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UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

In re:	}	Chapter 11
ATARI, INC., <i>et al.</i> ,	}	Case No. 13-10176 (JMP)
Debtors. <sup>1</sup>	}	Joint Administration Requested

**(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 PROVIDING  
SUPERPRIORITY ADMINISTRATIVE EXPENSE STATUS, (III) GRANTING  
ADEQUATE PROTECTION, (IV) MODIFYING AUTOMATIC STAY,  
AND (V) SCHEDULING A FINAL HEARING**

The above-captioned debtors and debtors-in-possession (collectively, the “Debtors”), by their undersigned proposed counsel, hereby move (the “Motion”) for entry of an interim order, the form of which is attached hereto as **Exhibit 1** (the “Interim Order”), authorizing the Debtors to, among other things, (i) enter into a post-petition, secured financing facility (the “DIP Facility”) the key terms of which are provided in the summary term sheet (the “DIP Term Sheet”) attached as Exhibit A to the commitment letter which is annexed hereto as **Exhibit 2** (the “Commitment Letter”), (ii) grant adequate protection to the Debtors’ creditors holding valid,

<sup>1</sup> The other Debtors are Atari Interactive, Inc., Humongous, Inc., and California U.S. Holdings, Inc.

enforceable and unavoidable liens (“Secured Creditors”), and (iii) scheduling a hearing to consider approval of a final order (the “Final Order” and together with the Interim Order, the “DIP Orders”) in connection with the DIP Facility. In support of the Motion, the Debtors submit (i) the *Declaration of Robert A. Mattes (I) In Support of Chapter 11 Petitions and First Day Motions and (II) Pursuant To Local Bankruptcy Rule 1007-2* (the “First Day Declaration”). In further support of this Motion, the Debtors respectfully represent as follows.

### **I. Background**

1. On January 21, 2013 (the “Petition Date”), each of the Debtors filed a voluntary petition for relief under chapter 11 of Title 11 of the United States Code, §§ 101-1532 (as amended, the “Bankruptcy Code”) commencing the above-captioned chapter 11 cases. The Debtors continue to operate their businesses and manage their properties as debtors-in-possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. The Debtors have, pursuant to a separate motion, moved the Court for entry of an order authorizing joint administration of these chapter 11 cases.

2. No request for the appointment of a trustee or an examiner has been made in these cases and no statutory committees have been appointed or designated.

3. A description of the Debtors’ businesses, the reasons for filing these chapter 11 cases and the relief sought from this Court to allow for a smooth transition into operations under chapter 11 is set forth in the First Day Declaration, which is being filed contemporaneously with this Motion.

### **II. Preliminary Statement**

4. Following a diligent process, the Debtors obtained the Commitment Letter which provides for an aggregate \$5.250 million DIP Facility on a superpriority, administrative claim and first-priority priming lien basis. The DIP Facility consists of a multiple draw term loan of

which \$2.250 million will be available on an interim basis subject to the conditions of the Term Sheet being satisfied. Another \$1 million will be available on a final basis after, among other things, entry of a final order approving the DIP Facility. Finally, the last \$2 million of the DIP Facility will be made available to the Debtors upon the filing of a 363 sale motion or a plan of reorganization.

5. The Debtors are requesting authority to access the full \$2.250 million on an interim basis pursuant to the Interim Order and are seeking a first priority priming lien in connection with existing pre-petition liens.

6. Access to the DIP Facility will allow the Debtors to continue normal business operations in chapter 11, maintain vendor and supplier relationships, pay their employees, and satisfy other working capital and operational requirements. Satisfaction of these key obligations is necessary to preserve and maintain the value of the enterprise. Accordingly, the Debtors respectfully submit that the DIP Facility should be approved.

### **III. Prepetition Capital Structure**

7. The Debtors' French parent company, Atari S.A. ("Atari S.A." or the "Parent"), and certain European subsidiaries entered into a master credit agreement with Banc of America Securities Limited on April 21, 2006 aimed at refinancing all the short and medium term debt of it and most of its subsidiaries. This senior secured credit facility (the "Blue Bay Facility") was later assigned to Blue Bay Value Recovery (Master) Fund Limited ("Blue Bay"), which together with an affiliated fund, The Blue Bay Multi-Strategy (Master) Fund Limited, are the largest shareholders of Atari S.A. Blue Bay also holds a seat on Atari S.A.'s board of directors.

8. Although none of the Debtors is an obligor under the Blue Bay Facility, whether by pledge, guarantee or otherwise, the Blue Bay Facility appears to be secured by a security interest in certain intellectual property owned by Debtor Atari, Inc. pursuant to a UCC-1

statement dated April 24, 2009. That intellectual property, known as the “Test Drive Unlimited” franchise (the “Test Drive IP”), is subject to two exclusive, worldwide licenses (one for trademark and one for all other intellectual property) granted to the Parent in 2007 (the “Test Drive Licenses”). The Test Drive Licenses are for terms expiring in November 2014. On or about March 31, 2008, the Parent assigned all of its rights in the Test Drive Licenses to Debtor Atari Interactive. Any lien asserted by Blue Bay against Atari, Inc. is limited to the reversionary interest after the Test Drive Licenses expire. Furthermore, Blue Bay’s lien on Test Drive Unlimited may be avoidable as a constructively fraudulent conveyance based on its “upstream” nature.

9. Atari S.A. also filed a financing statement reflecting a putative blanket lien on all assets of Debtor Atari, Inc., except for the Test Drive IP. The Test Drive IP is one of the most valuable assets at Atari, Inc. The majority of the remaining valuable assets (including the intellectual property) of the Debtors is held by Atari Interactive and Humongous. Aside from this, it is unclear what, if any, debt is purportedly secured by the Parent’s putative lien. Atari Inc.’s books and records reflect intercompany accounts purportedly owed to Atari S.A. and one of its European affiliates in the aggregate amount of approximately \$36 million. The Debtors believe that these claims should and likely will be treated as equity.

10. Aside from the disputed liens asserted by Blue Bay and Atari S.A., the Debtors’ assets are unencumbered.<sup>2</sup>

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<sup>2</sup> Cinram Group, LLC (“Cinram”) warehouses all of the Debtors’ retail inventory in Tennessee. The Debtors believe that Cinram may assert a lien against inventory under the Uniform Commercial Code to secure its prepetition claim of approximately \$44,000. On the Petition Date, the Debtors filed a motion [Docket No. 9] seeking authority to pay Cinram’s claim in full.

#### **IV. The Debtors' Efforts To Obtain PostPetition Financing**

11. Prior to the Petition Date, the Debtors' management determined that the Debtors would require additional working capital after the commencement of these chapter 11 cases. While the Debtors did their best to conserve their available cash prior to the Petition Date, they need additional liquidity to ensure their ability to fund their day-to-day operations and to reassure their employees, trade vendors and other constituencies that the Debtors will be in a position to meet their obligations during the pendency of these cases.

12. The Debtors approached five (5) financial firms in the months leading up to the Petition Date regarding potential post-petition financing arrangements. Four of the five entities signed non-disclosure agreements with the Debtors. The Debtors then paid due diligence deposits to two of the firms and both of those firms came forward with proposals for financing. However, only the proposal from Tenor Capital Management Company, L.P. ("Tenor" or the "DIP Lender") offered the Debtors sufficient flexibility and met all of the Debtors' financing needs.

13. In or about October 2012, the Debtors also began discussions with, among other potential buyers, a private equity/investment firm with experience in consumer and technology businesses (the "Potential Strategic Buyer") that expressed interest in purchasing Blue Bay's secured claim against and stock in the Parent and/or providing financing to the Debtors. Negotiations with the Potential Strategic Buyer continued through the week before the filing of these cases. The Debtors initially identified the term sheet submitted by the Potential Strategic Buyer as the one that best met their structure and liquidity requirements. Ultimately, negotiations with the Potential Strategic Buyer broke down. Of the remaining parties that indicated an interest in lending to the Debtors, only the DIP Lender provided a term sheet that met the structure and liquidity requirements of the Debtors. The Debtors and their advisors

subsequently engaged in round-the-clock diligence with the DIP Lender to obtain the best terms possible. These negotiations were at arm’s length and at all times were characterized by hard bargaining by all interested parties. Through such efforts, the Debtors were able to improve upon the initial offer of the DIP Lender until it ultimately made its best and final proposal.

14. Accordingly, following these extensive negotiations regarding the Debtors’ working capital needs and the means by which the Debtors will seek to reorganize or sell their assets, the DIP Lender has offered to provide the Debtors with the DIP Facility to address the Debtors’ anticipated working capital needs during the pendency of these cases. The DIP Lender is not a current creditor or equity security holder of the Debtors.

**V. Summary Of The Proposed DIP Facility**

15. The principal terms of the DIP Facility are set forth on the DIP Term Sheet, and are incorporated herein by reference. For ease of reference and in accordance with Rule 4001(c) of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), and Rule 4001-2 of the Local Bankruptcy Rules for the Southern District of New York (the “Local Rules”), set forth below are the principle terms of the DIP Facility.<sup>3</sup> Attached as **Exhibit 3** hereto is the DIP Budget referenced in the Term Sheet.

<b><u>MATERIAL TERMS OF THE DIP FACILITY</u></b>	
<b><u>Borrowers</u></b> <i>Bankruptcy Rule 4001(c)(1)(B)</i>	Atari, Inc., Atari Interactive, Inc., California US Holding, Inc. and Humongous, Inc., jointly and severally.
<b><u>DIP Lenders</u></b> <i>Bankruptcy Rule 4001(c)(1)(B)</i>	Tenor Capital Management Company, L.P. (“ <b>Tenor</b> ”) 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 “ <b>DIP Lenders</b> ”).
<b><u>DIP Agent</u></b> <i>Bankruptcy Rule</i>	Tenor or a third party designated by Tenor.

<sup>3</sup> This summary of the DIP Facility is intended to assist the Court in understanding key aspects of the arrangement and is qualified in its entirety by reference to the DIP Term Sheet attached to the Commitment Letter. All capitalized terms not otherwise defined in this description have the meanings given to them in the DIP Term Sheet.

4001(c)(1)(B)	
<p><b><u>DIP Loan Documentation</u></b></p>	<p>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 “<b>DIP Loan Documentation</b>”). 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 “<b>Definitive Documentation Date</b>”).</p>
<p><b><u>Commitment, Availability, and Purpose</u></b>  <i>Bankruptcy Rule 4001(c)(1)(B);                  Local Bankruptcy Rule 4001-2(a)(1)</i></p>	<p>The “DIP Credit Facility” shall consist of a multiple draw term loan facility in an aggregate principal amount of \$5.250 million (the “<b>DIP Commitment</b>”) to be made available to Borrowers as follows:</p> <p>(i) <u>Interim DIP Loan</u>: A term loan facility to be available in a single drawing on the Interim Closing Date in an aggregate principal amount of \$2.250 million in order to provide sufficient working capital to the Borrowers until the Final Closing Date, in accordance with the DIP Budget and subject to the provisions of the DIP Term Sheet (the “<b>Interim DIP Loan</b>”);</p> <p>(ii) <u>Final DIP Loan</u>: 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 “<b>Final DIP Loan</b>”); and</p> <p>(iii) <u>Sale/Plan Loan</u>: 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 or Plan 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 “<b>Sale/Plan Loan</b>,” and together with the Interim DIP Loan and Final DIP Loan, the “<b>DIP Loans</b>”).</p> <p>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 “<b>Permitted Expenditures</b>”).</p>
<p><b><u>Priority</u></b>  <i>Bankruptcy Rule 4001(c)(1)(B)(i);                  Local Bankruptcy Rule 4001-2(a)(4);</i></p>	<p>All DIP Loans and other liabilities and obligations of the Borrowers to the DIP Lenders under or in connection with the DIP Term Sheet, the DIP Loan Documentation, the Interim Order and Final Order shall be:</p> <p>(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;</p> <p>(ii) pursuant to section 364(c)(2) of the Bankruptcy Code, secured by a perfected first-priority lien on the Collateral, subject only to (a) valid, perfected and non-avoidable liens as of the date the Borrowers file the Chapter 11 Cases (the “<b>Petition Date</b>”), and (b) the Carveout (the “<b>First Priority DIP Liens</b>”);</p> <p>(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</p>

	<p>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 “<b>Second Priority DIP Liens</b>”); and</p> <p>(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 “<b>Priming DIP Liens</b>”).</p>
<p><b><u>Collateral</u></b> <i>Bankruptcy Rule 4001(c)(1)(B)</i></p>	<p>“<b>Collateral</b>” 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, and the equity interests of each direct and indirect subsidiary of each Borrower.</p>
<p><b><u>Carveout</u></b> <i>Bankruptcy Rule 4001(c)(1)(B)(ii); Local Bankruptcy Rule 4001-2(a)(5);</i></p>	<p>“<b>Carveout</b>” 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.</p>
<p><b><u>Termination Date</u></b> <i>Bankruptcy Rule 4001(c)(1)(B)</i></p>	<p>All of the Borrowers’ indebtedness, liabilities and obligations under the DIP Loans are due and payable in full on the earliest of (the “<b>Termination Date</b>”) (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 “<b>Maturity Date</b>”), (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.</p>
<p><b><u>Budget</u></b> <i>Bankruptcy Rule 4001(c)(1)(B)</i></p>	<p>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), <i>provided, however</i>, 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; <i>provided further, however</i>, that notwithstanding anything contained in any approved budget or the DIP 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 “<b>DIP Budget</b>”).</p> <p>The Borrowers shall deliver to the DIP Lenders by 12:00 p.m. (ET) on Wednesday of each</p>



