorporated herein by reference.

The Purchase Agreement is described herein to provide investors with information regarding the terms of the Acquisition. The representations, warranties and covenants contained in the Purchase Agreement were made solely for the purposes of the Purchase Agreement; were made only as of specified dates and do not reflect subsequent information; were made solely for the benefit of the parties thereto; may be subject to limitations agreed upon by the contracting parties, including being qualified by confidential disclosures that modify, qualify and create exceptions to such representations, warranties and covenants; were made for the purposes of allocating risk between the parties thereto instead of establishing matters of fact; and may be subject to standards of materiality applicable to the contracting parties that differ from those applicable to investors. Investors are not third-party beneficiaries under the Purchase Agreement and should not rely on the representations, warranties and covenants or any descriptions thereof as characterizations of the actual state of facts or condition of the parties, their affiliates or their respective businesses. Moreover, information concerning the subject matter of representations and warranties may change after the date of the Purchase Agreement, which subsequent information may or may not be reflected in the Company's public disclosures.

Credit Facility Amendment

On September 20, 2021, the Company entered into a First Amendment and Consent Agreement (the “*Amendment*”), which amends the Loan and Security Agreement, dated July 30, 2021, by and among the Company, as the lead borrower, certain of its subsidiaries party thereto as borrowers, Siena Lending Group LLC and the other financial institutions party thereto from time to time as lenders, Siena Lending Group LLC, as agent, and VVI Fulfillment Center, Inc., EP Properties, LLC and Portal Acquisition Company, as guarantor (as amended by the Amendment, the “*Credit Agreement*”). The Amendment, among other things, modifies the borrowers’ definition of consolidated adjusted EBITDA in the Credit Agreement, minimum liquidity covenant such that the borrowers shall not permit minimum liquidity, as defined in the Credit Agreement, as of the end of any fiscal month to be less than \$15,000,000 after consummation of the Acquisition; provided, that such amount shall be automatically reduced to \$7,500,000 upon the borrowers’ delivery of evidence satisfactory to the administrative agent in its permitted discretion that the borrowers had a senior net leverage ratio as defined in the Credit Agreement for the most recent fiscal quarter ended of not greater than 2.50:1.00. The Amendment also requires that the Subsidiary be joined as a guarantor under the Credit Agreement and certain other documents related thereto within five business days after consummation of the Acquisition. The Amendment also modifies the borrowers’ maximum senior net leverage ratio such that loan parties shall maintain a senior net leverage ratio as set forth in the following table tested as of the last date of each fiscal quarter of the loan parties measured on a trailing twelve-month basis:

Time Period	Senior Net Leverage Ratio
Fiscal quarter ending October 31, 2021	3.50:1.00
Fiscal quarter ending January 31, 2022	3.50:1.00
Fiscal quarter ending April 30, 2022	3.25:1.00
Fiscal quarter ending July 31, 2022	3.00:1.00
Fiscal quarter ending October 31, 2022	2.75:1.00
Fiscal quarter ending January 31, 2023	2.75:1.00
Fiscal quarter ending April 30, 2023 and thereafter	2.50:1.00

This description of the Amendment does not purport to be complete and is qualified in its entirety by reference to the Amendment, which is attached as Exhibit 10.3 to this Current Report on Form 8-K and is incorporated herein by reference. The Loan and Security Agreement, dated July 30, 2021, by and among the iMedia Brands, Inc., as the lead borrower, certain of its subsidiaries party thereto as borrowers, Siena Lending Group LLC and the other financial institutions party thereto from time to time as lenders, Siena Lending Group LLC, as agent, and VVI Fulfillment Center, Inc., EP Properties, LLC and Portal Acquisition Company, as guarantors, is incorporated by reference as Exhibit 10.2 into this Current Report on Form 8-K.

Item 2.03 Creation of a Direct Financial Obligation or an Obligation under an Off-Balance Sheet Arrangement of a Registrant

Concurrent with the closing of the Acquisition, the Subsidiary expects to enter into the Vendor Loan Agreement with certain Sellers (the “*Lenders*”) pursuant to which a portion of the purchase price for the Acquisition will be paid in the form of the Vendor Loan. The Vendor Loan has a EUR 18.0 million principal amount (\$21.2 million based on the September 13, 2021 exchange rate), with EUR 9.0 million (\$10.6 million based on the September 13, 2021 exchange rate) payable on each of the first and second anniversaries of the issuance date. The Vendor Loan bears interest at a rate equal to 8.5% per annum, payable semi-annually commencing on the six-month anniversary of the closing date of the Acquisition.

The Company’s and the Subsidiary’s obligations under the Vendor Loan are secured by the assets of 1-2-3.tv GmbH and subordinated in right of payment to the Company’s outstanding secured indebtedness to Siena Lending Group LLC and GreenLake Real Estate Finance LLC, as well as the Company’s proposed senior notes to be offered.

Amounts due under the Vendor Loan may be accelerated upon an Event of Default (as defined in the Vendor Loan), such as a sale of the Subsidiary or its assets and the occurrence of bankruptcy, if not otherwise waived or cured.

The Vendor Loan contains covenants and conditions, including, among other things, restrictions on the Company’s and the Subsidiary’s ability to incur additional senior indebtedness.

This description of the form of Vendor Loan does not purport to be complete and is qualified in its entirety by reference to the form of Vendor Loan, which is attached as Exhibit 10.1 to this Current Report on Form 8-K and is incorporated herein by reference.

Item 7.01 **Regulation FD Disclosure**

On September 22, 2021, we issued a press release in connection with the disclosures made in Item 1.01 of this Current Report on Form 8-K. The full text of the press release is furnished herewith as Exhibit 99.1 and is incorporated by reference into this Item 7.01.

Item 8.01 **Other Events**

Description of 1-2-3.tv Group Business

The 1-2-3.tv Group is a digitally-driven home shopping and inspirational e-commerce specialist with a unique omnichannel live and automated auction offering. The 1-2-3.tv Group caters primarily to the television retailing markets in Germany and Austria with its proprietary live television auctions and automated digital auctions. In fiscal 2020, the 1-2-3.tv Group facilitated more than 77,000 auctions, sold 10.6 million units, and shipped 3.1 million items to its more than 250,000 registered customers. The 1-2-3.tv Group utilizes or has planned or under development six different auction formats that consistently make it a leading auction channel in Germany.

Founded in 2004, the 1-2-3.tv Group now has over 120 employees across its two locations in Grünwald and Braunschweig, Germany. The 1-2-3.tv Group is fully integrated and controls its value chain, from global sourcing, point-of-sale entertainment, and omnichannel sales, to customer service. The 1-2-3.tv Group reaches its customer base through analog TV channels, web interfaces and a digital app. In addition, the 1-2-3.tv Group has started to capitalize on digital growth potential by launching automated digital auctions and live digital auctions. Innovative advances in automated digital auctioning have enabled the 1-2-3.tv Group to reach more than 40 million households in fiscal 2020 across multiple channels, 24 hours a day, 365 days a year.

Following consummation of the acquisition, instead of the 1-2-3.tv Group pursuing the traditional geographic expansion of entering more European television retailing marketplaces, the Company plans to use 1-2-3.tv Group's expertise and proprietary technologies to enter the inspirational e-commerce market in the United States. The Company believes that this strategy has the potential to generate significantly more first party data than our existing inventory-based business models, therefore accelerating our overall digital strategy. According to OMMAX, the inspirational e-commerce total addressable market in 2019 was EUR 9.3 billion (\$11.0 billion based on the September 13, 2021 exchange rate).

The 1-2-3.tv Group generated net revenues of EUR 155.3 million (\$183.4 million based on the September 13, 2021 exchange rate), EUR 126.1 million (\$148.9 million based on the September 13, 2021 exchange rate), and EUR 118.6 million (\$140.1 million based on the September 13, 2021 exchange rate) for fiscal years 2020, 2019, and 2018, respectively. Net revenue for fiscal 2020 was distributed broadly across 1-2-3.tv Group's assortment of product categories: household (37.8%), fashion & accessories (18.9%), jewelry (13.8%), beauty & wellness (10.9%), watches (9.9%), do-it-yourself hobbies (5.0%), and collection (3.6%). In fiscal 2020, sales in Germany accounted for approximately 98.0% of 1-2-3.tv Groups' net revenue and sales in Austria accounted for 2.0%. For fiscal 2020, 60.8% of 1-2-3.tv Group's net revenue was for displayed brands and 38.4% of 1-2-3.tv Group's net revenue was for non-displayed brands. In fiscal 2020, 73.1% of 1-2-3.tv Group's net revenues were through interactive voice response telephone sales conducted through an outsourced customer call center, with 17.7% of net revenue generated through online sources and 9.2% generated through mobile devices. The 1-2-3.tv Group's net revenue per employee in fiscal 2020 was EUR 1.25 million (\$1.48 million based on the September 13, 2021 exchange rate). In fiscal 2020, 65.9% of the 1-2-3.tv Group's customers are female, with 34.1% male. Moreover, by generation, for fiscal 2020, 21.6% of customers are in the greatest generation, 56.8% of customers are in the baby boomer generation, 13.1% of customers are generation X, 3.8% of customers are generation Y and less than 0.5% of customers are generation Z; however, the 1-2-3.tv Group has seen its most significant customer file percentage growth rates in generations X, Y and Z.

Risk Factor Updates

As part of the filing of this Current Report on Form 8-K, the Company intends to supplement its risk factors, including those contained in Part I, Item 1A of the Company's Annual Report on Form 10-K for the year ended January 30, 2021. The risk factors filed herewith as Exhibit 99.5 and incorporated herein by reference in this Item 8.01 should be considered together with the other risk factors described in the Company's Annual Report on Form 10-K for the year ended January 30, 2021 and other filings with the SEC under the Securities Exchange Act of 1934, as amended.

Public Offering Press Release

On September 22, 2021, we issued a press release announcing the commencement of a public offering of senior notes. The full text of the press release is filed herewith as Exhibit 99.6 and is incorporated by reference into this Item 8.01.

Pro Forma Senior Debt Net Leverage Ratio Calculations

A calculation of our pro forma senior debt net leverage ratio as of July 31, 2021 is filed herewith as Exhibit 99.7 and is incorporated by reference into this Item 8.01.

Item 9.01 Financial Statements and Exhibits

(a) Financial Statements of Business Acquired

- The historical consolidated audited financial statements of 123tv Beteiligungs GmbH as of and for the years ended December 31, 2020 and December 31, 2019 are filed as Exhibit 99.2 and incorporated herein by reference. The attached financial statements of 123tv Beteiligungs GmbH have been prepared in accordance with generally accepted accounting principles in Germany ("*German GAAP*"). Accounting principles generally accepted in Germany depart materially from accounting principles generally accepted in the United States of America ("*U.S. GAAP*"). The notes to the financial statements provide a summary of the nature and amounts of significant differences between German GAAP and U.S. GAAP. The audit of these 123tv Beteiligungs GmbH financial statements was conducted in accordance with U.S. generally accepted auditing standards.
- The historical financial statements of 123tv Beteiligungs GmbH as of and for the six months ended June 30, 2021 are filed as Exhibit 99.3 and incorporated herein by reference. The attached financial statements of 123tv Beteiligungs GmbH have been prepared in accordance with German GAAP. Accounting principles generally accepted in Germany depart materially from U.S. GAAP. The notes to the financial statements provide a summary of the nature and amounts of significant differences between German GAAP and U.S. GAAP.

(b) Pro Forma Financial Information

The following unaudited pro forma condensed combined financial information of iMedia Brands, Inc. giving effect to the acquisition of the 1-2-3.tv Group are included in Exhibit 99.4 and incorporated herein by reference:

- Unaudited pro forma condensed combined balance sheets as of July 31, 2021
- Unaudited pro forma condensed combined statements of operations for the year ended January 30, 2021
- Unaudited pro forma condensed combined statements of operations for the six months ended July 31, 2021

(d) Exhibits

The following exhibits are being filed with this Current Report on Form 8-K:

Exhibit No.	Description
2.1	Sale and Purchase Agreement Relating to 1-2-3.tv Group, dated September 22, 2021 between Emotion Invest GmbH & Co. KG, BE Beteiligungen Fonds GmbH & Co. geschlossene Investmentkommanditgesellschaft, Iris Capital Fund II, SCUR-Alpha 1359 GmbH and the Company
10.1	Form of Vendor Loan Agreement among SCUR-Alpha 1359 GmbH (to be renamed iMedia&123tv Holding GmbH) (as borrower), iMedia Brands, Inc. and 1-2-3.tv GmbH (as guarantors) and Emotion Invest GmbH & Co. KG, BE Beteiligungen Fonds GmbH & Co. geschlossene Investmentkommanditgesellschaft and Iris Capital Fund II
10.2	Loan and Security Agreement, dated July 30, 2021, by and among the iMedia Brands, Inc., as the lead borrower, certain of its subsidiaries party thereto as borrowers, Siena Lending Group LLC and the other financial institutions party thereto from time to time, Siena Lending Group LLC, as agent, and VVI Fulfillment Center, Inc., EP Properties, LLC and Portal Acquisition Company, as guarantors (incorporated by reference to Exhibit 10.1 on Form 8-K filed on August 5, 2021)
10.3	First Amendment and Consent Agreement, dated as of September 20, 2021, by and among iMedia Brands, Inc., certain of its subsidiaries party thereto as borrowers, Siena Lending Group LLC, as agent, and VVI Fulfillment Center, Inc., EP Properties, LLC and Portal Acquisition Company, as guarantors
23.1	Consent of Mazars GmbH & Co. KG
99.1	Press Release dated September 22, 2021 related to acquisition
99.2	The historical audited financial statements of 123tv Beteiligungs GmbH for the years ended December 31, 2020 and 2019
99.3	Financial Statements of 123tv Beteiligungs GmbH for the six months ended June 30, 2021 and June 30, 2020
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104	Cover Page Interactive Data File (embedded within the Inline XBRL document)

Safe Harbor Statement under the Private Securities Litigation Reform Act of 1995

This Current Report on Form 8-K, including any exhibits filed or furnished herewith, may contain certain “forward-looking statements” within the meaning of the Private Securities Litigation Reform Act of 1995. Any statements contained herein that are not statements of historical fact, including statements regarding the expected impact of COVID-19 on television retailing are forward-looking. The Company often use words such as anticipates, believes, estimates, expects, intends, seeks, predicts, hopes, should, plans, will and similar expressions to identify forward-looking statements. These statements are based on management’s current expectations and accordingly are subject to uncertainty and changes in circumstances. Actual results may vary materially from the expectations contained herein due to various important factors, including (but not limited to): the Company’s ability to complete a public offering of debt securities on terms favorable to the Company, the Company’s ability to integrate and operate the business of 1-2-3.tv Group and international operations in general, variability in consumer preferences, shopping behaviors, spending and debt levels; the general economic and credit environment, including COVID-19; interest rates; seasonal variations in consumer purchasing activities; the ability to achieve the most effective product category mixes to maximize sales and margin objectives; competitive pressures on sales and sales promotions; pricing and gross sales margins; the level of cable and satellite distribution for the Company’s programming and the associated fees or estimated cost savings from contract renegotiations; the Company’s ability to establish and maintain acceptable commercial terms with third-party vendors and other third parties with whom the Company has contractual relationships, and to successfully manage key vendor and shipping relationships and develop key partnerships and proprietary and exclusive brands; the ability to manage operating expenses successfully and the Company’s working capital levels; the ability to remain compliant with the Company’s credit facilities covenants; customer acceptance of the Company’s branding strategy and its repositioning as a video commerce Company; the ability to respond to changes in consumer shopping patterns and preferences, and changes in technology and consumer viewing patterns; changes to the Company’s management and information systems infrastructure; challenges to the Company’s data and information security; changes in governmental or regulatory requirements; including without limitation, regulations of the Federal Communications Commission and Federal Trade Commission, and adverse outcomes from regulatory proceedings; litigation or governmental proceedings affecting the Company’s operations; significant events (including disasters, weather events or events attracting significant television coverage) that either cause an interruption of television coverage or that divert viewership from its programming; disruptions in the Company’s distribution of its network broadcast to customers; the Company’s ability to protect its intellectual property rights; our ability to obtain and retain key executives and employees; the Company’s ability to attract new customers and retain existing customers; changes in shipping costs; expenses related to the actions of activist or hostile shareholders; the Company’s ability to offer new or innovative products and customer acceptance of the same; changes in customer viewing habits of television programming; and the risks identified under Item 1A (Risk Factors) in the Company’s most recently filed Annual Report on Form 10-K and any additional risk factors identified in its periodic reports since the date of such Form 10-K. More detailed information about those factors is set forth in the Company’s filings with the Securities and Exchange Commission, including its Annual Report on Form 10-K, Quarterly Reports on Form 10-Q, and Current Reports on Form 8-K. Investors are cautioned not to place undue reliance on forward-looking statements, which speak only as of the date of this announcement. The Company’s is under no obligation (and expressly disclaim any such obligation) to update or alter its forward-looking statements whether as a result of new information, future events or otherwise.

SIGNATURES

Pursuant to the requirements of the Securities Exchange Act of 1934, the Registrant has duly caused this report to be signed on its behalf by the undersigned hereunto duly authorized.

Date: September 22, 2021

iMedia Brands, Inc.

By: /s/ **Timothy A. Peterman**

Timothy A. Peterman
Chief Executive Officer

PART B
SALE AND PURCHASE AGREEMENT
RELATING TO
1-2-3.TV GROUP

**SALE AND PURCHASE AGREEMENT
RELATING TO
1-2-3.TV GROUP**

between

1. **Emotion Invest GmbH & Co. KG**, Theatinerstraße 7, c/o Arcus Capital AG, 80333 Munich, Germany

– the "**Seller 1**" –

2. **BE Beteiligungen Fonds GmbH & Co. geschlossene Investmentkommanditgesellschaft**, Hohenzollernring 72, 50672 Cologne, Germany

– the "**Seller 2**" –

3. **Iris Capital Fund II**, 62 rue Pierre Charron, c/o Iris Capital Management, 75008 Paris, France

– the "**Seller 3**" –

– the parties under nos. 1 through 3 each individually also a "**Seller**"
and collectively the "**Sellers**" –

4. **SCUR-Alpha 1359 GmbH (to be renamed iMedia&123tv Holding GmbH)**, registered with the commercial register of the local court of Munich under HRB 267579

– the "**Purchaser**" –

and

5. **iMedia Brands, Inc.**, 6740 Shady Oak Road, Eden Prairie, Minnesota 55344 USA

– the "**Guarantor**" –

– the Sellers, the Purchaser and the Guarantor individually also a "**Party**"
and collectively also the "**Parties**" –

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RECITALS

- (A) The Seller 1 is a limited partnership organized under the laws of Germany with its corporate seat in Munich/Germany and registered with the commercial register held with the local court of Munich under HRA 105627.
- (B) The Seller 2 is a limited partnership organized under the laws of Germany with its corporate seat in Cologne/Germany and registered with the commercial register held with the local court of Cologne under HRA 31009.
- (C) The Seller 3 is a professional private equity investment fund (*Fonds Professionnel de Capital Investissement*) which is represented by its investment management company Iris Capital Management S.A.S. a simplified joint-stock company (*Société par Actions Simplifiée*) organized under the laws of France with its corporate seat in Paris/France and registered with the Paris Companies Register (*Registre du Commerce et des Sociétés de Paris*) under register no. 424 495 315 R.C.S. Paris.
- (D) The Seller 1 and the Seller 2 are the sole shareholders of 123tv Invest GmbH, a limited liability company organized under the laws of Germany with its corporate seat in Munich/Germany and registered with the commercial register held with the local court (*Amtsgericht*) of Munich under HRB 228351 (the "**Company 1**").
- (E) The Company 1 and the Seller 3 are the sole shareholders of 123tv Holding GmbH, a limited liability company organized under the laws of Germany with its corporate seat in Munich/Germany and registered with the commercial register held with the local court of Munich under HRB 228364 (the "**Company 2**"; and jointly with the Company 1, the "**Target Companies**").
- (F) The Purchaser is a limited liability company, organized under the laws of Germany with its registered seat in Munich, Germany and registered with the commercial register of the local court of Munich under HRB 267579. Sole shareholder of the Purchaser is the Guarantor.
- (G) The Guarantor is a stock listed incorporation organized under the laws of Minnesota USA with its seat in Eden Prairie, Minnesota, USA and registered ISIN US4524652066. The Guarantor is the ultimate shareholder of the Purchaser and shall be responsible for the fulfillment of certain obligations of the Purchaser under this Agreement.
- (H) The Sellers simultaneously enter into a waiver agreement under Part A of the frame agreement, Part B of which is this sale and purchase agreement (the "**Agreement**"), by which the Group Companies and 1-2-play GmbH are released by the Sellers and any other parties thereto from any shareholders' agreement entered into with the Sellers and any other parties and any liabilities and obligations in relation thereto.
- (I) By entering into this Agreement, (i) the Seller 1 and the Seller 2 intend to sell to the Purchaser all of their shares in the Company 1, (ii) the Seller 3 intends to sell to the Purchaser all of its shares in the Company 2 and (iii) the Purchaser intends to acquire from the Sellers all such shares in the Target Companies (the "**Transaction**").

NOW, THEREFORE, the Parties agree as follows:

1. CERTAIN DEFINITIONS; TRANSACTION DATES

- 1.1 "AktG" shall mean the German Stock Corporation Act (*Aktiengesetz*).
- 1.2 "BGB" shall mean the German Civil Code (*Bürgerliches Gesetzbuch*).
- 1.3 "Business Day" shall mean any day (other than Saturdays and Sundays) on which banks are open for general business in Munich and Cologne, Germany, Paris, France, New York and Minnesota, USA.
- 1.4 "Closing Date" shall be the day on which all Closing Actions (as defined in Section 12.1 below) have taken place or have been duly waived in accordance with the terms of this Agreement.
- 1.5 "Effective Date" shall be July 31, 2021, 24:00 hrs. CST.
- 1.6 "HGB" shall mean the German Commercial Code (*Handelsgesetzbuch*).
- 1.7 "Scheduled Closing Date" shall be (i) the fifth (5th) Business Day after the day on which all Closing Conditions (as defined in Section 11.1 below) have been fulfilled or duly waived or (ii) any other date on which the Parties agree in writing after the Signing Date.
- 1.8 "Signing Date" shall be the date on which this Agreement has been entered into by the Parties in notarized form.

2. CORPORATE STATUS

- 2.1 The Company 1 is a limited liability company organized under the laws of Germany with its corporate seat in Munich/Germany and registered with the commercial register held with the local court of Munich under HRB 228351.
- 2.2 The Company 1 has a registered share capital in the amount of EUR 26,294.00 which is divided into 26,294 shares, each in a nominal value of EUR 1.00, with the consecutive share numbers set out below pursuant to the most recent shareholders' list kept with the commercial register, which are held by the Seller 1 and the Seller 2 as follows (the "**Company 1 Shares**"):

Seller	Consecutive Share Nos.	Total Nominal Value in EUR	Percentage of the registered share capital / shareholding quota (rounded)
Seller 1	1 – 12,117 25,001 – 26,294	13,411.00	51.00%
Seller 2	12,118 – 25,000	12,883.00	49.00%
Sum	-	26,294.00	100.00%

2.3 The Company 2 is a limited liability company organized under the laws of Germany with its corporate seat in Munich and registered with the commercial register held with the local court of Munich under HRB 228364.

2.4 The Company 2 has a registered share capital in the amount of EUR 36,079.00 which is divided into 36,079 shares, each in a nominal value of EUR 1.00, with the consecutive share numbers set out below pursuant to the most recent shareholders' list kept with the commercial register, which are held by the Company 1 and the Seller 3 as follows (the shares held by the Seller 3 as per the table below, the "**Seller 3 Company 2 Shares**"; and jointly with the Company 1 Shares the "**Sold Shares**"):

Seller	Consecutive Share Nos.	Nominal Value in EUR	Percentage of the registered share capital / shareholding quota (rounded)
Company 1	1 – 26,313	26,313.00	72.93%
Seller 3	26,314 – 36,079	9,766.00	27.07%
Sum	-	36,079.00	100.00%

2.5 The Company 2 holds, directly or indirectly, participations in the following Legal Entities:

2.5.1 The Company 2 holds all shares in 123tv Beteiligungs GmbH with corporate seat in Munich/Germany, registered with the commercial register held with the local court of Munich under HRB 228628.

2.5.2 The Company 2 holds indirectly via 123tv Beteiligungs GmbH all shares in 1-2-3.TV GmbH with corporate seat in Grünwald/Germany, district of Munich, registered with the commercial register held with the local court of Munich under HRB 151802 (123tv Beteiligungs GmbH and 1-2-3.TV GmbH each individually also a "**Subsidiary**" and collectively the "**Subsidiaries**"; the Subsidiaries and the Target Companies each individually also a "**Group Company**" and collectively the "**Group Companies**" or the "**Group**").

2.5.3 The Company 2 holds indirectly via 1-2-3.TV GmbH all shares in 1-2-play GmbH with corporate seat in Grünwald/Germany, district of Munich, registered with the commercial register held with the local court of Munich under HRB 162852.

- 2.6 1-2-3.TV GmbH and certain managers of 1-2-3.TV GmbH set out in **Exhibit 2.6-1** (the "**1-2-3.TV Managers**") have agreed on certain transactions bonuses to be paid to the 1-2-3.TV Managers (the "**Transaction Bonuses**") and each partial amount of a Transaction Bonus to be paid to a 1-2-3.TV Manager on its respective due date, a "**Transaction Bonus Amount**") under agreements attached hereto for information purposes as **Exhibit 2.6-2** ("**Transaction Bonus Agreements**"), for which 1-2-3.TV GmbH as employer of the 1-2-3.TV Managers is obliged to withhold and pay wage Taxes and the employee's share of social security contributions (if any) for each payment of a Transaction Bonus Tax (each a "**Transaction Bonus Tax**"). The Sellers, 1-2-3.TV GmbH and the 1-2-3.TV Managers have entered into settlement agreements attached as **Exhibit 2.6-3** pursuant to which the Transaction Bonuses shall not be borne by 1-2-3.TV GmbH but by the Sellers in accordance with the applicable seller ratio and pursuant to which a portion of each Transaction Bonus Amount shall be deducted from the respective Transaction Bonus Amount and paid on account of the respective 1-2-3.TV Manager to 1-2-3.TV GmbH for settlement of the related Transaction Bonus Taxes ("**Transaction Bonus Settlement Agreements**"). The Sellers have made the 1-2-3.TV Managers aware of the fact that this Agreement and its Exhibits and Schedules will be made available to the public.

3. SALE AND ASSIGNMENT OF THE SOLD SHARES; APPROVALS

- 3.1 The Seller 1 hereby sells the Company 1 Shares held by it pursuant to Section 2.2 but in any event all shares held by the Seller 1 in the Company 1 to the Purchaser subject to the terms and conditions of this Agreement, and the Purchaser hereby accepts such sale.
- 3.2 The Seller 2 hereby sells the Company 1 Shares held by it pursuant to Section 2.2 but in any event all shares held by the Seller 2 in the Company 1 to the Purchaser subject to the terms and conditions of this Agreement, and the Purchaser hereby accepts such sale.
- 3.3 The Seller 3 hereby sells the Seller 3 Company 2 Shares but in any event all shares held by the Seller 3 in the Company 2 to the Purchaser subject to the terms and conditions of this Agreement, and the Purchaser hereby accepts such sale.
- 3.4 Subject to the condition precedent (*aufschiebende Bedingung*) that the Closing Actions pursuant to Sections 12.1.4 through 12.1.6 have taken place or have been duly waived, each of the Sellers hereby transfers (*abtreten*) to the Purchaser the respective Sold Shares sold by it under this Agreement, and the Purchaser accepts such transfers.
- 3.5 The sale of the Sold Shares includes all rights and obligations associated with or otherwise pertaining to the respective Sold Shares including the rights to any profits of the Target Companies for the current business year of the Target Companies and the profits of any previous business years, to the extent they have not been distributed before the Effective Date.
- 3.6 The shareholders' meeting of the Company 1 has approved the sale and transfer of the respective Sold Shares from the Seller 1 and the Seller 2 to the Purchaser under this Agreement with shareholders' resolution, a copy of which is attached hereto as **Exhibit 3.6-1**. The shareholders' meeting of the Company 2 has approved the sale and transfer of the respective Sold Shares from the Seller 3 to the Purchaser under this Agreement with shareholders' resolution, a copy of which is attached hereto as **Exhibit 3.6-2**.
- 3.7 The Sellers hereby waive any and all pre-emptive rights, rights of first refusal or offer and similar rights with regard to the sale and transfer of the Sold Shares to the Purchaser.

4. PURCHASE PRICE; PRELIMINARY PURCHASE PRICE; VENDOR LOAN; PAYMENT OF THE PURCHASE PRICE

- 4.1 The aggregate purchase price payable by the Purchaser to the Sellers for the Sold Shares (the "**Purchase Price**") shall be equal to the balance of
- 4.1.1 EUR 80,000,000.00 (in words: eighty million Euro) (the "**Enterprise Value**");
 - 4.1.2 plus the Effective Date Cash of the Group Companies as of the Effective Date; the "**Effective Date Cash**" is defined in Exhibit 4.1.2; and
 - 4.1.3 minus the Effective Date Debt of the Group Companies as of the Effective Date; the "**Effective Date Debt**" is defined in Exhibit 4.1.3; and
 - 4.1.4 plus the Net Working Capital Surplus (as defined in Section 4.2 below) or minus the Net Working Capital Shortfall (as defined in Section 4.2 below), as the case may be;
 - 4.1.5 minus 50% of the W&I Costs, *i.e.* an amount of EUR 127,452.00 (in words: one hundred twenty-seven thousand four hundred fifty-two Euros); and
 - 4.1.6 minus Permitted Leakage amounts for the items set forth under (i) no. 2 and 4 of Exhibit 13.17.1 and (ii) no. 2 and 4 through 8 of Exhibit 14.2 in an aggregate amount of EUR 105,624.25;
- (the items under Section 4.1.2 through Section 4.1.4 collectively, the "**Purchase Price Calculation Items**").
- 4.2 "**Net Working Capital Surplus**" is the amount by which the Net Working Capital (as defined in Exhibit 4.2) of the Group Companies as of the Effective Date exceeds an amount of EUR 7,131,084.86 (in words: seven million one hundred thirty-one thousand eighty-four Euros and eighty-six Cent) (the "**Target Net Working Capital**"), if any, and the "**Net Working Capital Shortfall**" is the amount by which the "**Net Working Capital**" of the Group Companies as of the Effective Date falls short of the Target Net Working Capital, if any.
- 4.3 The Purchase Price and each of the Purchase Price Calculation Items shall be determined on the basis of the Effective Date Accounts (as defined in Section 5.1 below) which have become final and binding in accordance with Section 5 below.

- 4.4 The Sellers and the Purchaser agree that **Exhibit 4.4** sets out the good faith estimate as of the Signing Date of the Effective Date Cash, the Effective Date Debt, the Net Working Capital Surplus and, consequently, the Purchase Price (the "**Preliminary Purchase Price**") it being understood that certain balance sheet items of 1-2-3.tv Holding GmbH and 1-2-3.tv Invest GmbH have not been considered in **Exhibit 4.4** but shall be considered in the determination of the Purchase Price in the Effective Date Accounts.
- 4.5 The Preliminary Purchase Price shall – as agreement among the Sellers – be divided and allocated among Seller 1, Seller 2 and Seller 3 in the ratio as set out in **Exhibit 4.5** (such ratio, the "**Seller Ratio 1**").
- 4.6 The claim for payment of a portion of the Purchase Price in the total amount of EUR 18,000,000.00 (in words: eighteen million Euro) ("**Vendor Loan Amount**") and for each Seller a claim for payment of a portion of the Purchase Price in an amount which is equal to the Vendor Loan Amount multiplied with the relevant ratio as set out in **Exhibit 4.6** (such ratio the "**Seller Ratio 2**") shall not be paid to the Sellers on the Scheduled Closing Date but shall be novated into claims for repayment of a vendor loan in accordance with the vendor loan agreement ("**Vendor Loan Agreement**"), into which the Parties and 1-2-3.TV GmbH enter into in part C of the present deed and the effectiveness of which is subject to the condition precedent of the transfer in rem of the Sold Shares pursuant to Section 3.4.

- 4.7 The Preliminary Purchase Price minus the Vendor Loan Amount, i.e. an amount of EUR 67,848,212.11 (in words: sixty-seven million eight hundred forty-eight thousand two hundred twelve Euros and eleven Cent), and minus any Known Leakage Amount (if any) ("**Closing Cash Purchase Price**") shall be paid by the Purchaser as follows:
- 4.7.1 A portion of the Closing Cash Purchase Price which is equal to the amount of the relevant Transaction Bonus Amount for the 1-2-3.TV Manager Iris Ostermaier becoming due on the Closing Date pursuant to the respective Transaction Bonus Settlement Agreement ("**Bonus Payment IO**") shall be paid upon instruction of the Sellers (such instruction being hereby irrevocably rendered from the Sellers to the Purchaser) and by abbreviation of payment (*abgekürzter Zahlungsweg*) in (to such extent) fulfillment of and with debt releasing effect (*schuldbefreiende Wirkung*) as regards the obligation of the Purchaser vis-à-vis the Sellers to pay the Closing Cash Purchase Price and in fulfillment of the obligations of the Sellers under the Transaction Bonus Settlement Agreement with Iris Ostermaier by the Purchaser to 1-2-3.TV GmbH into the 1-2-3.TV Bank Account (as defined in Section 10.3 below);
- 4.7.2 A portion of the Closing Cash Purchase Price which is equal to the amount of the relevant Transaction Bonus Amount for the 1-2-3.TV Manager Jörg Simon ("**JS**") becoming due on the Closing Date pursuant to the respective Transaction Bonus Settlement Agreement ("**Bonus Payment JS**") shall be paid upon instruction of the Sellers (such instruction being hereby irrevocably rendered from the Sellers to the Purchaser) and by abbreviation of payment (*abgekürzter Zahlungsweg*) in (to such extent) fulfillment of and with debt releasing effect (*schuldbefreiende Wirkung*) as regards the obligation of the Purchaser vis-à-vis the Sellers to pay the Closing Cash Purchase Price and in fulfillment of the obligations of the Sellers under the Transaction Bonus Settlement Agreement with JS by the Purchaser to 1-2-3.TV GmbH into the 1-2-3.TV Bank Account;
- 4.7.3 the remaining amount of the Closing Cash Purchase Price, after deduction of the amounts set out in Sections 4.7.1 and 4.7.2, shall be paid to the Sellers in accordance with the Seller Ratio 1 on the Scheduled Closing Date as follows (the "**Payable Preliminary Purchase Price**"; the respective partial amount of the Payable Preliminary Purchase Price so allocated to each Seller each an "**Individual Payable Preliminary Purchase Price**"):
- (a) 31.18727% of the Payable Preliminary Purchase Price, shall be paid to the Seller 1 into the respective Seller's Bank Account (as defined below in Section 10.1) of the Seller 1;
 - (b) 29.96201% of the Payable Preliminary Purchase Price, shall be paid to the Seller 2 into the respective Seller's Bank Account of the Seller 2;
 - (c) 38.85072% of the Payable Preliminary Purchase Price, shall be paid to the Seller 3 into the respective Seller's Bank Account of the Seller 3.

- 4.8 Within fifteen (15) Business Days after the date on which the Effective Date Accounts have become final and binding in accordance with Section 5 and, therefore, the Purchase Price has finally been determined, an adjustment amount as set out in Sections 4.8.1 or 4.8.2, as applicable, (each an "**Adjustment Amount**") shall become payable from the Purchaser to the Sellers or from the Sellers to the Purchaser, as the case may be, as follows:
- 4.8.1 If the Purchase Price (as finally determined based on the Effective Date Accounts) exceeds the Preliminary Purchase Price, the excess amount shall be paid by the Purchaser to the Sellers into the respective Seller's Bank Account.
- 4.8.2 If the Purchase Price (as finally determined based on the Effective Date Accounts) falls short of the Preliminary Purchase Price, the excess amount shall be paid by the Sellers to the Purchaser into the Purchaser's Bank Account (as defined below in Section 10.2).
- 4.9 Any Adjustment Amount payable from the Purchaser to the Sellers shall be divided and allocated between the Sellers in accordance with their respective Seller Ratio 1 and paid to the respective Seller into the respective Seller's Bank Account pursuant to Section 10.1. Any Adjustment Amount payable by the Sellers to the Purchaser shall be payable by the Sellers as individual and not as joint and several debtors (*Teilschuldner*) in a portion which is equal to their respective Seller Ratio 1. The Parties acknowledge that a payment of the Adjustment Amount shall pursuant to the Transaction Bonus Settlement Agreements not trigger any payment obligations of a Party and/or a Group Company towards any of the 1-2-3.TV Managers.
- 5. EFFECTIVE DATE ACCOUNTS**
- 5.1 The Sellers prior the Closing Date and – after the Closing Date – the Purchaser shall procure that, the management of the Group Companies will prepare unaudited interim financial statements of all Group Companies pursuant to the provisions of the HGB as of the Effective Date (the "**Effective Date Accounts**") as soon as reasonably possible after the Signing Date, but within twenty (20) Business Days after the Closing Date at the latest.
- 5.2 The Effective Date Accounts shall be prepared in accordance with this Agreement and taking first priority with German generally accepted accounting principles (*Grundsätze ordnungsmäßiger Buchführung*) ("**German GAAP**") and (in particular to the extent that no mandatory German GAAP provisions exist) taking second priority consistent with past accounting practice (*unter Wahrung der Grundsätze der Bilanzierungs- und Bewertungskontinuität*) as applied in the financial statements for the fiscal year ending on December 31, 2020, it being understood that deviating from such financial statements all Group Companies shall be fully consolidated in the Effective Date Accounts.

- 5.3 The Sellers prior to the Closing Date and – after the Closing Date – the Purchaser shall procure that, as soon as the Effective Date Accounts have been prepared but within twenty (20) Business Days after the Closing Date at the latest, the management of the Group Companies will provide the Purchaser and the Sellers with a copy of the Effective Date Accounts together with a statement setting forth the calculation of the (i) Effective Date Cash, (ii) the Effective Date Debt, (iii) the Net Working Capital and (iv) the calculation of the Purchase Price pursuant to Section 4.1 above (collectively the "**Effective Date Calculation**").
- 5.4 The Effective Date Accounts and the Effective Date Calculation shall become binding as between the Parties to the extent that the Purchaser and/or the Sellers do not within six (6) weeks after the receipt of both, the Effective Date Accounts and the Effective Date Calculation, provide the respective other Party(ies) with (i) a written notice asserting that the Effective Date Accounts and/or the Effective Date Calculation do/does not meet the provisions of this Agreement by – to the extent possible from the available information - way of stating specific objections to specific balance sheet items and providing supporting evidence to that effect ("**Notice of Objection**") and/or a revised Effective Date Calculation (the "**Revised Effective Date Calculation**"), as applicable, prepared by the objecting Party(ies) which shall take into account the changes that are necessary in its/their view. If no written objections are raised by any of the Parties within six (6) weeks following the receipt of the Notice of Objection and/or the Revised Effective Date Calculation, as the case may be, by the relevant other Party(ies), then the Notice of Objection and/or the Revised Effective Date Calculation, as applicable, shall be final and binding on the Parties.
- 5.5 The Sellers and – after the Closing Date – the Purchaser shall – to the extent legally permissible – procure that the Group Companies assist the Sellers and the Purchaser in the review of the Effective Date Accounts and the Effective Date Calculation (as defined in Section 5.3 above) as well as the Objections by providing all information and documentation that (i) is relevant for or in connection with the preparation of the Effective Date Accounts and the Effective Date Calculation, and (ii) has been requested by the Sellers, the Purchaser or the their advisors and is required for the review of the Effective Date Accounts and the Effective Date Calculation, whereby the Sellers and – after the Closing Date – the Purchaser shall – to the extent legally permissible – procure that the Group Companies shall procure that the Sellers and the Purchaser and their advisors are granted access to all documents, relevant employees and advisors of the Group Companies, each as reasonably necessary in order to verify Effective Date Financial Statements and the Objections.
- 5.6 If, after the Sellers and/or the Purchaser having raised in time their objections against the Notice of Objection and/or the Revised Effective Date Calculation (the "**Objections**"), the Sellers and the Purchaser cannot agree on the items mentioned in the Notice of Objection and/or the Revised Effective Date Calculation within four (4) weeks following the delivery of the Objections, the Sellers and the Purchaser shall each unilaterally be entitled to request Ebner Stolz (the "**Envisaged Auditor**"), or any other audit firm of international standing the Purchaser and the Sellers may mutually agree upon to determine the amount of the (i) Effective Date Cash, (ii) the Effective Date Debt and (iii) the Net Working Capital, if and to the extent such positions are in dispute between the Sellers and the Purchaser. The requesting Party shall immediately notify the other Party if it has retained the Envisaged Auditor or such other audit firm as the Sellers and the Purchaser mutually agreed upon. If the Envisaged Auditor or such other audit firm the Sellers and the Purchaser have mutually agreed upon refuses to accept the instruction to issue such written opinion for any reason, and the Sellers and the Purchaser do not agree on the retention of another audit firm within five (5) Business Days after a respective written request of either Party either of the Sellers on the one side and the Purchaser on the other side shall be entitled to request the selection of an international audit firm by the German Institute of Certified Public Accountants (*Institut der Wirtschaftsprüfer in Deutschland e.V.*), which audit firm shall then be retained by the Sellers or the Purchaser requesting such retention (the audit firm finally retained in accordance with this Section 5.6 the "**Neutral Auditor**").

