



All references to AINS, Inc. in these Terms and Conditions should be read as “Contractor (immixTechnology, Inc.), acting by and through its supplier, AINS, Inc..”

TERMS AND CONDITIONS FOR AINS PRODUCTS AND SERVICES

SOFTWARE LICENSE AGREEMENT

This Software License Agreement (“Agreement”) is made between AINS, Inc. (“Company”), a Maryland corporation having its principal place of business at 806 W. Diamond Ave., Suite 400, Gaithersburg, Maryland 20878, and you (“You” or “Licensee”).

You may not access the Software if you are a direct competitor of Company, except with Company’s prior written consent. In addition, You may not access the Software for purposes of monitoring its availability, performance, or functionality, or for any other benchmarking or competitive process.

The terms of this Agreement apply to the Software (including the media on which You received it, if any), and any Company updates, supplements, Internet-based services, and services for the Software, unless other terms accompany those items in which case those terms shall apply.

TERMS AND CONDITIONS

1. Definitions

- 1.1. “Additional User” shall mean Licensee’s customer, vendor, agent, subcontractor, or consultant authorized to use the Software pursuant to a Licensee Third Party Contract.
- 1.2. “Agreement” shall mean this Software License Agreement, and any duly executed Purchase Orders, addenda and/or modifications attached hereto or referenced herein. “Agreement” shall also include any Services Agreement(s) between Company and Licensee that are subject to this Software License Agreement, where such Services Agreement is silent as to the term and/or condition set forth in this Agreement, including, but not limited to, those relating to ownership, confidentiality, proprietary information, limitations of liability, warranties, and remedies.
- 1.3. “Company Licensors” shall mean third parties from whom Company has licensed Software.
- 1.4. “Control” shall mean the possession, directly or indirectly, of the power to direct or cause the direction of the management and operating policies of an entity through the ownership of voting securities (at least fifty-one percent (51%) of its voting or equity securities or the maximum allowed by law), contract, voting trust, or otherwise.
- 1.5. “CPU” shall mean a processing unit utilized in Server or computer configurations.
- 1.6. “Developments” shall mean any ideas, know-how, or techniques (including any derivative works and modifications made to the Software or Documentation), which are developed by Company in the course of providing Services to Licensee.
- 1.7. “Documentation” shall mean the user manuals, policies, and guidelines relating to the use of the Software delivered by Company to Licensee in printed or electronic form.

- 1.8. "Licensee" shall mean the entity defined above, and shall include any affiliated entity which Controls, is Controlled by, or is under common Control with Licensee, provided all such entities ordering, installing, or using Software licensed under this Agreement have agreed to be bound by the terms and conditions of this Agreement.
- 1.9. "Licensee Third Party Contract" shall mean a validly executed contract between Licensee and an Additional User permitting the Additional User to use the Software.
- 1.10. "Platform Transfer" shall mean an operating environment supported by Company, which is different than the operating environment for which Software was originally licensed.
- 1.11. "Purchase Order" shall mean a valid purchase order between Company and Licensee describing the Software and/or Services purchased by Licensee, and any additional terms and conditions applicable thereto.
- 1.12. "Restricted Release" shall mean any version of the Software marked alpha, beta, or which is otherwise designated as a restricted release.
- 1.13. "SaaS" shall mean Company-hosted Software as a Service.
- 1.14. "Seat" shall mean a user designated by Licensee who is authorized to use the applicable Software licensed hereunder.
- 1.15. "Server" shall mean a device which includes one or more CPUs and enables or permits other computers electronically-linked to it to access data and software.
- 1.16. "Services" shall mean professional services provided by Company, including Software Maintenance as a Product, Software Maintenance as a Service, and Support Services.
- 1.17. "Software" shall mean a machine executable copy of the object code of the software products and applications licensed by Company to Licensee under this Agreement, including all third-party software under license embedded therein, updates, bug fixes and patches.
- 1.18. "User" shall mean any person having authorized access to the application, regardless of skill level, nature of use, or position/job title (e.g., system administrator), to include both routine use and software/system administration.

2. License

- 2.1. Subject to the terms and conditions of this Agreement and Company's acceptance of a Purchase Order, Company grants Licensee a limited, personal, non-exclusive, and non-transferable license to use the Software. All Software-related materials, in whatever form, including, but not limited to Documentation, instructions, programs, charts, manuals, and code are also furnished to Licensee only under a personal non-exclusive, nontransferable license.
- 2.2. The Software and Documentation and all licensed materials may only be used in accordance with the appropriate policies and procedures, as defined in the Documentation (including but not limited to the installation, system, and user manuals), and applicable laws and government regulations. Licensee may use the Software, Documentation and other licensed materials solely for Licensee's internal purposes.

- 2.3. The license granted hereunder is limited to the maximum number of Seats, Users, Servers, or CPUs specified in the Purchase Order (“Maximum Usage”). Licensee shall implement reasonable controls to ensure that it does not exceed the Maximum Usage. Company reserves the right to include and employ means within the Software to limit and/or monitor Licensee to the Maximum Usage. Licensee shall at all times remain responsible for Users’ compliance with this Agreement.
- 2.4. Company reserves the right to audit, at its expense, Licensee’s deployment and use of the Software for compliance with the terms of this Agreement and in accordance with the Licensee’s security requirements at any mutually agreeable time during Licensee’s normal business hours. If Licensee’s use of the Software is found to be greater than contracted for, Licensee will be invoiced for the additional Seats, Users, Servers, or CPUs and the unpaid license fees shall be payable in accordance with FAR 52.212-4(i).
- 2.5. For on-premises installation, Company shall provide Licensee with one (1) machine executable copy of the Software and Documentation. Licensee may make a backup copy of the Software and copies of the Documentation solely for Licensee’s internal use. Licensee must be a current Services subscriber to receive a new machine executable copy of the Software in the event one is required by a Platform Transfer by Licensee.
- 2.6. Unless otherwise agreed-to in advance, the use of Application Programming Interfaces (“APIs”), macros, and/or user interfaces not supported by Company that interfere with the Software and/or its data in any respect shall be deemed an unauthorized modification of the Software and are prohibited by this Agreement.
- 2.7. Licensee shall not permit an Additional User to use the Software without authorization from Company. Licensee, when authorized to permit such use, may do so either by allocating a portion or all of Licensee’s current license to the Additional User(s) up to the Maximum Usage, or by purchasing additional licenses, provided:
- 2.8. Licensee shall not permit an Additional User to use the Software without authorization from Company. Licensee, when authorized to permit such use, may do so either by allocating a portion or all of Licensee’s current license to the Additional User(s) up to the Maximum Usage, or by purchasing additional licenses, provided:
 - (a) prior to any such use an Additional User shall have agreed in writing to be bound by the terms and conditions of this Agreement regarding confidentiality and use of the Software;
 - (b) an Additional User is not charged a fee for such access, provided, however, that use of the Software may be a component of chargeable services rendered by Company;
 - (c) an Additional User is not granted rights to use Software except as expressly set forth in this Section 2.8;
 - (d) an Additional User’s use of the Software is related solely to Licensee’s internal purposes; and
 - (e) upon conclusion of a Licensee Third Party Contract, any Software in the possession of an Additional User (including partial copies within modified versions) is returned to Licensee.

