



# Service Level Agreement



## ACCEPTANCE OF TERMS

Atomix Logisitcs, L.L.C., a Wisconsin Limited Liability Company with offices at 11001 West Mitchell Street, Milwaukee, WI 53214, (“Atomix”) provides fulfillment services (the “Services”) to you \_\_\_\_\_, (herein referred to as the “Customer”, the “Client”, “Company”, or “you”). You agree to be bound by this Agreement (this “Agreement”) as of the date (the “Effective Date”) that you agree to when signing up with Atomix. This Agreement is between you and Atomix.

Atomix may change or revise this Agreement at our discretion. Atomix may change or revise this Terms of Service Agreement from time to time by providing five (5) days prior notice by emailing the email address provided by Atomix or by notifying you via any Atomix billing statements or web portals. If any change or revision to this Agreement is not acceptable to you, your only remedy is to notify both [solutions@atomixlogistics.com](mailto:solutions@atomixlogistics.com) and your account manager. Otherwise, you are bound by the revised or changed Terms of Service Agreement. Your use of the Services after five (5) days notice shall constitute full acceptance of the revised or changed Terms of Service Agreement.

NOW, THEREFORE, in consideration of the promises and the mutual covenants contained herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Client and Atomix hereby agree as follows:

### 1. DEFINITIONS

#### 1.1 CONTENT

“Content” shall mean any information or data provided to or stored by Atomix or its agents on its servers related to the Client, or stored on Client’s behalf.

#### 1.2 CLIENT REPRESENTATIVES

“Client Representatives” shall mean any Client employee, officer or agent that has access to information about any aspect of the Products (defined below) and Services provided by Atomix.

#### 1.3 USER

“User” shall mean any person/entity that has been granted access to the Client’s database on Atomix or its agent’s servers.

#### 1.4 SHIPPED OR FULFILLED

“Shipped” or “Fulfilled” shall mean any package/parcel, product or item that has a tracking number associated in any of Atomix’s computer software systems.

### 2. RIGHT TO USER SERVICES

If and to the extent you comply with this Agreement, you may use the Services to facilitate the packaging, warehousing and shipment of any of Client’s property or other goods sent to or held by Atomix (the “Products”). Client may use the Services only for its own internal business use and to



process its own data. Client has no right to (i) sublicense, sell or make available the Services to or for the benefit of any third party, (ii) use the Services in service bureau, application service provider or software as a service mode or share Services or make any portion thereof available to third parties or (iii) in any way use the Services to process or manage the products of a third-party.

### 3. WAREHOUSE AND INVENTORY MANAGEMENT

#### 3.1 RECEIVING SERVICES

Upon arriving at the Atomix warehouse, all items will be moved to the incoming receiving inspection area to be checked for compliance with Requirements for Inbound Product, as specified below. Client shall use reasonable efforts to ensure that items delivered to Atomix will comply with the Requirements for Inbound Products. Atomix shall verify the pallet and case quantities listed on the incoming paperwork against what Atomix physically receives, but the counts inside individual cases shall not be verified. The Client will be notified of any discrepancies between the paperwork and the physical receipt, and any exterior physical damage noted upon receipt will also be reported to the Client in a reasonable manner.

The delivery address for each warehouse is listed below. Less than truckload and full truckload carriers are required to call the number listed below for the respective facility at least 24 hours in advance to schedule a delivery appointment. Atomix is not liable for any fees associated with refused shipments.

Atomix Logistics / Company Name

11001 West Mitchell Street

Milwaukee, WI 53214

414-231-0788

“Requirements for Inbound Products”:

#### A. FORMAT:

Product must be received in ready-to-ship format unless previously discussed with email/written confirmation. One SKU per master carton unless previously discussed with email/written confirmation.

#### B. BARCODES:

Barcode must appear on exterior of the Product (unless otherwise specified via email). Each barcode must be a unique identifier for the product and will be applied to the unit of measure which is being ordered by Client’s customers. (For example, if a carton of toothpaste is being sold as a single unit, the carton must be barcoded on the exterior. If a shrink-wrapped bundle of 5 toothpaste cartons is being sold as a unit, the shrink-wrapped bundle must be barcoded). If Atomix receives an inbound shipment of Products that it reasonably determines does not apply barcode(s) in accordance with this Paragraph 3.1.B, Atomix shall apply the barcodes, and \$0.30 per label will be charged to Client unless agreed upon otherwise in writing.

#### C. PAPERWORK:



Product must be accompanied by a packing list with the following details (this can also be provided in advance via email):

- Client Name
- SKU (matching system part number)
- Product Description (matching system description)
- Packs Unit of Measure (i.e: 100 cases)
- Total Quantity (i.e: 20 units per case)

#### D. PALLETS:

Pallet dimensions must be as follows:

- Pallet must be a standard four-way entry 40" x 48"
- Maximum Height is 48" including pallet (Unless otherwise agreed upon in writing)
- EUROPALLETS are also acceptable

A non-standard inventory receipt fee of \$45/hour will apply for any items that do not meet these requirements.

