**Four Inc. Rider**
**to**
**Product Specific License Terms and Conditions**

**yello**

**(for U.S. Government End Users)**

**Scope**. This Rider and the attached **Yello** ("Manufacturer") product specific license terms establish the terms and conditions enabling Four Inc. to provide Manufacturer's information technology products and services to Ordering Activities under Four Inc's GSA contract number47QTCA24D008X (the "Schedule Contract").

**Applicability**. Whereas GSA and Four Inc. agreed at the time of Schedule Contract award upon a base set of terms and conditions applicable to all manufacturers and items represented on the Schedule Contract; and Whereas, the parties further agreed that all product specific license, warranty and software maintenance terms and conditions would be submitted at the time each new manufacturer was to be added to the Schedule Contract; Now, Therefore, the parties hereby agree the product specific license, warranty and software maintenance terms set forth in Attachment A hereto (the "Manufacturer Specific Terms" or the "Attachment A Terms") are incorporated into the Schedule Contract, but only to the extent that they are consistent with federal law (*e.g.*, the Anti-Deficiency Act (31 U.S.C. § 1341), the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.), the Prompt Payment Act (31 U.S.C. §§ 3901 et seq.), the Anti-Assignment statutes (31 U.S.C. § 3727 and 41 U.S.C. § 15), DOJ's jurisdictional statute 28 U.S.C. § 516 (Conduct of Litigation Reserved to the Department of Justice (DOJ), and 28 U.S.C. § 1498 (Patent and copyright cases)). To the extent any Attachment A Terms are inconsistent with federal law (See, FAR 12.212(a)), such inconsistent terms shall be deemed deleted, unenforceable and of no legal force or effect in all resultant orders under the Schedule Contract, including but not limited to the following provisions:

**Contracting Parties.** The Government Customer is the "Ordering Activity", defined as the entity authorized to order under GSA MAS contracts as set forth in GSA ORDER ADM 4800.2G (Feb 2011), as may be revised from time to time.

**Changes to Work and Delays.** Subject to GSAR Clause 552.243-72, Modifications (Federal Supply Schedule) (July 2000) (Deviation I – SEPT 2010), and 52.212-4(f) Excusable Delays (JUN 2010) regarding which the GSAR and the FAR provisions take precedence.

**Contract Formation.** Subject to FAR 1.601(a) and FAR 43.102, the Government Order must be signed by a duly warranted contracting officer, in writing. The same requirement applies to contract modifications affecting the rights of the parties. All terms and conditions intended to bind the Government must be included within the contract signed by the Government.

**Termination.** Clauses in the Manufacturer Specific Terms referencing termination or cancellation are hereby deemed to be deleted. Termination shall be governed by FAR 52.212-4(l) and (m) and the Contract Disputes Act, subject to the following exceptions:
Four Inc. may request cancellation or termination of the license agreement on behalf of the Manufacturer if such remedy is granted to it after conclusion of the Contracts Disputes Act dispute resolution process or if such remedy is otherwise ordered by a United States Federal Court.

**Choice of Law.** Subject to the Contracts Disputes Act and the Federal Tort Claims Act (28 U.S.C. §1346(b)), the validity, interpretation and enforcement of this Rider shall be governed by and construed in accordance with the laws of the United States. In the event the Uniform Computer Information Transactions Act (UCITA) or any similar federal laws or regulations are enacted, to the extent allowed by law, they will not apply to this Rider or the underlying Schedule Contract. All clauses in the Manufacturer Specific Terms referencing equitable remedies are deemed deleted and not applicable to any Government order.

**Force Majeure.** Subject to FAR 52.212-4(f) Excusable delays (FEB 2012), unilateral termination by the Contractor does not apply to a Government Order and all clauses in the Manufacturer Specific Terms referencing unilateral termination rights of the Manufacturer are hereby deemed to be deleted.

**Assignment.** All clauses regarding assignment are subject to FAR 52.232-23, Assignment of Claims (JAN 1986) and FAR 42.12 Novation and Change-of- Name Agreements. All clauses governing assignment in the Manufacturer Specific Terms are hereby deemed deleted.

**Waiver of Jury Trial.** Waivers of Jury Trials are subject to FAR 52.233-1 Disputes (JULY 2002). All clauses governing a waiver of jury trial in the Manufacturer Specific Terms are hereby deemed to be deleted.

**Customer Indemnities.** Unless otherwise permitted by Federal statute, all Manufacturer Specific Terms referencing customer Indemnities are hereby deemed to be deleted.