- 5.7 The Neutral Auditor shall act as an expert (*Schiedsgutachter*) in the meaning of Section 317 BGB, and not as an arbitrator (*Schiedsrichter*). The Neutral Auditor shall decide only on the specific line items in dispute between the Parties as set out in the Objections in accordance with the principles set out in Section 4 above and this Section 5 and shall give the Sellers and the Purchaser adequate opportunity to present their views in writing and at hearings (also via telephone or video call) to be held in the presence of the Sellers and the Purchaser and their advisors. In particular, the Neutral Auditor shall give the Parties reasonable opportunity to comment on a draft of his/her final decision. The final decision of the Neutral Auditor must not fall beyond or outside the positions taken by the Sellers and the Purchaser. The Neutral Auditor shall give reasons for its decision and on the specific line items in dispute between the Sellers and the Purchaser.
- 5.8 The Seller prior to the Closing Date and – after the Closing Date - the Purchaser shall ensure that until the Effective Date Accounts and the Effective Date Calculation have become final and binding between the Parties in accordance with this Agreement, all information and documents relevant therefore shall be kept available and made available to the Neutral Auditor; the Purchaser also undertakes to ensure that the Neutral Auditor receives the cooperation from the Group Companies required for the performance of the mandate. For the purpose of fulfilling its mandate hereunder, the Neutral Auditor shall: (i) have the right to access the documents, employees, auditor and advisors of the Parties and the Group Companies, (ii) apply the provisions of this Agreement, however not deciding on the legal assessment of this Agreement, (iii) take into consideration the observations, allegations and disputes of the Parties to the extent it deems appropriate, giving a concise explanation of the reasons for their acceptance or rejection, (iv) limit the review only to the matters in dispute between the Parties, and (v) if requested by either Party, hear the Parties and their advisors, authorizing the filing of written notes.

- 5.9 The Effective Date Accounts and the Effective Date Calculation as determined by the Neutral Auditor shall be final and binding on the Parties subject to Section 319 BGB.
- 5.10 The Neutral Auditor shall also determine the allocation of costs of its retention in accordance with the principles set out in Sections 91, 92 of the German Civil Procedural Code (*Zivilprozessordnung – ZPO*) between the Parties. The Sellers agree that as among them, costs of the Neutral Auditor so allocated to the Sellers by the Neutral Auditor shall be borne by the Sellers in proportion to the Seller Ratio 1. If and to the extent the Neutral Auditor requests advance payments towards its costs, the Sellers on the one side and the Purchaser on the other side are mutually obliged to make such payments in equal parts. Such advance payments shall be settled between the Sellers and the Purchaser upon the final determination of the cost allocation in accordance with sentence 1 of this Section 5.10. For any portion of costs for which any of the Sellers shall be liable under this Section 5.10, the Sellers shall be jointly and severally liable.
- 6. EARN-OUT**
- 6.1 The Purchaser shall pay to the Sellers in addition to the Purchase Price an additional purchase price (the "**Earn-out**") equal to the Total Earn-out Amount (as defined in Section 6.2 below), which shall be calculated and become payable according to Sections 6, 7 and 8.
- 6.2 The "**Total Earn-out Amount**" shall be the balance of the Earn-out Amount payable for each Relevant Year.
- 6.3 A "**Relevant Year**" shall be each of the financial years of the Group Companies comprising twelve (12) consecutive months and ending on December 31, 2022 (the "**Relevant Year 2022**"), December 31, 2023 (the "**Relevant Year 2023**") and December 31, 2024 (the "**Relevant Year 2024**"), provided that the Purchaser shall be entitled to change the financial year of the Group Companies in such way that it ends on January 29. In such event provided that it has occurred before January 29, 2022, the term Relevant Year shall refer to such adjusted financial year (i.e. the Relevant Year 2022, 2023 and 2024 shall start on January 30, 2022, 2023, 2024 and shall end on January 29, 2023, 2024 and 2025 respectively).

6.4 The "**Earn-out Amount**" for each Relevant Year shall be calculated as follows:

- 6.4.1 In case the Revenues (as defined below) for a Relevant Year amount to at least the Target Revenues for such Relevant Year the Earn-out Amount for such Relevant Year shall amount to EUR 14,000,000.00. In case the Revenues for a Relevant Year amount to equal or less than the Threshold Revenues for such Relevant Year, no Earn-out Amount for such Relevant Year shall be payable in such Relevant Year, whereby Section 6.4.2 shall remain unaffected. If the Revenues for a Relevant Year amount to more than the Threshold Revenues for such Relevant Year but less than the Target Revenues for such Relevant Year the Earn-out Amount for such Relevant Year shall be equal to an amount which is interpolated linearly between EUR 0 and EUR 14,000,000.00.
- 6.4.2 The calculation of the Earn-out Amounts shall be subject to a catch-up mechanism to cater for the possibility to earn the Total Earn-out Amount. If in any Relevant Year, the Revenues exceed the Target Revenues, such excess amount shall be added to the Revenues of (i) firstly, the preceding Relevant Year(s) (if any) if in such Relevant Year(s) the Threshold Revenues were not exceeded and/or the Target Revenues were not reached or exceeded (and consequently not the entire Earn-out Amount has been paid) by such amount of the excess amount until the Target Revenues are met and to the result that the portion of the Earn-out Amount not paid to the Sellers may be earned in the following Relevant Year(s), and, (ii) secondly, the following Relevant Year(s) (if any) to the result that the excess amount shall be accounted for in the calculation of the Earn-out Amount as if such Revenues had been earned in such Relevant Year, provided that in any case the maximum aggregate Total Earn-out Amount shall not exceed EUR 42,000,000.00.

As example:

- (a) If in the Relevant Year 2022 the Revenues amount to the Threshold Revenues (i.e. a shortfall from the Target Revenues in this Relevant Year of EUR 30,225,000) and in the Relevant Year 2023 the Revenues amount to the Target Revenues and in the Relevant Year 2024 the Revenues exceed the Target Revenues by an amount which is equal to the difference between the Target Revenues and the Threshold Revenues for the Relevant Year 2022 (i.e. EUR 30,225,000), the following Earn-out Amounts become payable: EUR 0 for the Relevant Year 2022, EUR 14,000,000.00 for the Relevant Year 2023 and EUR 28,000,000.00 for the Relevant Year 2024.
- (b) If in the Relevant Year 2022 the Revenues amount to EUR 268,835,000.00 (i.e. an excess amount of EUR 37,110,000.00) and in the Relevant Year 2023 the Revenues amount to the Target Revenues and in the Relevant Year 2024 the Revenues amount to the Threshold Revenues, the following Earn-out Amounts become payable: EUR 14,000,000.00 for each Relevant Year of 2022, 2023 and 2024.

6.4.3 The "**Threshold Revenues**" are set forth on **Exhibit 6.4.3**.

6.4.4 The "**Target Revenues**" are set forth on **Exhibit 6.4.4**.

6.4.5 "**Revenues**" shall be the revenues (*Umsatzerlöse*) of the business of the Group Companies according to Section 275 para. 2 no. 1 HGB determined on the basis of the consolidated (consolidating all of the Group Companies) financial statements of the Company 1 for the applicable Relevant Year as finally determined according to Section 7.

6.5 Each Earn-out Amount and the Total Earn-out Amount shall not be a negative amount.

6.6 The maximum aggregate Total Earn-out Amount shall not exceed EUR 42,000,000.00.

- 6.7 The Earn-out Amount for each Relevant Year shall be finally determined between the Parties according to Section 7.
- 6.8 A sample calculation of the Earn-out Amounts based on purely illustrative figures and the catch-up mechanism pursuant to Section 6.4.2 is set out for illustration purposes in Exhibit 6.8.
- 6.9 The Earn-out Amount for any given Relevant Year shall in the amount set out in the Purchaser Report become due for payment within thirty (30) days after delivery of the Purchaser Report to the Sellers. If and to the extent that the Earn-out Amount that has become final and binding between the Parties in accordance with this Agreement exceeds the Earn-out Amount set out in the applicable Purchaser Report, the excess amount plus interest pursuant to Section 6.11 shall be due for payment within ten (10) Business Days after having become final and binding as set out in Section 7.6.
- 6.10 If the Purchaser (i) fails to provide the Purchaser Report when due in accordance with Section 7.2 with respect to any given Relevant Year, and does not deliver such Purchaser Report, within further ten (10) Business Days after a written warning of the Sellers or, (ii) is in material and continued default of its obligations under Section 9 and does not remedy such default, within further twenty (20) Business Days after a written warning of the Sellers (each a "**Default Event**"), the minimum amount of the Earn-out Amount for the Relevant Year in which the Default Event occurs shall, deviating from any of the foregoing, be EUR 14,000,000.00 each for the Relevant Year 2022, the Relevant Year 2023 and/or the Relevant Year 2024, as applicable, and in case of the Relevant Year 2023 and/or the Relevant Year 2024 increased by the relevant amount pursuant to Section 6.4.2 (if any) and the aggregate amount for the respective Relevant Year shall become due for payment sixty (60) days following the relevant Default Event (and not be subject to any repayment). Section 6.6 remains unaffected.
- 6.11 Any Earn-out Amount shall bear interest of six percent (6%) p.a., calculated on basis of the Earn-out Amount that becomes final and binding for the period from the applicable Earn-out Due Date to the date the excess amount becomes due pursuant to Section 6.9. The "**Earn-out Due Date**" shall mean with respect to any given Relevant Year the date that falls thirty (30) days after the expiry of the period pursuant to Section 7.2. Section 10.5 shall remain unaffected, provided that as regards the excess amount that becomes due pursuant to Section 6.9, Section 10.5 shall apply only as of the expiry of the due date pursuant to Section 6.9 last sentence.
- 6.12 The Total Earn-out Amount and any component thereof shall – as agreed between the Sellers – be divided and allocated among Seller 1, Seller 2 and Seller 3 in the Seller Ratio 2 and shall be paid to the respective Seller into the respective Seller's Bank Account pursuant to Section 10.1.

- 6.13 In the event that the payment of any Earn-out Amount triggers the obligation of the Sellers to pay a Transaction Bonus to any 1-2-3.TV Manager, the Purchaser shall upon notification of the Sellers of the relevant calculation be entitled to withhold the respective Transaction Bonus including the respective Transaction Bonus Tax from the respective Earn-out Amount and shall directly pay to 1-2-3.TV GmbH such Transaction Bonus including the respective Transaction Bonus Tax and undertakes vis-à-vis the Sellers to procure that 1-2-3.TV GmbH pays on the respective due date of the Earn-out Amount the Transaction Bonus (less any Transaction Bonus Tax) to the 1-2-3.TV Manager and the Transaction Bonus Tax to the Tax Authorities in such amount as calculated by 1-2-3.TV GmbH based on the amount of the payable Transaction Bonus as notified by the Sellers (such notice to be delivered at the latest ten (10) Business Days prior to the relevant due date) in accordance with the Transaction Bonus Settlement Agreement. The Purchaser shall procure that 1-2-3.TV GmbH provides evidence of the payment of the Transaction Bonus including the Transaction Bonus Tax by written notice to the Sellers.

7. **EARN-OUT FINANCIAL STATEMENTS**

- 7.1 The Purchaser undertakes vis-à-vis the Sellers without undue delay after the end of each Relevant Year to prepare with the assistance of the Group Companies non-audited annual consolidated (consolidating all of the Group Companies) financial statements of the Company 1 (the "**Earn-out Financial Statements**"). The Earn-out Financial Statements shall be prepared in accordance with German GAAP applied on a basis consistent with past accounting practice as applied in the financial statements for the fiscal year ending on December 31, 2020 and the Effective Date Accounts (unless mandatory law requires otherwise); it being understood that all Group Companies shall be fully consolidated.
- 7.2 The Purchaser shall deliver to the Sellers without undue delay after preparation of the Earn-out Financial Statements however in any event by no later than five (5) months after expiry of a Relevant Year the Earn-out Financial Statements for the applicable Relevant Year and a report prepared by the Purchaser setting forth the Earn-out Amount for the given Relevant Year (the "**Purchaser Report**"). The Purchaser shall deliver to the Sellers audited annual consolidated (consolidating all of the Group Companies) financial statements of the Company 1 for each Relevant Year without undue delay after preparation for information purposes.

- 7.3 The Sellers, directly and through their advisors, shall have the right to verify the Earn-out Financial Statements, the Purchaser Report and all underlying documents and information, it being understood that the Purchaser shall procure that the Sellers and their advisors are granted access to all documents, relevant employees and advisors of the Group Companies, each as reasonably necessary in order to verify the Earn-out Financial Statements and the Purchaser Report. The Sellers shall have the right to send, by no later than six (6) weeks after having received the respective Earn-out Financial Statements and the respective Purchaser Report, a written notice to the Purchaser of their disagreement with the Earn-out Amount for the respective Relevant Year as specified in the Purchaser Report by – to the extent possible from the available information - way of stating specific objections to specific balance and/or profit and loss sheet items and providing supporting evidence to that effect as well as by attaching a revised calculation of the Earn-out Amount payable in the Relevant Year from the Sellers' point of view ("**Notice of Disagreement**").
- 7.4 If a Notice of Disagreement is timely sent, during a period of ten (10) Business Days following receipt of such notice by the Purchaser, the Parties will use commercially reasonable efforts to resolve the disputed matters by mutual agreement. If, at the end of such period, the Parties fail to reach an agreement, upon request of the Sellers or the Purchaser, the dispute shall be submitted to the Neutral Auditor. Sections 5.5 through 5.10 shall apply *mutatis mutandis*.
- 7.5 The Neutral Auditor shall deliver to the Parties his written decision, setting forth the Earn-out Amount for the applicable Relevant Year, which Earn-out Amount shall not fall beyond or outside the positions taken by the Purchaser in the Purchaser Report on the one end and the Sellers in the Notice of Disagreement on the other end, within thirty (30) Business Days from the acceptance of the mandate.
- 7.6 The Earn-out Amount for any given Relevant Year shall become final and binding between the Purchaser and the Sellers as follows:
- 7.6.1 the Earn-out Amount set out in a Purchaser Report shall become final and binding between the Parties if and when (i) the Sellers declare in writing their agreement with such Earn-out Amount, or (ii) no Notice of Disagreement is delivered by the Sellers to the Purchaser, within six (6) weeks as set out under Section 7.3 above;
- 7.6.2 if the Parties find written agreement on the Earn-out Amount for a Relevant Year, the Earn-out Amount shall become final and binding between the Parties in such agreed amount and on the date of such agreement;
- 7.6.3 if the Neutral Auditor determines the Earn-out Amount, such Earn-out Amount shall become final and binding between the Parties on the date the Neutral Auditor issues its report, subject to manifest (*offensichtliche*) errors (such as calculation errors, or manifest deviations from the terms of this Agreement), which the Neutral Auditor shall in any event correct;

whichever occurs earlier.

8. EARN-OUT PROTECTION

- 8.1 The Parties agree that the Earn-out requires that the Group will within the Relevant Years continue to be managed on a stand-alone basis and that the Sellers require adequate protection as set forth in this Agreement.
- 8.2 The Parties agree that - unless an Operational Default Event exists - Revenues shall be normalized (*normalisiert*) if and to the extent that measures are taken after the Closing Date (i) to reduce the Revenues for a Relevant Year, (ii) which result in a postponement of the Revenues to another time period which is not a Relevant Year, (iii) which lead to Revenues occurring at another Legal Entity (as defined in Section 8.6 below) other than a Group Company founded or acquired by any Group Company or the Purchaser or (iv) which result in deviations from past accounting practices as applied in the financial statements for the fiscal year ending on December 31, 2020, unless such deviations are required in order to comply with applicable German laws, in each case of (i) through (iv) unless the Sellers have given their explicit prior written consent to such measure or have not objected against such measures within ten (10) Business Days after being notified about the relevant measure by the Purchaser, in which case the Sellers' consent shall be deemed granted.
- 8.3 The Parties agree that if an Operational Default Event (as defined in Section 8.4) occurs the Earn-out Amount(s) payable for the Relevant Year in which the Operational Default Event occurs and for any subsequent Relevant Year(s) (if any) (such Relevant Year(s) together the "**Acceleration Year(s)**") shall for each Acceleration Year be equal to EUR 14,000,000.00, and in case of the Relevant Year 2023 and/or the Relevant Year 2024 increased by the relevant amount pursuant to Section 6.4.2 (if any) (the resulting aggregate amount the "**Acceleration Payment Amount**"). Section 6.6 remains unaffected.
- 8.4 An "**Operational Default Event**" shall be any of the following measures after the Closing Date, in each case unless the Sellers have given their explicit prior written consent in writing to such measure or have not objected against such measure within ten (10) Business Days after being notified about the relevant measure by the Purchaser, in which case the Sellers' consent shall be deemed granted:
- 8.4.1 Any change of the firms or brand name of a Group Company so that no longer 123, 1-2-3 or 1.2.3 is part of the relevant firm or brand name;
- 8.4.2 any restructuring (*Umstrukturierung*) of a Group Company, by way of merger, split, spin-off or otherwise or any measures having a similar effect due to which the majority of the shares in a Group Company or the majority of the assets of all Group Companies is transferred to a Third Party Acquirer; whereby "**Third Party Acquirer**" means any Legal Entity, individual person or group of any of the foregoing which is not the Purchaser, a Group Company or an Affiliate of the Purchaser;

- 8.4.3 any sale and/or transfer of the majority of the shares of a Group Company, or a substantial portion of the assets of the Group Companies to a Third Party Acquirer;
- 8.4.4 the acquisition of a majority shareholding in another operational Legal Entity, or business unit by a Group Company;
- 8.4.5 entering into liquidation or dissolution (except as a result of insolvency proceedings) of 1-2-3 tv GmbH (or its legal successor) or the abandonment of any material field of business or material geographical scope of activity of 1-2-3 tv GmbH (or its legal successor);
- 8.4.6 any transfer of the headquarter of 1-2-3 tv GmbH (or its legal successor) or material parts of its current operational business (and including the revenues billing/collection) out of the Munich area (including a transfer out of Germany);

unless any measures pursuant to Sections 8.4.1 through 8.4.6 were taken to avoid insolvency of the Group Companies.

- 8.5 The Purchaser has come to the conclusion that JS is a key manager with respect to the business operations of the Group Companies going forward, against this background, the Purchaser envisages to continue the current managing director service agreement of JS at least until the end of the fixed term (i.e. March 31, 2023). In case of any termination by the Group Companies before the end of such fixed term (other than for good cause for which JS is responsible) Section 8.4 shall apply.
- 8.6 "**Affiliates**" shall mean any Legal Entities that are affiliated enterprises (*verbundene Unternehmen*) pursuant to Sections 15 *et seqq.* AktG provided that with respect to the Sellers the definition of Affiliate shall not include the Group Companies (as defined in Section 2.5.2) and 1-2-play GmbH. "**Legal Entity**" shall mean any company, corporation, association, partnership or other legal entity established under the laws of any jurisdiction, independent of whether or not it is a separate legal entity.
- 8.7 In case an Operational Default Event occurs, the Acceleration Payment Amount shall become due and payable within thirty (30) Business Days after occurrence of the Operational Default Event.

9. INFORMATION RIGHTS

9.1 From the Closing Date until the date the last of the Earn-out Amounts becomes final and binding, the Purchaser shall procure that the Sellers are made available quarterly management reports of the Group on a consolidated basis, materially in line with previous management reports, within thirty (30) days following the respective quarter consisting of at least (x) balance sheet, (y) profit and loss accounts, and (z) cash flow statements, each on a quarterly basis and rolling basis of the last twelve (12) months, with a comparison of budgeted to actual figures and explanatory notes of the management of the Group on any significant deviations between budgeted and actual amounts.

9.2 From the Closing Date until the date the last of the Earn-out Amounts becomes final and binding, the Purchaser shall further procure that the Sellers and their advisers

9.2.1 are promptly informed of any Operational Default Event or any other event which may have a significant impact on an Earn-out Amount;

9.2.2 are (based on entering into customary non-reliance letters) granted reasonable access to the management, employees as well as the tax advisers and auditors of the Group Companies as reasonably required in order to determine whether an Operational Default Event has occurred or to verify the Earn-out Financial Statements and/or the Purchaser Report; and

9.2.3 are provided without undue delay with any information and documents in the relevant form in each case as reasonably required in order to determine whether an Operational Default Event has occurred.

10. PAYMENT METHOD; ACCOUNT DETAILS

10.1 Unless explicitly set out otherwise in this Agreement, any payments under this Agreement to the Sellers shall be paid to the bank accounts of the Sellers as set out in **Exhibit 10.1** (each a "**Seller's Bank Account**"), any other account in the European Union or the USA which the respective Seller may notify to the Purchaser at the latest five (5) Business Days prior to the relevant due date or any joint Sellers' account in the European Union or the USA which the Sellers may notify to the Purchaser at the latest five (5) Business Days prior to the relevant due date by joint and unanimous notification.

- 10.2 Any payments under this Agreement to the Purchaser shall be paid to the bank account of the Purchaser in the European Union or the USA which the Purchaser may notify to the respective Seller at the latest five (5) Business Days prior to the relevant due date (the "**Purchaser's Bank Account**").
- 10.3 Any payments under this Agreement to 1-2-3.TV GmbH shall be paid to the bank account of 1-2-3.TV GmbH with Deutsche Bank AG, IBAN DE18 7007 0010 0666 1110 01 and BIC DEUTDEMMXXX (the "**1-2-3.TV Bank Account**") or any other account in the European Union or the USA which 1-2-3.TV GmbH may notify to the respective Party at the latest five (5) Business Days prior to the relevant due date.
- 10.4 All payments under this Agreement shall be made by irrevocable wire transfer of immediately available funds in euros free of costs and charges for the recipient (except for costs and charges of the recipient's bank, which shall be borne by the relevant recipient) and with value as of the relevant due date set out in this Agreement. Any such payment shall be deemed made only upon the irrevocable and unconditional crediting of the amount payable to the relevant bank account as per the preceding sentence. The Sellers shall procure that 1-2-3.TV GmbH informs the Purchaser of the receipt of the payments pursuant to Sections 4.7.1 and 4.7.2 immediately after receipt.
- 10.5 If either Party is in default of any payment to be made by it under this Agreement, such amount shall bear interest at a per annum rate of eight percent (8%) from the due date until the date on which the payment is received by the respective claimant. Any interest payable under this Agreement shall be calculated on the basis of the days elapsed and a 365 days year.

11. CLOSING CONDITIONS; RESCISSION

- 11.1 The obligations of the Sellers and the Purchaser to perform the Closing Actions shall be subject to the condition precedent that the Closing Conditions (as defined below) have been met or duly waived:
- 11.1.1 the merger control approval by the Austrian Federal Cartel Authority (*Bundeswettbewerbsbehörde*; "**BWB**") has been or is deemed to be obtained (the "**Merger Clearance**");
- 11.1.2 the AWV Clearance has been obtained. "**AWV Clearance**" (and together with the Merger Clearance the "**Clearances**") shall mean that the German Federal Ministry for Economic Affairs and Energy (*Bundesministerium für Wirtschaft und Energie*) has

- (a) issued a certificate of non-objection under section 58 para. 1 of the Foreign Trade Ordinance (*Außenwirtschaftsverordnung*) ("AWV") or a clearance under section 58a para. 1 AWV is granted, provided that such certificate or clearance is either unconditional or any applicable conditions and requirements (including conditions and requirements agreed with the German Federal Ministry for Economic Affairs and Energy under a security agreement) (i) have been accepted by the Party or Parties affected by the conditions and/or requirements and (ii) either have been satisfied or do not need to be satisfied before completion of the Transaction, or, a certificate of non-objection is deemed to be issued according to section 58 para. 2 AWV; or
- (b) in the event of formal investigations pursuant to section 55 para. 1 AWV, failed to prohibit any portion of the Transaction contemplated under this Agreement within the review period pursuant to section 14a Foreign Trade Act (*Außenwirtschaftsgesetz*);

11.1.3 the Purchaser has procured the financing of the Transaction pursuant to which the Purchaser is entitled to draw funds or has such funds readily available for the financing of the Closing Cash Purchase Price on the Closing Date in an amount of not less than EUR 62,000,000.00 (in words: sixty-two million Euro) (the "**Purchaser Financing**"), all conditions for the drawing of such funds (if any) have been satisfied and such funds are actually made available to the Purchaser

(the conditions set out in Sections 11.1.1 through 11.1.3 collectively the "**Closing Conditions**").

- 11.2 To the extent legally permissible, the Seller and the Purchaser shall be entitled to unanimously waive the Closing Conditions (except for the Closing Condition under Section 11.1.1) in writing. The Parties agree to waive the Closing Condition under Section 11.1.2(a) if the Purchaser has informed the Sellers that the German Federal Ministry for Economic Affairs and Energy has informed the Purchaser or the Parties that there is no obligation to notify.
- 11.3 In the event that a or the Closing Condition(s) under Sections 11.1.1 and/or 11.1.2 is/are not fulfilled or duly waived within four (4) months after the Signing Date, each of (i) the Sellers (jointly) and (ii) the Purchaser shall be entitled to withdraw (*zurücktreten*) from this Agreement with immediate effect for all Parties by written notice to the opposite Party/Parties. In the event that the Closing Condition under Section 11.1.3 is not fulfilled or duly waived within seventy-five (75) days after the Signing Date, the Sellers jointly shall be entitled to withdraw (*zurücktreten*) from this Agreement with immediate effect for all Parties by written notice to the Purchaser.

- 11.4 In the event of a withdrawal pursuant to Section 11.3 sentence 2 due to the non-fulfillment of the Closing Condition under Section 11.1.3, the Purchaser shall be obliged to make within five (5) Business Days after such withdrawal, a one-time payment of EUR 2,000,000.00 to the Sellers on a *pro rata* basis according to their respective Seller Ratio 3 as liquidated damages (*pauschaliertes Schadensersatz*) for the non-occurrence of the Closing. The assertion of further damages by the Sellers shall be excluded. Nothing in this Agreement shall prevent a Party to claim for specific performance by another Party instead of a withdrawal pursuant to Section 11.3 sentence 2.
- 11.5 A withdrawal pursuant to Section 11.3 shall only be valid if the respective Party has received written notice of the withdrawal prior to the date on which the Closing Conditions have been met. In the event of a valid withdrawal, this Agreement shall immediately terminate with effect for all the Parties, and all rights and obligations of either of the Parties hereunder shall cease provided that (i) the provisions set forth in Sections 11.4, 11.5 and 25 through 32.1 shall survive and remain in full force and effect and (ii) the obligations of the Guarantor and the Purchaser under the non-disclosure agreement entered into between the Sellers and the Purchaser on May 7, 2021 shall continue or revive (*wiederaufleben*), as applicable.
- 11.6 The Purchaser shall use best efforts to ensure that the Closing Condition under Section 11.1.3 will be fulfilled as soon as reasonably possible after the Signing Date. The Purchaser shall keep the Sellers reasonably informed on the progress of the obtaining of the Purchaser Financing and without undue delay inform the Sellers by providing relevant evidence if one or all Closing Conditions has or have been fulfilled. The Purchaser shall provide the executed documentation on the Purchaser Financing to the Sellers on counsel-to-counsel basis.

12. CLOSING; CLOSING ACTIONS

- 12.1 On the Scheduled Closing Date at 9:00 a.m. CET, the Parties shall meet at the offices of Noerr Partnerschaftsgesellschaft mbB Rechtsanwälte Steuerberater Wirtschaftsprüfer, in Munich, Germany, or at such other time and/or location as mutually agreed upon between the Parties in writing where the following actions (the "**Closing Actions**") shall take place simultaneously (*Zug um Zug*):

- 12.1.1 The Sellers deliver to the Purchaser (i) resignation letters of the members of the advisory board of 1-2-3.TV GmbH substantially in the form of the drafts attached as **Exhibit 12.1.1** and (ii) Settlement Agreements (as defined in Section 12.6) and the corresponding shareholder resolutions.
- 12.1.2 The Sellers deliver to the Purchaser (i) resignation letters of the managing directors of the Company 1, the Company 2 and 123tv Beteiligungs GmbH substantially in the form of the drafts attached as **Exhibit 12.1.2** and (ii) Settlement Agreements (as defined in Section 12.6) and the corresponding shareholder resolutions.
- 12.1.3 The Sellers deliver to the Purchaser copies of the duly signed termination agreements with effect as per the Closing Date relating to (i) the management agreement between 1-2-3.TV GmbH and 123tv Beteiligungs GmbH, (ii) the management agreement between 123tv Beteiligungs GmbH and ARCUS Capital AG and the overdraft facility agreement (*Kontokorrentvereinbarung*) between 123tv Beteiligungs GmbH and Emotion Invest Verwaltungs GmbH.
- 12.1.4 The Purchaser irrevocably pays or procures payment of Bonus Payment IO into the 1-2-3.TV Bank Account pursuant to Section 4.7.1.
- 12.1.5 The Purchaser irrevocably pays or procures payment of an amount equal to the Bonus Payment JS into the 1-2-3.TV Bank Account pursuant to Section 4.7.2.
- 12.1.6 The Purchaser irrevocably pays or procures payment of the Individual Payable Preliminary Purchase Prices into the respective Seller's Bank Account as set out in Section 4.7.3.
- (it being understood that the Closing Actions under Sections 12.1.4 through 12.1.6 will have occurred, and the respective payment obligations will be fulfilled upon receipt of payment only).
- 12.1.7 The Sellers deliver to the Purchaser a bring down certificate substantially in the form of the draft attached hereto as **Exhibit 12.1.7 (the "Bring Down Certificate")**.
- 12.1.8 The Sellers deliver to the Purchaser the original of duly executed powers of attorney (*Vollmacht*) to adopt in the name and on behalf of the Seller 1 and the Seller 2 or the Company 1 and the Seller 3, respectively, shareholders' resolutions of the Company 1 and the Company 2 after Closing, substantially in the form of the drafts attached as **Exhibit 12.1.8**.

- 12.2 Each of the Sellers acting solely for himself/itself shall be entitled to waive (in part or full) the performance of the Closing Action under Section 12.1.6. The Purchaser shall be entitled to waive (in part or full) the performance of the Closing Actions under Sections 12.1.7 and 12.1.8 by written notice to the Sellers. Any other Closing Action may only be waived by mutual agreement in writing between all Sellers acting jointly and the Purchaser.
- 12.3 If the Closing Actions are not all satisfied or waived in accordance with this Agreement latest on the fifth (5th) Business Day after the Scheduled Closing Date,
- 12.3.1 the Sellers jointly shall be entitled to withdraw from this Agreement with effect for all Parties and with immediate effect by giving written notice to the Purchaser thereof, unless the non-fulfillment of the applicable Closing Action(s) was caused by a breach by the Sellers of their obligations provided for hereunder; and
- 12.3.2 the Purchaser may withdraw from this Agreement by giving written notice thereof to the Sellers, unless the non-satisfaction of the relevant Closing Action(s) was caused by a breach of the Purchaser's obligations provided for hereunder,
- provided in each case that any right of a Party to withdraw from this Agreement pursuant to this Section 12.3 shall cease (*verfallen*) upon the earlier of (i) the respective Closing Actions, the non-satisfaction of which entitles the Party to such termination, being satisfied or duly waived and (ii) the occurrence of the Closing. The right of either Party to seek, instead of exercising the termination right provided for, specific performance with respect to the Closing Actions to be satisfied by the other Party on the Scheduled Closing Date (in particular, Sellers' right to request payment in accordance with Section 4.7 and respective default interest) shall remain unaffected. Section 11.5, 2nd sentence shall apply *mutatis mutandis*.
- 12.4 As soon as all Closing Actions have been performed or duly waived (the "**Closing**"), the Sellers and the Purchaser shall confirm in a closing protocol substantially in the form of the draft attached as **Exhibit 12.4** (the "**Closing Protocol**") that all Closing Conditions have been met and that all Closing Actions have been duly performed or duly waived, as the case may be, and that Closing has occurred.

- 12.5 Subject to the condition precedent (*aufschiebende Bedingung*) pursuant to Section 158 BGB of the receipt of a signed copy of the Closing Protocol, the Sellers and the Purchaser hereby instruct the officiating notary public by joint instruction and authorisation to file with the competent commercial register (*Handelsregister*) in accordance with Section 40 para. 2 German Limited Liability Companies Act (*GmbH-Gesetz – GmbHG*), an updated shareholders' lists (*Gesellschafterliste*) of the Target Companies reflecting the change in the shareholder structure, i.e. the acquisition of the Sold Shares by the Purchaser.
- 12.6 The Purchaser agrees and accepts that the Sellers will, immediately prior to Closing, pass a shareholders' resolution and enter into general settlement agreements (*Generalbereinigungsvereinbarungen*), in each case in the form of the drafts attached hereto as **Exhibit 12.6** (each a "**Settlement Agreement**") under which the members of the advisory board of the Group will be granted full discharge for their actions as members of the advisory board for the period until to the Closing Date.

13. SELLERS' GUARANTEES

- 13.1 The Sellers (as further specified below) hereby guarantee, each individually and not jointly (*nicht gesamtschuldnerisch*), to the Purchaser, subject to the requirements and limitations provided in Sections 15 and 16 below, by way of an independent guarantee (*selbständiges Garantieverprechen*) pursuant to Section 311 para. 1 BGB – that the statements set forth in Sections 13.2 through 13.17 (individually a "**Sellers' Guarantee**" and collectively the "**Sellers' Guarantees**") are correct as of the Signing Date or as of any other date or time period explicitly referred to below, it being understood that such statements shall neither constitute a quality agreement within the meaning of Section 434 para. 1 BGB (*Beschaffenheitsvereinbarung*), nor shall they be construed as a guarantee within the meaning of Sections 443, 444 BGB (*Garantie für die Beschaffenheit der Sache*). The scope and content of each Sellers' Guarantee and the Sellers' liability arising thereunder shall be exclusively defined by the provisions of this Agreement (including without limitation, the limitations on the Purchaser's rights and remedies set forth in Sections 15 and 16), which shall be an integral part of the Sellers' Guarantees, provided that
- 13.1.1 each of the Sellers' Guarantees under Section 13.2 (Sellers' Status) and Section 13.3 (Capacity of the Sellers) are made by each of the Sellers only with respect to itself and not with respect to any other Seller;
- 13.1.2 each of the Sellers' Guarantees under Section 13.4 (Ownership of Sold Shares; No Encumbrances) are made by each of the Sellers, and by each Seller only with respect to the respective Sold Shares sold by itself hereunder and not with respect to any other Sold Shares;

- 13.1.3 each of the Sellers' Guarantees under Section 13.7 (Relations with Related Parties) and Section 13.17 (No Leakage) are made by each of the Sellers only with respect to itself and its respective Related Parties, and not with respect to any other Seller or any other Sellers' Related Parties; "**Related Party**" shall mean, in respect of a Party, such Party's Affiliates and their related parties pursuant to Section 138 of the German Insolvency Code (*Insolvenzordnung – InsO*), as applicable;
- 13.1.4 if and to the extent, the Sellers' Guarantees refer to the Company 1, such Sellers' Guarantees are solely made by the Seller 1 and the Seller 2 severally (*teilschuldnerisch*) on a *pro rata* basis in proportion to its respective shareholding in the Company 1 as stipulated in Section 2.2;
- 13.1.5 all other Sellers' Guarantees not referred to under Sections 13.1.1 through 13.1.4 are made by all Sellers severally on a *pro rata* basis, *i.e.* for each Purchaser's Claim relating to a Breach of such Sellers' Guarantee each Seller shall only be liable in proportion to its respective ratio as set out in **Exhibit 13.1.5** (such ratio, the "**Seller Ratio 3**");
- 13.1.6 the Sellers' Guarantees under Sections 13.5 through 13.16 are only given (i) in order to facilitate the Purchaser's entering into the W&I Insurance in accordance with Section 17 below, and subject to such W&I Insurance being in place and effective and (ii) in their entirety subject to Sellers' Knowledge, even if not expressly stated in each respective Sellers' Guarantees under Sections 13.5 through 13.16;
- 13.1.7 the Sellers' Guarantees are given on the basis (*Geschäftsgrundlage*) that, for the purpose of giving the Sellers' Guarantees in Sections 13.5 through 13.16, (i) the Sellers may not have first-hand knowledge with respect to the subject matters of the Sellers' Guarantees and neither the Sellers nor any of their managing directors, employees or advisors have independently examined or verified the underlying facts, matters, circumstances or statements made in the Sellers' Guarantees or the Schedules prepared by 1-2-3.TV GmbH and its management, but had rather to rely on documentation and information made available by the managing directors and employees of the Group, and (ii) nothing in this Agreement shall imply a duty of the Sellers or any of the Group Companies (including their managing directors, employees or advisors) to make inquiries or researches, and (iii) the lack of (x) such first-hand knowledge, (y) the ability to independently verify such Sellers' Guarantees in Sections 13.5 through 13.16, and (z) such examinations or verifications of the Sellers, or the need to rely on the management and employees of the Group shall as such in no event be regarded as intentional acting or acting in a fraudulent manner (*kein vorsätzliches Handeln und keine Arglist aufgrund Angaben "ins Blaue hinein" wegen unterbliebener Untersuchungen oder Überprüfungen*), and (iv) the Purchaser hereby waives any rights and/or claims against the Sellers based on such legal grounds to the largest extent legally permissible;

- 13.1.8 to the extent a Sellers' Guarantee is made to the Sellers' Knowledge, each of the Sellers making the respective Sellers' Guarantee, only makes the Sellers' Guarantee to its own Seller's Knowledge pursuant to Section 13.18;
- 13.1.9 the existence, on the Signing Date or the Closing Date, of any encumbrance or third party right of any sort in respect of any asset of a Group Company or of any Shares, which ceases to exist at the latest as of the Closing, shall not be deemed to entail the incorrectness of Sellers' Guarantee referring to the absence of such encumbrance or third party right and shall therefore not constitute a basis for a Purchaser's Claim;

whereby the Purchaser understands and herewith explicitly accepts that the provision of the Sellers' Guarantees has been negotiated between the Parties as a commercial method of allocating certain risks between the Sellers and the Purchaser within the limits set out in Sections 15 through 17 below, and that the Purchaser is not relying in any manner on the assumption that the Sellers have made investigations in respect of the correctness of the Sellers' Guarantees in Sections 13.5 through 13.16, beyond the limits set out in Sections 15 through 17 below.

13.2 Sellers' Status

As of the Signing Date and the Closing Date, the Sellers (i) have been duly incorporated or constituted under the laws of Germany or France, respectively, (ii) validly exist and (iii) are not subject to any insolvency or bankruptcy proceedings, whether opened, filed to be opened or rejected because of a lack of assets and no such proceedings are required to be filed to be opened according to the provisions of the German Insolvency Code (*Insolvenzordnung – InsO*) or, in case of the Seller 3, any comparable provisions under French laws.

13.3 Capacity of the Sellers

- 13.3.1 Each of the Sellers has the unrestricted and requisite power and authority to enter into this Agreement and to consummate the transactions contemplated under this Agreement.
- 13.3.2 For entering into this Agreement and consummating the transactions contemplated under this Agreement the Sellers do not require (except for the Clearances) any approval or consent of a third party and do not violate any applicable law or any decision by any court or Governmental Authority binding on a Seller. "**Governmental Authority**" shall mean any supranational, national, federal, state, provincial, country, municipal or local government, foreign or domestic, or the government of any political subdivision of any of the foregoing, or any regulatory or administrative authority or functions of or pertaining to government.

13.4 Ownership of Sold Shares; No Encumbrances

- 13.4.1 As of the Signing Date and the Closing Date the respective Seller is the sole and unrestricted legal and beneficial owner of the respective Sold Shares sold by it under this Agreement.
- 13.4.2 As of the Signing Date and the Closing Date, the respective Sold Shares sold by the respective Seller are free of any pledges, liens or other encumbrances, pending assignments or third party rights, are not subject to any trust arrangements (*Treuhandverhältnis*), silent partnership (*stille Beteiligung*), sub-participations (*Unterbeteiligung*) or similar arrangements, have been validly issued and have been fully paid in, either in cash or in kind and have not been repaid. As of the Signing Date and the Closing Date except for statutory rights or rights granted under the articles of association, as the case may be, no person has any pre-emptive right (*Vorkaufsrecht*), right of first refusal (*Vorerwerbsrecht*), subscription right (*Bezugsrecht*), option right (*Optionsrecht*), conversion right (*Wandlungsrecht*) or similar right in respect of the respective Sold Shares which have not been waived on the Signing Date.

