

**AMENDMENT TO YELP TERMS  
APPLICABLE TO U.S. GOVERNMENT USERS**

This is an amendment (the "Amendment") to Yelp's standard Terms of Service, available at <http://www.yelp.com/static?p=tos> and Yelp's API Agreement, available at [https://www.yelp.com/developers/api\\_terms](https://www.yelp.com/developers/api_terms) (together, the "Terms") entered into by and between Yelp Inc. ("Yelp") and Government users and applies to their use of Yelp's websites (including without limitation [www.yelp.com](http://www.yelp.com) and [www.biz.yelp.com](http://www.biz.yelp.com)), public application programming interface ("API") and mobile applications (collectively, the "Yelp Site") on behalf of a Government agency ("You" or the "Agency").

The reason for this Amendment is that You, as a U.S. Government entity, must follow federal laws and regulations, including those related to ethics, privacy and security, accessibility, federal records, limitations on indemnification, fiscal law constraints, advertising and endorsements, freedom of information; and rules about what laws govern and how disputes are to be resolved.

Yelp and You (the "Parties") agree that modifications to the Terms are appropriate to accommodate Your legal status, Your public mission, and other special circumstances. And so the Terms are modified by this Amendment as follows.

A. **Government entity:** "You" within the Terms shall mean the Agency itself and shall not apply to, nor bind (i) the individual(s) who utilize the Yelp Site and services on the Agency's behalf, or (ii) any individual users who happen to be employed by, or otherwise associated with, the Agency. Yelp will look solely to the Agency to enforce any violation or breach of the Terms by such individuals, subject to federal law. Nothing herein, however, shall limit Yelp's rights under Section H of this Amendment, which allow Yelp to enforce its Terms in relation to content on the Yelp Site, including removal of user content and closing user accounts, when Yelp believes there is a violation or breach of the Terms.

B. **Public purpose:** The Agency shall use Yelp Site and services solely in furtherance of the Agency's public purpose. Yelp acknowledges that the Agency may use the Yelp's Site and services overseas, and the Agency may open and maintain more than one account.

C. **Agency content serving the public:** Yelp will allow the Agency's distribution or other publication via the Site or services of Content that may contain or constitute promotions, advertisements or solicitations for goods or services, so long as the material relates to the Agency's mission and otherwise does not violate Yelp's Terms.

D. **Advertisements:** Yelp agrees not to serve or display any third-party commercial advertisements or solicitations on any of the Agency's claimed pages (sometimes referred to as its "business pages") on the Yelp Site that display content uploaded by or under the control of the Agency. This obligation is contingent upon the Agency providing to Yelp an email address that ends in .gov, .mil, or .fed.us, which serves as validation that You are an Agency, or through any another validation system agreed to by Yelp. Yelp may serve house ads on claimed Agency pages in a non-intrusive manner.



**E. Indemnification, Liability, Statute of Limitations:** Any provisions in the Terms related to indemnification, damages, attorneys fees, filing deadlines, defense of lawsuits, collection expenses, and settlement are hereby waived. Liability of either party for any breach of the Terms, as modified by this Amendment, or any claim arising from the Terms or this Amendment, or any claim, demand, suit or proceeding arising from the Terms or this Amendment, shall be determined under the Federal Tort Claims Act or other governing federal authority. Federal Statute of Limitations provisions shall apply to any claim, demand, suit or proceeding arising from the Terms or this Amendment.

**F. Governing law and Forum:** The Terms and this Amendment shall be governed by and interpreted and enforced in accordance with applicable federal laws of the United States of America without reference to conflict of laws. To the extent permitted by federal law, the laws of the State of California (excluding California's choice of law rules) will apply in the absence of applicable federal law. Any arbitration, mediation or other dispute resolution provision in the Terms is hereby waived. The forum for purposes of resolving claims and disputes will be determined in accordance with Federal law.

