



Reseller Agreement Terms & Conditions

1. Rights and Responsibilities of the Parties.

1.1 Appointment. Subject to the Reseller Agreement and these Reseller Agreement Terms and Conditions (these "Terms and Conditions"), the Parties agree that Company (as that term is defined in the Reseller) appoints Adtran as an authorized reseller of its Products, Services and licenses (as defined below) and agrees to sell such Products, Services and licenses to Adtran as ordered via an Adtran purchase order, at the price, quantity and other business terms as set forth in Exhibit A of the Agreement. These Terms and Conditions and any supplemental terms and conditions expressly set forth in the Agreement (including all mutually agreed upon attachments, schedules, exhibits, amendments and addendums thereto) and any non-conflicting terms in Adtran's purchase order shall exclusively govern and control the Parties' rights, responsibilities and obligations in all respects regarding the purchase and sale of the Products, Services and licenses (collectively, the "Agreement").

1.2 Sale to Customers/End Users. Pursuant to the Agreement, Adtran shall have the right to purchase Products, Services and licenses from Company for the purpose of reselling them to Adtran's Customer/End User in the global marketplace on a non-exclusive basis. "Customer/End User" is defined as a business or individual that purchases Products, Services and licenses from Adtran either for its own internal use or as an authorized reseller or distributor, or will be the end user of such Products, Services and licenses without any further resale to other third parties.

1.3 Services and Support. Company agrees to provide the Product, its warranty, and product support and other services related to the Products (collectively, "Services") directly to the Customer/End User, in accordance with the terms of the Customer/End User's agreement with Adtran. Company shall not, under any circumstances unless expressly authorized by Adtran, sell any Products or Services directly to any Registered Opportunity as defined in Section 1.4 below. Adtran shall have no obligation whatsoever to provide the aforementioned Services or any other services on behalf of Company to the Customer/End User under the Agreement.

1.4 Channel Conflicts. The Parties agree that Adtran may register any and all customer opportunities, by way of notifying Company in writing of any actual or potential customers for the purchase of Products, Services and licenses ("Registered Opportunity(ies)"). With respect to Registered Opportunities, except where Company can document that a Registered Opportunity was Company's direct or indirect customer prior to Adtran registering such opportunity, Company agrees not to directly or indirectly sell, provide pricing or otherwise market the Products, Services and licenses to Registered Opportunities without Adtran's prior express written consent.



2. **Term and Termination**. The Agreement shall become effective as of the Effective Date and shall continue for an initial term of three (3) years (hereinafter the “Initial Term”). Thereafter, the Agreement shall automatically renew for successive one (1) year renewal terms unless and until terminated in accordance with the Agreement. The Agreement may be terminated for convenience, for any reason or no reason, by either Party upon written notice to the other at least one hundred eighty (180) days prior to the effective date of such termination. In the event of a breach or if a Party becomes insolvent or subject of a bankruptcy proceeding, makes an assignment for the benefit of creditors, or ceases to function as a going concern, then the other Party shall have the right to immediately terminate upon written notice to the other. The expiration or termination of the Agreement shall not terminate a Customer/End Users’ license (if any) or right to the Products. Upon expiration or termination of the Agreement for any reason, the Parties will cooperate in good faith to provide Customer/End Users with instructions regarding how such Customer/End User may continue to use and access the Products, Services and licenses, which may include, but is not limited to, issuing orders directly to Company or its channel partners.

3. **Product(s)**. For purposes of the Agreement, “Product” or “Products” shall mean any and all items, including hardware, software and/or licenses, offered by Company to Adtran for resale to Adtran’s Customer/End User. Company may from time-to-time update its product offering to reflect additional products available for resale. However, Company agrees that it will provide written notice to Adtran at least one hundred eighty (180) days prior to discontinuing the availability of any Product in volumes ordinarily purchased by Adtran. Upon Adtran’s request Company agrees to provide copies of the Products to Adtran for demonstration purposes.

4. **Price/Payment Terms/Taxes**.

