



## MASTER PRODUCT AND SERVICES AGREEMENT

This **Master Product and Services Agreement** (hereinafter "**Agreement**") is made as of the last date written below by and between **SecureLogix Corporation** ("**SecureLogix**"), located at 13750 San Pedro, Suite 820, San Antonio, Texas 78232 and the **General Services Administration** ("**Customer**") located at -----.

**When the end user Customer is an instrumentality of the US Government, this Agreement is a contract with the US Government and becomes effective when signed by SecureLogix and the GSA Contracting Officer as an addendum to the contract. If this is an ID/IQ contract or Schedule contract, ordering activities placing orders against the Schedule or ID/IQ contract are subject to this Agreement as a term of the contract. This Agreement (EULA or TOS as applicable) shall bind the US Government, subject to federal law. This Agreement shall not operate to bind an US Government employee or person acting on behalf of the US Government in his or her personal capacity.**

In consideration of the mutual promises hereinafter set forth, SecureLogix and Customer do hereby agree as follows:

### 1. DEFINITIONS.

- a. The term "**Product(s)**" shall mean SecureLogix's hardware products (including any software contained therein), separately provided software products, documentation, equipment and items and the services ("**Services**") described on SecureLogix's published or established price list (the "**Price List**"). The Product(s) and the SecureLogix software and documentation, whether integral to the Product(s) or furnished on a standalone basis, are subject to the licensing provisions contained herein. SecureLogix reserves the right to correct errors in its Price List and any Order(s) (as hereinafter defined below) derived therefrom but such corrections shall not apply to any Orders previously accepted by SecureLogix.
- b. "**Order**" shall mean an order for Product(s) or Services submitted to SecureLogix, which, upon written acceptance by SecureLogix, shall become a binding contract for SecureLogix to sell and deliver and for Customer to purchase and pay for the Product(s) and/or Services described in the Order. An Order may consist of the Proposal (as hereinafter defined below) that SecureLogix has provided to Customer if the Proposal is accepted without modification and within the period specified in the Proposal. An Order may also be issued on Customer's purchase order or other form document; provided, however, that Customer's purchase order or other form document shall not alter, vary, amend, supplement or interpret the provisions of this Agreement.
- c. "**Proposal**" shall mean the written offer to Customer created by SecureLogix that describes the Product(s) and/or Services, the prices for the same, the anticipated delivery or commencement date, the work to be performed by SecureLogix for Customer and such additional information as may be included in the Proposal. All Proposal(s) are made subject to the terms and conditions stated herein.

### 2. SCOPE OF LICENSE FOR CUSTOMER'S USE OF PRODUCT(S).

- a. Subject to the provisions of this Agreement, upon the payment of any applicable fee(s), SecureLogix grants to Customer a nonexclusive, non-transferable license to use the Product(s) including any future versions, improvements, updates or enhancements that SecureLogix 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. Customer shall use the Product(s) only in accordance with the quantity provisions specified in the Order accepted by SecureLogix. Separately provided SecureLogix software may only be used on a single designated unit of equipment and in accordance with the provisions of this Agreement.

