

## Master Terms & Conditions Agreement

This Master Terms & Conditions Agreement (the "Agreement"), effective this 12<sup>th</sup> day of June, 2015, is made by and between ATRION NETWORKING CORPORATION ("Atrion"), a Rhode Island corporation having its principal place of business at 125 Metro Center Boulevard, Warwick, Rhode Island 02886, Attention: City of Central Falls ("Client"), having its principal place of business at 580 Broad St. Central Falls, RI, 02863 USA, Attention: (Atrion and Client may be referred to individually as a "Party" and together as "Parties").

WHEREAS, Atrion is a state-of-the-art provider of systems integration, network, and software services ("Services") to premier firms in diverse verticals; and

WHEREAS, in conjunction with the Services and independently, Atrion is a reseller of hardware and software from the foremost manufacturers and publishers ("Products") and

WHEREAS, Client desires from time to time to retain Atrion to perform Services and/or purchase Products on its behalf as more fully set forth herein; and

WHEREAS, the Parties desire to set forth herein the terms and conditions pursuant to which Client will retain Atrion to perform such Services.

NOW THEREFORE, for good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, the Parties hereby agree as follows.

### 1 Definitions

**1.1 "Confidential Information"** shall mean any and all information of or about a Party, including the terms of this Agreement and any Statement of Work, and all information relating to any technology, product, process or intellectual property rights, data, know-how, samples, technical and non-technical materials and specifications, as well as any business plan, financial information or other proprietary commercial information of or about such Party. Notwithstanding the foregoing, information of or about a Party shall not be considered Confidential Information to the extent that the Party receiving such information from the other Party can demonstrate by written record or other credible evidence that:

- (a) such information was in such Party's possession or control prior to the time such information was disclosed to such Party by the other Party;
- (b) such information was developed by such Party independently of and without reference to Confidential Information, provided, however, that without limiting the generality of the foregoing, the Confidential Information of either Party shall not become the Confidential Information of the other by virtue of this Agreement;
- (c) such information was obtained by such Party from a third party under no obligation of confidentiality to the Party to whom such information belongs; or
- (d) such information was at the time it was disclosed or obtained by such Party, or thereafter became, publicly known otherwise than through a breach by such Party of such Party's obligations to the disclosing Party.

**1.2 "Fee"** shall mean the total amount of moneys due from the Client for the provision of the Products purchased and the associated Services or annual service fees pursuant to an SOW, and is to be paid by Client in accordance with Section 6 hereof.

**1.3 "Statement of Work" or "SOW"** shall mean the written particulars of Products and Services that Client wishes Atrion to render. Each SOW shall (a) reference this Agreement, (b) describe the nature of the Services and/or Products along with the

applicable fees, payment terms, related schedules, term of performance, and any acceptance criteria for deliverables, and (c) be duly executed by Atrion and Client.

## 2 Engagement

Client may purchase Services from Atrion by entering into an SOW. Atrion may from time to time issue a quote for services, but no quote for Services will be binding unless incorporated in a SOW executed by both parties.

## 3 Products

**3.1 Orders.** Quotes for purchasing Products manufactured by third parties and resold by Atrion shall be binding when accepted in any writing from Client, including, but not limited to, emails.

**3.2 Warranties.** The limited warranties contained in this Agreement apply only to Atrion's services and shall not pertain at all to any Products purchased hereunder. Instead, Client shall receive the warranty of the manufacturer. Atrion will provide all warranty documentation. **ATRION DISCLAIMS ALL WARRANTIES WITH RESPECT TO PRODUCTS, EITHER EXPRESS OR IMPLIED, (INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE) AND MAKES NO WARRANTIES OR REPRESENTATIONS AS TO PERFORMANCE OF PRODUCTS SOLD HEREUNDER.**

**3.3 Returns.** Any and all returns shall be strictly in accordance with each manufacturer's returns policy. Atrion shall provide Client with all return policy documentation. Notwithstanding the foregoing, if Atrion erroneously orders Products that are inappropriate for a Client's project, it will take full responsibility for the return of such Products.

## 4 Sublicenses

Client recognizes that provision of the Services may require the use of third party software, which Atrion is licensed to use and to sublicense to Client as appropriate. To the extent that the use of such software may be deemed a sublicense, Client agrees to abide by all applicable terms and conditions of any end user license of such third parties, and Client recognizes that such use of the software will be governed by such licenses.

## 5 Term and Termination

**5.1 Term.** The term of this Agreement shall commence on the date first set forth above and continue until this Agreement is terminated in accordance with this Section 5 (the "Term").

**5.2 Termination for Breach.** This Agreement or an SOW may be terminated by either party by written notice in the event that the other party breached a material provision of this Agreement or the SOW, as applicable, including failure to make timely payments due hereunder, and such breach has not been cured within thirty (30) days after written notice thereof. Termination of this Agreement or an SOW for breach shall not affect any SOW then in effect unless the Parties specifically agree otherwise in writing and this Agreement shall continue to govern such other SOWs until they are terminated in accordance with their terms.

