

Delaero, Inc.

**immixTechnology Rider to Product Specific License Terms and
Conditions (for U.S. Government End Users)**

1. **Scope.** This Rider and the attached Delaero, Inc. ("Manufacturer") product specific license terms establish the terms and conditions enabling immixTechnology ("Contractor") to provide Manufacturer's information technology products and services to Ordering Activities under immixTechnology's GSA MAS IT contract number GS-35F-0265X (the "Schedule Contract"). Installation and use of the information technology shall be in accordance with this Rider and Manufacturer Specific Terms attached hereto, unless an Ordering Activity determines that it requires different terms of use and Manufacturer agrees in writing to such terms in a valid delivery order placed pursuant to the Schedule Contract.
2. **Applicability.** Whereas GSA and immixTechnology agreed at the time of Schedule Contract award upon a base set of terms and conditions applicable to all manufacturers and items represented on the Schedule Contract; and Whereas, the parties further agreed that all product specific license, warranty and software maintenance terms and conditions would be submitted at the time each new manufacturer was to be added to the Schedule Contract; Now, Therefore, the parties hereby agree that the product specific license, warranty and software maintenance terms set forth in Attachment A hereto (the "Manufacturer Specific Terms" or the "Attachment A Terms") are incorporated into the Schedule Contract, but only to the extent that they are consistent with Federal law, including but not limited to GSAR 552.212-4 Contract Terms and Conditions-Commercial Items. To the extent any Attachment A Terms are inconsistent with Federal law (See, FAR 12.212(a)), such inconsistent terms shall be superseded, unenforceable and of no legal force or effect in all resultant orders under the Schedule Contract, including but not limited to the following provisions:
 - a) **Contracting Parties.** The GSA Customer ("Licensee") is the "Ordering Activity", defined as the entity authorized to order under GSA MAS contracts as set forth in GSA Order OGP 4800.2I, as may be revised from time to time.
 - b) **Changes to Work and Delays.** Subject to GSAR Clause 552.238-81, Modifications (Federal Supply Schedule) (April 2014) (Alternate I – JUN 2016) and (Alternate II – JUN 2016), and 52.212-4(f) Excusable Delays (JUN 2010) regarding which the GSAR and the FAR provisions take precedence.
 - c) **Contract Formation.** Subject to FAR 1.601(a) and FAR 43.102, the GSA Customer Purchase Order must be signed by a duly warranted Contracting Officer, in writing. The same requirement applies to contract modifications affecting the rights of the parties. All terms and conditions intended to bind the Government must be included within the contract signed by the Government.
 - d) **Termination.** Clauses in the Manufacturer Specific Terms referencing termination or cancellation are superseded and not applicable to any GSA Customer order. Termination shall be governed by the FAR, the underlying GSA Schedule Contract and the terms in any applicable GSA Customer Purchase Orders. If the Contractor believes the GSA Customer to be in breach, it must file a claim with the Contracting Officer and continue to diligently pursue performance. In commercial item contracting under FAR 12.302(b), the FAR provisions dealing with disputes and continued performance cannot be changed by the Contracting Officer.
 - e) **Choice of Law.** Subject to the Contracts Disputes Act, the validity, interpretation and enforcement of this Rider shall be governed by and construed in accordance with the Federal laws of the United States. In the event the Uniform Computer Information Transactions Act (UCITA) or any similar Federal laws or regulations are enacted, to the extent allowed by Federal law, they will not apply to this Rider or the underlying Schedule Contract.
 - f) **Equitable remedies.** Equitable remedies are generally not awarded against the Government absent a statute providing therefore. In the absence of a direct citation to such a statute, all clauses in the Manufacturer Specific Terms referencing equitable remedies are superseded and not applicable to any GSA Customer order.
 - g) **Unilateral Termination.** Unilateral termination by the Contractor does not apply to a GSA Customer Purchase Order and all clauses in the Manufacturer Specific Terms referencing unilateral termination rights of the Manufacturer are hereby superseded.
 - h) **Unreasonable Delay.** Subject to FAR 52.212-4(f) Excusable delays, the Contractor shall be liable for default unless the nonperformance is caused by an occurrence beyond the reasonable control of the Contractor and without its fault or negligence such as, acts of God or the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. The Contractor shall notify the Contracting Officer in writing as soon as it is reasonably possible after commencement of any excusable delay, setting forth the full particulars in connection therewith, shall remedy such occurrence with all reasonable dispatch and shall promptly give written notice to the Contracting Officer of the cessation of such occurrence.