- b. Customer may make a reasonable number of archival copies of separately provided software Products.
  - c. Customer 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. Customer agrees to the provisions of this license and Customer 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 Customer shall comply with such laws and regulations governing use, export, re-export, and transfer of or re-export the Product(s) (including any documentation or technical data related thereto). Product(s) are classified as telecommunications/networking equipment pursuant to U. S. Regulations and subject to Export Control Classification Number 5A002A.1 which authorizes export or re-export to most government and commercial end users located in all territories except the embargoed destinations and countries designated as supporting terrorist activities listed in Part 746 of the EAR as embargoed destinations requiring a license.
  - e. SecureLogix provides the Product(s) to non-DOD agencies with RESTRICTED RIGHTS and documentation is provided with LIMITED RIGHTS. Use, duplication or disclosure by the Government is subject to the restrictions as set forth in subparagraph "C" of the Commercial Computer Software - Restricted Rights clause at FAR 52.227-19 (June 1987). In the event the sale is to a DOD agency, the government's rights in software, supporting documentation and technical data are governed by the restrictions in the Technical Data Commercial Items clause at DFARS 252.227-7015 (Nov. 1995) and subpart DFARS 227.7202-3.
3. **TECHNICAL SUPPORT.** The following provisions will apply when SecureLogix or its reseller accepts an Order for technical support ("**Technical Support**"). Technical Support shall be available from SecureLogix to Customer via email at [support@securelogix.com](mailto:support@securelogix.com) or SecureLogix's designated toll-free number during business hours (7:00 a.m. to 7:00 p.m. U.S.A. Central Time, Monday through Friday, national holidays excepted) for minor problems and technical assistance. National holidays are listed in SecureLogix's support handbook which can be downloaded from <http://www.securelogix.com/support/>.
4. **SECURELOGIX SOFTWARE MAINTENANCE.** The following provisions will apply when SecureLogix accepts an Order for SecureLogix software maintenance ("**Software Maintenance**"). SecureLogix Software Maintenance includes revisions and new releases to the SecureLogix software but does not include future products having differing functionality or features. Such future products will be made available to Customer in accordance with SecureLogix's then existing terms, conditions and fees.
5. **CONSULTING AND/OR TRAINING SERVICES.** The following provisions will apply when SecureLogix 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 SecureLogix's then existing terms, conditions and fees.
6. **EQUIPMENT SERVICES.** The following provisions will apply when SecureLogix accepts an Order to provide installation and/or maintenance for the hardware 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 SecureLogix via SecureLogix's designated toll-free number. Following SecureLogix's verification of a hardware problem, a Return Material Authorization ("**RMA**") number will be issued to Customer. The RMA will authorize Customer to receive an exchange unit on a freight prepaid basis. Customer shall return the malfunctioning Product(s) (or a component thereof) to SecureLogix by second business day delivery, freight prepaid by SecureLogix and shall be responsible for payment to SecureLogix of the published price of any units not returned within five (5) business days following receipt of the exchange unit by Customer. After the warranty period and if Equipment Services are not provided on a contract basis, Customer shall be responsible for all freight charges for the returned Product(s). Supplies and expendable items shall be provided in accordance with SecureLogix'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 SecureLogix'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 SecureLogix and shall be subject to the availability of personnel and parts. All parts or units that are replaced by parts or units provided by SecureLogix on an exchange basis shall become the property of SecureLogix and the part or unit supplied by SecureLogix shall become the property of Customer. Parts or units that are provided by SecureLogix 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 SecureLogix are either SecureLogix's property or property of third parties. No license or right to use any such maintenance aids is granted hereunder.

7. **CUSTOMER RESPONSIBILITIES.** Customer 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). Customer assumes the full responsibility to back-up and/or otherwise protect its data against loss, damage or destruction before Services are performed by SecureLogix. Customer also agrees to permit prompt access to equipment consistent with Customer's generally applicable standard security requirements and to provide reasonable assistance and facilities so as to expedite the performance of Services by SecureLogix. Customer shall provide SecureLogix with an accurate description of all communication lines, modems, networks, software and other devices and related items (collectively, "**Devices**") that may be necessary for SecureLogix to access during the performance of Services or the provision of any deliverables hereunder. Customer hereby authorizes SecureLogix to access the Devices for the purposes of performing such Services or providing such deliverables. Customer warrants that it owns or possesses all rights necessary to authorize SecureLogix to access such Devices.
8. **SHIPPING AND DELIVERY.** Shipping dates will be established by SecureLogix upon acceptance of Orders from Customer. Shipping dates will be assigned as close as practicable to the Customer's requested date based on SecureLogix's then-current lead times for the Product(s). SecureLogix will use commercially reasonable efforts to notify Customer of the scheduled shipping date within ten (10) working days after acceptance of an Order. Unless given written instruction by Customer, SecureLogix shall select the carrier. Delivery terms are FOB origination at SecureLogix's shipping location or as otherwise agreed in the Order. SecureLogix shall not be liable for delay in delivery caused by the carrier.
9. **PRICES AND FEES.** The prices and/or fees for Product(s) and Services provided during the term of this Agreement shall be in accordance with the provisions set forth on the Price List. No federal, state or local taxes shall be imposed upon the Product(s) or Services performed hereunder. Payment for Product(s) and Services is due within thirty (30) days after the date of SecureLogix's invoice. Time is of the essence with respect to payments to SecureLogix. SecureLogix reserves the right to change its published or established prices upon the termination or expiration of the GSA Schedule but no increases shall be effective with respect to Orders accepted by SecureLogix prior to the date of the notification. Past due amounts are governed by the Prompt Payment Act (31 USC 3901 et. seq.) and Treasury regulations at 5 CFR 1315.