**Contractor Indemnities.** All Manufacturer Specific Terms that (1) violate DOJ's jurisdictional statute (28 U.S.C. § 516) and/or (2) require that the Government give sole control over the litigation and/or settlement are hereby deemed to be deleted.

**Renewals.** All Manufacturer Specific Terms that violate the Anti-Deficiency Act ban on automatic renewal are hereby deemed to be deleted.

**Future Fees or Penalties.** All Manufacturer Specific Terms that violate the Anti-Deficiency Act prohibition on the Government paying any fees or penalties beyond the contract amount, unless specifically authorized by existing statutes, such as the Prompt Payment Act (31 U.S.C. § 3901 et seq.), or Equal Access To Justice Act (5 U.S.C. § 504; 28 U.S.C. § 2412), are hereby deemed to be deleted.

**Taxes.** Taxes are subject to FAR 52.212-4(k), which provides that the contract price includes all applicable federal, state, local taxes and duties.

**Third Party Terms.** Subject to the actual language agreed to in the Order by the Contracting Officer, any third-party manufacturer shall be brought into the negotiation, or the components acquired separately under federally-compatible agreements, if any. All Manufacturer Specific Terms that incorporate third-party terms by reference are hereby deemed to be deleted.

**Installation and Use of the Software.** Installation and use of the information technology shall be in accordance with this Rider and Manufacturer Specific Terms attached hereto, unless an Ordering Activity determines that it requires different terms of use and Manufacturer agrees in writing to such terms in a valid delivery order placed pursuant to the Schedule Contract.

**Dispute Resolution and Venue.** Any disputes relating to the Manufacturer Specific Terms or to this Rider shall be resolved in accordance with FAR 52.233-1 Disputes and the Contract Disputes Act. The Ordering Activity expressly acknowledges that Four Inc. as contractor, on behalf of the Manufacturer, shall have standing to bring such claim under the Contract Disputes Act.

**Advertisements and Endorsements.** Unless specifically authorized by an Ordering Activity in writing, use of the name or logo of any U.S. Government entity is prohibited.

**Public Access to Information.** Four Inc. agrees that the attached Manufacturer Specific Terms and this Rider contain no confidential or proprietary information and acknowledges the Rider shall be available to the public.

**Confidentiality.** Any provisions in the attached Manufacturer Specific Terms that require the Ordering Activity to keep certain information confidential are subject to the Freedom of Information Act (5 U.S.C. § 552), and any order by a United States Federal Court.

**Order of Precedence/Conflict**. To the extent there is a conflict between the terms of this Rider and the terms of the underlying Schedule Contract, the terms of this Rider shall control. Any capitalized terms used herein but not defined, shall have the meaning assigned to them in the underlying Schedule Contract.

**YELLO END-USER LICENSE AGREEMENT**

This End-User License Agreement (this "Agreement") is a legal contract between Ordering Activity under GSA Schedule contracts identified in the Purchase Order, Statement of Work, or similar document (the "Customer" or "Ordering Activity" ) and the GSA Multiple Award Schedule Contractor acting by and through its supplier, RECSOLU, Inc., DBA Yello, a Delaware corporation with its principal offices at 55 E. Monroe Street, Suite 3600, Chicago, Illinois 60603 ("Yello"). Each of Yello and Customer may hereinafter be referred to as a "Party" and collectively as the "Parties."

This Agreement describes your rights and the conditions upon which Customer may use the Yello Services and System. By accepting this Agreement, Customer agrees to all of these terms. If Customer does not accept and comply with these terms ,then Customer may not use the Services or System.

1) **Definitions**. The following terms used in this Agreement shall have the meanings stated below:

   a) "Admin User" means seats having full read, write and edit functionality with respect to the Services.

   b) "Authorized User" means any individual that is authorized by Customer to access and use the System on behalf of Customer in accordance with an Order.

   c) "Business Day(s)" means Monday through Friday, 8:00 AM to 6:00 PM U.S. Central Time, excluding all U.S. Federal holidays.

   d) "Cloud Services" means the software-as-a-service provided by Yello pursuant to any Order from, or for the benefit of, Customer.

