

INFOR LICENSE, WARRANTY AND SUPPORT TERMS

1. Definitions.

- (a) “**Affiliate**” means any entity, directly or indirectly, controlling, controlled by, or under common control with, Infor.
- (b) “**Component System**” means any one of the computer software programs which is identified in the applicable Order Form as a Component System. “**Component Systems**” refers, collectively, to every Component System listed in the applicable Order Form between the parties.
- (c) “**Confidential Information**” means non-public information of an Affiliate or a party to this Agreement that is identified as or would be reasonably understood to be confidential and/or proprietary. Confidential Information of Infor includes, without limitation, the Documentation, the Component Systems, all software provided with the Component Systems and all algorithms, methods, techniques, code (Source Code and Object Code) and processes revealed or utilized therein. Confidential Information does not include information that: (i) is or becomes known to the public without fault or breach of the Recipient; (ii) the Discloser regularly discloses to third parties without restriction on disclosure; (iii) the Recipient obtains from a third party without restriction on disclosure and without breach of a non-disclosure obligation; or (iv) is independently developed by the Recipient without access to Confidential Information.
- (d) “**Delivery Address**” means the Ordering Activity shipping address set forth in the applicable Order Form as the Delivery Address.
- (e) “**Delivery Date**” means, for each Component System, the earliest of (a) the date that Infor places the Component System with a shipping agent, F.O.B. Shipping Point, for shipment to the Delivery Address or such other address Ordering Activity specifies, (b) the date Infor provides Ordering Activity electronic access to the Component System by, for example, providing Ordering Activity a URL, where the Component System is available for immediate electronic download along with access codes permitting download and access to the Component System, or (c) the date that Ordering Activity actually receives the Component System.
- (f) “**Discloser**” means the party providing Confidential Information hereunder.
- (g) “**Documentation**” means the then-current Infor-provided operating and technical documentation relating to the features, functions and operation of a Component System.
- (h) “**Documented Defect**” means a material deviation between the then-current, general release version of the Component System and its Documentation, for which Documented Defect Ordering Activity has given Infor enough information for Infor to replicate the deviation on a computer configuration which is both substantially similar to the Equipment and is under Infor’s control.
- (i) “**Effective Date**” means the date identified on the signature page of this Agreement as the Effective Date.
- (j) “**Equipment**” mean the hardware and/or systems software configuration (e.g., the computer, computer platform, operating systems and/or data base management system) specified in the Order Form, or, in the absence of any such specification in the Order Form, the hardware and/or systems software configuration on which Infor generally supports use of the Component System.
- (k) “**Intellectual Property Rights**” means any and all rights in patents, patent applications, copyrights, copyright registrations, trade secrets, trademarks and service marks (including, where applicable, all derivative works of the foregoing).
- (l) “**Ordering Activity Employees**” means: (i) Ordering Activity’s employees with a need to know; and (ii) third party consultants engaged by Ordering Activity who have a need to know, who have been pre-approved in writing by Infor, and who, prior to obtaining access to the Component Systems, have executed an Infor-approved non-disclosure agreement and paid any applicable fees.
- (m) “**Marketing Associate**” means a third party entity specified on an Order Form which has an agreement with Infor authorizing such third party to market the Component Systems and related services, maintenance and support to Ordering Activity.
- (n) “**Object Code**” means computer programs assembled, compiled, or converted to magnetic or electronic binary form, which are readable and useable by computer equipment.
- (o) “**Order Form**” means each order form or similar ordering document (including all Software Supplements) between the parties incorporating the terms of this Agreement and/or the Support Agreement that sets forth the Component Systems, associated fees and User Restrictions, among other terms.
- (p) “**Order Form Date**” means the date identified on the applicable Order Form as the Order Form Date.
- (q) “**Recipient**” means the party receiving Confidential Information hereunder.
- (r) “**Software Supplement**” means, with respect to a Component System, the addendum attached to the applicable Order Form that contains additional terms, conditions, limitations and/or other information pertaining to that Component System. If any

terms of a Software Supplement conflicts with any other terms of this Agreement or the applicable Order Form, the terms of the Software Supplement will control.

- (r) **“Source Code”** means computer programs written in higher-level programming languages and readable by humans.
- (t) **“Support Agreement”** means the Software Support Agreement entered into between the parties as of the Effective Date.
- (s) **“Third Party Licensor”** means a third party whose software products (**“Third Party Products”**) have been made available to Infor for distribution and licensing under the terms of its agreement with Infor (a **“Third Party Agreement”**).
- (t) **“User Restriction”** means any Component System user restriction identified in an Order Form (for example, and without limitation, number of named or concurrent users).

