

**COUNTY OF MONTEREY STANDARD AGREEMENT
(NOT TO EXCEED \$100,000)**

This Agreement is made by and between the County of Monterey, a political subdivision of the State of California (hereinafter "County") and:

Applied Geographics, Inc.

(hereinafter "CONTRACTOR").

In consideration of the mutual covenants and conditions set forth in this Agreement, the parties agree as follows:

1.0 GENERAL DESCRIPTION.

- 1.01 The County hereby engages CONTRACTOR to perform, and CONTRACTOR hereby agrees to perform, the services described in Exhibit A in conformity with the terms of this Agreement. The goods and/or services are generally described as follows:

Provide Google Imagery license and support for 12 months.

2.0 PAYMENT PROVISIONS.

- 2.01 County shall pay the CONTRACTOR in accordance with the payment provisions set forth in Exhibit A, subject to the limitations set forth in this Agreement. The total amount payable by County to CONTRACTOR under this Agreement is not to exceed the sum of \$ 36,302.00.

3.0 TERM OF AGREEMENT.

- 3.01 The term of this Agreement is from July 1, 2016 to June 30, 2017, unless sooner terminated pursuant to the terms of this Agreement. This Agreement is of no force or effect until signed by both CONTRACTOR and County and with County signing last, and CONTRACTOR may not commence work before County signs this Agreement.
- 3.02 The County reserves the right to cancel this Agreement, or any extension of this Agreement, without cause, with a thirty day (30) written notice, or with cause immediately.

4.0 SCOPE OF SERVICES AND ADDITIONAL PROVISIONS.

- 4.01 The following attached exhibits are incorporated herein by reference and constitute a part of this Agreement:

Exhibit A Scope of Services/Payment Provisions

- | | |
|--------------|---|
| Attachment 2 | Google Ariel Orthoimagery Terms |
| Attachment 3 | Google Cloud Platform Terms of Service |
| Attachment 4 | Attribution Guidelines for Google Maps and Google Earth |

5.0 PERFORMANCE STANDARDS.

- 5.01 CONTRACTOR warrants that CONTRACTOR and CONTRACTOR's agents, employees, and subcontractors performing services under this Agreement are specially trained, experienced, competent, and appropriately licensed to perform the work and deliver the services required under this Agreement and are not employees of the County, or immediate family of an employee of the County.
- 5.02 CONTRACTOR, its agents, employees, and subcontractors shall perform all work in a safe and skillful manner and in compliance with all applicable laws and regulations. All work performed under this Agreement that is required by law to be performed or supervised by licensed personnel shall be performed in accordance with such licensing requirements.
- 5.03 CONTRACTOR shall furnish, at its own expense, all materials, equipment, and personnel necessary to carry out the terms of this Agreement, except as otherwise specified in this Agreement. CONTRACTOR shall not use County premises, property (including equipment, instruments, or supplies) or personnel for any purpose other than in the performance of its obligations under this Agreement.

6.0 PAYMENT CONDITIONS.

- 6.01 Prices shall remain firm for the initial term of the Agreement and, thereafter, may be adjusted annually as provided herein. The County does not guarantee any minimum or maximum amount of dollars to be spent under this Agreement.
- 6.02 Negotiations for rate changes shall be commenced, by CONTRACTOR, a minimum of ninety days (90) prior to the expiration of the Agreement. Rate changes are not binding unless mutually agreed upon in writing by the County and the CONTRACTOR.
- 6.03 Invoice amounts shall be billed directly to the ordering department.
- 6.04 CONTRACTOR shall submit such invoice periodically or at the completion of services, but in any event, not later than 30 days after completion of services. The invoice shall set forth the amounts claimed by CONTRACTOR for the previous period, together with an itemized basis for the amounts claimed, and such other information pertinent to the invoice. The County shall certify the invoice, either in the requested amount or in such other amount as the County approves in conformity with this Agreement, and shall promptly submit such invoice to the County Auditor-Controller for payment. The County Auditor-Controller shall pay the amount certified within 30 days of receiving the certified invoice.

7.0 TERMINATION.

- 7.01 During the term of this Agreement, the County may terminate the Agreement for any reason by giving written notice of termination to the CONTRACTOR at least thirty (30) days prior to the effective date of termination. Such notice shall set forth the effective date of termination. In the event of such termination, the amount payable under this Agreement shall be reduced in proportion to the services provided prior to the date of termination.
- 7.02 The County may cancel and terminate this Agreement for good cause effective immediately upon written notice to CONTRACTOR. "Good cause" includes the failure of

CONTRACTOR to perform the required services at the time and in the manner provided under this Agreement. If County terminates this Agreement for good cause, the County may be relieved of the payment of any consideration to CONTRACTOR, and the County may proceed with the work in any manner, which County deems proper. The cost to the County shall be deducted from any sum due the CONTRACTOR under this Agreement.

- 7.03 The County's payments to CONTRACTOR under this Agreement are funded by local, state and federal governments. If funds from local, state and federal sources are not obtained and continued at a level sufficient to allow for the County's purchase of the indicated quantity of services, then the County may give written notice of this fact to CONTRACTOR, and the obligations of the parties under this Agreement shall terminate immediately, or on such date thereafter, as the County may specify in its notice, unless in the meanwhile the parties enter into a written amendment modifying this Agreement.

8.0 INDEMNIFICATION.

- 8.01 Contractor shall indemnify, defend, and hold harmless the County of Monterey (hereinafter "County"), its officers, agents and employees from any claim, liability, loss, injury or damage arising out of, or in connection with, performance of this Agreement by Contractor and/or its agents, employees or sub-contractors, excepting only loss, injury or damage caused by the negligence or willful misconduct of personnel employed by the County. It is the intent of the parties to this Agreement to provide the broadest possible coverage for the County. The Contractor shall reimburse the County for all costs, attorneys' fees, expenses and liabilities incurred with respect to any litigation in which the Contractor is obligated to indemnify, defend and hold harmless the County under this Agreement.

9.0 INSURANCE REQUIREMENTS.

9.01 Evidence of Coverage:

Prior to commencement of this Agreement, the Contractor shall provide a "Certificate of Insurance" certifying that coverage as required herein has been obtained. Individual endorsements executed by the insurance carrier shall accompany the certificate. In addition, the Contractor upon request shall provide a certified copy of the policy or policies.

This verification of coverage shall be sent to the County's Contracts/Purchasing Department, unless otherwise directed. The Contractor shall not receive a "Notice to Proceed" with the work under this Agreement until it has obtained all insurance required and the County has approved such insurance. This approval of insurance shall neither relieve nor decrease the liability of the Contractor.

9.02 Qualifying Insurers:

All coverage's, except surety, shall be issued by companies which hold a current policy holder's alphabetic and financial size category rating of not less than A- VII, according to the current Best's Key Rating Guide or a company of equal financial stability that is approved by the County's Purchasing Manager.

- 9.03 Insurance Coverage Requirements: Without limiting CONTRACTOR's duty to indemnify, CONTRACTOR shall maintain in effect throughout the term of this Agreement a policy or policies of insurance with the following minimum limits of liability:

Commercial General Liability Insurance, including but not limited to premises and operations, including coverage for Bodily Injury and Property Damage, Personal Injury, Contractual Liability, Broad form Property Damage, Independent Contractors, Products and Completed Operations, with a combined single limit for Bodily Injury and Property Damage of not less than \$1,000,000 per occurrence.

