



# West Virginia Purchasing Division

2019 Washington Street, East  
Charleston, WV 25305  
Telephone: 304-558-2306  
General Fax: 304-558-6026  
Bid Fax: 304-558-3970

The following documentation is an electronically-submitted vendor response to an advertised solicitation from the *West Virginia Purchasing Bulletin* within the Vendor Self-Service portal at [wvOASIS.gov](http://wvOASIS.gov). As part of the State of West Virginia's procurement process, and to maintain the transparency of the bid-opening process, this documentation submitted online is publicly posted by the West Virginia Purchasing Division at [WVPurchasing.gov](http://WVPurchasing.gov) with any other vendor responses to this solicitation submitted to the Purchasing Division in hard copy format.

Header 6

List View

- General Information**
- Contact
- Default Values
- Discount
- Document Information
- Clarification Request

Procurement Folder: 1918839

Procurement Type: Central Master Agreement

Vendor ID:

Legal Name: Software Information Resource Corp

Alias/DBA:

Total Bid: \$0.00

Response Date:

Response Time:

Responded By User ID:

First Name:

Last Name:

Email:

Phone:

SO Doc Code: CRFQ

SO Dept: 0231

SO Doc ID: OOT2600000023

Published Date: 3/10/26

Close Date: 3/24/26

Close Time: 13:30

Status: Closed

Solicitation Description:

Total of Header Attachments: 6

Total of All Attachments: 6



Department of Administration  
 Purchasing Division  
 2019 Washington Street East  
 Post Office Box 50130  
 Charleston, WV 25305-0130

**State of West Virginia  
 Solicitation Response**

**Proc Folder:** 1918839  
**Solicitation Description:** Addendum No. 1 - Network Load Balancer Appliances  
**Proc Type:** Central Master Agreement

Solicitation Closes	Solicitation Response	Version
2026-03-24 13:30	SR 0231 ESR03242600000006320	1

**VENDOR**  
 VS0000015925  
 Software Information Resource Corp

**Solicitation Number:** CRFQ 0231 OOT2600000023  
**Total Bid:** 0  
**Response Date:** 2026-03-24  
**Response Time:** 11:11:59  
**Comments:** Please see SIRC quote D26-J3895 for pricing

**FOR INFORMATION CONTACT THE BUYER**  
 Toby L Welch  
 (304) 558-8802  
 toby.l.welch@wv.gov

**Vendor Signature X** **FEIN#** **DATE**

All offers subject to all terms and conditions contained in this solicitation

Line	Comm Ln Desc	Qty	Unit Issue	Unit Price	Ln Total Or Contract Amount
1	A10 Thunder 3350S Network Load Balancers, Pt#: TH335	3.00000	EA	0.000000	0.00

Comm Code	Manufacturer	Specification	Model #
43222634			

**Commodity Line Comments:** Please see SIRC quote D26-J3895 for pricing

**Extended Description:**

A10 Thunder 3350S Network Load Balancers, Part Number: TH3350S-020-CFW-FIPS "or Equal".

Line	Comm Ln Desc	Qty	Unit Issue	Unit Price	Ln Total Or Contract Amount
2	10Gb SR-Optical Transceiver for the A10 Thunder AX 3350 Appl	9.00000	EA	0.000000	0.00

Comm Code	Manufacturer	Specification	Model #
43222634			

**Commodity Line Comments:** Please see SIRC quote D26-J3895 for pricing

**Extended Description:**

10Gb SR-Optical Transceiver for the A10 Thunder AX 3350 Appliance, Part Number: AXSK-SFP+ SR "or Equal"

Line	Comm Ln Desc	Qty	Unit Issue	Unit Price	Ln Total Or Contract Amount
3	(1) seat for training on Application Delivery Controller (AD	1.00000	EA	0.000000	0.00

Comm Code	Manufacturer	Specification	Model #
81112201			

**Commodity Line Comments:** Please see SIRC quote D26-J3895 for pricing

**Extended Description:**

(1) seat for training on Application Delivery Controller (ADC) Administration Course, SKU: AX-TR "or Equal".

Line	Comm Ln Desc	Qty	Unit Issue	Unit Price	Ln Total Or Contract Amount
4	1 each Gold SupportService Program for wo (2) appliances 3yr	2.00000	EA	0.000000	0.00

Comm Code	Manufacturer	Specification	Model #
81112201			

**Commodity Line Comments:** Please see SIRC quote D26-J3895 for pricing

**Extended Description:**

1 each Gold Support Service Program for two (2) appliances listed in section 3.1.1 for a total quantity of 2 Gold Support Service Program "or Equal" for 3 Year period

Line	Comm Ln Desc	Qty	Unit Issue	Unit Price	Ln Total Or Contract Amount
5	1 Basic Support Service Program for one (1) appliance 3Yr	1.00000	EA	0.000000	0.00

Comm Code	Manufacturer	Specification	Model #
81112201			

**Commodity Line Comments:** Please see SIRC quote D26-J3895 for pricing

**Extended Description:**

1 Basic Support Service Program for one (1) appliance listed in section 3.1.1 for a total quantity of 1 Basic Support Service Program "or Equal" for 3 year period.

Line	Comm Ln Desc	Qty	Unit Issue	Unit Price	Ln Total Or Contract Amount
6	Yr4 renewal 1 each Gold Support Service Program for two (2)	2.00000	EA	0.000000	0.00

Comm Code	Manufacturer	Specification	Model #
81112201			

**Commodity Line Comments:** Please see SIRC quote D26-J3895 for pricing

**Extended Description:**

1 each Gold Support Service Program for two (2) appliances listed in section 3.1.1 for a total quantity of 2 Gold Support Service Program "or Equal" Year 4 Renewal

Line	Comm Ln Desc	Qty	Unit Issue	Unit Price	Ln Total Or Contract Amount
7	Yr 4 Renewal 1 Basic Support Service Program for one (1) app	1.00000	EA	0.000000	0.00

Comm Code	Manufacturer	Specification	Model #
81112201			

**Commodity Line Comments:** Please see SIRC quote D26-J3895 for pricing

**Extended Description:**

Yr 4 Renewal 1 Basic Support Service Program for one (1) appliance listed in section 3.1.1 for a total quantity of 1 Basic Support Service Program "or Equal" for 3 year period.

Line	Comm Ln Desc	Qty	Unit Issue	Unit Price	Ln Total Or Contract Amount
8	Yr 5 Renewal 1 each Gold Support Service Program for two (2)	2.00000	EA	0.000000	0.00

Comm Code	Manufacturer	Specification	Model #
81112201			

**Commodity Line Comments:** Please see SIRC quote D26-J3895 for pricing

**Extended Description:**

Yr 5 Renewal 1 each Gold Support Service Program for two (2) appliances listed in section 3.1.1 for a total quantity of 2 Gold Support Service Program "or Equal" Year 4 Renewal

Line	Comm Ln Desc	Qty	Unit Issue	Unit Price	Ln Total Or Contract Amount
9	Yr 5 Renewal 1 Basic Support Service Program for one (1) app	1.00000	EA	0.000000	0.00

Comm Code	Manufacturer	Specification	Model #
81112201			

**Commodity Line Comments:** Please see SIRC quote D26-J3895 for pricing

**Extended Description:**

Yr 5 Renewal 1 Basic Support Service Program for one (1) appliance listed in section 3.1.1 for a total quantity of 1 Basic Support Service Program "or Equal" for 3 year period.

  <p>730 24th ST NW, STE 3, Washington DC 20037-2500</p> <p style="color: red; font-weight: bold;">SIRC is a Women Owned Small Business</p> <h2 style="color: red; text-align: center;">Price Quotation</h2>	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr><td>Date:</td><td>03/24/2026</td></tr> <tr><td>Quote No:</td><td>D26-J3895</td></tr> <tr><td>Quote Expires:</td><td>03/27/2026</td></tr> <tr><td>Shipping Point:</td><td>FOB DEST</td></tr> <tr><td>Terms:</td><td>Net 30</td></tr> <tr><td>Shipping Method:</td><td>ESD</td></tr> <tr><td>Pricing:</td><td>OPEN MARKET</td></tr> <tr><td>Lead Time:</td><td>TBD</td></tr> <tr><td>Payment Method:</td><td>EFT</td></tr> <tr><td style="color: red;">Discount Terms:</td><td style="color: red;">NONE</td></tr> <tr><td>RFQ Number:</td><td>CRFQ-0231-OOT2600000023-1</td></tr> </table>	Date:	03/24/2026	Quote No:	D26-J3895	Quote Expires:	03/27/2026	Shipping Point:	FOB DEST	Terms:	Net 30	Shipping Method:	ESD	Pricing:	OPEN MARKET	Lead Time:	TBD	Payment Method:	EFT	Discount Terms:	NONE	RFQ Number:	CRFQ-0231-OOT2600000023-1
Date:	03/24/2026																						
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Pricing:	OPEN MARKET																						
Lead Time:	TBD																						
Payment Method:	EFT																						
Discount Terms:	NONE																						
RFQ Number:	CRFQ-0231-OOT2600000023-1																						

SIRC POC	POC Email	POC TEL	Cage Code	FEIN	DUNS	UEI	URL
Ethan Garcia	<a href="mailto:ethan.garcia@sirc.net">ethan.garcia@sirc.net</a>	202-536-2800	1PQ53	54-1727076	93-826-5865	EJMMMJHYDFH6	<a href="http://www.sirc.net">www.sirc.net</a>

Customer Name	Ship To Customer
WV-OFFICE OF TECHNOLOGY ATTN: Toby Welch 1900 KANAWHA BLVD E BLDG 5 10TH FLOOR CHARLESTON WV US Email: <a href="mailto:toby.l.welch@wv.gov">toby.l.welch@wv.gov</a> Tel: (304) 558-8802	WV-OFFICE OF TECHNOLOGY ATTN: Toby Welch 1900 KANAWHA BLVD E BLDG 5, 10TH FLOOR CHARLESTON WV US Email: <a href="mailto:toby.l.welch@wv.gov">toby.l.welch@wv.gov</a> Tel: (304) 558-8802

#	Item	Item Desc	OM GSA	Qty	U/M	Cost USD	Total USD
1	TH3350S-020-CFW-FIPS	Thunder 3350S CFW, 1U, 1CPU, 6x1GC, 2x1GF, 8x10/1GF, 4x10GF, 64GB, 1SSD, No LOM, No FTA, no S+R ASIC, SSL Builtin + SSL Card, screwless railkit, 2 AC PSU, FIPS Compliant** TRUSTED PRODUCT ** (TAA)	OM	2.00	EA	\$50,843.30	\$101,686.60
2	GOLD-SUPPORT-3-YEAR	24x7 Technical Support Access/Advanced Hardware Replacement - 3 years ** TRUSTED PRODUCT ** (TAA)	OM	2.00	EA	\$46,733.17	\$93,466.34
3	AXSK-SFP+-SR	10 Gig SFP+ Fiber transceiver - Short Range ** TRUSTED PRODUCT ** (TAA)	OM	12.00	EA	\$763.13	\$9,157.56
4	TRAINING-CREDIT	Training Credits are redeemable for A10 Networks training items for up to 12 months by any employee of the organization. For a full list of training policies and class schedule, refer to A10's training website. ** TRUSTED PRODUCT **	OM	40.00	EA	\$107.32	\$4,292.80
5	TH3350S-020-CFW-FIPS	Thunder 3350S CFW, 1U, 1CPU, 6x1GC, 2x1GF, 8x10/1GF, 4x10GF, 64GB, 1SSD, No LOM, No FTA, no S+R ASIC, SSL Builtin + SSL Card, screwless railkit, 2 AC PSU, FIPS Compliant** TRUSTED PRODUCT ** (TAA)	OM	1.00	EA	\$50,843.30	\$50,843.30
6	BASIC-SUPPORT-3-YEAR	9 am - 6 pm M-F Technical Support Access/Hardware Repair - 3 years ** TRUSTED PRODUCT ** (TAA)	OM	1.00	EA	\$40,892.28	\$40,892.28
7	SHIPPING-PROCESSING	Shipping cost	OM	1.00		\$7,850.43	\$7,850.43
<b>GRAND-TOTAL</b>		<b>Grand Total:</b>					<b>\$308,189.31</b>

\*\*\* For better order processing, please reference D26-J3895 when issuing an Order to SIRC \*\*\*

\*\*\* We cannot use your shipment account. Third-party shipment account will not be allowed \*\*\*

If it is requested that payment be made with a credit card, then the above pricing is subject to change and a processing fee will be added. Payment via Purchase Order and WAWF will incur no additional fee.

\*\* NOTE \*\*

No discounts will be provided for early payments.

SIRC does not have an active Facility Clearance

Please note, any software provided in this quote is identified as Commercial Computer Software.

The pricing and discounts being provided in this quote is based off of a complete bill of materials. Any changes to the configuration may cause an overall adjustment to the discount structure. Please contact your sales rep listed on the quote if any configuration changes are needed.

All items are subject to availability. We will make our best efforts to inform you as soon as possible if the goods you have ordered are not available or if shipment may be delayed.

SIRC cannot honor the pricing if quoted item becomes End of Life (EOL)

SIRC CONFIDENTIAL. SIRC is a SBA certified Women-Owned Small Business (WOSB). This is Confidential Pricing.

All maintenance and support services on this quote are quoted as prepaid annual maintenance unless otherwise explicitly specified.

Manufacturer Terms and conditions apply except where specifically contradicted by the FAR Clauses.

If you are a commercial entity, applicable sales tax will be added to the Invoice, unless you provide a Sales Tax Exemption Certificate.

Tariff may be added depending on the policies issued by Federal Government. Please reach out to SIRC before awarding to verify the Tariff cost

**Please note: A10 confirmed this quote and its quantities are also correct. Also, this is net new, the pop date will begin once the product is ordered and shipped.**

\*\*Penalty fees are being assessed due to a lapse in your support service period attributable to non-payment. A fee equal to total Net price will be added to your support renewal if your support expiration has exceeded 90 days.

\*\*For support that has lapsed over 180 days, A10 will impose an additional fee equal to total Net price. Such Penalty Fees are payable to A10 in full without set off and are non-negotiable.

This quotation, and any order placed in reference to this quotation, is governed by the A10 Networks End-User License and Services Agreement and A10 Networks' Standard Terms and Conditions for Purchase **attached via separate documents**, and can also be found at: <https://www.a10networks.com/wp-content/uploads/A10-Networks-End-User-License-and-Services-Agreement.pdf> and <https://www.a10networks.com/company/legal/products-services-terms-conditions/>

# Standard Terms and Conditions for purchase of A10 Products and Services

## A10 Networks, Inc. – Terms and Conditions of Purchase

### 1. SCOPE:

A10 is the provider of certain A10 Network Offerings as described further herein. All sales of A10 Networks Offerings set forth on a quotation provided by A10 Networks, Inc. ("A10 Networks") to customer ("Customer") are made on these terms and conditions of sale ("Agreement"), including those stated in Exhibit A. Unless otherwise expressly agreed upon in writing by the parties, additional terms, or a conflict between the terms, of this Agreement (including but not limited to additional or varying terms in a purchase order, Customer acknowledgement form or any other communication from Customer) are unacceptable and expressly rejected by A10 Networks. For the avoidance of doubt, such conflicting or additional terms shall not become part of the Agreement between A10 Networks and Customer.

### 2. DEFINITIONS:

The following definitions apply to capitalized terms in this Agreement. All other capitalized terms are defined in the body of the Agreement. The terms "days" and "months" refer to U.S. calendar days and months, rather than to business days and business months, unless expressly noted.

- 2.1. **"A10 Networks Offerings"** includes the A10 Networks Products, SaaS, and Services offered hereunder to Customer.
- 2.2. **"A10 Networks Products"** or **"Products"** includes the Hardware and Software that A10 Networks makes available to Customer under this Agreement.
- 2.3. **"Customer"** means the person or entity that purchases A10 Network Offerings, it being understood that all such purchases are solely for Customer's own internal use, not for resale, sublicensing, assignment, or onward distribution.
- 2.4. **"Documentation"** means any user documentation, on any media, provided by A10 for use with the A10 Network Offerings.
- 2.5. **"Hardware"** means the tangible equipment made available to Customer pursuant to this Agreement and may be summarized or amended from time to time in A10's sole discretion.
- 2.6. **"Initial Term"** means the period beginning on the Effective Date and ending twelve (12) months thereafter.
- 2.7. **"License Agreement"** means any of the standard form A10 Networks' software license or other agreement(s) by which Software is licensed. A10 Networks may revise the terms of its License Agreements from time to time, at its sole discretion; provided, however, that no such revision shall apply to any Software delivered prior to the effective date of the revision.
- 2.8. **"SaaS"** means those A10 subscription offerings made available by A10 Networks to Customer for Customer's use under the terms specified in this Agreement and A10's [Subscription Services Agreement](#). Where this Agreement refers to SaaS, such reference means A10's provision of access information to enable Customer's consumption of SaaS.
- 2.9. **"Software"** means the executable operating system software, firmware and all other software licensed by A10 to Customer under this Agreement, as may be summarized by A10 in its then-current price list as amended from time to time in A10's sole discretion, and all error corrections and bug fixes provided by A10.
- 2.10. **"Services"** means Support/Maintenance Services and/or Training (if applicable).

- 2.11. **"Subscription Services Activation Key"** means a unique code provided by A10 that an End User can redeem with A10 to obtain directly from A10 Software or SaaS (which may include, but are not limited to, A10's Harmony Controller (SaaS version), Cloud Access Controller, and other A10 offerings).
- 2.12. **"Support/Maintenance Services"** means the technical support and maintenance program or programs offered by A10 Networks with respect to the A10 Networks Products referenced at this link: [Support Programs](#).
- 2.13. **"Term"** means collectively the Initial Term and any Renewal Term as further set forth below.

### 3. ORDERS, PAYMENT, DELIVERY:

#### ◦ 3.1. **General Provisions:**

All orders ("Purchase Orders" or "PO") for A10 Networks Offerings submitted by Customer shall be in writing and sent to A10 at the address set forth above or as A10 otherwise specifies. Purchase Orders may be placed by email. All POs are subject to acceptance by A10. POs shall refer to this Agreement and shall contain the following: (i) each item of A10 Networks Offerings ordered by SKU, model or part number, (ii) quantity requested and/or as relevant the Subscription Service or other Service term and usage information, (iii) unit Price, (iv) payment information, (v) where relevant shipment instructions, including requested carrier, delivery schedule and destination, and (vi) as part of the delivery schedule, a date after A10 receives the PO upon which the order is requested to be delivered ("Specified Delivery Date"), (the terms of (i), (ii), (iii), (iv), (v) and (vi), collectively, "Ordering Information").

#### ◦ 3.2. **Purchase Orders; Acceptance:**

A PO shall not bind A10 until A10 accepts the PO in writing (e-mail being an acceptable form of writing) or ships or otherwise delivers the A10 Networks Offering. A10 may accept or reject any PO in its sole discretion. A10 shall have the right to allocate available inventory among its customers, Customer and distributors in any manner that A10 deems fair and reasonable, without liability to Customer. A10 shall use reasonable efforts to notify Customer within five (5) business days of receipt by A10 of a PO of: (i) the acceptance or rejection thereof; and (ii) the date designated by A10 for anticipated delivery of the Products, Subscription Services Activation Key(s), or Services (as relevant) ordered under the accepted PO. The receipt or deposit by A10 of a pre-payment shall not constitute acceptance of a PO. Any pre-payment received from Customer shall be returned if the PO is not accepted by A10. Partial shipment of a PO shall not constitute acceptance of the entire PO absent written acceptance of the entire PO.

#### ◦ 3.3. **Delivery:**

Upon acceptance of a PO by A10 and the satisfaction of all A10 prerequisites prior to delivery, A10 shall deliver to Customer, by full or partial shipment, Ex Works, (Incoterms 2020) A10's designated facility in the United States, the Product(s), Documentation, and/or collateral as appropriate. SaaS, Software and Support/Maintenance Services may be delivered electronically, including, but not limited to, the delivery of a Subscription Services Activation Key. A10 shall make commercially reasonable efforts to meet the estimated delivery date and/or the Specified Delivery Date but shall not, in any event, be liable for failure to deliver or for any delay or error in delivery of A10 Networks Offerings. Customer shall be responsible for and pay all packing, special packaging, shipping, freight and insurance charges, which charges A10 may require Customer to pay in advance, as well as all customs duties and other import and export fees or which may be pre-paid and added to Customer's invoice. All shipping costs are Ex Works (Incoterms 2020) A10's U.S. designated facility. A10 may make partial shipments on account of Customer's POs, to be separately invoiced and paid for when due. Any delay in the delivery of any installment will not relieve Customer of its obligation to accept the remaining deliveries.

#### ◦ 3.4. **Title and Risk of Loss:**

Title (except to the extent the A10 Products contain or consist of Software or reflect intangible deliveries such as SaaS) and all risk of loss of or damage to A10 Products and Subscription Service Activation Keys pass to Customer when A10 informs Customer that the Products and/or Subscription Service Activation Keys are available for pickup at A10's



#### ◦ 3.5. **Cancellation:**

Customer may not cancel any PO that A10 has accepted without A10's written consent. A10 may cancel any purchase order accepted by A10 Networks, or refuse or delay shipment of the A10 Networks Offerings pursuant to it, if Customer: (i) fails to make any payment as provided in this Agreement or under the payment terms set forth in any invoice or otherwise agreed to by A10 and Customer; (ii) fails to meet reasonable credit or financial requirements established by A10 Networks, including any limitations on allowable credit; or (iii) otherwise fails to comply with the terms and conditions of this Agreement. Any such cancellation, refusal or delay by A10 does not constitute a termination of this Agreement or breach of this Agreement by A10.

#### ◦ 3.6. **Customer Inspection of Products:**

All A10 Networks Offering shall be deemed accepted for all purposes of the Agreement upon delivery. Customer shall inspect the Product(s), Documentation and collateral (if any) upon delivery. Customer shall not return, and A10 shall not be obligated to accept return of, any Product(s), whether because of damage, defect or otherwise, except with A10's prior written approval. If returns are approved, A10 shall provide Customer with preferred return carrier and logistic information and pay all shipping, insurance and other costs of returning any Product(s) and shall bear any risk

of loss or damage until the Product(s) is received by A10 at its premises. If Product has been (i) modified or altered by Customer, (ii) abused or misused, or (iii) used in a manner or in an operating environment other than that for which it is designed, A10 shall have no warranty or other obligations related to the Product. Except as provided in this paragraph, Customer shall have no right to return any Products. Customer acceptance of Products tendered under this Agreement shall be final and irrevocable.

#### 4. **PAYMENT TERMS:**

Unless otherwise agreed in writing, all payments will be due net thirty (30) days from the date of A10's invoice, shall be made in U.S. Dollars, free of any currency control or other restrictions, and Customer shall pay A10 by (i) check or money order drawn on a U.S. bank; (ii) wire transfer to an account specified by A10 Networks, (iii) irrevocable Letter of Credit, or (iv) terms that may be extended upon receipt and approval of verifiable commercial trade reference. Customer shall bear all related bank fees and charges. All amounts payable hereunder are non-creditable and non-refundable, and no payment due may be deferred or delayed for any reason, including but not limited to Customer's failure to receive payment from any End User. Customer shall pay interest on all amounts not paid within fifteen (15) days of being due at the rate of one and one-half percent (1.5%) per month or the highest rate permitted by law, whichever is lower, from the due date. Notwithstanding the foregoing, A10 reserves the right to change payment terms (including without limitation requiring Customer to pay all amounts in full prior to shipment, or secure payment solely through an irrevocable letter of credit) at any time if, in A10's sole opinion and discretion, A10 identifies Customer as a credit risk, or Customer's financial condition or payment record so warrants. Customer will promptly reimburse A10 for all reasonable costs and expenses (including reasonable attorneys' fees) incurred by A10 in connection with collecting any overdue amounts.