**5.3 Termination for Bankruptcy/Insolvency.** Either Party may terminate this Agreement effective upon written notice to the other Party upon (i) the commencement of any voluntary bankruptcy or other insolvency proceeding of the other Party; or (ii) the commencement of any involuntary bankruptcy or other

insolvency proceeding with respect to the other Party that is not dismissed within ninety (90) days of the initial filing.

#### **5.4 Effect of Termination.**

- (a) Upon termination of this Agreement for any reason, nothing herein shall be construed to release either Party from any obligation that matured prior to the effective date of such termination.
- (b) The provisions of Sections 1.1, 3.3, 3.3, 4, 5.4, 6, 7, 8, 9, 10, 12, 15, 19, and 20 shall survive termination of this Agreement for any reason.
- (c) Client shall remain obligated to make all payments required under this Agreement for any completed Services or any partially completed Services on a pro-rated basis, as well as any costs reasonably incurred by Atrion in anticipation of fulfillment of the Agreement and shall not be entitled to a refund or return of payment for any Products or services which have been provided by Atrion unless the relevant manufacturer will accept the return of and refund for a product.

### **6 Payments**

Unless otherwise provided for in a Statement of Work, Client shall pay all Fees and reimburse all expenses within fifteen (15) days of the receipt of a bill and/or invoice from the Atrion. Atrion may charge interest on the overdue balance at a rate of 1.5 (one and one-half) percent per month or fraction thereof or the highest rate permitted by applicable state law, whichever is lower.

### **7 Indemnity**

**7.1 Indemnification by Atrion.** Atrion, at its own expense, shall indemnify, defend and hold harmless Client, its employees, representatives, agents and affiliates against any claim, suit, action, proceeding, debt or liability, including reasonable attorneys' fees, based on or arising from a claim that the Services supplied hereunder infringe a U.S. patent, copyright or trade secret. In the event any component of the Services becomes or in Atrion's opinion is likely to become the subject of a claim that it infringes a U.S. patent, copyright or trade secret, Client shall permit Atrion, at its option and expense, either to procure the right for Client to continue using such component or to replace or modify the same so that it becomes non-infringing; and if neither of the foregoing alternatives is available on terms that are reasonable in Atrion's judgment, Atrion may, at its option, terminate the Services and return any fees paid by Client for Services that are materially adversely affected by the inability to use the infringing component. Atrion shall have no obligation to Client under this Section 7.1 if any claim thereof is based upon: (x) use of any component of the Services in connection or in combination with Products, software or devices not supplied by Atrion; (y) use of any component of the Services in a manner which was not specified in an SOW; or (z) Atrion's compliance with Client's designs, specifications or instructions.

**7.2 Indemnification by Client.** Client, at its own expense, shall indemnify, defend and hold harmless Atrion, its employees, representatives, agents and affiliates against any claim, suit, action, proceeding, debt or liability, including reasonable attorneys' fees, based on or arising from a use of the Services not described in an SOW.

**7.3 Indemnification Procedure.** In claiming any indemnification hereunder, the indemnified Party shall promptly provide the indemnifying Party with written notice of any claim which the indemnified Party believes falls within the scope of the foregoing paragraphs. The indemnified Party may, at its own expense, participate in the defense at its own cost if it so chooses, provided that the indemnifying Party shall control such defense and all negotiations relative to the settlement of any such claim.

An indemnifying Party shall not settle any claim in a manner that would create obligations for, or admit liability of, the indemnified Party without its prior written consent. **THE INDEMNIFICATION PROVIDED IN THIS SECTION 6 SHALL CONSTITUTE A PARTY'S SOLE REMEDY REGARDING ANY MATTER FOR WHICH AN INDEMNITY IS SOUGHT.**

## **8. Limited Warranty and Limitation of Liability**

**8.1 Limited Warranty.** Atrion represents and warrants to Client that the Services will (i) be performed in a good and workmanlike manner, (ii) conform in all material respects to the applicable specifications and to the descriptions contained in the applicable SOW for a period of 30 days from delivery or acceptance, as appropriate; and (iii) will be performed in material compliance with all federal, state and local laws, statutes, regulations and ordinances applicable to, affecting or relating to its performance under this Agreement. **ATRION DISCLAIMS ALL IMPLIED WARRANTIES INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTIES AS TO THE SUITABILITY, MERCHANTABILITY, FITNESS FOR ANY PARTICULAR PURPOSE OR NON-INFRINGEMENT OF ANY PRODUCTS, SOFTWARE OR SERVICES PROVIDED HEREUNDER. ATRION DOES NOT WARRANT THAT THE PRODUCTS OR SOFTWARE PROVIDED HEREUNDER WILL OPERATE UNINTERRUPTED OR ERROR-FREE. NO REPRESENTATION OR OTHER AFFIRMATION OF FACT, INCLUDING, BUT NOT LIMITED TO, STATEMENTS REGARDING CAPACITY, SUITABILITY FOR USE OR PERFORMANCE OF THE SERVICES, WHETHER MADE BY ATRION'S EMPLOYEES OR OTHERWISE THAT IS NOT CONTAINED IN THIS AGREEMENT SHALL BE DEEMED TO BE A WARRANTY BY ATRION FOR ANY PURPOSE, OR GIVE RISE TO ANY LIABILITY OF ATRION WHATSOEVER.**