#### 10. EXCLUSIVE WARRANTY AND EXCLUSIVE REMEDY.

- a. SecureLogix'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 SecureLogix breaches this warranty, Customer's exclusive remedy shall be, at SecureLogix's option and expense, (i) SecureLogix shall correct any discrepancy in performance that materially impairs the functionality of the Product(s), or (ii) SecureLogix shall refund the price paid to SecureLogix for the Product(s) provided that Customer returns the Product(s) (freight prepaid by SecureLogix) within thirty (30) days of the discovery of the discrepancy during the warranty period.
- b. With respect to Services, SecureLogix's exclusive warranty is that, the Services shall be performed in a workmanlike fashion. In the event SecureLogix breaches this warranty, Customer's exclusive remedy shall be, at SecureLogix's option and expense, (i) to have SecureLogix correct such Services within ninety (90) days of the performance of the Services or (ii) SecureLogix shall refund the price paid for the applicable portion of the Services.
- c. EXCEPT AS EXPRESSLY PROVIDED HEREIN, SECURELOGIX MAKES NO REPRESENTATION OR GUARANTEE WHATSOEVER AND SPECIFICALLY DISCLAIMS ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE NOR DOES SECURELOGIX MAKE ANY REPRESENTATION AS TO PREVENTING OR RESOLVING ANY PROBLEMS OR PRODUCING ANY SPECIFIC RESULTS.

#### 11. LIMITATION OF LIABILITY.

- a. EXCEPT FOR CUSTOMER'S BREACH OF SECTION 2.c. ABOVE, NEITHER PARTY SHALL HAVE ANY LIABILITY UNDER THIS AGREEMENT OR OTHERWISE FOR CONSEQUENTIAL, EXEMPLARY, INCIDENTAL OR PUNITIVE DAMAGES EVEN IF IT HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.
- b. EXCEPTING SECURELOGIX'S OBLIGATIONS CONCERNING INFRINGEMENT SET FORTH IN SECTION 12 BELOW, IN NO EVENT SHALL SECURELOGIX'S LIABILITY ARISING FROM OR IN CONNECTION WITH THIS AGREEMENT OR OTHERWISE EXCEED THE LESSER OF CUSTOMER'S ACTUAL AND DIRECT DAMAGES OR THE AMOUNTS PAID TO SECURELOGIX BY CUSTOMER UNDER THIS AGREEMENT.

12. EXCLUSIVE PROVISION REGARDING INFRINGEMENT. SecureLogix's exclusive warranty regarding infringement is that SecureLogix has developed the Products and deliverables and/or has all right, title and interest in and to the Products and deliverables necessary to grant the rights under this Agreement and that the Products and deliverables do not infringe any United States patent, copyright or trade secret. **If a third party claims that Products or deliverables delivered under this Agreement infringes that party's patent or copyright, SecureLogix will indemnify the US Government against liability, at SecureLogix's expense and pay all costs, damages, and attorneys' fees that a court finally awards or that are included in a settlement approved by SecureLogix, provided that the US Government: A. Promptly notifies SecureLogix in writing of the claim; and B. Gives SecureLogix such opportunity as is offered by applicable laws, rules or regulations to participate in the defense thereof. The US Government shall make every effort to permit SecureLogix to fully participate in the defense and/or in any settlement of such claim. However, SecureLogix understands that such participation will be under the control of the Department of Justice.** In the event of any such infringement, SecureLogix shall, at its option and expense, either (i) replace or modify the Products or deliverables so that they become non-infringing,

or (ii) accept return of the Products or deliverables and refund an amount equal to Customer's depreciated value of the returned items found to be infringing. SecureLogix shall have no liability for infringements caused in whole or in part by Customer, third parties not hired by SecureLogix or alterations or combinations not reviewed and approved in writing in advance by SecureLogix or that are not performed or provided by SecureLogix. The foregoing constitutes the exclusive warranty of SecureLogix and exclusive remedy of Customer with respect to any claim or action for infringement.

