

SecureLogix Corporation
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**immixTechnology Rider to Product Specific License Terms and Conditions
(for U.S. Government End Users)**

1. **Scope.** This Rider and the attached **SecureLogix Corporation** ("Manufacturer") product specific license terms establish the terms and conditions enabling immixTechnology ("Contractor") to provide Manufacturer's information technology products and services to Ordering Activities under immixTechnology's GSA MAS IT70 contract number GS-35F-0265X (the "Schedule Contract"). Installation and use of the information technology shall be in accordance with this Rider and Manufacturer Specific Terms attached hereto, unless an Ordering Activity determines that it requires different terms of use and Manufacturer agrees in writing to such terms in a valid delivery order placed pursuant to the Schedule Contract.
2. **Applicability.** Whereas GSA and immixTechnology agreed at the time of Schedule Contract award upon a base set of terms and conditions applicable to all manufacturers and items represented on the Schedule Contract; and Whereas, the parties further agreed that all product specific license, warranty and software maintenance terms and conditions would be submitted at the time each new manufacturer was to be added to the Schedule Contract; Now, Therefore, the parties hereby agree that the product specific license, warranty and software maintenance terms set forth in Attachment A hereto (the "Manufacturer Specific Terms" or the "Attachment A Terms") are incorporated into the Schedule Contract, but only to the extent that they are consistent with federal law (e.g., the Anti-Deficiency Act (31 U.S.C. § 1341), the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 *et seq.*), the Prompt Payment Act (31 U.S.C. §§ 3901 *et seq.*), the Anti-Assignment statutes (31 U.S.C. § 3727 and 41 U.S.C. § 15), DOJ's jurisdictional statute 28 U.S.C. § 516 (Conduct of Litigation Reserved to the Department of Justice (DOJ)), and 28 U.S.C. § 1498 (Patent and copyright cases)). To the extent any Attachment A Terms are inconsistent with federal law (See, FAR 12.212(a)), such inconsistent terms shall be superseded, unenforceable and of no legal force or effect in all resultant orders under the Schedule Contract, including but not limited to the following provisions:
 - a) **Contracting Parties.** The GSA Customer ("Licensee") is the "Ordering Activity", defined as the entity authorized to order under GSA MAS contracts as set forth in GSA ORDER ADM 4800.2G (Feb 2011), as may be revised from time to time.
 - b) **Changes to Work and Delays.** Subject to GSAR Clause 552.243-72, Modifications (Federal Supply Schedule) (July 2000) (Deviation I – SEPT 2010), and 52.212-4(f) Excusable Delays (JUN 2010) regarding which the GSAR and the FAR provisions take precedence.
 - c) **Contract Formation.** Subject to FAR 1.601(a) and FAR 43.102, the GSA Customer Purchase Order must be signed by a duly warranted Contracting Officer, in writing. The same requirement applies to contract modifications affecting the rights of the parties. All terms and conditions intended to bind the Government must be included within the contract signed by the Government.
 - d) **Termination.** Clauses in the Manufacturer Specific Terms referencing termination or cancellation are superseded and not applicable to any GSA Customer order. Termination shall be governed by the FAR, the underlying GSA Schedule Contract and the terms in any applicable GSA Customer Purchase Orders. If the Contractor believes the GSA Customer to be in breach, it must file a claim with the Contracting Officer and continue to diligently pursue performance. In commercial item contracting under FAR 12.302(b), the FAR provisions dealing with disputes and continued performance cannot be changed by the Contracting Officer.
 - e) **Choice of Law.** Subject to the Contracts Disputes Act, the validity, interpretation and enforcement of this Rider shall be governed by and construed in accordance with the laws of the United States. In the event the Uniform Computer Information Transactions Act (UCITA) or any similar federal laws or regulations are enacted, to the extent allowed by federal law, they will not apply to this Rider or the underlying Schedule Contract.
 - f) **Equitable remedies.** Equitable remedies are generally not awarded against the Government absent a statute providing therefore. In the absence of a direct citation to such a statute, all clauses in the Manufacturer Specific Terms referencing equitable remedies are superseded and not applicable to any GSA Customer order.
 - g) **Unilateral Termination.** Unilateral termination by the Contractor does not apply to a GSA Customer Purchase Order and all clauses in the Manufacturer Specific Terms referencing unilateral termination rights of the Manufacturer are hereby superseded.
 - h) **Unreasonable Delay.** Subject to FAR 52.212-4(f) Excusable delays, the Contractor shall be liable for default unless the nonperformance is caused by an occurrence beyond the reasonable control of the Contractor and without its fault or negligence such as, acts of God or the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. The Contractor shall notify the Contracting Officer in writing as soon as it is reasonably possible after commencement of any excusable delay, setting forth the full particulars in connection therewith, shall remedy such occurrence with all reasonable dispatch and shall promptly give written notice to the Contracting Officer of the cessation of such occurrence.

