

# THE ART OF GETTING TO YES

*How to Negotiate a TOS and Reduce Cost for Agencies*

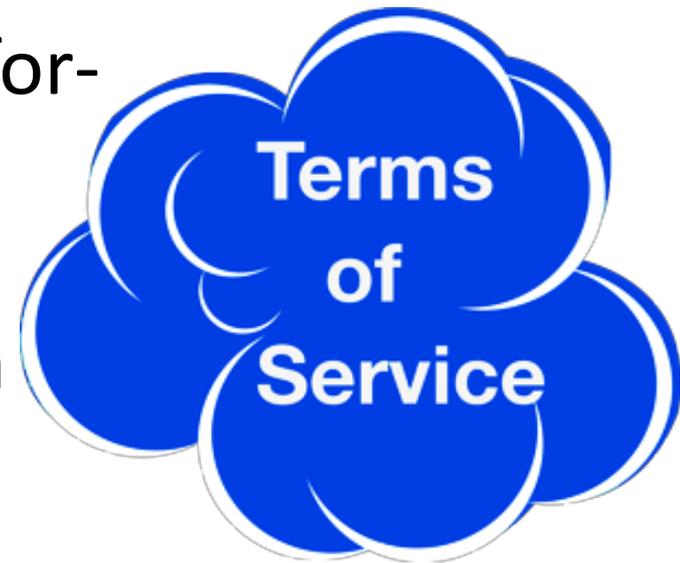


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# Why Negotiate?: Fed-Friendly TOS

- Government agencies use social media, and other third-party tools, to reach users
- Most tools, including the fee-for-service tools, have terms of service agreements
- Many are not compatible with federal law, regulation, or practice, especially...



## Why Negotiate? Fed-Friendly TOS *(cont.)*

- **Indemnification clauses** that obligate funds if there is a legal dispute
- **Clauses identifying a specific governing state** or court system in which disputes will be settled

# Why Negotiate?: Government Pricing

- Additionally...
- There is a great need for diversity in the tools available at a cost that meets the budget constraints of Federal Government agencies
- Many vendors do not have pricing tiers for Federal Government agencies

# Starting the conversation

Reaching out to vendors  
that have a product that  
you want to use



# Contact the Vendor

- First contact your Terms of Service Point of Contact (TOS POC)
- Next, connect with your Office of General Counsel for any special guidelines and protocol, they have the legal expertise to find what terms need to be modified
- Identify the best point of contact for the vendor: customer support or sales email address...
- Start the discussion about a government licensing model/pricing tier, as well as, fed-friendly TOS agreements.

# Challenges to Getting to Yes

- Many vendors are unfamiliar with the requirements for doing business with the federal government
- Developing a separate TOS may seem cumbersome and expensive to vendors
- Guarantee of bulk purchase normally precedes discount pricing

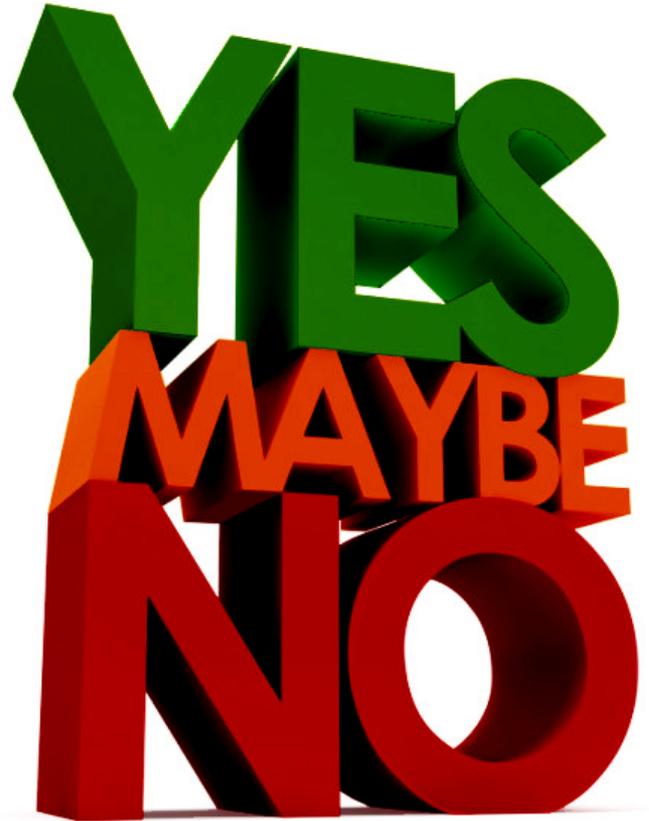


# Talking Points to Get to Yes

- **Good for Business:** *Adapting the terms of service for your product opens up a whole new market segment.*
- **Good for Public Service:** *Adapting the terms of service for your product delivers impact for public good.*
- **Good for Taxpayers and Government Agencies:** *Adapting the terms of service for your product allows government agencies to do more with less.*

