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*Proposed Counsel to the Debtors and
Debtors in Possession*

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

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

**NOTICE OF FILING OF
DEBTOR IN POSSESSION CREDIT AGREEMENT**

PLEASE TAKE NOTICE that on January 22, 2013, the above-captioned debtors and debtors-in-possession (collectively, the “Debtors”) filed the (*Corrected*) *Motion of Debtors and Debtors-in-Possession Pursuant to 11 U.S.C. §§ 105, 361, 362, 364 and 507 and Fed. R. Bankr. P. 2002, 4001 and 9014 for Entry of Interim and Final Orders (I) Authorizing the Debtors to Incur Post-Petition Secured Indebtedness, (II) Granting First Priority Priming Liens and*

¹ The Debtors are Atari, Inc., Atari Interactive, Inc., Humongous, Inc., and California U.S. Holdings, Inc.

Providing Superpriority Administrative Expense Status, (III) Granting Adequate Protection, (IV) Modifying Automatic Stay, and (V) Scheduling a Final Hearing [ECF No. 17].

PLEASE TAKE FURTHER NOTICE that a substantially final form of the Senior Secured, Super-Priority Debtor in Possession Credit Agreement (the “DIP Credit Agreement”) by and among the Debtors, on the one hand, and Alden Global Value Recovery Master Fund, L.P. (the “DIP Lender”) and Imperial Capital Loan Trading, LLC, as collateral agent, on the other hand, is being filed as Exhibit A hereto.

PLEASE TAKE FURTHER NOTICE that the Debtors reserve all rights to make further modifications to the form of the DIP Credit Agreement with the consent of the DIP Lender.

New York, New York
Dated: March 4, 2013

AKIN GUMP STRAUSS HAUER & FELD LLP

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Proposed Counsel to the Debtors and Debtors in Possession

EXHIBIT A

DIP Credit Agreement

\$5,000,000

**SENIOR SECURED, SUPER-PRIORITY DEBTOR IN POSSESSION CREDIT
AGREEMENT**

Dated as of March [], 2013

Among

ATARI, INC.

ATARI INTERACTIVE, INC.

CALIFORNIA US HOLDING, INC.

AND

HUMONGOUS, INC.

as Debtors

and

ALDEN GLOBAL VALUE RECOVERY MASTER FUND, L.P.,

as Initial Lender and Lender

and

IMPERIAL CAPITAL LOAN TRADING, LLC

as Collateral Agent

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SENIOR SECURED, SUPER-PRIORITY DEBTOR IN POSSESSION CREDIT AGREEMENT

This SENIOR SECURED, SUPER-PRIORITY DEBTOR IN POSSESSION CREDIT AGREEMENT dated as of March [], 2013 is among ATARI, INC., a Delaware corporation and a debtor and a debtor in possession under Chapter 11 of the Bankruptcy Code (as hereinafter defined) ("*Atari*"), ATARI INTERACTIVE, INC., a Delaware corporation and a debtor and debtor in possession under Chapter 11 of the Bankruptcy Code ("*Interactive*"), CALIFORNIA US HOLDING, INC., a California corporation and a debtor and a debtor in possession under Chapter 11 of the Bankruptcy Code ("*Holding*"), and HUMONGOUS, INC., a Delaware corporation and a debtor and a debtor in possession under Chapter 11 of the Bankruptcy Code ("*Humongous*"), jointly and severally, as borrowers (each a "*Debtor*" and collectively, the "*Debtors*"), the Lenders (as hereinafter defined) from time to time party hereto, ALDEN GLOBAL VALUE RECOVERY MASTER FUND, L.P., Cayman Islands exempted company, as Initial Lender and Lender, and IMPERIAL CAPITAL LOAN TRADING, LLC, a Delaware limited liability company, as Collateral Agent.

PRELIMINARY STATEMENTS:

A. On January 21, 2013 (the "*Petition Date*"), the Debtors commenced Chapter 11 Case No. 13-10176 (JMP) (the "*Case*") in the United States Bankruptcy Court in the Southern District of New York (the "*Bankruptcy Court*").

B. The Debtors have requested that the Initial Lender and the other Lenders provide a debtor in possession credit facility to the Debtors on a joint and several basis in the aggregate principal amount up to \$5,000,000 (inclusive of the Initial Loan (as defined herein)), to be used for the purposes as set forth herein.

C. The Debtors desire to secure all of their Obligations (as hereinafter defined) under the Loan Documents (as hereinafter defined) by granting to the Collateral Agent, for the benefit of the Secured Parties, a security interest and lien upon all of its personal and real property.

NOW, THEREFORE, in consideration of the premises and of the mutual covenants and agreements contained herein, the parties hereto hereby agree as follows:

ARTICLE I. DEFINITIONS AND ACCOUNTING TERMS

SECTION 1.01. Certain Defined Terms. As used in this Agreement, the following terms shall have the following meanings (such meanings to be equally applicable to both the singular and plural forms of the terms defined):

"*Administrative Borrower*" shall mean Atari, Inc..

"*Affiliate*" means, as to any Person, any other Person that, directly or indirectly, controls, is controlled by or is under common control with such Person or is a director or officer of such Person. For purposes of this definition, the term "*control*" (including the terms "*controlling*," "*controlled by*" and "*under common control with*") of a Person means the possession, direct or

indirect, of the power to vote 5% or more of the Voting Interests of such Person or to direct or cause the direction of the management and policies of such Person, whether through the ownership of Voting Interests, by contract or otherwise.

"Agreement" means this Senior Secured, Super-Priority Debtor In Possession Credit Agreement, as amended, restated, supplemented or otherwise modified from time to time.

"Alden" means Alden Global Value Recovery Master Fund, L.P., a Cayman Islands exempted company.

"Approved Budget" means the 13 week rolling cash flow forecast prepared by the Debtors and furnished to the Lenders on the Effective Date and which is approved by, and is in form and substance satisfactory to the Lenders in their sole discretion, as the same may be updated, modified or supplemented from time to time as provided in Section 5.01(i), which shall include a weekly cash budget, including information on a line item basis as to (x) projected cash receipts, (y) Permitted Expenditures, and (z) total available liquidity, which each such Approved Budget shall be certified by the Chief Financial Officer of the Administrative Borrower as having been prepared in good faith based upon assumptions believed by the Debtors to be reasonable at the time made.

"Asset Sale" means, with respect to each Debtor, any disposition, whether by sale, lease, improvement, license, transfer or otherwise, of any or all Property of such Debtor or any compromise, impairment, modification or relinquishment of any or all Property of such Debtor other than (a) dispositions of cash, Cash Equivalents and accounts receivable in the ordinary course of business or in a manner that is not prohibited by the terms of this Agreement or the other Loan Documents, (b) any Event of Loss or Casualty Event, (c) dispositions of worn out or obsolete property in the ordinary course of business, (d) Investments in compliance with Section 5.02(f), (e) licenses of the Intellectual Property between one Debtor and another Debtor in the ordinary course of business and consistent with past practices and (f) the assignment or transfer of trademarks or domain names solely for purposes of correcting the registrations thereof, which registrations were erroneous or misleading prior to the Petition Date.

"Assignment and Acceptance" means an assignment and acceptance in a form approved by Alden or its successor pursuant to Section 7.07(j) entered into by a Lender and an Eligible Assignee (with the consent or acceptance of any party whose consent or acceptance is required by Section 7.07).

"Bankruptcy Code" means Title 11 of the United States Code entitled "*Bankruptcy*," as now and hereafter in effect, or any successor statute.

"Bankruptcy Court" has the meaning set forth in the preliminary statements to this Agreement.

"Bankruptcy Law" means the Bankruptcy Code and all other liquidation, conservatorship, bankruptcy, general assignment for the benefit of creditors, moratorium, rearrangement, receivership, insolvency, reorganization or similar debtor relief laws of the United States or other applicable jurisdictions from time to time in effect and affecting the rights of creditors generally.

"Borrowing" means Loans made or continued on the same date.

"Business Day" means any day that is not a Saturday, Sunday or other day on which commercial banks in New York City are authorized or required by law to remain closed.

"Capital Expenditures" means, for any Person for any period, the sum of, without duplication, (a) all expenditures made, directly or indirectly, by such Person or any of its Subsidiaries during such period for equipment, fixed assets, real property or improvements, or for replacements or substitutions therefor or additions thereto, that have been or should be, in accordance with IFRS, reflected as additions to property, plant or equipment on a Consolidated balance sheet of such Person *plus* (b) the aggregate principal amount of all Debt (including obligations under Capitalized Leases) assumed or incurred in connection with any such expenditures.

"Capitalized Leases" means all leases that have been or should be, in accordance with IFRS, recorded as capitalized leases.

"Carve-Out" has the meaning set forth in the Final Order.

"Case" has the meaning specified in the Preliminary Statements.

"Cash" means money, currency or a credit balance in any demand account or deposit account.

"Cash Equivalents" means any of the following: (a) direct obligations of, or obligations the principal of and interest on which are unconditionally guaranteed by, the United States of America (or by any agency thereof to the extent such obligations are backed by the full faith and credit of the United States of America), in each case maturing within one (1) year from the date of acquisition thereof; (b) securities issued by any state of the United States of America or any political subdivision of any such state or any public instrumentality thereof or any political subdivision of any such state or any public instrumentality thereof having maturities of not more than one year from the date of acquisition thereof and, at the time of acquisition, having a rating of AA- or higher from S&P or Aa3 or higher from Moody's (or, if at any time neither S&P nor Moody's shall be rating such obligations, an equivalent rating from another nationally recognized rating service); (c) investments in commercial paper maturing within 365 days from the date of acquisition thereof and having, at such date of acquisition, a rating of at least A-1 or P-1 from either S&P or Moody's (or, if at any time neither SP nor Moody's shall be rating such obligations, an equivalent rating from another nationally recognized rating service); (d) investments in certificates of deposit, banker's acceptances and time deposits maturing within 270 days from the date of acquisition thereof issued or guaranteed by or placed with, and money market deposit accounts issues or offered by any domestic office of any commercial bank organized under the laws of the United States of America or any state thereof that has a combined capital and surplus and undivided profits of not less than \$500,000,000; (e) fully collateralized repurchase agreements with a term of not more than thirty (30) days for securities described in above and entered into with a financial institution satisfying the criteria of clause above; and (f) investments in *"money market funds"* within the meaning of Rule 2a-7 of the

Investment Company Act of 1940, as amended, substantially all of whose assets are invested in investments of the type described in clauses (a) through (e) above.

"Cash Management Order" means the Final Order (I) Authorizing Continued Use of Existing Cash Management System, (II) According Administrative Expense Status for Intercompany Receivables, (III) Authorizing Continued Use of Existing Business Forms, and (IV) Granting Certain Related Relief entered by the Bankruptcy Court on February 15, 2013, Docket No. 83.

"Casualty Event" means any event that gives rise to the receipt by any Debtor of any insurance proceeds in respect of any equipment, fixed assets or real property (including any improvements thereon) to replace or repair such equipment, fixed assets or real property.

"Change of Control" means the failure of Atari, S.A. to own, directly or indirectly, 100% of the aggregate issued and outstanding Equity Interests in each of the Debtors; *provided*, that the appointment of a receiver for Atari S.A. shall not constitute a Change of Control; *provided further*, that the exercise of remedies by Alden or its Affiliates under the Parent Loan Agreement shall not constitute a Change of Control.

"Claims" has the meaning specified in Section 7.15.

"Collateral" means all now owned or hereafter acquired assets and property of the Debtors and their bankruptcy estates, whether real or personal, tangible or intangible, or otherwise, and any and all proceeds therefrom, including, without limiting the generality of the foregoing, all cash, accounts, accounts receivable, inventory, property, plant and equipment, real estate, leaseholds, proceeds of avoidance actions under chapter 5 of the Bankruptcy Code, all intercompany claims, any and all proceeds arising from insurance policies, all claims and causes of action of each Debtor and any and all proceeds therefrom, all Intellectual Property, and the Equity Interests of each direct and indirect subsidiary of each Debtor.

"Collateral Agent" has the meaning set forth in Section 8.01.

"Collateral Documents" means any pledge or security agreement, mortgage or deed of trust entered into after the Effective Date, any account control agreement, any of the collateral documents, instruments and agreements delivered hereunder, and each other agreement or document that creates or purports to create a Lien in favor of the Secured Parties (including the Orders).

"Commitment Letter" means that certain DIP Facility Commitment Letter, dated as of January 24, 2013, from the Initial Lender to the Debtors.

"Commitments" means, (a) as to any Lender, (i) as of the Effective Date, the aggregate Commitment of such Lender as set forth on Schedule I hereto and (ii) the aggregate amount pursuant to one or more Assignment and Acceptances executed by such Lender, as set forth for such Lender in the Register maintained by Alden pursuant to Section 7.07(d) as such Lender's "Commitment," and (b) as to all Lenders, after giving effect to Section 2.01, the aggregate of all Lenders' Commitments, which aggregate commitment shall not exceed five million dollars

(\$5,000,000) on the Effective Date, as such Commitments may be adjusted from time to time, in accordance with this Agreement.

"**Committee**" means any official committee appointed pursuant to Bankruptcy Code section 1102.

"**Communications**" has the meaning specified in Section 7.02(b).

"**Confidential Information**" means information that any Debtor furnishes to any Lender or the Collateral Agent designated as confidential, but does not include any such information that is or becomes generally available to the public other than as a result of a breach by any Lender or the Collateral Agent of its obligations hereunder or that is or becomes available to such Lender or the Collateral Agent from a source other than such Debtor that is not, to the best of such Lender's or the Collateral Agent's knowledge, acting in violation of a confidentiality agreement with such Debtor.

"**Consolidated**" refers to the consolidation of accounts in accordance with IFRS.

"**Contractual Obligations**" means, as applied to any Person, any provision of any Equity Interests issued by such Person or of any indenture, mortgage, deed of trust, contract, undertaking, agreement ((whether bilateral or unilateral or executory or non-executory and whether a Person entitled to rights thereunder is so entitled directly or as a third-party beneficiary), including any license or covenant not to sue) or other instrument to which such Person is a party or by which it or any of its Properties is bound.

"**control**" means, with respect to any Person, the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such Person, whether through the ability to exercise voting power, contract or otherwise. "**controlling**" and "**controlled**" have meanings correlative thereto.

"**Debt**" of any Person means, with respect to a Person at any date of determination, any and all indebtedness, obligations or liabilities (but not including trade payables and accrued expenses incurred in the ordinary course of business which are not represented by a promissory note or other evidence of indebtedness and which are not more than sixty (60) days past due) (whether matured or unmatured, liquidated or unliquidated, direct or indirect, absolute or contingent, or joint or several) of such Person, in each case, for or in respect of: (a) borrowed money, (b) amounts raised under or liabilities in respect of any note purchase or acceptance credit facility, (c) reimbursement obligations (contingent or otherwise) under any letter of credit, (d) Hedging Obligations, (e) any other transaction (including forward sale or purchase agreements, Capitalized Leases and conditional sales agreements) having the commercial effect of a borrowing of money entered into by such Person to finance its operations or capital requirements, (f) any guaranty of Debt for borrowed money, and (g) all indebtedness secured by a Lien on assets owned by such Person, whether or not such indebtedness actually shall have been created, assumed or incurred by such Person.

"**Debtor**" has the meaning set forth in the Preliminary Statements.

"**Default**" means any Event of Default or any event that would constitute an Event of Default but for the passage of time or the requirement that notice be given or both.

"**Default Interest**" has the meaning set forth in Section 2.05(b).

"**Delayed Draw Loan**" has the meaning set forth in Section 2.01(a)

"**dollars**" and the sign "\$" mean the lawful currency of the United States of America.

"**Effective Date**" has the meaning specified in Section 3.01.

"**Eligible Assignee**" means (a) a Lender; (b) an Affiliate of a Lender; and (c) any other Person (other than an individual) approved by the Required Lenders (such approval not to be unreasonably withheld or delayed); *provided, however*, that neither the Debtors nor any of their Affiliates (other than Alden and its non-Debtor related Affiliates) shall qualify as an Eligible Assignee under this definition.

"**Equity Interests**" means, with respect to any Person, shares of capital stock of (or other ownership or profit interests in) such Person, warrants, options or other rights for the purchase or other acquisition from such Person of shares of capital stock of (or other ownership or profit interests in) such Person, securities convertible into or exchangeable for shares of capital stock of (or other ownership or profit interests in) such Person or warrants, rights or options for the purchase or other acquisition from such Person of such shares (or such other interests), and other ownership or profit interests in such Person (including, without limitation, partnership, member or trust interests therein), whether voting or nonvoting, and whether or not such shares, warrants, options, rights or other interests are authorized or otherwise existing on any date of determination.

"**Equity Issuance**" means any issuance of Equity Interests by the applicable Debtor.

"**ERISA**" means the Employee Retirement Income Security Act of 1974, as amended from time to time, and the regulations promulgated and rulings issued thereunder.

"**ERISA Affiliate**" means any Person that for purposes of Title IV of ERISA is a member of the controlled group of the Debtors, or under common control with the Debtors, within the meaning of Section 414(b) or (c) of the Code.

"**ERISA Event**" means (a)(i) the occurrence of a reportable event, within the meaning of Section 4043 of ERISA, with respect to any Plan unless the 30 day notice requirement with respect to such event has been waived by the PBGC or (ii) the requirements of Section 4043(b) of ERISA apply with respect to a contributing sponsor, as defined in Section 4001(a)(13) of ERISA, of a Plan, and an event described in paragraph (9), (10), (11), (12) or (13) of Section 4043(c) of ERISA is reasonably expected to occur with respect to such Plan within the following 30 days; (b) the application for a minimum funding waiver with respect to a Plan; (c) the provision by the administrator of any Plan of a notice of intent to terminate such Plan, pursuant to Section 4041(a)(2) of ERISA (including any such notice with respect to a plan amendment referred to in Section 4041(e) of ERISA); (d) the cessation of operations of any Debtor or any ERISA Affiliate in the circumstances described in Section 4062(e) of ERISA; (e) the withdrawal

by any Debtor or any ERISA Affiliate from a Multiple Employer Plan during a plan year for which it was a substantial employer, as defined in Section 4001(a)(2) of ERISA; (f) the conditions for imposition of a lien under Section 302(f) of ERISA shall have been met with respect to any Plan; (g) the adoption of an amendment to a Plan requiring the provision of security to such Plan pursuant to Section 307 of ERISA; or (h) the institution by the PBGC of proceedings to terminate a Plan pursuant to Section 4042 of ERISA, or the occurrence of any event or condition described in Section 4042 of ERISA that constitutes grounds for the termination of, or the appointment of a trustee to administer, such Plan.

"Event of Loss" means condemnation, seizure or taking, by exercise of the power of eminent domain or otherwise, or confiscation or requisition of use of Property.

"Events of Default" has the meaning specified in Section 6.01.

"Excluded Taxes" means any of the following Taxes imposed on or with respect to a Recipient or required to be withheld or deducted from a payment to a Recipient, (a) Taxes imposed on or measured by net income (however denominated), franchise Taxes, and branch profits Taxes, in each case, (i) imposed as a result of such Recipient being organized under the laws of, or having its principal office or its applicable Lending Office located in, the jurisdiction imposing such Tax (or any political subdivision thereof) or (ii) that are Other Connection Taxes, (b) in the case of a Lender, U.S. federal withholding Taxes imposed on amounts payable to or for the account of such Lender with respect to an applicable interest in a Loan or Commitment pursuant to a law in effect on the date on which (i) such Lender acquires such interest in the Loan or Commitment (other than pursuant to any assignment request by the Debtor to avoid the payment by the Lender of additional gross-up amounts payable under Section 2.08(a)) or (ii) such Lender changes its Lending Office, except in each case to the extent that, pursuant to Section 2.08, amounts with respect to such Taxes were payable either to such Lender's assignor immediately before such Lender became a party hereto or to such Lender immediately before it changed its Lending Office, (c) Taxes attributable to such Lender's failure to comply with Section 2.08(e) and (d) any U.S. federal withholding Taxes imposed under FATCA.

"Expenses" has the meaning specified in Section 7.04.

"Facility" means (a) at any time on or prior to the Effective Date, the aggregate amount of the Commitments at such time plus the aggregate principal amount of the Initial Loans outstanding at such time and (b) at any time after the Effective Date, the aggregate principal amount of the Loans outstanding at such time.