### 3.2 WAREHOUSING SERVICES

Atomix warehouses and inventories all Products received until such time as the Products are ordered, picked, packed and shipped. Storage of materials will be billed per the number of pallets, bins or equivalent pallets or bins held at Atomix. Storage charges are based on number of orders shipped per month (or 4-week average/Volume) and are outlined in the following table unless agreed upon otherwise in writing:

## 4. ORDER FULFILLMENT

### 4.1

All orders for Atomix to ship any of Client's Products (each an "Order") shall be placed by Client or a third party acting on Client's behalf through the Atomix WMS online portal or Order Management Account. Client shall be bound by and Atomix may rely on any Order accepted by Atomix in good faith accordance with the previous sentence.

### 4.2

Orders will be processed on Mondays through Fridays that are not national holidays or holidays in the state of Wisconsin ("Business Days"). "Business Hours" are defined as 9:00 AM local time to 5:00 PM local time. Local time is the time zone of the warehouse from which the Order is being shipped. Further, Orders will not be processed when Atomix is closed for the following holidays:



- New Year's Day, Martin Luther King, Jr. Day, Monday after the Super Bowl, Easter, Memorial Day, Fourth of July Labor Day, Thanksgiving Day, Christmas Eve & Christmas Day, Any Common Shipping Carrier (FedEx, UPS or USPS) Holidays.

#### 4.3

Orders received by Atomix with Standard/Flat-rate shipping on any Business Day before 3:00 PM (local warehouse time) will be fulfilled on the same Business Day. Orders received by Atomix with Expedited/Overnight shipping received on any Business Day before 12:00PM (local warehouse time) will be shipped on the same Business Day. Orders received by Atomix with Standard/Flat-rate shipping on any Business Day after 2:00 PM (local warehouse time) will be treated as if they came in on the following Business Day (unless otherwise agreed upon). Orders received by Atomix with Expedited/Overnight shipping received on any Business Day after 12:00PM (local warehouse time) will be treated as if they came in on the following Business Day (unless otherwise agreed upon). The Client should inform Atomix of any urgent Orders and Atomix may use reasonable efforts to send such Orders to customers (incurring an additional expedited fee). Additional lead time may be required for orders received during Holidays or peak times. Orders are considered Shipped when a tracking number is generated in any of Atomix's software systems regardless of their status with any third party shipping carriers.

#### 4.4

Orders will ship using the carrier and service level selected by Atomix in its reasonable discretion in accordance with Paragraph 7 of this Agreement based on the shipping method name mapping that is provided via API or Webhook from the Client's integrated web store. Notwithstanding the previous sentence, if the Client provides written instruction to Atomix to ship its Products using a different carrier or service level, the Client will be charged in accordance with Paragraph 11.4 below. Orders will be packed into shipping containers using standard packaging materials, at the sole discretion of Atomix. Standard packaging materials may include padded mailers, corrugated shipping boxes and newsprint paper filler. Materials will be selected by Atomix, in its sole discretion, based on the size, shape, weight, etc. of the Products contained in the Order. The smallest container, in Atomix's sole discretion, which adequately contains and protects the product will be selected to minimize postage expense. Unless otherwise stated in Exhibit A of this agreement, the Client will be billed for packing materials according to usage. If, in the sole discretion of Atomix, the Product does not require any additional packaging or overpacking, Atomix may apply a shipping label and the Shipping Invoice to the exterior of the Product.

#### 4.5

Unless stated in Exhibit A of this Agreement, Atomix shall not be responsible for any fees or reimbursements to the Client resulting from incorrect or incomplete information contained in any Order (including but not limited to address hold) if Atomix has made a good faith effort to either (i) ship an Order containing incorrect or incomplete information, or (ii) contact Client to correct such incorrect or incomplete information.

#### 4.6

Any reimbursements or guarantees provided for Same-Day Shipping or incorrect shipments are provided as a commitment to a quality level of service by Atomix to the Client. During holidays or peak shipping



seasons, Client agrees to provide Atomix with up to three business days to process orders. During such peak shipping seasons, Client agrees that any guaranteed shipping deadlines or reimbursements during these times will be extended up to three business days. Reimbursements or credits of these fees are credited to the Client account and cannot be redeemed for cash value. For example, if Atomix agrees to ship all orders that are in the WMS system by 2PM local warehouse time that same day (usually within 24 hours), and orders are shipped beyond the 24 hour mark due to a major US holiday, Atomix would not credit the Client any reimbursements owed until the delay exceeds 3 business days. Any third party carrier damage or claim credit requests for packages/parcels shipped by Atomix must be presented to Atomix within seven (7) days of the delivery of the package. If a shipping carrier's tracking number shows the parcel/package in a "Delivered" status, Atomix will not accept any claims for such package or parcel. Atomix does not guarantee any credits for parcels delivered by common third party shipping carriers and Client agrees that not all claims will be refunded unless approved by the third party shipping carrier. Atomix holds no responsibility for credits or claims once parcels have been tendered to a shipping carrier.

