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

Terms and Conditions for Bivio Networks, Inc. Products and Services

1.   Applicability. The following terms and conditions of sale apply to all quotations or purchase orders for any equipment, parts, or other products ("Products") sold by Bivio Networks, Inc. ("Bivio") to Buyer. Bivio's acceptance of any Buyer purchase order is expressly conditioned on Buyer's assent to these terms and conditions.

2.   Reserved.

3.   Inspection/Acceptance. The Contractor can only, and shall only tender for acceptance those items that substantially conform to the manufacture's (Bivio Networks, Inc.) published specifications. Therefore, items delivered shall be considered accepted upon delivery. The Ordering Activity reserves the right to inspect or test any supplies or services that have been delivered. The Ordering Activity 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 Ordering Activity may seek an equitable price reduction or adequate consideration for acceptance of nonconforming supplies or services. The Ordering Activity 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.   Ownership. The products are offered for sale and sold by Bivio subject in every case to the condition that such sale does not convey any ownership or license (except as set forth under Section 6 (License of Software)), expressly or by implication, estoppel or otherwise, of any of Bivio's intellectual property rights, including any patents, trade secrets or copyrights. Bivio expressly retains for itself all proprietary rights in and to all discoveries, inventions, patent rights, trade secrets, works of authorship, and all other intellectual property rights in the Products, including the Licensed Software, or arising out of work done in connection with the applicable ordering document.

5.   Confidential Information. "Confidential Information" means any proprietary information, technical data, trade secrets or know-how of Bivio, including data and information for the proper installation, testing, operation, and maintenance of Bivio's Products, that is designated as confidential or proprietary or which reasonably appears to be confidential or proprietary. Buyer shall not disclose the Confidential Information to anyone other than those employees and consultants of the Buyer who need such information in connection with their use of the Products. Buyer shall take all reasonable measures to avoid and prevent the disclosure, dissemination, or unauthorized use of the Confidential Information, including at a minimum those measures Buyer takes to protect its own confidential information. Bivio recognizes that Federal agencies are subject to the Freedom of Information Act, 5 U.S.C. 552, which requires that certain information be released, despite being characterized as "confidential" by the vendor.

6.   License of Software. The Products incorporate or use some proprietary and/or custom software (the "Licensed Software"). The Ordering Activity acknowledges that the Licensed Software is not sold to Ordering Activity and is licensed pursuant to the terms and conditions herein.

7.   Warranties. Bivio warrants the Products against defective material and workmanship under normal use and service for a period of one (1) year commencing from the delivery date of such Product (the "Warranty Period"). Bivio does not warrant that the use of the Licensed Software will be error-free and uninterrupted. Bivio will, at its own expense and as its sole obligation, and as Ordering Activity's remedy, for any breach of this warranty reported to Bivio in writing during the Warranty Period, at its option, either replace the Product with a new Product or repair the Product. Any such repair or replacement by Bivio will not extend

the original warranty period. The warranty set forth above does not apply to damage resulting from misuse, abuse or neglect, and becomes null and void upon any modification, movement or improper service performed on any Products by or at the direction of Ordering Activity or any third party. This warranty is applicable to the original Ordering Activity only and may not be asserted by Ordering Activity's users of Ordering Activity's products.

THE FOREGOING LIMITED WARRANTY IS IN LIEU OF ALL OTHER WARRANTIES, WHETHER EXPRESS, IMPLIED OR STATUTORY, INCLUDING ANY IMPLIED WARRANTIES OF TITLE, NON-INFRINGEMENT, MERCHANTABILITY, OR FITNESS FOR A PARTICULAR PURPOSE.

8.   Indemnification.

a. Indemnification of Buyer. Subject to the limitations set forth in Section 9 (Limitations of Liability), Bivio will, at its own expense, defend all third party suits or proceedings instituted against Buyer and pay any damages finally awarded against Buyer in such suits or proceedings, to the extent that the same are based on and attributable to claims that any Product or any part thereof furnished, in its unmodified form, constitutes an infringement of any patent of the United States issued as of the date of Buyer's purchase order.

