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

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disclosed to and remedied by Licensee. Software AG shall bear the cost of the audit, except where a material discrepancy with a value of more than $5,000 is discovered.

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LICENSE RESTRICTIONS/NOTES FOR PROPOSAL SOFTWARE:

The Proposal Software will be licensed to Customer only for use at the Installation Address specified below or a replacement Installation Address, subject to the applicable restrictions set forth in the Agreement and any amendment(s) thereto as well as the restrictions indicated in the table above and, this section (together, the “License Restrictions”) regarding the designated Operating System and License Metrics.

**Processor Cores.** With regard to the Proposal Software licensed herein on a per Processor Core basis, a Processor means a central processing unit or other integrated circuit that executes the instructions provided by the Software through a specified number of Cores and a Core means a collection of one or more processor threads and a set of shared execution resources. (For clarity, a single-core CPU is a Processor with one Core, a dual-core CPU is a Processor with two Cores, etc.)

**Processor Core Performance Types** are used to differentiate processor technologies with regard to their performance. The Proposal Software may be used only on licensed processor cores in their designated Processor Core Performance Type, which designations are subject to change. The current Processor Core Performance Type table is posted at: [https://empower.softwareag.com/sl24sec/SecuredServices/Announcement/Processor/table.htm](https://empower.softwareag.com/sl24sec/SecuredServices/Announcement/Processor/table.htm)

**Each** when used with wM Insight Agents stands for Managed Component. A Managed Component is a running instance of an application platform, standalone application, or tool that is instrumented by Insight.

**Operating System.** The Proposal Software set forth above is restricted to use on the designated operating system(s) specified above; provided, however, that if the specified operating system(s) is not identified in the Documentation for a specific product (or product component) as a supported operating system then the product (or product component) in question is restricted to use on the operating system(s) specified its Documentation. Provided Customer is not in default under the Agreement and maintains Extended Support on the Proposal Software, Customer may change the designated operating system, at no additional charge, upon advance written notice to Software AG.

**Partitioning, Hard Cap.** Customer may use the Proposal Software licensed herein on a specified machine and use partitioning to isolate and restrict use of the Proposal Software to two named and dedicated processor cores on such machine. At no time may use of the Proposal Software exceed the scope of the licenses granted (i.e., two processor cores). If Customer does not have the appropriate partitioning technology, then Customer must license the Proposal Software to the total capacity of the machine. If the partitioning tool enables Customer to report peak usage of the Proposal Software, Customer agrees that it will provide Software AG with quarterly reports documenting daily peak usage that specifically highlights Processor Core utilization for all Processor Cores to which the Proposal Software is assigned.
Disaster Recovery, Extended Duration Cold Standby:

“Extended Duration Cold Standby” means that the Proposal Software that may be temporarily installed on a secondary, dormant, backup system for up to 3 days per calendar quarter for testing of Licensee’s disaster recovery procedures. In addition, Licensee may use the Proposal Software on a secondary disaster recovery system for up to thirty (30) days if, due to an actual disaster, Licensee’s primary system fails to operate. Within fifteen (15) days after an actual disaster, Licensee hereby agrees to notify Software AG in writing setting forth in reasonable detail the nature of the actual disaster which caused the Proposal Software to be run in a disaster recovery mode and to provide Software AG with a reasonable estimate as to when the Licensee anticipates the Proposal Software will be reinstated on the primary system. Software AG may require Licensee to pay upgrade fees, in the event that Licensee tests its disaster recovery procedures in excess of 3 days per calendar quarter or if the Proposal Software is used on a secondary backup system in excess of thirty (30) days due to an actual disaster.

Disaster Recovery, Permanent Backup Installation:

“Permanent Backup Installation” means that the Proposal Software may be permanently installed on a dormant backup machine. Permanent Backup Installation may only be licensed in connection with Extended Duration Cold Standby and the dormant machine may only be used as set forth in the Extended Duration Cold Standby section above.