#### 4.7

Orders that are cancelled after fulfillment has been completed will be subject to a \$30 charge to locate the package, void the shipping label and restock the item(s). Orders that are cancelled after the package has been collected by the carrier will be subject to a \$55 fee to attempt to re-route the shipment back to our facilities. This does not constitute guarantee that the package will be returned to our facilities.

#### 5. RETURNS PROCESSING

If a package is returned to Atomix's facility, Atomix will update the Order status of such package from closed to returned on the WMS. Unless otherwise directed by the Client in writing, Atomix shall examine returned packages for content completeness, and if, in its sole discretion, Atomix determines a returned package contains good components, it may return such components to the Client's stock for use in future shipments. Goods that Atomix determined to be damaged or unsellable items will be moved to quarantine. Unless specified in Exhibit A of this agreement, the Client shall be charged a minimum fee of \$2.50 per unit for all returns. The \$2.50 fee includes labor cost for re-processing the return, re-stickering (labeling) the return and adding the product back into inventory. Any pricing provided during the quotation process supersedes this section.

#### 6. CLIENT SUPPORT CENTER

Questions regarding the Services can be officially submitted via email to [solutions@atomixlogistics.com](mailto:solutions@atomixlogistics.com). After receipt of a question regarding the Services, an Atomix agent will contact the Client via email or communication App (Slack) and update them on inquiry status within a reasonable amount of time. Atomix's goal is to acknowledge all inquiries within 15 minutes of receipt and resolve all matters within 24 business hours, but in some instances, more time may be required.

#### 7. PRICING AND PAYMENT

The pricing shown in EXHIBIT A shows all applicable costs associated including storage costs as described in this agreement. Pricing is subject to change at any time with 30 days written notice to the Client. Any non-standard delivery fees from shipping carriers such as Extended Delivery Area Surcharges, Returned



Package Fees, Insufficient Address Fees and any other non-standard fees will be billed to the client with a four percent (4%) surcharge added.

## 8. TERM AND TERMINATION

### 8.1 TERM

This Agreement shall commence upon execution by both parties and shall continue until this Agreement is terminated in accordance with its terms.

### 8.2 TERMINATION FOR CONVENIENCE

Either party may terminate this Agreement for convenience upon thirty (30) days written notice to the other party at any time.

### 8.3 TERMINATION FOR INSOLVENCY

This Agreement shall terminate immediately, without notice, (i) upon the institution by or against either party of insolvency, liquidation (whether voluntary or compulsory, except for the purposes of a bona fide reconstruction or amalgamation) receivership, examinership, bankruptcy, or administration proceedings or any other proceedings for the settlement of debts of either party, (ii) upon either party making a general assignment for the benefit of creditors, or (iii) upon the dissolution of either party.

### 8.4 EFFECTS OF TERMINATION

In the event of the expiration or termination of this Agreement, the licenses granted to Client shall automatically terminate and Client shall cease to use the Services and any Atomix trademarks. Atomix may suspend the Services at any time if Client is in breach of any obligation under this Agreement. In the event of termination of this Agreement, all fees due and payable by Client, together with all sums then outstanding, shall become immediately due and payable by Client. Client will be responsible for paying for any Services rendered until all Products are removed from Atomix's warehouse, including monthly fees, storage fees, attorney fees, administrative fees and product removal fees. Upon termination, Atomix will cease providing Services to Client and any of Client's customers who are being serviced on Client's behalf under the terms of this Agreement. Atomix will also discontinue any Atomix- or partner-hosted web pages or applications relating to Client or Client's customers. Client grants Atomix a security interest in all of Client's Products in the possession of Atomix as security for the full payment of any and all sums due to Atomix from Client hereunder. Subject to the foregoing sentence, Client agrees to remove all Products from Atomix's properties within thirty (30) days of termination of this Agreement. In the event that such Client Products are not removed, Client agrees that such Products shall be deemed abandoned by Client and Atomix may, in its sole and absolute discretion, remove and/or dispose of such Products in any manner without further liability or obligation to Client; and Client shall promptly reimburse Atomix for any reasonable fees incurred for such removal/disposal. Subject to the other terms of this Paragraph 8.4, in the event of expiration or termination of this Agreement, Atomix agrees to work in good faith with Client to transition the Client to use other fulfillment services.

## 9. CLIENT OBLIGATIONS AND WARRANTIES

### 9.1 CONTENT



Client warrants that it is the owner of the Content and/or has the necessary licenses and authority to use the Content and that it is authorized to license Atomix to use the Content to the extent necessary for the provision of the Services and the operation of the Products hereunder. Client is solely responsible for all aspects of the accuracy of the Content. Client warrants that possession of the Products by Atomix or any of its officers, employees, or agents, shall not violate any applicable laws.