2. Right to Grant License and Ownership. Infor has the right to grant Ordering Activity this license to use the Component Systems. Infor either owns all right, title and interest to, or has the right to license, the Component Systems.

3. License. Subject to the terms and conditions of this Agreement and the applicable Order Form (including, without limitation, with respect to termination), Infor through Contractor grants Ordering Activity a perpetual (unless otherwise specified on the Order Form), non-exclusive, non-transferable license (without the right to sublease or sublicense) to use the Component Systems (including any updates, enhancements or modifications to such Component Systems that Infor provides under its Support offerings) on the Equipment for Ordering Activity’s own, internal computing operations. The computer readable media containing the Component Systems may also contain software programs for which Ordering Activity is not granted a license for use. Ordering Activity may not make any use of any such software programs for which Ordering Activity is not expressly obtaining a license for use under this Agreement. Any rights not expressly granted in this Agreement are expressly reserved.

(a) **Documentation.** Except as otherwise provided in the applicable Software Supplement, Ordering Activity may make a reasonable number of copies of the Documentation for each Component System for its internal use in accordance with the terms of this Agreement.

(b) **Additional Restrictions on Use of the Component Systems.** Ordering Activity’s use of the Component Systems is subject to any User Restrictions specified in the applicable Order Form. Except to the extent contrary to applicable law, Ordering Activity is prohibited from causing or permitting the reverse engineering, disassembly or de-compilation of the Component Systems. Ordering Activity is prohibited from using the Component Systems to provide service bureau data processing services or to otherwise provide data processing services to third parties. Ordering Activity will not allow the Component Systems to be used by, or disclose all or any part of the Component Systems to, any person except Ordering Activity Employees. Ordering Activity acknowledges and agrees that U.S. export control laws and other applicable export and import laws govern its use of the Component Systems and Ordering Activity will neither export or re-export, directly or indirectly, the Component Systems, nor any direct product thereof in violation of such laws, or use the Component Systems for any purpose prohibited by such laws. Ordering Activity acknowledges that a special security program or code (“Key”) may be required to operate the Component System. Any such Key may prevent the Component System from operating (i) on any configuration other than the Equipment or (ii) for more than the maximum number of users specified in an Order Form.

(c) **Intellectual Property Rights Notices.** Ordering Activity is prohibited from removing or altering any of the Intellectual Property Rights notice(s) embedded in or that Infor otherwise provides with the Component Systems. Ordering Activity must reproduce the unaltered Intellectual Property Rights notice(s) in any full or partial copies that Ordering Activity makes of the Component Systems.

(d) **Notice.** To use any of the Component Systems, Ordering Activity may also need to obtain, install and maintain Infor-supported versions of certain software products, database software products and certain software/hardware peripherals. By this notice, Infor is advising Ordering Activity that Ordering Activity should request information about such necessary software products, database software products and software/hardware peripherals.

(e) **Source Code.** Unless otherwise explicitly provided in an Order Form, Ordering Activity has no license to access or use, or any other rights in or to, the Source Code for a particular Component System. If the Order Form grants Ordering Activity a license to use Source Code for a particular Component System, then Ordering Activity has the limited right to use such Source Code to modify such Component System for its own, internal computing operations. Subject to the foregoing, Ordering Activity will not disclose all or any part of the Source Code for a Component System to any person except Ordering Activity Employees who, before obtaining access to the Source Code, have been informed by Ordering Activity in writing of the non-disclosure obligations imposed on both Ordering Activity and such Ordering Activity Employees under this Agreement. Infor will own all right, title and interest to all derivative works of the Component System (**“Derivative Works”**), even if solely created by Ordering Activity pursuant to a license to use Source Code hereunder. Ordering Activity hereby assigns to Infor absolutely all of its rights, title and interest in and to any Derivative Works created by the Ordering Activity together with all Intellectual Property Rights therein. Subject to the terms and conditions of this Agreement, Infor grants Ordering Activity (if licensed to use Source Code hereunder) a perpetual (unless otherwise specified in the Order Form), non-exclusive, non-transferable license (without the right to sublease or sublicense) to use and copy for use the Derivative Works created by Ordering Activity or created by Infor at Ordering Activity’s request and payment, for Ordering Activity’s own, internal computing operations. Upon Infor’s request, Ordering Activity will provide Infor with a copy (including all documentation related thereto) of all Derivative Works created by Ordering Activity and will execute and deliver to Infor any documents reasonably necessary to vest in Infor all right, title and interest therein.



4. **Delivery.** Except as otherwise provided in the applicable Order Form, the Delivery Date shall not be later than thirty (30) days after the Order Form Date.