"FATCA" means Sections 1471 through 1474 of the Internal Revenue Code, as of the date of this Agreement (or any amended or successor version that is substantially comparable and not materially more onerous to comply with), any current or future regulations or official interpretations thereof and any agreements entered into pursuant to Internal Revenue Code Section 1471(b)(1).

"Final Order" means collectively, one or more orders of the Bankruptcy Court entered in the Case after a final hearing under Bankruptcy Rule 4001(c)(2) or such other procedures as approved by the Bankruptcy Court, which order shall be satisfactory in form and substance to the

Lenders, and which order is in effect and not stayed, which *inter alia* authorizes the Debtors to obtain credit, incur Debt and grant Liens under this Agreement and the other Loan Documents, provides for the superpriority of the Lenders' claims.

"Fiscal Quarter" means a fiscal quarter of any Fiscal Year.

"Fiscal Year" means a fiscal year of the Debtors ending on March 31 of each calendar year.

"Foreign Lender" means (a) if the Debtor is a U.S. Person, a Lender that is not a U.S. Person, and (b) if the Debtor is not a U.S. Person, a Lender that is resident or organized under the laws of a jurisdiction other than that in which the Debtor is resident for tax purposes.

"Fund" means any Person (other than an individual) that is or will be engaged in making, purchasing, holding or otherwise investing in commercial loans and similar extensions of credit in the ordinary course.

"Funding Account" shall mean the deposit account of the Administrative Borrower separately provided to the Lenders.

"Governmental Authority" means any nation or government, any state, province, city, municipal entity or other political subdivision thereof, and any governmental, executive, legislative, judicial, administrative or regulatory agency, department, authority, instrumentality, commission, board, bureau or similar body, whether Federal, state, provincial, territorial, local or foreign.

"Governmental Authorization" means any authorization, approval, consent, franchise, license, covenant, order, ruling, permit, certification, exemption, notice, declaration or similar right, undertaking or other action of, to or by, or any filing, qualification or registration with, any Governmental Authority.

"Hazardous Materials" means all hazardous, toxic, dangerous, explosive, or radioactive substances, wastes or pollutants that are regulated as such pursuant to any Environmental Law, including petroleum or petroleum distillates, asbestos and asbestos containing materials, polychlorinated biphenyls, radon gas, and infectious or medical wastes.

"Hedge Agreements" means interest rate swap, cap or collar agreements, interest rate future or option contracts, currency swap agreements, currency future or option contracts and other hedging agreements.

"IFRS" has the meaning set forth in Section 1.03.

"Indemnified Party" has the meaning specified in Section 7.04(b).

"Indemnified Taxes" means (a) Taxes, other than Excluded Taxes, imposed on or with respect to any payment made by or on account of any obligation of the Debtors under any Loan Document and (b) to the extent not otherwise described in (a), Other Taxes.

"Initial Lender" means Alden.

"Initial Loan" means the \$2,000,000 Loan made by the Initial Lender to the Administrative Borrower upon entry of and pursuant to the terms of the Interim Order.

"Insufficiency" means, with respect to any Plan, the amount, if any, of its unfunded benefit liabilities, as defined in Section 4001(a)(18) of ERISA.

"Intellectual Property" means any and all of the following any and all statutory or common law rights throughout the world in, arising out of, or associated therewith: (i) any and any and all patents and patent applications, including any and all reissues, divisions, renewals, extensions, provisionals, continuations and continuations-in-part thereof, and including the right to claim priority to such applications; (ii) any and all inventions (whether patentable or not), invention disclosures, improvements, discoveries, developments, formulas, techniques, designs, algorithms, routines, processes, devices, prototypes, schematics, methodologies, proprietary information, know how, trade secrets, and technology; (iii) any and all works of authorship, mask works, and copyrights, as well as any and all registrations and applications for registration of any of the foregoing; (iv) any and all trade names, logos, trade dress, trademarks, and service marks, as well as any and all registrations and applications for registration of any of the foregoing; (v) any and all files, databases or data collections (including, but not limited to, any and all knowledge databases, customer lists and customer databases); (vi) any and all software or computer code, including interactive video games (including all versions, prequels, sequels, expansion packs, add-on products and manuals); assemblers, applets, compilers, source code, and object code, as well as any and all associated data, images, sounds, design tools and user interfaces, in any form or format, however fixed; (vii) any and all Uniform Resource Locators, Web site addresses and domain names, as well as any and all registrations and applications for registration of any of the foregoing; (viii) any and all industrial designs as well as any and all registrations and applications for registration of any of the foregoing; (ix) publicity rights, privacy rights, and any and all other intellectual property or proprietary rights of any sort as well as any and all causes of action and contract rights related to any of the foregoing; (x) any and all similar, corresponding or equivalent assets, properties, general intangibles or rights to any of the foregoing; (xi) any and all media on which any of the foregoing is recorded and any and all of the tangible embodiments of any of the foregoing; (xii) any and all claims for damages by way of any past, present and future infringement of any of the foregoing; and (xiii) any and all goodwill associated with any of the foregoing.

"Interim Order" means the Interim Order Pursuant To 11 U.S.C. §§ 105, 361, 362, 364 and 507 (I) Authorizing the Debtors to (I) Incur Postpetition Secured Indebtedness, (II) Granting Liens And Providing Superpriority Administrative Expense Status, (III) Granting Adequate Protection, (IV) Modifying Automatic Stay, and (V) Scheduling A Final Hearing entered by the Bankruptcy Court in the Case on January 25, 2013, Docket No. 40.

"Internal Revenue Code" means the Internal Revenue Code of 1986, as amended from time to time, and the regulations promulgated and rulings issued thereunder.

"Investment" of any Person means any investment of such Person so classified under IFRS, and whether or not so classified, any loan, advance (other than intercompany transactions,

prepayments or deposits in each case made in the ordinary course of business) or extension of credit that constitutes Debt of the Person to whom it is extended or contribution of capital by such Person; and any stocks, bonds, mutual funds, partnership interests, notes (including structured notes), debentures or other securities owned by such Person. The amount of any Investment shall be the amount actually invested, without adjustment for subsequent increases or decreases in the values of such Investment.

"Investment Distribution" means any distribution received by a Debtor from any Investments.

"IRS" means the Internal Revenue Service of the United States.

"Lenders" means the Initial Lender, each other Lender party hereto as of the Effective Date with a Commitment hereunder and each Person that shall become a Lender hereunder pursuant to Section 7.07 for so long as such Initial Lender, Lender or Person, as the case may be, shall be a Lender under this Agreement.

"Lending Office" means, with respect to any Lender, the office of such Lender specified as its **"Lending Office"** opposite its name on Schedule I hereto or in the Assignment and Acceptance pursuant to which it became a Lender, as the case may be, or such other office of such Lender as such Lender may from time to time specify to the Administrative Borrower and the other Lenders.

"Lien" means, with respect to any Property, (a) any mortgage, deed of trust, deed to secure debt, lien (statutory or otherwise), pledge, hypothecation, easement, lease (including any sublease), license (including any sublicense), right-of-way, use agreement, royalty, restriction, reservation, covenant, mineral right, encumbrance, collateral assignment, charge or security interest in, on or of such Property, (b) the interest of a vendor or a lessor under any conditional sale agreement, capital lease or title retention agreement (or any financing lease having substantially the same economic effect as any of the foregoing), relating to such Property, and (c) in the case of Equity Interests or debt securities, any purchase option, call or similar right of a third party with respect to such Equity Interests or debt securities.

"Loans" has the meaning specified in Section 2.01(b).

"Loan Documents" means, collectively, (a) this Agreement, (b) any Notes, (c) the Collateral Documents and (d) any other agreement, certificate and document entered into, now or in the future, by any Debtor and the Lenders in connection with this Agreement, each, as amended, restated, supplemented or otherwise modified from time to time.

"Margin Stock" has the meaning specified in Regulation U.

"Material Adverse Effect" means, with respect to each Debtor, a material adverse effect on (a) the condition (financial or otherwise), business, assets, liabilities, prospects, or results of operations of the Debtors (taken as a whole) (other than the filing, commencement and continuation of the Case and the events that result from the filing, commencement and continuation of the Case), (b) the rights and remedies of the Lenders under any Loan Document or (c) the ability of such Debtor to perform its obligations under the Loan Documents.

"Material Contract" means (a) each of the agreements set forth on Schedule 4.01(r) and (b) any other Contractual Obligation (other than the Loan Documents) entered into after the date hereof by a Debtor for which breach, nonperformance or cancellation could reasonably be expected to have a Material Adverse Effect.

"Maturity Date" means the earliest to occur of (i) the Stated Maturity, subject to entry of the Final Order and the continued effectiveness of the Interim Order, (ii) the date of the Lenders' notice in writing to the Debtors of the occurrence of an Event of Default and the acceleration of the Loans, subject to any applicable notice and cure period, (iii) an Asset Sale by any Debtor outside the ordinary course of business (including any sale of assets pursuant to section 363 of the Bankruptcy Code), (iv) any Debtor's emergence from Chapter 11 pursuant to a plan of reorganization or liquidation with respect to such Debtor, (v) the date of conversion of the Case to a case under chapter 7 of the Bankruptcy Code, and (vi) the dismissal of the Case.

"Moody's" means Moody's Investors Services, Inc.

"Multiemployer Plan" means a multiemployer plan, as defined in Section 4001(a)(3) of ERISA, to which any Debtor or any ERISA Affiliate is making or accruing an obligation to make contributions, or has within any of the preceding five plan years made or accrued an obligation to make contributions.

"Multiple Employer Plan" means a single employer plan, as defined in Section 4001(a)(15) of ERISA, that (a) is maintained for employees of any Debtor or any ERISA Affiliate and at least one (1) Person other than a Debtor and the ERISA Affiliates or (b) was so maintained and in respect of which any Debtor or any ERISA Affiliate could have liability under Section 4064 or 4069 of ERISA in the event such plan has been or were to be terminated.

"Net Cash Proceeds" means, with respect to any event, (a) the cash proceeds received by any Person in respect of such event, including any cash received by such Person in respect of any non-cash proceeds, but only as and when received, net of (b) the sum of (i) all reasonable fees and out-of-pocket expenses paid by such Person to third parties (other than Affiliates) in connection with such event and (ii) the amount of all Taxes paid (or reasonably estimated to be payable) by such Person and the holders of the Equity Interests in such Person, and the amount of any reserves established by such Person to fund contingent liabilities reasonably estimated to be payable, in each case during the year that such event occurred or the next succeeding year and that are directly attributable to such event (as determined reasonably and in good faith by the chief financial officer of such Person).

"Non-Consenting Lender" has the meaning specified in Section 7.01(c).

"Note" means a promissory note of the Debtors payable to the order of any Lender, if requested by such Lender, evidencing the indebtedness of the Debtors to such Lender resulting from the Loans made by such Lender, which note shall be in form and substance reasonably acceptable to such Lender, as amended, restated, supplemented or otherwise modified from time to time.

"Notice of Borrowing" has the meaning specified in Section 2.02(a).

"Obligation" means all obligations of every nature of the Debtors from time to time owed to any Lender from time to time under any Loan Document, whether for principal, interest (including interest which, but for the filing of a petition in bankruptcy with respect to the Debtors, would have accrued on any Obligation, whether or not a claim is allowed against the Debtors for such interest in the related bankruptcy proceeding), fees, expenses, indemnification or otherwise.

"Orders" means the Final Order and/or the Interim Order, as the context so requires.

"Other Connection Taxes" means, with respect to any Lender, Taxes imposed as a result of a present or former connection between such Lender and the jurisdiction imposing such Tax (other than connections arising from such Lender having executed, delivered, become a party to, performed its obligations under, received payments under, received or perfected a security interest under, engaged in any other transaction pursuant to or enforced any Loan Document, or sold or assigned an interest in any Loan or Loan Document).

"Other Taxes" has the meaning specified in Section 2.08(b).

"Parent" means Atari S.A., a company organized under the laws of the French Republic.

"Parent Loan Agreement" means that certain Credit Facility Agreement dated April 21, 2006 among Atari Europe SA, the Parent and Alden, as assignee of The Bluebay Value Recovery (Master) Fund Limited, as amended, restated, supplemented or otherwise modified as of the date hereof.

"Participant Register" has the meaning specified in Section 7.07(k).

"Patriot Act" means the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001, Pub. L. 107-56, signed into law October 26, 2001.

"PBGC" means the Pension Benefit Guaranty Corporation (or any successor).

"Permitted Expenditures" means (a) working capital and general corporate purposes of the Debtors, (b) bankruptcy-related fees, costs and expenses, in each case as approved by the Bankruptcy Court, (c) fees, costs and expenses related to a sale of assets and/or plan of reorganization, in the case of (a), (b), and (c), in accordance with the Approved Budget, and (d) for any other purpose agreed upon in the Loan Documents and approved by the Bankruptcy Court. Notwithstanding the foregoing, "Permitted Expenditures" shall not include any severance or retention obligations, extraordinary compensation or bonuses owed to any current or former employee, director, or officer in excess of the aggregate amount of \$[●]¹ until the Loans have been paid in full in cash other than with respect to amounts distributed from any trust forming a part of any "employee benefit plan" (as defined in Section 3(3) of ERISA) which is intended to be qualified under Section 401(a) of the Code.

¹ Number to be updated by the execution of this DIP agreement.

"Permitted Liens" means (a) Liens for Taxes, assessments and governmental charges or levies to the extent not required to be paid under Section 5.01(b); (b) Liens imposed by law, such as materialmen's, mechanics', carriers', workmen's and repairmen's Liens and other similar Liens arising in the ordinary course of business (i) for amounts that are not overdue or (ii) for amounts that are overdue that (A) do not materially adversely affect the use of, and which do not individually or in the aggregate materially affect the value of, the Property to which they relate or (B) are bonded or are being contested in good faith by appropriate proceedings for which reserve and other appropriate provisions, if any, required by IFRS shall have been made; (c) pledges or deposits in the ordinary course of business to secure obligations under workers' compensation, unemployment insurance, social security legislation or other similar legislation or to secure public or statutory obligations; (d) deposits to secure obligations under worker's compensation laws, unemployment insurance and social security laws, or to secure the performance of bids, trade contracts and leases (other than Debt), statutory obligations, surety bonds (other than bonds related to judgments or litigation), performance bonds and other obligations of a like nature incurred in the ordinary course of business; (e) Liens arising from judgments for the payment of money not constituting a Default under Section 6.01(f) or securing appeal or other surety bonds related to such judgments; (f) easements, rights-of-way, restrictions, encroachments and other minor defects or irregularities in title and any zoning, that individually or in the aggregate do not materially adversely affect the value, use, operation of, any real property assets; (g) bankers' Liens, rights of setoff and other similar Liens existing solely with respect to cash and Cash Equivalents on deposit in accounts maintained by any Debtor as of the Effective Date, in each case granted in the ordinary course of business in favor of the bank or banks with which such accounts are maintained, and (h) licenses of Intellectual Property granted by any Debtor in the ordinary course of business as in effect as of the Effective Date and not interfering in any material respect with the conduct of business of the Debtors.

"Person" means an individual, partnership, corporation (including a business trust), limited liability company, joint stock company, trust, unincorporated association, joint venture or other entity, or a government or any political subdivision or agency thereof.

"Petition Date" has the meaning specified in the Preliminary Statements.

"Plan" means a Single Employer Plan or a Multiple Employer Plan.

"Plan of Reorganization" has the meaning set forth in Section 5.01(q)(ii).

"Pledge and Security Agreement" means a pledge and security agreement among the Debtors and the Collateral Agent for the benefit of the Secured Parties, in form and substance satisfactory to the Lenders, as may be amended, restated, supplemented and otherwise modified from time to time.

"Property" means any right or interest in or to any asset or property of any kind whatsoever (including Equity Interests), whether real, personal or mixed and whether intangible or tangible.

"Recipient" means (a) any Lender and (b) the Initial Lender, when the Initial Lender is acting in the capacity of the administrative agent with respect to the Loan, as applicable.

"**Register**" has the meaning specified in Section 7.07(d).

"**Regulation U**" means Regulation U of the Board of Governors of the Federal Reserve System, as in effect from time to time.

"**Releasees**" has the meaning specified in Section 7.15.

"**Releasers**" has the meaning specified in Section 7.15.

"**Repayment Event**" means the satisfaction of the following conditions: (a) the repayment in full in Cash of all of the outstanding principal amount of the Loans and all other Obligations (other than contingent Obligations) due and payable under the Loan Documents and (b) the termination of all Commitments.

"**Required Lenders**" means, at any time, Lenders owed or holding more than 50% of the sum of (a) the aggregate principal amount of the Loans outstanding at such time and (b) the aggregate unused Commitments.

"**Responsible Officer**" means, as to any Person, any individual holding the position of chairman of the board (if an officer), president, chief executive officer, chief financial officer, general counsel or director of finance.

"**S&P**" means Standard & Poor's Ratings Services, a division of the McGraw-Hill Companies, Inc.

"**Sale Motion**" has the meaning set forth in Section 5.01(q)(i).

"**Secured Parties**" means, collectively, the Collateral Agent and the Lenders and the beneficiaries of each indemnification obligation undertaken by the Debtors under any Loan Document.

"**Single Employer Plan**" means a single employer plan, as defined in Section 4001(a)(15) of ERISA, that (a) is maintained for employees of a Debtor or any ERISA Affiliate and no Person other than the Debtors and the ERISA Affiliates or (b) was so maintained and in respect of which a Debtor or any ERISA Affiliate could have liability under Section 4069 of ERISA in the event such plan has been or were to be terminated.

"**Stated Maturity**" means July 20, 2013.

"**Subsidiary**" of any Person means any corporation, partnership, joint venture, limited liability company, trust or estate of which (or in which) more than 50% of (a) the issued and outstanding capital stock having ordinary voting power to elect a majority of the Board of Directors of such corporation (irrespective of whether at the time capital stock of any other class or classes of such corporation shall or might have voting power upon the occurrence of any contingency), (b) the interest in the capital or profits of such partnership, joint venture or limited liability company or (c) the beneficial interest in such trust or estate is at the time directly or indirectly owned or controlled by such Person, by such Person and one or more of its other Subsidiaries or by one or more of such Person's other Subsidiaries.

"**Taxes**" means all present or future taxes, levies, imposts, duties, deductions, charges or withholdings (including backup withholding), assessments, fees or other charges imposed by any Governmental Authority, including any interest, additions to tax or penalties applicable thereto.

"**Termination Event**" has the meaning set forth in the Interim Order.

"**Transactions**" means the transactions contemplated by this Agreement and the other Loan Documents.

"**U.S. Person**" means any Person that is a "United States Person" as defined in Section 7701(a)(30) of the Internal Revenue Code.

"**Voting Interests**" means shares of capital stock issued by a corporation, or equivalent Equity Interests in any other Person, the holders of which are ordinarily, in the absence of contingencies, entitled to vote for the election of directors (or persons performing similar functions) of such Person, even if the right so to vote has been suspended by the happening of such a contingency.

"**Waiting Period**" has the meaning specified in Section 6.01(A).

"**Waived Claims**" has the meaning set forth in the Interim Order.

"**Withdrawal Liability**" has the meaning specified in Part I of Subtitle E of Title IV of ERISA.

SECTION 1.02. Computation of Time Periods; Other Definitional Provisions. In this Agreement and the other Loan Documents in the computation of periods of time from a specified date to a later specified date, the word "**from**" means "from and including" and the words "**to**" and "**until**" each mean "to but excluding." References in the Loan Documents to the term "**including**" means "including without limitations." References in the Loan Documents to any agreement or contract "**as amended**" shall mean and be a reference to such agreement or contract as amended, amended and restated, supplemented or otherwise modified from time to time in accordance with its terms.

SECTION 1.03. Accounting Terms. All accounting terms not specifically defined herein shall be construed in accordance with the International Financial Reporting Standards (IFRS) as in effect from time to time (except as otherwise provided herein) ("**IFRS**"); *provided* that, if the Debtors notify the Lender that the Debtors request an amendment to any provision hereof to eliminate the effect of any change occurring after the date hereof in IFRS or in the application thereof on the operation of such provision (or if the Lender notifies the Debtors that the Required Lenders request an amendment to any provision hereof for such purpose), regardless of whether any such notice is given before or after such change in IFRS or in the application thereof, then such provision shall be interpreted on the basis of IFRS as in effect and applied immediately before such change shall have become effective until such notice shall have been withdrawn or such provision amended in accordance herewith.