#### 5. **PRICING AND CHANGES:**

- 5.1. **Prices:** For each A10 Networks Offering ordered by Customer, Customer shall pay to A10 the price specified in a quotation provided by A10 to Customer (the "Price"). If A10 has not provided Customer with a quotation for the particular A10 Networks Offering ordered, the Price for such items will be the then-current North American retail price ("MRP").
- 5.2. **Price Changes:** A10 may change A10 Networks Offering prices, license fees, subscription fees and other charges from time to time, and without obligation or liability to Customer of any kind, provided that any such price changes will not apply to orders already accepted by A10.
- 5.3. **Service and Subscription Fee Increases:** Unless written notice is provided to A10 at least 60 days prior to the end of any relevant Order Term for Maintenance Services and/or SaaS, Customer's order for such A10 Offering will automatically renew for a single year term. The fees payable for the applicable A10 Offering in the resulting renewal period will be: (i) the same as that offered for the immediately preceding term plus the greater of: (i) 3%; or (ii) the percentage rate of increase equal to the change in the CPI (all items) for Urban Wage Earners and Clerical Workers between the most recent calendar-year report issued by the United States Bureau of Labor Statistics and the report issued for the immediately preceding calendar year (U.S. City Average, All Items, Index Base Period 1982-84=100), currently found at <https://www.bls.gov/news.release/cpi.t01.htm> (or its substantial equivalent if this index is not available), as published on February 1 of the renewal term year or (ii) such other amount as A10 advises. Customer agrees that this Section provides sufficient notice of any such increase and agrees to such increases.
- 5.4. **Other Changes:** A10 reserves the right, from time to time, and without obligation or liability to Customer of any kind, to: (i) change the A10 Networks Offering; (ii) add to or delete from the list of the A10 Networks Offering available pursuant to this Agreement; (iii) change or terminate the level or type of service or support that A10 makes available for the A10 Networks Offering. A10 will endeavor to provide Customer with at least thirty (30) days' advance notice of any of the changes described in the foregoing clauses (i) through (iii).

#### 6. **ORDER TERMS:**

- 6.1. **No Modification of Terms:** Nothing contained in any PO, acknowledgment, or invoice shall in any way modify the terms or add any additional terms or conditions to this Agreement. Except for Ordering Information, any terms and conditions in any PO that are inconsistent with or in addition to the terms and conditions of this Agreement are hereby rejected by A10 and will be deemed null and of no effect, even if A10 accepts or acknowledges such PO.
- 6.2. **Assurances by Customer:** A10 reserves the right to withhold and/or cancel any PO subject to assurances from Customer, which assurances A10 shall not unreasonably request, confirming that Customer can fulfill its obligations under this Agreement. Bases for A10's request shall include, without limitation, information regarding Customer's pending insolvency, Customer's overextension of credit and unusually large orders.

#### 7. **ADDITIONAL PAYMENT TERMS:**

- 7.1. **Taxes:** A10's prices are exclusive of all sales, use, value-added, withholding and other taxes or duties. Customer will pay all taxes and duties assessed in connection with this Agreement and its performance, except for taxes payable on A10's net income. Customer will promptly reimburse A10 for any and all taxes or duties that A10 may be required to pay on Customer's behalf in connection with this Agreement or its performance. Customer will provide A10 with appropriate resale certificate numbers and other documentation satisfactory to the applicable taxing authorities to substantiate any claim of exemption from any taxes or duties.
- 7.2. **No Setoff:** Customer may not set off against A10's invoices amounts that Customer claims are due to it under this Agreement or otherwise.

## 8. TERM:

This Agreement shall become effective as of the Effective Date and shall remain in effect for the Initial Term and shall be automatically renewed thereafter on a year-to-year basis (each a "Renewal Term"), unless notice of termination is provided by one party to the other party not less than thirty (30) days prior to the end of the Initial Term or any Renewal Term. Any expiration or termination of the Agreement shall not alter the rights, duties, payments and obligations of the parties, or the discounts granted, for any POs accepted by A10 under this Agreement prior to the date of such expiration or termination.

## 9. COMPLETE AGREEMENT:

This Agreement, including Exhibit A ("Additional Terms and Conditions") attached hereto and incorporated herein, are the complete and exclusive statement of the mutual understanding between the parties and supersede and terminate all previous written and oral agreements and communications relating to the subject matter of this Agreement. Any terms or conditions contained in any acknowledgment, purchase order, or other communication of Customer, which are inconsistent with the terms and conditions of this Agreement are expressly rejected and shall be null and void. Any waiver, modification or amendment of any provision of this Agreement will be effective only if in writing and signed by duly authorized representatives of each party.

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## EXHIBIT A

### ADDITIONAL TERMS AND CONDITIONS

#### 1. LICENSES

a. **Software Terms:** A10 licenses and does not "sell" any of its software, firmware (collectively "Software") or any technology used to provide subscriptions. A10 will "sell" in the sense of transfer title to Products to Customer, and Customer will purchase Products from A10, only to the extent that the Products contain or consist of items or components other than Software or SaaS, e.g., hardware. Use of terms such as "sell," "purchase," and "price" will be interpreted in accordance with the foregoing. To the extent that the Products contain or consist of Software, Customer only has the right to use Software, in executable form, only for its internal use in the Products or as otherwise expressly authorized by A10. Customer acknowledges and agrees that all Software is subject to A10's [End User Licensing Agreement \("EULA"\)](#), which terms are incorporated herein as if set forth at length, and agrees to use Software only in accordance with such terms. Customer will notify A10 promptly of any breach of such licensing terms and will assist A10 to enforce such licensing terms. Customer will not and will not enable any third party to: (i) copy, modify, disassemble, decompile, or reverse engineer Software, except, and solely to the extent, if any, that applicable local law requires that such activities be permitted; and (ii) use, distribute or otherwise dispose of Software or any subscription services, except as expressly permitted under this Agreement. A10 reserves all right, title and interest in and to Software not expressly granted by A10 under this Agreement.

b. **SaaS Terms:** Upon A10's receipt and acceptance of a Purchase Order from SaaS from Customer A10 will provide Customer with instructions regarding SaaS provisioning Customer's use in accordance with the Order. Customer acknowledges and agrees that SaaS are provided and are subject to the terms specified in A10's [Subscription Services Agreement](#), which terms are incorporated herein as if set forth at length. The terms of the A10's Subscription Services Agreement will control in the event of a conflict between the terms stated therein and in this Agreement.

c. **Documentation License:** A10 hereby grants Customer a non-exclusive, non-transferable, non-sub licensable, revocable license to use the Documentation and to make a reasonable number of copies of the Documentation solely for its own business purposes to support Customer's use of the A10 Networks Offering(s), provided that Customer must reproduce and include the copyright notice and any other notices that appear on the original copy of the Documentation on any copies made by Customer regardless of type of media.

#### 2. RESTRICTIONS ON USE

a. **Restrictions:** Customer hereby agrees (i) not to create or attempt to create by reverse engineering, disassembly, decompilation or otherwise, the source code, internal structure, hardware design or organization of the A10 Networks Offering(s), or any part thereof, or to aid or to permit others to do so, except and only to the extent expressly permitted by applicable law; (ii) not to remove any A10 Networks Offering(s) identification or notices of any proprietary or copyright restrictions from any A10 Networks Offering(s) or any A10 Networks Offering(s) support material; (iii) not to copy the A10 Networks Offering(s) software, modify, translate or, unless otherwise agreed, develop any derivative works thereof or include any portion of the Software, Documentation or Subscription Service or integrate them into any other software program; and (iv) not to separate the A10 Networks Offering(s) into component parts for distribution or transfer to a third party.

b. **No Modification:** Customer shall not alter, modify, obscure or remove any copyright, logo, trademark or other proprietary markings or confidentiality legends or any serial numbers as they appear on or in A10 Networks Offering(s).

c. Customer acknowledges that A10 Networks Offerings are not authorized by A10 Networks for use in any device or application where the failure, malfunction or inaccuracy of the A10 Networks Offering may carry a risk of death or serious bodily injury, such as, but not limited to, moving vehicles, medical equipment, nuclear facilities, aircraft

navigation or communication, air traffic control, life support or other applications representing a similar degree of hazard. Any such use is prohibited without prior written agreement of A10 Networks under terms intended to allocate the risks of selling the A10 Networks Offering for such uses.

### **3. SECURITY INTEREST:**

If A10 permits Customer to obtain the A10 Networks Offerings on credit, then Customer concurrently grants A10 a continuing security interest in any A10 Networks Offering acquired at any time by Customer and all proceeds therefrom and accessions thereto ("Collateral") to secure payment of any debts, obligations or liabilities of Customer to A10 arising at any time. Customer hereby authorizes A10 to file any financing statement or other documents necessary to perfect A10's security interest in the Collateral. If Customer fails to comply with A10's credit terms or, upon the occurrence of any event specified in Section 7(b) that permits A10 to terminate this Agreement, then A10 will be entitled to all rights, powers, and remedies available to a secured party under the Uniform Commercial Code with respect to the Collateral, in addition to all other rights and remedies under this Agreement and at law.

### **4. PUBLICITY:**

Customer authorizes and consents to A10's identification of Customer as a user of A10 Networks Offerings in A10's publicity, advertising and marketing materials. A10 will follow any trademark or related guidelines provided by Customer in any such advertisements.

### **5. OWNERSHIP AND RETENTION OF RIGHTS:**

Customer hereby agrees and acknowledges that A10 Networks, its suppliers, partners and licensors (if any), own and shall retain all right, title and interest in and to (i) the manufacture and/or production of A10 Networks Offerings (including all copies and derivative works thereof, by whomever produced), and associated A10 Networks Offering(s), Documentation, including all intellectual property rights embodied therein; (ii) all of the service marks, trademarks, trade names or any other designations, and (iii) all copyrights, patent rights, trade secret rights, and other proprietary rights in the A10 Networks Offering(s), and Customer shall have no rights with respect thereto other than the limited rights expressly set forth in this Agreement.

### **6. INDEMNIFICATION:**

#### **a. Scope:**

A10 will defend or settle any action brought against Customer to the extent that it is based upon a third-party claim that an A10 branded Product, as provided by A10 to Customer under this Agreement, infringes any United States patent or any copyright or misappropriates any trade secret, and will pay any costs and damages made in settlement or awarded against Customer in final judgment resulting from any such claim, subject to the understanding that A10 shall have exclusive control over the defense and/or settlement of such suits, provided however, that Customer: (i) gives A10 prompt notice of any such claim; (ii) gives A10 sole control of the defense and any related settlement of any such claim; and (iii) gives A10 Networks, at A10's expense, all reasonable information, assistance and authority in connection with the foregoing. A10 will not be bound by any settlement or compromise that Customer enters into without A10's express written prior consent.

#### **b. Injunction:**

If Customer's rights to use an A10 branded Product under the terms of this Agreement is, or in A10's opinion is likely to be, enjoined due to the type of claim specified in Section 6(a), then A10 may, at its sole option and expense: (i) procure for Customer the right to continue to use such A10 branded Product under the terms of this Agreement; (ii) replace or modify such A10 Product so that it is non-infringing; or (iii) if options (i) and (ii) above cannot be accomplished despite A10's reasonable efforts, then A10 may terminate Customer's rights and A10's obligations hereunder with respect to such A10 branded Product and credit to Customer the amounts paid for such A10 Product during the twelve (12) months prior to the date A10 issues such a credit, provided that all units of such A10 Product are returned to A10 in an undamaged condition.

#### **c. Limitations on Indemnification:**

A10 shall have no obligation under this Agreement for any claim of infringement or misappropriation to the extent that it results from (i) combination, operation or use of the Products with equipment, products, or processes not provided by A10 Networks; (ii) modifications to the Products made other than by A10 Networks; (iii) failure of Customer to use updated or modified Products provided by A10 Networks; (iv) compliance by A10 with designs, plans or specifications furnished by or on behalf of Customer; (v) any opening of or other tampering with a Product(s) by non-A10 personnel; (vi) third-party products or services.

#### **d. Limitation:**

THE FOREGOING PROVISIONS OF THIS ARTICLE 6 SET FORTH A10'S SOLE AND EXCLUSIVE LIABILITY AND CUSTOMER'S SOLE AND EXCLUSIVE REMEDY FOR ANY CLAIMS OF INFRINGEMENT OR MISAPPROPRIATION OF INTELLECTUAL PROPERTY RIGHTS OR PROPRIETARY RIGHTS OF ANY KIND.

### **7. TERMINATION:**

#### **a. Termination for Convenience:**

After the Initial Term, this Agreement may be terminated for convenience by A10 at any time upon at least thirty (30) days prior written notice.

**b. Termination for Cause:**

Either party may terminate this Agreement, at any time, if the other party breaches any material term of this Agreement and fails to cure that breach within twenty (20) days after notice thereof from the non-breaching party. A10 may also terminate this Agreement, at any time, if: (i) Customer breaches any of its payment obligations under this Agreement and fails to cure that breach within ten (10) days after notice thereof from A10 Networks; (ii) Customer becomes the subject of a voluntary or involuntary petition in bankruptcy or proceeding relating to insolvency, receivership, liquidation, or composition for the benefit of creditors; or (iii) Customer is merged or consolidated, sells all or substantially all of its assets, or is subject to any substantial change in management or control.

**c. Training Credits:**

Training credits are valid from the date of purchase and will automatically expire one (1) year thereafter. Such expired training credits will then be deemed forfeited and are non-refundable.

**d. Effects of Termination:**

Upon termination or expiration of this Agreement for any reason whatsoever, (i) the due dates of all outstanding invoices to Customer will automatically be accelerated so they become due and payable on the date of termination or expiration, even if longer terms had been provided previously; (ii) all POs or portions thereof remaining undelivered on the date of termination or expiration will automatically be canceled; and (iii) each party will promptly return to the other party all Confidential Information of the other party in its possession or control, and will provide the other party with a certification, signed by one of its officers, certifying the return of all such Confidential Information A10.

**e. No Expectation of Damages:**

CUSTOMER WAIVES ANY RIGHTS IT MAY HAVE TO RECEIVE ANY COMPENSATION OR INDEMNITY UPON TERMINATION OR EXPIRATION OF THIS AGREEMENT, OTHER THAN AS EXPRESSLY PROVIDED IN THIS AGREEMENT.

**f. Survival of Terms:**

The terms contained within the following Paragraphs and Sections shall survive any expiration or termination of this Agreement: Paragraphs of the Agreement as follows: 2 ("Definitions"), 4 ("Payment Terms"), 7 ("Additional Payment Terms"), 8 ("Term"), 9 ("Complete Agreement"), and Sections of these Additional Terms and Conditions as follows: 2 ("Restrictions on Use"), 4 ("Publicity"), 5 ("Ownership and Retention of Rights"), 7 ("Termination"), 9 ("Confidential Information"), 10 ("Warranty & Liability Disclaimers"), 11 ("Compliance with Laws") and 12 ("General Provisions").

**8. RELATIONSHIP OF THE PARTIES:**

**a. Independent Contractors:**

The parties are independent contractors and this Agreement will not establish any relationship of partnership, joint venture, employment, franchise, or agency between the parties. Neither party will have the power to bind the other party or to incur any obligations on its behalf, without the other party's prior consent.

**b. Non-exclusive Relationship:**

Nothing in this Agreement shall be construed as limiting A10's marketing or distribution activities or its appointment of other Customers, resellers, distributors, sales representatives, sub-resellers, licensees, or agents of any kind in any place.

**9. CONFIDENTIAL INFORMATION:**

**a. Definition:**

"Confidential Information" means: (i) any non-public information of a party, including, without limitation, any information relating to a party's current and planned products and services, technology, techniques, know-how, research, engineering, designs, finances, accounts, procurement requirements, manufacturing, customer lists, business forecasts and marketing plans; (ii) any other information of a party that is disclosed in writing and is conspicuously designated as "Confidential" at the time of disclosure or that is disclosed orally, is identified as "Confidential" at the time of disclosure, and is summarized in a writing sent by the disclosing party to the receiving party within thirty (30) days of any such disclosure; and (iii) the specific terms and pricing set forth in this Agreement.

**b. Obligations:**

Each party will not use the other party's Confidential Information, except as necessary for the performance of this Agreement, and will not disclose such Confidential Information to any third party, except to those of its employees and subcontractors that need to know such Confidential Information for the performance of this Agreement, provided that each such employee and subcontractor is subject to a written agreement that includes binding use and disclosure restrictions that are at least as protective as those set forth herein. Each party will use all reasonable efforts to maintain the confidentiality of all of the other party's Confidential Information in its

possession or control, but in no event less than the efforts that it ordinarily uses with respect to its own confidential information of similar nature and importance. The foregoing obligations will not restrict either party from disclosing the other party's Confidential Information or the terms and conditions of this Agreement: (i) pursuant to the order or requirement of a court, administrative agency, or other governmental body, provided that the party required to make such a disclosure gives reasonable notice to the other party (to the extent legally permitted) to enable it to contest such order or requirement; (ii) on a confidential basis to its legal or professional financial advisors; (iii) as required under applicable securities regulations; or (iv) on a confidential basis to present or future providers of venture capital and/or potential private investors in or acquirers of such party.

**c. Exclusions:**

The obligations in Section will not apply to the extent any information: (i) is or becomes generally known to the public through no fault of or breach of this Agreement by the receiving party; (ii) was rightfully in the receiving party's possession at the time of disclosure, without an obligation of confidentiality; (iii) is independently developed by the receiving party without use of the disclosing party's Confidential Information; or (iv) is rightfully obtained by the receiving party from a third party without restriction on use or disclosure.

**10. WARRANTY & LIABILITY DISCLAIMERS:**

**a. Limited Warranty – Scope and Duration:**

A10 Networks warrants to Customer that for ninety (90) days commencing upon delivery of Hardware and/or Software (or for any longer period set forth on an agreed quotation or any warranty included in any manual or other documentation shipped with the Hardware and/or Software)(the "Warranty Period"), Hardware and Software will substantially comply with the published specifications set forth in A10 Networks' user documentation for the Hardware and/or Software. A10 Networks makes no warranty as to the Hardware and/or Software after the Warranty Period or for third-party products or services. A10 Networks does not warrant that the Hardware and/or Software will meet Company's requirements or will operate in combination with other hardware, software or non-supported platforms/operating systems/databases, which may be selected for use by Customer, or that the operation of the Hardware and/or Software will be uninterrupted or error-free.

**b. Disclaimer:**

A10 MAKES NO WARRANTIES OR REPRESENTATIONS TO CUSTOMER OR TO ANY OTHER PARTY REGARDING ANY: (I) THIRD PARTY PRODUCTS OR SERVICES; NOR (II) TO ANY A10 PRODUCTS, SAAS, LICENSES OR SERVICES PROVIDED BY A10, EXCEPT AS SET FORTH IN THE LIMITED WARRANTY ACCOMPANYING DELIVERY OF THE A10 PRODUCTS. TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, A10 DISCLAIMS ALL OTHER WARRANTIES, TERMS, CONDITIONS, AND REPRESENTATIONS, WHETHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT OR ARISING FROM A COURSE OF DEALING OR USAGE OF TRADE. A10 PROVIDES ITS PRODUCTS AND SERVICES "AS IS" AND DOES NOT WARRANT THEIR EFFECTIVENESS, USEFULNESS OR RELIABILITY. A10 MAKES NO WARRANTY WITH RESPECT TO ANY THIRD PARTY PRODUCT OR SERVICE IT MAY MAKE AVAILABLE, ALTHOUGH A10 WILL PASS ON ANY THIRD PARTY WARRANTIES PROVIDED BY THIRD PARTIES TO THE EXTENT A10 IS PERMITTED BY CONTRACT AND LAW TO DO SO. SAAS ARE WARRANTED AS SET FORTH IN A10'S SUBSCRIPTION SERVICES AGREEMENT. CUSTOMER WILL NOT MAKE ANY WARRANTIES OR REPRESENTATIONS IN A10'S NAME OR ON A10'S BEHALF. CUSTOMER SHALL HANDLE AND BE RESPONSIBLE FOR ALL WARRANTY RETURNS FROM ITS CUSTOMERS.

**c. Exclusion of Certain Damages:**

IN NO EVENT WILL A10 BE LIABLE FOR ANY SPECIAL, INCIDENTAL, PUNITIVE OR CONSEQUENTIAL DAMAGES (INCLUDING, BUT NOT LIMITED TO, LOST PROFITS OR REVENUE, LOSS OF USE, LOST BUSINESS OPPORTUNITIES OR LOSS OF GOODWILL), OR FOR THE COSTS OF PROCURING SUBSTITUTE GOODS, TECHNOLOGY OR SERVICES, ARISING OUT OF, RELATING TO OR IN CONNECTION WITH THIS AGREEMENT OR THE USE OR PERFORMANCE OF ANY A10 OFFERING PROVIDED BY A10, WHETHER SUCH LIABILITY ARISES FROM ANY CLAIM BASED UPON CONTRACT, WARRANTY, TORT (INCLUDING NEGLIGENCE), PRODUCT LIABILITY OR OTHERWISE, WHETHER OR NOT A10 HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH LOSS OR DAMAGE. THE PARTIES HAVE AGREED THAT THESE LIMITATIONS WILL SURVIVE AND APPLY EVEN IF ANY LIMITED REMEDY SPECIFIED IN THIS AGREEMENT IS FOUND TO HAVE FAILED OF ITS ESSENTIAL PURPOSE.

**d. Limitation of Liability:**

NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS AGREEMENT OR ELSEWHERE, IN NO EVENT WHATSOEVER SHALL A10'S TOTAL LIABILITY UNDER THIS AGREEMENT, FROM ALL CAUSES OF ACTION AND UNDER ALL THEORIES OF LIABILITY, EXCEED THE AMOUNT ACTUALLY RECEIVED BY A10 FROM CUSTOMER DURING THE THREE (3) MONTHS PRIOR TO THE DATE A CLAIM FOR LIABILITY ARISES HEREUNDER.

**e. Basis of Bargain:**

The parties expressly acknowledge and agree that A10 has set its prices and entered into this Agreement in reliance upon the limitations of liability specified herein, which allocate the risk between A10 and Customer and form an essential basis of the bargain between the parties.

**f. Disclaimer of Other Representations:**

All representations made (express or implied) or agreements executed by Customer pursuant to this Agreement shall be Customer's sole responsibility. Furthermore, each such agreement shall contain an acknowledgment by any third party that it is not relying on any representations or warranties made by A10 except for those warranties expressly made in A10's Standard Warranty Service Program documents or EULA delivered with the Product(s). Customer hereby agrees to indemnify, defend and hold harmless A10 for all claims, liabilities and expenses (including reasonable attorneys' fees) arising out of Customer's breach of this Section 10(e).

**11. COMPLIANCE WITH APPLICABLE LAWS:**

**a. Compliance with Laws:**

Customer shall be solely responsible for complying with the laws and regulations applicable in the Territory, or any nation, or political subdivision thereof, in which it engages in business in performing its responsibilities hereunder as well as those applicable to the distribution and sale of the A10 Networks Offering(s) by Customer, including, without limitation, privacy, tax, export and foreign exchange laws, and export controls.

**b. Anti-Corruption Laws:**

Customer represents and warrants that in the performance of this Agreement, (a) Customer and Customer's shareholders, directors, officers, and employees, and Customer's agents or representatives, if any, will comply strictly with all applicable anti-corruption laws; (b) neither Customer nor Customer's shareholders, directors, officers, and employees, nor Customer's agents or representatives, if any, has taken or will take any action in furtherance of an offer, payment, promise to pay, or authorization of the payment or giving of anything of value, directly or indirectly, to any person while knowing that all or some portion of the money or value will be offered, given or promised to anyone to influence official action, to improperly obtain or retain business or otherwise to secure any improper advantage; and (c) Customer and its subsidiaries and affiliates have instituted and maintain, and will continue to maintain policies and procedures designed to promote and achieve compliance with such laws. Failure by Customer to comply with the terms of this Section will constitute a material breach of this Agreement.