   e) "Confidential Information" means any and all non-public, proprietary or confidential information, including, without limitation, trade secrets, know-how and proprietary information, firmware, software, source code, object code, data, designs, schematics, techniques, plans or any other information relating to any research project, work in process, future development, scientific, engineering, manufacturing, marketing or business plans or financial or personnel matters relating to either Party or its products, sales, suppliers, customers, employees, investors or affiliates. Confidential Information includes (i) the terms and conditions of this Agreement, any Order attached hereto and any purchase orders issued hereunder; (ii) information disclosed in a written or other tangible form which is clearly marked with a "confidential" or "proprietary" legend or other comparable legend; (iii) information disclosed orally or visually which is identified as confidential at the time of disclosure; and (iv) any other information which a reasonable person would deem confidential under the context of disclosure or due to the nature of the information itself, provided that "Confidential Information" shall not include the items listed in Section 5(b).

   f) "Customer Data" means the information and data that is submitted by or on behalf of the Customer to be processed by the System.

   g) "Disclosing Party" means the Party disclosing, supplying or otherwise making available its Confidential Information to the other Party.

   h) "Error" means a material failure of the System to conform to the Service Levels or other requirements of this Agreement or any Order, provided that notwithstanding the foregoing, "Error" shall not include, and Yello shall not be liable for or have any obligation to remedy any related issues, caused by (i) any use of the System by Customer or its Authorized Users which is not in accordance with the terms and conditions of this Agreement or any Order, (ii) any occurrence that is attributable to an interface or link, or attempted interface or link, by Customer, its Authorized Users or anyone acting on their behalf between the System and any telecommunications hardware, software or connections not provided by Yello hereunder, (iii) any misuse or improper or illegal use of the System,(iv) any malfunction of any telecommunications hardware,

software or connections not provided by Yello hereunder or (v) any issue that can be resolved by restarting a system or allowing for momentary systems or internet browser load spikes to pass.

i)  "<u>Indemnified Party</u>" means the Party seeking indemnification pursuant to Section 7(a) or 7(b).

j)  "<u>Indemnifying Party</u>" means the Party responsible for indemnification pursuant to Section 7(a) or 7(b).

k)  "<u>IP Rights</u>" means, on a worldwide basis, all patents (including originals, divisionals, continuations, continuations- in-part, extensions, foreign applications, utility models, and re-issues), patent applications, copyrights (including all registrations and applications therefor), trade secrets, service marks, trademarks, trade names, trade dress,

trademark applications, moral rights, and any and all other proprietary and intellectual property rights, and any goodwill relating to any of the foregoing.

l) "<u>Modification</u>" means any enhancement, modification, update, upgrade, improvement, new release or other change to the System.

m) "<u>Order</u>" means a document mutually executed by the Parties pursuant to which Customer procures specific Services from Yello, which document shall specify, among other things, a description of the Services to be provided, any Service Levels, the compensation for such Services, the term of the Order, and any other details specifically related to such Services.

n) "<u>Other Services</u>" means any services described in an Order that do not constitute Cloud Services, including professional services or consulting services.

o) "<u>Receiving Party</u>" means the Party receiving or otherwise being provided access to the Confidential Information from the other Party.

p) "<u>Reports</u>" means any reports that incorporate Customer Data generated by or through the Cloud Services or System by, or for the benefit of, Customer.

q) "<u>Service Levels</u>" means any service level agreement with respect to Services as stated in an applicable Order.

r) "<u>Services</u>" means any Cloud Services and/or Other Services.

s) "<u>Spin Off</u>" means the creation of a separate entity through the sale or distribution of shares of an existing entity or the division of a parent entity. This includes a divestiture and a split-up resulting from a dissolution.

t) "<u>Staff</u>" means seats having read-only functionality with respect to the Services.

u) "<u>System</u>" means Yello's cloud-based software, data, and related materials (in each case, including any modifications, corrections, enhancements or upgrades, whether made pursuant to this Agreement, any Order or otherwise) made available to Customer as part of any Cloud Services described in an Order.


2) **SERVICES**


a) Yello shall provide Customer with a limited, non-transferable (except to a permitted assignee as set forth in Section 12(c) below) license to use the Services in accordance with the terms and conditions of any applicable Order, including, if applicable, providing access for Authorized Users to the System. The terms of each Order are incorporated into this Agreement by reference and shall be binding upon the Parties. In the event of a conflict or ambiguity between any provision of this Agreement and an Order, the provision of the Order shall govern, but only with respect to the subject matter and scope of such Order.

b) Yello shall provide the implementation and support services described in an Order to provide Customer with access to the System. Customer will work with Yello to set an accommodating schedule to integrate and implement the System to maximize its usage by the Customer.

