

Upland Software
25 First Street
Suite 201
Cambridge, MA 02141

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

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extent any Attachment A Terms are inconsistent with federal law (See, FAR 12.212(a)), such inconsistent terms shall be superseded, unenforceable and of no legal force or effect in all resultant orders under the Schedule Contract, including but not limited to the following provisions: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

UPLAND SOFTWARE

UPLAND SOFTWARE LICENSE, WARRANTY AND SUPPORT TERMS

Definitions

“Authorized User” shall mean a named individual who is an employee, consultant, or contractor of Licensee (Ordering Activity) who is registered to use and access the Software. The registration and access of each Authorized User may be transferred or reassigned by Licensee to another Authorized User, so long as the total number of Authorized Users accessing the Software does not exceed the total number of Authorized Users purchased by Licensee. Multiple individuals may not login under the same Authorized User account. Licensee shall be liable for an Authorized User’s compliance with the terms and conditions herein.

“Documentation” means the operating manuals, including a description of the functions performed by the Software, user instructions, technical literature and all other related materials in the English language, in both eye-readable and machine-readable, printable form, which may, from time to time, be supplied to Licensee to facilitate the use and application of the Software.

“Hosting Services” means those services provided by Contractor through the Manufacturer (PowerSteering) for the hosting of the Software, for production servers, pursuant to the terms herein.

“Software” means the software and computer programs in machine-readable form (including Updates and Upgrades) ordered by Licensee and provided by Contractor.

“Updates” means interim releases of the Software incorporating standard maintenance, improvements, patches, error corrections and enhancements that are provided by PowerSteering to customers who subscribe to maintenance and support services. Updates are designated by all digit(s) to the right of the decimal point (e.g., 3.x.x), and the content and timing of all Updates shall be decided upon by Manufacturer in its sole discretion.

“Upgrades” shall mean full product releases of the Software, which contain substantial functional enhancements, and which are marketed and priced separately. Upgrades are also provided to customers who subscribe to maintenance and support services. Upgrades are designated by the digit to the left of the decimal point (e.g., x.0), and the content and timing of all Upgrades shall be decided by Manufacturer in its sole discretion.

License Grant and Restrictions

License Grant; Copies. Subject to the terms, conditions and restrictions set forth herein, Contractor grants Licensee, a non-exclusive, non-transferable, right and license, without the right to grant sublicenses, to use, solely for its internal business use (i) the Software, in object code form only, in accordance with the Documentation, and (ii) the Documentation. Licensee’s access to and use of the Software at any given time may not exceed the number of Authorized Users which Licensee has licensed to use. Licensee may make a reasonable number of copies of the Software for Licensee’s internal back-up and archival purposes only, provided that all such copies shall bear the original and unmodified copyright, patent and other intellectual property markings as originally delivered.

License Restriction and Acknowledgement of Proprietary Rights. Licensee shall display and retain all copyright, trademark, proprietary, or confidentiality statements and other notices on any portion of the Software however such Software is used. Licensee acknowledges that Manufacturer retains all right, title and interest in and to the original, and any copies, of the Software and Documentation, and ownership of all patent, copyright, trade secret, trademarks and other intellectual property rights pertaining thereto, shall be and remain the sole property of Manufacturer. Licensee shall not be an owner of any copies of, nor have any interest in, the Software or Documentation, but rather, is licensed, pursuant to and subject to the limitations herein, to use such copies. Without limiting the generality of the foregoing, Licensee receives no rights and agrees that it will not itself, or through any parent, subsidiary, affiliate, agent or other third party (i) decompile, disassemble, reverse engineer or attempt to reconstruct, identify

or discover any source code, underlying ideas, underlying user interface techniques or algorithms of the Software or any portion thereof, or otherwise derive its source code; (ii) modify, port, translate, localize or create derivative works of the Software; (iii) sell, lease, license, sublicense, copy, market or distribute the Software; (iv) encumber or suffer to exist any lien or security interest on the Software; and (v) disclose the results of any performance tests or qualitative analysis on the Software to any third party..