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

6. **Limited Warranty, Disclaimer of Warranty and Remedies.**

(a) **Limited Software Warranty by Infor and Remedy For Breach.** Infor warrants that each Component System licensed to Ordering Activity will operate without a Documented Defect for a period of ninety (90) days from the Delivery Date. Infor warrants that the media on which the Component System is delivered will be free of material defects in material and workmanship for a period of ninety (90) days from the Delivery Date. Infor's sole obligation with respect to a breach of either of the foregoing warranties shall be to repair or replace the Component System or media giving rise to the breach of warranty. If Infor is unable to repair or replace such Component System or media within a reasonable period of time, then, subject to the limitations set forth in Section 15 of this Agreement, Ordering Activity may pursue its remedies at law to recover direct damages resulting from the breach of the applicable warranty. The remedies in this Section 6(a) are exclusive and in lieu of all other remedies, and represent Infor's sole obligations, for a breach of the foregoing warranties. Ordering Activity must provide notice to Infor of any warranty claim within the warranty period.

(b) **Disclaimer of Warranty.** The limited warranties in this Section 6 are made to Ordering Activity exclusively and are in lieu of all other warranties. **INFOR MAKES NO OTHER WARRANTIES WHATSOEVER, EXPRESS OR IMPLIED, WITH REGARD TO THE COMPONENT SYSTEMS, IN WHOLE OR IN PART, OR ANY OTHER MATTER UNDER THIS AGREEMENT. INFOR EXPLICITLY DISCLAIMS ALL WARRANTIES OF NON-INFRINGEMENT, MERCHANTABILITY AND OF FITNESS FOR A PARTICULAR PURPOSE. INFOR EXPRESSLY DOES NOT WARRANT THAT THE COMPONENT SYSTEMS, IN WHOLE OR IN PART, WILL BE ERROR FREE, WILL OPERATE WITHOUT INTERRUPTION, WILL BE COMPATIBLE WITH ANY HARDWARE OR SYSTEMS SOFTWARE CONFIGURATION OTHER THAN THE EQUIPMENT, OR WILL MEET ORDERING ACTIVITY'S REQUIREMENTS.**

(c) **Abrogation of Limited Warranty.** Infor will have no obligation under this Section 6 to the extent that any alleged breach of warranty is caused by: (i) any modification of the Component System; (ii) Ordering Activity's failure to promptly implement changes that Infor provides to correct or improve the Component System; or (iii) the use or combination of the Component System with any computer, computer platform, operating system and/or data base management system other than the Equipment. To the extent that an alleged breach of warranty concerns a Third Party Product that is subject to a more limited warranty under a Third Party Agreement than specified in Section 6(a) above, Infor's obligations hereunder will be further limited accordingly. The limited warranty in Section 6(a) shall not apply to (x) updates, enhancements or modifications provided under the terms of Support Agreement or (y) previously licensed Component Systems for which Ordering Activity is changing User Restrictions (e.g., without limitation, adding users) under an Order Form.

(d) **FAILURE OF ESSENTIAL PURPOSE.** THE PARTIES HAVE AGREED THAT THE LIMITATIONS SPECIFIED IN SECTIONS 6 AND 15 WILL SURVIVE AND APPLY EVEN IF ANY LIMITED REMEDY SPECIFIED IN THIS AGREEMENT IS FOUND TO HAVE FAILED OF ITS ESSENTIAL PURPOSE, AND REGARDLESS OF WHETHER ORDERING ACTIVITY HAS ACCEPTED ANY COMPONENT SYSTEMS OR SERVICE UNDER THIS AGREEMENT.

(e) **HIGH RISK ACTIVITIES.** THE COMPONENT SYSTEMS ARE NOT FAULT-TOLERANT AND ARE NOT DESIGNED, MANUFACTURED OR INTENDED FOR USE AS ON-LINE CONTROL EQUIPMENT IN HAZARDOUS ENVIRONMENTS REQUIRING FAIL-SAFE PERFORMANCE, SUCH AS IN THE OPERATION OF NUCLEAR FACILITIES, AIRCRAFT NAVIGATION OR AIRCRAFT COMMUNICATION SYSTEMS, MASS TRANSIT, AIR TRAFFIC CONTROL, DIRECT LIFE SUPPORT MACHINES, OR WEAPONS SYSTEMS, IN WHICH THE FAILURE OF THE COMPONENT SYSTEMS COULD LEAD DIRECTLY TO DEATH, PERSONAL INJURY, OR SEVERE PHYSICAL OR ENVIRONMENTAL DAMAGE ("HIGH RISK ACTIVITIES"). ACCORDINGLY, INFOR DISCLAIMS ANY EXPRESS OR IMPLIED WARRANTY OF FITNESS FOR HIGH RISK ACTIVITIES. ORDERING ACTIVITY AGREES THAT INFOR SHALL NOT BE LIABLE FOR ANY CLAIMS OR DAMAGES ARISING FROM OR RELATED TO THE USE OF THE COMPONENT SYSTEMS IN SUCH APPLICATIONS.