	<p>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.</p>
<p><b>Closing Dates</b> <i>Bankruptcy Rule 4001(c)(1)(B)</i></p>	<p>“<b>Interim Closing Date</b>” 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 the DIP Term Sheet.</p> <p>“<b>Final Closing Date</b>” 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, “<b>Final Order</b>” 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 the DIP 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.</p> <p>“<b>Sale/Plan Closing Date</b>” 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) shall have been satisfied or waived.</p>
<p><b>Bankruptcy Milestones, Deadlines for Sale or Plan</b> <i>Bankruptcy Rule 4001(c)(1)(B); Local Bankruptcy Rule 4001-2(a)(12)</i></p>	<p>“<b>Bankruptcy Milestones</b>” shall include the following:</p> <p>(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;</p> <p>(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 the DIP 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 “<b>Sale Motion</b>”);</p> <p>(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;</p> <p>(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;</p> <p>(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</p> <p>(vi) In lieu of such sale:</p> <p>(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 the DIP 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 “<b>Plan</b>”);</p> <p>(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;</p> <p>(c) the Plan must be confirmed by an order of the Bankruptcy Court in form and</p>

	<p>substance acceptable to the DIP Lenders that is not subject to appeal, reconsideration or review within 105 days after the Petition Date; and</p> <p>(d) the Plan must be consummated, and the DIP Lenders paid in full within 120 days after the Petition Date.</p> <p>Additional milestones shall be mutually agreed upon between the Borrowers and DIP Lenders in the DIP Loan Documentation or any portion thereof.</p>
<p><b>Commitment Fee</b> <i>Bankruptcy Rule 4001(c)(1)(B); Local Bankruptcy Rule 4001-2(a)(3)</i></p>	<p>A commitment fee equal to \$250,000 shall be fully earned upon execution of the commitment letter to which the DIP 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</p>
<p><b>Origination /Take-Out Fee</b> <i>Bankruptcy Rule 4001(c)(1)(B); Local Bankruptcy Rule 4001-2(a)(3)</i></p>	<p>A fee (the “<b>Origination Fee</b>”) 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.</p> <p>An additional fee of \$1 million (the “<b>Take-Out Fee</b>”) shall be due and payable to the DIP Lenders immediately if any Borrower obtains alternative financing at any time after the Interim Closing Date.</p>
<p><b>Exit Fee</b> <i>Bankruptcy Rule 4001(c)(1)(B); Local Bankruptcy Rule 4001-2(a)(3)</i></p>	<p>A fee (the “<b>Exit Fee</b>”) 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, 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.</p> <p>“<b>Sale Proceeds</b>” 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 retained by the Borrowers. “<b>Plan Proceeds</b>” 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.</p>
<p><b>Interest Rate</b> <i>Bankruptcy Rule(c)(1)(B)</i></p>	<p>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.</p>
<p><b>Default Rate</b> <i>Bankruptcy Rule(c)(1)(B)</i></p>	<p>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.</p>
<p><b>Optional Prepayments</b> <i>Local Bankruptcy</i></p>	<p>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.</p>

<i>Rule 4001-2(a)(13)</i>	
<p><b><u>Mandatory Prepayments</u></b>  <i>Local Bankruptcy Rule 4001-2(a)(13)</i></p>	<p>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.</p>
<p><b><u>Conditions to Interim DIP Loan</u></b>  <i>Bankruptcy Rule 4001(c)(1)(B);  Local Bankruptcy Rule 4001-2(a)(2), 2(h)</i></p>	<p>(i) the Borrowers shall have timely delivered to the DIP Lenders and the Lenders shall have approved the DIP Budget;</p> <p>(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;</p> <p>(iii) the Interim Order shall have been entered by the Bankruptcy Court;</p> <p>(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, “<b>Interim Order</b>” 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;</p> <p>(v) the Borrowers shall have provided certified copies of board resolutions, constitutional documents, secretary’s certificates and good standing certificates;</p> <p>(vi) the Borrowers shall be in compliance in all respects with the Interim Order;</p> <p>(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;</p> <p>(viii) the Commitment Fee shall have been received by the DIP Lenders;</p> <p>(ix) the Borrowers shall have implemented and obtained Bankruptcy Court approval of a cash management system reasonably acceptable to the DIP Lenders;</p> <p>(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;</p> <p>(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;</p> <p>(xii) subject to Bankruptcy Court approval, (a) each Borrower shall have the corporate power and authority to make, deliver and perform its obligations under the DIP Term Sheet and the Interim Order, and (b) 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 the DIP Term Sheet and the Interim Order by any Borrower, or for the validity or enforceability of the DIP 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;</p> <p>(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 the DIP Term Sheet, the DIP Loans, the First Priority DIP Liens, the Second Priority DIP Liens, the Priming DIP Liens, or the Interim Order, the rights and remedies of the DIP Lenders under the DIP 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 “<b>Material Adverse Change</b>”);</p> <p>(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;</p> <p>(xv) The Debtors’ Chief Financial officer shall have resigned from all officer and director roles with Atari S.A.; and</p>

	<p>(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.</p>
<p><b><u>Conditions to Final DIP Loan</u></b>  <i>Bankruptcy Rule 4001(c)(1)(B);          Local Bankruptcy Rule 4001-2(a)(2), 2(h)</i></p>	<p><b><u>Conditions Precedent to Final DIP Loan.</u></b> 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 “<b>Investment Banker</b>”) 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.</p>
<p><b><u>Conditions to Sale/Plan Loan</u></b>  <i>Bankruptcy Rule 4001(c)(1)(B);          Local Bankruptcy Rule 4001-2(a)(2), 2(h)</i></p>	<p><b><u>Conditions Precedent to Sale/Plan Loan.</u></b> 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.</p> <p>Without limiting in any way the DIP Lenders’ discretion consistent with the provisions of the DIP 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, <i>inter alia</i>, the following:</p>

	<p>(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 the DIP 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);</p> <p>(b) that due, adequate and proper notice has been given to all parties in interest;</p> <p>(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;</p> <p>(d) a finding that the DIP Lenders have at all times acted in good faith; and</p> <p>(f) 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.</p>
<p><b><u>Affirmative Covenants</u></b> <i>Bankruptcy Rule 4001(c)(1)(B); Local Bankruptcy Rule 4001-2(a)(8)</i></p>	<p>Customary for debtor-in-possession financings of this type and otherwise as specified in the DIP Loan Documentation.</p>
<p><b><u>Negative Covenants</u></b> <i>Bankruptcy Rule 4001(c)(1)(B); Local Bankruptcy Rule 4001-2(a)(8)</i></p>	<p>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; <u>provided that</u>, 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:</p> <p>(i) create, incur, assume or suffer to exist any indebtedness, except indebtedness expressly permitted by the DIP Term Sheet;</p> <p>(ii) create, incur, assume or suffer to exist any indebtedness, except indebtedness expressly permitted by the DIP Term Sheet;</p> <p>(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;</p> <p>(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</p> <p>(v) create, or acquire any ownership interest in, any entity (whether direct or indirect) other than those existing on the Petition Date.</p>
<p><b><u>Events of Default</u></b> <i>Bankruptcy Rule 4001(c)(1)(B); Local Bankruptcy Rule 4001-2(a)(10)</i></p>	<p>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, "<b>Events of Default</b>"): (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</p>

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);

(xi) 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;

	<p>(xviii) failure by any Borrower to be in compliance in all respects with any provision of the DIP Term Sheet (including, without limitation, any covenants contained herein), the Interim Order, or the Final Order;</p> <p>(xix) failure to pay any interest, principal, fees, costs, charges, or expenses when due;</p> <p>(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;</p> <p>(xxi) failure of the DIP Loan Documentation to be executed and delivered by all parties prior to the Definitive Documentation Date;</p> <p>(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;</p> <p>(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;</p> <p>(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);</p> <p>(xxv) conversion of any Borrower's Chapter 11 Case to a case under Chapter 7 of the Bankruptcy Code;</p> <p>(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;</p> <p>(xxvii) the termination or commencement of liquidation of any Borrower's operations, business or assets; and</p> <p>(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.</p>
<p><b><u>Remedies Upon Event of Default</u></b> <i>Bankruptcy Rule 4001(c)(1)(B); Local Bankruptcy Rule 4001-2(a)(10)</i></p>	<p>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:</p> <p>(i) declare the principal of, and accrued interest on, any outstanding DIP Loans to be immediately due and payable;</p> <p>(ii) terminate any further commitment to lend to the Borrowers;</p> <p>(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);</p> <p>(iv) foreclose upon, sell, dispose of, or otherwise realize upon the Collateral; or</p> <p>(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 the DIP 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.</p>
<p><b><u>Automatic Stay</u></b> <i>Bankruptcy Rule 4001(c)(1)(B)(iv)</i></p>	<p>Upon three business days prior notice, the automatic stay is vacated to permit the DIP Lenders to exercise remedies to the extent set forth in the DIP Orders.</p>

## **VI. Jurisdiction, Venue and Predicates for Relief Requested**

16. The Court has jurisdiction over this Motion pursuant to 28 U.S.C. § 1334 and the *Amended Standing Order of Reference M-431*, dated January 31, 2012 (Preska, C.J.). Venue in this Court is proper pursuant to 28 U.S.C. §§ 1408 and 1409. This matter is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2).

17. The predicates for the relief requested herein are sections 105(a), 361, 362, 364(c)(1), 364(c)(2), 364(c)(3), 364(d), 364(e) and 507 of the Bankruptcy Code, Bankruptcy Rules 2002, 4001(c), and 6004(h) and Local Rule 4001-2.

## **VII. Relief Requested**

18. By this Motion, the Debtors respectfully request entry of the DIP Orders, (i) approving the DIP Term Sheet, (ii) authorizing the Debtors to obtain post-petition financing on a priming secured, super-priority basis on the terms and conditions set forth in the DIP Term Sheet and the DIP Loan Documentation (as defined in the DIP Term Sheet), once it is executed, (iii) authorizing the Debtors to grant liens and security interests on their assets as contemplated by the DIP Term Sheet, and (v) granting certain related relief.

## **VIII. Basis for Relief Requested**

### **A. The Debtors Should be Authorized to Obtain Postpetition Financing Through the DIP Facility.**

19. The Debtors believe that it is essential that they obtain post-petition financing. The relief requested herein will enable the Debtors to continue their ordinary course, day-to-day operations, to preserve the value of their estates, and to facilitate the Debtors' ability to successfully reorganize or sell their assets pursuant to section 363 of the Bankruptcy Code. Access to credit under the DIP Facility is necessary to provide working capital during the pendency of these cases to deal with the liquidity constraints described in the First Day



Declaration and to provide the Debtors' employees, vendors and other key constituencies with confidence that the Debtors have sufficient resources available to maintain their operations in the ordinary course. Absent this new liquidity, not only would the Debtors' ability to maximize the value of their estates be jeopardized, but the Debtors almost certainly would be forced to cease their business operations, and lose the going-concern value of their businesses to the direct detriment of all parties in interest.

20. Section 364 of the Bankruptcy Code authorizes a debtor to obtain secured or superpriority financing under certain circumstances. In particular, section 364(c) of the Bankruptcy Code establishes the conditions under which a debtor may obtain certain types of secured credit and provides, in relevant part, as follow:

(c) If the trustee is unable to obtain unsecured credit allowable under section 503(b)(1) of this title as an administrative expense, the court, after notice and hearing, may authorize the obtaining of credit or the incurring of debt –

- (1) with priority over any of all administrative expenses of the kind specified in section 503(b) or 507(b) of this title;
- (2) secured by a lien on property of the estate that is not otherwise subject to a lien; or
- (3) secured by a junior lien on property of the estate that is subject to a lien.

11 U.S.C. § 364(c).

21. Courts have articulated a three-part test to determine whether a debtor may obtain financing under section 364(c) of the Bankruptcy Code:

- (a) the debtor is unable to obtain unsecured credit under section 364(b) (*i.e.*, by granting a lender administrative expense priority);
- (b) the credit transaction is necessary to preserve the assets of the estate; and
- (c) the terms of the transaction are fair, reasonable and adequate, given the circumstances of the debtor-borrower and the proposed lender.