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

- u) **Alternate Dispute Resolution.** The GSA Customer cannot be forced to mediate or arbitrate. Arbitration requires prior guidance by the head of a federal agency promulgated via administrative rulemaking according to 5 U.S.C. § 575(c). GSA has not issued any because it considers the Board of Contract Appeals to be an adequate, binding ADR alternative. All Manufacturer Specific Terms that allow the Contractor to choose arbitration, mediation or other forms of alternate dispute resolution are hereby superseded.
 - v) **Ownership of Derivative Works.** Provisions purporting to vest exclusive ownership of all derivative works in the licensor of the standard software on which such works may be based are superseded. Ownership of derivative works should be as set forth in the copyright statute, 17 U.S.C. § 103 and the FAR clause at 52.227-14, but at a minimum, the GSA Customer shall receive unlimited rights to use such derivative works at no further cost.
3. **Order of Precedence/Conflict.** To the extent there is a conflict between the terms of this Rider and the terms of the underlying Schedule Contract or a conflict between the terms of this Rider and the terms of an applicable GSA Customer Purchase Order, the terms of the GSA Schedule Contract or any specific, negotiated terms on the GSA Customer Purchase Order shall control over the terms of this Rider. Any capitalized terms used herein but not defined, shall have the meaning assigned to them in the underlying Schedule Contract.

**ATTACHMENT A
CONTRACTOR SUPPLEMENTAL PRICELIST INFORMATION AND TERMS**

SECURELOGIX CORPORATION

SECURELOGIX LICENSE, WARRANTY AND SUPPORT TERMS

DEFINITIONS

The term "Product(s)" shall mean Contractor's hardware products (including any software contained therein), separately provided software products, documentation, equipment and items and the services ("Services") described on Contractor's price list from time to time (the "Price List"). The Product(s) and the Contractor software and documentation, whether integral to the Product(s) or furnished on a standalone basis are subject to the licensing provisions contained herein.

SCOPE OF LICENSE FOR CUSTOMER'S USE OF PRODUCT(S)

- a. Subject to the provisions of this Attachment, upon the payment of any applicable fee(s), Contractor grants to Ordering Activity a nonexclusive, non-transferable license to use the Product(s) including any future versions, improvements, updates or enhancements that Contractor may supply in the future, solely for the performance of services for itself or third parties and the creation of reports in connection with such services. Ordering Activity shall use the Product(s) only in accordance with the quantity provisions specified in the Order accepted by Contractor. Separately provided Contractor software may only be used on a single designated unit of equipment and in accordance with the provisions of this Attachment.
- b. Ordering Activity may make a reasonable number of archival copies of separately provided software Products.
- c. Ordering Activity may not reverse engineer, de-compile, disassemble, or otherwise translate any Product(s) or use the Product(s) to prepare other hardware or software products or works.
- d. Ordering Activity agrees to the provisions of this license and Ordering Activity affirmatively acknowledges and understands that the Product(s) contain cryptographic software subject to export controls under the United States Export Administration Regulations ("U. S. Regulations") and that Ordering Activity cannot export or re-export the Product(s) (including any documentation or technical data related thereto) without a license issued by the United States Government.

TECHNICAL SUPPORT. The following provisions will apply when Contractor accepts an Order for technical support ("Technical Support"). Technical Support shall be available from Contractor through Manufacturer to Ordering Activity via Contractor through Manufacturer's designated toll-free number during business hours (7:00 a.m. to 7:00 p.m. Central Time, Monday through Friday, national holidays excepted) for minor problems and technical assistance.

SOFTWARE MAINTENANCE. The following provisions will apply when Contractor accepts an Order for Contractor software maintenance ("Software Maintenance"). Contractor Software Maintenance includes revisions and new releases to the Contractor software but does not include future products having differing functionality or features. Such future products will be made available to Ordering Activity in accordance with Contractor's then existing terms, conditions and fees.