c) The portion of the System used by Customer will be password protected. Yello will utilize at least industry standard protections to limit access to such portion of the System to Authorized Users who have the requisite access codes, and to Yello's administrators who have a need to access the System. Yello will grant access codes to the Authorized Users designated in writing by Customer and will use reasonable efforts to assist Customer in promptly disabling access codes for any Authorized User upon Customer's written request. Customer is solely responsible for maintaining the confidentiality of its passwords.

d) Yello shall cause its agents and personnel to comply with all of the terms and conditions of this Agreement and any Order. Customer consents to Yello's use of subcontractors and cookies in the provisioning of the Services.

e) Yello shall provide at least five (5) Business Days' notice of any preventive maintenance which will render the System temporarily unavailable and any such preventive maintenance will be conducted outside of Business Day hours. In the event of emergency maintenance or repairs which will render the System temporarily unavailable are necessary, Yello shall use its commercially reasonable efforts to (i) provide

at least four (4) hours' notice prior to its performance of such emergency maintenance or repairs; (ii) perform such emergency maintenance or repairs outside of Business Day hours; and (iii) minimize the period of time required for the performance of such emergency maintenance or repairs.

f) Yello shall maintain commercially reasonable controls and safeguards that are designed to mitigate security risks to the System and to protect any Customer Data that is processed by Yello.

g) Yello will maintain commercially reasonable safeguards that are designed to protect against the destruction or loss of Customer Data in Yello's possession, including commercially reasonable backup procedures.

h) Customer shall notify Yello of the existence of any Errors promptly upon discovering and verifying the same. Yello shall provide written notice to Customer upon resolution of any Error identified by Customer and reproducible by

Yello, which resolution shall be implemented without additional cost to Customer. Customer shall reasonably assist Yello in identifying and attempting to resolve Errors.

i) Customer shall not introduce any viruses, Trojan horses, worms or other "malware" into the System.

j) Customer agrees to use the System solely for the legitimate business purposes of Customer's talent recruitment efforts, and to not operate the System for the benefit of any other person or entity, such as a time sharing, service bureau, hosting, service provider or like purposes. Customer is solely responsible for any misuse of the System, including any hijacking of the System, that is attributable to Customer.

k) Customer hereby acknowledges and agrees that it is not authorized to submit health data, financial data, or social security information into the System or Services ("Unauthorized Information"). Yello disclaims all liability in connection with, and Customer agrees to indemnify and hold Yello harmless for, any and all Losses (as defined below) resulting from, Customer's or Customers' candidate's insertion of Unauthorized Information into the System or Services.

l) Customer shall be responsible for the following:

i) Managing user authentication and authorization to the Services and System, including user provisioning procedures;

ii) Adopting strong operating system and application password management procedures, including using passwords that cannot be easily compromised;

iii) Reporting any issues or bugs to Yello via an email to infosec@yello.co or directly to a representative of Yello, within twenty-four (24) hours following discovery;

iv) Ensuring the legality of data that Customer inputs into the Services or System and the means by which
Customer acquired such data;

v) Using commercially reasonable efforts to protect its local IT systems against corruption by possible viruses, Trojans or similar malware;

vi) Using commercially reasonable efforts to prevent unauthorized access to or use of Services, and notify Yello within twenty-four (24) hours following any discovery of such unauthorized access or use;

vii) Ensuring that Authorized Users are aware of their responsibilities and obligations under this
Agreement, and comply with them; viii) Using the Services only in accordance with the applicable documentation and applicable laws and government regulations;

ix) Ensuring that, upon termination of any Authorized User's contract of employment or engagement, such terminated Authorized User's access to the Services is revoked within twenty-four (24) hours of such termination;

x) Complying with and causing its employees, agents, representatives, contractors, and subcontractors to comply with all applicable laws and regulations related to receipt and use of the Services; and

xi) Complying with and causing its employees, agents, representatives, contractors and subcontractors to comply with all personnel, facility, safety and security policies, rules and regulations and other reasonable instructions of Yello, when performing work at a Yello facility or accessing any Yello systems or Services, and conducting its work at Yello facilities or on Yello systems or Services in such a manner as to avoid endangering the safety, or interfering with the convenience or efficiency of, Yello's representatives or customers.

