

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

TERMS AND CONDITIONS FOR OSTRATO PRODUCTS AND SERVICES

1. DEFINITIONS. Certain capitalized terms used in this Agreement, not otherwise defined on the Cover Page, shall have the meanings set forth below or in this Agreement.

- 1.1.** “*Authorized Systems*” shall mean computer systems, storage devices, virtual machines, and networks owned, operated or under the supervision and control of Licensee.
- 1.2.** “*Compute Cloud Resource*” shall mean a virtual machine and / or virtual instance.
- 1.3.** “*Confidential Information*” shall mean all written or oral information, disclosed by either Party to the other, related to the operations of either Party or a third party that has been identified as confidential or that by the nature of the information or the circumstances surrounding disclosure ought reasonably to be treated as confidential. Without limiting the generality of the foregoing, the Ostrato Software and the Documentation shall be considered Ostrato’s Confidential Information.
- 1.4.** “*Storage Cloud Resource*” shall mean a virtual block storage device.
- 1.5.** “*Ostrato Software*” shall mean the executable, object code version of Ostrato’s proprietary application software specifically identified on the Cover Page or any Order Form.
- 1.6.** “*Documentation*” shall mean Ostrato’s standard user manuals and/or related documentation generally made available to Licensees of the Ostrato Software.
- 1.7.** “*Order Form*” or “*Purchase Order*” shall mean any ordering document referencing this Agreement for Ostrato Software.

2. LICENSE AND USAGE OF SOFTWARE.

2.1. License. Subject to the terms and conditions of this Agreement, Ostrato hereby grants to Licensee a non-exclusive, non-transferable, non-sublicenseable right and license during the applicable Subscription Period to install and operate the number of copies of the Ostrato Software on the number of Authorized Systems set forth on the Order Form for use by Authorized Users to manage and monitor the number of Compute Cloud Resources and Storage Cloud Resources set forth on the Order Form, solely for Licensee’s internal business purposes, and solely in accordance with applicable Documentation provided by Ostrato. Subject to the terms and conditions of this Agreement, Ostrato hereby grants to Licensee and non-exclusive, non-transferable, non-sublicenseable right and license during the Term to make copies of the Documentation provided by Ostrato, solely for use by Authorized Users in connection with the exercise of rights granted in Section 2.1.

2.2. Authorized Users. For purposes of this Agreement, the term “*Authorized Users*” shall mean any individual employee, agent or contractor of Licensee accessing or using the Ostrato Software solely on behalf and for the benefit of Licensee in the operation of Licensee’s business. Licensee acknowledges and agrees that it shall be responsible for all acts and omissions of Authorized Users, and any act or omission by an Authorized User which, if undertaken by Licensee, would constitute a breach of this Agreement, shall be deemed a breach of this Agreement by Licensee. Licensee shall undertake reasonable efforts to make all Authorized Users aware of the provisions of this Agreement as applicable to such Authorized User’s use of the Ostrato Software, and shall cause Authorized Users to comply with such provisions.

2.3. Delivery of Licensee Copies. As soon as commercially practicable after the execution of an Order Form, Ostrato shall deliver to Licensee one (1) copy of each of the Ostrato Software and the Documentation ordered by Licensee under such Order Form for use by Licensee in exercising its rights under the licenses granted in Section 2.1, provided that any use of the Ostrato Software shall at all times remain subject to the limitations and restrictions set forth in Section 2.6. Delivery shall be deemed complete upon receipt by Licensee of media upon which the Ostrato Software

and Documentation are digitally stored. Unless otherwise agreed between the Parties in an Addendum to this Agreement or in a separate written agreement, Ostrato shall have no obligation to install or configure the Ostrato Software for or on behalf of Licensee.

2.4. Ownership of Ostrato Software Subject to the rights granted in Section 2.1, Ostrato retains all right, title and interest in and to the Ostrato Software, the Documentation and associated intellectual property rights, and Licensee acknowledges that it neither owns or acquires any rights in any of the foregoing not expressly granted by this Agreement. Licensee further acknowledges that Ostrato retains the right to use the Ostrato Software for any purpose in Ostrato's sole discretion, and Ostrato reserves all rights not expressly granted in this Agreement.

2.5. General Usage Restrictions.

(a) Licensee will not use the Ostrato Software or Documentation for any purposes beyond the scope of the licenses granted in this Agreement.

