

**Objection Date and Time: March 13, 2013 at 5:00 p.m.**

New York (the "Local Rules"), as more fully set forth in the Application, a hearing will be held before the Honorable James Peck, United States Bankruptcy Judge, in Room 601 of the United States Bankruptcy Court for the Southern District of New York, One Bowling Green, New York, New York 10004, on **March 20, 2013 at 10:00 a.m. (Eastern Time)**, or as soon thereafter as counsel may be heard.

**PLEASE TAKE FURTHER NOTICE** that objections, if any, to the relief requested in the Application (i) must be in writing; (ii) shall conform to the Federal Rules of Bankruptcy Procedure and the Local Bankruptcy Rules for the Bankruptcy Court; (iii) be filed in accordance with General Order M-399 of the Bankruptcy Court, which can be found at [www.nysb.uscourts.gov](http://www.nysb.uscourts.gov); (iv) shall set forth the name of the objecting party and the basis for the objection and the specific grounds therefore; (v) shall be filed with the Clerk of the Bankruptcy Court (with a courtesy copy delivered directly to the Chambers of the Honorable James M. Peck), together with the proof of service thereof; and (vi) shall be served in a manner so as to actually be received by (a) Cooley LLP, proposed counsel to the Committee, 1114 Avenue of the Americas, New York, New York, 10036, Attn: Alex R. Velinsky, (b) Akin Gump Strauss Hauer & Feld LLP, proposed counsel for the Debtors, One Bryant Park, New York, New York 10036, Attn: Kristine G. Manoukian, Esq.; (c) the Office of the United States Trustee for the Southern District of New York, 271 Cadman Plaza East, Suite 4529, Brooklyn, New York 11201, Attn: Richard C. Morrissey, Esq., no later than **5:00 p.m. (Eastern Time) on March 13, 2013** (the "Objection Deadline").

**PLEASE TAKE FURTHER NOTICE** that if no objections are timely filed and served with respect to the Application, the Committee may, on or after the Objection Deadline, submit to the Bankruptcy Court an order substantially in the form of the proposed order annexed

to the Application, which order may be entered with no further notice or opportunity to be heard offered to any party.

Dated: March 4, 2013  
New York, New York

/s/ Jeffrey L. Cohen  
COOLEY LLP  
1114 Avenue of the Americas  
New York, New York 10036  
Tel.: 212-479-6000  
Cathy Hershcopf  
Jeffrey L. Cohen  
Alex R. Velinsky  
Robert B. Winning

*Proposed Counsel for the Official  
Committee of Unsecured Creditors*

**Objection Date and Time: March 13, 2013 at 5:00 p.m. (ET)**

In re:

Debtors,<sup>1</sup>

13-10176 (JMP)

## BACKGROUND

- <sup>1</sup> The Debtors in these cases along with the last four digits of their federal tax identification number are: Velo Holdings Inc. (3155), V2V Holdings LLC (8801), Coverdell & Company, Inc. (4660), V2V Corp. (0857), LN, Inc. (8759), FYI Direct Inc. (2491), Vertrue LLC (6882), Idaptive Marketing LLC (3362), My Choice Medical Holdings, Inc. (5870), Adaptive Marketing LLC (6882), Interactive Media Group (USA) Ltd. (1016), Brand Magnet, Inc. (8978), Neverblue Communications, Inc. (7832), and Interactive Media Consolidated Inc. (0774).

Southern District of New York (the "Court"). Pursuant to sections 1107 and 1108 of the Bankruptcy Code, the Debtors continue to operate their businesses and properties as debtors-in-possession. No trustee or examiner has been appointed in these cases.

2. On February 6, 2013, the Committee was appointed in these cases by the Office of the United States Trustee for the Southern District of New York (the "US Trustee"), consisting of the following five members: (i) CD Projekt S.A., f/k/a CD Projekt Red S.A.; (ii) CDV Software Entertainment, USA, Inc.; (iii) Liquid Entertainment; (iv) Rackspace Hosting; and (v) Tavant Technologies, Inc. On February 8, 2013, the Committee selected Cooley LLP as its proposed counsel.

3. On February 11, 2013 the Committee met and selected D&P to serve as its financial advisor in these Chapter 11 cases.

#### **JURISDICTION**

4. This Court has jurisdiction to consider this matter pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

#### **REQUESTED RELIEF**

5. By this application, the Committee respectfully requests authorization to retain and employ D&P as its financial advisor in these Chapter 11 cases. Specifically, the Committee respectfully requests entry of an order pursuant to §§ 328(a), 1103(a) and 1103(b) of the Bankruptcy Code authorizing D&P to perform those financial advisory services that will be necessary during these Chapter 11 cases as more fully described below.

### **SERVICES TO BE RENDERED**

6. The Committee proposes to employ D&P pursuant to the terms of the engagement letter dated as of February 22, 2013 (the "Engagement Letter"), attached hereto as Exhibit A, and anticipates that D&P may render the following services in these cases:

- (a) Review and analyze the Debtors' operations, financial condition, cash flows, business plan, strategy, and operating forecasts;
- (b) Evaluate the assets and liabilities of the Debtors and evaluate the Debtors' strategic and financial alternatives;
- (c) Assist in the determination of an appropriate go-forward capital structure for the Debtors;
- (d) Determine a theoretical range of values for the Debtors on a going concern basis;
- (e) Evaluate the Debtors' debt capacity in light of its projected cash flows;
- (f) Assist the Committee in developing, evaluating, structuring and negotiating the terms and conditions of a restructuring or Plan, including the value of securities, if any, that may be issued to unsecured creditors under any such restructuring or Plan;
- (g) Assist the Committee in monitoring a sales process and evaluating bids to purchase the Debtors;
- (h) Assist the Committee in analyzing any new debt and/or equity capital including debtor-in-possession financing (including advice on the nature and terms of the new securities);
- (i) Provide testimony, as necessary, before the Bankruptcy Court; and

Provide the Committee with other appropriate general restructuring advice.

### **QUALIFICATIONS OF PROFESSIONALS**

7. The Committee has selected D&P as its financial advisors because of the firm's diverse experience and extensive knowledge in the field of bankruptcy. D&P is a professional services firm engaged in the business of providing financial advisory and related professional investment banking services with an office located at 55 East 52nd Street, 31st Floor, New York, New York, 10055. D&P provides a broad range of services to its clients and has extensive

experience in dealing effectively with a full range of issues and challenges that arise in corporate restructurings and business reorganizations.

8. D&P's professionals have served as financial advisors in numerous recent chapter 11 cases, and have advised debtors and creditors' committees in numerous restructuring transactions, including some of the largest and most complicated cases. Some of D&P's more prominent recent creditor committee representations were in the following chapter 11 cases: *In re Visteon Corp.*, No. 09-11786 (CSS) (Bankr. D. Del. Sept. 11, 2009); *In re Dura Automotive Sys., Inc.*, No. 06-11202 (KJC) (Bankr. D. Del. Dec. 21, 2006); *In re Hayes Lemmerz Int'l*; No. 09-11655 (MFW) (Bankr. D. Del. Jul. 24, 2009); *In re Global Power Equip. Group, Inc.*, No. 06-11045 (BLS) (Bankr. D. Del. Nov. 17, 2006); *In re Citadel Broad. Corp.*, No. 09-17442 (BRL) (Bankr. S.D.N.Y. Apr. 12, 2010); *In re Int'l Aluminum Corp.*, No. 10-10003 (Bankr. D. Del. Jan. 27, 2010); *In re Philadelphia Newspapers, LLC*, No. 09-11204 (JKF) (Bankr. D. Del. June 6, 2009); *In re Star Tribune Holdings Corp.*, No. 09-10244 (RDD) (Bankr. S.D.N.Y. Apr. 27, 2009); *In re Champion Enters., Inc.*, No. 09-14019 (KG) (Bankr. D. Del. Feb. 3, 2010); *In re Real Mex Restaurants, Inc.*, No. 11-13122 (BLS) (Bankr. D. Del. Jan. 23, 2012), and *In re Trico Marine Servs., Inc.*, No. 10-12653 (BLS) (Bankr. D. Del. Oct. 1, 2010); *In re K-V Pharmaceutical Co.*, No. 12-13346 (ALG) (Bankr. S.D.N.Y. Oct. 10, 2012); and *In re ATP Oil & Gas Corp.*, No. 12-36187 (MI) (Bankr. S.D.T.X. Dec. 12, 2012).

