SOFTWARE LICENSE AGREEMENT

All references to AINS in these Terms and Conditions should be read as “Vendor (immixTechnology, Inc.), acting by and through its supplier, AINS.” DIR Contract No. DIR-TSO-4315 and this Software License Agreement Terms will govern this agreement between the Vendor and Customer (“Parties”). This Software License Agreement (“Agreement”) is made between AINS, Inc. (“Company”), and Customer (“You” or “Licensee”).

Customer accepts all the terms and conditions of DIR Contract No. DIR-TSO-4315 and this Agreement. If Customer are entering into this Agreement on behalf of a company or other legal entity, Customer represent that the Customer have the authority to bind such entity and its affiliates to these terms and conditions (in which case “Customer” and “Your” shall refer to such entity and its affiliates). If Customer does not have such authority, and/or if Customer does not agree to abide by the terms and conditions of this Agreement, Customer must not sign this Agreement and may not use the Software.

The Customer may not access the Software if Customer are a direct competitor of Company, except with Company’s prior written consent. In addition, Customer 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 DIR Contract No. DIR-TSO-4315 and this Agreement apply to the Software (including the media on which Customer 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.

In consideration of the mutual promises and covenants set forth herein and for other good and valuable consideration, the receipt, sufficiency, and adequacy of which are mutually acknowledged by each party, the parties agree to the following:

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 Technical 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 DIR Contract No. DIR-TSO-4315 this Agreement and Company’s acceptance of a Purchase Order, Company grants Licensee a limited, personal, non-exclusive, and nontransferable license to use the Software. All Software-related materials, in whatever form, including, but not limited to Documentation, instructions, programs, charts, manuals, and codes 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, and subject to applicable Government security requirements. 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:
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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, Fees and Payment

Payment will be in accordance with Appendix A Section 8, of DIR Contract No. DIR-TSO-4315. Fees will be in accordance with Appendix C, of DIR Contract No. DIR-TSO-4315.

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.

Company shall invoice Licensee accordingly within thirty (30) days. Licensee shall pay all fees when and as specified therein, but in any event, customer will follow the State of Texas Prompt Payment Act.

Company shall state separately on invoices taxes excluded from the fees, and the Licensee agrees either to pay the amount of the taxes (based on the current value of the equipment) or provide evidence necessary to sustain an exemption, in accordance with FAR 52.229-1 and FAR 52.229-3. Licensee is responsible for providing complete and accurate billing and contact information to Company and promptly notifying Company of any changes to such information.

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.

5.2. 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; however, Licensee may receive the right to utilize improvements or developments funded by the Licensee at no additional cost, commensurate with the then-current term of the Software License Agreement and/or Services Agreement.

5.3. 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.

5.4. All rights not expressly granted to Licensee hereunder are reserved by Company and its licensors.

5.5. Licensee shall not remove any copyright and/or proprietary information or confidentiality notices as were affixed to the original Software or Documentation.

5.6. Licensee shall not use AINS’ name, logo or other identifying information in any marketing, advertising or other publication without AINS’ express written approval. AINS may advertise Licensee’s use of its Software and/or Services to the extent permitted by the General Services Acquisition Regulation (GSAR) 552.203-71- RESTRICTION IN ADVERTISING.

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6. **Defense and Indemnification**

   6.6.1. Indemnification will be handled in accordance with Appendix A Section 10A of DIR Contract No. DIR-TSO-4315.

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 will be handled in accordance with Appendix A Section 10K of DIR Contract No. DIR-TSO-4315.

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 to the extent allowable under the Texas Public Information Act.

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, 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. Company recognizes that Federal agencies are subject to the Freedom of Information Act, 5 U.S.C. 552, which requires that certain information be released, despite being characterized as “confidential” by the vendor.

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. 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 responsible 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. Subject to record retention policies and laws, 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. LIMITATION OF LIABILITY. Limitation of Liability will be handled in accordance with Appendix A, Section 10K of DIR Contract No. DIR-TSO-4315.

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.


11.1. 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 routines 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 will be handled in accordance to Appendix A, Section 12 of DIR Contract No. DIR-TSO-4315.

