

A10 Networks, Inc.
2309 Bering Drive
San Jose, CA 95131

**EC America Rider to Product Specific License Terms and Conditions
(for U.S. Government End Users)**

1. **Scope.** This Rider and the attached **A10 Networks, Inc.** ("Manufacturer") product specific license terms establish the terms and conditions enabling EC America ("Contractor") to provide Manufacturer's information technology products and services to Ordering Activities under EC America's GSA MAS IT70 contract number GS-35F-0511T (the "Schedule Contract"). Installation and use of the information technology shall be in accordance with this Rider and Manufacturer Specific Terms attached hereto, unless an Ordering Activity determines that it requires different terms of use and Manufacturer agrees in writing to such terms in a valid delivery order placed pursuant to the Schedule Contract.

2. **Applicability.** Whereas GSA and EC America agreed at the time of Schedule Contract award upon a base set of terms and conditions applicable to all manufacturers and items represented on the Schedule Contract; and Whereas, the parties further agreed that all product specific license, warranty and software maintenance terms and conditions would be submitted at the time each new manufacturer was to be added to the Schedule Contract; Now, Therefore, the parties hereby agree that the product specific license, warranty and software maintenance terms set forth in Attachment A hereto (the "Manufacturer Specific Terms" or the "Attachment A Terms") are incorporated into the Schedule Contract, but only to the extent that they are consistent with Federal law (e.g., the Anti-Deficiency Act (31 U.S.C. § 1341), the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 *et seq.*), the Prompt Payment Act (31 U.S.C. §§ 3901 *et seq.*), the Anti-Assignment statutes (31 U.S.C. § 3727 and 41 U.S.C. § 15), DOJ's jurisdictional statute 28 U.S.C. § 516 (Conduct of Litigation Reserved to the Department of Justice (DOJ), and 28 U.S.C. § 1498 (Patent and copyright cases)). To the extent any Attachment A Terms are inconsistent with Federal law (See, FAR 12.212(a)), such inconsistent terms shall be superseded, unenforceable and of no legal force or effect in all resultant orders under the Schedule Contract, including but not limited to the following provisions:

- a) **Contracting Parties.** The GSA Customer ("Licensee") is the "Ordering Activity", defined as the entity authorized to order under GSA MAS contracts as set forth in GSA Order OGP 4800.2I, as may be revised from time to time.
- b) **Changes to Work and Delays.** Subject to GSAR Clause 552.238-81, Modifications (Federal Supply Schedule) (April 2014) (Alternate I – JUN 2016) and (Alternate II – JUN 2016), and 52.212-4(f) Excusable Delays (JUN 2010) regarding which the GSAR and the FAR provisions take precedence.
- c) **Contract Formation.** Subject to FAR 1.601(a) and FAR 43.102, the GSA Customer Purchase Order must be signed by a duly warranted Contracting Officer, in writing. The same requirement applies to contract modifications affecting the rights of the parties. All terms and conditions intended to bind the Government must be included within the contract signed by the Government.
- d) **Termination.** Clauses in the Manufacturer Specific Terms referencing termination or cancellation are superseded and not applicable to any GSA Customer order. Termination shall be governed by the FAR, the underlying GSA Schedule Contract and the terms in any applicable GSA Customer Purchase Orders. If the Contractor believes the GSA Customer to be in breach, it must file a claim with the Contracting Officer and continue to diligently pursue performance. In commercial item contracting under FAR 12.302(b), the FAR provisions dealing with disputes and continued performance cannot be changed by the Contracting Officer.
- e) **Choice of Law.** Subject to the Contracts Disputes Act, the validity, interpretation and enforcement of this Rider shall be governed by and construed in accordance with the Federal laws of the United States. In the event the Uniform Computer Information Transactions Act (UCITA) or any similar Federal laws or regulations are enacted, to the extent allowed by Federal law, they will not apply to this Rider or the underlying Schedule Contract.
- f) **Equitable remedies.** Equitable remedies are generally not awarded against the Government absent a statute providing therefore. In the absence of a direct citation to such a statute, all clauses in the Manufacturer Specific Terms referencing equitable remedies are superseded and not applicable to any GSA Customer order.
- g) **Unilateral Termination.** Unilateral termination by the Contractor does not apply to a GSA Customer Purchase Order and all clauses in the Manufacturer Specific Terms referencing unilateral termination rights of the Manufacturer are hereby superseded.
- h) **Unreasonable Delay.** Subject to FAR 52.212-4(f) Excusable delays, the Contractor shall be liable for default unless the nonperformance is caused by an occurrence beyond the reasonable control of the Contractor and without its fault or negligence such as, acts of God or the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. The Contractor shall notify the Contracting Officer in writing as soon as it is reasonably possible after commencement of any excusable delay, setting forth the full particulars in connection therewith, shall remedy such occurrence with all reasonable dispatch and shall promptly give written notice to the Contracting Officer of the cessation of such occurrence.