3) **PAYMENT AND TAXES**

a) Customer will pay the GSA Schedule Contractor on behalf of Yello the applicable fees associated with the Services as set forth in an Order in accordance with the GSA Schedule Pricelist. All fees and dollar amounts referred to under this Agreement or any Order are in United States Dollars ("USD"). Yello will invoice Customer for such fees at the times set forth in the applicable Order.

b) If any payment for Services is more than thirty (30) days past due of the invoicing and payment terms designated on the applicable Order, then such payments shall be subject to a finance fee as indicated by the Prompt Payment Act (31 USC 3901 et seq) and Treasury regulations at 5 CFR 1315.

c) Customer agrees to be responsible for and pay and discharge when due any and all federal, state and local sales, use or other similar taxes that may be levied, assessed, imposed or charged in connection with the performance of this Agreement (other than taxes based upon the income or revenue of Yello). If Customer has an applicable tax exemption certificate, Customer shall provide Yello with evidence of such exemption within five (5) days of mutual execution of the respective Order.

d) Purchases through Resellers. In the event Customer purchases the Services through a reseller, the invoicing and payment terms agreed between Customer and such reseller shall apply in lieu of the payment terms set forth herein.

4) **REPRESENTATIONS AND WARRANTIES**

a) Yello hereby makes the following representations and warranties:
   i) Yello is validly existing and in good standing under the laws of the jurisdiction of its formation.
   ii) Yello has all requisite company power and authority to execute and deliver this Agreement and any Order and to carry out and perform its obligations under the terms of this Agreement and any such Order.
   iii) Any Services shall be performed by Yello in a professional, competent and workmanlike manner in accordance with general industry standards. Yello shall ensure that all of its personnel have the proper skills and training necessary to perform the applicable Services. Customer's sole and exclusive remedy for a breach of this subsection is the proper re-performance of the Services affected by such breach.
   iv) Yello shall comply in all material respects with applicable federal, state and local laws, rules and regulations applicable to its provision of the Services. Yello will ensure that it has the permits and licenses necessary to perform the Services.
   v) Yello is not aware of any facts that indicate the System infringes on any third party's IP Rights.
   vi) Yello is not aware of any viruses, Trojan horses, worms or other "malware" in the System, and Yello has taken commercially reasonable steps to protect the System against any such "malware."

b) Customer hereby makes the following representations and warranties:
   i) Customer is validly existing and in good standing under the laws of the jurisdiction of its formation.
   ii) Customer has all requisite power and authority to execute and deliver this Agreement and any Order and to carry out and perform its obligations under the terms of this Agreement and any such Order.
   iii) Customer is not aware of any facts that indicate the Customer Data infringes on any third party's IP Rights.
   iv) Customer shall comply with all applicable federal, state, and local laws, rules, and regulations.

c) EXCEPT AS EXPRESSLY SET FORTH HEREIN OR IN ANY ORDER, NEITHER PARTY MAKES ANY, AND EACH PARTY HEREBY DISCLAIMS ALL, WARRANTIES OR CONDITIONS OF ANY KIND, WHETHER EXPRESS OR IMPLIED, WITH RESPECT TO ANY MATTER WHATSOEVER, INCLUDING WITHOUT LIMITATION THE IMPLIED WARRANTIES OF TITLE, MERCHANTABILITY, NON-INFRINGEMENT, AND FITNESS FOR A PARTICULAR PURPOSE.

5) **CONFIDENTIALITY**

a) Each Receiving Party agrees to keep confidential the Disclosing Party's Confidential Information subject to the terms and conditions of this Section 5. The Receiving Party will safeguard the Confidential Information of the Disclosing Party using the same degree of care as it uses to safeguard its own Confidential Information, but in no case less than a reasonable degree of care. The Receiving Party will limit (i) access to the Disclosing Party's Confidential Information to those of its personnel and agents with a need to know such Confidential Information for the performance of obligations under this Agreement and (ii) use of the Disclosing Party's Confidential Information to the exclusive purposes set forth in this Agreement. Unless otherwise agreed to by the Parties in writing, the Confidential Information of the Disclosing Party is and will remain the sole and exclusive property of the Disclosing Party, and the Receiving Party will have no right in or to the Disclosing Party's Confidential Information.

b) Confidential Information will not include information to the extent that the Receiving Party can show that (i) such information is or became publicly available other than through any act or omission of the Receiving Party in breach of this Agreement; (ii) such information was received by the Receiving Party from a third party, which third party, to the Receiving Party's knowledge, had no obligation of confidentiality to the Disclosing Party; (iii) such information was in the possession of the Receiving Party

at the time of the disclosure; or (iv) such information was independently developed by the Receiving Party without reference
to the Disclosing Party's Confidential Information.

