

SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

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FORM 8-K

CURRENT REPORT

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

Date of Report (Date of Earliest Event Reported): March 18, 1998

TAKE-TWO INTERACTIVE SOFTWARE, INC.  
(Exact name of registrant as specified in its charter)

Delaware (State or other jurisdiction of incorporation)	0-29230 (Commission File Number)	51-0350842 (I.R.S. Employer Identification No.)
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575 Broadway, New York, New York (Address of principal executive offices)	10012 (Zip Code)
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Registrant's telephone number, including area code: (212) 941-2988

Not Applicable  
Former name or former address, if changed since last report

Item 2. Acquisition and Disposition of Assets

Acquisition of Certain Assets of BMG Interactive.

In March 1998, the Company acquired substantially all of the assets of BMG Interactive, a division of BMG Entertainment North America ("BMG"), including direct distribution, sales and marketing offices in France and Germany; a product publishing and distribution group in the United Kingdom; distribution, publishing and certain sequel rights to twelve upcoming video game and PC game product releases; and various back catalog publishing and distribution rights.

As consideration for these assets, the Company issued to BMG 1,850,000 shares of newly created Series A Convertible Preferred Stock (the "Preferred Stock"), which are convertible on a one-for-one basis into shares of Common Stock. As a result, BMG beneficially owns approximately 15.8% of the Company's outstanding Common Stock. The holder of the Preferred Stock has one vote per share and, except as required by law, votes together with the holders of Common Stock as a single class on all matters presented to the shareholders for action, including the election of directors. The Preferred Stock is not entitled to receive dividends and has a liquidation preference of \$6.875 per share. The Company has granted BMG certain "piggyback" and demand registration rights with respect to the shares of Common Stock issuable upon conversion of the Preferred Stock.

Among the publishing and distribution rights acquired were:

(1) The worldwide publishing and distribution rights and copyright to Grand Theft Auto. The Company plans to release Grand Theft Auto through a distribution agreement with ASC Games, Inc. for the personal computer ("PC") platform in the United States in late March 1998 and under its own label for the Sony PlayStation in May 1998.

(2) The worldwide publishing and distribution rights and copyright to Space Station: Silicon Valley for the Nintendo 64 gaming system, scheduled to be released in October 1998.

(3) The European distribution rights to PC recreational software products including Berkley Systems' After Dark screen saver series, You Don't Know Jack

trivia series, gaming franchises such as Crystal Dynamic's Gex and Pandemonium series for the Sony PlayStation, and ASC Games' One for the Sony PlayStation.

(4) The worldwide publishing and distribution rights to a series of sales region customized World Cup soccer games for the Sony PlayStation. Each game in the series is expected to be

released in special packaging in April 1998, showcasing team colors and stars from the particular country it is released in.

(5) The worldwide publishing, distribution and sequel rights to the highly anticipated role-playing game Monkey Hero for the Sony PlayStation and PC platforms.

(6) The worldwide publishing, distribution and sequel rights to the military combat game Special Ops for the Sony PlayStation and PC platforms. The Company expects to release the PC platform version of Special Ops in the United States in conjunction with Panasonic Interactive Media.

Pursuant to the acquisition, the Company became the assignee to agreements entered into by BMG and/or its affiliates with respect to distribution rights to certain products (including the products described above). These agreements generally require the Company to make advance payments and pay royalties and satisfy other conditions.

#### Item 7. Financial Statements, Pro Forma Financial Information and Exhibits.

##### (a) Financial Statements of the Business Acquired.

Audited financial statements relating to the acquisition will be filed by amendment within 60 days of the date this Report was required to be filed.

##### (b) Pro Forma Financial Information and Exhibits.

Pro Forma financial information relating to the acquisition will be filed by amendment within 60 days of the date this report was required to be filed.

##### (c) Exhibits

Exhibit 1 - Asset Purchase Agreement, dated March 10, 1998, by and between the Company and BMG.

Exhibit 2 - Certificate of Designation, dated March 11, 1998, of the Company and certified by the Office of the Secretary of State of Delaware.

Exhibit 3 - Registration Rights Agreement, dated March 11, 1998, between BMG and the Company.

SIGNATURES

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

Dated: March \_\_, 1998

TAKE-TWO INTERACTIVE SOFTWARE, INC.

By

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Name: Ryan A. Brant  
Title: Chairman

ASSET PURCHASE AGREEMENT

dated as of March 10, 1998

between

TAKE-TWO INTERACTIVE SOFTWARE, INC.

and

BMG ENTERTAINMENT NORTH AMERICA, a division of BMG MUSIC

TABLE OF CONTENTS

Section	Page
ARTICLE I.....	1
DEFINITIONS.....	1
ARTICLE II.....	7
PURCHASE AND SALE.....	7
SECTION 2.01. Purchase and Sale of the Assets.....	7
SECTION 2.02. Assumption of Liabilities.....	7
SECTION 2.03. Purchase Price; Adjustment to Purchase Price.....	8
SECTION 2.04. Allocation of Purchase Price.....	10
SECTION 2.05. Receivables, License Payments.....	10
SECTION 2.06. Closing.....	10
ARTICLE III.....	10
CONDITIONS PRECEDENT TO THE CLOSING.....	10
SECTION 3.01. General.....	10
SECTION 3.02. Closing Deliveries.....	11
ARTICLE IV.....	11
REPRESENTATIONS AND WARRANTIES OF THE PURCHASER.....	11
SECTION 4.01. Purchaser's Organization and Authority.....	11
SECTION 4.02. Capitalization.....	11
SECTION 4.03. Warrants and Options.....	12
SECTION 4.04. No Conflict.....	12
SECTION 4.05. Consents and Approvals.....	12
SECTION 4.06. Securities Reports; Financial Statements.....	12
SECTION 4.07. Absence of Certain Changes or Events.....	13
SECTION 4.08. Litigation.....	13
SECTION 4.09. Certificate of Designation.....	13
SECTION 4.10. Brokers.....	13
ARTICLE V.....	13
REPRESENTATIONS AND WARRANTIES OF THE SELLER.....	13
SECTION 5.01. Organization and Authority.....	13
SECTION 5.02. No Conflict.....	14
SECTION 5.03. Consents and Approvals.....	14
SECTION 5.04. Litigation.....	14
SECTION 5.05. Compliance with Laws.....	15
SECTION 5.06. Contracts.....	15
SECTION 5.07. Employees.....	15
SECTION 5.08. Tangible Personal Property.....	16
SECTION 5.09. Certain Representations.....	16

SECTION 5.10.	Investment Intent.....	16
SECTION 5.11.	Securities Act.....	16
SECTION 5.12.	Taxes.....	16
SECTION 5.13.	Brokers.....	16
ARTICLE VI.....		17
ADDITIONAL AGREEMENTS.....		17
SECTION 6.01.	Investigation.....	17
SECTION 6.02.	Access to Information.....	17
SECTION 6.03.	Publicity.....	17
SECTION 6.04.	Confidentiality.....	17
SECTION 6.05.	Notice Preceding Compelled Disclosure.....	18
SECTION 6.06.	Notification to Governmental Authorities.....	18
SECTION 6.07.	Bulk Transfer Laws.....	18
SECTION 6.08.	Use of Name or Other Intellectual Property.....	18
SECTION 6.09.	Employees.....	19
SECTION 6.10.	No Competition.....	19
SECTION 6.11.	Voting of Designated Shares.....	20
SECTION 6.12.	Audit.....	20
SECTION 6.13.	Termination of Gametek Litigation.....	20
SECTION 6.14.	Right of Set-off.....	20
SECTION 6.15.	Performance of Contracts.....	21
SECTION 6.16.	Further Action.....	21
ARTICLE VII.....		21
TAX MATTERS.....		21
SECTION 7.01.	Conveyance Taxes.....	21
SECTION 7.02.	Taxes.....	21
SECTION 7.03.	Tax Reporting.....	21
ARTICLE VIII.....		22
INDEMNITY.....		22
SECTION 8.01.	Survival; Waiver.....	22
SECTION 8.02.	Seller Indemnification.....	22
SECTION 8.03.	Purchaser Indemnification.....	24
SECTION 8.04.	No Rescission.....	25
ARTICLE IX.....		25
GENERAL PROVISIONS.....		25
SECTION 9.01.	Expenses.....	25
SECTION 9.02.	Notices.....	25
SECTION 9.03.	Headings.....	26
SECTION 9.04.	Severability.....	26
SECTION 9.05.	Entire Agreement.....	27
SECTION 9.06.	Assignment.....	27
SECTION 9.07.	No Third-Party Beneficiaries.....	27

SECTION 9.08.	Amendment; Waiver.....	27
SECTION 9.09.	Governing Law.....	27
SECTION 9.10.	Consent to Jurisdiction.....	27
SECTION 9.11.	Counterparts.....	28

## EXHIBITS

- Exhibit A: Administrative Services Agreement
- Exhibit B-1: Assignment of Contracts between BMG Music and the Purchaser
- Exhibit B-2: Assignment of Contracts between BMG EIV and the Purchaser
- Exhibit B-3: Assignment of Contracts between BMG Music Spain, S.A. and the Purchaser
- Exhibit B-4: Assignment of Contracts between BMG Chile, S.A. and the Purchaser
- Exhibit B-5: Assignment of Contracts between BMG Portugal, Actividades Audiovisuais, Lda. and the Purchaser
- Exhibit B-6: Assignment of Contracts between BMG Entertainment Mexico, S.A. de C.V. and the Purchaser
- Exhibit B-7: Assignment of Contracts between BMG Ariola Miller GmbH and the Purchaser
- Exhibit B-8: Assignment of Contracts between BMG Japan, Inc. and the Purchaser
- Exhibit B-9: Assignment of Contracts between Universum Film GmbH and the Purchaser
- Exhibit B-10: Assignment of Contracts between BMG Entertainment International UK & Ireland Ltd. and the Purchaser
- Exhibit B-11: Assignment of Contracts between BMG France, S.A. and the Purchaser
- Exhibit C: Assumption Agreement made by the Purchaser in favor of the Seller and certain of its Affiliates
- Exhibit D: Bill of Sale and Assignment between Seller and the Purchaser
- Exhibit E: Central Services Agreement
- Exhibit F: Certificate of Designation
- Exhibit G: Copyright Assignment
- Exhibit H: Term Sheet for Employment Agreement for Benoit Deniau
- Exhibit I: Term Sheet for Employment Agreement for David Stempel
- Exhibit J: Term Sheet for Employment Agreement for Sam Houser
- Exhibit K: Pick, Pack, Ship, Billing and Collection Agreement
- Exhibit L: Reference Balance Sheet
- Exhibit M: Registration Rights Agreement
- Exhibit N: Secondment Agreement
- Exhibit O: Legal Opinion of Tenzer Greenblatt LLP

SCHEDULE I

PART A-1: Designated Contracts  
PART A-2: All Other Contracts

SCHEDULE II Accounting Policies

SCHEDULE III Unrecouped Advance Value

SCHEDULE IV Inventory

SCHEDULE V Book Values

SCHEDULE VI Employee Bonuses

DISCLOSURE SCHEDULE

- Section 4.03: Holders of Options, Warrants and Registration Rights
- Section 5.03: Consents, Approvals and Authorizations
- Section 5.04: Litigation
- Section 5.05: Compliance with Laws
- Section 5.06(a): Exceptions to Designated Contracts
- Section 5.07(a): Employees
- Section 5.07(b): Strikes, Slowdowns and Work Stoppages

ASSET PURCHASE AGREEMENT, dated as of March 10, 1998 between TAKE-TWO INTERACTIVE SOFTWARE, INC., a Delaware company, having an office at 575 Broadway, New York, New York 10012 (the "Purchaser") and BMG ENTERTAINMENT NORTH AMERICA, a division of BMG MUSIC, a New York general partnership, having an office at 1540 Broadway, New York, New York 10036 (the "Seller"; the Seller and the Purchaser are sometimes hereinafter collectively referred to as the "Parties").

W I T N E S S E T H:

WHEREAS, the Seller and certain of its Affiliates (as defined below) are engaged in, among other things, the business of distributing, developing and publishing Products (as defined below) (the "Business"); and

WHEREAS, the Seller wishes to sell to the Purchaser, and the Purchaser wishes to purchase from the Seller, the Assets (as defined below) and assume certain liabilities of the Business, all upon the terms and subject to the conditions set forth herein.

NOW, THEREFORE, in consideration of the premises and the mutual agreements and covenants hereinafter set forth, the Purchaser and the Seller hereby agree as follows:

ARTICLE I

DEFINITIONS

As used in this Agreement, the following terms shall have the following meanings:

"Accounting Policies" means United States generally accepted accounting principles, except as set forth in Schedule II.