(Note: any proposed modifications to these general liability insurance requirements shall be attached as an Exhibit hereto, and the section(s) above that are proposed as not applicable shall be lined out in blue ink. All proposed modifications are subject to County approval.)

Business Automobile Liability Insurance, covering all motor vehicles, including owned, leased, non-owned, and hired vehicles, used in providing services under this Agreement, with a combined single limit for Bodily Injury and Property Damage of not less than \$500,000 per occurrence.

(Note: any proposed modifications to these auto insurance requirements shall be attached as an Exhibit hereto, and the section(s) above that are proposed as not applicable shall be lined out in blue ink. All proposed modifications are subject to County approval.)

Workers' Compensation Insurance, if CONTRACTOR employs others in the performance of this Agreement, in accordance with California Labor Code section 3700 and with Employer's Liability limits not less than \$1,000,000 each person, \$1,000,000 each accident and \$1,000,000 each disease.

(Note: any proposed modifications to these workers' compensation insurance requirements shall be attached as an Exhibit hereto, and the section(s) above that are proposed as not applicable shall be lined out in blue ink. All proposed modifications are subject to County approval.)

Professional Liability Insurance, if required for the professional services being provided, (e.g., those persons authorized by a license to engage in a business or profession regulated by the California Business and Professions Code), in the amount of not less than \$1,000,000 per claim and \$2,000,000 in the aggregate, to cover liability for malpractice or errors or omissions made in the course of rendering professional services. If professional liability insurance is written on a "claims-made" basis rather than an occurrence basis, the CONTRACTOR shall, upon the expiration or earlier termination of this Agreement, obtain extended reporting coverage ("tail coverage") with the same liability limits. Any such tail coverage shall continue for at least three years following the expiration or earlier termination of this Agreement.

(Note: any proposed modifications to these insurance requirements shall be attached as an Exhibit hereto, and the section(s) above that are proposed as not applicable shall be lined out in blue ink. All proposed modifications are subject to County approval.)

9.04 **Other Requirements:**

All insurance required by this Agreement shall be with a company acceptable to the County and issued and executed by an admitted insurer authorized to transact Insurance business in the State of California. Unless otherwise specified by this Agreement, all such insurance shall be written on an occurrence basis, or, if the policy is not written on an occurrence basis, such policy with the coverage required herein shall continue in effect for a period of

three years following the date CONTRACTOR completes its performance of services under this Agreement.

Each liability policy shall provide that the County shall be given notice in writing at least thirty days in advance of any endorsed reduction in coverage or limit, cancellation, or intended non-renewal thereof. Each policy shall provide coverage for Contractor and additional insureds with respect to claims arising from each subcontractor, if any, performing work under this Agreement, or be accompanied by a certificate of insurance from each subcontractor showing each subcontractor has identical insurance coverage to the above requirements.

Commercial general liability and automobile liability policies shall **provide an endorsement naming the County of Monterey, its officers, agents, and employees as Additional Insureds** with respect to liability arising out of the CONTRACTOR'S work, including ongoing and completed operations, and shall further provide that **such insurance is primary** insurance to any insurance or self-insurance maintained by the County and that the insurance of **the Additional Insureds shall not be called upon to contribute** to a loss covered by the CONTRACTOR'S insurance. The required endorsement form for Commercial General Liability Additional Insured is ISO Form CG 20 10 11-85 or CG 20 10 10 01 in tandem with CG 20 37 10 01 (2000). The required endorsement form for Automobile Additional Insured endorsement is ISO Form CA 20 48 02 99.

Prior to the execution of this Agreement by the County, CONTRACTOR shall file certificates of insurance with the County's contract administrator and County's Contracts/Purchasing Division, showing that the CONTRACTOR has in effect the insurance required by this Agreement. The CONTRACTOR shall file a new or amended certificate of insurance within five calendar days after any change is made in any insurance policy, which would alter the information on the certificate then on file. Acceptance or approval of insurance shall in no way modify or change the indemnification clause in this Agreement, which shall continue in full force and effect.

CONTRACTOR shall at all times during the term of this Agreement maintain in force the insurance coverage required under this Agreement and shall send, without demand by County, annual certificates to County's Contract Administrator and County's Contracts/Purchasing Division. If the certificate is not received by the expiration date, County shall notify CONTRACTOR and CONTRACTOR shall have five calendar days to send in the certificate, evidencing no lapse in coverage during the interim. Failure by CONTRACTOR to maintain such insurance is a default of this Agreement, which entitles County, at its sole discretion, to terminate this Agreement immediately.

10.0 RECORDS AND CONFIDENTIALITY.

- 10.01 **Confidentiality.** CONTRACTOR and its officers, employees, agents, and subcontractors shall comply with any and all federal, state, and local laws, which provide for the confidentiality of records and other information. CONTRACTOR shall not disclose any confidential records or other confidential information received from the County or prepared in connection with the performance of this Agreement, unless County specifically permits CONTRACTOR to disclose such records or information. CONTRACTOR shall promptly transmit to County any and all requests for disclosure of any such confidential records or information. CONTRACTOR shall not use any confidential information gained by

CONTRACTOR in the performance of this Agreement except for the sole purpose of carrying out CONTRACTOR's obligations under this Agreement.

- 10.02 County Records. When this Agreement expires or terminates, CONTRACTOR shall return to County any County records which CONTRACTOR used or received from County to perform services under this Agreement.
- 10.03 Maintenance of Records. CONTRACTOR shall prepare, maintain, and preserve all reports and records that may be required by federal, state, and County rules and regulations related to services performed under this Agreement. CONTRACTOR shall maintain such records for a period of at least three years after receipt of final payment under this Agreement. If any litigation, claim, negotiation, audit exception, or other action relating to this Agreement is pending at the end of the three year period, then CONTRACTOR shall retain said records until such action is resolved.
- 10.04 Access to and Audit of Records. The County shall have the right to examine, monitor and audit all records, documents, conditions, and activities of the CONTRACTOR and its subcontractors related to services provided under this Agreement. Pursuant to Government Code section 8546.7, if this Agreement involves the expenditure of public funds in excess of \$10,000, the parties to this Agreement may be subject, at the request of the County or as part of any audit of the County, to the examination and audit of the State Auditor pertaining to matters connected with the performance of this Agreement for a period of three years after final payment under the Agreement.
- 10.05 Royalties and Inventions. County shall have a royalty-free, exclusive and irrevocable license to reproduce, publish, and use, and authorize others to do so, all original computer programs, writings, sound recordings, pictorial reproductions, drawings, and other works of similar nature produced in the course of or under this Agreement. CONTRACTOR shall not publish any such material without the prior written approval of County.

11.0 NON-DISCRIMINATION.

- 11.01 During the performance of this Agreement, CONTRACTOR, and its subcontractors, shall not unlawfully discriminate against any person because of race, religious creed, color, sex, national origin, ancestry, physical disability, mental disability, medical condition, marital status, age (over 40), or sexual orientation, either in CONTRACTOR's employment practices or in the furnishing of services to recipients. CONTRACTOR shall ensure that the evaluation and treatment of its employees and applicants for employment and all persons receiving and requesting services are free of such discrimination. CONTRACTOR and any subcontractor shall, in the performance of this Agreement, fully comply with all federal, state, and local laws and regulations which prohibit discrimination. The provision of services primarily or exclusively to such target population as may be designated in this Agreement shall not be deemed to be prohibited discrimination.

