

EXHIBIT 2

DIP COMMITMENT LETTER AND TERM SHEET

TENOR CAPITAL MANAGEMENT COMPANY, L.P.

1180 Avenue of the Americas, Suite 1940

New York, NY 10036

January 20, 2013

Robert A. Mattes
Chief Financial Officer
Atari, Inc.
475 Park Avenue South
New York, NY 10016

Re: DIP Financing Commitment

Gentlemen:

Atari, Inc., Atari Interactive, Inc., California US Holding, Inc. and Humongous, Inc., (each a "Company" and collectively, the "Companies"):

- (i) have advised Tenor Capital Management Company, L.P. ("Tenor") that the Companies intend to file voluntary petitions for relief under Chapter 11 of Title 11 of the United States Code (the "Bankruptcy Code") in the United States Bankruptcy Court for the Southern District of New York (the "Bankruptcy Court"); and
- (ii) have requested that Tenor provide a debtor-in-possession financing facility during the Companies' cases under the Bankruptcy Code (together, the "Chapter 11 Cases").

Tenor is pleased to advise you of its commitment, which may be performed by itself and/or its affiliates and/or any fund or entity managed by Tenor and/or any other entity designated as a lender by Tenor (collectively, the "Lender"), to provide a debtor-in-possession financing facility (the "Facility") consisting of a non-revolving term loan, which may not be re-borrowed once drawn, in the aggregate principal amount of US \$5.25 million (the "Term Loan"), of which up to US \$2.25 million will be available (subject to the terms and conditions in this letter and the Terms and Conditions attached hereto as Exhibit A (the "Term Sheet")) upon the entry of the Interim Order (as defined in the Term Sheet), U.S. \$1 million to be available (subject to the conditions set forth in this letter and the Term Sheet) upon entry of the Final Order (as defined in the Term Sheet) and the remaining amount of the Term Loan to be made available (subject to the conditions set forth in this letter and the Term Sheet)

upon the filing of a Sale Motion or Plan (each such term as defined in the Term Sheet) to the Companies as debtor-in-possession, during the Chapter 11 Cases. The Facility shall be substantially on the terms and conditions set forth in the Term Sheet. The Lender's commitment to provide the Facility is subject in all respects to the satisfaction of the terms and conditions contained in this letter and the Term Sheet attached hereto. All schedules and exhibits hereto shall form part of this letter.

The obligations of the Companies under the Facility shall be secured by first priority liens on and security interests in all existing and after-acquired undertaking and assets of the Companies.

By its execution hereof and its acceptance in writing of this letter, the Companies hereby agree that they will indemnify and, subject to entry of the Final Order, hold harmless the Lender, its affiliates and their respective assignees, and each of their respective directors, officers, partners, investors, employees, agents and advisors (each an "Indemnified Party") from and against any and all losses, claims, damages, liabilities or other expenses to which such Indemnified Party may become subject, insofar as such losses, claims, damages, liabilities (or actions or other proceedings commenced or threatened in respect thereof) or other expenses arise out of or in any way relate to or result from, this letter or the extension of the Facility or in any way arise from any use or intended use of this letter or the proceeds of the Facility, and the Companies agree to reimburse each Indemnified Party for all actual and reasonable legal or other expenses, for which an invoice has been provided, incurred in connection with investigating, defending or participating in any such loss, claim, damage, liability or action or other proceeding (whether or not such Indemnified Party is a party to any action or proceeding out of which indemnified expenses arise), but excluding therefrom all losses, claims, damages, liabilities and expenses which are finally determined in a non-appealable decision of a court of competent jurisdiction to have resulted solely from the gross negligence or wilful misconduct of such Indemnified Party. In the event of any litigation or dispute involving this letter or the Facility, the Lender shall not be responsible or liable to any Company, any reorganized entity, any of their respective subsidiaries or any other person for any special, indirect, consequential, incidental or punitive damages. In addition, the Companies agrees to reimburse the Lender for all actual and reasonable fees and expenses (the "Expenses"), including all fees and expenses of the Lender's counsel and other advisors, for which an invoice has been provided, incurred by or on behalf of the Lender in connection with or otherwise related to the negotiation, documentation and administration of the Facility and the enforcement of all Lender rights and security. The obligations of the Companies under this paragraph shall remain effective

whether or not definitive documentation is executed or any advance is made by the Lender under the Facility and notwithstanding any termination of the Lender's commitment under this letter.

The Lender's commitment to provide the Facility (or a portion thereof as set forth in the Term Sheet) is subject to:

- (i) the Companies obtaining the Interim Order or the Final Order, as applicable, from the Bankruptcy Court in respect of the transactions contemplated hereby (the Interim Order together with the Final Order (the "Court Orders"), in each case consistent with this letter and the Term Sheet and otherwise in form and substance reasonably satisfactory to the Lender;
- (ii) the negotiation, execution and delivery of definitive documentation consistent with this letter and the Term Sheet and otherwise in form and substance reasonably satisfactory to the Lender;
- (iii) the satisfaction of the Lender that, since the date of this letter, there has not occurred or become known to the Lender any material adverse event or development with respect to any Company's business, assets or financial condition, as determined by the Lender in its sole and absolute discretion (a "Material Adverse Development"); and
- (iv) such other conditions as are set forth in the Term Sheet.

If at any time prior to the funding of the Term Loan the Lender shall determine that any condition precedent (either in this letter or in the Term Sheet) has not been satisfied or that a Material Adverse Development has occurred, the Lender may terminate the Lender's funding obligations under this letter by giving notice thereof to the Companies (but the Companies shall, despite such termination, pay all Expenses incurred to such date and other such amounts agreed to by the Companies hereunder and such obligations of the Companies shall survive such termination).