**c. Export and Import Controls:**

Customer acknowledges that the A10 Networks Offering(s) and the technical data received from A10 in accordance with the terms hereunder may be subject to United States or Territory export and import controls, and in the performance of its obligations, Customer shall at all times strictly comply with all laws, regulations and orders, and agrees to commit no act which, directly or indirectly, would violate any United States or Territory law, regulation or order, including, without limitation, tax, export and foreign exchange laws, export controls imposed by the U.S. Export Administration Act of 1979. Additionally, Customer specifically acknowledges that A10 Networks Offerings(s) and any direct product thereof is subject to United States export controls, pursuant to the Export Administration Regulations, 15 C.F.R. Parts 730-774. Customer expressly agrees that, without the prior written authorization of A10 and the United States Government, Customer shall not, and shall cause its representatives (if any) not to (i) export, re-export, divert or transfer A10 Networks Offering(s) or any direct product thereof to any destination, company or person restricted or prohibited by the United States export controls, or (ii) disclose any data derived from A10 Networks Offering(s) or any direct product thereof to any national of any country when such disclosure is restricted or prohibited by the United States export controls.

**d. Authorizations:**

If this Agreement or any transaction or act contemplated herein is legally required to be approved, registered, notified or recorded with or by any government agency in the Territory, Customer will assume all such obligations and will indemnify and hold harmless A10 from any liability or expenses (including reasonable attorneys' fees and costs) from any failure by Customer to so comply.

**e. Compliance Audit:**

Upon reasonable request, Customer shall make its records available to A10 in order to permit A10 to confirm Customer's compliance with its obligations as set forth in this Section 11. Customer shall bear all expenses and costs related to compliance with any laws and/or regulations.

**12. GENERAL PROVISIONS:**

**a. Governing Law:**

This Agreement shall be governed by the laws of the State of California, as applied to agreements entered into and to be performed entirely within California between California residents, without regard to the principles of conflict of laws, the Uniform Computer Information Transactions Act (UCITA), or the United Nations Convention on Contracts for the International Sale of Goods.

**b. Venue:**

Any disputes, claims, or causes of action arising out of or related to this Agreement or Customer's use of the A10 Networks Offerings will be resolved individually, without resort to any form of class action, and exclusively by the state or federal courts located in Santa Clara County, California.

**c. Assignment:**

Except pursuant to a merger or acquisition resulting in the acquisition of all or substantially all of A10's assets, neither party may assign, delegate, sub-contract or otherwise transfer this Agreement or any of its rights and obligations hereunder, whether voluntarily, by operation of law or otherwise, without the other party's prior written approval. Subject to the foregoing, this Agreement will bind and inure to the benefit of each party's permitted successors and assigns.

**d. No Waiver; Severability:**

Failure by either party to enforce any provision of this Agreement will not be deemed a waiver of future enforcement of that or any other provision. The exercise by either party of any remedy under this Agreement will be without prejudice to its other remedies under this Agreement or otherwise. If for any reason a court or arbitration panel having competent jurisdiction finds any provision of this Agreement invalid or unenforceable, that provision of the Agreement will be enforced to the maximum extent permissible and the other provisions of this Agreement will remain in full force and effect.

**e. Equitable Relief:**

Customer acknowledges that any breach of its obligations under this Agreement with respect to the proprietary rights or Confidential Information of A10 will cause A10 irreparable injury and significant injury for which there are inadequate remedies at law. Accordingly, A10 will be entitled to obtain immediate equitable relief from any court having competent jurisdiction to enjoin any such breach, in addition to all other rights and remedies that it may have under this Agreement, at law or otherwise.

**f. Counterparts; Section Headings; Interpretation:**

This Agreement may be executed in two (2) or more counterparts, each of which shall be deemed an original, all of which together shall constitute one and the same instrument. The Section headings contained herein are for convenience of reference only and shall not be considered as substantive parts of this Agreement. The parties agree that this Agreement shall be fairly interpreted in accordance with its terms without any strict construction in favor of or against either party and that ambiguities shall not be interpreted against the drafting party.

**g. English Language; Notices:**

This Agreement is in the English language only, which language shall be controlling in all respects. Any versions of this Agreement in any other language will be for accommodation only and will not be binding upon either party. All communications and documentation for the A10 Networks Offerings or related to this Agreement to be furnished under this Agreement shall be in the English language. All notices, approvals, consents and other communications required or permitted under this Agreement will be in writing and delivered by courier or overnight delivery service with written verification of receipt, or by registered or certified mail, return receipt requested, postage prepaid, and, in each instance, will be deemed given upon receipt. All such notices, approvals, consents and other communications will be sent to the addresses set forth above or to such other address as may be specified by either party to the other party in accordance with this Section.

**h. Force Majeure:**

Except for the obligation to make payments, nonperformance of A10 shall be excused to the extent performance is rendered impossible by strike, fire, earthquake, flood, governmental acts or orders or restrictions, acts of civil disobedience or terror, failure of suppliers or any other reason where failure to perform is beyond the reasonable control of and is not caused by the negligence of the non-performing party. In the event of a threatened default or default as a result of any of the above causes, A10 shall exercise reasonable commercial efforts to avoid and cure such default.

**i. Government Use:**

SaaS, Software and Documentation delivered to an agency or instrumentality of the United States Government shall identify the Software and Documentation as "commercial computer software" and "commercial computer software documentation" and, as specified in FAR 12.212 or DFARS 227.7202, and their successors, as applicable, shall restrict the End User Government's rights to use, reproduce or disclose such Software and accompanying Documentation in accordance with and no more broad than any licensing granted herein.

**j. No Other Rights Conferred:**

Nothing contained in this Agreement shall be construed as conferring by implication, estoppel or otherwise upon either party hereunder any license or other right except the licenses, rights and uses expressly granted hereunder to a party hereto.

**A10 NETWORKS  
TERMS OF USE FOR  
SOFTWARE AND/OR CLOUD SERVICES**

**PLEASE READ THE FOLLOWING AGREEMENT CAREFULLY BEFORE USING CLOUD SERVICES OR INSTALLING OR USING A10 NETWORKS' SOFTWARE OR DOCUMENTATION. ALL DEFINED TERMS HAVE THE MEANING SET FORTH BELOW.**

**THIS AGREEMENT GOVERNS USE OF A10 NETWORKS' CLOUD SERVICES, SOFTWARE, DOCUMENTATION AND OTHER PRODUCTS UNLESS CUSTOMER AND A10 NETWORKS, INC. OR ITS AFFILIATES ("A10" OR "A10 NETWORKS") HAVE EXECUTED A SEPARATE AGREEMENT GOVERNING USE OF THE PRODUCTS. A10 IS WILLING TO LICENSE THE SOFTWARE AND DOCUMENTATION AND PROVIDE A LIMITED RIGHT TO USE CLOUD SERVICES TO CUSTOMER ONLY UPON THE CONDITION THAT CUSTOMER ACCEPTS ALL THE TERMS CONTAINED IN THIS AGREEMENT. YOU MAY ONLY USE THE PRODUCTS AS SET FORTH BELOW. INSTALLING OR USING THE PRODUCTS AND/OR RECEIPT OF SUPPORT INDICATES THAT YOU, ON BEHALF OF YOURSELF AND ANY ENTITY BY WHOM YOU ARE EMPLOYED OR FOR WHOM YOU ARE USING THE PRODUCTS ("CUSTOMER" OR "SUBSCRIBER"), ACCEPT AND ARE BOUND BY THE TERMS OF THIS AGREEMENT. YOU REPRESENT THAT YOU HAVE THE AUTHORITY TO BIND SUCH ENTITY TO THIS AGREEMENT AND THAT "YOU" AND "YOUR" WILL REFER TO YOU AND THAT ENTITY OR ORGANIZATION. IF YOU DO NOT AGREE TO THE TERMS OF THIS AGREEMENT OR DO NOT HAVE THE AUTHORITY SPECIFIED ABOVE, DO NOT USE, INSTALL OR DOWNLOAD THE PRODUCTS.**

**Definitions.** The following capitalized terms shall be defined as set forth below:

**"Agreement"** means these Terms, any annexure, addendum, schedule, or other attachment hereto, all Orders, and any other document referenced herein.

**"Appliance"** means hardware on which Software is pre-loaded or downloaded.

**"Cloud Service(s) or SaaS"** means A10's A10-branded subscription, cloud-based services which may include, but are not limited to, A10's ThreatX offerings, its Harmony Controller (SaaS version), Cloud Access Controller, and other A10 offerings. For clarity, any reference to a "license" to SaaS in this Agreement means the grant of a limited right to use the SaaS in compliance with this Agreement, not a right to possession or a grant of a license to a copy of the Product.

**"Confidential Information"** means all information disclosed by a party ("**Disclosing Party**") to the other party ("**Receiving Party**"), whether orally or in writing, that is designated as confidential or that reasonably should be understood to be confidential given the nature of the information and the circumstances of disclosure, including but not limited to the terms and conditions of this Agreement and all Orders (including pricing), business and marketing plans, technology and technical information, product plans and designs, and business processes disclosed by such party. Software, Documentation, and all proprietary information embedded in an Appliance or SaaS, or used to provide A10 services are Confidential Information of A10, regardless of marking. Confidential Information does not include any information that: (i) is or becomes generally known to the public without breach of any obligation owed to the Disclosing Party, (ii) was known to the Receiving Party without an obligation of confidentiality prior to its disclosure by the Disclosing Party, (iii) is received from a third party without an obligation of confidentiality and without breach of any obligation owed to the Disclosing Party, or (iv) was independently developed by the Receiving Party without use of or access to the Confidential Information of Disclosing Party.

**"Documentation"** means A10's user guides, documentation, Product-specific licensing terms, and help and training materials for Products and Appliance(s) (as applicable) provided by A10, as updated from time to time.

**"Equipment"** means all equipment and ancillary services needed to connect to, obtain, access, or otherwise use SaaS or Software, including, without limitation, computers, computer operating system, hypervisor, orchestrators and web browsers.

**"Execute"** and "**Execution**" means to load, install, and run Software to benefit from its functionality as designed by A10 in the applicable Documentation.

**"Limits"** mean those quantity, bandwidth, byte quantity, number of Users, Usage Term, or other usage limitations as specified in the applicable Order for a Product, which include but are not limited to the following: (a) for Software used on a virtual machine, such use is limited to a single instance with a unique identifier on a single hypervisor; (b) for Software delivered or used on an Appliance, such use is limited to a single specified Appliance; (c) for BareMetal Software, such use is limited to use on a single Intel x86 based server or other bare metal hardware specified by A10 ("**Permitted Bare Metal Hardware**"); and (d) for SaaS, such use will be limited and may be restricted in terms of capacity, bandwidth or other limitations.

**"Maintenance Release"** means any update or release of Products in connection with Support from time to time during the Usage Term, that may contain, among other things, error corrections, enhancements, or other changes to the user interface, functionality, compatibility, capabilities, performance, efficiency, or quality of the Software, but does not constitute a New Version.

**"New Version"** means any new version of Software that A10 may from time to time introduce and market generally as a distinct licensed product, and which A10 may make available to the Customer at an additional cost.

**"Open-Source Software" or "OSS"** means software components that are licensed under a license approved by the Open-Source Initiative ("**OSI**") or similar open source or freeware license that are embedded in or provided with SaaS, Software and/or an Appliance.

**"Order"** means an ordering document that includes a description of Product (including SaaS, Software or Support, as applicable) to be licensed and/or subscribed to by Customer, any applicable Limits, and the fees payable.

“**Product(s)**” means the A10-branded SaaS, Software (including SDK Software), Documentation, Support specified in an Order (and Maintenance Releases related thereto), and/or ancillary or related services otherwise made available directly or indirectly by A10.

“**SDK-Based Software**” means software that a Customer creates using the SDK Software.

“**SDK Software**” means an A10 software development kit delivered for the purpose of allowing Customer to modify the applicable Software or create applications to interact with or to configure, deploy or manage Products.

“**Service Description**” means a description of the features, functionality and/or operation of a SaaS offering.

“**Software**” means A10’s A10-branded software products, as are identified in one or more Orders, together with any Maintenance Releases provided to Customer.

“**Statistical Data**” means data analytics, performance metrics, traffic information, efficiency data, and such other transactional, statistical, or performance information relating to the provision, use, and performance of the Products and related systems and technologies (including, without limitation, information concerning or derived from Customer’s use of the Products and Subscriber Data).

“**Subscriber Data**” means all data, information, and content that Customer uploads, provides or makes available to A10 or its subprocessors for storage or processing by the Products or to provide services.

“**Support**” means, for purposes of this Agreement, A10’s then-standard support services for Products provided during the Usage Term as specified in an Order and/or as described at [www.a10networks.com/support](http://www.a10networks.com/support) depending on the level of Support purchased.

“**Trial Term**” means the period of time pursuant to which Customer is authorized to use a trial or evaluation version of the Product, which shall not exceed 90 days unless separately agreed in writing by the parties.

“**Usage Term**” means the period during which Customer is authorized to use the Product as specified in the applicable Order. A Usage Term may be perpetual for Software, for a specified period, or for a Trial Term, and begins at the time the Product is provided or otherwise made available to Customer.

“**Users**” means Customer’s employees, agents or contractors who are authorized by Customer to use and/or access the Products.

## 1. Grant of License to Software and Right to Use SaaS.

1.1 Conditioned upon Customer’s compliance with the terms and conditions of this Agreement, A10 grants Customer:

- (a) With respect to Software, a personal, limited, non-exclusive and non-transferable license to use (without a right to sublicense, except as otherwise expressly provided herein) the Software as identified in an Order accepted by A10, solely for Customer’s internal business purposes to optimize Customer’s network, as follows:
  - (i) SOFTWARE delivered for use on a virtual machine (including, but not limited to vThunder, and aGalaxy Software): to Execute, within either a designated third party service provider cloud environment or at a site owned or operated by Customer, a single instance with a unique identifier (UID) of the executable form of the Software on a single hypervisor, up to (and not exceeding) the Limit described in the relevant Order for the relevant Usage Term.
  - (ii) SOFTWARE as delivered on an A10 Appliance (including Thunder, AX Series, and aGalaxy Appliances) or downloaded to a third party Appliance in concordance with the relevant Documentation: to Execute the executable form of the Software provided by A10 on a single hardware Appliance, up to (and not exceeding) the Limit described in the relevant Order, for the relevant Usage Term.
  - (iii) BareMetal Software: to Execute a single instance with a unique identifier (UID) of the executable form of the Software on Permitted Bare Metal Hardware, up to (and not exceeding) the Limit described in the relevant Order, for the relevant Usage Term.
- (b) With respect to SaaS, a personal, limited, non-exclusive and non-transferable right to use (without a right to sublicense, except as otherwise expressly provided herein) the Cloud Services as designated by A10 in the applicable Documentation.

1.2 **SDK Software License:** Conditioned upon Customer’s compliance with the terms and conditions of this Agreement, A10 grants Customer a personal, limited, non-exclusive and non-transferable (without a right to sublicense, except as otherwise expressly provided herein) license to use and copy SDK Software delivered in binary form as delivered, and to use, copy and modify SDK Software provided in source code form, for the sole purpose of creating applications which: (i) enable the Software and/or Appliances to interact with Cloud Service(s); or (ii) to enable configuration and management of Cloud Services, Software and related Appliances, and to use, distribute and sublicense the binary code version of such SDK-Based Software, solely for the purpose of configuring and managing Cloud Services, Software and related A10 Appliances, provided that each party receiving the SDK-Based Software is bound to Customer by a written agreement with terms that are at least as restrictive as those contained herein.

1.3 **Trial License.** Notwithstanding any other term herein, if Customer has a trial version of Products or otherwise is licensed for evaluation or proof of concept (POC), and has not paid the applicable license or other fees, Customer’s license is limited to a **Trial License**, namely as follows: Conditioned upon Customer’s compliance with the terms and conditions of this Agreement, during the Trial Term (which, for purposes of trials, will be the Usage Term), A10 grants Customer a non-exclusive and non-transferable license to use the applicable Product consistent with Section 1.1, solely for its internal business purposes in a non-production environment. THE PRODUCT MAY CONTAIN A DISABLING DEVICE THAT WILL PREVENT IT FROM BEING USED AFTER THE TRIAL TERM ENDS. CUSTOMER AGREES NOT TO TAMPER WITH THE DISABLING DEVICE OR THE PRODUCT. CUSTOMER SHOULD TAKE PRECAUTIONS TO AVOID ANY LOSS OF DATA THAT MIGHT RESULT WHEN THE PRODUCT

CAN NO LONGER BE USED. Trials may be discontinued, modified, or cancelled by A10 for any reason upon thirty (30) days' prior written notice without liability to A10.

#### 1.4 General License Provisions applicable to both Trial Licenses and Production Licenses.

1.4.1 Access to Products. During the Usage Term, Customer may access and use the Products and may permit Users to access and use the Products, subject to the terms of this Agreement. User may only use and access SaaS and virtual Software through an account provided by A10 to User ("Account"). If Subscriber is an entity with more than one User needing access to SaaS or other virtual Products, a separate Account will be required for each User, i.e., each such individual employee or contractor. Customer is solely responsible for determining the appropriate configuration for each Product capability that it uses, and for the resulting operation and performance of the Product(s). Customer may establish up to the number of Accounts set out in the Order, and for each Account an individual shall establish and maintain a password and other security controls or credentials in accordance with A10's procedures and instructions. Each User shall maintain the security of their own passwords, security controls and credentials and Customer shall be fully responsible for all Products accessed and transactions executed by all its Users and all Accounts, whether intended or otherwise. Customer shall prevent unauthorized use of the Products and will not attempt to gain access to the Products or its related systems or networks in a manner not set forth in the relevant documentation. User shall further immediately report to A10 any compromise of any Account, including any security breach with respect to any password or other security measures related to the compromised Account.

1.4.2 Customer grants A10 and its affiliates a worldwide, non-exclusive, license to host, copy and transmit Subscriber Data during the relevant Usage Term as necessary for A10 to provide the Products and related services. Subscriber is responsible for compliance with this Agreement by its Users, affiliates and third parties whom it allows to obtain, use, or benefit from the Products. Any breach of this Agreement by any such person or entity will be deemed a breach by Customer, in which case, A10 may, without prejudice to its other rights, suspend its performance until Customer can show to A10's reasonable satisfaction, that any such breach has been cured.

1.4.3 Customer shall be solely responsible for obtaining and maintaining appropriate Equipment necessary to utilize Product(s). Customer shall ensure that Equipment complies with all configurations and specifications set forth in the applicable Documentation. Customer may make copies of Software and Documentation for backup purposes solely to enable use of the Products as licensed hereunder; provided Customer reproduces all copyright and other proprietary notices that are on the original copy of the Software and/or Documentation. Subscriber likewise acknowledges that it has sole responsibility for the accuracy, quality, and legality of all Subscriber Data; will obtain all permissions, authorizations, licenses, or approvals from each applicable data source as may be necessary or required to: (a) use and to provide the Subscriber Data to A10 for use as specified herein; and (b) comply with all applicable laws in its activities under this Agreement; will ensure that all Users given access to the Products have the right to access and use Subscriber Data; and will ensure that none of the Subscriber Data contains any malicious code, unlawful or harmful content.

1.4.4 For clarity it is noted that A10 reserves all rights in Products and Documentation not expressly granted to Customer in this Agreement.

1.5 Restrictions. A10 reserves all rights in and to the Products. Except as expressly permitted herein, Customer shall not: (a) reproduce, modify, translate or create any derivative work of all or any portion of the Products, (b) sell, sublicense, transfer, assign, rent, lease, loan, provide, distribute or otherwise transfer all or any portion of the Product to a third party, (c) reverse engineer, reverse assemble or otherwise attempt to gain access to the source code of all or any portion of the Product (other than the Open Source Software as permitted by the relevant OSS License) except to the extent expressly permitted by law, (d) remove, alter, cover, or obfuscate any copyright, trademark or other proprietary rights notices placed or embedded on or in the Products, (e) unbundle any components of Products, (f) access a Product for the purpose of building a competitive product or service or copying its features or user interface, (g) use the Products to scan unauthorized computer systems or exploit the vulnerability scanned by the Products to intrude into unauthorized computer systems, or grant access to the vulnerability information scanned by the Products to any third party, (h) use the Product for any other purpose that is to A10's commercial disadvantage, (i) exceed the contracted for Limits and/or Usage Term, (j) enable the sharing of login credentials other than as permitted in accordance with Section 1.4 of this Agreement, (k) circumvent A10's or any third-party security measures, (l) use Software or SaaS in a way that exceeds Customer's Usage Term, (m) cause, enable or permit any third party to do any of the foregoing, or (n) attempt to do any of the foregoing. If Customer is a European Union ("EU") resident, information necessary to achieve interoperability of the Products with other programs within the meaning of the EU Directive on the Legal Protection of Computer Programs is available from A10 upon written request. If Customer sells, leases, lends, rents, transfers, or otherwise distributes an Appliance to a third party, Customer will ensure that it erases all copies of the Software from such Appliance. In addition, Customer may not use the Products or Appliances in any manner which has any of the following effects and such use is prohibited if it: (i) conflicts with applicable law, (ii) hinders other customers' access to A10's network or compromises its network security or capacity, (iii) excessively and disproportionately contributes to A10's network congestion, (iv) adversely impacts A10's network service levels or legitimate data flows, (v) degrades A10's network performance, (vi) causes harm to A10's or its other customers' networks, (vii) defeats, obstructs or penetrates, or attempts to defeat, obstruct or penetrate the security measures of A10's network or systems, or another entity's network or systems; or (viii) accesses, or attempts to access without authority, the accounts of others. For example, this includes, but is not limited to, using malicious software or "malware" that is designed, intentionally or unintentionally, to infiltrate a network or computer system such as spyware, worms, Trojan horses, rootkits, and/or crimeware; attempting "denial of service" attacks against a network host or individual user; and sending "spam" or unsolicited commercial or bulk email (or activities that have the effect of facilitating unsolicited commercial email or unsolicited bulk e-mail). In addition, Products may not be used in any manner that has the effect of excessively contributing to network congestion or hindering other customers' access to A10 products. This includes, but is not limited to, using "auto-responders," "cancel-bots," or similar automated or manual routines that generate excessive amounts of traffic or that disrupt user groups or email use by others and software or other devices that maintain continuous active Internet connections when a connection would otherwise be idle or any "keep alive" functions, unless they adhere to A10 data retry requirements (as may be modified from time to time).

1.6 Ownership. The Products are licensed, not sold. Rights to obtain Support are likewise provided, not sold. As between Customer and A10, all right, title, and interest in and to the Products, and any and all intellectual property rights therein, belong exclusively to A10 or its licensors. The Products are protected by United States patent, copyright and trade secret laws and international treaties. Customer will not delete or in any manner alter the copyright, trademark, and other proprietary rights notices or markings appearing on the Products as delivered to Customer. Customer acknowledges that A10 will retain all right, title and interest in and to Statistical Data. Nothing contained in this Agreement shall be construed as transferring any right, title, or interest in or to the Products and/or any intellectual property rights in the same to Customer, and except for the limited rights granted to Customer as expressly set forth herein, all such rights are reserved to A10.

1.7 Trade Secrets and PII. Customer acknowledges and agrees that portions of the Products, including but not limited to the source code and the specific design and structure of individual modules or programs, constitute or contain trade secrets of A10 and its licensors. Customer agrees not to publicly display or disclose any A10 trade secrets to third parties, including but not limited to performance metrics related to the Products. Customer further agrees to refrain from providing personally identifiable information (“**PII**”) to A10 as much as possible. If A10 receives PII from Customer, Customer authorizes, directs and permits A10 to process such PII to facilitate the use of the Products, to provide Support or other services hereunder, to prevent or address service or technical problems, to test and verify improvements, and to otherwise comply with Customer’s instructions or requests. In using PII A10 will comply with [A10 Networks’ Data Processing Addendum](#) (“**DPA**”). Customer acknowledges the sufficiency of A10’s DPA for these purposes. The DPA shall control with respect to PII if and to the extent there is a conflict between the main body of this Agreement and the DPA.