12.0 COMPLIANCE WITH TERMS OF STATE OR FEDERAL GRANTS.

- 12.01 If this Agreement has been or will be funded with monies received by the County pursuant to a contract with the state or federal government in which the County is the grantee, CONTRACTOR will comply with all the provisions of said contract, to the extent applicable to CONTRACTOR as a subgrantee under said contract, and said provisions shall

be deemed a part of this Agreement, as though fully set forth herein. Upon request, County will deliver a copy of said contract to CONTRACTOR, at no cost to CONTRACTOR.

13.0 INDEPENDENT CONTRACTOR.

- 13.01 In the performance of work, duties, and obligations under this Agreement, CONTRACTOR is at all times acting and performing as an independent contractor and not as an employee of the County. No offer or obligation of permanent employment with the County or particular County department or agency is intended in any manner, and CONTRACTOR shall not become entitled by virtue of this Agreement to receive from County any form of employee benefits including but not limited to sick leave, vacation, retirement benefits, workers' compensation coverage, insurance or disability benefits. CONTRACTOR shall be solely liable for and obligated to pay directly all applicable taxes, including federal and state income taxes and social security, arising out of CONTRACTOR's performance of this Agreement. In connection therewith, CONTRACTOR shall defend, indemnify, and hold County harmless from any and all liability which County may incur because of CONTRACTOR's failure to pay such taxes.

14.0 NOTICES.

- 14.01 Notices required under this Agreement shall be delivered personally or by first-class, postage pre-paid mail to the County and CONTRACTOR'S contract administrators at the addresses listed below:

FOR COUNTY:	FOR CONTRACTOR:
Mais Shelor, Business Manager	Michael Turner, Executive Vice-President
Name and Title	Name and Title
1590 Moffett Street Salinas, CA 93905	24 School Street, Suite 500 Boston, MA 02108
Address	Address
831-755-5465	617-447-2468
Phone	Phone

15.0 MISCELLANEOUS PROVISIONS.

- 15.01 Conflict of Interest. CONTRACTOR represents that it presently has no interest and agrees not to acquire any interest during the term of this Agreement, which would directly, or indirectly conflict in any manner or to any degree with the full and complete performance of the services required to be rendered under this Agreement.
- 15.02 Amendment. This Agreement may be amended or modified only by an instrument in writing signed by the County and the CONTRACTOR.

- 15.03 Waiver. Any waiver of any terms and conditions of this Agreement must be in writing and signed by the County and the CONTRACTOR. A waiver of any of the terms and conditions of this Agreement shall not be construed as a waiver of any other terms or conditions in this Agreement.
- 15.04 Contractor. The term "CONTRACTOR" as used in this Agreement includes CONTRACTOR's officers, agents, and employees acting on CONTRACTOR's behalf in the performance of this Agreement.
- 15.05 Disputes. CONTRACTOR shall continue to perform under this Agreement during any dispute.
- 15.06 Assignment and Subcontracting. The CONTRACTOR shall not assign, sell, or otherwise transfer its interest or obligations in this Agreement without the prior written consent of the County. None of the services covered by this Agreement shall be subcontracted without the prior written approval of the County. Notwithstanding any such subcontract, CONTRACTOR shall continue to be liable for the performance of all requirements of this Agreement.
- 15.07 Successors and Assigns. This Agreement and the rights, privileges, duties, and obligations of the County and CONTRACTOR under this Agreement, to the extent assignable or delegable, shall be binding upon and inure to the benefit of the parties and their respective successors, permitted assigns, and heirs.
- 15.08 Compliance with Applicable Law. The parties shall comply with all applicable federal, state, and local laws and regulations in performing this Agreement.
- 15.09 Headings. The headings are for convenience only and shall not be used to interpret the terms of this Agreement.
- 15.10 Time is of the Essence. Time is of the essence in each and all of the provisions of this Agreement.
- 15.11 Governing Law. This Agreement shall be governed by and interpreted under the laws of the State of California.
- 15.12 Non-exclusive Agreement. This Agreement is non-exclusive and both County and CONTRACTOR expressly reserve the right to contract with other entities for the same or similar services.
- 15.13 Construction of Agreement. The County and CONTRACTOR agree that each party has fully participated in the review and revision of this Agreement and that any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not apply in the interpretation of this Agreement or any amendment to this Agreement.
- 15.14 Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same Agreement.

- 15.15 Authority. Any individual executing this Agreement on behalf of the County or the CONTRACTOR represents and warrants hereby that he or she has the requisite authority to enter into this Agreement on behalf of such party and bind the party to the terms and conditions of this Agreement.
- 15.16 Integration. This Agreement, including the exhibits, represent the entire Agreement between the County and the CONTRACTOR with respect to the subject matter of this Agreement and shall supersede all prior negotiations, representations, or agreements, either written or oral, between the County and the CONTRACTOR as of the effective date of this Agreement, which is the date that the County signs the Agreement.
- 15.17 Interpretation of Conflicting Provisions. In the event of any conflict or inconsistency between the provisions of this Agreement and the Provisions of any exhibit or other attachment to this Agreement, the provisions of this Agreement shall prevail and control.

-----*This section left blank intentionally*-----

16.0 SIGNATURE PAGE.

IN WITNESS WHEREOF, County and CONTRACTOR have executed this Agreement as of the day and year written below.

COUNTY OF MONTEREY

CONTRACTOR

By: _____
Contracts/Purchasing Officer

Date: _____

By: *Diana N. Neff*
Department Head (if applicable)

Date: 7-25-2016

Approved as to Form¹

By: *Rebecca M. Duncan* Date: _____
County Counsel

Date: July 21, 2016

Approved as to Fiscal Provisions²

By: *[Signature]*
Auditor/Controller

Date: 7-25-16

Approved as to Liability Provisions³

By: _____
Risk Management

Date: _____

Applied Geographics, Inc.
Contractor's Business Name*

By: *[Signature]*
(Signature of Chair, President, or Vice-President)*

Richard Grady, President
Name and Title

Date: 6-28-16

By: *[Signature]*
(Signature of Secretary, Asst. Secretary, CFO, Treasurer or Asst. Treasurer)*

Peter Girard,
Secretary
Name and Title

Date: 6-28-16

*INSTRUCTIONS: If CONTRACTOR is a corporation, including limited liability and non-profit corporations, the full legal name of the corporation shall be set forth above together with the signatures of two specified officers. If CONTRACTOR is a partnership, the name of the partnership shall be set forth above together with the signature of a partner who has authority to execute this Agreement on behalf of the partnership. If CONTRACTOR is contracting in an individual capacity, the individual shall set forth the name of the business, if any, and shall personally sign the Agreement.

¹Approval by County Counsel is required

²Approval by Auditor/Controller is required

³Approval by Risk Management is required only if changes are made in sections 7 or 8

EXHIBIT A-1

SCOPE OF WORK

I. Location of Services

County of Monterey Information Technology
1590 Moffett Street
Salinas, California

II. Scope of Work

The County is purchasing one Google Imagery Organizational License and managed services for serving, managing and downloading the Google imagery, through Applied Geographics, Contractor, a certified Google re-seller.