Each Company represents and warrants to the Lender with respect to itself that:

- (i) all written information and other materials concerning such Company (other than projections, estimates, budgets or forward looking statements) (the

“Information”) which has been, or is hereafter, prepared by or on behalf of such Company and delivered to the Lender are or, when delivered, will be, when considered as a whole, complete and correct in all material respects and do not, or will not when delivered, contain any untrue statement of material fact or omit to state a material fact necessary in order to make any statement contained therein not materially misleading in light of the circumstances under which such statement has been made; and

- (ii) to the extent that any such Information contains projections, estimates, budgets or forward looking statements, such projections, estimates, budgets or forward looking statements were prepared in good faith on the basis of:
 - A. assumptions, methods and tests stated therein which are believed by such Company to be reasonable at the time made; and
 - B. information believed by such Company to have been accurate based on the information available to such Company at the time such projections, estimates, budgets or forward looking statements were prepared and furnished to the Lender.

Each Company agrees that if, at any time prior to the advance of the entire Term Loan, any of the representations and warranties in the preceding sentence is or would be incorrect in any material respect if the information or projections were being furnished or such representations and warranties were being made, at such time, then such Company will promptly supplement, or cause to be supplemented, the information and projections so that such representations and warranties will be correct in all material respects under those circumstances.

The Companies acknowledge that the Lender and its affiliates may now or hereafter provide financing or obtain other interests in other companies in respect of which the Companies may be business competitors, and that the Lender and its affiliates will have no obligation to provide to the Companies any confidential information from such other companies.

No Company shall, after the Lender delivers this letter, without the Lender’s prior written consent, (a) seek, request, encourage, discuss, negotiate or enter into any agreement or non-

binding agreements of understanding or intent with other parties, (b) provide any information to a person, or (c) pay any commitment fee, arrangement fee or any other similar fee or pay any expense deposit or work fee, in each case, with respect to any debtor-in-possession or similar financing to be made available to it, whether during any Chapter 11 Case or otherwise, except, in each case, if required to do so by order of the Bankruptcy Court (collectively, the “No-Shop Obligations”); provided, however, that a Company may directly or indirectly, through its advisors and agents, respond to unsolicited bona fide offers to provide debtor-in-possession or similar financing to such Company (each, an “Alternative Proposal”) if such Company’s counsel advises such Company’s directors and officers that it would be inconsistent with their fiduciary duties not to respond to the Alternative Proposal; provided, further, that such Company must inform the Lender of receipt of any Alternative Proposal promptly (but in no event more than 1 business day after receipt), and keep the Lender informed on a current basis of the terms and status of any such Alternative Proposal.

No Company shall, from the date this letter is fully executed until commencement of the Chapter 11 Cases, make any out of the ordinary course disbursements or other payments to any employees or third parties, except pursuant to the Lender’s prior written consent or as required by applicable law or court order.

The Companies agree that their obligations and liabilities hereunder are joint and several obligations of each Company.

The offer made by the Lender in this letter shall expire, unless otherwise agreed by the Lender in writing, on the earlier to occur of: (i) 10:00 a.m. (New York time) on January 21, 2013; and (ii) the commencement of any of the Chapter 11 Cases, unless prior thereto the Lender has received a copy of this letter, signed by each Company accepting the terms and conditions of this letter and the Term Sheet.

The commitment by the Lender to provide the Facility shall expire:

- (i) at 6:00 p.m. (New York time) on January 22, 2013 unless, prior to such time, the Companies shall have filed (x) voluntary petitions for relief under Chapter 11 of the Bankruptcy Code and (y) a motion for approval of the Facility, each in form and substance satisfactory to the Lender;

- (ii) at 5:00 p.m. (New York time) on January 25, 2013 unless, prior to such time, the Companies shall have (x) obtained the Interim Order, in form and substance satisfactory to the Lender, (y) delivered to the Lender a duly executed certificate of a responsible officer of each Company certifying that all conditions to closing, shall have been satisfied or waived in writing by the Lender, and the transactions contemplated by the Facility shall have been consummated, and borrowed up to US \$2.25 million of the Term Loan, and (z) paid all required fees and expenses to Lender; and

- (iv) at 5:00 p.m. (New York time) on February 26, 2013 unless, prior to such time, the Companies shall have obtained the Final Order (if requested by the Lender), in form and substance satisfactory to the Lender.

If the terms and conditions of the commitment contained in this letter are satisfactory to you, please indicate your acceptance by signing and delivering to the Lender a copy of this letter.

This letter, including the attached Term Sheet:

- (i) supersedes all prior discussions, summaries, agreements, proposals, commitments, arrangements, negotiations or understandings, whether oral or written, of the parties with respect thereto;

- (ii) shall be governed by the law of the State of New York, without giving effect to the conflict of laws provisions thereof and each party submits to the exclusive jurisdiction of the New York Courts to adjudicate any disputes between any Company and the Lender;

- (iii) shall be binding on the parties and their respective successors and assigns;

- (iv) may not be relied on or enforced by any other person; and

- (v) may be signed in two counterparts and delivered by fax or pdf, each of which shall be deemed an original and both of which together shall constitute one and the same agreement.

If this letter becomes the subject of a dispute, each of the parties hereto hereby waives trial by jury to the extent permitted by applicable law. This commitment letter may be amended, modified or waived only in a writing signed by each of the parties hereto.

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Very truly yours,

TENOR CAPITAL MANAGEMENT COMPANY, L.P.

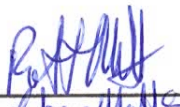
By: 

Name: Daniel Kochav

Title: Partner and COO

Agreed and accepted on this
20 day of January, 2013:

ATARI, INC.

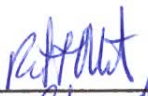
By: 

Name:

Title:

Robert Matus
CFO

ATARI, INTERACTIVE, INC.

By: 

Name:

Title:

Robert Matus
CFO

CALIFORNIA US HOLDING, INC.

By: 

Name:

Title:

Robert Matus
CFO

HUMONGOUS, INC.