ARTICLE II.

AMOUNTS AND TERMS OF THE LOANS

SECTION 2.01. The Loans.

(a) Each Lender severally agrees, on the terms and conditions hereinafter set forth, to make multiple delayed draw term loans (each, a "**Delayed Draw Loan**") to the Debtors, no more than once every two weeks on and after the Effective Date, in an amount equal to such Lender's pro rata share of such Delayed Draw Loan. All such Delayed Draw Loans made by such Lender shall not exceed such Lender's available and unused Commitment at such time. Each Borrowing shall consist of Delayed Draw Loans made simultaneously by the Lenders ratably according to their Commitments. Notwithstanding the foregoing, no Lender shall have any obligation to fund a Delayed Draw Loan to the Debtors if (i) Permitted Expenditures made by the Debtors in the cumulative period from the Petition Date to the end of the one full week period after the date of the proposed Borrowing exceed 110% of the amount of Permitted Expenditures allotted for such cumulative period set forth in the most recent Approved Budget, (ii) the sum of a proposed Borrowing together with the outstanding Loans as of such date of determination (exclusive of the Initial Loan) would exceed \$[●] before the satisfaction or waiver of Section 5.01(p).

(b) The Initial Lender has previously funded the Initial Loan on, and pursuant to the terms of, the Interim Order. The Initial Lender, the Lenders, the Collateral Agent and Debtors hereby agree (i) to amend and restate the terms of the Initial Loan, consolidate such Initial Loan with, and convert such Initial Loan into, loans hereunder on the Effective Date (such Initial Loan, together with any Delayed Draw Loans, collectively, the "**Loans**") (ii) that the aggregate amount of the Initial Loan shall be deemed to have been, and hereby is, automatically and without any further action on behalf of any party, converted on the Effective Date into Loans hereunder without constituting a novation and (iii) there shall be no new money advanced by the Lender pursuant to the Initial Loans on the Effective Date or thereafter. The Loans and any portion thereof repaid or prepaid under this Agreement may not be reborrowed.

(c) Subject to the terms and conditions hereof, the Administrative Borrower may prepay the Loans but no amount paid or repaid with respect to the Loans may be reborrowed.

SECTION 2.02. Making the Loans.

(a) Each Borrowing shall be made on notice, given not later than 11:00 A.M. (New York City time) on the Business Day prior to the date of the proposed Borrowing by the Administrative Borrower to the Lenders by telecopier or electronic communication. Each such notice of a Borrowing (a "**Notice of Borrowing**") shall be by telephone, confirmed immediately in writing, or by telecopier or electronic communication, in substantially the form of Exhibit A hereto, specifying therein the requested (i) date of such Borrowing and (ii) aggregate amount of such Borrowing. Each Lender shall, before 5:00 P.M. (New York City time) on the date of such Borrowing, make available such Lender's ratable portion of such Borrowing in accordance with its respective Commitment, in immediately available funds to the Funding Account. The requested Borrowing shall be an integral multiple of \$100,000 and not less than \$500,000.

(b) Borrowings may be made at any time (but not more frequently than every two weeks) prior to the earliest to occur of (i) the occurrence and continuation of an Event of Default, (ii) the Maturity Date and (iii) one (1) calendar week prior to the Stated Maturity.

(c) Each Notice of Borrowing shall be irrevocable and binding on the Debtors on a joint and several basis.

(d) The failure of any Lender to make the Loan to be made by it as part of any Borrowing shall not relieve any other Lender of its obligation, if any, hereunder to make its Loan on the date of such Borrowing, but no Lender shall be responsible for the failure of any other Lender to make the Loan to be made by such other Lender on the date of any Borrowing.

SECTION 2.03. Repayment of Loans. The Debtors shall repay to the Lenders on the Maturity Date the aggregate principal amount of the Loans then outstanding.

SECTION 2.04. Prepayments/Commitment Restrictions.

(a) Optional. The Administrative Borrower may prepay the Loans in whole or in part from time to time without premium or penalty upon at least three (3) Business Days' written notice to the Lenders stating the proposed date and aggregate principal amount of the prepayment. If such notice is given, the Debtors shall prepay the outstanding aggregate principal amount of the Loans in the amounts stated in such notice, together with accrued and unpaid interest to the date of such prepayment. Each partial prepayment shall be in an aggregate principal amount of \$100,000 or an integral multiple of \$100,000 in excess thereof.

(b) Mandatory. Within one (1) Business Day after the receipt by any Debtor of any Net Cash Proceeds of any Casualty Event, Asset Sale, Event of Loss, Investment Distribution, Equity Issuance or the incurrence or issuance of any Debt (other than Debt permitted by Section 5.02(b)), 100% of such Net Cash Proceeds shall be applied by such Debtor to the prepayment of the Loans and all accrued and unpaid interest. After the Loans have been repaid in full, the Commitments shall automatically reduce by the amount of Net Cash Proceeds in excess of the amounts applied to the prepayment of the Loans and interest until the Commitments are reduced to \$0.

(c) Termination/Reduction of Commitments. The Administrative Borrower may, upon at least three (3) Business Day's irrevocable written notice to the Lenders, terminate or from time to time permanently reduce the unused Commitments; *provided* that any such partial reduction shall be in an aggregate principal amount of \$100,000 or an integral multiple of \$100,000 in excess thereof. The Commitments shall be automatically and permanently reduced by an amount equal to the nominal principal amount of the Loans advanced to the Administrative Borrower pursuant to Section 2.01.

SECTION 2.05. Interest.

(a) The Loans shall accrue interest in arrears from the date of such Loan until such principal amount shall be paid in full, at a rate per annum equal to 10%, which such accrued interest amount shall be added to the principal amount of such Loans on the last Business Day of each calendar month.

(b) Upon the occurrence and during the continuance of an Event of Default, the unpaid principal amount of the Loans and, to the fullest extent permitted by applicable law, the amount of any interest, fee or other amount owed under this Agreement or any other Loan

Document to the Lenders shall be paid in full in cash and on demand, at a rate per annum equal at all times to 2% per annum above the rate per annum required to be paid on the Loans (the "**Default Interest**"). Payment or acceptance of the increased rates of interest provided for in this Section 2.05(b) is not a permitted alternative to timely payment and shall not constitute a waiver of any Event of Default or otherwise prejudice or limit any rights or remedies of the Collateral Agent or any Lender.

SECTION 2.06. Increased Costs, Etc.

(a) If, due to the introduction of or any change after the date hereof (or, if later, the date such Lender becomes a Lender hereunder pursuant to an Assignment and Acceptance executed pursuant to Section 7.07) in or in the interpretation of any law or regulation, or compliance by any Lender with any request, guideline or directive (whether or not having the force of law) of any Governmental Authority, any Lender shall incur increased costs, Taxes (other than Excluded Taxes described in clauses (a)(ii) through (d) of the definition of Excluded Taxes) or reductions in the amounts received or receivable hereunder with respect to any Loan, then the Debtors shall from time to time, upon demand by such Lender, pay to such Lender additional amounts sufficient to compensate such Lender for such increased cost. A certificate as to the amount of such increased cost, submitted to the Debtors by such Lender, shall be conclusive and binding for all purposes, absent manifest error.

(b) If any Lender determines that compliance with any law or regulation or any guideline or request from any central bank or other Governmental Authority (whether or not having the force of law) affects or would affect the amount of capital required or expected to be maintained by such Lender or any corporation controlling such Lender and that the amount of such capital is increased by or based upon the existence of such Lender's commitment to make Loans and other commitments of such type, then, upon demand by such Lender or such corporation, the Debtors shall pay to such Lender, from time to time as specified by such Lender, additional amounts sufficient to compensate such Lender in the light of such circumstances, to the extent that such Lender reasonably determines such increase in capital to be allocable to the existence of such Lender's commitment to make Loans. A certificate as to such amounts submitted to the Debtors by such Lender shall be conclusive and binding for all purposes, absent manifest error.

SECTION 2.07. Payments and Computations.

(a) The Administrative Borrower shall make each payment hereunder and under the other Loan Documents, irrespective of any right of counterclaim or set-off (except as otherwise provided in Section 2.09), not later than 2:00 P.M. (New York City time) on the day when due in U.S. dollars in same day funds, with payments being received by the Lender after such time being deemed to have been received on the next succeeding Business Day in the Lender's sole discretion.

(b) The Debtors hereby authorize each Lender and each of its Affiliates, if and to the extent payment owed to such Lender is not made when due hereunder or under the other Loan Documents to charge from time to time, to the fullest extent permitted by law, against any or all of the Debtors' accounts with such Lender or such Affiliate any amount so due.

(c) All computations of interest and of fees shall be made by the Initial Lender (with respect to the Initial Loan) and the Lenders (with respect to the Delayed Draw Loans) on the basis of a year of 365 days, in each case for the actual number of days (including the first day but excluding the last day) occurring in the period for which such interest, fees or commissions are payable. Each determination by the Lenders of an interest rate, fee or commission hereunder shall be conclusive and binding for all purposes, absent manifest error.

(d) Except as otherwise provided under the Loan Documents, whenever any payment hereunder or under the other Loan Documents shall be stated to be due on a day other than a Business Day, such payment shall be made on the next succeeding Business Day, and such extension of time shall in such case be included in the computation of payment of interest, fees or commission, as the case may be.

SECTION 2.08. Taxes.

(a) Any and all payments by or on account of any obligation of the Debtors under any Loan Document shall be made without deduction or withholding for any Taxes, except as required by applicable law. If any applicable law (as determined in the good faith discretion of the Debtors or any Lender) requires the deduction or withholding of any Tax from any such payment by the Debtors, then the Debtors shall be entitled to make such deduction or withholding and shall timely pay the full amount deducted or withheld to the relevant Governmental Authority in accordance with applicable law and, if such Tax is an Indemnified Tax, then the sum payable by the Debtors shall be increased as necessary so that after such deduction or withholding has been made (including such deductions and withholding applicable to additional sums payable under this Section 2.08) the applicable Lender receives an amount equal to the sum it would have received had no such deductions been made.

(b) In addition, the Debtors shall pay any present or future stamp, documentary, intangible, recording, filing or similar Taxes that arise from any payment made under, from the execution, delivery, performance, enforcement or registration of, from the receipt of a perfection of a security interest under, or otherwise with respect to, any Loan Document, except any such Taxes that are Other Connection Taxes imposed with respect to an assignment (other than an assignment pursuant to an assignment request by the Debtor to avoid the payment by the Lender of additional gross-up amounts payable under Section 2.08(a)) (hereinafter referred to as "***Other Taxes***").

(c) The Debtors shall indemnify, on a joint and several basis, each Lender for and hold them harmless against the full amount of any Indemnified Taxes (including Indemnified Taxes imposed or asserted on or attributable to amounts payable under this Section 2.08) payable or pay by such Lender or required to be withheld or deducted from a payment to such Lender and any reasonable expenses arising therefrom or with respect thereto. This indemnification shall be made within thirty (30) days from the date such Lender makes written demand therefor.

(d) Within thirty (30) days after the date of any payment of Taxes by any Debtor to a Governmental Authority pursuant to this Section 2.08, such Debtor shall furnish to the Initial Lender the original or a certified copy of a receipt evidencing such payment, to the extent such a

receipt is issued therefor, or other written proof of payment thereof that is reasonably satisfactory to the Initial Lender.

(e) Status of Lenders.

(i) Any Lender that is entitled to an exemption from or reduction of withholding Tax with respect to any payments made under any Loan Document shall deliver to the Debtors and the Initial Lender, as the time or times reasonably requested by the Debtors or the Initial Lender, such properly completed and executed documentation reasonably requested by the Debtors or the Initial Lender as will permit such payments to be made without withholding or at a reduced rate of withholding. In addition, any Lender, if reasonably requested by the Debtors or the Initial Lender, shall deliver such other documentation prescribed by applicable law or reasonably requested by the Debtors or the Initial Lender as will enable the Debtors or the Initial Lender to determine whether or not such Lender is subject to backup withholding or information reporting requirements. Notwithstanding anything to the contrary in the preceding two sentences, the completion, execution and submission of such documentation (other than documentation set forth in Section 2.08(e)(ii)(A), (ii)(B) and (ii)(D) below) shall not be required if in the Lender's reasonable judgment such completion, execution or submission would subject such Lender to any material unreimbursed costs or expense or would materially prejudice the legal or commercial position of such Lender.

(ii) Without limiting the generality of the foregoing, in the event that the Debtor is a U.S. Person,

(A) Any Lender that is a U.S. Person, shall deliver to the Debtors and the Initial Lender on or prior to the date on which such Lender becomes a Lender under this Agreement (and from time to time thereafter upon the reasonable request of the Debtors), executed originals of IRS Form W-9 certifying that such Lender is exempt from United States federal backup withholding tax;

(B) Each Foreign Lender shall, on or prior to the date of its execution and delivery of this Agreement or on the date of the Assignment and Acceptance pursuant to which it becomes a Lender, and from time to time thereafter as reasonably requested in writing by the Debtors (but only so long thereafter as such Lender remains lawfully able to do so), provide the Initial Lender and the Debtors with two (2) original IRS Forms W-8BEN or W-8ECI certifying that such Lender is exempt from or entitled to a reduced rate of United States withholding Tax on payments pursuant to this Agreement or any other Loan Document. Further, in the case of a Lender claiming the benefits of the exemption for portfolio interest under Section 881(c) of the Internal Revenue Code, a certificate substantially in the form of Exhibit B-1, Exhibit B-2, Exhibit B-3 or Exhibit B-4 hereto, as applicable, stating that such Lender that it is not (i) a "bank" (as defined in Section 881(c)(3)(A) of the Internal Revenue Code), (ii) a 10-percent shareholder (within the meaning of Section 871(h)(3)(B) of the Internal Revenue Code) of the Debtors or (iii) a controlled foreign corporation related to the Debtors (within the meaning of Section 864(d)(4) of the Internal

Revenue Code), and a duly executed IRS Form W-8BEN, as appropriate, or any successor or other form prescribed by the IRS. If any form or document referred to in this subsection (B) requires the disclosure of information, other than information necessary to compute the tax payable and information required on the date hereof by IRS Form W-8BEN or W-8ECI or the related certificate described above, that the applicable Lender reasonably considers to be confidential or may materially affect the legal or commercial position of such Lender, such Lender shall give notice thereof to the Debtors and shall not be obligated to include in such form or document such information

(C) any Foreign Lender shall, to the extent it is legally entitled to do so, deliver to the Debtors and the Initial Lender (in such number of copies as shall be requested by the recipient) on or prior to the date on which such Foreign Lender becomes a Lender under this Agreement (and from time to time thereafter upon the reasonable request of the Debtors or the Initial Lender), executed originals of any other form prescribed by applicable law as a basis for claiming exemption from or a reduction in United States federal withholding Tax, duly completed, together with such supplemental documentation as may be prescribed by applicable law to permit the Debtors or the Initial Lender to determine the withholding or deduction required to be made; and

(D) if a payment made to a Lender under any Loan Document would be subject to U.S. federal withholding Tax imposed by FATCA if such Lender were to fail to comply with the applicable reporting requirements of FATCA (including those contained in Sections 1471(b) or 1472(b) of the Internal Revenue Code, as applicable), such Lender shall deliver to the Debtors and the Initial Lender at the time or times prescribed by applicable law (including as prescribed by Section 1471(b)(3)(C)(i) of the Internal Revenue Code) and such additional documentation reasonably requested by the Debtors or the Initial Lender as may be necessary for the Debtors and the Initial Lender to comply with their obligations under FATCA and to determine that such Lender has complied with such Lender's obligations under FATCA or to determine the amount to deduct and withhold from such payment. Solely for purposes of this clause (D), "FATCA" shall include any amendments made to FATCA after the date of this Agreement.

Each Lender agrees that if any form or certification it previously delivered expires or becomes obsolete or inaccurate in any respect, it shall update such form or certification or promptly notify the Debtors and the Initial Lender in writing of its legal inability to do so.

(f) If any party determines, in its sole discretion exercised in good faith, that it has received a refund of any Taxes as to which it has been indemnified pursuant to this Section 2.08 (including by the payment of additional amounts pursuant to this Section 2.08), it shall pay to the indemnifying party an amount equal to such refund (but only to the extent of indemnity payments made under this Section 2.08 with respect to the Taxes giving rise to such refund), net of all out-of-pocket expenses (including Taxes) of such indemnified party and without interest (other than any interest paid by the relevant Governmental Authority with respect to such

refund). Such indemnifying party, upon the request of such indemnified party, shall repay to such indemnified party the amount paid over pursuant to this subsection (f) (plus any penalties, interest or other charges imposed by the relevant Governmental Authority) in the event that such indemnified party is required to repay such refund to such Governmental Authority. Notwithstanding anything to the contrary in this subsection (f), in no event will the indemnified party be required to pay any amount to an indemnifying party pursuant to this subsection (f) the payment of which would place the indemnified party in a less favorable net after-Tax position than the indemnified party would have been in if the Tax subject to indemnification and giving rise to such refund had not been deducted, withheld or otherwise imposed and the indemnification payments or additional amounts with respect to such Tax had never been paid. This subsection (f) shall not be construed to require any indemnified party to make available its Tax returns (or any other information relating to its Taxes that it deems confidential) to the indemnifying party or any other Person.

(g) Each party's obligations under this Section 2.08 shall survive the resignation or replacement of the Initial Lender (in its role as administrative agent) or any assignment of rights by, or the replacement of a Lender, the termination of the Commitments and the repayment, satisfaction or discharge of all obligations under any Loan Document.

SECTION 2.09. Sharing of Payments, Etc. If any Lender shall obtain at any time any payment (whether voluntary, involuntary, through the exercise of any right of set-off, or otherwise, other than as a result of an assignment pursuant to Section 7.07), (a) on account of Obligations due and payable to such Lender hereunder and under the other Loan Documents at such time in excess of its ratable share (according to the proportion of (i) the amount of such Obligations due and payable to such Lender to (ii) the aggregate amount of the Obligations due and payable to all Lenders hereunder and under the other Loan Documents at such time) of payments on account of the Obligations due and payable to all Lenders hereunder and under the other Loan Documents at such time obtained by all the Lenders at such time or (b) on account of Obligations owing (but not due and payable) to such Lender hereunder and under the other Loan Documents at such time in excess of its ratable share (according to the proportion of (i) the amount of such Obligations owing to such Lender at such time to (ii) the aggregate amount of the Obligations owing (but not due and payable) to all Lenders hereunder and under the other Loan Documents at such time) of payments on account of the Obligations owing (but not due and payable) to all Lenders hereunder and under the other Loan Documents at such time obtained by all of the Lenders at such time, such Lender shall forthwith purchase from the other Lenders such interests or participating interests in the Obligations as shall be necessary to cause such purchasing Lender to share the excess payment ratably with each of them; *provided, however*, that if all or any portion of such excess payment is thereafter recovered from such purchasing Lender, such purchase from each other Lender shall be rescinded and such other Lender shall repay to the purchasing Lender the purchase price to the extent of such Lender's ratable share (according to the proportion of (i) the purchase price paid to such Lender to (ii) the aggregate purchase price paid to all Lenders) of such recovery together with an amount equal to such Lender's ratable share (according to the proportion of (i) the amount of such other Lender's required repayment to (ii) the total amount so recovered from the purchasing Lender) of any interest or other amount paid or payable by the purchasing Lender in respect of the total amount so recovered. The Debtors agree that any Lender so purchasing an interest or participating interest from another Lender pursuant to this Section 2.09 may, to the fullest extent permitted by

law, exercise all its rights of payment (including the right of set-off) with respect to such interest or participating interest, as the case may be, as fully as if such Lender were the direct creditor of the Debtors in the amount of such interest or participating interest, as the case may be.

SECTION 2.10. Use of Proceeds. The proceeds of the Loans shall be available (and the Debtors agree that it shall use such proceeds) solely to fund Permitted Expenditures.