"Action" means any claim, action, suit, arbitration, proceeding or investigation by or before any Governmental Authority. An Action shall not be deemed to be "pending" with respect to any Person if such Person has not yet been served with a summons in connection therewith.

"Adjusted Assets" means, as of any date of determination, (i) the sum of Inventory Value plus Unrecouped Advance Value plus Tangible Personal Property Value less (ii) Balance Sheet Liabilities.

"Adjustment Date Share Price" means the average per share price of the Common Stock as traded on the NASDAQ SmallCap Market as of the Business Day immediately preceding the Closing Date.

"Administrative Services Agreement" means the Administrative Services Agreement dated as of the date hereof between the Purchaser and the Seller, a copy of which is attached hereto as Exhibit A.

"Affiliate" means, with respect to any specified Person, any other Person that directly, or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with, such specified Person.

"Agreement" means this Asset Purchase Agreement, dated as of March 10, 1998, between the Purchaser and the Seller.

"Assets" has the meaning specified in Section 2.01.

"Assignments of Contracts" means the Assignments of Contracts, dated as of the date hereof, copies of which are attached hereto as Exhibits B-1 through B-11.

"Assumed Liabilities" has the meaning specified in Section 2.02.

"Assumption Agreement" means the Assumption Agreement, dated as of the date hereof, made by the Purchaser in favor of the Seller and certain of its Affiliates, a copy of which is attached hereto as Exhibit C.

"Balance Sheet Liabilities" means, as of any date of determination, the aggregate liabilities of the Business determined in accordance with the Accounting Policies.

"Bill of Sale and Assignment" means the Bill of Sale and Assignment, dated as of the date hereof, between the Purchaser and the Seller, a copy of which is attached hereto as Exhibit D.

"BMG EIV" means BMG Entertainment International Interactive and Video Ltd.

"Business" has the meaning specified in the recitals to this Agreement.

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

"Central Services Agreement" means the Central Services Agreement, dated as of the date hereof, between the Seller and the Purchaser, a copy of which is attached hereto as Exhibit E.

"Certificate of Designation" means the Certificate of Designation with respect to the Preferred Stock to be filed by the Purchaser with the Secretary of State of Delaware, a copy of which is attached hereto as Exhibit F.

"Closing" has the meaning specified in Section 2.06.

"Closing Date" means the date this Agreement is executed or such other date as the Purchaser and the Seller may mutually agree.

"Code" shall mean the Internal Revenue Code of 1986, as amended through the date hereof.

"Common Stock" means the common stock of the Purchaser.

"Confidential Information" has the meaning specified in Section 6.04.

"Contracts" means, collectively, all of the contracts, licenses, sublicenses, agreements, leases, commitments, and sales and purchase orders as set forth in Part A-1 and Part A-2 of Schedule I.

"Copyright Assignment" means the Copyright Assignment, dated as of the date hereof, between the Purchaser and the Seller, with respect to the Product known as "Grand Theft Auto", a copy of which is attached hereto as Exhibit G.

"Copyrights" means copyrights, copyright registrations, copyright applications, copyright renewals and similar rights owned by or licensed to the Seller and used exclusively in the conduct of the Business, to the extent of the Seller's rights herein.

"Designated Contracts" means the Contracts set forth on Part A-1 of Schedule I.

"Designated Shares" means 1,850,000 shares of Preferred Stock (as it may be adjusted pursuant to Section 2.03(b)).

"Disclosing Party" has the meaning specified in 6.05.

"Disclosure Schedule" means the Disclosure Schedule, dated as of the date hereof and attached hereto.

"Employees" has the meaning specified in Section 5.07(a).

"Final Closing Balance Sheet" has the meaning specified in Section 2.03(b)(i).

"Gametek Litigation" means the litigation in Germany between Gametek (UK) Limited and BMG Ariola Miller GmbH relating to the Distribution Agreement dated as of August 1, 1995 between such parties.

"General Partner" means Bertelsmann Music Group Inc., a general partner of the Seller.

"Governmental Authority" means any United States federal, state or local or any foreign government, governmental, regulatory or administrative authority, agency or commission or any court, tribunal, or judicial or arbitral body.

"Indemnitee" has the meaning specified in Sections 8.02 and 8.03.

"Independent Accounting Firm" has the meaning specified in Section 2.03(b)(iii).

"Initial Closing Balance Sheet" has the meaning specified in Section 2.03(b)(i).

"Inventory" means the finished goods inventory of Products.

"Inventory Value" means, as of any date of determination, the value of the Inventory on such date determined in accordance with the Accounting Policies.

"IP Entities" has the meaning specified in Section 6.08.

"Key Employee Term Sheets" means the binding Term Sheets, dated the date hereof, between the Purchaser and each of Benoit Deniau, David Stempel and Sam Houser, copies of which are attached hereto as Exhibits H, I and J.

"Key Employees" means Benoit Deniau, Sam Houser and David Stempel.

"Losses" means any and all liabilities, losses, damages, claims, costs and expenses, interest, awards, judgments and penalties (including, without limitation, attorneys' and consultants' fees and expenses) actually suffered or incurred by a person (including, without limitation, any Action brought or otherwise initiated by any person.

"Loss Notice" has the meaning specified in Section 8.02.

"Material Adverse Effect" means any change in, or effect on, the Assets that is materially adverse to the Business or the Assets, in each case taken as a whole after giving effect to this Agreement.

"NASDAQ" means The NASDAQ Stock Market, Inc.

"Parties" has the meaning specified in the recitals.

"Permitted Disclosure" shall have the meaning specified in Section 6.03.

"Person" means any individual, partnership, firm, corporation, limited liability company, limited liability partnership, association, trust, unincorporated organization or other entity, as well as any syndicate or group that would be deemed to be a person under Section 13(d)(3) of the Securities Exchange Act of 1934, as amended.

"Pick, Pack and Ship Agreement" means the Pick, Pack, Ship, Billing and Collection Agreement dated as of the date hereof between the Purchaser and the Seller, a copy of which is attached hereto as Exhibit K.

"Platforms" means, collectively, Sony PlayStation, Nintendo 64 and Sega Saturn.

"Preferred Stock" means shares of the Purchaser's Series A Preferred Stock.

"Product" means an interactive multimedia product, including, but not limited to, the software applications, text, photographs, audio or video segments, story line, characters, animation, graphics, charts, tables or any other content or materials incorporated into the product, and related user and system documentation.

"Purchase Price" has the meaning set forth in Section 2.03(a).

"Purchaser" has the meaning specified in the recitals to this Agreement.

"Purchaser SEC Reports" has the meaning specified in Section 4.06.

"Reference Balance Sheet" means the balance sheet of the Seller, dated as of January 31, 1998 and prepared in accordance with the Accounting Policies, a copy of which is set forth in Exhibit L hereto.

"Reference Balance Sheet Date" means January 31, 1998.

"Registration Rights Agreement" means the Registration Rights Agreement dated as of the date hereof between the Purchaser and the Seller, a copy of which is attached hereto as Exhibit M.

"SEC" has the meaning specified in Section 4.06.

"Secondment Agreement" means the Secondment Agreement dated as of the date hereof between the Purchaser and the Seller with respect to Gary Dale, a copy of which is attached hereto as Exhibit N.

"Seller" has the meaning specified in the recitals.

"Specified Liabilities" means, collectively, (i) the payment obligations of the Seller or its Affiliates pursuant to the Contracts were due as of the Closing Date (after all applicable grace periods), (ii) the bonuses to the Employees as set forth on Schedule VI, and (iii) the costs and liabilities relating to the specific litigation matters set forth in items 1 and 3 on Disclosure Schedule 5.04.

"Tangible Personal Property" means all computers, equipment, supplies, furniture, personalty, rolling stock and other tangible personal property exclusively used in the Business and which is located in the United Kingdom, Germany or France; provided, that Tangible Personal Property shall not be deemed to include, without limitation, (i) telephones, computer servers (other than the computer server exclusively used in the Business and located in the United Kingdom) and fixtures, or (ii) any personal property exclusively used by Gary Dale or his assistant Joanne Green.

"Tangible Personal Property Value" means \$413,000.

"Tax" or "Taxes" means any and all taxes or similar charges or levies of any kind whatsoever (together with any interest, penalties, additions to tax and additional amounts imposed with respect thereto) imposed by any governmental or taxing authority.

"Third-Party Claims" has the meaning specified in Section 8.02.

"Transaction Agreements" means, collectively, the Central Services Agreement, the Administrative Services Agreement, the Pick, Pack and Ship Agreement, the Registration Rights Agreement, the Assumption Agreements, the Assignments of Contracts, the Bills of Sale and Assignment, the Copyright Assignment and the Key Employee Term Sheets.

"Transferred Employees" means the Employees of the Business who have executed employment agreements with the Seller, as set forth on Part A-2 of Schedule I attached hereto.

"Unrecouped Advance Value" means, as of any date of determination, the aggregate amount of unrecouped advances made by the Seller (and its Affiliates, as applicable) to the developers under the applicable Contracts.

## ARTICLE II

## PURCHASE AND SALE

SECTION 2.01. Purchase and Sale of the Assets. Upon the terms and subject to the conditions of this Agreement, at the Closing the Seller shall, or shall cause its applicable Affiliate to, sell, assign, transfer and convey to the Purchaser (or its designee), and the Purchaser (or its designee) shall purchase and acquire from the Seller (or its applicable Affiliate), all of the Seller's (or its applicable Affiliates') right, title and interest in and to the assets expressly set forth in this Section 2.01 (all such assets being referred to as the "Assets"):

(i) the Contracts (including, without limitation, all obligations set forth therein);

(ii) the Copyrights;

(iii) the Inventory;

(iv) the Tangible Personal Property;

(v) photocopies of all of the Seller's (and its Affiliates', as applicable) books of account, general, financial and personnel records (other than medical records) and other files and records pertaining exclusively to the Assets, wherever located.

SECTION 2.02. Assumption of Liabilities. The Purchaser shall assume and shall pay, perform and discharge when due all obligations and liabilities of the Seller and its Affiliates, as the case may be, of whatever nature (whether fixed or contingent, arising by law or by contract or otherwise) arising out of or relating to the Assets (all liabilities assumed pursuant to this Section 2.02 being, the "Assumed Liabilities"), including, without limitation, the following liabilities:

(a) All liabilities relating to the Employees; provided, that the Seller shall retain (i) all such liabilities relating to facts or circumstances arising, in their entirety, prior to the Closing, (ii) if such liabilities relate to facts and circumstances arising both before and after the Closing, all such liabilities that are principally related to facts or circumstances arising before the Closing, and (iii) any termination or severance costs in connection with the termination of the Employees who do not choose to be, and are not at any time, employed by the Purchaser.

(b) All obligations and liabilities which are set forth on the Closing Date Balance Sheet.

Notwithstanding anything to the contrary in the foregoing, the Purchaser shall not be deemed to assume any of the Specified Liabilities.

SECTION 2.03. Purchase Price; Adjustment to Purchase Price. (a) The aggregate purchase price for the Assets payable by the Purchaser to the Seller shall be the Designated Shares, subject to adjustment as set forth in paragraph (b) of this Section (the "Purchase Price").

(b) The Purchase Price shall be subject to adjustment after the Closing Date as specified in this Section 2.03(b).

(i) Final Closing Balance Sheets. At the Closing, the Seller shall deliver to the Purchaser an unaudited estimated balance sheet (the "Initial Closing Balance Sheet") as at the Closing Date, prepared in accordance with the Accounting Policies, subject to the amounts reflected thereon being the Seller's best estimates as of the Closing Date. Within thirty (30) days of the Closing Date the Seller shall prepare and deliver to the Purchaser, an unaudited balance sheet (the "Final Closing Balance Sheet") of the Business as at the Closing Date, prepared in accordance with the Accounting Policies.

(ii) Initial Purchase Price Adjustment. If the Adjusted Assets reflected on the Initial Closing Balance Sheet are less than \$9,000,000, the number of shares of Preferred Stock comprising the Purchase Price shall be reduced by an amount equal to the quotient of (A) \$9,000,000 less the Adjusted Assets reflected on the Initial Closing Balance Sheet divided by (B) the Adjustment Date Share Price.