*See In re Aqua Assocs.*, 123 B.R. 192, 195-96 (Bankr. E.D. Pa. 1991) (applying the above factors and holding that “[o]btaining credit should be permitted not only because it is not available elsewhere, which could suggest the unsoundness of the basis for the use of the funds generated by credit, but also because the credit acquired is of significant benefit to the debtor’s estate and the terms of the proposed loan are within the bounds of reason, irrespective of the inability of the debtor to obtain comparable credit elsewhere”); *In re Ames Dep’t Stores*, 115 B.R. 34, 37-39 (Bankr. S.D.N.Y. 1990).

**i. The DIP Facility Represents the Best Available Financing**

22. To show that the credit required is not obtainable on an unsecured basis or on better terms, a debtor need only demonstrate “by a good faith effort that credit was not available without” the protections of sections 364(c) of the Bankruptcy Code. *Bray v. Shenandoah Fed. Sav. and Loan Ass’n (In re Snowshoe Co.)*, 789 F.2d 1085, 1088 (4th Cir. 1986). Thus, “[t]he statute imposes no duty to seek credit from every possible lender before concluding that such credit is unavailable.” *Id.* at 1088; *see also Ames Dep’t Stores*, 115 B.R. at 40 (holding that debtor made a reasonable effort to secure financing where it approached four lending institutions, was rejected by two, and selected the least onerous financing option from the remaining two lenders). Moreover, where few lenders are likely to be able and willing to extend the necessary credit to the debtor, “it would be unrealistic and unnecessary to require [the debtor] to conduct an exhaustive search for financing.” *In re Sky Valley, Inc.*, 100 B.R. 107, 113 (Bankr. N.D. Ga. 1988), *aff’d sub nom., Anchor Sav. Bank FSB v. Sky Valley, Inc.*, 99 B.R. 117, 120 n.4 (N.D. Ga. 1989).

23. As discussed above, to obtain post-petition financing, the Debtors and their advisors approached several sophisticated, commercial entities, including potential strategic

buyers, about providing debtor-in-possession financing in conjunction with a sale or other restructuring transaction. None of those potential lenders were willing to make a post-petition loan on an unsecured basis in an amount necessary for the Debtors' business operations and other financing needs. As such, when considering all of the factors, the Debtors concluded that the DIP Facility was their best financing alternative. The Debtors' efforts to seek necessary post-petition financing satisfies the statutory requirements of section 364 of the Bankruptcy Code. *See, e.g., In re 495 Cent. Park Ave. Corp.*, 136 B.R. 626, 630 (Bankr. S.D.N.Y. 1992) (debtor seeking financing under section 364(c) of the Bankruptcy Code made acceptable attempt to obtain less onerous financing by speaking to several lenders that denied the loan request); *Ames Dep't Stores*, 115 B.R. at 40.

**ii. The DIP Facility is Necessary to Preserve Assets of the Estates**

24. It is essential that the Debtors obtain the financing required to continue, among other things, the orderly operation of the Debtors' businesses and to make certain capital expenditures and satisfy certain working capital requirements of the Debtors' businesses. The DIP Facility also is essential to provide the Debtors' various stakeholders, including employees, vendors, service providers and other key constituencies, with confidence in the Debtors' ability to reorganize.

25. The success of these cases depends, among other things, on (i) the Debtors' ability to meet their day-to-day working capital requirements without interruption or delay and (ii) the confidence of the Debtors' stakeholders. If the proposed DIP Facility is denied, the Debtors almost certainly will experience business disruptions or the ceasing of operations, and their ability to reorganize or realize value for stakeholders will be damaged irreparably. In addition to ensuring that the Debtors can fund their operations, the requested availability under

the DIP Facility will help provide assurances to the Debtors' vendors and employees that they will be paid for post-petition services. Approval of the requested borrowing under the DIP Facility thus is crucial to maximizing the value of the Debtors' estates.

**iii. The Terms of the DIP Facility Are Fair, Reasonable and Appropriate**

26. As discussed above, the terms and conditions of the proposed DIP Facility are fair and reasonable under the circumstances and are superior to the terms of any alternative financing available to the Debtors. The interest rates and other covenants negotiated with the DIP Lender are reasonable, and the terms of the DIP Facility were highly negotiated. Moreover, the other terms and conditions of the proposed DIP Facility are similar, or more favorable to the Debtors, than any other alternative financing available to the Debtors.

**iv. Entry into the DIP Facility is an Exercise of the Debtors' Sound and Reasonable Business Judgment**

27. Provided that an agreement to obtain secured credit does not run afoul of the provisions of, and policies underlying, the Bankruptcy Code, courts grant a debtor considerable deference in acting in accordance with its sound business judgment in obtaining such credit. *See, e.g., In re Barbara K. Enters., Inc.*, Case No. 08-11474, 2008 WL 2439649, at \* 14 (Bankr. S.D.N.Y. Jun. 16, 2008) (explaining that courts defer to a debtor's business judgment "so long as a request for financing does not 'leverage the bankruptcy process' and unfairly cede control of the reorganization to one party in interest."); *In re Ames Dep't Stores, Inc.*, 115 B.R. 34, 40 (Bankr. S.D.N.Y. 1990) ("[C]ases consistently reflect that the court's discretion under section 364 [of the Bankruptcy Code] is to be utilized on grounds that permit [a debtor's] reasonable business judgment to be exercised as long as the financing agreement does not contain terms that leverage the bankruptcy process and powers or its purpose is not so much to benefit the estate as it is to benefit a party-in-interest"); *see also In re Farmland Indus., Inc.*, 294 B.R. 855, 881

(Bankr. W.D. Mo. 2003) (noting that approval of postpetition financing requires, inter alia, an exercise of “sound and reasonable business judgment”).

28. As described above, after appropriate investigation and analysis, the Debtors’ management has concluded that the DIP Facility provides the best alternative available in the circumstances of these cases. The Debtors have exercised sound business judgment in determining that a post-petition credit facility is both necessary and appropriate and have satisfied the legal prerequisites to incur debt under the DIP Facility. The terms of the DIP Facility are fair and reasonable, and are in the best interests of the Debtors’ estates. The Debtors have reason to believe that the funds made available through the DIP Facility will be adequate to pay all administrative expenses due and payable during the post-petition periods. Accordingly, the Court should grant the Debtors authority to enter into the DIP Facility and obtain funds from the DIP Lender on the secured and administrative “superpriority” basis described above, pursuant to section 364(c) of the Bankruptcy Code.

**B. Approval of the Priming DIP Liens is Appropriate**

29. In addition to authorizing financing under section 364(c) of the Bankruptcy Code, courts also may authorize a debtor to obtain post-petition credit secured by a lien that is senior or equal in priority to existing liens on encumbered property, without the consent of the existing lien holders, if the debtor cannot otherwise obtain such credit and the interests of existing lien holders are adequately protected. *See* 11 U.S.C. § 364(d)(1). Specifically, section 364(d)(1) of the Bankruptcy Code provides, in relevant part, that a court may, after notice and a hearing:

authorize the obtaining of credit or the incurring of debt secured by a senior or equal lien on property of the estate that is subject to a lien only if --

(A) the [debtor] is unable to obtain such credit otherwise; and

- (B) there is adequate protection of the interest holder of the lien on the property of the estate on which such senior or equal lien is proposed to be granted.

11 U.S.C. § 364(d)(1).

30. When determining whether to authorize a debtor to obtain credit secured by a “priming” lien as authorized by section 364(d) of the Bankruptcy Code, courts focus on whether the transaction will enhance the value of the Debtors’ assets. Courts consider a number of factors including, without limitation:

- (i) whether alternative financing is available on any other basis (*i.e.* whether any better offers, bids or timely proposals are before the court);
- (ii) whether the proposed financing is necessary to preserve estate assets and is necessary, essential and appropriate for continued operation of the debtors’ business;
- (iii) whether the terms of the proposed financing are reasonable and adequate given the circumstances of both the debtors and proposed lender(s); and
- (iv) whether the proposed financing agreement was negotiated in good faith and at arm’s length and entry therein is an exercise of sound and reasonable business judgment and in the best interest of the debtor’s estate and its creditors.

*See, e.g., Ames Dept. Stores*, 115 B.R. at 37-39; *In re Lyondell Chem. Co.*, Case No. 09-10023 (Bankr. S.D.N.Y. Mar. 5, 2009); *see also Bland v. Farmworker Creditors*, 308 B.R. 109, 113-14 (S.D. Ga. 2003);

31. As explained above, the Debtors have explored financial alternatives and are aware of the lack of financing available to them given the nature of their capital structure. In light of that, and given the state of the credit markets, the Debtors have concluded that financing comparable to that provided by the DIP Lender in the DIP Facility is currently unobtainable without the priming of any existing prepetition liens. *See Shaw Indus., Inc. v. First Nat’l Bank of PA (In re Shaw Indus., Inc.)*, 300 B.R. 861, 863, 865 (Bankr. W.D. Pa. 2003) (where debtor

made efforts by “contacting numerous lenders” and was unable to obtain credit without a priming lien, it had met its burden under section 364(d)); *In re Dunes Casino Hotel*, 69 B.R. 784, 796 (Bankr. D. N.J. 1986) (holding that the debtor had made required efforts under section 364(d)(1) of the Bankruptcy Code based on evidence that the debtor had attempted unsuccessfully to borrow funds on an unsecured basis or secured by junior liens, but that at least three such lenders were willing to advance funds secured by a superpriority lien). Thus, the Debtors are otherwise unable to obtain financing other than financing secured by first priority priming liens.

32. Additionally, the interests of a lien holder whose liens will be primed will be “adequately protected” under section 364(d) of the Bankruptcy Code. What constitutes adequate protection is decided on a case-by-case basis and it can come in various forms, including payment of adequate protection fees, payment of interest, or granting of replacement liens or administrative claims. *In re Mosello*, 195 B.R. 277, 289 (Bankr. S.D.N.Y. 1996) (“the determination of adequate protection is a fact-specific inquiry . . . left to the vagaries of each case”; see also *In re Realty Southwest Assocs.*, 140 B.R. 360 (Bankr. S.D.N.Y. 1992); *In re Beker Indus. Corp.*, 58 B.R. 725, 736 (Bankr. S.D.N.Y. 1986) (the application of the adequate protection “is left to the vagaries of each case, but its focus is protection of the secured creditor from diminution in the value of its collateral during the reorganization process”) (citation omitted); *In re Continental Airlines Inc.*, 154 B.R. 176, 180-81 (Bankr. D. Del. 1993).

33. The DIP Facility contemplates priming Blue Bay’s lien on the Test Drive IP in both the Interim Order and Final Order. Blue Bay is an “insider” of the Debtors as that term is defined in section 101(31) of the Bankruptcy Code. To account for any diminution in value, the Debtors will provide Blue Bay adequate protection in the form of (a) a subordinate replacement

lien on *all assets of the Debtors* that is junior to the DIP Liens being granted the DIP Lender and (b) a superpriority claim under section 507(b) that is junior only to the superpriority claims of the DIP Lender. Given the value of the unencumbered property held at Atari Interactive, the amount of the DIP Facility and the limited nature of Blue Bay's security interest on rights that are licensed away for the next two years, the Debtors submit that a second priority lien on all assets of the Debtors offers more than sufficient protection to Blue Bay and is, in fact, a better position to be in than a possibly avoidable lien on the only asset at Atari, Inc. The Debtors submit that the adequate protection being offered Blue Bay is both fair and reasonable, and is sufficient to satisfy the requirements of section 364(d)(1)(B) of the Bankruptcy Code.

34. As for the purported lien of the Parent, the Debtors will also seek to prime it at the interim hearing but only to the extent the Parent can prove the extent, validity and priority of its lien. Even if the Parent establishes a valid lien, its lien purportedly is secured by all assets of Atari, Inc. except for the Test Drive IP. This makes the Parent's lien virtually worthless as the Test Drive IP is the only marketable asset held by Debtor Atari, Inc. To the extent that the Parent proves up its alleged lien, the Debtors are prepared to offer adequate protection in line with what is being offered to Blue Bay and submit that such terms are both fair and reasonable.

**C. The Debtors Should Be Authorized To Pay The Fees Required By The DIP Lender And Honor The Obligations Of the Commitment Letter**

35. As described above, the Debtors have agreed, subject to Court approval, to pay certain fees to the DIP Lender in exchange for their providing the DIP Facility. Specifically, the Debtors will pay (i) interest charges at 5%, accrued and added to the principal balance, (ii) a commitment fee of \$250,000, to be paid from the proceeds available during the interim period, (iii) an origination fee of \$250,000 to be paid at the Maturity Date of the loan (after assets are sold), and (iv) an exit fee based on a sliding-scale formula tied to the amount of sale or plan



proceeds in excess of the DIP balance and investment banker commissions. The fees the Debtors have agreed to pay the DIP Lender and other obligations under the Term Sheet represent the most favorable terms to the Debtors on which the DIP Lender would agree to make the DIP Facility available. The Debtors considered the fees described herein when determining in their sound business judgment that the DIP Term Sheet constituted the best postpetition financing necessary to continue their operations and prosecute their chapter 11 cases, and paying these fees in order to obtain the DIP Facility is in the best interests of the Debtors' estates, creditors, and other parties in interest.