All notices shall be in writing and (a)(1) delivered by hand, (a)(2) sent by Untied 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. Governing Law Will be in accordance with Appendix A Section 4F of DIR Contract DIR-TSO-4315. The Laws of the State of Texas shall govern this Agreement. Exclusive Venue for all actions will be in the state court, Travis County, Texas. Nothing in this Agreement shall be construed to waive the Sovereign Immunity of the State of Texas

15. Term and Termination

15.1. This Agreement shall become effective upon the execution of this document in writing.

15.2. This Agreement shall automatically terminate upon expiration of the license term set forth in any accepted Purchase Order.

15.3. When the End User is an instrumentality of the U.S., recourse against the United States for any alleged breach of this Agreement must be made as a dispute under the contract Disputes Clause (Contract Disputes Act). During any dispute under the Disputes Clause, [vendor] shall proceed diligently with performance of this Agreement, pending final resolution of any request for relief, claim, appeal, or action arising under the Agreement, and comply with any decision of the Contracting Officer.

15.4. Licensee may terminate this Agreement in accordance with Appendix A, Section 11B of DIR Contract No. DIR-TSO-4315.

15.5. Except with regard to perpetual on-premises Software licenses, Licensee’s lawful right to use and access the Software as set forth herein shall immediately terminate upon
termination of this Agreement. All other terms and conditions shall survive termination for any reason.

15.6. Upon termination for any reason, Licensee shall remain liable to AINS for all fees accrued and/or payable to Company prior to the effective date of termination, including the outstanding balance for the current license term. Licensee shall not be entitled to a refund of any license fees in the event of termination of this Agreement for any reason.

15.7. Subject to record retention laws and policies, Licensee acknowledges and agrees that following termination of this Agreement for any reason, Licensee shall return all AINS property to AINS and AINS may immediately deactivate Licensee’s account, as applicable. Furthermore, as applicable, unless otherwise agreed-upon by the Parties in writing, Licensee shall remove or overwrite all applicable Licensee content, data, and information from Licensee’s systems following the effective date of termination or cancellation, in accordance with Licensee’s standard procedures. As necessary, Licensee shall provide Company with reasonable and prompt access to Licensee’s premises to allow Company to retrieve the hardware and software and/or, in accordance with Company’s instructions, return to Company all hardware and software that Company has provided to Licensee in connection with this Agreement (other than hardware and software that Licensee has purchased from Company). Prior to any such deletion or destruction, however, Company shall either a) grant Licensee reasonable access to the Software for the sole purpose of Licensee retrieving Licensee’s data, or b) transfer all Licensee data to other media for delivery to Licensee.

15.8. Termination will be handled in accordance with Appendix A Section 11B, of DIR Contract No. DIR-TSO-4315.

16. General

16.1. 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.

16.2. Reserved.

16.3. 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 52.227-14, as applicable.

16.4. 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.
16.5. Escrow. Subject to applicable terms and conditions, Licensee may purchase the right to join Company’s existing source code escrow Agreement as a licensed beneficiary.

16.6. Company and Licensee agree that, in their dealings with each other under or in connection with this Agreement, each shall act in good faith.

16.7. The parties acknowledge that the Software may include software licensed by Company from third-party Company Licensors. Company Licensors may be direct and intended third-party beneficiaries of this Agreement and may be entitled to enforce it directly against Licensee to the extent that this Agreement relates to the licensing of Company Licensors’ software products, and Company fails to enforce the terms of this Agreement on Company Licensors’ behalf.

16.8. The section headings herein are provided for convenience only and have no substantive effect on the construction of this Agreement.

16.9. Force Majeure. Will be handed in accordance with Appendix A Section 11C of DIR Contract No. DIR-TSO-4315.

16.10. DIR Contract No. DIR-TSO-4315 and this Agreement, together with the Purchase Order(s), constitute the entire Agreement between the parties concerning Licensee’s use of the Software. No Purchase Order, other ordering document, or any handwritten or typewritten text which purports to modify or supplement the text of this Agreement shall add to or vary the terms of this Agreement unless signed by both parties. Further, in the event of conflict between this Agreement and the terms of the Purchase Order, the terms of the Purchase Order shall govern. This Agreement replaces and supersedes all prior verbal understandings, written communications, warranties or representations regarding the contents of this Agreement and Licensee represents and acknowledges that it in entering into this Agreement it is not relying upon any representations or warranties other than those set forth herein.

16.11. 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.

16.12. 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.

16.13. 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.

16.14. 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.

16.15. 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.

16.16. 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.

16.17. 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.

16.18. In the event of a conflict between this Agreement and DIR Contract No. DIR-TSO-4315, the DIR Contract No. DIR-TSO-4315 will have precedence.