

Arbor Networks, Inc.  
76 Blanchard Road  
Burlington, MA 01803

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

1. **Scope.** This Rider and the attached Arbor 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extent any Attachment A Terms are inconsistent with Federal law (See, FAR 12.212(a)), such inconsistent terms shall be superseded, unenforceable and of no legal force or effect in all resultant orders under the Schedule Contract, including but not limited to the following provisions: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 – ARBOR NETWORKS, INC.

### LICENSING AGREEMENT

THIS LICENSING AGREEMENT (“Agreement”) is entered into by and between Arbor Networks, Inc., a Delaware corporation with its principal office at 76 Blanchard Road, Burlington, MA 01803 (“Arbor”) and the Ordering Activity under GSA Schedule contracts (“You/Your” or “Ordering Activity”). Arbor and You are also referred to individually as a “Party” and collectively as “Parties.”

**PURPOSE AND SCOPE.** This Agreement sets forth the terms and conditions under which Arbor agrees to grant a license to use Arbor’s Product (“Software”) and to provide related Services to You. It is intended by the Parties that this Agreement govern any purchase made during the term of this Agreement.

NOW, THEREFORE, in consideration of the promises and mutual covenants hereinafter set forth, and intending to be legally bound hereby, the Parties agree as follows:

**1. License to Use.** Arbor grants You a limited, revocable, non-exclusive, non-transferable license (the “License”) to use Arbor’s software in machine-readable form that is shipped to You and/or identified in the Purchase Order and on the attached form (“Form”) and accompanying documentation (collectively “Product”) on the machines on which the software has been installed or authorized by Arbor. The term of the license shall be as stated on the Form. Any future trial or purchase of Product and services is governed exclusively by this Agreement and may be effected by You providing a purchase order or trial request. Trial term licenses for Product shall be for the longer of thirty (30) days from date of Product’s delivery to You or as stated on the Form supplied by Arbor. Any feed, release, revision or enhancement to the Software that Arbor may furnish to You becomes a part of Product and is governed by this Agreement. Specifically for Product, if You have not purchased a license by the end of a Product trial term or You breach this Agreement, You agree to return Product and any machine provided by Arbor to Arbor in its original condition less normal wear and tear in original packaging or equivalent and in accordance with Arbor’s RMA process within 10 days. If You purchase a license to Product, this Agreement will control that purchase and title to machines (where applicable) provided hereunder vests in You.

**2. Proprietary Rights and Restrictions.** Arbor and/or its licensors and outsourcing vendors (together, “Vendors”) retain all right, title, and interest in the Software and in all copies thereof, and no title to the Software or any intellectual property or other rights therein, are transferred to You other than as specified herein. No right, title or interest to any trademarks, service marks or trade names of Arbor or its Vendors is granted by this Agreement. Software is copyrighted and contains proprietary information and trade secrets belonging to Arbor and/or its Vendors. You will only use Software for Your own internal business purposes. You may not make copies of the Software, other than a single copy in machine-readable format for back-up or archival purposes. You may make copies of the associated documentation for Your internal use only. You shall ensure that all proprietary rights notices on Software are reproduced and applied to any copies. Licenses are limited to use in accordance with the “Description” on the Form and user documentation. You agree not to cause or permit the reverse engineering or decompilation of the Software or to derive source code therefrom. You may not create derivative works based upon all or part of Software. You may not transfer, lend, lease, assign, sublicense, and/or make available through timesharing, Software, in whole or in part. If you are purchasing spare Product, you are only licensed to use such spare during such time as another Product is removed from service for repair.

**3. Confidentiality.** When disclosing information under this Agreement, the disclosing party will be the “Disclosing Party” and the receiving party will be the “Receiving Party.” The term “Confidential Information” includes: (a) a party’s technical, financial, commercial or other proprietary information including without limitation product roadmaps, software code and documentation, Software, techniques or systems and (b) information or data that is confidential and proprietary to a third party and is in the possession or control of a party. The Receiving Party will not disclose any of the Disclosing Party’s Confidential Information to any third party except to the extent such disclosure is necessary for performance of the Agreement or it can be documented that any such Confidential Information is in the public domain and generally available to the general public without any restriction or license, or is required to be disclosed by any authority having jurisdiction so long as Disclosing Party is provided advance notice of such disclosure by the Receiving Party. Each party’s respective Confidential Information shall remain its own property. Notwithstanding the foregoing, Arbor may use anonymized data from the Product for its business purposes provided that Arbor shall not identify You to any third party as the source of such data. Arbor recognizes that Federal agencies are subject to the Freedom of Information Act, 5 U.S.C. 552, which requires that certain information be released, despite being characterized as “confidential” by the vendor.

**4. Product Warranty, Indemnification.** Arbor warrants, for sixty (60) days from shipment, that Product will perform in compliance with user manuals accompanying Product. If, within sixty (60) days of shipment, You report to Arbor that Product is not performing as described above, and Arbor is unable to correct it within sixty (60) days of the date You report it, You may return the non-performing Product at Arbor's expense, and Arbor will refund amounts paid for such Product. The foregoing is Your sole and exclusive remedy. Arbor agrees to defend You from and against any third party claim or action based on any alleged infringement of any U.S. patent or copyright arising from use of the Product according to the terms and conditions of this Agreement ("Claim"), and Arbor agrees to indemnify You from damages awarded against You in any such Claim or settlement thereof, provided that (i) Arbor is promptly notified in writing of such Claim, (ii) You grant Arbor control of the defense and any related settlement negotiations, and (iii) You cooperate with Arbor in defense of such Claim. Notwithstanding the foregoing, Arbor shall have no liability to You if the infringement results from (a) use of the Product in combination with software not provided by Arbor; (b) modifications to the Product not made by Arbor; (c) use of the Product other than in accordance with the Documentation or this Agreement; or (d) failure to use an updated, non-infringing version of the applicable Product. The foregoing states the entire liability of Arbor with respect to infringement. Nothing contained herein shall be construed in derogation of the U.S. Department of Justice's right to defend any claim or suit brought against the U.S. pursuant to its jurisdictional statute 28 U.S.C. § 516.