3. License Exclusions

3.1. Except as expressly authorized herein, Licensee shall not cause or permit any:

- (a) unauthorized access to or use of the Software;
- (b) copying or modification of the Software or Documentation;
- (c) reverse engineering, recompilation, translation, disassembly, or discovery of the source code of all or any portion of the Software;
- (d) removal, minimization, blocking, or modification of or to any logos, trademarks, copyright notices, proprietary information notices, digital watermarks, or other notices of Company or its suppliers that are affixed to or included in the Software or Documentation;
- (e) use of the Software for any illegal purpose or any purpose deemed by Company in its sole discretion to be offensive or otherwise harmful;
- (f) distribution, disclosure, marketing, rental, lending, leasing, sale, resale, or transfer of the Software or the Documentation to any third party or Company competitor, or use of the Software for any dial-up, remote access, interactive, or other on-line service except as specifically provided and licensed as an integral part of the Software;
- (g) disclosure of the results of Software performance benchmarks to any third party without Company's prior written consent; or
- (h) export of the Software in violation of UN embargoes or US laws and regulations, including the Export Administration Act of 1979, as amended, and successor legislation, and the Export Administration Regulations issued by the Department of Commerce.

4. Purchasing

Licensee shall provide Company with a Purchase Order detailing the Software to be licensed, including:

- (a) The number of Seats, Users, Servers, or CPUs to be licensed, and the Maximum Usage;
- (b) The cost per Seat, User, Server or CPU to be licensed; and
- (c) Whether the Software will be licensed on a SaaS basis or installed on-premises.

5. Proprietary Rights, Trademarks, and Publicity

5.1. This Agreement is not a sale and does not convey to Licensee any rights of ownership in or to the Software or Documentation. Company (or its licensors, as applicable) shall retain all right, title, and interest in and to the Software and Documentation and any copies thereof, including any copies, suggestions, ideas, enhancement requests, feedback, recommendations, translations, modifications, adaptations, derivations, or other information provided by Licensee or any other party related to the Software and the provision of Services, including any improvement or development thereof. Licensee acknowledges and agrees that such ideas, enhancements, or other information or improvements provided to Licensee in connection with this Agreement and/or any Services Agreement(s) shall be owned exclusively by Company, and that any such improvements,

developments, or other works provided by Company are not “works made for hire” under applicable copyright laws. Licensee agrees to assign any such claim of ownership, title, or other interest to Company upon Company’s request.

- 5.2. Except as otherwise expressly granted in this Agreement, no license, right, or interest in or to any Company trademark, copyright, trade name, or service mark is granted hereunder. The Company name and logo and the product names associated with the Software are trademarks of Company or third parties, and no right or license is granted to use them.
- 5.3. All rights not expressly granted to Licensee hereunder are reserved by Company and its licensors.
- 5.4. Licensee shall not remove any copyright and/or proprietary information or confidentiality notices as were affixed to the original Software or Documentation.
- 5.5. Licensee shall not use AINS’ name, logo or other identifying information in any marketing, advertising or other publication without AINS’ express written approval.

6. Defense and Indemnification

- 6.1. Company will defend Licensee at its own expense any action against Licensee that the Software directly infringes any U.S. copyright or misappropriates any trade secret recognized as such under the Uniform Trade Secret Law, and Company will pay those costs and damages finally awarded against Licensee in any such action that are specifically attributable to such claim or those costs and damages agreed to in a monetary settlement of such action, provided that:
 - (a) Licensee notifies Company in writing within thirty (30) days of the claim;
 - (b) to the extent allowed by 28 U.S.C. 516, Company has control of the defense and all related settlement negotiations; and
 - (c) Licensee provides Company with the assistance, information, and authority necessary to perform the above. Reasonable expenses incurred by Licensee in providing such assistance may be reimbursed by Company.
- 6.2. Reserved.
- 6.3. If the defending and/or indemnifying party under this section fails to assume the defense of any actual or threatened action within the earlier of a) any deadline established by a third party in a written demand or by a court, or b) thirty (30) days’ written notice of the claim, the other party may follow such course of action as it reasonably deems necessary to protect its interest and shall be indemnified for all costs reasonably incurred in such course of action, provided, however, the indemnified party shall not settle a claim without the consent of the indemnifying party.
- 6.4. Company shall have no defense or indemnification obligation or other liability for any claim of infringement based on:
 - (a) Any use of the Software not in accordance with this Agreement or for purposes not intended by Company;
 - (b) Use of a superseded or modified release of the Software, except for such alteration(s) or modification(s) which have been made by Company or under Company’s direction, if such

infringement would have been avoided by the use of a current unaltered release of the Software that Company provided or would have provided to Licensee at no additional charge beyond applicable service fees; and/or

- (c) The combination, operation, or use of any Software furnished under this Agreement with programs, data, products or hardware not furnished by Company, if such infringement would have been avoided by the use of the Software without such items.
- 6.5. In the event the Software becomes, or is likely to become, the subject of an infringement or misappropriation claim, Company shall have the option, at its expense, to:
- (a) modify the Software to be non-infringing;
 - (b) obtain for Licensee a license to continue using the Software;
 - (c) substitute the Software with other software reasonably suitable to Licensee; or
 - (d) if, in Company's opinion, none of the foregoing remedies are commercially feasible or practicable, terminate the license for the infringing Software and refund any prepaid license fees covering the remainder of the license term for that Software after the effective date of termination.
- 6.6. THIS SECTION 6 STATES COMPANY'S SOLE LIABILITY AND YOUR SOLE AND EXCLUSIVE REMEDY WITH RESPECT TO ANY CLAIM OF INTELLECTUAL PROPERTY INFRINGEMENT.
- 6.7. Reserved.

