

**AMENDMENT TO HOOTSUITE MEDIA, INC. TERMS OF SERVICE
FOR HOOTSUITE.COM SERVICES
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. Department of Commerce.**

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; privacy and security; accessibility; limitations on indemnification; fiscal law constraints; advertising and endorsements; freedom of information; and governing law and dispute resolution forum. HootSuite Media Inc. ("Company" or "We") and You (together, the "Parties") agree that modifications to the HootSuite Media Inc.'s standard Terms of Service for Hootsuite.com Services, available at www.hootsuite.com/terms (the "TOS") are appropriate to accommodate Your legal status, Your public (in contrast to private) mission, and other special circumstances. Accordingly, the TOS are hereby modified by this Amendment as they pertain to Agency's use of the Company web site and services.

- A. **Government entity:** "You" within the TOS shall mean the Agency itself and shall not apply to, or bind (i) the individual(s) who utilize the Company 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 TOS that use of the Company site and services be for private, personal and/or non-commercial purposes is hereby waived.
- C. **Agency content serving the public:** Company hereby approves Agency's distribution or other publication via the Website 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:** Company hereby agrees not to serve or display any third party commercial advertisements or solicitations on any pages within the Company site displaying content created by or under the control of the Agency that appears to members of the public. This exclusion shall not extend to house ads, which Company may serve on such pages in a non-intrusive manner.
- E. **Changes to standard TOS:** Language in the standard TOS reserving to Company the right to change the TOS without notice at any time is hereby amended to grant You at least three days advance notice of any material change to the TOS. Company shall send this notice to the email address You designate at the time You sign up for service, and You shall notify Company of any change in the notification email address during the life of the Amendment.
- F. **Access and use:** Company acknowledges that the Agency's use of Company's site and services may energize significant citizen engagement. Language in the TOS allowing Company to terminate service, or close the Agency's account, at any time, for any reason, is modified to

reflect the Parties' agreement that Company may unilaterally terminate service and/or terminate Agency's account only for breach of Agency's obligations under the TOS or its material failure to comply with the instructions and guidelines posted on the Site, or if Company ceases to operate its site or services generally. Company will provide Agency with a reasonable opportunity to cure any breach or failure on Agency's part.

- G. **Ownership of names:** Any provision(s) in the TOS related to Company's ownership of and right to change Your selected user name(s), user ID(s), domain name(s), channel name(s), and group name(s), are modified to reasonably accommodate Agency's proprietary, practical, and/or operational interest in its own publicly-recognized name and the names of Agency programs.
 - H. **Modifications of user content:** Company agrees that the right reserved in the TOS 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 substantively 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 the Act.
 - I. **Limitation of liability:** The Parties agree that nothing in the Limitation of Liability clause or elsewhere in the TOS in any way grants Company a waiver from, release of, or limitation of liability pertaining to, any past, current or future violation of United States Federal Law.
 - J. **Uploading, deleting:** The Parties understand and agree that You are not obligated to place any User Content on the Company site, and You reserve the right to remove any and all User Content at Your sole discretion on this or any third party site the content was posted on.
 - K. **No endorsement:** Company agrees that Your seals, trademarks, logos, service marks, trade names, and the fact that You have a presence on the Company site and use its services, shall not be used by Company in such a manner as to state or imply that Company's products or services are endorsed, sponsored or recommended by You or by any other element of the Federal Government, or are considered by these entities to be superior to any other products or services. Except for pages whose design and content is under the control of the Agency, or for links to or promotion of such pages, Company agrees not to display any Agency or government seals or logos on the Company's homepage or elsewhere on the Company Site, unless permission to do has been granted by the Agency or by other relevant U.S. federal government authority. Company may list the Agency's name in a publicly available customer list so long as the name is not displayed in a more prominent fashion than that of any other third party name.
 - L. **No business relationship created:** The Parties are independent entities and nothing in this Amendment or TOS creates an agency, partnership, joint venture, or employer/employee relationship.
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- M. **No cost agreement:** Nothing in this Amendment or TOS obligates You to expend appropriations or incur financial obligations. The Parties acknowledge and agree that none of the obligations arising from this Amendment or TOS are contingent upon the payment of fees by one party to the other.
- N. **Provision of data:** In case of termination of service, within 30 days of such termination Company will provide you with all user-generated content that is publicly visible and posted through the product to other third party sites through the Sites You created at Company. Data will be provided in a commonly used file or database format as Company deems appropriate. Company will not provide data if doing so would violate its privacy policy, available at <http://hootsuite.com/privacy>.
- O. **Separate future action for fee based services:** You understand that Company reserves the right to offer Services for a fee. If the Company decides to charge a fee for the basic level of service it must notify you within 30 days and provide You with a new terms of service, so You may evaluate the Agency's need for those services, make any modification to the terms of service, and complete the procurement process. Before deciding to use any fee-based Service that Company offers now or in the future, You agree to determine that your Agency has a need for those additional services; to consider the service'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 payment card is used as the payment method; to review this Side Letter Agreement and the then-applicable Company Terms for conformance to federal procurement law; and in all other respects to follow applicable federal acquisition laws, regulations, and agency guidelines when initiating that separate fee-based activity.
- P. **Assignment:** Neither party may assign its obligations under this Amendment or TOS to any third party without prior written consent of the other.
- Q. **Precedence; Further Amendment; Termination:** This Amendment constitutes an amendment to the TOS; language in the TOS indicating it alone is the entire agreement between the Parties is waived. If there is any conflict between this Amendment and the TOS, or between this Amendment and other rules or policies on the Company site or services, this Amendment shall prevail. This Amendment may be further amended only upon written agreement executed by both Parties. Agency may close Agency's account and terminate this agreement at any time. Company may close Agency's account and terminate this agreement on 30 days written notice.
- R. **Posting and availability of this Amendment:** The provision of the TOS requiring modifications to the TOS to be posted on Company's website is inapplicable since this Amendment is of limited, not general, application, and is otherwise waived for this special circumstance. The Parties agree this Amendment contains no confidential or proprietary information, and You may release it to the public upon request and to other agencies interested in using Company Site and services.
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S. **Security:** Company will, in good faith, exercise due diligence using generally accepted commercial business practices for IT security, to ensure that systems are operated and maintained in a secure manner, and that management, operational and technical controls will be employed to ensure security of systems and data. If Company notices that a breach of Your account occurs they will notify you and disable your account within two hours of awareness of the breach. If You become aware that your account has been breached you must notify the Company who will disable the account within two hours of Your notification. If You wish to have your account enabled after a breach the Company will do so with a new password within two business days of the request.

Additional Items for Discussion and Possible Inclusion in this Agreement: Company understands current federal law, regulation and policy may affect Agency's use of the Company's products and services in ways not addressed in the list of clauses above. Much depends on the nature of the products and services offered by the Company (which may change from time to time), and how Agency intends to use those services (which also may change). The following are among the topics Agency may need to discuss with Company. Discussion of these items may lead to the insertion of additional clauses in this Agreement.

Privacy

Accessibility

Records Management (in addition to Clause N on "Provision of Data")

Hootsuite Media, Inc.

U.S. Department of Commerce



Name: Ryan Holmes

Name: Kevin Griffiths

Title: CEO

Title: Director of Public Affairs

Date: 7/22/10

Date: 7/22/10

Email: kgriffis@doc.gov