- i) **Assignment.** All clauses regarding the Contractor's assignment are subject to FAR 52.232-23, Assignment of Claims (JAN 1986) and FAR 42.12 Novation and Change-of-Name Agreements (Sep. 2013). All clauses governing the Contractor's assignment in the Manufacturer Specific Terms are hereby superseded.
- j) **Waiver of Jury Trial.** Waivers of Jury Trials are subject to FAR 52.233-1 Disputes (JULY 2002). The Government will not agree to waive any right that it may have under Federal law. All clauses governing a waiver of jury trial in the Manufacturer Specific Terms are hereby superseded.
- k) **Government Indemnities.** This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered. The Interim FAR Rule dated June 21, 2013 and the Office of Legal Counsel opinion dated March 12, 2012 prohibit such indemnifications. All Manufacturer Specific Terms referencing customer indemnities are hereby superseded.
- l) **Contractor Indemnities.** All Manufacturer Specific Terms that violate DOJ's jurisdictional statute (28 U.S.C. § 516) by requiring that the Government give sole control over the litigation and/or settlement to the Contractor are hereby superseded. Nothing contained in the Manufacturer's Specific terms 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.
- m) **Renewals.** All Manufacturer Specific Terms that provide for automatic renewals violate the Anti-Deficiency Act and are hereby superseded. This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered.
- n) **Future Fees or Penalties.** All Manufacturer Specific Terms that require the Government to pay any future fees, charges or penalties are hereby superseded unless specifically authorized by existing statutes, such as the Prompt Payment Act (31 U.S.C. § 3901 et seq.) or Equal Access To Justice Act (5 U.S.C. § 504; 28 U.S.C. § 2412).
- o) **Taxes.** Taxes are subject to FAR 52.212-4(k), which provides that the contract price includes all applicable federal, state, local taxes and duties. Contractor shall state separately on its invoices, taxes excluded from the fees, and the GSA Customer agrees to either pay the amount of the taxes (based on the current value of the equipment or services) to Contractor or provide it evidence necessary to sustain an exemption, in accordance with FAR 52.229-1 and FAR 52.229-3.
- p) **Third Party Terms.** When the end user is an instrumentality of the U.S., no license terms bind the GSA Customer unless included in the EULA, and the EULA is made an attachment to the underlying GSA Schedule Contract. All terms and conditions affecting the GSA Customer must be contained in a writing signed by a duly warranted Contracting Officer. Any third party manufacturer shall be brought into the negotiation, or the components acquired separately under federally-compatible agreements, if any.
- q) **Dispute Resolution and Standing.** Any disputes relating to the Manufacturer Specific Terms or to this Rider shall be resolved in accordance with the FAR, the underlying GSA Schedule Contract, any applicable GSA Customer Purchase Orders, and the Contract Disputes Act. The Ordering Activity expressly acknowledges that immixTechnology as contractor, on behalf of the Manufacturer, shall have standing to bring such claim under the Contract Disputes Act.
- r) **Advertisements and Endorsements.** Pursuant to GSAR 552.203-71, use of the name or logo of any U.S. Government entity is prohibited. All Manufacturer Specific Terms that allow the Contractor to use the name or logo of a Government entity are hereby superseded.
- s) **Public Access to Information.** immixTechnology agrees that the attached Manufacturer Specific Terms and this Rider contain no confidential or proprietary information and acknowledges the Rider shall be available to the public.
- t) **Confidentiality.** Any provisions in the attached Manufacturer Specific Terms that require the Ordering Activity to keep certain information confidential are subject to the Freedom of Information Act (5 U.S.C. § 552), and any order by a United States Federal Court. When the end user is an instrumentality of the U.S. Government, neither this Rider, the Manufacturer's Specific Terms nor the Schedule Price List shall be deemed "confidential information" notwithstanding marking to that effect. Notwithstanding anything in this Rider, the Manufacturer's Specific Terms or the Schedule Contract to the contrary, the GSA Customer may retain such Confidential Information as required by law, regulation or its bonafide document retention procedures for legal, regulatory or compliance purposes; provided however, that such retained Confidential Information will continue to be subject to the confidentiality obligations of this Rider, the Manufacturer's Specific Terms and the Schedule Contract.

