TECHNICAL SERVICES 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 Technical Services Agreement Terms will govern this agreement between the Vendor and Customer (“Parties”). This Services Agreement (“Agreement”) is made between AINS, Inc. (“Company”) and you (“You” or “Licensee”).

This Agreement and AINS’ provision of Services to Licensee is subject to the definitions, terms and conditions of DIR Contract No. DIR-TSO-4315 and Licensee’s Software License Agreement. Should there be conflict in terms between DIR Contract No. DIR-TSO-4315 or Software License Agreement, the DIR Contract No. DIR-TSO-4315 shall take precedence.

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 troubleshooting. 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 relating to the Software caused in whole or in part by Licensee’s breach of this Agreement and/or the Software License Agreement, including, but not limited to, unauthorized use and/or modifications of the Software; g) 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; h) 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 i) 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 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, AINS 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.

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 accordance with this agreement and the specifications of Customers Purchase Order.

2.6 AINS shall provide personnel for Services with such expertise and experience as deemed appropriate by AINS upon agreement of both parties.

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

4.2 The term of Services shall be as set forth in a Purchase Order and shall renew upon issuance of Customer’s Purchase Order for the additional term.

4.3 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, AINS 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.

4.4 This Agreement shall immediately terminate upon termination of the Software License Agreement and/or Licensee’s right to use the Software for any reason, whatsoever, and AINS’ obligations hereunder shall terminate. All other terms and conditions shall survive termination.
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. AINS 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. To the extent allowable under the Texas Public Information Act.

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

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.