## 9.2 BRANDING AND MARKETING

Client grants to Atomix the right to use Client's trademarks, service marks and/or trade names that Client and its licensors may adopt from time to time (the "Trademarks") on any Atomix client list, in print or electronic media, used for sales generation, on any Atomix Client application web page derived from the Content as requested by the Client and as a hypertext link to the Client's website if mutually agreed. Client further agrees that Atomix may refer to Client by name and may use samples of Services provided to Client for marketing purposes on the Atomix website and in other Atomix literature if mutually agreed upon in advance. Any representations of Client's Trademarks other than for use on the Atomix client list shall first be submitted to Client for approval. During the term of this Agreement, Client may display the Atomix Trademarks on Client's website solely for the purpose of linking Client's website to the Atomix website or Atomix Client application web pages. All representations of the Atomix Trademarks that Client intends to use shall first be submitted to Atomix for approval.

## 9.3 PERMISSION BASED COMMUNICATION

Client agrees that it shall not use Content in connection with sending unsolicited or unauthorized junk mail, spam, chain letters, pyramid schemes, or any other form of duplicative or unsolicited messages. Client also agrees that it will honor all unsubscribe requests in the spirit of permission-based communications.

## 9.4 PRIVACY AND ACCEPTABLE USE

Client acknowledges and agrees that it has read and understands the Atomix Privacy and Acceptable Use Policy as set forth on its web site located at [www.atomixlogistics.com](http://www.atomixlogistics.com), which policy may change from time to time.

## 9.5 CLIENT REPRESENTATIVES/USER TERMS AND CONDITIONS

Client acknowledges and assumes responsibility for communicating the applicable sections of this Agreement to Client Representatives and Users of the Services.

## 9.6 GENERAL OBLIGATIONS

Client shall (i) promptly provide Atomix with all necessary information, decisions, support and co-operation that may reasonably be required to enable Atomix to carry out its obligations to Client under this Agreement; (ii) provide at no charge to Atomix adequate office accommodation, telephone services and other facilities including access to Client's applicable equipment to enable Atomix to perform the Services at Client's sites if so requested by the Client; (iii) abide by all applicable local, state, national and foreign laws, treaties and regulations in connection with the Products and Services.

## 10. ATOMIX OBLIGATIONS

### 10.1 CONTENT





You retain all right, title and interest in and to Your Data, other than the limited rights expressly granted in this Section 10. For purposes of this Agreement, “Your Data” means any and all information collected and/or stored by or on behalf of Atomix in connection with your use of the Services, excluding data and information relating to the operation and/or performance of any Atomix Software.

You hereby grant Atomix the non-exclusive right and license to (i) copy, use, modify, distribute, display and disclose Your Data solely to the extent necessary to provide the Services to you pursuant to the Agreement, (ii) copy, modify and use Your Data in connection with internal operations and functions, including, but not limited to, operational analytics and reporting, financial reporting and analysis, audit functions and archival purposes and (iii) copy, use, modify, distribute, display and disclose Your Data on an aggregate and anonymous basis for marketing purposes.

## 11. USE, STORAGE AND OTHER LIMITATIONS

Atomix reserves the right to establish or modify general practices and limits concerning use of the Services, including without limitation, the maximum number of days that Content will be retained and the maximum disk space that will be allotted to Client on Atomix or its agent servers.

### 11.1 PAYMENT

The billing period starts on the first day of shipping in a calendar week and ends on the following Friday. The billing period shall be every 1<sup>st</sup> and 15<sup>th</sup> of the month, Atomix will provide an invoice for the previous billing period to Client via email, and following circulation of such email invoice, Atomix will initiate the payment for the amount specified in the invoice via ACH transfer or credit card transaction (an additional 3% processing fee will be applied for payment by credit card) using the bank account/credit card information provided by the Client. If client is outside of the USA, client agrees to provide payment to Atomix within 1 business day after receiving invoice or the Client account with Atomix will be put on hold until such payment is made. All Services fees are FOB Atomix’s warehouse. In addition to its other rights hereunder, including the right to terminate and suspend the Services, Atomix may charge interest in respect of late payment of any sum due under this agreement at the rate of eight percent (8%) per anum or the maximum rate permitted by applicable law, whichever is higher, from the due date of the invoice until the date paid. In addition, the Client is responsible for all collection fees, including reasonable attorney’s fees incurred by Atomix to receive payment. If the Client is late in any payments, Atomix may suspend the Services without notice.