- i) **Assignment.** All clauses regarding the Contractor's assignment are subject to FAR 52.232-23, Assignment of Claims (JAN 1986) and FAR 42.12 Novation and Change-of-Name Agreements (Sep. 2013). All clauses governing the Contractor's assignment in the Manufacturer Specific Terms are hereby superseded.
- j) **Waiver of Jury Trial.** Waivers of Jury Trials are subject to FAR 52.233-1 Disputes (JULY 2002). The Government will not agree to waive any right that it may have under federal law. All clauses governing a waiver of jury trial in the Manufacturer Specific Terms are hereby superseded.
- k) **Government Indemnities.** This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered. The Interim FAR Rule dated June 21, 2013 and the Office of Legal Counsel opinion dated March 12, 2012 prohibit such indemnifications. All Manufacturer Specific Terms referencing customer indemnities are hereby superseded.
- l) **Contractor Indemnities.** All Manufacturer Specific Terms that violate DOJ's jurisdictional statute (28 U.S.C. § 516) by requiring that the Government give sole control over the litigation and/or settlement to the Contractor are hereby superseded. Nothing contained in the Manufacturer's Specific terms shall be construed in derogation of the U.S. Department of Justice's right to defend any claim or action brought against the U.S., pursuant to its jurisdictional statute.
- m) **Renewals.** All Manufacturer Specific Terms that provide for automatic renewals violate the Anti-Deficiency Act and are hereby superseded. This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered.
- n) **Future Fees or Penalties.** All Manufacturer Specific Terms that require the Government to pay any future fees, charges or penalties are hereby superseded unless specifically authorized by existing statutes, such as the Prompt Payment Act (31 U.S.C. § 3901 et seq.) or Equal Access To Justice Act (5 U.S.C. § 504; 28 U.S.C. § 2412).
- o) **Taxes.** Taxes are subject to FAR 52.212-4(k), which provides that the contract price includes all applicable federal, state, local taxes and duties. Contractor shall state separately on its invoices, taxes excluded from the fees, and the GSA Customer agrees to either pay the amount of the taxes (based on the current value of the equipment or services) to Contractor or provide it evidence necessary to sustain an exemption, in accordance with FAR 52.229-1 and FAR 52.229-3.
- p) **Third Party Terms.** When the end user is an instrumentality of the U.S., no license terms bind the GSA Customer unless included verbatim (not by reference) in the EULA, and the EULA is made an attachment to the underlying GSA Schedule Contract. All terms and conditions affecting the GSA Customer must be contained in a writing signed by a duly warranted Contracting Officer. Any third party manufacturer shall be brought into the negotiation, or the components acquired separately under federally-compatible agreements, if any. All Manufacturer Specific Terms that incorporate third party terms by reference are hereby superseded.
- q) **Dispute Resolution and Standing.** Any disputes relating to the Manufacturer Specific Terms or to this Rider shall be resolved in accordance with the FAR, the underlying GSA Schedule Contract, any applicable GSA Customer Purchase Orders, and the Contract Disputes Act. The Ordering Activity expressly acknowledges that EC America as contractor, on behalf of the Manufacturer, shall have standing to bring such claim under the Contract Disputes Act.
- r) **Advertisements and Endorsements.** Pursuant to GSAR 552.203-71, use of the name or logo of any U.S. Government entity is prohibited. All Manufacturer Specific Terms that allow the Contractor to use the name or logo of a Government entity are hereby superseded.
- s) **Public Access to Information.** EC America agrees that the attached Manufacturer Specific Terms and this Rider contain no confidential or proprietary information and acknowledges the Rider shall be available to the public.
- t) **Confidentiality.** Any provisions in the attached Manufacturer Specific Terms that require the Ordering Activity to keep certain information confidential are subject to the Freedom of Information Act (5 U.S.C. § 552), and any order by a United States Federal Court. When the end user is an instrumentality of the U.S. Government, neither this Rider, the Manufacturer's Specific Terms nor the Schedule Price List shall be deemed "confidential information" notwithstanding marking to that effect. Notwithstanding anything in this Rider, the Manufacturer's Specific Terms or the Schedule Contract to the contrary, the GSA Customer may retain such Confidential Information as required by law, regulation or its bonafide document retention procedures for legal, regulatory or compliance purposes; provided however, that such retained Confidential Information will continue to be subject to the confidentiality obligations of this Rider, the Manufacturer's Specific Terms and the Schedule Contract.