## 2. Payment and Fees.

2.1 Purchases through Authorized Resellers. If Customer licenses Products from an authorized A10 reseller, this Article 2 will not apply and payment and fees will be as agreed between Customer and such authorized reseller.

2.2 Fees. Fees will be as specified in the applicable Order at the rate plan selected by the Customer (“**Rate Plan**”). There is no proration of charges if Products are not used or Limits not met.

2.3 Fees and Taxes. Customer shall pay all fees set forth in an invoice. All Orders and fees are non-cancelable, non-creditable and nonrefundable and there is no proration of such charges if the license is terminated except as expressly specified herein. Limits and fees cannot be reduced during the relevant Usage Term. Usage levels and allotments may not be carried over into future periods or other billing cycles. All fees are exclusive of taxes, levies, or duties imposed by taxing authorities, and Customer shall be responsible for payment of all such taxes, levies, or duties (excluding U.S. taxes based on A10’s income), even if such amounts are not listed in an invoice. The amounts payable under this Agreement do not include sales or use tax, goods and services tax or customs duties or any similar taxes, duties and fees including state and local taxes, duties, and fees (if applicable). If any such tax, duty or fee is applicable to the fees payable to A10, the payment due from Customer to A10 will be grossed up such that A10 will receive the fees payable as if no such tax or duty had been applied. Customer shall pay all fees in U.S. Dollars or in such other currency as agreed to in writing by the Parties.

2.4 Invoicing and Payment. Fees for perpetual licenses and Support will be invoiced in advance. Customer will receive monthly invoices for subscription Products in arrears. Customer’s invoice will include monthly recurring charges, prorated charges/credits based on the install/disconnect date, overage charges, administrative, and late payment charges, and any non-recurring charges. Applicable taxes and surcharges may be added if applicable. All amounts invoiced are due and payable within thirty (30) days of the date of invoice. Unpaid invoices that are not the subject of a written good faith dispute are subject to a finance charge of 1.5% per month on any outstanding balance, or the maximum permitted by law, whichever is lower, plus all reasonable expenses of collection.

2.5 Rates. A10 may prospectively change any rates, fees, expenses, or charges regarding Products at any time. A10 will provide Customer with notice of material changes either in Customer’s monthly invoice or separately.

2.6 Charges. Customer is responsible for paying all charges for or resulting from Products provided under this Agreement, including, without limitation, recurring monthly service, usage charges, activation fees that may apply to each optional service, overage charges, administrative, and late payment charges. IF CUSTOMER DISPUTES ANY CHARGES ON CUSTOMER’S INVOICE, CUSTOMER MUST NOTIFY A10 IN WRITING WITHIN 30 DAYS OF THE DATE OF THE INVOICE OR CUSTOMER WILL HAVE WAIVED ITS RIGHT TO DISPUTE THE INVOICE AND TO PARTICIPATE IN ANY LEGAL ACTION RAISING SUCH DISPUTE.

2.7 Advance Payments and/or Deposits. A10 may require Customer to make deposits or advance payments for Products, which A10 may offset against any unpaid balance on Customer’s account. Interest will not accrue on advance payments or deposits unless required by law. Based on Customer’s creditworthiness as A10 determines it, A10 may establish a credit limit and restrict Products, Support, or features. If Customer’s account balance goes beyond the limit A10 sets for Customer, A10 may immediately interrupt or suspend the provision of Products until Customer’s outstanding balance is brought below the credit limit. Any charges Customer incurs in excess of Customer’s limit become immediately due. If Customer has more than one account with A10, Customer must keep all accounts in good standing. If one account is past due or over its limit or Customer’s accounts when aggregated are over its limit, all accounts in Customer’s name are subject to interruption or termination and all other available collection remedies.

2.8 Billing Model Service Limitations. Customer acknowledges that A10 may reduce Customer’s data throughput speeds at any time if Customer’s data usage exceeds any applicable Limits during any billing cycle and/or any Limit specified in an Order. To the extent that use of Products is obtained via an Order specifying a Rate Plan that:

- Specifies a Limit (which may be a fixed bandwidth limit, number of instances, data allowance or other usage limit) without overage coverage; once Customer exceeds its set Limit, additional data will be dropped as specified in the applicable Rate Plan.
- Specifies a Limit with overage coverage, once Customer exceeds its limit, Customer will be automatically charged for overage as specified in the applicable Rate Plan; and further, once Customer exceeds its designated overage data allowance, additional data will be dropped as specified in the applicable Rate Plan.

2.9 All data allowances, including overages, must be used in the billing period in which the allowance is provided. Unused data allowances will not roll over to any other billing periods.

## 3. Limited Warranty, General Limitations and Restrictions.

### Limited Warranty.

3.1.1 No Malicious Code. A10 warrants that, to the best of A10’s knowledge, the Products do not contain Malicious Code. In the event of a breach of this warranty A10 shall correct the non-conforming Product at no additional charge. As used herein, “**Malicious Code**” means any code, programs, procedures, or routines containing (i) viruses, malware, trojan horses, time bombs, worms, or the like or (ii) computer instructions,

circuitry, or other technological means designed to disrupt, damage, or interfere with a party's authorized use of the Products or a party's computers and communications facilities or equipment accessing the Products.

**3.1.2 For Fee Software.** With respect to A10 Software licensed by A10 to Customer for a fee, A10 warrants to Customer that, for ninety (90) days following the date of delivery, the Software will perform in all material respects in accordance with its Documentation.

**3.1.3 Free and 3<sup>rd</sup> Party Products.** Products provided without charge are provided "AS IS" and are not covered by this warranty and third-party equipment, software and peripheral products are covered not covered by A10's warranty or this EULA. A10 Networks shall have no liability with respect to such free and third-party products. Third-party warranties may vary from product to product. It is Customer's responsibility to consult the applicable product documentation and terms for specific warranty and contractual information. Customer is solely responsible for complying with all applicable terms and conditions governing the use of third-party products, including any end user license agreements or service terms required by the third-party provider.

**3.2 Limitations.** Except for the foregoing, the Products are provided "AS IS." In no event does A10 warrant that the that Customer will be able to operate the Products without problems. A10 does not warrant the following: (i) that the Products will meet Customer's requirements, (ii) that the Products will operate in the combinations that Customer may select for execution, (iii) that the operation of the Products will be error-free or uninterrupted, (iv) any aspects of hardware or third-party products; or (v) that any errors contained in the Products will be corrected. In addition, due to the continual development of new techniques for intruding upon and attacking networks, A10 does not warrant that the Products, or any equipment, system or network on which the Products are used, will be free of vulnerability to intrusion or attack. Some Products are designed to identify, block and/or remove applications, data, messages, and files that may compromise productivity or the performance and security of Customer's networks. While A10 uses reasonable efforts to properly identify applications and files for detection, given the potential nature and volume of malicious and unwanted electronic content, A10 cannot guarantee that the Products will properly detect or clean all applications, data and files that are malicious or that Customer does not use or want. Customer acknowledges and accepts the risk that the Products may cause welcome as well as unwelcome files, email or URLs or other web content to be screened and blocked and that rejected files or data may not be recoverable. Customer further acknowledges that certain Products or components may be OSS and/or otherwise covered by open source licenses and that no warranties are provided with respect to such components except as specified in the relevant OSS license.

**3.3 Restrictions.** This warranty does not apply if (a) the Products or any other equipment upon which the Products are authorized to be used has been altered, except by A10 or its authorized representative, (b) the Products have not been used, installed, operated, or maintained in accordance with instructions supplied by A10, (c) Product(s) is/are licensed or provided without charge or for trial, beta, evaluation, testing or demonstration purposes; or (d) with respect to Software, if Customer fails to notify A10 of any warranty deficiencies within 90 days from delivery of the relevant Software. This warranty also does not apply to (i) any temporary Software modules; (ii) any SDK Based Software; or (iii) software or services supplied by any third party or OSS.

**3.4 DISCLAIMER.** THE LIMITED WARRANTY SET FORTH IN THIS ARTICLE IS IN LIEU OF, AND, TO THE EXTENT ALLOWED BY APPLICABLE LAW, A10, ITS SUPPLIERS AND LICENSORS EXPRESSLY DISCLAIM, ALL OTHER WARRANTIES, REPRESENTATIONS AND CONDITIONS, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO ANY IMPLIED WARRANTIES AND CONDITIONS OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT, SATISFACTORY QUALITY, NON-INTERFERENCE, ACCURACY OF INFORMATIONAL CONTENT, OR ARISING FROM A COURSE OF DEALING, LAW, USAGE, OR TRADE PRACTICE. TO THE EXTENT THAT ANY OF THE SAME CANNOT BE EXCLUDED, SUCH IMPLIED CONDITION, REPRESENTATION AND/OR WARRANTY IS LIMITED IN DURATION TO THE EXPRESS WARRANTY PERIOD REFERRED TO IN THE "LIMITED WARRANTY" SECTION ABOVE. NO ADVICE OR INFORMATION, WHETHER ORAL OR WRITTEN, OBTAINED FROM A10 OR ELSEWHERE WILL CREATE ANY WARRANTY OR CONDITION NOT EXPRESSLY STATED IN THIS AGREEMENT. FURTHER, A10 SHALL HAVE NO LIABILITY WITH RESPECT TO CUSTOMER'S FAILURE TO PURCHASE ENOUGH BANDWIDTH FOR CUSTOMER'S USE OR THAT OF USERS. THIS DISCLAIMER AND EXCLUSION SHALL APPLY EVEN IF THE EXPRESS WARRANTY SET FORTH ABOVE FAILS TO SERVE ITS ESSENTIAL PURPOSE.

#### **4. Support, Data and Databases, Statistical Data.**

4.1 During paid Usage Terms A10 will use commercially reasonable efforts to make SaaS available 24 hours a day, 7 days a week, except for: (a) planned downtime (of which A10 shall use commercially reasonable efforts to provide advance electronic notice), and (b) any unavailability caused by circumstances beyond A10's reasonable control, including, for example, an act of God, act of government, flood, fire, earthquake, civil unrest, act of terror, strike or other labor problem (other than one involving A10 employees), data center or Internet service failure or delay, or denial of service or similar attack. With respect to Software, A10 will make support available in accordance with A10 Network's warranty as specified herein or the relevant support agreement purchased by Customer. To assist Customer in isolating the cause of a problem with a Product, A10 may request that Customer: (i) allow A10 to remotely access a Product and/or Customer's system or (ii) send Customer information or data to A10. However, A10 is not obligated to provide such assistance: (a) outside a Usage Term for SaaS; and/or (b) with respect to Software unless A10 and Customer enter a support agreement under which A10 agrees to provide Customer Support beyond A10's obligations in this Agreement. In any event, Customer instructs A10 to use information about errors and problems to improve its products and services and assist with its provision of related support offerings and consents to such use. For these purposes, A10 entities and subcontractors may use Subscriber Data (including Customer-provided PII) to the extent permitted by applicable data protection laws and in one or more countries other than the one in which Customer is located, and Customer authorizes A10 to do so.

4.2 A10 reserves the right to modify the Products or means of their delivery in ways that do not materially degrade their functionality (other than free Products which may be changed, degraded, or cancelled at any time) at any time without notice. If Customer objects to any changes to the Products, Customer's sole recourse will be to cease using them. Continued use of the Products following any such changes will indicate Users acknowledgement of such changes and satisfaction with the Products as so modified.

4.3 Customer remains responsible for: (i) any data and the content of any database, product or system Customer makes available to A10, (ii) receipt of all permissions, authorizations, licenses or approvals from each applicable data source as may be necessary or required to use and to provide data to A10 in connection with the delivery of Products and Support; (iii) compliance with all applicable laws in its performance under this Agreement; (iv)

implementation of, and compliance with, appropriate and effective procedures and controls regarding access, security, encryption, use, and transmission of data (including any PII), and (v) backup and recovery of any database and any stored data. Customer will not send or provide A10 access to any PII, whether in data or any other form, without advising A10 of such provision, and will be responsible for reasonable costs and other amounts that A10 may incur relating to any such information provided to A10 or the loss or disclosure of such information by A10, including those arising out of any third-party claims. Customer will also ensure that Subscriber Data does not contain any viruses, malware, or similar contaminants.

4.4 Customer instructs A10 to collect and compile Statistical Data with respect to Customer's use of Products (including usage levels) to improve Products and to enable, help, demonstrate and ensure compliance with applicable usage limits and conditions under this Agreement. Such Statistical Data may include and is not limited to data regarding the quantity of traffic, bandwidth usage, and viability of the Products for A10's use as well as data for billing, providing Customer Support and other services (collectively, "**Usage Information**"). Customer specifically authorizes these activities to the extent conducted in accordance with this Agreement and agrees to hold A10 harmless from third-party claims arising from Customer's failure to provide necessary disclosures with respect to Subscriber Data. A10 will use reasonable methods to monitor and collect Statistical Data and Usage Information to better optimize the operation of the Products, related network(s), and services and may use such Statistical Data, Usage Information and the know-how resulting from the provision of the Products to enhance, improve and provide them and new or enhanced products and services. A10 will be free (during and after the term hereof) to (i) use Statistical Data and Usage Information to improve and enhance the Products and for other development, diagnostic and corrective purposes in connection with the Products and other A10 offerings, and (ii) use such Statistical Data and Usage Information as necessary solely for A10's business purposes. Customer grants A10 a non-exclusive, fully paid-up, royalty-free worldwide, transferable, sub-licensable, assignable, irrevocable, and perpetual license to use such Statistical Data and Usage Information, provided that such data is de-identified and aggregated so that neither Customer nor any individual User can be identified. Notwithstanding anything to the contrary in this Agreement or any related agreement, Customer further authorizes and will cooperate with A10 to facilitate such electronic access to Customer systems by A10 only as reasonably necessary for A10's collection of Statistical Data in accordance with this Section, provided that the foregoing does not permit A10 to disclose any Statistical Data to any third party in raw or disaggregated form, identify any A10 customers individually, or to identify Customer as the source of any such Statistical Data, Usage Information or analytical results.

## **5. Indemnification and Limitation of Liability.**

### **5.1 A10's Indemnification Obligation.**

5.1.1 A10 agrees to defend or, at its option, settle, any third-party claim, suit or proceeding (collectively, "**Claim**") brought against Customer alleging that the use of the Products by Customer or provision of services by A10 infringes or misappropriates any U.S. intellectual property right of any third party. A10 will have sole control of the defense or settlement negotiations, and A10 agrees to pay, subject to the limitations set forth below, any final judgment entered against Customer, as a result of such infringement by a Product, in any such Claim defended by A10; provided that: (1) A10 is given prompt written notice of any such Claim and (2) Customer reasonably cooperates with A10 in such defense. Notwithstanding the foregoing, A10 shall have no obligation under this Section or otherwise with respect to any Claims for Products that are provided or made available by A10 without charge or that are based upon (i) any use of or access to the Products not in accordance with this Agreement; (ii) any use of the Products in combination with other products, equipment, software or data not contemplated by this Agreement if such infringement would not have occurred absent such combination or use; (iii) any non-A10 hardware, software, or service (including but not limited to OSS), or (iv) any modification or adaption to the Products by anyone other than A10 if such infringement would not have occurred absent such modification or adaption. If Customer is enjoined from using the Product or if A10 reasonably believes it will be enjoined, A10 may, at its sole option, obtain for Customer the right to continue use of the Product or replace or modify the Product so that it is no longer infringing. If neither of the foregoing options is reasonably available to A10, then either party may terminate the Agreement and A10's sole liability, in addition to the indemnification obligations in this section, will be to refund (y) the fee paid for the impacted Product or perpetual license amortized over a three (3) year period on a straight line basis and/or (z) any prepaid fees for a subscription based license for use that was to be provided after the effective date of termination.

5.1.2. Sole Remedy. This Article states A10's entire liability and Customer's sole and exclusive remedy with respect to alleged infringement of any intellectual property rights of any third party with respect to the Products.

5.2 Customer Indemnification Obligation. Customer agrees to defend, hold harmless and indemnify A10 and its affiliates, and their respective officers, directors, employees, successors, assigns, and agents ("**A10 Parties**") from and against any damages, liabilities, assessments, losses, costs, and other expenses (including reasonable attorneys' fees and legal expenses) incurred by that A10 Party arising from or related to any Claim alleging that Customer's or any of its Users use of the Products or data provided by Customer other than in compliance with this Agreement or applicable laws infringed or misappropriated a third-party's property (including intellectual property), privacy or other rights or from SDK Based Software. Customer shall have sole control of the defense, except that Customer will not settle any such Claim without A10 Parties' prior written consent, which may not be unreasonably withheld. A10 will give Customer reasonable notice of each Claim for which it or an A10 Party wants indemnity, except that failure to provide such notice will not release Customer from any obligations hereunder except to the extent that Customer is materially prejudiced by such failure. A10 will also give Customer its reasonable cooperation in the defense of each Claim, at Customer's written request.

**5.3 A10'S AND ITS LICENSORS' TOTAL LIABILITY TO CUSTOMER FROM ALL CAUSES OF ACTION AND UNDER ALL THEORIES OF LIABILITY WILL BE LIMITED TO THE AMOUNTS PAID TO A10 BY CUSTOMER FOR THE PRODUCT(S) GIVING RISE TO THE CLAIM, OR, IN THE EVENT THAT A10 HAS MADE THE PRODUCT(S) AVAILABLE TO CUSTOMER WITHOUT CHARGE, A10'S TOTAL LIABILITY WILL BE LIMITED TO \$500. IN NO EVENT WILL A10 BE LIABLE FOR ANY SPECIAL, INCIDENTAL, EXEMPLARY, PUNITIVE OR CONSEQUENTIAL DAMAGES (INCLUDING LOSS OF DATA, BUSINESS, PROFITS OR ABILITY TO EXECUTE) OR FOR THE COST OF PROCURING SUBSTITUTE PRODUCTS ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR THE EXECUTION OR PERFORMANCE OF THE PRODUCTS WHETHER SUCH LIABILITY ARISES FROM ANY CLAIM BASED UPON CONTRACT, WARRANTY, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR OTHERWISE, AND WHETHER OR NOT A10 HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH LOSS OR DAMAGE. THE FOREGOING LIMITATIONS WILL SURVIVE AND APPLY EVEN IF ANY LIMITED REMEDY SPECIFIED IN THIS AGREEMENT IS FOUND TO HAVE FAILED OF ITS ESSENTIAL PURPOSE. NOTHING IN THIS AGREEMENT LIMITS OR EXCLUDES ANY**

**LIABILITY THAT CANNOT BE LIMITED OR EXCLUDED UNDER APPLICABLE LAW. THIS LIMITATION OF LIABILITY IS CUMULATIVE AND NOT PER INCIDENT.**

**6. Confidentiality.**

6.1 Duty of Care. The Receiving Party will use the same degree of care that it uses to protect the confidentiality of its own confidential information of like kind (but not less than reasonable care) to protect Disclosing Party's Confidential Information. Receiving Party will (1) not use any Confidential Information of the Disclosing Party for any purpose outside the scope of this Agreement, and (2) except as otherwise authorized by the Disclosing Party in writing, limit access to Confidential Information of the Disclosing Party to those of its and its affiliates' employees and contractors who need that access for purposes consistent with this Agreement and who are subject to confidentiality obligations to the Receiving Party not materially less protective of the Confidential Information than those herein. Neither party will disclose the terms of this Agreement or any Order to any third party other than its affiliates, legal counsel, and accountants without the other party's prior written consent, provided that a party that makes any such disclosure to its affiliate, legal counsel or accountants will remain responsible for such affiliate's, legal counsel's or accountant's compliance with this Article ("**Confidentiality**"). Notwithstanding the foregoing, A10 may disclose the terms of this Agreement and any applicable Order to a subcontractor, sub-processor, or other entity that is working with A10 to the extent necessary to enable A10 to perform A10's obligations to Customer under this Agreement, under terms of confidentiality materially as protective as set forth herein.

6.2 Compelled Disclosure. The Receiving Party may disclose Confidential Information of the Disclosing Party to the extent compelled by law to do so, provided the Receiving Party gives the Disclosing Party prior notice of the compelled disclosure (to the extent legally permitted) and reasonable assistance, at the Disclosing Party's cost, if the Disclosing Party wishes to contest the disclosure. If the Receiving Party is compelled by law to disclose the Disclosing Party's Confidential Information as part of a civil proceeding to which the Disclosing Party is a party, and the Disclosing Party is not contesting the disclosure, the Disclosing Party will reimburse the Receiving Party for its reasonable cost of complying and providing secure access to that Confidential Information.

6.3 Injunctive Relief. It is understood and agreed that notwithstanding any other provision of this Agreement, a breach by either party of Article 12 may cause the other party irreparable damage for which recovery of money damages might be inadequate, and that the other party shall therefore be entitled to seek timely injunctive relief, without posting bond, to protect such party's rights under this Agreement in addition to any and all remedies available at law.

**7. Term and Termination.**

7.1 Term. Licenses granted under this Agreement remain in effect for the applicable Usage Term or Trial Term (the "**Term**"), unless earlier terminated in accordance with this Agreement. Customer may terminate the license at any time by destroying all copies of the Products in Customer possession or control, provided that termination will not abate any amounts due A10 under an Order. The license granted under this Agreement will automatically terminate, with or without notice from A10, upon completion of the relevant Term, if Customer breaches any term of this Agreement or exceeds the scope of the license granted herein. Unless written notice is provided to A10 at least 60 days prior to the end of a relevant Usage Term, the Usage Term shall automatically renew for a single year term. Upon termination, Customer must at A10's option, either promptly destroy or return to A10 all copies of the Software and Documentation in Customer possession or control.

7.1.1 Termination for Breach. In the event of a material breach by either party of this Agreement or any Order, the non-breaching party shall have the right to terminate the applicable Order or this Agreement, in such party's sole discretion, for cause if such breach has not been cured within thirty (30) days of written notice from the non-breaching party specifying the breach in detail. A10 may immediately terminate this Agreement and/or Customer's password, account, and access to Products if (i) Customer fails to make payment due within ten (10) business days after A10 has provided Customer with notice of such failure; or (ii) Customer violates Sections 1, 2, 3, 6, or 8 of this Agreement. If A10 terminates an Order for Customer's material breach, all fees set forth on such Order are immediately due and payable.

7.1.2 Termination for Insolvency. Either party may terminate this Agreement immediately at its option if the other party (i) ceases to do business in the normal course; (ii) becomes or is declared insolvent or bankrupt; (iii) is the subject of any proceeding related to its liquidation or insolvency (whether voluntary or involuntary) which is not dismissed within ninety (90) days; or (iv) makes an assignment for the benefit of creditors.

**7.2 Effect of Termination**

7.2.1 Products. Upon any termination or expiration of an Order or this Agreement, Customer's license and/or right to access and use Products and Documentation covered by that Order or this Agreement, as applicable, shall terminate.

7.2.2 Customer Data. Customer acknowledges and agrees that A10 has no obligation to retain Subscriber Data and that A10 may, in its sole discretion, and without notice to Customer, irretrievably delete and destroy Subscriber Data after the termination of the Agreement.

7.2.3 Term Completion. The right to access Support and the license to Products will automatically terminate upon termination of this Agreement, the relevant Usage Term or the applicable Order for any reason. Upon such termination, Customer must, at A10's option, either promptly destroy or return to A10 all copies of Software and Documentation in Customer's possession or control as well as any and all access instructions, codes, passcodes or other information that enables access to and/or use of SaaS.