7. Warranties

- 7.1. Licensee warrants that it has all requisite power and authority to enter into this Agreement and to perform its obligations hereunder. This Agreement constitutes a valid and binding obligation of the Licensee, enforceable against Licensee in accordance with its terms.
- 7.2. Company warrants that it has title to and/or the authority to grant licenses of the Software.
- 7.3. For SaaS Licensees, the Company warrants that the Software will substantially perform, in accordance with AINS' then-current Service Level Agreement, the functions described in the Documentation, when operated in accordance with Section 2.2.
- 7.4. The warranties in this Section shall not apply to Restricted Release(s).
- 7.5. The warranties in this Section shall be void as to a) the acts or omissions of non-Company personnel, b) misuse, theft, vandalism, fire, water, or other peril, c) moving or relocation not authorized by Company, d) any alterations or modifications made to any Software by Licensee, e) use of the Software other than in the operating environment specified in the technical specifications, or f) coding, information, or specifications created or provided by Licensee.
- 7.6. Company does not warrant that the Software will meet Licensee's requirements, or that the Software will operate in the combinations which Licensee may select for use, or that the operation of the Software will be uninterrupted or error-free, or that all Software errors will be corrected. Any claim submitted under this Section must be submitted in writing to Company within the specified warranty

period. Company's sole and exclusive obligation for warranty claims shall be to make the Software operate as warranted or to terminate the license for such Software and return the applicable license fees paid to Company for such Software, provided the claim is submitted within the specified warranty period.

- 7.7. THE WARRANTIES ABOVE ARE EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES, WHETHER EXPRESS OR IMPLIED, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.
- 7.8. UCITA. With respect to licensing and use of the Software in jurisdictions subject to the Uniform Computer Information Transactions Act ("UCITA"), Company and Licensee agree that, with respect to information and computer programs provided by one party to the other under this Agreement, and except for the express warranties set forth in this Agreement: THERE ARE NO WARRANTIES A) AGAINST INTERFERENCE WITH ENJOYMENT OF INFORMATION, B) AGAINST INFRINGEMENT, C) THAT INFORMATION, EITHER PARTY'S EFFORTS, OR SYSTEMS, AS EACH MAY BE PROVIDED UNDER THIS AGREEMENT, WILL FULFILL ANY OF EITHER PARTY'S PARTICULAR PURPOSES OR NEEDS, AND D) WITH RESPECT TO DEFECTS IN THE INFORMATION OR SOFTWARE THAT AN EXAMINATION SHOULD HAVE REASONABLY REVEALED. THE PARTIES HEREBY EACH DISCLAIM IMPLIED WARRANTIES OF MERCHANTABILITY, QUALITY, AND ACCURACY. THE INFORMATION AND COMPUTER PROGRAMS PROVIDED UNDER THIS AGREEMENT ARE PROVIDED "AS IS" WITH ALL FAULTS, AND THE ENTIRE RISK AS TO SATISFACTORY QUALITY, PERFORMANCE, ACCURACY, AND EFFORT IS WITH THE USER OF SUCH INFORMATION AND COMPUTER PROGRAMS.

8. Limitations and Disclaimers of Liability

LIMITATION OF LIABILITY. EXCEPT AS OTHERWISE EXPRESSLY PROVIDED HEREIN, COMPANY'S LIABILITY FOR DIRECT DAMAGES UNDER THIS AGREEMENT (WHETHER IN CONTRACT OR TORT OR UNDER ANY OTHER THEORY OF LIABILITY) SHALL IN NO EVENT EXCEED THE AMOUNT PAID BY LICENSEE TO COMPANY FOR THE SOFTWARE IN THE TWELVE (12) MONTH PERIOD IMMEDIATELY PRECEDING THE EVENT GIVING RISE TO SUCH LIABILITY UNDER THIS AGREEMENT, PROVIDED THAT IN NO EVENT SHALL COMPANY'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT (WHETHER IN CONTRACT OR TORT OR UNDER ANY OTHER THEORY OF LIABILITY) EXCEED THE TOTAL AMOUNT PAID BY LICENSEE HEREUNDER.

DISCLAIMER OF LIABILITY. IN NO EVENT SHALL COMPANY BE LIABLE FOR A) INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL, OR PUNITIVE DAMAGES, INCLUDING BUT NOT LIMITED TO LOST DATA, LOST PROFITS, DAMAGED HARDWARE OR EQUIPMENT, AND CLAIMS BY ANY THIRD PARTIES, OR FOR EXEMPLARY DAMAGES, ARISING FROM, RELATING TO, OR RESULTING FROM THIS AGREEMENT, LICENSEE'S USE OF OR INABILITY TO USE THE SOFTWARE, OR ANY SUPPORT SERVICES RENDERED WITH RESPECT THERETO, HOWEVER ARISING, WHETHER IN CONTRACT OR TORT OR UNDER ANY OTHER THEORY OF LIABILITY, EVEN IF IT HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, B) DAMAGES (REGARDLESS OF THEIR NATURE) FOR ANY DELAY OR FAILURE BY COMPANY TO PERFORM

ITS OBLIGATIONS UNDER THIS AGREEMENT DUE TO ANY CAUSE BEYOND COMPANY'S LEGAL CONTROL, AND/OR C) CLAIMS MADE SUBJECT OF A LEGAL PROCEEDING AGAINST COMPANY MORE THAN TWO YEARS AFTER ANY SUCH CAUSE OF ACTION FIRST AROSE.

This Section 8 shall not impair the U.S. Government's right to recover for fraud or crimes arising out of or related to this Agreement under any federal fraud statute, including the False Claims Act, 31 U.S.C. §§ 3729-3733.