# Talking Points: Fed-Friendly Pricing

- Federal Government is the one of the largest consumers of products and services
- Federal pricing-tiers and TOS makes the vendor more competitive, although there is not a guarantee of purchase
- Special pricing for education sector should follow similar logic



# Talking Points: Fed-Friendly TOS

- Modifying a TOS to meet the fed-government standards is not necessarily a heavy lift
- GSA offers a model TOS that vendors can use
- Refer to specific parts the vendor TOS that need to be adjusted to meet fed-gov standards



# Case Study: HHS and GoAnimate

How HHS got to yes  
with Goanimate and  
the results of YES.



## Case Study (Cont.)



The HHS ideaLab is an innovation center designed to help HHS employees formulate, test, measure and possibly scale their ideas through coaching, funding, and recognition.

# Case Study: Results

- Fed friendly TOS

**GOANIMATE, INC.**

**AMENDMENT TO TERMS OF SERVICE**

**APPLICABLE TO U.S. GOVERNMENT USERS/MEMBERS**

If you are an employee of the federal government of the United States and are using any of the business subscriptions on the GoAnimate Platform for official government work, the TOS is amended as follows:

- 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 Services on the Agency's behalf, or (ii) any individual users who happen to be employed by, or otherwise associated with, the Agency. GoAnimate will look solely to the Agency to enforce any violation or breach of the TOS by such individuals, subject to federal law.
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- C. Agency content serving the public: GoAnimate hereby approves Agency's distribution or other publication via the GoAnimate Platform 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 and complies with any requirements set forth in the TOS relating to Content (as such term is defined in the TOS).
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- E. Indemnification: All indemnification and damages provisions of the TOS are hereby waived. Neither Party will be liable to the other for any lost profits or business opportunities, loss of use, business interruption, loss of data, or any other indirect, special, incidental, or consequential damages under any theory of liability, whether based in contract, tort (including negligence and product liability), or otherwise. Liability of Agency for any breach of the TOS or this Agreement, or any claim arising from the TOS or this Agreement, shall be determined by applicable federal or state law. Federal Statute of Limitations provisions shall apply to any breach or claim.
- F. Governing law: The TOS and this Amendment shall be governed, interpreted and enforced in accordance with applicable federal law without reference to conflict of laws. To the extent permitted by federal law, the law of the State of California will apply in the absence of federal law.

[http://goanimate.com/termsfuse\\_government](http://goanimate.com/termsfuse_government)

# Case Study: Results (Cont.)

- Pricing tier for fed government

**Our Plans for Federal Agencies** [View plans for commercial use >](#)

[View GoAnimate's Terms Of Service amendment](#) – applicable to US federal employees.

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	<b>SAVE 20%</b>	<b>SAVE 20%</b>	<b>SAVE 20%</b>
	\$31.20/month or \$239.20/year	\$63.20/month or \$479.20/year	Starting at \$200/month or \$1,600/year for 3 users
Number of Users	1	1	3 or more
Additional Users	⊘	⊘	Escalating Volume Discounts
Download / Export Resolution	up to 720P	up to 1080P (Full HD)	up to 1080P (Full HD)
Export to YouTube, Other Sites	✓	✓	✓
Produce Unlimited Videos	✓	✓	✓
Unlimited Hosting / Playback	✓	✓	✓

# Case Study: Results (Cont.)

- GoAnimate has also modified their website to make the fed pricing and TOS easy to find



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# Summary

- Getting to yes does not have to be difficult
- Reach out to the vendor, seek the advice of the Office of General Counsel
- Use the model TOS provided by GSA
- Use the talking points and voila...
- Once you reach an agreement make sure you circle back to GSA and your general counsel with the good news