4.1 **Payment Terms**. All prices, invoices and payments shall be stated in U.S. Dollars (USD). Company will invoice Adtran for Products, Services and licenses upon Adtran’s Customer/End User’s actual receipt and acceptance of such Products, Services and licenses. With respect to Services, invoices will be sent on the date or at the intervals as may be mutually agreed upon by the Parties in writing. Payment terms shall be net forty-five (45) days from Adtran’s receipt and acceptance of an invoice with respect to all properly invoiced, undisputed amounts in accordance herein. Notwithstanding anything to the contrary, Adtran shall have no obligation to pay any invoices or other amounts owed to Company for Products, Services and licenses that are subject of an invoice if such is not received by Adtran within ninety (90) days from the date of delivery of the Products, license and/or completion of the Services, respectively.

4.2 **Price/Discount Adjustments**. Company agrees that the pricing extended to Adtran under the Agreement shall be at least as favorable to Adtran as that pricing extended to any other purchaser of Company’s Products, Services and/or licenses for purchase levels the same or similar to those of Adtran under comparable volume,



terms and conditions. In the event Company offers more favorable pricing to such other purchaser, or decreases the published list price on any Product, Service and/or license, Adtran shall immediately be given the new, lower pricing for all new and open purchase orders as of the date of such reduction. All Products, Services and/or licenses provided after the effective date of any price decrease will be invoiced at the price in effect at the time of shipment. The provisions of this Section 4.2 shall only apply to Products, Services and licenses purchased directly from Company. Price protection for Products, Services and licenses will be extended by Company to Adtran to satisfy any Customer/End User purchase agreements that Adtran has in force on the effective date of any price increase, for the period of the remaining terms of said purchase agreements.

4.3 Taxes on Sales to Adtran. As between Adtran and Company, all taxes, fees or stamps required to be paid or collected under the laws of any local, state, federal or foreign jurisdiction whether in the United States or any foreign country, relating to the sale to Adtran, other than taxes based on Adtran's income and the sale of Products, Services and licenses by Adtran to its Customers/End Users, shall be the responsibility of, and promptly paid or remitted by, Company to the appropriate governmental authority.

4.4 Taxes on Sales to Customers/End Users. Adtran shall bear and be responsible for the payment of all taxes, fees or stamps required to be paid or collected under the laws of any local, state, federal or foreign jurisdiction whether in the United States or any foreign country, associated with Adtran's Customers/End Users' use, subscription fees, or licensing of any Software (other than taxes based on Company's net income), fees, duties or other amounts, however designated, including value added and withholding taxes which are levied or based upon such charges or upon the Agreement. Taxes related to Adtran Customers/End Users' SaaS subscriptions, Software, maintenance fees, and Support Services purchased or licensed pursuant to this Agreement shall be paid by Adtran or Adtran shall present an exemption certificate acceptable to the applicable taxing authorities. Adtran shall be responsible for keeping all records and/or impounding or paying all taxes (e.g., national, local, self-employment tax, foreign tax withholding, etc.) and any other charges required by and imposed by any taxing authority on payments to its employees or agents.

5. Purchase Orders.

5.1 Procedure. Adtran may, in its sole discretion, submit purchase order to Company for the quantities of Products, Services and licenses that Adtran desires to purchase from Company for resale pursuant to the terms of the Agreement. Each purchase order shall state the type and quantity of Products, Services and licenses ordered, the per unit and total price to be paid for each Products, Services and licenses, the required date of delivery, any shipping instructions (where applicable) and any other terms of purchase related to such Products, Services and licenses.



5.2 Acceptance/Rejection of POs. Company agrees to reasonably accept all purchase orders submitted by Adtran in accordance with the Agreement, and will not reject a purchase order without good reason. Company shall notify Adtran of receipt of a purchase order by email or facsimile within two (2) business days of receipt. Each purchase order shall be deemed accepted if Company (i) confirms acceptance of the purchase order, (ii) fails to reject the purchase order within two (2) business days after receipt, or (iii) ships any of the Products, commences performance of Services and/or issue licenses ordered. Company acknowledges and agrees that its acceptance of each purchase order submitted by Adtran shall be according to the terms, requirements, and conditions set forth in the Agreement.