Software AG is licensing only the Proposal Software specified in this Proposal. The availability of any future versions, features, or functionality of the Proposal Software shall not be relied upon by Customer in connection with its decision to act on this Proposal.

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The Software and Documentation shall be distributed electronically over the Internet through a password-protected web page, and neither the Software nor any related media, label or packaging shall be subject to inspection prior to delivery of the Software. Following execution of this Agreement, Software AG will deliver a software activation password key and software download instructions to Licensee via an e-mail message sent to Licensee’s designated contact person. Licensee agrees that acceptance of the Software will occur upon delivery of the software activation key and download instructions, and that such acceptance shall not be revoked. If Licensee requests shipment by CD, then Software AG will deliver the CD F.O.B. point of shipment and acceptance of the Software will occur upon shipment of the CD. Licensee is solely responsible for installation of the Software on computers as permitted under this Agreement.

TERM
The licenses granted hereunder shall endure for the term (the “Term”) set forth on the Product Schedule, or quotation, subject to Licensee's payment of the fees set forth herein and Licensee's strict compliance with the terms of this Agreement.

INSPECTION/ACCEPTANCE
The Contractor (immixTechnology, Inc.) can only, and shall only tender for acceptance those items that substantially conform to the software manufacturer’s (“SOFTWARE AG”) 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.
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(iv) is received from a third party lawfully in possession thereof whose disclosure does not violate any confidentiality obligation.

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Benefit. Subject to provisions hereof restricting assignment, this Agreement shall be binding upon and shall inure to the benefit of the parties and their respective successors and assigns.

Force Majeure. If the performance of this Agreement or any obligation under this Agreement, except for the making of payments, is prevented, restricted or interfered with by reason of fire, flood, earthquake, explosion or other Act of God or casualty or accident, or strikes or labor disputes affecting third-party vendors, inability to procure or obtain delivery of parts, supplies or power, war or other violence, any law, order, proclamation, regulation, ordinance, demand or requirements of any governmental agency, or any act or condition whatsoever beyond the reasonable control of the affected party, the party so affected will take all reasonable steps to avoid or remove such cause of nonperformance and will resume performance hereunder with dispatch whenever such causes are removed.

Export. Except when otherwise required by law or regulation, Licensee shall not export, re-export or transfer, whether directly or indirectly, the Software and material delivered pursuant to this Agreement, or any system containing the Software outside the United States of America without first complying with the applicable export laws of the United States of America and the import laws of the country in which the Software is to be used.
Severability. If any provision of this Agreement is determined by a court of competent jurisdiction to be or becomes unenforceable or illegal, such provision shall be adjusted to the minimum extent necessary to cure such unenforceability or illegality and the remainder of this Agreement shall remain in effect in accordance with its terms as modified by such adjustment.

Software AG Product Support and Maintenance Service

Ordering Activity is a licensee of certain Software AG products under a license agreement that the ordering activity has executed with a Software AG subsidiary (hereinafter “Licensor”). The product support and maintenance services that the Licensor has agreed to deliver as provided in the license agreement are defined herein, and this document forms an attachment to the license agreement.

1. Definitions

a. Business Day. “Business Day” shall mean the days from Monday to Friday excluding the public holidays in [Germany].

b. Business Hour. “Business Hour” shall mean the hours from 8.00am to 5.00pm on a Business Day.

c. Documentation. “Documentation” shall mean the user manuals that the Licensor makes available to licensees of the Software.

d. Error. “Error” shall mean any verifiable and reproducible failure of the Software to substantially conform to the specifications for such Software. Notwithstanding the foregoing, “Error” shall not include any such failure that is caused by: (i) the use or operation of the Software with any other software or code or in an environment other than that intended or recommended in the Documentation, (ii) modifications to the Software not made or approved by Software AG Global Support in writing, or (iii) any bug, defect, or error in third-party Software used with the Software.