**G. Changes to standard Terms:** Language in the Terms reserving to Yelp the right to make material changes to the Terms without notice at any time is hereby amended to grant You at least three days advance notice of any material change to the Terms. Yelp shall send this notice to the following email address: socialmediaapps@gsa.gov. You shall notify Yelp of any change in the notification email address.

**H. Access and use:** Yelp acknowledges that the Agency's use of Yelp's Site and services may energize significant citizen engagement and otherwise become important to the Agency's mission. Language in the Terms allowing Yelp to terminate service, refuse or remove any Content, or close the Agency's account, at any time, for any reason, is modified to reflect that Yelp may unilaterally terminate service, temporarily or permanently, refuse or remove any Content, and/or terminate the Agency's account only for breach of the Agency's obligations under the Terms, or the Agency's material failure to comply with the instructions and guidelines posted on the Site, or if Yelp ceases to operate its Site or services generally. Yelp will provide the Agency with a reasonable opportunity to cure any breach or failure on Agency's part. Notwithstanding this Section, Yelp reserves the right to disable any user account's ability to add content to the Yelp Site, or remove previously posted content, without prior notice if Yelp believes that such account or content violates Yelp's Terms.

**I. Provision on crawlers:** Any provision in the Terms prohibiting "crawl," "spider" or similar processes is amended to allow the Agency to reasonably apply such tools solely to its pages and content, and solely to fulfill Agency's obligations under the Federal Records Act or other applicable federal law or regulation.

**J. Ownership of names:** Any provision in the Terms related to Yelp'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 the Agency's proprietary, practical, and/or operational interest in its own publicly-recognized name and the names of Agency programs.

**K. Modifications of Agency content:** Any right Yelp reserves in the Terms to modify or adapt Agency 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. In the event Agency discovers that Agency content has been modified in a manner that alters the meaning of such content, Agency may contact Yelp and the Parties shall work together in good faith to resolve the matter. Notwithstanding the foregoing, nothing in this Amendment shall result in an expansion of the Agency's rights as a United States Government entity under the Copyright Act of 1976 (17 U.S.C. §§101 et seq.), specifically including Section 105 of the Act.

**L. Limitation of liability:** The Parties agree that nothing in the Limitation of Liability clause or elsewhere in the Terms in any way grants Yelp a waiver from, release of, or limitation of liability pertaining to, any past, current or future violation of federal law.

**M. Uploading, deleting:** The Parties understand and agree that You are not obligated to place any user content on the Site, and You reserve the right to remove any and all of Your Content at Your sole discretion, to the extent permitted by Yelp's existing systems.

**N. No endorsement:** Yelp agrees that Your name, seals, trademarks, logos, service marks and trade names ("Agency Marks"), and the fact that You have a presence on the Yelp Site and use its services, shall not be used by Yelp in such a manner as to state or imply (in the judgment of a reasonable person) that Yelp's products or services are endorsed, sponsored or recommended by You or by any other element of the Federal Government, or are considered by You or the Federal Government 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, Yelp agrees not to upload any Agency Marks on Yelp's homepage or elsewhere on the Yelp Site unless permission to do so has been granted by the Agency or by other relevant federal government authority. Yelp may list the Agency's name on the Yelp Site or elsewhere so long as the name is not displayed in a more prominent fashion than that of any other third-party name. If other users upload Agency Marks to the Site, it is the Agency's responsibility to monitor such incidents and notify Yelp to request removal of those Agency Marks, pursuant to Yelp's established policies.

**O. No business relationship created:** The Parties are independent entities and nothing in the Terms as modified by this Amendment creates a partnership, joint venture, agency, or employer/employee relationship.

**P. No cost agreement:** Nothing in the Terms as modified by this Amendment obligates You to expend appropriations or incur financial obligations. The Parties acknowledge and agree that none of the obligations arising from the Terms as modified by this Amendment are contingent upon the payment of fees by one party to the other. This Amendment also applies when the Agency uses one of Yelp's paid usage plans or other paid services.