By: 

Name:

Title:

Robert Matus
CFO

[signature page to Atari Commitment Letter]

Exhibit A

Term Sheet

Exhibit A

Atari, Inc., Atari Interactive, Inc., California US Holding, Inc. and Humongous, Inc.

PRIMING SUPERPRIORITY DEBTOR-IN-POSSESSION CREDIT FACILITY

TERM SHEET

January 20, 2013

This term sheet ("**Term Sheet**") describes certain of the principal terms and conditions of a proposed priming superpriority secured debtor-in-possession term credit facility (as further described below, the "**DIP Credit Facility**") to be provided by the DIP Lenders (as defined below) to Atari, Inc., Atari Interactive, Inc., California US Holding, Inc. and Humongous, Inc. (each a "**Borrower**," and collectively, the "**Borrowers**") in connection with voluntary petitions for relief and cases (collectively, the "**Chapter 11 Cases**") to be filed by each Borrower pursuant to chapter 11 of title 11 of the United States Code (as amended, the "**Bankruptcy Code**") in the United States Bankruptcy Court for the Southern District of New York (the "**Bankruptcy Court**").

This Term Sheet is being provided on a confidential basis and it, along with its contents and existence, may not be distributed, disclosed or discussed with any other party. This Term Sheet is not an offer for the purchase, sale or subscription or invitation of any offer to buy, sell or to subscribe for any securities. The terms and conditions set forth in this Term Sheet do not constitute or create an agreement, obligation or commitment of any kind by or on behalf of any party until entry of the Interim Order (as defined below). Any such commitment (i) will be subject to completion of the DIP Lenders' credit approval process, (ii) will be subject to the execution and delivery of a definitive commitment letter reasonably acceptable to all parties and their respective counsel and (iii) will be subject to the completion of the DIP Lenders' legal and business due diligence and the DIP Lenders' sole and absolute satisfaction with the results thereof.

BORROWERS Atari, Inc., Atari Interactive, Inc., California US Holding, Inc. and Humongous, Inc., jointly and severally.

DIP LENDERS Tenor Capital Management Company, L.P. ("**Tenor**") and/or its affiliates and/or any fund or entity managed by Tenor and/or any other entity designated as a lender by Tenor (collectively, the "**DIP Lenders**").

DIP AGENT Tenor or a third party designated by Tenor.

AMOUNTS AND AVAILABILITY The "**DIP Credit Facility**" shall consist of a multiple draw term loan facility in an aggregate principal amount of \$5.250 million (the "**DIP Commitment**") to be made available to Borrowers as follows:

- (i) Interim DIP Loan: A term loan facility to be available in a single drawing on the Interim Closing Date (defined below) in an aggregate principal amount of \$2.250 million in order to provide sufficient working capital to the Borrowers until the Final Closing Date (as defined below), in accordance with the DIP Budget (as defined below) and subject to the provisions of

this Term Sheet (the “**Interim DIP Loan**”);

- (ii) Final DIP Loan: Subject to DIP Lenders’ completion of business and legal due diligence and sole and absolute satisfaction with the results thereof, a term loan facility to be available pursuant to draws made once every two weeks on and after the Final Closing Date up to an aggregate principal amount equal \$1 million, subject to the DIP Budget and the terms and on the conditions set forth in the DIP Loan Documentation (the “**Final DIP Loan**”); and
- (iii) Sale/Plan Loan: Subject to DIP Lenders’ completion of business and legal due diligence and sole and absolute satisfaction with the results thereof, a term loan facility to be available pursuant to draws made once every two weeks on and after a Sale Motion (as defined below) or Plan (as defined below) is filed with the Bankruptcy Court up to an aggregate principal amount equal to \$2 million, subject to the DIP Budget and the terms and on the conditions set forth in the DIP Loan Documentation (the “**Sale/Plan Loan**,” and together with the Interim DIP Loan and Final DIP Loan, the “**DIP Loans**”).

CLOSING DATES

“**Interim Closing Date**” means the date on which the “Conditions Precedent to the Interim DIP Loan” set forth under “Conditions Precedent” below are satisfied or waived in accordance with this Term Sheet.

“**Final Closing Date**” means the date on which the conditions precedent to the Final DIP Loan as set forth in the DIP Loan Documentation (including, without limitation, entry of the Final Order) shall have been satisfied or waived. As used herein, “**Final Order**” means an order of the Bankruptcy Court not subject to appeal, reconsideration or review authorizing and approving the DIP Loans on a final basis, which order shall be consistent with the terms of this Term Sheet and the DIP Loan Documentation, and shall be in form and substance acceptable to the DIP Lenders in their sole and absolute discretion.

“**Sale/Plan Closing Date**” means the date on which the conditions precedent to the Sale/Plan Loan as set forth in the DIP Loan Documentation (including, without limitation, the filing of a Sale Motion or Plan in accordance with the Bankruptcy Milestones (as defined below)) shall have been satisfied or waived.

**DIP LOAN
DOCUMENTATION**

Definitive financing documentation with respect to the DIP Loans, in form and substance acceptable to the DIP Lenders in their sole and absolute discretion, which documentation shall be executed by all parties thereto (the “**DIP Loan Documentation**”). The DIP Loan Documentation shall be executed and delivered by the parties thereto on or prior to the date that is 20 days after the Interim Closing Date (the date on which such event occurs, the “**Definitive Documentation Date**”).

USE OF PROCEEDS

The DIP Loans will be used solely for (a) working capital and general corporate purposes of the Borrowers, (b) bankruptcy-related fees, costs and expenses, (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 DIP Budget, and (d) for any other purpose agreed upon in the DIP Loan Documentation (collectively, the “**Permitted Expenditures**”).