- u) **Alternate Dispute Resolution.** The GSA Customer cannot be forced to mediate or arbitrate. Arbitration requires prior guidance by the head of a federal agency promulgated via administrative rulemaking according to 5 U.S.C. § 575(c). GSA has not issued any because it considers the Board of Contract Appeals to be an adequate, binding ADR alternative. All Manufacturer Specific Terms that allow the Contractor to choose arbitration, mediation or other forms of alternate dispute resolution are hereby superseded.
- v) **Ownership of Derivative Works.** Provisions purporting to vest exclusive ownership of all derivative works in the licensor of the standard software on which such works may be based are superseded. Ownership of derivative works should be as set forth in the copyright statute, 17 U.S.C. § 103 and the FAR clause at 52.227-14, but at a minimum, the GSA Customer shall receive unlimited rights to use such derivative works at no further cost.

3. Order of Precedence/Conflict. To the extent there is a conflict between the terms of this Rider and the terms of the underlying Schedule Contract or a conflict between the terms of this Rider and the terms of an applicable GSA Customer Purchase Order, the terms of the GSA Schedule Contract or any specific, negotiated terms on the GSA Customer Purchase Order shall control over the terms of this Rider. Any capitalized terms used herein but not defined, shall have the meaning assigned to them in the underlying Schedule Contract.

ATTACHMENT A CONTRACTOR SUPPLEMENTAL PRICELIST INFORMATION AND TERMS

A10 NETWORKS

A10 NETWORKS LICENSE, WARRANTY AND SUPPORT TERMS

License. Conditioned upon compliance with the terms and conditions of this Attachment A, Contractor, grants to Ordering Activity a nonexclusive and nontransferable license to use for Ordering Activity's business purposes the Software and the Documentation for which Ordering Activity has paid all required fees. "Documentation" means written information (whether contained in user or technical manuals, training materials, specifications or otherwise) specifically pertaining to the product or products and made available by Contractor in any manner (including on CD-Rom, or on-line).

Unless otherwise expressly provided in the Documentation, Ordering Activity shall use the Software solely as embedded in or for execution on A10 Networks equipment owned or leased by Ordering Activity and used for Ordering Activity's business purposes *General Limitations.* This is a license, not a transfer of title, to the Software and Documentation, and Contractor retains ownership of all copies of the Software and Documentation. Ordering Activity acknowledges that the Software and Documentation contain trade secrets of A10 Networks, its suppliers or licensors, including but not limited to the specific internal design and structure of individual programs and associated interface information. Accordingly, except as otherwise expressly provided under this Attachment A, Ordering Activity shall have no right and Ordering Activity specifically agrees not to:

- (i) transfer, assign or sublicense its license rights to any other person or entity, or use the Software on unauthorized or secondhand A10 Networks equipment
- (ii) make error corrections to or otherwise modify or adapt the Software or create derivative works based upon the Software, or permit third parties to do the same
- (iii) reverse engineer or decompile, decrypt, disassemble or otherwise reduce the Software to human readable form, except to the extent otherwise expressly permitted under applicable law notwithstanding this restriction
- (iv) disclose, provide, or otherwise make available trade secrets contained within the Software and Documentation in any form to any third party without the prior written consent of Contractor. Ordering Activity shall implement reasonable security measures to protect such trade secrets.