7. **Reserved.**

8. **Reserved.**

9. **Term and Termination.**

(a) Reserved.

(b) **Effect of Termination.** Upon termination of this Agreement, Ordering Activity will discontinue further use of the Component Systems, and will promptly return to Contractor through Infor or (at Infor's request) destroy all copies of the Component Systems, and will certify to Infor in writing, over the signature of a duly authorized representative of Ordering Activity, that it has done so.



Termination of this Agreement will not relieve either party from making payments which may be owing to the other party under the terms of this Agreement.

10. Reserved.

11. Reserved.

12. Reserved.

13. Reserved.

14. Reserved.

15. LIMITATIONS OF LIABILITY.

(a) **LIMITED LIABILITY OF INFOR.** THE TOTAL LIABILITY OF INFOR, ITS AFFILIATES AND THIRD PARTY LICENSORS IN CONNECTION WITH THE COMPONENT SYSTEMS, THIS LICENSE OR ANY OTHER MATTER RELATING TO THIS AGREEMENT (WHATEVER THE BASIS FOR THE CAUSE OF ACTION) SHALL NOT EXCEED THE FEE THAT LICENSEE ACTUALLY PAID TO INFOR (OR, IF NO DISCRETE FEE IS IDENTIFIED IN THE APPLICABLE ORDER FORM, THE FEE REASONABLY ASCRIBED BY INFOR) FOR THE COMPONENT SYSTEM GIVING RISE TO THE LIABILITY.

(b) **EXCLUSION OF DAMAGES.** IN NO EVENT SHALL INFOR, ITS AFFILIATES OR THIRD PARTY LICENSORS BE LIABLE FOR ANY SPECIAL, INCIDENTAL, INDIRECT OR CONSEQUENTIAL DAMAGES OR DAMAGES FOR LOST PROFITS, WHETHER BASED ON BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), PRODUCT LIABILITY, OR OTHERWISE, AND WHETHER OR NOT INFOR HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

a) **Exclusion of Consequential Damages.** EXCEPT FOR A) A CLAIM OF IP INFRINGEMENT HEREUNDER, OR B) AS PROVIDED IN (c)(iii) BELOW, IN NO EVENT SHALL CONTRACTOR BE LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES, INCLUDING WITHOUT LIMITATION DAMAGES FOR LOSS OF PROFITS, DATA OR USE, INCURRED BY EITHER PARTY OR ANY THIRD PARTY, WHETHER IN AN ACTION IN CONTRACT OR TORT, EVEN IF THE OTHER PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES **provided however, that in the event Ordering Activity makes unauthorized copies of the Software, Contractor shall be entitled to recover the full amount of any license fees that would relate to such copies.**

b) **Limitation of Direct Damages.** Except for a) a claim of IP Infringement hereunder, or b) as provided in (c)(iii) below, the aggregate and cumulative liability of Contractor and licensors for damages hereunder shall in no event exceed the amount of fees paid by Ordering Activity under the order giving rise to such liability, and if such damages relate to particular Software or Maintenance Services, such liability shall be limited to fees paid for the relevant Software or Maintenance Services giving rise to the liability.

c) **Non-Applicability to Statutory or Regulatory Rights.** Nothing herein shall operate to impair or prejudice the U.S. Government's right (a) to recover for fraud or crimes arising out of or relating to this contract under any Federal fraud statute, including without limitation the False Claims Act (31 USC §§3729 through 3733), or (b) to express remedies provided under any FAR, GSAR or Schedule 70 solicitation clauses incorporated into this contract, including without limitation the GSAR 552.215-72 Price Adjustment – Failure to Provide Accurate Information (August 1997) or GSAR 552.238-75 Price Reductions (May 2004) Alternate I (May 2003).

16. Reserved

17. **Audit Rights.** To the extent not in conflict with applicable Ordering Activity regulations, Infor (may audit the records and systems of Licensee to ensure compliance with the terms of this Agreement and each applicable Order Form(s). Infor will notify Licensee in writing at least ten (10) business days prior to any such audit. Any such audit will be conducted during Licensee's regular business hours at Licensee's location and will not interfere unreasonably with Licensee's business activities. Infor may audit Licensee no more than once in any six (6) month period. If an audit reveals that Licensee is using a Component System beyond the scope of the license granted herein (such as for example, for a number of users greater than those that Licensee licensed pursuant to this Agreement), then, the parties will work to true-up the account.