b. Conditions. Bivio's obligations in subsection (a) above will apply only if (i) Buyer has provided written notice to Bivio of the institution of the claim, suit or proceedings within ten (10) calendar days after the date on which Buyer first receives any written or oral notice that such claims may be asserted against Buyer; (ii) Bivio has control of the defense and settlement of any such claims, with counsel of Bivio's choice, to the extent permitted by applicable law; and (iii) Buyer gives Bivio all needed information, assistance, and authority to enable Bivio to defend or settle any such claims. Bivio will have the right to refuse to settle or comprise any such claims or, in its sole judgment and at Bivio's expense, to defend Buyer against any lawsuit. Bivio will not be bound by any judgments or settlement agreements to which it has not been a party or to which it has not consented in writing. In the event of any modification or alteration to a Product by Buyer or any third party, Bivio will have no indemnification obligations to Buyer under subsection (a) or otherwise. If any Product is subject to a claim of infringement or its use is enjoined, Bivio may, at its option, either secure for Buyer the right to continue using the Product, modify the Product to be non-infringing, or replace it with a noninfringing Product, or, if neither of these alternatives is commercially reasonable, terminate Buyer's rights to use the Product and refund the purchase price paid to Bivio therefore, as depreciated on a straight-line basis over 5 years. Nothing contained herein shall be construed in derogation of the U.S. Department of Justice's right to defend any claim or action brought against the U.S., pursuant to its jurisdictional statute 28 U.S.C. §516.

c. Limitation. Bivio will not be responsible for infringement claims based on combination patents or process patents covering the use of Products in combination with other equipment or materials not furnished by Bivio. THIS SECTION 12 STATES THE ENTIRE OBLIGATION OF BIVIO AND THE REMEDY OF BUYER WITH RESPECT TO ANY ALLEGED PATENT, COPYRIGHT OR OTHER INTELLECTUAL PROPERTY INFRINGEMENT BY ANY PRODUCT.

9.   Reserved.

10.   Miscellaneous.

a.   Force Majeure. Excusable delays shall be governed by FAR 52.212-4(f).

b.   Export. Regardless of any disclosure made by Buyer to Bivio of an ultimate destination of Products, Ordering Activity warrants that Ordering Activity will not export or reexport, directly or indirectly, any Product without first obtaining any and all necessary licenses and approvals from the U.S. Department of Commerce or any other agency or department of the United States Government, or any foreign government, as required.

c.   Assignment. Buyer may not assign, delegate, or transfer, by operation of law or otherwise, any of its rights or obligations under these provisions (including with respect to Licensed Software) to any

third party without the prior written approval of Bivio; provided that Buyer shall have the right to assign these provisions to any successor to substantially all of its business or assets, whether by merger, sale of assets, sale of stock, reorganization or otherwise, provided that such assignee assumes all obligations hereunder. Subject to the foregoing, these provisions will bind and inure to the benefit of the parties and their respective successors and permitted assigns.

d.   **Waiver.** No failure of Bivio to insist upon compliance by Buyer with any of these terms and conditions, or to promptly exercise any right accruing from any default by Buyer, will impair Bivio's rights or remedies with respect to that breach or default or any subsequent breach or default. All waivers must be in writing and signed by the party to be charged. Waiver of any breach or failure to enforce any term herein will not be deemed a waiver of any other breach or right to enforce that may thereafter occur.

e.   **Severability.** If a court or arbitrator finds any provisions herein to be invalid, illegal, or unenforceable, such provision will be changed and interpreted to accomplish the objectives of the provision to the greatest extent possible under applicable law and the unaffected provisions of this Agreement will remain in full force and effect.

f.   **Notices.** All notices, consents, or reports permitted or required under these provisions must be in writing and must be delivered by personal delivery, private courier, or certified or registered mail, return receipt requested, and will be effective upon receipt. Notices to Bivio must be sent to Bivio Networks, Inc., 4457 Willow Road, Suite 240, Pleasanton, CA 94588, Attn: Chief Financial Officer, or such other address as Bivio may specify in writing.

BIVIO LICENSE TERMS

1.The Parties. The parties to this Agreement are Bivio Networks, Inc. and its subsidiaries (collectively "Bivio"), and the person or organization that originally purchased from Bivio or an authorized Bivio reseller the applicable license(s) for use of the Software ("Ordering Activity") (collectively, the "Parties").

2. The Software. In this Agreement, "Software" means the program modules and features of the Bivio or Bivio-supplied software, and updates and releases of such software, for which Ordering Activity has paid the applicable license or support fees to Bivio or an authorized Bivio reseller.