9. Confidentiality

- 9.1. "Confidential Information" is defined as any and all information that the disclosing Party considers to be confidential, proprietary, non-public business information or a trade secret, in any form whatsoever, including, but not limited to, discoveries, concepts and ideas, regarding: (i) Product or service information, including designs and specifications, development plans, patent applications, and strategy; (ii) Marketing information, including lists of potential or existing customers or suppliers, marketing plans, and surveys; (iii) Computer software, including codes, flowcharts, algorithms, architectures, menu layouts, routines, report formats, data compilers, and assemblers; (iv) Financial information, including sales, pricing, and revenue information; and (v) Any other information identified as Confidential by either Party.
- 9.2. "Confidential Information" does not include any information that: (i) Is in the public domain at the time of disclosure without any breach of this agreement by the receiving Party; (ii) Is already known to the receiving Party at the time of disclosure without any breach of this agreement by the receiving Party; or (iii) Becomes available to the receiving Party on a non-confidential basis from a source other than the disclosing Party which the receiving Party has no reasonable basis to believe is prohibited from disclosing such information to the receiving Party.
- 9.3. The receiving Party shall be responsible as set forth herein for all Confidential Information: (a) Identified in writing at the time of the disclosure by an appropriate legend, marking, stamp or other positive written identification; (b) Identified as confidential to the receiving Party orally at the time of disclosure and in writing within ten (10) business days after such disclosure; (c) Identified as confidential or proprietary in writing at any time regardless of oral notice (however, in this instance, the receiving Party shall not be liable for disclosures of confidential information prior to receiving such notice, except as set forth in the following subsection (d)); or (d) Apparent to a reasonable person familiar with the disclosing Party's business and the industry in which it operates that such information is of a confidential or proprietary nature.
- 9.4. Duty of Care. Each Party agrees that it will treat the disclosing Party's Confidential Information with at least the same degree of care that it uses in protecting its own confidential and proprietary information, but in no event less than a reasonable degree of care.
- 9.5. Use of Confidential Information. Each Party agrees that Confidential Information disclosed to it shall be used solely in furtherance of this agreement, any other agreements between or amongst the Parties, and in the best interests of the disclosing Party. Confidential Information shall not be used by the receiving Party to invent, create, modify, adopt, or manufacture any hardware or software or other products, services, or processes that would or could compete with or be used in lieu of the disclosing Party's hardware or software or other products, services, or processes. The receiving Party

shall not copy or reproduce, in whole or in part, any Confidential Information without written consent of the disclosing Party.

- 9.6. Disclosure of Confidential Information. Subject to the Freedom of Information Act, 5 U.S.C. § 552, Each Party agrees that it will not disclose any Confidential Information to any individuals, including employees, except on a need-to-know basis as is necessary for performance under this and any other agreement between the Parties. Each Party agrees that it will not disclose any Confidential Information to any third parties without the express written consent of the disclosing Party. Each Party agrees to advise any individual and/or entity receiving Confidential Information of the limitations on its use and disclosure set forth herein, and to require such individual and/or entity to execute a confidentiality and non-disclosure agreement at least as restrictive as this agreement. The receiving Party shall ensure that all disclosures to its employees or to third parties hereunder are marked with appropriate legends, as required or permitted under Government regulations, in order to preserve the proprietary nature of the information and the initial disclosing Party's rights therein. The receiving Party shall be liable for any unauthorized use and disclosure of Confidential Information by any individual or entity to whom the receiving Party provides the disclosing Party's Confidential Information, as if committed by the receiving Party.
- 9.7. Compelled Disclosures. The receiving Party may disclose Confidential Information as required by any law, regulation, court order, subpoena, or other administrative or legal process, provided that: (i) Upon becoming aware of such an actual or potential obligation, the receiving Party immediately notifies the disclosing Party of the same; (ii) The receiving Party fully cooperates with any efforts by the disclosing Party to protect against any such disclosure and/or obtain a protective order preventing or narrowing the scope of such disclosure; (iii) The receiving Party limits any compelled disclosure of Confidential Information to the minimum extent necessary to comply with such obligations; and (iv) The receiving Party utilizes statutory sealing and other privacy measures to the fullest extent to protect the Confidential Information. This exception does not apply to, and the receiving Party remains fully liable for, any disclosure of Confidential Information caused in whole or in part by the receiving Party's unauthorized conduct.
- 9.8. Unauthorized Disclosures. The receiving Party shall promptly notify the disclosing Party of any unauthorized use or disclosure of Confidential Information, and cooperate with and assist the disclosing Party in taking any and all lawful actions deemed necessary by the disclosing Party to stop and/or minimize any actual or perceived harm resulting from such unauthorized use or disclosure.
- 9.9. Upon written request by the disclosing Party, the receiving Party shall promptly: (a) Cease and desist from any use or disclosure of the disclosing Party's Confidential Information; (b) Return any of the disclosing Party's Confidential Information in its possession or under its control to the disclosing Party; and (c) Upon the disclosing Party's express direction, destroy any of the disclosing Party's Confidential Information in its possession or under its control and certify its destruction in a manner agreeable to the disclosing Party.
- 9.10. The Parties' obligations set forth in this Section shall remain binding upon the Parties for five (5) years following the termination of this Agreement for any reason.
- 9.11. Reserved

9.12. Reserved.

10. Maintenance and Support Services

- 10.1. Maintenance and Support Services may be ordered by Licensee by Purchase Order and will be provided subject to the terms and conditions of this Agreement and a separate Services Agreement.
- 10.2. Maintenance Services as a Product as defined in the Services Agreement are included in the cost of a SaaS License.

11. Security, Back Up, and Recovery for SaaS/Hosted Licenses

- 11.1. Company conducts ongoing security assessments in connection with its SaaS and hosted offerings, and maintains a secure, FEDRAMP, FISMA, and FIPS, compliant, datacenter at its headquarters in Gaithersburg, Maryland.
- 11.2. Company hosted data is backed up incrementally on a daily basis and a full back up is performed weekly. Backups are stored locally in redundant hard disk NAS storages. Backup data is also replicated to a DR (remote) site every two (2) hours. In addition to these routine back up procedures, backups are performed before and after any major technical or business related change to a system or application. Company maintains an audit trail of all backup activities. The restoration processes from local and remote sites are simulated every six (6) months to test for quality.

