

FLICKR SERVICE AGREEMENT WITH [INSERT PARTY NAME]

THIS FLICKR SERVICE AGREEMENT (this "Agreement") is entered into and is effective as of this eleventh day of February, 2009 (the "Effective Date") between Yahoo! Inc., a Delaware corporation with offices at 701 1st Avenue, Sunnyvale, CA 94089 ("Yahoo!"), and the U.S. General Services Administration, a federal agency, with offices at 1800 F Street NW, Washington, DC 20405 ("You or Your").

WHEREAS, Yahoo! provides a service for hosting user photographs and videos, which photographs and videos may be further distributed to third parties via "APIs" for both commercial and non-commercial use and which service allows other users of the service to add tags and otherwise augment the metadata associated with any photograph or video, which service is currently located at <http://www.flickr.com> (the "Service"); and

WHEREAS, You are a Branch, department, agency or instrumentality, or sub-unit thereof (an "Agency") of the United States Government and have in Your possession various photographs which You have the right to submit, and which You would like to submit, to the Service for purposes of applying each aspect of the Service's functionality to such content; and

WHEREAS, You, as an Agency of the United States Government, are required to follow applicable federal laws and regulations when entering into agreements with other parties, including laws and regulations related to limitations on indemnification, fiscal law constraints, advertising, privacy, governing law, and dispute resolution forum and processes; and

WHEREAS, Yahoo! and You (together, the "Parties" to this Agreement) agree that modifications to Yahoo!'s standard Terms of Service, located at <http://info.yahoo.com/legal/us/yahoo/utos/utos-173.html>, and additional terms of service located at <http://www.flickr.com/atos/pro>, applicable to subscribers of Flickr Pro, are appropriate to accommodate Your legal status and related special circumstances.

NOW, THEREFORE, in consideration of the mutual promises contained herein, the Parties agree as follows:

1. Service Access. Yahoo! hereby provides You with access to the Service for Your use. Your use of the Service is subject to this Agreement and to the Yahoo! Terms of Service, a current copy of which can be found at <http://docs.yahoo.com/info/terms/> (Yahoo! Terms), which Yahoo! Terms are hereby incorporated into this Agreement by reference. In addition, as a condition of Your use of the Service, You agree to comply with the Flickr Community Guidelines, a current copy of which can be found at <http://www.flickr.com/guidelines.gne> ("Community Guidelines"). In the event of any conflict between this Agreement, the Community Guidelines and/or the Yahoo! Terms (including Flickr Pro Additional Terms of Service), this Agreement shall first control, followed by the Community Guidelines, and then the Yahoo! Terms and the Flickr Pro Additional Terms of Service.

2. API License. Yahoo! hereby grants to You a limited, revocable, non-exclusive, non-assignable, non-transferable, non-sublicensable, royalty-free license during the existence of the Agreement to use the Flickr application programming interface, including the related intellectual property therein, (“**Flickr API**”) solely in the United States for the purpose of incorporating the display of Flickr photos and/or videos submitted to and residing with You or on your website located at <http://www.gsa.gov>, <http://www.usa.gov>, or other .gov website managed by the U.S. General Services Administration (“**Your Website**”), and in such a manner as is pre-approved by Yahoo! in our sole discretion (the “**Purpose**”). You understand and agree that your use of the Flickr API is subject to the Flickr API Terms of Use (“**API TOU**”), which may be found at <http://www.flickr.com/services/api/tos/> and which may be updated from time to time in Yahoo!’s sole discretion, and which terms of use are hereby incorporated by this reference into this Agreement. Unless specifically stated otherwise herein, in the event of any conflict between this Agreement and the API TOU, the API TOU will prevail as to the API license contained herein. You understand and agree that any breach of the API TOU via your direct or indirect use of the Flickr API will be deemed a breach by You of this Agreement.

3. Yahoo Trademark License.

(a) License. Subject to your strict compliance with this Agreement, we hereby grant to you a limited, revocable, non-exclusive, non-assignable, non-transferable, non-sublicensable, worldwide, royalty-free license during the existence of this Agreement to use Flickr’s product name, trademark, logo service mark, trade name, and/or legal notice (collectively “**Trademarks**”), on Your Website as it relates to this Agreement and in any marketing or promotional materials created pursuant to Section 4 (“Additional Obligations”) below, subject to Yahoo!’s prior approval as described in Section 3(b) (“Approval”) below. Any further use of the Trademarks must also be approved by Yahoo! in writing. You agree to include the following statement at the bottom of any page on your Website, or at the bottom of any other approved material, which includes a Trademark: “Flickr and the Flickr logo are the trademarks of Yahoo! Inc.”