c) Notwithstanding the foregoing, in the event a subpoena or other legal process is served upon the Receiving Party that, pursuant to the requirement of a governmental agency or law with jurisdiction over the Receiving Party, compels disclosure of the Disclosing Party's Confidential Information, the Receiving Party may disclose such portion of the Disclosing Party's Confidential Information required to be disclosed, provided that the Receiving Party notifies the Disclosing Party promptly of such request (unless such notice is prohibited by law, rule or regulation), and cooperates with the Disclosing Party, at the Disclosing Party's expense, in the Disclosing Party's efforts to contest the legal validity or scope of such subpoena or other legal process.  Yello recognizes that Federal agencies are subject to the Freedom of Information Act, 5 U.S.C. 552, which may require that certain information be released, despite being characterized as "confidential" by the vendor.

d) Reserved

enforce such provisions. This provision with respect to injunctive relief will not, however, diminish a Party's right to seek other legal, contractual or equitable remedies, or to claim and recover damages in the event of a breach of this Section 5.

e) Except when disclosure is permitted pursuant to this Section 5 or as may otherwise be required pursuant to the requirement of a governmental agency or law with jurisdiction over the Receiving Party, neither Party will disclose the economic terms of this Agreement to any third party without prior written approval from the other Party, provided that Yello may note in its marketing materials that Customer is a client (but may disclose no other terms or conditions of the relationship) during the term of this Agreement to the extent permitted by the General Services Acquisition Regulation (GSAR) 552.203-71.

f) In the event Yello becomes aware of any security breach that compromises Customer's Confidential Information, Yello will promptly notify Customer, investigate, and use its commercially reasonable efforts to remedy said breach.

## 6) **INTELLECTUAL PROPERTY**

a) Yello agrees that, as between Yello and Customer, Customer owns the Customer Data and all Reports generated with such Customer Data. During the term of this Agreement, Customer may provide Yello with Customer Data for use in the provision of the Services. Customer hereby grants to Yello a nonexclusive, non-transferable (except to a permitted assignee in connection with an assignment pursuant to Section 12(c) below) license to use the Customer Data solely in the provision of the Services. In addition, Yello may also use statistics generated from the provision of the Services to Customer in an aggregated form for purposes of benchmarking system performance, system metrics and other business purposes but only if all personally identifiable information and any relationship to or association with Customer has been removed from, and Customer is not identifiable as a result of, such statistics (for example, using the number of QR Code scans made by Customer at a particular conference, without attribution to Customer, in preparing aggregate conference statistics).

b) Except for (i) the limited rights to access the System pursuant to the terms and conditions set forth herein or any Order and (ii) Customer's rights in the Customer Data, Customer agrees that, as between Customer and Yello, Yello owns all, and Customer is not granted any rights in, to, or with respect to (A) the System and all IP Rights therein or (B) any other IP Rights of Yello, and all such rights therein are reserved for Yello. Customer agrees to use the System and the Cloud Services solely for the legitimate business purposes for which they are intended and to not operate the System or the Cloud Services for the benefit of any other person or entity. Customer further agrees not to modify, adapt, translate, disassemble or reverse engineer any aspect or portion of the System.

## 7) **INDEMNIFICATION**

a) Yello shall indemnify and hold Customer harmless from any and all losses, damages, costs (including reasonable attorneys' fees), settlements and liabilities (collectively, "Losses") resulting from third party claims, suits, actions or proceedings arising from or relating to (i) the infringement, misappropriation or other violation by Yello of any United States IP Rights of any third party and (ii) the gross negligence or willful misconduct of Yello or its personnel or agents; provided that notwithstanding the foregoing, Yello shall not be liable for any Losses relating to any alleged infringement, misappropriation or other violation of any IP Rights of any third party to the extent based upon Customer's use of the Cloud Services or System: (i) in combination with other products or services if such Losses would have been avoided but for such combination; or (ii) in violation of this Agreement.

b) Reserved.

c) Upon becoming aware of events giving rise to an indemnification claim under Section 7(a)      above, the Indemnified Party shall provide prompt written notice of such claim, including a reasonable description of the basis thereof, to the Indemnifying Party and allow the Indemnifying Party to control the defense of such third party claim at the Indemnifying Party's expense. The Indemnifying Party shall not settle any claim without the Indemnified Party's written consent (which consent shall not be unreasonably withheld, conditioned or delayed) if such settlement would result in injunctive relief against, a monetary contribution from, or admission of wrongdoing by, the Indemnified Party. If the Indemnifying Party elects to control the defense of such third-party claim, the Indemnified Party shall have the right to participate in such defense at its own expense. The Indemnified Party

shall provide reasonable non-monetary assistance to the Indemnifying Party in connection with the defense and/or settlement of any third-party claim.

