

For the avoidance of doubt, all references to “Disgover” in these Terms and Conditions should be read as “Contractor (immixTechnology, Inc.), acting by and through its supplier, Disgover.”

DISGOVER, INC. SOFTWARE LICENSE GOVERNMENT TERMS

Disgover, Inc. (hereinafter Disgover) and the ordering activity (hereinafter LICENSEE) agree as follows:

1. Grant, Schedules, Definitions

1.1 Subject to the provisions contained herein and in the SCHEDULE(s). DISGOVER grants LICENSEE the non-exclusive perpetual right for an AUTHORIZED END-USER to use in object code form only the copyrighted computer software products specified in the SCHEDULE(s) attached hereto or subsequently executed by the parties (hereinafter the SOFTWARE). Each SCHEDULE, which is made a part hereof with the same effect as if each and every provision thereof were set forth in full herein, also provides details of any other conditions related to the license granted hereunder and any other matters relevant to the SCHEDULE that are in addition to or different from those set forth in this Agreement. The terms and conditions in a given SCHEDULE shall take precedence over the terms and conditions in this Agreement.

1.2 For purposes of this Agreement, “AUTHORIZED END-USER” shall mean a User who is affiliated with LICENSEE either as (i) a full-time or part-time employee; or (ii) a full-time or part-time faculty member; or (iii) a third party contractor while working on LICENSEE’S business. The term user may vary based on type of licensee and implementation.

1.3 LICENSEE may opt to obtain access to the DISGOVER Software and provide access to its Users either as: (i) a cloud-based online service hosted at a DISGOVER provided data center (the “Service”); (ii) a software as a service solution which may be hosted at a DISGOVER or client-provided data center (“SAAS”); or as Software that may be installed at LICENSEE’S facility, in which case, DISGOVER would provide one (1) master copy of the SOFTWARE to LICENSEE within fifteen (15) days of the Effective Date of this Agreement.

1.4 In the event that LICENSEE purchases a License to install the Software at its facility, it may from time to time order additional copies of the SOFTWARE or other copyrighted software products from DISGOVER pursuant to this Agreement and the appropriate SCHEDULE, and if such orders are accepted in writing by DISGOVER, these products shall be considered to be included in the definition of SOFTWARE. LICENSEE may submit subsequent orders for other products DISGOVER makes available under this Agreement.

1.5 In the event that LICENSEE obtains a license to install the Software at its facility, DISGOVER will grant LICENSEE a non-transferable, non-exclusive license to make not more than two (2) copies of SOFTWARE for archival and backup purposes and to make the number of copies for use in accordance with the SCHEDULE. All copies of SOFTWARE shall remain subject to all terms of this Agreement, and shall include the copyright notice and any other proprietary notice set forth on the master media, and at a minimum shall include the following:

Copyright (DISGOVER name as appropriate) ____ (year on media label)
Licensed Material – Property of (DISGOVER company name as appropriate).
All rights reserved.

This notice must appear externally on any distribution medium and internally in machine-readable form. LICENSEE further agrees to complete the customization process described in the documentation before making any copies of the SOFTWARE, and that all copies made will specify the Site license name as shown in the SCHEDULE.

1.6 DISGOVER retains all right, title and ownership rights to the SOFTWARE, including all copies duplicated by LICENSEE under this Agreement.

2. Maintenance

2.1 For so long as DISGOVER generally maintains and supports the SOFTWARE for its customers, DISGOVER will provide LICENSEE with on-going maintenance of the SOFTWARE so long as LICENSEE pays DISGOVER the annual Service and/or Maintenance fee(s).

2.2 Maintenance, as used in this Section 2, includes enhancements, upgrades and improvements to the SOFTWARE, when and if developed, and reasonable efforts to correct errors and deficiencies in the SOFTWARE. Maintenance further includes reasonable technical assistance via the telephone or email to LICENSEE'S designated support representative. LICENSEE agrees that the determination of the extent of technical support required shall rest exclusively with DISGOVER and that DISGOVER is not required to correct every error or problem LICENSEE may have with the SOFTWARE. Technical support does not cover hardware, operating system, network or third party software. Any troubleshooting by DISGOVER in relation to such items will, with prior notice to LICENSEE, be considered Consulting Services and be charged for and treated in accordance with Section 6 below.

2.3 Maintenance will be provided only for DISGOVER'S latest release of the SOFTWARE but reasonable telephone or email support will be available for the prior release of the SOFTWARE. MAINTENANCE may, but need not be provided if LICENSEE has modified the SOFTWARE or if LICENSEE is in default of this Agreement.