(b) Approval. Yahoo! has the right to approve your use of the Trademarks in each instance. Prior to Your use of the Trademarks, You will submit a written request for approval of such use to Yahoo!. Yahoo! agrees to not unreasonably withhold its consent to any proposed use by You that is in conformance with this Agreement. If Yahoo! does not accept Your request in writing, or does not object in writing specifying the reasons for objection, within ten (10) business days of receipt of such request, Yahoo! will be deemed to have rejected the request (the “Yahoo Approval Process”). You may submit revised requests for approval of any use to which Yahoo! objected, which shall be governed by the Yahoo Approval Process. Thereafter and as long as You use the Trademarks in the same manner and for the same purpose as initially approved by us, You may use the Trademarks as permitted by this Agreement without additional approval. You agree to cooperate with Yahoo! in facilitating its oversight of Your use of

the Trademarks. Yahoo! has the right to receive free samples of all advertising and promotional materials on which such Trademarks are used, if any. You agree to comply with all requests from Yahoo! to correct any improper uses of the Trademarks.

(c) Ownership. You acknowledge that Yahoo! is the sole and exclusive owner of the Trademarks. Except as prohibited by law, You agree that You shall do nothing inconsistent with such ownership, either during the existence of this Agreement or afterwards. You agree that the use of the Trademarks by You shall be on behalf, and inure to the benefit, of Yahoo!. You acknowledge that Your utilization of the Trademarks shall not create any right, title or interest in such Trademarks in You. You will use the Trademarks so that each mark creates a separate and distinct impression from any other trademark that may be used or affixed to materials bearing the Trademarks or used in connection with goods or services provided under the Trademarks.

4. Additional Obligations. You agree to use reasonable efforts to promote your Website, appropriate to Your status as part of the United States Government, such as, by way of example and not limitation, by posting news on your blog, if any. In the event Yahoo! elects, in our sole discretion, to promote Your Website, You hereby grant to Yahoo! a limited, revocable, non-exclusive, freely assignable, transferable, sub-licensable, worldwide, royalty-free license during the existence of this Agreement to use Your trademarks, logos, service marks, and trade names as approved by You, to the extent those items are not in the public domain and a license is required. Yahoo! agrees that the use of Your trademarks, logos, service mark, and trade names by Yahoo! shall be on behalf, and inure to the benefit, of You. Yahoo! acknowledges that its utilization of the foregoing shall not create any right, title or interest in Your trademarks, logos, service mark, and trade names in Yahoo!. Yahoo! also agrees that Your trademarks, logos, service mark, trade names, or the fact that You have a Flickr account and are using the services of Flickr and/or Yahoo!, shall not be used to imply an endorsement by You or the Federal Government of Flickr or Yahoo! or its services.

5. Additional Representations and Warranties. Yahoo! understands and agrees that notwithstanding anything to the contrary in the Community Guidelines or the Yahoo! Terms, You did not create all of the content which You are submitting to the Service. Further, Yahoo! understands that Your employees and/or agents will be submitting the content on Your behalf through a Flickr account. Accordingly, You agree that any actions taken on Your behalf by Your employees or agents with regard to Your Flickr account(s) and/or Your Yahoo! account(s) are deemed to be actions taken by You for which You and the individual acting on Your behalf are jointly and severally liable. Further, in addition to the representations and warranties provided by You pursuant to the Yahoo! Terms of Service, You represent and warrant that: (a) You have the right to submit the content which You are submitting to the Service; (b) You have the right to allow such content to be displayed on the Service and to be subject to all of the functionality of the Service in each of the jurisdictions in which the Service operates, including, without limitation, the functionality described in the recitals above; (c) the content you submit does not and will not infringe upon any Intellectual Property rights of any third party ("Intellectual Property Rights" means any and all rights, titles, and interests, whether

foreign or domestic, in and to any and all copyrights, trademarks, service marks, and trade secrets, as well as any and all moral rights, rights of publicity and rights of privacy under the laws or regulations of any governmental, regulatory, or judicial authority, foreign or domestic); (d) You have reviewed and approved the pages created by Yahoo! on Your behalf utilizing content provided by You and You have requested that Yahoo! present such pages on Your behalf; and (e) none of the foregoing activities violate any laws or otherwise violate the rights of any third party.

6. ADDITIONAL DISCLAIMER. IN ADDITION TO THE DISCLAIMERS SET FORTH IN THE YAHOO! TERMS AND/OR THE COMMUNITY GUIDELINES, YAHOO! AND ITS SUBSIDIARIES, AFFILIATES, OFFICERS, EMPLOYEES, AGENTS, PARTNERS AND THIRD PARTY LICENSORS EXPRESSLY DISCLAIM ALL WARRANTIES OF ANY KIND, WHETHER EXPRESS OR IMPLIED, AS TO THE SERVICE, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT.

7. LIMITATIONS OF LIABILITY. UNDER NO CIRCUMSTANCES WILL YAHOO! BE LIABLE TO YOU FOR LOST PROFITS OR FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL, PUNITIVE OR EXEMPLARY DAMAGES ARISING IN CONNECTION WITH THIS AGREEMENT, REGARDLESS OF THE TYPE OF CLAIM AND EVEN IF YAHOO! HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, SUCH AS, BUT NOT LIMITED TO, LOSS OF REVENUE, LOST DATA, OR ANTICIPATED PROFITS OR LOST BUSINESS.

