

**EXHIBIT 1**

January 11, 2013

Robert Mattes  
Chief Financial Officer  
Atari, Inc.  
475 Park Avenue South  
New York, NY 10016

**RE: Protiviti Engagement Letter**

Dear Mr. Mattes:

This letter confirms Protiviti Inc.'s ("Protiviti") arrangements with Atari, Inc. ("Atari" or "Client"), with respect to the planned Chapter 11 filing matter.

**Project Scope and Approach**

Atari desires to engage Protiviti to perform financial advisory and consulting services in connection with its financial restructuring. Protiviti's work may include, but is not limited to, the following:

- Perform various accounting, administrative, and compliance tasks associated with the Chapter 11 process;
- Develop cash flow projections and collateral valuations to facilitate negotiations with prospect lenders;
- Assist with design, formulation and analyses related to Atari's exit strategy from chapter 11 including an asset sale, Plan of Reorganization, or corporate liquidation;
- Assist counsel and provide support and testimony, if needed, for any motions, recovery actions or litigation during the pendency of the case; and
- Assist with such other matters that may arise in the course of this engagement as agreed between Protiviti and Atari.

**Deliverables**

Atari acknowledges that Protiviti's work is dependent on the availability of Atari personnel, the availability of relevant documents, and other factors beyond the control of Protiviti. Protiviti will use commercially reasonable efforts to assist Atari in meeting stated deadlines, but Atari acknowledges that despite these efforts, due to such factors, any stated deadlines and timelines may not be met.

### **Professional Fees & Expenses**

In accordance with our normal procedures for an engagement of this nature, Protiviti will require an initial retainer of \$50,000 prior to commencing work. This retainer will provide an advance payment for the services rendered in preparation for a bankruptcy filing and must be replenished periodically as needed to maintain that level and also immediately prior to filing. Depending on the circumstances at the time of a bankruptcy filing and the anticipated level of future services, an increased retainer prior to filing may be appropriate, subject to an agreement between Protiviti and Atari. After a bankruptcy filing, Protiviti will hold the retainer as security for payment of its fees.

At the conclusion of the engagement, Protiviti will apply its retainer to the balance due on its final invoice (or allowed Fee Application as the case may be) and return the balance of the retainer, if any, to Atari.

Protiviti will charge for this work based upon the level of expertise and time required for completing this project, plus out-of-pocket expenses. We agree to submit monthly invoices to the Atari for review and approval. We agree to charge for the Services provided hereunder at the rates set forth below for actual time expended, plus reasonable expenses incurred in connection with performance of the Services. It is understood and agreed that if we are subpoenaed as the result of any work performed for you in connection with this engagement, we will be compensated at the foregoing rates for our time involved in responding to such subpoena(s) and that we will be reimbursed for any costs and expenses reasonably incurred. Protiviti's services are will be billed at the discounted hourly rates listed below. These rates vary according to the individual's position and level of expertise.

	Standard <u>Hourly Rate</u>	Discounted <u>Hourly Rate (5%)</u>
Managing Directors	\$560 - \$590	\$532 - 560
Directors and Associate Directors	\$375 - \$465	\$356 - 441
Senior Managers and Managers	\$265 - \$360	\$251 - 342
Senior Consultants and Consultants	\$150 - \$260	\$142 - 247
Administrative	\$95	\$90

Due to the exigent circumstances of the company, Protiviti may extend professional courtesy discounts to the Company at the time each invoice is submitted based on a mutual agreement between Protiviti and the Company. Protiviti may also adjust its fees to reflect company-wide pricing changes and rate modifications associated with customary promotions of engagement personnel. Such changes will reflect the percentage discount described above and will be communicated to you in a timely manner.

### **Engagement Team**

Protiviti engagement leaders will be as follows:

- Project Director Guy Davis
- Project Director Suzanne Roski

In addition, managers, senior consultants and staff consultants will be used as necessary to complete the work. Protiviti reserves the right to staff the project as it sees fit and according to the personnel available to it.

This Arrangement Letter and the terms and conditions set forth in Attachment I (collectively, the "Agreement") represent the entire agreement between Protiviti and Client regarding this engagement, supersede all other oral, written or electronic communications between the parties concerning this engagement, and shall be binding on and inure to the benefit of the parties and their respective successor

and permitted assigns. This Agreement has been entered into solely between Client and Protiviti, and no third-party beneficiaries are created hereby.