2.4 LICENSEE shall have the sole and exclusive responsibility to provide technical support to any AUTHORIZED END-USER.

3. Inspection/Acceptance.

3.1 The Contractor (immixTechnology, Inc.) can only, and shall only tender for acceptance those items that substantially conform to the software manufacturer's ("DISGOVER") 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.

4. Restricted Use

4.1 In the event that LICENSEE licenses the Software as an installed solution to be installed at its facility, it shall use the SOFTWARE under this Agreement only on computers which are; 1) owned or leased by LICENSEE and 2) controlled by LICENSEE.

4.2 LICENSEE agrees to use the SOFTWARE only for LICENSEE'S own internal requirements and not for commercial timesharing, rental, or service bureau use.

4.3 LICENSEE agrees not to create, or attempt to create, or permit or help others to create the source code from the SOFTWARE furnished pursuant to this Agreement. LICENSEE agrees that it will not reverse engineer or decompile the SOFTWARE.

4.4 The SOFTWARE and documentation are provided with RESTRICTED RIGHTS. Use, duplication or disclosure by the U.S. Government is subject to restrictions as set forth in the Rights in Technical Data and Computer Software Regulations. Contractor/manufacturer is DISCOVER, Inc.

5. Term and Termination

5.1 Reserved.

5.2 Upon termination, LICENSEE shall also promptly destroy the SOFTWARE and make sure that it is no longer in use or useable and certify in writing to DISCOVER that such action has been taken. This paragraph shall survive the termination of this Agreement.

6. Consulting Services

6.1 From time to time during the term of this Agreement as mutually agreed to by the parties, DISCOVER may provide LICENSEE certain Consulting Services such as customizations, training and the like. For each Consulting Services project the parties will agree in advance a written Statement of Work and/or Services Authorization Form (hereafter "Statement of Work"), which will contain a description of the Consulting Services to be performed, a description of and specifications for the deliverables to be provided to LICENSEE as a result of such Consulting Services ("Deliverables"), an estimated timeline, fees payable by LICENSEE for such Consulting Services, and all additional terms that are applicable to the project. A Statement of Work must be signed by both parties prior to DISCOVER beginning the project and it may only be modified by a change order signed by both parties. Each Statement of Work (including any executed change order) shall be attached

hereto and deemed a part of this Agreement. In the event of any conflict between the terms of this Agreement and a Statement of Work, the terms of the Statement of Work, shall prevail.

6.2 For any Deliverables provided to LICENSEE hereunder which constitute a modification(s) or addition(s) to SOFTWARE, such Deliverables shall be deemed a part of the applicable SOFTWARE and shall be licensed to LICENSEE subject to the terms of this Agreement. Subject to the foregoing license, DISGOVER shall retain all right, title and interest (including, without limitation, all patents, present and future copyrights, and trade secrets) in and to all such Deliverables, and any ideas, know-how and programs which may be developed by DISGOVER or a subcontractor as a result of the provision of Consulting Services to LICENSEE hereunder. Notwithstanding anything to the contrary herein, DISGOVER and its personnel shall be free to use and employ its and their general skills, knowhow, and expertise, and to use, disclose, and employ any generalized ideas, concepts, know-how, methods, techniques, or skills gained or learned during the course of providing Consulting Services, so long as it or they acquire and apply such information without disclosure of any confidential or proprietary information of LICENSEE.

6.3 LICENSEE acknowledges and agrees that DISGOVER shall have no obligation to provide Maintenance for any Deliverables provided to LICENSEE hereunder, unless the parties agree otherwise in a Statement of Work.

6.4 Reserved.

6.5 DISGOVER'S obligation to deliver Consulting Services under a discrete Statement of Work will, unless otherwise indicated therein, terminate one (1) year after the effective date of that Statement of Work.

7. Warranties

7.1 DISGOVER warrants that it has the right to grant this license.

7.2 DISGOVER further warrants that:

- a. The media on which the SOFTWARE is furnished are warranted to be free of defects in workmanship and material under normal use for a period of sixty (60) days from the date of shipment by DISGOVER; and
- b. SOFTWARE will, for a period of sixty (60) days from the date of shipment by DISGOVER, operate substantially in accordance with DISGOVER'S documentation, provided that SOFTWARE is installed and operated in accordance with such documentation.

The sole responsibility of DISGOVER and LICENSEE'S remedy under these Section 7.2 warranties will be to receive a replacement of the media, or a full refund if DISGOVER is unable, within a commercially reasonable time, to deliver media free from defects in workmanship and materials and that operate in substantial conformance with DISGOVER documentation.