A. Contractor will be responsible for the following:

1. Providing one Google Imagery Organization license with direct access to 6" high resolution aerial images of Monterey County, California and rights to downloaded imagery for the term of this agreement. The table below summarizes what Contractor will provide to the County:

Area of Interest (AOI)	10,257.20 square kilometers (sqkm)
Coverage Area	10,257.20 sqkm
Total AOI coverage	100%
Number of flights	6

2. Deploying Google Imagery from Google Cloud Platform (GCP) in two storage buckets, configured as follows:
 - a. Original JPG2K imagery files
 - b. Pyramid structured download of imagery files allowing for optimized display performance.

3. Providing the following characteristics for the imagery content:

Imagery Resolution	6 inch (15 centimeters/cm)
Positional Accuracy (CE 90)	Sub 1 meter
Spectral Bands	Red Green Blue (RGB)
Processing	Orthorectified and mosaicked
Bit Depth	8 bits per pixel (scaled from 12-bit source)
Format	JPEG2000
Tiling	4,096 by 4,096 pixels
Coordinate Systems/Projection	Geographic, Web Mercator
Clouds	< 1 percent
Snow and Ice	Only permanent snow or ice above the timberline
Sun Angle	>= 30 degrees

Smoke/Haze	<1 percent
Leaf On/ Off	Mix of both

4. Provide Google Imagery data to the County for quality control testing
 - a. County has 3 weeks, i.e., 21 calendar days, from receipt of imagery data to complete the testing
 - b. Once County testing is complete and once County is satisfied with the Imagery, written notice will be provided to Contractor.
5. Provide the final JPG2K and level 20 data to the County once Contractor receives written notice of acceptance from County.
 - a. Set up the County's imagery as a layer in the appliance and create a "Monterey County" user.
 - b. Provide the County with a one-hour walk through of the appliance with the designated user, and describe how to create additional users.
6. Provide the County with Managed Services for the Google Imagery
 - a. Phone/Email support to ensure County can use the software, including how to create/manage users, review usage statistics and perform small batch downloads.
 - b. Monitor up time and fix any issues if downtime occurs.
 - c. Ongoing technical support for both the appliance and GCP instance and storage buckets.
 - d. Review new data provided by Google and other sources, update imagery services, and update index to reflect changes.
 - e. Install incremental new versions of the Appliance software.
 - f. Provide documentation about version updates and answer any questions.
 - g. Provide the following service levels:

Vendor Response	Methods of Contact
Contractor will respond to service requests during the hours of 8 am Eastern to 5 pm Pacific, on the same business day, as quickly as possible.	Via email at gizahelpdesk@appgeo.com
Contractor will respond to after-hours service requests immediately the following business day	Via phone at 617-447-2468

7. Provide the County with the following rights:
 - a. Download the imagery to a local server for internal use
 - b. Consume the imagery into third party software environments.
 - c. Make the imagery accessible behind a login/firewall.
 - d. Use of imagery for County-based projects conducted by County staff and sub-contractors working on behalf of the County

8. Notwithstanding paragraphs 6.1(a) and 6.2(b) of the Google Aerial Orthoimagery Terms, Contractor recognizes that Monterey County is a public agency subject to Public Records Requests under California law. As such, while the Google Imagery Terms of Service included in this agreement limit use of data to authorized, licensed users, products that County creates from the data, such as maps showing imagery or on-line web mapping applications, are available to the public.

B. County will be responsible for the following:

1. Identify a Project Manager and provide contact information to Contractor.
2. Provide technical information needed by Contractor for project.
3. Manage/share imagery data in a manner consistent with Agreement.

C.

1. The terms of this Agreement are governed by the "Google Aerial Orthoimagery Terms," the "Google Cloud Platform Terms of Service," and "Attribution Guidelines for Google Maps and Google Earth" documents, which are incorporated by reference, except as noted in paragraph II.A.8 of this Scope of Work.

2. Paragraph 10.05 of this Agreement, "Royalties and Inventions," is deleted from this Agreement.

III Term of the Agreement

The term of the agreement shall be from July 1, 2016 to June 31, 2017, unless sooner terminated pursuant to the terms of this Agreement.

IV Payment Provisions

- A. For the services described in the Agreement within the term specified above, the maximum obligation of the County will be **\$36,302.00**. Notwithstanding paragraph 6 of the Agreement, full payment is due upon Contractor's provision of the final JPG2K and level 20 data to the County, upon written notice of acceptance from County, as set forth in Paragraph II.A.5 of this Scope of Work. Contractor will invoice County within thirty (30) days delivery of the final JPG2k and level 20 data to the County, and County will pay Contractor within thirty (30) days of receipt of Contractor's invoice.
- B. Contractor is providing County one dollar (\$ 1.00) of Google Cloud Platform (GCP) credit for each square kilometer of imagery that is licensed, in this case **\$10,433.00** of credit. Contractor represents that this sum is more than sufficient to pay for the cost to store all imagery data provided to County for one year. Currently Google Cloud

Storage (GCS) is priced at \$0.26/gigabytes (GB)/year, or approximately \$312.00/terabytes (TB)/year.

- C. Invoices shall be mailed to:
County of Monterey Information Technology
1590 Moffett Street
Salinas, Ca. 93905
Attn: Accounts Payable

ATTACHMENT 2:

Google Aerial Orthoimagery Terms

1. Parties subject to these Terms. The following terms apply to Reseller's license agreement with Google Aerial Orthoimagery customers ("**Customer(s)**") only. Customer's license to selected online Google Aerial Orthoimagery as specified in the Order Form ("**Imagery**") will be subject to these Product-specific terms (the "**Imagery Terms**").

2. Pass-Through Obligation. Reseller will pass the Imagery Terms to Customer in a Customer license agreement along with any applicable Customer Minimum Terms for a transaction.

3. Definitions. Capitalized terms not defined in these Imagery Terms have the meaning given to them in Reseller's Google Enterprise Reseller Agreement.

4. Google Cloud Platform Terms. Customer's use of Google Cloud Platform ("**GCP**") is governed by the terms at <https://cloud.google.com/terms/> (or such other URL as Google may specify).

5. Imagery Terms. Customer's use of Imagery is governed by these Imagery Terms. Google reserves all rights, title, and interest in the Imagery not expressly granted to the Customer.

6. Imagery License Grants.

6.1 Term-Based License. Subject to the Imagery Terms (including Section 7 (Imagery License Restrictions)), Google grants to Customer a non-exclusive, non-sublicensable, non-transferable license to do the following during the license term specified in the Order Form:

(a) use the Imagery for its internal business purposes (no third-party access);

(b) distribute materials based on the Imagery (including reports and analyses) to third parties, as

long as Customer provides Google attribution in accordance with the Attribution Guidelines for Google Maps and Google Earth at

<http://www.google.com/permissions/geoguidelines/atrguide.html> (or such other URL as Google may specify);

(c) export Imagery outside of GCP;

(d) permit a third-party service provider ("**Service Provider**") to access the Imagery for the sole

purpose of configuring or making available the Imagery for the Customer's benefit, subject to the Customer Agreement and the following additional terms:

(i) Customer will remain liable for all subcontracted obligations and all of its Service Providers' acts or omissions, including confidentiality breaches;

(ii) the Service Provider can only use the Imagery for Customer's benefit, and the Service Provider must agree in writing to the terms of this Attachment 2; and

(iii) Customer will terminate Service Provider's Imagery access immediately when the Customer's agreement with the Service Provider terminates.