36. Court routinely authorize debtors to pay DIP financing fees where the financing, in the debtor's business judgment, is beneficial to the debtors' estates. *See, e.g., In re InSight Health Servs. Holding Corp.*, Case No. 10-16564 (AJG) (Bankr. S.D.N.Y. Jan. 4, 2011)(approving 2.0% DIP closing fee); *In re Lear Corp.*, Case No. 09-14326 (ALG) (Bankr. S.D.N.Y. Aug. 4, 2009)(approving 5.0% up front fee and a 1.0% exit/conversion fee); *In re Aleris Int'l Inc.*, Case No. 09-10478 (BLS)(Bankr. D. Del. Mar. 18, 2009)(approving 3.5% exit fee and 3.5% front-end net adjustment against each lender's initial commitment). Accordingly, the Court should authorize the Debtors to pay the fees as provided in the Term Sheet.

**D. The Scope of the Carve-Out is Appropriate.**

37. The proposed DIP Facility subjects the security interests and administrative expense claims of the DIP Lender to the Carveout (as defined in the DIP Term Sheet). Such carve-outs for professional fees have been found to be reasonable and necessary to ensure that a debtor's estate and any statutory committee can retain assistance from counsel. *See, e.g., Ames Dep't. Stores*, 115 B.R. at 40; *In re United Retail*, Case No. 12-10405 (SMB) (Bankr. S.D.N.Y. Feb. 1, 2012); *In re Eastman Kodak Co.*, Case No. 12-10202 (ALG) (Bankr. S.D.N.Y. Jan. 19,

2012); *In re General Maritime Corp.*, Case No. 11-15285 (MG) (Bankr. S.D.N.Y. Nov. 17, 2011). The DIP Facility does not directly or indirectly deprive the Debtors' estates or other parties in interest of possible rights and powers by restricting the services for which professionals may be paid in these cases. *See In re Ames Dep't Stores*, 115 B.R. at 38 (observing that courts insist on carve-outs for professionals representing parties-in-interest because "[a]bsent such protection, the collective rights and expectations of all parties-in-interest are sorely prejudiced"). Additionally, the Carveout protects against administrative insolvency during the course of the case by ensuring that assets remain for payment of U.S. Trustee fees and professional fees of the Debtors and the future Committee notwithstanding the grant of superpriority and administrative liens and claims under the DIP Facility.

**E. The DIP Lender Should be Deemed a Good Faith Lender under Section 364(e).**

38. Section 364(e) of the Bankruptcy Code protects a good faith lender's right to collect on loans extended to a debtor, and its right in any lien securing those loans, even if the authority of the debtor to obtain such loans or grant such liens is later reversed or modified on appeal. Section 364(e) provides that:

(e) The reversal or modification on appeal of an authorization under this section to obtain credit or incur debt, or of a grant under this section of a priority or a lien, does not affect the validity of any debt so incurred, or any priority or lien so granted, to an entity that extended such credit in good faith, whether or not such entity knew of the pendency of the appeal, unless such authorization and the incurring of such debt, or the granting of such priority or lien, were stayed pending appeal.

11 U.S.C. § 364(e).

39. As explained in detail herein and in the First Day Declaration, the DIP Facility is the result of the Debtors' reasonable and informed determination that the DIP Lender offered the most favorable terms on which to obtain needed post-petition financing, and of extended arm's-

length negotiations between the Debtors and the DIP Lender. The term and conditions of the DIP Facility are fair and reasonable, and the proceeds of the DIP Facility will be used only for purposes that are permissible under the Bankruptcy Code. Further, no consideration is being provided to any party to the DIP Facility other than as described herein. Accordingly, the Court should find that the DIP Lender is a “good faith” lender within the meaning of section 364(e) of the Bankruptcy Code, and is entitled to all of the protections afforded by that section.

**F. Approval of the DIP Facility on an Interim Basis is Necessary to Prevent Immediate and Irreparable Harm.**

40. Bankruptcy Rule 4001(c)(2) governs the procedures for obtaining authorization to obtain postpetition financing and provides, in relevant part:

The court may commence a final hearing on a motion for authority to obtain credit no earlier than 14 days after service of the motion. If the motion so requests, the court may conduct a hearing before such 14 day period expires, but the court may authorize the obtaining of credit only to the extent necessary to avoid immediate and irreparable harm to the estate pending a final hearing.

Fed. R. Bankr. Proc. 4001(c)(2).

41. In examining requests for interim relief under the immediate and irreparable harm standard, courts apply the same business judgment standard applicable to other business decisions. *See, e.g., Ames Dep’t Stores*, 115 B.R. at 36. After the 14-day period, the request for financing is not limited to those amounts necessary to prevent the destruction of the debtor’s business, and the debtor is entitled to borrow those amounts that it believes are prudent to the operation of its business. *Ames Dep’t Stores*, 115 B.R. at 36.

42. Immediate and irreparable harm would result if the relief requested herein is not granted on an interim basis. As described in detail herein and the First Day Declaration, the Debtors have an immediate need to obtain access to liquidity to, among other things, continue to

operate their businesses, maintain key business relationships, make payroll and satisfy other working capital and operational needs. Funding each of these expenditures is necessary to preserve and maintain the value of the Debtors' estates for the benefit of all parties in interest. Without approval of the DIP Facility on an interim basis, the Debtors would need immediately to cease operations. The DIP Lender has agreed to lend up to the amount of \$2.25 million on an interim basis. The Debtors anticipate they will need, at the absolute minimum, the amount of \$1.4 million to operate through a two-week period after the Petition Date. Having access to the amount offered by the DIP Lender will assure the Debtors sufficient breathing room to focus on maintaining business operations while dealing with the ongoing demands of the chapter 11 cases.

43. The crucial importance of a debtor's ability to secure postpetition financing to prevent immediate and irreparable harm to its estate repeatedly has been recognized in this district. *See, e.g., In re United Retail Grp., Inc.*, Case No. 12-10405 (SMB) (Bankr. S.D.N.Y. Feb 2, 2012) (order approving postpetition financing on an interim basis); *In re Sbarro, Inc.*, Case No. 11-11527 (SCC) (Bankr. S.D.N.Y. Apr. 5, 2011) (same); *In re MSR Resort Golf Course LLC*, Case No. 11-10372 (SHL) (Bankr. S.D.N.Y. Mar. 16, 2011); (same); *In re Great Atl. & Pac. Tea Co.*, Case No. 10-24549 (RDD) (Bankr. S.D.N.Y. Dec. 13, 2010) (same); *In re Reader's Digest Assoc.*, Case NO. 09-23529 (RDD) (Bankr. S.D.N.Y. Aug. 26, 2009) (same); *In re Tronox Inc.*, Case No. 09-10156 (ALG) (Bankr. S.D.N.Y. Jan 13, 2009) (same)., Accordingly, for the reasons set forth above, prompt entry of the Interim Order is necessary to avert immediate and irreparable harm to the Debtors' estates and is consistent with, and warranted under, Bankruptcy Rule 4001(c)(2).

44. Accordingly, the Debtors request that, pending the Final Hearing, the Court schedule an interim hearing on the Petition Date or as soon thereafter as is practical to consider the Debtors' request for authorization to obtain interim financing under the DIP Facility.

**G. Modification of the Automatic Stay Is Warranted.**

45. The Interim Order provides that the automatic stay provisions under section 362 of the Bankruptcy Code are vacated and modified to the extent necessary to permit the DIP Lender to exercise, upon the occurrence and during the continuation of any Event of Default, all rights and remedies provided for in the DIP Term Sheet, and to take various actions without further order of or application to the Court. The Interim Order also proposes that the DIP Lender must provide the Debtors, any committee and the U.S. Trustee with three (3) business days' written notice prior to exercising any enforcement rights or remedies in the Event of Default.

46. Stay modification provisions of this sort are ordinary and usual features of debtor in possession financing facilities and, in the Debtors' business judgment, are reasonable under the present circumstances. *See, e.g., In re United Retail Grp., Inc.*, Case No. 12-10405 (SMB) (Bankr. S.D.N.Y. Feb. 22, 2012); *In re Sbarro, Inc.*, Case No. 11-11527 (SCC) (Bankr. S.D.N.Y. May 4, 2011); *In re MSR Resort Golf Course LLC*, Case No. 11-10372 (SHL) (Bankr. S.D.N.Y. Jan. 25, 2011); *In re Great Atl. & Pac. Tea Co.*, Case No. 10-24549 (RDD) (Bankr. S.D.N.Y. Jan. 11, 2011); *In re InSight Health Servs. Holdings Corp.*, Case No. 10-16564 (AJG) (Bankr. S.D.N.Y. Jan 4, 2011). Accordingly, the Court should modify the automatic stay to the extent contemplated under the DIP Facility Term Sheet and the proposed DIP Orders.

**H. Request for Final Hearing.**

47. Pursuant to Bankruptcy Rules 4001(c)(2), the Debtors request that the Court set a date for the Final Hearing that is as soon as practicable, but in no event later than, 15 days

following the Petition Date, and fix the time and date prior to the Final Hearing for parties to file objections to this Motion.

**I. Waiver of Bankruptcy Rules Regarding Notice and Stay of an Order.**

48. The Debtors further seek a waiver of any stay of the effectiveness of the order approving this Motion. Pursuant to Bankruptcy Rule 6004(h), “an order authorizing the use, sale, or lease of property other than cash collateral is stayed until the expiration of 14 days after entry of the order, unless the court orders otherwise.” As set forth above, the DIP Facility is essential to prevent irreparable damage to the Debtors’ operations, value, and ability to reorganize. Accordingly, the Debtors submit that ample cause exists to justify a waiver of the 14-day stay imposed by Bankruptcy Rule 6004(h), to the extent it applies.

**IX. Notice**

49. Notice of this Motion has been provided to: (i) the Office of the United States Trustee for the Southern District of New York; (ii) counsel to the DIP Lender; (iii) counsel to Blue Bay; (iv) counsel to Atari S.A.; (v) the creditors holding the thirty (30) largest unsecured claims against the Debtors’ estates on a consolidated basis, as identified in the Debtors’ chapter 11 petitions; and (vi) all parties that have filed a notice of appearance or have requested service in these chapter 11 cases. In light of the nature of the relief requested herein and the potential harm to the Debtors’ estates if the relief requested herein is not granted, the Debtors respectfully submit that no other or further notice need be provided.

**X. No Prior Request**

50. No prior motion for the relief requested herein has been made to this or any other court.

WHEREFORE, the Debtors respectfully request that the Court (i) enter an order, substantially in the form of the Interim Order, granting the relief requested herein, and (ii) grant to the Debtors such other and further relief as the Court may deem just and proper.

Dated: New York, New York  
January 22, 2013

Respectfully submitted,

/s/ Peter S. Partee, Sr.

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*Proposed Attorneys for Debtors and  
Debtors-in-Possession*

**EXHIBIT 1**

**PROPOSED INTERIM ORDER**



UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

In re:

ATARI, INC., *et al.*,

Debtors.

Chapter 11

Case No. 13-10176 (\_\_\_\_)

Jointly Administered

**INTERIM ORDER PURSUANT TO 11 U.S.C. §§ 105, 361,  
362, 364 AND 507 (I) AUTHORIZING THE DEBTORS  
TO 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**

Upon the motion (the “**Motion**”) by Atari, Inc., Atari Interactive, Inc., California US Holding, Inc. and Humongous, Inc., as debtors and debtors in possession (each, a “**Debtor**,” and collectively, the “**Debtors**”) in their Chapter 11 bankruptcy cases (each, a “**Case**,” and collectively, the “**Cases**”), pursuant to Sections 105, 361, 362, 364 and 507 of Title 11 of the United States Code (the “**Bankruptcy Code**”), Rules 2002, 4001 and 9014 of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”), and Rule 4001-2 of the Local Bankruptcy Rules for the United States Bankruptcy Court for the Southern District of New York (the “**Local Rules**”), seeking entry of this interim order (the “**Interim Order**”) *inter alia*:

(i) authorizing the Debtors to enter into the term sheet attached hereto as Exhibit A (as amended, supplemented or otherwise modified from time to time, the “**DIP Term Sheet**”), between the Debtors, on the one hand, and Tenor Capital Management Company, L.P. (“**Tenor**”) and/or any fund or entity managed by Tenor and/or any other entity designated as a lender by Tenor (collectively, the “**DIP Lenders**”), on the other hand, to obtain, subject to (x) the entry of an order not subject to appeal, reconsideration or review in form and substance acceptable to the

DIP Lenders approving the DIP Facility (as defined below) and DIP Credit Documents (as defined below) on a final basis (the “**Final Order**”), (y) the delivery and execution of a post-petition financing credit agreement (the “**DIP Credit Agreement**”) and other post-petition financing documents ancillary thereto, referenced in the DIP Term Sheet or this Interim Order, or requested by the DIP Lenders (collectively, and together with the DIP Credit Agreement, the “**DIP Credit Documents**”), each consistent with the DIP Term Sheet and in form and substance satisfactory to the DIP Lenders, and (z) the satisfaction of each of the terms and conditions (including the “**Conditions Precedent**” set forth in the DIP Term Sheet) set forth in the DIP Term Sheet, this Interim Order and the DIP Credit Documents (collectively, the “**DIP Financing Conditions**”), priming superpriority secured postpetition financing, consisting of up to a \$5.250 million, of which \$2.250 million shall be available on an interim basis in accordance with the terms of the DIP Term Sheet and this Interim Order (the “**DIP Facility**”);<sup>1</sup>

(ii) authorizing the Debtors to execute and deliver the DIP Credit Agreement and the other DIP Credit Documents, and to perform such other acts as may be necessary or desirable to the DIP Lenders in connection with the DIP Credit Agreement and the other DIP Credit Documents, all of which shall be subject to the Court’s approval at the Final Hearing;

(iii) subject to the satisfaction of the DIP Financing Conditions, authorizing the Debtors to grant the DIP Facility and all indebtedness, obligations and liabilities owing to the DIP Lenders under the DIP Term Sheet, DIP Facility, DIP Credit Documents, this Interim Order and the Final Order (collectively, the “**DIP Obligations**”), allowed superpriority administrative expense claim status in the Cases and any Successor Cases (as defined below), and authorizing the

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<sup>1</sup> The Court’s approval of the DIP Facility pursuant to this Interim Order shall be limited to the terms of the DIP Term Sheet and this Interim Order. The Debtors are not seeking approval of the DIP Credit Documents, or authority to draw on the DIP Facility *in toto* until the DIP Financing Conditions have been satisfied. The Debtors shall file the DIP Credit Documents in advance of the Final Hearing (as defined below).