(b) Without limiting the generality of the foregoing, Licensee will not (i) authorize or permit of the Ostrato Software or Documentation by persons other than Authorized Users; (ii) market or distribute the Ostrato Software the Documentation; (iii) assign, sublicense, sell, lease or otherwise transfer or convey, or pledge as security or otherwise encumber, Licensee's rights under the licenses granted in Section 2.1; (iv) use the Ostrato Software in any time-sharing or service bureau arrangement, including, without limitation, any use to provide services or process data for the benefit of, or on behalf of, any third party; (v) modify the Ostrato Software or Documentation, except with the prior written consent of Ostrato; or (vi) decompile, disassemble, reverse engineer or otherwise attempt to obtain or perceive the source code from which any component of the Ostrato Software is compiled or interpreted, and Licensee hereby acknowledges that nothing in this Agreement shall be construed to grant Licensee any right to obtain or use such source code.

(c) Licensee shall undertake all measures necessary to ensure that its use of the Ostrato Software and the Documentation complies in all respects with all applicable laws, statutes, regulations, ordinances or other rules promulgated by governing authorities having jurisdiction over the Parties, the Ostrato Software or the Documentation, including, without limitation, by means of obtaining any permits, licenses and/or approvals required with respect to export regulations promulgated by the Bureau of Export Administration or any other agency or department of the federal government of the United States of America. Licensee acknowledges that Ostrato makes no representation or warranty that the Ostrato Software may be exported without appropriate licenses or permits under applicable law, or that any such license or permit has been, will be or can be obtained.

(d) Licensee shall duplicate all proprietary notices and legends of Ostrato and its suppliers or licensors upon any and all copies of the Ostrato Software and Documentation made by Licensee. Licensee shall not remove, alter or obscure any such proprietary notice or legend.

2.6. Compliance Records; Auditing Rights.

(a) Licensee shall create and maintain complete and accurate records of all copies of the Ostrato Software and/or Documentation made by or on behalf of Licensee, including the date such copies are made and the locations of Authorized Systems where such copies are installed as well as the number and type of Compute Cloud Resources and Storage Cloud Resources monitored and/or managed. Licensee shall promptly provide a copy of such records upon request by Ostrato.

(b) Throughout the Term of this Agreement, Ostrato will have the right, at its own expense, upon reasonable prior notice, periodically to inspect and audit Licensee's use of the Ostrato Software and Documentation for purposes of determining Licensee's compliance with the terms and conditions herein. Licensee agrees to cooperate with

Ostrato in the performance of any such audit, and shall provide to Ostrato such access to Licensee's relevant records, data, information, personnel and/or facilities as Ostrato may reasonably request for such limited purposes. Such inspection and auditing rights shall extend throughout the Term and for a period of two (2) years after the termination of this Agreement.

3. FEES AND PAYMENTS.

3.1. **Reserved.**

3.2. **Reserved.**

3.3. **Reserved.**

3.4. **Reserved.**

3.5. **Future Functionality.** Licensee agrees that Licensee's purchases are not contingent on the delivery of any future functionality or features, or dependent on any oral or written public comments made by Ostrato regarding future functionality or features.

4. NON OSTRATO APPLICATIONS

4.1. **Acquisition of Non-Ostrato Products and Services.** Any acquisition by Licensee of any product or service not provided by Ostrato is between Licensee and any such person or entity. Ostrato does not warrant or support non-Ostrato products or services, whether or not they are designated by Ostrato as "certified" or otherwise.

4.2. **Integration with Non-Ostrato Applications.** The Ostrato Software contains features designed to interface or interoperate with cloud based and other applications not developed or provided by Ostrato. If the provider of such an application ceases to make their application available for interoperation with the Ostrato Software, the Ostrato Software may cease to operate with such third party application. Ostrato cannot guarantee interoperability with any particular third party service or application.

5. TECHNICAL SUPPORT OBLIGATIONS.

5.1. **Scope of Technical Assistance.** Subject to the terms and conditions of this Agreement including the payment of the applicable fees (if any), Ostrato shall, during the period of time for which support fees have been paid to Ostrato, exercise commercially reasonable efforts to provide Technical Assistance to Eligible Support Recipients during Ostrato's ordinary and customary business hours in accordance with its standard policies and procedures. "Technical Assistance" shall mean the provision of responses by Ostrato personnel to questions from Eligible Support Recipients related to use of the Ostrato Software.

5.2. **Eligible Support Recipients.** Ostrato shall have no obligation to provide Technical Assistance, by any means, to any entity or individual other than Eligible Support Recipients. Licensee can designate up to two (2) persons, which designees shall be eligible to receive Technical Assistance from Ostrato ("Eligible Support Recipients"). Such designees may be changed at any time by written notice.