- u) **Alternate Dispute Resolution.** The GSA Customer cannot be forced to mediate or arbitrate. Arbitration requires prior guidance by the head of a Federal agency promulgated via administrative rulemaking according to 5 U.S.C. § 575(c). GSA has not issued any because it considers the Board of Contract Appeals to be an adequate, binding ADR alternative. All Manufacturer Specific Terms that allow the Contractor to choose arbitration, mediation or other forms of alternate dispute resolution are hereby superseded.

3. Order of Precedence/Conflict. To the extent there is a conflict between the terms of this Rider and the terms of the underlying Schedule Contract or a conflict between the terms of this Rider and the terms of an applicable GSA Customer Purchase Order, the terms of the GSA Schedule Contract or any specific, negotiated terms on the GSA Customer Purchase Order shall control over the terms of this Rider. Any capitalized terms used herein but not defined, shall have the meaning assigned to them in the underlying Schedule Contract.

EXHIBIT A

DELAERO, INC. SUPPLEMENTAL TERMS & CONDITIONS FOR PURCHASES OF DELAERO SERVICES BY GOVERNMENT CUSTOMERS THROUGH IMMIXGROUP.

THIS CUSTOMER AGREEMENT ("AGREEMENT") GOVERNS CUSTOMER'S ACQUISITION AND USE OF DELAERO SERVICES.

BY EXECUTING AN ORDER FORM THAT REFERENCES THIS AGREEMENT OR SCHEDULE CONTRACT, CUSTOMER AGREES TO THE TERMS OF THIS AGREEMENT. THE TERM "CUSTOMER" SHALL REFER TO THE ORDERING ACTIVITY UNDER THOSE GOVERNMENT CONTRACTS IDENTIFIED IN THE PURCHASE ORDER, STATEMENT OF WORK, OR SIMILAR DOCUMENT.

GENERAL TERMS AND CONDITIONS

The terms and conditions that follow apply to all services purchased from Delaero.

1) PROFESSIONAL SERVICES

Professional Services refers to the activities outlined in the applicable order or Statement of Work (SOW) including but not limited to software installation, configuration, integration, training, consulting and/or other services provided to Customer hereunder. Customer may order Professional Services from Delaero by submitting a request for such Professional Services.

Any Professional Services provided hereunder are subject to Customer's performance of any obligations herein or in the SOW, and to the terms of a mutually agreeable SOW. With respect to any installation, configuration, integration and other services by and between a Customer Environment and the products and services provided by Delaero hereunder, Delaero agrees to perform those services to the extent specified on a SOW. Customer must provide all necessary information, access, and support materials as reasonably required by Delaero to perform its duties in a timely manner. All Professional Services provided on a time and material basis are per person unless otherwise specified and are charged hourly as indicated for each person. Invoicing and payment will be as outlined in the specified order or SOW. Professional Services scheduling is dependent upon the allocation and availability of Delaero resources.

2) INTELLECTUAL PROPERTY & OWNERSHIP

All computer software programs and documentation, program code, and any other information or material, tangible or intangible, arising out of or resulting from the tasks contracted to Delaero as part of this Agreement and all proprietary rights thereto, including copyright therein, (the "Work Product") shall be assigned to and belong to Customer upon its creation as works made for hire. As to copyrights, this agreement shall operate as an irrevocable assignment of the copyright to the entire Work Product to Customer.

Customer acknowledges that as part of performing the Services, Delaero personnel may utilize proprietary software, methodologies, tools, specifications, drawings, sketches, models, samples, records, documentation, knowledge or data which have been originated or developed by the personnel of Delaero or its affiliates or by third parties under contract to Delaero to develop them, prior to or outside the scope of this Statement of Work, or which have been purchased by, or licensed to, Delaero (collectively, "Delaero Proprietary Materials"). Delaero shall retain all right, title and interest in and to Delaero Proprietary Materials; provided, however, to the extent such Delaero Proprietary Materials are embedded or otherwise incorporated in any Work Product, Delaero grants to Customer an irrevocable, unrestricted, non-exclusive, royalty free, perpetual, license to use, have used, reproduce, sublicense, sell, distribute and modify, in whole or in part, such Delaero Proprietary Materials.