6.2 Perpetual License for Offline Imagery.

(a) During the license term specified in the Order Form, Customer may download the licensed Imagery files and use the downloaded files offline ("**Offline Imagery**") subject to the license in Subsection (b).

(b) Subject to the Imagery Terms (including Section 7 (Imagery License Restrictions) but not including Section 6.1 (Term-Based License)), Google grants to Customer a **non-exclusive**, non-sublicensable, non-transferable, perpetual license to use the Offline Imagery solely for internal purposes only (no third-party access). This perpetual license expressly excludes the rights described in Section 6.1(b) and (d) (distributing materials based on the Imagery to third parties and providing Service Providers with access to the Imagery).

7. Imagery License Restrictions. The Imagery license grants in Section 6 are subject to the following restrictions. Customer will not:

(a) sublicense, sell, rent, or lease the Imagery on a stand-alone basis to a third-party;

(b) use the Imagery for High Risk Activities;

(c) use the Imagery with any products, systems, or applications for or in connection with any of the following:

(i) real time navigation or route guidance, including turn-by-turn route guidance that is synchronized to the position of a user's sensor-enabled device; or

(ii) automatic or autonomous control of vehicle behavior.

(d) print more than five thousand copies of sales collateral materials containing a screenshot of the Imagery for purposes of commercial sales lead generation or incorporate the Imagery as a core part of printed matter (such as printed maps or guidebooks) that is redistributed for a fee; or

(e) give third-parties access to Imagery downloads or feeds.

8. Renewing the Imagery License.

8.1 Renewal. Customer may renew its Imagery license agreement by paying the applicable renewal fee.

8.2 Updated Imagery.

(a) Upon Customer's payment of the applicable renewal fee, Google will replace the prior-term's Imagery with updated Imagery, if available, for the same coverage area.

(b) Customer may decline the updated Imagery and retain the prior-term's Imagery, but this will not reduce the applicable renewal fee.

(c) For an additional fee, Customer may not only license the updated Imagery but also retain previously licensed prior-term Imagery.

9. Non-Renewal of Imagery License. If Customer does not renew the Imagery license agreement (or does not pay the applicable renewal fee), all Imagery in Customer's GCP account will be permanently deleted and will no longer be accessible, except that Customer may still access Offline Imagery subject to Section 6.2 (Perpetual License for Offline Imagery).

Addendum 1

Google Imagery Eligible Entities

Related Entities that are licensed to have access to Google Imagery include: all departments within the county as well as all cities and towns incorporated within the county. Authorized contractors and partners (e.g., State agencies) of the county or of other entities eligible for access to the imagery may use the imagery to support joint efforts on behalf of, or with the County.

Google Cloud Platform Terms of Service

- Contents
- Google Cloud Platform License Agreement

Last modified: June 17, 2016

If you are accessing the Google Cloud Platform Services as a customer of a Google Cloud Platform reseller, the terms below do not apply to you, and your agreement with your reseller governs your use of the Google Cloud Platform Services.

Google Cloud Platform License Agreement

This Google Cloud Platform License Agreement (the "Agreement") is made and entered into by and between Google and the entity agreeing to these terms ("Customer"). "Google" means either (i) Google Ireland Limited, with offices at Gordon House, Barrow Street, Dublin 4, Ireland, if Customer's billing address is in any country within Europe, the Middle East, or Africa ("EMEA"), (ii) Google Asia Pacific Pte. Ltd., with offices at 8 Marina View Asia Square 1 #30-01 Singapore 018960, if Customer's billing address is in any country within the Asia Pacific region ("APAC"), or (iii) Google Inc., with offices at 1600 Amphitheatre Parkway, Mountain View, California 94043, if Customer's billing address is in any country in the world other than those in EMEA and APAC.

This Agreement is effective as of the date Customer clicks to accept the Agreement (the "Effective Date"). If you are accepting on behalf of Customer, you represent and warrant that: (i) you have full legal authority to bind Customer to this Agreement; (ii) you have read and understand this Agreement; and (iii) you agree, on behalf of Customer, to this Agreement. If you do not have the legal authority to bind Customer, please do not click to accept. This Agreement governs Customer's access to and use of the Service. For an offline variant of this Agreement, you may contact Google for more information.

1. Provision of the Services.

1.1 Services Use. Subject to this Agreement, during the Term, Customer may: (a) use the Services, (b) integrate the Services into any Application that has material value independent of the Services, and (c) use any Software provided by Google as part of the Services. Customer may not sublicense or transfer these rights except as permitted under the Assignment section of the Agreement.

1.2 Console. Google will provide the Services to Customer. As part of receiving the Services, Customer will have access to the Admin Console, through which Customer may administer the Services.

1.3 Facilities. All facilities used to store and process an Application and Customer Data will adhere to reasonable security standards no less protective than the security standards at facilities where Google processes and stores its own information of a similar type. Google has implemented at least industry standard systems and procedures to (i) ensure the security and confidentiality of an Application and Customer Data, (ii) protect against anticipated threats or hazards to the security or integrity of an Application and Customer Data, and (iii) protect against unauthorized access to or use of an Application and Customer Data.

1.4 Data Location. Customer may select where certain Customer Data will be stored ("Data Location Selection"), and Google will store it there in accordance with the Service Specific Terms . If a Data Location Selection is not covered by the Service Specific Terms (or a Data Location Selection is not made by Customer with respect to any Customer Data), Google may process and store the Customer Data anywhere Google or its agents maintain facilities. By using the Services, Customer consents to this processing and storage of Customer Data. Under this Agreement, Google is merely a data processor.

1.5 Accounts. Customer must have an Account and a Token (if applicable) to use the Services, and is responsible for the information it provides to create the Account, the security of the Token and its passwords for the Account, and for any use of its Account and the Token. If Customer becomes aware of any unauthorized use of its password, its Account or the Token, Customer will notify Google as promptly as possible. Google has no obligation to provide Customer multiple Tokens or Accounts.

1.6 New Applications and Services. Google may: (i) make new applications, tools, features or functionality available from time to time through the Services and (ii) add new services to the "Services" definition from time to time (by adding them at the URL set forth under that definition), the use of which may be contingent upon Customer's agreement to additional terms.

1.7 Modifications.

a. To the Services. Google may make commercially reasonable updates to the Services from time to time. If Google makes a material change to the Services, Google will inform Customer, provided that Customer has subscribed with Google to be informed about such change.

b. To the Agreement. Google may make changes to this Agreement, including pricing (and any linked documents) from time to time. Unless otherwise noted by Google, material changes to the Agreement will become effective 30 days after they are posted, except if the changes apply to new functionality in which case

they will be effective immediately. If Customer does not agree to the revised Agreement, please stop using the Services. Google will post any modification to this Agreement to the Terms URL.

c. To the Data Processing and Security Terms. Google may only change the Data Processing and Security Terms where such change is required to comply with applicable law, applicable regulation, court order, or guidance issued by a governmental regulator or agency, where such change is expressly permitted by the Data Processing and Security Terms, or where such change:

(i) is commercially reasonable;

(ii) does not result in a degradation of the overall security of the Services;

(iii) does not expand the scope of or remove any restrictions on Google's processing of Customer Personal Data, as described in Section 5.2 (Scope of Processing) of the Data Processing and Security Terms; and

(iv) does not otherwise have a material adverse impact on Customer's rights under the Data Processing and Security Terms.