9. The Committee needs assistance in analyzing financial information, providing strategic advisory services and assisting in negotiations with parties in interest in relation to these Chapter 11 cases. The professionals of D&P have considerable experience with rendering such services to committees and other parties in numerous Chapter 11 cases. Accordingly, D&P is

well qualified to represent the Committee in these chapter 11 proceedings and it is respectfully requested that the Committee be authorized to retain D&P effective as of February 11, 2013.

10. The Committee is of the opinion that it is necessary to employ D&P and that such employment is in the best interest of the Debtors' estates.

#### **DISINTERESTEDNESS OF PROFESSIONALS**

11. Based upon the affidavit of Thomas Clark Carlson filed contemporaneously herewith (the "Carlson Affidavit"), the Committee is satisfied that (i) D&P represents no interest adverse to the Committee, the Debtors, or their estates, in the matters upon which it is to be engaged and that its employment is in the best interest of the estates, (ii) D&P has no connection with the U.S. Trustee or any other person employed in the office of the U.S. Trustee, and (iii) D&P has not been paid any retainer against which to bill fees and expenses.

12. The Committee is satisfied that D&P has no interest adverse to the Debtors' estates.

#### **PROFESSIONAL COMPENSATION**

13. The Committee seeks approval of the Engagement Letter and the provisions set forth therein to retain and employ D&P pursuant to section 328(a) of the Bankruptcy Code. Section 328(a) provides, in relevant part, that a committee, "with the court's approval, may employ or authorize the employment of a professional person under section 327 or 1103 . . . on any reasonable terms and conditions of employment, including a retainer, on an hourly basis, on a fixed or percentage fee basis, or on a contingent fee basis." 11 U.S.C. § 328(a).

14. Subject to this Court's approval, and as described in the Engagement Letter, the Committee requests that D&P be entitled to receive the following compensation for professional services rendered to the Committee: a monthly fee of \$50,000 per month (the "Monthly Fees"),



plus a restructuring fee (the "Restructuring Fee") of up to \$700,000 based upon the recovery received by general unsecured creditors on account of their allowed general unsecured claims in these cases. The Restructuring Fee will be calculated by applying the pro rata percentage recovery received or to be received by general unsecured creditors on account of their allowed general unsecured claims to \$700,000. For example, if general unsecured creditors are paid 100% of their allowed claims, D&P will be entitled to a Restructuring Fee of \$700,000. If, however, general unsecured creditors receive distributions equal to 25% of their allowed general unsecured claims, then D&P will be entitled to a Restructuring Fee of \$175,000. Fifty percent of any Monthly Fees actually paid to D&P following the second Monthly Fee, will be credited toward any Restructuring Fee payable to D&P. Restructuring Fees shall become payable upon consummation of a "Restructuring Transaction" (as defined in the Engagement Letter) as is more fully set forth in the Engagement Letter.

15. D&P intends to apply to the Court for the payment of compensation for services rendered and reimbursement of actual and necessary documented out-of-pocket expenses, in accordance with applicable provisions of the Bankruptcy Code, the Bankruptcy Rules, the guidelines promulgated by the Office of the U.S. Trustee, the Local Rules and orders of this Court, and pursuant to any additional procedures that may be or have already been established by the Court in these cases. These expenses and disbursements may include, among other things, travel costs, telephone and facsimile, lodging, certain meals, research, costs of duplication, computer usage, legal counsel and other direct expenses incurred in connection with D&P providing professional services to the Committee.

16. As described more fully in the Carlson Affidavit in support of the Application, the terms of the Engagement Letter are similar to the terms, both financial and otherwise, agreed to

by D&P and other financial advisory firms, both inside and outside of bankruptcy, for an engagement such as this one. The terms of the Engagement Letter were negotiated between the Committee and D&P, and reflect the extensive work to be performed by D&P in these Chapter 11 Cases and the firm's financial advisory expertise.

17. Because the Committee is requesting that D&P be paid a monthly fee, rather than on an hourly basis, the Committee requests that D&P be permitted to submit its time records during the course of these cases in a summary format that sets forth the description of the services rendered by each of the D&P's restructuring professionals and the amount of time spent, in one-half hour increments, on each date by such professional rendering such services on behalf of the Committee, in lieu of submission by D&P of detailed billing statements that report time in tenth of an hour increments by project category.

18. Further, the Committee requests that any fee application submitted by D&P is only subject to the standards of review set forth in section 328(a) of the Bankruptcy Code, and not subject to the standards of review set forth in section 330 of the Bankruptcy Code, whereby the right to raise any challenges to fee applications pursuant to section 330 of the Bankruptcy Code is only reserved by the U.S. Trustee. The Committee submits that D&P's proposed compensation structure, as described in the Engagement Letter, should be approved unless D&P's fees "prove to have been improvident in light of developments not capable of being anticipated at the time" such compensation structure was initially approved. 11 U.S.C. § 328(a). Other than as set forth herein, no arrangement is proposed between the Committee and D&P for compensation to be paid in these cases. In light of the above, the Committee submits that such proposed compensation is fair and reasonable and should be approved under section 328(a) of the Bankruptcy Code.

19. Other than as set forth herein, no arrangement is proposed between the Committee and D&P for compensation to be paid in these cases. In light of the above, the Committee submits that such proposed compensation is fair and reasonable and should be approved under section 328(a) of the Bankruptcy Code

#### **INDEMNIFICATION PROVISIONS**

20. Subject to Court approval (including in accordance with the proposed order) and pursuant to terms of the Engagement Letter, in connection with D&P's engagement to provide financial advisory services to the Committee, the Debtors shall indemnify and hold harmless D&P and its affiliates against any and all losses, claims, damages, liabilities, penalties, judgments, awards, costs, fees, documented expenses and disbursements including, without limitation, defending any action, suit, proceedings or investigation, to the extent and in the manner provided in Schedule I to the Engagement Letter (the "Indemnity").

21. The Indemnity includes qualifications and limits on the indemnifications and limitation on liability provisions that are customary in Chapter 11 cases. Accordingly, the Committee and D&P believe the Indemnity is customary and reasonable for engagements of this type and should be approved.

#### **NOTICE, PRIOR APPLICATION AND WAIVER OF BRIEF**

22. Notice of the instant Application is being given to (i) the Office of the U.S. Trustee (Attn: Richard C. Morrissey, Esq.); (ii) the Debtors and their counsel; (iii) counsel to the DIP lenders; and (iv) any other party having filed with the Court a request for notice (collectively, the "Notice Parties"). The Committee respectfully submits that in light of the nature of the relief requested, no further notice of the relief requested is necessary or required.

23. No prior application has been made in this or any other Court.

24. The Committee submits that the Application does not present novel issues of law requiring the citation to any authority, other than the statutes and rules cited above and, accordingly, submits that no brief is necessary.

**WHEREFORE**, the Committee hereby requests that it be authorized to retain and employ D&P as its counsel *nunc pro tunc* to February 11, 2013 and that said firm be paid such compensation as may be allowed by this Court, and that this court grant such further relief as is deemed just and proper.

Dated: February 26, 2013

Respectfully submitted,

THE OFFICIAL COMMITTEE OF UNSECURED  
CREDITORS

By: /s/ Harvey S. Goldstein  
Harvey S. Goldstein, Rackspace Hosting  
Committee Chairperson

**EXHIBIT A**

## DUFF &amp; PHELPS

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February 21, 2013

PRIVILEGED AND CONFIDENTIAL

To: The Official Committee of Unsecured Creditors of Atari Inc.