(iii) Disputes. Purchaser may dispute any amounts reflected on the Final Closing Balance Sheet by delivering to Seller within twenty (20) Business Days of the Seller's delivery of the Final Closing Balance Sheet a written notice setting forth in reasonable detail the basis for such dispute; provided, however, that Purchaser may dispute amounts reflected on the Final Closing Balance Sheet (A) only to the extent the net effect of such disputed amounts in the aggregate would reduce the Adjusted Assets reflected on the Final Closing Balance Sheet to less than \$9,000,000; and (B) only on the basis that the amounts reflected on the Final Closing Balance Sheet were not arrived at in accordance with the Accounting Policies. If the Purchaser timely delivers to Seller a dispute notice pursuant to this Section 2.03(b)(iii), the parties hereto shall negotiate in good faith to resolve such dispute, and any resolution by them as to any disputed amounts shall immediately be final, binding, and conclusive. If any such resolution leaves in dispute amounts the net effect of which in the aggregate would not reduce the Adjusted Assets reflected on the Final Closing Balance Sheet to less than \$9,000,000, all

such amounts remaining in dispute shall then be deemed to have been resolved in favor of the Final Closing Balance Sheet delivered by the Seller to the Purchaser. If the parties are unable to reach a resolution with such effect within twenty (20) Business Days after receipt by the Seller of the Purchaser's written notice of dispute, the parties shall submit the items remaining in dispute for resolution in accordance with the Accounting Policies to Price Waterhouse LLP (or, if such firm shall decline or is unable to act or is not, at the time of such submission, independent of both the Seller and the Purchaser, to another independent accounting firm of international reputation mutually acceptable to the Purchaser and the Seller) (either Price Waterhouse LLP or such other accounting firm, the "Independent Accounting Firm"), which shall, within thirty (30) Business Days after such submission, determine and report to the Purchaser and the Seller upon such remaining disputed items, and such report shall be final, binding, and conclusive on the Seller and the Purchaser. The fees and disbursements of the Independent Accounting Firm shall be allocated between the Seller and the Purchaser in the same proportion that the aggregate amount of such remaining disputed items so submitted to the Independent Accounting Firm that is unsuccessfully disputed by each such party (as finally determined by the Independent Accounting Firm) bears to the total amount of such remaining disputed items so submitted. No adjustment to the Purchase Price pursuant shall be made with respect to amounts disputed by the Purchaser, unless the net effect of the amounts successfully disputed by the Seller in the aggregate is to reduce the Adjusted Assets reflected on the Final Closing Balance Sheet to less than \$9,000,000.

(iv) Final Purchase Price Adjustment. The Final Closing Balance Sheet shall be final, binding, and conclusive on the parties hereto on the earlier of (A) the twentieth (20th) Business Day after delivery thereof by Seller to Purchaser if no dispute notice is delivered by Purchaser prior to such date, and (B) the date on which all disputes thereof have been resolved in accordance with Section 2.03(b)(iii). If the Adjusted Assets reflected on the Final Closing Balance Sheet are less than \$9,000,000, the Seller shall, within ten (10) Business Days of the delivery of the Final Closing Balance Sheet being deemed final, binding, and conclusive, reconvey to the Purchaser a number of shares of Preferred Stock equal to the quotient of (A) (1) the lesser of (x) \$9,000,000 and (y) the Adjusted Assets reflected on the Initial Closing Balance Sheet, less (2) the Adjusted Assets reflected on the Final Closing Balance Sheet, divided by (B) the Adjustment Date Share Price; provided, however, that if the Adjusted Assets reflected on the Initial Closing Balance Sheet were less than \$9,000,000 (i.e., an initial purchase price adjustment was made at the Closing), and the Adjusted

Assets reflected on the Final Closing Balance Sheet are greater than the Adjusted Assets reflected on the Initial Closing Balance Sheet, the Purchaser shall issue to the Seller within ten (10) Business Days of the Final Closing Balance Sheet being deemed final, binding, and conclusive a number of shares of Preferred Stock equal to the quotient of (A) (1) the lesser of (x) \$9,000,000 and (y) the Adjusted Assets reflected on the Final Closing Balance Sheet less (2) the Adjusted Assets reflected on the Initial Closing Balance Sheet, divided by (B) the Adjustment Date Share Price.

SECTION 2.04. Allocation of Purchase Price. The Purchase Price, as adjusted pursuant to Section 2.03 hereof (and all other capitalizable costs), shall be allocated among the various categories of Assets, in such manner as shall be negotiated and agreed by the Parties in good faith, in accordance with Section 1060 of the Code and the regulations promulgated thereunder and all applicable provisions of state, local or foreign law. Each of the Parties hereto agrees to prepare and file all tax returns, including Form 8594, in a manner consistent with such allocation and to report this transaction for federal, state and foreign income tax purposes in accordance with such allocation of the Purchase Price and shall use its best efforts to sustain such allocation in any subsequent tax audit or dispute.

SECTION 2.05. Receivables, License Payments. Notwithstanding anything herein to the contrary, the Seller (and its Affiliates) shall be entitled to all proceeds and receivables generated from the Seller's (and its Affiliates') shipment of Products (for the avoidance of doubt, for purposes of this Section, gold masters shall not be deemed Products) prior to the Closing Date. Additionally, BMG shall be entitled to collect and retain all payments, whether made before or after the Closing, related to the (i) Assignment and Assumption Agreement, dated as of June 20, 1997, between BMG Interactive, Delphine Software International S.A.R.L. and Electronic Arts, Inc.; (ii) Termination Agreement, dated as of June 21, 1997, between BMG Interactive and Pixel Multimedia Limited; and (iii) Termination Agreement, dated as of June 30, 1997, between BMG Interactive and Engineering Animation, Inc.

SECTION 2.06. Closing. Upon the terms and subject to the conditions of this Agreement, the sale and purchase of the Assets contemplated by this Agreement shall take place at a closing (the "Closing") to be held at the office of Levin & Srinivasan LLP, 1776 Broadway, Suite 1900, New York, New York 10019, at 10:00 A.M. New York time on the Closing Date, or at such other place or at such other time or on such other date as the Seller and the Purchaser may mutually agree.

### ARTICLE III

#### CONDITIONS PRECEDENT TO THE CLOSING

SECTION 3.01. General. The respective obligations set forth herein of the Purchaser and the Seller to consummate the transactions contemplated in this Agreement shall be conditioned on the satisfaction at or prior to the Closing of the condition set forth in Section 3.02 and the delivery at the Closing of the documents set forth in Section 3.02 hereof.

SECTION 3.02. Closing Deliveries. At the Closing:

(a) The Purchaser, or its Affiliate, as applicable, the Seller, or its Affiliate, as applicable, and all other applicable parties shall have entered into each of the Transaction Agreements to which it is a party;

(b) The Purchaser shall deliver to the Seller (i) the stock certificates evidencing the Designated Shares, in the name of the Purchaser, in form satisfactory to the Seller and with all required tax stamps affixed and (ii) a legal opinion from Tenzer Greenblatt LLP, a copy of which is attached hereto as Exhibit 0; and

(c) The Seller shall deliver to the Purchaser a receipt for the Purchase Price.

#### ARTICLE IV

##### REPRESENTATIONS AND WARRANTIES OF THE PURCHASER

As an inducement to the Seller to enter into this Agreement, the Purchaser hereby represents and warrants to the Seller as follows:

SECTION 4.01. Purchaser's Organization and Authority. The Purchaser is a corporation duly organized, validly existing and in good standing under the laws of the State of Delaware and the execution, delivery and performance of this Agreement and the Transaction Agreements to which the Purchaser is a party are within the Purchaser's corporate powers and have been duly authorized on its part by all requisite action. This Agreement and the Transaction Agreements to which the Purchaser is a party have been duly executed and delivered by the Purchaser and (assuming due execution and delivery by all other parties signatory thereto) constitutes a legally valid and binding obligation of the Purchaser, subject to principles of equity, bankruptcy laws and the effect of laws limiting the rights of creditors generally.

## SECTION 4.02 Capitalization.

(a) The authorized capital stock of the Purchaser consists of 15,000,000 shares of voting Common Stock and 5,000,000 shares of Preferred Stock, of which, as of the Closing (after taking into account the issuance of the Designated Shares), 9,850,043 shares of voting Common Stock and 1,850,000 shares of Preferred Stock were issued and outstanding, all of which are duly authorized, validly issued, fully paid and non-assessable and not subject to preemptive rights created by statute, the Purchaser's certificate of incorporation or by-laws or any agreement to which the Purchaser is a party or is bound.

(b) Upon the consummation of the transactions contemplated herein, the Designated Shares will be duly authorized, validly issued, fully paid and non-assessable, and such Designated Shares will be owned by the Seller free and clear of all security interests, liens, claims, pledges, agreements, restrictions or other limitations on the Seller's voting rights, charges or other encumbrances of any nature whatsoever, other than any restrictions arising under applicable law, imposed by obligations or agreements to which the Seller is a party or under the Transaction Agreements.

SECTION 4.03. Warrants and Options. Except as set forth in Section 4.03 of the Disclosure Schedule, there are no options, warrants or other rights (including registration rights), agreements, arrangements or commitments to which the Purchaser or any of its subsidiaries is a party of any character relating to the issued or unissued capital stock of, or other equity interests in, the Purchaser or any of its subsidiaries, or obligating the Purchaser or any of its subsidiaries to grant, issue or sell any shares of the capital stock of, or other equity interests in, the Purchaser or any of its subsidiaries.

SECTION 4.04. No Conflict. Assuming that all consents, approvals, authorizations and other actions described in Section 4.05 have been obtained, and except as may result from any facts or circumstances relating solely to the Seller, the execution and delivery of this Agreement and the Transaction Agreements to which the Purchaser is a party and the performance by the Purchaser of its obligations and duties under this Agreement and the Transaction Agreements do not contravene or constitute a default under (a) to the Purchaser's knowledge, any provision of applicable law or regulation, or (b) the certificate of incorporation or by-laws or similar organizational documents of the Purchaser.

SECTION 4.05. Consents and Approvals. No action by, or in respect of or filing with, any Governmental Authority is required to be taken by the Purchaser for the execution delivery and performance by the Purchaser of this Agreement or the Transaction Agreements to which the Purchaser is a party, except (a) where failure to obtain such consent, approval, authorization or action, or to make such filing or notification, would not prevent the Purchaser from performing any of its material obligations under this Agreement or the Transaction Agreements to which the Purchaser is a party and (b) as may be necessary as a result of any facts or circumstances relating solely to the Seller.

SECTION 4.06. Securities Reports; Financial Statements. As of the date hereof, (a) the Purchaser has filed all forms, reports, statements and other documents required to be filed with (i) the Securities and Exchange Commission (the "SEC") including, without limitation, (A) all Annual Reports on Form 10-K, (B) all Quarterly Reports on Form 10-Q, (C) all proxy statements relating to meetings of shareholders (whether annual or special), (D) all reports on Form 8-K, (E) all other reports or registration statements, and (F) all amendments and supplements to all such reports and registration statements (collectively, the "Purchaser SEC Reports") and (ii) any applicable, federal, state or foreign securities authorities; and (b) the Purchaser has complied with the filing requirements in all material respects regarding all forms, reports, statements and other documents required to be filed with any other applicable federal, state or foreign regulatory authorities including, without limitation, state insurance and health regulatory authorities. The Purchaser SEC Reports do not, as of the date they were filed, contain any untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading.

SECTION 4.07. Absence of Certain Changes or Events. Except as disclosed in the Purchaser SEC Reports filed prior to the date of this Agreement or as contemplated in this Agreement, there has not been any material adverse change in the Purchaser's business or in its financial condition.

SECTION 4.08. Litigation. No claim, action, proceeding or investigation is pending which seeks to delay or prevent the consummation of the transactions contemplated by this Agreement or the Transaction Agreements to which the Purchaser (or its Affiliates) is a party, or which would be reasonably likely to adversely affect or restrict the Purchaser's (or its Affiliates') ability to consummate the transactions contemplated by this Agreement or such Transaction Agreements, as the case may be.

SECTION 4.09. Certificate of Designation. Attached hereto as Exhibit F is a true and complete copy of the Certificate of Designation.

SECTION 4.10. Brokers.

No broker, finder or investment banker is entitled to any brokerage, finder's or other fee or commission in connection with the transactions contemplated by this Agreement or the Transaction Agreements based on arrangements made by or on behalf of the Purchaser.

#### ARTICLE V

##### REPRESENTATIONS AND WARRANTIES OF THE SELLER

As an inducement to the Purchaser to enter into this Agreement, the Seller hereby represents and warrants to the Purchaser as follows:

SECTION 5.01. Organization and Authority. (a) The Seller is a general partnership duly organized, validly existing and in good standing under the laws of the State of New York and the execution, delivery and performance of this Agreement and the Transaction Agreements to which the Seller is a party are within the Seller's partnership powers and have been duly authorized on its part by all requisite action. This Agreement and the Transaction Agreements to which the Seller is a party have been duly executed and delivered by the Seller and (assuming due execution and delivery by all other parties signatory thereto) constitutes a legally valid and binding obligation of the Seller, subject to principles of equity, bankruptcy laws and the effect of laws limiting the rights of creditors generally.