7.3 Suspension. A10 reserves the right to temporarily suspend or permanently terminate use of or access to Support by Customer or User(s) in the event that (i) Customer or such User(s) violates, or is deemed by A10, in A10's sole determination to be in violation of the terms of this Agreement, (ii) uses Support in a manner that A10 reasonably believes will cause it liability, or (iii) A10 does not timely receive payment from the Customer or, as applicable, the authorized A10 reseller, that purchased Support from A10. Customer also remains responsible for paying Customer's monthly Support fee if Support is suspended as permitted herein.

7.4 **Survival.** The following provisions will survive any expiration or termination of this Agreement: Articles 2, 3, 4, 5, 6, 8, 9, 13 and 15.

**7 Compliance with Laws.** Customer agrees to comply in all material respects with all applicable laws, rules, and regulations in connection with its activities under this Agreement. Customer specifically avers and agrees that Customer has not received or been offered any illegal or improper bribe, kickback, payment, gift, or thing of value from any of A10's employees or agents in connection with this Agreement.

**8 Export Administration Act and Related Laws.** The Products and technology (collectively, "**Software and Technology**" for purposes of this Article) supplied by A10 under the Agreement are subject to export controls under the laws and regulations of the United States and any other applicable countries' laws and regulations. Customer shall be responsible for being knowledgeable as to all laws, regulations, and requirements regarding the export, re-export, transfer, diversion, release and/or import of the Software and Technology and any other A10 items (whether tangible or intangible, including without limitation commodities, software, technology, and technical data) that Customer may receive or access under this Agreement. Customer, at its cost, agrees to conduct all activities and obligations under this Agreement in conformity with such laws, regulations, and requirements. In addition, Customer understands and agrees that A10's Software and Technology shall not, in the absence of authorization by United States and local law and regulations, as required, be used by or exported or re-exported to (i) any United States sanctioned or embargoed country, or to foreign nationals or residents of such countries; or (ii) any person, entity, organization or other party identified on the United States Department of Commerce's Denied Persons or Entity Lists, the United States Department of Treasury's Specially Designated Nationals or Blocked Persons Lists, or the Department of State's Debarred Parties List, as published and revised from time to time; (iii) any party engaged in nuclear, chemical/biological weapons or missile proliferation activities; or (iv) any party for use in the design, development, or production of rocket systems or unmanned air vehicles. Customer warrants and represents that it is not (i) a person, entity, organization, or other party identified on the United States Department of Commerce's Denied Persons or Entity List, the United States Department of Treasury's Specially Designated Nationals or Blocked Persons Lists, or the Department of State's Debarred Parties List, as published and revised from time to time. A10 reserves the right in its sole discretion to deny access or use of the Products to any of the foregoing entities, without any liability or any other obligation hereunder to Customer or any other third party.

**9 Identified Components; Additional Terms.** The Products and Appliances may contain or be delivered with one or more components, which may include third-party components, as may be identified by A10 in the documentation, readme.txt file, third-party click-accept or elsewhere (e.g. on www.a10networks.com) (the "**Identified Component(s)**") as being subject to different license and/or agreement terms, disclaimers of warranties, limited warranties or other terms and conditions (collectively, "**Additional Terms**") than those set forth herein. Customer agrees to the applicable Additional Terms for any such Identified Component(s).

**10 Open Source Statement.** The Software includes Open Source Software that is licensed pursuant to the Open Source Software license agreement(s) identified in the Open Source Software comments in the applicable source code file(s) and/or file header(s) provided with or otherwise associated with the Software. Additional detail may be provided (where applicable) in the accompanying on-line documentation, or within the user interface of the device, if any. With respect to Open Source Software, nothing in this Agreement limits any rights under, or grants rights that supersede, the terms of any applicable Open Source Software license agreement.

**11 General.** Without regard to or application of conflict of laws rules or principles: (a) this Agreement will be governed by and construed in accordance with the laws of the State of California without reference to its conflict of laws rules; and (b) any disputes, claims, or causes of action arising out of or related to this Agreement or Customer's use of the Products will be resolved individually, without resort to any form of class action, and exclusively by the state or federal courts located in Santa Clara County, California. The United Nations Convention on Contracts for the International Sale of Goods and the Uniform Computer Information Transactions Act (UCITA) will not apply. Customer may not assign or transfer this Agreement, or any rights granted hereunder, by operation of law or otherwise, without A10's prior written consent, and any attempt by Customer to do so, without such consent, will be void. A10 may assign or transfer this Agreement, by operation of law or otherwise, without Customer's consent. Except as expressly set forth in this Agreement, the exercise by either party of any of its remedies under this Agreement will be without prejudice to its other remedies under this Agreement or otherwise. The failure by either party to enforce any provision of this Agreement will not constitute a waiver of future enforcement of that or any other provision. If any provision of this Agreement is held to be unenforceable or invalid, that provision will be enforced to the maximum extent possible, and the other provisions will remain in full force and effect. This Agreement and all Order(s) are the complete and exclusive understanding and agreement between the parties regarding its subject matter, and supersede all proposals, understandings, or communications between the parties, oral or written, regarding their subject matter. Any terms or conditions contained in Customer's purchase order or other ordering document that are inconsistent with or in addition to the terms and conditions of this Agreement are hereby rejected by A10 and will be deemed null. In the event of a conflict between this Agreement and an Order, the terms of this Agreement shall control. Except for payment obligations, neither party will be liable for inadequate performance to the extent caused by a condition that was beyond the party's reasonable control (for example, natural disaster, act of war or terrorism, riot, labor condition, governmental action, and Internet disturbance). There are no third-party beneficiaries to this Agreement. A10 may use third-party contractors to perform some or all of A10's obligations under this Agreement provided that A10 will be responsible for such performance. The original of this Agreement is in English and Customer waives any right to have it written in any other language. Any use of the plural in this Agreement shall also imply the singular and vice-versa, as appropriate.

**12 U.S. Government Customers.** The software elements of Products and Documentation are deemed to be "commercial computer software" and "commercial computer software documentation," respectively, pursuant to DFAR Section 227.7202 and FAR Section 12.212(b), as applicable. Consistent with FAR 12.211, FAR 12.212 and DoD FAR Supp. 227.7102-1 through 227.7102-4 and 227.7202-1 through 227.7202-4, and notwithstanding any other FAR or other contractual clause to the contrary in any agreement into which the Agreement may be incorporated, Customer may provide to U.S. Government Customers or, if the Agreement is direct, U.S. Government Customer will acquire, the software elements of Products and Documentation with only those rights set forth in the Agreement. Use of either the software elements of Products or Documentation constitutes agreement by the U.S. Government that the items are "technical data," "commercial computer software" or "commercial computer software documentation," and constitutes acceptance of the rights and restrictions herein.

**13 General Notices.** All notices or approvals required or permitted under this Agreement will be in writing and delivered by electronic mail to the electronic mail addresses specified in an Order, by overnight delivery service, or by certified mail, and in each instance will be deemed given upon receipt. All notices or approvals will be sent to the addresses set forth in the applicable ordering document or invoice or to such other address as may be specified by either party to the other in accordance with this section. Copies of all legal notices shall be sent to A10 at legal@a10networks.com

**14 Trademark Notices.** The A10 logo, A10 Harmony, A10 Lightning, A10 Networks, A10 Thunder, aCloud, ACOS, AIR, Application Intelligence Report, Affinity, aFlex, aFlow, aGalaxy, aGAPI, aVCS, AX, aXAPI, IDSentire, IP-to-ID, Secure Application Services, SSL Insight, SSLi,

Thunder, Thunder TPS, UASG, and vThunder are trademarks or registered trademarks of A10 Networks, Inc. in the United States and other countries. All other trademarks are property of their respective owners.

Patent Protection. A10 Networks products including all A10 Thunder Series products are protected by one or more of the following patents in the United States: 8977749, 8943577, 8918857, 8914871, 8904512, 8897154, 8868765, 8849938, 8826372, 8813180, 8782751, 8782221, 8595819, 8595791, 8595383, 8584199, 8464333, 8423676, 8387128, 8332925, 8312507, 8291487, 8266235, 8151322, 8079077, 7979585, 7804956, 7716378, 7665138, 7647635, 7627672, 7596695, 7577833, 7552126, 7392241, 7236491, 7139267, 6748084, 6658114, 6535516, 6363075, 6324286, 5931914, 5875185, RE44701, 8392563, 8103770, 7831712, 7606912, 7346695, 7287084, 6970933, 6473802, 6374300. This list is not all inclusive.



Department of Administration  
 Purchasing Division  
 2019 Washington Street East  
 Post Office Box 50130  
 Charleston, WV 25305-0130

State of West Virginia  
 Centralized Request for Quote  
 Info Technology

<b>Proc Folder:</b> 1918839		<b>Reason for Modification:</b>	
<b>Doc Description:</b> Addendum No. 1 - Network Load Balancer Appliances		Addendum No 1 is issued to correct an error	
<b>Proc Type:</b> Central Master Agreement			
<b>Date Issued</b>	<b>Solicitation Closes</b>	<b>Solicitation No</b>	<b>Version</b>
2026-03-10	2026-03-24 13:30	CRFQ 0231 OOT2600000023	2

**BID RECEIVING LOCATION**

BID CLERK  
 DEPARTMENT OF ADMINISTRATION  
 PURCHASING DIVISION  
 2019 WASHINGTON ST E  
 CHARLESTON WV 25305  
 US

**VENDOR**

**Vendor Customer Code:**

**Vendor Name :** Software Information Resource Corporation

**Address :**

**Street :** 730 24th St NW, Suite #3

**City :** Washington

**State :** DC

**Country :** USA

**Zip :** 20037-2500

**Principal Contact :** Ethan Garcia

**Vendor Contact Phone:** 202-536-2800

**Extension:** 294

**FOR INFORMATION CONTACT THE BUYER**

Toby L Welch  
 (304) 558-8802  
 toby.l.welch@wv.gov

Vendor  
 Signature X 

**FEIN#** 54-1727076

**DATE** 3/24/26

All offers subject to all terms and conditions contained in this solicitation

**ADDITIONAL INFORMATION**

Addendum No 1 is issued for the following reasons:

1) To correct an error. The line-item quantity is being changed from quantity two (2) to quantity one (1) on commodity lines, 5, 7, and 9.

---no other changes---

INVOICE TO		SHIP TO	
DEPARTMENT OF ADMINISTRATION OFFICE OF TECHNOLOGY 1900 KANAWHA BLVD E, BLDG 5 10TH FLOOR CHARLESTON WV US		WV OFFICE OF TECHNOLOGY BLDG 5, 10TH FLOOR 1900 KANAWHA BLVD E CHARLESTON WV US	

Line	Comm Ln Desc	Qty	Unit Issue	Unit Price	Total Price
1	A10 Thunder 3350S Network Load Balancers, Pt#: TH335	3.00000	EA	Please see SIRC quote D26-J3895 for pricing	

Comm Code	Manufacturer	Specification	Model #
43222634			

**Extended Description:**

A10 Thunder 3350S Network Load Balancers, Part Number: TH3350S-020-CFW-FIPS "or Equal".

INVOICE TO		SHIP TO	
DEPARTMENT OF ADMINISTRATION OFFICE OF TECHNOLOGY 1900 KANAWHA BLVD E, BLDG 5 10TH FLOOR CHARLESTON WV US		WV OFFICE OF TECHNOLOGY BLDG 5, 10TH FLOOR 1900 KANAWHA BLVD E CHARLESTON WV US	

Line	Comm Ln Desc	Qty	Unit Issue	Unit Price	Total Price
2	10Gb SR-Optical Transceiver for the A10 Thunder AX 3350 Appl	9.00000	EA	Please see SIRC quote D26-J3895 for pricing	

Comm Code	Manufacturer	Specification	Model #
43222634			

**Extended Description:**

10Gb SR-Optical Transceiver for the A10 Thunder AX 3350 Appliance, Part Number: AXSK-SFP+ SR "or Equal"

INVOICE TO		SHIP TO	
DEPARTMENT OF ADMINISTRATION OFFICE OF TECHNOLOGY 1900 KANAWHA BLVD E, BLDG 5 10TH FLOOR CHARLESTON WV US		WV OFFICE OF TECHNOLOGY BLDG 5, 10TH FLOOR 1900 KANAWHA BLVD E CHARLESTON WV US	

Line	Comm Ln Desc	Qty	Unit Issue	Unit Price	Total Price
3	(1) seat for training on Application Delivery Controller (AD	1.00000	EA	Please see SIRC quote D26-J3895 for pricing	

Comm Code	Manufacturer	Specification	Model #
81112201			

**Extended Description:**

(1) seat for training on Application Delivery Controller (ADC) Administration Course, SKU: AX-TR "or Equal".

INVOICE TO		SHIP TO	
DEPARTMENT OF ADMINISTRATION OFFICE OF TECHNOLOGY 1900 KANAWHA BLVD E, BLDG 5 10TH FLOOR CHARLESTON WV US		WV OFFICE OF TECHNOLOGY BLDG 5, 10TH FLOOR 1900 KANAWHA BLVD E CHARLESTON WV US	

Line	Comm Ln Desc	Qty	Unit Issue	Unit Price	Total Price
4	1 each Gold SupportService Program for wo (2) appliances 3yr	2.00000	EA	Please see SIRC quote D26-J3895 for pricing	

Comm Code	Manufacturer	Specification	Model #
81112201			

**Extended Description:**

1 each Gold Support Service Program for two (2) appliances listed in section 3.1.1 for a total quantity of 2 Gold Support Service Program "or Equal" for 3 Year period

INVOICE TO		SHIP TO	
DEPARTMENT OF ADMINISTRATION OFFICE OF TECHNOLOGY 1900 KANAWHA BLVD E, BLDG 5 10TH FLOOR CHARLESTON WV US		WV OFFICE OF TECHNOLOGY BLDG 5, 10TH FLOOR 1900 KANAWHA BLVD E CHARLESTON WV US	

Line	Comm Ln Desc	Qty	Unit Issue	Unit Price	Total Price
5	1 Basic Support Service Program for one (1) appliance 3Yr	1.00000	EA	Please see SIRC quote D26-J3895 for pricing	

Comm Code	Manufacturer	Specification	Model #
81112201			

**Extended Description:**

1 Basic Support Service Program for one (1) appliance listed in section 3.1.1 for a total quantity of 1 Basic Support Service Program "or Equal" for 3 year period.

INVOICE TO		SHIP TO	
DEPARTMENT OF ADMINISTRATION OFFICE OF TECHNOLOGY 1900 KANAWHA BLVD E, BLDG 5 10TH FLOOR CHARLESTON WV US		WV OFFICE OF TECHNOLOGY BLDG 5, 10TH FLOOR 1900 KANAWHA BLVD E CHARLESTON WV US	

Line	Comm Ln Desc	Qty	Unit Issue	Unit Price	Total Price
6	Yr4 renewal 1 each Gold Support Service Program for two (2)	2.00000	EA	Please see SIRC quote D26-J3895 for pricing	

Comm Code	Manufacturer	Specification	Model #
81112201			

**Extended Description:**

1 each Gold Support Service Program for two (2) appliances listed in section 3.1.1 for a total quantity of 2 Gold Support Service Program "or Equal" Year 4 Renewal

INVOICE TO		SHIP TO	
DEPARTMENT OF ADMINISTRATION OFFICE OF TECHNOLOGY 1900 KANAWHA BLVD E, BLDG 5 10TH FLOOR CHARLESTON WV US		WV OFFICE OF TECHNOLOGY BLDG 5, 10TH FLOOR 1900 KANAWHA BLVD E CHARLESTON WV US	

Line	Comm Ln Desc	Qty	Unit Issue	Unit Price	Total Price
7	Yr 4 Renewal 1 Basic Support Service Program for one (1) app	1.00000	EA	Please see SIRC quote D26-J3895 for pricing	

Comm Code	Manufacturer	Specification	Model #
81112201			

**Extended Description:**

Yr 4 Renewal 1 Basic Support Service Program for one (1) appliance listed in section 3.1.1 for a total quantity of 1 Basic Support Service Program "or Equal" for 3 year period.

INVOICE TO		SHIP TO	
DEPARTMENT OF ADMINISTRATION OFFICE OF TECHNOLOGY 1900 KANAWHA BLVD E, BLDG 5 10TH FLOOR CHARLESTON WV US		WV OFFICE OF TECHNOLOGY BLDG 5, 10TH FLOOR 1900 KANAWHA BLVD E CHARLESTON WV US	

Line	Comm Ln Desc	Qty	Unit Issue	Unit Price	Total Price
8	Yr 5 Renewal 1 each Gold Support Service Program for two (2)	2.00000	EA	Please see SIRC quote D26-J3895 for pricing	

Comm Code	Manufacturer	Specification	Model #
81112201			

**Extended Description:**

Yr 5 Renewal 1 each Gold Support Service Program for two (2) appliances listed in section 3.1.1 for a total quantity of 2 Gold Support Service Program "or Equal" Year 4 Renewal

INVOICE TO		SHIP TO	
DEPARTMENT OF ADMINISTRATION OFFICE OF TECHNOLOGY 1900 KANAWHA BLVD E, BLDG 5 10TH FLOOR CHARLESTON WV US		WV OFFICE OF TECHNOLOGY BLDG 5, 10TH FLOOR 1900 KANAWHA BLVD E CHARLESTON WV US	

Line	Comm Ln Desc	Qty	Unit Issue	Unit Price	Total Price
9	Yr 5 Renewal 1 Basic Support Service Program for one (1) app	1.00000	EA	Please see SIRC quote D26-J3895 for pricing	

Comm Code	Manufacturer	Specification	Model #
81112201			

**Extended Description:**

Yr 5 Renewal 1 Basic Support Service Program for one (1) appliance listed in section 3.1.1 for a total quantity of 1 Basic Support Service Program "or Equal" for 3 year period.

**SCHEDULE OF EVENTS**

<u>Line</u>	<u>Event</u>	<u>Event Date</u>
1	Questions are due by 3:00 p.m.	2026-03-16

	Document Phase	Document Description	Page
OOT2600000023	Final	Addendum No. 1 - Network Load Balancer Appliances	7

**ADDITIONAL TERMS AND CONDITIONS**

See attached document(s) for additional Terms and Conditions



Department of Administration  
 Purchasing Division  
 2019 Washington Street East  
 Post Office Box 50130  
 Charleston, WV 25305-0130

**State of West Virginia  
 Centralized Request for Quote  
 Info Technology**

<b>Proc Folder:</b> 1918839		<b>Reason for Modification:</b>	
<b>Doc Description:</b> Addendum No. 1 - Network Load Balancer Appliances		Addendum No 1 is issued to correct an error	
<b>Proc Type:</b> Central Master Agreement			
<b>Date Issued</b>	<b>Solicitation Closes</b>	<b>Solicitation No</b>	<b>Version</b>
2026-03-10	2026-03-24 13:30	CRFQ 0231 OOT2600000023	2

**BID RECEIVING LOCATION**

BID CLERK  
 DEPARTMENT OF ADMINISTRATION  
 PURCHASING DIVISION  
 2019 WASHINGTON ST E  
 CHARLESTON WV 25305  
 US

**VENDOR**

**Vendor Customer Code:**

**Vendor Name :** Software Information Resource Corporation

**Address :**

**Street :** 730 24th St NW, Suite #3

**City :** Washington

**State :** DC **Country :** USA **Zip :** 20037-2500

**Principal Contact :** Ethan Garcia

**Vendor Contact Phone:** 202-536-2800 **Extension:** 294

**FOR INFORMATION CONTACT THE BUYER**  
 Toby L Welch  
 (304) 558-8802  
 toby.l.welch@wv.gov

**Vendor Signature X** 

**FEIN#** 54-1727076 **DATE** 3/24/26

**All offers subject to all terms and conditions contained in this solicitation**

**ADDITIONAL INFORMATION**

Addendum No 1 is issued for the following reasons:

1) To correct an error. The line-item quantity is being changed from quantity two (2) to quantity one (1) on commodity lines, 5, 7, and 9.

---no other changes---

**INVOICE TO****SHIP TO**DEPARTMENT OF  
ADMINISTRATION  
OFFICE OF TECHNOLOGY  
1900 KANAWHA BLVD E,  
BLDG 5 10TH FLOOR  
CHARLESTON WV  
USWV OFFICE OF  
TECHNOLOGY  
BLDG 5, 10TH FLOOR  
1900 KANAWHA BLVD E  
CHARLESTON WV  
US

Line	Comm Ln Desc	Qty	Unit Issue	Unit Price	Total Price
1	A10 Thunder 3350S Network Load Balancers, Pt#: TH335	3.00000	EA		

Comm Code	Manufacturer	Specification	Model #
43222634			

**Extended Description:**

A10 Thunder 3350S Network Load Balancers, Part Number: TH3350S-020-CFW-FIPS "or Equal".

**INVOICE TO****SHIP TO**DEPARTMENT OF  
ADMINISTRATION  
OFFICE OF TECHNOLOGY  
1900 KANAWHA BLVD E,  
BLDG 5 10TH FLOOR  
CHARLESTON WV  
USWV OFFICE OF  
TECHNOLOGY  
BLDG 5, 10TH FLOOR  
1900 KANAWHA BLVD E  
CHARLESTON WV  
US

Line	Comm Ln Desc	Qty	Unit Issue	Unit Price	Total Price
2	10Gb SR-Optical Transceiver for the A10 Thunder AX 3350 Appl	9.00000	EA	Please see SIRC quote D26-J3895 for pricing	

Comm Code	Manufacturer	Specification	Model #
43222634			

**Extended Description:**

10Gb SR-Optical Transceiver for the A10 Thunder AX 3350 Appliance, Part Number: AXSK-SFP+ SR "or Equal"

INVOICE TO		SHIP TO	
DEPARTMENT OF ADMINISTRATION OFFICE OF TECHNOLOGY 1900 KANAWHA BLVD E, BLDG 5 10TH FLOOR CHARLESTON US	WV	WV OFFICE OF TECHNOLOGY BLDG 5, 10TH FLOOR 1900 KANAWHA BLVD E CHARLESTON US	WV

Line	Comm Ln Desc	Qty	Unit Issue	Unit Price	Total Price
3	(1) seat for training on Application Delivery Controller (AD)	1.00000	EA	Please see SIRC quote D26-J3895 for pricing	

Comm Code	Manufacturer	Specification	Model #
81112201			

**Extended Description:**

(1) seat for training on Application Delivery Controller (ADC) Administration Course, SKU: AX-TR "or Equal".

INVOICE TO		SHIP TO	
DEPARTMENT OF ADMINISTRATION OFFICE OF TECHNOLOGY 1900 KANAWHA BLVD E, BLDG 5 10TH FLOOR CHARLESTON US	WV	WV OFFICE OF TECHNOLOGY BLDG 5, 10TH FLOOR 1900 KANAWHA BLVD E CHARLESTON US	WV

Line	Comm Ln Desc	Qty	Unit Issue	Unit Price	Total Price
4	1 each Gold SupportService Program for wo (2) appliances 3yr	2.00000	EA	Please see SIRC quote D26-J3895 for pricing	

Comm Code	Manufacturer	Specification	Model #
81112201			

**Extended Description:**

1 each Gold Support Service Program for two (2) appliances listed in section 3.1.1 for a total quantity of 2 Gold Support Service Program "or Equal" for 3 Year period

INVOICE TO			SHIP TO		
DEPARTMENT OF ADMINISTRATION OFFICE OF TECHNOLOGY 1900 KANAWHA BLVD E, BLDG 5 10TH FLOOR CHARLESTON WV US			WV OFFICE OF TECHNOLOGY BLDG 5, 10TH FLOOR 1900 KANAWHA BLVD E CHARLESTON WV US		

Line	Comm Ln Desc	Qty	Unit Issue	Unit Price	Total Price
5	1 Basic Support Service Program for one (1) appliance 3Yr	1.00000	EA		

Comm Code	Manufacturer	Specification	Model #
81112201			Please see SIRC quote D26-J3895 for pricing

**Extended Description:**

1 Basic Support Service Program for one (1) appliance listed in section 3.1.1 for a total quantity of 1 Basic Support Service Program "or Equal" for 3 year period.