THE MAXIMUM AGGREGATE LIABILITY OF YAHOO! AND ITS SUBSIDIARIES TO YOU, AND THE EXCLUSIVE REMEDY AVAILABLE IN CONNECTION WITH THE AGREEMENT FOR ANY AND ALL DAMAGES, INJURY, LOSSES ARISING FROM ANY AND ALL CLAIMS AND/OR CAUSES OF ACTION RELATED TO THIS AGREEMENT, SHALL BE TO RECOVER THE ACTUAL DAMAGES YOU INCURRED BASED UPON REASONABLE RELIANCE UP TO A MAXIMUM OF ONE THOUSAND U.S. DOLLARS (U.S.\$ 1,000.00). THE EXISTENCE OF MULTIPLE CLAIMS OR SUITS UNDER OR RELATED TO THIS AGREEMENT WILL NOT ENLARGE OR EXTEND THE LIMITATION OF MONEY DAMAGES.

THE LIMITATIONS SET FORTH IN THE PRECEDING TWO PARAGRAPHS ARE INDEPENDENT OF EACH OTHER AND BOTH THE LIMITATION OF DAMAGES AND LIMITATION OF REMEDY SET FORTH ABOVE WILL SURVIVE ANY FAILURE OF THE ESSENTIAL PURPOSE OF ANY OR ALL PARTS OF THE LIMITED REMEDY SET FORTH IN THE PARAGRAPH IMMEDIATELY ABOVE.

8. Indemnification. Notwithstanding anything to the contrary in any other part of this Agreement, the Parties understand and agree that the indemnity provisions in the Yahoo! Terms of Service, including indemnity provisions in documents linked and/or referenced within the Yahoo! Terms of Service, do not apply to You under this Agreement. The Parties do, however, expressly agree that Your liability, if any, resulting from any breach by You of this Agreement or otherwise, shall be determined under the Federal Tort Claims Act, 28 U.S.C. Section 2671 et seq., or other such governing authority.

9. Choice of Law; Forum. This Agreement shall, for all purposes, be governed by and interpreted and enforced in accordance with the laws of the United States of America, without regard to its conflict of laws provisions. 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.

10. Severability. If any of the terms or provisions of this Agreement are ruled to be invalid or unenforceable, the remainder of this Agreement shall not be affected thereby and You and Yahoo! shall endeavor in good faith to replace such provision with a valid and enforceable one that accomplishes the same general purpose to the greatest extent possible. You and Yahoo! also agree that if any provision is found by a court of competent jurisdiction to be invalid, the court should endeavor to give effect to the intentions as reflected in the provision.

11. Entire Agreement. The terms and conditions herein contained constitute the entire agreement between You and Yahoo! and supersede all previous commitments, agreements, and understandings, whether oral or written, including any click-through agreement used previously to establish a Flickr account, between You and Yahoo! hereto with respect to the subject matter hereof and no previous agreement or understanding varying or extending the same shall be binding upon You or Yahoo!.

12. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

13. Termination. The Parties understand and agree that You are not obligated to deliver photographs or other content to the Service and You reserve the right to remove any or all of Your photographs or other content from the Service at Your sole discretion. Either Party may end this Agreement on 30 days written notice.

14. Miscellaneous. The section headings and subheadings contained in this agreement are included for convenience only, and shall not limit or otherwise affect the terms of this Agreement. Any construction or interpretation to be made of the Agreement shall not be construed against the drafter. The Parties to this Agreement are independent entities and nothing in this Agreement creates an agency, partnership, or joint venture. Nothing in this Agreement obligates You to expend appropriations or incur financial obligations. The parties acknowledge and agree that none of the obligations arising from this Agreement are contingent upon the payment of fees by one party to the other. Neither party may assign this Agreement to any third party without the prior written consent of the other. This Agreement may only be amended upon written agreement executed by both parties. Failure to enforce any provision of this Agreement will not be deemed a waiver.

15. Additional Service. The Parties understand that Yahoo! provides an optional additional service known as "Flickr Pro," for a subscription fee (currently \$24.95 per year). Before deciding to enter into a Flickr Pro subscription, You agree to determine

whether You have a need for those additional services, to consider the subscription's value in comparison with comparable services available elsewhere, to determine that funds are available for payment, to follow proper usage of the Government Purchase Card if that Card is used as the payment method, and in all other respects to follow applicable laws, regulations, and agency guidelines in making the purchase. Yahoo! agrees that Your subscription to Flickr Pro will adhere to the premises of this Agreement (outlined in the "Whereas" clauses) as well as the Flickr Pro Additional Terms of Service. The Parties further agree that, as stated in Section 1, this Agreement will take precedence over any conflicting terms and conditions in the Flickr Pro Additional Terms of Service, that among these controlling provisions are Section 8 (Indemnification) and Section 9 (Choice of Law; Forum) of this Agreement, but that the remaining non-conflicting provisions of the Flickr Pro Additional Terms of Service will govern.

IN WITNESS WHEREOF, the parties have, each through a duly-authorized representative, executed this Flickr Service Agreement on the Effective Date.

YAHOO!, INC.

By: _____

Name: _____

Title: _____

YOU: U.S. General Services Administration

By: _____

Name: _____

Title: _____

Email: _____

Fax: _____