Software, Upgrades and Additional Products or Copies. For purposes of this Attachment A, "Software" and "Products" shall include (and the terms and conditions of this Attachment A shall apply to) computer programs, including firmware and hardware, as provided to Ordering Activity by Contractor, and any upgrades, updates, bug fixes or modified versions thereto (collectively, "Upgrades") or backup copies of the Software licensed or provided to Ordering Activity by Contractor.

OTHER PROVISIONS OF THIS ATTACHMENT A:

- (1) ORDERING ACTIVITY HAS NO LICENSE OR RIGHT TO USE ANY ADDITIONAL COPIES OR UPGRADES UNLESS ORDERING ACTIVITY, AT THE TIME OF ACQUIRING SUCH COPY OR UPGRADE, ALREADY HOLDS A VALID LICENSE TO THE ORIGINAL SOFTWARE AND HAS PAID THE APPLICABLE GSA FEE FOR THE UPGRADE OR ADDITIONAL COPIES
- (2) USE OF UPGRADES IS LIMITED TO A10 NETWORKS EQUIPMENT FOR WHICH ORDERING ACTIVITY IS THE ORIGINAL END USER PURCHASER OR LEASEE OR WHO OTHERWISE HOLDS A VALID LICENSE TO USE THE SOFTWARE WHICH IS BEING UPGRADED
- (3) THE MAKING AND USE OF ADDITIONAL COPIES IS LIMITED TO NECESSARY BACKUP PURPOSES ONLY.

Limited Hardware Warranty. Contractor provides a one (1) year limited product hardware warranty to Ordering Activities of A10 products. Contractor warrants that the product hardware will be free from defects in materials and workmanship that result in a material deviation from the applicable published A10 technical specifications ("Hardware System Failure"). Upon a Hardware System Failure, Contractor will repair or replace such product hardware within 3 working days of its receipt of the failed hardware, if in advance of its receipt, such hardware (1) was evaluated by A10 Technical Support in person or via telephone, and (2) received a Technical Support RMA number from Contractor through A10 Networks. Further, the product hardware must be shipped, shipment prepaid, to Contractor through A10 Networks, and the RMA number must be clearly indicated on the shipping box and papers.

Limited Software Warranty. Contractor provides a ninety (90) day limited software warranty to Ordering Activities of A10 software accompanying A10 hardware or licensed separately. Contractor warrants that the media on which the software is delivered will be free of defects in material and workmanship for a period of ninety (90) days following delivery of the software to Ordering Activity. Contractor warrants that the software, when used in accordance with the terms of this Attachment A, will operate substantially as set forth in the applicable A10 Documentation for a period of ninety (90) days following delivery of the software to licensee.

Warranty Limitations. Contractor's warranties as set forth herein ("Warranty") are contingent on proper use of the A10 hardware and software ("Products") and do not apply if the Products have been modified without Contractor's written approval, or if the Products' serial number label is removed, or if the Product has been damaged. The terms of the Warranty are limited to the remedies as set forth in this Warranty.

THIS WARRANTY IS PROVIDED IN LIEU OF ALL OTHER RIGHTS, CONDITIONS AND WARRANTIES. CONTRACTOR MAKES NO OTHER EXPRESS OR IMPLIED WARRANTY WITH RESPECT TO THE SOFTWARE, HARDWARE, PRODUCTS, DOCUMENTATION OR A10 SUPPORT, INCLUDING, WITHOUT LIMITATION, ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT OF THIRD PARTY RIGHTS. CONTRACTOR DOES NOT WARRANT THAT ANY PRODUCTS WILL BE ERROR-FREE, OR THAT ANY DEFECTS THAT MAY EXIST IN ITS PRODUCTS CAN BE CORRECTED.