**8.2 Limitation of Liability.** IN NO EVENT SHALL ATRION OR CLIENT BE LIABLE FOR ANY LOST OR ANTICIPATED PROFITS, OR ANY INDIRECT, INCIDENTAL, EXEMPLARY, SPECIAL, RELIANCE OR CONSEQUENTIAL DAMAGES, HOWEVER CAUSED, AND UNDER ANY THEORY OF LIABILITY INCLUDING BREACH OF WARRANTY OR CONTRACT, TORT (INCLUDING NEGLIGENCE, STRICT LIABILITY AND PRODUCT LIABILITY) OR OTHERWISE, AND REGARDLESS OF WHETHER A PARTY HAS BEEN ADVISED OR HAS REASON TO KNOW OF THE POSSIBILITY OF SUCH DAMAGES. Notwithstanding any provision contained herein to the contrary, the maximum liability of Atrion to Client or any person whatsoever arising out of or in connection with this Agreement or any use of or inability to use the Services, whether such liability arises from any claim based upon contract, warranty, tort, or otherwise, shall in no case exceed the actual amount paid to Atrion by Client for the specific Statement (or Statements) of Work that gave rise to the cause of action. The foregoing limitations of liability will not apply to claims for personal injury caused by Atrion's intentional misconduct or negligence.

**8.3 Limitation on Actions.** Neither Atrion nor Client may institute any action in any form arising out of this Agreement more than eighteen (18) months after the cause of action has arisen.

## **9 Confidentiality**

The Parties shall not divulge or communicate to any person (other than those whose province it is to know the same) or use or exploit for any purpose whatsoever (other than that contemplated in this Agreement) any Confidential Information which has or may have come to its knowledge by reason of or in connection with this Agreement, and shall use all reasonable efforts to prevent its employees, officers, agents and consultants from so acting, except where the prior written consent of the consenting Party is obtained. In the event that a Party is required by law or legal process to disclose any Confidential Information, the Party shall, to the extent permitted by law, provide prompt notice of such to the other Party so that legal protection for the Confidential Information may be sought. In the event that a protective order or other remedy is

not obtained, each Party will furnish only that portion of the Confidential Information that is legally required.

#### **10 Covenant Not To Hire Employees**

The Parties covenant and agree that during the period beginning on the commencement date and terminating two (2) years after the termination of this Agreement (the "Covenant Period"), each Party shall not, directly or indirectly, whether for or on behalf of itself or any other person or entity, hire or engage, or attempt to hire or engage, any individual who shall have been an employee of the other Party at any time during the period one (1) year prior to the date hereof and ending on the termination of the Covenant Period. In the event a party breaches the foregoing covenant, the breaching party will pay, as liquidated damages and not a penalty, within thirty (30) days of receipt of a notice of breach, a sum equal to six months of the salary or fees the non-breaching party would pay to the relevant employee or contractor.

#### **11 Assignment**

This Agreement shall be binding upon and shall inure to the benefit of each Party and each Party's respective transferees, successors and assigns, *provided, however*, that neither Party shall have the right to assign this Agreement or its rights and obligations hereunder, by operation of law or otherwise, to any person without the prior written consent of the other Party. Any purported assignment in violation of the provisions of this paragraph shall be null and void.

#### **12 Entire Agreement/Amendments**

This Agreement constitutes the entire and only agreement between the Parties relating to the subject matter contained herein, and all prior negotiations, representations, agreements and understandings are superseded hereby. In the case of any conflict between this Agreement and any SOW issued hereunder, this Agreement shall control unless the Parties otherwise expressly agree otherwise in a writing signed by both Parties that references this Agreement. All SOWs constitute a part of this Agreement until terminated in accordance with their respective terms. No agreements amending, altering or supplementing the terms hereof may be made except by means of a written document signed by a duly authorized representative of each Party. Headings included herein are for convenience only, and shall not be used to construe this Agreement.

#### **13 Independent Contractors**

For the purposes of this Agreement and all services to be provided hereunder, each Party shall be, and shall be deemed to be, an independent contractor and not an agent, partner, joint venturer or employee of the other Party. Neither Party shall have authority to make any statements, representations nor commitments of any kind, or to take any action which shall be binding on the other Party, except as may be explicitly provided for herein or authorized in writing.

#### **14 Subcontracts**

Atrion specifically retains the right to subcontract all or any portion of its obligations with respect to the Services under this Agreement to third parties, provided, however, that such subcontracts shall not be deemed to relieve Atrion of any duties it may have pursuant to this Agreement, Atrion shall remain primarily responsible for the provision of the Services, and any subcontractor shall agree to be bound by the applicable terms of this Agreement.

#### **15 Severability**

If any provision of this Agreement shall be found by a court of competent jurisdiction to be void, invalid or unenforceable, the same shall either be reformed to comply with applicable law or stricken if not so conformable, so as not to affect the validity or enforceability of this Agreement.



