

**AMENDMENT TO FOURSQUARE LABS, INC.'S TERMS OF USE
APPLICABLE TO GOVERNMENTAL USERS/MEMBERS**

This Amendment, agreed to by both Parties, applies to the following governmental agency/department ("Agency", "User", or "You"): U.S. National Archives and Records Administration.

You, as a United States 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; limitations on indemnification; fiscal law constraints; advertising and endorsements; freedom of information; and governing law and dispute resolution forum. Foursquare Labs, Inc. ("Foursquare" or "We") and You (together, the "Parties") agree that modifications to Foursquare's standard Terms of Use, available at <http://foursquare.com/legal/terms> (the "TOU"), are appropriate to accommodate Your legal status, Your public (in contrast to private) mission, and other special circumstances. Accordingly, the TOU are hereby modified by this Amendment as they pertain to Agency's use of the website at <http://foursquare.com> (the "Site") and the services, features, content, applications or widgets offered by Foursquare (collectively with the Site, the "Service").

- A. **Government entity:** "You" within the TOU shall mean the Agency itself and shall not apply to, or bind (i) the individual(s) who utilize the Foursquare Service on the 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 TOU that use of the Foursquare Service be for private, personal and/or non-commercial purposes is hereby waived.
- C. **Agency content serving the public:** Foursquare hereby approves Agency's distribution or other publication via the Service of materials which may contain or constitute promotions, advertisements or solicitations for goods or services related to the Agency's mission.
- D. **Advertisements:** Foursquare hereby agrees not to serve or display any commercial advertisements or solicitations on any pages within the Foursquare Site displaying content created by or under the control of the Agency. This exclusion shall not extend to promotion of additional Foursquare Services, which Foursquare may continue to serve on such pages and the Foursquare menu.
- E. **Indemnification:** All indemnification and damages provisions of the TOU are hereby waived. Liability of Agency for any breach of the TOU or this Amendment, or any claim arising from the TOU or this Amendment, shall be determined under the Federal Tort Claims Act, or other governing authority. Liability of Foursquare for any breach of the TOU or this Amendment, or any claim arising from the TOU or this Amendment, shall be determined by applicable federal law.
- F. **Governing law:** The Dispute Resolution provision of the TOU is hereby deleted. The TOU and this Amendment shall be governed, interpreted and enforced in accordance

with the federal laws of the United States of America. To the extent permitted by federal law, the laws of the State of New York will apply in the absence of federal law.

- G. **Dispute Resolution:** The Dispute Resolution provision of the TOU is hereby deleted. Except as otherwise provided herein, and those situations where a pre-existing statutory or regulatory system exists (e.g. under the Freedom of Information Act, 5 U.S.C. § 552), all disputes concerning questions of fact or law arising under the TOU and this Amendment shall be referred by the claimant in writing to the Agency signatory below (the "Agency Point of Contact"), and such writing shall identify an individual as a Foursquare Point of Contact. The persons identified as the Points of Contact for the Agency and Foursquare will consult and attempt to resolve all issues arising from the implementation of the TOU and this Amendment. If they are unable to come to agreement on any issue, the dispute will be referred to the signatories to this Amendment, or their designees, for joint resolution. If the Parties remain unable to resolve the dispute, then the Agency signatory or that person's designee, as applicable will issue a written decision that will be the final Agency decision for the purpose of judicial review. Nothing in this section limits or prevents either Party from pursuing any other right or remedy available by law upon the issuance of the final agency decision.
- H. **Changes to standard TOU:** Language in the standard TOU reserving to Foursquare the right to change the TOU without notice at any time is hereby amended to grant You at least three days advance notice of any material change to the TOU. Foursquare shall send this notice to the email address You designate at the time You sign up for the Foursquare Service, and You shall notify Foursquare of any change in the notification email address during the life of the Amendment.
- I. **Access and use:** Foursquare acknowledges that the Agency's use of Foursquare's Service may energize significant citizen engagement. Language in the TOU allowing Foursquare to terminate service, or close the Agency's account, at any time, for any reason, is modified to reflect the Parties' agreement that Foursquare may unilaterally terminate service and/or terminate Agency's account only for breach of Agency's obligations under the TOU or its material failure to comply with the instructions and guidelines posted on the Site, or if Foursquare ceases to operate its Site or Service generally. Foursquare will provide Agency with a reasonable opportunity to cure any breach or failure on Agency's part.
- J. **Provision on crawlers:** Any provision in the TOU prohibiting "crawl" or "spider" processes is amended to allow the Agency to apply such tools solely to its pages and solely to fulfill Agency's obligations under the Federal Records Act or other applicable federal law or regulation.
- K. **Modifications of User Submissions:** Foursquare agrees that the rights reserved in the TOU to modify or change Your content, including User Submissions, in any way is limited to technical actions necessary to index, format and display that content. The right to modify or change Your content does not include the right to edit or otherwise alter the meaning of the content. Notwithstanding the foregoing, nothing in this Amendment shall