5.3 Terms of Agreement Prevail. This Agreement are the Parties' entire understanding with respect to the subject matter described in the Reseller Agreement. As such, the terms of the Agreement shall prevail over any terms or conditions contained in any other documentation related to the subject matter of the Agreement and expressly exclude any of Company's general terms and conditions contained in any invoice, terms of sale or other document issued by Company. Any additional or conflicting terms and conditions included in any acceptance of a purchase order or otherwise provided by Company are hereby rejected and shall have no effect.

5.4 Cancellation/ Rescheduling. Adtran may reschedule any purchase order, or portion thereof, at any time but no more than twice for the same purchase order, upon written notice to Company without any liability for undelivered Products, incomplete Services or unused licenses. Additionally, Adtran may cancel any order for Services without liability and/or return any delivered Products for a full refund (provided they are in new, resellable condition) at any time, should the Customer/End User cancel its corresponding order with Adtran, and otherwise anytime up to five (5) business days prior to the scheduled ship date. Any cancellations outside of this condition must be mutually agreed between the Parties.

6. Delivery; Risk of Loss; No Stock.

6.1 Physical Delivery; Risk of Loss. All shipments shall be FCA - Location Specified by Adtran or will be drop shipped to Customer/End User at Adtran's request. Title and risk of loss or damage to Product shall pass directly from Company to the applicable Customer/End User upon delivery to the designated location. In the event of in-transit damage, or a loss subsequent to delivery and upon notice to Company, Company is responsible for promptly advising the carrier and insurer of the loss and for filing a claim for recovery of any sums owed by Adtran or Customer/End User. Adtran shall cooperate with Company in establishing any such claim. Adtran will have no responsibility to provide insurance for shipments of Products. Company, when preparing shipments on behalf of Adtran or its Customer/End User, shall adhere to the transportation routing instructions defined by Company.

6.2 No Stock. Adtran will have no obligation to maintain any physical stock or



other inventory of the Products. Company shall remain responsible for having sufficient Products and licenses available to accommodate Adtran's orders. Adtran may, from time to time, provide a non-binding forecast to assist Company in determining quantities it should maintain to fulfill Adtran's orders.

6.3 Software Delivery; Access. Delivery of any Products or licenses in any manner other than by physical delivery must be specified by Company in writing, and will be deemed to have occurred on the date in which the Customer/End User is notified as to the manner of delivery, instructed on how to access or obtain such Products and/or licenses, and such Products and/or licenses are issued or otherwise made available to Customer/End User (as applicable).

7. Use of Company Marks. Company grants to Adtran, during the term of the Agreement, the right to use the Company logo and any other trademark owned by Company (collectively, the "Company Marks") solely in accordance with the terms of Company's trademark and logo usage policy as provided to Adtran. Adtran will not distribute, disseminate, provide to any person or entity, or use in any manner whatsoever any sales literature or materials prepared by Adtran pertaining to the Products, Services and licenses in violation of Company's policy without obtaining Company's prior approval.

8. Confidentiality. The Parties may make available to each other certain oral or written information including, but not limited to, engineering and technical data, test and analysis data, marketing, application and customer information, price lists, product and other specifications (including but not limited to the Products, Services and licenses), new product information and any material terms of the Agreement not already publicly available ("Confidential Information"). Such information may be deemed confidential and so marked or identified as such at the time of its transmission, and neither Party nor their respective agents, employees, assigns, or successors in interest shall disclose any such Confidential Information to any third party(ies) without the prior written consent of the other Party. Upon termination or cancellation of the Agreement, all such Confidential Information shall, at the option of the owner of the information, be immediately returned or destroyed. A Party may seek interim injunctive relief in any court of appropriate jurisdiction with respect to any alleged breach of the other Party's obligations under this Section.