**Q. Paid Services and Agency responsibilities under paid usage plans:** The Parties agree this Amendment applies to the Agency's usage of both free and paid services that Yelp may offer. The Parties understand that fee-based products and services are categorically different than free products and services, and are subject to federal procurement rules and processes. Before the Agency decides to enter into a premium or enterprise subscription, or any other fee-based service that this Yelp or alternative providers may offer now



or in the future, the Agency agrees to determine if it has a need for those additional services for a fee, 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 any then-applicable 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 action.

R. **Assignment:** Neither party may assign its obligations under the Terms as modified by this Amendment to any third party without prior written consent of the other. However, if Agency is using the Yelp's free services only, Yelp or its subsidiaries may, without the Agency's consent, assign the Terms as modified by this Amendment to an affiliate or to a successor or acquirer, as the case may be, in connection with a merger, acquisition, corporate reorganization or consolidation, or the sale of all or substantially all of the Yelp's assets.

S. **Termination rights:** The Agency may close its account and terminate the Terms at any time. Yelp may close the Agency's account and terminate the Terms on 30 days written notice.

T. **Security:** Yelp will, in good faith, exercise due diligence using generally accepted commercial business practices for IT and cyber security in an effort to operate and maintain its systems in a secure manner, and to employ management, operational and technical controls in an effort to improve security of systems and data. Yelp agrees to discuss the possibility of implementing additional security controls as deemed necessary by Agency to conform to the Federal Information Security Management Act (FISMA), 44 U.S.C. 3541 *et seq.*

U. **Federal Records:** The Agency acknowledges that use of Yelp's Site and services may require management of Federal records. Agency and user-generated content may meet the definition of Federal records as determined by the Agency. If Yelp holds Federal records, the Agency and Yelp must manage Federal records in accordance with all applicable records management laws and regulations, including but not limited to the Federal Records Act (44 U.S.C. chs. 21, 29, 31, 33), and regulations of the National Archives and Records Administration (NARA) at 36 CFR Chapter XII Subchapter B). Managing the records includes, but is not limited to, secure storage, retrievability, and proper disposition of all Federal records including transfer of permanently valuable records to NARA in a format and manner acceptable to NARA at the time of transfer. The Agency is responsible for ensuring that its use of Yelp is compliant with applicable records management laws and regulations through the life and termination of its use of the Site and services.

V. **Intellectual property ownership:** Except as expressly allowed in the Terms, no rights to any derivative works, inventions, or Yelp product modifications are conferred on the Agency or any other party. All such rights belong solely to Yelp.

W. **Precedence; Further Amendments:** If there is any conflict between this Amendment and the Terms, or between this Amendment and other terms, rules or policies on the Yelp Site or related to its services, this Amendment shall prevail. This Amendment constitutes an amendment to the Terms; any language in the

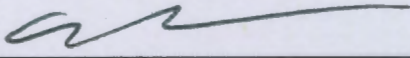
Terms indicating it may not be modified or that it alone is the entire agreement between the Parties is waived. Any further amendment must be agreed to in writing by both Parties.

**X. Additional Items for discussion and possible inclusion in this Amendment:** Yelp understands current federal law, regulation and policy may affect the Agency's use of the Yelp's products and services in ways not addressed in the list of clauses above. Among the topics the Agency may need to discuss with Yelp, and which may lead to a mutual agreement to insert additional clauses in this Amendment, are Privacy and Accessibility.

**Agency Name: National Archives and Records Administration**

Name: Andrew Wilson

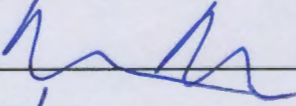
Title: Digital Engagement Division Director

Signature:  \_\_\_\_\_

Date: 9/15/2015

Name: Pamela Wright

Title: Chief Innovation Officer

Signature:  for PW \_\_\_\_\_

Date: 9/15/15