Maintenance; Hosting

Support and Maintenance. During the Term hereof, Licensee may, upon payment of the applicable fees, subscribe to annual support and maintenance from PowerSteering, in accordance with the terms and conditions set forth in this Attachment. At Licensee's option and for an additional fee as set forth in Exhibit A, Contractor through the Manufacturer will assign U.S. citizens only to support and maintain Licensee's data and software (as defined above). In addition, customizations to the Software contracted for by Licensee will, when completed and installed, add to the base license fee value for purposes of computing the applicable support and maintenance fee.

Limitations; Remedy. Contractor through the Manufacturer shall (a) provide support and maintenance for production servers of the Software only, and (b) not be obligated to provide support and maintenance to Licensee's customers or any other third party. In addition, Contractor shall not be obligated to perform support and maintenance services if the following occur: (a) any attempt at repair, maintenance or modification of any Software performed by anyone other than authorized service personnel; (b) if applicable, Licensee's failure to install an Upgrade or Update within six (6) months of such Upgrade's or Update's release; or (c) issues related to third-party software, excluding issues arising out of the Software's application program interface. Except as set forth above, in the event that Contractor fails to provide support and maintenance services, Contractor's liability, and Licensee's remedy for such failure shall be (a) for Contractor to use commercially reasonable efforts, commensurate with the highest industry standards, to correct such failure through further services, or (b) refund any prepaid but unutilized support and maintenance fees.

Subscriptions

Subscription License Grant and Restrictions. Contractor grants Licensee a non-exclusive, non-transferable, right and license, without the right to grant sublicenses, to use, solely for its internal business use, (i) the PowerSteering Enterprise software and any upgrades or updates thereto (the "Software"), on a hosted basis, in accordance with the Documentation, and (ii) the operating manuals, including a description of the functions performed by the Software, user instructions, technical literature and all other related materials in the English language, in both eye-readable and machine-readable, printable form, which may, from time to time, be supplied to Licensee to facilitate the use and application of the Software (the "Documentation"), each for the Term purchased by the Licensee. All right, title, and interest in the Software and any updates, upgrades or modifications thereof, or in any ideas, know-how, and programs developed by Manufacturer during the term of the license are the property of Manufacturer. Licensee will not: (i) disassemble, reverse engineer, decompile, or otherwise attempt to derive source code from the Software; (ii) modify, adapt, create derivative works based upon, or translate the Software; (iii) copy, install or use the Software on any of its computer systems, servers, or networks; (iv) assign, re-license or sublicense the Software or the use of the Software; or (v) transfer, lease, loan, resell for profit, distribute or otherwise grant any rights in the Software in any form to any other party, including commercial time-sharing, rental, or service bureau use.

Subscription Services. The cost of maintenance, support and hosting services is included in the Subscription Fee.

Subscription Terms. In the event Licensee's use of the Software increases over the initial number of users in any month during the initial term or any renewal term, then in the month following such increase, Licensee will be invoiced in full for the additional users for the balance of such term.

Exclusions

Contractor will have no liability under this Section or the limited warranty provided for above for any claim or action where: (a) such claim or action would have been avoided but for modifications of the Software or Deliverable(s), or portions thereof, made after delivery to Licensee; (b) such claim or action would have been avoided but for the combination or use of the Software or Deliverable(s), or portions thereof, with other products, processes or materials not authorized by Manufacturer; (c) Licensee continues allegedly infringing activities after being notified thereof or after being informed of modifications that would have avoided the alleged infringement; (d) Licensee's use of the Software or Deliverable(s) is not in accordance with the terms herein; or (e) if the infringement or misappropriation resulted from Contractor's compliance with designs or specifications provided by Licensee.