**APPROVED DIP
BUDGET; VARIANCE
REPORTS**

To provide for payment of Permitted Expenditures pursuant to Borrowers’ weekly budget (on a line-item basis) for the first thirteen weeks and rolling thereafter, approved in each instance by the DIP Lenders (subject to the restrictions in the DIP Loan Documentation, the Interim Order and the Final Order), *provided, however*, that the DIP Lenders shall have no obligation to provide any credit under the DIP Credit Facility if the use of proceeds of the DIP Credit Facility would cause or has caused disbursements to exceed 110% of the amount of disbursements for any given four-week period as set forth in the most recent budget approved by the DIP Lenders, tested on a rolling four-week basis; *provided further, however*, that notwithstanding anything contained in any approved budget or this Term Sheet, the Borrowers shall not pay any severance or retention obligations, compensation or bonuses owed to any current or former employee, director, or officer in excess of the aggregate amount of \$100,000 until the DIP Loans have been paid in full in cash (collectively, the “**DIP Budget**”).

The Borrowers shall deliver to the DIP Lenders by 12:00 p.m. (ET) on Wednesday of each week, a reconciliation for the prior week, the prior two-week operating period (if less than two weeks have elapsed since the Petition Date, such shorter period) and the cumulative period from the Petition Date to the date of determination of actual expenses and disbursements as compared to the amounts set forth in the DIP Budget.

PRIORITY

All DIP Loans and other liabilities and obligations of the Borrowers to the DIP Lenders under or in connection with this Term Sheet, the DIP Loan Documentation, the Interim Order and Final Order shall be:

- (i) pursuant to section 364(c)(1) of the Bankruptcy Code, entitled to an allowed superpriority administrative expense claim in the Chapter 11 Cases of the Borrowers with priority over any and all administrative expenses, whether heretofore or hereafter incurred, of the kind specified in sections 503(b) or 507(a) of the Bankruptcy Code and including the proceeds of avoidance actions, subject only to the Carveout (as defined below);
- (ii) pursuant to section 364(c)(2) of the Bankruptcy Code, secured

by a perfected first-priority lien on the Collateral, subject only to (i) valid, perfected and non-avoidable liens as of the date the Borrowers file the Chapter 11 Cases (the “**Petition Date**”), and (ii) the Carveout (the “**First Priority DIP Liens**”);

- (iii) pursuant to section 364(c)(3) of the Bankruptcy Code, secured by a perfected second priority lien on the Collateral, to the extent that such Collateral is subject to valid, perfected and non-avoidable liens in favor of third parties in existence as of the Petition Date or to valid liens in existence as of the Petition Date that are perfected subsequent to such date as permitted by section 546(b) of the Bankruptcy Code, and to the extent such liens are expressly permitted in writing by the DIP Lenders in their sole and absolute discretion, subject only to the Carveout (the “**Second Priority DIP Liens**”); and
- (iv) pursuant to section 364(d) of the Bankruptcy Code, secured by a perfected first priority, priming and senior security interest and lien granted to the DIP Lenders on the Collateral to the extent that such Collateral is subject to any lien or security interest as of the Petition Date, subject only to the Carveout (the “**Priming DIP Liens**”).

CARVEOUT

“**Carveout**” means a \$200,000 back-end carveout for the outstanding fees and expenses of the professionals of the Borrowers and any official committee of unsecured creditors that are allowed as administrative expenses by the Bankruptcy Court, and all statutory fees required to be paid to the Clerk of the Court and to the Office of the United States Trustee pursuant to 28 U.S.C. § 1930(a), from and after the date of occurrence of any Event of Default. For the avoidance of doubt, the Carveout shall be in addition to any and all fees and expenses of such professionals allowed by an order of the Bankruptcy Court that is not subject to appeal, reconsideration or review and paid or accrued by the Borrowers in accordance with the DIP Budget, whether from draws on the DIP Credit Facility or otherwise, prior to the occurrence of any Event of Default.

COLLATERAL

“**Collateral**” means, collectively, all now owned or hereafter acquired assets and property of the Borrowers 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, 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 Borrower and any and all proceeds therefrom, all Intellectual Property (as defined below), and the equity interests of each direct and indirect subsidiary of each Borrower.

COMMITMENT FEE

A commitment fee equal to \$250,000 shall be fully earned upon execution of the commitment letter to which this Term Sheet is attached and due and payable (i) in the event the Companies commence the Chapter 11 Cases in

accordance with the terms hereof, on the Interim Closing Date, or (ii) in all other cases, on January 22, 2013.

ORIGINATION/TAKE-OUT FEE

A fee (the “**Origination Fee**”) equal to five (5%) percent of the DIP Commitment under the DIP Credit Facility shall be fully earned on the Interim Closing Date and due and payable to the DIP Lenders on the Maturity Date (as defined below).

An additional fee of \$1 million (the “**Take-Out Fee**”) shall be due and payable to the DIP Lenders immediately if any Borrower obtains alternative financing at any time after the Interim Closing Date.

EXIT FEE

A fee (the “**Exit Fee**”) payable in cash in an amount equal to: (i) in the event of a Sale Motion, the sum of (x) thirty percent (30%) of the first \$10 million of Sale Proceeds (as defined below), plus (y) twenty percent (20%) of the Sale Proceeds in excess of \$10 million and up to \$20 million, plus (z) ten percent (10%) of the Sale Proceeds in excess of \$20 million, or (ii) in the event of a Plan, the sum of (x) thirty percent (30%) of the first \$10 million of Plan Proceeds, plus (y) twenty percent (20%) of the Plan Proceeds in excess of \$10 million and up to \$20 million, plus (z) ten percent (10%) of the Plan Proceeds in excess of \$20 million. In the event of a Sale Motion, the Exit Fee shall be earned on the Final Closing Date and due and payable to the DIP Lenders prior to any other distribution of Sale Proceeds. In the event of a Plan, the Exit Fee shall be earned on the Final Closing Date and due and payable to the DIP Lenders prior to any other distribution of Plan Proceeds.