CONSULTING AND/OR TRAINING SERVICES. The following provisions will apply when Contractor accepts an Order to provide training services ("Training Services") and/or consulting services ("Consulting Services"). Training Services and/or Consulting Services shall consist of and be performed in accordance with the scope of work and dates set forth in the Order and in accordance with Contractor's then existing terms, conditions and fees.

EQUIPMENT SERVICES. The following provisions will apply when Contractor accepts an Order to provide installation and/or maintenance for the hardware are component of the Product(s) ("Equipment Services"). Installation Services will be performed as mutually agreed in the accepted Order. Requests for Equipment Services for the Product(s) shall be made to Contractor through Manufacturer's designated toll-free number. Following Contractor's verification of a hardware problem, a Return Material Authorization ("RMA") number will be issued to Ordering Activity. The RMA will authorize Ordering Activity to receive an exchange unit on a freight prepaid basis. Ordering Activity shall return the malfunctioning Product(s) (or a component thereof) to Contractor by second business day delivery, freight prepaid by Contractor and shall be responsible for payment to Contractor of the published price of any units not returned within five (5) business days following receipt of the exchange unit by Ordering Activity. After the warranty period and if Equipment Services are not provided on a contract basis, Ordering Activity shall be responsible for all freight charges for the returned Product(s). Supplies and expendable items shall be provided in accordance with Contractor's prices in effect on the date shipped. Equipment Services that are outside those specified herein, shall be on a time, materials and transportation basis at Contractor's prices in effect at the time such Equipment Services are provided and the provision of such non-contracted Equipment Services shall be at the discretion of Contractor and shall be subject to the availability of personnel and parts. All parts or units that are replaced by parts or units provided by Contractor on an exchange basis shall become the property of Contractor and the part or unit supplied by Contractor shall become the property of Ordering Activity. Parts or units that are provided by Contractor may be new or refurbished parts or units that are functionally equivalent to new parts or units and may be from different sources than the original equipment manufacturer. Maintenance aids, including, but not limited to, software or documentation utilized by Contractor are either Contractor's property or property of third parties. No license or right to use any such maintenance aids is granted hereunder.

CUSTOMER RESPONSIBILITIES. Ordering Activity shall, at its expense, prepare and maintain the site where the Product(s) will be used in accordance with the published specifications for operating environments and perform those tasks set forth in an Order for the Product(s). Ordering Activity assumes the full responsibility to back-up and/or otherwise protect its data against loss, damage or destruction before Services are performed by Contractor. Ordering Activity also agrees to permit prompt access to equipment consistent with Ordering Activity's generally applicable standard security requirements and to provide reasonable assistance and facilities so as to expedite the performance of Services by Contractor. Ordering Activity shall provide Contractor with an accurate description of all communication lines, modems, networks, software and other devices and related items (collectively, "Devices") that may be necessary for Contractor to access during the performance of Services or the provision of any deliverables hereunder. Ordering Activity hereby authorizes Contractor to access the Devices for the purposes of performing such Services or providing such deliverables. Ordering Activity warrants that it owns or possesses all rights necessary to authorize Contractor to access such Devices.

WARRANTY AND REMEDY

- a. Contractor's exclusive limited Product(s) warranty is that the Product(s), under normal use and service, will substantially perform all of the functions described in the specifications for the Product(s). The warranty period is one (1) year from date of delivery of the Products. In the event Contractor breaches this warranty, Ordering Activity's remedy shall be, at Contractor's option and expense, (i) Contractor shall correct any discrepancy in performance that materially impairs the functionality of the Product(s), or (ii) Contractor shall refund the price paid to Contractor for the Product(s) provided that Ordering Activity returns the Product(s) (freight prepaid by Contractor) within thirty (30) days of the discovery of the discrepancy during the warranty period.
- b. With respect to Services, Contractor's exclusive warranty is that, the Services shall be performed in a workmanlike fashion. In the event Contractor breaches this warranty, Ordering Activity's remedy shall be, at Contractor's option and expense, (i) to have Contractor correct such Services within ninety (90) days of the performance of the Services or (ii) Contractor shall refund the price paid for the applicable portion of the Services.
- c. EXCEPT AS EXPRESSLY PROVIDED HEREIN, CONTRACTOR MAKES NO REPRESENTATION OR GUARANTEE WHATSOEVER AND SPECIFICALLY DISCLAIMS ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE NOR DOES CONTRACTOR MAKE ANY REPRESENTATION AS TO PREVENTING OR RESOLVING ANY PROBLEMS OR PRODUCING ANY SPECIFIC RESULTS.