BASIC WARRANTY SERVICE PROGRAM

Coverage for A10 Networks products are described below. Additional Support coverage can be purchased with Ordering Activity's A10 Products. Please refer to the Contractor's GSA Price List for Annual Support & Services fees.
Phone Support - 90 days from date of purchase

During the 90-day Software Warranty period, phone support is offered 5 days per week (8:30 a.m. to 5:30 p.m. Pacific Time, Monday through Friday, except holidays). Calls left after hours will be returned the next business day. Access to Technical Support after this 90-day warranty period is on a commercially reasonable basis (unless a Support Contract is purchased for all systems owned by the Ordering Activity).

Contact Contractor through A10 Networks Technical Support at +1 (408) 325-8676 or +1 (888) TACS-A10 for North America toll free access.

Software Updates - 90 days from date of purchase

Software Updates for system software and Software Products released by Contractor through A10 Networks within 90 days of Ordering Activity's purchase of an A10 product are available by contacting A10 Networks Technical Support. System Software Updates include applicable minor releases (e.g. Release 1.1.0 to 1.2.0) to the A10 Networks family of products as well as major feature releases (e.g. Release 1.x to 2.0). Ordering Activity must have access to the Internet for Web Browser or FTP downloads as directed by Technical Support.

Software Updates released after the initial 90-day warranty period are available as an upgrade product for the then applicable GSA price.

Advanced Hardware Replacement Service - 30 days from date of purchase

In the event of a hardware system failure, during the first 30 days of ownership, Advanced Hardware Replacement allows the Ordering Activity to request that a replacement unit be shipped prior to the return of the failed unit. This service requires a Phone Support evaluation of the failed system by Technical Support personnel, and the issuance of a Technical Support RMA (Return Material Authorization) number. RMAs issued by 12:00 (noon) Pacific Time will be shipped via overnight carrier that same day whenever possible. RMAs issued after 12:00 p.m. will be shipped the following business day. Contractor through A10 Networks must receive the failed unit within 14 days after issuance of the RMA to avoid replacement charges. Saturday delivery service is available for an extra charge.

Hardware Repair Service - After 30 days through 90 days from date of purchase

In the event of a hardware system failure past the first 30-days but within the first 90 days of ownership, the unit will be either repaired or at Contractor through A10 Networks' option, replaced with a new or reconditioned unit of equal or better value. This service requires a Phone Support evaluation of the failed system by an A10 Networks Technical Support personnel, and the issuance of a Technical Support RMA number. The Ordering Activity must ship the failed unit, pre-paid, to Contractor through A10 Networks. The RMA number must be clearly indicated on the box and shipping papers. Failure to do so will result in delays. A repaired or replacement unit will be shipped at A10 Networks' expense within 3 business days after receipt of the failed unit.

BASIC SUPPORT SERVICE PROGRAM

Coverage for A10 Networks products under the Basic Support Service Program are described below. Please refer to the Contractor's current GSA Price List for Annual Support & Services fees.

Phone Support – 1, 2 and 3 year terms from date of purchase

For the duration of the term purchased, phone support is offered 5 days per week between the hours of 8:30 a.m. to 5:30 p.m., except holidays (Pacific Time, Monday through Friday). Calls left after hours will be returned the next business day. Access to

Technical Support under the Basic Support Service Program period is on a commercially reasonable basis and Contractor through A10 Networks will make every reasonable effort to provide fast and efficient service. Ordering Activities MUST register their A10 products and support programs to obtain technical support from A10 Networks. Contact A10 Networks Technical Support at +1 (408) 325-8676 or +1 (888) TACS-A10 for North America toll free access.

Software Updates - 1, 2 and 3 year terms from date of purchase

Software Updates for system software and Software Products released by Contractor through A10 Networks are provided for the duration of the Basic Support Service Program purchased by contacting A10 Networks Technical Support. System Software Updates include applicable minor releases (e.g. Release 1.1.0 to 1.2.0) to the A10 Networks family of products as well as major feature releases (e.g. Release 1.x to 2.0). Ordering Activity must have access to the Internet for Web Browser or FTP downloads as directed by Technical Support.