INVOICE TO			SHIP TO		
DEPARTMENT OF ADMINISTRATION OFFICE OF TECHNOLOGY 1900 KANAWHA BLVD E, BLDG 5 10TH FLOOR CHARLESTON WV US			WV OFFICE OF TECHNOLOGY BLDG 5, 10TH FLOOR 1900 KANAWHA BLVD E CHARLESTON WV US		

Line	Comm Ln Desc	Qty	Unit Issue	Unit Price	Total Price
6	Yr4 renewal 1 each Gold Support Service Program for two (2)	2.00000	EA		

Comm Code	Manufacturer	Specification	Model #
81112201			Please see SIRC quote D26-J3895 for pricing

**Extended Description:**

1 each Gold Support Service Program for two (2) appliances listed in section 3.1.1 for a total quantity of 2 Gold Support Service Program "or Equal" Year 4 Renewal

INVOICE TO			SHIP TO		
DEPARTMENT OF ADMINISTRATION OFFICE OF TECHNOLOGY 1900 KANAWHA BLVD E, BLDG 5 10TH FLOOR CHARLESTON WV US			WV OFFICE OF TECHNOLOGY BLDG 5, 10TH FLOOR 1900 KANAWHA BLVD E CHARLESTON WV US		

Line	Comm Ln Desc	Qty	Unit Issue	Unit Price	Total Price
7	Yr 4 Renewal 1 Basic Support Service Program for one (1) app	1.00000	EA	Please see SIRC quote D26-J3895 for pricing	

Comm Code	Manufacturer	Specification	Model #
81112201			

**Extended Description:**

Yr 4 Renewal 1 Basic Support Service Program for one (1) appliance listed in section 3.1.1 for a total quantity of 1 Basic Support Service Program "or Equal" for 3 year period.

INVOICE TO			SHIP TO		
DEPARTMENT OF ADMINISTRATION OFFICE OF TECHNOLOGY 1900 KANAWHA BLVD E, BLDG 5 10TH FLOOR CHARLESTON WV US			WV OFFICE OF TECHNOLOGY BLDG 5, 10TH FLOOR 1900 KANAWHA BLVD E CHARLESTON WV US		

Line	Comm Ln Desc	Qty	Unit Issue	Unit Price	Total Price
8	Yr 5 Renewal 1 each Gold Support Service Program for two (2)	2.00000	EA	Please see SIRC quote D26-J3895 for pricing	

Comm Code	Manufacturer	Specification	Model #
81112201			

**Extended Description:**

Yr 5 Renewal 1 each Gold Support Service Program for two (2) appliances listed in section 3.1.1 for a total quantity of 2 Gold Support Service Program "or Equal" Year 4 Renewal

INVOICE TO		SHIP TO	
DEPARTMENT OF ADMINISTRATION OFFICE OF TECHNOLOGY 1900 KANAWHA BLVD E, BLDG 5 10TH FLOOR CHARLESTON US	WV	WV OFFICE OF TECHNOLOGY BLDG 5, 10TH FLOOR 1900 KANAWHA BLVD E CHARLESTON US	WV

Line	Comm Ln Desc	Qty	Unit Issue	Unit Price	Total Price
9	Yr 5 Renewal 1 Basic Support Service Program for one (1) app	1.00000	EA	Please see SIRC quote D26-J3895 for pricing	

Comm Code	Manufacturer	Specification	Model #
81112201			

**Extended Description:**

Yr 5 Renewal 1 Basic Support Service Program for one (1) appliance listed in section 3.1.1 for a total quantity of 1 Basic Support Service Program "or Equal" for 3 year period.

**SCHEDULE OF EVENTS**

<u>Line</u>	<u>Event</u>	<u>Event Date</u>
1	Questions are due by 3:00 p.m.	2026-03-16

**SOLICITATION NUMBER:** CRFQ OOT2600000023

**Addendum Number:** 1

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The purpose of this addendum is to modify the solicitation identified as (“Solicitation”) to reflect the change(s) identified and described below.

**Applicable Addendum Category:**

- Modify bid opening date and time
- Modify specifications of product or service being sought
- Attachment of vendor questions and responses
- Attachment of pre-bid sign-in sheet
- Correction of error
- Other

**Description of Modification to Solicitation:**

Addendum No 1 is issued for the following reasons:

1) To correct an error. The line-item quantity is being changed from quantity two (2) to quantity one (1) on commodity lines, 5, 7, and 9.

---no other changes---

**Additional Documentation:** Documentation related to this Addendum (if any) has been included herewith as Attachment A and is specifically incorporated herein by reference.

**Terms and Conditions:**

1. All provisions of the Solicitation and other addenda not modified herein shall remain in full force and effect.
2. Vendor should acknowledge receipt of all addenda issued for this Solicitation by completing an Addendum Acknowledgment, a copy of which is included herewith. Failure to acknowledge addenda may result in bid disqualification. The addendum acknowledgement should be submitted with the bid to expedite document processing.

**ADDENDUM ACKNOWLEDGEMENT FORM**  
**SOLICITATION NO.: CRFQ OOT26\*023**

**Instructions:** Please acknowledge receipt of all addenda issued with this solicitation by completing this addendum acknowledgment form. Check the box next to each addendum received and sign below. Failure to acknowledge addenda may result in bid disqualification.

**Acknowledgment:** I hereby acknowledge receipt of the following addenda and have made the necessary revisions to my proposal, plans and/or specification, etc.

**Addendum Numbers Received:**

(Check the box next to each addendum received)

- |  |  |
|--|--|
| <input checked="" type="checkbox"/> Addendum No. 1 | <input type="checkbox"/> Addendum No. 6  |
| <input type="checkbox"/> Addendum No. 2            | <input type="checkbox"/> Addendum No. 7  |
| <input type="checkbox"/> Addendum No. 3            | <input type="checkbox"/> Addendum No. 8  |
| <input type="checkbox"/> Addendum No. 4            | <input type="checkbox"/> Addendum No. 9  |
| <input type="checkbox"/> Addendum No. 5            | <input type="checkbox"/> Addendum No. 10 |

I understand that failure to confirm the receipt of addenda may be cause for rejection of this bid. I further understand that any verbal representation made or assumed to be made during any oral discussion held between Vendor's representatives and any state personnel is not binding. Only the information issued in writing and added to the specifications by an official addendum is binding.

Software Information Resource Corporation

\_\_\_\_\_  
Company

  
\_\_\_\_\_  
Authorized Signature

3/24/26

\_\_\_\_\_  
Date

**NOTE:** This addendum acknowledgement should be submitted with the bid to expedite document processing.  
Revised 6/8/2012



Department of Administration  
 Purchasing Division  
 2019 Washington Street East  
 Post Office Box 50130  
 Charleston, WV 25305-0130

**State of West Virginia  
 Centralized Request for Quote  
 Info Technology**

<b>Proc Folder:</b> 1918839	<b>Reason for Modification:</b>
<b>Doc Description:</b> Network Load Balancer Appliances	
<b>Proc Type:</b> Central Master Agreement	

Date Issued	Solicitation Closes	Solicitation No	Version
2026-03-09	2026-03-24 13:30	CRFQ 0231 OOT2600000023	1

**BID RECEIVING LOCATION**

BID CLERK  
 DEPARTMENT OF ADMINISTRATION  
 PURCHASING DIVISION  
 2019 WASHINGTON ST E  
 CHARLESTON WV 25305  
 US

**VENDOR**

**Vendor Customer Code:**

**Vendor Name :** Software Information Resource Corporation

**Address :**

**Street :** 730 24th St NW, Suite #3

**City :** Washington

**State :** DC **Country :** USA **Zip :** 20037-2500

**Principal Contact :** Ethan Garcia

**Vendor Contact Phone:** 202-536-2800 **Extension:** 294

**FOR INFORMATION CONTACT THE BUYER**  
 Toby L Welch  
 (304) 558-8802  
 toby.l.welch@wv.gov

**Vendor Signature X** 

**FEIN#** 54-1727076 **DATE** 3/24/26

**All offers subject to all terms and conditions contained in this solicitation**

**ADDITIONAL INFORMATION**

The West Virginia Purchasing Division is soliciting bids on behalf of the West Virginia Office of Technology (WVOT) to establish an open-end contract to purchase three (3) new network load balancer appliances with maintenance and support per the attached documents

**INVOICE TO** | **SHIP TO**

DEPARTMENT OF ADMINISTRATION OFFICE OF TECHNOLOGY 1900 KANAWHA BLVD E, BLDG 5 10TH FLOOR CHARLESTON WV US	WV OFFICE OF TECHNOLOGY BLDG 5, 10TH FLOOR 1900 KANAWHA BLVD E CHARLESTON WV US
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Line	Comm Ln Desc	Qty	Unit Issue	Unit Price	Total Price
1	A10 Thunder 3350S Network Load Balancers, Pt#: TH335	3.00000	EA	Please see SIRC quote D26-J3895 for pricing	

Comm Code	Manufacturer	Specification	Model #
43222634			

**Extended Description:**  
A10 Thunder 3350S Network Load Balancers, Part Number: TH3350S-020-CFW-FIPS "or Equal".

**INVOICE TO** | **SHIP TO**

DEPARTMENT OF ADMINISTRATION OFFICE OF TECHNOLOGY 1900 KANAWHA BLVD E, BLDG 5 10TH FLOOR CHARLESTON WV US	WV OFFICE OF TECHNOLOGY BLDG 5, 10TH FLOOR 1900 KANAWHA BLVD E CHARLESTON WV US
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Line	Comm Ln Desc	Qty	Unit Issue	Unit Price	Total Price
2	10Gb SR-Optical Transceiver for the A10 Thunder AX 3350 Appl	9.00000	EA	Please see SIRC quote D26-J3895 for pricing	

Comm Code	Manufacturer	Specification	Model #
43222634			

**Extended Description:**  
10Gb SR-Optical Transceiver for the A10 Thunder AX 3350 Appliance, Part Number: AXSK-SFP+ SR "or Equal"

<b>INVOICE TO</b>	<b>SHIP TO</b>
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DEPARTMENT OF ADMINISTRATION OFFICE OF TECHNOLOGY 1900 KANAWHA BLVD E, BLDG 5 10TH FLOOR CHARLESTON WV US	WV OFFICE OF TECHNOLOGY BLDG 5, 10TH FLOOR 1900 KANAWHA BLVD E CHARLESTON WV US
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Line	Comm Ln Desc	Qty	Unit Issue	Unit Price	Total Price
3	(1) seat for training on Application Delivery Controller (AD)	1.00000	EA	Please see SIRC quote D26-J3895 for pricing	

Comm Code	Manufacturer	Specification	Model #
81112201			

**Extended Description:**

(1) seat for training on Application Delivery Controller (ADC) Administration Course, SKU: AX-TR "or Equal".

<b>INVOICE TO</b>	<b>SHIP TO</b>
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DEPARTMENT OF ADMINISTRATION OFFICE OF TECHNOLOGY 1900 KANAWHA BLVD E, BLDG 5 10TH FLOOR CHARLESTON WV US	WV OFFICE OF TECHNOLOGY BLDG 5, 10TH FLOOR 1900 KANAWHA BLVD E CHARLESTON WV US
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Line	Comm Ln Desc	Qty	Unit Issue	Unit Price	Total Price
4	1 each Gold SupportService Program for wo (2) appliances 3yr	2.00000	EA	Please see SIRC quote D26-J3895 for pricing	

Comm Code	Manufacturer	Specification	Model #
81112201			

**Extended Description:**

1 each Gold Support Service Program for two (2) appliances listed in section 3.1.1 for a total quantity of 2 Gold Support Service Program "or Equal" for 3 Year period

INVOICE TO			SHIP TO		
DEPARTMENT OF ADMINISTRATION OFFICE OF TECHNOLOGY 1900 KANAWHA BLVD E, BLDG 5 10TH FLOOR CHARLESTON US		WV	WV OFFICE OF TECHNOLOGY BLDG 5, 10TH FLOOR 1900 KANAWHA BLVD E CHARLESTON US		WV

Line	Comm Ln Desc	Qty	Unit Issue	Unit Price	Total Price
5	1 Basic Support Service Program for one (1) appliance 3Yr	2.00000	EA	Please see SIRC quote D26-J3895 for pricing	

Comm Code	Manufacturer	Specification	Model #
81112201			

**Extended Description:**

1 Basic Support Service Program for one (1) appliance listed in section 3.1.1 for a total quantity of 1 Basic Support Service Program "or Equal" for 3 year period.

INVOICE TO			SHIP TO		
DEPARTMENT OF ADMINISTRATION OFFICE OF TECHNOLOGY 1900 KANAWHA BLVD E, BLDG 5 10TH FLOOR CHARLESTON US		WV	WV OFFICE OF TECHNOLOGY BLDG 5, 10TH FLOOR 1900 KANAWHA BLVD E CHARLESTON US		WV

Line	Comm Ln Desc	Qty	Unit Issue	Unit Price	Total Price
6	Yr4 renewal 1 each Gold Support Service Program for two (2)	2.00000	EA	Please see SIRC quote D26-J3895 for pricing	

Comm Code	Manufacturer	Specification	Model #
81112201			

**Extended Description:**

1 each Gold Support Service Program for two (2) appliances listed in section 3.1.1 for a total quantity of 2 Gold Support Service Program "or Equal" Year 4 Renewal

INVOICE TO			SHIP TO		
DEPARTMENT OF ADMINISTRATION OFFICE OF TECHNOLOGY 1900 KANAWHA BLVD E, BLDG 5 10TH FLOOR CHARLESTON US		WV	WV OFFICE OF TECHNOLOGY BLDG 5, 10TH FLOOR 1900 KANAWHA BLVD E CHARLESTON US		WV

Line	Comm Ln Desc	Qty	Unit Issue	Unit Price	Total Price
7	Yr 4 Renewal 1 Basic Support Service Program for one (1) app	2.00000	EA	Please see SIRC quote D26-J3895 for pricing	

Comm Code	Manufacturer	Specification	Model #
81112201			

**Extended Description:**

Yr 4 Renewal 1 Basic Support Service Program for one (1) appliance listed in section 3.1.1 for a total quantity of 1 Basic Support Service Program "or Equal" for 3 year period.

INVOICE TO			SHIP TO		
DEPARTMENT OF ADMINISTRATION OFFICE OF TECHNOLOGY 1900 KANAWHA BLVD E, BLDG 5 10TH FLOOR CHARLESTON US		WV	WV OFFICE OF TECHNOLOGY BLDG 5, 10TH FLOOR 1900 KANAWHA BLVD E CHARLESTON US		WV

Line	Comm Ln Desc	Qty	Unit Issue	Unit Price	Total Price
8	Yr 5 Renewal 1 each Gold Support Service Program for two (2)	2.00000	EA	Please see SIRC quote D26-J3895 for pricing	

Comm Code	Manufacturer	Specification	Model #
81112201			

**Extended Description:**

Yr 5 Renewal 1 each Gold Support Service Program for two (2) appliances listed in section 3.1.1 for a total quantity of 2 Gold Support Service Program "or Equal" Year 4 Renewal

INVOICE TO		SHIP TO	
DEPARTMENT OF ADMINISTRATION OFFICE OF TECHNOLOGY 1900 KANAWHA BLVD E, BLDG 5 10TH FLOOR CHARLESTON US	WV	WV OFFICE OF TECHNOLOGY BLDG 5, 10TH FLOOR 1900 KANAWHA BLVD E CHARLESTON US	WV

Line	Comm Ln Desc	Qty	Unit Issue	Unit Price	Total Price
9	Yr 5 Renewal 1 Basic Support Service Program for one (1) app	2.00000	EA	Please see SIRC quote D26-J3895 for pricing	

Comm Code	Manufacturer	Specification	Model #
81112201			

**Extended Description:**

Yr 5 Renewal 1 Basic Support Service Program for one (1) appliance listed in section 3.1.1 for a total quantity of 1 Basic Support Service Program "or Equal" for 3 year period.

**SCHEDULE OF EVENTS**

<u>Line</u>	<u>Event</u>	<u>Event Date</u>
1	Questions are due by 3:00 p.m.	2026-03-16

	Document Phase	Document Description	Page
OOT2600000023	Draft	Network Load Balancer Appliances	7

**ADDITIONAL TERMS AND CONDITIONS**

See attached document(s) for additional Terms and Conditions

## INSTRUCTIONS TO VENDORS SUBMITTING BIDS

1. **REVIEW DOCUMENTS THOROUGHLY:** The attached documents contain a solicitation for bids. Please read these instructions and all documents attached in their entirety. These instructions provide critical information about requirements that if overlooked could lead to disqualification of a Vendor's bid. All bids must be submitted in accordance with the provisions contained in these instructions and the Solicitation. Failure to do so may result in disqualification of Vendor's bid.

2. **MANDATORY TERMS:** The Solicitation may contain **mandatory** provisions identified by the use of the words "**must**," "**will**," and "**shall**." Failure to comply with a mandatory term in the Solicitation will result in bid disqualification.

3. **PRE-BID MEETING:** The item identified below shall apply to this Solicitation.

A pre-bid meeting will not be held prior to bid opening

A **MANDATORY PRE-BID** meeting will be held at the following place and time:

All Vendors submitting a bid must attend the **mandatory** pre-bid meeting. Failure to attend the **mandatory** pre-bid meeting shall result in disqualification of the Vendor's bid. No one individual is permitted to represent more than one vendor at the pre-bid meeting. Any individual that does attempt to represent two or more vendors will be required to select one vendor to which the individual's attendance will be attributed. The vendors not selected will be deemed to have not attended the pre-bid meeting unless another individual attended on their behalf.

An attendance sheet provided at the pre-bid meeting shall serve as the official document verifying attendance. Any person attending the pre-bid meeting on behalf of a Vendor must list on the attendance sheet his or her name and the name of the Vendor he or she is representing. It is the Vendor's responsibility to locate the attendance sheet and provide the required information. Failure to complete the attendance sheet as required may result in disqualification of Vendor's bid.

Vendors who arrive after the starting time but prior to the end of the pre-bid will be permitted to sign in but are charged with knowing all matters discussed at the pre-bid.

Any discussions or answers to questions at the pre-bid meeting are preliminary in nature and are non-binding. Official and binding answers to questions will be published in a written addendum to the Solicitation prior to bid opening.

**4. VENDOR QUESTION DEADLINE:** Vendors may submit questions relating to this Solicitation to the Purchasing Division. Questions must be submitted in writing. All questions **must be submitted on or before the date listed below and to the address listed below to be considered.** A written response will be published in a Solicitation addendum if a response is possible and appropriate. Non-written discussions, conversations, or questions and answers regarding this Solicitation are preliminary in nature and are non-binding.

Submitted emails should have the solicitation number in the subject line. Question

Submission Deadline: Monday March 16, 2026 @ 3:00 p.m.

Submit Questions to: Toby L Welch  
2019 Washington Street, East Charleston, WV 25305  
Fax: (304) 558-3970  
Email: [Toby.L.Welch@wv.gov](mailto:Toby.L.Welch@wv.gov)

**5. VERBAL COMMUNICATION:** Any verbal communication between the Vendor and any State personnel is not binding, including verbal communication at the mandatory pre-bid conference. Only information issued in writing and added to the Solicitation by an official written addendum by the Purchasing Division is binding.

**6. BID SUBMISSION:** All bids must be submitted on or before the date and time of the bid opening listed in section 7 below. Vendors can submit bids electronically through *wvOASIS*, in paper form delivered to the Purchasing Division at the address listed below either in person or by courier, or in facsimile form by faxing to the Purchasing Division at the number listed below. Notwithstanding the foregoing, the Purchasing Division may prohibit the submission of bids electronically through *wvOASIS* at its sole discretion. Such a prohibition will be contained and communicated in the *wvOASIS* system resulting in the Vendor's inability to submit bids through *wvOASIS*. The Purchasing Division will not accept bids or modification of bids via email.

**Bids submitted in paper, facsimile, or via wvOASIS must contain a signature. Failure to submit a bid in any form without a signature will result in rejection of your bid.**

A bid submitted in paper or facsimile form should contain the information listed below on the face of the submission envelope or fax cover sheet. Otherwise, the bid may be rejected by the Purchasing Division.

VENDOR NAME:  
BUYER: Toby L Welch  
SOLICITATION NO.: CRFQ OOT2600000023  
BID OPENING DATE: TUESDAY MARCH 24, 2026  
BID OPENING TIME: 1:30 P.M.  
FAX NUMBER: 304-558-3970

Any bid received by the Purchasing Division staff is considered to be in the possession of the Purchasing Division and will not be returned for any reason.

**Bid Delivery Address and Fax Number:**

Department of Administration, Purchasing Division 2019 Washington Street East  
Charleston, WV 25305-0130  
Fax: 304-558-3970

**7. BID OPENING:** Bids submitted in response to this Solicitation will be opened at the location identified below on the date and time listed below. Delivery of a bid after the bid opening date and time will result in bid disqualification. For purposes of this Solicitation, a bid is considered delivered when confirmation of delivery is provided by wvOASIS (in the case of electronic submission) or when the bid is time stamped by the official Purchasing Division time clock (in the case of hand delivery or via delivery by mail).

Bid Opening Date and Time: 3/24/26 @ 1:30 P.M.

Bid Opening Location:  
Department of Administration, Purchasing Division  
2019 Washington Street East  
Charleston, WV 25305-0130

**8. ADDENDUM ACKNOWLEDGEMENT:** Changes or revisions to this Solicitation will be made by an official written addendum issued by the Purchasing Division. Vendor should acknowledge receipt of all addenda issued with this Solicitation by completing an Addendum Acknowledgement Form. Failure to acknowledge addenda may result in bid disqualification. The addendum acknowledgement should be submitted with the bid to expedite document processing.

**9. BID FORMATTING:** Vendor should type or electronically enter the information onto its bid to prevent errors in the evaluation. Failure to type or electronically enter the information may result in bid disqualification.

**10. ALTERNATE MODEL OR BRAND:** Unless the box below is checked, any model, brand, or specification listed in this Solicitation establishes the acceptable level of quality only and is not intended to reflect a preference for, or in any way favor, a particular brand or vendor. Vendors may bid alternates to a listed model or brand provided that the alternate is at least equal to the model or brand and complies with the required specifications. The equality of any alternate being bid shall be determined by the State at its sole discretion. Any Vendor bidding an alternate model or brand **shall** clearly identify the alternate items in its bid and should include manufacturer's specifications, industry literature, and/or any other relevant documentation demonstrating the equality of the alternate items. Failure to provide information for alternate items **may** be grounds for rejection of a Vendor's bid.

This Solicitation is based upon a standardized commodity established under W. Va. Code § 5A-3-61. Vendors are expected to bid the standardized commodity identified. Failure to bid the standardized commodity will result in your firm's bid being rejected.

**11. COMMUNICATION LIMITATIONS:** In accordance with West Virginia Code of State Rules §148-1-6.6.2, communication with the State of West Virginia or any of its employees regarding this Solicitation during the solicitation, bid, evaluation or award periods, except through the Purchasing Division, is strictly prohibited without prior Purchasing Division approval. Purchasing Division approval for such communication is implied for all agency delegated and exempt purchases.

**12. REGISTRATION:** Prior to Contract award, the apparent successful Vendor **must** be properly registered with the West Virginia Purchasing Division and must have paid the \$125 fee, if applicable.