12. Restricted Release

- 12.1. If Licensee is selected for participation and elects to participate in a Restricted Release program, Licensee agrees:
 - (a) Company shall have no obligation to correct errors in, deliver updates to, or otherwise support a Restricted Release;
 - (b) Licensee will promptly report to Company any error discovered in the Restricted Release and provide Company with appropriate test data for the Restricted Release if necessary to resolve problems in the Restricted Release encountered by Licensee;
 - (c) the Restricted Release is for evaluation only, not to be used in a production environment, may contain problems and/or errors, and is being provided to Licensee on an as-is basis with no warranty of any kind, express or implied;
 - (d) neither party will be responsible or liable to the other for any losses, claims, or damages of any nature, arising out of or in connection with the Restricted Release.

13. Notices

All notices shall be in writing and (a)(1) delivered by hand, (a)(2) sent by United States mail or commercial courier, return receipt requested, and (b) transmitted electronically. Notice to Licensee shall be sent to the last Licensee address known to Company, or as otherwise directed by Licensee upon ten (10) days' written notice. Unless otherwise directed in writing, notices to Company shall be sent to:

AINS, Inc.
806 W. Diamond Ave., Suite 400



Gaithersburg, MD 20878 USA
ATTN: Benjamin Leftin, Esq., General Counsel
bleftin@ains.com

Notice shall be deemed to have been given upon receipt of a hard copy notice.

14. Inspection/Acceptance

The Contractor (immixTechnology, Inc.) can only, and shall only tender for acceptance those items that substantially conform to the software manufacturer's ("AINS") published specifications. Therefore, items delivered shall be considered accepted upon delivery. The Government reserves the right to inspect or test any supplies or services that have been delivered. The Government may require repair or replacement of nonconforming supplies or re-performance of nonconforming services at no increase in contract price. If repair/replacement or re-performance will not correct the defects or is not possible, the Government may seek an equitable price reduction or adequate consideration for acceptance of nonconforming supplies or services. The Government must exercise its post-acceptance rights-

- (1) Within the warranty period; and
- (2) Before any substantial change occurs in the condition of the item, unless the change is due to the defect in the item.

15. Reserved.

16. Reserved.

17. Reserved.

18. General

- 18.1. For purchases by agencies and representatives of the U.S. Government, the Software is a "commercial item", as that term is defined at 48 C.F.R. 2.101 (Oct 1995), consisting of "commercial computer software" and "commercial computer software documentation", as such terms are used in 48 C.F.R. 12.212 (Sept 1995), and is provided to the U.S. Government only as a commercial end item. Consistent with 48 C.F.R. 12.212 and 48 C.F.R. 227.7202-1 through 227.7202-4 (June 1995), all U.S. Government end users acquire the Software with only those rights set forth herein.
- 18.2. For purchases made against Company's General Services Administration (GSA) Schedule, the terms and conditions of Company's GSA Schedule shall control in the event of a conflict between such terms and conditions and those contained herein (Company's GSA Schedule is available at https://www.gsaadvantage.gov/ref_text/GS35F4747G/0OQCUDU.37HKQL_GS35F4747G_GS-35F-4747G-4-21-2015-275778.PDF).
- 18.3. Any use of the Software and/or Services by or on behalf of the U.S. Government is provided with Restricted Rights. Use, duplication, or disclosure by the U.S. Government is subject to restrictions as set forth in subparagraph I(1)(ii) of the Rights in Technical Data and Computer Software clause at

DFARS 252.227-7013 or subparagraphs I(1) and (2) of the Commercial Computer Software – Restricted Rights at 48 CFR 52.227-19, as applicable.

- 18.4. Company shall not be precluded from providing any products or services to any other individual or entity, including Licensee's competitor(s), even those that may be the same or similar as set forth herein or in any other agreements between Company and Licensee. Company shall not be restricted in its use of ideas, concepts, know-how, methodologies, and techniques acquired or learned in the course of activities hereunder.
- 18.5. Reserved.
- 18.6. Company and Licensee agree that, in their dealings with each other under or in connection with this Agreement, each shall act in good faith.
- 18.7. The parties acknowledge that the Software may include software licensed by Company from third-party Company Licensors.
- 18.8. The section headings herein are provided for convenience only and have no substantive effect on the construction of this Agreement.
- 18.9. Force Majeure. Except for monetary obligations hereunder, neither party shall be liable for any failure to perform due to causes beyond its reasonable control. If any such event causes a material breach of this Agreement that is not cured within sixty (60) days, the parties' shall mutually agree to in writing to a reasonable suspension and/or termination of this Agreement
- 18.10. Reserved.
- 18.11. Each provision of this Agreement is severable. If any provision or any portion of any provision of this Agreement is held to be invalid or unenforceable for any reason by a court of competent jurisdiction, all other provisions shall remain in full force and effect. Any provision or any portion of any provision of this Agreement that is held to be unenforceable shall be modified only to the extent necessary so that it shall be legally enforceable to the fullest extent permitted by law, and in such a way that is consistent with the intent and economic effect of the affected provision.
- 18.12. This agreement does not establish a teaming, joint venture, joint employer, partnership or other business relationship between the Parties. Unless explicitly stated, nothing in this agreement grants to either Party the right to make commitments of any kind for, or on behalf of, the other Party.
- 18.13. Each Party hereby covenants and warrants that it is not aware of any potential or actual conflict of interest or other legal or contractual obligation that would in any way interfere with its ability to perform and uphold its obligations under this agreement. Each Party hereby covenants and warrants that it will indemnify and hold harmless the other for any liability arising out of the indemnifying Party's undisclosed conflict of interest.
- 18.14. Except as otherwise expressly provided in this Agreement, no waiver of any covenant, condition, or provision of this Agreement shall be deemed to have been made unless expressed in writing and signed by the party against whom such waiver has been charged. The failure of any party to insist in any one or more cases upon the performance of any of the provisions, covenants, or conditions of this Agreement or to exercise any option set forth in this Agreement shall not be



construed as a waiver or relinquishment for the future of any such provisions, covenants, or conditions. No waiver by Company of one breach of this Agreement shall be construed as or deemed to be a waiver with respect to any other subsequent breach.

18.15. This Agreement and all of the terms, provisions, and conditions hereof shall be binding upon and inure to the benefit of the parties hereto and their respective successors and permitted assigns.

18.16. This Agreement may be executed simultaneously in two (2) or more counterparts, each of which will be considered an original, but all of which together will constitute one and the same instrument.