Dear Committee Members:

This letter, effective nunc pro tunc to February 11, 2011, confirms the understanding and agreement (the "Agreement") with the Official Committee of Unsecured Creditors (the "Committee") of Atari Inc. and its associated debtors-in-possession (the "Debtors") that have filed petitions commencing cases (the "Chapter 11 Cases") under the Bankruptcy Code in the United States Bankruptcy Court for the Southern District of New York (the "Bankruptcy Court"), concerning the Committee's engagement of Duff & Phelps Securities, LLC ("Duff & Phelps") as financial advisor. The Debtors, by executing this letter, acknowledge and agree, subject to Bankruptcy Court approval, to be responsible for the payment and other obligations to Duff & Phelps, and agrees to be bound by the acknowledgements made by it in this Agreement.

1. Engagement: Duff & Phelps is being retained to provide financial advisory services for the Committee in connection with the Debtors' restructuring of indebtedness and Chapter 11 Cases, including the analysis, consideration and development of a Chapter 11 plan of reorganization (the "Plan") for one or more of the Debtors. Upon retention, Duff & Phelps will work at the reasonable request and direction of the Committee to:

- (a) Review and analyze the Debtors' operations, financial condition, cash flows, business plan, strategy, and operating forecasts;
- (b) Evaluate the assets and liabilities of the Debtors and evaluate the Debtors' strategic and financial alternatives;
- (c) Assist in the determination of an appropriate go-forward capital structure for the Debtors;
- (d) Determine a theoretical range of values for the Debtors on a going concern basis;
- (e) Evaluate the Debtors' debt capacity in light of its projected cash flows;
- (f) Assist the Committee in developing, evaluating, structuring and negotiating the terms and conditions of a restructuring or Plan, including the value of securities, if any, that may be issued to unsecured creditors under any such restructuring or Plan;
- (g) Assist the Committee in monitoring a sales process and evaluating bids to purchase the Debtors;

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- (h) Assist the Committee in analyzing any new debt and/or equity capital including debtor-in-possession financing (including advice on the nature and terms of the new securities);
- (i) Provide testimony, as necessary, before the Bankruptcy Court; and
- (j) Provide the Committee with other appropriate general restructuring advice.

2. Term of Agreement: This Agreement shall commence upon its execution by both parties and shall continue until the expiration of 30 days after either the Committee or Duff & Phelps gives written notice of termination to the other party. Upon any termination, the provisions of Paragraph 3 shall survive the termination of this Agreement to the extent such provisions relate to the payment of fees and expenses due or accrued on or before the effective date of termination. The provisions of Paragraphs 4 through 15 and Schedule I shall also survive the termination of this Agreement and shall remain in effect. Additionally, if this Agreement is terminated by the Committee, Duff & Phelps shall be entitled to payment of a Restructuring Fee (as defined below) if an agreement with respect to a Restructuring Transaction is entered into, announced or consummated within 12 months of the effective date of such termination.

3. Fees and Expenses: All fees and expenses hereunder shall be paid by the Debtors' estates subject to application to and allowance by the Bankruptcy Court. Subject to the foregoing, the Debtors shall be solely responsible for, and shall pay, the compensation and other amounts that are payable to Duff & Phelps hereunder and for certain other obligations specified herein (including without limitation the indemnification and other obligations in Schedule I). Neither the Committee nor its members will be responsible for paying Duff & Phelps' fees. As consideration for the services rendered and to be rendered by Duff & Phelps to and for the Committee, Duff & Phelps will be paid the following non-refundable amounts:

- (a) Monthly Fees: The Debtor shall be liable for and shall pay to Duff & Phelps a non-refundable cash fee of \$50,000 per month ("Monthly Fees"), which amount shall be paid in advance on the first business day of each month for each month of the engagement through the earlier of (i) termination of this Agreement in accordance with paragraph 2 hereof; or (ii) the effective date of a Restructuring Transaction. The first Monthly Fee shall be reduced pro rata to the number of days expired in the first month prior to the execution of this Agreement. 50.0% of all Monthly Fees paid with respect to the months following the second month of this engagement shall be credited (without duplication) against any Restructuring Fee payable; provided that such credit shall only apply to the extent that such fees are approved in entirety by the Bankruptcy Court, if applicable.
- (b) Restructuring Fee: In addition, if (i) any Restructuring Transaction is consummated, including, among other things and without limitation, a settlement of unsecured claims between the unsecured creditors and the Debtors prior to the agreement upon and/or confirmation of a chapter 11 plan or sale or transfer transaction (as contemplated herein) or (ii) an agreement in principle, definitive agreement or a Plan to effect a Restructuring Transaction is entered into and concurrently therewith or at any time thereafter (including following the expiration of the term of this engagement), any Restructuring Transaction is consummated pursuant to such agreement or Plan (as the same is amended or modified), Duff & Phelps shall be entitled to receive a restructuring fee in cash, contingent upon the consummation of a Restructuring Transaction and payable at the closing thereof, equal to the percentage recovery received by or to be received by the unsecured creditors in this matter upon consummation of the Restructuring Transaction in respect of their unsecured claims – in whatever form such recovery is conveyed – multiplied by \$700,000 (the "Restructuring Fee"). For the avoidance of doubt, if the unsecured

creditors were to receive a recovery equal to 95% of the face value of their claims, the Restructuring Fee payable to Duff & Phelps would be \$665,000 (calculated as .95 x \$700,000). In the event any claims by unsecured creditors are preserved through a post-bankruptcy trust or similar entity, Duff & Phelps shall be entitled to compensation up to the full amount – if not otherwise received – of the Fees contemplated herein with respect to any additional recoveries received therefrom.

- (c) Expense Reimbursement: The Debtors shall reimburse Duff & Phelps for its reasonable and documented out-of-pocket expenses incurred in connection with the services to be provided under this Agreement and the preparation of this Agreement on the first day of each month. Out-of-pocket expenses shall include, but not be limited to, all reasonable travel expenses, working and overtime meals, computer and research charges, reasonable attorney fees, messenger services and long-distance telephone calls incurred by Duff & Phelps in connection with the services to be provided.

"Restructuring Transaction" means any recapitalization, refinancing or restructuring (including, without limitation, through any exchange, conversion, cancellation, forgiveness, retirement and/or a material modification or amendment to the terms, condition or covenants thereof) of the Debtors' equity, debt securities, other indebtedness, obligations or liabilities (including capital stock, partnership interests, membership interests, lease obligations, trade credit facilities, contract or tort obligations, or other similar item), that is achieved, including without limitation, through a Chapter 11 plan of reorganization, exchange offer, tender, waiver, amendment, consent solicitation, rescheduling of debt maturities, changes in interest rates, settlement or forgiveness of debt, conversion of debt and/or other liabilities into equity, issuance of new securities, raising of new debt or equity capital (including amounts raised from the current debt holders and/or equity holders and including where raised solely for the purpose of avoiding defaults under existing credit agreements), or sale or other transfer, directly or indirectly of equity, control, assets or other interests of the Debtors whatsoever, whether in one or a series of transactions, acquisition, mergers or other business combinations or other similar transaction or series of transactions. Moreover, any settlement reached between the unsecured creditors and the Debtors with respect to a recovery of their unsecured claims that is achieved and consummated prior to the agreement upon and/or confirmation of a chapter 11 plan or sale or transfer transaction (as contemplated herein) shall constitute a Restructuring Transaction for the purposes of the calculation of the Restructuring Fee payable to Duff & Phelps.

4. Debtor Information and Coordination: The Debtors recognizes and confirms that in rendering services hereunder, Duff & Phelps will be using and relying on, and assuming the accuracy of, without any independent verification, data, material and other information (collectively, the "Information") furnished to Duff & Phelps by or on behalf of the Debtors or other third parties (including their agents, counsel, employees and representatives). The Committee understands that Duff & Phelps will not be responsible for independently verifying the accuracy of the Information and shall not be liable for inaccuracies in any such Information. Unless required by law (including pursuant to a subpoena or other legal process) and, to the extent practical, prior written notice is provided to the Debtors so that the Debtors may challenge such disclosure, Duff & Phelps will not disclose to any third party (other than Duff & Phelps' counsel) any confidential and proprietary Information provided by the Debtors to Duff & Phelps, except (i) with the Debtors' consent or (ii) in furtherance of Duff & Phelps' engagement hereunder.