**13. UNIT PRICE:** Unit prices **shall** prevail in cases of a discrepancy in the Vendor's bid.

**14. PREFERENCE:** Vendor Preference may be requested in purchases of motor vehicles or construction and maintenance equipment and machinery used in highway and other infrastructure projects. Any request for preference must be submitted in writing with the bid, must specifically identify the preference requested with reference to the applicable subsection of West Virginia Code § 5A-3-37, and must include with the bid any information necessary to evaluate and confirm the applicability of the requested preference. A request form to help facilitate the request can be found at: [www.state.wv.us/admin/purchase/vrc/Venpref.pdf](http://www.state.wv.us/admin/purchase/vrc/Venpref.pdf).

**15A. RECIPROCAL PREFERENCE:** The State of West Virginia applies a reciprocal preference to all solicitations for commodities and printing in accordance with W. Va. Code § 5A-3-37(b). In effect, non-resident vendors receiving a preference in their home states, will see that same preference granted to West Virginia resident vendors bidding against them in West Virginia. Any request for reciprocal preference must include with the bid any information necessary to evaluate and confirm the applicability of the preference. A request form to help facilitate the request can be found at: [www.state.wv.us/admin/purchase/vrc/Venpref.pdf](http://www.state.wv.us/admin/purchase/vrc/Venpref.pdf).

**15. SMALL, WOMEN-OWNED, OR MINORITY-OWNED BUSINESSES:**

For any solicitations publicly advertised for bid, in accordance with West Virginia Code §5A-3-37 and W. Va. CSR § 148-22-9, any non-resident vendor certified as a small, women-owned, or minority-owned business under W. Va. CSR § 148-22-9 shall be provided the same preference made available to any resident vendor. Any non-resident small, women-owned, or minority-owned business must identify itself as such in writing, must submit that writing to the Purchasing Division with its bid, and must be properly certified under W. Va. CSR § 148-22-9 prior to contract award to receive the preferences made available to resident vendors.

**16. WAIVER OF MINOR IRREGULARITIES:** The Director reserves the right to waive minor irregularities in bids or specifications in accordance with West Virginia Code of State Rules § 148-1-4.7.

**17. ELECTRONIC FILE ACCESS RESTRICTIONS:** Vendor must ensure that its submission in wvOASIS can be accessed and viewed by the Purchasing Division staff immediately upon bid opening. The Purchasing Division will consider any file that cannot be immediately accessed and viewed at the time of the bid opening (such as, encrypted files, password protected files, or incompatible files) to be blank or incomplete as context requires and are therefore unacceptable. A vendor will not be permitted to unencrypt files, remove password protections, or resubmit documents after bid opening to make a file viewable if those documents are required with the bid. A Vendor may be required to provide document passwords or remove access restrictions to allow the Purchasing Division to print or electronically save documents provided that those documents are viewable by the Purchasing Division prior to obtaining the password or removing the access restriction.

**18. NON-RESPONSIBLE:** The Purchasing Division Director reserves the right to reject the bid of any vendor as Non-Responsible in accordance with W. Va. Code of State Rules § 148-1-5.3, when the Director determines that the vendor submitting the bid does not have the capability to fully perform or lacks the integrity and reliability to assure good-faith performance.”

**19. ACCEPTANCE/REJECTION:** The State may accept or reject any bid in whole, or in part in accordance with W. Va. Code of State Rules § 148-1-4.6. and § 148-1-6.3.”

**20. WITH THE BID REQUIREMENTS:** In instances where these specifications require documentation or other information with the bid, and a vendor fails to provide it with the bid, the Director of the Purchasing Division reserves the right to request those items after bid opening and prior to contract award pursuant to the authority to waive minor irregularities in bids or specifications under W. Va. CSR § 148-1-4.7. This authority does not apply to instances where state law mandates receipt with the bid.

**21. EMAIL NOTIFICATION OF AWARD:** The Purchasing Division will attempt to provide bidders with e-mail notification of contract award when a solicitation that the bidder participated in has been awarded. For notification purposes, bidders must provide the Purchasing Division with a valid email address in the bid response. Bidders may also monitor [wvOASIS](#) or the Purchasing Division's website to determine when a contract has been awarded.

**22. EXCEPTIONS AND CLARIFICATIONS:** The Solicitation contains the specifications that **shall** form the basis of a contractual agreement. **Vendor shall clearly mark any exceptions, clarifications, or other proposed modifications in its bid.** Exceptions to, clarifications of, or modifications of a requirement or term and condition of the Solicitation may result in bid disqualification.

## **GENERAL TERMS AND CONDITIONS:**

**1. CONTRACTUAL AGREEMENT:** Issuance of an Award Document signed by the Purchasing Division Director, or his designee, and approved as to form by the Attorney General's office constitutes acceptance by the State of this Contract made by and between the State of West Virginia and the Vendor. Vendor's signature on its bid, or on the Contract if the Contract is not the result of a bid solicitation, signifies Vendor's agreement to be bound by and accept the terms and conditions contained in this Contract.

**2. DEFINITIONS:** As used in this Solicitation/Contract, the following terms shall have the meanings attributed to them below. Additional definitions may be found in the specifications included with this Solicitation/Contract.

**2.1. "Agency" or "Agencies"** means the agency, board, commission, or other entity of the State of West Virginia that is identified on the first page of the Solicitation or any other public entity seeking to procure goods or services under this Contract.

**2.2. "Bid" or "Proposal"** means the vendors submitted response to this solicitation.

**2.3. "Contract"** means the binding agreement that is entered into between the State and the Vendor to provide the goods or services requested in the Solicitation.

**2.4. "Director"** means the Director of the West Virginia Department of Administration, Purchasing Division.

**2.5. "Purchasing Division"** means the West Virginia Department of Administration, Purchasing Division.

**2.6. "Award Document"** means the document signed by the Agency and the Purchasing Division, and approved as to form by the Attorney General, that identifies the Vendor as the contract holder.

**2.7. "Solicitation"** means the official notice of an opportunity to supply the State with goods or services that is published by the Purchasing Division.

**2.8. "State"** means the State of West Virginia and/or any of its agencies, commissions, boards, etc. as context requires.

**2.9. "Vendor" or "Vendors"** means any entity submitting a bid in response to the Solicitation, the entity that has been selected as the lowest responsible bidder, or the entity that has been awarded the Contract as context requires.

**3. CONTRACT TERM; RENEWAL; EXTENSION:** The term of this Contract shall be determined in accordance with the category that has been identified as applicable to this Contract below:

**Term Contract**

**Initial Contract Term:** The Initial Contract Term will be for a period of THREE (3) YEARS. The Initial Contract Term becomes effective on the effective start date listed on the first page of this Contract, identified as the State of West Virginia contract cover page containing the signatures of the Purchasing Division, Attorney General, and Encumbrance clerk (or another page identified as \_\_\_\_\_), and the Initial Contract Term ends on the effective end date also shown on the first page of this Contract.

**Renewal Term:** This Contract may be renewed upon the mutual written consent of the Agency, and the Vendor, with approval of the Purchasing Division and the Attorney General's office (Attorney General approval is as to form only). Any request for renewal should be delivered to the Agency and then submitted to the Purchasing Division thirty (30) days prior to the expiration date of the initial contract term or appropriate renewal term. A Contract renewal shall be in accordance with the terms and conditions of the original contract. Unless otherwise specified below, renewal of this Contract is limited to TWO (2) successive one (1) year periods or multiple renewal periods of less than one year, provided that the multiple renewal periods do not exceed the total number of months available in all renewal years combined. Automatic renewal of this Contract is prohibited. Renewals must be approved by the Vendor, Agency, Purchasing Division and Attorney General's office (Attorney General approval is as to form only)

**Alternate Renewal Term** – This contract may be renewed for \_\_\_\_\_ successive \_\_\_\_\_ year periods or shorter periods provided that they do not exceed the total number of months contained in all available renewals. Automatic renewal of this Contract is prohibited. Renewals must be approved by the Vendor, Agency, Purchasing Division and Attorney General's office (Attorney General approval is as to form only)

**Delivery Order Limitations:** In the event that this contract permits delivery orders, a delivery order may only be issued during the time this Contract is in effect. Any delivery order issued within one year of the expiration of this Contract shall be effective for one year from the date the delivery order is issued. No delivery order may be extended beyond one year after this Contract has expired.

**Fixed Period Contract:** This Contract becomes effective upon Vendor's receipt of the notice to proceed and must be completed within \_\_\_\_\_ days.

**Fixed Period Contract with Renewals:** This Contract becomes effective upon Vendor's receipt of the notice to proceed and part of the Contract more fully described in the attached specifications must be completed within \_\_\_\_\_ days. Upon completion of the work covered by the preceding sentence, the vendor agrees that:

the contract will continue for \_\_\_\_\_ years;

the contract may be renewed for \_\_\_\_\_ successive \_\_\_\_\_ year periods or shorter periods provided that they do not exceed the total number of months contained in all available renewals. Automatic renewal of this Contract is prohibited. Renewals must be approved by the Vendor, Agency, Purchasing Division and Attorney General's Office (Attorney General approval is as to form only).

**One-Time Purchase:** The term of this Contract shall run from the issuance of the Award Document until all of the goods contracted for have been delivered, but in no event will this Contract extend for more than one fiscal year.

**Construction/Project Oversight:** This Contract becomes effective on the effective start date listed on the first page of this Contract, identified as the State of West Virginia contract cover page containing the signatures of the Purchasing Division, Attorney General, and Encumbrance clerk (or another page identified as \_\_\_\_\_), and continues until the project for which the vendor is providing oversight is complete.

**Other:** Contract Term specified in \_\_\_\_\_

**4. AUTHORITY TO PROCEED:** Vendor is authorized to begin performance of this contract on the date of encumbrance listed on the front page of the Award Document unless either the box for "Fixed Period Contract" or "Fixed Period Contract with Renewals" has been checked in Section 3 above. If either "Fixed Period Contract" or "Fixed Period Contract with Renewals" has been checked, Vendor must not begin work until it receives a separate notice to proceed from the State. The notice to proceed will then be incorporated into the Contract via change order to memorialize the official date that work commenced.

**5. QUANTITIES:** The quantities required under this Contract shall be determined in accordance with the category that has been identified as applicable to this Contract below.

**Open End Contract:** Quantities listed in this Solicitation/Award Document are approximations only, based on estimates supplied by the Agency. It is understood and agreed that the Contract shall cover the quantities actually ordered for delivery during the term of the Contract, whether more or less than the quantities shown.

**Service:** The scope of the service to be provided will be more clearly defined in the specifications included herewith.

**Combined Service and Goods:** The scope of the service and deliverable goods to be provided will be more clearly defined in the specifications included herewith.

**One-Time Purchase:** This Contract is for the purchase of a set quantity of goods that are identified in the specifications included herewith. Once those items have been delivered, no additional goods may be procured under this Contract without an appropriate change order approved by the Vendor, Agency, Purchasing Division, and Attorney General's office.

**Construction:** This Contract is for construction activity more fully defined in the specifications.

**6. EMERGENCY PURCHASES:** The Purchasing Division Director may authorize the Agency to purchase goods or services in the open market that Vendor would otherwise provide under this Contract if those goods or services are for immediate or expedited delivery in an emergency. Emergencies shall include, but are not limited to, delays in transportation or an unanticipated increase in the volume of work. An emergency purchase in the open market, approved by the Purchasing Division Director, shall not constitute of breach of this Contract and shall not entitle the Vendor to any form of compensation or damages. This provision does not excuse the State from fulfilling its obligations under a One-Time Purchase contract.

**7. REQUIRED DOCUMENTS:** All of the items checked in this section must be provided to the Purchasing Division by the Vendor as specified:

**LICENSE(S) / CERTIFICATIONS / PERMITS:** In addition to anything required under the Section of the General Terms and Conditions entitled Licensing, the apparent successful Vendor shall furnish proof of the following licenses, certifications, and/or permits upon request and in a form acceptable to the State. The request may be prior to or after contract award at the State's sole discretion.

The apparent successful Vendor shall also furnish proof of any additional licenses or certifications contained in the specifications regardless of whether or not that requirement is listed above.

**8. INSURANCE:** The apparent successful Vendor shall furnish proof of the insurance identified by a checkmark below prior to Contract award. The insurance coverages identified below must be maintained throughout the life of this contract. Thirty (30) days prior to the expiration of the insurance policies, Vendor shall provide the Agency with proof that the insurance mandated herein has been continued. Vendor must also provide Agency with immediate notice of any changes in its insurance policies, including but not limited to, policy cancelation, policy reduction, or change in insurers. The apparent successful Vendor shall also furnish proof of any additional insurance requirements contained in the specifications prior to Contract award regardless of whether that insurance requirement is listed in this section.

Vendor must maintain:

**Commercial General Liability Insurance** in at least an amount of: \$1,000,000.00 per occurrence.

**Automobile Liability Insurance** in at least an amount of: \$1,000,000.00 per occurrence.

**Professional/Malpractice/Errors and Omission Insurance** in at least an amount of: \_\_\_\_\_ per occurrence. Notwithstanding the forgoing, Vendor's are not required to list the State as an additional insured for this type of policy.

**Commercial Crime and Third Party Fidelity Insurance** in an amount of: \_\_\_\_\_ per occurrence.

**Cyber Liability Insurance** in an amount of: \_\_\_\_\_ per occurrence.

**Builders Risk Insurance** in an amount equal to 100% of the amount of the Contract.

**Pollution Insurance** in an amount of: \_\_\_\_\_ per occurrence.

**Aircraft Liability** in an amount of: \_\_\_\_\_ per occurrence.

**9. WORKERS' COMPENSATION INSURANCE:** Vendor shall comply with laws relating to workers compensation, shall maintain workers' compensation insurance when required, and shall furnish proof of workers' compensation insurance upon request.

**10. VENUE:** All legal actions for damages brought by Vendor against the State shall be brought in the West Virginia Claims Commission. Other causes of action must be brought in the West Virginia court authorized by statute to exercise jurisdiction over it.

**11. LIQUIDATED DAMAGES:** This clause shall in no way be considered exclusive and shall not limit the State or Agency's right to pursue any other available remedy. Vendor shall pay liquidated damages in the amount specified below or as described in the specifications:

\_\_\_\_\_ for \_\_\_\_\_.

Liquidated Damages Contained in the Specifications.

Liquidated Damages Are Not Included in this Contract.

**12. ACCEPTANCE:** Vendor's signature on its bid, or on the certification and signature page, constitutes an offer to the State that cannot be unilaterally withdrawn, signifies that the product or service proposed by vendor meets the mandatory requirements contained in the Solicitation for that product or service, unless otherwise indicated, and signifies acceptance of the terms and conditions contained in the Solicitation unless otherwise indicated.

**13. PRICING:** The pricing set forth herein is firm for the life of the Contract, unless specified elsewhere within this Solicitation/Contract by the State. A Vendor's inclusion of price adjustment provisions in its bid, without an express authorization from the State in the Solicitation to do so, may result in bid disqualification. Notwithstanding the foregoing, Vendor must extend any publicly advertised sale price to the State and invoice at the lower of the contract price or the publicly advertised sale price.

**14. PAYMENT IN ARREARS:** Payments for goods/services will be made in arrears only upon receipt of a proper invoice, detailing the goods/services provided or receipt of the goods/services, whichever is later. Notwithstanding the foregoing, payments for software maintenance, licenses, or subscriptions may be paid annually in advance.

**15. PAYMENT METHODS:** Vendor must accept payment by electronic funds transfer and P-Card. (The State of West Virginia's Purchasing Card program, administered under contract by a banking institution, processes payment for goods and services through state designated credit cards.)

**16. TAXES:** The Vendor shall pay any applicable sales, use, personal property or any other taxes arising out of this Contract and the transactions contemplated thereby. The State of West Virginia is exempt from federal and state taxes and will not pay or reimburse such taxes.

**17. ADDITIONAL FEES:** Vendor is not permitted to charge additional fees or assess additional charges that were not either expressly provided for in the solicitation published by the State of West Virginia, included in the Contract, or included in the unit price or lump sum bid amount that Vendor is required by the solicitation to provide. Including such fees or charges as notes to the solicitation may result in rejection of vendor's bid. Requesting such fees or charges be paid after the contract has been awarded may result in cancellation of the contract.

**18. FUNDING:** This Contract shall continue for the term stated herein, contingent upon funds being appropriated by the Legislature or otherwise being made available. In the event funds are not appropriated or otherwise made available, this Contract becomes void and of no effect beginning on July 1 of the fiscal year for which funding has not been appropriated or otherwise made available. If that occurs, the State may notify the Vendor that an alternative source of funding has been obtained and thereby avoid the automatic termination. Non-appropriation or non-funding shall not be considered an event of default.

**19. CANCELLATION:** The Purchasing Division Director reserves the right to cancel this Contract immediately upon written notice to the vendor if the materials or workmanship supplied do not conform to the specifications contained in the Contract. The Purchasing Division Director may also cancel any purchase or Contract upon 30 days written notice to the Vendor in accordance with West Virginia Code of State Rules § 148-1-5.2.

**20. TIME:** Time is of the essence regarding all matters of time and performance in this Contract.

**21. APPLICABLE LAW:** This Contract is governed by and interpreted under West Virginia law without giving effect to its choice of law principles. Any information provided in specification manuals, or any other source, verbal or written, which contradicts or violates the West Virginia Constitution, West Virginia Code, or West Virginia Code of State Rules is void and of no effect.

**22. COMPLIANCE WITH LAWS:** Vendor shall comply with all applicable federal, state, and local laws, regulations and ordinances. By submitting a bid, Vendor acknowledges that it has reviewed, understands, and will comply with all applicable laws, regulations, and ordinances.

**SUBCONTRACTOR COMPLIANCE:** Vendor shall notify all subcontractors providing commodities or services related to this Contract that as subcontractors, they too are required to comply with all applicable laws, regulations, and ordinances. Notification under this provision must occur prior to the performance of any work under the contract by the subcontractor.

**23. ARBITRATION:** Any references made to arbitration contained in this Contract, Vendor's bid, or in any American Institute of Architects documents pertaining to this Contract are hereby deleted, void, and of no effect.

**24. MODIFICATIONS:** This writing is the parties' final expression of intent. Notwithstanding anything contained in this Contract to the contrary no modification of this Contract shall be binding without mutual written consent of the Agency, and the Vendor, with approval of the Purchasing Division and the Attorney General's office (Attorney General approval is as to form only). Any change to existing contracts that adds work or changes contract cost, and were not included in the original contract, must be approved by the Purchasing Division and the Attorney General's Office (as to form) prior to the implementation of the change or commencement of work affected by the change.

**25. WAIVER:** The failure of either party to insist upon a strict performance of any of the terms or provision of this Contract, or to exercise any option, right, or remedy herein contained, shall not be construed as a waiver or a relinquishment for the future of such term, provision, option, right, or remedy, but the same shall continue in full force and effect. Any waiver must be expressly stated in writing and signed by the waiving party.

**26. SUBSEQUENT FORMS:** The terms and conditions contained in this Contract shall supersede any and all subsequent terms and conditions which may appear on any form documents submitted by Vendor to the Agency or Purchasing Division such as price lists, order forms, invoices, sales agreements, or maintenance agreements, and includes internet websites or other electronic documents. Acceptance or use of Vendor's forms does not constitute acceptance of the terms and conditions contained thereon.

**27. ASSIGNMENT:** Neither this Contract nor any monies due, or to become due hereunder, may be assigned by the Vendor without the express written consent of the Agency, the Purchasing Division, the Attorney General's office (as to form only), and any other government agency or office that may be required to approve such assignments.

**28. WARRANTY:** The Vendor expressly warrants that the goods and/or services covered by this Contract will: (a) conform to the specifications, drawings, samples, or other description furnished or specified by the Agency; (b) be merchantable and fit for the purpose intended; and (c) be free from defect in material and workmanship.

**29. STATE EMPLOYEES:** State employees are not permitted to utilize this Contract for personal use and the Vendor is prohibited from permitting or facilitating the same.

**30. PRIVACY, SECURITY, AND CONFIDENTIALITY:** The Vendor agrees that it will not disclose to anyone, directly or indirectly, any such personally identifiable information or other confidential information gained from the Agency, unless the individual who is the subject of the information consents to the disclosure in writing or the disclosure is made pursuant to the Agency's policies, procedures, and rules. Vendor further agrees to comply with the Confidentiality Policies and Information Security Accountability Requirements, set forth in [www.state.wv.us/admin/purchase/privacy](http://www.state.wv.us/admin/purchase/privacy).

**31. YOUR SUBMISSION IS A PUBLIC DOCUMENT:** Vendor's entire response to the Solicitation and the resulting Contract are public documents. As public documents, they will be disclosed to the public following the bid/proposal opening or award of the contract, as required by the competitive bidding laws of West Virginia Code §§ 5A-3-1 et seq., 5-22-1 et seq., and 5G-1-1 et seq. and the Freedom of Information Act West Virginia Code §§ 29B-1-1 et seq.

**DO NOT SUBMIT MATERIAL YOU CONSIDER TO BE CONFIDENTIAL, A TRADE SECRET, OR OTHERWISE NOT SUBJECT TO PUBLIC DISCLOSURE.**

Submission of any bid, proposal, or other document to the Purchasing Division constitutes your explicit consent to the subsequent public disclosure of the bid, proposal, or document. The Purchasing Division will disclose any document labeled "confidential," "proprietary," "trade secret," "private," or labeled with any other claim against public disclosure of the documents, to include any "trade secrets" as defined by West Virginia Code § 47-22-1 et seq. All submissions are subject to public disclosure without notice.

**32. LICENSING:** In accordance with West Virginia Code of State Rules § 148-1-6.1.e, Vendor must be licensed and in good standing in accordance with any and all state and local laws and requirements by any state or local agency of West Virginia, including, but not limited to, the West Virginia Secretary of State's Office, the West Virginia Tax Department, West Virginia Insurance Commission, or any other state agency or political subdivision. Obligations related to political subdivisions may include, but are not limited to, business licensing, business and occupation taxes, inspection compliance, permitting, etc. Upon request, the Vendor must provide all necessary releases to obtain information to enable the Purchasing Division Director or the Agency to verify that the Vendor is licensed and in good standing with the above entities.

**SUBCONTRACTOR COMPLIANCE:** Vendor shall notify all subcontractors providing commodities or services related to this Contract that as subcontractors, they too are required to be licensed, in good standing, and up-to-date on all state and local obligations as described in this section. Obligations related to political subdivisions may include, but are not limited to, business licensing, business and occupation taxes, inspection compliance, permitting, etc. Notification under this provision must occur prior to the performance of any work under the contract by the subcontractor.

**33. ANTITRUST:** In submitting a bid to, signing a contract with, or accepting a Award Document from any agency of the State of West Virginia, the Vendor agrees to convey, sell, assign, or transfer to the State of West Virginia all rights, title, and interest in and to all causes of action it may now or hereafter acquire under the antitrust laws of the United States and the State of West Virginia for price fixing and/or unreasonable restraints of trade relating to the particular commodities or services purchased or acquired by the State of West Virginia. Such assignment shall be made and become effective at the time the purchasing agency tenders the initial payment to Vendor.

**34. VENDOR NON-CONFLICT:** Neither Vendor nor its representatives are permitted to have any interest, nor shall they acquire any interest, direct or indirect, which would compromise the performance of its services hereunder. Any such interests shall be promptly presented in detail to the Agency.

**35. VENDOR RELATIONSHIP:** The relationship of the Vendor to the State shall be that of an independent contractor and no principal-agent relationship or employer-employee relationship is contemplated or created by this Contract. The Vendor as an independent contractor is solely liable for the acts and omissions of its employees and agents. Vendor shall be responsible for selecting, supervising, and compensating any and all individuals employed pursuant to the terms of this Solicitation and resulting contract. Neither the Vendor, nor any employees or subcontractors of the Vendor, shall be deemed to be employees of the State for any purpose whatsoever. Vendor shall be exclusively responsible for payment of employees and contractors for all wages and salaries, taxes, withholding payments, penalties, fees, fringe benefits, professional liability insurance premiums, contributions to insurance and pension, or other deferred compensation plans, including but not limited to, Workers' Compensation and Social Security obligations, licensing fees, etc. and the filing of all necessary documents, forms, and returns pertinent to all of the foregoing.