If Google makes a material change to the Data Processing and Security Terms in accordance with this Section, Google will post the modification to the URL containing those terms.

1.8 Service Specific Terms and Data Processing and Security Terms. The Service Specific Terms and Data Processing and Security Terms are incorporated by this reference into the Agreement.

2. Payment Terms.

2.1 Free Quota. Certain Services are provided to Customer without charge up to the Fee Threshold, as applicable.

2.2 Online Billing. At the end of the applicable Fee Accrual Period, Google will issue an electronic bill to Customer for all charges accrued above the Fee Threshold based on (i) Customer's use of the Services during the previous Fee Accrual Period (including, if any, the relevant Fee for TSS set forth in the Fees definition below); (ii) any Reserved Units selected; (iii) any Committed Purchases selected; and/or (iv) any Package Purchases selected. For use above the Fee Threshold, Customer will be responsible for all Fees up to the amount set in the Account and will pay all Fees in the currency set forth in the invoice. If Customer elects to pay by credit card, debit card, or other non-invoiced form of payment, Google will charge (and Customer will pay) all Fees immediately at the end of the Fee Accrual Period. If Customer elects to pay by invoice (and Google agrees), all Fees are due as set forth in the invoice. Customer's obligation to pay all Fees is non-cancellable. Google's measurement of Customer's use of the Services is final. Google has no obligation to

provide multiple bills. Payments made via wire transfer must include the bank information provided by Google.

2.3 Taxes. Customer is responsible for any Taxes, and Customer will pay Google for the Services without any reduction for Taxes. If Google is obligated to collect or pay Taxes, the Taxes will be invoiced to Customer, unless Customer provides Google with a timely and valid tax exemption certificate authorized by the appropriate taxing authority. In some states the sales tax is due on the total purchase price at the time of sale and must be invoiced and collected at the time of the sale. If Customer is required by law to withhold any Taxes from its payments to Google, Customer must provide Google with an official tax receipt or other appropriate documentation to support such withholding.

2.4 Invoice Disputes & Refunds. Any invoice disputes must be submitted prior to the payment due date. If the parties determine that certain billing inaccuracies are attributable to Google, Google will not issue a corrected invoice, but will instead issue a credit memo specifying the incorrect amount in the affected invoice. If the disputed invoice has not yet been paid, Google will apply the credit memo amount to the disputed invoice and Customer will be responsible for paying the resulting net balance due on that invoice. To the fullest extent permitted by law, Customer waives all claims relating to Fees unless claimed within sixty days after charged (this does not affect any Customer rights with its credit card issuer). Refunds (if any) are at the discretion of Google and will only be in the form of credit for the Services. Nothing in this Agreement obligates Google to extend credit to any party.

2.5 Delinquent Payments; Suspension. Late payments may bear interest at the rate of 1.5% per month (or the highest rate permitted by law, if less) from the payment due date until paid in full. Customer will be responsible for all reasonable expenses (including attorneys' fees) incurred by Google in collecting such delinquent amounts. If Customer is late on payment for the Services, Google may suspend the Services or terminate the Agreement for breach pursuant to Section 9.2.

2.6 No Purchase Order Number Required. For clarity, Customer is obligated to pay all applicable Fees without any requirement for Google to provide a purchase order number on Google's invoice (or otherwise).

3. Customer Obligations.

3.1 Compliance. Customer is solely responsible for its Applications, Projects, and Customer Data and for making sure its Applications, Projects, and Customer Data comply with the AUP. Google reserves the right to review the Application, Project, and Customer Data for compliance with the AUP. Customer is responsible for ensuring all Customer End Users comply with Customer's obligations under the AUP, the Service Specific Terms, and the restrictions in Sections 3.3 and 3.5 below.

3.2 Privacy. Customer will obtain and maintain any required consents necessary to permit the processing of Customer Data under this Agreement.

3.3 Restrictions. Customer will not, and will not allow third parties under its control to: (a) copy, modify, create a derivative work of, reverse engineer, decompile, translate, disassemble, or otherwise attempt to extract any or all of the source code of the Services (subject to Section 3.4 below and except to the extent such restriction is expressly prohibited by applicable law); (b) use the Services for High Risk Activities; (c) sublicense, resell, or distribute any or all of the Services separate from any integrated Application; (d) create multiple Applications, Accounts, or Projects to simulate or act as a single Application, Account, or Project (respectively) or otherwise access the Services in a manner intended to avoid incurring Fees; (e) unless otherwise set forth in the Service Specific Terms, use the Services to operate or enable any telecommunications service or in connection with any Application that allows Customer End Users to place calls or to receive calls from any public switched telephone network; or (f) process or store any Customer Data that is subject to the International Traffic in Arms Regulations maintained by the Department of State. Unless otherwise specified in writing by Google, Google does not intend uses of the Services to create obligations under HIPAA, and makes no representations that the Services satisfy HIPAA requirements. If Customer is (or becomes) a Covered Entity or Business Associate, as defined in HIPAA, Customer will not use the Services for any purpose or in any manner involving Protected Health Information (as defined in HIPAA) unless Customer has received prior written consent to such use from Google.

3.4 Third Party Components. Third party components (which may include open source software) of the Services may be subject to separate license agreements. To the limited extent a third party license expressly supersedes this Agreement, that third party license governs Customer's use of that third party component.

3.5 Documentation. Google may provide Documentation for Customer's use of the Services. The Documentation may specify restrictions (e.g. attribution or HTML restrictions) on how the Applications may be built or the Services may be used and Customer will comply with any such restrictions specified.

3.6 DMCA Policy. Google provides information to help copyright holders manage their intellectual property online, but Google cannot determine whether something is being used legally or not without their input. Google responds to notices of alleged copyright infringement and terminates accounts of repeat infringers according to the process set out in the U.S. Digital Millennium Copyright Act. If Customer thinks somebody is violating Customer's or Customer End Users' copyrights and wants to notify Google, Customer can find information about submitting notices, and Google's policy about responding to notices at <http://www.google.com/dmca.html>.

4. Suspension and Removals.

4.1 Suspension/Removals. If Customer becomes aware that any Application, Project, or Customer Data violates the AUP, Customer will immediately suspend the Application or Project and/or remove the relevant Customer Data (as applicable). If Customer fails to suspend or remove as noted in the prior sentence, Google may specifically request that Customer do so. If Customer fails to comply with Google's request to do so within twenty-four hours, then Google may disable the Project or Application, and/or disable the Account (as may be applicable) until such violation is corrected.

4.2 Emergency Security Issues. Despite the foregoing, if there is an Emergency Security Issue, then Google may automatically suspend the offending Application, Project, and/or Account. Suspension will be to the minimum extent required, and of the minimum duration, to prevent or resolve the Emergency Security Issue. If Google suspends an Application, Project, or the Account, for any reason, without prior notice to Customer, at Customer's request, Google will provide Customer the reason for the suspension as soon as is reasonably possible.