5. Indemnification: The Debtors shall provide indemnification and shall satisfy other obligations set forth in Schedule I hereto, which is an integral part hereof and is hereby incorporated by reference. Further, if an Indemnified Person (as defined in Schedule I) is



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requested or required to appear as a witness in any Action (as defined in Schedule I) that is brought by or on behalf of or against the Committee or the Debtors or that otherwise relates to this Agreement or the services rendered by Duff & Phelps hereunder, the Debtors shall reimburse Duff & Phelps and the Indemnified Person for all expenses incurred by them in connection with such Indemnified Person appearing or preparing to appear as such a witness, including without limitation, the fees and disbursements of legal counsel.

6. Bankruptcy Court Approval: This Agreement is subject to the entry of an order of the Bankruptcy Court approving the retention of Duff & Phelps pursuant to the terms hereof. The Committee shall, within three (3) business days from the signing of this Agreement by the parties, use commercially reasonable efforts to obtain prompt authorization of the retention of Duff & Phelps, nunc pro tunc to February 11, 2013, on the terms and provisions in this Agreement pursuant to section 328(a) of the Bankruptcy Code. The Committee shall supply Duff & Phelps with a draft of the retention application and proposed order prior to the filing of that application and proposed order to enable Duff & Phelps and its counsel to review and comment thereon. The form of order approving the Agreement and authorizing the retention of Duff & Phelps shall be acceptable to Duff & Phelps in its sole discretion. If the order authorizing the employment of Duff & Phelps is not obtained, or is later reversed or set aside for any reason, Duff & Phelps may terminate this Agreement, and the Debtors shall reimburse Duff & Phelps for all fees and expenses reasonably incurred prior to the date of expiration or termination, subject to the requirements of the Bankruptcy Code. The parties acknowledge that a substantial professional commitment of time and effort will be required by Duff & Phelps and its professionals hereunder, and that such commitment may foreclose other opportunities for Duff & Phelps. Moreover, the actual time and commitment required by the engagement may vary substantially from week to week or month to month, creating 'peak load' issues for Duff & Phelps. Given the numerous issues which may arise in this engagement, Duff & Phelps' commitment to the variable level of time and efforts necessary to address these issues, and the market prices for Duff & Phelps' engagements of this nature, the parties agree that the fee arrangement hereunder, pursuant to section 328(a) of the Bankruptcy Code, fairly compensates Duff & Phelps and provides certainty for the Committee. Duff & Phelps acknowledges that in the event that the Bankruptcy Court approves its retention by the Committee, Duff & Phelps' fees and expenses will be subject to the jurisdiction and approval of the Bankruptcy Court under section 328(a) of the Bankruptcy Code and any applicable fee and expense guideline orders; provided, however, that Duff & Phelps shall not be required to maintain time records. The terms of this paragraph are solely for the benefit of Duff & Phelps, and may be waived, in whole or in part, only by Duff & Phelps.

7. Entire Agreement; Counterparts; Validity and Enforceability: This Agreement constitutes the entire Agreement between the parties and supersedes and cancels any and all prior or contemporaneous arrangements, understandings and agreements, written or oral, between them relating to the subject matter hereof. This Agreement may be executed in any number of counterparts and by different parties on separate counterparts. Each of such counterparts shall be deemed to be an original, and all of such counterparts, taken together, shall constitute but one and the same agreement. Delivery of an executed counterpart of this letter by telefacsimile or electronic mail shall be equally effective as delivery of a manually executed counterpart. This Agreement may not be amended or modified, nor may any provision be waived, except in writing signed by both parties. Any provision of this Agreement which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining portions hereof or thereof or affecting the validity or enforceability of such provision in any other jurisdiction.

8. Affiliation: The Committee recognizes that Duff & Phelps has been retained only by the Committee and that the Committee's engagement of Duff & Phelps is not deemed to be on behalf of and is not intended to and does not confer rights upon the Debtors, any security holders of the

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Debtors or any officers, agents, employees or representatives of either the Debtors or any of the Debtors' affiliates. No one other than the Committee is authorized to rely upon the engagement of Duff & Phelps hereunder or any statements, advice, opinions or conduct of Duff & Phelps.

9. Advertisements: Upon completion of the transactions contemplated by this Agreement, Duff & Phelps may place advertisement in financial and other media at its own expense describing its services to the Committee hereunder.

10. Governing Law and Arbitration: This Agreement will be governed by, and construed in accordance with, the laws of the State of New York applicable to agreements made and to be performed entirely in such State, without giving effect to the choice of law provisions thereof. Unless the Bankruptcy Court entertains jurisdiction, each of the parties hereto agrees to submit any claim or dispute arising out of or related to this Agreement to private and confidential arbitration by a single arbitrator selected in accordance with the rules of the American Arbitration Association. Any such arbitration proceedings shall be governed by the Commercial Rules of Arbitration of the American Arbitration Association and shall take place in the Borough of Manhattan, New York City, New York. The arbitrator shall have the power to order discovery and the authority to award any remedy or relief that a court of the State of New York could order or grant, including, without limitation, specific performance. The decision of the arbitrator shall be final and binding on each of the parties and judgment thereon may be entered in any court having jurisdiction. Except for the Bankruptcy Court's exercising jurisdiction over any dispute, this arbitration procedure is intended to be the exclusive method of resolving any claim arising out of or related to this Agreement, including any claim as to the validity of this Agreement. Except for the Bankruptcy Court's exercising jurisdiction over any dispute, each party agrees to the personal and subject matter jurisdiction of the arbitrator for the resolution of any such claim, including any issue relating to this arbitration position. In the event of any arbitration arising out of or in connection with this Agreement, the prevailing party shall be entitled to an award of actual attorneys' fees and costs incurred in connection with the arbitration.

11. No Third Party Claims: No (a) direct or indirect holder of any equity interests or securities of Duff & Phelps whether such holder is a limited or general partner, member, stockholder or otherwise, (b) affiliate of Duff & Phelps, or (c) director, officer, employee, representative, or agent of Duff & Phelps, or of an affiliate of Duff & Phelps or of any such direct or indirect holder of any equity interests or securities of Duff & Phelps (collectively, the "Party Affiliates") shall have any liability or obligation of any nature whatsoever in connection with or under this Agreement or the transactions contemplated hereby, and the Committee and the Debtors waive and release all claims against such Party Affiliates related to any such liability or obligation.

12. Other Matters: If this letter correctly sets forth our Agreement on the matters covered herein, please so indicate by signing and returning the enclosed copy of this letter and signing and retaining the duplicate we are enclosing for your records. Upon execution by each party, this letter will constitute a legally binding Agreement between the Committee, the Debtors and Duff & Phelps.

[Remainder of page intentionally left blank. Signature page follows.]

By:

Digitally signed by Harvey Goldstein  
DN: cn=Harvey Goldstein, o=Rackspace Hosting, ou=Revenue Operations  
Manager, email=harvey.goldstein@rackspace.com, c=US

By

Name: Harvey Goldstein  
Title: Committee Chairperson

**Schedule I**

**INDEMNIFICATION PROVISIONS**

This Schedule I is a part of and is incorporated into that certain letter agreement (the "Agreement"), dated February 21, 2013, but effective nunc pro tunc to February 11, 2011, by the Official Committee of Unsecured Creditors (the "Committee") of Atari, Inc. and its associated debtors-in-possession that have commenced Chapter 11 Cases under chapter 11 of the Bankruptcy Code in the Bankruptcy Court (the "Debtors"), concerning the engagement of Duff & Phelps Securities, LLC ("Duff & Phelps") by the Committee. Capitalized terms not defined herein shall have the same meaning assigned in the Agreement.