7.3 DISGOVER warrants that all Consulting Services Deliverables provided in accordance with Section 6 will materially conform to the specifications in the applicable Statement of Work(s). This warranty will remain in effect for a period of thirty (30) days from the date of final delivery of the Deliverables. DISGOVER will use all reasonable efforts to correct any defects found during this thirty (30) day period in a commercially reasonable time at no charge to LICENSEE. Any changes requested by LICENSEE after the thirty (30) day period will be billed on a time and materials basis.

7.4 LICENSEE and LICENSEE alone is responsible for determining which SOFTWARE meets its particular needs, for installing the SOFTWARE, and for the results obtained. THE SOFTWARE IS LICENSED “AS IS” WITHOUT WARRANTY AS TO ITS PERFORMANCE AND DISCOVER MAKES NO WARRANTY WITH RESPECT TO ITS CONSULTING SERVICES OR THE RESULTS OBTAINED THEREFROM. EXCEPT FOR THE WARRANTIES PROVIDED ABOVE. THERE ARE NO WARRANTIES EXPRESSED OR IMPLIED, INCLUDING BUT NOT LIMITED TO IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AND ALL SUCH WARRANTIES ARE EXPRESSLY DISCLAIMED. IN NO EVENT SHALL DISCOVER BE RESPONSIBLE FOR ANY INDIRECT OR CONSEQUENTIAL DAMAGES OR LOST PROFITS, EVEN IF DISCOVER HAD BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGE. DISCOVER’S LIABILITY ARISING OUT OF THIS AGREEMENT SHALL IN NO EVENT EXCEED THE AMOUNT OF THE INITIAL LICENSE FEE PAYMENT SET FORTH IN THE APPLICABLE SCHEDULE OR, WHERE APPROPRIATE, THE CONSULTING SERVICES PAYMENT MADE BY LICENSEE TO DISCOVER PURSUANT TO THIS AGREEMENT.

7.5 DISCOVER agrees to defend, or settle at its option, any action against LICENSEE arising from a claim that the SOFTWARE infringes any United States patent or property right provided that; (i) DISCOVER is promptly notified of such action and is given control over the defense or settlement thereof; (ii) the SOFTWARE has not been modified by LICENSEE; and (iii) the charge of infringement has not arisen from the use of the SOFTWARE in combination with other hardware or software components where it is the combination which is charged to infringe. DISCOVER shall, at its option and expense, secure for LICENSEE the right to continue using the SOFTWARE, or replace or modify the SOFTWARE so that it becomes noninfringing, or grant LICENSEE a credit minus a reasonable depreciation for the use of the SOFTWARE but in no event shall such credit be greater than the License Fee paid hereunder.

8. General Provisions

8.1 LICENSEE agrees that this Agreement may not be assigned and that SOFTWARE may not be transferred or sublicensed without the prior written consent of DISCOVER in its sole discretion.

8.2 LICENSEE grants DISCOVER the right to conduct an audit to verify that LICENSEE is using the SOFTWARE pursuant to the provisions of this Agreement. LICENSEE agrees to allow DISCOVER to inspect LICENSEE’S premises physically and to cooperate fully in the conducting of such an audit, including but not limited to providing DISCOVER with periodic reports supplied by the SOFTWARE.

8.3 This Agreement together with the SCHEDULE(s) supersedes all prior agreements, proposals, representations and communications between the parties relating to the subject matter herein. In the case of conflict between this Agreement and purchase orders issued for the SOFTWARE, the terms of this Agreement and SCHEDULE(s) shall prevail.

8.4 DISCOVER shall not be liable for delays or nonperformance of this Agreement occasioned by strikes, fires, accidents or other causes beyond the control of DISCOVER.

8.5 Reserved.

8.6 LICENSEE and DISCOVER agree that this Agreement and the SOFTWARE, including all information related to the SOFTWARE that is disclosed to LICENSEE as a result of this Agreement, (a) constitutes the proprietary and confidential information of DISCOVER; (b) shall be used by LICENSEE only as required to exercise the license granted under this Agreement; and (c) shall be held in confidence and shall not be made available in any form to any person or entity other than LICENSEE, without the express written consent of DISCOVER. DISCOVER agrees that LICENSEE shall be permitted to disclose relevant aspects of the SOFTWARE to its employees and its agents, but solely to the extent that such disclosure is directly related to LICENSEE'S use of the SOFTWARE, and provided that LICENSEE shall take all reasonable steps to ensure that SOFTWARE is not disclosed or duplicated in contravention of this Agreement. The provisions of this Section 8.6 shall survive any termination of this Agreement.

8.7 If a part of this Agreement is held unenforceable or invalid or prohibited under law, it shall be struck from this Agreement and shall not affect the enforceability of the other parts of this Agreement.

8.8 Reserved.