**5. Limitations.** EXCEPT AS OTHERWISE PROVIDED HEREIN, ARBOR AND ITS THIRD-PARTY VENDORS MAKE NO OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. ARBOR'S AGGREGATE LIABILITY FOR ANY AND ALL CLAIMS ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT, THE PERFORMANCE OF PRODUCT PROVIDED HEREUNDER, AND/OR ARBOR'S PERFORMANCE OF SERVICES, SHALL NOT EXCEED THE CONTRACT PRICE. IN NO EVENT SHALL ARBOR OR ITS VENDORS BE LIABLE FOR ANY INDIRECT, SPECIAL, INCIDENTAL, PUNITIVE, OR CONSEQUENTIAL DAMAGES, INCLUDING, WITHOUT LIMITATION, DAMAGES RESULTING FROM LOSS OF PROFITS, DATA, OR BUSINESS ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT, EVEN IF ARBOR HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN NO EVENT SHALL ARBOR BE LIABLE FOR ANY UNAUTHORIZED ACCESS TO, ALTERATION OF, OR THE DELETION, DESTRUCTION DAMAGE, LOSS OR FAILURE TO STORE ANY OF YOUR CONTENT OR OTHER DATA. YOUR SOLE RECOURSE HEREUNDER SHALL BE AGAINST ARBOR AND YOU SHALL HOLD THIRD PARTY VENDORS HARMLESS.

**6. Product Installation and Support.** Installation purchased directly from Arbor with Product is governed by this Agreement, but Arbor shall not be required to continue any installation for longer than 90 days following receipt of Product. If a perpetual license is granted hereunder, You may purchase support ("Support") for at least the initial year from shipment. Thereafter, Arbor will invoice Ordering Activity at the end of the Support term for additional one-year periods so long as Product is covered by Support. Failure to pay such invoice will result in a lapse of Your Support. If Support lapses, upon renewal of Support you shall pay all Support fees back to the date Support lapsed. With Support, Arbor will provide You (i) telephone and email based technical support in accordance with the level purchased and (ii) all new maintenance releases to Product when and if available during Your participation in Support. Arbor shall not be required to provide Support on any Product (i) for more than twelve months after its general release, or (ii) more than one release behind the currently shipping release. Arbor shall be permitted to subcontract any or all of its services or Support obligations under this Agreement to an affiliated company including, without limitation, Arbor Networks, Inc. in the United States, provided that Arbor shall remain liable for the actions and services provided by such subcontractors at all times.

**7. Export Regulation and Government Rights.** You agree to comply strictly with all U.S. export control laws, including the U.S. Export Administration Act and Export Administration Regulations ("EAR"). Product is prohibited for export or re-export to the list of terrorists supporting countries or to any person or entity on the U.S. Department of Commerce Denied Persons List or on the U.S. Department of Treasury's lists of Specially Designated Nationals, Specially Designated Narcotics Traffickers or Specially Designated Terrorists. If Product is being shipped by Arbor, then it is exported from the U.S. in accordance with the EAR. Diversion contrary to U.S. law is prohibited. If You are licensing Product or its accompanying documentation on behalf of the U.S. Government, it is classified as "Commercial Computer Product" and "Commercial Computer Documentation" developed at private expense, contains confidential information and trade secrets of Arbor and its licensors, and is subject to "Restricted Rights" as that term is defined in the Federal Acquisition Regulation ("FAR"). Contractor/Manufacturer is: Arbor Networks, Inc., and its subsidiaries, Burlington, Massachusetts, USA.

**8. General.** This Agreement is made under the Federal laws of the USA. This Agreement, together with the underlying GSA Schedule Contract, Schedule Pricelist, Purchase Order(s), is the entire agreement between You and Arbor relating to Product and supersedes all prior, contemporaneous and future communications, proposals and understandings with respect to its subject matter. No modification to this Agreement is binding unless in writing and

signed by a duly authorized representative of each party. The waiver or failure of either party to exercise any right provided for herein shall not be deemed a waiver of any further right hereunder. If any provision of this Agreement is held invalid, all other provisions shall continue in full force and effect. All licenses and rights granted hereunder shall terminate upon expiration of the term or Your breach of this Agreement pursuant to the FAR and the Contract Disputes Act. Excusable delays shall be governed by FAR 52.212-4(f). Neither party may assign its rights, duties or obligations under this Agreement without the prior written consent of the other party and any attempt to do so shall be void; except to a successor by merger, acquisition or restructuring that assumes the rights and duties of this Agreement. The following sections survive termination or expiration of this Agreement: Proprietary Rights and Restrictions, Confidentiality, Limitations, Export and Government Rights, and General. All Product shipments are FCA Shipping Point and title to machines shall pass upon shipment.

IN WITNESS WHEREOF, the duly authorized officers or representatives of the parties have executed this Agreement as of this day \_\_\_\_\_, 20\_\_, intending legally to be bound.

Arbor Networks, Inc.

Ordering Activity Name

BY: \_\_\_\_\_

BY: \_\_\_\_\_

Print Name: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_