The Debtors shall indemnify and hold harmless Duff & Phelps and its affiliates and their respective directors, officers, employees, attorneys and other agents appointed by any of the foregoing and each other person, if any, controlling Duff & Phelps or any of its affiliates (Duff & Phelps and each such person and entity being referred to as an "Indemnified Person"), from and against any finally determined losses, claims, damages, judgments, assessments, costs and other liabilities (collectively, "Liabilities"), and will reimburse each Indemnified Person for all fees and expenses (including the reasonable fees and expenses of counsel) (collectively, "Expenses") as they are incurred in investigating, preparing, pursuing or defending any claim, action, proceeding or investigation, whether or not in connection with pending or threatened litigation and whether or not any Indemnified Person is a party (collectively, "Actions"), arising out of or in connection with advice or services rendered or to be rendered by an Indemnified Person pursuant to the Agreement, the transaction contemplated thereby or any Indemnified Persons' actions or inactions in connection with any such advice, services or transaction (the "Services"); provided that the Debtors will not be responsible for any Liabilities or Expenses of any Indemnified Person that are determined by a judgment of a court of competent jurisdiction, which judgment is no longer subject to appeal or further review, to have resulted from such Indemnified Person's gross negligence or willful misconduct in connection with any of the advice, actions, inactions or services referred to above. The Debtors shall also reimburse such Indemnified Person for all Expenses as they are incurred in connection with enforcing such Indemnified Persons' rights under the Agreement (including without limitation its rights under this Schedule I). Such Indemnified Person shall reasonably cooperate with the defense of any Actions.

Upon receipt by an Indemnified Person of actual notice of an Action against such Indemnified Person with respect to which indemnity may be sought under the Agreement, such Indemnified Person shall promptly notify the Debtors in writing; provided that failure to so notify the Debtors shall not relieve the Debtors from any liability which the Debtors or any other person may have on account of this indemnity or otherwise, except to the extent the Debtors shall have been materially prejudiced by such failure. The Debtors shall, upon receipt of notice, assume the defense of any such Action including the employment of counsel reasonably satisfactory to Duff & Phelps or any other Indemnified Person, as applicable. Any Indemnified Person shall have the right to employ separate counsel in any Action and participate in the defense thereof, but the fees and expenses of such counsel shall be at the expense of such Indemnified Person, unless: (i) the Debtors have failed promptly to assume the defense and employ counsel or (ii) the named parties to any such Action (including any impleaded parties) include such Indemnified Person and the Debtors, and such Indemnified Person shall have been advised by counsel that there may be one or more legal defenses available to it which are different from or in addition to those available to the Debtors; provided that the Debtors shall not in such event be responsible hereunder for the fees and expenses of more than one separate counsel in connection with any Action in the same jurisdiction, in addition to any local counsel. The Debtors shall not be liable for any settlement of any Action effected without its written consent (which shall not be unreasonably withheld). In

The Official Committee of Unsecured Creditors of  
Atari, Inc.  
February 21, 2013  
Page 8 of 8

addition, the Debtors will not, without prior written consent of Duff & Phelps (which shall not be unreasonably withheld), settle, compromise or consent to the entry of any judgment in or otherwise seek to terminate any pending or threatened Action in respect of which indemnification or contribution may be sought hereunder (whether or not any Indemnified Person is a party thereto) unless such settlement, compromise, consent or termination includes an unconditional release of such Indemnified Person from all liabilities arising out of such Action.

In the event that the foregoing indemnity is not available to an Indemnified Person in accordance with the Agreement pursuant to the requirements of applicable law, the Debtors shall contribute to the Liabilities and Expenses paid or payable by such Indemnified Person in such proportion as is appropriate to reflect (i) the relative benefits to the Debtors, on the one hand, and to Duff & Phelps, on the other hand, of the matters contemplated by the Agreement, or (ii) if the allocation provided by the immediately preceding clause is not permitted by the applicable law, not only such relative benefits but also the relative fault of the Debtors, on the one hand, and Duff & Phelps, on the other hand, in connection with the matters as to which such Liabilities or Expenses relate, as well as any other relevant equitable considerations. For purposes of this paragraph, the relative benefits to the Debtors, on the one hand, and to Duff & Phelps, on the other hand, of the matters contemplated by this Agreement shall be deemed to be in the same proportion as (a) the total value paid or received or contemplated to be paid or received by the Debtors in the transaction, whether or not any transaction is consummated, bears to (b) the fees paid or payable to Duff & Phelps under the Agreement.

No Indemnified Person shall have any liability (whether direct or indirect, in contract or tort or otherwise) to the Debtors for or in connection with advice or services rendered or to be rendered by any Indemnified Person pursuant to the Agreement, the transactions contemplated thereby or any Indemnified Person's actions or inactions in connection with any such advice, services or transactions except for Liabilities (and related Expenses) of the Debtors that are determined by a judgment of a court of competent jurisdiction, which judgment is no longer subject to appeal or further review, to have resulted solely from such Indemnified Person's gross negligence or willful misconduct in connection with any such advice, actions, inactions or services.

These indemnification, contribution and other provisions of this Schedule I shall (i) remain operative and in full force and effect regardless of any termination of the Agreement or completion of the engagement by Duff & Phelps; (ii) inure to the benefit of any successors, assigns, heirs or personal representative of any Indemnified Person; and (iii) be in addition to any other rights that any Indemnified Person may have.

Subject to the preceding paragraph, the Debtors shall indemnify Duff & Phelps, in accordance with the Agreement and this Schedule I thereto for any claim arising from, related to, or in connection with the Services, but not for any claim arising from, related to, or in connection with Duff & Phelps' performance of any services other than the Services occurring following the commencement of the Chapter 11 cases unless such post-petition services and indemnification therefore are approved by the Bankruptcy Court.

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

_____	)	
In re:	)	Chapter 11 Case No.
	)	
ATARI, INC., <u>et al.</u> ,	)	13-10176 (JMP)
	)	
Debtors, <sup>1</sup>	)	
_____	)	

**DECLARATION OF THOMAS CLARK CARLSON IN SUPPORT OF APPLICATION  
TO RETAIN AND EMPLOY DUFF & PHELPS SECURITIES, LLC AS FINANCIAL  
ADVISOR TO THE OFFICIAL COMMITTEE OF  
UNSECURED CREDITORS OF ATARI, INC., *ET AL.*,  
NUNC PRO TUNC TO FEBRUARY 11, 2013**

Thomas Clark Carlson, under penalty of perjury, hereby declares, as follows:

1. I am a Managing Director at Duff & Phelps Securities, LLC ("D&P"), a professional services firm engaged in the business of providing financial advisory and related professional investment banking services, and with offices located at 55 East 52nd Street, 31st Floor, New York, New York, 10055. I submit this declaration (the "Declaration") pursuant to 11 U.S.C. § 1103 and Federal Rule of Bankruptcy Procedure 2014 in support of the *Application to Retain and Employ Duff & Phelps Securities, LLC as Financial Advisor to the Official Committee of Unsecured Creditors of Atari, Inc., et al., Nunc Pro Tunc to February 11, 2013* (the "Application"), filed contemporaneously herewith by the Official Committee of Unsecured Creditors (the "Committee") appointed in the Debtors' chapter 11 cases (the "Chapter 11 Cases"). Except as otherwise indicated, I have personal knowledge of the matters set forth

<sup>1</sup> The Debtors in these cases along with the last four digits of their federal tax identification number are: Velo Holdings Inc. (3155), V2V Holdings LLC (8801), Coverdell & Company, Inc. (4660), V2V Corp. (0857), LN, Inc. (8759), FYI Direct Inc. (2491), Vertrue LLC (6882), Idaptive Marketing LLC (3362), My Choice Medical Holdings, Inc. (5870), Adaptive Marketing LLC (6882), Interactive Media Group (USA) Ltd. (1016), Brand Magnet, Inc. (8978), Neverblue Communications, Inc. (7832), and Interactive Media Consolidated Inc. (0774).

herein and, if called as a witness, would testify competently thereto.<sup>2</sup> I am duly authorized to make this Declaration on behalf of D&P.