18.17. The parties agree that facsimile and/or electronic copies of this Agreement and/or signatures shall be binding to the same extent and in the same manner as if originally signed and transmitted by hand.

18.18. Reserved.



EXHIBIT 1 SERVICES AGREEMENT

This Services Agreement (“Agreement”) is made between AINS, Inc. (“Company”), a Maryland corporation having its principal place of business at 806 W. Diamond Ave., Suite 400, Gaithersburg, Maryland 20878, and you (“You” or “Licensee”).

This Agreement and AINS’ provision of Services to Licensee is subject to the definitions, terms and conditions of Licensee’s Software License Agreement. Where this Agreement is silent or conflicts with the Software License Agreement, the Software License Agreement shall control.

Subject to the following terms and conditions, AINS agrees to provide the following Services to Licensee:

TERMS AND CONDITIONS

1. Services

Licensee may purchase the following Services subject to AINS’ acceptance of a Purchase Order setting forth the agreed upon Services, terms, and prices:

- 1.1. Software Maintenance as a Product. Software Maintenance as a Product includes the publishing of bug/defect fixes via patches and updates/upgrades in function and technology to maintain the operability and usability of the Software. Except as otherwise set forth herein, Software Maintenance as a Product does not include person-to-person communications or use of the AINS Help Desk.
- 1.2. Software Maintenance as a Service. Software Maintenance as a Service creates, designs, implements, and/or integrates customized changes to software that solve one or more problems. Software Maintenance as a Service also provides the Licensee with assistance installing the Software. Software Maintenance as a Service includes person-to-person communications and use of the AINS Help Desk.
- 1.3. Installation Assistance. Software Maintenance as a Product and Software Maintenance as a Service both include five (5) unique technical support incidents per maintenance period in support of new major or minor release implementation, Software updates/enhancements and Software bug/defect fixes only. Each call includes up to two hours of support time. Multiple calls can be used for a single incident or case that exceeds two hours. Supplemental Maintenance or Support Services are required for further support.
- 1.4. Support Services. Support Services includes all functional and how-to product support. Typical issues include: basic Software how-to guidance, and basic software trouble-shooting. Support Services do not include online training. Support Services may also be used as necessary for Maintenance Services if Licensee exceeds its purchased Maintenance Services.
- 1.5. AINS Help Desk. Unless otherwise agreed-upon in writing, all Services are provided to the Licensee via the AINS Help Desk. Use of the AINS Help Desk is subject to the current AINS Help Desk Policy. Extended Help Desk hours and on-site Services are available for purchase.

2. Exclusions and Reservations

2.1 AINS shall have no obligation to, but may in its sole discretion, provide Services to Licensee regarding the following: a) Restricted Releases of the Software; b) Any version of the Software older than the latest version made available to Licensee and the immediately preceding release, including any patches and bug fixes; c) Hardware issues; d) Issues relating to any third party software or services; e) Issues caused solely by Licensee; f) Issues resulting from Licensee's failure, negligent or otherwise, to implement all upgrades, updates, improvements or modifications to the Software within sixty (60) days of release by AINS or as may otherwise be directed; g) Software that is altered, damaged, or modified, including any modification, adjustment, change, "tuning," "optimization," application programming interfaces (APIs), interfaces with any other software, or any other action that in any way alters the precise structure and/or function of the database or application files as originally delivered; and/or h) Software installed in an operating environment for which the Software has not been licensed.

2.2 AINS shall have no obligation to provide Services to Licensee in excess of any Purchase Order accepted by AINS.

2.3 Reserved.

2.4 Gaps in Maintenance Services coverage are not allowed and may impair the proper functioning of the Software and AINS' ability to provide Services. In the event of a gap in coverage, Licensee shall pay standard rates for all gap periods before they may repurchase Maintenance Services. AINS shall not be liable for any damages or issues that arise with or from the Software after the termination or expiration of this Agreement and/or during any gap in coverage.

2.5 Services shall be provided to Licensee in any form deemed appropriate by AINS.

2.6 AINS shall provide personnel for Services with such expertise and experience as deemed appropriate by AINS in its sole discretion.

3. Licensee Obligations

As a condition for receiving Services under this Agreement, Licensee agrees to:

- 3.1. Abide by the terms and conditions of this Agreement, the Software License Agreement, and any and all other agreements with AINS;
- 3.2. Promptly notify AINS of the discovery or any bugs, errors, or other Software defects;
- 3.3. Maintain, and make available to AINS upon request, a representative data set ("Testing Data") so that AINS may conduct testing and maintenance of the Software in a controlled environment to ensure its continued performance. Licensee may make such alterations to the Testing Data as it deems necessary to protect Confidential Information, so long as such alterations do not affect AINS' ability to test and maintain the Software. Licensee retains all rights to the ownership of such data, and AINS agrees to return and/or destroy (at Licensee's written request) any Testing Data at the conclusion of AINS' testing;
- 3.4. Maintain, and make available to AINS upon request, records of any bugs and/or errors, including output, screen shots, and the operating conditions under which the error was discovered or could be reproduced;



- 3.5. As necessary in AINS' discretion, subject to applicable government security requirements, provide, or provide access to: office workspace, telephone and other facilities, suitably configured computer equipment with Internet access, complete and accurate information and data from its employees and agents, coordination of onsite, online, and telephonic meetings, and other resources as reasonably necessary for the satisfactory and timely performance of Services. AINS is not liable for any delays or claims of any nature which result, directly or indirectly, from the failure by Licensee to comply with AINS's reasonable requests; and
- 3.6. Refrain from soliciting AINS's employees. During the term of this Agreement and for a period of one (1) year after termination, for any reason, of this Agreement, Licensee shall not directly solicit or divert, or attempt to solicit or divert, any of Company's employees who are performing Services under this Agreement, for purposes of hiring or offering to that employee employment or compensation for services or information in any form.

4. Term and Termination

4.1 The term of Services shall be as set forth in a Purchase Order, and shall renew as set forth therein.

5. Confidentiality, Ownership, and Proprietary Information

This Agreement is subject to the terms and conditions regarding confidential information, ownership, and proprietary information set forth in the parties' Software License Agreement.