(b) The General Partner is a corporation duly organized, validly existing and in good standing under the laws of the State of Delaware. The execution and delivery of this Agreement and the other Transaction Agreements by the General Partner, on behalf of the Seller are within the General Partner's powers (corporate or otherwise) and have been duly authorized on its part by all requisite actions. This Agreement and the Transaction Agreements to which the Seller is a party have been duly executed and delivered by the General Partner, on behalf of the Seller, and (assuming due execution and delivery by all other parties signatory thereto) constitutes a legal, valid and binding obligation of the Seller enforceable against the Seller in

accordance with its terms, subject to principles of equity, bankruptcy laws and the effect of laws limiting the rights of creditors generally.

SECTION 5.02. No Conflict. Assuming that all consents, approvals, authorizations and other actions described in Section 5.03 have been obtained, and except as may result from any facts or circumstances relating solely to the Purchaser, the execution and delivery of this Agreement and the Transaction Agreements to which the Seller is a party and the performance by the Seller of its obligations and duties under this Agreement and the Transaction Agreements to which the Seller is a party do not contravene or constitute a default under (a) to the Seller's knowledge, any provision of applicable law or regulation, or (b) the certificate of incorporation or by-laws or similar organizational documents of the Seller.

SECTION 5.03. Consents and Approvals.

Except as set forth in Section 5.03 of the Disclosure Schedule:

(a) No action by, or in respect of, or filing with, any Governmental Authority is required to be taken by the Seller for the execution, delivery and performance by the Seller of this Agreement or the Transaction Agreements to which the Seller is a party, except (i) where the failure to obtain such consent, approval, authorization or action, or to make such filing or notification, would not prevent the Seller from performing any of its material obligations under this Agreement or the Transaction Agreements to which the Seller is a party and would not have a Material Adverse Effect and (ii) as may be necessary as a result of any facts or circumstances relating solely to the Purchaser.

(b) No action by, or in respect of, or filing with, any Governmental Authority is required to be taken by the General Partner for the execution and delivery by the General Partner, on behalf of the Seller, of this Agreement or the Transaction Agreements to which the Seller is a party, except (i) where the failure to obtain such consent, approval, authorization or action, or to make such filing or notification, would not prevent the Seller from performing any of its material obligations under this Agreement or the Transaction Agreements to which the Seller is a party and would not have a Material Adverse Effect and (ii) as may be necessary as a result of any facts or circumstances relating solely to the Purchaser.

SECTION 5.04. Litigation. Except as disclosed in Section 5.04 of the Disclosure Schedule, there are no Actions pending against the Seller relating to any Assets that, individually or in the aggregate, are reasonably likely to have a Material Adverse Effect. The Seller is not subject to any order, writ, judgment, injunction, decree, determination or award relating to the Assets which could be reasonably expected to have a Material Adverse Effect. No claim, action, proceeding or investigation is pending which seeks to delay or prevent the consummation of the transactions contemplated by this Agreement or the Transaction Agreement to which the Seller is a party, or which would be reasonably likely to adversely affect or restrict the Seller's ability to consummate the transactions contemplated by this Agreement or such Transaction Agreements, as the case may be.

SECTION 5.05. Compliance with Laws. To the best of the Seller's knowledge, the Seller's use of the Assets is not in violation of any law, rule, regulation, order, judgment or decree applicable to the Seller and relating to the Assets or by which any of the Assets are bound or affected, except (i) as set forth in Section 5.05 of the Disclosure Schedule and (ii) for violations the existence of which would not be reasonably expected to have a Material Adverse Effect.

SECTION 5.06. Contracts. (a) Except as disclosed in Section 5.06(a) of the Disclosure Schedule, each Designated Contract: (i) is valid and binding in accordance with its terms on the Seller, taking into account any oral modifications or waivers that do not substantially and materially impair the value of the Designated Contract as a whole, (ii) has not been breached by the Seller in any manner that could reasonably be expected to have a material adverse effect on the Purchaser's rights thereunder, (iii) is freely assignable to the Purchaser without penalty, (iv) has not been terminated by the Seller, and (v) true and complete copies of each Designated Contract have previously been made available to the Purchaser; provided, however, that the Seller does not represent or warrant in any respect the performance under any Designated Contract by any party thereto (other than the Seller), or any party whose services are furnished thereunder, after the date hereof.

(b) To the best of the Seller's knowledge, Part A-2 of Schedule I lists substantially all of the contracts, licenses, sublicenses, and agreements exclusively related to the Business (other than the Designated Contracts), except for omissions which would not be reasonably expected to have a Material Adverse Effect. To Tom McIntyre's and LaVerne Evans' actual knowledge, in each case without independent investigation, no notices of default have been received by the Seller (or its applicable Affiliates) alleging a default by the Seller (or its applicable Affiliates) under any of the Contracts listed on Part A-2 of Schedule I, except for notices of default, the existence of which default would not be reasonably expected to have a Material Adverse Effect.

SECTION 5.07. Employees. (a) Attached hereto as Section 5.07(a) of the Disclosure Schedule is a true and complete list of all of the Seller's employees to be transferred to the Purchaser as of the date hereof (collectively, the "Employees") in accordance with Section 6.09.

(b) Except as set forth on Section 5.07(b) of the Disclosure Schedule there are no strikes, slowdowns, picketing or work stoppages in which the Employees are participating that, individually or in the aggregate, are reasonably likely to have a Material Adverse Effect.

SECTION 5.08 Tangible Personal Property. (a) The value of the Tangible Personal Property as of the date of the Closing shall not be less than \$250,000, as calculated using the values set forth for such Tangible Personal Property in Schedule V.

(b) The Tangible Personal Property is free and clear of any security interest, pledge, mortgage, lien or encumbrance; provided, that the Seller shall only be liable for any breach of the representation contained in this Section 5.08(b) to the extent such breach causes the Adjusted Assets, as reflected on the Final Closing Balance Sheet, to be less than \$9,000,000.

SECTION 5.09. Certain Representations. (i) The Seller's financial situation is such that it can afford to bear the economic risk of holding its interest in the Designated Shares for an indefinite period of time and can afford to suffer a complete loss of its investment in the Designated Shares, (ii) the Seller's knowledge and experience in financial and business matters are such that it is capable of evaluating the merits and risks of its investment in the Designated Shares, as contemplated by this Agreement, and (iii) the Seller understands that the Designated Shares are a speculative investment which involves a high degree of risk of loss of its investment therein and that there are substantial restrictions on the transferability of the Designated Shares.

SECTION 5.10. Investment Intent. The Designated Shares to be acquired by the Seller hereunder are being acquired for its own account and without a view to any public distribution of such Designated Shares.

SECTION 5.11. Securities Act. The Seller has been advised that the Purchaser is issuing and selling the Designated Shares in reliance upon the exemption from registration provided in Section 4(2) of the Securities Act and is relying upon these representations, and agrees that said Designated Shares may be transferred only if registered under the Securities Act or pursuant to an exemption from such registration requirements in compliance with such applicable securities laws and that the certificate representing the Designated Shares will have a legend to such effect.

SECTION 5.12. Taxes. To the best of the Seller's knowledge, there are no liens encumbering any of the Assets as a result of any Taxes.

SECTION 5.13. Brokers. No broker, finder or investment banker is entitled to any brokerage, finder's or other fee or commission in connection with the transactions contemplated by this Agreement based upon arrangements made by or on behalf of the Seller.

## ARTICLE VI

## ADDITIONAL AGREEMENTS

SECTION 6.01. Investigation. The Purchaser acknowledges and agrees that it (i) has made its own inquiry and investigation into, and, based thereon, has formed an independent judgment concerning the Assets and the Assumed Liabilities, (ii) has been furnished with or given adequate access to such information about the Business, the Assets and the Assumed Liabilities as it has requested, and (iii) will not assert any claim against the Seller or any of its directors, officers, employees, agents, stockholders, Affiliates, consultants, or representatives, or hold the Seller or any such persons liable for any inaccuracies, misstatements or omissions with respect to information (other than, with respect to the representations, warranties, covenants and agreements contained in this Agreement) furnished by the Seller or such persons concerning the Seller, the Business, the Assets or the Assumed Liabilities.

SECTION 6.02. Access to Information. If after the Closing, in order to properly prepare documents required to be filed with Governmental Authorities or its financial statements, it is necessary that any Party hereto or any of its successors be furnished with additional information relating to the Business, the Assets or the Assumed Liabilities, and such information is in the possession of any another Party hereto, such Party agrees to use its reasonable efforts to furnish photocopies of such information to such other Party, at the cost and expense of the Party being furnished such information.

SECTION 6.03. Publicity. Each Party agrees to consult the other Party prior to issuing any press release, public statement or advertisement in any manner relating to the existence of this Agreement or any terms, conditions or obligations contained herein or in the Transaction Agreements; provided, that the Purchaser shall have the right to disclose such information (the "Permitted Disclosure") as it is required to disclose by applicable law and the applicable NASDAQ regulations to be disclosed; provided, further, that the Purchaser hereby agrees that it will not issue any communication to the press, any other media or its applicable regulators that would reflect adversely on the Seller or its Affiliates, except to the extent that such failure to disclose such information in that way would cause the Purchaser to be in violation of applicable law or applicable NASDAQ regulations.

SECTION 6.04. Confidentiality. Subject to Section 6.03 above, each of the Parties will keep strictly confidential any and all information delivered or transferred by the Purchaser or the Seller in connection with this Agreement and any of the Transaction Agreements, including, without limitation, the terms of any such agreements (the "Confidential Information"), except that any Party may disclose any such term or information:

(a) to the extent required by law, regulation or legal process or any regulatory agency, subject to the terms and conditions contained in Section 6.05;

(b) to its employees, representatives, legal, financial, technical and professional advisors and affiliates who need to know the information for the purpose of performing their duties and obligations hereunder; or

(c) if at the time of disclosure it is in the public domain other than as a result of a Party's breach under this Section 6.04.

To the extent that there is a breach of this Section 6.04 by any person receiving information pursuant to (b) above, such breach shall be deemed to be a breach by the Party which originally disclosed the information to the person pursuant to (b) above.

Each Party, on behalf of itself and the employees and Affiliates of such Party, agrees that it will issue no communication to the press or other media that would reflect adversely on any other Party.

SECTION 6.05. Notice Preceding Compelled Disclosure. In the event any of the Parties or any of their respective representatives are requested pursuant to, or become compelled by, applicable law, regulation or legal process to disclose any of the Confidential Information (the "Disclosing Party"), such Disclosing Party will provide the other Parties with prompt written notice so that they may seek a protective order or other appropriate remedy or, in their sole discretion, waive compliance with the term of this Agreement. In the event that no such protective order or other remedy is obtained, or that any of the Parties waive compliance with the terms of this Agreement, the Disclosing Party will furnish only that portion of the Confidential Information which the Disclosing Party is advised by counsel is legally required and cooperate, at the Disclosing Party's sole cost and expense with the other Parties efforts to obtain reliable assurance that confidential treatment will be accorded the Confidential Information.

SECTION 6.06. Notification to Governmental Authorities. The Purchaser shall promptly after the Closing, and in any event not later than thirty (30) days after the date hereof notify each governmental and regulatory authority that would have on record the ownership of the Seller (or its Affiliates) or the names of the officers and directors (either current or former) of the Seller (or its Affiliates), with respect to the Purchaser's ownership of the Assets and with respect to the names of the then current officers and directors of the Purchaser.

SECTION 6.07. Bulk Transfer Laws. The Parties hereby waive compliance by the Seller with the provisions of any so-called bulk transfer laws of any jurisdiction in connection with the sale or transfer to the Purchaser of the Assets.

SECTION 6.08. Use of Name or Other Intellectual Property. Immediately after the Closing and with all due diligence, the Purchaser shall remove or obliterate from all of the Assets (including letterheads and other materials) all signs and other materials containing the name BMG, BMG Music, BMG Entertainment, Bertelsmann Music Group, Inc., Ariola Eurodisc, Inc., Bertelsmann Music Group Company or any Affiliate, or related entity to all of the foregoing (collectively, the "IP Entities"), or any variant thereof, and any trademark, servicemark, trade dress, logo, trade name, or corporate name of BMG or any of the IP Entities. The Purchaser shall not use or put into use after the Closing Date any materials that bear any trademark, service mark, trade dress, logo, trade name or corporate name of the IP Entities or any variant thereof. The Purchaser shall make any requisite filings with, and provide any requisite notices to, the appropriate federal, state, local and foreign agencies to place a title or other indicia of ownership in a name other than as referred to above in this Section 6.08. Any signs and other materials containing the name of the IP Entities or any variant thereof and any trademark, service mark, trade dress, logo, trade name, or corporate name of the IP Entities shall be promptly returned to the Seller or with the Seller's written consent, destroyed or otherwise permanently disposed of. Notwithstanding the foregoing, with the Seller's prior written consent, such consent not to be unreasonably withheld, the Purchaser may sticker the materials, so long as all references to the IP Entities or any variant thereof shall be obliterated; provided, that the Purchaser may use materials ancillary to the Products (but expressly excluding the Products) containing references to the IP Entities or a variant thereof without stickered such materials for a reasonable period of time during the transition, such period not to exceed 90 days from the date hereof.