5.3. **Licensee Access.** As a condition of Ostrato's obligations under Section 5.1, Licensee shall provide such information and/or access to Licensee resources as Ostrato may reasonably require in order to provide Technical Assistance under this Agreement. Ostrato shall be excused from any non-performance of its obligations hereunder to

the extent any such non-performance is attributable to Licensee's failure to perform its obligations under this Section 5.3.

5.4. Means of Access to Technical Assistance. Eligible Support Recipients shall be permitted to request Technical Assistance (i) by telephoning Ostrato at such telephone number as Ostrato may specify for such purposes from time to time; or (ii) by directing electronic mail requests therefore to Ostrato at the electronic mail address as Ostrato may specify for such purposes from time to time. Unless otherwise agreed by the Parties, Ostrato shall have no obligation hereunder to provide on-site Technical Assistance at Licensee's facilities or at any other location. To the extent the Parties hereafter agree that Ostrato shall provide on-site Technical Assistance of any kind whatsoever, such on-site Technical Assistance will require Ordering Activity to issue an order in accordance with the Contractors Schedule Contract.

5.5. Limitations on Technical Assistance. (a) Unless otherwise agreed by the Parties, Ostrato shall have no obligation to provide Technical Assistance with respect to any Software Error resulting from (i) use of the Ostrato Software other than strictly according to the terms of this Agreement; (ii) modification of the Ostrato Software by Licensee or any third party; or (iii) any combination or integration of the Ostrato Software with hardware, software and/or technology not provided by Ostrato. (b) Unless otherwise agreed by the Parties, Ostrato shall not be required to provide Technical Assistance regarding use of any version of the Ostrato Software other than a version incorporating the most recently released Technology Update or Technology Upgrade.

5.6. Maintenance.

- (a) Subject to Licensee's payment of all fees and other amounts payable under this Agreement, Ostrato shall use commercially reasonable efforts to adapt, re-configure or re-program the Ostrato Software in order to correct in a timely fashion any Software Errors reported by Eligible Support Recipients by any means set forth in Section 5.4, provided that if Ostrato determines in good faith that such Software Error is the result of errors or misstatements in the Documentation, Ostrato may correct such nonconformity solely by amending the Documentation, as necessary, and further provided that any failure or inability by Ostrato to correct any such Software Error, or failure or inability to do so in a timely fashion, shall in no event be deemed a breach of Ostrato's obligations hereunder.
- (b) Subject to Licensee's payment of all fees and other amounts payable under this Agreement, in the event that Ostrato fails or is unable to correct any Software Error, as required by Section 5.6(a), Ostrato shall use commercially reasonable efforts to develop, in a timely fashion, procedures or routines, for use by end users of the Ostrato Software, which, when employed in the regular operation of the Ostrato Software, will avoid or diminish the practical adverse effects of the relevant Software Error, provided that any failure or inability by Ostrato to develop any such procedure or routine, or failure or inability to do so in a timely fashion, shall in no event be deemed a breach of Ostrato's obligations hereunder.
- (c) From time to time Ostrato may, in its discretion, develop Technology Updates and/or Technology Upgrades. Subject to Licensee's payment of all fees and other amounts payable under this Agreement, Ostrato shall, during the Term of this Agreement, make such Technology Updates and/or Technology Upgrades, when and if developed, available to Licensee at no additional cost. Except as provided in the foregoing sentence, any such Technology Updates and/or Technology Upgrades provided under this Agreement shall be deemed to constitute part of the Ostrato Software and shall be subject to all terms and provisions set forth in this Agreement, otherwise applicable to the Ostrato Software, including, without limitation, terms and provisions related to licenses, use restrictions, ownership and distribution of the Ostrato Software.

- (d) “Technology Update” shall mean any version of the Ostrato Software, developed subsequent to the Effective Date, which implements minor improvements or augmentations, or which corrects failures of the Ostrato Software materially to conform to the Documentation. Technology Updates may be labeled v.1.1, v.1.2, v.1.3, etc. or v.1.1.1, v.1.1.2, 1.1.3, etc.
- (e) “Technology Upgrade” shall mean any version of the Ostrato Software, developed subsequent to the Effective Date, which implements additional features or functions, or which produces substantial and material improvements with respect to the utility and efficiency of the Ostrato Software, but which does not constitute merely a Technology Update, and which is not marketed and/or distributed by Ostrato as a separate and independent product or module. Technology Upgrades may be labeled v.1, v.2, v.3, etc.