You agree and acknowledge that Atomix shall maintain a warehouseman’s lien and security interest under the UCC for all Goods in Atomix’s possession or control, regardless of whether a specific receipt is issued by Atomix, to cover all charges, expenses, costs and fees set forth in this Agreement. In the event Atomix is required to exercise its lien or security interest, you shall be responsible for all necessary and reasonable costs incurred by Atomix to enforce the lien or security interest including, but not limited to, reasonable attorney fees. You will execute all agreements and documents so that Atomix may obtain, perfect and maintain its lien rights and security interest in the Goods. You will execute all documentation to permit us to perfect our liens.

### 11.2 BUSINESS SALES TAX

Client is responsible for all sales, goods and services, use, excise, import, export, value added, consumption and other taxes and duties assessed, incurred or required to be collected or paid for any



reason in connection with its purchase of the Services from Atomix, except for taxes based upon Atomix's net income. Atomix base prices do not include any such taxes. To the extent Atomix is required by law to collect such taxes relative to the services provided, those amounts shall be added to Atomix invoices and paid in full by Client. Atomix will be responsible for remitting those taxes to the sales or use taxing authority. If WI State sales tax applies, Atomix agrees to accept Client's direct pay permit, which shall relieve Atomix from the obligation to collect WI State Sales tax.

### 11.3 CLIENT TAX

Client agrees that it is the Client's responsibility to determine whether Client Taxes apply to sales utilizing the Services and to collect, report, and remit the correct Client Taxes to the appropriate tax authority, and that Atomix is not obligated to determine whether Client Taxes apply and is not responsible to collect, report, or remit any sales, use, or similar taxes arising from any Client transaction between Client and a customer. "Client Taxes" means any and all sales, goods and services, use, excise, import, export, value added, consumption and other taxes and duties assessed, incurred or required to be collected or paid for any reason in connection with any Client transaction between Client and a customer using the Services, or otherwise in connection with any action, inaction or omission of you or any of affiliate of yours, or any of your or their respective employees, agents, contractors or representatives. Under no circumstances shall Atomix, an unaffiliated entity of Client, as a Complete Fulfillment Service provider, be required to collect or pay WI State Sales Tax or the sales tax of a foreign state, or receive any resale or exemption certificate in any Client transaction between Client and a customer.

### 11.4 POSTAGE AND SHIPPING FEES

Client will be charged postage and shipping fees in accordance with Paragraph 7. If the Client instructs Atomix to use a shipping method not specified in Paragraph 7 above, the use of Atomix shipping and carrier numbers will be invoiced to Client (i) for commercial carriers, at the published commercial rate less a ten percent (10%) discount, or (ii) for USPS postage, at the published commercial rate plus a three percent (3%) service and handling fee. These fees only apply to shipments that are requested outside of normal operating procedure in accordance with Paragraph 7.

## 12. WARRANTY AND EXCLUSIONS

### 12.1 WARRANTY

Atomix warrants that it has the right to grant the Services. Atomix shall have no liability as a result of any of the following circumstances: (i) the improper use or operation of the Products or Services; (ii) the merger or use (in whole or in part) with any software or hardware by any person other than Atomix; (iii) any failure by Client to implement recommendations previously advised by Atomix; (iv) the use of the Products for a purpose not reasonably to be inferred from the Product information provided by the Client. Client expressly agrees that Atomix shall have no liability for non-performance or failure of functionality of the Services where the same is due to third party telecommunications equipment or services or Client's computer equipment and software.

### 12.2 EXCLUSIONS OF WARRANTIES AND CONSEQUENTIAL DAMAGES



Except as expressly stated in this agreement, Atomix hereby excludes all liabilities whether express or implied, statutory or otherwise in respect of the Services to the greatest extent permitted by applicable law. No warranty of fitness for a particular purpose or merchantability is given by Atomix to Client under any circumstances. Notwithstanding anything to the contrary contained herein, Atomix shall not, under any circumstances, be liable to Client for lost profits, consequential, incidental, special or indirect damages arising out of or related to this Agreement even if Atomix has been apprised of the likelihood of such damages or such damages were reasonably foreseeable.

### 13. LIMITATION OF LIABILITY

In no event shall Atomix's liability to Client, whether based on an action or claim in contract, tort (including, without limitation, negligence and, to the extent permitted by law, strict liability) or otherwise, arising out of or related to this agreement, exceed the amount received by Atomix from Client for the Services complained of pursuant to this agreement in the twelve-month period immediately prior to the date Client notifies Atomix of such action or claim.