Please indicate your acceptance of this Agreement by signing where indicated below and returning it to us. We look forward to the opportunity to assist you in this project. Please contact me at (804) 644-7000 with any questions regarding this Agreement or the project.

Very truly yours,

PROTIVITI INC.

By: 

Guy A. Davis  
Managing Director  
Protiviti Inc.

Date: 1/11/13

AGREED AND ACKNOWLEDGED BY:

By: 

Robert Mattes  
Atari, Inc.

Date: 1/11/13

**ATTACHMENT I**

**Terms and Conditions to Agreement Dated as of January 11, 2013 Between  
Atari, Inc. ("Client") and PROTIVITI INC. ("Protiviti")**

1. **Regulated Activity.** Client understands that Protiviti is not a public accounting firm and does not issue opinions on financial statements or offer any attestation services. To the extent required by applicable law (e.g., the U.S. Securities Exchange Act of 1934 and U.S. Securities and Exchange Commission regulations (referred to collectively as the "**SEC Rules**")), Client (i) acknowledges to Protiviti that it is Client's responsibility to design, establish and maintain a system of internal accounting controls in compliance with applicable laws (including the SEC Rules), including "disclosure controls and procedures" and "internal controls and procedures for financial reporting," as each such term is used and defined under the Sarbanes-Oxley Act of 2002, as amended, and the interpretive guidance and regulations relating to such act, and (ii) acknowledges to Protiviti that it is Client's responsibility to make such disclosures with respect to this engagement that are required by applicable laws (including SEC Rules).
2. **Confidential Information.** Each party (the "**Recipient**") agrees to protect the Confidential Information of the other party (the "**Disclosing Party**") in a manner consistent with the treatment that Recipient accords its own Confidential Information of a similar nature, and the Recipient agrees to use and reproduce Confidential Information only to perform its obligations under this Agreement or for its internal collection, analysis and training purposes. The Recipient may disclose Confidential Information to its employees, agents, and subcontractors, who have a need to know, and employees of any legal entity that it controls, controls it, or with which it is under common control, who have a need to know. Confidential Information is any information which is identified by the Disclosing Party at the time of disclosure as being of a confidential nature (including, but not limited to, business plans, products, trade secret processes or methodologies, software, documentation, design specifications, other technical documents and other proprietary rights or information) or that is disclosed to the Recipient under circumstances that would lead a reasonable person to understand that such information is confidential or proprietary in nature. Confidential Information does not include information that (i) is or becomes generally available to the public without breach by Recipient of its confidentiality obligations under this Agreement, (ii) is received by Recipient from a third party without restriction against disclosure, (iii) was known to Recipient without restriction prior to disclosure, or (iv) is independently developed by Recipient without subsequent use of Disclosing Party's Confidential Information. If Recipient becomes legally compelled (including by deposition, interrogatory, request for documents, subpoena, civil investigative demand or similar process) to disclose any of the Confidential Information, Recipient shall (to the extent legally permitted) provide Disclosing Party with prompt prior written notice of such requirement so that discloser may seek a protective order or other appropriate remedy.
3. **Indemnification.** Client agrees to indemnify, defend and hold Protiviti, its affiliates, directors, officers, employees, vendors, and contractors ("**Protiviti Parties**") harmless from and against any and all losses, damages or liabilities (including costs, expenses and reasonable attorneys' fees) resulting from or related to a Third Party claim arising in any manner out of or in connection with the Services or Deliverables, except to the extent that it is finally judicially determined that the losses, damages or liabilities were the direct result of Protiviti's gross negligence or willful misconduct in the rendering of the Services. The Protiviti Parties are entitled at their election to retain separate counsel; provided that it shall be at their own cost and expense, except where the need for separate counsel arises from a conflict of interest.
4. **No Third-Party Beneficiaries.** This Agreement has been entered into solely between Client and Protiviti, and no third-party beneficiaries are created hereby.
5. **Responsibility for Information.** Protiviti shall be entitled to rely on all information provided by, and the decisions and approvals of, Client in connection with Protiviti's work hereunder. Client hereby releases Protiviti and its personnel from any liability and costs relating to the Services to the extent

that such liability and costs are attributable to any information provided, or decisions or approvals made, by Client personnel that were not complete, accurate or current.