d) If a third party claim alleging infringement of any IP Rights with respect to the Cloud Services or System is successful against Yello or Customer, Yello may, at its option and expense, either (i) procure from such third party the right for Customer to continue using the System and receiving the Cloud Services or (ii) modify the System and Cloud Services to make them non-infringing, but functionally substantially equivalent. If Yello determines that neither of these alternatives is reasonably available, either Party may terminate this Agreement and Customer will receive a refund of any prepaid but unused fees. THIS SECTION STATES YELLO'S ENTIRE OBLIGATION TO CUSTOMER WITH RESPECT TO ANY CLAIM OF INFRINGEMENT OF ANY THIRD-PARTY INTELLECTUAL PROPERTY RIGHTS.

8) **LIMITATIONS ON LIABILITY**

a) THE AGGREGATE LIABILITY OF YELLO FOR ALL CLAIMS OR LIABILITY, WHETHER IN CONTRACT, TORT (INCLUDING PRODUCT LIABILITY), STRICT LIABILITY, INFRINGEMENT OR OTHERWISE, ARISING OUT OF, CONNECTED WITH, OR RESULTING DIRECTLY OR INDIRECTLY FROM THIS AGREEMENT, ANY ORDER OR THE SERVICES OR SYSTEM SHALL NOT EXCEED AN AMOUNT EQUAL TO THE FEES PAID BY CUSTOMER TO YELLO UNDER THE APPLICABLE ORDER(S). THE FOREGOING LIMITATION OF LIABILITY SHALL NOT APPLY TO (1) PERSONAL INJURY OR DEATH RESULTING FROM LICENSOR'S NEGLIGENCE; (2) FOR FRAUD; OR (3) FOR ANY OTHER MATTER FOR WHICH LIABILITY CANNOT BE EXCLUDED BY LAW.

b) NOTWITHSTANDING ANY OTHER PROVISION IN THIS AGREEMENT TO THE CONTRARY, EXCEPT IN THE EVENT OF WILLFUL MISCONDUCT, IN NO EVENT SHALL EITHER PARTY BE LIABLE FOR INCIDENTAL, CONSEQUENTIAL, INDIRECT, EXEMPLARY, SPECIAL OR PUNITIVE DAMAGES, INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOST PROFITS OR REVENUE, ARISING OUT OF OR RELATING TO THIS AGREEMENT, ANY ORDER OR THE SERVICES OR SYSTEM, EVEN IF THE PARTIES HAD KNOWLEDGE OF THE POSSIBILITY OF SUCH DAMAGES OR COSTS AND WHETHER OR NOT SUCH DAMAGES ARE FORESEEABLE.

9) **INSURANCE REQUIREMENTS**

a) During the Term of this Agreement, Yello shall maintain commercially reasonable levels of insurance coverage to secure the performance of its obligations under this Agreement, including, but not limited to, comprehensive general liability, automobile/umbrella liability, and worker's compensation.

b) Upon written request, Yello will provide Customer with written evidence of the coverage described in Section 9(a).

10) **INDEPENDENT CONTRACTOR RELATIONSHIP**

a) In connection with this Agreement, the Parties acknowledge that they are independent contractors. Neither this Agreement nor any Order shall create a relationship of employment, agency, or partnership between the Parties, nor shall they give either Party any authority to bind or commit the other Party.

b) Neither Yello nor any of its personnel or agents shall be entitled to any benefits provided by Customer to its employees. Yello shall be solely responsible for payment of all employment related and compensation related charges to its personnel and agents in connection with the performance of the Services.

c) This Agreement shall not be deemed to be an exclusive contract. Subject to the Parties' obligations in Section 5, Customer may utilize any other vendor to provide similar services, and Yello may provide similar services to any other customer.

