

**AMENDMENT TO MIXEDINK LLC TERMS OF USE
APPLICABLE TO GOVERNMENTAL USERS/MEMBERS**

This Amendment, agreed to by both parties, applies to the following governmental agency/department ("Agency", "User", or "You"): **U.S. GENERAL SERVICES ADMINISTRATION.**

You, as a United States Government entity, are required, when entering into agreements with other parties, to follow applicable federal laws and regulations, including those related to ethics, limitations on indemnification, fiscal law constraints, advertising and endorsements, freedom of information, governing law and dispute resolution forum. MixedInk LLC ("MixedInk" or "We") and You (together, the "Parties") agree that modifications to the MixedInk standard Terms of Use, available at www.mixedink.com/terms.php (the "TOU") are appropriate to accommodate Your legal status, Your public (in contrast to private) mission, and other special circumstances. Accordingly, the TOU are hereby modified by this Amendment as they pertain to Agency's use of the MixedInk web site and services.

- A. **Government entity:** "You" within the TOU shall mean the Agency itself and shall not apply to, or bind (i) the individual(s) who utilize the MixedInk site or services on Agency's behalf, or (ii) any individual users who happen to be employed by, or otherwise associated with, the Agency.
- B. **Public purpose:** Any requirement(s) set forth within the TOU that use of the MixedInk site and services be for private, personal and/or non-commercial purposes is hereby waived.
- C. **Agency content serving the public:** MixedInk hereby approves Agency's distribution or other publication via the Services of materials which may contain or constitute promotions, advertisements or solicitations for goods or services, so long as the material relates to the Agency's mission.
- D. **Advertisements:** MixedInk hereby agrees not to serve or display any commercial advertisements or solicitations on any pages within the MixedInk site displaying content created by or under the control of the Agency. This exclusion shall not extend to house ads, which MixedInk may serve on such pages in a non-intrusive manner. The Agency will notify MixedInk when creating a new project or topic within the MixedInk site that requires the removal of automatically generated advertising. MixedInk will remove the advertisements within one business day following notification.
- E. **Indemnification:** All indemnification and damages provisions of the TOU are hereby waived. Liability for any breach of this Agreement shall be determined under the Federal Tort Claims Act, or other governing authority.
- F. **Governing law:** The Jurisdiction/choice of law provision of the TOU is hereby deleted. The TOU and this Amendment shall be governed, interpreted and enforced in accordance with the laws of the United State of America. To the extent permitted by federal law, the laws of the State of Delaware will apply in the absence of federal law.

- G. **Changes to Terms of TOU:** The "Changes to Terms" provision of the TOU is hereby amended to grant You at least three days advance notice of any material change to the TOU. MixedInk shall send this notice to the email address You designate at the time You sign up for service.
- H. **Access and Use:** MixedInk acknowledges that the Agency's collaborative document creation projects may energize significant citizen engagement. Language in the "Access and Use" provision of the TOU allowing MixedInk to terminate service at any time "for any reason or no reason" is deleted and replaced with the parties' agreement that service may be terminated by MixedInk only for good cause.
- I. **Ownership of names:** Provisions in the TOU related to MixedInk's ownership of and right to change Your selected user name, user ID, channel names, and group names, are modified to accommodate Agency's proprietary, practical, and/or operational interest in its own publicly-recognized name and the names of Agency programs.
- J. **Modifications of User Content:** MixedInk agrees that the right reserved in the TOU to "modify" or "adapt" Your content is limited to technical actions necessary to index, format and display that content. The right to modify or adapt does not include the right to edit or otherwise alter the meaning of the content. Notwithstanding the foregoing, nothing in this Amendment shall result in an expansion of Your rights as a United States Government entity under the Copyright Act of 1976 (17 U.S.C. §§101 et sec.), specifically including Section 105 of said Act.
- K. **Limitation of Liability:** The Parties agree that nothing in the Limitation of Liability clause or elsewhere in the TOU in any way grants MixedInk a waiver from, release of, or limitation of liability pertaining to, any past, current or future violation of federal law.
- L. **Uploading, Deleting:** The Parties understand and agree that You are not obligated to place any User Content on the MixedInk site, and You reserve the right to remove any and all User Content at Your sole discretion.
- M. **No persistent cookies:** In connection with material posted on a government website, MixedInk agrees not to use persistent cookies unless specifically authorized by the government entity to do so. The Agency will notify MixedInk when creating a new project or topic within the MixedInk site that requires the removal of persistent cookies. MixedInk will remove persistent cookies within one business day following notification.
- N. **No endorsement:** MixedInk agrees that Your trademarks, logos, service marks, trade names, and the fact that You have a presence on the MixedInk site and use its services, shall not be used by MixedInk to imply an endorsement, sponsorship or recommendation of MixedInk or its services by You or the Federal Government.
- O. **No business relationship created:** The Parties are independent entities and nothing in this Amendment or TOU creates an agency, partnership or joint venture.

- P. **No cost agreement:** Nothing in this Amendment or TOU obligates you to expend appropriations or incur financial obligations. The Parties acknowledge and agree that none of the obligations arising from this Amendment or TOU are contingent upon the payment of fees by one party to the other.
- Q. **Provision of Data:** In case of termination of service, MixedInk will provide you with all user-generated content that is publicly visible through the Sites You created at MixedInk within 30 days. Data will be provided in a commonly used file or database format as MixedInk deems appropriate. MixedInk will not provide data if doing so would violate its privacy policy, available at <http://mixedink.com/privacy.php>.
- R. **Future fee based arrangements:** You acknowledge that while MixedInk currently provides some services and features for free, MixedInk reserves the right to begin charging for those services and features at some point in the future. You also understand that MixedInk currently offers other premium and enterprise services for a fee. Before deciding to enter into a premium or enterprise subscription, or any other fee-based service MixedInk may offer in the future, You agree to determine your Agency has a need for those additional services, to consider the subscription's value in comparison with comparable services available elsewhere, to determine that Agency funds are available for payment, to properly use the Government Purchase Card if that Card is used as the payment method, to review this Amendment and the then-applicable TOU for conformance to federal procurement law, and in all other respects to follow applicable acquisition laws, regulations, and agency guidelines when initiating that separate action.
- S. **Assignment:** Neither party may assign its obligations under this Amendment or TOU to any third party without prior written consent of the other.
- T. **Precedence; Further Amendment; Termination:** If there is any conflict between this Amendment and the TOU, or between this Amendment and other rules or policies on the MixedInk site or services, this Amendment shall prevail. This Amendment may be further amended only upon written agreement executed by both Parties. Either party may terminate Agency's account and end the MixedInk service agreement on 30 days written notice.
- U. **Posting of this Amendment:** The provision of the TOU requiring modifications to the TOU to be posted on MixedInk is inapplicable since this Amendment is of limited not general application, and is otherwise waived for this special circumstance. The Parties agree this Agreement contains no confidential or proprietary information, and may be released to the public upon request.

David Stern

Name: David Stern

Title: Manager

Date: June 11, 2009

Martha Ann Dornis

Name: Martha Ann Dornis

Title: Acting Deputy Assoc Adm

Date: 6/12/09

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