Ordering Activities MUST register their A10 products and support programs to obtain software updates from Contractor through A10 Networks.

Advanced Hardware Replacement Service – 30 days from date of purchase

In the event of a hardware system failure, during the first 30 days from date of purchase, Advanced Hardware Replacement allows the Ordering Activity to request that a replacement unit be shipped prior to the return of the failed unit. This service requires a Phone Support evaluation of the failed system by Technical Support personnel, and the issuance of a Technical Support RMA (Return Material Authorization) number. RMAs issued by 12:00 (noon) Pacific Time will be shipped via overnight carrier that same day whenever possible. RMAs issued after 12:00 p.m. will be shipped the following business day. Contractor through A10 Networks must receive the failed unit within 14 days after issuance of the RMA. Saturday delivery service is available for an extra charge.

Hardware Repair Service - 1, 2 and 3 year terms from date of purchase

In the event of a hardware system failure during the period of the Basic Support Service Program purchased, the unit will be either repaired or at Contractor through A10 Networks' option or replaced with a new or reconditioned unit of equal or better value. This service requires a Phone Support evaluation of the failed system by an A10 Networks Technical Support personnel, and the issuance of a Technical Support RMA number. The Ordering Activity must ship the failed unit to A10 Networks. The RMA number must be clearly indicated on the box and shipping papers. Failure to do so will result in delays. A repaired or replacement unit will be shipped at A10 Networks' expense within 3 business days after receipt of the failed unit.

GOLD SUPPORT SERVICE PROGRAM

Coverage for A10 Networks products under the Gold Support Service Program are described below. Please refer to the Contractor's current GSA Price List for Annual Support & Services fees.

Phone Support – 1, 2 and 3 year terms from date of purchase

For the duration of the term purchased, phone support is offered 7 days per week 24 hours a day. Access to Technical Support under the Gold Support Service Program period is on a commercially reasonable basis and Contractor through A10 Networks will make every reasonable effort to provide fast and efficient service.

Ordering Activities MUST register their A10 products and support programs to obtain technical support from Contractor through A10 Networks. Contact A10 Networks Technical Support at +1 (408) 325-8676 or +1 (888) TACS-A10 for North America toll free access.

Software Updates - 1, 2 and 3 year terms from date of purchase

Software Updates for system software and Software Products released by Contractor through A10 Networks are provided for the duration of the Gold Support Service Program purchased by contacting A10 Networks Technical Support. System Software Updates include applicable minor releases (e.g. Release 1.1.0 to 1.2.0) to the A10 Networks family of products as well as major feature releases (e.g. Release 1.x to 2.0). Ordering Activity must have access to the Internet for Web Browser or FTP downloads as directed by Technical Support.

Ordering Activities MUST register their A10 products and support programs to obtain software updates from A10 Networks.

Advanced Hardware Replacement Service - 1, 2 and 3 year terms from date of purchase

In the event of a hardware system failure, during the period of the Gold Support Service Program purchased, Advanced Hardware Replacement allows the customer to request that a replacement unit be shipped prior to the return of the failed unit. This service requires a Phone Support evaluation of the failed system by Technical Support personnel, and the issuance of a Technical Support RMA (Return Material Authorization) number. RMAs issued by 12:00 (noon) Pacific Time will be shipped via overnight carrier that same day whenever possible. RMAs issued after 12:00 p.m. will be shipped the following business day. Contractor through A10 Networks must receive the failed unit within 14 days after issuance of the RMA.

Hardware Repair Service - 1, 2 and 3 year terms from date of purchase

In the event of a hardware system failure during the period of the Gold Support Service Program purchased, the unit will be either repaired or at A10 Networks' option or replaced with a new or reconditioned unit of equal or better value. This service requires a Phone Support evaluation of the failed system by A10 Networks Technical Support personnel, and the issuance of a Technical Support RMA number. The Ordering Activity must ship the failed unit to Contractor through A10 Networks. The RMA number must be clearly indicated on the box and shipping papers. Failure to do so will result in delays. A repaired or replacement unit will be shipped at A10 Networks' expense within 3 business days after receipt of the failed unit.