“**Sale Proceeds**” shall mean the gross proceeds of a sale (or sales) pursuant to the Sale Motion, after deducting amounts repaid on the DIP Loans and amounts allowed by order of the Bankruptcy Court as administrative expenses payable as a commission to the Investment Banker (as defined below) retained by the Borrowers. “**Plan Proceeds**” shall mean the gross value of all distributions to be made after the commencement of the Chapter 11 Cases (including, without limitation, all securities issued under a Plan and any accrued value with respect thereto) calculated after deducting amounts repaid on the DIP Loans and amounts allowed by order of the Bankruptcy Court as administrative expenses payable as a commission to the Investment Banker retained by the Borrowers.

INTEREST RATE

Five percent (5%) per annum, to be paid in kind with such interest added to the principal amount of the DIP Loans compounded monthly in arrears on the last day of each month. Interest shall begin to accrue on the Interim DIP Loan on the Interim Closing Date, on the Final DIP Loan from and after the Final Closing Date, and on the Sale/Plan Loan from and after the Sale/Plan Closing Date.

DEFAULT RATE

At all times while a default exists, principal, interest and other amounts shall bear interest at a rate per annum equal to two percent (2%) in excess of the interest rate set forth under “Interest Rate” above.

TERMINATION DATE All of the Borrowers' indebtedness, liabilities and obligations under the DIP Loans are due and payable in full on the earliest of (the "**Termination Date**") (i) 120 days after the Petition Date, subject to entry of the Interim Order and the Final Order, and subject to the filing of the Sale Motion or Plan (the "**Maturity Date**"), (ii) the date of the DIP Lenders' notice in writing to the Borrowers of the occurrence of an Event of Default, subject to any applicable cure period in the DIP Loan Documentation, or (iii) sale of any Borrower's assets outside the ordinary course of business or any Borrower's emergence from Chapter 11 pursuant to a plan of reorganization.

OPTIONAL PREPAYMENTS The Borrowers may prepay the DIP Loans in whole or in part at any time. Amounts repaid under the DIP Loans cannot be re-borrowed.

MANDATORY PREPAYMENTS Customary for debtor-in-possession financings of this type and otherwise as specified in the DIP Loan Documentation. Amounts repaid under the DIP Loans cannot be re-borrowed.

BANKRUPTCY MILESTONES "**Bankruptcy Milestones**" shall include the following:

- (i) The Borrowers shall file a motion with the Bankruptcy Court seeking authority to retain the Investment Banker within 5 days after the Petition Date;
- (ii) The Borrowers shall file a motion with the Bankruptcy Court to sell substantially all of their assets for a minimum amount necessary to satisfy all obligations in cash owed to the DIP Lenders pursuant to this Term Sheet and the DIP Loan Documentation, approve a committed stalking horse bidder with a demonstrated financial ability reasonably acceptable to the DIP Lenders to close a sale and approve bidding procedures under Section 363 of the Bankruptcy Code no later than 30 days after the Petition Date, which motion and any agreement the Borrowers seek approval of by the Bankruptcy Court shall be in form and substance acceptable to the DIP Lenders (the "**Sale Motion**");
- (iii) A bidding procedures order for such sale in form and substance acceptable to the DIP Lenders shall have been entered by the Bankruptcy Court within 45 days after the Petition Date;
- (iv) An auction for such sale shall be scheduled by order of the Bankruptcy Court and take place (unless there is no other qualified bidder other than the stalking horse bidder) within 60 days after the Petition Date;
- (v) Such sale must be (a) approved by an order of the Bankruptcy Court that provides for payment to the DIP Lenders in full at the closing of the sale, that is in form and substance acceptable to the DIP Lenders, and that is not subject to appeal, reconsideration or review, and (b) consummated and the DIP Lenders must be paid in full in cash, in each case within 75 days

after the Petition Date; and

- (vi) In lieu of such sale:
- a. the Borrowers may file a disclosure statement, joint plan of reorganization and an executed and fully committed plan sponsor agreement or executed term sheet for plan sponsorship (which shall be wholly consistent with this Term Sheet, unless otherwise consented to by the DIP Lenders in their sole and absolute discretion) no later than 30 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 DIP Lenders and must provide for payment to the DIP Lenders in full in cash on the effective date of the plan (collectively, the “**Plan**”);
 - b. an order approving such disclosure statement in form and substance acceptable to the DIP Lenders must be entered by the Bankruptcy Court within 75 days after the Petition Date;
 - c. the Plan must be confirmed by an order of the Bankruptcy Court in form and substance acceptable to the DIP Lenders that is not subject to appeal, reconsideration or review within 105 days after the Petition Date; and
 - d. the Plan must be consummated, and the DIP Lenders paid in full within 120 days after the Petition Date.

Additional milestones shall be mutually agreed upon between the Borrowers and DIP Lenders in the DIP Loan Documentation.

**CONDITIONS
PRECEDENT**

Conditions Precedent to Interim DIP Loan. The obligations of the DIP Lenders to make the Interim DIP Loan will be subject to satisfaction, or waiver by the DIP Lenders in their sole and absolute discretion, of customary conditions precedent, including, without limitation:

- (i) the Borrowers shall have timely delivered to the DIP Lenders and the Lenders shall have approved the DIP Budget;
- (ii) the Borrowers shall have provided the DIP Lenders’ technical, financial and legal advisors with full access to the Borrowers, and the Borrowers’ technical, financial and legal advisors, and requested diligence materials and information;
- (iii) the Interim Order shall have been entered by the Bankruptcy Court;
- (iv) the Interim Order, as entered by the Bankruptcy Court, shall not have been reversed, modified, amended, stayed or vacated, or in the case of any modification or amendment, in a manner, or

relating to a matter, without the consent of the DIP Lenders. As used herein, “**Interim Order**” means an order of the Bankruptcy Court authorizing and approving the DIP Loans (including, without limitation, the Interim DIP Loan) on an interim basis, which order shall be in form and substance acceptable to the DIP Lenders in their sole and absolute discretion;