(a) Except for the Committee Investigation Rights (as defined in the Interim Order), no proceeds of the Loans and Collateral or the Carve-Out may be used: (a) in connection with or to finance in any way any action, suit, arbitration, proceeding, application, motion or other litigation of any type (i) adverse to the interests of any Lender or its rights and remedies under the Commitment Letter, the Loan Documents, or the Orders, including, but not limited to, for the payment of any services rendered by the professionals retained by any Debtor or Committee in connection with the assertion of or joinder in any claim, counterclaim, action, proceeding, application, motion, objection, defense or other contested matter, the purpose of which is to seek, or the result of which would be to obtain, any order, judgment, determination, declaration or similar relief, (ii) invalidating, setting aside, avoiding or subordinating, in whole or in part, the Obligations, (iii) invalidating, setting aside, avoiding or subordinating, in whole or in part, the Waived Claims, (iv) for monetary, injunctive or other affirmative relief against any Lender or the Collateral, (v) preventing, hindering or otherwise delaying the exercise by any Lender of any rights and remedies under the Commitment Letter, the Loan Documents, the Orders, or applicable law, or the enforcement or realization (whether by foreclosure, credit bid, further order of the Bankruptcy Court, or otherwise) by any Lender upon the Collateral, or (vi) to pursue litigation against any Lender; (b) to make any distribution under a plan of reorganization or liquidation or any agreement regarding sale of a Debtor's assets in the Case; (c) to make any payment in settlement of any claim, action or proceeding before any court, arbitrator or other governmental body without the prior written consent of the Lenders unless otherwise ordered by the Bankruptcy Court; (d) to pay any fees or similar amounts to any person or entity who has proposed or may propose to purchase interests in a Debtor without the prior written consent of the Lenders; (e) objecting to, contesting, or interfering with, in any way, a Lender's enforcement or realization upon any of the Collateral once a Termination Event (as defined in the Interim Order) or an Event of Default hereunder has occurred, or seeking to prevent a Lender from credit bidding in connection with any proposed plan of reorganization or liquidation, or any proposed transaction pursuant to Section 363 of the Bankruptcy Code; (f) using or seeking to use the Facility in a manner inconsistent with the Approved Budget; (g) using or seeking to use any insurance proceeds (which constitute Collateral) without the consent of the Lenders; (h) incurring any indebtedness, obligation or liability outside the ordinary course of business without the prior consent of the Lenders, except as permitted hereunder; (i) objecting to or challenging in any way the claims, Liens, or interests held by or on behalf of a Secured Party; (j) asserting, commencing or prosecuting any claims or causes of action whatsoever, including, but not limited to, any actions under Chapter 5 of the Bankruptcy Code, against a Lender; or (k) prosecuting an objection to, contesting in any manner, or raising any defenses to, the validity, extent, amount, perfection, priority, or enforceability of any of the Obligations, the Liens in favor of the Secured Party, or any other rights, remedies or interests of a Lender and/or Secured Party.

(b) No portion of the claims in the Case, other than those administrative expenses or priority claims directly attributable to the operation of the business of the Debtors or expenses

attributable to the administration of the Case consistent with the Approved Budget or to which the Lenders have specifically agreed, shall be funded with the Loans, and the percentages and categories of permitted allocations of such claims and expenses shall be approved by the Lenders.

SECTION 2.11. Evidence of Debt.

(a) Each Lender shall maintain in accordance with its usual practice an account or accounts evidencing the indebtedness of the Debtors to such Lender resulting from each Loan owing to such Lender from time to time, including the amounts of principal and interest payable and paid to such Lender from time to time hereunder. The Debtors agree that upon notice by any Lender to the Debtors to the effect that a promissory note or other evidence of indebtedness is required or appropriate in order for such Lender to evidence (whether for purposes of pledge, enforcement or otherwise) the Loans owing to, or to be made by, such Lender, the Debtors shall promptly execute and deliver to such Lender a Note, as applicable, payable to the order of such Lender in a principal amount equal to the Loans, respectively, of such Lender. All references to Notes in the Loan Documents shall mean Notes, if any, to the extent issued hereunder.

(b) The Register maintained by Alden pursuant to Section 7.07(d) shall record (i) the date and amount of each Borrowing made hereunder, (ii) the terms of each Assignment and Acceptance delivered to and accepted by it, (iii) the amount of any principal or interest due and payable or to become due and payable from the Debtors to each Lender hereunder and (iv) the amount of any sum received by each Lender from the Debtors hereunder.

(c) Entries made in good faith by Alden in the Register pursuant to subsection (b) above, and by each Lender in its account or accounts pursuant to subsection (a) above, shall be *prima facie* evidence of the amount of principal and interest due and payable or to become due and payable from the Debtors to, in the case of the Register, each Lender and, in the case of such account or accounts, such Lender, under this Agreement, absent manifest error; *provided, however*, that the failure of Alden or such Lender to make an entry, or any finding that an entry is incorrect, in the Register or such account or accounts shall not limit or otherwise affect the obligations of the Debtors under this Agreement.

SECTION 2.12. Priority of Obligations and the Lender's Liens. The priority of the Secured Parties' Liens on the Collateral and the superpriority administrative expense claims of the Initial Lender and the other Lenders shall be as set forth in the Interim Order and the Final Order.

ARTICLE III.

CONDITIONS TO EFFECTIVENESS AND OF LENDING

SECTION 3.01. Conditions Precedent. Section 2.01 of this Agreement shall become effective on and as of the first date (the "*Effective Date*") on which the following conditions precedent have been satisfied or waived by the Lenders (and the obligation of each Lender to make a Delayed Draw Loan on the occasion of each of the initial Borrowing and each subsequent Borrowing hereunder is subject to the satisfaction or waiver by the Lenders of such conditions precedent):

(a) DIP Budget. The Lenders shall have received the Approved Budget. The projections shall be certified by a Responsible Officer of the Administrative Borrower, which certifications, shall among other things, certify that such projections have been prepared in good faith based on reasonable assumptions, and that such projections contain no statements or conclusions which are based upon or include information known to the Debtors to be misleading in any material respect or which fail to take into account material information known to the Debtors regarding the matters reported therein.

(b) Final Order. The Bankruptcy Court shall have entered the Final Order, the operation or effect of which has not been stayed, modified, vacated, reversed or amended. The Final Order shall be entered upon proper notice as may be required by the Bankruptcy Code, the Federal Rules of Bankruptcy Procedure and any applicable local bankruptcy rules.

(c) Other Bankruptcy Matters.

(i) The Debtors shall have filed a motion with the Bankruptcy Court seeking authority to retain the Investment Banker (as defined in the Commitment Letter and attached to the Interim Order).

(ii) The Interim Order shall not have been reversed, modified, amended, stayed or vacated in any manner without the consent of the Lenders, and the Debtors shall be in compliance in all respects with the Interim Order.

(iii) The Debtors shall have provided evidence to the Bankruptcy Court that the Debtors' Chief Executive Officer and Chief Financial Officer shall have resigned from all officer and director roles with Atari, S.A.

(d) No Appointment of Trustee, Examiner or Other Disinterested Person. No trustee, examiner or other disinterested Person with expanded powers pursuant to section 1104(c) of the Bankruptcy Code, shall have been appointed or designated with respect to the Debtors or their business, properties or assets and no motion shall be pending seeking any such relief.

(e) Material Adverse Change. No occurrence, development or change shall have occurred after the Petition Date that, in the commercially reasonable judgment of the Lenders, has had or could reasonably be expected to have a Material Adverse Effect.

(f) Reserved.

(g) No Default; Representations and Warranties. At the time of the Effective Date (i) there shall exist no Default or Event of Default, and none would result from the occurrence of the Effective Date, (ii) all representations and warranties contained herein and in each other Loan Document shall be true and correct in all material respects as of the Effective Date (it being understood and agreed that any representation or warranty which by its terms is made as of a specified date shall be required to be true and correct only as of such specified date), *provided, however*, that notwithstanding the foregoing, any representation and warranty which by its terms is qualified as to "materiality" or "material adverse effect" or similar qualification, shall be true and correct in all respects as of the Effective Date, and (iii) the Debtors shall have complied in all material respects with all of its obligations under the Commitment Letter.

(h) Litigation. There shall exist no action, suit, investigation, litigation or proceeding (other than the Case and those matters previously disclosed to the Lender) affecting the Debtors pending or threatened before any Governmental Authority that (i) would reasonably be likely to have a Material Adverse Effect or (ii) other than with respect to objections which have been overruled by the Final Order, if applicable, purports to affect the legality, validity or enforceability of any Loan Document or the consummation of the Transaction.

(i) Payment of Fees. The Debtors shall have paid (or shall be contemporaneously paying from the proceeds of the Loans) all accrued reasonable fees of the Lenders and all accrued reasonable costs and expenses of the Lenders (including, without limitation, the accrued reasonable fees and expenses of Bracewell & Giuliani LLP and all filing fees), and of the Collateral Agent (including, without limitation, the accrued reasonable fees and expenses of counsel to the Collateral Agent and all filing fees).

(j) Valid Liens; Financing Statements. The Liens of the Secured Parties in the Collateral shall be fully perfected and have the priority described in the Final Order or, pending entry of the Final Order, the Interim Order. The Lenders shall have received evidence satisfactory to them that Uniform Commercial Code financing statements have been filed against each Debtor in the appropriate jurisdictions to perfect the Secured Parties' Lien on the Collateral.

(k) Approvals. Except for any Governmental Authorizations required in connection with the Lenders' exercise of remedies under the Loan Documents, all Governmental Authorizations and member and third party consents and approvals necessary in connection with the Transaction shall have been obtained (without the imposition of any conditions that are not acceptable to the Lenders) and shall remain in full force and effect.

(l) Proof of Insurance. The Debtors shall have provided or caused to be provided to the Lenders satisfactory proof of the type of insurance maintained as required under Section 5.01(d) and proof that the Lenders have been named as additional insured as to any liability policy and loss payee as to any property policy.

(m) Execution of Agreement; Notes. The Debtors shall have delivered to the Lenders their executed counterpart of this Agreement and, for the account of each of the Lenders that has requested same, the appropriate Notes executed by the Debtors, in each case in the amount, maturity and as otherwise provided herein.

(n) Security Documents. The Debtors shall have delivered to the Lenders and the Collateral Agent executed and effective copies of all Collateral Documents requested by the Lenders or Collateral Agent in respect of the Collateral in form and substance reasonably satisfactory to the Lenders and Collateral Agent.

(o) Corporate Documents; etc. The Debtors shall have delivered each of the items referred to in clauses (i), (ii), (iii) and (iv) below, each in form and substance satisfactory to the Lenders:

(i) a copy of the certificate of incorporation of each Debtor, certified by the Secretary or Assistant Secretary of the Administrative Borrower (or, to the extent that the

Administrative Borrower does not have such officers, an officer, director or manager that is an authorized signatory thereof for such purposes);

(ii) a certificate of the Secretary or Assistant Secretary of the Administrative Borrower (or, to the extent that the Administrative Borrower does not have such officers, an officer, director or manager that is an authorized signatory thereof for such purposes) dated the Effective Date and certifying:

(A) that attached thereto is a true and complete copy of the bylaws (or other equivalent governing document) of each Debtor as in effect on the Effective Date and at all times since a date prior to the date of the resolutions described in clause (B) below,

(B) that attached thereto is a true and complete copy of resolutions duly adopted by the board of directors (or equivalent governing body) of each Debtor authorizing the execution, delivery and performance of the Loan Documents to which such Debtor is a party and the borrowings hereunder, and that such resolutions have not been modified, rescinded or amended and are in full force and effect on the Effective Date,

(C) that the certificate of incorporation of each Debtor has not been amended,

(D) as to the incumbency and specimen signature of each officer of each Debtor executing any Loan Document or any other document delivered in connection herewith on behalf of each Debtor;

(iii) a certificate of a director or another officer as to the incumbency and specimen signature of the Secretary or Assistant Secretary or similar officer of the Administrative Borrower executing the certificate pursuant to clause (ii) above; and

(iv) a certificate from the appropriate Governmental Authority certifying as to the good standing of each Debtor in the jurisdiction of its incorporation.

(p) Bank Regulatory Documents. The Lenders shall have received, to the extent requested, on or before the date which is five (5) Business Days prior to the Effective Date, all documentation and other information required by bank regulatory authorities under applicable "*know your customer*" and anti-money laundering rules and regulations including the Patriot Act.

SECTION 3.02. Conditions Precedent to Each Borrowing. The obligation of each Lender to make a Loan shall be subject to the further conditions precedent on the date of each Borrowing unless waived by the Lenders:

(a) No Default, Representations and Warranties. At the time of the Borrowing (i) there shall exist no Default or Event of Default, and none would result from such Borrowing or from the application of proceeds thereof, and (ii) all representations and warranties contained herein and in each other Loan Document shall be true and correct in all material respects with the same effect as though such representations and warranties had been made on the date of such

Borrowing (it being understood and agreed that any representation or warranty which by its terms is made as of a specified date shall be required to be true and correct in all material respects only as of such specified date), *provided however*, that notwithstanding the foregoing, any representation and warranty which by its terms is qualified as to "materiality" or "material adverse effect" or similar qualification, shall be true and correct in all respects as if the date of such Borrowing.

(b) Fees, etc. The Debtors shall have paid (or shall be contemporaneously paying from the proceeds of the Loans) all accrued fees of the Lenders and all accrued reasonable expenses of the Lenders (including, without limitation, the accrued reasonable fees and expenses of Bracewell & Giuliani LLP and all recording taxes and fees) and of the Collateral Agent (including, without limitation, the accrued reasonable fees and expenses of counsel to the Collateral Agent and all recording taxes and fees).

(c) Officer's Certificate. The Lenders shall have received a certificate, in form and substance satisfactory to the Lenders, dated the date of the Borrowing, and signed by a Responsible Officer of the Administrative Borrower, certifying on behalf of the Debtors that all of the conditions set forth in this Section 3.02 have been satisfied on such date.

ARTICLE IV. **REPRESENTATIONS AND WARRANTIES**

SECTION 4.01. Representations and Warranties. Each Debtor, jointly and severally, represents and warrants as follows:

(a) Organization. It (i) is corporation duly organized, validly existing and in good standing under the laws of the jurisdiction of its incorporation, (ii) is duly qualified and in good standing as a corporation in each other jurisdiction in which it owns or leases property or in which the conduct of its business requires it to so qualify or be licensed except where the failure to so qualify or be licensed could not be reasonably likely to have a Material Adverse Effect and (iii) has all requisite corporate power and authority (including, without limitation, all material Governmental Authorizations) to own or lease and operate its properties and to carry on its business as now conducted and as proposed to be conducted.

(b) Location. Set forth on Schedule 4.01(b) hereto is each Debtor's legal name and jurisdiction of formation, the address of its principal place of business and its U.S. taxpayer identification number. The copy of the certificate of incorporation of each Debtor and each amendment thereto provided pursuant to Section 3.01(o) is a true and correct copy of each such document, each of which is valid and in full force and effect.

(c) Ownership Information. Set forth on Schedule 4.01(c) hereto is (i) the organizational chart of the Debtors and their Affiliates (other than Alden or any shareholder of public Equity Interests of the Parent) and (ii) the complete and accurate list of each Debtor's Equity Interests as of the date hereof, including the number authorized and the number outstanding. All of the outstanding Equity Interests in the Debtors have been validly issued, are fully paid and non-assessable and are owned, directly or indirectly, by Atari, S.A. free and clear of all Liens other than those arising out of the Parent Loan Agreement.

(d) Authorization; Non-Contravention. Upon entry of the Final Order, the execution, delivery and performance by the Debtors of each Loan Document, and the consummation of the Transaction, are within such Debtor's corporate powers, have been duly authorized by all necessary corporate action and do not (i) contravene such Debtor's bylaws or other constituent documents, (ii) violate any law, rule, regulation (including, without limitation, Regulation X of the Board of Governors of the Federal Reserve System), order, writ, judgment, injunction, decree, determination or award applicable to or binding on it (except to the extent any such violation would not reasonably be expected to have a Material Adverse Effect), (iii) conflict with or result in the breach of, or constitute a default or require any payment to be made under, a Contractual Obligation of such Debtor (except to the extent such conflict, breach, default or payment could not reasonably be expected to have a Material Adverse Effect) or (iv) except for the Liens created under the Loan Documents or the Final Order, and the Liens arising out of the Parent Loan Agreement, result in or require the creation or imposition of any Lien upon or with respect to any of the Properties of the Debtors. As of the Effective Date, no Debtor is in violation of any such law, rule, regulation, order, writ, judgment, injunction, decree, determination or award or in breach of any contract, loan agreement, indenture, mortgage, deed of trust, lease or other instrument, the violation or breach of which could be reasonably likely to have a Material Adverse Effect.

(e) Consents and Approvals. No Governmental Authorization, and no notice to, filing with, or consent or approval of any other third party is required for (A) the due execution, delivery, recordation, filing or performance by the Debtors of any Loan Document or for the consummation of the Transaction, (B) the grant by the Debtors of the Liens granted by it pursuant to the Collateral Documents and the Orders, (C) the perfection or maintenance of the Liens created under the Collateral Documents and the Orders (including the priority thereof) or (D) the exercise by the Secured Parties of their rights under the Loan Documents or the remedies in respect of the Collateral pursuant to the Collateral Documents and the Orders, except for (1) the entry of the Final Order and those authorizations, approvals, actions, notices and filings required by the Bankruptcy Court and (2) authorizations, approvals, actions, notices and filings required by securities, regulatory or applicable law in connection with an exercise of remedies or (3) those Governmental Authorizations, notices, filings with, or consents of, any other third party, the failure of which to obtain and maintain could not reasonably be expected to result in a Material Adverse Effect.

(f) Binding Agreement. This Agreement has been, and each other Loan Document when delivered hereunder will have been, duly executed and delivered by the Debtors. This Agreement is, and each other Loan Document when delivered hereunder will be, the legal, valid and binding obligation of the Debtors, enforceable against the Debtors in accordance with its terms on a joint and several basis, except as the enforcement thereof may be limited by applicable bankruptcy, insolvency or similar laws affecting the enforcement of rights of creditors generally and except to the extent that enforcement of rights and remedies set forth therein may be limited by equitable principles (regardless of whether enforcement is considered in a court of law or a proceeding in equity).

(g) Litigation. Other than the Case and except as set forth on Schedule 4.01(g), there is no action, suit, investigation, litigation, proceeding or Environmental Action affecting the Debtors pending or to the Debtors' knowledge, threatened in writing before any Governmental

Authority or arbitrator that (i) could reasonably be likely to have a Material Adverse Effect or (ii) purports to affect the legality, validity or enforceability of any Loan Document or the consummation of the Transaction.

(h) Reserved.

(i) Accuracy of Information. All information heretofore or contemporaneously furnished to the Initial Lender and the other Lenders by or on behalf of the Debtors in connection with any Loan Document or any transaction contemplated hereby (including the Transactions), taken together as a whole with all other information with which the Initial Lender and the other Lenders have previously been furnished, is complete and correct in all material respects, as of the date such information was furnished and as of the Effective Date, and did not contain any untrue statement of a material fact or omit to state any material fact necessary to make any information not misleading in light of the circumstances under which furnished provided that to the extent any such information was based upon or constitutes a forecast or projection or pro forma adjustment, each Debtor represents only that it acted in good faith and utilized reasonable assumptions and due care in the preparation of such information, report, financial statement, exhibit or schedule (it being understood that forecasts are subject to uncertainties and contingencies and that no representation or warranty is given that any forecast will be realized).

(j) Margin Stock. The Debtors are not engaged in the business of extending credit for the purpose of purchasing or carrying Margin Stock, and no proceeds of any Loan will be used to purchase or carry any Margin Stock or to extend credit to others for the purpose of purchasing or carrying any Margin Stock.

(k) Investment Company Act. No Debtor is an "*investment company*," as defined in or subject to regulations under the Investment Company Act of 1940, as amended.

(l) Security Interest. The Collateral Documents and the Final Order create in favor of the Secured Parties a valid and, together with such filings and other actions, perfected security interest in the Collateral, securing the payment of the Obligations and having the priority described in the Final Order. Each Debtor is the legal and beneficial owner of its respective Collateral free and clear of any Lien, except for the liens and security interests created or permitted under the Loan Documents, Permitted Liens, and Liens arising out of the Parent Loan Agreement.

(m) ERISA Etc. (i) No ERISA Event has occurred or is reasonably expected to occur with respect to any Plan that has had or is reasonably expected to have a Material Adverse Effect.