SECTION 6.09. Employees. As of the Closing, the Seller shall transfer all the Employees to the Purchaser and the Purchaser shall offer employment to all the Employees effective as of the Closing. The Purchaser's offer of employment to such Employees of the Seller shall be on terms and conditions no less favorable, in the aggregate, than the terms and conditions such Employees were entitled to from the Seller prior to the Seller's transfer of such Employee, including, without limitation, salary, bonus, and pension and health benefit arrangements; provided, that, for purposes of all of the Purchaser's employee benefit plans, including but not limited to, retirement benefit plans, the Purchaser will grant each of the Employees who becomes an employee of the Purchaser on or after the Closing service credit equal to the service credit that each such Employee of the Seller would have accrued if he or she had been employed by the Purchaser during the entire period that each such Employee of the Seller was employed by the Business or the Seller. The Seller and the Purchaser shall comply with all applicable laws relating to the transfer and employment of the Employees. The Seller shall pay all severance and termination costs in connection with any Employee who does not accept employment with the Purchaser. The Purchaser hereby represents that it does not have any intention to hire any Employee, either contemporaneously with the Closing or at any time thereafter, who declines its offer of employment and accepts any severance or termination payments from the Seller.

SECTION 6.10. No Competition. In partial consideration of the payment of the Purchase Price, as set forth in Section 2.01, for a period of two (2) years after the Closing Date, the Seller will not (i) internally develop a business which is principally engaged in the publishing of traditional video games (as currently understood as of the date hereof in the Platform industry) for Platforms and personal computers; but expressly excluding any on-line activities of the Seller; or (ii) acquire a business whose principal line of business is the publishing of traditional video games (as currently understood as of the date hereof in the Platform industry) for Platforms and personal computers; but, for purposes of determining such principal line of business, all on-line activities of the entity whose business is acquired shall be excluded. For the avoidance of doubt, the Seller shall have no restrictions with respect to publishing any products which are primarily focused on music or musical artists or where prerecorded music forms a substantial portion of such Product.

SECTION 6.11. Voting of Designated Shares. From the date hereof through and including June 30, 1998, the Seller hereby agrees to vote the Designated Shares in favor of an amendment to the Purchaser's certificate of incorporation, authorizing the Purchaser to (i) increase its number of authorized options exercisable to purchase Common Stock, and (ii) increase its authorized share capital.

SECTION 6.12. Audit. The Parties hereby agree that KPMG Peat Marwick shall be principally responsible for preparing, within sixty (60) days of the date hereof, audited financial statements of the Business' operations in the United States, United Kingdom, France, Germany, Sweden, Italy and Japan. Notwithstanding anything herein or in the Transaction Agreements to the contrary, the Parties agree and acknowledge that the audit is being prepared solely as a result of the Purchaser's obligations under Section 3.05 of Regulation S-X under the Securities Act of 1933, as amended, and the Securities Exchange Act of 1934, as amended and, in that regard, the Parties agree that neither Party shall use the results of such audit with respect to this Agreement or the Transaction Agreements, including, without limitation, to impact the Purchase Price adjustment set forth in Section 2.03 or to affect the representations, warranties, covenants, agreements and indemnities contained herein and in the Transaction Agreements or in any way to affect the performance of the Parties hereunder or under the Transaction Agreements. The Seller shall pay the costs and expenses associated with conducting the audit in the United Kingdom, France, Germany, Sweden, Italy and Japan and the Purchaser shall pay all costs and expenses associated with conducting the audit in the United States.

SECTION 6.13. Termination of Gametek Litigation. The Purchaser shall immediately following the execution of this Agreement, and in no event later than fifteen (15) days following such execution, take all actions in order to unilaterally terminate, with prejudice, the Gametek Litigation, thereby releasing the Seller (and its Affiliates) from all liability related to such litigation.

SECTION 6.14. Right of Set-off. Each party hereto is hereby authorized at any time and from time to time, to the fullest extent permitted by law, to set off and apply any and all indebtedness or other payment obligations at any time owing by such party (or any of its Affiliates) to or for the credit or the account of any other party against any and all of the obligations of such other party to such party now or hereafter existing under any agreement, including, without limitation, this Agreement or any Transaction Agreement. Each party hereto agrees promptly to notify the other parties after any such set-off and application; provided, that the failure to give such notice shall not affect the validity of such set-off and application. The rights of each party under this Section are in addition to other rights and remedies (including, without limitation, other rights of set-off) which such party may have at law or in equity. Nothing set forth in this Section 6.14 shall be deemed to waive or otherwise limit any rights of set-off any party may have at law or in equity.

SECTION 6.15. Performance of Contracts. The Purchaser hereby agrees, as of the Closing, to perform, observe and fulfill all of the terms, covenants, conditions and obligations under the Contracts.

SECTION 6.16. Further Action. Each of the Parties hereto shall execute and deliver such documents and other papers and take such further actions as may be reasonably required to carry out the provisions hereof and give effect to the transactions contemplated hereby.

## ARTICLE VII

### TAX MATTERS

SECTION 7.01. Conveyance Taxes. Notwithstanding anything contained herein to the contrary, any sales, use, transfer, value added, excise, stock transfer, stamp, recording, registration and any similar Taxes which become payable in connection with the transactions contemplated hereby shall be payable by the Party obligated to make such payment under applicable law. The Parties shall execute and deliver all instruments and certificates necessary to permit compliance with the foregoing.

SECTION 7.02. Taxes. Except as provided in Section 7.01, the Purchaser shall be responsible for any and all Taxes, including, without limitation, all real and personal property Taxes or any other Taxes related to the ownership or the use of the Assets or the conduct of the Business that are due after the date hereof, whether accruing prior to or after the date hereof; provided that, for these purposes any such Taxes payable with respect to a period beginning before and ending after the date hereof shall be pro-rated based on the number of days in such period, including, without limitation, any Taxes paid by the Seller in respect of the Assets prior to the date of the Closing.

SECTION 7.03. Tax Reporting. The Seller agrees to reasonably cooperate with the Purchaser to provide any information reasonably requested by the Purchaser which is necessary to the filing of the Purchaser's tax return.

## ARTICLE VIII

## INDEMNITY

SECTION 8.01. Survival; Waiver. (a) Subject to the limitations and other provisions of this Agreement, the representations and warranties of the Parties hereto contained herein shall survive and remain in full force and effect and be subject to indemnification as provided in this Article VIII, regardless of any investigation made by or on behalf of the Purchaser or the Seller, for a period of one (1) year from the date hereof; provided, that if either Party gives the other Party written notice of a claim prior to the expiration of the applicable representation or warranty, then the relevant representation or warranty and such claim, as the case may be, shall survive as to such claim until such claim has been finally resolved. Except as set forth in this Agreement or a Transaction Agreement, there are no other representations and warranties, express or implied, made by any Party hereto to any other Party in connection with the transactions contemplated by this Agreement.

(b) The Purchaser and the Seller hereby acknowledge and agree that their sole and exclusive remedy with respect to any and all claims (including claims against each other) relating to the subject matter of this Agreement shall be pursuant to the indemnification provisions set forth in this Article VIII. The Purchaser and the Seller shall take all steps as may be reasonably requested by the other Party and at such requesting Party's expense, to mitigate all such liabilities and damages.

SECTION 8.02. Seller Indemnification. (a) The Seller shall indemnify the Purchaser, each Affiliate of the Purchaser, each successor and assign of each such person, and each representative of each of the foregoing (for purposes of this Section 8.02, each such person in its capacity as indemnitee hereunder, an "Indemnitee"), with respect to, and hold each of them harmless from and against, any and all Losses resulting from, arising out of, or relating to (i) the Seller's breach of any representation, warranty, covenant, or agreement of the Seller contained in this Agreement or any Transaction Agreement, and (ii) the Specified Liabilities. To the extent that the Seller's undertakings in this Section 8.02 may be unenforceable, the Seller shall contribute the maximum amount that it is permitted to contribute under applicable law to the payment and satisfaction of all Losses incurred by any Indemnitee.

(b) An Indemnitee shall give the Seller notice (for purposes of this Section 8.02, a "Loss Notice") of any matter which such Indemnitee has determined has given or could reasonably be expected to give rise to a right of indemnification under this Agreement within thirty (30) days of such determination, stating the amount of the Loss, if known, and method of computation thereof, and describing in reasonable detail the facts and circumstances upon which such determination is based;

provided, however, that the failure to provide such notice shall not release the Seller from any of its obligations under this Article VIII except to the extent the Seller is materially prejudiced by such failure and shall not relieve the Seller from any other obligation or liability that it may have to any Indemnitee otherwise than under this Article VIII.

(c) The Seller's obligations and liabilities hereunder with respect to Losses arising from claims of any third party which are subject to the indemnification provided for in this Section 8.02 (for purposes of this Section 8.02, "Third-Party Claims") shall be governed by and contingent upon the following additional terms and conditions:

(i) If an Indemnitee receives notice of any Third-Party Claim, such Indemnitee shall give the Seller notice of such Third-Party Claim within thirty (30) days after the receipt of such notice by such Indemnitee; provided, however, that the failure to provide such notice shall not release the Seller from any of its obligations under this Section 8.02 except to the extent the Seller is materially prejudiced by such failure and shall not relieve the Seller from any other obligation or liability that it may have to any Indemnitee otherwise than under this Section 8.02;

(ii) If the Seller acknowledges in writing its obligation to indemnify an Indemnitee against any Losses that may result from such Third-Party Claim, then the Seller shall be entitled to assume and control the defense of such Third-Party Claim at its expense and through counsel of its choice (which counsel shall be reasonably acceptable to such Indemnitee) if it gives notice of its intention to do so to such Indemnitee within five (5) Business Days after the receipt of such notice from such Indemnitee; provided, however, that if there exists or is reasonably likely to exist a conflict of interest that would make it inappropriate in the judgment of such Indemnitee, in its sole and absolute discretion, for the same counsel to represent both such Indemnitee and the Seller, then all Indemnities with respect to any such Third-Party Claim shall, collectively, be entitled to retain one counsel of their own selection, in each jurisdiction for which such Indemnities determine counsel is required, at the Seller's expense. If the Seller exercises its right to undertake any such defense against any such Third-Party Claim as provided above, the Indemnitee shall cooperate with the Seller in such defense and make available to the Seller, at the Seller's expense, all witnesses, pertinent records, materials, and information in such Indemnitee's possession or under such Indemnitee's control relating thereto as is reasonably required by the Seller. Similarly, in the event that an Indemnitee is, directly or indirectly, conducting the defense against any such Third-Party Claim, the Seller shall cooperate with such Indemnitee in such defense and make available to such Indemnitee, at the Seller's expense, all such witnesses, records, materials, and information in the Seller's possession or under the Seller's control relating thereto as is reasonably required by such

Indemnitee. No such Third-Party Claim may be settled by the Seller without the prior written consent of the Indemnitee.

SECTION 8.03. Purchaser Indemnification. (a) The Purchaser shall indemnify the Seller, each Affiliate of the Seller, each successor and assign of each such person, and each representative of each of the foregoing (for purposes of this Section 8.03, each such person in its capacity as indemnitee hereunder, an "Indemnitee"), with respect to, and hold each of them harmless from and against, any and all Losses resulting from, arising out of, or relating to (i) the Purchaser's breach of any representation, warranty, covenant, or agreement of the Purchaser contained in this Agreement or any Transaction Agreement; (ii) the Assumed Liabilities; and (iii) any claim alleging that any Products shipped after the date hereof or Assets sold by the Purchaser containing the name of the IP Entities, infringe a valid and existing copyright or of any claim for royalties (based on title to the Products or Assets) pursuant to any copyright law of the United States or any other law. To the extent that the Purchaser's undertakings in this Section 8.03 may be unenforceable, the Purchaser shall contribute the maximum amount that it is permitted to contribute under applicable law to the payment and satisfaction of all Losses incurred by any Indemnitee.