#### 13.1

NO LIABILITY FOR CONSEQUENTIAL OR INDIRECT DAMAGES THIRD PARTY LIABILITY. EXCEPT FOR LIABILITY FOR INDEMNIFICATION AND LIABILITY FOR BREACH OF CONFIDENTIALITY, NEITHER ATOMIX NOR ITS REPRESENTATIVES IS LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL, EXEMPLARY, PUNITIVE OR ENHANCED DAMAGES, OR DAMAGES FOR LOSS, LOSS OF PROFITS, REVENUE, DATA OR USE, INCURRED BY COMPANY OR ANY THIRD PARTY, WHETHER IN AN ACTION IN CONTRACT OR TORT, ARISING OUT OF OR RELATING TO ANY BREACH OF THIS AGREEMENT, WHETHER OR NOT THE POSSIBILITY OF SUCH DAMAGES HAS BEEN DISCLOSED IN ADVANCE BY ATOMIX OR COULD HAVE BEEN REASONABLY FORESEEN BY ATOMIX, REGARDLESS OF THE LEGAL OR EQUITABLE THEORY (CONTRACT, TORT OR OTHERWISE) UPON WHICH THE CLAIM IS BASED, AND NOTWITHSTANDING THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE. OTHER THAN AS SET FORTH BELOW, IN NO EVENT SHALL ATOMIX'S LIABILITY UNDER THIS AGREEMENT EXCEED THE MONIES PAID OR PAYABLE BY COMPANY TO ATOMIX EXCLUDING CARRIER FEES OR OTHER THIRD-PARTY FEES ("DAMAGES CAP"). ATOMIX MUST BE NOTIFIED WITHIN FIVE (5) DAYS AFTER ANY UNAUTHORIZED TRANSACTION OR COMPANY WAIVE ALL DAMAGES FROM ATOMIX.

#### 13.2

EXCLUSIVE REMEDY. THE PROVISIONS OF THIS AGREEMENT PROVIDE COMPANY'S EXCLUSIVE REMEDY AGAINST ATOMIX FOR ANY CLAIM OR CAUSE OF ACTION WHATSOEVER SHALL APPLY TO ALL CLAIMS INCLUDING INVENTORY SHORTAGE AND MYSTERIOUS DISAPPEARANCE CLAIMS UNLESS PROVEN BY AFFIRMATIVE EVIDENCE THAT ATOMIX CONVERTED THE INVENTORY TO ITS OWN USE. COMPANY HEREBY WAIVES ANY RIGHTS TO RELY UPON ANY PRESUMPTION OF CONVERSION IMPOSED BY LAW.

13.3 INVENTORY COUNT INACCURACIES. IN THE EVENT OF INVENTORY LOSS DUE TO INVENTORY COUNT INACCURACIES, INACCURATE INVENTORY COUNTS DURING RECEIVING OR INVENTORY COUNT INACCURACIES AT ANY TIME THAT ATOMIX IS IN POSSESSION OF INVENTORY FOR WHICH THE CLAUSES ABOVE IS DETERMINED TO BE INAPPLICABLE AND ATOMIX IS HELD LEGALLY LIABLE, COMPANY AGREES THAT IT WILL BE CONSIDERED AN "INVENTORY LOSS" AND ATOMIX'S LIABILITY SHALL BE LIMITED AS



STATED ABOVE. IN NO EVENT SHALL ATOMIX BE LIABLE FOR ANY LOST SALES REVENUE FROM THE INVENTORY LOSS DUE TO INVENTORY COUNT INACCURACIES.

13.4 PROJECTS. IN THE EVENT OF A LOSS DUE TO A PROJECT DEFINED AS AN HOURLY OR PIECE WORK DONE ON EXPECTED OR HELD INVENTORY (“SPECIAL PROJECT”), COMPANY AGREES AND ACKNOWLEDGE’S THAT ATOMIX’S LIABILITY SHALL BE LIMITED TO THE HOURLY CHARGE COMPANY PAID TO ATOMIX FOR THE PROJECT.

#### 14. INDEMNITY AND INSURANCE

Client warrants that the Content shall not be libelous, or constitute malicious falsehood or disparagement of goods or services, or be otherwise defamatory, immoral, obscene, pornographic, illegal, and shall not advocate illegal activity or constitute a violation of privacy or a breach of any obligation of confidentiality to any third party, nor shall it infringe the proprietary or intellectual property rights of any third party. Client shall indemnify, defend and hold Atomix, its employees, officers and agents harmless from any and all claims, losses, damages, liabilities, costs or expenses (including, without limitation, reasonable attorney’s fees and costs whether incurred in a third party action or in an action to enforce this Agreement) whether related to injury or death to persons (including Atomix employees) or damage to property to the extent that such may arise out of or be connected with Client’s breach of this Agreement or Client’s gross negligence. Subject to the terms of this Agreement, Atomix shall indemnify, defend and hold Client, its employees, officers and agents harmless from any and all claims, losses, damages, liabilities, costs or expenses (including, without limitation, reasonable attorneys’ fees, and costs whether incurred in a third party action or in an action to enforce this Agreement) whether related to injury or death to persons (including Client employees) or damage to property that may arise out of or be connected with Atomix’s gross negligence.