Limited Warranties and Disclaimer

Limited Warranty. Subject to the limitations and exceptions set forth in this Attachment, Contractor warrants that (a) it holds the necessary rights through the Manufacturer to license the Software to Licensee, (b) that the services furnished shall be performed in accordance with standards of care, skill and diligence consistent with (i) recognized and sound industry practices, procedures and techniques, and (ii) all applicable laws and regulations; and (c) for a period of thirty (30) days from the delivery of the Software, or acceptance of a Deliverable (the "Warranty Period"), that when properly installed and used for the purpose and in the manner authorized herein, the Software and/or Deliverable will perform substantially in accordance with the specifications set forth in the Documentation or the Statement of Work, as applicable. The warranty is made only to Licensee and Contractor shall have no liability to any third party with respect to the Software or Deliverable(s) as a result of such warranty. Contractor's warranty obligations shall be void if any Software and/or Deliverable is modified by or through Licensee without the express prior written consent of Contractor or Manufacturer. In the event of nonconformity of the Software or Deliverable, as applicable, to such specifications, Licensee shall promptly notify Contractor and provide all information required Contractor in written or electronic form so that Contractor can reproduce any such nonconformity. Licensee's remedy and Contractor's obligation under the warranty set

forth in herein shall be, at Contractor's sole discretion, (i) to correct any failure of the affected Software or Deliverable to perform as warranted (remedies may include, without limitation, software patches or workarounds as required), (ii) to replace the affected Software or Deliverable with a new copy or Update; provided that such failure is reported within the Warranty Period or (iii) a refund of the fee(s) paid by Licensee for the affected Software or Deliverable, including support and maintenance, if any.

DISCLAIMER. CONTRACTOR MAKES NO OTHER WARRANTY OF ANY KIND, WHETHER EXPRESS OR IMPLIED, WRITTEN OR ORAL, EXCEPT AS EXPRESSLY STATED HEREIN. CONTRACTOR DISCLAIMS ALL OTHER WARRANTIES, EXPRESSED AND IMPLIED, INCLUDING WITHOUT LIMITATION THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE WITH RESPECT TO ALL SOFTWARE, DELIVERABLES, UPDATES, UPGRADES, AND ALL OTHER PRODUCTS, SERVICES, MATERIALS AND OTHER ITEMS FURNISHED.

Maintenance and Support Services

Releases

Updated versions of the Software will be released periodically:

- Maintenance Releases include fixes and are typically released monthly or as necessary
- Point Releases (i.e. version 6.1, 6.2 etc.) include minor improvements which are not priced separately.
- Version Upgrades (i.e. 7.0, 8.0 etc.) include significant new features or modules for which additional fees may apply.

Helpdesk Support

10.2.1 Named Administrator Technical Support

Licensee shall designate in writing the two (2) users responsible for the administration and configuration of the Software ("Named Administrators").

Escalation Protocol

Escalation protocol for support proceeds from the PowerSteering Helpdesk case owner to the Licensee's PowerSteering Account Manager, then the Vice President of Client Services, and, finally, the CEO.

User Phone Support

Named Administrators can call the PowerSteering helpdesk via telephone, 24 hours per day, 365 days per year:

- From within the United States and Canada (toll-free) at 1-866-390-9088
- From outside the United States and Canada at 1-617-995-4848.

10.2.4 Normal Business Hours

9:00 AM to 5:00 PM Eastern Time.

Support Portal

Contractor through the Manufacturer provides a secure support portal, available to Licensee's Named Administrators, 24 hours per day, 365 days per year, except in instances of scheduled downtime. Administrators can (a) access support documentation, (b) submit new support cases, and (c) search and track existing cases. Contractor requests that all problems are reported using the support portal and include the case severity, case type and area of the Software.

Severity Level Definitions

Severity 1 Problem

Definition: A Severity 1 Problem is one that renders the Software substantially unusable in production.