Debtors to grant to the DIP Lenders automatically perfected security interests in and liens on all of the Collateral (as defined below);

(iv) vacating and modifying the automatic stay imposed by Section 362 of the Bankruptcy Code to the extent necessary to implement and effectuate the terms and provisions of this Interim Order, the DIP Term Sheet and, subject to the satisfaction of the DIP Financing Conditions, the DIP Credit Documents; and

(v) scheduling a final hearing (the “**Final Hearing**”) to consider the relief requested in the Motion and this Interim Order, and approving the form of notice with respect to the Final Hearing.

The Court having considered the Motion, the Declaration of Robert A. Mattes, the Debtors’ Chief Financial Officer, in support of the Chapter 11 petitions and first day motions, including the Motion, the exhibits attached thereto, the DIP Term Sheet, the DIP Facility and the evidence submitted or adduced and the arguments of counsel made at the hearing held to grant the Motion on an interim basis (the “**Interim Hearing**”); and notice of the Interim Hearing having been given in accordance with the Bankruptcy Rules and Local Rules; and the Interim Hearing to consider the interim relief requested in the Motion and this Interim Order having been held and concluded; and all objections, responses, or reservations of rights, if any, to the interim relief requested in the Motion having been withdrawn, resolved or overruled by the Court; and it appearing to the Court that granting the interim relief requested is necessary to avoid immediate and irreparable harm, loss or damage to the Debtors and their estates pending the Final Hearing, and otherwise is fair and reasonable and in the best interests of the Debtors, their estates, and their creditors and equityholders, and is essential for the continued operation of the Debtors’ business; and after due deliberation and consideration, and for good and sufficient

cause appearing therefor;

IT IS FOUND, DETERMINED, ADJUDGED AND DECREED AS FOLLOWS:<sup>2</sup>

A. Petition Date. On January 21, 2013 (the “**Petition Date**”), the Debtors filed voluntary petitions for relief under Chapter 11 of the Bankruptcy Code in this Court commencing the Cases.

B. Debtors in Possession. The Debtors are continuing in the management and operation of their business and assets as debtors in possession pursuant to Sections 1107 and 1108 of the Bankruptcy Code. No trustee or examiner has been appointed in the Cases.

C. Jurisdiction and Venue. This Court has jurisdiction over these proceedings, and over the persons, entities and assets affected hereby pursuant to 28 U.S.C. § 1334 and the *Amended Standing Order of Reference M-431*, dated January 31, 2012 (Preska, C.J.). Consideration of the Motion constitutes a core proceeding under 28 U.S.C. § 157(b)(2). Venue for the Cases and proceedings on the Motion is proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409.

D. Committee Formation. As of the date hereof, the Office of the United States Trustee for the Southern District of New York (the “**U.S. Trustee**”) has not yet appointed any official committee in these Cases pursuant to Section 1102 of the Bankruptcy Code (each, a “**Statutory Committee**”).

E. Prepetition Debt. As of the Petition Date, Atari S.A., the Debtors’ parent company, had outstanding debt owed to Blue Bay Value Recovery (Master) Fund Limited (“**Blue Bay**”). Prior to the Petition Date, Blue Bay filed a financing statement (the “**Prepetition Lien**”) against certain assets of Atari, Inc. (the “**Prepetition Collateral**”).

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<sup>2</sup> This Interim Order shall constitute the Court’s findings of fact and conclusions of law as required by Bankruptcy Rule 7052. Findings of fact shall be construed as conclusions of law, and conclusions of law shall be construed as findings of fact, when appropriate.

The Debtors dispute the validity and enforceability of the Prepetition Lien.

F. Findings Regarding Postpetition Financing.

(i) *Request for Postpetition Financing.* The Debtors seek authority to enter into the DIP Term Sheet. The Court's approval of the DIP Facility pursuant to this Interim Order shall be limited to the terms of the DIP Term Sheet and this Interim Order. The DIP Lenders shall have no obligation to make loans or advances under the DIP Facility (other than as set forth in this Interim Order or in the DIP Term Sheet) until the DIP Financing Conditions have been satisfied.

(ii) *Priming of Prepetition Lien.* The priming of the Prepetition Lien on the Prepetition Collateral by the DIP Liens (as defined below) will enable the Debtors to obtain the DIP Facility and to continue to operate their business for the benefit of their estates and creditors.

(iii) *Need for Postpetition Financing.* The Debtors' need to obtain credit as set forth in the DIP Term Sheet is immediate and critical in order to enable the Debtors to continue their operations, and to administer and preserve the value of their estates. The ability of the Debtors to finance their operations, maintain business relationships, pay their employees, protect the value of their assets and otherwise finance their operations requires the availability of working capital from the credit as set forth in the DIP Term Sheet, the absence of which would immediately and irreparably harm the Debtors, their estates, their creditors and equityholders, and the possibility for a successful reorganization of the Debtors. The Debtors do not have sufficient available sources of working capital or financing to operate their business or to maintain their assets in the ordinary course of business without the authorized use of credit as set forth in the DIP Term Sheet.

(iv) *No Credit Available on More Favorable Terms.* Given their current financial condition, financing arrangement and capital structure, the Debtors are unable to obtain postpetition financing from sources other than the DIP Lenders on terms more favorable than those set forth in the DIP Term Sheet. The Debtors have been unable to obtain unsecured credit allowable under Section 503(b)(1) of the Bankruptcy Code as an administrative expense. The Debtors have also been unable to obtain credit: (a) having priority over that of administrative expenses of the kind specified in Sections 503(b), 507(a) and 507(b) of the Bankruptcy Code, (b) secured solely by a lien on property of the Debtors and their estates that is not otherwise subject to a lien; or (c) secured solely by a junior lien on property of the Debtors and their estates that is subject to a lien. Financing on a postpetition basis is not otherwise available without granting the DIP Lenders (1) perfected security interests in and liens on all of the Debtors' existing and after-acquired assets with the priorities set forth herein, (2) superpriority claims, and (3) the other protections set forth in this Interim Order and in the Final Order.

(v) *Use of Proceeds.* As a condition to the authorization to obtain credit as set forth in this Interim Order and the DIP Term Sheet, the DIP Lenders require, and the Debtors have agreed, that any financing provided pursuant to this Interim Order and the DIP Term Sheet shall be used in accordance with the DIP Budget<sup>3</sup> (as defined in the DIP Term Sheet, as the same may be modified from time to time with the prior written consent of the DIP Lenders), solely for the Permitted Expenditures (as defined in the DIP Term Sheet).

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<sup>3</sup> The initial DIP Budget is attached hereto as Exhibit B.

G. Section 506(c). In light of the DIP Lenders' agreement to subordinate the DIP Liens and DIP Superpriority Claim (as defined below) to the Carveout pursuant to the terms of the DIP Term Sheet and this Interim Order, upon entry of the Final Order the DIP Lenders are entitled to a waiver of the provisions of Section 506(c) of the Bankruptcy Code.

H. Good Faith of the DIP Lenders.

(i) *Willingness to Provide Financing*. The DIP Lenders have indicated a willingness to provide financing to the Debtors subject to: (a) the entry of this Interim Order; (b) the satisfaction of the DIP Financing Conditions; (c) Court approval of the terms and conditions of the DIP Term Sheet; and (d) entry of findings by this Court that such financing is essential to the Debtors' estates, that the DIP Lenders are extending credit to the Debtors as set forth in the DIP Term Sheet in good faith, and that the DIP Lenders' claims, superpriority claims, security interests, liens, protections, rights and remedies will have the protections provided in Section 364(e) of the Bankruptcy Code and will not be affected by any subsequent reversal, modification, stay, vacatur, amendment, reargument or reconsideration of this Interim Order or any other order.

(ii) *Business Judgment and Good Faith Pursuant to Section 364(e)*. The terms and conditions of the DIP Term Sheet are fair, reasonable, and the best available to the Debtors under the circumstances, reflect the Debtors' exercise of prudent business judgment consistent with their fiduciary duties, and are supported by reasonably equivalent value and consideration. The DIP Term Sheet was negotiated in good faith and at arms' length among the Debtors and the DIP Lenders. Any credit to be extended as set forth in the DIP Term Sheet shall be deemed to have been so allowed, advanced, made, used or extended in good faith, and for valid

business purposes and uses, within the meaning of Section 364(e) of the Bankruptcy Code, and the DIP Lenders are therefore entitled to the protection and benefits of Section 364(e) of the Bankruptcy Code and this Interim Order.

I. Notice. Notice of the DIP Term Sheet, this Interim Order, the Interim Hearing and the emergency relief requested in the Motion has been provided by the Debtors by facsimile (where facsimile numbers were available), email (where email addresses were available), and overnight courier or hand delivery to: (i) the U.S. Trustee; (ii) the Internal Revenue Service; (iii) the parties included on the Debtors' list of 30 largest unsecured creditors; (iv) counsel to Atari, S.A., the ultimate corporate parent of each of the Debtors; (v) counsel to Blue Bay; (vi) counsel to the DIP Lenders; (vii) all parties in interest that have filed a request for notices pursuant to Bankruptcy Rule 2002, and (viii) counsel for any Statutory Committee. The Debtors have made reasonable efforts to afford notice that was, in the Debtors' belief, the best notice available under the circumstances, and such notice is proper and sufficient to permit the relief set forth in this Interim Order, and no other or further notice is or shall be required.

Based upon the foregoing findings and conclusions, the Motion, the DIP Term Sheet and the record before the Court with respect to the Motion, and good and sufficient cause appearing therefor,

IT IS HEREBY ORDERED that:

1. DIP Term Sheet Approved. The Motion is GRANTED and the DIP Term Sheet is APPROVED. The Debtors are expressly and immediately authorized, empowered and directed to execute and deliver the DIP Term Sheet, to incur and to perform thereunder, and to deliver all instruments and documents that may be necessary or required for performance by the Debtors under the DIP Term Sheet and the creation and perfection of the DIP Liens described in and



provided for by this Interim Order and the DIP Term Sheet. Each term and provision of the DIP Term Sheet is valid, binding and enforceable as though set forth in this Interim Order. The failure to specifically include or reference any particular term or provision of the DIP Term Sheet in this Interim Order shall not diminish or impair the effectiveness of such term or provision, it being the intent of this Court that the DIP Term Sheet be approved in its entirety.

2. Objections Overruled. All objections, responses or reservations of rights to the Motion or DIP Term Sheet that have not been withdrawn or otherwise resolved, are overruled on their merits.

3. DIP Obligations. Upon execution and delivery, and subject to the satisfaction of the DIP Financing Conditions, the DIP Credit Documents shall represent valid and binding obligations of the Debtors, enforceable against the Debtors, their estates and any successors or assigns thereto, including, but not limited to, any trustee or other estate representative appointed in a Case or any case under Chapter 7 of the Bankruptcy Code upon the conversion of a Case (a “**Successor Case**”). The “**DIP Obligations**” include, but are not limited to, all loans and any other indebtedness or obligations, contingent or absolute, which may from time to time be owing by the Debtors to the DIP Lenders under the DIP Term Sheet or DIP Credit Documents, including, but not limited to, all principal, interest, costs, fees, expenses and other amounts owed pursuant to the DIP Term Sheet or DIP Credit Documents.

4. DIP Liens and Collateral. Pursuant to Section 364(c)(2), (c)(3) and (d) of the Bankruptcy Code, the DIP Lenders are hereby granted, continuing, valid, binding, enforceable, non-avoidable and automatically and properly perfected first-priority postpetition security interests in and liens on the Collateral (as defined in the DIP Term Sheet) (collectively, the “**DIP Liens**”).