13.5 Corporate Matters

- 13.5.1 As of the Signing Date and as of the Closing Date, the statements in Sections 2.1 through 2.5 are correct.
- 13.5.2 Other than the domination agreement entered into between 1-2-3.TV GmbH as subsidiary company and 123tv Beteiligungs GmbH as dominating company dated December 9, 2016, the Group Companies and 1-2-play GmbH are not party to a domination and/or profit and loss pooling agreement (*Beherrschungs- und/oder Gewinnabführungsvertrag*) or to any other enterprise agreement (*Unternehmensvertrag*) within the meaning of Sections 291 *et seqq.* AktG or a similar agreement under foreign law.
- 13.5.3 As of the Signing Date and the Closing Date the interests in the Subsidiaries, the Company 1 in the Company 2 and 1-2-play GmbH are free of any pledges, liens or other encumbrances, pending assignments or third party rights, are not subject to any trust arrangements (*Treuhandverhältnis*), silent partnership (*stille Beteiligung*), sub-participations (*Unterbeteiligung*) or similar, have been validly issued and are fully paid in, either in cash or in kind.
- 13.5.4 The Subsidiaries and 1-2-play GmbH have been duly established and are validly existing.

13.5.5 As of the Signing Date and the Closing Date, neither any Group Company nor 1-2-play GmbH directly or indirectly holds any shares, participations or equity interests (including by way of silent partnerships, sub-participations or trusts) in other Legal Entities other than stipulated under Section 2.

13.5.6 As of the Signing Date and the Closing Date, 1-2-play GmbH has no liabilities (*Verbindlichkeiten*) or any other obligation which may result in a payment by 1-2-play GmbH. 1-2-play GmbH is a dormant entity and has not conducted business since 2007.

13.6 No Insolvency or Similar Proceedings

As of the Signing Date and the Closing Date, no bankruptcy, insolvency or liquidation (whether mandatory or voluntary) proceedings concerning any of the Group Companies have been applied for by the respective Group Company or opened or rejected because of a lack of assets. There exist no legal requirements for the filing of insolvency proceedings pursuant to the German Insolvency Code.

13.7 Relations with Related Parties

13.7.1 The Sellers or any of the Sellers' Related Parties on the one side and the Group Companies or 1-2-play GmbH on the other side are only parties to the agreements listed in **Schedule 13.7.1** (collectively the "**Related Party Agreements**") and no other agreements between the Sellers or the Sellers' Related Parties on the one side and the Group Companies or 1-2-play GmbH on the other side exist.

13.7.2 Except for the claims set forth in **Schedule 13.7.1**, neither the Sellers nor any Sellers' Related Party has as of the Closing Date any claims against the Group Companies or 1-2-play GmbH.

13.8 No Transaction Costs, No Exit Bonuses

Except as set out in **Schedule 13.8**, the Group Companies and 1-2-play GmbH have no obligations or liabilities to pay any fees or commissions to any advisor, broker or finder or any transaction or exit bonuses to any managing director or employee of any of the Group Companies in connection with the sale of the Sold Shares as set out in this Agreement ("**Transaction Costs**") provided that fees incurred by a Group Company for legal or other professional advice predominantly rendered for the benefit of a Group Company or managing directors or employees of a Group Company shall not be considered as Transaction Costs.

13.9 Financial Statements

- 13.9.1 The Sellers have delivered to the Purchaser prior to the Signing Date the audited individual financial statements of 1-2-3.TV GmbH and the audited consolidated financial statements of 123tv Beteiligungs GmbH, in each case relating to the fiscal years ending on December 31, 2018, 2019 and 2020 (jointly the "**Audited Financial Statements**"). The Audited Financial Statements are attached hereto as **Schedule 13.9.1**.
- 13.9.2 The Audited Financial Statements have been prepared in accordance with German generally acknowledged accounting principles (*Grundsätze ordnungsmäßiger Buchführung*) according to the German Commercial Code (*Handelsgesetzbuch – HGB*) and present a true and fair view of the assets and liabilities, financial condition and results of operations (*Vermögens-, Finanz- und Ertragslage*) of the relevant Group Company/ies as of the relevant balance sheet date, based on the facts actually known by the management (*Geschäftsführung*) of the relevant Group Company as of the Signing Date. The Parties are in agreement that the Sellers' Guarantee under this Section 13.9.2 does not constitute an objective or hard guarantee (*objektive oder harte Bilanzgarantie*).
- 13.9.3 Unless disclosed otherwise in **Schedule 13.9.3**, in Schedules to or otherwise in this Agreement, from December 31, 2020 until Signing Date, the business operations of the Group Companies have been conducted in the ordinary course of business and consistent with past practice.

13.10 Material Agreements

- 13.10.1 **Schedule 13.10.1** contains a complete list of all agreements to which any Group Company is a party to and which as of the third (3rd) Business Day prior to the Signing Date meet one of the following criteria and under which either party or both parties have not yet fulfilled their main performance obligations (*Hauptleistungspflichten*), except for agreements concluded solely between the Group Companies ("**Material Agreements**"):

- (a) agreements in respect of (i) the acquisition, encumbrance or disposal of (y) shares or real estate, (z) participations in other Legal Entities or (ii) joint venture agreements;
 - (b) leasing agreements in respect of any movable assets (including equipment) with an annual net leasing fee of at least EUR 35,000;
 - (c) loan, credit or facilities agreements, overdrafts, used lines of credit, loan commitments including bonds as well as factoring agreements;
 - (d) agreements with suppliers of logistic and packaging services which provide for payment obligations in excess of EUR 50,000.00 in the calendar year 2021;
 - (e) agreements with the Top ten (10) broadcasting providers relating to the (expected) revenues in the calendar year 2021;
 - (f) exclusive supply agreements with the Top five (5) exclusive suppliers for the supply of brands relating to the (expected) revenues in the calendar year 2021;
 - (g) agreements relating to (x) the lease or license of software (except for standard, *i.e.* off-the shelf software), (y) hosting services and (z) the further development of software which are, in each case, essential for the operation of the online-shop of 1-2-3.TV GmbH as conducted as of the Signing Date and provide for payment obligations in excess of EUR 50,000.00 in the calendar year 2021;
 - (h) production agreements relating to the provision of services and production sites and provide for payment obligations in excess of EUR 100,000.00 in the calendar year 2021; and
 - (i) agreements which prevent the Group from competing with another market participant (*wettbewersbeschränkende Vereinbarung*).
- 13.10.2 Except as disclosed in Schedule 13.10.1, as of the third (3rd) Business Day prior to the Signing Date, no Material Agreement has been terminated *vis-à-vis* or by the relevant Group Company, and no party to a Material Agreement has given written notice of termination or indicated in writing that it will give notice of termination.
- 13.10.3 None of the Group Companies and none of their counterparties are currently in breach of any obligation under any of the Material Agreements that would entitle the relevant counterparty to terminate the relevant Material Agreement.
- 13.10.4 No Material Agreement, except as listed in Schedule 13.10.4, contains a provision which entitles the counterparty to prematurely terminate or materially amend such Material Agreement due to the conclusion or the implementation of this Agreement.

13.11 Real Estate

- 13.11.1 None of the Group Companies is the legal owner of any real estate or rights similar to real estate (*grundstücksgleiche Rechte*).
- 13.11.2 **Schedule 13.11.2** contains a true and complete list of the Group Companies' real estate lease agreements other than those defined as Material Agreement pursuant to Section 13.10.1(h).
- 13.11.3 The Group Companies can conduct their business operations to the extent and in the manner presently conducted on the business premises and operational areas identified in **Schedule 13.11.2** and **Schedule 13.10.1**; no additional business premises and/or operational areas are required.

13.12 Employment

- 13.12.1 **Schedule 13.12.1** contains a complete list of all managing directors and employees of the Group Companies (which will not disclose names but employee ID nos.) as of the third (3rd) Business Day prior to the Signing Date (the "**Employees**"), such list states for each of them the employee number, the job title, special dismissal protection and the amount of the yearly fixed gross salary. None of the Group Companies has terminated the service or employment agreement with any of the Employees and (ii) no Employee terminated its service or employment relationship with any of the Group Companies or has made or received a written offer to enter into a termination agreement.
- 13.12.2 **Schedule 13.12.2** contains (i) a list of all tariff and works council agreements as well as (ii) a description of general commitments (*Gesamtzusagen*) and company practices (*betriebliche Übungen*) exceeding in each individual case annual obligations of EUR 100.00 p.a. gross per employee applied at the Group Companies. No agreements on partial retirement (*Altersteilzeit*) and long term accounts (*Langzeitkonten*) exist at the Group Companies.
- 13.12.3 **Schedule 13.12.3** contains complete (anonymized) list of all freelancers currently – as of the third (3rd) Business Day prior to the Signing Date – deployed by the Group Companies.
- 13.12.4 All social security contributions have been paid to the full amount required by law and no additional social security contributions must be paid for previous or current freelancers of the Group Companies.

- 13.12.5 **Schedule 13.12.5** contains a complete (anonymized) list of all temporary workers currently – as of the third (3rd) Business Day prior to the Signing Date – deployed by the Group Companies. The Group Companies have complied with all legal requirements regarding labor leasing with respect to all current temporary workers listed in **Schedule 13.12.5** as well as all other temporary workers of the Group Companies within the last four (4) years prior to the Signing Date.
- 13.12.6 Except for the works council established at 1-2-3.TV GmbH, as of the Signing Date, no works council or comparable body of employee representation exists at the level of any of the Group Companies.
- 13.12.7 Except as disclosed in **Schedule 13.12.7**, no pension commitments or schemes of a collective nature apply to former or current managing directors or employees of the Group Companies or their respective dependents. The Group Companies have complied with the regulations of company pension schemes and in particular have paid all contributions due to company pension schemes and, to the extent required, to statutory insolvency protection.
- 13.13 Intellectual Property Rights and Information Technology
- 13.13.1 The trademarks and internet domains (collectively "**IP Rights**") listed in **Schedule 13.13.1** (the IP Rights listed in such Schedule the "**Owned IP Rights**") are, to the extent legally possible, owned by and, to the extent capable of registration, registered on behalf of the Group Companies as set forth in such **Schedule 13.13.1**. All payments required to maintain the Owned IP Rights have been timely made and all required applications for renewal have been timely filed.
- 13.13.2 Music and other copyright protected works that are not owned by the Group Companies but used for the Group Companies to conduct their own business as currently conducted are lawfully used by the Group Companies. Any copyright related contracts of the Group Companies provide for a remuneration in accordance with the applicable statutory law.
- 13.13.3 No ownership in IP Rights other than the Owned IP Rights is necessary for the Group Companies to conduct their own business as currently conducted. For the avoidance of doubt, the Parties agree and understand that the conduct of the Group Companies' business includes the sales and marketing of third-party products that are protected by the relevant third-party trademark owners.

- 13.13.4 The Group Companies have not granted any exclusive license with respect to any Owned IP Right to any third party.
- 13.13.5 The Group Companies have obtained in each case, to the extent legally possible, ownership or exclusive and unrestricted rights to all inventions, developments and work results which were made by its managing directors, employees and freelance workers. All such developments, inventions and work results are free of third party rights except for moral rights.
- 13.13.6 None of the Group Companies is subject to any pending judgement, injunction, order or decree issued against any Group Company which restricts the use of the Owned IP Rights by it. No third party is currently challenging the validity of the Owned IP Rights in writing towards any Group Company, except for those listed in **Schedule 13.13.6**.
- 13.13.7 **Schedule 13.13.7** contains a list of any material software applications specifically developed by, on behalf of or for the use of the respective Group Companies excluding any standard software (e.g. as operating system or data base software) and/or any open source software which is part of or is otherwise used in conjunction with such software ("**Proprietary Software**"). The respective Group Companies own all exclusive, world-wide, transferable, sub-licensable, royalty-free rights to use and exploit the Proprietary Software in object code and source code and the respective documentation for their own business purposes without limitation in time, including the rights to copy, modify, and further develop or have developed the Proprietary Software. As to publicly available open source software which is part of or is otherwise used in conjunction with any Proprietary Software, there is no copy-left effect and/or any other obligation to make any material parts of the source code of such Proprietary Software available to third parties due to such open source software on the basis of the current use by the Group Companies. The source code of any Proprietary Software has neither partly nor fully been made available to any third party (except in the ordinary course of business, in particular to developers and service providers) nor has the source code of any Proprietary Software been put in escrow for the benefit of any third party.

13.13.8 Except as otherwise set out in **Schedule 13.13.8**, during the last twelve (12) months prior to the Signing Date, the Group Companies did not suffer any material business disruption or material loss of data caused by a malfunction of the hardware and software technology systems and infrastructure (including, but not limited to, servers, operating software, applications, databases, interfaces, telephone systems, telecommunications and network equipment and disaster recovery systems) used in the business operations of the Group Companies (together "**Information Technology**"). The Information Technology is in a condition suitable for use and is owned, leased or otherwise lawfully used by the respective Group Company on the basis of valid contracts with providers or business partners and are used by them according to valid licenses.

13.14 Litigation; Legal Proceedings

No lawsuit or other proceeding is pending (*rechtshängig*) against any Group Company before any state court, arbitrator or Governmental Authority involving a claim (*Streitwert*) in excess of EUR 25,000 in the individual case (excluding costs and fees).

13.15 Permits; Compliance

13.15.1 The Group Companies operate their business with a fictitious indefinite broadcasting permission (*fingierte medienrechtliche Zulassung*). The Group Companies are in compliance with such permission and there exist no circumstances, other than the sale of the Sold Shares to the Purchaser, which could lead to a revocation or a restriction of such permission.

13.15.2 The Group Companies operate their business in compliance with all material applicable German and Austrian laws, including broadcasting law (*Rundfunkrecht*) and data protection law (*Datenschutzrecht*) that are material for the business operations of the Group Companies, in each case provided that such incompliance was not fully remedied prior to the Signing Date, and such non-compliance results in losses (including fines) exceeding an amount of EUR 50,000.00 in the aggregate.

13.15.3 Neither any of the Group Companies nor any of their managing directors or employees has in the last two (2) years prior to the Signing Date violated any anti-corruption laws.

13.15.4 The Group Companies have not received governmental subsidies (state aids as well as EU subsidies), in particular according to Art. 107 of the Treaty on the Functioning of the European Union (*Vertrag über die Arbeitsweise der Europäischen Union, AEUV*).

13.16 Insurance

Schedule 13.16 includes a complete list of all insurance policies maintained by or on behalf of the Group Companies including details of the insured risk, the insurance company and the policy number ("**Insurance Policies**"). All premiums under the Insurance Policies have been paid when due.

13.17 No Pre-Signing Leakage

Between the Effective Date and the Signing Date no Leakage other than Permitted Leakage has occurred.

13.17.1 "**Leakage**" shall mean

- (a) any dividend or other distribution or withdrawal (whether in cash or in specie) declared, paid or made by any Group Company or any repayment of share capital to any Prohibited Recipient; or
- (b) any repurchase, redemption or other acquisition by any of the Group Companies of its shares or interests from any Prohibited Recipient; or
- (c) any bonus payment or benefit payable to any member of the management board, director or employee (or any of their dependents (*Angehörige*)) of the Group Companies as a result of Closing or as a result of the Transaction other than regular bonus payments, payment of salaries or other benefits which are payable in the ordinary course of business of the respective Group Company; or
- (d) any assumption or fulfilment by any Group Company of liabilities of any Prohibited Recipient; or
- (e) any waiver by any of the Group Companies of a claim of any Prohibited Recipient; or
- (f) provision or repayment of loans, provision of any security or guarantee by any Group Company to any Prohibited Recipient; or

- (g) any payment or assumption of Transaction Costs (including for the avoidance of doubt the costs set forth in Schedule 13.8) by any Group Company to or of any Prohibited Recipient; or
- (h) any waiver, discount, deferral, release or discharge by any Group Company of any amount, obligation or liability owed to a Group Company by any Prohibited Recipient; or
- (i) any agreement, arrangement or other commitment by any Group Company to do or give effect to any of the matters referred to above.

13.17.2 Any internal administration costs of the Group Companies incurred in connection with the Transaction, any cost reimbursements paid to any managing directors or employees of the Group Companies in connection with the Transaction up to an amount of EUR 10,000 and any matter that is disclosed in **Schedule 13.17.2** shall not be prohibited and shall not constitute Leakage ("**Permitted Leakage**").

13.17.3 "**Prohibited Recipient**" means the Sellers and the Sellers' Related Parties.

13.18 Sellers' Knowledge

The Sellers' Guarantees which are deemed to be qualified by the expression "**Sellers' Knowledge**" pursuant to Section 13.1.6 shall only be deemed incorrect and only the respective Seller shall be liable with respect to such Sellers' Guarantee, if (i) Stefan Eishold with respect to Seller 1, (ii) Roland Eschmann with respect to Seller 2 and (iii) Erik de la Rivière with respect to Seller 3 has at the Signing Date after due inquiry of the individuals listed in **Exhibit 13.18** positive knowledge (*positive Kenntnis*) of the relevant Sellers' Guarantee being untrue or incorrect. Any further liability with respect to constructive knowledge (*fahrlässige Unkenntnis, Kennenmüssen*) or with respect to information available in any files of the Group Companies or the Sellers, but not positively known by the respective Seller having made the respective Sellers' Guarantee (*aktenmäßig verfügbare, aber nicht positive Kenntnis*), as well as any other form of imputed knowledge, such as, with regard to the knowledge of any other Seller, agents (*Erfüllungsgehilfen*) or advisors of the Sellers as well as managing directors or employees of the Group Companies, shall be explicitly excluded and waived and therefore do not form part of the respective Sellers' Knowledge. For the avoidance of doubt: In respect of the Sellers' Guarantees that are only made by each Seller individually as individual debtor, the term Sellers' Knowledge shall only mean the positive knowledge on the Signing Date of such Seller.

13.19 No further Representations or Warranties

- 13.19.1 The Sellers do not make any representations or warranties regarding the Sold Shares, the Group Companies and their business other than the Sellers' Guarantees. The Purchaser hereby expressly confirms and agrees to acquire the Sold Shares, the interests in the Group Companies and their business in the state they are in on the Closing Date based on the Purchaser's own inspection, examination and determination, including the due diligence investigation it and its Affiliates or any of its and its Affiliates' directors, officers, employees, representatives and advisors have conducted, without relying on any express or implied representations or undertakings given or undertaken by the Sellers, the Sellers' Affiliates or any of their respective (managing) directors, officers, employees, representatives and advisors (collectively the "**Sellers' Representatives**") in connection with this Agreement and the transactions contemplated hereby, except for the Sellers' Guarantees and any other covenants and indemnities expressly provided for in this Agreement.
- 13.19.2 Without limiting the foregoing, the Sellers do not make any representations or warranties, and the Purchaser has not relied on nor will it make any claim against any of the Sellers or any of the Sellers' Representatives, in respect of any budget, forecast, estimate or other projection of any nature and any due diligence information or documents unless explicitly covered by a Sellers' Guarantee.

14. SELLERS' COVENANTS

- 14.1 For the period between the Signing Date and the Closing Date, each of the Sellers shall in its capacity as shareholder of the Company 1 or Company 2, as the case may be, exercise its shareholder rights in order to ensure that the Group Companies (i) continue to operate their business in a manner consistent with past practice and (ii) do not:
- 14.1.1 perform any transactions under the German Transformation Act (*Umwandlungsgesetz*) or similar transactions;

- 14.1.2 resolve any amendments to or modifications of the articles of association of the Group Companies or enter into any agreements pursuant to Sections 291 *et seq.* AktG;
- 14.1.3 dissolve or liquidate any Group Company;
- 14.1.4 acquire, encumber or dispose of, (i) any shares or equity interests in any Legal Entity, (ii) any business units (*Geschäftsbereich*), or (iii) any real estate;
- 14.1.5 take out any loans or credits or assume the liability for third parties' debt except for (i) any intra-group loans between Group Companies and (ii) the utilization of existing credit lines and guarantee agreements (*Avalvereinbarungen*) by the Group Companies in the ordinary course of business;
- 14.1.6 mortgage, pledge, assign or transfer for security purposes or provide liens, charges or any other encumbrances on any of their material tangible or intangible assets in each case except as in accordance with the ordinary course of business and consistent with prior practice;
- 14.1.7 undertake any material lay-offs, material hirings (other than replacement hirings) or other material restructurings, in each case affecting a significant part of the workforce of any Group Company;
- 14.1.8 enter into, terminate or amend any Related Party Agreement;
- 14.1.9 commence any new branches of business or abandon branches;
- 14.1.10 terminate or materially amend a Material Agreement or conclude any long term agreement that cannot be terminated by the Group Companies within twelve (12) months after the Closing Date, except, in each case, in the ordinary course of business and consistent with past practice;
- 14.1.11 make investments in the fixed assets of more than EUR 50,000 in each individual case or in a series of related incidents, except in the ordinary course of business and consistent with prior practice;
- 14.1.12 withdraw any public permits held by a Group Company;
- 14.1.13 make any changes in the fixed and/or variable remuneration, other extra compensation, pensions or severance pay as well as make a commitment relating to the aforementioned issues, except, in each case, in the ordinary course of business, or due to commitments already existing on the Signing Date that have been Fairly Disclosed in the Data Room or in this Agreement, or in order to comply with the law.

- 14.1.14 employ or dismiss without good cause Employees with a fixed gross annual income of EUR 80,000.00 or more in the individual case safe for replacements which shall in any case be possible, provided that the Sellers shall inform the Purchaser of such replacement prior to entering into a binding contract;
- 14.1.15 negotiate, enter into or acknowledge collective bargaining agreements;
- 14.1.16 actively initiate or conclude legal proceedings with an amount in dispute in excess of EUR 25,000 or more in each individual case; or
- 14.1.17 enter into any agreement or commitment to do any of the foregoing;

in each case (i) unless the respective measure is set out in **Exhibit 14.1** or contemplated under this Agreement, or (ii) the Purchaser has consented to the respective measure at least in text form (*Textform*) pursuant to Section 126b BGB which consent shall not be unreasonably withheld or delayed. The Purchaser's consent shall be deemed granted if and to the extent no response from or on behalf of Purchaser is received by the Sellers at least in text form within three (3) Business Days after the Purchaser has received the request for consent.

- 14.2 For the period between the Signing Date and the Closing Date the Sellers shall further procure that no Leakage occurs, unless (i) the respective measure is set out in **Exhibit 14.2** or (ii) the Purchaser has consented to the respective measure at least in text form after the Signing Date ((i) and (ii) together "**Post-Signing Permitted Leakage**"). The Purchaser and the Sellers hereby agree that (i) all costs of Mazars incurred by any Group Company in connection with (x) the consolidated financial statements of the Group and/or the Effective Date Accounts or any reconciliation from German GAAP to US GAAP of any financial data or financial statements of any Group Company, (y) the Purchaser's financing including the bond issued by iMedia for the purpose of the Purchaser's financing and the Form 8-K filing of iMedia or (i) related to the increase in liability insurance costs of Mazars shall constitute Permitted Leakage and Post-Signing Permitted Leakage and (ii), in the event this Agreement is duly terminated, that the Purchaser shall reimburse the Sellers or, upon instruction of the Sellers, the Group Companies for any costs mentioned under (i). This sentence supersedes **Schedule 13.17.2** and **Exhibit 14.2**.
- 14.3 The Sellers shall procure that any Related Party Agreements are terminated and fulfilled as per the Closing Date.
- 14.4 The obligations of the Sellers under Sections 14.1, 14.2 and 14.3 are collectively referred to as the "**Sellers' Covenants**".
- 14.5 Five (5) Business Days prior to the Scheduled Closing Date at the latest, the Sellers shall provide to the Purchaser a notice disclosing any Leakage known by the Seller on such date, specifying the respective amounts and dates on which the Leakage occurred (the "**Known Leakage Amount**"). The Known Leakage Amount will be deducted from the Preliminary Purchase Price payable at the Scheduled Closing Date as set forth in Section 4.7.

15. REMEDIES

- 15.1 In the event of a breach of a Sellers' Guarantee or Sellers' Covenant (each a "**Breach**") (other than in the event of those Breaches which are set forth in Section 15.2), (i) the Seller(s) having committed the Breach shall put the Purchaser, or at the election of the Purchaser, the respective Group Company, into the position the Purchaser, or the respective Group Company, as the case may be, would have been in if the respective Breach had not occurred (restitution in kind – *Naturalrestitution*) or (ii) if the relevant Seller is unable to achieve, or finally refuses (which refusal shall lie in the sole and unfettered discretion of such Seller), the restitution in kind within two (2) months after having been notified by the Purchaser of the Breach in accordance with Section 15.5.1 or a restitution in kind is impossible or commercially unreasonable, pay monetary damages (*Schadensersatz in Geld*) to the Purchaser or at the election of the Purchaser the respective Group Company (the claims of the Purchaser under (i) and (ii) each a "**Purchaser's Claim**"). For purposes of determining the liability of the Sellers for the losses incurred by the Purchaser or the respective Group Company, as the case may be, the legal principles of calculation of damages, mitigation of damages and offsetting of advantages (*Schadensberechnung, Schadensminderung und Vorteilsanrechnung*) pursuant to Sections 249 *et seq.* BGB shall apply, provided that (i) any potential or actual reduction in value (*Minderung*) of the Sold Shares or the Group Companies and any damages based on the allegation that the Purchase Price (or any part thereof) was calculated on incorrect assumptions (including on an incorrect EBIT or EBITDA), (ii) any consequential or indirect damages (*Folge- oder mittelbare Schäden*) and lost profit (*entgangener Gewinn*), (iii) any frustrated expenses (*vergebliche Aufwendungen*), and (iv) any incidental or internal costs and expenses incurred by the Purchaser or the Group Companies shall be excluded and not be taken into account (the "**Losses**"); items pursuant to (ii) shall not be excluded and shall be taken into account in the definition of Losses to the extent they are reasonably foreseeable. In no event shall any multipliers be taken into account in determining the amount of Losses.
- 15.2 In the event of a breach of the Sellers' Guarantees in Section 13.8 (No Transaction Costs, No Exit Bonuses) and Section 13.17 (No Pre-Signing Leakage) or the Sellers' Covenant in Section 14.2 (No Post-Signing Leakage), the Sellers in breach of the respective Sellers' Guarantee or Sellers' Covenant shall, subject to Closing having occurred, comprehensively compensate, indemnify and hold harmless the Purchaser or, upon request of the Purchaser, the relevant Group Company from and against all damages, losses, costs, expenses, including, by paying to the Purchaser or at the Purchaser's request to the relevant Group Company concerned an amount equal to the amount of the Leakage or the Transaction Costs on a Euro for Euro basis (each a and collectively the "**Leakage Claim(s)**"). For the avoidance of doubt, any Known Leakage Amount deducted from the Preliminary Purchase Price shall not constitute a Leakage Claim.

- 15.3 The relevant Seller(s) shall not be liable for a Purchaser's Claim if and to the extent that
- 15.3.1 the matter to which the Purchaser's Claim relates has been considered by the Purchaser in the determination of the Enterprise Value as described in **Exhibit 15.3.1**;
 - 15.3.2 the matter to which the Purchaser's Claim relates has been deducted or is otherwise reflected as deduction or negative item in the Purchase Price Calculation Items;
 - 15.3.3 the Losses can be recovered or would be recoverable by claims of the Purchaser or the Group Companies against third parties, including under any insurance policy, such as the W&I Insurance, or can be recovered or would be recoverable under any insurance policy maintained by, or for the benefit of, any of the Group Companies existing immediately prior to the Closing if such insurance had continued to be in effect after the Closing;
 - 15.3.4 the Purchaser, an Affiliate of the Purchaser or after Closing a Group Company has participated in causing (*mitverursacht*) the Loss pursuant to Section 254 para. 1 BGB or failed to comply with its duty to mitigate damages pursuant to Section 254 para. 2 sentence 1 BGB;
 - 15.3.5 the Purchaser's Claim does result from, or is increased by, the passing of, or any change in any law, statute, ordinance, rule, regulation, common law rule or administrative practice of any government, governmental department, agency or regulatory body after the Signing Date;
 - 15.3.6 the underlying facts or circumstances on which the Purchaser's Claim is based were actually known (*positives Wissen*) by the Purchaser on the Signing Date, whereby the knowledge of the persons listed in **Exhibit 15.3.6** shall be attributed to the Purchaser. Without limitation of the foregoing, the following facts and circumstances are deemed to be actually known by the Purchaser, if and to the extent such facts and circumstances were Fairly Disclosed in:
 - (a) this Agreement including all Schedules and Exhibits;
 - (b) the answers provided to the questions of the Purchaser and its advisors and representatives in text form;
 - (c) the Information Memorandum relating to the Group provided by GCA Altium;
 - (d) the Financial Fact Book relating to the Group provided by KPMG;
 - (e) the Tax Fact Book relating to the Group provided by KPMG;
 - (f) the Commercial Fact Book provided by Ommax;

- (g) the documents contained in the electronic data room relating to the Group hosted by the data room provider *imprima* from July 23, 2021 through September 3, 2021 (the "**Data Room**"). For identification purposes, one (1) USB Stick shall be handed over to the notarizing notary public with the instruction to keep it for evidence purposes for a period of ten (10) years or, if earlier, until receipt of a joint instruction from the Parties on their further use. After lapse of that period the notary is entitled to destroy the USB Stick without further notice;
- (h) the documents, which have been provided to the Purchaser's legal advisors Noerr with email of Matthias Uelner on September 9, 2021 and saved on an additional USB-Stick; Section 15.3.6(g) sentences 2 and 3 shall apply *mutatis mutandis*;

Whereas "**Fairly Disclosed**" shall be a matter only if (i) the disclosure was made in a manner and in such reasonable detail that the relevant risks could be identified by applying the standard of care of a reasonable businessman and (ii) the relevant documents were disclosed in a part of the Data Room in which a professional reader instructed to exercise a due diligence could expect to find them.

15.4 Section 442 BGB and Section 377 HGB shall not apply.

15.5 In the event of an actual or potential Purchaser's Claim that is not subject to the W&I Cap, the following principles shall apply:

15.5.1 The Purchaser shall without undue delay, but not later than twenty (20) Business Days after the Purchaser or, after the Closing, any of the Group Companies, becomes aware of any such alleged Breach, notify the respective Seller in writing, describing the potential Purchaser's Claim in reasonable detail (to the extent available to the Purchaser at such time) including the underlying facts and the legal grounds and, to the extent practical and possible, state the estimated amount of the Purchaser's Claim (a "**Breach Notice**"). The Purchaser shall procure that the Sellers and their advisors are given access to the premises, books and records, management and employees of the Purchaser and the Group Companies as reasonably required by the relevant Seller(s) in order to examine the potential Breach.

15.5.2 In the event that in connection with a Breach any claim or demand of a third party is asserted against the Purchaser or any of the Group Companies (a "**Third Party Claim**"), the Purchaser shall, and shall procure after Closing that the Group Companies, provide the relevant Seller(s), together with the Breach Notice or as soon as possible thereafter, copies of all documents relating to the Third Party Claim. The Purchaser shall, and shall procure after Closing that the Group Companies, cooperate with the relevant Seller(s) in respect of the Third Party Claim and defend or settle each Third Party Claim upon the request and in accordance with the instructions of the relevant Seller(s). The relevant Seller(s) shall in any event be entitled to participate in, and direct, any and all negotiations and correspondence with the third party in relation to the Third Party Claim and the Purchaser shall, and shall procure after Closing that the Group Companies, the relevant Seller(s) and their legal advisors are given the reasonable opportunity to do so, including by providing promptly all correspondence regarding the Third Party Claim, and giving the relevant Seller(s) and their legal advisors due advance notice of any meetings and scheduled communications in this respect. No action by a Seller in this respect shall however be construed as an acceptance of a Breach (*keine Anerkennung*).

15.5.3 In no event shall the Purchaser or any of the Group Companies be entitled to acknowledge or settle a claim or permit any such acknowledgement or settlement without the relevant Seller's/Sellers' prior written consent to the extent that such claims may result in a liability of the relevant Seller(s) under this Agreement.

15.5.4 To the extent that a Seller is in Breach, all costs and expenses incurred by such Seller in defending such claim shall be borne by such Seller, unless such costs are covered by the third party that has raised the Third Party Claim. To the extent such Seller was not in Breach reasonable costs incurred by the Sellers in connection with the defense shall be borne by the Purchaser if not covered by the third party that has raised the Third Party Claim.

16. EXPIRATION AND LIMITATION OF CLAIMS OF PURCHASER

16.1 The Sellers shall not be liable for Purchaser's Claims based on a Breach of Seller Guarantees (i) if the Purchaser's Claim (relating to 100% of the damage, *i.e.* potentially against all Sellers) does not exceed an amount of EUR 30,000 (in words: thirty thousand Euro) (the "**De Minimis Amount**") and (ii) if the amount of all Purchaser's Claims exceeding the De Minimis Amount does not exceed an amount of EUR 200,000 (in words: two hundred thousand Euro) in which case the Sellers shall be liable for the relevant Purchaser's Claim from the first Euro (*Freigrenze*) (the "**Basket**"). It is the common understanding of the Parties that in all cases in which the W&I Cap applies to Purchaser's Claims based on a Breach of Seller Guarantees the De Minimis Amount and the Basket will not be of relevance. The limitations pursuant to sentence 1 shall not apply to Purchaser's Claims based on Breaches of the Sellers' Guarantees under Section 13.2 (Sellers' Status) through 13.4 (Ownership of Sold Shares; No Encumbrances) and Leakage Claims (collectively "**Fundamental Claims**").

- 16.2 The overall liability of each of the Sellers for claims of the Purchaser under or in connection with this Agreement shall be limited as follows:
- 16.2.1 For all (i) Purchaser's Claims in relation to a Breach of a Sellers' Guarantee (other than Fundamental Claims) and (ii) Tax Indemnification Claims relating to Pre-Effective Date Indemnified Taxes (for the avoidance of doubt, not including any Tax Indemnification Claims relating to Post-Effective Date Indemnified Taxes) the overall liability of each of the Sellers shall be limited to and in no event exceed EUR 1.00 (the "**W&I Cap**" and such Purchaser's Claims, however, including Fundamental Claims pursuant to Section 13.2 (Sellers' Status) through 13.4 (Ownership of Sold Shares; No Encumbrances) collectively the "**Insured Claims**").
- 16.2.2 In any case the overall liability of each of the Sellers against the Purchaser under or in connection with this Agreement shall be limited to and in no event exceed the amount which is equal to (i) an amount equal to the Purchase Price (actually received by all Sellers; including, for the avoidance of doubt, the payments made on behalf of the Sellers to 1-2-3.TV GmbH pursuant to Sections 4.7.1 and 4.7.2) multiplied with the respective Seller's Sellers' Ratio 3 plus (ii) an amount equal to the Earn-out Amounts (actually received by all Sellers; including, for the avoidance of doubt, the payments made on behalf of the Sellers to 1-2-3.TV GmbH pursuant to Section 6.13) multiplied with the respective Seller's Sellers' Ratio 3, it being understood that only such parts of the Vendor Loan Amount shall be deemed received by the relevant Seller pursuant to (i) above that have been paid back under the Vendor Loan Agreement (including, for the avoidance of doubt, the payments made on behalf of the Sellers to 1-2-3.TV GmbH pursuant to Section 6 of the Vendor Loan Agreement).
- 16.3 All claims under this Agreement shall become time-barred (*verjähren*) eighteen (18) months after the Closing Date, except for:
- 16.3.1 claims for specific performance (*Primärerfüllungspflichten*) which shall become time-barred pursuant to statutory law;
- 16.3.2 claims based on Breaches of the Sellers' Guarantees under Section 13.2 (Sellers' Status) through 13.4 (Ownership of Sold Shares; No Encumbrances) and claims under Section 19, which shall become time-barred four (4) years after the Closing Date;
- 16.3.3 Tax Indemnification Claims, which shall become time-barred in accordance with Section 18.6;
- 16.3.4 claims under Section 21, which shall become time-barred in accordance with Section 21.3; and
- 16.3.5 claims arising as a result of willful or intentional (*vorsätzliche Handlung*) breach of a Party's obligation under this Agreement which shall become time-barred pursuant to statutory law.
- 16.4 Section 203 BGB shall not apply unless the relevant Parties agree in writing that the expiry period shall be tolled (*gehemmt*) on the basis of pending settlement negotiations.

- 16.5 The limitations and exclusion of claims under this Agreement shall not apply to claims of the Purchaser arising as a result of willful or intentional breach of a Seller's obligation under this Agreement, in which cases German statutory law shall apply.
- 16.6 The Purchaser shall not be entitled to recover from the Sellers more than once in respect of the same damage suffered (no double dip). In particular, without limitation, the foregoing shall apply where one and the same set of facts (*Sachverhalt*) qualifies under more than one provision entitling the Purchaser to a claim or remedy under or in connection with this Agreement.
- 16.7 Any Purchaser's Claims are subject to the condition precedent that Closing has occurred.
- 16.8 To the extent this Agreement provides primary obligations (*Primärleistungsverpflichtungen*) under this Agreement and no specific remedies in case of breaches of such primary obligations are provided for under this Agreement, Section 15.1 shall apply *mutatis mutandis* as exclusive remedy for secondary claims. The right to claim specific performance shall remain unaffected. In the event this Agreement stipulates specific remedies in case of breaches of primary obligations, exclusively such remedies shall apply.
- 16.9 Unless explicitly set out in this Agreement and to the extent permitted by law, any further claims and remedies against the Sellers, irrespective of which nature, amount or legal basis, are hereby expressly waived and excluded, in particular, without limitation, claims under pre-contractual fault (Sections 311 para. 2 and 3, 241 para. 2 BGB), for breach of contract (*Pflichtverletzung aus dem Schuldverhältnis, culpa in contrahendo*), on the basis of statutory warranty provisions (*gesetzlicher Gewährleistungsbestimmungen*) or tort (*unerlaubter Handlung*) as well as any and all other claims, which could, due to a withdrawal (*Rücktritt*), challenging (*Anfechtung*), defects of the legal basis of the Agreement (*Störung der Geschäftsgrundlage*), reduction of the Purchase Price or any other reasons result in the termination (*Beendigung*), invalidity (*Unwirksamkeit*) or winding up (*Rückabwicklung*) of this Agreement, an amendment of its content or a repayment or reduction of the Purchase Price, unless such claim is based on a willful act (*vorsätzliche Handlung*) of or fraudulent misrepresentation (*arglistige Täuschung*) by a Seller.
- 16.10 The Parties agree that
- 16.10.1 no managing director, employee, representative or advisor of any Group Companies or of the Sellers, except for the persons belonging to the Sellers' deal team as listed in **Exhibit 16.10.1**, is or has been authorized to act as vicarious agent or knowledge representative (*Erfüllungs- oder Verhandlungsgehilfe oder Wissensvertreter*) of the Sellers in connection with the conclusion of this Agreement and shall in no event be considered as such;
- 16.10.2 the Sellers shall not be liable towards the Purchaser for willful acts or fraudulent misrepresentations of vicarious agents or knowledge representatives of any Seller, except for the persons belonging to the Sellers' deal team as listed in **Exhibit 16.10.1**.

