THE ART OF GETTING TO YES
How to Negotiate a TOS and Reduce Cost for Agencies

Clair Koroma and Kathryn Hambleton
Digital Communications Division, Office of the Secretary, DHHS
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.
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

http://goanimate.com/termsofuse_government
Case Study: Results (Cont.)

• Pricing tier for fed government
Case Study: Results (Cont.)

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