(b) An Indemnitee shall give the Purchaser notice (for purposes of this Section 8.02, a "Loss Notice") of any matter which such Indemnitee has determined has given or could reasonably be expected to give rise to a right of indemnification under this Agreement within thirty (30) days of such determination, stating the amount of the Loss, if known, and method of computation thereof, and describing in reasonable detail the facts and circumstances upon which such determination is based; provided, however, that the failure to provide such notice shall not release the Purchaser from any of its obligations under this Article VIII except to the extent the Purchaser is materially prejudiced by such failure and shall not relieve the Purchaser from any other obligation or liability that it may have to any Indemnitee otherwise than under this Article VIII.

(c) The Purchaser's obligations and liabilities hereunder with respect to Losses arising from claims of any third party which are subject to the indemnification provided for in this Section 8.03 (for purposes of this Section 8.03, "Third-Party Claims") shall be governed by and contingent upon the following additional terms and conditions:

(i) If an Indemnitee receives notice of any Third-Party Claim, such Indemnitee shall give the Purchaser notice of such Third-Party Claim within thirty (30) days after the receipt of such notice by such Indemnitee; provided, however, that the failure to provide such notice shall not release the Purchaser from any of its obligations under this Section 8.03 except to the extent the Purchaser is materially prejudiced by such failure and shall not relieve the Purchaser from any other obligation or liability that it may have to

any Indemnitee otherwise than under this Section 8.03;

(ii) If the Purchaser acknowledges in writing its obligation to indemnify an Indemnitee against any Losses that may result from such Third-Party Claim, then the Purchaser shall be entitled to assume and control the defense of such Third-Party Claim at its expense and through counsel of its choice (which counsel shall be reasonably acceptable to such Indemnitee) if it gives notice of its intention to do so to such Indemnitee within five (5) Business Days after the receipt of such notice from such Indemnitee; provided, however, that if there exists or is reasonably likely to exist a conflict of interest that would make it inappropriate in the judgment of such Indemnitee, in its sole and absolute discretion, for the same counsel to represent both such Indemnitee and the Purchaser, then all Indemnitees with respect to any such Third-Party Claim shall, collectively, be entitled to retain one counsel of their own selection, in each jurisdiction for which such Indemnitees determine counsel is required, at the Purchaser's expense. If the Purchaser exercise its right to undertake any such defense against any such Third-Party Claim as provided above, the Indemnitee shall cooperate with the Purchaser in such defense and make available to the Purchaser at its expense, all witnesses, pertinent records, materials, and information in such Indemnitee's possession or under such Indemnitee's control relating thereto as is reasonably required by the Purchaser. Similarly, in the event that an Indemnitee is, directly or indirectly, conducting the defense against any such Third-Party Claim, the Purchaser shall cooperate with such Indemnitee in such defense and make available to such Indemnitee, at the Purchaser's expense, all such witnesses, records, materials, and information in the Purchaser's possession or under the Purchaser's control relating thereto as is reasonably required by such Indemnitee. No such Third-Party Claim may be settled by the Purchaser without the prior written consent of the Indemnitee.

SECTION 8.04. No Rescission. Except as set forth in this Agreement, neither Party is making any representation, warranty, covenant or agreement with respect to the matters contained herein. Notwithstanding anything herein to the contrary, no breach of any representation, warranty, covenant or agreement contained herein shall give rise to any right on the part of either Party to rescind this Agreement or any of the transactions contemplated hereby.

#### ARTICLE IX

#### GENERAL PROVISIONS

SECTION 9.01. Expenses. All costs and expenses, including, without limitation, fees and disbursements of counsel, financial advisors and accountants, incurred in connection with this Agreement and the Transaction Agreements and the transactions contemplated hereby and thereby shall be paid by the Party incurring such costs and expenses, whether or not the Closing shall have occurred.

SECTION 9.02. Notices. All notices and other communications given or made pursuant hereto shall be in writing and shall be deemed to have been duly given or made as of the date delivered, mailed or telecopied if delivered personally or mailed by registered or certified mail (postage prepaid, return receipt requested) or telecopied to the Parties at the following addresses (or at such other address for a Party as shall be specified by like notice, except that notices after the giving of which there is a designated period within which to perform an act and notices of changes of address shall be effective only upon receipt):

(a) if to the Purchaser:       Take-Two Interactive Software, Inc.  
575 Broadway  
New York, New York 10012  
Attention: Anthony Williams  
Telecopy: (212) 941-2997

with a copy to:               Tenzer Greenblatt LLP  
The Chrysler Building  
405 Lexington Avenue  
New York, New York 10174  
Attention: Barry S. Rutcofsky  
Telecopy: (212) 885-5001

(b) if to the Seller:         BMG Entertainment,  
a division of BMG Music  
1540 Broadway  
New York, New York 10036-4098  
Telecopy: (212) 930-4914  
Attention: Executive Vice President  
and Chief Financial Officer

with a copy to:               BMG Entertainment,  
a division of BMG Music  
1540 Broadway  
New York, New York 10036-4098  
Telecopy: (212) 930-4914  
Attention: Senior Vice President  
and General Counsel of BMG  
Entertainment

Levin & Srinivasan LLP  
1776 Broadway, Suite 1900  
New York, New York 10019  
Telecopy: (212) 957-4565  
Attention: Notices (100/022)

SECTION 9.03. Headings. The headings contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement.

SECTION 9.04. Severability. If any term or other provision of this Agreement is invalid, illegal or incapable of being enforced by any rule of law or public policy, all other conditions and provisions of this Agreement shall nevertheless remain in full force and effect so long as the economic or legal substance of the transactions contemplated hereby is not affected in any manner adverse to any Party. Upon such determination that any term or other provision is invalid, illegal or incapable of being enforced, the Parties hereto shall negotiate in good faith to modify this Agreement so as to effect the original intent of the Parties as closely as possible in a mutually acceptable manner in order that the transactions contemplated hereby be consummated as originally contemplated to the greatest extent possible.

SECTION 9.05. Entire Agreement. This Agreement and the Transaction Agreements constitute the entire agreement of the Parties hereto with respect to the subject matter hereof and supersede all prior agreements and undertakings, both written and oral, with respect to the subject matter hereof and except as otherwise expressly provided herein.

SECTION 9.06. Assignment. This Agreement shall be binding upon the parties and their successors and assigns and shall benefit and inure it to the benefit of the parties, their successors and permitted assigns. This Agreement shall not be assigned by any party hereto without the express written consent of the Purchaser and the Seller (which consent may be granted or withheld in the sole discretion of the Purchaser and the Seller).

SECTION 9.07. No Third-Party Beneficiaries. Except as explicitly provided herein, this Agreement is for the sole benefit of the Parties hereto and their permitted assigns and nothing herein, express or implied, is intended to or shall confer upon any other Person any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of this Agreement.

SECTION 9.08. Amendment; Waiver. This Agreement may not be amended or modified except by an instrument in writing signed by the Purchaser and the Seller. Waiver of any term or condition of this Agreement shall only be effective if in writing and shall not be construed as a waiver of any subsequent breach or waiver of the same term or condition, or a waiver of any other term or condition of this Agreement.

SECTION 9.09. Governing Law. This Agreement shall be governed by, and construed in accordance with, the laws of the State of New York applicable to contracts executed in and to be performed in that State.

SECTION 9.10. Consent to Jurisdiction. The Purchaser and the Seller hereby irrevocably submit to the exclusive jurisdiction of any court of the State of New York sitting in New York County and any Federal court sitting in New York County and any appellate court from any thereof in any action or proceeding arising out of or relating to this Agreement, and the Purchaser and the Seller hereby irrevocably agree that all claims in respect of such action or proceeding may be heard and determined in such court. The Purchaser and the Seller agree that a final judgment in any such action or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law. The Purchaser and the Seller hereby irrevocably agree that the summons a complaint or any other process in any action in any jurisdiction may be served by mailing to any of the addresses set forth herein or by hand delivery to a person of suitable age and discretion at any such address. Such service will be complete on the date such process is so mailed and delivered.

SECTION 9.11. Counterparts. This Agreement may be executed in one or more counterparts, and by the different Parties hereto in separate counterparts, each of which when executed shall be deemed to be an original but all of which taken together shall constitute one and the same agreement.

[REST OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, each of the Purchaser and the Seller have caused this Agreement to be executed as of the date first written above by their, if applicable, respective officers thereunto duly authorized.

TAKE-TWO INTERACTIVE SOFTWARE, INC.,  
a Delaware company

By: \_\_\_\_\_  
Name:  
Title:

BMG ENTERTAINMENT NORTH AMERICA, a  
division of BMG MUSIC, a New York  
general partnership

By: BERTELSMANN MUSIC GROUP,  
INC., a Delaware corporation,  
a general partner

By: \_\_\_\_\_  
Name:  
Title:

CERTIFICATE OF DESIGNATION

OF

TAKE-TWO INTERACTIVE SOFTWARE, INC.

Certificate Pursuant to Section 151 of the  
General Corporation Law of the State of Delaware

We, being, respectively, the Chief Executive Officer and Assistant Secretary of Take-Two Interactive Software, Inc., a corporation organized and existing under the General Corporation Law of the State of Delaware (the "Corporation"), DO HEREBY CERTIFY:

Pursuant to authority expressly vested in the Board of Directors of said Corporation by the provisions of its Certificate of Incorporation, said Board of Directors duly adopted the following resolution on March 10, 1998:

RESOLVED, that the Board of Directors, pursuant to authority expressly vested in it by the provisions of the Certificate of Incorporation of the Corporation, hereby authorizes the issue from time to time of a series of Preferred Stock, \$.01 par value, of the Corporation and hereby fixes the designation, preferences and relative, participating, optional or other rights, and the qualifications, limitations or restrictions thereof, as follows:

Section 1. Designation. The series of Preferred Stock shall be designated and known as "Series A Preferred Stock" (the "Series A Preferred Stock"). The number of shares constituting such series shall be 1,850,000.

Section 2. Dividend Rights. When and if the Board of Directors declares any dividend of cash, securities, or other property payable with respect to Common Stock, the holders of the Series A Preferred Stock shall be entitled to receive, on the date such dividend is paid with respect to the Common Stock, such cash, securities, and/or other property as is payable with respect to the number of shares of Common Stock into which such Series A Preferred Stock was convertible on the record date for such dividend.

Section 3. Liquidation Rights. In the event of any voluntary or involuntary liquidation, dissolution or winding up of the affairs of the Corporation, each holder of Series A Preferred Stock shall be entitled to receive, prior and in preference to any distribution of any of the assets or surplus funds of the Corporation to the holders of the Common Stock or any other series of Preferred Stock of the Corporation by reason of their ownership thereof, an amount equal to \$6.875 per share.

All of the preferential amounts to be paid to the holders of the Series A Preferred Stock under this Section 3 shall be paid or set apart for payment before the payment or setting apart for payment of any amount for, or the distribution of any assets of the Corporation to, the holders of the Common Stock or any other series of Preferred Stock in connection with such liquidation, dissolution or winding up. After the payment or the setting apart of payment to the holders of the Series A Preferred Stock of the preferential amounts so payable to them, the holders of Common Stock shall be entitled to receive all remaining assets of the Corporation.

If the assets or surplus funds to be distributed to the holders of the Series A Preferred Stock are insufficient to permit the payment to such holders of their preferential amount, the assets and surplus funds legally available for distribution shall be distributed ratably among the holders of the Series A Preferred Stock in proportion to the full preferential amount each such holder is otherwise entitled to receive.

Section 4. Conversion. The holders of the Series A Preferred Stock shall have conversion rights as follows (the "Conversion Rights"):

(a) Right to Convert. Any outstanding shares of Series A Preferred Stock may be converted by the holder thereof into fully paid and nonassessable shares of the Corporation's Common Stock in the manner hereinafter provided.

(b) Automatic Conversion. In the event of any consolidation or merger of the Corporation with or into an unaffiliated corporation or other entity or the conveyance of all or substantially all of the assets of the Corporation to an unaffiliated corporation or other entity (other than any merger or sale which does not result in any reclassification or change in the relative right or preference of the outstanding shares), the Series A Preferred Stock shall automatically be converted into Common Stock immediately prior to the consummation of any such transaction at the Conversion Ratio then in effect and the holders thereof shall thereafter be entitled to receive a pro rata portion of the shares of capital stock or other securities or property that is

delivered upon consummation of such transaction to holders of shares of Common Stock.