#### 15. PROPRIETARY RIGHTS OWNERSHIP

##### 15.1 PROPRIETARY RIGHTS

All right, title, and interest in the intellectual property rights related to the Services and the deliverables (if any) of the Services (the “Deliverables”), including, without limitation, all patents, trademarks, trade names, inventions, copyrights, (including copyright in computer programs), database rights, know-how, and trade secrets (“Intellectual Property Rights”) relating to the design, manufacture, operation or service of the Services and Deliverables are retained by Atomix except as specifically set forth herein. Client’s use of any of these Intellectual Property Rights is authorized only for the purposes and to the extent set forth in this Agreement, and upon termination of this Agreement for any reason, such authorization shall cease. Nothing herein shall grant to Client any right, title or interest in or to the Intellectual Property Rights in the Services and Deliverables.

#### 16. ATOMIX THIRD PARTY INTELLECTUAL PROPERTY RIGHTS INDEMNITY

Atomix will indemnify and defend Client and keep Client fully and effectively indemnified against any damages (including costs) that may be awarded or agreed to be paid to any third party in respect of any claim or action that the normal operation, possession or use of the Deliverables by Client infringes the Intellectual Property Rights of said third party (an “Intellectual Property Infringement”), provided that Client gives Atomix the sole right to conduct the defense to any claim or action in respect of an Intellectual Property Infringement, and do not at any time admit liability or otherwise settle or



compromise, or attempt to settle or compromise the said claim or action except upon the express written instructions of Atomix and gives to Atomix such assistance as it shall reasonably require in respect of the conduct of the said defense. Should notice be given to Client by a third party that any of the Services or Deliverables infringes any intellectual property rights owned or controlled by the third party, or should Client learn of any infringement by a third party of any of Atomix intellectual property rights in the Products or Deliverables, Client shall immediately notify Atomix thereof.

## 17. INDEMNIFICATION

If any of the Services are finally adjudged to so infringe, or in Atomix's opinion is likely to become the subject of such a claim, Atomix may, at its option and expense, either: (i) procure for Client the right to continue using the Services; (ii) modify or replace the Services to make it noninfringing; or (iii) terminate this Agreement and provide Client a pro rata refund of any pre-paid fees for the period after termination.

Subject to the terms and conditions of this Agreement, Company shall indemnify, defend and hold harmless Atomix and its representatives/officers, directors, employees, agents, affiliates, successors and permitted assigns (collectively, "Indemnified Party") against any and all losses, damages, liabilities, deficiencies, claims, actions, judgments, settlements, interest, awards, penalties, fines, costs, or expenses of whatever kind, including attorneys' fees, fees and the costs of enforcing any right to indemnification under this Agreement and the cost of pursuing any insurance providers, incurred by Indemnified Party or End- User (collectively, "Losses"), arising out or resulting from any claim of a third party alleging:

- (a) Breach or non-fulfillment of any representation, warranty or covenant under/representation or warranty set forth in this Agreement by Company;
- (b) Any negligent or more culpable act or omission of Company (including any recklessness or willful misconduct) in connection with the performance of its obligations under this Agreement;
- (c) Any bodily injury, death of any person or damage to real or tangible personal property caused by the willful or grossly negligent acts or omissions of Company;
- (d) The acts or omissions (including, without limitation, any negligence or willful misconduct) of any third party whether or not selected by or retained by Atomix;
- (e) Any failure by Company to substantially comply with an applicable Food and Drug Administration (FDA) or other governmental requirement; or
- (f) Any failure by Company to comply with any applicable state, federal or international laws.

## 18. CONFIDENTIALITY

### 18.1 GENERAL

Each party shall treat as confidential all information obtained from the other party pursuant to this Agreement and shall not divulge such information to any person (except to such party's own employees, and then only to the extent that those employees need to know) without the other party's prior written consent, provided however, that this clause shall not extend to information that is already public knowledge or will become so at a future date (otherwise than as a result of a breach of this clause) or



that is trivial or obvious. Each party shall ensure that its employees are aware of and comply with the provisions of this clause. This Agreement imposes no obligation upon Client with respect to disclosed information that (a) Client can demonstrate was already in its possession before receipt from Atomix; (b) is or becomes publicly available through no fault of Client or Client's representatives; (c) is rightfully received by Client from a third party without a duty of confidentiality; (d) is disclosed by Atomix to a third party without a duty of confidentiality on the third party; (e) is independently developed by Client without a breach of this Agreement as evidenced by contemporaneous written records; or (f) is disclosed by Client with Atomix's prior written approval. If Client is required by a governmental body or court of law to disclose any confidential information, to the extent permitted by law, Client agrees to give Atomix reasonable advance notice so that Client may contest the disclosure or seek a protective order.

## 18.2 EMPLOYEES

Each party undertakes and agrees that it shall not solicit any personnel of the other during the term of this Agreement and for one (1) year after the expiration or termination of this Agreement.