9. Limited Warranty / Warranty Returns.

9.1 Warranty. Company represents and warrants to Adtran and its Customers/End Users that Company has all rights and permissions to sell and license the Products and Services and is under no restrictions that might prevent or interfere with Adtran's rights and ability to resell such Products, Services and licenses, or the Customers/End Users right to full use and enjoyment of the Products. Company further warrants the (i) Products will perform in the manner in which they were designed and are free from defects in design, workmanship, and materials; and (ii)



Services will be performed in a diligent, professional, workmanlike manner in accordance with the highest industry standards. Company agrees to provide any and all of its standard warranty(ies) directly to Customers/End Users of the Products, Services and licenses, which shall be included in a written warranty statement with the Product or set out in the written warranty statement on Company's website as specified in the Reseller Agreement and made available to the Customer/End User no later than delivery of the Products, Services and licenses to Customer/End User. Adtran's only obligations to the Customer/End User shall be to resell Products, Services and licenses to such Customer/End User and arrange for delivery of the Products and/or licenses by Company to Customer/End User. UNDER NO CIRCUMSTANCES SHALL Adtran HAVE ANY OBLIGATION TO DIRECTLY OR INDIRECTLY ASSIST COMPANY WITH ITS WARRANTY OBLIGATIONS. Adtran AGREES TO BE RESPONSIBLE FOR ANY WARRANTY REGARDING ANY PRODUCTS, SERVICES OR LICENSES THAT IS IN ADDITION TO COMPANY'S WARRANTIES DESCRIBED AND/OR REFERENCED BY THIS SECTION.

9.2 Warranty Returns. Company shall be solely responsible for implementing, maintaining and performing an appropriate process for handling warranty returns directly with the Customer/End User. Product to be returned under a warranty claim shall be returned to Company in accordance with its appropriate Return Material Authorization procedures. Adtran shall have no obligation to perform, assist in or otherwise participate in the warranty return process between Company and Customer/End Users.

10. Indemnity. Company agrees to indemnify, hold harmless and defend Adtran against any losses, damages, liabilities or expenses incurred by Adtran arising out of or resulting from any claim by a third party alleging or relating to the Products, Services and licenses to the extent that any such claim: 1) is attributable to bodily injury or death or to injury to or destruction of physical property (other than the Products); 2) arises from a negligent act or omission of Company; or 3) alleges that the Product or license violates any valid patent, trademark, copyright, trade secret or otherwise infringes the intellectual property rights of any third party. This obligation on the part of Company shall exist only to the extent that Adtran (1) purchased Products, Services and/or licenses from Company; (2) gives Company prompt written notice of any such claim; (3) grants Company control of the defense and resolution of such claim, provided such defense and resolution do not involve any payment or admission of wrongdoing by Adtran or its Customer/End User; and (4) provides reasonable assistance in the defense so long as Company pays all costs associated with such defense. Neither Party shall have any liability for any settlement or compromise made without its prior written consent.

11. Limitation of Liability. IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER FOR ANY INCIDENTAL OR CONSEQUENTIAL DAMAGES, OR FOR LOSS OF PROFITS, REVENUE OR DATA, WHETHER IN AN ACTION IN CONTRACT, TORT, STRICT LIABILITY, OR OTHERWISE, EVEN IF ADVISED OF



THE POSSIBILITY OF SUCH DAMAGES. NOTWITHSTANDING ANYTHING ELSE HEREIN, TO THE FULLEST EXTENT ALLOWED BY LAW, ANY LIABILITY OF A PARTY FOR CLAIMS ARISING UNDER THE AGREEMENT OR OTHERWISE SHALL BE LIMITED TO THE CUMULATIVE PURCHASE PRICE OF ALL PRODUCTS, SERVICES AND LICENSES SOLD TO Adtran. THE FOREGOING LIMITATIONS SHALL NOT APPLY TO COMPANY'S OBLIGATIONS OF INDEMNITY OR A BREACH OF CONFIDENTIALITY BY EITHER PARTY.

12. **Export Controls**. The Parties shall comply with such laws and regulations governing use, export, re-export, and transfer of Products and technology and will obtain all required U.S. and local authorizations, permits, or licenses. Company agrees to maintain full, true, and accurate records of exports, re-exports, and transfers of the products and technology, purchased and deployed or distributed, according to U.S. and local laws for at least five (5) years following the date of any such export, re-export, or transfer. The Parties' obligations under this clause shall survive the expiration or termination of the Agreement.

13. **General Provisions**.