5. Priority of DIP Liens.

(a) *DIP Liens.* The DIP Liens shall be junior only to the Carveout, and shall otherwise be senior in priority and superior to the Prepetition Lien and any other security, mortgage, collateral interest, lien or claim on or to any of the Collateral. The DIP Liens shall not be subject to or *pari passu* with any security, mortgage, collateral interest, lien or claim heretofore or hereinafter granted in a Case or any Successor Case.

(b) *Treatment of DIP Liens.* The DIP Liens shall be valid and enforceable against the Debtors, the Collateral, any trustee or other estate representative appointed in a Case or any Successor Case, upon the conversion of any of a Case to a case under Chapter 7 of the Bankruptcy Code (or in any other Successor Case), and/or upon the dismissal of any of a Case or a Successor Case. The DIP Liens shall not be subject to challenge, including, but not limited to, under Sections 510, 549, or 550 of the Bankruptcy Code. No security, mortgage, collateral interest, lien, claim, or interest avoided and preserved for the benefit of the Debtors' estates shall be *pari passu* with or senior to the DIP Liens.

6. DIP Budget. The Debtors' use of the credit extended under this Interim Order and the DIP Term Sheet is on an interim basis, shall at all times be in compliance with the DIP Budget, and may be utilized until the earlier of (x) February 24, 2013, (y) the date of written notice from the DIP Lenders of the occurrence of an Event of Default (as defined in the DIP Term Sheet), or (z) the date of sale of any Debtor's assets outside the ordinary course of business or any Debtor's emergence from Chapter 11 pursuant to a plan of reorganization (the "**Termination Date**"). Nothing in this Interim Order shall authorize the Debtors' disposition of any of their assets or the assets of their estates outside the ordinary course of business (which shall be subject to further orders of this Court), or the Debtors' use of any proceeds

resulting therefrom, except as permitted in this Interim Order and in accordance with the DIP Budget. Any modification to, or amendment or update of, the DIP Budget shall be in form and substance acceptable to the DIP Lenders.

7. DIP Superpriority Claim.

(a) *Superpriority Claim of DIP Lenders.* The DIP Lenders are hereby granted, pursuant to Section 364(c)(1) of the Bankruptcy Code, an allowed superpriority administrative expense claim in the Cases and any Successor Case for all DIP Obligations (the “**DIP Superpriority Claim**”). The DIP Superpriority Claim shall be subordinate only to the Carveout, and shall otherwise have priority over any and all administrative expenses, whether heretofore or hereafter incurred, of the kinds specified in or ordered pursuant to Sections 503(b) and 507(b) of the Bankruptcy Code.

(b) *Priority of DIP Superpriority Claim.* The DIP Superpriority Claim shall be payable from and have recourse to all pre- and postpetition assets of the Debtors and their estate, and all proceeds thereof, subject only to the Carveout. Upon entry of the Final Order, the DIP Superpriority Claim shall be payable from or have recourse to any and all claims and causes of action under Chapter 5 of the Bankruptcy Code.

8. No Obligation to Extend Credit. The DIP Lenders shall have no obligation to make loans or advances under the DIP Facility until the DIP Financing Conditions have been satisfied and the conditions precedent to the making of such extension of credit under the DIP Credit Documents have been satisfied in full, in each case in the sole discretion of the DIP Lender.

9. Adequate Protection Lien. Blue Bay is hereby granted a valid and perfected replacement security interest in, and lien on the Prepetition Collateral (the “**Adequate Protection Lien**”). The Adequate Protection Lien is and shall be valid, binding and enforceable

as of the date of this Interim Order, and subordinate and subject to (i) the DIP Liens, and (ii) the Carveout. For the avoidance of doubt, the Prepetition Lien shall be junior in all respects to the DIP Liens, the DIP Superpriority Claim, the Carveout, the Adequate Protection Lien and the Adequate Protection Superpriority Claim (as defined below).

10. Adequate Protection Superpriority Claim. As further adequate protection of the interests of Blue Bay, it is hereby granted an allowed administrative claim against Atari Interactive, Inc.'s estate under Section 503(b) of the Bankruptcy Code with superpriority pursuant to Section 507(b) of the Bankruptcy Code to the extent that the Adequate Protection Lien does not adequately protect against any diminution in the value of Blue Bay's interests in the Prepetition Collateral (the "**Adequate Protection Superpriority Claim**"). The Adequate Protection Superpriority Claim shall be junior in all respects to the DIP Liens, the DIP Superpriority Claim, the Carveout and the Adequate Protection Lien, but shall otherwise have priority over administrative expenses of the kinds specified in or ordered pursuant to Sections 503(b) and 507(b) of the Bankruptcy Code.

11. No Finding/Admission. The granting of the Adequate Protection Lien and the Adequate Protection Superpriority Claim shall not constitute a finding, admission or concession that Blue Bay has a valid Prepetition Lien. All rights of the Debtors, the DIP Lenders and all parties in interest to challenge the validity of such lien are hereby preserved.

12. Modification of Automatic Stay. The automatic stay imposed under Section 362(a) of the Bankruptcy Code is hereby modified as necessary to effectuate all of the terms and provisions of this Interim Order and the DIP Term Sheet, including, but not limited to, to permit the Debtors to grant the DIP Liens, the DIP Superpriority Claim, the Adequate Protection Lien and the Adequate Protection Superpriority Claim.

13. Automatic Perfection of Liens. This Interim Order shall be sufficient and conclusive evidence of the validity, perfection, and priority of all liens granted herein, including the DIP Liens, without the necessity of filing or recording any financing statement, mortgage, notice, or other instrument or document which may otherwise be required under any law or regulation of any jurisdiction or the taking of any other action to validate or perfect (including, but not limited to, in accordance with applicable non-bankruptcy law) the DIP Liens, and to entitle the DIP Lenders to the priorities granted herein.

14. Proceeds of Subsequent Financing. If the Debtors, any trustee, any examiner with enlarged powers, any responsible officer or any other estate representative subsequently appointed in a Case or any Successor Case shall obtain credit or incur debt pursuant to Section 364(b, c, or d) of the Bankruptcy Code at any time prior to the repayment in full in cash of all DIP Obligations, including subsequent to the confirmation of any plan of reorganization or liquidation with respect to a Debtor or Debtor's estate, then all the proceeds derived from such credit or debt shall immediately be turned over to the DIP Lenders to be applied to the DIP Obligations.

15. Financial Information and Reporting Requests. The Debtors shall allow the DIP Lenders reasonable access during business hours to the premises, books and records, officers, employees, auditors, appraisers, legal advisors and financial advisors of the Debtors, upon reasonable advance notice in order to conduct appraisals, analyses and/or audits of the Collateral and the Debtors' financial affairs, and shall otherwise cooperate in providing any other financial information reasonably requested by the DIP Lenders, each at the cost and expense of the Debtors. The Debtors shall deliver to the DIP Lenders by 12:00 p.m. (ET) on Wednesday of each week, a reconciliation for (a) the most recent Saturday through Friday period (a "**Weekly**

**Report**”), (b) the prior four-week operating period (if less than four weeks have elapsed since the Petition Date, such shorter period), and (c) the cumulative period from the Petition Date to the date of determination, as to each, of the Debtors’ actual cash receipts and disbursements as compared to the DIP Budget, with a breakdown by line-item in the same format as the DIP Budget for such periods; (ii) a copy of each monthly operating report as and when submitted to the U.S. Trustee; (iii) monthly, no later than the thirtieth (30<sup>th</sup>) day of each month, the prior month’s income statement, cashflow statement, and balance sheet for the Debtors; (iv) a Weekly Report of accounts payable and accounts receivable agings; and (v) such other reports and information as reasonably requested by the DIP Lenders.

16. Disposition of Collateral; Rights of DIP Lender. Unless otherwise authorized by the Court, the Debtors shall not sell, transfer, lease, encumber or otherwise dispose of any portion of the Collateral. Nothing provided herein shall limit the rights of the DIP Lenders to object to any proposed disposition of the Collateral.

17. Termination Date. All of the DIP Obligations are due and payable in full in cash upon the occurrence of a Termination Event (as defined below) or the Termination Date, and the DIP Lenders may thereafter exercise any rights and remedies provided in this Interim Order or the DIP Term Sheet, at law or equity, including all rights and remedies provided under the Bankruptcy Code.

18. Termination Event. The occurrence of any of the following, unless waived by the DIP Lenders, shall constitute a “**Termination Event**”:

- (a) the occurrence of any Event of Default (as defined in the DIP Term Sheet);
- (b) the Debtors shall, without the DIP Lenders’ prior written consent, file a motion with the Court seeking the authority to liquidate, transfer, or dispose of any of the

Debtors' or their estates' assets or capital stock unless the transactions that are the subject of the motions will result in immediate payment in full in cash of the DIP Obligations;

(c) other than in connection with the payment in full in cash of the DIP Obligations, the bringing of a motion, taking of any action or the filing of any plan of reorganization or liquidation (or disclosure statement) by or on behalf of a Debtor in a Case: (A) to obtain financing under Section 364(c or d) of the Bankruptcy Code (other than in connection with the DIP Facility), (B) to grant any lien or security interest other than the Adequate Protection Lien or the DIP Liens upon or affecting the Prepetition Collateral, (C) to grant any lien or security interest other than the DIP Liens upon or affecting the Collateral, (D) that seeks to prohibit the DIP Lenders from credit bidding on any or all of the Debtors' assets during the pendency of a Case, or (E) any other action or actions materially adverse to the DIP Lenders or their rights and remedies under this Interim Order or the DIP Term Sheet, or their interest in any Collateral;

(d) other than in connection with the payment in full in cash of the DIP Obligations, (i) the filing of any plan of reorganization or liquidation (or disclosure statement), or any direct or indirect amendment to such plan or disclosure statement, by the Debtors or any other person, entity, or Statutory Committee to which the DIP Lenders have not consented or otherwise agreed to the treatment of their claims, or (ii) the entry of any order terminating, or the expiration of, a Debtor's exclusive right to file a plan of reorganization or liquidation;

(e) the entry of an order in a Case confirming a plan of reorganization or liquidation that (i) is not in form and substance acceptable to the DIP Lenders, and (ii) does not contain a provision for repayment in full in cash of all of the DIP Obligations on or before the effective date of such plan and the Termination Date;

(f) the entry of an order amending, supplementing, staying, vacating or otherwise modifying the DIP Term Sheet, the DIP Credit Documents, this Interim Order, the Final Order or the Debtors' "first-day" cash management order without the written consent of the DIP Lenders;

(g) the DIP Term Sheet, any of the DIP Credit Documents, this Interim Order, the Final Order, or the Debtors' "first-day" cash management order is not in full force and effect;

(h) the Final Order is not entered within 30 days of the Interim Closing Date (as defined in the DIP Term Sheet);

(i) the payment of, or application for authority to pay, any prepetition indebtedness or prepetition claim without the DIP Lenders' prior written consent unless otherwise approved in the Budget;

(j) the allowance of any claim or claims under Section 506(c) of the Bankruptcy Code or otherwise against the DIP Lenders or any of the Collateral;

(k) the appointment of an interim or permanent trustee in any Case, or the appointment of a receiver or an examiner in any Case with expanded powers to operate or manage the financial affairs, the business, or reorganization or liquidation of a Debtor;

(l) the sale (or the filing of a motion to sell) any Debtor's assets without the DIP Lenders' consent, either pursuant to Section 363 of the Bankruptcy Code, a confirmed plan of reorganization or liquidation, or otherwise, that does not provide for payment in full in cash of the DIP Obligations;

(m) the dismissal of any Case, the conversion of any Case from Chapter 11 to Chapter 7 of the Bankruptcy Code, or the filing of a motion or other pleading seeking such relief;

(n) the entry of an order (other than this Interim Order or the Final Order) by the



Court granting relief from or modifying the automatic stay of Section 362 of the Bankruptcy Code (i) to allow any creditor to execute upon or enforce a lien on any Collateral having a value of \$25,000 or more, or (ii) 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;

(o) the commencement of a suit or action against any of the DIP Lenders by or on behalf of a Debtor or its estate;

(p) the entry of an order in any Case avoiding or permitting recovery of any portion of the payments made on account of the DIP Obligations;

(q) the failure of any Debtor to perform any of its obligations under the DIP Term Sheet, the DIP Credit Documents, this Interim Order, the Final Order, the “first-day” cash management order, or any of a Debtor’s material obligations under any other order of the Court, which is not cured within 3 business days’ written notice to the Debtor(s);

(r) (1) the failure of the Court to, within 60 days after the Petition Date, grant an order that is not subject to appeal, reconsideration or review extending the Debtors’ time period to assume or reject unexpired leases of real property to a date that is not less than two hundred and seventy (270) days after the Petition Date, or (2) if such date has been extended by order of the Court, the failure of the Court to, within 5 days prior to such extended deadline, grant an order that is not subject to appeal, reconsideration or review further extending the Debtors’ time period to assume or reject unexpired leases of real property; or

(s) the entry of an order in any Case granting any other superpriority administrative claim or lien equal or superior in priority or priority of payment to that granted to the DIP Lenders.