11) **TERMINATION**

a) This Agreement shall commence on the Effective Date of the respective Order, and shall continue in full force and effect until terminated pursuant to the provisions of this Section 11.

b) This Agreement may be terminated at any time upon the mutual written agreement of the Parties.

c) When the End User is an instrumentality of the U.S., recourse against the United States for any alleged breach of this Agreement must be brought as a dispute under the contract Disputes Clause (Contract Disputes Act). During any dispute under the Disputes Clause, Yello shall proceed diligently with performance of this Agreement, pending final resolution of any request for relief, claim, appeal, or action arising under the Agreement, and comply with any decision of the Contracting Officer.

d) Yello may immediately terminate this Agreement or any Order if Customer materially breaches either Section 5 (Confidentiality) or Section 6 (Intellectual Property) of this Agreement.

e) Sections 1, 3, 5, 6, 7, 8, 10, 12, and this Section 11(e), and any other provisions of this Agreement which expressly provide that they survive shall survive the expiration or termination of this Agreement. Other than with respect to the provisions of this Agreement which survive expiration or termination, neither Party will be liable to the other Party for damages in connection with this Agreement following expiration or termination of this Agreement or any Order except for those arising due to a material breach by a Party of this Agreement or any Order prior to such expiration or termination. Both Parties waive any right it may have to receive compensation or reparation under the law of any jurisdiction in the event of such an expiration or termination other than as a result of a material breach of this Agreement or any Order arising prior to such expiration or termination.

12) **GENERAL PROVISIONS**

a) <u>Force Majeure</u>. Excusable delays shall be governed by FAR 52.212-4(f).

b) <u>Notice</u>. Any notices required or permitted under this Agreement must be in writing and delivered in person or sent by U.S. Postal Service or other delivery service requiring acknowledgment of receipt by signature to the following applicable address: (i) if to Yello: RECSOLU, Inc., DBA Yello, 55 E. Monroe, Suite 3600, Chicago, IL 60603, Attn: Legal Dept, contracts@yello.co; and (ii) if to Customer: the address set forth in the Order.

c) <u>Assignment</u>. Neither Party may assign this Agreement without the prior written consent of the other Party, which consent shall not be unreasonably withheld or delayed, except that either Party may assign this Agreement, without the other Party's written consent, to (i) an affiliate; (ii) a successor in interest resulting from merger or consolidation with such assigning Party or to any person or entity which acquires all or substantially all of the assets of such Party's business to which this Agreement relates; and (iii) its financing sources as collateral subject to 31 USC 3727 and FAR clause at 52.2124(b). Any assignment in violation of this Section 12(c) shall be null and void and of no force and effect. Subject to the foregoing, this Agreement shall bind and inure to the benefit of the Parties, their respective successors and permitted assigns.

d) If any phrase, clause or provision of this Agreement is declared invalid or unenforceable by a court of competent jurisdiction or arbiter, such phrase, clause or provision shall be deemed severed from this Agreement, but will not affect any other provision of this Agreement, which shall otherwise remain in full force and effect.

e) Yello and Customer intend that this Agreement shall not benefit or create any right or cause of action in favor of or for the benefit of any person or entity other than the Parties.

f) This Agreement, and any Order entered into in connection with this Agreement, shall be governed by and construed in accordance with the Federal laws of the United States. EACH PARTY HERETO HEREBY WAIVES ALL RIGHTS TO TRIAL BY JURY IN ANY ACTION OR PROCEEDING WHICH PERTAINS DIRECTLY OR INDIRECTLY TO THIS AGREEMENT OR ANY ADDENDUM, ORDER OR OTHER AGREEMENT WHICH, IN ANY WAY, ARISES OUT OF OR RELATES TO THIS AGREEMENT.

g) Reserved.

h) The headings assigned to the Sections and subsections of this Agreement are for convenience only and shall not limit the scope and applicability of the Sections and subsections.

i) Neither Party shall be deemed to be the drafter of this Agreement and if this Agreement is construed in any court or arbitration proceeding, said court or arbiter shall not construe this Agreement or any provision hereof against either Party as the drafter hereof.

j) This Agreement, together with the Order(s) being entered into in connection herewith, the underlying GSA Schedule Contract, and Schedule Pricelist, sets forth the entire understanding and agreement of the Parties, and supersedes all prior agreements, arrangements and

communications, whether oral or written, between the Parties with respect to the subject matter hereof. There are no written or oral understandings directly or indirectly related to this Agreement that are not set forth herein.

k) No amendment, change, or modification of this Agreement or any Order shall be effective unless it is made in writing, is signed by an authorized representative of each Party, and expressly states that it amends this Agreement or a respective Order. No waiver of any breach of this Agreement or any Order shall be effective unless made in writing and signed by an authorized representative of the waiving Party.

l) No terms or conditions of either Party's invoice, purchase order, or other administrative document (unless signed by both parties) will be effective as a modification of the terms and conditions of this Agreement, regardless of the other Party's failure to object to such.