Response/Resolution Time: Contractor through the Manufacturer will respond to a Severity 1 Problem within two (2) hours and will use commercially reasonable efforts to provide a solution within 24 hours

Severity 2 Problem

Definition: A Severity 2 Problem is a major problem that causes a feature failure in the Software.

Response/Resolution Time: Contractor through the Manufacturer will respond to a Severity 2 Problem within four (4) hours if the Problem is reported during Normal Business Hours. For Severity 2 Problems reported outside of normal business hours, response will be within two (2) hours of the start of the next business day. Contractor through the Manufacturer will use commercially reasonable efforts to provide a solution within 96 hours

Severity 3 Problem

Definition: A Severity 3 Problem is one that causes a feature or system failure whereby the Software is usable, but inconvenience is caused to normal operations.

Response/Resolution Time: Contractor through the Manufacturer will respond to a Severity 3 Problem within 24 hours if the Severity 3 Problem is reported during Normal Business Hours. For Severity 3 Problems reported outside of normal business hours, response will be within 24 hours of the start of the next business day. Contractor through the Manufacturer will use commercially reasonable efforts to provide a work-around and/or incorporate a fix in the next Maintenance Release.

Severity 4 Problem

Definition: A Severity 4 Problem is one which causes a minor inconvenience to the Licensee, or that does not directly affect normal operations.

Response/Resolution Time: Contractor through the Manufacturer will respond to Severity 4 Problems within 48 business hours. As a solution, Contractor through the Manufacturer will consider incorporating a fix into a future version of the Software.

Activities Out of Scope for Helpdesk Support Helpdesk Support does not include:

- Adding or inviting a new user
- Deleting, re-assigning or setting up new projects for end users
- Administration, Security or Configuration training, design, development or testing
- Report writing, data import or enhancement related requests
- Third party software or hardware support
- On-site support.

Hosting Terms

Operation of Hosting Services

Operation and Maintenance. Contractor through the Manufacturer shall (a) install and operate the host portion of the Hosting Services at a third party managed data center selected by the Manufacturer, together with necessary operation systems and utilities, in Manufacturer's host computer system, and (b) provide Licensee with the Hosting Services via Internet facilities and protected Internet access (utilizing industry standard firewall protection software). Notwithstanding the foregoing, in order to improve and adapt the Hosting Services to changing market conditions and technology, Contractor through the Manufacturer reserves the right to add to, delete from or change the Hosting Services, at its sole discretion, upon thirty (30) days' prior written notice to Licensee, provided that no addition, deletion or change to the Hosting Services shall be intended to degrade the functionality of the Hosting Services. Licensee shall only use applicable hardware and software, as well as Internet connections, for accessing and using the Hosting Services as approved by Contractor and Manufacturer in advance. Licensee acknowledges and agrees that Contractor through the Manufacturer may make improvements or modifications to the Hosting Services that may result in different system requirements for accessing and using the Hosting Services, upon thirty (30) days prior written notice to Licensee.

Licensee Warranty. Licensee warrants that it shall not willfully tamper with, compromise, or attempt to circumvent any physical or electronic security measures employed with respect to the Hosting Services.

Licensee Responsibilities. Licensee is responsible for the manner in which it uses the Hosting Services, including the maintenance and security of its own data extracted or derived from the Hosting Services, computer network and other facilities, as well as Licensee's choice of online content.

Ownership. All intellectual property rights in, to and related to the Hosting Services (exclusive of any data, research, or results generated by Licensee, which shall be the property of Licensee) shall remain the property of Manufacturer (and/or its respective suppliers/licensors if applicable), exclusively. Licensee shall have no rights in or to the Hosting Services except as expressly set forth herein.

Backup. Contractor through the Manufacturer will maintain backup and recovery copies of Licensee's production database nightly for disaster recovery purposes. Backups are stored for the previous seven (7) days. Backups are also stored for the last day of the week for the past four (4) weeks, and for the last day of the month for the past six (6) months.