- 16.11 All payments by a Seller on a Purchaser's Claim shall be considered a reduction of the Purchase Price in the relationship between the respective Seller and the Purchaser.
- 17. W&I INSURANCE**
- 17.1 The Purchaser confirms to the Sellers
- 17.1.1 that it has taken out on its own cost warranty and indemnity insurance under an insurance policy (the "**W&I Insurance**"; the relevant insurance provider(s) as identified therein, collectively, the "**Insurer**") at the W&I Costs; a copy of the final insurance policy is attached hereto as **Exhibit 17.1.1**;
- 17.1.2 the W&I Insurance has been entered into on a non-recourse basis to the effect that there will not be any subrogation of claims against the Sellers from the Purchaser to the Insurer.
- 17.2 The Purchaser undertakes vis-à-vis the Sellers not to subsequently amend or terminate or take a measure which leads to non-application of (i) any non-recourse provision of the W&I Insurance or (ii) the W&I Insurance to the extent that this has a negative effect for the Sellers, in each case of (i) or (ii) without the prior written consent of the Sellers.
- 17.3 The costs for the W&I Insurance amount to EUR 254,904 (incl. VAT and other taxes) (the "**W&I Costs**").
- 17.4 The Purchaser undertakes not to raise any claims against the Sellers and undertakes to indemnify and hold the Sellers harmless from and against (i) any Insured Claims raised against Sellers by any Affiliates of the Purchaser (including the Group Companies) and/or the Insurer, regarding all amounts in excess of the W&I Cap and/or (ii) any claims pursuant to the Bring Down Certificate. With respect to the Insured Claims pursuant to Sections 13.2 through 13.4, the Purchaser shall first raise its claims up to the limit of liability under the W&I Insurance against the Insurer and only if and to the extent the limit of liability is reached under W&I Insurance the Purchaser may raise claims against the Sellers; Section 16.2.2 remains unaffected. Any liability for Insured Claims pursuant to Sections 13.2 through 13.4 in excess of the limit of liability under the W&I Insurance can be claimed from the Sellers without prior recourse to the W&I Insurance.
- 18. TAX INDEMNITY**
- 18.1 The following terms shall have the following meanings:
- 18.1.1 "**Post-Effective Date Indemnified Tax(es)**" means (a) any Tax(es) imposed on the Group Companies or 1-2-play GmbH relating to the period from the Effective Date up to and including the Closing Date in connection with (i) any Leakage (including any Permitted Leakage), (ii) any breach of any of the Seller's Covenants pursuant to Section 14.1(ii) and/or (iii) measure that qualifies for tax purposes as a constructive dividend (*verdeckte Gewinnausschüttung*) and (b) any Tax(es) imposed on the Group Companies or 1-2-play GmbH in connection with the Transaction Bonuses and the settlement of the claims thereunder.
- 18.1.2 "**Pre-Effective Date Indemnified Tax(es)**" means any Tax(es) imposed on the Group Companies or 1-2-play GmbH (or any legal successor) relating to the Pre-Effective Date Tax Period irrespective of whether assessed before or after the Closing Date.

- 18.1.3 "Pre-Effective Date Tax Period" means (i) any taxable period (*Veranlagungszeiträume, Erhebungszeiträume, Voranmeldungszeiträume*) ending on or before the Effective Date and (ii) in respect of any taxable period (*Veranlagungszeiträume, Erhebungszeiträume, Voranmeldungszeiträume*) running on the Effective Date the period from the beginning of such taxable period up to and including the Effective Date;
- 18.1.4 "Tax" means any taxes (*Steuern*) and ancillary surcharges (*steuerliche Nebenleistungen*) within the meaning of Section 3 para. 1 through 4 of the German Fiscal Code (*Abgabenordnung – AO*) and similar or comparable taxes and ancillary surcharges levied under the laws of a foreign jurisdiction, including all payment obligations under a withholding obligation and all payment obligations under a secondary liability for taxes owed by another taxpayer, and all other custom duties and other charges and levies under public law;
- 18.1.5 "Tax Audit" means any Tax audit, inspection or similar investigation by any Tax Authority (other than routine matters of a minor nature);
- 18.1.6 "Tax Authority" means any taxing or other authority competent to impose any liability in respect of Taxes or responsible for the administration or collection of taxation or enforcement of any law in relation to Taxes;
- 18.1.7 "Tax Proceeding" means any administrative or judicial proceeding or action (including but not limited to Tax assessments, Tax Audits, appeals, court proceedings or decisions, meetings with Tax Authorities, correspondence by letter, fax message or email with any Tax Authority); and
- 18.1.8 "Tax Return" means any Tax return (including any Schedule or attachment thereto and including the filing of amended Tax returns) filed or to be filed by the Group Companies relating to the Pre-Effective Date Tax Period.
- 18.2 The Sellers shall, as partial debtors (*Teilschuldner*) in proportion to their respective Seller Ratio 3, pay at the Purchaser's discretion either (i) to the relevant Group Company or (ii) to the Purchaser, the amount of any Pre-Effective Date Indemnified Taxes and any Post-Effective Date Indemnified Taxes (the claim for any such payment a "Tax Indemnification Claim"), unless and to the extent
- 18.2.1 the respective Pre-Effective Date Indemnified Tax or Post-Effective Date Indemnified Tax has been paid to the competent Tax Authority by the Effective Date and with respect to Post-Effective Date Indemnified Taxes with respect to Section 18.1.1(b) on or after the Closing Date;
- 18.2.2 the respective Pre-Effective Date Indemnified Tax or Post-Effective Date Indemnified Tax is reflected either as a tax liability (*Steuerverbindlichkeit*) or as a tax accrual (*Steuerrückstellung*) in the Effective Date Accounts and such tax liability or tax accrual has reduced the Purchase Price;
- 18.2.3 none of the relevant Group Companies (or any legal successor) has collected a claim for repayment, reimbursement or indemnification of the respective Pre-Effective Date Indemnified Tax or Post-Effective Date Indemnified Tax against a third party other than a claim against a Tax Authority;

- 18.2.4 the respective Pre-Effective Date Indemnified Tax or Post-Effective Date Indemnified Tax is the result of any change in the accounting and taxation principles or practices of the Group Companies (including methods of submitting Tax Returns) or any transaction, action or omission (including any change in the exercise of any Tax election right, termination of any Tax consolidation scheme, approval or implementation of any reorganization measure) carried out or effected by the Purchaser, any Affiliate of it, or – after the Closing Date – by any Group Company, except that this exclusion shall not apply where any such transaction or action is carried out or effected by the respective Legal Entity concerned (i) with the consent of the Sellers, (ii) in order to comply with mandatory law, or (iii) pursuant to a legally binding commitment of the Group Companies created on or before Closing; or
- 18.2.5 the respective Pre-Effective Date Indemnified Tax or Post-Effective Date Indemnified Tax cannot or could not be avoided by offsetting taxable profits against any Tax loss carry-backs or Tax loss carry-forwards (or any other Tax credit, allowance, deduction or similar Tax item) arising from any losses in the Pre-Effective Date Period (including as a result of subsequent Tax audits) which have not been used to set off any other taxable profits arising in the Pre-Effective Date Period.
- 18.3 Any payment on the Tax Indemnification Claim shall be due and payable within ten (10) Business Days after the Sellers have received a written payment request including a copy of the relevant Tax assessment notice (*Steuerbescheid*) of the competent Tax Authority, but in no case earlier than two (2) Business Days before the Tax to be indemnified is due and payable to the Tax Authority. On request of the Sellers, the Purchaser shall provide to the Sellers in respect of any Post-Effective Date Indemnified Tax for which the Purchaser has raised a Tax Indemnification Claim any document, information or data which may enable the Sellers to review the validity of the indemnification request. On request of the Sellers, the Purchaser shall, and shall ensure that the relevant Group Company does, apply for a deferred payment date (*Aussetzung der Vollziehung*). If a Tax being subject to a Tax Indemnification Claim is not finally assessed but the respective Tax is due and payable, any indemnification payment shall be considered as an advanced payment to the Purchaser. If subsequently the Tax for which the advanced payment has been made is reduced by way of Tax assessment or otherwise lowered, the difference between the higher advanced payment made by the Sellers and the lower Tax liability shall be reimbursed by the Purchaser to the Sellers within ten (10) Business Days after the respective Group Companies' receipt of the respective refund, including all interest related thereto (minus any Taxes levied thereon).
- 18.4 The Parties shall cooperate on Tax matters relating to Post-Effective Date Indemnified Taxes) as follows:
- 18.4.1 After the Closing Date, the Purchaser shall procure that the Group Companies (i) do not declare without the prior written consent of the Sellers that must not be unreasonable withheld any Post-Effective Date Indemnifiable Tax which gives rise to a Tax Indemnification Claim ("**Relevant Tax Matter**") in a Tax Return or other Tax related written correspondence with the Tax Authorities, (ii) forward all such written correspondence except for self-assessment notices with respect to wage tax, VAT and other self-assessed taxes (*Lohnsteueranmeldungen, Umsatzsteueranmeldung, sonstige Anmeldungsteuern*) at least thirty (30) Business Days before filing to the Sellers for review and comments and (iii) comply in respect of Relevant Tax Matters with all instructions issued by the Sellers to the extent in line with applicable laws and regulations (including published guidelines of the Tax Authorities).
- 18.4.2 After the Closing Date, the Purchaser shall procure that the Sellers will be fully and timely notified of any Tax Proceedings relating to a Relevant Tax Matter ("**Tax Notification**"); in particular, the Sellers shall be notified, within ten (10) Business Days after its receipt, of the receipt by any Group Company of any Tax assessment notice and other administrative order (*Verwaltungsakt*) and other written requests and statements made by any Tax Authority relating to a Relevant Tax Matter; any Tax Notification shall include copies of the relevant documents received by the relevant Group Company; the Purchaser shall procure that all Group Companies will grant the Sellers (and their representatives and counsel) the opportunity to participate in any Tax Proceedings relating to Relevant Tax Matters from the beginning until the end (in particular, in meetings with the Tax Authorities) and comply with all reasonable instructions issued by the Sellers in line with applicable laws with respect to Tax Proceedings (including instructions to challenge and litigate Tax assessment notices or other administrative orders (*Verwaltungsakte*)); all costs and expenses of the Group Companies and the Purchaser in respect of any Tax Proceeding initiated on request of the Sellers are to be borne by the Sellers. No Tax assessment notice received by any Group Company from a Tax Authority relating to any Relevant Tax Matter shall become legally binding without the prior written approval of the Sellers which shall not be unreasonably withheld or delayed.

- 18.5 All payments under this Section 18 shall be treated as a reduction or increase of the Purchase Price and, if and to the extent payments are made to any of the Group Companies, such payments shall be construed and deemed as contributions made by the Purchaser into the relevant Group Company and shall be treated as reduction of the Purchase Price between the Parties.
- 18.6 Any claims of the Purchaser under this Section 18 shall become time-barred as upon expiry of six (6) months after the last assessment of the relevant Tax that cannot be changed anymore has become final and non-appealable (*formell und materiell bestandskräftig*), however, with respect to Post Effective Indemnified Taxes, in any event five (5) years after the Closing Date. The limitation periods shall only be suspended (*gehemmt*) in accordance with Section 16.4.
- 18.7 Sections 16.2, 16.4, 16.6, 16.7, 16.8 and 17 shall apply (*mutatis mutandis as applicable*) to any Tax Indemnification Claim. Any other limitations and exclusions stipulated in any other provision of this Agreement than this Section 18 with respect to claims of the Purchaser, including but not limited to all other provisions of Sections 15 and 16, shall not apply to any Tax Indemnification Claims.
- 18.8 Section 377 HGB and Section 442 BGB shall not apply.
- 18.9 For the avoidance of doubt, each Seller shall only be liable as partial debtor (*als Teilschuldner*) for any Tax Indemnification Claim in proportion to its respective Seller Ratio 3.

19. OBLIGATIONS WITH REGARD TO TRANSACTION BONUSES

- 19.1 The Purchaser undertakes vis-à-vis the Seller to procure that in case that 1-2-3.TV GmbH receives payments on the Transaction Bonuses including the Transaction Bonus Tax by or on behalf of the Sellers including by abbreviation of payment by the Purchaser pursuant to this Agreement that (i) the relevant Transaction Bonus Tax is without undue delay paid to the relevant tax authorities and (ii) the remaining amount after deduction of (i) are without undue delay paid to the 1-2-3.TV Managers in accordance with the Transaction Bonus Settlement Agreements.
- 19.2 The Sellers shall indemnify the Purchaser or, upon request of the Purchaser, 1-2-3.TV GmbH from any liabilities and costs (other than internal costs) with respect to the Transaction Bonuses, in particular with respect to the execution and implementation of the Transaction Bonus Settlement Agreements (including liabilities resulting from the employer's share of the social security contributions attributable to the Transaction Bonuses).

20. PURCHASER'S AND GUARANTOR'S GUARANTEES

- 20.1 The Purchaser and the Guarantor hereby each guarantees to the Sellers each by way of an independent guarantee pursuant to Section 311 para. 1 BGB that the statements set forth in Sections 20.1.1 and 20.1.2 (each a "**Purchaser's Guarantee**" and collectively the "**Purchaser's Guarantees**") are correct as of the Signing Date and as of the Closing Date, it being understood that such statements shall not constitute quality guarantees concerning the object of the purchase (Garantien für die Beschaffenheit der Sache) pursuant to Sections 443 para. 1, 444 BGB.

20.1.1 Capacity

- (a) The Purchaser and the Guarantor each have the unrestricted and requisite power and authority to enter into this Agreement and to consummate the transaction contemplated under this Agreement.
- (b) Entering into this Agreement by the Purchaser and the Guarantor and consummating the transaction contemplated under this Agreement by the Purchaser, do not require any approval or consent or waiver to be obtained by any Governmental Authority or third party and do not violate any applicable law or any decision by any court or Governmental Authority binding on the Purchaser or the Guarantor.
- (c) There is no action, suit, investigation or other proceeding pending against the Purchaser or the Guarantor before any Governmental Authority which in any manner challenges or seeks to prevent, enjoin, alter or materially delay the execution or consummation of this Agreement.

20.1.2 Corporate Matters

- (a) The Purchaser and the Guarantor have been duly incorporated, validly exist and no insolvency or bankruptcy proceedings concerning the Purchaser or the Guarantor have been opened, filed to be opened or rejected because of a lack of assets or are required to be filed to be opened.
- (b) The Purchaser is acquiring the Sold Shares at its own account.

20.2 In the event that the Purchaser or the Guarantor is in breach of a Purchaser's Guarantee, the relevant Party in breach shall indemnify and hold harmless each of the Sellers from any damages incurred by the respective Seller.

21. PURCHASER'S INDEMNITIES AND COVENANTS

21.1 Subject to the Closing having occurred, the Purchaser shall (i) not, and shall procure that the Group Companies do not, make any claims against any of the Sellers, or the Sellers' Representatives (collectively the "**Beneficiaries**"), on whatever legal ground, in connection with (x) this Agreement, its preparation or consummation, or the Transaction, or (y) in respect of any act or omission of such Beneficiary prior to the Closing Date in its capacity as direct or indirect shareholder, board member, employee, representative or advisor of a Seller or a Group Company and (ii) indemnify the Beneficiaries against any such claim. This Section 21.1 shall not apply to claims specifically provided for under this Agreement and to claims that are based on intentional breaches of contractual provisions and tort law or on criminal acts.

21.2 The Purchaser undertakes towards each of the Sellers to procure that within the period commencing on the Closing Date and ending thirteen (13) months after the Closing Date there will be no payment by a Group Company that could give rise to a claim by a Group Company against any of the Sellers following a contestation pursuant to Section 135 German Insolvency Act. The Purchaser shall indemnify and hold the Sellers harmless against any claim raised in connection with, or resulting from, a breach of the above undertaking.

21.3 Claims pursuant to Sections 21.1 and 21.2 above shall become due and payable at the same time as the claims they are based on and shall become time-barred six (6) months after the date on which the underlying claim has become time-barred. The Purchaser's obligations under Section 21.1 constitute obligations in favor of the Beneficiaries within the meaning of Section 328 BGB.

21.4 The Purchaser undertakes that after the Closing Date, the Sellers will be granted access during normal business hours to (i) the books and records of the Group Companies for the period until the Closing Date, (ii) all information necessary for the preparation of Tax Returns to be filed by the Sellers and for the conduct of announced or ongoing Tax audits or other administrative and legal proceedings, (iii) all information, that the Sellers may reasonably require to verify the existence of any claim that the Purchaser or any Group Company may assert under or in connection with this Agreement and (iv) any other financial and business information that the Sellers may require to comply with requests for information from administrative and Governmental Authorities relating to matters up to and including the Closing Date.

22. PURCHASER FINANCING

The Sellers shall procure that the Group Companies provide to the extent legally permitted any information and any support as reasonably requested by the Purchaser to facilitate the obtaining of the Purchaser Financing, it being understood that the Group Companies shall, until occurrence of the Closing, not be under any obligation to incur any external cost or liabilities in this respect, or grant any security with respect to the Purchaser Financing or enter into any agreement or commitment.

23. CLEARANCE PROCEEDINGS

- 23.1 The Purchaser shall be responsible for obtaining the Clearances and shall undertake all necessary measures to prepare and submit the filings required for the Clearances within eight (8) Business Days after the Signing Date and to provide all necessary information in connection therewith. To the extent filings are to be made by the Sellers and the Purchaser, such filings shall, unless the Sellers request otherwise, be made by the Purchaser on behalf of both, the Sellers and the Purchaser. The Purchaser may withdraw (*zurücknehmen*) filings with the competent Governmental Authorities or agree with such authorities on the extension of any examination period only with the express prior written consent of the Sellers.
- 23.2 The Sellers hereby undertake to cooperate with the Purchaser by providing all reasonably required information about the Sellers and the business of the Group Companies within a time period that allows the Purchaser to submit the filings within the time period set out under Section 23.1. The Purchaser shall, in reasonable time prior to any filing, submission of a written statement or any other communication with or to any competent authority, give notice in writing or in text form to the Sellers and shall provide to the Sellers any drafts of such filings, statements or correspondence and any related documents or information, as reasonably requested by the Sellers. The Purchaser shall not be obliged to disclose business secrets to the Sellers. Instead, such information shall be provided on a confidential basis to the legal advisors of the Sellers. The Purchaser hereby undertakes to reasonably review and consider any comments made by the Sellers on such filings, submissions or other communications. The Purchaser further undertakes to keep the Sellers continuously and completely informed about the progress of the applications and proceedings submitted with respect to the Clearances. The Sellers, and their respective advisors shall have the right, and shall be granted the reasonable opportunity by the Purchaser, to attend all meetings and telephone calls with the competent authorities or other institutions (to the extent not prohibited by such authorities) and to make any representations or submissions during such meetings or telephone calls.
- 23.3 The Purchaser shall use best efforts to obtain the Clearances as quickly as possible. The Purchaser shall be obliged to accept any conditions and commitments (*Bedingungen und Auflagen*) in relation to the Group Companies towards the respective competent authorities as required, requested or beneficial for the obtaining of the Clearances. None of such conditions, commitments or undertakings shall have any effect on the Purchase Price.
- 23.4 If the Purchaser becomes aware that it is reasonably likely that the Clearances will not be obtained or that conditions, commitments or undertakings may be imposed by a Governmental Authority, the Purchaser shall notify the Sellers in writing without undue delay.
- 23.5 If the competent merger control authorities prohibit the concentration provided for in this Agreement, the Purchaser shall upon request of the Sellers, promptly invoke appropriate legal remedies and make all efforts necessary and commercially reasonable in order to obtain the relevant Clearance.
- 23.6 If the Clearance is obtained but the Transaction has not been cleared or approved pursuant to the merger control law or other laws of any jurisdiction for which approval is not a Closing Condition, the Closing shall nonetheless take place to the extent legally permitted.

24. NOTIFICATIONS UNDER BROADCASTING LAW

The Parties shall cooperate closely and – subject to the fulfillment or waiver of the Closing Condition pursuant to Section 11.1.3 – the Purchaser shall be entitled to notify the competent state media authority (*Bayerische Landeszentrale für neue Medien*) of the envisaged change in the shareholding structure in the Group Companies in the context of the Transaction prior to the Closing Date with a notification to be aligned with the Sellers. The Sellers shall procure that the Group Companies closely cooperate with the Purchaser in this regard.

25. CONFIDENTIALITY AND PRESS RELEASE

25.1 The Parties undertake to treat all Confidential Information strictly confidential to refrain from disclosing it to any third parties other than permitted recipients (as set out in Section 25.2 below) unless such Confidential Information is or has been

25.1.1 made available by the disclosing Party for general release independent of the receiving Party;

25.1.2 made public as required by law, court proceedings or stock exchange regulations;

25.1.3 made part of the public domain without breach of the confidentiality obligations established under this Agreement by the receiving Party; or

25.1.4 disclosed with the other Parties' prior written consent.

25.2 A receiving Party may disclose Confidential Information of a disclosing Party

25.2.1 to its directors and officers, employees, agents, advisors, lenders, insurance carriers and brokers (the "**Representatives**");

25.2.2 to its Affiliates and its Affiliates' Representatives;

25.2.3 to the extent required under applicable laws or stock exchange regulations;

25.2.4 to its investors and/or financing banks.

provided that in case of Sections 25.2.1 and 25.2.2 the receiving Party procures that such recipients keep such information confidential at terms equivalent to those provided in Section 25.1. The Parties acknowledge that the Purchaser is obliged under statutory law to disclose the content of this Agreement including all Exhibits and Schedules under its applicable stock exchange regulations under US law. The Purchaser shall only disclose this Agreement to the extent required due to its applicable stock exchange regulations under US law.

25.3 "**Confidential Information**" shall mean (i) the content of this Agreement, (ii) all information created, transferred, recorded or employed as part of or otherwise resulting from any activities undertaken pursuant to this Agreement, including, but not limited to business, organizational, technical, financial, marketing, operational, regulatory or sales information of each of the Sellers, Sellers' Affiliates, the Purchaser, an Affiliate of the Purchaser and the Group Companies received by a Party from a disclosing Party in connection with or pursuant to, this Agreement or relating to, as the case may be, the Sellers, any Sellers' Affiliate, the Purchaser, any Affiliate of the Purchaser or (iii) with respect to the Sellers, all information relating to any of the Group Companies and its business. For the avoidance of doubt, the Parties agree that any Confidential Information in relation to the Group Companies may be disclosed by the Purchaser after the Closing Date.

25.4 The Parties undertake that, except for a press release that neither Party shall make without the prior written consent of the respective other Party/Parties, which shall not unreasonably be withheld, any public announcement or press release regarding this Agreement, unless required by applicable law or stock exchange regulations applicable to the respective Party.

26. GUARANTEE OF THE GUARANTOR

- 26.1 The Guarantor hereby guarantees to each Seller as individual creditor by way of an independent guarantee irrespective of fault (*selbständiges verschuldensunabhängiges Garantieverprechen*) pursuant to Section 311 para. 1 BGB the full and due performance of any payment obligation of the Purchaser arising under or in connection with this Agreement.
- 26.2 The Parties agree that the Sellers are not required to proceed first against or claim specific performance from the Purchaser to the effect that as between the Sellers and the Guarantor the latter shall be liable as principal debtor as if it had entered into the undertaking to fulfill any obligation under this Agreement jointly and severally (*Gesamtschuldner*) with the Purchaser.

27. NO JOINT AND SEVERAL LIABILITY OF THE SELLERS

The Sellers shall be severally liable under this Agreement as partial debtors (*Teilschuldner*) in accordance with, and in proportion to, unless expressly otherwise provided in this Agreement, their respective Seller Ratio 3. The Sellers shall under no circumstances be liable to the Purchaser as joint and several debtors (*keine Gesamtschuldnerhaftung*) under or in connection with this Agreement.

28. NOTICES; JOINT DECLARATIONS; PROCESS AGENT

- 28.1 Any statement of legal significance, notice or other declaration under or in connection with this Agreement (the "**Notice(s)**") shall be made in writing (*Schriftform*) unless a notarization or any other stricter form is required by mandatory law or in this Agreement. The written form shall include fax and email with an undersigned pdf copy attached (but no other transmission by way of telecommunication) and exchange of letters. In particular the electronic form shall not suffice to comply with the written form requirement.
- 28.2 All Notices to be given to the Parties shall be addressed to the addresses set forth in **Exhibit 28.2**.
- 28.3 The receipt of copies of Notices by the legal advisers to any of the Parties shall not constitute or substitute the receipt of such Notices by the Parties themselves, regardless of whether the delivery of such copy was mandated by this Agreement.
- 28.4 Each Party is to communicate any change of its respective addresses set forth above as soon as possible in writing to the respective other Parties. Until receipt of such communication, the address as hitherto shall be relevant.

- 28.5 Unless explicitly stated otherwise in this Agreements, all declarations shall be made and all rights shall be exercised only jointly and unanimously to the respective other Parties (i) by the Purchaser and/or the Guarantor towards the Sellers or (ii) by the Sellers towards the Purchaser and/or Guarantor to the extent they refer to the matters described in **Exhibit 28.5**.
- 28.6 The Purchaser and the Guarantor hereby appoint Noerr Partnerschaftsgesellschaft mbB Rechtsanwälte Steuerberater Wirtschaftsprüfer, Attn. Robert Korndörfer, Brienner Straße 28, 80333 Munich, Germany as its agent for service of process (*Zustellungsbevollmächtigter*) for all legal proceedings involving the Purchaser and/or the Guarantor arising out of or in connection with this Agreement. This Appointment shall only terminate upon the appointment of another agent for service of process domiciled in Germany, provided that agent for service of process is an attorney admitted to the German bar (*in Deutschland zugelassener Rechtsanwalt*) and its appointment has been notified to and approved in writing by the Sellers (whose approval shall not be unreasonably delayed, conditioned or withheld). The Purchaser and the Guarantor shall upon the appointment of any new agent for service of process issue to the agent a written power of attorney (*Vollmachtsurkunde*) and shall irrevocably instruct the agent to submit such power of attorney in connection with any service of process pursuant to this Agreement.
- 28.7 The Seller 3 hereby appoints Iris Capital Management Berlin, Attn. Curt Gunsenheimer, Kemperplatz 1, 10785 Berlin, Germany, as its agent for service of process (*Zustellungsbevollmächtigter*) for all legal proceedings involving Seller 3 arising out of or in connection with this Agreement. This Appointment shall only terminate upon the appointment of another agent for service of process domiciled in Germany, provided that agent for service of process is an attorney admitted to the German bar (*in Deutschland zugelassener Rechtsanwalt*) and its appointment has been notified to and approved in writing by the Purchaser (whose approval shall not be unreasonably delayed, conditioned or withheld). Seller 3 shall upon the appointment of any new agent for service of process issue to the agent a written power of attorney (*Vollmachtsurkunde*) and shall irrevocably instruct the agent to submit such power of attorney in connection with any service of process pursuant to this Agreement.

29. NO ASSIGNMENT; NO SET-OFF; NO RIGHTS OF RETENTION

29.1 Unless explicitly otherwise provided for in this Agreement, no Party shall be entitled to assign or transfer rights and obligations under this Agreement in whole or in part without the prior written consent of the respective other Party. As exception to Sentence 1, the Sellers shall be entitled to assign and transfer any claims under or in connection with this Agreement to any of its Affiliates and the Purchaser may assign and transfer any claims under or in connection with this Agreement to any of its Affiliates and to financing banks.

29.2 Unless explicitly provided for in this Agreement, no Party shall be entitled (i) to set-off (*aufrechnen*) any rights and claims it may have under this Agreement against any rights or claims the other Party may have under this Agreement or (ii) to refuse to perform any obligations it may have under this Agreement on the grounds that it has a right of retention (*Zurückbehaltungsrecht*) unless the rights or claims of the relevant Party claiming a right of set-off or retention have been acknowledged in writing by the relevant other Party or Parties, as the case may be, or have been confirmed by a final non-appealable decision of a competent (arbitration) court.

30. NO RIGHTS OF THIRD PARTIES

Except as explicitly otherwise provided for in this Agreement, this Agreement shall only grant rights to the Parties and shall not constitute a contract for the benefit of third parties (*Vertrag zugunsten Dritter*) or a contract with protective effect (*Vertrag mit Schutzwirkung für Dritte*) for third parties. If under this Agreement any other party than the Purchaser, in particular the Group Companies, is to be indemnified by a Seller such third party shall have no rights against the respective Seller and shall in particular not be entitled to bring claims against the respective Seller (*kein echter Vertrag zugunsten Dritter*).

31. COSTS; VAT

31.1 The Purchaser shall bear all transfer taxes (including real estate transfer taxes, stamp duties), notary fees, registration duties and other charges, including fees charged by the competent antitrust authorities and other authorities in connection with the Clearances, and other charges and costs payable in connection with this Agreement and the consummation of the Transaction.

31.2 Each Party shall bear its own expenses, including the fees of its advisors and counsel.

31.3 The Sellers and the Purchaser assume that no VAT (or comparable foreign tax) shall accrue for the Transaction. The Sellers undertake not to opt in favor of VAT pursuant to Section 9 German VAT Act (or applicable provisions in other jurisdictions) in respect of any part of the Transaction. If the Transaction or any part thereof is deviating from the unanimous assessment of the Parties subject to VAT, the Purchase Price is to be understood as gross consideration for the relevant supply of service which includes the amount of VAT and the Purchaser shall not be obliged to pay any amount of VAT in addition to the Purchase Price to the Sellers.

32. GOVERNING LAW; JURISDICTION

- 32.1 This Agreement shall be governed by and construed in accordance with the substantive laws of Germany without recourse to the conflicts of laws provisions.
- 32.2 Unless explicitly stated otherwise in this Agreement any dispute, controversy or claim arising from or in connection with this Agreement or its validity shall be exclusively and finally settled by three arbitrators in accordance with the Arbitration Rules of the German Institution of Arbitration e. V. (*DIS*) as in effect from time to time without recourse to the ordinary courts of law. The place of arbitration shall be Munich, Germany. The language of the arbitral proceedings shall be English. Documents originally prepared for purposes other than the relevant proceeding in the German language do not have to be translated into the English language (unless so required by arbitration tribunal).
- 32.3 In the event that mandatory applicable law requires any matter arising out of or in connection with this Agreement and its execution to be decided upon by an ordinary court of law, the competent courts in Munich, Germany, shall have the exclusive jurisdiction.

33. FINAL PROVISIONS

- 33.1 Any amendment or suspension (*Aufhebung*) of this Agreement, including this provision, shall be valid only if agreed in writing except where notarization or any other stricter form is required under mandatory law. Section 28.1 sentences 2 and 3 shall apply *mutatis mutandis*.
- 33.2 This Agreement constitutes the full understanding of the Parties and the complete and exclusive statements of the terms and conditions of the Parties' agreements relating to the subject matter hereof and replaces any and all prior agreements between any of the Parties with respect to the subject matter of this Agreement or parts thereof.
- 33.3 All Exhibits and Schedules attached to this Agreement form an integral part of this Agreement.
- 33.4 The headings in this Agreement are for convenience only and shall not be decisive for the purposes of interpreting this Agreement.
- 33.5 Where the English wording of this Agreement is (once or several times) followed by a legal term in another language in parentheses and/or in italics, such legal term in the other language shall prevail for such English terms throughout the entire Agreement.
- 33.6 Wherever the word "include", "includes", or "including" is used in this Agreement, it shall be deemed to be followed by the words "without limitation", unless the context otherwise requires.
- 33.7 If any provision of this Agreement should be or become wholly or partially void (*nichtig*), ineffective (*unwirksam*) or unenforceable (*undurchsetzbar*), the validity, effectiveness and enforceability of the other provisions of this Agreement shall not be affected thereby. Any such invalid, ineffective or unenforceable provision shall be deemed replaced by such valid, effective and enforceable provision as comes closest to the economic intent and purpose of the invalid, ineffective or unenforceable provision as regards subject-matter, extent (*Maß*), time, place and scope (*Geltungsbereich*). The aforesaid shall apply *mutatis mutandis* to any gap (*Lücke*) in this Agreement. This Section 33.7 shall not merely operate as a shift of the burden of proof (*Beweislastumkehr*) but Section 139 BGB shall be contracted out in its entirety.

Exhibit 6.4.3 Threshold Revenues

The "Threshold Revenues" amount to

- (a) EUR 201,500,000.00 for the Relevant Year 2022;
 - (b) EUR 224,000,000.00 for the Relevant Year 2023; and
 - (c) EUR 247,400,000.00 for the Relevant Year 2024.
-

Exhibit 6.4.4 Target Revenues

The "Target Revenues" amount to

- (a) EUR 231,725,000.00 for the Relevant Year 2022;
 - (b) EUR 257,600,000.00 for the Relevant Year 2023; and
 - (c) EUR 284,510,000.00 for the Relevant Year 2024.
-

VENDOR LOAN AGREEMENT

between

1. **Emotion Invest GmbH & Co. KG**, Theatinerstraße 7, c/o Arcus Capital AG, 80333 Munich, Germany
– the "**Lender 1**" –
2. **BE Beteiligungen Fonds GmbH & Co. geschlossene Investmentkommanditgesellschaft**, Hohenzollernring 72, 50672 Cologne, Germany
– the "**Lender 2**" –
3. **Iris Capital Fund II**, 62 rue Pierre Charron, c/o Iris Capital Management, 75008 Paris, France
– the "**Lender 3**" –
– the parties under nos. 1 through 3 each individually also a "**Lender**"
and collectively the "**Lenders**" –
4. **SCUR-Alpha 1359 GmbH (to be renamed iMedia&123tv Holding GmbH)**, registered with the commercial register of the local court of Munich under HRB 267579
– the "**Borrower**" –
5. **iMedia Brands, Inc.**, 6740 Shady Oak Road, Eden Prairie, Minnesota 55344 USA
– "**iMedia**" –
6. **1-2-3.TV GmbH**, Bavariafilmplatz 7, 82031 Grünwald, Germany
– "**1-2-3.TV**" –
– iMedia and 1-2-3.TV jointly also the "**Guarantors**" –
– the Lenders, the Borrower and iMedia individually also a "**Party**"
and collectively the "**Parties**" –

RECITALS

- (A) The Borrower intends to (directly or indirectly) acquire from the Lenders 123tv Invest GmbH, a limited liability company organized under the laws of Germany with its corporate seat in Munich/Germany and registered with the commercial register held with the local court (*Amtsgericht*) of Munich under HRB 228351, 123tv Holding GmbH, a limited liability company organized under the laws of Germany with its corporate seat in Munich/Germany and registered with the commercial register held with the local court of Munich under HRB 228364, and their direct and indirect subsidiaries, including 1-2-3.TV (collectively the "**Target Companies**").
- (B) The Parties have entered into a share purchase agreement regarding the Target Companies (the "**SPA**") under which, *inter alia*, the Lenders have sold their participation in the Target Companies to the Borrower against a certain purchase price.
- (C) The Borrower is a wholly owned subsidiary of iMedia.
- (D) The Lenders have, pursuant to section 4.6 of the SPA, agreed that a partial amount of the portion of the purchase price under the SPA in the total amount of EUR 18,000,000.00 (in words: Euro eighteen million Euro) (the "**Vendor Loan Amount**") shall not be payable immediately in cash at closing of the SPA but shall be extended as a loan pursuant to the terms of this vendor loan agreement (the "**Agreement**").

Now, therefore, the Parties agree as follows:

1. EFFECTIVE DATE

This Agreement shall become effective as of the Closing Date (as defined under the SPA), provided that Section 2.7 as well as Sections 9 through 14 shall become effective with immediate effect.

2. NOVATION; LOAN

2.1 The Lenders and the Borrower agree that a portion of the Purchase Price (as defined in the SPA) in the amount of the Vendor Loan Amount shall be satisfied by the Parties by entering into this Agreement (Novation).

2.2 Accordingly, due to the novation the Borrower owes each Lender an amount equal to the portion of the principal amount of the Vendor Loan Amount allocable to such Borrower pursuant to the Seller Ratio 2 (as defined in the SPA) and all mutual rights and obligations regarding the Vendor Loan Amount shall be exclusively governed by the terms and conditions of this Agreement.

2.3 The initial principal loan amount under this Agreement shall be equal to the Vendor Loan Amount and shall be deemed granted as a loan (the "**Loan**") by the Lenders as follows (each a "**Loan Amount**"):

No.	Lender	Loan Amount in EUR
1.	Lender 1	6.886.170,52
2.	Lender 2	6.615.633,36
3.	Lender 3	4.498.196,12
Total		18,000,000.00

2.4 The Loan shall be deemed disbursed as of the Closing Date as defined under the SPA (the "**Disbursement Date**").

2.5 The Lenders shall be individual and partial debtors (*Teilschuldner*) and individual and partial creditors (*Teilgläubiger*) in respect of all rights and obligations under this Agreement. Any debt arising under the Loan to a Lender from the Borrower is a separate and independent debt in respect of which each Lender shall be entitled to enforce its rights independently.

2.6 If, at any time while this Agreement remains in effect or the Loan remains outstanding, iMedia incurs Senior Indebtedness (as defined below), each Lender agrees that its right to receive payment of the Loans from a Guarantor and/or the Borrower shall be in each case subordinated to the indefeasible payment in full in cash by iMedia of the Senior Indebtedness owing to the applicable lender or holder thereof and the termination of all commitments to lend with respect thereto. The subordination set forth herein shall continue even if the Senior Indebtedness (or any portion thereof) is subordinated, set aside, avoided or disallowed under the provisions of Title 11 of the United States Code, 11 U.S.C. sections 101 et seq. or any other applicable law, and shall apply regardless of the date on which any Senior Indebtedness is incurred or arises and whether any person or entity is obliged to advance any such Senior Indebtedness. As used herein, the term "**Senior Indebtedness**" shall mean, collectively, all present and future debts, liabilities and obligations (inclusive of any refinancings, further advances, novations, deferrals, extensions, renewals, restatements, and replacements thereof or relating thereto), whether owed jointly or severally, whether incurred as principal or surety, whether actual or contingent, and whether direct or indirect, due or to become due, primary or secondary, liquidated or unliquidated, including any obligations and liabilities arising subsequent to the occurrence of any winding-up, bankruptcy, insolvency or judicial composition proceeding or event, (x) owed by iMedia to Siena Lending Group, LLC, a Delaware limited liability company, pursuant to a loan and security agreement dated as of July 30, 2021 with a principal amount of up to USD 80,000,000 plus any accrued interest, costs and expenses, (y) owed by iMedia to GreenLake Real Estate Finance LLC, a California limited liability company, pursuant to a promissory note dated July 30, 2021 with principal amount of up to USD 28,500,000 plus any accrued interest, costs and expenses and (z) owed by iMedia to the noteholders pursuant to those certain senior unsecured notes issued under an indenture to be dated on or about the date of this Agreement. With respect to any Senior Indebtedness, (i) so long as no default with respect to such Senior Indebtedness has occurred and is continuing and so long as no default with respect to such Senior Indebtedness would result from the making of any such payments, the Guarantors and/or the Borrower may make, payments with respect to the Loans in accordance with the terms of this Agreement, and (ii) upon the occurrence of a default with respect to such Senior Indebtedness, until such default with respect to such Senior Indebtedness has been cured or waived, the Guarantors and/or the Borrower shall not pay, and each Lender agrees that it shall not accept, any payments of any kind from iMedia associated with the Loan. The provisions of this Section 2.6 are for the benefit of each holder of the Senior Indebtedness, and any one or more holders of the Senior Indebtedness (or their agent or representative, as applicable), may enforce the provisions of this Section 2.6. In the event the Guarantors and/or the Borrower are restricted to make payments to the Lenders under this Section 2.6, such non-payment shall not constitute a Event of Default under this Agreement. The Parties agree that in the event the proceeds under the bond mentioned under (z) above exceed an amount of USD 80,000,000, the net proceeds after deducting underwriting discounts and expenses from the excess amount shall be used to repay the Loan without undue delay.

- 2.7 To secure the payment and performance of the obligations of the Borrower in respect of the Loan under this Agreement, the Borrower and the Lenders will procure that 1-2-3.TV enters with effect as per the Closing Date into an customary security interest agreement with the Lenders under which 1-2-3.TV grants to the Lenders – subject to customary limitations and to the extent legally or contractually permissible - security interest in all material right, title and interest of 1-2-3.TV in and to all accounts, chattel paper, commercial tort claims, goods, deposit accounts, documents, equipment, general intangibles (including the Owned IP Rights (as defined in the SPA)), instruments, inventory, investment property, letter of credit rights, letters of credit, money and payment intangibles, whether now owned or hereafter acquired, and proceeds of any of the foregoing. Borrower and the Lenders will negotiate the security interest agreement in good faith with the aim that 1-2-3.TV and the Lenders enter into the security interest agreement on the Closing Date (as defined under the SPA) at the latest.

3. INTEREST

- 3.1 The Loan shall bear interest at a rate of eight point five percent (8.5%) p.a. on the respective outstanding Loan Amount from time to time commencing on the respective Disbursement Date and calculated on the basis of the actual number of days elapsed and a year of 365 days (act/365) (the "**Interest**").
- 3.2 The Loan is based on interest periods of six months, commencing on the Disbursement Date, respectively, each six months period following thereafter (each an "**Interest Period**").
- 3.3 Interest for the relevant Interest Period shall be due (*fällig*) and payable to the Lenders on the last Business Day of each Interest Period. "**Business Day**" shall mean any day (other than Saturdays and Sundays) on which banks are open for general business in Munich and Cologne, Germany, Paris, France, and Minnesota, USA.
- 3.4 All taxes being payable with respect to the Interest and all other payments to the Lenders under or in connection with this Agreement, including but not limited to income tax, corporate income tax, trade tax and withholding taxes, are to be borne by the Lenders respectively their direct and indirect partners if the relevant Lender is fiscally transparent. If the Borrower or any of the Guarantors is obliged under applicable law to make a withholding in respect of taxes from any payment to any of the Lenders under this Agreement, the Borrower respectively the relevant Guarantor shall be entitled to withhold from the amount owed to the relevant Lender under this Agreement the amount of the relevant tax and pay the amount withheld to the relevant tax authority. Safe for a deviating agreement, all withholdings for tax purposes are to be made at the minimum amount required to be withheld under applicable law.