- (v) the Borrowers shall have provided certified copies of board resolutions, constitutional documents, secretary’s certificates and good standing certificates;
- (vi) the Borrowers shall be in compliance in all respects with the Interim Order;
- (vii) all documented, reasonable, out of pocket fees, costs and expenses of the DIP Lenders relating to the DIP Credit Facility (including, without limitation, reasonable fees and expenses of their counsel and advisors) shall have been paid in full;
- (viii) the Commitment Fee shall have been received by the DIP Lenders;
- (ix) the Borrowers shall have implemented and obtained Bankruptcy Court approval of a cash management system reasonably acceptable to the DIP Lenders;
- (x) the Borrowers shall have insurance (including, without limitation, commercial general liability and property insurance) with respect to the Collateral in such amounts and scope as is acceptable to the DIP Lenders and the DIP Lenders shall have received additional insured and loss payee endorsements, as applicable, with respect thereto, in form and substance reasonably acceptable to the DIP Lenders;
- (xi) no Event of Default shall have occurred and be continuing on the Interim Closing Date, or after giving effect to the Interim DIP Loan;
- (xii) subject to Bankruptcy Court approval, (i) each Borrower shall have the corporate power and authority to make, deliver and perform its obligations under this Term Sheet and the Interim Order, and (ii) no consent or authorization of, or filing with, any person or entity (including, without limitation, any governmental authority) shall be required in connection with the execution, delivery or performance of this Term Sheet and the Interim Order by any Borrower, or for the validity or enforceability of this Term Sheet and the Interim Order in accordance with their terms against any Borrower, except for consents, authorizations and filings which shall have been obtained or made and are in full force and effect and except for

such consents, authorizations and filings, the failure to obtain or perform, could not be reasonably expected to cause a Material Adverse Change (as defined below);

- (xiii) since the Petition Date, there shall not have been any material adverse change, individually or in the aggregate, in the validity or enforceability of any provision of this Term Sheet, the DIP Loans, the First Priority DIP Liens, the Second Priority DIP Liens, the Priming DIP Liens (as to the Final Order only), or the Interim Order, the rights and remedies of the DIP Lenders under this Term Sheet or the Interim Order, or in the operations, assets, revenues, financial condition, profits or prospects of any Borrower, taken as a whole (other than as a result of the filing of the Chapter 11 Cases) (a “**Material Adverse Change**”);
- (xiv) execution and delivery of such documentation and performance of such other acts as the DIP Lenders may reasonably request, each satisfactory in form and substance to the DIP Lenders;
- (xv) The Debtors’ Chief Financial officer shall have resigned from all officer and director roles with Atari S.A.; and
- (xvi) The Debtors shall have filed their petitions for bankruptcy protection on or before 6:00 p.m.. (New York time) on January 21, 2013.

Conditions Precedent to Final DIP Loan. The obligations of the DIP Lenders to make the Final DIP Loan will be subject: (i) to the Borrowers’ compliance with each Bankruptcy Milestone, (ii) to satisfaction or waiver of conditions precedent specified in the DIP Loan Documentation, including, without limitation, the Conditions Precedent to the Interim DIP Loan set forth in subsections (i)-(xvi) above (including as modified in the DIP Lenders’ discretion to reflect the passage of time, the entry of the Interim Order and/or the occurrence of the Interim Closing Date), (iii) to entry of the Final Order, (iv) to the Interim Order, as entered by the Bankruptcy Court, and Final Order not having been reversed, modified, amended, stayed or vacated, or in the case of any modification or amendment, in a manner, or relating to a matter, without the consent of the DIP Lenders, (v) to UCC statements covering the Collateral having been filed, (vi) to the entry of an order by the Bankruptcy Court (or other court of competent jurisdiction) not subject to appeal, reconsideration or review that expressly holds that Atari SA, and any parent, affiliate or subsidiary entity thereof (other than a Borrower) has no interest in, no license to use and no right to use the ATARI trademark, any other trademark used in connection therewith, or any variation of the ATARI trademark or any other trademark used in connection therewith and that all agreements related to any such rights or licenses are fully terminated and of no further force or effect, (vii) the Debtors’ Chief Executive Officer shall have resigned from all officer and director roles with Atari S.A., (viii) Borrowers shall have engaged an investment banking firm to assist with their sale and/or reorganization upon terms and conditions (including the identity of such firm) acceptable to the

DIP Lenders in their sole and absolute discretion.(such approved firm, the “**Investment Banker**”) and (ix) to the DIP Lenders’ satisfaction, in their discretion, with the results of their legal and business due diligence performed after the Interim Closing Date.

Conditions Precedent to Sale/Plan Loan. The obligations of the DIP Lenders to make the Sale/Plan Loan will be subject: (i) to the Borrowers’ compliance with each Bankruptcy Milestone, (ii) to satisfaction or waiver of conditions precedent specified in the DIP Loan Documentation, including, without limitation, the Conditions Precedent to the Interim DIP Loan (set forth in subsections (i)-(xvi) therein) above and the Conditions Precedent to the Final DIP Loan (set forth in subsections (i)-(ix) therein) (including as modified in the DIP Lenders’ discretion to reflect the passage of time, the entry of the Interim Order or Final Order, and/or the occurrence of the Interim Closing Date or Final Closing Date), (iii) to entry of the Final Order, (iv) to the Interim Order, as entered by the Bankruptcy Court, and Final Order not having been reversed, modified, amended, stayed or vacated, or in the case of any modification or amendment, in a manner, or relating to a matter, without the consent of the DIP Lenders, (v) to UCC statements covering the Collateral having been filed, (vi) to the entry of an order by the Bankruptcy Court (or other court of competent jurisdiction) not subject to appeal, reconsideration or review that expressly holds that Atari SA, and any parent, affiliate or subsidiary entity thereof (other than a Borrower) has no interest in, no license to use and no right to use the ATARI trademark, any other trademark used in connection therewith, or any variation of the ATARI trademark or any other trademark used in connection therewith and that all agreements related to any such rights or licenses are fully terminated and of no further force or effect, and (vii) to the DIP Lenders’ satisfaction, in their discretion, with the results of their legal and business due diligence performed after the Interim Closing Date.