6. **Changes to Services.** Changes to any Services must be agreed upon by Protiviti and Client and will not be considered effective unless and until both parties agree in writing to an amendment.
7. **Bodily Injury or Real Property Damages.** Protiviti and Client shall indemnify, defend and hold harmless the other party for any losses for bodily injury or damages to real property resulting directly from the indemnifying party's negligence or willful misconduct.
8. **Limitation of Liability.** Notwithstanding anything to the contrary in this Agreement, Client and Protiviti agree that, regardless of the legal theory asserted (including, but not limited to, breach of contract, warranty, negligence or tort): (i) Protiviti's entire liability to Client or any person asserting claims on behalf of or in the name of Client will not exceed in the aggregate, for all claims, liability, losses, damages or expenses, the total amount of fees paid to Protiviti hereunder with respect to the engagement hereunder provided that this subsection (i) shall not apply to Protiviti's indemnification obligations under this Agreement; and (ii) neither party shall be liable to the other party or any person asserting claims on behalf of or in the name of the other party for consequential, indirect, incidental, punitive or special damages of any nature suffered by Client or Protiviti (including, but not limited to, lost profits or business opportunity costs), provided that this subsection (ii) shall not apply to any indemnification obligations under the Agreement.
9. **Engagement Team Restrictions.** If for any reason any of the employees or subcontractors designated in the Arrangement Letter portion of this Agreement is not able to complete this engagement, Protiviti will provide employees or subcontractors with similar qualifications and experience to complete the assignment. For a period commencing as of the date of this Agreement and ending one (1) year from the date that a Protiviti employee or subcontractor personnel stops providing Services to Client under this Agreement, neither Client nor any of its affiliates shall hire or solicit such individual. If Client hires or solicits any such Protiviti employee within the proscribed time period above, Client shall pay Protiviti a fee equal to the annual salary of such individual as liquidated damages. If Client hires or solicits any Protiviti subcontractor personnel within the proscribed time period above, Client shall pay Protiviti a fee equal to one percent (1%) for each thousand dollars of such subcontractor personnel's proposed annual compensation with Client or its affiliates, including bonuses, up to a maximum of 35% as liquidated damages.
10. **Workspace.** Client shall provide reasonable workspace for Protiviti personnel at its work sites, as well as occasional administrative support services related to the Services. Client shall provide Protiviti personnel with any necessary safety orientation and security access for work on Client's premises.
11. **Warranties.** NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED IN THIS AGREEMENT, PROTIVITI MAKES NO WARRANTIES, EXPRESS OR IMPLIED, WHETHER ARISING BY OPERATION OF LAW, COURSE OF PERFORMANCE OR DEALING, CUSTOM, USAGE IN THE TRADE OR PROFESSION OR OTHERWISE, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY, NONINFRINGEMENT AND FITNESS FOR A PARTICULAR PURPOSE.
12. **Proprietary Rights in Deliverables and Data.** Subject to the terms of this Agreement and Client's fulfillment of all payment obligations hereunder, Protiviti agrees that Client shall own the copyright in the Deliverables, excluding any Protiviti Proprietary Materials (as defined below) and any third-party software that is incorporated into the Deliverables. Client acknowledges that as part of performing Services, Protiviti may utilize proprietary copyrights, patents, trade secrets, software, ideas, concepts, know-how, tools, models, processes, methodologies and techniques (including any derivatives, enhancements or modifications thereto) which have been originated or developed by Protiviti, or which have been purchased by, or licensed to, Protiviti (collectively, "**Protiviti Proprietary Materials**"). Client agrees that Protiviti retains all right, title, and interest in the Protiviti Proprietary



Materials. Subject to the terms of this Agreement and Client's fulfillment of all payment obligations hereunder, Protiviti grants and Client accepts a nonexclusive, nontransferable license to use the Protiviti Proprietary Materials solely to the extent necessary to make use of the Deliverables as contemplated by this Agreement.