(i) Neither the Debtors nor any of their ERISA Affiliates have incurred or are reasonably expected to incur any Withdrawal Liability to any Multiemployer Plan except for Withdrawal Liability that could not reasonably be expected to have a Material Adverse Effect.

(ii) Neither the Debtors nor any of their ERISA Affiliates have been notified by the sponsor of a material Multiemployer Plan that such Multiemployer Plan is in reorganization or has been terminated, within the meaning of Title IV of ERISA, and no

such Multiemployer Plan is reasonably expected to be in reorganization or to be terminated, within the meaning of Title IV of ERISA.

(n) Intellectual Property. Set forth on Schedule 4.01(n) hereto is a complete and accurate list of all registered Intellectual Property and material unregistered Intellectual Property that the Debtors own or are licensed or otherwise have the exclusive full legal right to use and that are reasonably necessary for the operation of their respective businesses, without conflict with the rights of any other Person with respect thereto.

(o) Tax Matters. Each Debtor has filed, has caused to be filed or has been included in all Tax returns (Federal, state, local and foreign) required to be filed, other than those Tax returns where the failure to file such returns could not be reasonably expected to have a Material Adverse Effect, and has paid all federal income Taxes and all other material Taxes shown thereon to be due and payable, together with applicable interest and penalties (other than Taxes contested in good faith).

(i) No issues have been raised by the Internal Revenue Service in respect of Federal income Tax returns for years for which the expiration of the applicable statute of limitations has not occurred by reason of extension or otherwise that, in the aggregate, could be reasonably likely to have a Material Adverse Effect.

(ii) No issues have been raised by any state, local or foreign Governmental Authority, in respect of the returns for years for which the expiration of the applicable statute of limitations has not occurred by reason of extension or otherwise, that, in the aggregate, could be reasonably likely to have a Material Adverse Effect.

(p) Owned Real Property. Set forth on Schedule 4.01(p) hereto is a complete and accurate list of all real property owned by each Debtor, showing as of the date hereof the street address, county or other relevant jurisdiction, state and record owner thereof. Each Debtor has good, indefeasible and marketable fee simple title to such real property, free and clear of all Liens, other than Permitted Liens and Liens permitted pursuant to Section 5.02(a).

(q) Leased Real Property. Set forth on Schedule 4.01(q) hereto is a complete and accurate list of all leases of real property under which each Debtor is the lessee, showing as of the date hereof the street address, county or other relevant jurisdiction, state, lessor and lessee thereof. Each such lease is the legal, valid and binding obligation of the parties thereto, enforceable in accordance with its terms, except as the enforcement thereof may be limited by applicable bankruptcy, insolvency or similar laws affecting the enforcement of rights of creditors generally and except to the extent that enforcement of rights and remedies set forth therein may be limited by equitable principles (regardless of whether enforcement is considered in a court of law or a proceeding in equity).

(r) Material Contracts. Except as set forth on Schedule 4.01(r), each Material Contract (i) has been duly authorized, executed and delivered by each Debtor party thereto and, to Debtors knowledge each other party thereto, and has not been amended or otherwise modified from the form previously delivered to the Initial Lender and the other Lenders, except in accordance with the terms of this Agreement, (ii) is in full force and effect and is binding upon

and enforceable against all parties thereto in accordance with its terms, except as the enforcement thereof may be limited by applicable bankruptcy, insolvency or similar laws affecting the enforcement of rights of creditors generally and except to the extent that enforcement of rights and remedies set forth therein may be limited by equitable principles (regardless of whether enforcement is considered in a court of law or a proceeding in equity), and (iii) to the best knowledge of the Debtors, there exists no material default under any Material Contract by any party thereto (other than by the applicable Debtors as a result of the filing, commencement and continuation of the Case).

(s) Accounts. The Debtors have no deposit or securities accounts other than as set forth in Schedule 4.01(s).

(t) Material Adverse Effect. Since the Effective Date, there has been no event or circumstance, either individually or in the aggregate, that has had or could reasonably be expected to have a Material Adverse Effect.

(u) Violation of Law. No Debtor is in violation of any applicable law, rule, regulation, order, writ, judgment, injunction, decree, determination or award binding on it, the violation or breach of which could be reasonably likely to have a Material Adverse Effect.

(v) Reorganization Matters.

(i) The Case was commenced on the Petition Date in accordance with applicable law and proper notice thereof and of the hearings for the approval of the Final Order has been given. Each Debtor shall give, on a timely basis as specified in the Final Order or, pending entry of the Final Order, the Interim Order, all notices required to be given to all parties specified in the Final Order or such Interim Order.

(ii) After the entry of the Final Order or, pending entry of the Final Order, the Interim Order, and pursuant to and to the extent provided in the Final Order or such Interim Order, the Obligations will constitute allowed administrative expense claims in the Case having priority over all administrative expense claims and unsecured claims against the Debtors, now existing or hereafter arising, of any kind whatsoever, as provided under Section 364(c)(1) of the Bankruptcy Code, subject, after the entry of the Final Order, as to priority only, to the Carve-Out.

(iii) After entry of the Final Order or, pending entry of the Final Order, the Interim Order, and pursuant to and to the extent provided in the Final Order or such Interim Order, the Obligations will be secured by a valid and perfected Lien on all of the Collateral and have the priority set forth in the Final Order or such Interim Order and be subject, after the entry of the Final Order, as to priority only, to the Carve-Out.

(iv) Notwithstanding the provisions of Section 362 of the Bankruptcy Code, and subject to the applicable provisions of the Final Order or, pending entry of the Final Order, the Interim Order, upon the maturity (whether by acceleration or otherwise) of any of the Obligations, the Lenders shall be entitled to immediate payment of such Obligations and, upon seven (7) Business Days prior written notice to the Debtors, to

enforce the remedies provided for hereunder or under applicable law, without further application to or order by the Bankruptcy Court.

(w) Insurance. Schedule 4.01(w) sets forth a true and complete list of all insurance maintained by the Debtors as of the Effective Date. Such insurance is in full force and effect and all premiums have been duly paid. The properties of the Debtors are insured with financially sound and reputable insurance companies not Affiliates of the Debtors, in such amounts, with such deductibles and covering such risks as are customarily carried by companies engaged in similar businesses and owning similar properties in localities where the Debtors operate.

ARTICLE V. COVENANTS

SECTION 5.01. Affirmative Covenants. Until a Repayment Event has occurred, each Debtor will:

(a) Compliance with Laws, Etc. Comply with all applicable laws, rules, regulations and orders binding on it, such compliance to include, without limitation, compliance with ERISA and the Racketeer Influenced and Corrupt Organizations Chapter of the Organized Crime Control Act of 1970, other than any such non-compliance which could not reasonably be expected to have a Material Adverse Effect.

(b) Payment of Taxes, Etc. Subject to approval of the Bankruptcy Court in the Case, (x) Pay and discharge before the same shall become delinquent, (i) all Taxes, assessments and governmental charges or levies imposed upon it or upon its property and (ii) all lawful claims that, if unpaid, might by law become a Lien upon its property (unless, in the case of (i) and (ii), the failure to do so could not reasonably be expected to have a Material Adverse Effect); *provided, however*, that the Debtors shall not be required to pay or discharge any such Tax, assessment, charge or claim that is being contested in good faith and by proper proceedings and only to the extent that adequate reserves are being maintained; and (y) deliver to the Lenders evidence of such payment and discharge (or a certificate indicating no such payment was due and payable) on a weekly basis in form and substance reasonably acceptable to the Lenders.

(c) Reserved.

(d) Maintenance of Insurance. Maintain insurance consistent with the policies set forth on Schedule 4.01(w).

(e) Preservation of Existence, Etc. Preserve and maintain its existence as a corporation, its good standing in its state of incorporation and its material rights, franchises, licenses, permits, copyrights, trademarks and patents.

(f) Visitation Rights. Upon reasonable notice, at any reasonable time and from time to time during normal business hours, permit the Lenders, or any agents or representatives thereof, to examine and make copies of and abstracts from the records and books of account of, and visit the properties of, the Debtors, and to discuss the affairs, finances and accounts of the Debtors with any of its officers or directors and with its independent certified public accountants.

(g) Keeping of Books. Keep proper books of record and account in accordance with IFRS.

(h) Maintenance of Properties, Etc. Maintain, preserve and protect (or cause to be maintained, preserved or protected) all of its properties, assets and equipment necessary in the conduct of its business in good working order and condition, ordinary wear and tear excepted.

(i) DIP Budget. Use the Loans in accordance with the Approved Budget and the Debtors shall otherwise comply in all respects therewith except to the extent of the variance permitted in Section 5.02(s). The initial Approved Budget shall depict, on a weekly basis, cash revenues, receipts, expense and disbursements and other information for the first 13 week period from the Effective Date and shall be approved by, and in form and substance satisfactory to, the Lenders in their discretion. The Approved Budget shall be updated, modified, or supplemented (with the consent and/or at the request of the Lenders) from time to time, but in any event not less than on a monthly basis (with the delivery to the Lenders on or before the 20th day of each calendar month), and each such updated, modified or supplemented budget shall be approved by, and in form and substance satisfactory to the Lenders in their discretion and no such updated, modified or supplemented budget shall be effective until so approved and once so approved shall be deemed an Approved Budget; *provided*, however, that in the event that the Lenders, on the one hand, and the Debtors, on the other hand, cannot agree as to an updated, modified or supplemented budget, the Debtors shall continue to operate under the then existing Approved Budget regardless of whether the period covered thereby has terminated until such time that the Lenders and the Debtors can agree on any such updated, modified or supplemented budget (and such existing Approved Budget shall remain in full force and effect, the breach of which shall, subject to Section 5.02(s), give rise to an Event of Default hereunder). Each Approved Budget delivered to the Lenders shall be accompanied by such supporting documentation as reasonably requested by the Lenders.

(j) Approved Budget Variance Report. As soon as available, and in any event, no later than 12:00 p.m. (New York City time) on each Wednesday of each week, the Debtors shall deliver a variance report (i) reconciling Permitted Expenditures against actual expenses and disbursements as compared to the amounts set forth in the most recent Approved Budget (x) for the prior week, (y) the prior two week period, and (z) for the cumulative period from the Petition Date to the end of the prior week and (ii) noting therein all variances, on a line-item basis, from amounts set forth for such period in the Approved Budget, and shall include explanations for all material variances, in each case as certified by the chief financial officer of the Administrative Borrower; *provided* that the delivery of such variance report shall not relieve the Debtors from their obligation to comply with any provision of the Loan Documents, the Interim Order and the Final Order.

(k) Advance Notice of Pleadings. Promptly, but no later than five days before the filing thereof with the Bankruptcy Court, provide copies of all pleadings, orders and stipulations to the Lenders.

(l) Further Assurances. Promptly, upon reasonable request by the Lenders, do, execute, acknowledge, deliver, record, re-record, file, re-file, register and re-register any and all such further acts, deeds, conveyances, pledge agreements, security agreements, mortgages,

estoppel and consent agreements of lessors (delivery of such agreements of lessors of non-Affiliates of the Debtors shall only require Debtors to use their commercially reasonable efforts), assignments, financing statements and continuations thereof, termination statements, notices of assignment, transfers, certificates, assurances and other instruments as the Lenders may reasonably require from time to time in order to (i) carry out more effectively the purposes of the Loan Documents, (ii) to the fullest extent permitted by applicable law, subject the Debtors' properties, assets, rights or interests to the Liens now or hereafter intended to be covered by any of the Collateral Documents and the Orders, (iii) perfect and maintain the validity, effectiveness and priority of any of the Collateral Documents and the Orders, and any of the Liens intended to be created thereunder.

(m) Deposit of Revenues. Cause all revenues and other amounts payable to it to be deposited into a deposit account in which the Lenders have been granted a valid and perfected first priority security interest.

(n) Performance of Obligations. Perform all of its obligations under the terms of each of its Material Contracts, except (i) where the performance of such agreements or instruments is prohibited or restricted by the Bankruptcy Code, the Bankruptcy Court, this Agreement or the other Loan Documents or (ii) such non-performances as could not, either individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

(o) Use of Proceeds. Use the proceeds of the Loans only as provided in Section 2.10. No part of the proceeds of any Loan will be used, whether directly or indirectly, for any purpose that entails a violation of any of the Regulations of the Board of Governors of the Federal Reserve System of the United States of America, including Regulations T, U and X.

(p) Business Plan. No later than [March 22, 2013], the Debtors shall deliver a business plan, including projections (as well as other financial information requested by the Lenders), prepared by the Debtors in good faith based upon assumptions believed by the Debtors to be reasonable at the time made, is in form and substance satisfactory to the Lenders.

(q) Sale Motion; Plan of Reorganization. Comply with either of the following sub-clauses (i) or (ii):

(i) with respect to the sale of all or substantially all of the Debtors' assets, the Debtors shall file a motion with the Bankruptcy Court to (i) sell all or substantially all of their assets for a minimum amount necessary to satisfy all of the Debtors' Obligations, and (ii) approve a committed stalking horse bidder with a demonstrated financial ability reasonably acceptable to the Lenders to close a sale and approve bidding procedures under Section 363 of the Bankruptcy Code no later than [60]² days after the Petition Date, which motion and any agreement the Debtors seek approval of by the Bankruptcy Court shall be in form and substance acceptable to the Lenders (the "**Sale Motion**");

(ii) with respect to any plan of reorganization in lieu of a sale of all or substantially all of the Debtors' assets pursuant to clause (i) above, the Debtors shall file a disclosure statement, joint plan of reorganization and an executed and fully committed

² All timelines to be discussed.

plan sponsor agreement or executed term sheet for plan sponsorship no later than [60] days after the Petition Date, which disclosure statement, plan, agreement, term sheet and all of their respective attendant documents must be in form and substance acceptable to the Lenders and must provide for payment to the Lenders in full in cash on the effective date of the plan (collectively, the "***Plan of Reorganization***").

(r) Other Information; Weekly Updates. (i) Provide promptly upon the request of the Lenders, any such other information respecting the business, properties or Collateral, or the condition or operations, financial or otherwise, of the Debtors; and (ii) participate in a weekly phone call to be scheduled at a mutually agreeable time among the Lenders and the Debtors, to discuss (x) the business, properties or Collateral, or the condition or operations, financial or otherwise, of the Debtors, (y) the Debtors' sale process and/or plan sponsorship process, and (z) any material or anticipated material events in the Cases.

(s) Preservation of Collateral.

(i) Preserve, protect and take all further action that may be necessary, or that the Lenders may reasonably require, to preserve and protect the security interest in and the Lien on the Collateral granted or purported to be granted to the Lenders under the Collateral Documents and the Orders; and

(ii) Vigorously and diligently defend and take all further action that may be reasonably necessary to defend the security interest in and the Lien on the Collateral granted or purported to be granted to the Lenders under the Collateral Documents and the Orders against any Persons not party to this Agreement or any other Loan Documents.

SECTION 5.02. Negative Covenants. Until a Repayment Event has occurred, each Debtor will not at any time:

(a) Liens, Etc. Create, incur, assume or suffer to exist any Lien on or with respect to any of its properties of any character (including, without limitation, accounts) whether now owned or hereafter acquired or assign any accounts or other right to receive income, except for the following subject to the provisions of Final Order:

(i) Liens in existence on the Effective Date which are listed, and the property subject thereto described, in Schedule 5.02(a)(i) and any Lien granted as a replacement or substitution therefor pursuant to the Interim Order or the Final Order; *provided* that such Liens are not expanded to include other assets or to secure other obligations than those so listed and described therein and on Schedule 5.02(b)(i);

(ii) Liens created under any security documents entered into pursuant to, or related to, the Parent Loan Agreement;

(iii) Permitted Liens; and

(iv) Liens created under the Collateral Documents and the Orders.

The prohibition provided for in this Section 5.02(a) specifically includes, without limitation, any effort by the Debtors, any committee or any other party in interest in the Case, to prime any claims, Liens or interest of the Initial Lender, any of the other Lenders or the Collateral Agent (other than as expressly provided in the Orders) irrespective of whether such claims, Liens or interest may be "adequately protected".

(b) Debt. Create, incur, assume or suffer to exist any Debt, except:

(i) Debt in existence on the Effective Date which are listed in Schedule 5.02(b)(i), and which shall not be increased or otherwise modified without the consent of Required Lenders;

(ii) Debt under the Loan Documents;

(iii) to the extent constituting Debt, Debt in respect of performance bonds, bid bonds, appeal bonds, surety bonds, completion guarantees, indemnification obligations, obligations to pay insurance premiums, take or pay obligations and similar obligations incurred in the ordinary course of business and not in connection with Debt for borrowed money;

(iv) intercompany Debt among Debtors permitted pursuant to the Cash Management Order;

(v) Debt incurred in the ordinary course of business and consistent with past practices in respect of credit cards, credit card processing services, debit cards, stored value cards, purchase cards (including so-called "procurement cards" or "P-cards"), or cash management services; and

(vi) endorsements of negotiable instruments for collection.

Notwithstanding the foregoing, no Debt permitted hereunder shall be permitted to have an administrative expense claim status under the Bankruptcy Code that is senior to, or pari passu with, the superpriority administrative expense claims of the Lender, except and as, and to the extent, expressly set forth in the Orders.

(c) Change in Nature of Business. Make any material change in the nature of its business as carried on at the date hereof and activities reasonably incidental thereto except pursuant to the Sale Motion or the Plan of Reorganization.

(d) Mergers, Etc. Merge into or consolidate with any Person or permit any Person to merge into it except pursuant to the Sale Motion or the Plan of Reorganization.

(e) Sales of Assets. Permit any Asset Sales, except (i) pursuant to the Sale Motion or (ii) any disposition, whether by sales, licenses, abandonment or transfer, of inventory, with respect to which a notice and request for consent has been delivered to the Lenders at least three Business Days prior to any such disposition (if the DIP Lenders have not responded within three Business Days of a notice and request for consent, a consent shall be deemed to have been given).

(f) Investments in Other Persons. Make or hold any Investment in any Person, except:

(i) Investments expressly permitted in the Approved Budget;

(ii) Investments by the Debtors in Cash Equivalents;

(iii) Investments received in connection with the bankruptcy or reorganization of suppliers or customers and in settlement of delinquent obligations of, and other disputes with, customers arising in the ordinary course of business; and

(iv) Investments held on the Effective Date and described on Schedule 5.02(f);

(v) Investments consisting of (a) endorsements of negotiable instruments held for collection in the ordinary course of business, (b) lease, utility and other similar deposits in the ordinary course of business, and in each case, consistent with past practices;

(vi) Investments in any other Debtor existing on the Petition Date which shall not be modified in any way without the prior consent of Required Lenders; and

(vii) intercompany loans by and among the Debtors permitted pursuant to the Cash Management Order.

(g) Restricted Payments. Declare or pay any dividends, purchase, redeem, retire, defease or otherwise acquire for value any of its Equity Interests now or hereafter outstanding, return any capital to its members (or the equivalent Persons thereof) as such, make any distribution of assets, Equity Interests, obligations or securities to its members (or the equivalent Persons thereof) as such; provided that any Subsidiary of a Debtor may pay cash dividends to such Debtor.

(h) Amendments of Constitutive Documents. Amend its bylaws or other constitutive documents other than amendments that could not be reasonably expected to have a Material Adverse Effect.

(i) Accounting Changes. Make or permit any change in (i) accounting policies or reporting practices, except immaterial changes and except as permitted by IFRS or (ii) any Debtor's Fiscal Year.

(j) Prepayments, Etc. of Debt. Prepay, redeem, purchase, defease or otherwise satisfy prior to the scheduled maturity thereof in any manner, or make any payment in violation of any subordination terms of, any Debt.

(k) Partnerships; Formation of Subsidiaries, Etc. (i) Become a general partner in any general or limited partnership or joint venture or (ii) organize or acquire any Subsidiary.

(l) Amendment, Assignment, Etc. of Material Contracts. Cancel or terminate any Material Contract or consent to or accept any cancellation or termination thereof, amend or

otherwise modify any Material Contract or give any consent, waiver or approval thereunder, waive any default under or breach of any Material Contract, or agree in any manner to any other amendment, modification or change of any term or condition of any Material Contract, except as could not reasonably be expected to have a Material Adverse Effect.