Without limiting in any way the DIP Lenders’ discretion consistent with the provisions of this Term Sheet, the Interim Order and Final Order shall be in form and substance acceptable to the DIP Lenders in their sole and absolute discretion and provide, *inter alia*, the following:

- a. that all indebtedness, liabilities and obligations of the Borrowers to the DIP Lenders, whenever and however arising, including without limitation, the DIP Loans and all fees, charges, costs and expenses contemplated by this Term Sheet or otherwise incurred, shall be secured by the First Priority DIP Liens, the Second Priority DIP Liens and the Priming DIP Liens on all Collateral (as to the Interim Order, other than avoidance actions under Chapter 5 of the Bankruptcy Code and the proceeds thereof);
- b. that due, adequate and proper notice has been given to all parties in interest;
- c. as to the Final Order only, no fees, costs, expenses, or other charges may be assessed or attributed to the DIP Lenders in

connection with the Collateral pursuant to Section 506(c) of the Bankruptcy Code, or otherwise;

- d. a finding that the DIP Lenders have at all times acted in good faith; and
- e. relief from the automatic stay to exercise any remedies upon an Event of Default on three (3) business days' notice to the Borrowers without further order of or application to the Bankruptcy Court.

**REPRESENTATIONS
AND WARRANTIES**

Customary for debtor-in-possession financings of this type and otherwise as specified in the DIP Loan Documentation.

**FINANCIAL
COVENANTS**

Customary for debtor-in-possession financings of this type and otherwise as specified in the DIP Loan Documentation.

**AFFIRMATIVE
COVENANTS**

Customary for debtor-in-possession financings of this type and otherwise as specified in the DIP Loan Documentation.

**NEGATIVE
COVENANTS**

Customary for debtor-in-possession financings of this type and otherwise as specified in the DIP Loan Documentation, and subject to customary grace periods and cure periods, and materiality thresholds; provided that, from the Interim Closing Date until the Definitive Documentation Date, the Borrowers shall not, without the express, prior written consent of the DIP Lenders, do, cause to be done, or agree to do or cause to be done, any of the following:

- (i) create, incur, assume or suffer to exist any indebtedness, except indebtedness expressly permitted by this Term Sheet;
- (ii) create, incur, assume or suffer to exist any lien upon any of its property, assets, income or profits, whether now owned or hereafter acquired;
- (iii) convey, sell, lease, assign, transfer or otherwise dispose of (including through a transaction of merger, consolidation, or otherwise) any Borrower's property, business or assets, whether now owned or hereafter acquired, outside of the ordinary course of business;
- (iv) incur or make any expenditure (including, without limitation, any capital expenditure), investment or other payment, other than in accordance with the approved DIP Budget; or
- (v) create, or acquire any ownership interest in, any entity (whether direct or indirect) other than those existing on the Petition Date.

PAYMENT OF TAXES The Borrowers shall deliver to the DIP Lenders evidence of payment of all taxes on a weekly basis in form and substance acceptable to the DIP Lenders.

EVENTS OF DEFAULT Events of default are those customary for debtor-in-possession financings of this type, and subject to customary grace periods and cure periods, and materiality thresholds, all reasonably acceptable to the DIP Lenders, or as otherwise specified in the DIP Loan Documentation, including, without limitation, those set forth in subsections (i)-(xxviii) below (collectively, “**Events of Default**”):

- (i) any representation, warranty, certification or other statement of fact made or deemed made by any Borrower in any DIP Loan Documentation or in a certificate delivered under or in connection with the Term Sheet shall prove to have been incorrect in any material respect when made or deemed made;
- (ii) (a) any Borrower shall fail to pay any principal of or a premium or interest on any debt that is outstanding and payable postpetition in a principal net amount of \$100,000 or more; (b) any other event shall occur or condition shall exist under any agreement or instrument relating to any debt and shall continue after any applicable grace period and permits the holders or beneficiaries of such debt to accelerate such debt; or (c) any such debt shall be declared to be due and payable, or required to be prepaid or redeemed, in each case prior to its stated maturity;
- (iii) any judgments or orders arising from any investigation, litigation or proceeding shall be rendered against any Borrower;
- (iv) a change of control whereby Atari, S.A. or a Debtor no longer directly owns and controls 100% of the aggregate issued and outstanding equity interests in each of the Borrowers; provided, however, that the appointment of a receiver for Atari S.A. shall not constitute a change of control;
- (v) any security agreement or financing statement shall for any reason cease to create a valid and perfected first priority lien on and security interest in the Collateral;
- (vi) an order of the Bankruptcy Court shall be entered granting any superpriority claim (other than the Carveout) in any of the cases of the Borrowers that is *pari passu* with senior to the claims of the DIP Lenders against any Borrower, or any Borrower takes any action seeking or supporting the grant of any such claim;
- (vii) any Borrower is not duly organized, validly existing and in good standing under the laws of the jurisdiction of its organization;
- (viii) a Borrower is engaged in the business of extending credit for the purpose of purchasing or carrying margin stock (within the

meaning of Regulation U issued by the Board of Governors of the Federal Reserve System);