Maintenance of Hosting Services; System Availability

Scheduled Maintenance. All regularly scheduled maintenance will be performed outside the hours of 8:00 am to 7:00 p.m. Boston, MA time weekdays, or anytime during a weekend, and will be performed as mutually agreed.

Emergency Maintenance Notifications. On rare occasions, Hosting Services may experience the need for emergency maintenance, during which time the Hosting Services will be unavailable to Licensee ("Service Outage"). Contractor through the Manufacturer will use commercially reasonable efforts to notify Licensee a minimum of fifteen (15) minutes prior to any emergency maintenance.

System Availability and Service Interruption. Contractor through the Manufacturer shall provide system availability of at least 99%, excluding commercially reasonable scheduled downtime and downtime due to an inability to connect to a Licensee provided services (e.g. authentication to an LDAP server). Licensee will provide notification of service interruptions or delays that may be known to Licensee. Contractor through the Manufacturer will provide Licensee's technical contact with notice of any Service Outage (as defined above) of the Hosting Services after the Contractor or the Manufacturer becomes aware of such Service Outage. Licensee will provide access to its designated contacts to assist with correcting any Service Outage problems in a timely manner. Contractor through the Manufacturer will also provide updates to Licensee until the Service Outage has been corrected. Upon learning of any Service Outage, Contractor through the Manufacturer will correct the Service Outage and restore Hosting Services availability.

Disclaimers

Internet Link. The parties expressly recognize that Internet servers and links are susceptible to crashes and down time. Contractor through the Manufacturer represent that it shall maintain a consistent link with the Internet for accessing the Hosting Services via Internet facilities, but Contractor cannot and does not warrant that it shall maintain a continuous and uninterrupted link.

Security. The parties expressly recognize that it is impossible to maintain flawless security, but Contractor through the Manufacturer shall take reasonable steps to prevent security breaches in its server interaction with Licensee's network, and security breaches in its server interaction with resources or users outside of any firewall that may be built into its server. However, Licensee is solely responsible for any damage caused by unauthorized access. Licensee agrees that it will only access and use the Hosting Services via authorized access provided by Contractor through the Manufacturer

(e.g. password protected access) and Licensee indemnifies and holds Contractor harmless for any unauthorized access to or use of the Hosting Services.

Downloading of Data or Files. The parties expressly recognize that Contractor cannot and does not guarantee or warrant that files available for downloading through the Hosting Services will be free of infection, viruses, worms, Trojan horses or other code that manifests contaminating or destructive properties. Licensee agrees that it shall be solely responsible for implementing sufficient procedures to satisfy Licensee's particular requirements for accuracy of data input and output, and for maintaining a separate means for the reconstruction of any lost data.

Accuracy Disclaimer. Licensee is solely responsible for the accuracy and integrity of its own data, reports, and documentation. Contractor through the Manufacturer or third parties may provide links to other World Wide Web sites or resources as part of the Hosting Services. Contractor does not endorse and is not responsible for any data, software or other content available from such sites or resources. Licensee acknowledges and agrees that Contractor shall not be liable, directly or indirectly, for any damage or loss relating to Licensee's use of or reliance on such data, software or other content.

Disk Space

For each Licensee, Contractor through the Manufacturer allocates at no charge to Licensee 10GB of Database Storage and 40GB of File Storage. Items in the recycle bin do not count against the storage limits. Additional Database and File Storage is available for purchase by Licensee. System Administrators can review how much space Licensee is using, and can also provide usage information by users and record types. Once Licensee reaches 90% of its storage limit, an email notification shall be sent every week to its system administrator(s) with the following suggestions:

- Archive old data - Clean out old leads and contacts by exporting them to a CSV file and then deleting them; and/or.
- Purchase additional storage.

Once Licensee reaches its storage limit, notifications shall be sent every day. Licensee shall not be able to create new records until its storage usage lowers or additional storage is purchased.