6. CONFIDENTIALITY RIGHTS AND OBLIGATIONS.

6.1. Ownership of Confidential Information. Subject to the Freedom of Information Act, 5 U.S.C. § 552, the Parties acknowledge that during the performance of this Agreement, each Party will have access to certain of the other Party’s Confidential Information or Confidential Information of third parties that the disclosing Party is required to maintain as confidential. Both Parties agree that all items of Confidential Information are proprietary to the disclosing Party or such third party, as applicable, and shall remain the sole property of the disclosing Party or such third party.

6.2. Mutual Confidentiality Obligations. Subject to the Freedom of Information Act, 5 U.S.C. § 552, each Party agrees as follows: (a) to use the Confidential Information only for the purposes described herein; (b) that such Party will not reproduce the Confidential Information and will hold in confidence and protect the Confidential Information from dissemination to, and use by, any third party; (c) that neither Party will create any derivative work from Confidential Information disclosed to such Party by the other Party; (d) to restrict access to the Confidential Information to such of its personnel, agents, and/or consultants, if any, who have a need to have access and who have been advised of and have agreed in writing to treat such information in accordance with the terms of this Agreement; and (e) to return or destroy, pursuant to Section 7.4, all Confidential Information of the other Party in its possession upon termination or expiration of this Agreement.

6.3. Confidentiality Exceptions. Notwithstanding the foregoing, the provisions of Sections 6.1 and 6.2 shall not apply to Confidential Information that (i) is publicly available or in the public domain at the time disclosed; (ii) is or becomes publicly available or enters the public domain through no fault of the recipient; (iii) is rightfully communicated to the recipient by persons not bound by confidentiality obligations with respect thereto; (iv) is already in the recipient’s possession free of any confidentiality obligations with respect thereto at the time of disclosure; (v) is independently developed by the recipient; or (vi) is approved for release or disclosure by the disclosing Party without restriction. Notwithstanding the foregoing, each Party may disclose Confidential Information to the limited extent required (x) in order to comply with the order of a court or other governmental body, or as otherwise necessary to comply with applicable law, provided that the Party making the disclosure pursuant to the order shall first have given notice to the other Party and made a reasonable effort to obtain a protective order; or (y) to establish a Party’s rights under this Agreement, including to make such court filings as it may be required to do.

7. WARRANTIES; DISCLAIMERS.

7.1. Representations and Warranties. For a period of thirty (30) days after initial delivery of the Ostrato Software to Licensee pursuant to an Order Form or Purchase Order (the “*Software Warranty Period*”), Ostrato warrants that the Ostrato Software, when used as permitted under this Agreement and in accordance with the instructions in the Documentation (including use on a computer hardware and operating system platform supported by Ostrato), will operate substantially as described in the technical specifications in the Documentation. Ostrato does not warrant the Licensee’s use of the Ostrato Software will be error-free or uninterrupted. For any breach of the warranties contained

in Section 7.1, Licensee's exclusive remedy, and Ostrato's entire liability, shall be: at Ostrato's sole discretion, the correction of Ostrato Software errors that cause breach of the warranty, replacement of such Ostrato Software or return of the fees paid to Ostrato for the license of such Ostrato Software prorated over a five (5)-year term from the Effective Date of the applicable Order Form or Purchase Order. Any such error correction provided to Licensee will not extend the original Software Warranty Period.

7.2. Disclaimer. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, OSTRATO DISCLAIMS ANY AND ALL OTHER PROMISES, REPRESENTATIONS AND WARRANTIES, WHETHER EXPRESS, IMPLIED OR STATUTORY, INCLUDING, BUT NOT LIMITED TO, ANY WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, DATA ACCURACY, SYSTEM INTEGRATION, TITLE, NON-INFRINGEMENT AND/OR QUIET ENJOYMENT, AND THE OSTRATO SOFTWARE IS PROVIDED "AS IS". NO WARRANTY IS MADE BY OSTRATO ON THE BASIS OF TRADE USAGE, COURSE OF DEALING OR COURSE OF TRADE. OSTRATO DOES NOT WARRANT THAT THE OSTRATO SOFTWARE WILL MEET LICENSEE'S REQUIREMENTS OR THAT THE OPERATION OF THE OSTRATO SOFTWARE WILL BE UNINTERRUPTED OR ERROR-FREE, OR THAT ALL ERRORS WILL BE CORRECTED. LICENSEE ACKNOWLEDGES THAT OSTRATO'S OBLIGATIONS UNDER THIS AGREEMENT ARE FOR THE BENEFIT OF LICENSEE ONLY.