5. Intellectual Property Rights; Use of Customer Data; Feedback.

5.1 Intellectual Property Rights. Except as expressly set forth in this Agreement, this Agreement does not grant either party any rights, implied or otherwise, to the other's content or any of the other's intellectual property. As between the parties, Customer owns all Intellectual Property Rights in Customer Data and the Application or Project (if applicable), and Google owns all Intellectual Property Rights in the Services and Software.

5.2 Use of Customer Data. Google will not access or use Customer Data, except as necessary to provide the Services to Customer.

5.3 Customer Feedback. If Customer provides Google Feedback about the Services, then Google may use that information without obligation to Customer, and Customer hereby irrevocably assigns to Google all right, title, and interest in that Feedback.

6. Technical Support Services

6.1 By Customer. Customer is responsible for technical support of its Applications and Projects.

6.2 By Google. Subject to payment of applicable support Fees, Google will provide TSS to Customer during the Term in accordance with the TSS Guidelines. Certain TSS levels include a minimum recurring Fee as described in the "Fees" definition below. If Customer downgrades its TSS level during any calendar month, Google may continue to provide TSS at the same level and TSS Fees before the downgrade for the remainder of that month.

7. Deprecation of Services

7.1 Discontinuance of Services. Subject to Section 7.2, Google may discontinue any Services or any portion or feature for any reason at any time without liability to Customer.

7.2 Deprecation Policy. Google will announce if it intends to discontinue or make backwards incompatible changes to the Services specified at the URL in the next sentence. Google will use commercially reasonable efforts to continue to operate those Services versions and features identified at <https://cloud.google.com/terms/deprecation> without these changes for at least one year after that announcement, unless (as Google determines in its reasonable good faith judgment):

(i) required by law or third party relationship (including if there is a change in applicable law or relationship), or

(ii) doing so could create a security risk or substantial economic or material technical burden.

The above policy is the "Deprecation Policy."

8. Confidential Information.

8.1 Obligations. The recipient will not disclose the Confidential Information, except to Affiliates, employees, agents or professional advisors who need to know it and who have agreed in writing (or in the case of professional advisors are otherwise bound) to keep it confidential. The recipient will ensure that those people and entities use the received Confidential Information only to exercise rights and fulfill obligations under this Agreement, while using reasonable care to keep it confidential.

8.2 Required Disclosure. Notwithstanding any provision to the contrary in this Agreement, the recipient may also disclose Confidential Information to the extent required by applicable Legal Process; provided that the recipient uses commercially reasonable efforts to: (i) promptly notify the other party of such disclosure before disclosing; and (ii) comply with the other party's reasonable requests regarding its efforts to oppose the disclosure. Notwithstanding the foregoing, subsections (i) and (ii) above will not apply if the recipient determines that complying with (i) and (ii) could: (a) result in a violation of Legal Process; (b) obstruct a governmental investigation; and/or (c) lead to death or serious physical harm to an individual. As between the parties, Customer is responsible for responding to all third party requests concerning its use and Customer End Users' use of the Services.

9. Term and Termination.

9.1 Agreement Term. The "Term" of this Agreement will begin on the Effective Date and continue until the Agreement is terminated as set forth in Section 9 of this Agreement.

9.2 Termination for Breach. Either party may terminate this Agreement for breach if: (i) the other party is in material breach of the Agreement and fails to cure that breach within thirty days after receipt of written notice; (ii) the other party ceases its business operations or becomes subject to insolvency proceedings and the proceedings are not dismissed within ninety days; or (iii) the other party is in material breach of this Agreement more than two times notwithstanding any cure of such breaches. In addition, Google may terminate any, all, or any portion of the Services or Projects, if Customer meets any of the conditions in Section 9.2(i), (ii), and/or (iii).

9.3 Termination for Inactivity. Google reserves the right to terminate the Services for inactivity, if, for a period exceeding 180 days, Customer: (a) has failed to access the Admin Console; (b) a Project has no active virtual machine or storage resources or an Application has not served any requests; and (c) no electronic bills are being generated.

9.4 Termination for Convenience. Customer may stop using the Services at any time. Customer may terminate this Agreement for its convenience at any time on prior written notice and upon termination, must cease use of the applicable Services. Google may terminate this Agreement for its convenience at any time without liability to Customer.

9.5 Effect of Termination. If the Agreement is terminated, then: (i) the rights granted by one party to the other will immediately cease; (ii) all Fees owed by Customer to Google are immediately due upon receipt of the final electronic bill; (iii) Customer will delete the Software, any Application, Instance, Project, and any Customer Data; and (iv) upon request, each party will use commercially reasonable efforts to return or destroy all Confidential Information of the other party.

10. Publicity. Customer is permitted to state publicly that it is a customer of the Services, consistent with the Trademark Guidelines. If Customer wants to display Google Brand Features in connection with its use of the Services, Customer must obtain written permission from Google through the process specified in the Trademark Guidelines. Google may include Customer's name or Brand Features in a list of Google customers, online or in promotional materials. Google may also verbally reference Customer as a customer of the Services. Neither party needs approval if it is repeating a public statement that is substantially similar to a previously-approved public statement. Any use of a party's Brand Features will inure to the benefit of the party holding Intellectual Property Rights to those Brand Features. A party may revoke the other party's right to use its Brand Features under this Section with written notice to the other party and a reasonable period to stop the use.

11. Representations and Warranties. Each party represents and warrants that: (a) it has full power and authority to enter into the Agreement; and (b) it will comply with all laws and regulations applicable to its provision, or

use, of the Services, as applicable. Google warrants that it will provide the Services in accordance with the applicable SLA (if any).

12. Disclaimer. EXCEPT AS EXPRESSLY PROVIDED FOR IN THIS AGREEMENT, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, GOOGLE AND ITS SUPPLIERS DO NOT MAKE ANY OTHER WARRANTY OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, INCLUDING WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR USE AND NONINFRINGEMENT. GOOGLE AND ITS SUPPLIERS ARE NOT RESPONSIBLE OR LIABLE FOR THE DELETION OF OR FAILURE TO STORE ANY CUSTOMER DATA AND OTHER COMMUNICATIONS MAINTAINED OR TRANSMITTED THROUGH USE OF THE SERVICES. CUSTOMER IS SOLELY RESPONSIBLE FOR SECURING AND BACKING UP ITS APPLICATION, PROJECT, AND CUSTOMER DATA. NEITHER GOOGLE NOR ITS SUPPLIERS, WARRANTS THAT THE OPERATION OF THE SOFTWARE OR THE SERVICES WILL BE ERROR-FREE OR UNINTERRUPTED. NEITHER THE SOFTWARE NOR THE SERVICES ARE DESIGNED, MANUFACTURED, OR INTENDED FOR HIGH RISK ACTIVITIES.

13. Limitation of Liability.

13.1 Limitation on Indirect Liability. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, NEITHER PARTY, NOR GOOGLE'S SUPPLIERS, WILL BE LIABLE UNDER THIS AGREEMENT FOR LOST REVENUES OR INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, EXEMPLARY, OR PUNITIVE DAMAGES, EVEN IF THE PARTY KNEW OR SHOULD HAVE KNOWN THAT SUCH DAMAGES WERE POSSIBLE AND EVEN IF DIRECT DAMAGES DO NOT SATISFY A REMEDY.