- 13. Termination of Agreement.** Either party may at any time and without cause terminate this Agreement by providing 30 days' prior written notice of termination to the other party. The rights and obligations set forth in Sections 2, 3, 5, 7, 8, 9, 11, and 12 shall survive termination of this Agreement. After conclusion of the work contemplated herein or the termination or expiration of this Agreement, for so long as the Client and Protiviti are actively negotiating a new agreement for Protiviti's provision of additional Services to Client that are substantially similar to those provided under this Agreement, the provisions of this Agreement, including any payment terms, shall apply to such Services provided by Protiviti prior to the finalization of such new agreement.
- 14. Governing Law.** This Agreement and the rights and duties of the parties hereunder shall be governed by, and construed in accordance with, the laws of the State of New York, without regard to its conflict of laws provisions.
- 15. Expenses.** Client shall reimburse Protiviti for any fees or expenses (including, but not limited to, legal expenses) reasonably incurred by it in connection with providing evidence in, or preparing to serve or serving as a witness with respect to, any lawsuits, investigations, claims or other proceedings in any way connected with, or related to, the Services.
- 16. Notice.** All notices or other communications required or desired to be sent to either party shall be in writing and sent by first class mail, postage prepaid, by next-day courier or by facsimile, to the attention of the person identified below, at the address shown below or to the facsimile number shown below. Either party may change such person, address or facsimile number by written notice to the other party. Notice shall be effective on the fifth (5<sup>th</sup>) business day after mailing, on the first (1<sup>st</sup>) day after the date of sending via next-day courier, or on the date of transmission if sent by facsimile (provided that notice shall be effective on the first (1<sup>st</sup>) business day following the date of transmission if transmission is effected on a non-business day).

Protiviti: Protiviti Inc.  
Attn: Guy Davis  
Managing Director  
1051 East Cary Street, Suite 602  
Richmond, VA 23219  
Facsimile: (804) 644-7055  
Suzanne.Roski@protiviti.com

cc: Protiviti Inc.  
Attn: Legal Department  
50 California Street, 17th Floor  
San Francisco, CA 94111

Client: Atari, Inc.  
Attn: Robert Mattes  
Chief Financial Officer  
475 Park Avenue South  
Twelfth Floor  
New York, NY 10016  
robert.mattes@atari.com

17. **Assignment.** Neither Protiviti nor Client may assign this Agreement, by operation of law or otherwise, without the prior written consent of the other party. Any assignment in violation of this provision shall be deemed to be null and void.
18. **Employment Practices.** Both parties agree to comply with all applicable equal employment opportunity laws, including, but not limited to, Title VII of the 1964 Civil Rights Act, the Civil Rights Act of 1991, the Americans with Disabilities Act, the affirmative action requirements of Executive Order 11246, the Rehabilitation Act of 1973, as amended, and the Vietnam Era Veterans Readjustment Assistance Act of 1974, as amended.
19. **Force Majeure.** Neither party shall be liable for any default or delay in the performance of its obligations (except for payment obligations) under this Agreement if such default or delay is caused by an act of God or other circumstance outside the reasonable control of the party, including, but not limited to, fire, flood, earthquake, natural disasters or other acts of God, terrorist acts, riots, civil disorders, freight embargoes, government action, or the like.
20. **Severability.** If any term of the Agreement is found to be illegal, invalid or unenforceable under any applicable law, such term shall, insofar as it is severable from the remaining terms, be deemed omitted from the Agreement and shall in no way affect the legality, validity or enforceability of the remaining terms.
21. **Waiver.** No waiver shall be deemed to have been made by either party unless it is expressed in writing and signed by the waiving party. The failure of either party to insist in any one or more instances upon strict performance of any of the terms of provisions of this Agreement, or to exercise any option or election herein contained, shall not be construed as a waiver or relinquishment for the future of such terms, provisions, option or election, and no waiver by either party of any one or more of its rights or remedies under this Agreement shall be deemed to be a waiver of any prior or subsequent rights or remedies hereunder or at law.
22. **Headings and Interpretation.** The section headings in this Agreement are inserted for convenience only and shall not affect in any way the meaning or interpretation of the Agreement. All parties hereto have participated substantially in the negotiation and drafting of this Agreement and each party hereby disclaims any defense or assertion that any ambiguity herein should be construed against the drafter of the Agreement.
23. **Regulatory Compliance.** Client acknowledges and agrees that it is responsible for its own legal representation and guidance related to the Services or Deliverables, and that it will consult its own legal resources before acting upon any Services or Deliverables. Client further acknowledges and agrees that Protiviti is not a law firm and is not providing legal advice or analysis and that Protiviti has not engaged legal counsel with respect to the Services or Deliverables.
24. **Business Contact Information.** Client authorizes Protiviti and its affiliated entities (and their successors and assigns and contractors) to store and use Client's business contact information wherever they do business, in connection with Protiviti's and its affiliated entities' services and in furtherance of Protiviti's and its affiliated entities' business relationship with Client. Client is responsible for obtaining any consent necessary for such authorization.