7.3. Exclusions of Remedies; Limitation of Liability. EXCLUDING REPROCUREMENT COSTS, 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. IN NO EVENT SHALL OSTRATO BE LIABLE TO LICENSEE FOR ANY INCIDENTAL, INDIRECT, SPECIAL, CONSEQUENTIAL OR PUNITIVE DAMAGES, REGARDLESS OF THE NATURE OF THE CLAIM, INCLUDING, WITHOUT LIMITATION, LOST PROFITS, COSTS OF DELAY, ANY FAILURE OF DELIVERY, BUSINESS INTERRUPTION, COSTS OF LOST OR DAMAGED DATA OR DOCUMENTATION OR LIABILITIES TO THIRD PARTIES ARISING FROM ANY SOURCE, EVEN IF OSTRATO HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THIS LIMITATION UPON DAMAGES AND CLAIMS IS INTENDED TO APPLY WITHOUT REGARD TO WHETHER OTHER PROVISIONS OF THIS AGREEMENT HAVE BEEN BREACHED OR HAVE PROVEN INEFFECTIVE. THE CUMULATIVE LIABILITY OF OSTRATO TO LICENSEE FOR ALL CLAIMS ARISING FROM OR RELATING TO THIS AGREEMENT, INCLUDING, WITHOUT LIMITATION, ANY CAUSE OF ACTION SOUNDING IN CONTRACT, TORT, OR STRICT LIABILITY, SHALL NOT EXCEED THE TOTAL AMOUNT OF ALL FEES THEN-PAID TO OSTRATO BY LICENSEE UNDER SECTION 3.1 DURING THE TWELVE (12)-MONTH PERIOD IMMEDIATELY PRIOR TO THE EVENT, ACT OR OMISSION GIVING RISE TO SUCH LIABILITY. THIS LIMITATION OF LIABILITY IS INTENDED TO APPLY WITHOUT REGARD TO WHETHER OTHER PROVISIONS OF THIS AGREEMENT HAVE BEEN BREACHED OR HAVE PROVEN INEFFECTIVE.

7.4. Essential Basis. The Parties acknowledge and agree that the disclaimers, exclusions and limitations of liability set forth in this Section 5 form an essential basis of this Agreement, and that, absent any of such disclaimers, exclusions or limitations of liability, the terms of this Agreement, including, without limitation, the economic terms, would be substantially different.

8. INDEMNIFICATION.

8.1. Indemnification of Licensee. Subject to 28 U.S.C. § 516, Ostrato agrees to indemnify, defend and hold harmless Licensee from and against any and all third party losses, liabilities, costs (including reasonable attorneys' fees) or damages resulting from any claim by any third party that the Ostrato Software infringes or misappropriates, as applicable, such third party's U.S. patent rights issued as of the Effective Date, or such third party's copyrights or

trade secret rights under applicable laws of any jurisdiction within the United States of America, provided that, notwithstanding the foregoing, Ostrato shall have no obligation to indemnify Licensee hereunder if the alleged infringement arises, in whole or in part, due to modification of the Ostrato Software by Licensee, on Licensee's behalf, or upon Licensee's request or direction, or if such alleged infringement arises, in whole or in part, due to combination or integration of the Ostrato Software with hardware, software and/or technology not supplied by Ostrato hereunder, if such infringement would have been avoided by use of the Ostrato Software absent such combination or integration. If any claim for which indemnity is or may be sought hereunder is made or appears reasonably possible, Licensee agrees (i) promptly to notify Ostrato in writing; (ii) to cooperate with Ostrato, and to allow Ostrato participate in the defense and settlement of such claim; and (iii) to permit Ostrato, at Ostrato's sole discretion, to enable Licensee to continue to use the Ostrato Software, or to modify or replace any such infringing material to make it non-infringing, provided that, if Ostrato determines that none of the foregoing alternatives is reasonably available, Licensee shall, upon written request from Ostrato, cease use of, and, if applicable, return, such materials as are the subject of the relevant infringement claim.

9. TERM AND TERMINATION.

9.1. Term. The term of this Agreement shall commence on the Effective Date and shall continue perpetually thereafter unless and until terminated in accordance with this Section 9 (the period during which this Agreement remains in effect, the "*Term*"). The term of the licenses for use of the Ostrato Software ordered under an Order Form (the "*Subscription Period*") shall be set forth in the applicable Order Form (the "*Initial Subscription Period*").