(c) Conversion Ratio. Each share of the Series A Preferred Stock shall be convertible at any time and from time to time in whole or in part into one (1) share of the Corporation's Common Stock (the "Conversion Ratio"); provided, however, (i) in the event that, at any time and from time to time, the Corporation shall issue additional shares of Common Stock (or securities convertible into or exchangeable for Common Stock) in a stock dividend, stock distribution, or subdivision paid with respect to Common Stock, or declare any dividend or other distribution payable with additional shares of Common Stock (or securities convertible into or exchangeable for Common Stock) with respect to Common Stock or effect a split or subdivision of the outstanding shares of Common Stock, the Conversion Ratio shall, concurrently with the effectiveness of such stock dividend, stock distribution, or subdivision, or the earlier declaration thereof, be proportionately increased, and the number of shares of Common Stock issuable upon conversion of the Series A Preferred Stock shall be proportionately adjusted so that, to avoid dilution of each holder's position, each holder shall thereafter be entitled to receive an additional number of shares of the Corporation's Common Stock which such holder would have owned or would have been entitled to receive upon or by reason of any of the events described above, had the Series A Preferred Stock been converted immediately prior to the occurrence of such event; (ii) in the event the outstanding shares of Common Stock shall be combined or

consolidated, by reclassification or otherwise, into a lesser number of shares of Common Stock, the Conversion Ratio shall, concurrently with the effectiveness of such combination or consolidation, be proportionately decreased and the number of shares of Common Stock issuable upon conversion of the Series A Preferred Stock shall be proportionately adjusted so that each holder of any Series A Preferred Stock converted after such date shall be entitled to receive the aggregate number of shares of Common Stock which each holder would have owned upon such conversion and been entitled to receive, if such Series A Preferred Stock had been converted immediately prior to the occurrence of such combination or consolidation; and (iii) in the event of any consolidation or merger of the Corporation with or into an affiliated corporation or other entity or the conveyance of all or substantially all of the assets of the Corporation to an affiliated corporation or other entity (other than any merger or sale which does not result in any reclassification or change in the relative right or preference of the outstanding shares), the Series A Preferred Stock shall thereafter be convertible into the number of shares of capital stock or other securities or property that would have been deliverable to such holder at the time of such consolidation, merger or conveyance, if such holder had converted the Series A Preferred Stock immediately prior to such consolidation, merger, or conveyance; and, in any such case, appropriate adjustment shall be made in the application of the provisions herein set forth with respect to the rights and interests of each holder of Series A Preferred Stock thereafter, to

the end that the provisions set forth herein (including provisions with respect to adjustments in the Conversion Ratio) shall thereafter be applicable, as nearly as may be possible, in relation to any shares of stock or other property thereafter deliverable upon the conversion of Series A Preferred Stock. At the request of any holder of Series A Preferred Stock, the resulting or surviving entity in any such consolidation or merger, if other than the Corporation, shall acknowledge in writing such holder's rights hereunder.

(d) Mechanics of Conversion. The right of the holders of the Series A Preferred Stock to convert their shares shall be exercised by transmitting to the Corporation or its agent, a notice of such conversion together with certificates representing shares of the Series A Preferred Stock to be converted, duly endorsed in blank. If the shares issuable upon conversion are to be issued in a name other than the name in which the shares of Series A Preferred Stock to be converted are then registered, such notice and the certificates representing shares of the Series A Preferred Stock to be converted shall be accompanied by such evidence of payment transfer taxes and such proper instruments of transfer as may be reasonably requested by the Corporation. The Corporation shall promptly after receipt of the foregoing issue to the holder of the Series A Preferred Stock the appropriate number of shares of the Corporation's Common Stock. The Series A Preferred Stock shall be convertible on the basis of the first Series A Preferred Stock received by the Corporation for conversion.

(e) No Impairment. The Corporation shall not, by amendment of its Articles of Incorporation or through any reorganization, transfer of assets, consolidation, merger, dissolution, issue or sale of securities or any other voluntary action, avoid or seek to avoid the observance or performance of any of the terms to be observed or performed hereunder by the Corporation but will at all times in good faith assist in the carrying out of all the provisions of this Section 4 and in the taking of all such action as may be necessary or appropriate in order to protect the conversion rights of the holders of the Series A Preferred Stock against impairment.

(f) Certificate as to Adjustments. Upon the occurrence of each adjustment to the Conversion Ratio pursuant to this Section 4, the Corporation, at its expense, shall promptly compute such adjustment in accordance with the terms hereof and furnish to each holder of the Series A Preferred Stock a certificate setting forth such adjustment and showing in detail the facts upon which such adjustment is based. The Corporation shall, upon the written request at any time of any holder of Series A Preferred Stock, furnish or cause to be furnished to such holder a like certificate setting forth (i) such adjustments, (ii) the Conversion Ratio at the time in effect, and (iii) the number of shares of Common Stock and the amount, if any, of other property which at the time would be received upon the conversion of the Series A Preferred Stock.

(g) Common Stock Reserved. The Corporation shall reserve and keep available out of its authorized but unissued

Common Stock such number of shares of Common Stock as shall from time to time be sufficient to effect the conversion of the Series A Preferred Stock.

(h) Common Stock Listing. Prior to delivery of any securities which the Corporation is obligated to deliver upon payment of any dividend, upon any liquidation, dissolution, or winding up of the Corporation, or upon conversion of the Series A Preferred Stock, the Corporation shall use all reasonable efforts to list such securities on any exchange or inter-dealer quotation system on which such securities are principally traded or authorized to be quoted.

(i) Transfer Taxes. The Corporation shall pay all documentary stamp or similar issue or transfer taxes payable with respect to the issue or delivery of shares of Common Stock upon conversion of the Series A Preferred Stock pursuant hereto, provided that such shares of Common Stock are issued in the name of the then registered holder of the Series A Preferred Stock to be converted.

(j) Notice of Record Dates. The Corporation shall mail to the holders of shares of series A Preferred Stock at their addresses as shown on the stock records of the Corporation, as promptly as possible, but in any event not fewer than 15 days prior to the applicable recorded date, a notice stating (i) the date on which any merger, consolidation, recapitalization, or reorganization of the Corporation, or sale of all or substantially all of the Corporation's assets, or any other similar transaction or any corporate transaction requiring the vote of the stockholders

of the Corporation, (ii) the record date therefor, and (iii) the consideration (by class and series) to be paid to holders of capital stock of the Corporation upon consummation thereof.

Section 5. Voting Rights. Except as otherwise required by law, the holders of the Series A Preferred Stock shall have voting rights equal to those of the Common Stock into which the Series A Preferred Stock are convertible and shall vote together with the holders of Common Stock as a single class on all matters submitted to the stockholders for a vote.

Section 6. Covenants. So long as any of the Series A Preferred Stock shall be outstanding (as adjusted for all subdivisions and combinations), the Corporation shall not, without first obtaining the affirmative vote or written consent of not less than fifty-one percent (51%) of such outstanding shares of Series A Preferred Stock:

(a) amend or repeal, whether by merger, consolidation, or otherwise, any provision of, or add any provision to, the Corporation's Certificate of Incorporation or By-Laws if such action would alter or change the preferences, rights, privileges or powers of, or the restrictions provided for the benefit of the Series A Preferred Stock, or the number of authorized shares of Series A Preferred Stock; or

(b) reclassify any Common Stock into shares having any preference or priority as to dividends or assets superior to or on a parity with such preference or priority of the Series A Preferred Stock.

Section 7. Residual Rights. All rights accruing to the outstanding shares of the Corporation not expressly provided for to the contrary herein shall be vested in the Common Stock.

Section 8. Preemptive Rights. The holders of the Series A Preferred Stock are not entitled to any preemptive rights.

IN WITNESS WHEREOF, This Certificate has been signed by the Chief Executive Officer of Take-Two Interactive Software, Inc., and attested by its Assistant Secretary this 11th day of March, 1998.

TAKE-TWO INTERACTIVE SOFTWARE, INC.

By:

-----  
RYAN BRANT, Chief Executive Officer

[Seal]

ATTEST:

By:

-----  
JENNIFER KOLBE, Assistant Secretary

REGISTRATION RIGHTS AGREEMENT

Registration Rights Agreement dated as of March 11, 1998, by and between Take-Two Interactive Software, Inc., a Delaware corporation (the "Company"), and BMG Entertainment, a division of BMG Music, a New York general partnership (the "Holder").

WHEREAS, the Company is simultaneously issuing to the Holder pursuant to a Purchase Agreement dated as of the date hereof, by and among the Company and the Holder (the "Purchase Agreement"), 1,850,000 shares (the "Shares") of the Company's Common Stock, par value \$.01 per share; and

WHEREAS, pursuant to the Purchase Agreement, the Company has agreed to grant to the Holder registration rights set forth herein with respect to the Shares.

NOW, THEREFORE, the parties do hereby agree as follows:

1. Piggyback Registration.

(a) If, at any time during the period ending on the first anniversary of the date of this Agreement, the Company proposes to prepare and file with the Securities and Exchange Commission (the "Commission") a registration statement covering equity or debt securities of the Company or any such securities of the Company held by its shareholders, other than in connection with a merger, acquisition or pursuant to a registration statement on Form S-4 or Form S-8 or any successor form (for purposes of this Section 1, a "Registration Statement"), the Company will give written notice of its intention to do so to the Holder at least 20 days prior to the filing of each such Registration Statement. Upon the written request of the Holder, made within 10 days after receipt of the notice, that the Company include up to 467,500 (as hereafter adjusted as necessary to reflect any stock split, reverse stock split, recapitalization, or other similar transaction affecting the Shares prior to the effective date of such Registration Statement) of the Shares in the proposed Registration Statement, the Company shall, as to the Holder, use its best efforts to effect the registration under the Securities Act of 1933, as amended (the "Act") of the Shares which it has been so requested to register (the "Piggyback Registration");

(b) If, at anytime during the one-year period following the first anniversary of the date of this Agreement, the Company proposes to prepare and file a Registration Statement, the Company will give notice to the Holder least 20 days prior to the filing of such Registration Statement. Upon the written request of the Holder, made within 10 days after receipt of the notice, that the Company include up to an

additional 467,500 (as hereafter adjusted as necessary to reflect any stock split, reverse stock split, recapitalization, or other similar transaction affecting the Shares prior to the effective date of such Registration Statement) of the Shares in the proposed Registration Statement, the Company shall, as to the Holder, use its best efforts to effect the Piggyback Registration.

(c) Notwithstanding the provisions of paragraphs (a) and (b) above, if the Piggyback Registration is in connection with an underwritten public offering and in the written opinion of the Company's underwriter or managing underwriter of the underwriting group, if any, for such offering, the inclusion of all or a portion of the Shares requested to be registered, when added to the securities being registered by the Company or the selling shareholder(s), if any, will exceed the maximum amount of the Company's securities which can be marketed (i) at a price reasonably related to their then current market value, or (ii) without otherwise having a material adverse effect on the offering, then the Company may exclude from such offering all or a portion of the Shares which it has been requested to register.

(d) If securities are proposed to be offered for sale pursuant to a Registration Statement by other security holders of the Company and the total number of securities to be offered by the Holder and such other selling security holders is required to be reduced pursuant to a request from the underwriter or managing underwriter as set forth in paragraph (c) above, the aggregate number of Shares to be offered by the Holder pursuant to such Registration Statement shall equal the number which bears the same ratio to the maximum number of securities that the underwriter or managing underwriter believes may be included for all the selling security holders (including the Holder) as the original number of Shares proposed to be sold by the Holder bears to the total original number of securities proposed to be offered by the Holder and the other selling

security holders.

(e) Notwithstanding the preceding provisions of this Section, the Company shall have the right to elect not to file any proposed Registration Statement or to withdraw the same after the filing but prior to the effective date thereof.

(f) Notwithstanding anything to the contrary contained in this Agreement, the provisions of this Section 1 shall not apply to any Registration Statement to be filed by the Company on or prior to April 14, 1998 or any amendment thereto.

## 2. Demand Registration.

(a) At any time during the one-year period following the first anniversary of the date of this Agreement, the Holder shall have the right exercisable by written notice to the Company (the "Demand Registration Request"), to have the

Company prepare and file with the Commission, at the sole expense of the Company (except as herein after provided), in respect of up to 250,000 (as hereafter adjusted as necessary to reflect any stock split, reverse stock split, recapitalization, or other similar transaction affecting the shares prior to the effective date of such Registration Statement) of the Shares (less the number of shares previously registered pursuant to Section 1 above) a Registration Statement so as to permit a public offering and sale of the Shares for a period of nine months; provided that notwithstanding the provisions of Sections 1 and 2 hereof, the Holder agrees not to sell or otherwise dispose of more than 925,000 shares during the two-year period following the date of this Agreement, pursuant to a registration statement, Rule 144 under the Act, or otherwise.