4. TERM; REPAYMENT

- 4.1 The term of the Loan (the "**Loan Term**") shall end on the earlier of
- 4.1.1 (i) twelve (12) months as of the Disbursement Date (the "**Ordinary Maturity Date I**") with respect to EUR 9.000.000,00 of the principal amount of the Loan, and (ii) twenty-four (24) months as of the Disbursement Date (the "**Ordinary Maturity Date II**") with respect to further EUR 9.000.000,00 of the principal amount of the Loan; the Ordinary Maturity Date I and the Ordinary Maturity Date II each an "**Ordinary Maturity Date**"), and in each case as set out in the table below:

No.	Lender	Loan Amount to be repaid on Ordinary Maturity Date I	Loan Amount to be repaid on Ordinary Maturity Date II
1.	Lender 1	3,443,085.26	3,443,085.26
2.	Lender 2	3,307,816.68	3,307,816.68
3.	Lender 3	2,249,098.06	2,249,098.06
Total		9,000,000.00	9,000,000.00

or,

- 4.1.2 on the date on which the Borrower receives a notice of extraordinary termination by the respective Lender pursuant to Section 5 (*Termination*) (the "**Extraordinary Maturity Date**").

4.2 The respective Loan Amount(s) and any accrued and unpaid Interest thereon, if any, shall become due for repayment on the respective Ordinary Maturity Date or the Extraordinary Maturity Date, as applicable, (such aggregate amounts in cash each a "**Repayment Amount**"). In such event, the Borrower shall irrevocably and unconditionally pay the Repayment Amount in Euro and free of charge and without any deductions for fees in immediately available funds (i) to the respective Lender's bank account of which the Borrower shall have been notified at least in textform pursuant to Section 126b BGB (or as otherwise mutually agreed upon by the respective Lender and the Borrower) five (5) Business Days in advance or (ii) to a joint Lenders' bank account of which the Borrower shall have been notified by a joint declaration of the Lenders at least in textform pursuant to Section 126b BGB (or as otherwise mutually agreed upon by the Lenders and the Borrower) five (5) Business Days in advance.

5. TERMINATION

5.1 For the duration of the Loan Term neither of the Parties shall be entitled to give notice of an ordinary termination (*ordentliche Kündigung*), provided that the Borrower shall be entitled, but not obliged, to (partially or entirely) repay the relevant outstanding Repayment Amount at any time, subject to prior written notice to the Lenders with a notice period of ten (10) Business Days. No early repayment fees (*Vorfälligkeitsentschädigungen*) have to be paid in such event.

5.2 Each of the Lenders shall be entitled to give notice of an extraordinary termination for cause (*außerordentliche Kündigung aus wichtigem Grund*) at any time during the Loan Term with respect to its respective Loan Amount, it being understood that such extraordinary termination shall relate to the entire Loan Amount of such Lender, irrespective of the respective Ordinary Maturity Date of such portion of the Loan Amount having already occurred or not. Such extraordinary termination delivered by a Lender to the Borrower shall be deemed to be for cause if any of the following events (each an "**Event of Default**") occurs, provided that none of the following shall be construed or operate to limit the Lenders' right of extraordinary termination on any other grounds that qualify as cause (*wichtiger Grund*) under applicable German law:

- 5.2.1 The Borrower (i) does not repay any portion of the Repayment Amount or (ii) if the Borrower is in default with respect to its Interest payment obligations, in each case of (i) and (ii) more than one (1) month following a written notice from the Lenders; or
- 5.2.2 Sale of all or substantially all of the assets of the Borrower has occurred; or
- 5.2.3 A Change of Control (as defined below) has been officially announced or has occurred; or
- 5.2.4 In relation to the Borrower (i) a winding-up, bankruptcy, insolvency or judicial composition proceeding has been initiated or applied for; (ii) any of the reasons set forth in secs. 17 or 19 InsO exists, (iii) the competent court takes any actions set forth in sec. 21 InsO or sec. 26 InsO (*Abweisung mangels Masse*) or comparable actions under foreign law applicable to the Borrower; or (iv) there is an appointment of an insolvency administrator (*Insolvenzverwalter*) by the competent court or any comparable action under foreign law applicable to the Borrower; or
- 5.2.5 Enforcement proceedings (*Zwangsvollstreckungsmaßnahmen*) are or were executed or initiated against the Borrower and not cured and/or levied within a time period of thirty (30) days following such execution or initiation; or
- 5.2.6 The Borrower dissolves, is (voluntarily or involuntarily) dissolved or enters into liquidation or any resolution with respect to the liquidation or the winding-up of the Borrower is passed; or
- 5.2.7 An event of default under the third party financing documentation of the Borrower has occurred and is continuing and, in case of an event of default because of a covenant breach under the respective third party financing documentation, such covenant breach has not been cured or waived within 60 days.
- 5.3 "**Change of Control**" shall mean the entering into or execution of any transaction resulting in iMedia ceasing to hold, indirectly or directly, the majority of the voting rights in 1-2-3.TV.
- 5.4 The Borrower shall immediately following the occurrence of an Event of Default inform the Lenders and upon request by any Lender supply to the Lenders a certificate of the managing directors of the Borrower certifying that an Event of Default has occurred (by specifying the Event of Default(s) which has/have been occurred) or has not occurred.

5.5 Any termination of the Loan shall be made in writing.

6. TRANSACTION BONUS

In the event that the repayment of any Repayment Amount triggers the obligation of the Lenders to pay a Transaction Bonus (as defined in the SPA) to any 1-2-3.TV Manager (as defined in the SPA), the Borrower shall, upon Notification of the Lenders, be entitled to withhold the respective Transaction Bonus (as defined in the SPA) from the respective Repayment Amount and shall directly pay to 1-2-3.TV such Transaction Bonus on the respective due date in such amount as calculated by 1-2-3.TV based on the amount of the payable Transaction Bonus as notified by the Lenders (such notice to be delivered at the latest ten (10) Business Days prior to the relevant due date). The Borrower shall procure that 1-2-3.TV confirms the payment of the Transaction Bonus by written notice to the Lenders. The Lenders shall inform 1-2-3.TV without undue delay (*unverzüglich*) after the net amount of the respective Transaction Bonus has been paid to the respective 1-2-3.TV Manager about the payment made to the respective 1-2-3.TV Manager and the point in time of such payment. The Borrower shall procure that upon receipt of any payment as regards the Transaction Bonus (as defined in the SPA) by 1-2-3.TV, 1-2-3.TV will pay the amount received minus any amount to be withheld for wage tax and social security contribution to the relevant 1-2-3.TV Manager (as defined in the SPA).

7. INFORMATION RIGHTS

The Borrower shall deliver to the Lenders the quarterly Form 10-Q as well as the Form 10-K annual report of iMedia within ten (10) Business Days following mandatory filing as mandated by the United States federal Securities and Exchange Commission. These documents shall be deemed delivered upon the filing of such document on the U.S. Securities and Exchange Commission's EDGAR filing system.

8. GUARANTEE OF THE GUARANTORS

8.1 Subject to Section 2.6 above, the Guarantors hereby guarantee to each Lender as individual creditor by way of an independent guarantee irrespective of fault (*selbständiges verschuldensunabhängiges Garantieverprechen*) pursuant to Section 311 para. 1 BGB the full and due performance of any payment obligation of the Borrower arising out of this Agreement. The liability of 1-2-3.TV shall apply to the extent legally permissible under the applicable statutory capital maintenance provisions.

8.2 The Parties agree that the Lenders are not required to proceed first against or claim specific performance from the Borrower to the effect that as between the Lenders and the Guarantors, the latter shall be liable as principal debtors as if they had entered into the undertaking to fulfill any obligation under this Agreement jointly and severally (*Gesamtschuldner*) with the Borrower.

9. NO ASSIGNMENT; NO SET-OFF; NO RIGHTS OF RETENTION

9.1 Unless explicitly otherwise provided for in this Agreement, no Party shall be entitled to assign or transfer rights and obligations under this Agreement in whole or in part without the prior written consent of the other Parties. As exception to sentence 1, each Party shall be entitled to assign and transfer any claims under or in connection with this Agreement to any of its respective affiliates, whereby affiliates means legal entities that are affiliated enterprises pursuant to Sections 15 *et seqq.* of the German Stock Corporation Act and any other investment fund having the same general partner, managing limited partner or investment management company as the respective Lender. In case of a termination of this Agreement due to an Event of Default, the Lenders shall be entitled to assign their claims under this Agreement to third parties. In case of such assignment, the Lenders shall inform the Borrower of the assignment without undue delay.

9.2 No Party, except as provided otherwise in this Agreement, shall be entitled (i) to set-off (*aufrechnen*) any rights and claims it may have under this Agreement against any rights or claims the other Party may have under this Agreement or (ii) to refuse to perform any obligation it may have under this Agreement on the grounds that it has a right of retention (*Zurückbehaltungsrecht*) unless the rights or claims of the relevant Party claiming a right of set-off (*Aufrechnung*) or retention (*Zurückbehaltung*) have been acknowledged (*anerkannt*) in writing by the relevant other Party or have been confirmed by final decision of a competent (arbitration) court.

10. COSTS AND EXPENSES

Each of the Parties hereto shall bear its own legal and other costs and expenses incurred in connection with the execution, implementation and consummation of this Agreement, including all previous negotiations and communications.

11. AMENDMENTS; NOTICES

11.1 Any amendment of, or notice or other declaration (the "**Notice(s)**") under or in connection with, this Agreement shall be made in writing (*in Schriftform*), unless a notarization or any other stricter form is required by mandatory law or in this Agreement. The written form shall include exchange of letters, fax and exchange of emails if scans of the undersigned documents are attached but no other transmission by way of telecommunication. The electronic form shall not suffice to comply with the written form requirement.

- 11.2 All Notices to be given to a Party or any of them hereunder shall be addressed as set out above.
- 11.3 Each Party is to communicate any change of its respective addresses set forth above as soon as possible in writing to the respective other Parties. Until receipt of such communication, the address as hitherto shall be relevant.

12. RIGHTS OF THIRD PARTIES

Except as explicitly otherwise provided for in this Agreement, this Agreement shall only grant rights to the Parties and shall not constitute a contract for the benefit of third parties or a contract with protective effect for third parties.

13. CHOICE OF LAW AND PLACE OF JURISDICTION

- 13.1 This Agreement shall be governed by and construed in accordance with the substantive laws of Germany without recourse to the conflicts of laws provisions.
- 13.2 Any dispute, controversy or claim arising from or in connection with this Agreement or its validity shall be exclusively and finally settled by three arbitrators in accordance with the Arbitration Rules of the German Institution of Arbitration e. V. (*DIS*) as in effect from time to time without recourse to the ordinary courts of law. The place of arbitration shall be Munich, Germany. The language of the arbitral proceedings shall be English. Documents originally prepared for purposes other than the relevant proceeding in the German language do not have to be translated into the English language (unless so required by arbitration tribunal).
- 13.3 In the event that mandatory applicable law requires any matter arising out of or in connection with this Agreement and its execution to be decided upon by an ordinary court of law, the competent courts in Munich, Germany, shall have the exclusive jurisdiction.

14. SEVERABILITY

If any provision of this Agreement should be or become wholly or partially void (*nichtig*), ineffective (*unwirksam*) or unenforceable (*undurchsetzbar*), the validity, effectiveness and enforceability of the other provisions of this Agreement shall not be affected thereby. Any such invalid, ineffective or unenforceable provision shall be deemed replaced by such valid, effective and enforceable provision as comes closest to the economic intent and purpose of the invalid, ineffective or unenforceable provision as regards subject-matter, extent (*Maß*), time, place and scope (*Geltungsbereich*). The aforesaid shall apply *mutatis mutandis* to any gap (*Lücke*) in this Agreement. This Section 14 shall not merely operate as a shift of the burden of proof (*Beweislastumkehr*) but sec. 139 BGB shall be contracted out in its entirety.

**FIRST AMENDMENT AND CONSENT TO
LOAN AND SECURITY AGREEMENT**

THIS FIRST AMENDMENT AND CONSENT TO LOAN AND SECURITY AGREEMENT (this "**Amendment**"), dated as of September 20, 2021, is entered into by and among IMEDIA BRANDS, INC., a Minnesota corporation ("**iMedia**" or "**Borrowing Agent**"), VALUEVISION INTERACTIVE, INC., a Minnesota corporation ("**Value Interactive**"), VALUEVISION RETAIL, INC., a Delaware corporation ("**Value Retail**"), PW ACQUISITION COMPANY, LLC, a Minnesota limited liability company ("**PW Acquisition**"), FL ACQUISITION COMPANY, a Minnesota corporation ("**FL Acquisition**"), VALUEVISION MEDIA ACQUISITIONS, INC., a Delaware corporation ("**Value Media**"), TCO, LLC, a Delaware limited liability company ("**TCO**"), JWH ACQUISITION COMPANY, a Minnesota corporation ("**JWH Acquisition**"), NORWELL TELEVISION, LLC, a Delaware limited liability company ("**Norwell**"), 867 GRAND AVENUE LLC, a Minnesota limited liability company ("**867 Grand Avenue**" and together with iMedia, Value Interactive, Value Retail, PW Acquisition, FL Acquisition, Value Media, TCO, JWH Acquisition, Norwell, and any other Person who from time to time becomes a Borrower under the Loan Agreement, collectively, the "**Borrowers**" and each individually, a "**Borrower**"), VVI FULFILLMENT CENTER, INC., a Minnesota corporation ("**VVI Fulfillment**"), EP PROPERTIES, LLC, a Minnesota limited liability company ("**EP Properties**"), PORTAL ACQUISITION COMPANY, a Minnesota corporation ("**Portal**" and together with VVI Fulfillment, EP Properties, and any other Affiliates of the Borrowers who become signatory to the Loan Agreement from time to time as guarantors, if any, each a "**Guarantor**" and collectively, the "**Guarantors**"), SIENA LENDING GROUP LLC, as a lender ("**Siena**" and together with any other financial institutions who become part to the Loan Agreement referred to below from time to time, each a "**Lender**" and collectively, the "**Lenders**") and SIENA LENDING GROUP LLC, as administrative and collateral agent for the Lenders (in such capacity, the "**Agent**"). Terms used herein without definition shall have the meanings ascribed to them in the Loan Agreement defined below.

RECITALS

A. Agent, Lenders and Borrowers have previously entered into that certain Loan and Security Agreement dated as of July 30, 2021 (as amended, modified and supplemented from time to time, the "**Loan Agreement**"), pursuant to which Lenders have made certain loans and financial accommodations available to Borrowers.

B. Borrowers wish to acquire (through its wholly owned Subsidiary SCUR-Alpha 1359 GmbH (to be renamed iMedia&123tv Holding GmbH), registered with the commercial register of the local court of Munich under HRB 267579 ("**123tv Holding**") the stock of 123tv Invest GmbH, a limited liability company organized under the laws of Germany with its corporate seat in Munich/Germany and registered with the commercial register held with the local court of Munich under HRB 228541 ("**123tv Invest**"), and 123tv Holding GmbH, a limited liability company organized under the laws of Germany with its corporate seat in Munich/Germany and registered with the commercial register held with the local court of Munich under HRB 228364 ("**123tv**"), and their direct and indirect Subsidiaries (including 1-2-3.TV (as defined below), pursuant to a Sale and Purchase Agreement ("**SPA**") and other documents and agreements executed in connection therewith (the "**Acquisition**") to be entered into on or about September 20, 2021 with an anticipated closing date of October 31, 2021, for an aggregate purchase price of approximately \$94,458,760.00 (EUR 80,000,000), subject to cash, debt and working capital adjustment, which shall be financed in part from the proceeds of the following: (i) approximately \$73,204,950.00 (EUR 62,000,000) from the proceeds of a bond issuance and (ii) approximately \$21,249,810 (EUR 18,000,000) from the proceeds of a vendor loan agreement made by 123tv Holding in favor of sellers.

C. In connection with the Acquisition, iMedia wishes to enter into an indenture or other debt instrument issued by one or more borrowers in favor of certain debtholders signatory thereto dated on or about September 27, 2021 pursuant to which such Borrowers plan to issue bonds in an aggregate principal amount of approximately \$80,000,000 subject to a mandatory redemption obligation if the Acquisition is not consummated within the time specified thereunder (the “**Bond Issuance**”).

D. 123tv Holding, as borrower, further wishes to execute and deliver a vendor loan agreement in favor of the sellers party to the Acquisition, in the original principal amount of approximately \$18,000,000 (the “**Seller Note**” and together with the Bond Issuance and the Acquisition, collectively, the “**Transaction**”), which Seller Note would be guaranteed by iMedia and 1-2-3.TV GmbH, a limited liability company organized under the laws of Germany with its corporate seat in Grünwald/Germany and registered with the commercial register held with the local court of Munich under HRB 151802.

E. Borrowers have requested that Agent and Lenders (a) consent to the Transaction and (b) amend the Loan Agreement, in each case on the terms and conditions set forth herein.

F. Agent and Lenders are willing to provide such consent and Agent, Lenders and Borrowers now wish to amend the Loan Agreement, in each case on the terms and conditions set forth herein.

G. Borrowers are entering into this Amendment with the understanding and agreement that, except as specifically provided herein, none of Agent’s or any Lender’s rights or remedies as set forth in the Loan Agreement or any other Loan Document are being waived or modified by the terms of this Amendment.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing and the mutual covenants herein contained, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

1. Amendments to Loan Agreement.

(a) **Schedule B** to the Loan Agreement is hereby amended by adding the defined terms “**Bond Indebtedness**”, “**First Amendment and Consent**”, “**iMedia&123tv Holding**” and “**First Amendment Effective Date**”, each in the appropriate alphabetical order as follows:

“**Bond Indebtedness**” means an indenture or other debt instrument issued by one or more borrowers in favor of certain debtholders signatory thereto dated on or about October 31, 2021 pursuant to which such Borrowers will issue bonds in an aggregate principal amount of approximately \$80,000,000.

“**First Amendment and Consent**” means that certain First Amendment and Consent to the Loan Agreement dated as of September 13, 2021 by and among Agent, Lenders and the Loan Parties.

“**iMedia&123tv Holding**” means iMedia&123tv Holding GmbH, a limited liability company organized under the laws of Germany with its corporate seat in Munich/Germany and registered with the commercial register of the local court of Munich under HRB 267579.

“**First Amendment Effective Date**” means September 13, 2021.

(b) **Schedule B** to the Loan Agreement is hereby amended by amending and restating defined terms “**Consolidated Adjusted EBITDA**” “**Senior Debt**” and “**Senior Net Leverage Ratio**”, each in its entirety as follows:

“**Consolidated Adjusted EBITDA**” means, for the applicable period, for the Loan Parties on a consolidated basis, such Loan Parties’ consolidated adjusted EBITDA for such period as publicly reported by the Borrowers in their financial statements for such period; **provided, however** that solely for purposes of calculating Consolidated Adjusted EBITDA of iMedia&123tv Holding, the Acquisition (as defined in the First Amendment and Consent) shall be deemed to have occurred as of the first day of the applicable period of measurement, (i) for the one fiscal quarter ending on or about (i) the last day of the fiscal quarter in which the Acquisition is consummated (the “**Acquisition Quarter**”), Consolidated Adjusted EBITDA shall be deemed to equal the Consolidated Adjusted EBITDA for the Acquisition Quarter, multiplied by a factor of four (4); (ii) the last day of the fiscal quarter immediately after the Acquisition Quarter, Consolidated Adjusted EBITDA for such period shall be deemed to equal the actual Consolidated Adjusted EBITDA for the two fiscal quarters then ended, multiplied by a factor of two (2); and (iii) the last day of the second fiscal quarter immediately after the Acquisition Quarter, Consolidated Adjusted EBITDA for such period shall be deemed to equal the actual Consolidated Adjusted EBITDA for the three fiscal quarters then ended, multiplied by a factor of one and one-third (1 1/3).

“**Senior Debt**” means the sum of (a) outstanding principal amount of all Revolving Loans and issued and outstanding Letters of Credit under this Agreement, (b) the outstanding principal balance of the Term Debt Permitted Indebtedness and (c) the outstanding principal balance of the Bond Indebtedness.

“**Senior Net Leverage Ratio**” means, as of the last day of any fiscal quarter of Loan Parties, the ratio of (i) (a) Senior Debt as of the last day of any fiscal quarter of Loan Parties **minus** (b) the total cash on deposit in the Borrowers’ Deposit Accounts (other than Restricted Accounts) as of the last day of such fiscal quarter **to** (ii) Loan Parties’ Consolidated Adjusted EBITDA for the most recent four fiscal quarters ended as of the last day of the most recent fiscal quarter then ended.

(c) **Schedule E** to the Loan Agreement is hereby deleted in its entirety and replaced with the schedule in the form of **Exhibit A** attached hereto.

2. **Consent.** Notwithstanding anything to the contrary contained in the Loan Agreement, to the extent Lender’s consent is necessary and/or required under the Loan Agreement, Lender hereby consents to the Transaction (including the Indebtedness, Liens and Acquisition arising in connection therewith) and waives any obligation under Section 3.3 of the Loan Agreement that would otherwise require that 123tv Invest, 123tv, or any of their Subsidiaries, to become a Loan Party under the Loan Documents and to grant Agent a Lien in and to their respective assets; **provided, that** Borrowers acknowledge and agree that Borrowers may not use any proceeds of Revolving Loans to satisfy any mandatory redemption obligations arising out of the Bond Issuance (it being understood that the foregoing does not modify the obligation of iMedia to execute and deliver to Agent on behalf of itself and each of the Lenders, (i) a joinder to the Loan Agreement in form and substance satisfactory to Agent whereby iMedia&123tv Holding will become a Guarantor and Loan Party thereto and (ii) a Negative Pledge Agreement regarding the Equity Interests in 123tv Holding in accordance with the terms hereof); **provided, that**, on or before the date that is (i) five (5) Business Days after the execution and delivery of the SPA by the parties thereto and (ii) five (5) Business Days after the consummation in full of each aspect of the Transaction, in each case, Borrowers deliver to Agent fully executed copies of all material documentation executed in connection therewith and any other related documentation that Lender may reasonably request in its Permitted Discretion related thereto.

3. Amendment Fee. In consideration of the agreements set forth herein, Borrowers hereby agree to jointly and severally pay to Agent for the benefit of the Lenders an amendment fee in the amount of \$75,000 (the "**Amendment Fee**"), which fee is non-refundable when paid and is fully-earned as of and due and payable on the date of this Amendment.

4. Effectiveness of this Amendment. This Amendment and the consent provided for herein shall become effective upon the satisfaction, as determined by Agent, of the following conditions:

(a) Amendment. Agent shall have received this Amendment fully executed by the other parties hereto;

(b) Amendment Fee. Agent shall have received the Amendment Fee, which may be paid as a charge to Borrowers' Loan Account. Borrowers hereby authorize Agent to charge Borrower's Loan Account in full payment of such Amendment Fee on the date of this Amendment;

(c) Representations and Warranties. The representations and warranties set forth herein and in the Loan Agreement must true and correct in all material respects (without duplication of materiality qualifiers therein) as of the date hereof (or to the extent any representations or warranties are expressly made solely as of an earlier date, such representations and warranties shall be true and correct in all material respects (without duplication of materiality qualifiers therein) as of such earlier date); and

(d) Other Required Documentation. All other documents and legal matters in connection with the transactions contemplated by this Amendment shall have been delivered or executed or recorded, as reasonably required by Agent in its Permitted discretion.

(e) Covenants. Borrowers hereby agree to deliver to Agent or cause to be delivered to Agent, in each case within five (5) Business Days of the consummation of the Acquisition (i) a duly executed Negative Pledge Agreement from iMedia regarding the Equity Interests in 123tv Holding, substantially in the form of **Exhibit B** attached hereto (ii) a joinder to the Loan Agreement in form and substance satisfactory to Agent whereby iMedia&123tv Holding will become a Guarantor and Loan Party thereto, (iii) an updated Information Certificate as of the date of such joinder and after giving effect thereto, to the extent necessary, to reflect iMedia&123tv Holding as a Loan Party and (iv) all other documents reasonably requested by Agent in its Permitted Discretion in connection with such joinder.

5. Representations and Warranties. Each Loan Party represents and warrants as follows:

(a) Authority. Such Loan Party has the requisite corporate power and authority to execute and deliver this Amendment, and to perform its obligations hereunder, under the Loan Agreement (as amended or modified hereby) and under the other Loan Documents to which it is a party. The execution, delivery and performance by such Loan Party of this Amendment have been duly approved by all necessary corporate action and no other corporate proceedings are necessary to consummate such transactions.

(b) Enforceability. This Amendment has been duly executed and delivered by each Loan Party. This Amendment, the Loan Agreement (as amended or modified hereby) and each other Loan Document is the legal, valid and binding obligation of each Loan Party, enforceable against each Loan Party in accordance with its terms, and is in full force and effect.

(c) Representations and Warranties. The representations and warranties contained in the Loan Agreement and each other Loan Document (other than any such representations or warranties that, by their terms, are specifically made as of a date other than the date hereof) are correct on and as of the date hereof as though made on and as of the date hereof.

(d) Due Execution. The execution, delivery and performance of this Amendment are within the power of each Loan Party, have been duly authorized by all necessary corporate action, have received all necessary governmental approval, if any, and do not contravene any law or any contractual restrictions binding on any Loan Party.

(e) No Default. No event has occurred and is continuing that constitutes a Default or an Event of Default.

6. Choice of Law. THIS AMENDMENT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAW OF THE STATE OF NEW YORK APPLICABLE TO CONTRACTS MADE AND TO BE PERFORMED THEREIN WITHOUT REGARD TO CONFLICT OF LAW PRINCIPLES (EXCEPT SECTIONS 5-1401 AND 5-1402 OF THE NEW YORK GENERAL OBLIGATION LAW). FURTHER, THE LAW OF THE STATE OF NEW YORK SHALL APPLY TO ALL DISPUTES OR CONTROVERSIES ARISING OUT OF OR CONNECTED TO OR WITH THIS AMENDMENT AND ALL SUCH RELATED LOAN DOCUMENTS WITHOUT REGARD TO CONFLICT OF LAW PRINCIPLES (EXCEPT SECTIONS 5-1401 AND 5-1402 OF THE NEW YORK GENERAL OBLIGATION LAW).

7. Counterparts: Facsimile Signatures. This Amendment may be executed in any number of and by different parties hereto on separate counterparts, all of which, when so executed, shall be deemed an original, but all such counterparts shall constitute one and the same agreement. Any signature delivered by a party by e-mail, DocuSign, facsimile or other similar form of electronic transmission shall be deemed to be an original signature hereto.

8. Reference to and Effect on the other Loan Documents.

(a) Upon and after the effectiveness of this Amendment, each reference in the Loan Agreement to "*this Agreement*", "*hereunder*", "*hereof*" or words of like import referring to the Loan Agreement, and each reference in the other Loan Documents to "*the Loan Agreement*", "*thereof*" or words of like import referring to the Loan Agreement, shall mean and be a reference to the Loan Agreement as modified and amended hereby.

(b) Except as specifically amended above, the Loan Agreement and all other Loan Documents, are and shall continue to be in full force and effect and are hereby in all respects ratified and confirmed and shall constitute the legal, valid, binding and enforceable obligations of Borrowers to Agent and Lenders.

(c) The execution, delivery and effectiveness of this Amendment shall not, except as expressly provided herein, operate as a waiver of any right, power or remedy of Agent or any Lender under the Loan Agreement or any of the other Loan Documents, nor constitute a waiver of any provision of the Loan Agreement or any of the other Loan Documents.

(d) To the extent that any terms and conditions in any of the other Loan Documents shall contradict or be in conflict with any terms or conditions of the Loan Agreement, after giving effect to this Amendment, such terms and conditions are hereby deemed modified or amended accordingly to reflect the terms and conditions of the Loan Agreement as modified or amended hereby.

9. Integration. This Amendment, together with the Loan Agreement and the other Loan Documents, incorporates all negotiations of the parties hereto with respect to the subject matter hereof and is the final expression and agreement of the parties hereto with respect to the subject matter hereof.

10. Severability. If any part of this Amendment is contrary to, prohibited by, or deemed invalid under Applicable Laws, such provision shall be inapplicable and deemed omitted to the extent so contrary, prohibited or invalid, but the remainder hereof shall not be invalidated thereby and shall be given effect so far as possible.

11. Guarantors' Acknowledgment. With respect to the amendments to the Loan Agreement effected by this Amendment, each Guarantor hereby acknowledges and agrees to this Amendment and confirms and agrees that its Guaranty (as modified and supplemented in connection with this Amendment) is and shall continue to be, in full force and effect and is hereby ratified and confirmed in all respects except that, upon the effectiveness of, and on and after the date of this Amendment, each reference in such Guaranty to the Loan Agreement, "*thereunder*", "*thereof*" or words of like import referring to the Loan Agreement, shall mean and be a reference to the Loan Agreement as amended or modified by this Amendment. Although Lender has informed the Guarantors of the matters set forth above, and each Guarantor has acknowledged the same, each Guarantor understands and agrees that Lender has no duty under the Loan Agreement, any Guaranty or any other agreement with any Guarantor to so notify any Guarantor or to seek such an acknowledgement, and nothing contained herein is intended to or shall create such a duty as to any transaction hereafter.

[remainder of page intentionally blank]

IN WITNESS WHEREOF, the parties have entered into this Amendment as of the date first above written.

BORROWERS:

IMEDIA BRANDS, INC.

By: /s/ Tim Peterman
Name: Tim Peterman
Its: Chief Executive Officer

VALUEVISION RETAIL, INC.

By: /s/ Tim Peterman
Name: Tim Peterman
Its: Chief Executive Officer

FL ACQUISITION COMPANY

By: /s/ Tim Peterman
Name: Tim Peterman
Its: Chief Executive Officer

PW ACQUISITION COMPANY, LLC

By: /s/ Tim Peterman
Name: Tim Peterman
Its: Chief Executive Officer

VALUEVISION MEDIA ACQUISITIONS, INC.

By: /s/ Tim Peterman
Name: Tim Peterman
Its: Chief Executive Officer

[Signature Page for First Amendment and Consent to Loan and Security Agreement]

TCO, LLC

By: /s/ Tim Peterman
Name: Tim Peterman
Its: Chief Executive Officer

JWH ACQUISITION COMPANY

By: /s/ Tim Peterman
Name: Tim Peterman
Its: Chief Executive Officer

NORWELL TELEVISION, LLC

By: /s/ Tim Peterman
Name: Tim Peterman
Its: Chief Executive Officer

867 GRAND AVENUE LLC

By: /s/ Tim Peterman
Name: Tim Peterman
Its: Chief Executive Officer

VALUEVISION INTERACTIVE, INC.

By: /s/ Tim Peterman
Name: Tim Peterman
Its: Chief Executive Officer

[Signature Page for First Amendment and Consent to Loan and Security Agreement]

GUARANTORS:

VVI FULFILLMENT CENTER, INC.

By: /s/ Tim Peterman

Name: Tim Peterman
Its: Chief Executive Officer

EP PROPERTIES, LLC

By: /s/ Tim Peterman

Name: Tim Peterman
Its: Chief Executive Officer

PORTAL ACQUISITION COMPANY

By: /s/ Tim Peterman

Name: Tim Peterman
Its: Chief Executive Officer

[Signature Page for First Amendment and Consent to Loan and Security Agreement]

SIENA LENDING GROUP LLC, as Agent

By: /s/ Renee Singer
Name: Renee Singer
Title: Authorized Signatory

By: /s/ Steven Sanicola
Name: Steven Sanicola
Title: Authorized Signatory

SIENA LENDING GROUP LLC, as Lender

By: /s/ Renee Singer
Name: Renee Singer
Title: Authorized Signatory

By: /s/ Steven Sanicola
Name: Steven Sanicola
Title: Authorized Signatory

[Signature Page for First Amendment and Consent to Loan and Security Agreement]

Exhibit A
to
First Amendment and Consent to Loan and Security Agreement

Schedule E

Financial Covenants

(a) **Minimum Liquidity.** Borrowers shall not permit Minimum Liquidity as of the end of any fiscal month to be less than \$7,500,000; *provided, that*, solely after the consummation of the Acquisition (as defined in the First Amendment and Consent), Borrowers shall not permit Minimum Liquidity as of the end of any fiscal month to be less than \$15,000,000; *provided, that* such amount shall be automatically reduced to \$7,500,000 upon Borrowers' delivery of evidence satisfactory to Agent in its Permitted Discretion that Borrowers had a Senior Net Leverage Ratio for the most recent fiscal quarter of not greater than 2.50:1.00.

(b) **Maximum Senior Net Leverage Ratio.** Loan Parties shall maintain a Senior Net Leverage Ratio of not greater than the applicable ratio set forth in the table immediately below, and corresponding to the applicable time period, which shall be tested as of the last day of each fiscal quarter of Loan Parties and be measured on a trailing-twelve-month basis:

Time Period	Senior Net Leverage Ratio
Fiscal quarter ending October 31, 2021	3.50:1.00
Fiscal quarter ending January 31, 2022	3.50:1.00
Fiscal quarter ending April 30, 2022	3.25:1.00
Fiscal quarter ending July 31, 2022	3.00:1.00
Fiscal quarter ending October 31, 2022	2.75:1.00
Fiscal quarter ending January 31, 2023	2.75:1.00
Fiscal quarter ending April 30, 2023 and thereafter	2.50:1.00

Exhibit A to First Amendment and Consent to Loan and Security Agreement

Exhibit B
to
First Amendment and Consent to Loan and Security Agreement

NEGATIVE PLEDGE AGREEMENT

This Negative Pledge Agreement (“*Agreement*”) dated September __, 2021, is made by IMEDIA BRANDS, INC., a Minnesota corporation (“*iMedia*”), in favor of SIENA LENDING GROUP LLC, as agent for the benefit of Lenders (“*Siena*” or “*Agent*”).

BACKGROUND

A. To induce Agent and Lenders (as defined below) to continue extending credit to iMedia Brands, Inc. (the “*iMedia*”) and certain of its Subsidiaries (collectively, “*Borrowers*”), pursuant to that certain Loan and Security Agreement (the “*Loan Agreement*”) dated as of July 30, 2021 among Agent, Borrowers and the financial institutions party thereto from time to time (the “*Lenders*”) and to enter into the First Amendment and Consent to such Loan Agreement, the Agent and Lenders are requiring iMedia to execute and deliver this Agreement to Agent. All capitalized terms used herein and not otherwise defined shall have the same meanings assigned to such terms in the Loan Agreement.

B. iMedia owns 100% of the Equity Interests of iMedia&123tv Holding GmbH, a limited liability company organized under the laws of Germany with its corporate seat in Munich/Germany and registered with the commercial register held with the local court of Munich under HRB 267579 (“*123tv Holding*”).

C. Agent and Lenders have required that iMedia agree to certain restrictions relating to the sale, assignment, transfer and encumbrance of all or any part of its shares, rights to purchase, options, warrants, participation or other equivalents of or interest in (regardless of how designated) equity of 123tv Holding, whether now owned or hereinafter acquired, whether voting or nonvoting, including common stock, preferred stock, convertible securities or any other “equity security” (as such term is defined in Rule 3a11-1 of the General Rules and Regulations promulgated by the SEC under the Exchange Act) (collectively, the “*Equity Interests*”) as a condition to its making and continuing to make financial accommodations to Borrowers under the Loan Agreement, and iMedia is willing to agree to such restrictions, all as set forth in this Agreement.

D. This Agreement is given and is intended to provide additional security for the Obligations under the Loan Agreement.

NOW THEREFORE, for other good and sufficient consideration, the receipt of which is hereby acknowledged, iMedia, intending to be legally bound hereby, covenant and agree as follows:

1. **Incorporation of Recitals**. The foregoing recitals are incorporated in this Agreement by this reference.

2. **Restrictions on Transfer or Sale of Equity Interests**. iMedia hereby agrees that until all Obligations have been indefeasibly paid in full and the Loan Agreement has been terminated, or as the Agent shall otherwise consent in writing, iMedia shall not directly or indirectly sell, assign (by operation of law or otherwise), transfer, exchange or otherwise dispose of all or any portion of the Equity Interests or any interest therein without the prior written consent of Agent.

3. **Negative Pledge: Restrictions on Hypothecation of Property.** iMedia hereby agrees that until all Obligations have been indefeasibly paid in full and the Loan Agreement has been terminated, iMedia will not directly or indirectly create, assume, incur or suffer to be created, assumed or incurred any security interest, Lien, charge, mortgage, pledge, hypothecation, assignment or encumbrance of any kind on all or any part of the Equity Interests other than as created by this Agreement or consented to by Agent.

4. **Restriction on Further Negative Pledge.** iMedia hereby agrees that until all Obligations have been indefeasibly paid in full and the Loan Agreement has been terminated, the Original Owners will not grant a similar “negative pledge” as that described in Section 3 above or enter into any agreement not to create, assume, incur or suffer to be created, assumed or incurred any security interest, Lien, charge, mortgage, pledge, hypothecation, assignment or encumbrance of any kind in favor of any Person.

5. **Termination.** This Agreement shall remain in full force and effect until such time as the Obligations have been indefeasibly paid in full and the Loan Agreement has been terminated.

6. **Representations and Warranties of Borrower.** iMedia represents and warrants to Agent as follows:

6.1 **Ownership of Membership Interests.** iMedia owns 100% of the Equity Interests (on a fully diluted basis) of 123tv Holding and there are no existing Liens or encumbrances upon or affecting the Equity Interests of the Borrower owned by iMedia other than as created by this Agreement.

6.2 **Authority of the Original Owners.** The execution and delivery by iMedia of this Agreement and the performance of their respective obligations hereunder have been duly authorized by all necessary corporate or company action, as applicable, of iMedia. This Agreement constitutes the legal, valid and binding obligations of iMedia enforceable in accordance with its terms, subject only to the effects of applicable bankruptcy, insolvency, reorganization, moratorium and other similar laws affecting the rights of creditors generally, principles of equity and exercise of judicial discretion. The execution and delivery of this Agreement and the compliance with the provisions hereof will not conflict with or constitute a breach of, or default under, any of the provisions of iMedia Certificate or Articles of Incorporation, bylaws, any other governing documents, as applicable, of iMedia or any other agreement to which any of iMedia is a party or by which iMedia is bound.

7. **Event of Default.** Without limiting any of the terms of the Loan Agreement or the other Loan Documents, each of the following events shall constitute an immediate “Event of Default” (as such term is defined in the Loan Agreement) by Borrowers under the Loan Agreement (an “Event of Default”):

7.1 **Breach of Agreement.** iMedia breaches of any of its warranties, covenants, or obligations under this Agreement.

8. **Cumulative Remedies.** Agent’s and Lenders’ rights and remedies under this Agreement are cumulative with and in addition to all other legal and equitable rights and remedies that Agent and Lenders may have under the Loan Agreement and Other Documents or under applicable law.

9. **Miscellaneous.** The provisions of Section 7.3 of the Loan Agreement regarding remedies, Section 10.1 of the Loan Agreement regarding notices, Section 10.2 of the Loan Agreement regarding severability, Section 10.5 of the Loan Agreement regarding modifications in writing, Section 10.8 of the Loan Agreement regarding assignment and assumption, Section 10.11 of the Loan Agreement regarding rules of construction, Section 10.14 of the Loan Agreement regarding counterparts, Section 10.15 of the Loan Agreement regarding governing law and Section 10.16 of the Loan Agreement regarding consents to and waivers regarding jurisdiction and venue are hereby specifically incorporated by reference.

[SIGNATURES TO APPEAR ON FOLLOWING PAGE]

Each of the parties has signed this Agreement as of the day and year first above written.

IMEDIA BRANDS, INC.

By: _____
Name: _____
Title: _____

SIENA LENDING GROUP LLC,
as Agent

By: _____
Name: Renee Singer
Title: Authorized Signatory

By: _____
Name: Steve Sanicola
Title: Authorized Signatory

CONSENT OF INDEPENDENT PUBLIC ACCOUNTING FIRM

We consent to the incorporation by reference in Registration Statement Nos. 333-258519, 333-217216, 333-214061, and 333-203209 on Form S-3 and 333-239832, 333-233700, 333-225833, 333-214063, 333-190982, 333-175320, 333-175319, 333-139597, 333-125183 and 333-81438 on Form S-8 of our report dated September 20, 2021, relating to the consolidated audited financial statements of 123tv Beteiligungs GmbH as of and for the years ended December 31, 2020 and December 31, 2019, appearing in this Current Report on Form 8-K.