e. Error Correction. “Error Correction” shall mean either a modification or addition to or deletion from the Software having the effect that such Software substantially conforms to the then current specifications, or a procedure or routine that, when exercised in the regular operation of the Software, eliminates any material adverse effect on the Ordering Activity caused by an Error. An Error Correction may be a correction, workaround, fix, or service pack.

f. Software AG Global Support. “Software AG Global Support” shall mean Software AG’s Global Support Organization providing the support and maintenance services for the respective Licensor.

g. License Agreement. “License Agreement” shall mean the software license agreement under which the Software is licensed to the Ordering Activity.

h. Software. “Software” shall mean the Software AG software programs licensed to the Ordering Activity under the License Agreement.

i. Update. “Update” shall mean additional or replacement code or Documentation for the Software that is provided to remedy an Error.
j. Software AG’s Support Portal. “Software AG’s Support Portal” shall mean Software AG’s web-based customer support system, designed with proactive services, information and Error Corrections. Software AG’s Support Portal can currently be accessed on “http://servline24.softwareag.com” (this URL may change from time to time).

1. **Service Description**

**Standard Product Support Service**

Software AG’s Standard Product Support Service comprises the following services:

- Twenty-four (24) hour access to Software AG’s Support Portal including access for authorized technical contacts to Software AG’s request reporting system for browsing and submitting trouble tickets, online access to new product information, documentation, knowledge center, and information on available Software fixes.
- 9x5 (9 hours a day; 5 days a week) telephone support according to this agreement during Business Hours. The respective telephone number is available in Software AG’s Support Portal. If not provided in local language, telephone support is provided in English language.
- Unlimited number of authorized technical contacts of the customer entitled to access Software AG’s Support Portal.
- Information on new features, events, and customer application articles.

**Extended 24x7 Support Service for Crisis Cases**

Subject to a separate agreement, the Licensor also offers to provide extended 24x7 support service for crisis cases. If the parties agreed about the 24x7 support service for crisis cases, telephone support according to this agreement is available 24x7 (24 hours a day; 7 days a week) for crisis requests. The 24x7 telephone support is provided in English language only.

1. **Processing Customer Requests**

Customer requests will be received by Software AG Global Support and will be documented in Software AG’s Support Portal for further processing. The customer will be given a reference processing number for future reference.

**Service Expectations**

<table>
<thead>
<tr>
<th>The following support severities are used for classifying the customer’s issues. These classifications ensure consistent treatment of issues handled by Software AG Global Support. Software AG Global Support will determine the appropriate severity level according to the following table: <strong>Severity Level</strong></th>
<th>Crisis</th>
<th>Critical</th>
<th>Standard</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Definition</td>
<td>Customer’s problem has a severe business impact. Customer is unable to use the Software, resulting in a major impact on customer’s operations. Work cannot reasonably continue.</td>
<td>Customer’s problem has a significant business impact; however, operations can continue in a restricted fashion. The Software is usable but severely limited. There is no acceptable workaround available. Customer is experiencing a significant loss of service.</td>
<td>Customer’s problem has some business impact. The Software is usable and causes only minor inconvenience. It may be a minor Error, documentation Error, or incorrect operation of the application, which does not significantly impede the operation of a system.</td>
</tr>
<tr>
<td>-----------------------------------------------------------------------------------------------------</td>
<td>-------------------------------------------------------------------------------------------------------------------------------------------------</td>
<td>-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------</td>
<td>-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------</td>
</tr>
<tr>
<td>Reaction time</td>
<td>1 Business Hour: call-back or electronic reply</td>
<td>4 Business Hours: call-back or electronic reply</td>
<td>1 Business Day: call-back or electronic reply</td>
</tr>
<tr>
<td>Reporting (timeframe)</td>
<td>daily reporting (unless otherwise agreed with Software AG Global Support on a case-by-case basis)</td>
<td>as agreed with Software AG Global Support on a case-by-case basis</td>
<td>as agreed with Software AG Global Support on a case-by-case basis</td>
</tr>
</tbody>
</table>