(m) Transactions with Affiliates. Enter into or cause or permit to exist any arrangement, transaction or contract (including for the purchase, lease or exchange of property or the rendering of services) with any of its Affiliates (other than Alden), unless such arrangement, transaction or contract is:

(i) (A) on fair and reasonable terms no less favorable to a Debtor than it could obtain in an arm's-length transaction with a Person that is not an Affiliate and (B) of the kind which would be entered into by a prudent Person in the position of a Debtor with a Person that is not one of its Affiliates;

(ii) an arrangement, transaction or contract expressly permitted by the terms of this Agreement;

(iii) the payment of fees and indemnities to directors, officers, consultants and employees of the Debtors in the ordinary course of business;

(iv) any employment or severance agreements or arrangements entered into by the Debtors in the ordinary course of business;

(v) transactions between or among the Debtors otherwise permitted hereunder;

(vi) the payment of dividends permitted by Section 5.02(g); or

(vii) an Investment permitted by Section 5.02(f).

(n) Maintenance of Accounts. Establish or maintain any deposit account or securities account other than accounts in existence on the Effective Date.

(o) Chapter 11 Claims and Priorities. Incur, create, assume, suffer to exist or permit (a) any other superpriority administrative claim or (b) any Lien of any kind that, in any case, is senior to or pari passu with the Liens or the claims of the Lenders against the Debtors, other than, after entry of the Final Order, the Carve-Out.

(p) Limitation on Issuance of Equity Interests. Issue any Equity Interests.

(q) Limitation on Additional DIP and Exit Financing. Procure, solicit or enter into any agreement for any additional debtor in possession facility for borrowed money or exit facility for borrowed money that does not provide for the repayment in full of all Obligations under this Agreement.

(r) Capital Expenditures. Make any Capital Expenditures except as may be permitted in the Approved Budget.

(s) Variance. Demonstrate a variance in actual disbursements for Permitted Expenditures for the cumulative period from the Petition Date through the end of the most recently ended calendar week in excess of 110% of the amount allotted to Permitted Expenditures in the most recent Approved Budget for such cumulative period.

SECTION 5.03. Reporting Requirements. Until a Repayment Event has occurred, each Debtor will furnish to the Lenders:

(a) Default Notice. As soon as possible and in any event within one (1) Business Day after a Debtor obtains knowledge thereof, the occurrence of each Event of Default or any event, development or occurrence reasonably likely to have a Material Adverse Effect continuing on the date of such statement, a statement of a Responsible Officer of the Debtors setting forth details of such Event of Default or Material Adverse Effect and the action that the Debtors have taken and proposes to take with respect thereto.

(b) Financial Information; Reporting Requests. Promptly after the request therefor, any financial information other requests for information pertaining to the Debtors in accordance with the Final Order.

(c) Litigation. Promptly after the commencement thereof, notice of all actions, suits, litigation and proceedings before any Governmental Authority of the type described in Section 4.01(g).

(d) Agreement, Other Information Notices. Promptly upon execution thereof, copies of any Material Contract entered into by any Debtor after the date hereof;

(i) Promptly upon execution thereof, copies of any amendment, modification or waiver of any Material Contracts; *provided* that actual receipt of the foregoing through the Case administration shall satisfy this clause (ii);

(ii) Promptly upon filing with the Bankruptcy Court of any pleadings, motions, applications and other documents, notice of the same; *provided* that actual receipt of the foregoing through the Case administration shall satisfy this clause (iii); and

(iii) Promptly upon distribution to any Committee of any information related to the Case, notice of the same.

(e) ERISA.

(i) ERISA Events and ERISA Reports. (A) Promptly and in any event within ten (10) Business Days after a Debtor or any ERISA Affiliate knows or has reason to know that any ERISA Event has occurred that could reasonably be expected to result in liability in excess of \$10,000,000, a statement of a Responsible Officer of the applicable Debtor describing such ERISA Event and the action, if any, that such Debtor or such ERISA Affiliate has taken and proposes to take with respect thereto and (B) on the date any records, documents or other information must be furnished to the PBGC with respect to any Plan pursuant to Section 4010 of ERISA, a copy of such records, documents and information within ten (10) Business Days.

(ii) Plan Terminations. Promptly and in any event within ten (10) Business Days after receipt thereof by any Debtor or any ERISA Affiliate, copies of each notice from the PBGC stating its intention to terminate any Plan or to have a trustee appointed to administer any Plan.

(iii) Multiemployer Plan Notices. Promptly and in any event within ten (10) Business Days after receipt thereof by any Debtor or any ERISA Affiliate from the sponsor of a Multiemployer Plan, copies of each notice concerning (A) the imposition of Withdrawal Liability that could reasonably be expected to result in liability in excess of \$10,000,000 by any such Multiemployer Plan, (B) the reorganization or termination, within the meaning of Title IV of ERISA, of any such Multiemployer Plan that could reasonably be expected to result in liability in excess of \$10,000,000 or (C) the amount of liability incurred, or that may be incurred, by any Debtor or any ERISA Affiliate in connection with any event described in clause (A) or (B).

(f) Material DIP Budget Deviation. Promptly, and no later than three (3) Business Days after gaining knowledge thereof, a notice of any material variance, in the aggregate, in actual disbursements for Permitted Expenditures from the Approved Budget.

(g) Insurance.

(i) Promptly after a Debtor gains knowledge of the occurrence thereof, a report summarizing any changes in the insurance coverage of such Debtor.

(ii) Promptly after the occurrence thereof, notice of any Casualty Event or Event of Loss affecting a Debtor, whether or not insured, through fire, theft, other hazard, casualty involving a probable loss of \$250,000 or more.

(iii) Promptly after receipt thereof, copies of any cancellation or receipt of written notice of threatened cancellation of any property damage insurance required to be maintained under Section 5.01(d).

(h) Other Information. Such other information respecting the business, condition (financial or otherwise), operations, performance, properties or prospects of the Debtors as the Lenders may from time to time reasonably request.

ARTICLE VI. EVENTS OF DEFAULT

SECTION 6.01. Events of Default. If any of the following events ("*Events of Default*") shall occur and be continuing:

(a) Payment Defaults. The Debtors shall fail to (i) pay any principal of or interest on any Loan when the same shall become due and payable or (ii) make any other payment under any Loan Document within three (3) Business Days after the same shall become due and payable;

(b) Misrepresentation. Any representation, warranty, certification or other statement made by the Debtors (or any of their officers) under or in connection with any Loan Document shall prove to have been incorrect in any material respect (without duplication of materiality qualifiers contained herein) when made;

(c) Reserved;

(d) Covenants. Any Debtor shall fail to perform or observe any other term, covenant or agreement contained in any Loan Document or the Commitment Letter on its part to be performed or observed;

(e) Cross Default. After the Petition Date, any Debtor shall fail to pay any principal of, premium or interest on or any other amount payable in respect of any Debt in excess of \$100,000 or more of such Debtor (but excluding Debt outstanding under this Agreement) when the same becomes due and payable (whether by scheduled maturity, required prepayment, acceleration, demand or otherwise); or any other event shall occur or condition shall exist under any agreement or instrument relating to any such Debt and shall continue after the applicable grace period, if any, specified in such agreement or instrument, if the effect of such event or condition is to accelerate, or to permit the acceleration of, the maturity of such Debt or otherwise to cause, or to permit the holder thereof to cause, such Debt to become due and payable prior to the stated maturity thereof (other than (x) Debt that has been accelerated on the Petition Date and not reinstated, (y) any default arising as a result of the filing, commencement and continuation of the Case or (z) due to restrictions imposed by an order of the Bankruptcy Court or Bankruptcy Law);

(f) Judgments. One or more judgments or decrees shall be entered against any Debtor and such judgments and decrees either shall be final and non-appealable, shall not be vacated, discharged or stayed or bonded pending appeal for any period of sixty (60) consecutive days;

(g) The Case. The occurrence of any of the following in the Case:

(i) the bringing of a motion, taking of any action or the filing of any plan of reorganization or disclosure statement attendant thereto, in each case, by a Debtor in the Case, or the entry of any order by the Bankruptcy Court in the Case: (w) to obtain additional financing under Section 364(c) or (d) of the Bankruptcy Code not otherwise permitted pursuant to this Agreement; (x) to grant any Lien other than those set forth in Section 5.02(a) upon or affecting any Collateral; or (y) that requests or seeks authority for or that (in the case of an order entered by the Bankruptcy Court) approves or provides authority to take any other action or actions materially adverse to the Lenders or their rights and remedies hereunder or their interest in the Collateral;

(ii) the entry of an order amending, supplementing, reversing, staying, vacating or otherwise modifying the Loan Documents or any Order, without the prior written consent of the Required Lenders;

(iii) the payment of, or application by the Debtors for authority to pay, any pre-petition claim without the Required Lenders' prior written consent other than as provided

in the Orders or any other order in form and substance acceptable to the Required Lenders and as set forth in the Approved Budget or unless otherwise permitted under this Agreement;

(iv) the appointment of an interim or permanent trustee in the Case or the appointment of a receiver or an examiner under section 1104 of the Bankruptcy Code in the Case, in each case with expanded powers (beyond those set forth in sections 1106(a)(3) and 1106(a)(4) of the Bankruptcy Code) to operate or manage the financial affairs, the business, or reorganization of the Debtors or with the power to conduct an investigation of (or compel discovery from) any Lender; or the sale without the Required Lenders' consent of all or substantially all of the Debtors' assets either through a sale under section 363 of the Bankruptcy Code, through a confirmed Plan of Reorganization in the Case, or otherwise that does not provide for payment in full in cash of the Obligations and the termination of the Commitments;

(v) the dismissal of the Case, or the conversion of the Case from one under chapter 11 to one under chapter 7 of the Bankruptcy Code or the Debtors shall file a motion or other pleading seeking the dismissal of the Case under section 1112 of the Bankruptcy Code or otherwise;

(vi) the entry of an order by the Court granting relief from or modifying the automatic stay of section 362 of the Bankruptcy Code (x) to allow any creditor (other than the Lenders) to execute upon or enforce a Lien on any asset of any Debtor or (y) with respect to any Lien of or the granting of any Lien on any Collateral to any state or local environmental or regulatory agency or authority;

(vii) entry of an order granting any other superpriority claim or Lien equal to or superior in priority to that granted to the Collateral Agent for the benefit of the Secured Parties (other than those, after the entry of the Final Order, covered by the Carve-Out);

(viii) the commencement of any enforcement action by any material creditor of a Debtor, and with respect to any action by an unsecured creditor, such action remains undismissed or unstayed for thirty (30) days after commencement, except where any such action could not reasonably be expected to result in a Material Adverse Effect;

(ix) the commencement of any action (whether under Bankruptcy Rule 2004 or otherwise), litigation, contested matter or adversary proceeding or assertion of any setoff or offset by any Debtor against any Lender;

(x) the entry of an order in the Case avoiding or requiring disgorgement of any portion of the payments made on account of the Obligations owing under this Agreement or the other Loan Documents;

(xi) the failure of the Debtors to perform any of their obligations under any Order, or any violation of any of the terms of any Order;

(xii) the entry by any court with valid jurisdiction of an order or judgment in the Case modifying, limiting, subordinating, recharacterizing or avoiding the priority,

validity or amount of any Obligations owed to any Lender or the perfection, priority or validity of the Liens in favor of any Secured Party on any Collateral or imposing, surcharging or assessing against any Lender or its claims or any Collateral of any costs or expenses, whether pursuant to Section 506(c) of the Bankruptcy Code or otherwise;

(xiii) any Debtor files any application for approval or allowance of, or any order is entered approving or allowing, any administrative expense claim in the Case, having any priority over, or being pari passu with, the superadministrative priority of the Lenders and the Collateral Agent hereunder, under the Final Order or the Collateral Documents (other than those, after the entry of the Final Order, covered by the Carve-Out);

(xiv) a Debtor consents or supports, directly or indirectly, a filing of an application by any committee for approval or allowance of, or any order of the Bankruptcy Court is entered approving or allowing, any administrative expense claim in the Case, having any priority over, or being pari passu with, the super priority administrative claim of the Lender hereunder, under the Orders or the Collateral Documents (other than those, after the entry of the Final Order, covered by the Carve-Out) or any Debtor consents to, or supports, such claim;

(xv) except to the extent the Required Lenders support the motion or application in their sole and absolute discretion, any motion or application is filed by or on behalf of the Debtors in the Case seeking the entry of an order, or an order is entered in the Case, approving any subsequent debtor in possession facility for borrowed money or other extensions of credit unless such motion or applications and such order expressly provide for the indefeasible payment and complete satisfaction in full in cash of all Obligations prior to, or concurrently with, any initial borrowings or other extensions of credit under such subsequent facility;

(xvi) except to the extent the Required Lenders support the motion or application in their sole and absolute discretion, any motion or application is filed by or on behalf of any committee or other party in interest in the Case seeking the entry of an order, or an order is entered in the Case, approving any subsequent debtor in possession facility for borrowed money or other extensions of credit unless such motion or applications and such order expressly provide for the indefeasible payment and complete satisfaction in full in cash to the Lenders of all Obligations prior to, or concurrently with, any initial borrowings or other extensions of credit under such subsequent facility and either (i) the Debtors do not immediately and diligently oppose such application or (ii) an order is entered approving such subsequent debtor in possession facility for borrowed money or other extension of credit;

(xvii) any Debtor procures, solicits or enters into an agreement with respect to any additional debtor in possession facility for borrowed money or exit facility for borrowed money that does not provide for the repayment in full of all Obligations under this Agreement;

(xviii) any Debtor shall take any action, including, without limitation, the filing of a motion or an application in support of any of the foregoing clauses (i) – (xv) or any

Person other than the Debtors shall do so and such motion or application is not contested in good faith by the Debtors;

(xix) with respect to the sale of all or substantially all of the Debtors' assets pursuant to the Sale Motion:

(A) a bidding procedures order in respect of the Sale Motion shall not have been entered by the Bankruptcy Court within [75] days after the Petition Date in form and substance acceptable to the Required Lenders;

(B) an auction in respect of the Sale Motion shall not have been scheduled by order of the Bankruptcy Court and have taken place (unless there is no other qualified bidder other than the stalking horse bidder) within [90] days after the Petition Date; and

(C) any sale pursuant to the Sale Motion shall not have been (i) approved by an order of the Bankruptcy Court that provides for payment to the Lenders in full at the closing of the sale, that is in form and substance acceptable to the Lenders, and that is not subject to appeal, reconsideration or review, and (ii) consummated and the Lenders paid in full in cash, in each case, within [105] days after the Petition Date;

(xx) with respect to the filing and pursuing of the Plan of Reorganization in lieu of a sale of all or substantially all of the Debtors' assets pursuant to the Sale Motion:

(A) an order approving any related disclosure statement in form and substance acceptable to the Lenders shall not have been entered by the Bankruptcy Court within [105] days after the Petition Date;

(B) the Debtors shall have failed to establish the bar date for the filing of proofs of claim to be no later than [April 17, 2013];

(C) the Plan of Reorganization shall not have been confirmed by an order of the Bankruptcy Court in form and substance acceptable to the Lenders that is not subject to appeal, reconsideration or review within [135] days after the Petition Date; and

(D) the Plan of Reorganization shall not have been consummated, and the Lenders paid in full, within [150] days after the Petition Date;

(xxi) the Bankruptcy Court (or other court of competent jurisdiction) shall have made a finding that the Debtors do not have a valid and enforceable right to use all Intellectual Property necessary for the conduct of their business as conducted as of the Petition Date;

(xxii) a claim has been asserted and is pending, or to the knowledge of any Debtor is threatened in writing, challenging the use of any such Intellectual Property by any Debtor or the validity or enforceability of any such Intellectual Property or alleging

that the conduct of the business of any Debtor infringes, misappropriates or otherwise violates the Intellectual Property rights of any other person, which, in each case would reasonably be likely to have a Material Adverse Effect; or

(xxiii) the Debtors shall have failed to file a motion, within 60 days after the Petition Date, extending the deadline by which the Debtors must assume or reject unexpired leases of real property to a date that is at least 120 days after the Petition Date;

(h) Invalidity. Any provision of any Loan Document after delivery thereof pursuant to Section 3.01 or 5.01(l) shall for any reason (except as a result of acts or omissions of the Lenders) cease to be valid and binding on or enforceable against the Debtors or any Debtor shall so state in writing;

(i) Collateral. Any Collateral Document or financing statement after delivery thereof pursuant to Section 3.01 or 5.01(l) shall for any reason (other than pursuant to the terms thereof) cease to create a valid and perfected first senior super-priority lien on and security interest in any material portion of the Collateral purported to be covered thereby;

(j) Change of Control. A Change of Control shall have occurred;

(k) ERISA. (i) Any ERISA Event shall have occurred with respect to a Plan and the sum (determined as of the date of occurrence of such ERISA Event) of the Insufficiency of such Plan and the Insufficiency of any and all other Plans with respect to which an ERISA Event shall have occurred and then exist (or the liability of any Debtor and the ERISA Affiliates related to such ERISA Event) could reasonably be expected to have a Material Adverse Effect;

(i) any Debtor or any ERISA Affiliate shall have been notified by the sponsor of a Multiemployer Plan that it has incurred Withdrawal Liability to such Multiemployer Plan in an amount that, when aggregated with all other amounts required to be paid to Multiemployer Plans by such Debtor and the ERISA Affiliates as Withdrawal Liability (determined as of the date of such notification), could reasonably be expected to have a Material Adverse Effect;

(ii) any Debtor or any ERISA Affiliate shall have been notified by the sponsor of a Multiemployer Plan that such Multiemployer Plan is in reorganization or is being terminated, within the meaning of Title IV of ERISA, and as a result of such reorganization or termination the aggregate annual contributions of such Debtor and the ERISA Affiliates to all Multiemployer Plans that are then in reorganization or being terminated have been or will be increased over the amounts contributed to such Multiemployer Plans for the plan years of such Multiemployer Plans immediately preceding the plan year in which such reorganization or termination occurs by an amount that could reasonably be expected to have a Material Adverse Effect; or

(l) Loss Proceeds. The occurrence of a Casualty Event or an Event of Loss with respect to (A) all or a material portion of the Property or (B) all or a material portion of the Collateral.

Then,

(A) Upon the occurrence of any Termination Event or Event of Default, and in any such event, and at any time thereafter, if any Event of Default shall then be continuing, the Lenders and the Collateral Agent shall continue to have all rights and remedies available to them under this Agreement, the other Loan Documents and under applicable law, and notwithstanding the provisions of Section 362 of the Bankruptcy Code, without any application, motion or notice to, hearing before, or order from, the Bankruptcy Court, the Secured Parties, upon seven (7) Business Days prior written notice to the Debtors and its counsel and the U.S. Trustee (the "**Waiting Period**"), take any or all of the following actions, without prejudice to the rights of the Secured Parties to enforce their claims against the Debtors: (i) declare the principal of and any accrued interest in respect of all Loans and the Notes and all Obligations owing hereunder and thereunder to be, whereupon the same shall become, forthwith due and payable without presentment, demand, protest or other notice of any kind, all of which are hereby waived by the Debtors; (ii) terminate any outstanding Commitments; (iii) enforce all of the Liens and security interests created pursuant to the Collateral Documents and the Orders (including rights of setoff); and (iv) upon seven (7) Business Days prior written notice to the Debtors and any landlord, lienholder, licensor or other third party owner of any leased or licensed premises or Intellectual Property that an Event of Default under this Agreement has occurred and is continuing, the Secured Parties (a) may, unless otherwise provided in any separate agreement by and between the applicable landlord or licensor and the Secured Parties (the terms of which shall be reasonably acceptable to the parties thereto), enter upon any leased or licensed premises of the Debtors for the purpose of exercising any remedy with respect to the Collateral located thereon and (b) shall be entitled to all of the Debtors' rights and privileges as lessee or licensee under the applicable license and to use any and all trademarks, trade names, copyrights, licenses, patents or any other similar assets of the Debtors, which are owned by or subject to a Lien of any third party and which are used by the Debtors in their businesses, in either the case of clause (a) or (b) above without interference from lienholders or licensors thereunder, subject to such lienholders or licensors rights under applicable law; *provided, however*, that the Lenders shall pay only rent and additional rent, fees, royalties or other obligations of the Debtors that first arise after the Lenders' and/or Collateral Agent's written notice referenced above and that are payable during the period of such occupancy or use by the Lenders and the Collateral Agent, as the case may be, calculated on a *per diem* basis (nothing herein shall require the Debtors, the Lenders or the Collateral Agent to assume any lease or license under Bankruptcy Code Section 365(a) as a precondition to the rights afforded to the Lenders and the Collateral Agent in this paragraph). To the extent that any of the foregoing rights and remedies would otherwise be in violation of the automatic stay of Section 362 of the Bankruptcy Code, such stay shall be deemed modified, as set forth in the Final Order or, pending the entry of the Final Order, the Interim Order, to the extent necessary to permit the Secured Parties to exercise such rights and remedies. During the Waiting Period, the Debtors shall not use any Loan proceeds to pay any administrative expenses.