19. Rights and Remedies Following Termination Event.

(a) *Termination.* Immediately upon the occurrence and during the continuance of a Termination Event, the DIP Lenders may provide the Debtor(s) written notice as set forth in Paragraph 19(b) of this Interim Order (such notice, a “**Termination Notice**”). Three (3) business days after the issuance of a Termination Notice, subject to the Remedies Notice Period (as defined below), the DIP Lenders may exercise all rights and remedies set forth in the DIP Term Sheet, the DIP Credit Documents, this Interim Order or the Final Order, or under applicable law, without further order of or application to the Court notwithstanding section 362 of the Bankruptcy Code. Without limiting the foregoing, the DIP Lenders may, subject to the Remedies Notice Period, enter onto the premises of the Debtors in connection with an orderly liquidation of the Collateral. Upon the issuance of a Termination Notice, and following the termination of any applicable Remedies Notice Period, the Debtors agree to and shall cooperate with the DIP Lenders in a “friendly foreclosure” by the DIP Lenders on the Collateral, the DIP Lenders may require the Debtors to seek authority from the Court to retain an advisor or liquidator for the purpose of conducting a sale or liquidation of the Collateral and, if the Debtor(s) refuses to seek such authority, the DIP Lenders shall be entitled to seek such authority directly.

(b) *Notice of Termination.* Any Termination Notice shall be given by facsimile (or other electronic means) to counsel to the Debtor(s), counsel to any Statutory Committee, and the U.S. Trustee (the earliest date any such Termination Notice is sent shall be referred to herein as the “**Termination Notice Date**”). The DIP Lenders shall not be required to extend credit under the DIP Facility, or otherwise, on and after the Termination Notice Date, and all of the DIP Obligations shall be due and payable in full in cash on the

Termination Notice Date. Any automatic stay otherwise applicable to the DIP Lenders is hereby modified so that 3 business days after the Termination Notice Date (the “**Remedies Notice Period**”), the DIP Lenders shall be entitled to exercise any and all of their rights and remedies against the Collateral in accordance with the DIP Term Sheet, the DIP Credit Documents, this Interim Order, or the Final Order, and shall be permitted to satisfy the DIP Superpriority Claim and the DIP Liens, subject only to the Carveout. During the Remedies Notice Period, the Debtor(s) shall be entitled to seek an emergency hearing with the Court for the sole purpose of contesting whether a Termination Event has occurred and/or is continuing. Unless the Court determines during the Remedies Notice Period that a Termination Event has not occurred, the automatic stay shall automatically be terminated at the end of the Remedies Notice Period without further notice or order, and the DIP Lenders shall be permitted to exercise any and all rights and remedies set forth in the DIP Term Sheet, the DIP Credit Documents, this Interim Order, or the Final Order, without further order of or application or motion to the Court, and without restriction or restraint by any stay under Sections 105 or 362 of the Bankruptcy Code, or otherwise, against the enforcement of the liens and security interests in the Collateral or any other rights and remedies granted to the DIP Lenders with respect thereto.

20. Good Faith Under Section 364 of the Bankruptcy Code; No Modification or Stay or this Interim Order. The DIP Lenders have acted in good faith in connection with the DIP Term Sheet and this Interim Order, and their reliance on the terms and effectiveness of this Interim Order is in good faith. Based on the findings set forth in this Interim Order and the record made during the Interim Hearing, and in accordance with Section 364(e) of the Bankruptcy Code, in the event any or all of the provisions of this Interim Order are hereafter modified, amended or vacated by this Court or any other court, the DIP Lenders are entitled to

the protections provided in Section 364(e) of the Bankruptcy Code. Any such modification, amendment, or vacatur of this Interim Order shall not affect the validity and enforceability of the DIP Term Sheet, the DIP Credit Documents, this Interim Order, the Final Order, any DIP Obligations, or any lien, claim or priority authorized or created in any of them, provided that this Interim Order was not stayed by court order after due notice to the DIP Lenders at the time such obligations were incurred or the liens, claims or priorities were authorized and/or created. The validity and enforceability of the DIP Term Sheet, the DIP Credit Documents, this Interim Order, the Final Order, any DIP Obligations, or any lien, claim or priority authorized or created in any of them prior to the effective date of any such modification, amendment or vacatur of this Interim Order shall be governed in all respects by the original provisions of this Interim Order, including the DIP Lenders' entitlement to all rights, remedies, privileges and benefits granted herein, provided that the Interim Order was not stayed by court order after due notice had been given to the DIP Lenders at the time the obligations were incurred or the liens, claims or priorities were authorized and/or created.

21. Carveout.

(a) *Carveout.* As used in this Interim Order, the “**Carveout**” means (i) all statutory fees required to be paid to the Clerk of the Court and the U.S. Trustee pursuant to 28 U.S.C. § 1930(a), and (ii) an aggregate amount equal to no more than \$200,000 to pay, upon the occurrence of any Termination Event and delivery of a written notice by the DIP Lenders to lead counsel for the Debtors, any Statutory Committee, and the U.S. Trustee (a “**Carveout Trigger Notice**”), (A) outstanding and allowed fees and expenses of the Debtors' and any Statutory Committee's professionals retained by order of the Court not subject to appeal, reconsideration or review under Sections 327 or 1103(a) (collectively, the “**Case Professionals**”) of the

Bankruptcy Code (collectively, the “**Professional Fees**”) and (B) the reimbursement of out-of-pocket expenses outstanding and allowed by the Court incurred by the Statutory Committee members in the performance of their duties (but excluding fees and expenses of professionals employed by such members) (collectively, the “**Committee Expenses**”), in each case, incurred after the delivery of a Carveout Trigger Notice. The Carveout shall be funded solely with the Debtors’ cash on hand, cash collateral, and with the first proceeds of the Collateral. No portion of the Carveout may be used in violation of this Interim Order or the DIP Term Sheet. So long as the Carveout Trigger Notice has not been delivered, the Debtors shall be permitted to pay, as the same becomes allowed by the Court, due and payable Professional Fees provided for in the DIP Budget, and the same shall not reduce the Carveout amount.

(b) *No Direct Obligation to Pay Professional Fees or Committee Expenses.* The DIP Lenders shall not be responsible for the direct payment or reimbursement of any fees or disbursements of any Case Professionals or any Committee Expenses incurred in connection with a Case or any Successor Case. Nothing in this Interim Order or otherwise shall be construed to obligate the DIP Lenders in any way to pay compensation to or to reimburse expenses of any of the Case Professionals (including any Professional Fees or Committee Expenses), or to guarantee that the Debtors have sufficient funds to pay such compensation or reimbursement. Nothing in this Interim Order or otherwise shall be construed to increase the Carveout if actual Professional Fees or Committee Expenses are higher in fact than the estimated fees and disbursements reflected in the DIP Budget.

(c) *Payment of Carveout After Carveout Trigger Notice.* Any payment or reimbursement made on or after the delivery of the Carveout Trigger Notice in respect of any Professional Fees (exclusive of the application of any retainers by any of the Case

Professionals), Committee Expenses or statutory fees required to be paid to the Clerk of the Court and the U.S. Trustee pursuant to 28 U.S.C. § 1930(a) shall permanently reduce the Carveout amount on a dollar-for-dollar basis.

22. Prohibited Use of Cash Collateral, Carveout, Etc. The Debtors shall not, directly or indirectly, voluntarily purchase, redeem, defease, or prepay any principal, premium, interest or other amount payable in respect of any indebtedness prior to its scheduled maturity, other than the DIP Obligations and obligations authorized under the DIP Budget. In addition, the DIP Facility, the Collateral and the Carveout may not 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 DIP Lender or its rights and remedies under the DIP Term Sheet, the DIP Credit Documents, this Interim Order, or the Final Order, including, but not limited to, for the payment of any services rendered by the professionals retained by any Debtor or Statutory 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 DIP Obligations, (iii) for monetary, injunctive or other affirmative relief against any DIP Lender or the Collateral, (iv) preventing, hindering or otherwise delaying the exercise by any DIP Lender of any rights and remedies under the DIP Term Sheet, the DIP Credit Documents, this Interim Order, the Final Order, or applicable law, or the enforcement or realization (whether by foreclosure, credit bid, further order of the Court, or otherwise) by any DIP Lender upon the Collateral, or (v) to pursue litigation against any DIP Lender; (b) to make any distribution under a plan of reorganization or liquidation or any agreement regarding sale of a Debtor's assets in any

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 DIP Lenders unless otherwise ordered by this 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 DIP Lenders; (e) objecting to, contesting, or interfering with, in any way, a DIP Lender's enforcement or realization upon any of the Collateral once a Termination Event has occurred, or seeking to prevent a DIP 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 DIP Facility in a manner inconsistent with the DIP Budget; (g) using or seeking to use any insurance proceeds (which constitute Collateral) without the consent of the DIP Lenders; (h) incurring any indebtedness, obligation or liability outside the ordinary course of business without the prior consent of the DIP Lenders, except as permitted under the DIP Credit Documents; (i) objecting to or challenging in any way the claims, liens, or interests held by or on behalf of a DIP Lender; (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 DIP 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 DIP Obligations, the DIP Liens, or any other rights, remedies or interests of a DIP Lender.

23. Payment of Compensation. Nothing herein shall be construed as a consent to the allowance of any professional fees or expenses of any Case Professionals or shall affect the right of the DIP Lenders to object to the allowance and payment of such fees and expenses. So long as no Termination Event has occurred and is continuing, the Debtors shall be permitted to pay fees

and expenses allowed and payable by order (that has not been reversed, modified, vacated or stayed, unless the stay has been vacated) under Sections 330 and 331 of the Bankruptcy Code to the extent set forth in the DIP Budget.

24. Fees, Costs and Expenses. The Debtors are authorized and directed to pay all reasonable out-of-pocket fees, costs and expenses of a DIP Lender in connection with the DIP Term Sheet, the DIP Credit Documents, this Interim Order or the Final Order, whether or not the transactions contemplated by this Interim Order are consummated, including, but not limited to, legal, financial advisory, consulting, accounting, collateral examination, monitoring and appraisal fees, costs and expenses of a DIP Lender, and indemnification and reimbursement of such fees, costs and expenses shall be payable without need to comply with the U.S. Trustee fee guidelines.

25. No Third Party Rights. Except as explicitly provided for in this Interim Order, this Interim Order does not create any rights for the benefit of any third party, creditor (other than the DIP Lenders and Blue Bay), equityholder or any direct, indirect, or incidental beneficiary.

26. Section 506(c) Claims. Upon entry of the Final Order, no costs or expenses of administration which have been or may be incurred in any Case at any time shall be charged against the DIP Lenders or the Collateral pursuant to Sections 105 or 506(c) of the Bankruptcy Code, or otherwise, without the prior written consent of the DIP Lenders, and no such consent shall be implied from any action, inaction, or acquiescence by any DIP Lender or its agent.

27. No Marshaling/Applications of Proceeds. Upon entry of the Final Order, the DIP Lenders shall not be subject to the equitable doctrine of “marshaling” or any other similar doctrine with respect to any of the Collateral.

28. Section 552(b). Subject to the entry of the Final Order, the “equities of the case” exception under Section 552(b) of the Bankruptcy Code shall not apply to the DIP Lenders with



respect to proceeds, products, offspring or profits of any of the Collateral.

29. Discharge Waiver. The Debtors expressly stipulate, and the Court finds and holds that none of the DIP Obligations, the DIP Superpriority Claims or the DIP Liens shall be discharged by any order confirming any plan or reorganization or liquidation, or any plan of reorganization or liquidation, notwithstanding the provisions of Section 1141(d) of the Bankruptcy Code, unless the DIP Obligations have been paid in full in cash on or before the effective date of a confirmed plan of reorganization or liquidation. The Debtors shall not propose or support any plan of reorganization or liquidation, sale of all or substantially all of any Debtor's assets, or entry of any confirmation order or sale order that is not conditioned upon the payment in full in cash, on the effective date of such plan or closing of such sale, of all DIP Obligations. The DIP Superpriority Claims and the DIP Liens shall not be affected in any manner by the entry of an order confirming a plan of reorganization or liquidation in a Case or any Successor Case that is not conditioned upon the payment in full in cash, on the effective date of such plan or closing of such sale, of all DIP Obligations.

30. Rights Preserved. Notwithstanding anything in this Interim Order to the contrary, the entry of this Interim Order is without prejudice to, and does not constitute a waiver of, expressly or implicitly: (a) any DIP Lender's right to seek any other or supplemental relief in respect of a Debtor; (b) any of the rights of a DIP Lender under the Bankruptcy Code or other applicable law, including, but not limited to, the right to (i) request further modification of or relief from the automatic stay of Section 362 of the Bankruptcy Code, (ii) request dismissal of a Case or any Successor Case, conversion of a Case to a case under Chapter 7, or appointment of a Chapter 11 trustee or examiner with expanded powers, or (iii) propose, subject to the provisions of Section 1121 of the Bankruptcy Code, a Chapter 11 plan or plans of

reorganization or liquidation. Other than as expressly set forth in this Interim Order, any other rights, remedies, claims, causes of action, or privileges (whether legal, equitable, or otherwise) of each DIP Lender are reserved and preserved.