6. Warranties and Limitations on Liability

6.1 AINS warrants that the Services will be provided in a competent and professional manner in accordance with industry standards. Licensee agrees that AINS has not warranted preserving or recovering any data or other information contained in Licensee's computer systems.

6.2 Licensee warrants and represents that any Licensee representative communicating directly with AINS with respect to the Services shall have sufficient authority and knowledge to assist in investigating, diagnosing, and fixing any technical issues, and will have full knowledge and understanding of Licensee's obligations under this Agreement and the Software License Agreement.

6.3 ALL SERVICES HEREUNDER ARE PROVIDED "AS IS" AND ALL OTHER WARRANTIES ARE SPECIFICALLY EXCLUDED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR NON-INFRINGEMENT, AND ANY WARRANTY ARISING BY STATUTE, OPERATION OF LAW, COURSE OF DEALING OR PERFORMANCE AND/OR USE OF TRADE.

6.4 COMPANY'S LIABILITY FOR DIRECT DAMAGES UNDER THIS AGREEMENT (WHETHER IN CONTRACT OR TORT OR UNDER ANY OTHER THEORY OF LIABILITY) SHALL IN NO EVENT EXCEED THE AMOUNT PAID BY LICENSEE TO COMPANY FOR SERVICES IN THE TWELVE (12) MONTH PERIOD IMMEDIATELY PRECEDING THE EVENT GIVING RISE TO SUCH LIABILITY UNDER THIS AGREEMENT, PROVIDED THAT IN NO EVENT SHALL COMPANY'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT (WHETHER IN CONTRACT OR TORT OR UNDER ANY OTHER THEORY OF LIABILITY) EXCEED THE TOTAL AMOUNT PAID BY LICENSEE HEREUNDER.



6.5 IN NO EVENT SHALL COMPANY BE LIABLE FOR INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL, OR PUNITIVE DAMAGES, INCLUDING BUT NOT LIMITED TO LOST DATA OR LOST PROFITS, OR FOR EXEMPLARY DAMAGES RESULTING FROM LICENSEE'S USE OR INABILITY TO USE THE SOFTWARE OR FROM ANY SUPPORT SERVICES RENDERED WITH RESPECT THERETO, HOWEVER ARISING, WHETHER IN CONTRACT OR TORT OR UNDER ANY OTHER THEORY OF LIABILITY, EVEN IF IT HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. This clause shall not impair the U.S. Government's right to recover for fraud or crimes arising out of or related to this Contract under any federal fraud statute, including the False Claims Act, 31. U.S.C. §§ 3729-3733.

7. Independent Contractor

All work performed by Company in connection with this Agreement shall be performed by Company as an independent contractor and not as the agent or employee of Licensee. All persons furnished by Company shall be for all purposes solely the Company's employees or agents and shall not be deemed to be employees of Licensee for any purpose whatsoever. Company shall furnish, employ, and have exclusive control of all persons to be engaged in performing maintenance services under this Agreement and shall prescribe and control the means and methods of performing such maintenance services by providing adequate and proper supervision. Company shall be solely responsible for compliance with all rules, laws, and regulations relating to employment of labor, hours of labor, working conditions, payment of wages, and payment of taxes, such as employment, Social Security, and other payroll taxes including applicable contributions from such persons when required by law.



EXHIBIT 2 SERVICE LEVEL AGREEMENT

This SERVICE LEVEL AGREEMENT (“SLA”) applies to the Licensee’s use of AINS’ Software-as-a-Service (“SaaS”) and hosted software services (collectively with SaaS, “Hosted Software”).

This SLA is subject to the terms and conditions of the Licensee’s and AINS’ (collectively the “Parties”) Software License Agreement.

AINS’S MAXIMUM LIABILITY FOR ANY AND ALL CAUSES OF ACTION ARISING FROM ANY BREACH OF ANY PROMISE HEREIN SHALL BE A SERVICE CREDIT AS SET FORTH BELOW.

System Availability

Service Level Goals. AINS shall use commercially reasonable efforts to provide Licensee with a Service Level of at least 99.9% uptime of the Hosted Software on a 24 hours per day, 7 days per week, 365 days per year basis (“Service Level Goal”). The Service Level is determined by subtracting from 100% the percentage of minutes during the month in which the Hosted Software was unavailable or inaccessible to Licensee. Service Levels below 99.5% will trigger a response to the Licensee and the beginning of an investigation within 1 hour. As deemed appropriate in AINS’ sole discretion, AINS will provide Licensee with a corrective action plan to restore Service Levels to at least 99.9%.

Service Level Exclusions. AINS is not liable for any Hosted Software downtime or inaccessibility caused in whole or in part by any of the following:

- a. Scheduled Downtime for Preventative Maintenance;
- b. Licensee’s: (i) use of any hardware, software, or services not provided by AINS as part of its Hosted Software; (ii) use of the Hosted Software in a manner inconsistent with AINS’ direction, instruction or guidance; (iii) faulty input, instructions, or arguments (such as requests to files that do not exist); or (iv) failure, negligent or otherwise, to follow appropriate security practices;
- c. Any person gaining access to AINS’ data center and/or Hosted Software by means of the Licensee’s passwords, equipment, or other means of access without AINS’ express written approval; or
- d. Factors outside AINS’ reasonable control, including, but not limited to: (a) network or device failure external to AINS’ data center, at the Licensee’s site, or between AINS’ data center and the Licensee’s site; or bugs or defects in infrastructure software (such as operating system software, database software, and content management software).

System Stability

Routine System Monitoring. AINS utilizes monitoring tools to monitor software (applications, operating system, databases, etc.) and hardware (routers, switches, servers, etc.) performance and integrity. These tools are configured to send prioritized alerts to designated engineers in case of any downtime or failure of any infrastructure or application. The AINS System Administrator and/or Technical Manager also regularly monitor the AINS data



center for Preventative Maintenance issues, such as the availability of updates, patches, and/or other changes to the operating system of the Hosted Software.

Routine System Reporting. AINS' monitoring tools provide AINS and Licensees with weekly reports of Licensee's system usage including Service Levels, response times, and CPU, memory, disk, and bandwidth utilizations.

Redundancy, Backups, and Disaster Recovery.