## 19. OTHER TERMS

### 19.1 RISK OF LOSS

- (a) Client hereby agrees that at no time during the period that Products are held by Atomix as Inventory in the Warehouse will Atomix hold title, or any other rights of ownership in the Inventory. Title in Inventory will continue to be held by Company until such time as the Products are delivered to the End-User.
- (b) Client hereby agrees that at no time during the period that Products are held by Atomix as Inventory in the Warehouse will Atomix carry the risk of loss in the Inventory. Risk of Loss in Inventory will continue to be held by Company until such time as the Products are delivered to the End-User.
- (c) Client hereby agrees that it is Company's responsibility, at all times, to maintain an insurance policy that covers the cost of the Products held in Inventory. Company has the option of adding the Warehouse as a designated storage location to Company's general inventory policy.
- (d) Client can choose not to insure its inventory. In this event, Atomix will, under no circumstances, be liable for any loss or damage to the inventory stored at Atomix facilities. These events include, but are not limited to, theft, misuse, fire, natural disaster or any other event, not directly caused by Atomix.

### 19.2 WAIVER OF JURY TRIAL

TO THE EXTENT PERMITTED BY LAW, YOU AND ATOMIX EACH WAIVE YOUR RIGHTS TO A TRIAL BY JURY OF ALL CLAIMS OR CAUSES OF ACTION (INCLUDING COUNTERCLAIMS) RELATED TO OR ARISING OUT OF THIS AGREEMENT BROUGHT BY EITHER PARTY AGAINST THE OTHER. THIS WAIVER WILL APPLY TO ANY SUBSEQUENT AMENDMENTS OF OR MODIFICATIONS TO THIS AGREEMENT.

All claims between the parties related to this Agreement will be litigated individually and you may not consolidate or seek class treatment for any claim with respect to the Services.

### 19.3 RECORD RETENTION



Atomix will keep full and accurate records for a period of six (6) months following any distribution or disposition of inventory by Atomix. These records shall, during normal business hours and upon seventy-two (72) hour written notice, be open to examination by Client authorized personnel. Atomix is not responsible for the retention of any information after six (6) months.

#### 19.4 GOVERNING LAW AND JURISDICTION

This Agreement shall be governed in all respects by the substantive laws of the court of the State of Wisconsin, without regard to its conflicts of laws principles, and controlling U.S. Federal law. Any and all disputes, controversies or differences arising from or in connection with this Agreement shall be settled by mutual consultation between the parties hereto in good faith as promptly as possible, but failing an amicable settlement shall be resolved by litigation held in Wisconsin. This Agreement was negotiated and executed in English, and the original English language version shall be controlling.

#### 19.5 RELATIONSHIP OF THE PARTIES

The parties are independent contractors, and nothing contained in this Agreement shall be construed to constitute the parties as partners, joint ventures, co-owners, principal and agent, or otherwise as participants in a joint or common undertaking.

#### 19.6 ASSIGNMENT

Client shall not assign, sub-contract or otherwise transfer any of Client's rights, obligations or licenses hereunder or appoint any agent to perform Client's obligations hereunder without the prior written consent of Atomix, provided however, that Client and Atomix shall each have the right to assign this Agreement to a corporation controlled by, controlling, or under common control of the assigning party. Assignments not in accordance with this Section 19.6 are null and void.

#### 19.7 WAIVER

Failure by any party to enforce any of its rights under this Agreement shall not be deemed a waiver of any right, which that party has under this Agreement.

#### 19.8 FORCE MAJEURE

Except for the payment of any monies due under this Agreement non-performance of either party shall be excused, and any performance date shall be extended, to the extent that performance is rendered impossible by strike, fire, flood, governmental acts or orders or restrictions, failure of suppliers, telecommunications services or equipment or any other reason where failure to perform is beyond the reasonable control and not caused by the negligence of the non-performing party.

#### 19.9 INVALID PROVISIONS

If any provision of this Agreement is held to be invalid or unenforceable, the other provisions will remain in effect to the greatest extent possible consistent with the parties' intent, and the invalid, void or unenforceable provision shall be modified as may be necessary to make it valid, effective and enforceable to the greatest extent possible consistent with the parties' intent.

#### 19.10 ENTIRE AGREEMENT



This Agreement reflects the entire agreement of the parties regarding the subject matter hereof, and supersedes all prior and contemporaneous agreements between the parties, whether written or oral.

#### 19.11 SURVIVAL OF CERTAIN PROVISIONS

The indemnification, confidentiality, and payment obligations set forth in any Agreement shall survive the termination of the Agreement by either party for any reason.

#### 19.12 HEADINGS

Headings to clauses in this Agreement are for the purposes of information only and shall not be construed as forming part of this Agreement.

#### 19.13 CONFLICT OF TERMS

If there is a conflict between this Agreement and the terms on any air waybill, bill of lading or other transit documentation set forth by the contracted carrier, the carrier's terms will control. If not stated within the carrier's terms, this Agreement shall control.





## **EXHIBIT A**

Atomix Pricing

See Attached

\_\_\_\_ (signature)

I acknowledge and agree to the Pricing displayed in Exhibit A