31. No Waiver by Failure to Seek Relief. The failure of a DIP Lender to seek relief or otherwise exercise its rights and remedies under the DIP Term Sheet, the DIP Credit Documents, this Interim Order, the Final Order, or applicable law shall not constitute a waiver of any of the rights or remedies hereunder, thereunder, or otherwise of a DIP Lender.

32. Binding Effect of Interim Order. Immediately upon entry by this Court (notwithstanding any applicable law or rule to the contrary), the terms and provisions of this Interim Order shall become valid and binding upon and inure to the benefit of the Debtors, the DIP Lenders, all other creditors and equityholders of the Debtors, any Statutory Committee, any other committee appointed in the Case, all other parties in interest, and each of their successors and assigns, including any trustee, examiner or other fiduciary hereafter appointed in a Case, any Successor Case, or upon or after dismissal of the Case or any Successor Case.

33. No Modification of Interim Order. The Debtors irrevocably waive any right to seek and shall not seek or consent to, directly or indirectly: (a) without the prior written consent of the DIP Lenders (i) any modification, stay, vacatur or amendment to this Interim Order, or (ii) a priority claim for any administrative expense or unsecured claim against any of the Debtors (now existing or hereafter arising of any kind or nature whatsoever, including, but not limited to, any administrative expense of the kind specified in Sections 503(b), 507(a) or 507(b) of the Bankruptcy Code) equal or superior in priority or priority of payment to the DIP Superpriority Claim, other than the Carveout; (b) without the prior written consent of the DIP Lenders, any order allowing use of the DIP Facility other than this Interim Order and the Final Order; and (c)

without the prior written consent of the DIP Lenders, any lien on any of the Collateral equal or superior in priority or priority of payment to the DIP Liens. The Debtors irrevocably waive any right to seek any amendment, modification or extension of this Interim Order that a DIP Lender reasonably believes is material or adverse to a DIP Lender without the prior written consent of the DIP Lenders, and no such consent shall be implied by any other action, inaction or acquiescence of a DIP Lender.

34. Interim Order Controls. In the event of any express inconsistency between the terms and conditions of the DIP Term Sheet and this Interim Order, the provisions of this Interim Order shall govern and control.

35. Survival. The provisions of this Interim Order and any actions taken pursuant to this Interim Order shall survive entry of any order which may be entered: (a) confirming any plan of reorganization or liquidation in a Case, (b) converting a Case to a case under Chapter 7 of the Bankruptcy Code, (c) approving the sale of a Debtor's assets, (d) dismissing a Case or any Successor Case, or (e) pursuant to which this Court abstains from hearing a Case or any Successor Case; *provided, however,* that the DIP Superpriority Claims shall survive only to the extent permitted by applicable law. The terms and provisions of this Interim Order, including the claims, liens, security interests and other protections granted to the DIP Lenders pursuant to this Interim Order and/or the DIP Credit Documents shall continue in each Case, in any Successor Case, or following dismissal of any Case or any Successor Case, and shall maintain their priority as provided by this Interim Order until all DIP Obligations have been paid in full in cash.

36. Final Hearing. The Final Hearing to consider entry of the Final Order and approval of the DIP Facility on a final basis is scheduled for **February \_\_\_\_\_, 2013 at \_\_\_\_\_ (EST)** before The Honorable \_\_\_\_\_, United States

Bankruptcy Judge, Courtroom \_\_\_\_\_, at the United States Bankruptcy Court for the Southern District of New York located at One Bowling Green, New York, New York 10004.

37. Notice of Final Hearing: Notice of the Final Hearing will be provided in accordance with this Interim Order. On or before January \_\_\_\_, 2013, the Debtors shall serve, by United States mail, first-class postage prepaid, a copy of the Motion and this Interim Order upon: (i) the U.S. Trustee; (ii) the Internal Revenue Service; (iii) the parties included on the Debtors' list of 30 largest unsecured creditors; (iv) counsel to Atari, S.A.; (v) counsel to Blue Bay; (vi) counsel to the DIP Lenders; (vii) all parties in interest that have filed a request for notices pursuant to Bankruptcy Rule 2002, and (viii) counsel for any Statutory Committee.

38. Objection Deadline: Objections, responses or reservations of rights, if any, to the relief sought in the Motion or Final Order shall be in writing, shall set forth with particularity the grounds for such objection, response or reservation of rights, shall be filed with the Clerk of the Court, and shall be served upon (i) Hunton & Williams, LLP, 200 Park Avenue, New York, New York 10166, Attn: Peter S. Partee, Esq. and Michael P. Richman, Esq., proposed counsel to the Debtors, (ii) the U.S. Trustee, (iii) counsel to any Statutory Committee, (iv) SNR Denton US LLP, 1221 Avenue of the Americas, New York, New York 10020, Attn: Hugh M. McDonald, Esq., counsel to the DIP Lenders, and (v) counsel for Blue Bay, so that such objections, responses or reservations of rights are filed with the Court and received by said parties on or before **February \_\_\_\_, 2013 at \_\_\_\_\_ (ET).**

39. Effect of this Interim Order. This Interim Order shall take effect immediately, notwithstanding anything to the contrary under applicable law.

40. Retention of Jurisdiction. The Court has and will retain jurisdiction to enforce this Interim Order and the DIP Term Sheet according to their terms, including, without limitation,

the DIP Lenders' rights and remedies contained in the DIP Term Sheet and granted by this Interim Order and the DIP Lenders' enforcement of such rights and remedies and, in accordance with this Interim Order and the DIP Term Sheet, foreclosure on the Collateral.

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

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UNITED STATES BANKRUPTCY JUDGE

**EXHIBIT A**

**DIP 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.

**EXHIBIT B**

**DIP BUDGET**

Atari, Inc., et al.  
Debtor-in-Possession Facility Budget  
Cash Flow Projections for the Thirteen Weeks Ending April 19, 2013

(\$000s)	Weeks Ending Friday,													13-Weeks Ending 4/19
	Week 1 1/25	Week 2 2/1	Week 3 2/8	Week 4 2/15	Week 5 2/22	Week 6 3/1	Week 7 3/8	Week 8 3/15	Week 9 3/22	Week 10 3/29	Week 11 4/5	Week 12 4/12	Week 13 4/19	
	<i>File 1/21</i>													
I. Receipts	82	838	273	306	2	493	480	218	13	40	314	79	5	3,143
II. Disbursements														
Payroll and Benefits	6	353	-	352	77	347	-	352	77	347	-	17	412	2,338
Royalties	-	20	-	-	30	100	-	-	-	-	-	-	-	150
Publishing and Marketing	130	159	85	38	62	119	42	129	9	-	24	2	4	801
Other Operating Expenses	51	345	39	104	103	206	15	48	78	15	161	20	50	1,234
	187	876	124	494	272	772	57	528	163	362	184	39	465	4,523
III. Net Investment-New Games	-	(30)	(68)	(68)	(68)	(68)	(192)	(192)	(192)	(192)	(218)	(218)	(218)	(1,722)
IV. Net Cash From Operations	(105)	(68)	81	(255)	(338)	(347)	230	(502)	(343)	(514)	(88)	(178)	(677)	(3,102)
V. Restructuring / Other	275	-	628	-	(300)	500	-	-	-	-	497	-	-	1,601
VI. Net Change in Cash b/f DIP	(380)	(68)	(547)	(255)	(38)	(847)	230	(502)	(343)	(514)	(585)	(178)	(677)	(4,703)
VII. Cash Balance														
Beginning Cash Bal. (Book)	86	1,956	1,888	1,341	1,086	1,048	201	702	200	714	200	378	200	86
Net change in Cash b/f DIP	(380)	(68)	(547)	(255)	(38)	(847)	230	(502)	(343)	(514)	(585)	(178)	(677)	(4,703)
DIP Draw/(Paydown)	2,250	-	-	-	-	-	270	-	856	-	763	-	895	5,035
Ending Cash Bal. (Book)	1,956	1,888	1,341	1,086	1,048	201	702	200	714	200	378	200	418	418
Add: Estimated O/S Checks	50	50	50	50	50	50	50	50	50	50	50	50	50	50
Ending Cash Bal. (Bank)	2,006	1,938	1,391	1,136	1,098	251	752	250	764	250	428	250	468	468
VIII. DIP Facility Balance														
Beginning DIP Facility Bal.	-	2,250	2,250	2,250	2,250	2,259	2,259	2,530	2,530	3,396	3,396	4,159	4,159	-
Interest Accrual	-	-	-	-	9	-	-	-	10	-	-	-	16	35
Draws / (Paydowns)	2,250	-	-	-	-	-	270	-	856	-	763	-	895	5,035
Ending DIP Facility Bal.	\$ 2,250	\$ 2,250	\$ 2,250	\$ 2,250	\$ 2,259	\$ 2,259	\$ 2,530	\$ 2,530	\$ 3,396	\$ 3,396	\$ 4,159	\$ 4,159	\$ 5,070	\$ 5,070



**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: Robert Matus  
Title: CFO


**ATARI, INTERACTIVE, INC.**

By:   
Name: Robert Matus  
Title: CFO

**CALIFORNIA US HOLDING, INC.**

By:   
Name: Robert Matus  
Title: CFO

**HUMONGOUS, INC.**

By:   
Name: Robert Matus  
Title: 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.

**EXHIBIT 3**

**DIP BUDGET**

Atari, Inc., et al.  
Debtor-in-Possession Facility Budget  
Cash Flow Projections for the Thirteen Weeks Ending April 19, 2013

(\$000s)	Weeks Ending Friday,													13-Weeks Ending 4/19
	Week 1 1/25	Week 2 2/1	Week 3 2/8	Week 4 2/15	Week 5 2/22	Week 6 3/1	Week 7 3/8	Week 8 3/15	Week 9 3/22	Week 10 3/29	Week 11 4/5	Week 12 4/12	Week 13 4/19	
	<i>File 1/21</i>													
I. Receipts	82	838	273	306	2	493	480	218	13	40	314	79	5	3,143
II. Disbursements														
Payroll and Benefits	6	353	-	352	77	347	-	352	77	347	-	17	412	2,338
Royalties	-	20	-	-	30	100	-	-	-	-	-	-	-	150
Publishing and Marketing	130	159	85	38	62	119	42	129	9	-	24	2	4	801
Other Operating Expenses	51	345	39	104	103	206	15	48	78	15	161	20	50	1,234
	187	876	124	494	272	772	57	528	163	362	184	39	465	4,523
III. Net Investment-New Games	-	(30)	(68)	(68)	(68)	(68)	(192)	(192)	(192)	(192)	(218)	(218)	(218)	(1,722)
IV. Net Cash From Operations	(105)	(68)	81	(255)	(338)	(347)	230	(502)	(343)	(514)	(88)	(178)	(677)	(3,102)
V. Restructuring / Other	275	-	628	-	(300)	500	-	-	-	-	497	-	-	1,601
VI. Net Change in Cash b/f DIP	(380)	(68)	(547)	(255)	(38)	(847)	230	(502)	(343)	(514)	(585)	(178)	(677)	(4,703)
VII. Cash Balance														
Beginning Cash Bal. (Book)	86	1,956	1,888	1,341	1,086	1,048	201	702	200	714	200	378	200	86
Net change in Cash b/f DIP	(380)	(68)	(547)	(255)	(38)	(847)	230	(502)	(343)	(514)	(585)	(178)	(677)	(4,703)
DIP Draw/(Paydown)	2,250	-	-	-	-	-	270	-	856	-	763	-	895	5,035
Ending Cash Bal. (Book)	1,956	1,888	1,341	1,086	1,048	201	702	200	714	200	378	200	418	418
Add: Estimated O/S Checks	50	50	50	50	50	50	50	50	50	50	50	50	50	50
Ending Cash Bal. (Bank)	2,006	1,938	1,391	1,136	1,098	251	752	250	764	250	428	250	468	468
VIII. DIP Facility Balance														
Beginning DIP Facility Bal.	-	2,250	2,250	2,250	2,250	2,259	2,259	2,530	2,530	3,396	3,396	4,159	4,159	-
Interest Accrual	-	-	-	-	9	-	-	-	10	-	-	-	16	35
Draws / (Paydowns)	2,250	-	-	-	-	-	270	-	856	-	763	-	895	5,035
Ending DIP Facility Bal.	\$ 2,250	\$ 2,250	\$ 2,250	\$ 2,250	\$ 2,259	\$ 2,259	\$ 2,530	\$ 2,530	\$ 3,396	\$ 3,396	\$ 4,159	\$ 4,159	\$ 5,070	\$ 5,070