3. License Grant. Subject to payment of the applicable fees and the limitations and restrictions set forth herein, Bivio grants to Ordering Activity a non-exclusive and non-transferable license, without right to sublicense, to use the Software, in executable form only, subject to the following use restrictions:

   a. Ordering Activity shall use the Software solely as embedded in, and for execution on, Bivio equipment originally purchased by Ordering Activity from Bivio or an authorized Bivio reseller, unless the applicable Bivio documentation expressly permits installation on non-Bivio equipment.

   b. Ordering Activity shall use the Software on a single hardware chassis having a single processing unit, or as many chassis or processing units for which Ordering Activity has paid the applicable license fees.

   c. Other Bivio documentation for the Software (such as product purchase documents, documents accompanying the product, the Software user manual(s), Bivio's website for the Software, or messages displayed by the Software) may specify limits to Ordering Activity's use of the Software. Such limits may restrict use to a maximum number of seats, concurrent users, sessions, subscribers, nodes, or transactions, or require the purchase of separate licenses to use particular features, functionalities, or capabilities, or provide temporal or geographical limits. Ordering Activity's use of the Software shall be subject to all such limitations and purchase of all applicable licenses.

The foregoing license is not transferable or assignable by Ordering Activity. No license is granted herein to any user who did not originally purchase the applicable license(s) for the Software from Bivio or an authorized Bivio reseller.

4. Use Prohibitions. Notwithstanding the foregoing, the license provided herein does not permit the Ordering Activity to, and Ordering Activity agrees not to and shall not: (a) modify, unbundle, reverse engineer, or create derivative works based on the Software; (b) make unauthorized copies of the Software (except as necessary for backup purposes); (c) rent, transfer, or grant any rights in and to any copy of the Software, in any form, to any third party; (d) remove any proprietary notices, labels, or marks on or in any copy of the Software; (e) distribute any copy of the Software to any third party, including as may be embedded in Bivio equipment sold in the secondhand market; (f) use any 'locked' or key-restricted feature, function, or capability without first purchasing the applicable license(s) and obtaining a valid key from Bivio, even if such feature, function, or capability is enabled without a key; (g) distribute any key for the Software provided by Bivio to any third party; (h) use the Software in any manner that extends or is broader than the uses purchased by Ordering Activity from Bivio or an authorized Bivio reseller; (i) use the Software on non-Bivio equipment where the Bivio documentation does not expressly permit installation on non-Bivio equipment; (j) use the Software (or make it available for use) on Bivio equipment that the Ordering Activity did not originally purchase from Bivio or an authorized Bivio reseller; or (k) use the Software in any manner other than as expressly provided herein.

5. No Reverse Engineering. ORDERING ACTIVITY SHALL NOT REVERSE ENGINEER, DECOMPILE, DISASSEMBLE OR OTHERWISE ATTEMPT TO DISCOVER THE SOURCE CODE OF THE SOFTWARE OR SCHEMATICS OF THE HARDWARE.

6. Audit. Customer shall maintain accurate records as necessary to verify compliance with this Agreement. Upon request by Bivio, Customer shall furnish such records to Bivio and certify its compliance with these terms. Any audit shall be in accordance with applicable Government security requirements.

7. Confidentiality. The Parties agree that aspects of the Software and associated documentation are the confidential information of Bivio. As such, Customer shall exercise all reasonable commercial efforts to maintain the Software and associated documentation in confidence, which at a minimum includes restricting access to

the Software to Customer employees and contractors having a need to use the Software. Bivio recognizes that Federal agencies are subject to the Freedom of Information Act, 5 U.S.C. 552, which requires that certain information be released, despite being characterized as "confidential" by the vendor.

8. Ownership. The Software is protected by United States and international copyright laws and other intellectual property laws and international treaties and trade regulations. Bivio and Bivio's licensors, respectively, retain ownership of all right, title, and interest (including copyright) in and to the Software, associated documentation, and all copies of the Software. Nothing in this Agreement constitutes a transfer or conveyance of any ownership interest in the Software or associated documentation, or a sale of the Software, associated documentation, or copies of the Software.

9. Warranty, Disclaimer of Warranty. If the Software is distributed on physical media (such as CD), Bivio warrants for 90 days from delivery that the media on which the Software is delivered will be free of defects in material and workmanship under normal use. This limited warranty extends only to the Ordering Activity. Except as may be expressly provided in separate documentation from Bivio, no other warranties apply to the Software, and the Software is otherwise provided AS IS. Ordering Activity assumes all risks arising from use of the Software. Ordering Activity's sole remedy and Bivio's entire liability under this limited warranty is that Bivio, at its option, will repair or replace the media containing the Software, or provide a refund, provided that Ordering Activity makes a proper warranty claim to Bivio, in writing, within the warranty period. Nothing in this Agreement shall give rise to any obligation to support the Software. Any such support shall be governed by a separate, written agreement.