18. Reserved.

19. Reserved.

EXHIBIT A – INFOR SUPPORT TERMS

1. Additional Definitions.

(a) **"Contract Period"** means, as applicable, the Initial Term or the Renewal Period for which Licensee has paid the applicable fee for Support.

(b) **"Initial Term"** means, with respect to the Component Systems specified in an Order Form, the twelve-month period

beginning on the Order Form Date, unless otherwise specified in the Order Form.

- (c) **“Renewal Period”** means, as applicable, each successive twelve-month period following the Initial Term.
- (d) **“License Agreement”** means the Software License Agreement entered into between the parties as of the Effective Date.

32. **Services.**

(a) **Types of Services.** Subject to Ordering Activity paying the applicable fee for Support hereunder for a particular Component System, Contractor through Infor shall (a) provide Ordering Activity with access (via the Internet, telephone or other means established by Infor) to Infor’s support helpline, (b) provide, when and if generally available, updates, enhancements or modifications to the then-current, general release version of such Component System that are not separately priced or licensed as new products; and (c) use reasonable efforts to correct or circumvent Documented Defects (the foregoing referred to collectively as “Support”).

(b) **Third Party Products.** With respect to Third Party Products, Infor’s provision of Support will be limited to providing Ordering Activity with the support that the Third Party Licensor provides to Infor for such Third Party Products.

(c) **Restrictions.** Infor shall have no obligation to provide Support if Ordering Activity fails to pay the applicable fees hereunder or is otherwise in breach of this Support Agreement. Contractor or Infor shall have no obligation to provide Support for any Component System on any hardware or systems software configuration other than the Equipment, or if the Component System has been modified other than in accordance with this Support Agreement. In addition, Ordering Activity agrees to provide Infor with access to such facilities and equipment as are reasonably necessary for Infor to perform its obligations hereunder, including remote access to the Equipment. Support provided hereunder does not include related services, if any, required by Ordering Activity, including, without limitation, installation or implementation of the Component System or any updates, enhancements or modifications thereto.

4. **Reserved.**

5. **Reserved.**

63. Disclaimer of Warranties. Ordering Activity acknowledges and agrees that **INFOR MAKES NO WARRANTIES WHATSOEVER, EXPRESSED OR IMPLIED, WITH REGARD TO ANY SUPPORT AND/OR ANY OTHER MATTER RELATING TO THIS SUPPORT AGREEMENT, AND THAT INFOR EXPLICITLY DISCLAIMS ALL WARRANTIES OF NON-INFRINGEMENT, MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. FURTHER, INFOR EXPRESSLY DOES NOT WARRANT THAT A COMPONENT SYSTEM OR ANY SUPPORT WILL BE USABLE BY ORDERING ACTIVITY IF THE COMPONENT SYSTEM HAS BEEN MODIFIED, OR WILL BE ERROR FREE, WILL OPERATE WITHOUT INTERRUPTION OR WILL BE COMPATIBLE WITH ANY HARDWARE OR SYSTEMS SOFTWARE CONFIGURATION OTHER THAN THE EQUIPMENT.**

7. **Reserved.**

8. **LIMITATIONS OF LIABILITY.**

(a) **LIMITED LIABILITY OF INFOR.** THE TOTAL LIABILITY OF INFOR, ITS AFFILIATES AND THIRD PARTY LICENSORS IN CONNECTION WITH SUPPORT OR ANY OTHER MATTER RELATING TO THIS SUPPORT AGREEMENT (WHATEVER THE BASIS FOR THE CAUSE OF ACTION) SHALL NOT EXCEED THE FEE THAT LICENSEE ACTUALLY PAID TO INFOR FOR SUPPORT FOR THE TWELVE-MONTH CONTRACT PERIOD IN WHICH SUCH LIABILITY FIRST AROSE.

(b) **EXCLUSION OF DAMAGES.** IN NO EVENT SHALL INFOR, ITS AFFILIATES OR THIRD PARTIES BE LIABLE FOR ANY SPECIAL, INCIDENTAL, INDIRECT OR CONSEQUENTIAL DAMAGES OR DAMAGES FOR LOST PROFITS, WHETHER BASED ON BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), PRODUCT LIABILITY, OR OTHERWISE, AND REGARDLESS OF WHETHER INFOR HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR WHETHER ANY REMEDY SET FORTH HEREIN FAILS OF ITS ESSENTIAL PURPOSE.

9. **Reserved.**