13. SECURELOGIX'S EMPLOYEES. SecureLogix reserves the right to determine which of its employees will be assigned to a particular project, to replace or reassign such employees and/or subcontract to qualified third persons part or all of the performance of any Services requested hereunder. Customer may request the removal or reassignment of SecureLogix's employees on a nondiscriminatory basis at any time and SecureLogix will promptly provide a suitable replacement. SecureLogix's employees will comply with all generally applicable work and security rules of Customer.
14. FORCE MAJEURE. SecureLogix shall not be liable for any delay or failure to perform its obligations due to any cause beyond its reasonable control, including, without limitation, lack of cooperation or assistance by Customer, labor difficulties, fire, accident, act of the public enemy, war, public disturbances, sabotage, transportation delay, shortage of raw material, energy, or machinery, or act of God, government or the judiciary or information or telecommunications systems disruption caused by a third party that materially impairs SecureLogix's performance hereunder.
15. INDEPENDENT CONTRACTORS. The parties' relationship during the term of this Agreement shall be that of independent contractors. Neither party shall have, nor shall represent that it has, any power, right or authority to bind the other, or to assume or create any obligation or responsibility, express or implied, on behalf of the other or in such other party's name, except as herein expressly provided. Nothing stated in this Agreement shall be construed as constituting a partnership, joint venture or as creating the relationships of employer/employee, franchisor/franchisee or principal/agent between the parties.
16. NOTICES. All notices shall be in writing and all notices and payments shall be sent to the recipient at its respective address set forth above or to such other address as may, from time to time, be designated by written notice. Each party agrees to promptly provide written notice of the specifics of any claim of breach or for damages and to provide the other with a reasonable opportunity to investigate and cure any curable matter.
17. WAIVER. Any waiver of any breach of this Agreement shall not be effective unless set forth in a writing signed by an officer of the waiving party.
18. TERM. This Agreement shall be effective as of the last date written below and shall continue until Customer ceases to use the Product(s). In the event of a claimed breach by the Customer, SecureLogix shall submit a claim to the contracting officer and to continue performance during the pendency of the claim.
19. ASSIGNMENT. Other than to an affiliate of Customer, Customer may not assign, sub-license, transfer, pledge, lease, rent, or share the Product(s) or Customer's rights under this Agreement.
20. RESERVED.
21. REJECTION OF U.N. CONVENTION. THE PARTIES AGREE THAT THE PROVISIONS OF THE UNITED NATIONS CONVENTION ON CONTRACTS FOR THE INTERNATIONAL SALE OF GOODS, UNIFORM COMPUTER INFORMATION TRANSACTIONS ACT, THE ELECTRONIC SIGNATURES IN GLOBAL AND NATIONAL COMMERCE ACT, THE UNIFORM ELECTRONIC TRANSACTIONS ACT, ANY STATUTORY ADOPTIONS OR

EQUIVALENTS OF THE AFOREMENTIONED ACTS AND CONVENTION, AND ANY OTHER LAWS OR REGULATIONS OF ANY STATE OR COUNTRY RELATED TO ELECTRONIC CONTRACTS, ELECTRONIC SIGNATURES, OR ELECTRONIC RECORDS SHALL NOT APPLY TO THE PARTIES, ANY ORDER OR THIS AGREEMENT.

22. ENTIRE AGREEMENT. This Agreement shall be construed in accordance with the laws of the United States (e.g., the Federal Tort Claims Act, 28 USC 1346(b); the Contract Disputes Act, 41 USC 7101 et. seq.; the Tucker Act, 28 USC 1346(a)(1)). This Agreement constitutes the entire agreement between the parties and may only be modified by a written instrument executed by an authorized officer of both parties. All proposals, negotiations and representations (if any) made prior, and with reference to the subject matter of this Agreement, are merged herein. This Agreement may be executed in two (2) or more counterparts and each counterpart will be deemed an original, but all counterparts together will constitute a single instrument. This Agreement has been negotiated by the parties and their respective counsel and will be interpreted fairly in accordance with its terms and without any strict construction in favor of or against either party. Neither SecureLogix nor Customer shall be bound by any oral agreement or representation, irrespective of when made. This Agreement, together with any Order accepted by SecureLogix that conforms to this Agreement, is the complete statement of the terms and conditions that apply to the subject matter of this Agreement. SecureLogix and Customer agree that use of preprinted forms, such as purchase orders or acknowledgments, are for convenience only and all terms and conditions stated thereon, except for the information requested by this Agreement, are void and of no effect. In the event of any conflict between this Agreement and the terms and conditions on an Order, this Agreement will govern. A facsimile or imaged copy of this Agreement (including the facsimile or imaged signatures of the parties' representatives thereon) shall for all purposes be deemed equivalent to an original (including the original signatures of the parties' representatives thereon).

IN WITNESS WHEREOF, the parties hereto have executed this Agreement by their authorized representatives as of the last date written below.

**SecureLogix Corporation**

By: \_\_\_\_\_

Name: Rick Jordan

Title: Chief Financial Officer

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

**General Services Administration**

By: \_\_\_\_\_

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

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

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