result in an expansion of Your rights as a United States Government entity under the Copyright Act of 1976 (17 U.S.C. §§101 et seq.), specifically including Section 10 of said Act, or shall prevent Foursquare from removing any content that is in violation of the TOU.

- L. **Limitation of liability:** The Parties agree that nothing in the Limitation of Liability clause or elsewhere in the TOU in any way grants Foursquare a waiver from, release of, or limitation of liability pertaining to, any past, current or future violation of federal law.
- M. **No endorsement:** Foursquare agrees that Your seals, insignia, trademarks, logos, service marks, trade names or the fact that You use its Services, shall not be used by Foursquare to imply an endorsement, sponsorship or recommendation of Foursquare or its Service by You or the Federal Government. Except for pages whose design and content is under the control of the Agency, or for links to or promotion of such pages, Foursquare agrees not to display any Agency seal, insignia, trademarks, logos, service marks, or trade names on the Foursquare's homepage or elsewhere on the Foursquare Site, unless permission to do has been granted by the Agency or by other relevant federal government authority.
- N. **No business relationship created:** The Parties are independent entities and nothing in this Amendment or TOU creates an agency, partnership, or joint venture.
- O. **No cost agreement:** Nothing in this Amendment or TOU obligates You to expend appropriations or incur financial obligations. The Parties acknowledge and agree that none of the obligations arising from this Amendment or TOU are contingent upon the payment of fees by one party to the other.
- P. **Provision of data:** In case of termination of service, Foursquare will offer to, and upon Your acceptance, will provide You, within thirty (30) days of such termination, with all Your content, including User Content, that is publicly visible through the Foursquare Site and Service You created at Foursquare. Data will be provided in a commonly used file or database format as Foursquare deems appropriate. Foursquare will not provide data if doing so would violate its privacy policy, available at <http://foursquare.com/legal/privacy>.
- Q. **Separate future action for fee based arrangements:** You understand that We may offer services in the future for a fee. Foursquare will provide You with at least thirty (30) days advance notice of a change involving the charging of fees for the basic level of service. The Parties understand that fee-based services are categorically different than free products, 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 Foursquare may offer now or in the future, You agree to determine whether your Agency 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 TOU 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.

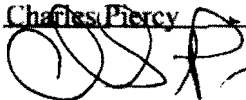
R. **Assignment:** Neither party may assign its obligations under this Amendment or TOU to any third party without prior written consent of the other.

S. **Precedence; Further Amendment; Termination:** This Amendment constitutes an amendment to the TOU; language in the TOU indicating it alone is the entire agreement between the Parties is waived. If there is any conflict between this Amendment and the TOU, or between this Amendment and other rules or policies on the Foursquare 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 agreement at any time. Foursquare may close Agency's account and terminate this agreement on thirty (30) days written notice.

**U.S. NATIONAL ARCHIVES AND
RECORDS ADMINISTRATION**

FOURSQUARE LABS, INC.

BY: Charles Piercy



BY: Eric Friedman

Title: Chief Information Officer (Acting)

Title: Director of Client Services

Email: Charles.Piercy@nara.gov

Email: Eric@Foursquare.com

Date: 12/7/2010

Date: 12/7/10