- a. Power Redundancy. AINS utilizes battery backups and a natural gas powered generator to provide a continuous power supply to AINS' data center in case of power outages. AINS' electronic building entry system is also powered by a backup generator for continuous security.
- b. Redundant Cloud Infrastructure. AINS utilizes multiple Internet Service Providers ("ISP"), switches, and servers to provide for automatic failover with minimum downtime in case of any interruptions to AINS' cloud-based Hosted Software.
- c. Backup and Recovery. AINS utilizes mirrored databases to avoid any catastrophic data loss caused by hardware failures. AINS performs, and stores locally, daily incremental and weekly full backups of all databases. AINS also maintains a redundant disaster recovery site in a separate location and replicates all databases to that remote site every two (2) hours. Restoration of data will first be attempted from local backups to minimize downtime. AINS conducts a simulated restoration from both local and remote backups every six (6) months to test the backup procedures and quality of backup data.

Preventative Maintenance.

- a. "Preventative Maintenance" includes installation of patches, bug fixes, upgrades to the operating system, hardware, and/or firmware upgrades, and any other measures that AINS deems necessary to ensure the proper functioning and security of its data center and Hosted Software, in its sole and exclusive discretion.
- b. Licensee acknowledges that AINS shall have the exclusive right to schedule and implement Preventative Maintenance measures, including those resulting in system and application downtime, rendering the Hosted Software temporarily inaccessible ("Scheduled Downtime").
- c. AINS will make every commercially reasonable effort to perform Preventative Maintenance and Scheduled Downtime so as to minimize any Licensee impact.
- d. Updates and patches to the operating system and Hosted Software will be tested for performance and stability issues in a secure environment before they are implemented on behalf of the Licensee. Virtualized test instances are made available to the Licensee for patching, upgrades, and troubleshooting on an as-needed basis in AINS' sole and exclusive discretion.
- e. AINS will maintain a log that identifies: (i) the date and time of Preventative Maintenance; (ii) the individual performing the Preventative Maintenance; (iii) the individual who provided access to the data center and Services if other than the individual performing the Preventative Maintenance;



(iv) the Preventative Maintenance performed; and (v) any equipment removed or replaced during Preventative Maintenance.

System Security

The AINS main data center is a Top Secret cleared facility, and FedRamp, FISMA, and FIPS compliant.

Licensee Obligations

Licensee shall at all times abide by its obligations under any and all other agreement(s) it has with AINS.

Term, Termination, Duration

AINS’ obligations under this SLA shall terminate immediately upon: (a) termination of Licensee’s Software License Agreement; and/or (b) termination of Licensee’s authorized use of or access to the Hosted Software, for any reason whatsoever.

Modifications

AINS retains the right to modify this Service Level Agreement as it deems appropriate in its sole and exclusive discretion.

Service Credits/Remedies

AINS provides the following service credit program:

| Monthly Availability | Service Credits |
|----------------------|---|
| 100%-99.9% | Customer credits AINS one (1) day service cost |
| 99.9% to 99.5% | No service credits |
| Below 99.5% | AINS credits Customer for (Number of downtime hours - 3.6 hours) * one (1) day service cost |

- Service credit shall be limited to a maximum of one (1) month of cloud service costs in a monthly reporting period.
- Customers are required to submit a service credit request to AINS within ten (10) days from the date the Customer receives the Monthly Report.
- Service credits are accrued for Customer and AINS through the life of the contract.

AINS retains the right to modify this Service Level Agreement as it deems appropriate in its sole and exclusive discretion.



EXHIBIT 3 HELP DESK POLICY

The AINS Help Desk is available to AINS Customers as the primary method of resolving and reporting technical issues with AINS' products and services and for the provision of Maintenance and Support Services. Use of the AINS' Help Desk is contingent upon an existing Services Agreement and payment of all applicable fees.

Contact Information

The AINS Help Desk is available from **8:30 a.m.** to **5:30 p.m.** ET.
(Extended Help Desk and Services hours are available for an additional fee)

The AINS Help Desk can be reached by:

Email: support@ains.com; or

Telephone: (301) 670-2333

Help Desk Escalation Procedure

The AINS Help Desk will manage service requests through the following escalation procedures and staffing:

Level 1 – Help Desk Staff (“First Line of Support”) – Help Desk Staff receives request via telephone, email, or web and produces a ticket for each request. If Help Desk Staff cannot resolve the problem immediately it will be escalated to Level 2 informing the user of the need to escalate the problem.

Level 2 – Subject Matter Expert (Requests on Functionality) (SME) – SME will work with the user to resolve the problem. If the problem cannot be resolved, it will be escalated to Level 3 technology specialist support. The user submitting the request will be informed of the need to escalate the problem.

Level 3 – Technology Specialist (Requests of a Technical Nature) – Technology Specialist will attempt to duplicate the problem on our test system so that a solution may be identified. If the problem persists and a solution cannot be identified within one working day after it has been escalated to level 3, it will be escalated to the product development team for further review and resolution.

AINS will conduct ongoing evaluation at each Level to determine whether the problem is a system issue that may need to be resolved by a patch, bug fix, new release, or other Maintenance Services.

Response Times

AINS will provide an appropriate response according to the Help Desk procedures for most inquiries within four (4) hours.

AINS will provide an appropriate response according to the Help Desk Procedures for Time Critical inquiries as early as practicable, but at least within two (2) hours. A request for support is “Time Critical” because it



impacts customer productivity. Time Critical inquiries will be escalated immediately to the appropriate level, with AINS management being informed of the problem. Customer management will be kept informed on the assessment/nature of the problem, time estimated to fix the problem, and progress in identifying a solution should it go beyond the estimated time.

On Site Support

On site support may be provided on an as-needed basis for an additional cost.

Legal Notices

This Help Desk Policy is for informational purposes only. Neither this policy nor Customer's use of the AINS Help Desk shall create nor be deemed to create any legal obligations for either party.

Customer's use of the AINS Help Desk is contingent upon Customer's execution of a valid agreement to purchase AINS' Services. This Help Desk Policy and Customer's use of the Help Desk are subject to the terms and conditions of any other agreements between AINS and the Customer. Customer's use of the AINS Help Desk shall be limited as agreed-upon by the Parties. Excessive use, or use contrary to the Parties' agreements, may incur additional fees.

AINS retains the right to modify this Help Desk policy as it deems appropriate in its sole and exclusive discretion.