3) WARRANTY

For Professional Services: Delaero warrants to Customer that the Professional Services provided hereunder will be performed in a timely and professional manner by qualified Personnel.

DELAERO MAKES NO OTHER WARRANTIES DIRECTLY TO THE CUSTOMER, AND DISCLAIMS AND EXCLUDES ALL OTHER WARRANTIES, REPRESENTATIONS, AND CONDITIONS, IMPLIED, WRITTEN OR ORAL.

4) INFRINGEMENT INDEMNIFICATION

Delaero, at its expense, will defend Customer against any claim that a deliverable provided hereunder infringes or violates any copyright or trade secret of a third party, and will pay all costs and damages finally awarded or agreed upon in settlement; provided that Customer gives Delaero prompt written notice of such claim, sole authority to defend or settle the claim and reasonable assistance in defending the claim. Delaero will obtain for Customer the right to continue using the deliverable or replace or modify the deliverable so that it becomes non-infringing. Delaero will not have any liability under this section if the alleged infringement is based upon Customer's modification of the Deliverable or Customer's combination of the deliverable with other technology not provided or approved by Delaero. This Section states Customer's sole and exclusive remedy with respect to third party infringement claims. 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.

5) LIMITATIONS OF LIABILITY

THIS SECTION SHALL SURVIVE AND CONTINUE IN FULL FORCE AND EFFECT DESPITE ANY FAILURE OF ESSENTIAL PURPOSE, CONSIDERATION, OR OF AN EXCLUSIVE REMEDY.

EXCEPT WITH RESPECT TO A PARTY'S INDEMNITY OBLIGATIONS PROVIDED FOR IN THIS AGREEMENT, EACH PARTY'S MAXIMUM LIABILITY ARISING OUT OF OR IN ANY WAY CONNECTED TO THIS AGREEMENT SHALL BE IN THE AGGREGATE AND LIMITED TO THE OTHER PARTY'S DIRECT ACTUAL DAMAGES NOT TO EXCEED THE ACTUAL FEES PAID AND DUE TO DELAERO UNDER THE ORDER IN WHICH THE DAMAGES AROSE.

IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER PARTY FOR ANY CONSEQUENTIAL, INDIRECT, EXEMPLARY, INCIDENTAL, OR SPECIAL DAMAGES OR COSTS (INCLUDING ATTORNEYS' FEES OR LOST PROFITS, TIME, SAVINGS, PROPERTY, DATA OR GOODWILL) REGARDING THIS AGREEMENT OR RESULTING FROM OR IN CONNECTION WITH THE USE, MISUSE, OR INABILITY TO USE ANY PRODUCTS OR SERVICES, REGARDLESS OF THE CAUSE OF ACTION, EVEN IF ADVISED OF THE POSSIBILITY THEREOF. WITHOUT LIMITING THE FOREGOING, IN NO EVENT SHALL DELAERO BE LIABLE FOR PROCUREMENT COSTS OF SUBSTITUTE PRODUCTS OR SERVICES. THE FOREGOING LIMITATION OF LIABILITY SHALL NOT APPLY TO (1) PERSONAL INJURY OR DEATH RESULTING FROM LICENSOR'S NEGLIGENCE; (2) FOR FRAUD; OR (3) FOR ANY OTHER MATTER FOR WHICH LIABILITY CANNOT BE EXCLUDED BY LAW.

6) ASSIGNMENT

Customer cannot assign, sublicense, or transfer this Agreement without the prior written consent of Delaero, and any such attempt by Customer to sublicense, assign or transfer any rights, duties, or obligations hereunder is null and void.

7) ENTIRE AGREEMENT / MODIFICATIONS

Except as otherwise specified in this Section, this Agreement, comprises the entire agreement between Customer and Delaero, and supersedes any other agreement or discussion, oral or written, with respect to the subject matter of this Agreement, and may not be changed except by a written agreement signed by the parties. Preprinted, additional or conflicting provisions on Customer's purchase order or on either party's acknowledgement forms, whether presented before or after the terms of this Agreement, and including any integration clauses contained therein, shall not apply unless agreed to in writing and signed by both parties. In the event the parties to this Agreement have executed any other agreement in any form covering the same subject matter, that separate agreement shall remain in effect, govern and control for that subject matter, and this Agreement shall govern and control for all other subject matters contemplated herein.