### **D&P'S QUALIFICATIONS**

2. D&P is a professional services firm engaged in the business of providing financial advisory and related professional investment banking services with an office located at 55 East 52nd Street, 31st Floor, New York, New York, 10055. D&P provides a broad range of services to its clients and has extensive experience in dealing effectively with a full range of issues and challenges that arise in corporate restructurings and business reorganizations.

3. In my role as a Managing Director at D&P, I have advised numerous clients in a variety of different types of distressed transactions. Prior to my employment with D&P, I co-founded VC Independent Advisors, LLC with Thomas A. Vanderslice, Jr. and was Chief Restructuring Officer of Brown Media Holdings, a publisher of local newspapers and regional business publications. Prior to that, I was a managing director in the restructuring and recapitalization group at Jefferies & Company, a manager at Zolfo Cooper, and worked Price Waterhouse. I began my career at Coopers & Lybrand. I have almost 20 years of experience in the areas of corporate reorganization, crisis management and business turnaround, providing services to management and debtors, senior creditors, unsecured creditors, and equity investors in both out-of-court and in-court reorganizations. I have an MBA from NYU Stern School of Business and received my undergraduate degree from Colgate University.

4. D&P's professionals have served as financial advisors in numerous recent chapter 11 cases, and have advised debtors and creditors' committees in numerous restructuring transactions, including some of the largest and most complicated cases. Some of D&P's more

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<sup>2</sup> Certain of the disclosures herein related to matters within the knowledge of other professionals at D&P and are based on information provided to me by them.

prominent recent creditor committee representations were in the following chapter 11 cases: *In re Visteon Corp.*, No. 09-11786 (CSS) (Bankr. D. Del. Sept. 11, 2009); *In re Dura Automotive Sys., Inc.*, No. 06-11202 (KJC) (Bankr. D. Del. Dec. 21, 2006); *In re Hayes Lemmerz Int'l*; No. 09-11655 (MFW) (Bankr. D. Del. Jul. 24, 2009); *In re Global Power Equip. Group, Inc.*, No. 06-11045 (BLS) (Bankr. D. Del. Nov. 17, 2006); *In re Citadel Broad. Corp.*, No. 09-17442 (BRL) (Bankr. S.D.N.Y. Apr. 12, 2010); *In re Int'l Aluminum Corp.*, No. 10-10003 (Bankr. D. Del. Jan. 27, 2010); *In re Philadelphia Newspapers, LLC*, No. 09-11204 (JKF) (Bankr. D. Del. June 6, 2009); *In re Star Tribune Holdings Corp.*, No. 09-10244 (RDD) (Bankr. S.D.N.Y. Apr. 27, 2009); *In re Champion Enters., Inc.*, No. 09-14019 (KG) (Bankr. D. Del. Feb. 3, 2010); *In re Real Mex Restaurants, Inc.*, No. 11-13122 (BLS) (Bankr. D. Del. Jan. 23, 2012); *In re Trico Marine Servs., Inc.*, No. 10-12653 (BLS) (Bankr. D. Del. Oct. 1, 2010); *In re K-V Pharmaceutical Co.*, No. 12-13346 (ALG) (Bankr. S.D.N.Y. Oct. 10, 2012); and *In re ATP Oil & Gas Corp.*, No. 12-36187 (MI) (Bankr. S.D.T.X. Dec. 12, 2012).

5. D&P is prepared to efficiently analyze and advise on the issues that need to be contemplated in any of the Debtors' reorganization options. This, in addition to D&P's skill, extensive experience and excellent reputation in providing advice and financial services in complex chapter 11 cases, make D&P an optimal choice for the Committee with respect to providing services to assist the Committee throughout the Debtors' complex restructuring activities.

6. For these reasons, I believe that D&P is well-qualified and uniquely able to serve as its financial advisor in these Chapter 11 Cases due to D&P's possession of extensive knowledge and expertise in relevant financial advisory services and information concerning the Debtors. As described above, D&P has the necessary background to deal effectively with the



full range of issues and challenges that are faced by the Committee in the context of these Chapter 11 Cases. I will put forth my best efforts to coordinate tasks and ensure that D&P's services will complement, and not duplicate, the services provided by the other of the Committee's professionals, agents or advisors.

7. In light of the above, I believe that the Committee's retention and employment of D&P is in the best interests of the Committee, the Debtors' estates and all parties-in-interest.

**SERVICES TO BE PROVIDED**

8. In accordance with the terms of the Engagement Letter, D&P expects that it will provide the following services to the Committee:

- (a) Review and analyze the Debtors' operations, financial condition, cash flows, business plan, strategy, and operating forecasts;
- (b) Evaluate the assets and liabilities of the Debtors and evaluate the Debtors' strategic and financial alternatives;
- (c) Assist in the determination of an appropriate go-forward capital structure for the Debtors;
- (d) Determine a theoretical range of values for the Debtors on a going concern basis;
- (e) Evaluate the Debtors' debt capacity in light of its projected cash flows;
- (f) Assist the Committee in developing, evaluating, structuring and negotiating the terms and conditions of a restructuring or Plan, including the value of securities, if any, that may be issued to unsecured creditors under any such restructuring or Plan;
- (g) Assist the Committee in monitoring a sales process and evaluating bids to purchase the Debtors;
- (h) Assist the Committee in analyzing any new debt and/or equity capital including debtor-in-possession financing (including advice on the nature and terms of the new securities);
- (i) Provide testimony, as necessary, before the Bankruptcy Court; and
- (j) Provide the Committee with other appropriate general restructuring advice.

### COMPENSATION

9. In accordance with the Engagement Letter, D&P proposes the following compensation structure for its services:

- (a) **Monthly Fee:** The Company shall pay D&P a cash fee of \$50,000 per month for the term of the engagement beginning February 11, 2013. The Monthly Fees shall be paid in advance on the first day of each month and shall be due and payable for all months from the inception of this engagement through the earlier of (i) the termination of the Engagement Letter, or (ii) the effective date of a restructuring transaction.
- (b) **Restructuring Fee:** In addition to the foregoing Monthly Fees, D&P shall be entitled to a restructuring fee (the "Restructuring Fee") of up to \$700,000 based upon the recovery received by general unsecured creditors on account of their allowed general unsecured claims in these cases. The Restructuring Fee will be calculated by applying the pro rata percentage recovery received or to be received by general unsecured creditors on account of their allowed general unsecured claims to \$700,000. For example, if general unsecured creditors are paid 100% of their allowed claims, D&P will be entitled to a Restructuring Fee of \$700,000. If, however, general unsecured creditors receive distributions equal to 25% of their allowed general unsecured claims, then D&P will be entitled to a Restructuring Fee of \$175,000. Fifty percent of any Monthly Fees actually paid to D&P following the second Monthly Fee, will be credited toward any Restructuring Fee payable to D&P. Restructuring Fees shall become payable upon consummation of a "Restructuring Transaction" (as defined in the Engagement Letter) as is more fully set forth in the Engagement Letter.
- (c) **Expense Reimbursement:** D&P shall be entitled to monthly reimbursement of reasonable out-of-pocket expenses incurred in connection with the services to be provided under the Engagement Letter.

10. After conducting certain diligence in connection with reasonable compensation that D&P could request for the provision of its services in these Chapter 11 Cases, upon information and belief, the terms of the Engagement Letter are similar to the terms, both financial and otherwise, agreed to by D&P and other financial advisory firms, both inside and outside of bankruptcy, for an engagement such as this one. Moreover, the terms of the Engagement Letter were negotiated between the Committee and D&P, and reflect the extensive

work to be performed by D&P in these Chapter 11 Cases and the firm's financial advisory expertise.