(b) At any time during the one-year period following the second anniversary of the date of this Agreement, the Holder may submit to the Company a Demand Registration Request, to have the Company prepare and file with the Commission, at the sole expense of the Company (except as herein after provided), in respect of up to 925,000 (as hereafter adjusted as necessary to reflect any stock split, reverse stock split, recapitalization, or other similar transaction affecting the Shares prior to the effective date of such Registration Statement) of the Shares a Registration Statement so as to permit a public offering and sale of the Shares for a period of nine months; provided that if the Holder intends to distribute the Shares by means of a "firm commitment" underwriting, then the Holder shall so notify the Company pursuant to the Demand Registration Request. Any underwriter selected by the Holder shall be reasonably acceptable to the Company.

(c) At any time during the one-year period following the third anniversary of the date of this Agreement, the Holder shall have the right to submit to the Company a Demand Registration Request, to have the Company prepare and file with the Commission, at the sole expense of the Company (except as herein after provided), in respect of up to the aggregate number of the Shares not previously registered pursuant to Section 1 or Section 2(a)), a Registration Statement so as to permit a public offering and sale of the Shares for a period of nine months; provided that if the Holder intends to distribute the Shares by means of a "firm commitment" underwriting, then the Holder shall so notify the Company pursuant to the Demand Registration Request. Any underwriter selected by the Holder shall be reasonably acceptable to the Company.

(d) Notwithstanding any provision of this Section 2 to the contrary, if, at the time a Demand Registration Request is given to the Company under Section 2 hereof (i) the Company is engaged in negotiations with respect to an acquisition, merger, financing or other material event which would require the Company to file a Form 8-K in the event that such acquisition, merger,

financing or other material event is consummated or has otherwise occurred or (ii) in the event the Company shall furnish to the Holder a certificate signed by the chief executive officer of the Company stating that in the good faith judgment of the Company and its investment banker that it would be detrimental to the Company and its shareholders for the Company to immediately proceed with a registration statement and it is therefore essential to defer the filing of such registration statement, then, in each such case, the Company will have the right to defer such filing for a period not to exceed one hundred and eighty (180) days.

(e) Nothing herein contained shall require the Company to undergo an audit, other than in the ordinary course of business, or as required in connection with the delivery of a "comfort letter" for purposes of effecting a Registration Statement as set forth in this Section 2.

3. Covenants of the Company. The Company hereby covenants and agrees as follows:

(a) In accordance with the Act and the rules and regulations promulgated thereunder, the Company shall prepare and file with the commission a registration statement as expeditiously as reasonably possible, but in no event later than 75 days following the receipt of a Demand Registration Request. The Company shall use its reasonable best efforts to cause such registration statement to become and remain continuously effective for a period of nine months; provided that if for any portion of such nine-month period such registration statement is not effective, the such nine-month requirement for maintaining the effectiveness of such registration statement shall be extended by the length of such interruption(s); and the Company shall prepare and file with the commission such amendments to such registration statement and supplements to the prospectus contained therein as may be necessary to keep such registration statement effective and such registration statement and prospectus accurate and complete in all material respects during such period. In connection with any underwritten Demand Registration Request, the Company will enter into an underwriting agreement reasonably necessary to effect such offering, provided such underwriting agreement (i) is with an underwriter reasonably acceptable to the Company and (ii) contains customary underwriting provisions for offerings by selling stockholders.

(b) Following the effective date of any registration statement filed under Section 1 or 2, the Company shall, upon the request of the Holder, forthwith supply such reasonable number of copies of the registration statement and prospectus meeting the requirements of the Act and such other documents (i.e., documents incorporated in the registration statement by reference) as shall be reasonably requested by the Holder to permit the Holder to make a public distribution of the

Shares. The obligations of the Company hereunder with respect to the Shares are expressly conditioned on the Holder's furnishing to the Company such appropriate information concerning the Holder, the Shares and the terms of the Holder's offering of such shares as the Company may reasonably request.

(c) The Company will pay all costs, fees and expenses in connection with any registration statement filed pursuant to Sections 1 and 2 hereof, including, without limitation, all registration and filing fees, the Company's legal and accounting fees, printing expenses and blue sky fees and expenses; provided, however, that the Holder shall be solely responsible for the fees of any counsel retained by the Holder in connection with such registration and any transfer taxes or underwriting discounts, selling commissions or selling fees applicable to the Shares sold by the Holder pursuant thereto.

(d) The Company will use its reasonable best efforts to qualify or register the Shares included in a registration statement for offering and sale under the securities or blue sky laws of such states as are reasonably requested by the Holder, provided that the Company shall not be obligated to execute or file any general consent to service of process (unless the Company is already then subject to service in such jurisdiction) or to qualify as a foreign corporation to do business under the laws of any such jurisdiction, except as may be required by the Act and its rules and regulations.

(e) Notwithstanding anything contained in this Agreement to the contrary, the Company shall not be obligated to register the Shares under the Act or maintain the effectiveness of any registration statement filed under Sections 1 or 2 hereof if it receives an opinion of counsel to the Company that any of the Shares may be freely traded without registration under Rule 144(k) under the Act.

(f) Subject to such other reasonable requirements as may be imposed by the underwriter as a condition of inclusion of the Shares in a registration statement, the Holder agrees, if so required by the managing underwriter, not to sell, take any short sale of, loan, grant any option for the purchase of, effect any public sale or distribution of or otherwise dispose of, except as part of such underwritten registration, any equity securities of the Company, during such reasonable period of time requested by the underwriter; provided, however, such period shall not exceed a period commencing 180 days following the completion of such underwritten offering.

(g) The Company shall use its reasonable best efforts to remain eligible at all times to file registration statements of Form S-3.

4. Covenant of the Holder. The Holder, upon receipt of notice from the Company that an event has occurred which requires a post-effective amendment to a registration statement or a supplement to the prospectus included therein, shall promptly discontinue the sale of Shares until the Holder receives a copy of a supplemented or amended prospectus from the Company, which the Company shall provide as soon as practicable after such notice. The Company shall use its reasonable best efforts to file and have declared effective any such post-effective amendment as soon as possible.

5. Indemnification.

(a) The Company shall indemnify, defend and hold harmless the Holder, each of its directors, officers, employees, and any person who controls Holder within the meaning of Section 15 of the Act from and against any and all losses, claims, damages and liabilities caused by or arising out of any untrue statement or alleged untrue statement of a material fact contained in a registration statement or prospectus or any amendment or supplement thereto included therein or caused by or arising out of any omission or alleged omission to state therein a material fact required to be stated therein or necessary to make the statements therein not misleading, except insofar as such losses, claims, damages or liabilities are caused by any such untrue statement or alleged untrue statement or omission or alleged omission based upon information furnished or required to be furnished in writing to the Company by the Holder expressly for use therein; provided, however, that the indemnification in this Section shall not inure to the benefit of the Holder on account of any such loss, claim, damage or liability arising from the sale of Shares by the Holder, if a copy of a subsequent prospectus correcting the untrue statement or omission in such earlier prospectus was provided to the Holder by the Company prior to the sale and the subsequent prospectus was not delivered or sent by the Holder to the purchaser prior to such sale. The Holder shall at the same time indemnify the Company, its directors, each officer signing a registration statement and each person who controls the Company within the meaning of the Act from and against any and all losses, claims, damages and liabilities caused by or arising out of any untrue statement or alleged untrue statement of a material fact contained in a registration statement or prospectus included therein, or caused by or arising out of any omission or alleged omission to state therein a material fact required to be stated therein or necessary to make the statements therein not misleading, in each case, only insofar as such losses, claims, damages or liabilities are caused by any untrue statement or alleged untrue statement or omissions or alleged omission based upon information furnished in writing to the Company by the Holder expressly for use therein.

(b) If for any reason the foregoing indemnity is unavailable, or is insufficient to hold harmless any indemnitee,

then the indemnitor shall contribute to the amount paid or payable by the indemnitee as a result of such losses, claims, damages, liabilities, or expenses (i) in such proportion as is appropriate to reflect the relative benefits received by the indemnitor on the one hand and the indemnitee on the other from the registration, or (ii) if the allocation provided by clause (i) above is not permitted by applicable law, or provides a lesser sum to the indemnitee than the amount hereinafter calculated, in such proportion as is appropriate to reflect not only the relative benefits received by the indemnitor on the one hand and the indemnitee on the other but also the relative fault of the indemnitor and the indemnitee as well as any other relevant equitable considerations. The relative fault of the Company and the Holder shall be determined by reference to, among other things, whether the untrue or alleged untrue statement of a material fact or the omission or alleged omission to state a material fact relates to information supplied by the Company or by the Holder and the parties' relative intent, knowledge, access to information, and opportunity to correct or prevent such statement or omission. Notwithstanding the provisions of this Section 5(b), in no event shall the Company be required to contribute any amount of any damages that the Holder has otherwise been required to pay by reason of such untrue or alleged untrue statement or omission or alleged omission. No person guilty of fraudulent misrepresentation (within the meaning of Section 11(f) of the Act) shall be entitled to contribution from any person who was not guilty of such fraudulent misrepresentation.

#### 6. Governing Law.

(a) This Agreement shall be governed as to validity, interpretation, construction, effect and in all other respects by the internal substantive laws of the State of New York.

(b) Each of the Company and the Holder hereby irrevocably and unconditionally consents to submit to the exclusive jurisdiction of the courts of the State of New York and of the United States located in the County of New York, State of New York (the "New York Courts") for any litigation arising out of or relating to this Agreement and the transactions contemplated hereby (and agrees not to commence any litigation relating thereto except in such courts), waives any objection to the laying of venue of any such litigation in the New York Courts and agrees not to plead or claim that such litigation brought in any New York Courts has been brought in an inconvenient forum.

7. Notices. All notices, requests, demands and other communications hereunder shall be in writing and shall be deemed duly given when delivered by hand or mailed by express, registered or certified mail, postage prepaid, return receipt requested, as follows:

If to the Company, at:

Take-Two Interactive Software, Inc.  
575 Broadway  
New York, New York 10022  
Attn: Ryan A. Brant, Chief Executive Officer

with a copy of the same to:

Tenzer Greenblatt LLP  
405 Lexington Avenue  
23rd Floor  
New York, New York 10174  
Attn: Barry Rutcofsky, Esq.

If to the Holder, at that address set forth under their name on the signature page.

with a copy of the same to:

BMG Entertainment, a division of BMG Music  
1540 Broadway  
New York, NY 10036-4098  
Attn: Senior Vice President and General Counsel  
Telecopier: (212) 930-4914

and

Levin & Srinivasan LLP  
1776 Broadway, Suite 1900  
New York, New York 10019  
Attention: Notices (100/022)  
Telecopier: (212) 957-4565

Or such other address as has been indicated by either party in accordance with a notice duly given in accordance with the provisions of this Section.

8. Amendment. This Agreement may only be amended by a written instrument executed by the Company and the Holder.

9. Entire Agreement. This Agreement constitutes the entire agreement of the parties hereto with respect to the subject matter hereof, and supersedes all prior agreements and understandings of the parties, oral and written, with respect to the subject matter hereof.

10. Assignment; Benefits. The Holder may not assign the Holder's rights hereunder without the prior written consent of the Company, which consent may be given or withheld for any reason or no reason at all, and any attempted assignment without such consent shall be void and of no force and effect; provided,

however, that the Holder may freely assign its rights hereunder without the Company's consent to any person who controls the Holder within the meaning of the Act, to any subsidiary of the Holder or any such controlling person, and to any person acquiring all or substantially all of the assets of the Holder or with which the Holder consummates any business combination. Nothing herein contained, express or implied, is intended to confer upon any person other than the parties hereto any rights or remedies under or by reason of this Agreement.

11. Headings. The headings contained herein are for the sole purpose of convenience of reference, and shall not in any way limit or affect the meaning or interpretation of any of the terms or provisions of this Agreement.

12. Severability. Any provision of this Agreement which is held by a court of competent jurisdiction to be prohibited or unenforceable in any jurisdiction(s) shall be, as to such jurisdiction(s), ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions of this Agreement or affecting the validity or enforceability of such provision in any other jurisdiction.

13. Execution in Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same document.

IN WITNESS WHEREOF, this Agreement has been executed and delivered by the parties hereto as of the date first above written.

Company: TAKE-TWO INTERACTIVE SOFTWARE, INC.

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Holder: BMG ENTERTAINMENT,  
a division of BMG Music

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Address: 1540 Broadway  
New York, NY 10036-4098  
Telecopy: (212) 930-4941

Attention: Executive Vice President  
and Chief Financial  
Officer

Number of Shares: \_\_\_\_\_

SIGNATURE PAGE TO REGISTRATION RIGHTS AGREEMENT  
EXECUTED IN CONNECTION WITH THE  
ASSET PURCHASE AGREEMENT AMONG  
BMG INTERACTIVE AND  
TAKE TWO INTERACTIVE SOFTWARE, INC.