Vendor shall hold harmless the State, and shall provide the State and Agency with a defense against any and all claims including, but not limited to, the foregoing payments, withholdings, contributions, taxes, Social Security taxes, and employer income tax returns.

**36. INDEMNIFICATION:** The Vendor agrees to indemnify, defend, and hold harmless the State and the Agency, their officers, and employees from and against: (1) Any claims or losses for services rendered by any subcontractor, person, or firm performing or supplying services, materials, or supplies in connection with the performance of the Contract; (2) Any claims or losses resulting to any person or entity injured or damaged by the Vendor, its officers, employees, or subcontractors by the publication, translation, reproduction, delivery, performance, use, or disposition of any data used under the Contract in a manner not authorized by the Contract, or by Federal or State statutes or regulations; and (3) Any failure of the Vendor, its officers, employees, or subcontractors to observe State and Federal laws including, but not limited to, labor and wage and hour laws.

**37. NO DEBT CERTIFICATION:** In accordance with West Virginia Code §§ 5A-3-10a and 5-22-1(i), the State is prohibited from awarding a contract to any bidder that owes a debt to the State or a political subdivision of the State. By submitting a bid, or entering into a contract with the State, Vendor is affirming that (1) for construction contracts, the Vendor is not in default on any monetary obligation owed to the state or a political subdivision of the state, and (2) for all other contracts, neither the Vendor nor any related party owe a debt as defined above, and neither the Vendor nor any related party are in employer default as defined in the statute cited above unless the debt or employer default is permitted under the statute.

**38. CONFLICT OF INTEREST:** Vendor, its officers or members or employees, shall not presently have or acquire an interest, direct or indirect, which would conflict with or compromise the performance of its obligations hereunder. Vendor shall periodically inquire of its officers, members and employees to ensure that a conflict of interest does not arise. Any conflict of interest discovered shall be promptly presented in detail to the Agency.

**39. REPORTS:** Vendor shall provide the Agency and/or the Purchasing Division with the following reports identified by a checked box below:

Such reports as the Agency and/or the Purchasing Division may request. Requested reports may include, but are not limited to, quantities purchased, agencies utilizing the contract, total contract expenditures by agency, etc.

Quarterly reports detailing the total quantity of purchases in units and dollars, along with a listing of purchases by agency. Quarterly reports should be delivered to the Purchasing Division via email at [purchasing.division@wv.gov](mailto:purchasing.division@wv.gov).

**40. BACKGROUND CHECK:** In accordance with W. Va. Code § 15-2D-3, the State reserves the right to prohibit a service provider's employees from accessing sensitive or critical information or to be present at the Capitol complex based upon results addressed from a criminal background check. Service providers should contact the West Virginia Division of Protective Services by phone at (304) 558-9911 for more information.

**41. PREFERENCE FOR USE OF DOMESTIC STEEL PRODUCTS:** Except when authorized by the Director of the Purchasing Division pursuant to W. Va. Code § 5A-3-56, no contractor may use or supply steel products for a State Contract Project other than those steel products made in the United States. A contractor who uses steel products in violation of this section may be subject to civil penalties pursuant to W. Va. Code § 5A-3-56. As used in this section:

- a. "State Contract Project" means any erection or construction of, or any addition to, alteration of or other improvement to any building or structure, including, but not limited to, roads or highways, or the installation of any heating or cooling or ventilating plants or other equipment, or the supply of and materials for such projects, pursuant to a contract with the State of West Virginia for which bids were solicited on or after June 6, 2001.
- b. "Steel Products" means products rolled, formed, shaped, drawn, extruded, forged, cast, fabricated or otherwise similarly processed, or processed by a combination of two or more or such operations, from steel made by the open heath, basic oxygen, electric furnace, Bessemer or other steel making process.
- c. The Purchasing Division Director may, in writing, authorize the use of foreign steel products if:
  1. The cost for each contract item used does not exceed one tenth of one percent (.1%) of the total contract cost or two thousand five hundred dollars (\$2,500.00), whichever is greater. For the purposes of this section, the cost is the value of the steel product as delivered to the project; or
  2. The Director of the Purchasing Division determines that specified steel materials are not produced in the United States in sufficient quantity or otherwise are not reasonably available to meet contract requirements.

**42. PREFERENCE FOR USE OF DOMESTIC ALUMINUM, GLASS, AND STEEL:** In Accordance with W. Va. Code § 5-19-1 et seq., and W. Va. CSR § 148-10-1 et seq., for every contract or subcontract, subject to the limitations contained herein, for the construction, reconstruction, alteration, repair, improvement or maintenance of public works or for the purchase of any item of machinery or equipment to be used at sites of public works, only domestic aluminum, glass or steel products shall be supplied unless the spending officer determines, in writing, after the receipt of offers or bids, (1) that the cost of domestic aluminum, glass or steel products is unreasonable or inconsistent with the public interest of the State of West Virginia, (2) that domestic aluminum, glass or steel products are not produced in sufficient quantities to meet the contract requirements, or (3) the available domestic aluminum, glass, or steel do not meet the contract specifications. This provision only applies to public works contracts awarded in an amount more than fifty thousand dollars (\$50,000) or public works contracts that require more than ten thousand pounds of steel products.

The cost of domestic aluminum, glass, or steel products may be unreasonable if the cost is more than twenty percent (20%) of the bid or offered price for foreign made aluminum, glass, or steel products. If the domestic aluminum, glass or steel products to be supplied or produced in a “substantial labor surplus area”, as defined by the United States Department of Labor, the cost of domestic aluminum, glass, or steel products may be unreasonable if the cost is more than thirty percent (30%) of the bid or offered price for foreign made aluminum, glass, or steel products. This preference shall be applied to an item of machinery or equipment, as indicated above, when the item is a single unit of equipment or machinery manufactured primarily of aluminum, glass or steel, is part of a public works contract and has the sole purpose or of being a permanent part of a single public works project. This provision does not apply to equipment or machinery purchased by a spending unit for use by that spending unit and not as part of a single public works project.

All bids and offers including domestic aluminum, glass or steel products that exceed bid or offer prices including foreign aluminum, glass or steel products after application of the preferences provided in this provision may be reduced to a price equal to or lower than the lowest bid or offer price for foreign aluminum, glass or steel products plus the applicable preference. If the reduced bid or offer prices are made in writing and supersede the prior bid or offer prices, all bids or offers, including the reduced bid or offer prices, will be reevaluated in accordance with this rule.

**43. INTERESTED PARTY SUPPLEMENTAL DISCLOSURE:** W. Va. Code § 6D-1-2 requires that for contracts with an actual or estimated value of at least \$1 million, the Vendor must submit to the Agency a disclosure of interested parties prior to beginning work under this Contract. Additionally, the Vendor must submit a supplemental disclosure of interested parties reflecting any new or differing interested parties to the contract, which were not included in the original pre-work interested party disclosure, within 30 days following the completion or termination of the contract. A copy of that form is included with this solicitation or can be obtained from the WV Ethics Commission. This requirement does not apply to publicly traded companies listed on a national or international stock exchange. A more detailed definition of interested parties can be obtained from the form referenced above.

**44. PROHIBITION AGAINST USED OR REFURBISHED:** Unless expressly permitted in the solicitation published by the State, Vendor must provide new, unused commodities, and is prohibited from supplying used or refurbished commodities, in fulfilling its responsibilities under this Contract.

**45. VOID CONTRACT CLAUSES:** This Contract is subject to the provisions of West Virginia Code § 5A-3-62, which automatically voids certain contract clauses that violate State law.

**46. ISRAEL BOYCOTT:** Bidder understands and agrees that, pursuant to W. Va. Code § 5A-3-63, it is prohibited from engaging in a boycott of Israel during the term of this contract.

**DESIGNATED CONTACT:** Vendor appoints the individual identified in this Section as the Contract Administrator and the initial point of contact for matters relating to this Contract.

(Printed Name and Title) Ethan Garcia - Sales Representative

(Address) 730 24th St NW, Suite #3, Washington DC 20037-2500

(Phone Number) / (Fax Number) 202-536-2800 x 294

(email address) ethan.garcia@sirc.net

**CERTIFICATION AND SIGNATURE:** By signing below, or submitting documentation through wvOASIS, I certify that: I have reviewed this Solicitation/Contract in its entirety; that I understand the requirements, terms and conditions, and other information contained herein; that this bid, offer or proposal constitutes an offer to the State that cannot be unilaterally withdrawn; that the product or service proposed meets the mandatory requirements contained in the Solicitation/Contract for that product or service, unless otherwise stated herein; that the Vendor accepts the terms and conditions contained in the Solicitation, unless otherwise stated herein; that I am submitting this bid, offer or proposal for review and consideration; that this bid or offer was made without prior understanding, agreement, or connection with any entity submitting a bid or offer for the same material, supplies, equipment or services; that this bid or offer is in all respects fair and without collusion or fraud; that this Contract is accepted or entered into without any prior understanding, agreement, or connection to any other entity that could be considered a violation of law; that I am authorized by the Vendor to execute and submit this bid, offer, or proposal, or any documents related thereto on Vendor's behalf; that I am authorized to bind the vendor in a contractual relationship; and that to the best of my knowledge, the vendor has properly registered with any State agency that may require registration.

*By signing below, I further certify that I understand this Contract is subject to the provisions of West Virginia Code § 5A-3-62, which automatically voids certain contract clauses that violate State law; and that pursuant to W. Va. Code 5A-3-63, the entity entering into this contract is prohibited from engaging in a boycott against Israel.*

Software Information Resource Corporation

(Company)

  
(Signature of Authorized Representative)

Ethan Garcia - Sales Representative | | 3/24/26  
(Printed Name and Title of Authorized Representative) (Date)

202-536-2800  
(Phone Number) (Fax Number)

ethan.garcia@sirc.net  
(Email Address)

REQUEST FOR QUOTATION  
Network Load Balancer Appliances

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**SPECIFICATIONS**

1. **PURPOSE AND SCOPE:** The West Virginia Purchasing Division is soliciting bids on behalf of West Virginia Office of Technology to establish a contract for the purchase of new network load balancer appliances. The network load balancer appliances will reroute network traffic to a secondary set of servers in the event the primary servers become unresponsive. In addition, they provide flexibility to take a host or primary site down for maintenance while the load is redirected. Network traffic load is balanced across a number of hosts, which enhances the scalability and availability of mission critical IP-based services such as virtual private networks, streaming media, terminal services, and proxies. Multiple lines of business applications are hosted behind these devices to ensure business continuity of the state government in the event of a disaster or failure. The high availability that is provided detects host failures and automatically redistributes traffic to operational hosts.
  
2. **DEFINITIONS:** The terms listed below shall have the meanings assigned to them below. Additional definitions can be found in Section 2 of the General Terms and Conditions.
  - 2.1 **"Appliance"** means a device or piece of equipment designed to perform a specific task.
  
  - 2.2 **"Business Hours"** means Monday 9:00 AM to Friday 6:00 PM EST excluding weekends and Federal and State holidays. State Holidays are as follows:
    - New Year's Day (January 1)
    - Martin Luther King Day (Third Monday in January)
    - President's Day (Third Monday in February)
    - Memorial Day (Last Monday in May)
    - West Virginia Day (June 20)
    - Independence Day (July 4)
    - Labor Day (First Monday in September)
    - Columbus Day (Second Monday in October)
    - Veterans Day (November 11)
    - Thanksgiving (Fourth Thursday in November)
    - Day After Thanksgiving (Fourth Friday in November)
    - Christmas Day (December 25)
  
  - 2.3 **"Contract Item"** means network load balancer appliances, optical transceivers, and training as more fully described by these specifications.

REQUEST FOR QUOTATION  
Network Load Balancer Appliances

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- 2.4 "ECC" means Error Correction Code. ECC is used on Random Access Memory (RAM) or memory. ECC is used for validating data being sent to and from the RAM.
- 2.5 "FIPS" means Federal Information Processing Standards.
- 2.6 "Gb" means Gigabit. A gigabit is used to measure the data transfer rates. This is not to be confused with gigabyte, which is abbreviated GB.
- 2.7 "GB" means Gigabyte. A gigabyte is a measure of computer data storage capacity.
- 2.8 "Pricing Page" means the pages, contained in wvOASIS or attached as Exhibit A, upon which Vendor should list its proposed price for the Contract Items.
- 2.9 "RAM" means Random Access Memory. This is where current data is kept and can be accessed quickly by an appliances processor.
- 2.10 "SSD" means Solid State Drive. SSD is a mass storage device that is similar to a hard disk drive in that it can read and write data to the drive. However, it maintains the stored data in a permanent state.
- 2.11 "SSL" means Secure Socket Layer. A secure protocol that provides encryption for sending information securely over the internet.
- 2.12 "Solicitation" means the official notice of an opportunity to supply the State with goods or services that is published by the Purchasing Division.
- 2.13 "VRRP" means Virtual Router Redundancy Protocol. VRRP is a networking protocol that provides for automatic assignment of available Internet Protocol (IP) routers to participating hosts. This increases the availability and reliability of routing paths via automatic default gateway selections on an IP subnetwork.

**3. GENERAL REQUIREMENTS:**

- 3.1 **Mandatory Contract Item Requirements:** Contract Item must meet or exceed the mandatory requirements listed below.

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- 3.1.1 Commodity Line 1:** Vendor must provide a quantity of three (3) A10 Thunder 3350S Network Load Balancers, Part Number: TH3350S-020-CFW-FIPS "or Equal".

Thunder 3350S Network Load Balancer or Equal must contain the following hardware specifications:

- 3.1.1.1 Must fit in 1U of rack space
- 3.1.1.2 Must have a minimum of 1 Central Processing Unit
- 3.1.1.3 Must have a minimum of 6 1Gb over Copper ports
- 3.1.1.4 Must have a minimum of 2 1Gb (SFP) Fiber ports
- 3.1.1.5 Must have a minimum of 4 10Gb (SFP+) Fiber ports
- 3.1.1.6 Must have a minimum of 32GB of RAM (ECC)
- 3.1.1.7 Must be equipped with a Solid State Drive (SSD)
- 3.1.1.8 Must feature Hardware acceleration / SSL Offload
- 3.1.1.9 Must support Virtual Router Redundancy Protocol supplement - A (VRRP-A) Failover
- 3.1.1.10 Must have FIPS 140-2 certification or better
- 3.1.1.11 Must support Layer 4-7 load balancing
- 3.1.1.12 Any appliance listed as refurbished or "like new" condition will be disqualified.

**Optical Transceivers:**

- 3.1.2 Commodity Line 2:** Vendor must provide a quantity of three (3) each per appliance for a total quantity of nine , 10Gb SR-Optical Transceiver for the A10 Thunder AX 3350 Appliance, Part Number: AXSK-SFP+ SR "or Equal"

- 3.1.2.1 Transceivers must be compatible with the Thunder 3350 Network Load Balancer or Equal product bid on Commodity Line 1
- 3.1.2.2 Vendor must submit documentation that the Transceivers are certified by the manufacturer upon delivery
- 3.1.2.3 Any networking components listed as refurbished or "like new" condition will be disqualified.

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**3.1.3 Commodity Line 3:** Vendor must provide a quantity of one (1) seat for training on Application Delivery Controller (ADC) Administration Course, SKU: AX-TR "or Equal".

**3.1.3.1** Vendor must provide instructor-led training course at the vendor's facility. The course must cover the following topics.

**3.1.3.1.1** Advanced Core Operating System Management

**3.1.3.1.2** Load balancing

**3.1.3.1.3** HTTP protocol

**3.1.3.1.4** HTTPS protocol

**3.1.3.1.5** Acceleration

**3.1.3.1.6** Security

**3.1.3.1.7** High Availability

**3.1.3.1.8** Troubleshooting

**3.1.3.1.9** aFlex

**Hardware Maintenance and Support:**

**3.1.4 Commodity Line 4:** Vendor must provide a quantity of 1 each Gold Support Service Program for Three appliances listed in section 3.1.1 for a total quantity of 2 Gold Support Service Program "or Equal" For 3 year period, with 2, 1 year renewals.

**3.1.4.1** Vendor will provide technical phone support 24 hours a day, 7 days a week.

**3.1.4.2** Vendor will provide software updates, patches, and releases.

**3.1.4.3** Vendor will provide advanced hardware replacement in the event of failure for the length of the contract.

**3.1.4.3.1** System failure will be confirmed by phone support or email support.

**3.1.4.3.2** Tech support personnel must issue a Return Material Authorization (RMA) number.

**3.1.4.3.3** Replacement hardware must be new. Hardware listed as refurbished, reconditioned, or "like new" condition will not be accepted.

**3.1.4.3.4** The advance replacement should be received the next business day.

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**3.1.5 Commodity Line 5:** Vendor must provide a quantity of 1 Basic Support Service Program for one (1) appliance listed in section 3.1.1 for a total quantity of 1 Basic Support Service Program "or Equal" For 3 Yr Period with 2, 1 year renewals.

3.1.5.1 Vendor will provide technical phone support during Business Hours as defined in Section 2. from 9:00AM to 6:00PM EST

3.1.5.2 Vendor will provide software updates, patches, and releases.

3.1.5.3 Vendor will provide advanced hardware replacement in the event of failure as confirmed by the vendor's technical support personnel during the first 30 calendar days from date of installation.

3.1.5.3.1 System failure will be confirmed by phone support or email support.

3.1.5.3.2 Tech support personnel must issue a Return Material Authorization (RMA) number.

3.1.5.3.3 Replacement hardware must be new. Hardware listed as refurbished, reconditioned, or "like new" condition will not be accepted.

3.1.5.4 Vendor will provide hardware repair in the event of failure after 30 calendar days from installation during the Basic Support Service Program "or Equal" from date of installation. After system failure is confirmed technical support personnel via phone or email support a Return Material Authorization number will be issued.

3.1.5.4.1 The appliance will be repaired, or, at the vendor's discretion, will be replaced with new hardware at equal or better value. Hardware listed as refurbished, reconditioned, or "like new" condition will not be accepted.

**3.1.6 Commodity Line 5-7:** Vendor must include in their bid the cost of optional Annual renewals the Gold Support Services Program quantity of one (1) each for two (2) appliances for initial 3 year period with 2, 1 year renewals and the Basic Support Services Program quantity of one (1) for 3 years with 2, 1 year renewals. These optional Annual renewals will be initiated by the Agency, agreed to by the Vendor and processed as a Change Order authorized by the West Virginia Purchasing Division.

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**4. CONTRACT AWARD:**

**4.1 Contract Award:** The Contract is intended to provide Agency with a purchase price for the Contract Items. The Contract shall be awarded to the Vendor that provides the Contract Items meeting the required specifications for the lowest overall total cost as shown on the Pricing Pages.

**Evaluation and Awarded Contract will be based upon the Total Price for all items requested.**

Renewal options for years 4 and 5 will be initiated by the Agency, agreed to by the Vendor and processed by the West Virginia Purchasing Division as Change Orders for subsequent years.

**4.2 Pricing Page:** Vendor should complete the Pricing Page and submit it as part of the bid response. Vendor should complete the Pricing Page in full as failure to complete the Pricing Page in its entirety may result in Vendor's bid being disqualified.

- 4.2.1** If the Vendor is submitting an Equivalent Brand, this information including Model Number must be submitted with their bid submission.
- 4.2.2** Vendor will include the renewal cost should the agency opt to renew for years 4 and 5. Vendor should complete the Pricing Page in its' entirety as failure to do so may result in Vendor's bid being disqualified.
- 4.2.3** Vendor should electronically enter the information into the Pricing Pages through wvOASIS, if available, or as an electronic document. In most cases, the Vendor can request an electronic copy of the Pricing Pages for bid purposes by sending an email request to the following address: [Laura.B.Hooper@WV.gov](mailto:Laura.B.Hooper@WV.gov).

***VENDOR'S WHO WISH TO RESPOND TO A CENTRALIZED REQUEST FOR QUOTATION (CRFQ) ONLINE MAY SUBMIT INFORMATION THROUGH THE STATE'S WVOASIS VENDOR SELF SERVICE (VSS). VENDORS SHOULD DOWNLOAD THE EXHIBIT "A": PRICING PAGE THAT IS ATTACHED SEPARATELY TO THE CRFQ AND PUBLISHED TO THE VSS. VENDORS MUST COMPLETE THIS FORM WITH THEIR PRICE INFORMATION AND INCLUDE IT AS AN ATTACHMENT TO THEIR ONLINE RESPONSE WITH AN ATTACHMENT TYPE OF "PRICING". THE PRICING***

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***PAGE ATTACHMENTS (PRICING) ARE THEN  
DOWNLOADED BUY THE BUYER DURING THE  
SCHEDULED BID OPENING FOR BID EVALUATION.***

***IF UNABLE TO RESPOND ONLINE VENDOR MUST SUBMIT  
THE EXHIBIT "A" PROPOSAL FORM/PRICING PAGES  
WITH YOUR BID PRIOR TO THE SCHEDULED BID  
OPENING DATE.***

Vendor should type or electronically enter the information into the Pricing Page to prevent errors in the evaluation.

**5. PAYMENT:**

**5.1 Payment:** Vendor shall accept payment in accordance with the payment procedures of the State of West Virginia.

**6. DELIVERY AND RETURN:**

**6.1 Shipment and Delivery:** Vendor shall ship the Contract Items immediately after being awarded this Contract and receiving a purchase order. Vendor shall deliver the Contract Items within 30 calendar days after receiving a purchase order. Contract Items must be delivered to Agency at:

West Virginia Office of Technology  
ATTENTION: Carmen Young  
908 Bullitt St.  
Charleston, WV 25301-1002

**6.2 Late Delivery:** The Agency placing the order under this Contract must be notified in writing if the shipment of the Contract Items will be delayed for any reason. Any delay in delivery that could cause harm to an Agency will be grounds for cancellation of the Contract, and/or obtaining the Contract Items from a third party.

Any Agency seeking to obtain the Contract Items from a third party under this provision must first obtain approval of the Purchasing Division.

**6.3 Delivery Payment/Risk of Loss:** Vendor shall deliver the Contract Items F.O.B. destination to the Agency's location.

**6.4 Return of Unacceptable Items:** If the Agency deems the Contract Items to be unacceptable, the Contract Items shall be returned to Vendor at Vendor's expense and with no restocking charge. Vendor shall either make arrangements for the return

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within five (5) days of being notified that items are unacceptable, or permit the Agency to arrange for the return and reimburse Agency for delivery expenses. If the original packaging cannot be utilized for the return, Vendor will supply the Agency with appropriate return packaging upon request. All returns of unacceptable items shall be F.O.B. the Agency's location. The returned product shall either be replaced, or the Agency shall receive a full credit or refund for the purchase price, at the Agency's discretion.

- 6.5 Return Due to Agency Error:** Items ordered in error by the Agency will be returned for credit within 30 days of receipt, F.O.B. Vendor's location. Vendor shall not charge a restocking fee if returned products are in a resalable condition. Items shall be deemed to be in a resalable condition if they are unused and in the original packaging. Any restocking fee for items not in a resalable condition shall be the lower of the Vendor's customary restocking fee or 5% of the total invoiced value of the returned items.

**7. VENDOR DEFAULT:**

**7.1** The following shall be considered a vendor default under this Contract.

- 7.1.1** Failure to provide Contract Items in accordance with the requirements contained herein.
- 7.1.2** Failure to comply with other specifications and requirements contained herein.
- 7.1.3** Failure to comply with any laws, rules, and ordinances applicable to the Contract Services provided under this Contract.
- 7.1.4** Failure to remedy deficient performance upon request.

**7.2** The following remedies shall be available to Agency upon default.

- 7.2.1** Immediate cancellation of the Contract.
- 7.2.2** Immediate cancellation of one or more release orders issued under this Contract.
- 7.2.3** Any other remedies available in law or equity.