Mazars GmbH & Co. KG
Wirtschaftsprüfungsgesellschaft
Steuerberatungsgesellschaft

/s/ Schäfer
Schäfer
Wirtschaftsprüfer
(German CPA)

/s/ Stocker
Stocker
Wirtschaftsprüfer
(German CPA)

Munich/Germany, September 22, 2021



iMedia Signs Agreement to Acquire 123tv, the Leading Auction-Driven TV Retailer in Germany

123tv's 2020 Net Sales were \$184 Million

MINNEAPOLIS, MN – September 22, 2021 – iMedia Brands, Inc. (the “Company” or “IMBI”) (NASDAQ: IMBI) today announced that on September 22nd it signed a purchase agreement to acquire 123tv for an enterprise value of approximately \$95 million, with an earn-out potential for an additional \$50 million based upon achievement of certain target revenues. The transaction is subject to customary closing conditions, including German governmental and Austrian merger control approvals, as well as a financing condition, and the Company expects to close the transaction in the fourth quarter of 2021.

123tv is a leading interactive media company disrupting Germany’s television retailing marketplace with its expertise in proprietary, Dutch auction style live and automated auctions that emotionally engages consumers with 123tv’s balanced merchandising mix of compelling products shipped directly to their homes. 123tv reaches consumers via its television network available in 40+ million German and Austrian television households 24 hours a day, 365 days a year and via its online, mobile and over-the-top (“OTT”) digital platforms. The company controls its entire value chain, from global sourcing to the interactive video point-of-sale experience, to the omnichannel sales and customer solutions.

“We believe gamification of consumers’ emotion-based shopping experience is the ultimate disruption to the status quo,” said Tim Peterman, CEO of IMBI. “123tv’s entrepreneurial team with their proprietary technologies are experts in this shopping disruption and iMedia is humbled by the trust of 123tv’s primary shareholder, Stefan Eishold of ARCUS Capital AG, that enables iMedia to help 123tv accelerate its growth plan, which we believe can include disrupting digital shopping marketplaces here in the United States.”

Commenting on this transaction, Stefan Eishold, CEO of ARCUS Capital AG, said: “We at ARCUS and our partners, BE Beteiligungen and IRIS Capital, would like to thank the 123tv team for the incredibly successful cooperation over the past five years, in which we have transformed the business into an omnichannel sales platform. It was very important to us that we hand over the company into good hands. With Tim and his team at iMedia we have found the best possible new owner.”

GCA Altium acted as financial advisor for ARCUS Capital AG and the other selling shareholders.

About iMedia Brands, Inc.

iMedia Brands, Inc. is a leading interactive media company that owns a growing portfolio of TV Networks, Consumer Brands and Digital Services that together position the Company as a leading single-source partner to television advertisers and consumer brands seeking to entertain and transact with customers using interactive video.



About ARCUS Capital AG

ARCUS Capital AG is an independent investment company based in Germany that is focused on medium-sized companies in German-speaking countries. The company works in partnership and continuously as a sparring partner for management in companies it invests to be competitive and successful together.

Safe Harbor Statement under the Private Securities Litigation Reform Act of 1995

This document may contain certain “forward-looking statements” within the meaning of the Private Securities Litigation Reform Act of 1995, including statements regarding our future operations, future business opportunities, the ability to disrupt the digital shopping marketplace and the acquisition of 123tv Group. Any statements contained herein that are not statements of historical fact, including statements regarding the expected impact of COVID-19 on television retailing are forward-looking. The Company often use words such as anticipates, believes, estimates, expects, intends, seeks, predicts, hopes, should, plans, will and similar expressions to identify forward-looking statements. These statements are based on management's current expectations and accordingly are subject to uncertainty and changes in circumstances. Actual results may vary materially from the expectations contained herein due to various important factors, including (but not limited to): variability in consumer preferences, shopping behaviors, spending and debt levels; the general economic and credit environment, including COVID-19; interest rates; seasonal variations in consumer purchasing activities; the ability to achieve the most effective product category mixes to maximize sales and margin objectives; competitive pressures on sales and sales promotions; pricing and gross sales margins; the level of cable and satellite distribution for the Company’s programming and the associated fees or estimated cost savings from contract renegotiations; the Company’s ability to establish and maintain acceptable commercial terms with third-party vendors and other third parties with whom the Company has contractual relationships, and to successfully manage key vendor and shipping relationships and develop key partnerships and proprietary and exclusive brands; the ability to manage operating expenses successfully and the Company’s working capital levels; the ability to remain compliant with the Company’s credit facilities covenants; customer acceptance of the Company’s branding strategy and its repositioning as a video commerce Company; the ability to respond to changes in consumer shopping patterns and preferences, and changes in technology and consumer viewing patterns; changes to the Company’s management and information systems infrastructure; challenges to the Company’s data and information security; changes in governmental or regulatory requirements; including without limitation, regulations of the Federal Communications Commission and Federal Trade Commission, and adverse outcomes from regulatory proceedings; litigation or governmental proceedings affecting the Company’s operations; significant events (including disasters, weather events or events attracting significant television coverage) that either cause an interruption of television coverage or that divert viewership from its programming; disruptions in the Company’s distribution of its network broadcast to customers; the Company’s ability to protect its intellectual property rights; our ability to obtain and retain key executives and employees; the Company’s ability to attract new customers and retain existing customers; changes in shipping costs; expenses related to the actions of activist or hostile shareholders; the Company’s ability to offer new or innovative products and customer acceptance of the same; changes in customer viewing habits of television programming; and the risks identified under Item 1A(Risk Factors) in the Company’s most recently filed Form 10-K and any additional risk factors identified in its periodic reports since the date of such Form 10-K. More detailed information about those factors is set forth in the Company’s filings with the Securities and Exchange Commission, including its annual report on Form 10-K, quarterly reports on Form 10-Q, and current reports on Form 8-K. Investors are cautioned not to place undue reliance on forward-looking statements, which speak only as of the date of this announcement. the Company’s is under no obligation (and expressly disclaim any such obligation) to update or alter its forward-looking statements whether as a result of new information, future events or otherwise.



Contacts:

Investors:

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(800) 938-9707

123tv Beteiligungs GmbH

Financial Statements

As of and for the years ended December 31, 2020 and 2019

123tv Beteiligungs GmbH

Financial Statements

As of and for the Years Ended
December 31, 2020 and 2019

123tv Beteiligungs GmbH
Index of Financial Statements
December 31, 2020 and 2019

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Independent Auditor's Report

To: 123tv Beteiligungs GmbH, München:

We have audited the accompanying consolidated financial statements of 123tv Beteiligungs GmbH, München and its subsidiaries (the "Group"), which comprise the consolidated balance sheets as of December 31, 2020, and 2019 and the related consolidated statements of income, retained earnings, and cash flows for the years then ended, and the related notes to the consolidated financial statements.

We are independent of the Group in accordance with the ethical requirements that are relevant to our audit of the consolidated financial statements in the United States of America, together with the International Ethics Standards Board for Accountants' Code of Ethics for Professional Accountants, and we have fulfilled our other ethical responsibilities in accordance with those requirements, respectively.

Management's responsibility for the Consolidated financial Statements

Management is responsible for the preparation and fair presentation of these consolidated financial statements in accordance with accounting principles generally accepted in Germany; this includes the design, implementation, and maintenance of internal control relevant to the preparation and fair presentation of consolidated financial statements that are free from material misstatement, whether due to fraud or error. In preparing the consolidated financial statements, management is responsible for evaluating whether there are conditions and events, considered in the aggregate, that raise substantial doubt about the entity's ability to continue as a going concern within one year after the date that the consolidated financial statements are available to be issued, and for disclosing, as applicable, matters related to this evaluation unless the liquidation basis of accounting is being used by the entity.

Those charged with governance are responsible for overseeing the Group's financial reporting process.

Auditor's Responsibility

Our responsibility is to express an opinion on these consolidated financial statements based on our audit. We conducted our audit in accordance with auditing standards generally accepted in the United States of America and in accordance with International Standards on Auditing. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the consolidated financial statements are free from material misstatement, whether due to fraud or error. Reasonable assurance is a high level of assurance, but it is not a guarantee that an audit will always detect a material misstatement when it exists. Misstatements can arise from fraud or error and are considered material if, individually or in the aggregate, they could reasonably be expected to influence the economic decisions of users taken on the basis of these consolidated financial statements.

An audit involves performing procedures to obtain audit evidence about the amounts and disclosures in the consolidated financial statements. The procedures selected depend on the auditor's judgment, including the assessment of the risks of material misstatement of the consolidated financial statements, whether due to fraud or error. We design audit procedures responsive to those risks and obtain audit evidence that is sufficient and appropriate to provide a basis for our opinion. The risk of not detecting a material misstatement resulting from fraud is higher than for one resulting from error because fraud may involve collusion, forgery, intentional omissions, misrepresentations, or the override of internal control.

In making those risk assessments, the auditor considers internal control relevant to the entity's preparation and fair presentation of the consolidated financial statements in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the entity's internal control. Accordingly, we express no such opinion. An audit also includes evaluating the appropriateness of accounting policies used and the reasonableness of significant accounting estimates made by management, as well as evaluating the overall presentation, structure, and content of the consolidated financial statements, including disclosures, and whether the consolidated financial statements represent the underlying transactions and events in a manner that achieves fair presentation.

As part of an audit, we exercise professional judgment and maintain professional skepticism throughout the audit. We also conclude on the appropriateness of management's use of the going concern basis of accounting, and based on the audit evidence obtained, whether substantial doubt exists related to the Group's ability to continue as a going concern. If we conclude that substantial doubt exists, we are required to draw attention in our auditor's report to the related disclosures in the consolidated financial statements or, if such disclosures are inadequate, to modify our opinion. Our conclusions are based on the audit evidence obtained up to the date of our auditor's report. However, future events or conditions may cause the Group to cease to continue as a going concern.

We communicate with those charged with governance regarding, among other matters, the planned scope and timing of the audit and significant audit findings, including any significant deficiencies or material weaknesses in internal control that we identify during our audit.

We believe that the audit evidence we have obtained is sufficient and appropriate to provide a basis for our audit opinion.

Opinion

In our opinion, the consolidated financial statements referred to above present fairly, in all material respects, the financial position of 123tv Beteiligungs GmbH, München as of December 31, 2020, and 2019 and the results of its operations and its cash flows for the years then ended in accordance with accounting principles generally accepted in Germany.

Other Matter

As discussed in Note 1 to the consolidated financial statements, the Group prepares its consolidated financial statements on the basis of accounting principles as defined within the provisions of the German Commercial Code and taking into account the provisions of the GmbH Act ("accounting principles generally accepted in Germany " or "German GAAP"), but do not conform with accounting principles generally accepted in the United States of America. German GAAP vary in certain significant respects from accounting principles generally accepted in the United States of America ("US GAAP"). Information relating to the nature and effect of such differences is presented in Note 10 to the consolidated financial statements.

Munich/Germany, September 20, 2021

Mazars GmbH & Co. KG
Wirtschaftsprüfungsgesellschaft
Steuerberatungsgesellschaft

/s/ Schäfer
Schäfer
Wirtschaftsprüfer
(German CPA)

/s/ Stocker
Stocker
Wirtschaftsprüfer
(German CPA)

123tv Beteiligungs GmbH
Consolidated Balance Sheets
As of December 31, 2020 and 2019
(in thousands, except share and per share information)

	December 31, 2020	December 31, 2019
ASSETS		
CURRENT ASSETS		
Cash	€ 5,719	€ 2,591
Trade receivables	8,203	6,989
Receivables from affiliated companies	6	-
Other current assets	1,913	1,335
Inventory	12,926	12,307
Prepaid expenses and other current assets	162	217
TOTAL CURRENT ASSETS	28,929	23,439
TANGIBLE ASSETS		
Land, land rights and building including building on third party land	318	64
Other equipment, factory and office equipment	347	223
Prepayments on tangible assets and construction in progress	-	204
INTANGIBLE ASSETS		
Concessions, industrial and similar rights and assets and licenses in such rights and assets	4,901	4,477
Excess of purchase price over fair value of net assets of business acquired	8,122	9,495
Prepayments on intangible assets	743	84
TOTAL ASSETS	€ 43,360	€ 37,986
LIABILITIES AND STOCKHOLDERS' EQUITY		
CURRENT LIABILITIES		
Liabilities to banks	€ -	€ 550
Trade payables	11,196	10,660
Payable to affiliated companies	6	-
Other liabilities	2,020	1,695
Tax accruals	195	11
Other accruals	3,969	4,174
TOTAL CURRENT LIABILITIES	17,386	17,090
Deferred taxes, passive	604	706
TOTAL LIABILITIES	€ 17,990	€ 17,796
STOCKHOLDERS' EQUITY		
Subscribed capital	€ 36	€ 36
Capital reserve	14,191	14,191
Retained earnings	5,963	5,082
Net income	5,180	881
	25,370	20,190
TOTAL LIABILITIES AND STOCKHOLDERS' EQUITY	€ 43,360	€ 37,986

123tv Beteiligungs GmbH
Consolidated Statements of Operations
For the years ended December 31, 2020 and 2019
(in thousands, except share and per share information)

	Year Ended December 31	
	<u>2020</u>	<u>2019</u>
Revenue		
Sales	€ 155,269	€ 126,110
Other operating income	<u>616</u>	<u>614</u>
	155,885	126,724
Costs of material		
Cost of raw materials, consumables and supplies and of purchased merchandise	(92,349)	(75,617)
Cost of purchased service	(21,293)	(17,915)
	<u>(113,642)</u>	<u>(93,532)</u>
Personnel expenses		
Wages and salaries	(7,742)	(6,439)
Social security and pension expenses	(1,259)	(1,108)
	<u>(9,001)</u>	<u>(7,547)</u>
Depreciations and amortization on intangible fixed assets and tangible assets	(2,709)	(2,431)
Other operating expenses	(24,669)	(22,180)
Interests		
Other interest and similar income	6	14
Interest and similar expenses	(109)	(93)
	<u>(103)</u>	<u>(79)</u>
Taxes on income	(579)	(72)
Income after taxes	€ 5,182	€ 883
Other taxes	(2)	(2)
Consolidated income	<u>€ 5,180</u>	<u>€ 881</u>

123tv Beteiligungs GmbH
Consolidated Statements of Stockholders' Equity
For the years ended December 31, 2020 and 2019
(in thousands, except share and per share information)

	Common capital stock	Capital Reserve	Balance sheet profit and loss	Total Equity
Balance as of December 31, 2018	€ 36	€ 14,191	€ 5,082	€ 19,309
Consolidated income	-	-	881	881
Balance as of December 31, 2019	36	14,191	5,963	20,190
Consolidated income	-	-	5,180	5,180
Balance as of December 31, 2020	€ 36	€ 14,191	€ 11,143	€ 25,370

123tv Beteiligungs GmbH
Consolidated Statements of Cash Flows
For the years ended December 31, 2020 and 2019
(in thousands, except share and per share information)

	<u>2020</u>	<u>2019</u>
CASH FLOWS FROM OPERATING ACTIVITIES		
Consolidated income	€ 5,180	€ 881
Adjustments to reconcile consolidated income to net cash provided by operating activities:		
Depreciations and amortization on intangible fixed assets and tangible assets	2,709	2,431
Increase/decrease in accruals	168	78
Profit/loss from disposal of fixed assets	6	5
Income tax refund	579	72
Tax payments	(767)	(761)
Interest income	104	79
Interest expenses	(23)	-
Changes in operating assets and liabilities:		
Inventories	(619)	(2,523)
Trade receivables	(1,213)	903
Receivables from affiliated companies	(6)	-
Other assets, prepaid expenses and other assets	(698)	(123)
Trade payables	533	225
Other liabilities, deferred income	331	(252)
Net cash provided by operating activities	<u>6,284</u>	<u>1,015</u>
CASH FLOWS FROM INVESTING ACTIVITIES		
Expenses for investments in intangible assets	(2,187)	(750)
Expenses for investments in tangible assets	(412)	(467)
Net cash used in investing activities	<u>(2,599)</u>	<u>(1,217)</u>
CASH FLOWS FROM FINANCING ACTIVITIES		
Repayment of long-term debts and others	(550)	(2,025)
Paid taxes	(7)	(49)
Net cash used in financing activities	<u>(557)</u>	<u>(2,074)</u>
NET INCREASE (DECREASE) IN CASH	<u>3,128</u>	<u>(2,276)</u>
CASH AT BEGINNING OF PERIOD	<u>€ 2,591</u>	<u>€ 4,867</u>
CASH AT END OF PERIOD	<u>€ 5,719</u>	<u>€ 2,591</u>

Notes to the Consolidated Financial Statements for the years ended December 31, 2020 and 2019

1. GENERAL INFORMATION ABOUT THE CONSOLIDATED FINANCIAL STATEMENTS AND CONSOLIDATED FINANCIAL STATEMENT DUE DATE

As the parent company, 123tv Beteiligungs GmbH has prepared consolidated financial statements in accordance with the provisions of the German Commercial Code and taking into account the provisions of the GmbH Act. The parent company is entered in the commercial register at the Munich Local Court under HRB 228628. According to the entry in the register, the company is based in Munich, Germany.

The consolidated financial statements include the consolidated balance sheets, consolidated statements of operations, consolidated statements of shareholders' equity, consolidated cash flow statements and notes to the consolidated financial statements.

The consolidated income statement follows the expenditure format.

All amounts in the consolidated financial statements are in thousands of EURO (TEUR).

2. INFORMATION ABOUT CONSOLIDATION BASIS

The consolidation basis includes 123tv BeteiligungsGmbH (the "parent" company) and 1-2-3.TV GmbH (the "subsidiary" company).

The parent company acquired the subsidiary on November 14, 2016. Inclusion in the consolidated financial statements is based on the majority ownership per 290 Abs. 2 Nr. 1 HGB (commercial code law). The parent company holds 100% of the voting rights in the subsidiary.

Furthermore, the subsidiary company holds 100% of the shares and voting rights of 1-2 play GmbH, located in Gruenwald. 1-2 play GmbH is not included in the consolidated financial statements based on 296 Abs. 2 HGB and using the same approach as in the prior year.

3. INFORMATION ABOUT METHODS OF CONSOLIDATION

The capital consolidation occurs as full consolidation with the applicable valuation methods (described in Part 4). Under this method, the assets including prepaid expenses, liabilities and equity of the subsidiary are fully consolidated into the parent company financial statements as of December 1, 2016 (time of initial consolidation).

The **liability consolidation** under 303 Abs. 1 HGB combines loans receivables, loans payables, the respective accruals and other liabilities of the consolidated companies into the respective consolidated liability accounts.

The **asset and liability consolidation** under 305 Abs 1 HGB combines sales, other operating income and costs of the consolidated companies into the respective consolidated income and costs accounts. Interest income, other income and the respective expenses are consolidated using the same approach.

The deferred taxes arising as part of the consolidation measures, in particular the capital consolidation, result from differences between the commercial valuation of assets, debts and prepaid expenses and their tax valuation and are expected to decrease in subsequent years. Deferred taxes were determined using the parent effective tax rate of 24.23%.

4. GENERAL INFORMATION ABOUT ACCOUNTING AND VALUATION METHODS

The annual consolidated financial statements are included in accordance with the statutory provisions following the accounting and valuation methods applicable at the parent company. The following **accounting and valuation methods** were applied:

The acquired intangible assets are valued at acquisition cost less amortization on a straight-line basis and / or impairment. Brands and goodwill (from business consolidation) are amortized over a useful life of ten years in accordance with Section 253 (3) sentence 3 in conjunction with Section 298 (1) HGB. In addition, the other assets are amortized over an estimated useful life of three to five years.

Tangible assets are valued at costless depreciation on a straight-line basis and / or impairment. The planned useful lives of tangible assets range between three and five years.

Low-cost assets with individual acquisition costs of up to EUR 250 are expensed in the year of acquisition. Assets with individual acquisition costs between EUR 250 and EUR 800 are fully depreciated in the year of the acquisition.

Financial assets are valued at the lower of acquisition cost or fair value in accordance with Section 253 (3) sentence 3 of the German Commercial Code (HGB).

Inventories (merchandise) are valued at acquisition cost. Write-offs of obsolete inventory normally occur due to reduced usability of merchandise. Realized profit or loss from the sale of inventory take into account the possible resale value.

Receivables and other assets are shown at their nominal value. Identifiable risks are taken into account by valuation of bad debt allowances for trade receivables (e.g., the general credit risk of the customers).

Cash and cash equivalents include petty cash and bank account balances. Cash and cash equivalents are stated at their nominal value.

Tax provisions are determined for trade tax and corporation tax based on the basis of expected income and earnings. Tax is valued at the expected settlement amount.

Other provisions are accounted for at the expected settlement amount, taking into account all identifiable risks. A provision has been made for returns from customers that have not yet been received based on the historical return rates over the past few months.

The **liabilities** are recognized at the expected settlement amount on the balance sheet date.

Assets and liabilities in foreign currencies (other than EURO) were generally valued at the average spot exchange rate on the balance sheet date.

The **deferred income** represents the income which has not been earned on the balance sheet date.

Sales revenues from merchandise and the flat-rate shipping costs are recorded at the time of delivery of the products to the customers. Returned items will be offset against the recognized sales. A provision was made for expected returns on the balance sheet date.

Income and expenses are recorded when the service is provided to the customers, or when the income and expense from the transactions are realized. Income and expense are recorded on the accrual basis regardless of the time of payment.

5. INFORMATION ABOUT THE CONSOLIDATED BALANCE SHEET

The **goodwill** shown in fixed assets is related exclusively to the difference between the acquired net assets and the purchase price from the business combination of 1-2-3.TV GmbH (Section 301 (3) HGB). At the time of initial consolidation, goodwill amounted to EUR 13,727 thousand and as of December 30, 2020 and 2019 goodwill amounted to EUR 8,122 thousand and EUR 9,495 thousand, respectively.

The inventories consist exclusively of merchandise that was obtained for resale and is stored in the warehouse of DHL Home Delivery GmbH in Braunschweig. At the location in Grünwald, sample articles are stored in small numbers for presentation in the live broadcasts. As of December 31, 2020 and 2019, write-downs were made based on the fair value of the items in accordance with Section 253 (4) HGB in the amount of EUR 632 thousand and EUR 590 thousand, respectively.

The gross trade receivables amounted to EUR 8,669 thousand and EUR 7,492 thousand as of December 31, 2020 and 2019, respectively. Bad-debt allowance for default risks was recognized in the amount of EUR 466 thousand and EUR 503 thousand as of December 31, 2020 and 2019 respectively.

The **other assets** consist of receivables from suppliers for returned goods.

Liquid funds amounted to EUR 5,719 thousand and EUR 2,591 thousand as of December 31, 2020 and 2019, respectively. The total amount consists of available cash held at financial institutions and cash on hand.

The (active) **prepaid expenses** include a discount of 162 thousand EUR and 217 thousand EUR, as of December 31, 2020 and 2019, respectively.

On December 31, 2020, the **subscribed capital** was unchanged from December 31, 2019 and amounted to EUR 36 thousand.

The **capital reserve** at December 31, 2020 according to Section 272, Paragraph 2, No. 4 of the German Commercial Code (HGB) is unchanged from December 31, 2019.

The **tax provisions** are related to taxes on income for the period from January 1, 2020 through December 31, 2020 and from January 1, 2019 through December 31, 2019.

The **other provisions** consist of provisions for outstanding returns or warranty cases, outstanding supplier invoices and provisions for TV broadcast costs that have not yet been billed, as well as provisions for personnel costs.

The **trade payables** result mainly from the purchase of goods from suppliers; of this, EUR 0 and EUR 5,000 as of December 31, 2020 and 2019, respectively, are related to liabilities to affiliated companies.

Liabilities to affiliated companies in the amount of EUR 6 thousand and EUR 0 thousand as of December 31, 2020 and 2019, respectively, are related to payables from deliveries and services.

In addition to the liabilities from taxes and social security already shown on the balance sheet, the **other liabilities** include credits from returns to be paid to customers in the amount of EUR 1,289 thousand and EUR 1,076 thousand as of December 31, 2020 and 2019, respectively.

In the individual financial statements, **deferred tax assets and liabilities** are offset against each other in accordance with Section 274 (1) of the German Commercial Code (HGB). If there is a surplus of deferred tax assets when offsetting, the surplus is not used.

Deferred taxes which arose from the acquisition of the subsidiary in accordance with Section 301 (3) HGB were recognized as part of the revaluation. The revaluation of intangible assets which arose from the acquisition of the parent in accordance with Section 301 (1) HGB resulted in deferred tax liabilities of EUR 1,021 thousand, which changed to EUR 604 thousand and EUR 706 thousand as of December 31, 2020 and 2019, respectively. Offsetting against deferred tax assets in accordance with Section 274 HGB was not carried out. The deferred taxes were based on a tax rate of 24.23% as of December 31, 2020 and 2019, respectively.

The **liabilities** are broken down according to the remaining payment term as of December 31, 2020 as follows:

Liabilities	Sum TEUR	Up to 1 Year TEUR	Remaining Term	
			1 to 5 Years TEUR	Higher than 5 Years TEUR
1. Trade payables	11,196	11,196	-	-
2. Payable to affiliated companies	6	6	-	-
3. Other liabilities	2,020	2,020	-	-
	<u>13,222</u>	<u>13,222</u>	<u>-</u>	<u>-</u>

The liabilities were broken down according to remaining payment term as of December 31, 2019 as follows:

Liabilities	Total TEUR	Up to 1 Year TEUR	Remaining term	
			1 to 5 Years TEUR	Higher than 5 Years TEUR
1. Liabilities to banks	550	550	-	-
2. Trade payables	10,660	10,660	-	-
3. Other liabilities	1,695	1,695	-	-
	<u>12,905</u>	<u>12,905</u>	<u>-</u>	<u>-</u>

6. EXPLANATIONS TO THE CONSOLIDATED INCOME STATEMENT

Revenues from sales of goods amounted to EUR 135,221 thousand and EUR 109,057 thousand for the year ended December 31, 2020 and December 31, 2019, respectively.

Flat-rate shipping costs received amounted to EUR 13,927 thousand and EUR 11,583 thousand for the year ended December 31, 2020 and December 31, 2019, respectively.

Value-added telephone numbers amounted to EUR 5,082 thousand and EUR 4,382 thousand for the year ended December 31, 2020 and December 31, 2019, respectively.

Advertising income amounted to EUR 1,039 thousand and EUR 1,088 thousand (realized) for the year ended December 31, 2020 and December 31, 2019, respectively. The amounts take into account the returns that have already been incurred and those that are still to be expected from realized sales.

Sales revenues in Germany amounted to EUR 152,254 thousand and EUR 123,635 thousand for the year ended December 31, 2020 and December 31, 2019, respectively. Sales revenues abroad amounted to EUR 3,015 thousand and EUR 2,475 thousand for the year ended December 31, 2020 and December 31, 2019, respectively.

The other operating income amounted to EUR 616 thousand and EUR 614 thousand for the year ended December 31, 2020 and December 31, 2019, respectively and consisted mainly of:

- income from other accounting periods from the collection of statute-barred liabilities in the amount of EUR 161 thousand and EUR 0 thousand for the year ended December 31, 2020 and December 31, 2019, respectively;
- income from dunning fees received in the amount of EUR 133 thousand and 128 thousand EUR for the year ended December 31, 2020 and December 31, 2019, respectively;
- income from the reversal of provisions in the amount of 80 thousand EUR and 103 thousand EUR for the year ended December 31, 2020 and December 31, 2019, respectively;
- income from currency conversions in the amount of 64 thousand EUR and 12 thousand EUR for the year ended December 31, 2020 and December 31, 2019, respectively.

The following main expenses are summarized in the other operating expenses:

- expenses for TV broadcasting in the amount of EUR 8,447 thousand and EUR 8,052 thousand for the year ended December 31, 2020 and December 31, 2019, respectively;
- expenses for TV / studio operation in the amount of EUR 6,000 and EUR 5,641 thousand for the year ended December 31, 2020 and December 31, 2019, respectively;
- expenses in connection with services in the area of customer service and accounts receivable accounting in the amount of EUR 3,232 thousand and EUR 2,700 thousand for the year ended December 31, 2020 and December 31, 2019, respectively;

- expenses for IT, marketing, e-commerce in the amount of EUR 6,902 thousand and EUR 5,731 thousand for the year ended December 31, 2020 and December 31, 2019, respectively;
- expenses from currency conversion in the amount of EUR 50 thousand and EUR 44 thousand for the year ended December 31, 2020 and December 31, 2019, respectively.

Other interest and similar income include income of EUR 6 thousand and EUR 14 thousand for the year ended December 31, 2020 and December 31, 2019, respectively.

Interest and similar expenses mainly include interest expenses for long-term loans and the reversal of a discount. The interest and similar expenses also include expenses from the compounding of provisions in the amount of EUR 109 thousand and EUR 93 thousand for the year ended December 31, 2020 and December 31, 2019, respectively.

Income taxes include income from the reversal of deferred tax liabilities in the amount of EUR 581 thousand and EUR 74 thousand for the year ended December 31, 2020 and December 31, 2019, respectively.

7. INFORMATION ON THE CONSOLIDATED CASH FLOW STATEMENT

The Group's financial assets of EUR 5,719 thousand and EUR 2,591 thousand for the year ended December 31, 2020 and December 31, 2019, respectively were allocated to the financial resources; liabilities to banks due at any time were EUR 0 for the year ended December 31, 2020 and December 31, 2019.

8. SUBSEQUENT EVENTS

The effects of the ongoing COVID 19 pandemic and the associated "lockdown phases" are continuously evaluated in terms of risks for the goods procurement processes and sales management as well as possible financial effects. As far as foreseeable, various precautionary measures were taken at an early stage in order to avoid major business interruptions. At the current time, these risks are considered to be easily manageable due to the flexibility in the processes and the current economic and financial situation of the company. At the time the report was prepared, there was no negative impact on customer demand in relation to the current corona lockdown. Due to the business model, which is based on the mail order sales of a very wide range of consumer goods, there is a chance of an increase in demand or sales in individual product ranges compared to the general market situation in stationary retail. The Group's liquidity position is classified as stable, the continuation of corporate activities is assessed as safe.

After the end of the financial year, no other events of materiality have occurred that would have a significant impact on the Group's earnings, financial or asset position.

9. OTHER INFORMATION

During the past financial year, the parent company's business was led by Stefan Eishold, Grünwald.

With regard to the remuneration of the members of the executive bodies, the Group does not disclose this information by exercising the option in accordance with Section 286 (4) of the German Commercial Code (HGB).

On average, employees were employed in the areas of purchasing (31) planning (11), production (11), e-commerce (25), IT (11) and other areas (29) in the 2020 financial year in accordance with Section 267 (5) HGB.

The total expenses for auditing and consulting totaled EUR 46 thousand and EUR 55 thousand for the year ended December 31, 2020 and December 31, 2019, respectively, of which EUR 46 thousand and EUR 46 thousand was attributable to audit services for the year ended December 31, 2020 and December 31, 2019, respectively and EUR 0 thousand and EUR 9 thousand to other services for the year ended December 31, 2020 and December 31, 2019, respectively.

The following other financial obligations existed as of the reporting date:

In Thousand EUR	2021	2022	after 2022 to 2026
Obligations from rental agreements	661	670	1,061
Obligations from leasing agreements	78	34	15
Obligations from insurance agreements	102	2	-
Obligations from service agreements	10,154	5,528	10,172
Total	10,995	6,234	11,248

1-2-3.TV GmbH, Grünwald is included in the consolidated financial statements of 123tv Beteiligungs GmbH as part of the full consolidation and utilizes the exemption from Section 264 (3) HGB.

The management of the parent proposes to its shareholders that the annual results be carried forward.

Transactions with related companies and persons are carried out with subsidiaries in the form of management services. The transactions are conducted on the terms customary in the respective market. There are no transactions at prices that are not customary in the market.

10. Summary of differences between German GAAP and U.S. generally accepted accounting principles (“U.S. GAAP”)

The financial statements of the acquiree have been prepared in accordance with HGB (“German GAAP”) which differ in certain significant respects from U.S. GAAP. The effects of the application of U.S. GAAP to the net income and stockholders’ equity are set forth in the table below:

	Year ended December 31, 2020 (in EUR)	Year ended December 31, 2019 (in EUR)
Reconciliation of net income:		
Net income for the financial year in accordance with German GAAP	€ 5,180	€ 881
U.S. GAAP reconciliation adjustments		
Adjustments to rent expense under lease accounting	37	58
Reversal of amortization of goodwill	1,372	1,372
Tax related adjustment for GAAP reconciliation adjustments	(9)	(14)
Net income in accordance with U.S. GAAP	<u>€ 6,580</u>	<u>€ 2,297</u>
	December 31, 2020 (in EUR)	December 31, 2019 (in EUR)
Reconciliation of stockholders’ equity:		
Stockholders’ equity in accordance with German GAAP	€ 25,370	€ 20,190
U.S. GAAP reconciliation adjustments		
Adjustments to rent expense under lease accounting	71	44
Reversal of amortization of goodwill	5,606	4,234
Stockholders’ equity in accordance with U.S. GAAP	<u>€ 31,047</u>	<u>€ 24,468</u>

Notes to the reconciliation of net income and stockholders’ equity in accordance with German GAAP and U.S. GAAP:

Lease accounting

Under German GAAP, if a lease arrangement is recognized as an operating lease, the lessee recognizes the rental expense on a straight-line basis over the lease term. Under U.S. GAAP, for all leases over 12 months, the lessee is required to measure and recognize the right-of-use assets and a lease liability on the balance sheet at the commencement date of the lease. The lease liability is measured at the present value of the future lease payments, discounted at the implicit discount rate, (or lessee’s incremental borrowing rate, if the lessee cannot readily determine the rate implicit in the lease). The right-of-use asset is measured at the carrying amount of the lease liability, adjusted for (1) prepaid or accrued lease payments, (2) lease incentives received, (3) incurred initial direct costs. Lessee is required to subsequently measure the lease liability of the right-of-use assets based on the same methodology used for its initial measurement. The reconciling item above represents the recognition of right-of-use assets, lease liabilities, and adjustment to current and historical earnings. Refer below for a table showing the impact of the lease accounting adjustment as of December 31, 2020 and 2019.

In Thousand EUR	German GAAP December 31, 2020	US GAAP December 31, 2020	Change
Right of Use Asset	-	3,862	3,862
Deferred Tax Asset	-	23	23
Net Income	(5,180)	(5,207)	(27)
Retained Earnings	(5,963)	(6,007)	(44)
Finance Lease Obligation – Current	-	(1,145)	(1,145)
Finance Lease Obligation – Long Term Portion	-	(2,669)	(2,669)

In Thousand EUR	German GAAP December 31, 2019	US GAAP December 31, 2019	Change
Right of Use Asset	-	4,892	4,892
Deferred Tax Asset	-	14	14
Net Income	(881)	(925)	(44)
Finance Lease Obligation – Current	-	(1,157)	(1,157)
Finance Lease Obligation – Long Term Portion	-	(3,705)	(3,705)

Goodwill

Goodwill is difference between the acquisition cost and the fair value of the net identifiable assets. Under German GAAP, goodwill is amortized over its estimated useful life using the straight-line method. Under U.S. GAAP, goodwill is not amortized, but rather tested annually for impairment for public companies. The reconciling item above represents the current and historical reversal of goodwill amortization expense, and the elimination of accumulated amortization of goodwill.

Tax related impact of GAAP adjustments

There was a €9 and €14 tax related impact, for the years ended December 31, 2020 and 2019 respectively, resulting from the GAAP reconciling adjustments in recognition of (i) the change in amortization expense, and (ii) adjustments to rent expense under lease accounting.

123tv Beteiligungs GmbH

Interim Financial Statements

As of
June 30, 2021 and December 31, 2020,
and for the six months ended June 30, 2021 and 2020

123tv Beteiligungs GmbH

Index of Interim Financial Statements

As of June 30, 2021 and December 31, 2020,
and for the six months ended June 30, 2021 and 2020

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123tv Beteiligungs GmbH
Consolidated Balance Sheets
As of June 30, 2021 and December 31, 2020
(in thousands, except share and per share information)

	June 30, 2021	December 31, 2020
ASSETS		
CURRENT ASSETS		
Cash	€ 3,914	€ 5,719
Trade receivables	7,185	8,203
Receivables from affiliated companies	6	6
Other current assets	1,539	1,913
Inventory	15,958	12,926
Prepaid expenses and other current assets	248	162
TOTAL CURRENT ASSETS	28,850	28,929
TANGIBLE ASSETS		
Land, land rights and building including building on third party land	281	318
Other equipment, factory and office equipment	413	347
INTANGIBLE ASSETS		
Concessions, industrial and similar rights and assets and licenses in such rights and assets	4,727	4,901
Excess of purchase price over fair value of net assets of business acquired	7,435	8,122
Prepayments on intangible assets	1,026	743
TOTAL ASSETS	€ 42,732	€ 43,360
LIABILITIES AND STOCKHOLDERS' EQUITY		
CURRENT LIABILITIES		
Trade payables	€ 8,957	€ 11,196
Payable to affiliated companies	-	6
Other liabilities	1,521	2,020
Tax accruals	177	195
Other accruals	3,722	3,969
TOTAL CURRENT LIABILITIES	14,377	17,386
Deferred taxes, passive	573	604
TOTAL LIABILITIES	€ 14,950	€ 17,990
STOCKHOLDERS' EQUITY		
Subscribed capital	€ 36	€ 36
Capital reserve	14,191	14,191
Retained earnings	11,143	5,963
Net income	2,412	5,180
	27,782	25,370
TOTAL LIABILITIES AND STOCKHOLDERS' EQUITY	€ 42,732	€ 43,360

123tv Beteiligungs GmbH
Consolidated Statements of Operations
For six-month ended as of June 30, 2021 and June 30, 2020
(in thousands, except share and per share information)

	June 30, 2021	June 30, 2020
Revenue		
Sales	€ 81,730	€ 70,846
Other operating income	<u>265</u>	<u>136</u>
	81,995	70,982
Costs of material		
Cost of raw materials, consumables and supplies and of purchased merchandise	(48,418)	(41,388)
Cost of purchased service	(12,370)	(9,770)
	<u>(60,788)</u>	<u>(51,158)</u>
Personnel expenses		
Wages and salaries	(4,072)	(3,686)
Social security and pension expenses	(738)	(612)
	<u>(4,810)</u>	<u>(4,298)</u>
Depreciations and amortization on intangible fixed assets and tangible assets	(1,449)	(1,301)
Other operating expenses	(12,315)	(11,680)
Interest and similar expenses	(11)	(94)
Taxes on income	(209)	(195)
Income after taxes	€ 2,413	€ 2,256
Other taxes	<u>(1)</u>	<u>(1)</u>
Consolidated income	€ <u>2,412</u>	€ <u>2,255</u>

123tv Beteiligungs GmbH
Consolidated Statements of Stockholders' Equity
For the six months ended June 30, 2020 and 2021
(in thousands, except share and per share information)

	Common capital stock	Capital Reserve	Balance sheet profit and loss	Total Equity
Balance as of January 1, 2020	€ 36	€ 14,191	€ 5,963	€ 20,190
Consolidated income	-	-	2,255	2,255
Balance as of June 30, 2020	€ 36	€ 14,191	€ 8,218	€ 22,445

	Common capital stock	Capital Reserve	Balance sheet profit and loss	Total Equity
Balance as of January 1, 2021	€ 36	€ 14,191	€ 11,143	€ 25,370
Consolidated income	-	-	2,412	2,412
Balance as of June 30, 2021	€ 36	€ 14,191	€ 13,555	€ 27,782

123tv Beteiligungs GmbH
Consolidated Statements of Cash Flows
For six-month ended as of June 30, 2021 and June 30, 2020
(in thousands, except share and per share information)

	June 30, 2021	June 30, 2020
CASH FLOWS FROM OPERATING ACTIVITIES		
Consolidated income	€ 2,412	€ 2,255
Adjustments to reconcile consolidated income to net cash (used in) provided by operating activities:		
Depreciations and amortization on intangible fixed assets and tangible assets	1,449	1,301
Increase/decrease in accruals	(283)	735
Income tax refund	209	195
Tax payments	(242)	(285)
Interest income	11	94
Interest expenses	(11)	(9)
Changes in operating assets and liabilities:		
Inventories	(3,032)	(882)
Trade receivables	1,018	415
Other assets, prepaid expenses and other assets	288	448
Trade payables	(2,238)	(1,807)
Other liabilities, deferred income	(485)	(702)
Net cash (used in) provided by operating activities	<u>(904)</u>	<u>1,758</u>
CASH FLOWS FROM INVESTING ACTIVITIES		
Expenses for investments in intangible assets	(757)	(778)
Expenses for investments in tangible assets	(144)	(212)
Net cash used in investing activities	<u>(901)</u>	<u>(990)</u>
CASH FLOWS FROM FINANCING ACTIVITIES		
Proceeds from long-term debts and others	-	2,000
Repayment of long-term debts and others	-	(550)
Interest paid	-	(26)
Net cash provided by financing activities	<u>-</u>	<u>1,424</u>
NET (DECREASE) INCREASE IN CASH	<u>(1,805)</u>	<u>2,192</u>
CASH AT BEGINNING OF PERIOD	<u>€ 5,719</u>	<u>€ 2,591</u>
CASH AT END OF PERIOD	<u>€ 3,914</u>	<u>€ 4,783</u>

**Notes to the Consolidated Financial Statements
(Interim financial statements)**

**1. GENERAL INFORMATION ABOUT THE CONSOLIDATED FINANCIAL STATEMENTS AND CONSOLIDATED FINANCIAL STATEMENTS
DUE DATE**

As the parent company, 123tv Beteiligungs GmbH has prepared consolidated financial statements in accordance with the provisions of the German Commercial Code and taking into account the provisions of the GmbH Act. The parent company is entered in the commercial register at the Munich Local Court under HRB 228628. According to the entry in the register, the company is based in Munich, Germany.