9.2. Effect of Termination. Upon any termination of this Agreement, Licensee (i) shall immediately discontinue all use of the Ostrato Software and Documentation, as well as any use of Ostrato's Confidential Information; (ii) shall delete any Ostrato Confidential Information from Licensee's computer storage or any other media, including, but not limited to, online and off-line libraries; (iii) shall return to Ostrato or, at Ostrato's option, destroy, all copies of Ostrato's Confidential Information then in Licensee's possession.

10. GENERAL PROVISIONS.

10.1. Reserved.

10.2. Independent Contractors. In making and performing this Agreement, Licensee and Ostrato act and shall act at all times as independent contractors, and, except as expressly set forth herein, nothing contained in this Agreement shall be construed or implied to create an agency, partnership or employer and employee relationship between them. Except as expressly set forth herein, at no time shall either Party make commitments or incur any charges or expenses for, or in the name of, the other Party.

10.3. Inspection/Acceptance. The Contractor (immixTechnology, Inc.) can only, and shall only tender for acceptance those items that substantially conform to the software manufacturer's ("Ostrato") 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.

- 10.4. Amendments; Modifications.** This Agreement may not be amended or modified except in a writing duly executed by the Party against whom enforcement of such amendment or modification is sought.
- 10.5. Assignment; Delegation.** Assignments are subject to FAR Clause 52.232-23, Assignment of Claims (JAN 1986) and FAR 42.12 Novation and Change-of-Name Agreements.
- 10.6. No Third Party Beneficiaries.** The Parties acknowledge that the covenants set forth in this Agreement are intended solely for the benefit of the Parties, their successors and permitted assigns. Nothing herein, whether express or implied, shall confer upon any person or entity, other than the Parties, their successors and permitted assigns, any legal or equitable right whatsoever to enforce any provision of this Agreement.
- 10.7. Severability.** If any provision of this Agreement is invalid or unenforceable for any reason in any jurisdiction, such provision shall be construed to have been adjusted to the minimum extent necessary to cure such invalidity or unenforceability. The invalidity or unenforceability of one or more of the provisions contained in this Agreement shall not have the effect of rendering any such provision invalid or unenforceable in any other case, circumstance or jurisdiction, or of rendering any other provisions of this Agreement invalid or unenforceable whatsoever.
- 10.8. Waiver.** No waiver under this Agreement shall be valid or binding unless set forth in writing and duly executed by the Party against whom enforcement of such waiver is sought. Any such waiver shall constitute a waiver only with respect to the specific matter described therein and shall in no way impair the rights of the Party granting such waiver in any other respect or at any other time. Any delay or forbearance by either Party in exercising any right hereunder shall not be deemed a waiver of that right.
- 10.9. Force Majeure.** Except as may be otherwise provided herein, this Agreement is subject to FAR 52.212 -4 (f) Excusable delays. (JUN 2010). Except with respect to payment obligations under this Agreement, if a Party is prevented or delayed in performance of its obligations hereunder as a result of circumstances beyond such Party's reasonable control, including, by way of example, war, riot, fires, floods, epidemics, or failure of public utilities or public transportation systems, such failure or delay shall not be deemed to constitute a material breach of this Agreement, but such obligation shall remain in full force and effect, and shall be performed or satisfied as soon as reasonably practicable after the termination of the relevant circumstances causing such failure or delay, provided that if such Party is prevented or delayed from performing for more than ninety (90) days, the other Party may terminate this Agreement upon thirty (30) days' written notice.
- 10.10. Survival.** The provisions of Sections 2.6, 6, 7.2, 7.3, 7.4 and 8 will survive the termination of this Agreement.
- 10.11. U.S. Government End-Users.** Each of the components that constitute the Ostrato Software and Documentation is a "commercial item" as that term is defined at 48 C.F.R. 2.101, consisting of "commercial computer software" and "commercial computer software documentation" as such terms are used in 48 C.F.R. 12.212. Consistent with 48 C.F.R. 12.212 and 48 C.F.R. 227.7202-1 through 227.7202-4, all U.S. Government end users acquire the Ostrato Software with only those rights set forth herein.
- 10.12. Reserved.**
- 10.13. Headings.** The headings in this Agreement are inserted merely for the purpose of convenience and shall not affect the meaning or interpretation of this Agreement.