- (ix) a Borrower is an “investment company”, or a company “controlled” by an “investment company”, within the meaning of the Investment Company Act of 1940, as amended;
- (x) any Borrower is found not to have a valid and enforceable right to use all trademarks, service marks, trade names, domain names, goodwill associated with the foregoing, patents, copyrights, trade secrets, source codes and/or know-how (including, without limitation, all registrations and applications or registration of the foregoing) or any other intellectual property rights (collectively, “**Intellectual Property**”) necessary for the conduct of its business as currently conducted;
- (xi) a claim has been asserted and is pending, or to the knowledge of any Borrower is threatened, challenging the use of any such Intellectual Property by any Borrower or the validity or enforceability of any such Intellectual Property or alleging that the conduct of the business of any Borrower infringes, misappropriates or otherwise violates the Intellectual Property rights of any other person;
- (xii) (a) Federal income tax returns or any other tax returns, domestic or foreign, required to be filed by any Borrower have not been filed on a timely basis, (b) taxes and assessments payable by any Borrower have become due and payable and remain unpaid, or (c) a claim is being asserted in writing with respect to any taxes against any Borrower;
- (xiii) any Borrower does not have good and marketable fee simple title to or valid leasehold interests in all of the real property owned or leased by such Borrower and good title to all of their personal property;
- (xiv) the security interest in the Collateral is not in full force and effect or is not valid or have first priority or the Collateral is not free and clear of any lien, except for the liens and security interests created or permitted under the DIP Loan Documentation;
- (xv) insurance with responsible and reputable insurance companies or associations in such amounts and covering such risks as is usually carried by companies engaged in similar business and owning similar properties in the same general areas in which each Borrower operates is not in effect;
- (xvi) failure by any Borrower to be in compliance with any Bankruptcy Milestone;
- (xvii) the occurrence of any deviation from the approved DIP Budget

that is greater than permitted variances;

- (xviii) failure by any Borrower to be in compliance in all respects with any provision of this Term Sheet (including, without limitation, any covenants contained herein), the Interim Order, or the Final Order;
- (xix) failure to pay any interest, principal, fees, costs, charges, or expenses when due;
- (xx) reversal, modification, amendment, stay or vacatur of the Interim Order or the Final Order, as entered by the Bankruptcy Court, without the prior written consent of the DIP Lenders;
- (xxi) failure of the DIP Loan Documentation to be executed and delivered by all parties prior to the Definitive Documentation Date;
- (xxii) if each Condition Precedent to the Final DIP Loan has not been satisfied or waived by the DIP Lenders on or before the date that is 30 days after the Interim Closing Date;
- (xxiii) if each Condition Precedent to the Sale/Plan Loan has not been satisfied or waived by the DIP Lenders on or before the date that is 30 days after the Interim Closing Date;
- (xxiv) the appointment in any of the Chapter 11 Cases of a trustee, receiver, examiner, or responsible officer with enlarged powers relating to the assets of any Borrower or the operation of the business of any Borrower (powers beyond those set forth in sections 1106(a)(3) and (a)(4) of the Bankruptcy Code);
- (xxv) conversion of any Borrower's Chapter 11 Case to a case under Chapter 7 of the Bankruptcy Code;
- (xxvi) the granting of relief from the automatic stay by the Bankruptcy Court to any creditor or party in interest other than a DIP Lender in the Chapter 11 Cases;
- (xxvii) the termination or commencement of liquidation of any Borrower's operations, business or assets; and
- (xxviii) the Borrowers' failure to obtain, within 60 days after the Petition Date, an order of the Bankruptcy Court that is not subject to appeal, reconsideration or review extending the deadline by which the Borrowers must assume or reject unexpired leases of real property to a date that is at least 270 days after the Petition Date.

**REMEDIES UPON
EVENT OF DEFAULT**

Upon the occurrence and during the continuance of any Event of Default, subject to 3 business days' notice to the Borrowers, the DIP Lenders may take all or any of the following actions without further order of or application to the Bankruptcy Court notwithstanding section 362 of the Bankruptcy Code:

- (i) declare the principal of, and accrued interest on, any outstanding DIP Loans to be immediately due and payable;
- (ii) terminate any further commitment to lend to the Borrowers;
- (iii) set-off any amounts held as cash collateral (including, without limitation, in any cash collateral account held for the benefit of the DIP Lenders);
- (iv) foreclose upon, sell, dispose of, or otherwise realize upon the Collateral; or
- (v) without notice, application or motion to, or further orders from, the Bankruptcy Court or any other court, and without interference from the Borrowers or any other party in interest, take any other action or exercise any other right or remedy (including, without limitation, with respect to the First Priority DIP Liens, Second Priority DIP Liens, Priming DIP Liens and Collateral) permitted under this Term Sheet, in the DIP Loan Documentation, the Interim Order or the Final Order, or under applicable law, including, without limitation, exercising any and all rights and remedies with respect to the Collateral or any portion thereof.

**OTHER
BANKRUPTCY
MATTERS**

All reasonable out-of-pocket fees, costs and expenses of the DIP Lenders and the DIP Agent relating to the DIP Credit Facility (including, without limitation, reasonable fees and disbursements of counsel, advisors and of third-party appraisers and consultants advising the DIP Lenders and the DIP Agent, expenses in connection with the appraisal and monitoring of the Collateral, syndication, enforcement of rights and other miscellaneous disbursements) shall be payable by the Borrowers promptly upon written demand (together with summary backup documentation supporting such reimbursement request) and without the requirement for Bankruptcy Court approval in the event the transactions contemplated hereby are consummated. A copy of the summary invoice shall be provided by the Borrowers to the Office of the United States Trustee and counsel for any statutory committee appointed in the Chapter 11 Cases.

The Borrowers shall indemnify, pay and hold harmless the DIP Lenders and the DIP Agent (and their respective directors, officers, employees, professionals and agents) against any loss, liability, fee, charge, cost or expense incurred in respect of the financing contemplated hereby or the use or the proposed use of proceeds thereof (except to the extent resulting from the gross negligence or willful misconduct of the indemnified party, as determined by a final, non-appealable judgment of a court of competent

jurisdiction).

**GOVERNING LAW
AND JURISDICTION**

The laws of the State of New York (except as governed by the Bankruptcy Code) shall govern this Term Sheet and the DIP Loan Documentation.

The DIP Loan Documentation will provide that the Borrowers shall submit to the exclusive jurisdiction of the Bankruptcy Court and shall waive any right to trial by jury.