(B) The Bankruptcy Court shall retain exclusive jurisdiction with respect to all matters relating to the exercise of rights and remedies under this Agreement and the other Loan Documents and the Final Order or, pending the entry of the Final Order, the Interim Order. The Debtors shall be entitled to an emergency hearing and may seek Bankruptcy Court intervention at any scheduled hearing to determine or contest whether an Event of Default has in fact occurred and is continuing but shall have no other right to object, seek to delay or prevent the Secured Parties from exercising remedies.

(C) The Lenders or the Collateral Agent on the Lenders' behalf shall have the right to "credit bid" the allowed amount of the Loans during the sale of any of the Debtors' assets pledged as Collateral, including without limitation, sales occurring pursuant to section 363 of the Bankruptcy Code or included as part of any plan of reorganization subject to confirmation under section 1129(b)(2)(A)(iii) of the Bankruptcy Code.

ARTICLE VII. MISCELLANEOUS

SECTION 7.01. Amendments, Etc. Subject to clause (b) below, no amendment or waiver of any provision of this Agreement, the Notes or any other Loan Document, nor consent to any departure by the Debtors therefrom, shall in any event be effective unless the same shall be in writing and signed by the Debtors and the Required Lenders, and then such waiver or consent shall be effective only in the specific instance and for the specific purpose for which given; *provided, however*, that

(i) no amendment, waiver or consent shall, unless in writing and signed by the Debtors and all of the Lenders, do any of the following at any time:

(A) waive any of the conditions specified in Section 3.01 or Section 3.02;

(B) change (A) the definition of "*Required Lenders*" or (B) the number of Lenders or the percentage of (x) the Commitments or (y) the aggregate unpaid principal amount of the Loans that, in each case, shall be required for the Lenders or any of them to take any action hereunder or under any other Loan Document;

(C) release any material portion of the Collateral in any transaction or series of related transactions; or

(D) amend this Section 7.01, and

(ii) no amendment, waiver or consent shall, unless in writing and signed by the Debtors and the Required Lenders and each Lender specified below for such amendment, waiver or consent:

(A) increase the Commitments of a Lender without the consent of such Lender;

(B) reduce the principal of, or stated rate of interest on, the Loans owed to a Lender or any fees or any other amounts stated to be payable hereunder or under the other Loan Documents to such Lender without the consent of such Lender;

(C) postpone any date scheduled for any payment of principal of, or interest on, the Loans pursuant to Section 2.03 or 2.05 (other than as provided in the definition of "Stated Maturity" as of the date hereof) or any date fixed for any payment of fees hereunder in each case payable to a Lender without the consent of such Lender;

(D) impose any restrictions on the rights of a Lender under Section 7.07 without the consent of such Lender; or

(E) otherwise amend or modify any Collateral Document in a manner which disproportionately affects any Lender vis-à-vis any other Lender without the written consent of such Lender; *provided further* that no amendment, waiver or consent shall, unless in writing and signed by the Debtors and the Lenders required above to take such action, affect the rights or duties of the Lenders (or any successor administrative agent) under this Agreement or the other Loan Documents.

(b) Notwithstanding the other provisions of this Section 7.01, the Debtors and the Lenders may (but shall have no obligation to) amend or supplement the Loan Documents: (i) to cure any ambiguity, defect or inconsistency; (ii) to make any change that would provide any additional rights or benefits to the Lenders; or (iii) to make, complete or confirm any grant of Collateral permitted or required by this Agreement or any of the Collateral Documents or any release of any Collateral that is otherwise permitted under the terms of this Agreement and the Collateral Documents.

(c) If, in connection with any proposed amendment, waiver or consent, the consent of all of the Lenders, or all of the Lenders directly affected thereby, is required pursuant to this Section 7.01, and any such Lender refuses to consent to such amendment, waiver or consent as to which the Required Lenders have consented (any such Lender whose consent is not obtained as described in this Section 7.01 being referred to as a "**Non-Consenting Lender**"), then, so long as Alden is not a Non-Consenting Lender, at the Debtors' request and at the sole cost and expense of the Debtors, an Eligible Assignee shall be entitled (but shall have no obligation) to purchase from such Non-Consenting Lender, and such Non-Consenting Lender (by its acceptance of the benefits of the applicable Loan Documents) agrees that it shall sell and assign to such Eligible Assignee, all of the Loans and Commitments of such Non-Consenting Lender for an amount equal to the principal balance of all Loans held by the Non-Consenting Lender and all accrued interest and fees with respect thereto through the date of sale, *provided* that such Eligible Assignee consents to the proposed amendment, waiver or consent. Each Lender (by its acceptance of the benefits of the Loan Documents) agrees that, if it becomes a Non-Consenting Lender, it shall execute and deliver to Alden (or the administrative agent if appointed at such time) an Assignment and Acceptance to evidence such sale and purchase and shall deliver to Alden (or the successor administrative agent if appointed at such time) any Note (if the assigning

Lender's Loans are evidenced by Notes) subject to such Assignment and Acceptance; *provided, however*, that the failure of any Non-Consenting Lender to execute an Assignment and Acceptance shall not render such sale and purchase (and the corresponding assignment) ineffective.

SECTION 7.02. Notices, Etc.

(a) All notices and other communications provided for hereunder shall be either (x) in writing (including telegraphic, telecopy or electronic (including portable document format (pdf)) communication) and mailed, telegraphed, telecopied or delivered or (y) as and to the extent set forth in Section 7.02(b) and in the proviso to this Section 7.02(a), in an electronic medium and delivered as set forth in Section 7.02(b), if to the Debtors, to the Debtors in care of Atari, Inc., 475 Park Avenue South, 12th Floor, New York, NY 10016, Attention: Chief Financial Officer, Fax: 212.726.4214, E-mail: Robert.Mattes@atari.com (with a copy sent to Akin Gump Strauss Hauer & Feld LLP, 1333 New Hampshire Avenue, N.W., Washington, DC 20036-1564, Attention: Scott Alberino, Esq., Fax: 202.887.4288, E-mail: salberino@akingump.com; if to any Lender, at its Lending Office specified opposite its name on Schedule I hereto; if to the Collateral Agent, at its address at 2000 Avenue of the Stars, 9th Floor South, Los Angeles, CA 90067, Attention: Mark Martis, Fax: 310.246.3667, E-mail: mmartis@imperialcapital.com (with a copy, which shall not constitute notice, sent to Jeffrey D. Segal, A Professional Corporation 9200 Sunset Boulevard, Ninth Floor, Los Angeles, CA 90069, Attention: Jeffrey D. Segal, Esq., Fax: 310.788.3925, E-mail: jeff@segallaw.com; if to any other Lender, at its Lending Office specified in the administrative questionnaire delivered in conjunction with the Assignment and Acceptance pursuant to which it became a Lender; or, as to the Debtors or the Lenders, at such other addresses as shall be designated by such party in a written notice to the other parties and, as to each other party, at such other address as shall be designated by such party in a written notice to the Debtors and the Lenders; *provided, however*, that materials and information described in Section 7.02(b) shall be delivered to the Lenders in accordance with the provisions thereof or as otherwise specified to the Debtors by the Lenders. All such notices and other communications shall, when mailed, telegraphed, telecopied, or e-mailed, be effective when deposited in the mails, delivered to the telegraph company, transmitted by telecopier or sent by electronic communication, respectively, except that notices and communications to the Lenders pursuant to Articles II or III shall not be effective until received by the Lenders. Delivery by telecopier of an executed counterpart of a signature page to any amendment or waiver of any provision of this Agreement or the Notes shall be effective as delivery of an original executed counterpart thereof.

(b) Each Debtor hereby agrees that it will provide to the Lenders all information, documents and other materials that it is obligated to furnish to the Lenders pursuant to the Loan Documents, including, without limitation, all notices, requests, financial statements, financial and other reports, certificates and other information materials, but excluding any such communication that (i) relates to a request for a Borrowing, (ii) relates to the payment of any principal or other amount due under this Agreement prior to the scheduled date therefor, (iii) provides notice of any Default or Event of Default under this Agreement or (iv) is required to be delivered to satisfy any condition precedent to the effectiveness of this Agreement and/or any Borrowing thereunder (all such non-excluded communications being referred to herein collectively as "**Communications**"), by transmitting the Communications in an electronic/soft medium in a format acceptable to the Lenders to an electronic mail address specified by the

Lenders to the Debtors. In addition, each Debtor agrees to continue to provide the Communications to the Lenders in the manner specified in the Loan Documents but only to the extent requested by the Lenders.

(c) Each Lender agrees that the receipt of the Communications by such Lender at its e-mail address set forth above shall constitute effective delivery of the Communications to such Lender for purposes of the Loan Documents. Nothing herein shall prejudice the right of any Lender to give any notice or other communication pursuant to any Loan Document in any other manner specified in such Loan Document.

SECTION 7.03. No Waiver; Remedies. No failure on the part of any Lender to exercise, and no delay in exercising, any right hereunder or under any Note or any other Loan Document shall operate as a waiver thereof; nor shall any single or partial exercise of any such right preclude any other or further exercise thereof or the exercise of any other right. The remedies herein provided are cumulative and not exclusive of any remedies provided by law.

SECTION 7.04. Costs and Expenses.

(a) Other than with respect to Other Taxes which are governed solely by Section 2.08, each Debtor agrees to pay, within five (5) Business Days of receipt of a written invoice (containing summary detail and redacted to preserve privilege), incurred in connection with the consideration, investigation, negotiation, documentation, execution, consummation, delivery, administration, amendment and enforcement of any Order, this Agreement, the other Loan Documents and the documents and instruments referred to herein and therein and any amendment, waiver or consent relating hereto or thereto, and participation in the Case, including without limitation, (A) all reasonable due diligence, collateral review, transportation, computer, duplication, appraisal, audit, insurance, consultant, search, filing and recording fees and expenses and (B) the reasonable fees and expenses of counsel for the Lenders with respect thereto, with respect to advising the Lenders as to its rights and responsibilities, or the perfection, protection or preservation of rights or interests, under the Loan Documents, with respect to negotiations with the Debtors or with other creditors of the Debtors arising out of any Default or any events or circumstances that may give rise to a Default and with respect to presenting claims in or otherwise participating in or monitoring any bankruptcy, insolvency or other similar proceeding involving creditors' rights generally and any proceeding ancillary thereto) and (ii) all costs and expenses of each Lender in connection with the enforcement of the Loan Documents, whether in any action, suit or litigation, or any bankruptcy, insolvency or other similar proceeding affecting creditors' rights generally (including, without limitation, the reasonable fees and expenses of counsel for each Lender with respect thereto) (the "**Expenses**").

(b) Each Debtor agrees to indemnify, defend and save and hold harmless each Secured Party, each of their Affiliates and their respective officers, directors, employees, agents, trustees, representatives, attorneys and advisors (each, an "**Indemnified Party**") from and against, and shall pay on demand, any and all claims, damages, losses, liabilities and related expenses (including, without limitation, fees, disbursements and other charges of counsel) that may be incurred by or asserted or awarded against any Indemnified Party, in each case arising out of or in connection with or by reason of (including, without limitation, in connection with any investigation, litigation or proceeding (regardless of whether any Lender is a party thereto) or

preparation of a defense in connection therewith) (i) the Facility, the actual or proposed use of the proceeds of the Loans, the Loan Documents or any of the transactions contemplated thereby (including, without limitation, the Transaction), including the enforcement of any rights of the Lender, or (ii) the actual or alleged presence of Hazardous Materials on any property of the Debtors or any Environmental Action relating in any way to the Debtors or any property, except to the extent such claim, damage, loss, liability or expense is found in a final, non-appealable judgment by a court of competent jurisdiction to have resulted from such Indemnified Party's gross negligence or willful misconduct. In the case of an investigation, litigation or other proceeding to which the indemnity in this Section 7.04(b) applies, such indemnity shall be effective whether or not such investigation, litigation or proceeding is brought by the Debtors, their directors, members or creditors, any Indemnified Party or any other Person, whether or not any Indemnified Party is otherwise a party thereto and whether or not the Transaction is consummated. Each Debtor also agrees not to assert any claim against any Secured Party, any of their Affiliates, or any of their respective officers, directors, employees, agents, trustees, representatives, attorneys and advisors, on any theory of liability, for special, indirect, consequential or punitive damages arising out of or otherwise relating to the Facility, the actual or proposed use of the proceeds of the Loans, the Loan Documents or the Transactions.

(c) All unpaid Expenses shall constitute part of the Obligations and shall be secured by the Collateral and afforded all priorities and protections afforded to the Loans under the Orders, this Agreement and any other Loan Document.

(d) Without prejudice to the survival of any other agreement of the Debtors hereunder or under any other Loan Document, the agreements and obligations of the Debtors contained in Sections 2.06 and 2.08 and this Section 7.04 shall survive the payment in full of principal, interest and all other amounts payable hereunder and under any of the other Loan Documents.

SECTION 7.05. Right of Set-off. Upon the occurrence and during the continuance of any Event of Default, each Lender and each of their respective Affiliates is hereby authorized at any time and from time to time, to the fullest extent permitted by law, to set off and otherwise apply any and all deposits (general or special, time or demand, provisional or final) at any time held and other indebtedness at any time owing by such Lender or such Affiliate to or for the credit or the account of the Debtors against any and all of the Obligations of the Debtors now or hereafter existing under the Loan Documents, irrespective of whether such Lender shall have made any demand under this Agreement and although such Obligations may be unmatured. The rights of each Lender and their respective Affiliates under this Section 7.05 are in addition to other rights and remedies (including, without limitation, other rights of set-off) that such Lender and their respective Affiliates may have.

SECTION 7.06. Binding Effect. This Agreement shall become effective when it shall have been executed by the Debtors and the Lenders and thereafter shall be binding upon and inure to the benefit of the Debtors and each Lender and their respective successors and permitted assigns, except that the Debtors shall not have the right to assign their rights and obligations hereunder or any interest herein without the prior written consent of each Lender.

SECTION 7.07. Assignments and Participations.

(a) Each Lender may assign to one or more Eligible Assignees all or a portion of its rights and obligations under this Agreement (including, without limitation, all or a portion of its Commitment or Commitments, the Loans owing to it and the Note or Notes held by it) with, except with respect to an assignment to an Eligible Assignee described in clauses (a) and (b) of the definition thereof, so long as no Event of Default has occurred and is continuing, the prior written consent of the Debtors (such consent not to be unreasonably withheld or delayed; *provided*, however, that such consent shall be deemed given if the Debtors have not responded after three (3) Business Days advance notice of any assignment by a Lender); *provided, however*, each Lender shall sell, and such Eligible Assignee shall purchase, an equal pro rata share of such Lender's Loans and Commitments together; *provided, further*, that for so long as Alden is a Lender, the parties to each such assignment shall execute and deliver to Alden, for its acceptance and recording in the Register, an Assignment and Acceptance via an electronic settlement system acceptable to Alden (or, if previously agreed with Alden, manually), together with (A) any Note or Notes (if any) subject to such assignment (B) an administrative questionnaire and tax forms, if applicable.

(b) Upon such execution, delivery, acceptance and recording, from and after the effective date specified in such Assignment and Acceptance, (i) the assignee thereunder shall be a party hereto and, to the extent that rights and obligations hereunder have been assigned to it pursuant to such Assignment and Acceptance, have the rights and obligations of a Lender, as the case may be, hereunder and (ii) the Lender or assignor thereunder shall, to the extent that rights and obligations hereunder have been assigned by it pursuant to such Assignment and Acceptance, relinquish its rights (other than its rights under Sections 2.06, 2.08 and 7.04 to the extent any claim thereunder relates to an event arising prior to such assignment) and be released from its obligations under this Agreement (and, in the case of an Assignment and Acceptance covering all of the remaining portion of an assigning Lender's rights and obligations under this Agreement, such Lender shall cease to be a party hereto).

(c) By executing and delivering an Assignment and Acceptance, each Lender assignor thereunder and each assignee thereunder confirm to and agree with each other and the other parties thereto and hereto as follows: (i) other than as provided in such Assignment and Acceptance, such assigning Lender makes no representation or warranty and assumes no responsibility with respect to any statements, warranties or representations made in or in connection with any Loan Document or the execution, legality, validity, enforceability, genuineness, sufficiency or value of, or the perfection or priority of any lien or security interest created or purported to be created under or in connection with, any Loan Document or any other instrument or document furnished pursuant thereto; (ii) such assigning Lender makes no representation or warranty and assumes no responsibility with respect to the financial condition of the Debtors or the performance or observance by the Debtors of any of its obligations under any Loan Document or any other instrument or document furnished pursuant thereto; (iii) such assignee confirms that it has received a copy of this Agreement and such other documents and information as it has deemed appropriate to make its own credit analysis and decision to enter into such Assignment and Acceptance; (iv) such assignee will, independently and without reliance upon such assigning Lender or any other Lender and based on such documents and information as it shall deem appropriate at the time, continue to make its own credit decisions in taking or not taking action under this Agreement; (v) such assignee confirms that it is an Eligible Assignee; and (vi) such assignee agrees that it will perform in accordance with their terms all of

the obligations that by the terms of this Agreement are required to be performed by it as a Lender.

(d) For so long as it is a Lender, Alden, acting for this purpose (but only for this purpose) as the agent of the Debtors, shall maintain at its address referred to in Section 7.02 a copy of each Assignment and Acceptance delivered to and accepted by it and a register for the recordation of the names and addresses of the Lenders and the Commitments under the Facility and the principal amount of the Loans owing under the Facility to each Lender from time to time (the "**Register**"). The entries in the Register shall be conclusive and binding for all purposes, absent manifest error, and the Debtors and the Lenders shall treat each Person whose name is recorded in the Register as a Lender hereunder for all purposes of this Agreement.

(e) Reserved.

(f) Reserved.

(g) Any Lender may, in connection with any assignment or participation or proposed assignment or participation pursuant to this Section 7.07, disclose to the assignee or participant or proposed assignee or participant any information relating to the Debtors furnished to such Lender by or on behalf of the Debtors; *provided, however*, that, prior to any such disclosure, the assignee or participant or proposed assignee or participant shall agree in writing to preserve the confidentiality of any Confidential Information received by it from such Lender on substantially the same terms and conditions set forth in Section 7.09.

(h) Notwithstanding any other provision set forth in this Agreement, any Lender may at any time create a security interest in all or any portion of its rights under this Agreement (including, without limitation, the Loans owing to it and the Note or Notes (if any) held by it) in favor of any Federal Reserve Bank in accordance with Regulation A of the Board of Governors of the Federal Reserve System.

(i) Notwithstanding anything to the contrary contained herein, any Lender that is a Fund may create a security interest in all or any portion of the Loans owing to it and any Note or Notes held by it to the trustee for holders of obligations owed, or securities issued, by such Fund as security for such obligations or securities; *provided* that, unless and until such trustee actually becomes a Lender in compliance with the other provisions of this Section 7.07, (i) no such pledge shall release the pledging Lender from any of its obligations under the Loan Documents and (ii) such trustee shall not be entitled to exercise any of the rights of a Lender under the Loan Documents even though such trustee may have acquired ownership rights with respect to the pledged interest through foreclosure or otherwise.

(j) Each Debtor and Alden agree that prior to the assignment by Alden of any of its rights or obligations hereunder, each of the Debtors and Alden shall negotiate in good faith an amendment to this Agreement and the other Loan Documents, as applicable, to add customary administrative agency provisions hereto and thereto (and additional Required Lenders and payment sharing provisions, as applicable) including, without limitation, the appointment of an administrative agent by Alden, provision for deliverables and payments by the Debtors to such administrative agent as agreed by the Debtors, Alden and such administrative agent, an

Approved Budget variance provision as agreed by the Debtors and the Lenders, and an increased costs mitigation provision as agreed by the Debtors and the Lenders.