13.1 **Choice of Law**. The validity, interpretation, and enforcement of the Reseller Agreement and these Terms and Conditions shall be governed by the domestic laws of the State of Delaware, United States of America, as if performed wholly within the State of Delaware and without giving effect to its principles of conflicts of laws, and the State and Federal courts of Delaware shall have exclusive jurisdiction over any claim arising hereunder, except as expressly provided below. The Parties specifically disclaim the application of the UN Convention on Contracts for the International Sale of Goods to the interpretation or enforcement of the Agreement.

13.2 **Dispute Resolution**. If any claim, controversy or dispute between the Parties, their agents, employees, officers, directors, or affiliates ("Dispute") cannot be settled through negotiation, it shall be resolved by arbitration conducted by a panel of three arbitrators engaged in the practice of law, under the then current Commercial Arbitration rules of the American Arbitration Association (hereinafter "AAA"). The Federal Arbitration Act, 9 U.S.C. §§ 1-16 shall govern the arbitrability of all Disputes. The arbitrators shall not have the authority to award punitive damages. All expedited procedures prescribed by the AAA rules shall apply. The arbitrators' decision and award shall be final and binding and judgment may be entered in any court having jurisdiction thereof. The arbitration shall occur in Huntsville, Alabama. The Party or Parties prevailing in such arbitration shall be entitled, in addition to such other relief as may be granted, to a reasonable sum for their attorney's fees which shall be determined by the arbitrator in such arbitration or in a separate arbitration action brought for that purpose.

13.3 **Assignment**. Neither this Agreement, nor any rights under this Agreement, may be assigned by either Party without the express prior written



consent of the other Party. Any attempted assignment in violation of the preceding sentence shall immediately terminate the Agreement and be without legal effect.

13.4 Relationship of the Parties No Partnership. The Agreement does not create any agency, partnership, joint venture, employment or franchise relationship. Furthermore, no labor relationship between Company and Adtran employees is created hereby. Other than as expressly set forth herein, neither Party has the right or authority to, and shall not, assume or create any obligation of any nature whatsoever on behalf of the other Party or bind the other Party in any respect whatsoever.

13.5 Notices. All notices, demands, and other communications shall be in writing and shall be deemed to have been given if delivered by email, or mailed registered or certified mail, postage prepaid, or by express delivery service, to the designated Adtran contact as follows:

To Adtran:

Adtran, Inc.
901 Explorer Blvd.
Huntsville, AL
35806 USA
Attn: Director, Global Procurement
Email: contracts-purchasing@adtran.com

13.6 Survival of Termination. The following provisions and obligations shall survive termination:

13.6.1 All licenses and sublicenses granted to Adtran customer(s) prior to termination shall not be affected by any termination and shall continue in full force and effect for as long as Adtran's customer(s) license the software;

13.6.2 Company shall continue to fully support all existing Adtran customers which have purchased solutions which include Company licensed technology, and to the extent agreed upon as per terms of purchase order and/or contract to Company, Adtran's support thereof, through the end of their respective licensing terms, and any renewals thereafter;

13.6.3 All confidentiality obligations;

13.6.4 All rights and remedies available to a Party for breaches occurring prior to termination; and



13.6.5 Each Party's obligations with respect to liability and indemnity.

13.7 Compliance with Laws. In its performance of the Agreement, Company shall comply with all applicable government or regulatory authority's laws, rules, policies and regulations, and shall comply with all applicable laws, rules, policies and procedures including without limitation the US Foreign Corrupt Practices Act, requirements applicable to the manufacture and sale of Products, provision of Services and (as applicable) licensing of any software (collectively "Applicable Laws").

13.8 Force Majeure. Neither party will be liable for delay or failure to perform obligations hereunder for causes beyond its reasonable control and without fault or negligence of such party, provided that such party has in good faith diligently worked to remove the cause. Such causes will include but not be limited to Acts of God, government, acts of war, riot or epidemic. If any such cause continues for more than thirty (30) days, then either Party will have the right to terminate the Reseller Agreement by providing five (5) days written notice to the party delayed or unable to perform its obligations.

13.9 Headings/Severability. Headings used in these Terms and Conditions are provided for convenience only and shall not be used to construe meaning or intent. If any provision of the Agreement are held invalid in a court of law, the remaining provisions shall be construed as if the invalid provision were not included in this Agreement.