The consolidated financial statements include the consolidated balance sheets, consolidated statements of operations, consolidated statements of stockholders' equity, consolidated cash flow statements and attachment to the consolidated financial statements.

The consolidated income statement follows the expenditure format.

All amounts in the consolidated financial statements are in thousands of EURO (TEUR).

2. INFORMATION ABOUT CONSOLIDATION BASIS

The consolidation basis includes 123tv Beteiligungs GmbH (the "parent" company) and 1-2-3.TV GmbH (the "subsidiary" company).

The parent company acquired the subsidiary on November 14, 2016. Inclusion in the consolidated financial statements is based on the majority ownership per 290 Abs. 2 Nr. 1 HGB (commercial code law). The parent company holds 100% of the voting rights in the subsidiary.

Furthermore, the subsidiary company holds 100% of shares and voting rights of 1-2 play GmbH with location in Gruenwald. 1-2 play GmbH is not included in the consolidated financial statements based on 296 Abs. 2 HGB and using the same approach as in the prior year.

3. INFORMATION ABOUT METHODS OF CONSOLIDATION

The **capital consolidation** occurs as full consolidation with the applicable valuation methods (described in Part 4). Under this method, the assets including prepaid expenses, liabilities and equity of the subsidiary are fully consolidated into the parent company financial statements as of December 1, 2016 (time of initial consolidation).

The **liability consolidation** under 303 Abs. 1 HGB combines loans receivables, loans payables, the respective accruals and other liabilities of the consolidated companies into the respective consolidated liability accounts.

The **asset and liability consolidation** under 305 Abs 1 HGB combines sales, other operating income and costs of the consolidated companies into the respective consolidated income and costs accounts. Interest income, other income and the respective expenses are consolidated using the same approach.

The **deferred taxes** arising as part of the consolidation measures, in particular the capital consolidation, result from differences between the commercial valuation of assets, debts and prepaid expenses and their tax valuation and are expected to decrease in subsequent years. Deferred taxes were determined using the parent company specific tax rate of 24.23%.

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The acquired **intangible assets** are valued at acquisition cost less amortization on a straight-line basis and / or impairment. Brands and goodwill (from business consolidation) are amortized over a useful life of ten years in accordance with Section 253 (3) sentence 3 in conjunction with Section 298 (1) HGB. In addition, other intangible assets are amortized over an estimated useful life of three to five years.

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Low cost assets with individual acquisition costs of up to EUR 250 are expensed in the year of acquisition. Assets with individual acquisition costs between EUR 250 and EUR 800 are fully depreciated in the year of the acquisition.

The **financial assets** are valued at the lower of acquisition cost or fair value in accordance with Section 253 (3) sentence 3 of the German Commercial Code (HGB).

Inventories (merchandise) are valued at acquisition cost. Write-off of obsolete inventory usually occurs due to reduced usability of merchandise. Realized profit or loss from the sale of inventory take into account the possible resale value.

Receivables and other assets are shown at their nominal value. Identifiable risks are taken into account by valuation of bad debt allowances for trade receivables (e.g., the general credit risk of the customers).

Cash and cash equivalents include petty cash and bank account balances. Cash and cash equivalents are stated at their nominal value.

Tax provisions are determined for trade tax and corporation tax based on the expected income and earnings. Tax is valued at the expected settlement amount.

Other provisions are accounted for at the expected settlement amount, taking into account all identifiable risks. A provision has been made for returns from customers that have not yet been received based on the historical return rates over the past few months.

The **liabilities** are recognized at the expected settlement amount on the balance sheet date.

Assets and liabilities in foreign currencies (other than EURO) were generally valued at the average spot exchange rate on the balance sheet date.

The **deferred income** represents the income which has not been earned on the balance sheet date.

Sales revenues from merchandise and the flat-rate shipping costs are recorded at the time of delivery of the products to the customers. Returned items will be offset against the recognized sales. A provision was made for expected returns on the balance sheet date.

Income and expenses are recorded when the service is provided to the customers, or when the income and expense from the transactions are realized. Income and expense are recorded on the accrual basis regardless of the time of payment.

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The **goodwill** shown in fixed assets is related exclusively to the difference between acquired net assets and purchase price from the business combination of 1-2-3.TV GmbH (Section 301 (3) HGB). At the time of initial consolidation, goodwill amounted to EUR 13,727 thousand and as of June 30, 2021 and December 31, 2020 goodwill amounted to EUR 7,435 thousand and EUR 8,122, respectively.

The **inventories** consist exclusively of merchandise that was obtained for resale and is stored in the warehouses of DHL Home Delivery GmbH in Braunschweig and Langenfeld. At the location in Grünwald, sample articles are stored in small numbers for presentation in the live broadcasts. As of June 30, 2021 and December 31, 2020, write-downs were made based on the fair value of the items in accordance with Section 253 (4) HGB in the amount of EUR 463 thousand and EUR 632 thousand, respectively.

The gross trade receivables amounted to EUR 7,580 thousand and EUR 8,669 thousand as of June 30, 2021 and December 31, 2020, respectively. Bad-debt allowance for default risks was recognized in the amount of EUR 395 thousand and EUR 466 thousand as of June 30, 2021 and December 31, 2020, respectively.

The **other assets** consist of receivables from suppliers for the returned goods.

Liquid funds amounted to EUR 3,914 thousand and EUR 5,719 thousand as of June 30, 2021 and December 31, 2020, respectively. The total amount consists of available cash held at financial institutions and cash on hand.

The (active) **prepaid expenses** include a discount of 248 thousand EUR and 162 thousand EUR as of June 30, 2021 and December 31, 2020, respectively.

On June 30, 2021, the **subscribed capital** was unchanged from December 31, 2020 and amounted to EUR 36 thousand.

The **capital reserve** at June 30, 2021 according to Section 272, Paragraph 2, No. 4 of the German Commercial Code (HGB) is unchanged from December 31, 2020.

The **tax provisions** are related to taxes on income for the period from January 1, 2021 through June 30, 2021 and from January 1, 2020 through June 30, 2020.

The **other provisions** consist of provisions for outstanding returns or warranty cases, outstanding supplier invoices and provisions for TV broadcast costs that have not yet been billed, as well as provisions for personnel costs.

The **trade payables** result mainly from the purchase of goods from suppliers.

Liabilities to affiliated companies in the amount of EUR 0 thousand and EUR 6 thousand as of June 30, 2021 and December 31, 2020, respectively are related to payables from the provided services.

In addition to the liabilities from taxes and social security already shown on the balance sheet, the **other liabilities** include credits from return to be paid to customers in the amount of EUR 1,305 thousand and EUR 1,853 thousand as of June 30, 2021 and December 31, 2020, respectively.

In the individual financial statements, **deferred tax assets and liabilities** are offset against each other in accordance with Section 274 (1) of the German Commercial Code (HGB). If there is a surplus of deferred tax assets, the surplus is not used. Deferred taxes liabilities of EUR 20 thousand and EUR 0 thousand were reported as of June 30, 2021 and December 31, 2020, respectively.

Deferred taxes in accordance with Section 306 of the German Commercial Code (HGB) were recognized as part of the revaluation. The revaluation of intangible assets, which arose from the acquisition of the subsidiary, and was done in accordance with Section 301 (1) HGB, resulted in deferred tax liabilities of EUR 1,021 thousand, which changed to EUR 573 thousand and EUR 604 thousand as of June 30, 2021 and December 31, 2020, respectively. Offsetting against deferred tax assets in accordance with Section 274 of the German Commercial Code (HGB) was not carried out. The deferred taxes were based on a tax rate of 24.23% as of the June 30, 2021 and December 31, 2020.

The **liabilities** are broken down according to the remaining payment term as of June 30, 2021 as follows:

Liabilities	Sum TEUR	Up to 1 Year TEUR	Remaining Term	
			1 to 5 Years TEUR	Higher than 5 Years TEUR
1. Trade payables	8,957	8,957	0,0	0,0
2. Other liabilities	1,521	1,521	0,0	0,0
	<u>10,478</u>	<u>10,478</u>	<u>0,0</u>	<u>0,0</u>

The **liabilities** were broken down according to remaining payment term as of December 31, 2020 as follows:

Liabilities	Total TEUR	Up to 1 Year TEUR	Remaining term	
			1 to 5 Years TEUR	Higher than 5 Years TEUR
1. Trade payables	11,196	11,196	0,0	0,0
2. Payable to affiliated companies	6	6	0.0	0.0
3. Other liabilities	2,020	2,020	0,0	0,0
	<u>13,222</u>	<u>13,222</u>	<u>0,0</u>	<u>0,0</u>

6. EXPLANATIONS TO THE CONSOLIDATED STATEMENTS OF OPERATIONS

For the period from January 1, 2021 through June 30, 2021, revenues from sales of goods amounted to EUR 70,721 thousand and for the period from January 1, 2020 through June 30, 2020 revenues from sales of goods amounted to EUR 61,406 thousand.

Flat-rate shipping costs received for the period from January 1, 2021 through June 30, 2021 amounted to EUR 7,607 thousand and for the period from January 1, 2020 through June 30, 2020 flat-rate shipping costs amounted to EUR 6,434 thousand.

Value-added telephone numbers for the period from January 1, 2021 through June 30, 2021 amounted to EUR 2,708 thousand and for the period from January 1, 2020 through June 30, 2020 value-added telephone numbers amounted to EUR 2,304 thousand.

Other income for the period from January 1, 2021 through June 30, 2021 amounted to EUR 694 thousand and for the period from January 1, 2020 through June 30, 2020 other income amounted to EUR 702 thousand (realized). The amounts take into account the returns that have already been incurred and those that are still to be expected from realized sales.

Sales revenues in Germany for the period from January 1, 2021 through June 30, 2021 amounted to EUR 80,380 thousand and for the period from January 1, 2020 through June 30, 2020 sales revenues amounted to EUR 69,356 thousand. Sales revenues abroad for the period from January 1, 2021 through June 30, 2021 amounted to EUR 1,350 thousand and for the period from January 1, 2020 through June 30, 2020 amounted to EUR 1,490 thousand.

Internally generated intangible assets amounted to EUR 82 thousand and EUR 0 thousand as of June 30, 2021 and December 31, 2020, respectively and were related to the capitalization option pursuant to Section 248 (2) Sentence 1 HGB for internal IT development and project costs.

The **other operating income** in the amount of EUR 265 thousand for the period from January 1, 2021 through June 30, 2021 and EUR 136 thousand for the period from January 1, 2020 through June 30, 2020 consisted mainly of income from overdue payment fees and compensation payments of EUR 121 thousand for the period from January 1, 2021 through June 30, 2021 and EUR 70 thousand for the period from January 1, 2020 through June 30, 2020.

The following main expenses are summarized in the **other operating expenses**:

- expenses for TV broadcasting in the amount of EUR 4,098 thousand for the period from January 1, 2021 through June 30, 2021 and EUR 4,218 thousand for the period from January 1, 2020 through June 30, 2020;
- expenses for TV / studio operation in the amount of EUR 3,030 for the period from January 1, 2021 through June 30, 2021 and EUR 2,892 thousand for the period from January 1, 2020 through June 30, 2020;
- expenses in connection with services in the area of customer service and accounts receivable accounting in the amount of EUR 1,812 thousand for the period from January 1, 2021 through June 30, 2021 and EUR 1,419 thousand for the period from January 1, 2020 through June 30, 2020;
- expenses for IT, marketing, e-commerce in the amount of EUR 2,301 thousand for the period from January 1, 2021 through June 30, 2021 and EUR 1,928 thousand for the period from January 1, 2020 through June 30, 2020.

Interest and similar expenses of EUR 11 thousand for the period from January 1, 2021 through June 30, 2021 and EUR 94 thousand for the period from January 1, 2020 through June 30, 2020 mainly comprise of expenses for custody fees for demand deposits with banks.

Income taxes include expenses for corporate income tax and trade tax as well as expenses for deferred taxes in the amount of EUR 209 thousand for the period from January 1, 2021 through June 30, 2021 and EUR 195 thousand for the period from January 1, 2020 through June 30, 2020.

7. INFORMATION ON THE CONSOLIDATED CASH FLOW STATEMENT

The Group's financial assets of EUR 3,914 thousand as of June 30, 2021 and EUR 4,783 thousand as of June 30, 2020 were allocated to the financial resources; liabilities to banks due at any time were EUR 0 for each of the periods ending June 30, 2021 and June 30, 2020.

8. SUBSEQUENT EVENTS

The effects of the ongoing COVID 19 pandemic and the associated "lockdown phases" are continuously evaluated in terms of risks for the goods procurement processes and sales management as well as possible financial effects. As far as foreseeable, various precautionary measures were taken at an early stage in order to avoid major business interruptions. At the current time, these risks are considered to be manageable due to the flexibility in the processes and the current economic and financial situation of the company. The Group's liquidity position is classified as stable, the continuation of corporate activities is assessed as safe.

As of June 30, 2021, no other events of materiality have occurred that would have a significant impact on the Group's earnings, financial or asset position.

9. OTHER INFORMATION

The parent company's business was led by Stefan Eishold, Grünwald.

With regard to the remuneration of the members of the executive bodies, the Group does not disclose this information by exercising the option in accordance with Section 286 (4) of the German Commercial Code (HGB).

On average, employees were employed in the areas of purchasing (33) planning (13), production (11), e-commerce (29), finance (10) and other areas (32) from January 1, 2021 through June 30, 2021 in accordance with Section 267 (5) HGB.

The following other financial obligations existed as of June 30, 2021:

In million EUR	Year 2021	Year 2022	Years after 2022 to 2026
Obligations from rental agreements	1	1	1
Obligations from service agreements	5	6	10
Total	6	7	11

1-2-3.TV GmbH, Grünwald is included in the consolidated financial statements of 123tv Beteiligungs GmbH as part of the full consolidation and utilizes the exemption from Section 264 (3) HGB.

Transactions with related companies and persons are carried out with subsidiaries in the form of management services. The transactions are conducted on the terms customary in the respective market. There are no transactions at prices that are not customary in the market.

10. SUMMARY OF DIFFERENCES BETWEEN GERMAN GAAP AND U.S. GENERALLY ACCEPTED ACCOUNTING PRINCIPLES (“U.S. GAAP”)

The financial statements of the acquiree have been prepared in accordance with HGB (“German GAAP”) which differ in certain significant respects from U.S. GAAP. The effects of the application of U.S. GAAP to the net income and stockholders’ equity are set forth in the table below:

	Six months ended June 30, 2021 (in EUR)	Six months ended June 30, 2020 (in EUR)
Reconciliation of net income:		
Net income for the financial year in accordance with German GAAP	€ 2,412	€ 2,255
U.S. GAAP reconciliation adjustments		
Adjustments to rent expense under lease accounting	—	37
Reversal of amortization of goodwill	686	686
Tax related adjustment for GAAP reconciliation adjustments	—	(9)
Net income in accordance with U.S. GAAP	<u>€ 3,098</u>	<u>€ 2,969</u>
	June 30, 2021 (in EUR)	June 30, 2020 (in EUR)
Reconciliation of stockholders’ equity:		
Stockholders’ equity in accordance with German GAAP	€ 27,782	€ 22,445
U.S. GAAP reconciliation adjustments		
Adjustments to rent expense under lease accounting	71	71
Reversal of amortization of goodwill	6,292	4,920
Stockholders’ equity in accordance with U.S. GAAP	<u>€ 34,145</u>	<u>€ 27,436</u>

Notes to the reconciliation of net income and stockholders’ equity in accordance with German GAAP and U.S. GAAP:

Lease accounting

Under German GAAP, if a lease arrangement is recognized as an operating lease, the lessee recognizes the rental expense on a straight-line basis over the lease term. Under US GAAP, for all leases over 12 months, the lessee is required to measure and recognize the right-of-use assets and a lease liability on the balance sheet at the commencement date of the lease. The lease liability is measured at the present value of the future lease payments, discounted at the implicit discount rate, (or lessee’s incremental borrowing rate, if the lessee cannot readily determine the rate implicit in the lease). The right-of-use asset is measured at the carrying amount of the lease liability, adjusted for (1) prepaid or accrued lease payments, (2) lease incentives received, (3) incurred initial direct costs. Lessee is required to subsequently measure the lease liability of the right-of-use assets based on the same methodology used for its initial measurement. The reconciling item above represents the recognition of right-of-use assets, lease liabilities, and adjustment to current and historical earnings. Refer below for a table showing the impact of the lease accounting adjustment as of June 30, 2021 and December 31, 2020.

In Thousand EUR	German GAAP June 30, 2021	US GAAP June 30, 2021	Change
Right of Use Asset	-	3,256	3,256
Deferred Tax Asset	-	19	19
Retained Earnings	(11,143)	(11,215)	(72)
Finance Lease Obligation – Current	-	(962)	(962)
Finance Lease Obligation – Long Term Portion	-	(2,241)	(2,241)

In Thousand EUR	German GAAP December 31, 2020	US GAAP December 31, 2020	Change
Right of Use Asset	-	3,862	3,862
Deferred Tax Asset	-	23	23
Net Income	(5,180)	(5,207)	(27)
Retained Earnings	(5,963)	(6,007)	(44)
Finance Lease Obligation – Current	-	(1,145)	(1,145)
Finance Lease Obligation – Long Term Portion	-	(2,669)	(2,669)

Goodwill

Goodwill is difference between the acquisition cost and the fair value of the net identifiable assets. Under German GAAP, goodwill is amortized over its estimated useful life using the straight-line method. Under US GAAP, goodwill is not amortized, but rather tested annually for impairment for public companies. The reconciling item above represents the current and historical reversal of goodwill amortization expense, and the elimination of accumulated amortization of goodwill.

Tax related impact of GAAP adjustments

There was a €0 and €9 tax related impact, for the six months ended June 30, 2021 and 2020 respectively, resulting from the GAAP reconciling adjustments in recognition of (i) the change in amortization expense, and (ii) adjustments to rent expense under lease accounting.

iMedia Brands, Inc.

Comparative financial information for the periods presented

*Pro forma financial statements***Unaudited Pro Forma Condensed Combined Financial Information**

On September 22, 2021, iMedia Brands, Inc. and its wholly-owned subsidiary SCUR-Alpha 1359 GmbH (to be renamed iMedia&123tv Holding GmbH) (the “Subsidiary”), entered into a Sale and Purchase Agreement relating to 1-2-3.tv Group (the “Purchase Agreement”) with Emotion Invest GmbH & Co. KG, BE Beteiligungen Fonds GmbH & Co. geschlossene Investmentkommanditgesellschaft, and Iris Capital Fund II (collectively, the “Sellers”). Pursuant to the Purchase Agreement, upon the terms and subject to the conditions thereof, the Subsidiary intends to purchase and acquire from the Sellers (the “Acquisition”) all of the issued and outstanding equity interests of 123tv Invest GmbH, a limited liability company organized under the laws of Germany, and 123tv Holding GmbH, a limited liability company organized under the laws of Germany (collectively with their direct and indirect subsidiaries, the “1-2-3.tv Group”). The 1-2-3.tv Group is a digitally-driven home shopping and inspirational e-commerce specialist with a unique omnichannel live and automated auction offering. The 1-2-3.tv Group caters primarily to the television retailing markets in Germany and Austria with its proprietary live television auctions and automated digital auctions. In fiscal 2020, the 1-2-3.tv Group facilitated more than 77,000 auctions, sold 10.6 million units, and shipped 3.1 million items to its more than 250,000 registered customers. The 1-2-3.tv Group utilizes or has planned or under development six different auction formats that consistently make it a leading auction channel in Germany.

In accordance with the terms of the Purchase Agreement, concurrent with the closing of the Acquisition, the Subsidiary expects to enter into the Vendor Loan Agreement with certain Sellers (the “Lenders”) pursuant to which a portion of the purchase price for the Acquisition will be paid in the form of a loan by the Lenders to the Subsidiary (the “Vendor Loan”). The Vendor Loan has a EUR 18.0 million principal amount (\$21.2 million based on the September 13, 2021 exchange rate), with EUR 9.0 million (\$10.6 million based on the September 13, 2021 exchange rate) payable on each of the first and second anniversaries of the issuance date. The Vendor Loan bears interest at a rate equal to 8.50% per annum, payable semi-annually commencing on the six-month anniversary of the closing date of the Acquisition.

The following unaudited pro forma condensed combined financial information is based on the historical financial statements of iMedia Brands, Inc and 1-2-3.tv Group after giving effect to the acquisition of 1-2-3.tv Group by iMedia Brands, Inc using the acquisition method of accounting in accordance with the Financial Accounting Standards Board’s Accounting Standards Codification Topic 805, Business Combinations. The historical condensed consolidated financial information of iMedia Brands, Inc has been adjusted in the unaudited pro forma condensed combined financial information to give effect to pro forma events that are (i) directly attributable to the transaction, (ii) factually supportable, and (iii) expected to have a continuing impact on the combined results of iMedia Brands, Inc and 1-2-3.tv Group.

The unaudited pro forma condensed combined balance sheet as of July 31, 2021 for iMedia Brands, Inc and June 30, 2021 for 1-2-3.tv Group, presents pro forma effects of the transaction as if the acquisition had occurred on July 31, 2021. The audited pro forma condensed combined statement of operations for the year ended January 31, 2021, has been prepared by combining iMedia Brand, Inc’s consolidated statement of operations for the year ended January 31, 2021, with the statement of operations of 1-2-3.tv Group for the year ended December 31, 2021 as incorporated by reference to this Form 8-K/A. The unaudited pro forma condensed combined statement of operations for the six months ended July 31, 2021, has been prepared by combining iMedia Brand, Inc’s’s unaudited condensed combined statement of operations for the six months ended July 31, 2021, with the unaudited condensed statement of operations of 1-2-3.tv Group for the six months ended June 30, 2021. The unaudited pro forma condensed combined statements of operations of iMedia Brands, Inc and 1-2-3.tv Group for the six months ended July 31, 2021, and the year ended January 31, 2021 give effect to the acquisition as if it had occurred on February 2, 2020.

The historical unaudited condensed balance sheet of 1-2-3tv Group as of June 30, 2021 were translated from the Euro to U.S. dollars using the current period-end exchange rate. The historical unaudited condensed statements of operations of 1-2-3.tv Group were translated from the Euro to U.S. dollars using the average exchange rate for the periods presented. The amounts reflected in the unaudited condensed combined pro forma balance sheet as of July 31, 2021 are preliminary and subject to change and, therefore, the final values may differ substantially from these amounts. The financial information of 1-2-3.tv Group has been converted from German GAAP to U.S. GAAP and reclassified to conform with iMedia Brand, Inc’s financial statement presentation.

The unaudited pro forma condensed combined financial information is presented for informational purposes only and are not intended to represent or be indicative of the consolidated results of operations or financial condition of iMedia Brands, Inc that would have been reported had the acquisition been completed as of the date presented, and should not be taken as representative of the future consolidated results of operations or financial condition of iMedia Brands, Inc. The unaudited pro forma condensed combined financial information does not reflect any operating efficiencies and cost savings or expense that iMedia Brands, Inc may achieve or incur with respect to the combined companies.

The unaudited pro forma condensed combined financial information should be read in conjunction with the accompanying notes to the unaudited pro forma condensed combined financial information. In addition, the unaudited pro forma condensed combined financial information should be read in conjunction with:

- the audited financial statements and the accompanying notes of iMedia Brands, Inc included in iMedia Brands, Inc’s Annual Report on Form 10-K for the fiscal year ended January 31, 2021 filed with the U.S. Securities and Exchange Commission, or SEC, on April 23, 2021;
- the unaudited condensed financial statements and the accompanying notes of iMedia Brands, Inc. included in iMedia Brands, Inc.’s Quarterly Report on Form 10-Q for the six months ended July 31, 2021 filed with the SEC on September 3, 2021;
- the audited financial statements of 1-2-3.tv Group as of and for the years ended December 31, 2020 and 2019 filed as Exhibit 99.2 to this Current Report Form 8-Kand incorporated herein by reference; and
- the unaudited financial statements of 1-2-3.tv Group as of and for the six months ended July 30, 2020 and 2019 filed as Exhibit 99.3 to this Current Report Form 8-Kand incorporated herein by reference.



iMedia Brands, Inc.

Comparative financial information for the periods presented

Pro forma financial statements

UNAUDITED PRO FORMA CONDENSED COMBINED BALANCE SHEET
AS OF JULY 31, 2021
 (Amounts in thousands, except per share data)

	As of		June 30, 2021 German GAAP to US GAAP Adj 123tv (Historical)	June 30, 2021 US GAAP 123tv (Historical)	Transaction Accounting Adjustments	As of
	July 31, 2021	June 30, 2021				July 31, 2021
	iMedia (Historical)	German GAAP 123tv (Historical)				Pro Forma Combined
ASSETS						
Current assets:						
Cash and cash equivalents	\$ 20,918	\$ 4,641	—	4,641	\$ (4,009){a}	\$ 21,550
Restricted cash	2,192	—	—	-	-	2,192
Accounts receivable, net	64,324	8,519	—	8,519	-	72,843
Inventories	76,735	18,922	—	18,922	-	95,657
Other financial assets	-	—	—	-	-	-
Prepaid expenses and other	39,999	294	23 {g}	317	-	40,316
Total current assets	204,168	32,376	23	32,399	(4,009)	232,558
Property and equipment, net	44,593	822	—	822	-	45,415
Intangible assets	-	6,977	3,860 {g}	10,837	8,023 {d}	18,860
Goodwill	-	8,816	7,460 {h}	16,276	50,673 {c}	66,949
Deferred tax asset	-	—	—	-	-	-
Other assets	96,085	1,832	—	1,832	-	97,917
TOTAL ASSETS	\$ 344,846	\$ 50,823	11,343	62,166	\$ 54,687	\$ 461,699
LIABILITIES AND SHAREHOLDERS' EQUITY						
Accounts payable	\$ 58,535	\$ 10,618	—	10,618	-	\$ 69,153
Accrued liabilities	31,816	4,387	—	4,387	-	36,203
Current portion of long term obligations	29,441	—	—	-	-	29,441
Current portion of financing lease liabilities	1,036	—	1,142 {g}	1,142	-	2,178
Deferred revenue	679	—	—	-	-	679
Other financial liabilities	-	—	—	-	-	-
Other liabilities	-	1,804	—	1,804	-	1,804
Total current liabilities	121,507	16,809	1,142	17,951	-	139,458
123tv. Seller Note	-	—	—	-	21,292 {e}	21,292
Other LT Liabilities	64,157	237	—	237	-	64,394
Financing lease liabilities	-	—	2,656 {g}	2,656	-	2,656
Long Term Deferred Tax Liability	-	717	—	717	-	717
Long Term Credit Facility	73,919	—	—	-	-	73,919
Long term debt, net of deferred financing cost (assuming exercise of the underwriters' overallotment option)	-	—	—	-	74,000 {b}	74,000
TOTAL LIABILITIES	259,583	17,763	3,798	21,561	95,292	376,436
Shareholders' equity:						
Preferred stock	-	—	—	-	-	-
Common stock	212	43	—	43	(43) {f}	212
Warrants	-	—	—	-	-	-
Additional paid-in capital	536,835	—	—	-	-	536,835
Accumulated income / deficit	(454,932)	31,473	7,156 {g}, {h}	38,629	(38,629) {f}	(454,932)
Accumulated other comprehensive income / loss	-	1,544	389 {g}, {h}	1,933	(1,933) {f}	-
Total shareholders' equity	82,115	33,060	7,545	40,605	(40,605)	82,115
Equity of the non-controlling interest	3,148	—	—	-	-	3,148
Total shareholders' equity	85,263	33,060	7,545	40,605	(40,605)	85,263
Total liabilities, and shareholders' equity	\$ 344,846	\$ 50,823	\$ 11,343	\$ 62,166	\$ 54,687	\$ 461,699

See accompanying Notes to Unaudited Pro Forma Condensed Combined Financial Information.

iMedia Brands, Inc.

Comparative financial information for the periods presented

Pro forma financial statements

UNAUDITED PRO FORMA CONDENSED COMBINED STATEMENT OF OPERATIONS
FOR THE SIX MONTHS ENDED JULY 31 AND JUNE 30, 2021
(Amounts in thousands, except per share data)

	<u>For the six months ended</u>		<u>June 30,</u> <u>2021</u>		<u>June 30,</u> <u>2021</u>			<u>For the</u> <u>six</u> <u>months</u> <u>ended</u> <u>July 31,</u> <u>2021</u>
	<u>July 31,</u> <u>2021</u>	<u>June 30,</u> <u>2021</u>						
Net sales	226,644	98,485			\$ 98,485	—		325,129
Cost of sales	132,651	58,652			58,652	—		191,303
Gross profit	93,993	39,832			39,832	—		133,825
Operating expenses:								
Distribution and selling	69,605	13,973			\$ 13,973	—		83,578
General and administrative	13,822	20,913			20,913	—		34,735
Depreciation and amortization	14,986	1,746	(827)	{i}	919	1,607	{j}	17,512
Asset Impairment FCC	—	—			-	—		—
Executive and management transition costs	—	—			-	—		—
Restructuring Costs	—	—			-	—		—
Gain/Loss on Station Sale	—	—			-	—		—
Other income / expense	—	(32)			(32)	—		(32)
Total operating expenses	98,413	36,600			35,773	1,607		135,793
Operating loss	(4,420)	3,232			4,059	(1,607)		(1,968)
Other expense (income), net:								
Interest income (expense)	39	(13)			(13)	—		26
Non-Cash Accretion - Series B Preferred	—	—			-	—		—
Interest Expense - Series B Dividends	—	—			-	—		—
Interest Expense - PNC	(2,694)	—			-	—		(2,694)
Interest Expense - GACP	—	—			-	—		—
Interest Expense - Other	—	—			-	—		—
Interest Expense - Debt Incurred for Purchase	—	—			-	(3,400)	{k}	(3,400)
Other Non-Operating	—	—			-	—		—
Loss on Early Debt Payment	(654)	—			-	—		(654)
Gain (Loss) on Sale of Investments	—	—			-	—		—
Income (loss) from continuing operations before income taxes	(7,729)	3,219			4,046	(5,007)		(8,690)
Provision (benefit) for income taxes	30	313			313	(1,302)	{l}	(959)
Net loss attributable to common shareholders	\$ (7,759)	\$ 2,906			\$ 3,733	\$ (3,705)		\$ (7,731)
Net loss per share - basic and diluted:	\$ (0.45)	\$ —			\$ —	\$ —		\$ (0.45)
Weighted-average shares used to compute net loss per share attributable to ordinary shareholders	17,314,317	—			—	—		17,314,317

See accompanying Notes to Unaudited Pro Forma Condensed Combined Financial Information.

iMedia Brands, Inc.

Comparative financial information for the periods presented

Pro forma financial statements

UNAUDITED PRO FORMA CONDENSED COMBINED STATEMENT OF OPERATIONS
FOR THE TWELVE MONTHS ENDED JANUARY 30, 2021
 (Amounts in thousands, except per share data)

	<u>For the twelve months ended</u>					<u>For the</u>
	<u>January</u>	<u>December</u>	<u>December</u>	<u>December</u>		<u>twelve</u>
	<u>30,</u>	<u>31,</u>	<u>31,</u>	<u>31,</u>		<u>months</u>
	<u>2021</u>	<u>2020</u>	<u>2020</u>	<u>2020</u>		<u>ended</u>
			<u>German</u>			
			<u>GAAP to</u>			
			<u>US GAAP</u>			
	<u>iMedia</u>	<u>German GAAP</u>	<u>Adj</u>	<u>US GAAP</u>	<u>Transaction</u>	<u>Pro Forma</u>
	<u>(Historical)</u>	<u>123tv</u>	<u>123tv</u>	<u>123tv</u>	<u>Accounting</u>	<u>Combined</u>
	<u>(Historical)</u>	<u>(Historical)</u>	<u>(Historical)</u>	<u>(Historical)</u>	<u>Adjustments</u>	<u>(Historical)</u>
Net sales	454,171	177,082		177,082	—	631,253
Cost of sales	287,118	106,119	82 {n}	106,201	—	393,319
Gross profit	167,053	70,963	(82)	70,881	—	237,934
Operating expenses:						
Distribution and selling	129,920	22,519	—	22,519	—	152,439
General and administrative	20,336	39,369	—	39,369	—	59,705
Depreciation and amortization	24,022	3,089	(1,566) {m}	1,523	3,214 {p}	28,759
Asset Impairment FCC	—	—	—	—	—	—
Executive and management transition costs	—	—	—	—	—	—
Restructuring Costs	715	—	—	—	—	715
Gain/Loss on Station Sale	—	—	—	—	—	—
Other income / expense	—	(700)	—	(700)	—	(700)
Total operating expenses	174,993	64,277	(1,566)	62,711	3,214	240,918
Operating loss	(7,940)	6,686	1,484	8,170	(3,214)	(2,984)
Other expense (income), net:						
Interest income (expense)	3	6	—	6	—	9
Non-Cash Accretion - Series B Preferred	—	—	—	—	—	—
Interest Expense - Series B Dividends	—	—	—	—	—	—
Interest Expense - PNC	(5,237)	(125)	124 {n}	(1)	—	(5,238)
Interest Expense - GACP	—	—	—	—	—	—
Interest Expense - Other	—	—	—	—	—	—
Interest Expense - Debt Incurred for Purchase	—	—	—	—	(6,800) {q}	(6,800)
Other Non-Operating	—	—	—	—	—	—
Loss on Early Debt Payment	—	—	—	—	—	—
Gain (Loss) on Sale of Investments	—	—	—	—	—	—
Income (loss) from continuing operations before income taxes	(13,174)	6,567	1,608	8,175	(10,014)	(15,013)
Provision (benefit) for income taxes	60	660	11 {o}	671	(2,604) {r}	(1,873)
Net loss attributable to common shareholders	\$ (13,234)	\$ 5,907	\$ 1,597	\$ 7,504	\$ (7,411)	\$ (13,140)
Net loss per share - basic and diluted:	\$ (1.23)	\$ —	\$ —	\$ —	\$ —	\$ (1.22)
Weighted-average shares used to compute net loss per share attributable to ordinary shareholders	10,745,916	—	—	—	—	10,745,916

See accompanying Notes to Unaudited Pro Forma Condensed Combined Financial Information.

iMedia Brands, Inc.

Comparative financial information for the periods presented

Pro forma financial statements

**UNAUDITED PRO FORMA CONDENSED COMBINED STATEMENT OF OPERATIONS
FOR THE SIX MONTHS ENDED AUGUST 1, 2020
(Amounts in thousands, except per share data)**

	For the six months ended		June 30, 2020		June 30, 2020		June 30, 2020		For the six months ended
	August 1, 2020	June 30, 2020	June 30, 2020	June 30, 2020	June 30, 2020	June 30, 2020	June 30, 2020	August 1, 2020	
	iMedia (Historical)	German GAAP 123tv (Historical)	German GAAP to US GAAP Adj 123tv (Historical)		US GAAP 123tv (Historical)	Transaction Accounting Adjustments		Pro Forma Combined	
Net sales	220,349	78,050	—		78,050	—		298,399	
Cost of sales	138,500	46,773	79	{t}	46,852	—		185,352	
Gross profit	81,849	31,277	(79)		31,198	—		113,126	
Operating expenses:									
Distribution and selling	65,610	9,893	—		9,893	—		75,503	
General and administrative	10,471	17,296	—		17,296	—		27,767	
Depreciation and amortization	8,723	1,433	(756)	{s}	677	1,607	{v}	11,007	
Asset Impairment FCC	—	—	—		—	—		—	
Executive and management transition costs	—	—	—		—	—		—	
Restructuring Costs	209	—	—		—	—		209	
Gain/Loss on Station Sale	—	—	—		—	—		—	
Other income / expense	—	1	—		1	—		1	
Total operating expenses	85,013	28,623	(756)		27,867	1,607		114,487	
Operating loss	(3,164)	2,654	677		3,331	(1,607)		(1,440)	
Other income (expense)									
Interest income (expense)	1	150	—		150	—		151	
Non-Cash Accretion - Series B Preferred	—	—	—		—	—		—	
Interest Expense - Series B Dividends	—	—	—		—	—		—	
Interest Expense - PNC	(2,581)	—	—		—	—		(2,581)	
Interest Expense - GACP	—	—	—		—	—		—	
Interest Expense - Other	—	(104)	120	{t}	16	—		16	
Interest Expense - Debt Incurred for Purchase	—	—	—		—	(3,400)	{w}	(3,400)	
Other Non-Operating	—	—	—		—	—		—	
Loss on Early Debt Payment	—	—	—		—	—		—	
Gain (Loss) on Sale of Investments	—	—	—		—	—		—	
Income (loss) from continuing operations before income taxes	(5,744)	2,700	797		3,497	(5,007)		(7,254)	
Provision (benefit) for income taxes	30	215	11	{u}	226	(1,302)	{x}	(1,046)	
Net loss attributable to common shareholders	\$ (5,774)	\$ 2,485	\$ 786		\$ 3,271	\$ (3,705)		\$ (6,208)	
Net loss per share - basic and diluted:	\$ (0.65)	\$ —	\$ —		\$ —	\$ —		\$ (0.70)	
Weighted-average shares used to compute net loss per share attributable to ordinary shareholders	8,911,580	—	—		—	—		8,911,580	

See accompanying Notes to Unaudited Pro Forma Condensed Combined Financial Information.

NOTES TO THE UNAUDITED PRO FORMA CONDENSED COMBINED FINANCIAL INFORMATION

1. Description of the Purchase

On September 22, 2021, iMedia Brands, Inc. (the “Company”) and its wholly-owned subsidiary SCUR-Alpha 1359 GmbH (to be renamed iMedia&123tv Holding GmbH) (the “Subsidiary”), entered into a Sale and Purchase Agreement relating to 1-2-3.tv Group (the “Purchase Agreement”) with Emotion Invest GmbH & Co. KG, BE Beteiligungen Fonds GmbH & Co. geschlossene Investmentkommanditgesellschaft and Iris Capital Fund II (collectively, the “Sellers”). Pursuant to the Purchase Agreement, upon the terms and subject to the conditions thereof, the Subsidiary intends to purchase and acquire from the Sellers (the “Acquisition”) all of the issued and outstanding equity interests of 123tv Invest GmbH, a limited liability company organized under the laws of Germany, and 123tv Holding GmbH, a limited liability company organized under the laws of Germany (collectively with their direct and indirect subsidiaries, the “1-2-3.tv Group”). Pursuant to the Purchase Agreement, iMedia will purchase 1-2-3.tv Group for consideration of approximately \$97.3 million, including \$2.7 million to be paid to Sellers for working capital adjustment at closing. This is subject to potential earn-out considerations, conditional on achievement of certain future target revenue growth of the Company.

In connection with the Acquisition, iMedia will enter into an indenture or other debt instrument issued by the Company pursuant to which the Company plans to issue bonds in an aggregate principal amount of approximately \$80.0 million (the “Bond Issuance”) (assuming exercise of the underwriters' overallotment option). The Bond Issuance will consist of senior fixed rate bonds with term maturities in 2026. The term bonds will be priced to yield 8.50%. As a result of the Bond Issuance, the Company plans to recognize proceeds of approximately \$74.0 million, net of issuance costs (assuming exercise of the underwriters' overallotment option). The cash held by the Company, along with the proceeds from the Bond Issuance, will be used to finance the Acquisition of 1-2-3.tv Group.

The Purchase Agreement contains customary representations and warranties of each of the parties as well as customary covenants and agreements, including with respect to the operation of the business of 1-2-3.tv Group between signing and closing. The Purchase Agreement also contains certain indemnification provisions whereby the shareholders and certain employees of 1-2-3.tv Group will indemnify iMedia and certain other parties for certain losses arising out of, among other things, inaccuracies in, or breaches of, the representations, warranties, and covenants of 1-2-3.tv Group and pre-closing taxes of 1-2-3.tv Group, subject to certain caps, thresholds, and other limitations. In addition, iMedia is the beneficiary of certain Warranty and Indemnity Insurance to cover against financial loss that may arise from certain claims resulting from a breach of an insured warranty or indemnity as set forth in the Purchase Agreement.