11. D&P intends to apply to the Court under section 328(a) of the Bankruptcy Code for the payment of compensation for expenses, services rendered and reimbursement of actual and necessary documented out-of-pocket expenses, in accordance with applicable provisions of the Bankruptcy Code, the Bankruptcy Rules, the guidelines promulgated by the Office of the U.S. Trustee, the Local Rules and orders of this Court, and pursuant to any additional procedures that may be or have already been established by the Court in these cases. These expenses and disbursements may include, among other things, travel costs, telephone and facsimile, lodging, certain meals, research, costs of reproduction, computer usage, legal counsel and other direct expenses incurred in connection with D&P providing professional services to the Committee. Accordingly, D&P will maintain records in support of any such costs and expenses incurred in connection with its provision of services for the Committee in these Chapter 11 Cases.

12. Since the Committee understands that D&P is requesting to be paid a monthly fee, rather than on an hourly basis, and that D&P does not, as a matter of general practice, keep detailed or categorized time records in a manner similar to that which attorneys do, D&P respectfully requests that it be permitted to submit its time records during the course of these cases in a summary format that sets forth the description of the services rendered by each of the D&P's restructuring professionals and the amount of time spent, in one-half hour increments, on each date by such professional rendering such services on behalf of the Committee, in lieu of submission by D&P of detailed billing statements that report time in tenth of an hour increments by project category. Additionally, D&P respectfully requests that its professionals not be required to maintain time records on a "project category" basis. D&P intends to provide such

records as described herein to the Court in its fee applications.

13. I submit that the above-described compensation structure and time recordkeeping practice is reasonable given the nature of the services described in the Application and the Engagement Letter.

14. D&P's decision to accept the Committee's appointment and advise and assist the Committee in connection with these Chapter 11 Cases is subject to its ability to be retained in accordance with the terms and conditions of the Engagement Letter pursuant to section 328(a), and not section 330, of the Bankruptcy Code (with the exception that only the U.S. Trustee may challenge the reasonableness of D&P's compensation and expenses pursuant to sections 330 and 331 of the Bankruptcy Code).

15. Other than as set forth above, no arrangement is proposed between the Committee and D&P for compensation to be paid in these cases. Neither D&P nor any of its members and employees has entered into an agreement or understanding to share compensation other than in accordance with the Bankruptcy Code.

#### **INDEMNIFICATION**

16. Subject to Court approval (including in accordance with the proposed order) and pursuant to terms of the Engagement Letter, in connection with D&P's engagement to provide financial advisory services to the Committee, the Debtors shall indemnify and hold harmless D&P and its affiliates against any and all losses, claims, damages, liabilities, penalties, judgments, awards, costs, fees, documented expenses and disbursements including, without limitation, defending any action, suit, proceedings or investigation, to the extent and in the manner provided in Schedule I to the Engagement Letter.

17. I believe that the terms of the Engagement Letter, both financial terms and the

indemnification of D&P by the Debtors, are similar to the terms agreed to by D&P and other financial advisory firms, both inside and outside of bankruptcy. Moreover, this Engagement Letter reflects the standard format used by D&P in all restructuring matters. The terms and conditions of the Engagement Letter were negotiated between the Committee and D&P, and reflect the parties' mutual agreement as to the substantial efforts and protection of rights that will be required in this engagement.

#### **DISINTERESTEDNESS**

18. To the best of my knowledge, information and belief, based on and except as set forth herein, D&P does not represent any interest adverse to the Committee, the creditors or other parties in interest in connection with these Chapter 11 Cases. More specifically, D&P, its members and employees:

- (a) Are not creditors, equity security holders or insiders of the Debtors;
- (b) Are not and were not, within two (2) years before the Petition Date, directors, officers, or employees of the Debtors; and
- (c) Do not have an interest materially adverse to the interest of the Debtors' estates or of any class of creditors or equity security holders, by reason of any direct or indirect relationship to, connection with, or interest in the Debtors for any other reason.

19. Based on a general inquiry issued to certain of D&P's professionals, D&P has conducted a conflicts check, through a search of its client database regarding its connections with the Debtors, creditors and other parties in interest (collectively, the "Potential Parties in Interest"). This search of D&P's client database is designed to reveal any representation of, or potential conflict with, the entity searched or any known subsidiary or affiliate. A list of the Potential Parties in Interest that were the subject matter of D&P's conflicts search is attached hereto as Schedule 1.

20. Based on the foregoing inquiry and result of the search, to the best of my

knowledge, none of D&P's members or employees has any connection with the Debtors, their professional advisors, their creditors, members of the Committee, any United States Bankruptcy Judge or District Judge for the Southern District of New York or the U.S. Trustee for the Southern District of New York or to any employee in the offices thereof, except as described on Schedule 2 hereto. As of the date of this Declaration, D&P does not represent the entities listed on Schedule 2 in any matters adverse to the interests of the Committee.

21. To the best of my knowledge, neither D&P nor any professional at D&P is or was a creditor, any equity security holder, or an insider of the Debtors and no professional at D&P is or was, within two (2) years before the petition date (the "Petition Date"), a director, officer or employee of the Debtors.

22. It is my understanding that D&P represents, in unrelated matters, numerous entities, including entities listed on Schedule 2 that buy and sell distressed debt of chapter 11 debtors. Because distressed bank and note debt is actively traded in the commercial markets, D&P may be unaware of the actual holder of such debt at any given moment.

23. None of the engagements or relationships mentioned above are related to these Chapter 11 Cases. To the best of my knowledge, D&P does not hold or represent an adverse interest in connection with the Debtors or these Chapter 11 Cases.

24. Upon information and belief, D&P's search was as complete as possible under the circumstances, but D&P recognizes that the Debtors are a large enterprise with numerous creditors and other relationships. Accordingly, additional parties in interest or additional information regarding such parties in interest may surface during the course of these Chapter 11 Cases. As further information or further parties become known or make appearances in these cases, D&P will continue to assess, any and all client relationships to ensure that D&P does not

represent any interest adverse to the Committee and is and remains disinterested and shall disclose on an ongoing basis any relationship that may reflect upon D&P's disinterestedness. To the extent I am able to ascertain any additional facts bearing upon matters described herein or its engagement by the Committee during the period of its employment, D&P will supplement the information contained in the Application and this Declaration.

25. To the best of my knowledge, D&P has not been retained to assist any entity or person other than the Committee on matters relating to, or in connection with, these Chapter 11 Cases. If this Court approves the proposed employment of D&P by the Committee, then D&P will not accept any engagement or perform any service in this case for any entity or person other than the Committee. D&P may, however, continue to provide professional services to, and engage in commercial or professional relationships with, entities or persons that may be creditors of the Debtors in these Chapter 11 Cases; provided, however, that such services do not and will not relate to, or have any direct connection with, these Chapter 11 Cases.

26. In view of the foregoing, I believe that D&P is a "disinterested person" within the meaning of Bankruptcy Code section 101(14), and to the extent required by sections 328 and 1103 of the Bankruptcy Code and Bankruptcy Rule 2014.

Pursuant to 28 U.S.C. § 1746, I declare under the penalty of perjury that the foregoing statements are true and correct to the best of my knowledge information and belief.

Dated: New York, New York  
February 22, 2013

A handwritten signature in black ink, appearing to read 'T. Carlson', written over a horizontal line.