EXCEPT AS EXPRESSLY PROVIDED HEREIN OR IN SEPARATE DOCUMENTATION PROVIDED FROM BIVIO AND TO THE EXTENT PERMITTED BY LAW, BIVIO DISCLAIMS ANY AND ALL WARRANTIES IN AND TO THE SOFTWARE (WHETHER EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE), INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR NONINFRINGEMENT. IN NO EVENT DOES BIVIO WARRANT THAT THE SOFTWARE, OR ANY EQUIPMENT OR NETWORK RUNNING THE SOFTWARE, WILL OPERATE WITHOUT ERROR OR INTERRUPTION, OR WILL BE FREE OF VULNERABILITY TO INTRUSION OR ATTACK.

10. Reserved.

11. Reserved.

12. Export. Ordering Activity agrees to comply with all applicable export laws and restrictions and regulations of any United States and any applicable foreign agency or authority, and not to export or re-export the Software or any direct product thereof in violation of any such restrictions, laws or regulations, or without all necessary approvals. Ordering Activity shall be liable for any such violations. The version of the Software supplied to Ordering Activity may contain encryption or other capabilities restricting Ordering Activity's ability to export the Software without an export license.

13. Commercial Computer Software. The Software is "commercial computer software" and is provided with restricted rights. Use, duplication, or disclosure by the United States government is subject to restrictions set forth in this Agreement and as provided in DFARS 227.7201 through 227.7202-4, FAR 12.212, FAR 27.405(b)(2), FAR 52.227-14(ALT III) as applicable.

14. Miscellaneous. If any portion of this Agreement is held invalid, the Parties agree that such invalidity shall not affect the validity of the remainder of this Agreement. Ordering Activity acknowledge the Software may contain third party software which requires notices and/or additional terms and conditions.

Warranty Services

Bivio Networks Standard Hardware Warranty Statement

Bivio warrants the Products against defective material and workmanship under normal use and service for a period of one (1) year commencing from the delivery date of such Product (the "Warranty Period"). Bivio does not warrant that the use of the Licensed Software will be error-free and uninterrupted. Bivio will, at its own expense and as its sole obligation, and as Ordering Activity's exclusive remedy, for any breach of this warranty reported to Bivio in writing during the Warranty Period, at its option, either replace the Product with a new Product or repair the Product. Any such repair or replacement by Bivio will not extend the original warranty period. The warranty set forth above does not apply to damage resulting from misuse, abuse or neglect, and becomes null and void upon any modification, movement or improper service performed on any Products by or at the direction of Ordering Activity or any third party. This warranty is applicable to the original Ordering Activity only and may not be asserted by Ordering Activity's users of Ordering Activity's products.

THE FOREGOING LIMITED WARRANTY IS IN LIEU OF ALL OTHER WARRANTIES, WHETHER EXPRESS, IMPLIED OR STATUTORY, INCLUDING ANY IMPLIED WARRANTIES OF TITLE, NONINFRINGEMENT, MERCHANTABILITY, OR FITNESS FOR A PARTICULAR PURPOSE.

Bivio Standard Warranty Service Program

The Base Warranty Service Program provides basic support services including remote troubleshooting and problem diagnosis for the purposes of diagnosing potential hardware and/or software warranty issues during standard business hours (8:00 AM to 5:00 PM Pacific Time, Monday to Friday, except holidays) through the standard warranty period. A web-based Ordering Activity Support System is used for requesting service, and tickets are handled on a best available basis with not more than two business days before receiving an initial response toward ticket resolution.

	Duration	Hardware	Software
Standard Warranty	1 Year Hardware 90 Day Software	Return to Factory	Software updates, bug fixes

Hardware Repair Service – One (1) year from date of purchase:
In the event of a hardware system failure within the first one-year period of ownership, the unit will be either repaired, or, at Bivio Networks' discretion, replaced with a new or reconditioned unit. This service requires a Ordering Activity Support evaluation of the failed system by Bivio Networks personnel, and the issuance of a Ordering Activity Support RMA number. The Ordering Activity must ship the failed unit, pre-paid, to Bivio Networks. The RMA number must be clearly indicated on the box and shipping papers. A repaired or replacement unit will be shipped at Bivio Networks' expense within 21 business days after receipt of the failed unit.

Software Updates – Ninety (90) days from date of purchase:
Software Updates for system software and Software Products released by Bivio Networks within 90 days of the purchase date of a Bivio Networks product are available by contacting Ordering Activity Support. Software Updates include applicable minor releases (e.g. Release X.0 to X.1) to the Bivio Networks family of products. Ordering Activity must have access to the Internet for Web Browser or FTP downloads as directed by Ordering Activity Support.