(k) Each Lender that sells a participation shall, acting solely for this purpose as an agent of the Debtors, maintain a register on which it enters the name and address of each participant and the principal amounts (and stated interest) of each participant's interest in the Loans or other obligations under the Loan Documents (the "***Participant Register***"); *provided* that no Lender shall have any obligation to disclose all or any portion of the Participant Register (including the identity of any participant or any information relating to a participant's interest in any commitments, loans, letters of credit or its other obligations under any Loan Document) to any Person except to the extent that such disclosure is necessary to establish that such commitment, loan, letter of credit or other obligation is in registered form under Section 5f.103-1(c) of the United States Treasury Regulations. The entries in the Participant Register shall be conclusive absent manifest error, and such Lender shall treat each Person whose name is recorded in the Participant Register as the owner of such participation for all purposes of this Agreement notwithstanding any notice to the contrary. For avoidance of doubt, Alden (in its capacity as Initial Lender, Lender or administrative agent) shall have no responsibility for maintaining a Participant Register.

SECTION 7.08. Execution in Counterparts. This Agreement may be executed in any number of counterparts and by different parties hereto in separate counterparts, each of which when so executed shall be deemed to be an original and all of which taken together shall constitute one and the same agreement. Electronic delivery (by telecopier or portable document format (pdf)) of an executed counterpart of a signature page to this Agreement shall be effective as delivery of an original executed counterpart of this Agreement.

SECTION 7.09. Confidentiality. No Lender or Collateral Agent shall disclose any Confidential Information to any Person without the consent of the Debtors, other than (a) to such Lender's Affiliates and their officers, directors, employees, agents, trustees and advisors, (b) to actual or prospective Eligible Assignees and participants whom have agreed to be bound by the terms of this Section 7.09, (c) as required by any law, rule or regulation or judicial process, (d) as requested or required by any state, Federal or foreign authority or examiner (including the National Association of Insurance Commissioners or any similar organization or quasi-regulatory authority) regulating such Lender, (e) to any rating agency when required by it, *provided* that, prior to any such disclosure, such rating agency shall undertake to preserve the confidentiality of any Confidential Information relating to the Debtors received by it from such Lender, (f) in connection with any litigation or proceeding to which such Lender or any of its Affiliates may be a party or (g) in connection with the exercise of any right or remedy under this Agreement or any other Loan Document.

SECTION 7.10. Marshalling; Payments Set Aside. No Lender shall be under any obligation to marshal any assets in favor of the Debtors or any other Person or against or in payment of any or all of the Obligations. To the extent that any Debtor makes a payment or payments to the Lenders, or any Lender enforces any security interests or exercise its rights of set-off, and such payment or payments or the proceeds of such enforcement or set-off or any part thereof are subsequently invalidated, declared to be fraudulent or preferential, set aside and/or required to be repaid to a trustee, receiver or any other party under any Bankruptcy Law, any

other state or Federal law, common law or any equitable cause, then, to the extent of such recovery, the obligation or part thereof originally intended to be satisfied, and all Liens, rights and remedies therefor or related thereto, shall be revived and continued in full force and effect as if such payment or payments had not been made or such enforcement or set-off had not occurred.

SECTION 7.11. Patriot Act Notice. Each Lender hereby notifies the Debtors that pursuant to the requirements of the Patriot Act, it is required to obtain, verify and record information that identifies the Debtors, which information includes the name and address of the Debtors and other information that will allow such Lender to identify the Debtors in accordance with the Patriot Act. The Debtors shall provide such information and take such actions as are reasonably requested by any Lender in order to assist the Lenders in maintaining compliance with the Patriot Act.

SECTION 7.12. Jurisdiction, Etc.

(a) Each of the parties hereto hereby irrevocably and unconditionally submits, for itself and its property, to the exclusive jurisdiction of the Bankruptcy Court, and any appellate court from any thereof, in any action or proceeding arising out of or relating to this Agreement or any of the other Loan Documents to which it is a party, or for recognition or enforcement of any judgment, and each of the parties hereto hereby irrevocably and unconditionally agrees that all claims in respect of any such action or proceeding may be heard and determined in such court. Each of the parties hereto agrees that a final judgment in any such action or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law.

(b) Each of the parties hereto irrevocably and unconditionally waives, to the fullest extent it may legally and effectively do so, any objection that it may now or hereafter have to the laying of venue of any suit, action or proceeding arising out of or relating to this Agreement or any of the other Loan Documents to which it is a party in the Bankruptcy Court. Each of the parties hereto hereby irrevocably waives, to the fullest extent permitted by law, the defense of an inconvenient forum to the maintenance of such action or proceeding in any such court.

SECTION 7.13. Governing Law. This Agreement and the Notes shall be governed by, and construed in accordance with, the laws of the State of New York; *provided* that the Debtors and the Lenders shall retain all rights arising under the Bankruptcy Code.

SECTION 7.14. **Waiver of Jury Trial. Each of the Debtors and the Lenders irrevocably waives, to the fullest extent permitted by applicable law, all right to trial by jury in any action, proceeding or counterclaim (whether based on contract, tort or otherwise) arising out of or relating to any of the Loan Documents, the Loans or the actions of any Lender in the negotiation, administration, performance or enforcement thereof.**

SECTION 7.15. General Release. In consideration of, among other things, the execution and delivery of this Agreement by the Lenders, and any financial accommodations which any Lender elects to extend to the Debtors after the date hereof, each Debtor, on behalf of itself and its successors and assigns (collectively, "**Releasors**"), hereby forever waives, releases and discharges to the fullest extent permitted by law, and hereby agrees to hold each Releasee (as

defined below) harmless from, any and all claims (including, without limitation, crossclaims, counterclaims, rights of set-off and recoupment), causes of action, demands, suits, costs, expenses and damages (collectively, the “*Claims*”), that any Releasor now has, of whatsoever nature and kind, whether known or unknown, whether arising at law or in equity, against any or all of the Secured Parties, in each case, in any capacity and their respective affiliates, shareholders and “controlling persons” (within the meaning of the federal securities laws), and their respective successors and assigns and each and all of the officers, directors, employees, consultants, agents, attorneys and other representatives of each of the foregoing (collectively, the “*Releasees*”), based in whole or in part on facts, whether or not now known, existing on or before the Effective Date. The receipt by any Debtor of any Loans or other financial accommodations made by any Lender after the date hereof shall constitute a ratification, adoption, and confirmation by each Debtor of the foregoing general releases of all Claims against any Releasee which are based in whole or in part on facts, whether or not now known or unknown, existing on or prior to the date of receipt of any such Loans or other financial accommodations. In entering into this Agreement, each Debtor has consulted with, and been represented by, legal counsel and expressly disclaims any reliance on any representations, acts or omissions by any of the Releasees and hereby agrees and acknowledges that the validity and effectiveness of the releases set forth above do not depend in any way on any such representations, acts and/or omissions or the accuracy, completeness or validity hereof. The provisions of this Section 7.15 shall survive the termination of this Agreement and the other Loan Documents and payment in full of the Obligations.

ARTICLE VIII.
APPOINTMENT OF COLLATERAL AGENT

SECTION 8.01. Appointment and Authority. Each of the Lenders hereby irrevocably appoints Imperial Capital Loan Trading, LLC, a Delaware limited liability company, to act on its behalf as the collateral agent (in such capacity, the “*Collateral Agent*”) hereunder and under the other Loan Documents and authorizes the Collateral Agent to take such actions on its behalf and to exercise such powers as are delegated to the Collateral Agent by the terms hereof or thereof, together with such actions and powers as are reasonably incidental thereto. The provisions of this Article are solely for the benefit of the Collateral Agent and the Lenders, and no Debtor shall have rights as a third party beneficiary of any of such provisions. Each of the Secured Parties hereby acknowledges and confirms their agreement that the Collateral Agent is subject to certain Collateral Documents as trustee for and on behalf of the Lenders or the terms of the declaration of trust and other terms and conditions set forth in the applicable Collateral Documents.

SECTION 8.02. Exculpatory Provisions. The Collateral Agent shall not have any duties or obligations except those expressly set forth herein and in the other Loan Documents. Without limiting the generality of the foregoing, the Collateral Agent:

- (a) shall not be subject to any fiduciary or other implied duties, regardless of whether a Default has occurred and is continuing;
- (b) shall not have any duty to take any discretionary action or exercise any discretionary powers, except discretionary rights and powers expressly contemplated hereby or

by the other Loan Documents that the Collateral Agent is required to exercise as directed in writing by the Required Lenders (or such other number or percentage of the Lenders as shall be expressly provided for herein or in the other Loan Documents); *provided* that the Collateral Agent shall not be required to take any action that, in its opinion or the opinion of its counsel, may expose the Collateral Agent to liability or that is contrary to any Loan Document or applicable law; and

(c) shall not, except as expressly set forth herein and in the other Loan Documents, have any duty to disclose, and shall not be liable for the failure to disclose, any information relating to the Debtors, the Lenders or any of their Affiliates that is communicated to or obtained by the Collateral Agent or any of its Affiliates in any capacity.

The Collateral Agent shall not be liable for any action taken or not taken by it (i) with the consent or at the request of the Required Lenders (or such other number or percentage of the Lenders as shall be necessary, or as the Collateral Agent shall believe in good faith be necessary, under the circumstances as provided in Section 7.01) or (ii) in the absence of its own gross negligence or willful misconduct as determined by a final and non-appealable judgment of a court of competent jurisdiction. The Collateral Agent shall not be deemed to have knowledge of any Default unless and until notice describing such Default is given to the Collateral Agent by the Debtors or the Lenders. In the event that the Collateral Agent obtains such actual knowledge or receives such notice, the Collateral Agent shall give prompt notice thereof to each of the Lenders. Upon the occurrence of any Event of Default, the Collateral Agent shall take such action with respect to such Event of Default as shall be reasonably directed by the Required Lenders. Unless and until the Collateral Agent shall have received such direction, the Collateral Agent may (but shall not be obligated to) take such action, or refrain from taking such action, with respect to any such Event of Default as it shall deem advisable in the best interest of the Lenders. In no event shall the Collateral Agent be required to comply with any such directions to the extent that the Collateral Agent believes that its compliance with such directions would be unlawful.

The Collateral Agent shall not be responsible for or have any duty to ascertain or inquire into (i) any statement, warranty or representation made in or in connection with this Agreement or any other Loan Document, (ii) the contents of any certificate, report or other document delivered hereunder or thereunder or in connection herewith or therewith, (iii) the performance or observance of any of the covenants, agreements or other terms or conditions set forth herein or therein or the occurrence of any Default, (iv) the validity, enforceability, effectiveness or genuineness of this Agreement, any other Loan Document or any other agreement, instrument or document, or the creation, perfection or priority of any Lien purported to be created by the Collateral Documents, the Interim Order or the Final Order, or (v) the satisfaction of any condition set forth in Article III or elsewhere herein, other than to confirm receipt of items expressly required to be delivered to the Collateral Agent.

The Collateral Agent shall be entitled to rely upon, and shall not incur any liability for relying upon, any notice, request, certificate, consent, statement, instrument, document or other writing (including, but not limited to, any electronic message, internet or intranet website posting or other distribution) believed by it in good faith to be genuine and to have been signed, sent or otherwise authenticated by the proper Person. The Collateral Agent also may rely upon any

statement made to it orally or by telephone and believed by it in good faith to have been made by the proper Person, and shall not incur any liability for relying thereon in the absence of its own gross negligence or willful misconduct, as determined by a final non-appealable judgment of a court of competent jurisdiction. The Collateral Agent may consult with legal counsel, independent accountants and other experts selected by it, and shall not be liable for any action taken or not taken by it in accordance with the advice of any such counsel, accountants or experts in the absence of its own gross negligence or willful misconduct, as determined by a final non-appealable judgment of a court of competent jurisdiction.

(d) Whenever the Collateral Agent is bound to act at the request or direction of another party, it shall not be so bound unless first indemnified and/or secured and/or prefunded to its satisfaction against all proceedings, claims and demands to which it may render itself liable and all reasonable costs, charges, expenses and liabilities which it may incur directly by so doing. The Collateral Agent shall not expend or risk its own funds or otherwise incur any financial liability in the performance of its duties, or in the exercise of any of its rights and powers.

(e) Each Lender acknowledges that it has, independently and without reliance upon the Collateral Agent or any other Lender or any of their Affiliates and based on such documents and information as it has deemed appropriate, made its own credit analysis and decision to enter into this Agreement. Each Lender also acknowledges that it will, independently and without reliance upon the Collateral Agent or any other Lender or any of their Affiliates and based on such documents and information as it shall from time to time deem appropriate, continue to make its own decisions in taking or not taking action under or based upon this Agreement, any other Loan Document or any related agreement or any document furnished hereunder or thereunder.

SECTION 8.03. Collateral Matters.

(a) Each Lender (by its acceptance of the benefits of any Lien encumbering Collateral) acknowledges and agrees that the Collateral Agent has entered into the Collateral Documents on behalf of itself and the Secured Parties, and the Secured Parties hereby agree to be bound by the terms of such Collateral Documents, acknowledge receipt of copies of such Collateral Documents and consent to the rights, powers, remedies, indemnities and exculpations given to the Collateral Agent thereunder. All rights, powers and remedies available to the Collateral Agent and the Secured Parties with respect to the Collateral, or otherwise pursuant to the Collateral Documents, shall be subject to the provisions of such Collateral Documents.

(b) Each Lender (by its acceptance of the benefits of any Lien encumbering Collateral) hereby authorizes the Collateral Agent, at its option and in its discretion, without the necessity of any notice to or further consent from the Secured Parties:

- (i) to release any Lien on any property granted to or held by the Collateral Agent under any Security Document as provided herein or in any Collateral Document or
- (ii) subject to Section 7.01, if approved, authorized or ratified in writing by the Required Lenders;

(ii) to take any actions with respect to any Collateral or Collateral Documents which may be necessary to perfect and maintain an acceptable security interest in and Liens upon the Collateral granted pursuant to the Collateral Documents; and

(iii) to take any action in exigent circumstances as may be reasonably necessary to preserve any rights or privileges of the Secured Parties under the Loan Documents or applicable law.

(c) Upon the request of the Collateral Agent at any time, the Secured Parties will confirm in writing the Collateral Agent's authority to release particular types or items of Collateral pursuant to this Section 8.03.

(d) Each Debtor hereby irrevocably appoints the Collateral Agent as such Debtor's attorney-in-fact, with full authority to, after the occurrence and during the continuance of an Event of Default, act for such Debtor and in the name of such Debtor to, in the Collateral Agent's discretion upon the occurrence and during the continuance of an Event of Default, (i) file one or more financing or continuation statements, and amendments thereto, relative to all or any part of the Collateral, (ii) to receive, endorse, and collect any drafts or other instruments, documents, and chattel paper which are part of the Collateral, (iii) to ask, demand, collect, sue for, recover, compromise, receive, and give acquittance and receipts for moneys due and to become due under or in respect of any of the Collateral, (iv) to file any claims or take any action or institute any proceedings which the Collateral Agent may reasonably deem necessary or desirable for the collection of any of the Collateral or otherwise to enforce the rights of the Collateral Agent with respect to any of the Collateral and (v) if any Debtor fails to perform any covenant contained in this Agreement or the other Collateral Documents relating to the Collateral after the expiration of any applicable grace periods, the Collateral Agent may itself perform, or cause performance of, such covenant, and such Debtor shall pay for the expenses of the Collateral Agent incurred in connection therewith. The power of attorney granted hereby is coupled with an interest and is irrevocable.

(e) The powers conferred on the Collateral Agent under this Agreement and the other Collateral Documents are solely to protect its interest in the Collateral and shall not impose any duty upon it to exercise any such powers. Beyond the safe custody thereof, the Collateral Agent and each Secured Party shall have no duty with respect to any Collateral in its possession or control (or in the possession or control of any agent or bailee) or with respect to any income thereon or the preservation of rights against prior parties or any other rights pertaining thereto. The Collateral Agent shall be deemed to have exercised reasonable care in the custody and preservation of the Collateral in its possession if the Collateral is accorded treatment substantially equal to that which the Collateral Agent accords its own property. None of the Collateral Agent or any other Secured Party shall be liable or responsible for any loss or damage to any of the Collateral, or for any diminution in the value thereof, by reason of the act or omission of any warehouseman, carrier, forwarding agency, consignee, broker or other agent or bailee selected by the Debtors or selected by the Collateral Agent in good faith.

SECTION 8.04. Indemnification. The Lenders severally agree to indemnify upon demand the Collateral Agent of any of the foregoing (to the extent not reimbursed by the Debtors), according to their respective ratable shares, and hold harmless the Collateral Agent

from and against any and all claims in all cases, whether or not caused by or arising, in whole or in part, out of the negligence of the Collateral Agent; *provided, however*, that no Lender shall be liable for (a) the payment to the Collateral Agent for any portion of such claims to the extent determined in a final, non-appealable judgment by a court of competent jurisdiction to have resulted from the Collateral Agent's own gross negligence or willful misconduct and (b) claims made or legal proceedings commenced against the Collateral Agent by any security holder or creditor thereof arising out of and based on rights afforded any such security holder or creditor solely in its capacity as such; *provided further, however*, that no action taken in accordance with the directions of the Required Lenders shall be deemed to constitute gross negligence or willful misconduct for purposes of this Section 8.04. Without limitation of the foregoing, each Lender agrees to reimburse the Collateral Agent promptly upon demand for its ratable share of any out-of-pocket expenses (including all fees, expenses and disbursements of any law firm or other external counsel) incurred by the Collateral Agent in connection with the preparation, execution, delivery, administration, modification, amendment, or enforcement (whether through negotiations, legal proceedings, or otherwise) of, or legal advice in respect of rights or responsibilities under, this Agreement or any other Loan Document, to the extent that the Collateral Agent is not reimbursed for such by the Debtors. The undertaking in this Section 8.04 shall survive termination of the Commitments, the payment of all other Obligations and the resignation of the Collateral Agent.

SECTION 8.05. Resignation of Collateral Agent.

(a) The Collateral Agent may at any time give written notice of its resignation to the Lenders and the Debtors. Upon receipt of any such notice of resignation, the Required Lenders shall have the right to appoint a successor Collateral Agent. If no such successor shall have been so appointed by the Required Lenders and shall have accepted such appointment within thirty (30) days after the retiring Collateral Agent gives notice of its resignation, or by such earlier date as agreed by the Required Lenders (the "*Agent Resignation Date*"), then the retiring Collateral Agent may, but shall not be obligated to, on behalf of the Lenders, appoint a successor Collateral Agent. Regardless of whether a Person has accepted such appointment, such resignation shall nonetheless become effective in accordance with such notice on the Agent Resignation Date.

(b) With effect from the Agent Resignation Date (i) the retiring Collateral Agent shall be discharged from its duties and obligations hereunder and under the other Loan Documents and (ii) except for any indemnity payments owing to the retiring Collateral Agent, all payments, communications and determinations provided to be made by, to or through the Collateral Agent shall instead be made by or to each Lender directly, until such time, if any, as the Required Lenders appoint a successor Collateral Agent as provided for above in this Section 8.05. Upon the acceptance of a successor's appointment as Collateral Agent hereunder, such successor shall succeed to and become vested with all of the rights, powers, privileges and duties of the retiring Collateral Agent (except with respect to indemnity payments owed to the retiring Collateral Agent). The fees payable by the Debtors to a successor Collateral Agent shall be the same as those payable to its predecessor unless otherwise agreed between the Debtors and such successor.

[Remainder of page intentionally left blank. Signature pages follow.]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their respective officers thereunto duly authorized, as of the date first above written.

ATARI, INC., as Debtor

By: _____
Name:
Title:

ATARI INTERACTIVE, INC., as Debtor

By: _____
Name:
Title:

CALIFORNIA US HOLDING, INC., as Debtor

By: _____
Name:
Title:

HUMONGOUS, INC., as Debtor

By: _____
Name:
Title:

ALDEN GLOBAL VALUE RECOVERY
MASTER FUND, L.P., as Initial Lender and
Lender

By: Alden Global Capital Limited, its
Investment Adviser

By: Alden Global Capital LLC, its Sub-Adviser

By: _____
Name: John Ferguson
Title: President

IMPERIAL CAPITAL LOAN TRADING,
LLC, as Collateral Agent

By: _____
Name:
Title: