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

## STANDARD TERMS AND CONDITIONS FOR REDSEAL PRODUCTS AND SERVICES

RedSeal Networks, Inc. ("RedSeal") agrees to license or sell certain RedSeal software products ("Software"), third party hardware products ("Hardware"), related maintenance and support ("Maintenance") and/or professional services ("ProServe") to the Licensee specified in the attached quotation and/or order pursuant to these Terms. While Licensee may provide other terms and conditions on its purchase order or other ordering document, Licensee acknowledges that these Terms shall control.

**1. DEFINITIONS**. The following terms shall have the following meanings:

1.1     "Documentation" means RedSeal's standard published documentation accompanying the Products.

1.2     "EULA" means either (i) the End User License Agreement accompanying the RedSeal Software ("Software") or (ii) the End User License Agreement executed by RedSeal and Licensee.

1.3     "Products" means the Software, Hardware, Maintenance and/or ProServe licensed or purchased by Licensee as specified in an order accepted by RedSeal.

**2. FEES, SHIPPING**.

2.1     Licensee shall pay RedSeal the amounts specified in the applicable quotation.

2.2     When physically shipped to Licensee, shipments will be made Ex Works (Incoterms 2010), RedSeal's shipping dock. Licensee will pay all costs relating to transportation, delivery and insurance and will bear the risk of loss while materials are in transit. Normal delivery of the Software will be through electronic download.

2.3     Professional Services must be used within one (1) year following the date of purchase or remaining days will be forfeited.

**3. WARRANTIES AND DISCLAIMERS**. RedSeal warrants that (a) the Hardware and Software, as delivered, will perform substantially in accordance with the applicable Documentation for a period of ninety (90) days from the date of initial delivery to Licensee and that any Maintenance and ProServe shall be performed in a professional manner. RedSeal makes no warranty that the operation of the Products will be uninterrupted or error-free, that the Products will meet Licensee's requirements or that the Products will operate in combination with hardware or software not provided by RedSeal. In the event that the Products do not conform with the above warranties, RedSeal's entire liability and Licensee's sole remedy shall be for RedSeal to (i) with respect to Software, use its reasonable efforts to correct any reproducible error confirmed by RedSeal; provided, however, that Licensee acknowledges that RedSeal may not be able, and shall have no obligation, to correct all errors or (ii) with respect to Maintenance or ProServe, re-perform such Maintenance or ProServe at no additional charge to Licensee. In the event the Hardware does not conform to the above warranties, RedSeal's entire liability and Licensee's sole remedy shall be for RedSeal to provide repaired or replacement Hardware to Licensee pursuant to RedSeal's then current RMA process. RedSeal's warranty shall not extend to errors that result from: (i) Licensee's failure to implement any updates which are provided by RedSeal; (ii) use of the Products other than in accordance with the Documentation; (iii) any alterations of or additions to the Products performed by parties other than RedSeal; (iv) use of the Products in a manner for which they were not designed or outside the scope of the EULA ; (v) accident, negligence, or misuse of  the Products by any party other than RedSeal; or (vi) combination of the Products with other products not supplied by RedSeal.

3.2.     Disclaimer of Warranties.  EXCEPT AS EXPRESSLY SPECIFIED IN THIS SECTION 3, REDSEAL AND ITS LICENSORS PROVIDE THE PRODUCTS "AS IS" AND EXPRESSLY DISCLAIM ANY WARRANTIES, TERMS OR CONDITIONS, EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, WITH RESPECT TO THE PRODUCTS PROVIDED HEREUNDER, INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTIES, TERMS OR CONDITIONS OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NONINFRINGEMENT, OR THOSE ARISING FROM COURSE OF PERFORMANCE, DEALING, USAGE OR TRADE.

## 4. LICENSES.

4.1     The Software and Document may be used solely as specified in the EULA. Maintenance will be provided as specified in the EULA and RedSeal's then current policy for Maintenance.  ProServe will be performed as specified in the quotation or mutually agreed upon statement of work. The EULA and maintenance terms are specified herein below.

4.2     The Products (excluding any Hardware) are licensed, not sold.  All right, title, and interest in and to the Software and Documentation and in any ideas, know-how, and programs which may be developed by RedSeal in the course of providing Maintenance or ProServe will at all times remain the property of RedSeal or its licensors.  Licensee hereby acknowledges that the Products are protected by the copyright laws and other laws pertaining to intellectual property and proprietary rights in the United States and other countries.

4.3      Licensee hereby grants to RedSeal a royalty-free license to use, reproduce, modify, display and transmit any information provided by Licensee ("Information") solely in connection with the performance of its obligations.  Licensee acknowledges and agrees that RedSeal or its licensors, own and shall retain all right, title and interest in and to the any deliverables provided in connection with ProServe (excluding any Information) and does hereby assign to RedSeal all rights Licensee may have or acquire in such deliverables. Licensee hereby irrevocably appoints RedSeal and any of its officers as its attorney in fact to undertake such acts in its name.  Upon payment for the applicable ProServe, RedSeal grants Licensee a non-exclusive, non-sublicensable right to use, reproduce, copy and display the deliverables for Licensee's internal business purposes and in conjunction with Licensee's use of the Software.

**5. LIMITATION OF LIABILITY.**  REDSEAL SHALL NOT BE LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL, PUNITIVE, OR CONSEQUENTIAL DAMAGES, OR ANY LOSS OF PROFITS, REVENUE, DATA, OR DATA USE ARISING IN CONNECTION WITH THE PRODUCTS. REDSEAL'S MAXIMUM LIABILITY FOR ANY DAMAGES ARISING OUT OF OR RELATED TO THE PRODUCTS, WHETHER IN CONTRACT, TORT, OR OTHERWISE, SHALL BE LIMITED TO THE FEES PAID REDSEAL FOR THE SPECIFIED PRODUCT.

**6.  GOVERNMENT PROVISIONS.**   Licensee acknowledges and agrees that the Products and related technology are subject to the export control laws and regulations of the United States, the European Union and other countries including U.S. embargo and sanctions regulations and prohibitions on export for certain end uses or to certain users.  Licensee agrees to comply with all such laws and regulations. The Software and Documentation are deemed to be "commercial computer software" and "commercial computer software documentation," respectively, pursuant to DFAR Section 227.7202 and FAR Section 12.212(b), as applicable.  Any use, modification, reproduction, release, performing, displaying, or disclosing of the Software or Documentation by the U.S. Government or other government entity shall be governed solely by these Terms (or the EULA included herein below).

**7.  INSPECTION/ACCEPTANCE.** The Contractor (immixTechnology, Inc.) can only, and shall only tender for acceptance those items that substantially conform to the software manufacturer's ("REDSEAL") 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.


## REDSEAL EULA


## 1.    DEFINITIONS

1.1     "*Affiliate*" of a party means a company or other legal entity which controls, is controlled by, or is under common control with such party, but any such company or other legal entity shall be deemed to be an Affiliate only as long as such control exists, and for the purposes of this definition, "control" shall mean direct or indirect ownership of more than fifty percent (50%) of the voting power, capital or other securities of a controlled or commonly controlled entity.

1.2     "*Authorized Users*" means Licensee's employees or contractors that are authorized by Licensee to use the Software from time to time pursuant to this Agreement.  Unless otherwise specified in an Order, the total Authorized Users at any time shall not exceed twenty five (25) users.  Additional blocks of Authorized Users may be licensed from RedSeal.

1.3     "*Confidential Information*" means all confidential and proprietary information of a party ("**Disclosing Party**") disclosed to the other party ("**Receiving Party**") whether orally or in writing, that is identified as confidential or that reasonably should be understood to be confidential given the nature of the information and the circumstances of disclosure, including but not limited to the terms and conditions of this Agreement (including pricing and other terms), the Software and the Documentation.

1.4     "*Documentation*" means RedSeal's standard published documentation accompanying the Products and any Updates thereto, in any form or media provided.

1.5     "*Hardware*" means the equipment specified in the Order, if any, onto which the Software is pre-installed.

1.6     "*Maintenance*" means the services provided pursuant to Section 3.1.

1.7     "*Open Source Software*" means those third party software components identified in the Documentation which are delivered with the Software or any Updates thereto and for which Licensee may have greater rights to use than those specified in this Agreement.  Such additional rights, if any, are specified in the applicable license agreement accompanying the Open Source Software or as provided in the Documentation ("Open Source License").

1.8     "*Order*" means an Order which includes a description of specific Products and Professional Services to be licensed or purchased, the number of Permitted Configurations and Authorized Users and the term of each license.  Orders which have been accepted by RedSeal shall become a part of this Agreement.  No preprinted terms and conditions on any Order which conflict with, are in addition to, or which modify this Agreement will be deemed part of this Agreement and such terms and conditions shall not be binding on RedSeal.

1.9     "*Permitted Configurations*" means the number of network device configurations on Licensee's network which are permitted to be analyzed using the Software as specified in the Order(s).  Each Permitted Configuration is tied to a specific network device and may not be changed to or used with another network device except as expressly permitted in Section 2.1. If the license is not a perpetual license, the Permitted Configuration is tied to a specific network device for a specific consulting project and customer and may not be changed to or used with another network device or for use for another customer or project.

1.10 "*Products*" means the Software, Hardware and Maintenance licensed or purchased by Licensee as specified in an Order.

1.11 "*Software*" means RedSeal's proprietary software program(s) described in the applicable Order, in object code form, and any Updates thereto.

1.12 "*Professional Services*" means the services provided pursuant to Section 3.2 and as specified in an Order.

1.13 "*Updates*" means maintenance releases and error corrections to the Software and/or Documentation which are generally provided by RedSeal to customers receiving Maintenance at no additional charge. Updates do not include releases, improvements, and enhancements for which RedSeal charges separately or extra as determined by RedSeal in its sole discretion.

## 2. LICENSES

2.1 *License Grant*. Subject to the terms and conditions of this Agreement, RedSeal hereby grants Licensee during the term specified for such license in the Order, a personal, non-exclusive, non-transferable (except as specified herein) license, without the right of sublicense (other than to Affiliates), to (i) install and have its Authorized Users use the Software for the Permitted Configurations and (ii) to reproduce and use the Documentation, for Licensee's internal business purposes only. The Software may be used on the Hardware or on hardware which complies with the specifications for hardware set forth in the Documentation. In the event that the network device on which a Permitted Configuration has been used is retired from production use on an ongoing basis, Licensee may transfer its use of the Software to a new network device for ongoing use if the license is a perpetual license. Otherwise, no other changes may be made to the network devices allocated for use of the Software unless otherwise agreed upon in writing by RedSeal. Licensee may have greater rights to the Open Source Software as described in the applicable Open Source License. To obtain a copy of the source code for the Open Source Software, please contact RedSeal. If more than the licensed number of Authorized Users require use of the Software, additional blocks of Authorized Users may be licensed from RedSeal.

2.2. *Restrictions*. Except for the limited license rights expressly granted in Section 2.1, RedSeal reserves all rights in and to the Software and Documentation. Except as expressly permitted herein, Licensee shall not (i) reproduce, modify, translate or create any derivative work of all or any portion of the Software or Documentation, (ii) sell, rent, lease, loan, provide, distribute or otherwise transfer all or any portion of the Software or Documentation to a third party, (iii) reverse engineer, reverse assemble or otherwise attempt to gain access to the source code of all or any portion of the Software (other than the Open Source Software) except to the extent expressly permitted by law, (iv) remove, alter, cover or obfuscate any copyright notices, trademark notices or other proprietary rights notices placed or embedded on or in the Products, (v) unbundle any components of the Software, (vi) exceed the number of Authorized Users having use of the Software, or (vii) cause or permit any third party to do any of the foregoing. In addition, Licensee shall not use the Products for the benefit of any third party, including but not limited to as an application service provider, for third-party training, or time-sharing or service bureau use. Notwithstanding the foregoing, Licensee may make a reasonable number of copies of the Software and Documentation for backup purposes provided that such copies shall include all copyright and other intellectual property rights notices that appear on the original. If Licensee is a European Union ("EU") resident, information necessary to achieve interoperability of the Software with other programs within the meaning of the EU Directive on the Legal Protection of Computer Programs is available from RedSeal upon written request.

2.3 *Audit*. RedSeal reserves the right, upon reasonable prior notice to Licensee and during Licensee's normal business hours, to audit Licensee's use of the Products to verify compliance with this Agreement. Any such audit shall be performed by RedSeal or its authorized representative, shall not take place more than once per calendar year and shall be done in a manner to minimize disruption to Licensee's business. In the event that any audit reveals noncompliance with this Agreement, including but not limited to use of the Products on other than the Permitted Configurations or in excess of the number of Authorized Users, Licensee and RedSeal shall negotiate to true-up the account.

## 3. MAINTENANCE AND PROFESSIONAL SERVICES

3.1.      _Maintenance_.  Maintenance may be purchased for one (1) year periods (each a "Maintenance Term").  Provided that Licensee has purchased Maintenance, RedSeal will provide the Maintenance subject to the Maintenance terms listed in the section below during the Maintenance Term.  Hardware maintenance is available for annual periods not to exceed three (3) years following date of the Hardware purchase as set forth in the Order.  RedSeal agrees to make Maintenance for Software available for at least three (3) years following the first delivery date of the particular Software product to Licensee at RedSeal's then current rates.

3.2.      _Professional Services_.  Licensee may order training, configuration and other Professional Services from RedSeal from time to time pursuant to the terms specified in the applicable Order.  Except as otherwise specified in the applicable Order, all materials created by RedSeal and all intellectual property rights created in connection with such Professional Services shall be the sole property of RedSeal (excluding any Licensee Confidential Information).  The fees for all Professional Services shall be specified in the applicable Order.  RedSeal shall comply with Licensee's reasonable security policies while on Licensee's site provided that such security policies are provided to RedSeal in advance.  Licensee acknowledges that in the normal course of business RedSeal should not have any unescorted access to Licensee's premises or access to any personally identifiable information.  In the event that such access is deemed necessary, the parties will negotiate additional security procedures applicable to such access in good faith and include them in the relevant Order.  Professional Services must be used within one (1) year following the date of purchase or remaining days will be forfeited.

## 4. LIMITED WARRANTIES AND DISCLAIMER

4.1.     _Performance_.  RedSeal warrants that (a) the Hardware and Software, as delivered, will perform substantially in accordance with the applicable Documentation for a period of ninety (90) days from the date of initial delivery to Licensee and that any Maintenance and Professional Services shall be performed in a professional manner.  RedSeal makes no warranty that the operation of the Products will be uninterrupted or error-free, that the Products will meet Licensee's requirements or that the Products will operate in combination with hardware or software not provided by RedSeal.  In the event that the Software does not conform to the above warranties, RedSeal's entire liability and Licensee's sole remedy shall be for RedSeal to: (i) use its reasonable efforts to correct any reproducible error confirmed by RedSeal; or (ii) at RedSeal's option, to accept return of the non-conforming Software and refund to Licensee the fees paid for such non-conforming Software.  In the event that Professional Services or Maintenance do not conform with the above warranties, RedSeal's entire liability and Licensee's sole remedy shall be for RedSeal to re-perform such Maintenance or Professional Services at no additional charge to Licensee.  In the event the Hardware does not conform to the above warranties, RedSeal's entire liability and Licensee's sole remedy shall be for RedSeal to provide repaired or replacement Hardware to Licensee pursuant to RedSeal's then current RMA process.  RedSeal's warranty shall not extend to errors that result from: (i) Licensee's failure to implement any Updates which are provided by RedSeal; (ii) use of the Products other than in accordance with the Documentation; (iii) any alterations of or additions to the Products performed by parties other than RedSeal; (iv) use of the Products in a manner for which they were not designed or outside of the scope of this Agreement; (v) accident, negligence, or misuse of  the Products by any party other than RedSeal; or (vi) combination of the Products with other products not supplied by RedSeal.

4.2     _Reserved._

4.3     _Harmful Code_.  For purposes of this warranty, "Harmful Code" shall include without limitation, any code containing viruses, Trojan horses, time bombs, worms or like destructive code or code that self-replicates or computer instructions, circuitry or other technological means designed to disrupt, damage or interfere with Licensee's authorized use of the Products or License's computer and communications facilities or equipment.  RedSeal represents and warrants that it: (i) incorporates commercially reasonable measures to screen for Harmful Code, (ii) has used commercially

reasonable efforts, including the installation of industry standard anti-virus software, to ensure that the Products contain no Harmful Code, and (iii) uses commercially reasonable efforts to prevent the introduction of such Harmful Code into the Products. Notwithstanding the foregoing, Licensee acknowledges that the Software contains Permitted Configuration limitations on the number of Permitted Configurations that may be analyzed by the Software, Authorized User limitations on the number of users that may login to the Software, and expiration dates for Maintenance that will limit Licensee's access to RedSeal's support websites and access to threat reference libraries that are limited by time constraints, none of which are considered a breach of the foregoing warranties.

4.4     *Open Source*. RedSeal represents and warrants that the Software does not contain any technology from the open source community ("Open Source Technology"), that requires as a condition of use, modification and/or distribution of such software, that other software incorporated into, derived from or distributed with such software be: (i) disclosed or distributed in source code form; (ii) licensed for the purpose of making derivative works; or (iii) redistributable at no charge.

4.5     *Disclaimer of Warranties*. EXCEPT AS EXPRESSLY SPECIFIED IN THIS SECTION 4, REDSEAL AND ITS LICENSORS PROVIDE THE PRODUCTS AND PROFESSIONAL SERVICES "AS IS" AND EXPRESSLY DISCLAIM ANY WARRANTIES, TERMS OR CONDITIONS, EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, WITH RESPECT TO THE PRODUCTS, OR ANY PART THEREOF OR ANY PROFESSIONAL SERVICES PROVIDED HEREUNDER, INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTIES, TERMS OR CONDITIONS OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NONINFRINGEMENT, OR THOSE ARISING FROM COURSE OF PERFORMANCE, DEALING, USAGE OR TRADE.

4.6     *Preproduction Releases*. With Licensee's consent, RedSeal may provide Licensee with a preproduction release of Products (often labeled "beta release") for evaluation purposes only. These releases are not suitable for production use. Such releases are provided on an "AS IS" basis and are not warranted.

4.7     *Licensee Warranties*. Licensee warrants that (i) it has the authority to enter into this Agreement and to comply with its obligations hereunder and (ii) it shall at all times fully comply with all laws and regulations applicable with respect to any use of the Products and Professional Services. Licensee remains responsible for (a) any data and the content Licensee makes available to RedSeal in connection with this Agreement, (b) the selection and implementation of procedures and controls regarding access, security, encryption, use, and transmission of data (including any personally-identifiable data), and (c) backup and recovery of any database and any stored data. Licensee will not send or provide RedSeal with access to any personally-identifiable information, whether in data or any other form, and will indemnify and hold RedSeal harmless from any claims regarding personally-identifiable data.


5.      **LIMITATION OF LIABILITY**

EXCEPT IN CONNECTION WITH A BREACH OF SECTION 7 ("CONFIDENTIALITY") BELOW, REDSEAL AND ITS SUPPLIERS SHALL NOT BE LIABLE TO LICENSEE OR ANY THIRD PARTY FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL, OR EXEMPLARY DAMAGES, INCLUDING BUT NOT LIMITED TO LOSS OF USE, LOSS OF REVENUE OR ANTICIPATED PROFITS, BUSINESS DISRUPTION, LOST BUSINESS, OR DAMAGE TO SYSTEMS, DATA, OR PROGRAMS ARISING OUT OF THIS AGREEMENT EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THE LIABILITY OF REDSEAL AND ITS SUPPLIERS HEREUNDER SHALL IN NO EVENT EXCEED THE FEES PAID BY LICENSEE FOR THE PRODUCTS.

6.      **PROPRIETARY RIGHTS**

The Software and Documentation are licensed, not sold.  All right, title and interest in and to the Software and Documentation and in any ideas, know-how, and programs which may be developed by RedSeal in the course of providing Maintenance or Professional Services, including any enhancements or modifications and all intellectual property rights embodied therein (other than Licensee's Confidential Information), will at all times remain the property of RedSeal or its licensors. Licensee hereby acknowledges that the Products are protected by the copyright laws and other laws pertaining to intellectual property and proprietary rights in the United States and other countries.  Licensee is aware that this Agreement confers only the right to use the Products while this Agreement and the specified licenses are in effect.  It does not convey any rights of ownership in or to the Software or Documentation.

## 7.    CONFIDENTIALITY

7.1.    _Treatment of Confidential Information_.  By virtue of this Agreement, either party may have access to the other party's Confidential Information.  Receiving Party will protect Disclosing Party's Confidential Information with the same degree of care as it uses to protect its own Confidential Information of like kind, but in no event with less than a reasonable degree of care. Receiving Party will not use or disclose Disclosing Party's Confidential Information except as permitted in this Section or for the purpose of performing its obligations under the Agreement.  Confidential Information may be disclosed only to employees or contractors of Receiving Party with a "need to know" and who are instructed and agree not to disclose the Confidential Information and not to use the Confidential Information for any purpose, except as set forth herein.  Receiving Party shall have appropriate written agreements with any such employees or contractors sufficient to permit compliance with the provisions of this Agreement.  Receiving Party may disclose the Disclosing Party's Confidential Information to the extent such disclosure is required by order or requirement of a court, administrative agency, or other governmental body, provided that the Receiving Party provides prompt written notice thereof to the Disclosing Party (to the extent legally permitted) and assistance to enable the Disclosing Party to seek a protective order or otherwise prevent or restrict such disclosure.  The confidentiality obligations of each party will survive expiration or termination of the Agreement for a period of three (3) years.

7.2.    _Exclusions_.  Confidential Information does not include information that (a) is or becomes publicly available through no act or omission of the Receiving Party; (b) the Disclosing Party discloses to third parties without restriction on disclosure; (c) is disclosed to the Receiving Party by a third party without restriction on disclosure and without breach of a nondisclosure obligation; (d) is independently developed by the Receiving Party without use of the Confidential Information of the Disclosing Party; or (e) is previously known to the Receiving Party without nondisclosure obligations as evidenced by written records.

7.3.    _Reserved_.

7.4    _Return of Confidential Information_.  On Disclosing Party's written request or upon expiration or termination of this Agreement for any reason, the Receiving Party will promptly return or destroy, at Disclosing Party's option, all Confidential Information of Disclosing Party, in any form or media and provide a written statement to Disclosing Party certifying the return or destruction of such Confidential Information.

## 8.    INTELLECTUAL PROPERTY RIGHT INDEMNITY

8.1    _Indemnity_.  To the extent permitted by federal law and the DOJ, RedSeal shall indemnify, hold harmless, and defend Licensee and its officers, directors and employees from and against all claims, demands, damages, liabilities, costs, and expenses (including reasonable attorneys' fees) to the extent arising from a claim brought by a third party that the Software and/or Documentation as delivered to Licensee and used as licensed hereunder infringes any (a) copyright, trademark or trade secret of a third party or (b) patent enforceable within the United States or Canada. Licensee shall provide RedSeal with (i) prompt written notice of any such claim or action, (ii) sole control and authority over the defense or settlement of such claim or action, and (iii) reasonable information and assistance to settle and/or defend any such claim or action at RedSeal's expense.  Should the Software or Documentation become, or in RedSeal's opinion be likely

to become, the subject of such a claim, or in the event RedSeal wishes to minimize its potential liability hereunder, RedSeal shall, at its option and expense: (i) procure for Licensee the right to continue to use the Software and/or Documentation as provided herein, (ii) replace the Software and/or Documentation with non-infringing, functionally equivalent products; or (iii) suitably modify the Software and/or Documentation so that it is not infringing. In the event that none of the foregoing can be achieved using reasonable efforts, then RedSeal, at its option, may terminate the licenses for the affected Software and/or Documentation and refund the fees paid for such Software and/or Documentation to Licensee, amortized over a three (3) year period on a straight line basis.

8.2    _Exclusions_. RedSeal shall have no obligation with respect to any claim, action or proceeding to the extent arising from (a) modification of the Products by anyone other than RedSeal or its authorized agents, (b) use of the Software in combination or conjunction with any equipment, data, devices or software not provided by RedSeal where in the absence of such combination the applicable Software would not have been infringing, (c) use of the Software in a manner other than for which it was intended or outside the scope of this Agreement, or (d) use of other than the then-most current release of the Software if such infringement or claim would have been prevented by the use of such current release.

THE PROVISIONS OF THIS SECTION 8 SET FORTH REDSEAL'S SOLE AND EXCLUSIVE OBLIGATIONS, AND LICENSEE'S SOLE AND EXCLUSIVE REMEDIES, WITH RESPECT TO INFRINGEMENT OR MISAPPROPRIATION OF INTELLECTUAL PROPERTY RIGHTS OF ANY KIND.

**9.      RESERVED**

**10.    RESERVED**.

**11.    RESERVED**.

**12     INSURANCE.**

12.1    _Coverage_. RedSeal shall at its own expense secure and maintain during the term of this Agreement, the following policies of insurance covering liability arising from this Agreement.
a. Commercial General Liability Insurance with $3,000,000 coverage.
b. Owned, Non-Owned and Hired Automobile Liability Insurance with at least $2,000,000 coverage .
c. Full statutory coverage for Workers' Compensation and Employers Liability with limits of $1,000,000 .
d. Errors and Omissions or Professional liability coverage with a limit of $5,000,000 coverage.

**13.    GENERAL**

13.1.    _Reserved_.
13.2.    _Reserved_.
13.3.    _Reserved_.
13.4.    _Reserved_.

13.5.    _Severability_. If any provision of this Agreement is held to be invalid by a court of competent jurisdiction, then the remaining provisions shall nevertheless remain in full force and effect. The parties further agree to negotiate in good faith a valid and enforceable provision that most nearly affects the parties' intent and to be bound by the mutually agreed substitute provision.

13.6.    _Amendment and Waiver_. Except as otherwise expressly provided herein, any provision of this Agreement may be amended or modified and the observance of any provision of this Agreement may be waived (either generally or any particular instance either retroactively or prospectively) only with the written consent of both parties. The failure of either

party to enforce at any time any of the provisions of this Agreement shall not be deemed to be a waiver of the right of such party thereafter to enforce any such provisions.

13.7.    *Force Majeure*.  Except for the obligation to make payments, neither party shall be responsible for any delay in its performance due to causes beyond its reasonable control.

13.8.    *Reserved.*
13.9.    *Reserved*.

13.10.    *Government Rights*.  The Software and Documentation are deemed to be "commercial computer software" and "commercial computer software documentation," respectively, pursuant to DFAR Section 227.7202 and FAR Section 12.212(b), as applicable.  Any use, modification, reproduction, release, performing, displaying, or disclosing of the Software or Documentation by the U.S. Government or other government entity shall be governed solely by the terms of this Agreement.

13.11    *Export Compliance*.  Licensee acknowledges and agrees that the Products and related technology subject to this Agreement are subject to the export control laws and regulations of the United States, the European Union and other countries including U.S. embargo and sanctions regulations and prohibitions on export for certain end uses or to certain users.  Licensee agrees to comply with all such laws and regulations.  Licensee shall ensure that the Products and related technology are not (1) sold, transferred or diverted to any U.S. or E.U. sanctioned or embargoed country (including, but not limited to, Cuba, Iran, Sudan and Syria), unless authorized by U.S. export license or regulation; (2) sold, transferred, or diverted to any person, firm, or other entity listed in the U.S. Department of Commerce Denied Persons List or Entity List, the U.S. Department of Treasury's Specially Designated Nationals List, the U.S. Department of State's Debarred Parties listing, or any E.U. or local country listing of sanctioned persons; (3) sold, transferred, or diverted to any nuclear weapons, nuclear power, nuclear research, chemical/biological weapons, or missile/rocket technology end-user or end-use; or (4) sold, transferred, or diverted in violation of any other applicable import/export laws, regulations, licenses, or government orders.  Licensee is responsible for obtaining any licenses to export, reexport, transfer or import the Products.  Licensee shall promptly advise RedSeal in writing of any known or suspected sale, transfer, or diversion in violation of the foregoing.  The obligations of this Section as to these laws shall survive any termination of this Agreement.

13.12    *Reserved*.
13.13.    *Reserved*.

## REDSEAL MAINTENANCE TERMS

In consideration of Licensee's purchase of Maintenance, RedSeal shall perform the following Maintenance during the applicable Maintenance Term.  The Maintenance Term is the term for which Licensee has ordered Maintenance as specified in the Order.

**1.    MAINTENANCE**.

1.1    *Error Correction*.  For purposes of these maintenance terms, "Error" means a nonconformity in the Software which causes the Software to not substantially conform to the applicable Documentation and "Error Correction" means additional or replacement code of the Software or a workaround solution provided by RedSeal to remedy an Error. RedSeal will use commercially reasonable efforts to correct any Errors in the Software in accordance with the priority assigned by RedSeal in its discretion.  RedSeal will provide services directly to the Licensee's Technical Contact(s).

1.2    *Licensee Assistance*.  Licensee will provide RedSeal with information in Licensee's possession as reasonably necessary to allow RedSeal to duplicate the Error.

1.3     *Licensee Technical Contact*.  Licensee will designate on the applicable Order a technical contact person ("Licensee Technical Contact") and an alternate who will receive all Error Corrections, Updates, correspondence and other communications concerning the Software.  The Licensee Technical Contact may be changed from time to time upon written notice to RedSeal.

1.4     *Supported Versions*.  RedSeal will provide Maintenance only for the current commercially available version of the Software.

1.5     *Telephone Support*.  RedSeal will provide telephone, web site ticket and email assistance to the Licensee Technical Contact.  Assistance will be available 7 days a week, 24 hours per day ("Support Hours") consistent with the Maintenance package purchased.  RedSeal will use commercially reasonable efforts to meet the initial response times set forth below from the time an inquiry is received by the appropriate RedSeal contacts during the Support Hours:

| SUPPORT PLAN | INITIAL RESPONSE TIME* |
|---|---|
| Basic Support | 4 hours |
| Premium Support | 1 hour |

1.6     *Limitations*.  RedSeal will have no obligation for the correction of Errors that result from:  (i) Licensee's failure to implement any Updates which are provided by RedSeal; (ii) use of the Products other than in accordance with the Documentation; (iii) any alterations of or additions to the Products performed by parties other than RedSeal; (iv) use of the Products in a manner for which they were not designed or outside the scope of this Agreement; (v) accident, negligence, or misuse of the Products by any party other than RedSeal; or (vi) combination of the Products with other products not supplied by RedSeal.  In addition, RedSeal is not obligated to correct Errors that cannot be remedied due to the hardware on which the Software is operated if such hardware does not meet the minimum systems requirements specified in the Documentation.  Licensee acknowledges that RedSeal is under no obligation to provide Maintenance with respect to any Hardware or any Software for which Licensee does not have a valid license.

2.     **UPDATE RELEASES**.  RedSeal will make available via electronic delivery to Licensee one copy of any Update and one set of the Documentation relating thereto, when such Update is ready for commercial release.  Unless otherwise agreed, such materials will be made available to the Licensee Technical Contact.

3.     **HARDWAR**E.  If Licensee has purchased separate Hardware Maintenance, Licensee may contact RedSeal to report a malfunction in the Hardware and to obtain a Return Material Authorization ("RMA"). Replacement units will be shipped in accordance with the Maintenance plan purchased by Licensee (two business days/five business days).  After receiving an approved RMA from RedSeal, Licensee must ship the defective Hardware, which must be clearly identified with its RMA and with any requested documentation, to the address provided by RedSeal.  Any Hardware damaged during return shipment due to improper packing will not be covered by Maintenance.  Defective Hardware must be returned to RedSeal within fifteen (15) days following issuance of the RMA or Licensee will be billed for the replacement Hardware at RedSeal's then current list price.  If the Hardware defect is found by RedSeal to be caused by one of the events specified in Section 1.6, then repairs and/or replacement will be billed to Licensee's account at RedSeal's then-current rates.