2. Basis of Presentation

The unaudited pro forma condensed combined financial information and related notes are prepared in accordance with Article 11 of Regulation S-X and present the historical financial information of iMedia and 1-2-3.tv Group adjusted to give effect to events that are: (1) directly attributable to the Acquisition, (2) factually supportable and (3) with respect to the unaudited pro forma condensed combined statement of operations, expected to have a continuing impact.

The unaudited pro forma condensed combined financial information was prepared using the purchase method of accounting in accordance with Accounting Standards Codification (ASC) 805-50 Business Combinations—Issues, with iMedia as the accounting acquirer, using the fair value concepts defined in ASC 820, Fair Value Measurement, and based on the respective historical consolidated financial statements of iMedia and 1-2-3.tv Group.

ASC 805 requires that assets and liabilities acquired be recognized at their fair values as of the Acquisition date. Financial statements of iMedia issued after completion of the Acquisition will reflect such fair values, measured as of the Acquisition date, which may be different than the estimated fair values included in this unaudited pro forma condensed combined financial information. The financial statements of iMedia issued after the completion of the Acquisition will not be retroactively restated to reflect the historical financial position or results of operations of 1-2-3.tv Group. In addition, ASC 805 establishes that the consideration transferred be measured at the closing date of the Acquisition at the then-current market price, which will likely result in a purchase price that is different from the amount assumed in these unaudited pro forma condensed combined financial statements.

Under ASC 805, acquisition-related transaction costs (such as advisory, legal, valuation, other professional fees) are excluded from the unaudited pro forma condensed combined statement of operations. Such costs will be expensed in the historical statement of operations in the period incurred.

ASC 820 defines the term “fair value” and sets forth the valuation requirements for any asset or liability measured at fair value, expands related disclosure requirements and specifies a hierarchy of valuation techniques based on the nature of the inputs used to develop the fair value measures. Fair value is defined as “the price that would be received to sell an asset or paid to transfer a liability in an orderly transaction between market participants at the measurement date.” This is an exit price concept for the valuation of the asset or liability. In addition, market participants are assumed to be buyers and sellers unrelated to iMedia in the principal (or the most advantageous) market for the asset or liability. Fair value measurements for an asset assume the highest and best use by these market participants. As a result of these standards, iMedia may be required to record assets which are not intended to be used or sold and/or to value assets at fair value measures that do not reflect iMedia’s intended use of those assets. Many of these fair value measurements can be highly subjective and it is also possible that others, applying reasonable judgment to the same facts and circumstances, could develop and support a range of alternative estimated amounts.

The allocation of the purchase consideration for the Acquisition depends upon certain estimates and assumptions, all of which are preliminary. The allocation of the purchase consideration has been made for the purpose of developing the unaudited pro forma condensed combined financial information. The final determination of fair values of assets acquired and liabilities assumed relating to the Acquisition could differ materially from the preliminary allocation of purchase consideration. The final valuation will be based on the actual net tangible and intangible assets of 1-2-3.tv Group existing at the Acquisition date. The final valuation may materially change the allocation of the purchase consideration, which could materially affect the fair values assigned to the assets and liabilities and could result in a material change to the unaudited pro forma condensed combined financial information.

The pro forma adjustments represent iMedia management’s best estimates and are based upon currently available information and certain assumptions that iMedia believes are reasonable under the circumstances.

The unaudited pro forma information is not necessarily indicative of what the combined company’s financial position or results of operations would have been had the Acquisition been completed on the dates indicated. In addition, the unaudited pro forma condensed combined financial information does not purport to project the future financial position or operating results of the combined company.

There were no material transactions between iMedia and 1-2-3.tv Group during the periods presented in the unaudited pro forma condensed combined financial statements.

Accounting Periods Presented

The unaudited pro forma condensed combined statements of operations have been prepared as if the Acquisition had been consummated on July 31, 2021, and the unaudited pro forma condensed combined balance sheet has been prepared as if the Acquisition had been consummated on July 31, 2021. Because the difference between iMedia and 1-2-3.tv Group’s fiscal year ends are not in excess of 93 days, 1-2-3.tv Group’s financial statements are not required to be adjusted to a period within 93 days of iMedia’s fiscal year end.

The unaudited pro forma condensed combined statement of operations for the six months ended July 31, 2021 and August 1, 2020, combines 1-2-3.tv Group’s unaudited consolidated statement of operations for the six months ended June 30, 2021 and 2020, and iMedia’s unaudited consolidated statements of operations for the six-month ended July 31, 2021 and August 1, 2020. The unaudited pro forma combined statement of operations for the twelve months ended January 30, 2021, combines 1-2-3.tv Group TV’s unaudited consolidated statement of operations for the twelve months ended December 31, 2020, and iMedia’s unaudited consolidated statements of operations for the twelve months ended January 30, 2021. The unaudited pro forma condensed combined balance sheet as of July 31, 2021, combines the historical consolidated balance sheet of iMedia as of July 31, 2021, and the historical unaudited consolidated balance sheet of 1-2-3.tv Group as of June 30, 2021.

3. Accounting Policies and Accounting Framework Conversion

The accounting policies used in the preparation of this unaudited pro forma condensed combined financial information are those set out in iMedia's consolidated financial statements as of and for the six months ended July 31, 2021. Based on the procedures performed to date, the accounting policies of 1-2-3.tv Group are similar in all material respects to iMedia's accounting policies.

As 1-2-3.tv Group is a German entity, 1-2-3.tv Group's consolidated unaudited financial statements are prepared in accordance with HGB ("German GAAP"). Certain adjustments have been made to the unaudited pro forma combined financial information to conform 1-2-3.tv Group's historical financial statement presentation to iMedia's financial statement presentation. Upon consummation of the Acquisition, iMedia will perform a comprehensive review of 1-2-3.tv Group's accounting policies. iMedia may, as a result, identify additional differences between the accounting policies of the two companies which, when conformed, could have a material impact on the condensed combined financial statements.

In addition, iMedia's functional currency is the United States dollar. 1-2-3.tv Group's functional currency is the Euro. The accompanying condensed combined financial statements are expressed in United States dollars. As such, the current method is used to translate the foreign subsidiary's financial statements prior to consolidation with the parent company. Assets and liabilities of foreign operations are translated at period-end rates of exchange. Revenues, costs and expenses are translated at average rates of exchange prevailing during the period. Equity adjustments resulting from translating foreign currency financial statements are accumulated as a separate component of stockholders' equity.

4. Estimated Preliminary Purchase Consideration and the Preliminary Purchase Price Allocation

Estimated Preliminary Purchase Consideration

The fair value of the estimated preliminary purchase consideration expected to be transferred on the closing date is based on the purchase consideration mechanism described in Note 1 to the unaudited pro forma condensed combined financial information. The accompanying unaudited pro forma condensed combined financial statement reflect an estimated preliminary purchase price of approximately \$97.3 million, including \$2.7 million to be paid to Sellers for working capital adjustment at closing.

	Amount
Estimated cash to be paid to Sellers	73,338
Estimated note issued to Sellers	21,292
Estimated cash to be paid to Sellers for working capital adjustment at close	2,671
Total Estimated Preliminary Purchase Consideration	\$ 97,301

The notes to the unaudited pro forma condensed combined financial information are preliminary and based on management estimates of the fair value and useful lives of the assets acquired and liabilities assumed and have been prepared to illustrate the estimated effect of the Acquisition. The final determination of the purchase price allocation, upon the completion of the Acquisition, will be based on 1-2-3.tv Group's net assets acquired as of that date and will depend on several factors that cannot be predicted with certainty at this time. Therefore, the actual allocations may differ from the pro forma adjustments presented. The allocation is dependent upon certain valuation and other studies that have not yet been completed. Accordingly, the pro forma purchase price allocation is subject to further adjustment as additional information becomes available and as additional analyses and final valuations are completed. There can be no assurances that these additional analyses and final valuations will not result in significant changes to the estimates of the fair value set forth below.

The following table sets forth a preliminary allocation of the estimated preliminary purchase consideration to the identifiable tangible and intangible assets acquired and liabilities assumed of 1-2-3.tv Group based on 1-2-3.tv Group's unaudited condensed consolidated balance sheet as of June 30, 2021, with the excess recorded to goodwill.

	Amount (in thousands)
Cash and cash equivalents	\$ 4,641
Accounts receivable, net	8,519
Inventories	18,922
Property and equipment	822
Prepaid expenses	317
Other assets	1,832
Right of use asset	3,860
Accounts payable	(10,618)
Accrued liabilities	(6,387)
Other current liabilities	(1,804)
Finance lease obligations	(3,798)
Deferred tax liability	(717)
Other long-term liabilities	(237)
Intangible assets – customer list ⁽¹⁾	5,000
Intangible assets – technology platform ⁽¹⁾	5,000
Intangible assets - tradename ⁽¹⁾	5,000
Goodwill ⁽²⁾	66,949
	\$ 97,301

Preliminary

Estimated Useful

Annual

	<u>Fair Value</u> <u>(in thousands)</u>	<u>Life</u> <u>(in years)</u>	<u>Amortization</u> <u>(in thousands)</u>
Customer list	\$ 5,000	4	\$ 1,250
Technology platform	5,000	4	1,250
Tradenames	5,000	7	714
	<u>\$ 15,000</u>		<u>\$ 3,214</u>

- (1) Preliminary identifiable intangible assets in the unaudited pro forma condensed combined financial information consists of the following:

1-2-3.tv Group's identifiable intangible assets include customer list, technology platform and trade names. These preliminary estimates of fair value and weighted average useful life may be different from the amounts included in the purchase accounting upon the close of the Acquisition, and the difference could have a material impact on the accompanying unaudited pro forma condensed combined financial statements. Once further information about 1-2-3.tv Group's intangible assets becomes available, additional analysis will be made that may impact: (1) the estimated total fair value assigned to identifiable intangible assets and, (2) the estimated weighted-average useful life of each category of intangible assets. The estimated intangible asset values and their useful lives could be impacted by a variety of factors that may only be discoverable upon obtaining full access to additional information and/or by changes in such factors that may occur prior to completion of the Acquisition. The combined effect of any such changes could then also result in a material increase or decrease to iMedia's estimate of associated future amortization expense.

- (2) Goodwill represents the excess of purchase consideration over the fair value of the underlying net assets acquired. In accordance with ASC 350, Goodwill and Other Intangible Assets, goodwill will not be amortized but rather subject to annual impairment test, absent any indicators of impairment. Goodwill is attributable to planned growth in new markets and synergies expected to be achieved from the combined operations of iMedia and 1-2-3.tv Group. Goodwill recorded in the Acquisition is not expected to be deductible for tax purposes.

5. Notes to Unaudited Pro Forma Condensed Combined Balance Sheet—Pro Forma Adjustments as of July 31, 2021

a) Reflects adjustments to cash and cash equivalents for consideration transferred which includes cash payment at closing to the Sellers and net receipt of funds from debt offering.

	<u>Amount</u> <u>(in thousands)</u>
Net cash proceeds from debt offering (assuming exercise of the underwriters' over-allotment option)	\$ 74,000
Preliminary cash paid at closing	(78,009)
Total pro forma adjustment to cash and cash equivalents	<u>\$ (4,009)</u>

b) Reflects net bond issuance proceeds, which were utilized to fund the Acquisition.

	<u>Amount</u> <u>(in thousands)</u>
Bond principal (assuming exercise of the underwriters' over-allotment option)	\$ 80,000
Bond issuance costs	(6,000)
Bond, net of issuance costs	<u>\$ 74,000</u>

c) Reflects preliminary goodwill of \$66.9 million for the estimated purchase consideration in excess of the fair value of the net assets acquired in connection with the Acquisition. Refer to Note 4 of the "Estimated Preliminary Purchase Consideration and the Preliminary Purchase Price Allocation" for additional information on the goodwill expected to be recognized.

	<u>Amount</u> <u>(in thousands)</u>
Elimination of existing goodwill of 1-2-3.tv Group	\$ (16,276)
Fair value of acquired goodwill	66,949
Total pro forma adjustment to goodwill	<u>\$ 50,673</u>

d) Reflects the preliminary purchase accounting adjustment for estimated intangibles based on the purchase method of accounting. Refer to Note 4 of the "Estimated Preliminary Purchase Consideration and the Preliminary Purchase Price Allocation" for additional information on the acquired intangible assets expected to be recognized and the associated useful lives.

	<u>Amount</u> <u>(in thousands)</u>
Elimination of existing intangible asset	\$ (6,977)
Fair value of acquired intangibles	15,000
Total pro forma adjustment to intangible assets	<u>\$ 8,023</u>

e) Reflects issuance of Sellers Note at closing of transaction

	<u>Amount</u> <u>(in thousands)</u>
Sellers Note	<u>\$ 21,292</u>

f) Reflects the elimination of historical common stock, accumulated other comprehensive income and retained earnings of 1-2-3.tv Group.

	<u>Amount</u> <u>(in thousands)</u>
Elimination of historical retained earnings	\$ (38,629)
Elimination of historical accumulated other comprehensive income	(1,933)
Elimination of historical common stock	(43)
	<u>\$ (40,605)</u>

6. Notes to Unaudited Pro Forma Condensed Combined Balance Sheet as of July 31, 2021 and Statement of Operations for the Six Months Ended July 31, 2021— German GAAP to US GAAP adjustments:

g) Reflects the recording of the finance lease and the corresponding effect on deferred taxes:

	<u>Amount</u> (in thousands)
Prepaid expenses and other	\$ 23
Intangible assets	3,860
Current portion of financing lease liabilities	(1,142)
Financing lease liabilities	(2,656)
Accumulated income / deficit	(33)
Accumulated other comprehensive income / loss	\$ (52)

(h) Reflects the elimination of accumulated amortization on goodwill, and the reversal of historical and current amortization expense

	<u>Amount</u> (in thousands)
Goodwill	\$ 7,460
Accumulated income / deficit	(7,123)
Accumulated other comprehensive income / loss	\$ (337)

(i) Reflects German GAAP to US GAAP adjustment for amortization of Goodwill

	<u>Amount</u> (in thousands)
Amortization of Goodwill	\$ (827)

7. Notes to Unaudited Pro Forma Condensed Statement of Operations for the Six Months Ended July 31, 2021 —Pro Forma Adjustments

(j) Reflects the following estimated amortization expense related to the intangible assets to be acquired:

	<u>Six months ended July 31, 2021</u>		
	<u>Historical</u>	<u>Based on Fair Values</u>	<u>Pro Forma Adjustment</u>
	(in thousands)		
Customer list	\$ —	\$ 5,000	\$ 625
Technology platform	—	5,000	625
Tradename	—	5,000	357
Total adjustment	<u>\$ —</u>	<u>\$ 15,000</u>	<u>\$ 1,607</u>

(k) Reflects the interest expense for the bond issuance

	Six months ended July 31, 2021		
	Bond Principal (in thousands)	Interest Rate	Pro Forma Adjustment (in thousands)
Debt incurred to finance Acquisition (assuming exercise of the underwriters' overallotment option)	\$ 80,000	8.5%	\$ 3,400

(l) Reflects the tax impact from (j) and (k)

	Six months ended July 31, 2021		
	Operations Impact (in thousands)	Effective tax rate	Pro Forma Adjustment (in thousands)
Tax impact from debt incurred to finance Acquisition and estimated amortization	\$ (5,007)	26%	\$ (1,302)

8. Notes to Unaudited Pro Forma Condensed Combined Statement of Operations for the Twelve Months Ended January 30, 2021— German GAAP to US GAAP adjustments:

(m) Reflects German GAAP to US GAAP adjustment for amortization of Goodwill

	Amount (in thousands)
Amortization of Goodwill	\$ 1,566

(n) Reflects German GAAP to US GAAP adjustment for lease adjustments

	Amount (in thousands)
Cost of Sales	\$ (82)
Finance expense	124
Impact on net income	42

(o) Reflects the tax impact from (m) and (n)

	Twelve months ended January 30, 2021		
	Operations Adjustment (in thousands)	Effective tax rate	Pro Forma Adjustment (in thousands)
Tax impact from German GAAP adjustments for lease adjustments	\$ 42	26%	\$ 11

9. Notes to Unaudited Pro Forma Condensed Statement of Operations for the Twelve Months Ended January 30, 2021 —Pro Forma Adjustments

(p) Reflects the following estimated amortization expense related to the intangible assets to be acquired:

	Twelve months ended January 30, 2021		
	Historical	Based on Fair Values (in thousands)	Pro Forma Adjustment
Customer list	\$ —	\$ 5,000	\$ 1,250
Technology platform	—	5,000	1,250
Tradenname	—	5,000	714
Total adjustment	\$ —	\$ 15,000	\$ 3,214

(q) Reflects the interest expense for the bond issuance

	Twelve months ended January 30, 2021		
	Bond Principal (in thousands)	Interest Rate	Pro Forma Adjustment (in thousands)
Debt incurred to finance Acquisition (assuming exercise of the underwriters' overallotment option)	\$ 80,000	8.5%	\$ 6,800

(r) Reflects the tax impact from (p) and (q) for debt incurred and amortization

	Twelve months ended January 30, 2021		
	Operations Adjustment (in thousands)	Effective tax rate	Pro Forma Adjustment (in thousands)
Tax impact from debt incurred to finance Acquisition and estimated amortization	\$ (10,014)	26%	\$ (2,604)

10. Notes to Unaudited Pro Forma Condensed Combined Statement of Operations for the Six Months Ended August 1, 2020— German GAAP to US GAAP adjustments:

(s) Reflects German GAAP to US GAAP adjustment for amortization of Goodwill

	Amount (in thousands)
Amortization of Goodwill	\$ 756

(t) Reflects German GAAP to US GAAP adjustment for lease adjustments

	Amount (in thousands)
Cost of Sales	\$ (79)
Finance expense	120
Impact on net income	41

(u) Reflects the tax impact from (s) and (t)

	Six months ended August 1, 2020		
	Operations Adjustment (in thousands)	Effective tax rate	Pro Forma Adjustment (in thousands)
Tax impact from German GAAP adjustments for lease adjustments	\$ 41	26%	\$ 11

11. Notes to Unaudited Pro Forma Condensed Statement of Operations for the Six Months Ended August 1, 2020 —Pro Forma Adjustments

(v) Reflects the following estimated amortization expense related to the intangible assets to be acquired:

	Six months ended August 1, 2020		
	Historical	Based on Fair Values (in thousands)	Pro Forma Adjustment
Customer list	\$ —	\$ 5,000	\$ 625
Technology platform	—	5,000	625
Tradenname	—	5,000	357
Total adjustment	<u>\$ —</u>	<u>\$ 15,000</u>	<u>\$ 1,607</u>

(w) Reflects the interest expense for the bond issuance

	Six months ended August 1, 2020		
	Bond Principal	Interest Rate (in thousands)	Pro Forma Adjustment
Debt incurred to finance Acquisition (assuming exercise of the underwriters' overallotment option)	<u>\$ 80,000</u>	<u>8.5%</u>	<u>\$ 3,400</u>

(x) Reflects the tax impact from (v) and (w) for debt incurred and amortization

	Six months ended August 1, 2020		
	Operations Adjustment (in thousands)	Effective tax rate	Pro Forma Adjustment (in thousands)
Tax impact from debt incurred to finance Acquisition and estimated amortization	\$ (5,007)	26%	\$ (1,302)

RISK FACTORS

Our business is subject to many risks. The following are material factors known to us that could have a material adverse effect on our business, reputation, operating results, industry, financial position, or future financial performance. The following risks, along with the other risk factors described in our Annual Report on Form 10-K for the year ended January 30, 2021, should be considered in evaluating an investment in our Company.

Unless otherwise stated or the context otherwise indicates, references in these Risk Factors to “iMedia,” the “Company,” “we,” “us” or “our” refer to iMedia Brands, Inc., a Minnesota corporation, and references to the “Purchase Agreement” refer to that certain Sale and Purchase Agreement relating to 1-2-3.tv Group with Emotion Invest GmbH & Co. KG, BE Beteiligungen Fonds GmbH & Co. geschlossene Investmentkommanditgesellschaft, and Iris Capital Fund II (collectively, the “Sellers”) and SCUR-Alpha 1359 GmbH (to be renamed iMedia&123tv Holding GmbH), a wholly-owned subsidiary of the Company (the “Subsidiary”), pursuant to which the Subsidiary intends to purchase and acquire from the Sellers (the “Acquisition”) all of the issued and outstanding equity interests of 123tv Invest GmbH, a limited liability company organized under the laws of Germany, and 123tv Holding GmbH, a limited liability company organized under the laws of Germany (collectively with their direct and indirect subsidiaries, the “1-2-3.tv Group”).

Risks Related to the Acquisition

Failure to consummate the Acquisition as currently contemplated or at all could adversely affect the price of our common stock and our future business and financial results.

Completion of the Acquisition is subject to the satisfaction of a number of conditions, including obtaining certain German and Austrian regulatory approvals and the Company’s completion of a financing in the amount of not less than EUR 62.0 million (\$73.3 million based on the September 13, 2021 exchange rate). We cannot guarantee when or if these conditions will be satisfied or that the Acquisition will be successfully completed. The consummation of the Acquisition may be delayed or on terms different than those contemplated by the Purchase Agreement, or the Acquisition may not be consummated at all. If the Acquisition is not completed or is delayed, or is completed on different terms than as contemplated by the Purchase Agreement, our business operations and financial conditions will be adversely affected and subject to a variety of other risks, including the following:

- our shareholders may be prevented from realizing the anticipated benefits of the Acquisition;
- the market price of our common stock could decline significantly;
- reputational harm due to the adverse perception of any failure to successfully complete the Acquisition;
- incurrence of substantial costs relating to the proposed Acquisition, such as legal, accounting, financial advisor, filing, printing and mailing fees; and
- our management’s and employees’ attention may be diverted from our day-to-day business and operational matters as a result of efforts relating to attempting to consummate the Acquisition.

Any delay in the consummation of the Acquisition or any uncertainty about the consummation of the Acquisition on terms other than those contemplated by the Purchase Agreement, or if the Acquisition is not completed or is delayed, could materially adversely affect our business, financial results and share price.

Estimates as to the future value or performance of the Company after the Acquisition are inherently uncertain. You should not rely on such estimates without considering all of the information contained or incorporated by reference into this Current Report on Form 8-K.

Any estimates as to the future value or performance of the Company after the Acquisition are inherently uncertain and subject to risks. The future value or performance of the Company will depend upon, among other factors, the Company’s ability to achieve projected revenue and earnings expectations; realize the anticipated synergies; integrate the new business operations successfully and timely; and execute our business strategies for the combined companies in accordance with our plans, all of which are subject to the risks and uncertainties described in this Current Report on Form 8-K, including these risk factors. Accordingly, you should not rely upon any estimates as to the future value of the Company, whether made before or after the date of this Current Report on Form 8-K, without considering all of the information contained or incorporated by reference into this Current Report on Form 8-K.

Unanticipated costs relating to the Acquisition could reduce our future earnings per share.

We have incurred substantial legal, accounting, financial advisory and other costs, and our management has devoted considerable time and effort in connection with the Acquisition. If the Acquisition is not completed, we will bear certain fees and expenses associated with the Acquisition without realizing the benefits of the Acquisition. If the Acquisition is completed, we expect to incur substantial expenses in connection with integrating the business, operations, network, systems, technologies, policies, accounting controls and procedures of the two companies. The fees and expenses may be significant and could have an adverse impact on our results of operations.

We believe that we have reasonably estimated the likely costs of integrating the operations of 1-2-3.tv Group, and the incremental costs of operating after the Acquisition. However, it is possible that unexpected transaction costs such as taxes, fees or professional expenses or unexpected future operating expenses such as increased personnel costs or increased taxes, as well as other types of unanticipated adverse developments, could have a material adverse effect on the results of operations and financial condition of the Company. If unexpected costs are incurred, the Acquisition could have a negative effect on our earnings per share and may not produce the anticipated financial benefits. In other words, if the Acquisition is completed, the earnings per share of our common stock could be less than anticipated or even less than if the Acquisition had not been completed.

The market price of our common stock may decline as a result of the Acquisition and the market price of our common stock after the consummation of the Acquisition may be affected by factors different from those affecting the price of our common stock before the Acquisition.

The market price of our common stock may decline as a result of the Acquisition if we do not achieve the perceived benefits of the Acquisition or the effect of the Acquisition on our financial results is not consistent with the expectations of financial or industry analysts. Moreover, certain of our shareholders may not perceive benefits of the Acquisition that outweigh the risks to our company of completing the acquisition.

In addition, our business and the business of 1.2.3.tv Group differ. As a result, while we expect to benefit from certain synergies following the Acquisition, we may also encounter new risks and liabilities associated with these differences. Upon announcement of the Acquisition or following the Acquisition, our shareholders may not wish to continue to invest in us, or for other reasons may wish to dispose of some or all of our common stock. If, following the announcement or effective time of the Acquisition, large amounts of our common stock are sold, the price of our common stock could decline.

Further, our results of operations and the market price of our common stock may be affected by factors different from those currently affecting the independent results of operations of 1.2.3.tv Group. Accordingly, our and 1.2.3.tv Group's historical financial results may not be indicative of these matters for us after the Acquisition.

The Acquisition is subject to the receipt of consents and approvals from governmental authorities that may delay the date of completion of the Acquisition or impose conditions that could have an adverse effect on us.

Before the Acquisition may be completed, various approvals, waivers or consents must be obtained, including from certain German and Austrian regulatory authorities. Satisfying the requirements of these governmental authorities may delay the date of completion of the Acquisition. In addition, these governmental authorities may include conditions on the completion of the Acquisition, or require changes to the terms of the Acquisition. While we and the Sellers do not currently expect that any such conditions or changes would result in a material adverse effect on us, there can be no assurance that they will not, and such conditions or changes could have the effect of delaying or terminating completion of the Acquisition, or imposing additional costs on or limiting our revenues following the Acquisition, any of which might have a material adverse effect on us following the Acquisition. The parties are not obligated to complete the Acquisition should any regulatory approval contain a condition, restriction or requirement.

If the Acquisition is not consummated by January 13, 2022, we or the Sellers may terminate the Acquisition agreement.

Either we or the Sellers may terminate the Purchase Agreement under certain circumstances, including if the Acquisition has not been consummated by January 13, 2022. In the event the termination is due to the failure of our company to complete a financing raising at least EUR 62.0 million (\$73.3 million based on the September 13, 2021 exchange rate) within 75 days of the execution date of the agreement, we will owe the Sellers an aggregate of EUR 2.0 million (\$2.4 million based on the September 13, 2021 exchange rate) in liquidated damages.

The unaudited pro forma financial data included in this Current Report on Form 8-K is illustrative only, and may differ materially from 1.2.3.tv Group's actual financial position and results of operations after the Acquisition.

The unaudited pro forma financial data in this Current Report on Form 8-K is presented for illustrative purposes only and is not necessarily indicative of what 1.2.3.tv Group's actual financial position or results of operations would have been had the Acquisition been completed on the dates indicated. The pro forma financial data reflects adjustments, which are based on preliminary estimates, to record 1.2.3.tv Group's identifiable assets acquired and liabilities assumed at fair value and the resulting goodwill recognized. The purchase price allocation reflected in this Current Report on Form 8-K is preliminary and final allocation of the purchase price will be based on the actual purchase price and the fair value of the assets and liabilities of 1.2.3.tv Group as of the date of the completion of the Acquisition. As a result, the final acquisition accounting adjustments may differ materially from the pro forma adjustments reflected in this Current Report on Form 8-K.

If the Acquisition is consummated, the Company's operations would expand into international markets, including Germany and Austria, which will expose us to significant new risks.

The Acquisition will expand our operations to Germany and Austria, which requires significant resources and management attention and subjects us to legislative, judicial, accounting, regulatory, economic, and political risks in addition to those we already face in the United States. We have no current experience operating internationally. There are significant risks and costs inherent in doing business in international markets, including:

- difficulty establishing, staffing and managing international operations and the increased operations, travel, infrastructure, including establishment of local delivery service and customer service operations, and legal compliance costs associated with locations in different countries or regions;
- the need to vary pricing and margins to effectively compete in international markets;
- the need to adapt and localize products for specific countries, including obtaining rights to third-party intellectual property used in each country;
- misjudging the markets and competitive landscape of foreign jurisdictions;
- increased competition from local competitors;
- the ability to protect and enforce intellectual property rights abroad;
- the need to offer content and customer support in various languages;
- difficulties in understanding and complying with local laws, regulations, and customs in other jurisdictions;
- compliance with anti-bribery laws, such as the U.S. Foreign Corrupt Practices Act by us, our employees, and our business partners;
- complexity and other risks associated with current and future (including changing) legal requirements in other countries, including legal requirements related to consumer protection, consumer product safety, and data privacy frameworks, such as the E.U. General Data Protection Regulation;
- difficulties in integrating and coordinating with international practices, operations and employee cultures with those in the U.S.;
- greater potential for corruption and bribery;
- varying levels of internet technology adoption and infrastructure, and increased or varying network and hosting service provider costs;
- tariffs and other non-tariff barriers, such as quotas and local content rules, as well as tax consequences including the complexities of foreign value added tax systems and restrictions on the repatriation of earnings;
- increased financial accounting and reporting burdens and complexities;
- fluctuations in currency exchange rates and the requirements of currency control regulations, which might restrict or prohibit conversion of other currencies into U.S. dollars; and
- political or social unrest or economic instability, terrorist attacks and security concerns in general in a specific country or region in which we operate.

The occurrence of any one of these risks could negatively affect our international business and, consequently, our results of operations generally. Additionally, operating in international markets also requires significant management attention and financial resources. We cannot be certain that the investment and additional resources required in establishing, acquiring, or integrating operations in other countries will produce desired levels of revenues or profitability.

The extent to which the COVID-19 outbreak and measures taken in response thereto in international markets in which we would operate could impact our business, results of operations and financial condition and will depend on on-going and future developments and outcomes, which are highly uncertain and cannot be predicted.

Our business operations and financial results internationally may be adversely impacted by health epidemics, pandemics, and similar outbreaks. Despite our efforts to manage these impacts, their ultimate impact also depends on factors beyond our knowledge or control, including the duration and severity of any such outbreak and actions taken to contain its spread and mitigate its public health effects. Governments in international markets in which we will operate may impose restrictions on our operations that are more extensive and harmful to us than in the U.S.

The COVID-19 pandemic could have adverse impacts on our international business operations by limiting our employees' ability to work and travel (including between the U.S. and our international locations), disrupting our third-party technology providers, or causing internal operational workflow to change, among other potentially unforeseen circumstances given the unprecedented and rapidly evolving situation.

Additionally, the COVID-19 pandemic may continue to cause significant disruptions and changes in the economic or political conditions in international markets in which we operate. This may cause significant volatility in demand for our products due to, among other adverse impacts, disruption and downturns in our programming and supply chains or our customers' ability to pay for products sold by our company when due or in full.



iMedia Brands Announces Proposed \$75.0 Million Public Offering of Senior Notes

MINNEAPOLIS, September 22, 2021 -- iMedia Brands, Inc. (NASDAQ: IMBI) (“iMedia Brands” or the “Company”) today announced that it intends to offer and sell \$75.0 million aggregate principal amount of senior notes due 2026 in an underwritten public offering. The interest rate of the senior notes is expected to be 8.50%. The proposed offering is subject to market and other conditions, and there can be no assurance as to whether or when the offering may be completed, or as to the actual size or terms of the offering. iMedia Brands also expects to grant the underwriters a 30-day option to purchase additional \$5.0 million aggregate principal amount of senior notes in connection with the public offering.

iMedia Brands intends to use the net proceeds from the offering to fund the closing cash purchase price and transaction costs related to its pending acquisition of 1-2-3.tv Group, and any remaining proceeds for working capital and general corporate purposes, which may include certain post-closing payments related to the 1-2-3.tv Group acquisition.

In connection with the Offering, the Company has applied to list the notes on the Nasdaq Global Market (the “Nasdaq”) under the symbol “IMBIL.” If approved for listing, trading on the Nasdaq is expected to commence within 30 days after the notes are first issued. iMedia Brands and this issuance of notes received a rating of BB from Egan-Jones Ratings Company, an independent, unaffiliated rating agency.

B. Riley Securities, Inc., D.A. Davidson & Co., Ladenburg Thalmann & Co. Inc. and InspereX LLC will act as joint book-running managers for the offering. Aegis Capital Corp., Alexander Capital L.P., Newbridge Securities Corporation, Revere Securities LLC and Zeigler will act as co-managers for the offering.

A shelf registration statement on Form S-3 (File No. 333-258519) relating to the offering of the notes described above was filed with the Securities and Exchange Commission (the “SEC”) on August 5, 2021 and declared effective by the SEC on August 12, 2021. The notes may be offered only by means of a prospectus. Copies of the preliminary prospectus supplement and accompanying prospectus relating to the offering may be obtained by contacting B. Riley Securities, Inc., 1300 North 17th Street, Suite 1300, Arlington, Virginia 22209, email: prospectuses@brileyfin.com, telephone: (703) 312-9580 or on the SEC’s website at www.sec.gov. The final terms of the proposed offering will be disclosed in a final prospectus supplement to be filed with the SEC.

This press release does not constitute an offer to sell or the solicitation of an offer to buy any of these securities, nor will there be any sale of these securities in any state or other jurisdiction in which such offer, solicitation or sale is not permitted.

About iMedia Brands, Inc.

iMedia Brands, Inc. and its subsidiaries is a leading interactive media company that owns a growing portfolio of lifestyle television networks, consumer brands, online marketplaces and media commerce services that together position the Company as a leading single-source partner to television advertisers and consumer brands seeking to entertain and transact with customers using interactive video.

Safe Harbor Statement under the Private Securities Litigation Reform Act of 1995

This press release contains certain “forward-looking statements.” Any statements contained herein that are not statements of historical fact, including statements regarding the proposed offering, are forward-looking. The Company often uses words such as anticipates, believes, estimates, expects, intends, seeks, predicts, hopes, should, plans, will and similar expressions to identify forward-looking statements. These statements are based on management's current expectations and accordingly are subject to uncertainty and changes in circumstances. Actual results may vary materially from the expectations contained herein due to various important factors, including (but not limited to), risks and uncertainties associated with market conditions and the timing, size and completion of this offering, the consummation and success of the proposed acquisition of 1-2-3.tv Group and the ability to achieve the expected benefits thereof, and the risks identified under Item 1A (Risk Factors) in the Company’s most recently filed Form 10-K and any additional risk factors identified in its periodic reports since the date of such Form 10-K, including risk factors set forth in Exhibit 99.5 of the Form 8-K filed by the Company on September 22, 2021. Investors are cautioned not to place undue reliance on forward-looking statements, which speak only as of the date of this announcement. The Company is under no obligation (and expressly disclaims any such obligation) to update or alter its forward-looking statements whether as a result of new information, future events or otherwise.

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CALCULATION OF PRO FORMA SENIOR DEBT NET LEVERAGE RATIO AS OF JULY 31, 2021

Non-GAAP Financial Measures

To provide investors with additional information regarding the Company in addition to that as determined by generally accepted accounting principles in the United States (“GAAP”), the Company discloses the following non-GAAP financial measures: Adjusted EBITDA and total net senior debt leverage ratio. These measures are not financial measures calculated in accordance with GAAP and should not be considered as a substitute for net income, operating income, cash flows, or any other measure calculated in accordance with GAAP, and may not be comparable to similarly titled measures reported by other companies.

Adjusted EBITDA Reconciliation

EBITDA represents net income (loss) for the respective periods excluding depreciation and amortization expense, interest income (expense) and income taxes. The Company defines Adjusted EBITDA as EBITDA excluding non-operating gains (losses); executive and management transition costs; restructuring costs; non-cash impairment charges and write downs; transaction, settlement, and integration costs, net; rebranding costs; and non-cash share-based compensation expense. The Company has included the “Adjusted EBITDA” measure in its EBITDA reconciliation in order to adequately assess the operating performance of its television and online businesses and in order to maintain comparability to its analyst's coverage and financial guidance, when given. Management believes that the Adjusted EBITDA measure allows investors to make a meaningful comparison between its business operating results over different periods of time with those of other similar companies. In addition, management uses Adjusted EBITDA as a metric to evaluate operating performance under the Company’s management and executive incentive compensation programs. EBITDA and Adjusted EBITDA are both non-GAAP measures and should not be construed as an alternative to operating income (loss), net income (loss) or to cash flows from operating activities as determined in accordance with generally accepted accounting principles (“GAAP”) and should not be construed as a measure of liquidity.

The following table presents a reconciliation of Adjusted EBITDA to net income (loss) attributable to shareholders, as adjusted on a pro forma combined basis to include the Company’s portal and advertising business that was acquired in July 2021 and the proposed acquisition of all of the issued and outstanding equity interests of 123tv Invest GmbH, a limited liability company organized under the laws of Germany, and 123tv Holding GmbH, a limited liability company organized under the laws of Germany.

iMEDIA BRANDS, INC.
AND SUBSIDIARIES
Reconciliation of Net Income (Loss) Attributable to Shareholders to Adjusted EBITDA:
(Unaudited)
(in thousands)

	For the Twelve-Month Periods Ended					
	July 31, 2021		Consolidated iMedia	June 30, 2021	July 31, 2021	July 31, 2021
	ShopHQ	Emerging		123tv (Historical)	Portal and Ad (Historical)	Pro Forma Combined
Net income (loss) attributable to shareholders			\$ (14,937)	\$ 8,213	\$ 4,139	\$ (2,585)
Adjustments:						
Depreciation and amortization			34,121	1,222	-	35,343
Interest income			(41)	-	-	(41)
Interest expense			5,351	24	-	5,375
Income taxes			60	799	-	859
EBITDA (as defined)	<u>\$ 24,200</u>	<u>\$ 354</u>	<u>\$ 24,554</u>	<u>\$ 10,258</u>	<u>\$ 4,139</u>	<u>\$ 38,951</u>
A reconciliation of EBITDA to Adjusted EBITDA is as follows:						
EBITDA (as defined)	\$ 24,200	\$ 354	\$ 24,554	\$ 10,258	\$ 4,139	\$ 38,951
Adjustments:						
Non-operating losses	-	-	-	1,738	-	1,738
One-time customer concessions	341	-	341	-	-	341
Transaction, settlement and integration costs, net	790	1,756	2,546	-	-	2,546
Non-cash share-based compensation expense	2,673	-	2,673	-	-	2,673
Loss on Debt Extinguishment	654	-	654	-	-	654
Restructuring costs	506	-	506	-	-	506
Adjusted EBITDA	<u>\$ 29,164</u>	<u>\$ 2,110</u>	<u>\$ 31,274</u>	<u>\$ 11,996</u>	<u>\$ 4,139</u>	<u>\$ 47,409</u>

Total Net Senior Debt Leverage Ratio Reconciliation

Total net senior debt represents the long term credit facility, plus unamortized debt issuance costs, plus a seller note within other long term liabilities plus any additional senior debt, less debt subordinated in right of payment to the Company's senior debt and less unrestricted cash. Total net senior debt leverage ratio is the ratio of total net senior debt to the Company's pro forma combined last-twelve month Adjusted EBITDA.

The Company has included the "total net senior debt leverage ratio" measure as this is measured by the Company's senior lender for compliance with the Company's (together with its subsidiary borrowers) maximum senior net leverage ratio. Management believes that the total net senior debt leverage ratio allows investors to have a meaningful understanding of the Company's compliance with its senior lender's maximum senior net leverage ratio covenant.

The following table presents a reconciliation of total debt to total net senior debt leverage ratio:

**iMEDIA BRANDS, INC.
AND SUBSIDIARIES**
Reconciliation of Total Debt to Total Net Senior Debt:
(Unaudited)
(in thousands)

	As of July 31, 2021		
	As Reported iMedia	Pro Forma Adjustments	Pro Forma Combined
Long term credit facility	\$ 73,919	\$ -	\$ 73,919
Add: unamortized debt issuance costs	1,826	-	1,826
Seller note within other long term liabilities	10,000	-	10,000
Senior Notes (assuming exercise of the underwriters' over-allotment option)	-	80,000	80,000
Total debt	\$ 85,745	\$ 80,000	\$ 165,745
Less: seller note	10,000	-	10,000
Less: unrestricted cash	20,918	(4,009)	16,909
Total net senior debt	\$ 54,827	\$ 84,009	\$ 138,836
LTM Adjusted EBITDA	\$ 31,274	\$ 16,135	\$ 47,409
Total net senior debt leverage ratio	1.8		2.9