Thomas Clark Carlson  
Managing Director



Schedule 1

Debtors

Atari, Inc.  
Atari Interactive, Inc.  
Humongous, Inc.  
California U.S. Holdings,  
Jim Wilson

Debtors' Affiliates

Atari S.A.  
Atari Europe SAS  
Ocean International Ltd.  
Ocean Europe Ltd.  
Atari UK Publishing Ltd  
Eden Games SAS  
Atari Japan KK

DIP LENDERS AND RELATED

Alden Global Distressed Opportunities Master  
Fund, L.P.  
Alden Global Value Recovery Master Fund, L.P.  
Turnpike Limited  
Ker Ventures, LLC  
Frédéric Chesnais  
BlueBay Value Recovery (Master) Fund Limited

CREDITORS

Rackspace Hosting  
CD Projekt S.A.  
Tavant Technologies, Inc.  
CDV Software Entertainment, USA, Inc.  
Liquid Entertainment  
Chris Sawyer  
Deloitte & Touche  
Kmart  
Gibson, Dunn & Crutcher LLP  
Frontier Developments Ltd  
Sleepy Giant Entertainment Inc  
Gui Karyo  
Dorsey & Whitney LLP  
Gskinner.Com Inc.  
Ernst & Young  
Flurry Inc.  
Petrol Advertising, Inc.  
Bug Tracker  
Escalation Studios Inc.  
Arvato Digital Services, LLC  
Triplepoint, LLC  
Wal-Mart  
Babel Media Ltd.  
Koolhaus Games, Inc.  
Flying Wisdom Studios, Inc.  
Griptonite, Inc.  
Cinram  
Gamespy Industries, Inc.  
Uab On5  
Hudson Valley Computer Services LLC

Schedule 2

Duff & Phelps has active engagements with the following entities (or a related entity):

Party Name	Role in Case
Alden Global entities <sup>3</sup>	DIP Lenders and Related
Deloitte & Touche	Creditors
Gibson Dunn & Crutcher LLP (Orrick engagement)	Creditors
Ernst & Young	Creditors

Duff & Phelps has recent (within the last 3 years) client relationships with the following entities (or a related entity):

Party Name	Role in Case
Atari S.A. <sup>4</sup>	Debtors' Affiliates
Alden Global entities <sup>3</sup>	DIP Lenders and Related
BlueBay Value Recovery (Master) Fund Limited	DIP Lenders and Related
Deloitte & Touche	Creditors
Gibson Dunn & Crutcher LLP	Creditors
Ernst & Young	Creditors
Wal-Mart	Creditors

<sup>3</sup> Duff & Phelps' affiliate Duff & Phelps, LLC provides ongoing portfolio valuation services to certain funds controlled by Alden Global. Strict information barriers are maintained between affiliates. I have been informed that the annual fees generated from Alden are approximately \$200,000 per annum.

<sup>4</sup> Duff & Phelps' affiliate Duff & Phelps, LLC provided dispute consulting services to Olshan Frome Wolosky LLP ("Olshan") on behalf of Infogrames Entertainment S.A. f/k/a Atari, S.A. in 2011 relating to a contract settlement dispute with Hasbro, Inc. I have been informed that the fees generated from Olshan were approximately \$80,000.

**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK**

In re:	)	Chapter 11
	)	
Atari, Inc., <u>et al.</u> ,	)	Case No. 13-10176 (JMP)
	)	
Debtors.	)	(Jointly Administered)
	)	

**ORDER AUTHORIZING RETENTION AND EMPLOYMENT OF DUFF & PHELPS  
SECURITIES, LLC, AS FINANCIAL ADVISOR TO THE OFFICIAL COMMITTEE  
OF UNSECURED CREDITORS *NUNC PRO TUNC* TO FEBRUARY 11, 2013**

Upon the application (the "Application") of the Official Committee of Unsecured Creditors (the "Committee") of the above-captioned debtors and debtors-in-possession (the "Debtors") for the entry of an order, pursuant to sections 328(a) and 1103(a) of title 11 of the United States Code, 11 U.S.C. §§ 101 *et seq.* (as amended and supplemented, the "Bankruptcy Code"), Rule 2014(a) of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), and Rule 2014-1 of the Local Bankruptcy Rules for the United States Bankruptcy Court for the Southern District of New York (the "Local Rules"), authorizing the Committee to retain and employ Duff & Phelps Securities, LLC ("D&P") as its financial advisor in connection with these Chapter 11 cases *nunc pro tunc* to February 11, 2013 pursuant to the terms of the Engagement Letter<sup>1</sup> and as supported by the Declaration of Thomas Clark Carlson, a Managing Director at D&P (the "Carlson Declaration"); and this Court having jurisdiction to consider the Application and the relief requested therein pursuant to 28 U.S.C. §§ 157(b) and 1334; and this proceeding being a core proceeding pursuant to 28 U.S.C. § 157(b)(2); and venue being proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409; and due and proper notice of the Application having been provided, and it appearing that no other or further notice need be provided; and this

<sup>1</sup> Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to such terms in the Application.

Court having reviewed the Application; and the Court being satisfied based on the representations made in the Application and the Carlson Declaration, that D&P represents no interest adverse to the Committee and/or the Debtors' estates with respect to the matters upon which it is to be engaged, that the terms and conditions set forth in the Engagement Letter are reasonable; and this Court having determined that D&P is a "disinterested person" as that term is defined in section 101(14) of the Bankruptcy Code; and the Court having determined that the legal and factual bases set forth in the Application establish just cause for the relief granted herein; and this Court being satisfied that D&P's employment is necessary and in the best interest of the Committee, the Debtors' estates and all parties-in-interest, and after due deliberation and sufficient cause appearing therefor, it is hereby:

ORDERED that the Application is GRANTED; and it is further

ORDERED that in accordance with sections 328(a) and 1103(a) of the Bankruptcy Code and Bankruptcy Rule 2014(a), the Committee is authorized to retain and employ D&P as its financial advisor, *nunc pro tunc* to February 11, 2013 on the terms described in the Application and set forth in the Engagement Letter; and it is further

ORDERED that D&P shall be compensated in accordance with the Engagement Letter and that D&P is authorized to perform the services set forth in the Application, as more fully described in the Engagement Letter, in compliance with the applicable provisions of the Bankruptcy Code, the Bankruptcy Rules, the Local Rules, and any other applicable procedures and orders of this Court; and it is further

ORDERED that notwithstanding the foregoing, fee applications filed by D&P shall be subject to review only pursuant to the standards set forth in section 328(a) of the Bankruptcy Code, and not subject to the standards of review set forth in section 330 of the

Bankruptcy Code; provided, however, that the U.S. Trustee shall retain the right to object to any D&P fee application based on the reasonableness standard pursuant to section 330 and of the Bankruptcy Code; and it is further

ORDERED that D&P and its professionals (i) shall be permitted to provide general summaries of tasks and hours in half hour increments and (ii) shall not be required to maintain or provide detailed time records using project categories in connection with its fee applications; and it is further

ORDERED that all requests of D&P for indemnification or contribution payments pursuant to the Engagement Letter shall be made by means of an application (interim or final as the case may be) and shall be subject to review by this Court to ensure that payment of indemnification or contribution payments conforms to the terms of the Engagement Letter and is reasonable based upon the circumstances of the litigation or settlement in respect of which indemnity or contribution is sought; provided, however, that in no event shall D&P be indemnified or receive contribution (i) in the case of its own bad faith, self-dealing, breach of fiduciary duty (if any), gross negligence or willful misconduct, or (ii) if the Debtors or a representative of the estates asserts a claim for, and a court of competent jurisdiction determines by final order that such claim arose out of, D&P's own bad faith, self-dealing, breach of fiduciary duty (if any), gross negligence, or willful misconduct; and it is further

ORDERED that in the event that D&P seeks reimbursement for attorneys' fees from the Debtors relating to indemnity claims, the invoices and supporting time records from such attorneys shall be included in D&P's own applications (both interim and final) and such invoices and time records shall be subject to the United States Trustee's Guidelines for compensation and reimbursement of expenses and approval by the Bankruptcy Court under the

standards of sections 330 and 331 of the Bankruptcy Code, without regard to whether such attorney has been retained under section 327 of the Bankruptcy Code and without regard to whether such attorney's services satisfy section 330(a)(3)(C) of the Bankruptcy Code; and it is further

ORDERED that notwithstanding the possible applicability of Bankruptcy Rules 6004, 7062 and 9014, or otherwise, the terms and conditions of this Order shall be immediately effective and enforceable upon its entry; and it is further

ORDERED that to the extent there is any inconsistency between this Order and the Engagement Letter, this Order shall govern; and it is further

ORDERED that this Court retains jurisdiction with respect to all matters arising from or related to the implementation of this Order.

Dated: New York, New York  
\_\_\_\_\_, 2013

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THE HONORABLE JAMES M. PECK  
UNITED STATES BANKRUPTCY JUDGE