Software Updates released after the **initial 90-day** warranty period are available as a product upgrade for the fee as set by current applicable GSA list price.

Access to Ordering Activity Support following the warranty period is not guaranteed (unless a Bivio NetworksSupport Contract is purchased for all systems owned by the Ordering Activity). In addition, Ordering Activities contacting Ordering Activity Support after warranty expiration may be subject to Non-Warranty Support Service fees as indicated in the next section.

Non-Warranty Support Service

Bivio Networks will provide, at its sole discretion, support service following the warranty period for products that are not otherwise covered by an annual support contract. Support for these products may be offered at the standard out-of-warranty service rate for any trouble tickets initiated by phone or web.

All requests for non-warranty support services will require a new Purchase Order issued by Ordering Activity .

Bivio Networks Maintenance Support Services

Bivio Maintenance Support Services programs are annual maintenance agreements that are selected and purchased with the initial equipment purchase. Bivio offers three annual support programs:

- **Ruby** – Basic "entry-level" support & maintenance program
- **Sapphire** – Professional support & maintenance program
- **Diamond** – Comprehensive "mission-critical" support & maintenance program

Bivio Ordering Activity Support Services programs offer a comprehensive set of product support and maintenance services as outlined in the table and described below.

Bivio Networks Maintenance Support Services Program Summary

Service Description		Standard Warranty		Customer Support Services Programs		
		SW (90 days)	HW (1 year)	Ruby	Sapphire	Diamond
Technical Support	Live Support Hours	8-5 PST, M-F	8-5 PST, M-F	8-5 PST M-F	8-5 PST M-F	24 x 7 x 365
	Contact Method	Web	Web	Web	Web, Phone	Web, Phone
	Web Ticket Response Time	2 bus. days	2 bus. days	1 bus. day	8 hours	4 hours
	Phone Ticket Response Time	N/A	N/A	N/A	4 hours	1 hour
	Remote Troubleshooting & Diagnosis	Per Warranty	Per Warranty	Included	Included	Included
	Web Knowledgebase Access	N/A	N/A	Included	Included	Included
	Post Installation Technical Knowledge Query, Questions and Assistance	N/A	N/A	N/A	Included	Included
	Performance Optimization & Tuning	N/A	N/A	N/A	N/A	Included
	Designated Technical Account Manager	N/A	N/A	N/A	N/A	Included
	Quarterly Support Reviews	N/A	N/A	N/A	N/A	Included
Hardware	RMA Repair Time (Return to Factory)	N/A	21 days	15 days	15 days	7 days
	Advanced Replacement Policy	N/A	DOA: Next Bus. Day	DOA: Next Bus. Day	DOA: Next Bus. Day	DOA: Next Bus. Day
	Advanced Hardware Replacement[†]	N/A	DOA only	DOA only	DOA only	DOA + Opt.Svcs.
	ECN Notification (HW)	N/A	N/A	N/A	Included	Included
	Failure Reporting & Root Cause Analysis	N/A	N/A	N/A	N/A	Included
Software	Software Bug Fixes/Patches	Included	N/A	Included	Included	Included
	Software Feature Upgrades	N/A	N/A	N/A	Included	Included
	ECN Notification (SW)	N/A	N/A	N/A	Included	Included

† Advanced Replacement (optional service for Diamond Program Only): To minimize production system downtime, an optional Advanced Replacement service may be added to the Diamond Maintenance Support Program for all covered systems. The Advanced Replacement service allows Ordering Activities to request that a replacement unit be shipped prior to the return of the failed unit. This service requires a phone support evaluation of the failed system by Technical Support personnel, and the issuance of a Technical Support RMA number. Replacement parts will be shipped at Bivio Networks' expense within 24 hours after Technical Support confirmation of the failed unit. A replacement unit may be a new or reconditioned unit of equivalent or better value as determined by Bivio Networks.

The Maintenance Support Program may be renewed annually, and is purchased for each Bivio application platform and associated spare components that are shipped as Ordering Activity production (revenue) systems.

The Ordering Activity is required to purchase at a minimum the Ruby-level support at the time they acquire any Bivio Networks equipment. This is for the Ordering Activity's protection to ensure that the system is maintained with the appropriate level of software and security patching for the operating system. Ordering Activities may upgrade, for a fee, the level of support at any time during the support period. Contact Bivio for additional information.