AMENDMENT TO DISQUS TERMS OF SERVICE
APPLICABLE TO U.S. GOVERNMENT USERS/MEMBERS

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

You, as a U.S. 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; federal records; limitations on indemnification; fiscal law constraints; advertising and endorsements; freedom of information; and governing law and dispute resolution forum. Disqus ("Company" or "We") and You (together, the "Parties") agree that modifications to the Disqus standard Terms of Service, available at http://docs.disqus.com/help/29/ (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 Site and Services.

A. ***Government entity***: "You" within the TOS shall mean the Agency itself and shall not apply to, nor 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 Services of material that 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 agrees not to serve or display any commercial advertisements or solicitations in the publicly available portion of the Site displaying content uploaded by or under the control of the Agency. This exclusion shall not extend to house ads, which Company may place in a non-intrusive manner. This exclusion shall also not extend to windows or interfaces that are part of Company's service but not specific to Agency's site, such as global commenter profiles.

E. ***Indemnification, Liability, Statute of Limitations***: Any and all indemnification and damages provisions of the TOS are hereby waived. Liability for any breach of the TOS as modified by this Amendment, or any claim arising from the TOS as modified by 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 breach or claim.

F. ***Governing law***: Any arbitration, mediation or similar dispute resolution provision in the TOS is hereby deleted. The TOS and this Amendment shall be governed by and interpreted and enforced in accordance with the laws of the United States of America without reference to conflict of laws. Any provision of the TOS stating that the TOS shall be governed by and interpreted and enforced in accordance with any other

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laws other than those of the United States of America is hereby waived.

G. ***Changes to standard TOS***: Language in the 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.

H. ***Access and use***: Company acknowledges that the Agency's use of Company's Site and Services may energize significant citizen engagement and otherwise become important to the Agency's mission. 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 Agency's 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.

I. ***Ownership of names***: Any provision 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.

J. ***Modifications of Agency content***: Company agrees that any right reserved in the TOS 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 Company 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 Agency's 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.

K. ***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 federal law.

L. ***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.

M. ***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 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, Company agrees not

to display any Agency or government seals, trademarks, logos, service marks, and trade names 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 federal government authority. Company may list the Agency's name in a publicly available customer list on its homepage or elsewhere so long as the name is not displayed in a more prominent fashion than that of any other third party name.

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

O. ***No cost agreement***: Nothing in the TOS 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 TOS as modified by this Amendment are contingent upon the payment of fees by one party to the other.

P. ***Provision of data***: In the event of termination of service, within 30 days of such termination Company will provide you with all user-generated content that is publicly visible on the Site. 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://docs.disqus.com/help/30/.

Q. ***Separate future action for fee based Services***: You acknowledge that while Company will provide You with some services and features for free, Company reserves the right to begin charging for the Services and features at some point in the future. Company will provide Agency with at least 30 days advance notice of a change involving the charging of fees for currently free services. Agency also understand that Company may currently offer other premium and enterprise Services for a fee. 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 an Agency decides to enter into a premium or enterprise subscription, or any other fee-based service that this Company or alternative providers may offer now or in the future, 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 TOS 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 TOS as modified by this Amendment to any third party without prior written consent of the other.

S. ***Precedence; Further Amendment; Termination rights***: This Amendment constitutes an amendment to the TOS; any language in the TOS indicating it may not be modified or that 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 Amendment at any time. Company may close Agency's account and terminate this Amendment on 30 days written notice.

T. ***Posting and availability of this Amendment***: Any provision of the TOS requiring modifications of its terms to be posted on Company's Site 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 either party may release it to the public upon request and to other agencies interested in using the Services.

U. ***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 are employed to ensure security of systems and data. An SAS 70 Type II audit certification will be conducted annually, and Company agrees to provide Agency with the current SAS 70 Type II audit certification upon the agency's request. Recognizing the changing nature of the Web, Company will continuously work with users to ensure that its Site and Services meet users' requirements for the security of systems and data. Company agrees to discuss 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.

V. ***Federal Records***: Agency acknowledges that use of Company'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 the Company holds Federal records, the Agency and the Company 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 the Company is compliant with applicable records management laws and regulations through the life and termination of its use of the Site and Services.

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

X. ***Additional Items for discussion and possible inclusion in this Amendment***: 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. Among the topics Agency may need to discuss with Company, and which may lead to a mutual agreement to insert additional clauses in this Amendment, are Privacy and Accessibility.

[Disqus] **[U.S. Department of Commerce]**

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