13.2 Limitation on Amount of Liability. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, NEITHER PARTY, NOR GOOGLE'S SUPPLIERS, MAY BE HELD LIABLE UNDER THIS AGREEMENT FOR MORE THAN THE AMOUNT PAID BY CUSTOMER TO GOOGLE UNDER THIS AGREEMENT DURING THE TWELVE MONTHS PRIOR TO THE EVENT GIVING RISE TO LIABILITY.

13.3 Exceptions to Limitations. These limitations of liability do not apply to breaches of confidentiality obligations, violations of a party's Intellectual Property Rights by the other party, indemnification obligations, or Customer's payment obligations.

14. Indemnification.

14.1 By Customer. Unless prohibited by applicable law, Customer will defend and indemnify Google and its Affiliates against Indemnified Liabilities in any Third-Party Legal Proceeding to the extent arising from: (i) any Application, Project, Instance, Customer Data or Customer Brand Features; or (ii) Customer's, or Customer End Users', use of the Services in violation of the AUP.

14.2 By Google. Google will defend and indemnify Customer and its Affiliates against Indemnified Liabilities in any Third-Party Legal Proceeding to the extent arising solely from an Allegation that use of (a) Google's technology used to provide the Services (excluding any open source software) or (b) any Google Brand Feature infringes or misappropriates the third party's patent, copyright, trade secret, or trademark.

14.3 Exclusions. This Section 14 will not apply to the extent the underlying Allegation arises from:

- a. the indemnified party's breach of this Agreement;
- b. modifications to the indemnifying party's technology or Brand Features by anyone other than the indemnifying party;
- c. combination of the indemnifying party's technology or Brand Features with materials not provided by the indemnifying party; or
- d. use of non-current or unsupported versions of the Services or Brand Features;

14.4 Conditions. Sections 14.1 and 14.2 will apply only to the extent:

- a. The indemnified party has promptly notified the indemnifying party in writing of any Allegation(s) that preceded the Third-Party Legal Proceeding and cooperates reasonably with the indemnifying party to resolve the Allegation(s) and Third-Party Legal Proceeding. If breach of this Section 14.4(a) prejudices the defense of the Third-Party Legal Proceeding, the indemnifying party's obligations under Section 14.1 or 14.2 (as applicable) will be reduced in proportion to the prejudice.
- b. The indemnified party tenders sole control of the indemnified portion of the Third-Party Legal Proceeding to the indemnifying party, subject to the following: (i) the indemnified party may appoint its own non-controlling counsel, at its own expense; and (ii) any settlement requiring the indemnified party to admit liability, pay money, or take (or refrain from taking) any action, will require the indemnified party's prior written consent, not to be unreasonably withheld, conditioned, or delayed.

14.5 Remedies.

a. If Google reasonably believes the Services might infringe a third party's Intellectual Property Rights, then Google may, at its sole option and expense: (a) procure the right for Customer to continue using the Services; (b) modify the Services to make them non-infringing without materially reducing their functionality; or (c) replace the Services with a non-infringing, functionally equivalent alternative.

b. If Google does not believe the remedies in Section 14.5(a) are commercially reasonable, then Google may suspend or terminate Customer's use of the impacted Services.

14.6 Sole Rights and Obligations. Without affecting either party's termination rights, this Section 14 states the parties' only rights and obligations under this Agreement for any third party's Intellectual Property Rights Allegations and Third-Party Legal Proceedings.

15. U.S. Federal Agency Users. The Services were developed solely at private expense and are commercial computer software and related documentation within the meaning of the applicable Federal Acquisition Regulations and their agency supplements.

16. Miscellaneous.

16.1 Notices. All notices must be in writing and addressed to the other party's legal department and primary point of contact. The email address for notices being sent to Google's Legal Department is legal-notices@google.com. Notice will be treated as given on receipt as verified by written or automated receipt or by electronic log (as applicable).

16.2 Assignment. Neither party may assign any part of this Agreement without the written consent of the other, except to an Affiliate where: (a) the assignee has agreed in writing to be bound by the terms of this Agreement; (b) the assigning party remains liable for obligations under the Agreement if the assignee defaults on them; and (c) the assigning party has notified the other party of the assignment. Any other attempt to assign is void.

16.3 Change of Control. If a party experiences a change of Control (for example, through a stock purchase or sale, merger, or other form of corporate transaction): (a) that party will give written notice to the other party within thirty days after the change of Control; and (b) the other party may immediately terminate this Agreement any time between the change of Control and thirty days after it receives that written notice.

16.4 Force Majeure. Neither party will be liable for failure or delay in performance to the extent caused by circumstances beyond its reasonable control.

16.5 No Agency. This Agreement does not create any agency, partnership or joint venture between the parties.

16.6 No Waiver. Neither party will be treated as having waived any rights by not exercising (or delaying the exercise of) any rights under this Agreement.

16.7 Severability. If any term (or part of a term) of this Agreement is invalid, illegal, or unenforceable, the rest of the Agreement will remain in effect.

16.8 No Third-Party Beneficiaries. This Agreement does not confer any benefits on any third party unless it expressly states that it does.

16.9 Equitable Relief. Nothing in this Agreement will limit either party's ability to seek equitable relief.

16.10 U.S. Governing Law.

a. For U.S. City, County, and State Government Entities. If Customer is a U.S. city, county or state government entity, then the Agreement will be silent regarding governing law and venue.

b. For U.S. Federal Government Entities. If Customer is a U.S. federal government entity then the following applies: ALL CLAIMS ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE SERVICES WILL BE GOVERNED BY THE LAWS OF THE UNITED STATES OF AMERICA, EXCLUDING ITS CONFLICT OF LAWS RULES. SOLELY TO THE EXTENT PERMITTED BY FEDERAL LAW: (I) THE LAWS OF THE STATE OF CALIFORNIA (EXCLUDING CALIFORNIA'S CONFLICT OF LAWS RULES) WILL APPLY IN THE ABSENCE OF APPLICABLE FEDERAL LAW; AND (II) FOR ALL CLAIMS ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE SERVICES, THE PARTIES CONSENT TO PERSONAL JURISDICTION IN, AND THE EXCLUSIVE VENUE OF, THE COURTS IN SANTA CLARA COUNTY, CALIFORNIA.

c. For All Other Entities. If Customer is any entity not set forth in Section 16.10(a) or (b) then the following applies: ALL CLAIMS ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE SERVICES WILL BE GOVERNED BY CALIFORNIA LAW, EXCLUDING THAT STATE'S CONFLICT OF LAWS RULES, AND WILL BE LITIGATED EXCLUSIVELY IN THE FEDERAL OR STATE COURTS OF SANTA CLARA COUNTY, CALIFORNIA, USA; THE PARTIES CONSENT TO PERSONAL JURISDICTION IN THOSE COURTS.

16.11 Amendments. Except as set forth in Section 1.7(b) or (c), any amendment must be in writing, signed by both parties, and expressly state that it is amending this Agreement.

16.12 Survival. The following Sections will survive expiration or termination of this Agreement: 5, 8, 9.5, 13, 14, and 16.

16.13 Entire Agreement. This Agreement sets out all terms agreed between the parties and supersedes all other agreements between the parties relating to its subject matter. In entering into this Agreement, neither party has relied on, and neither party will have any right or remedy based on, any statement, representation or warranty (whether made negligently or innocently), except those expressly set out in this Agreement. The terms located at a URL referenced in this Agreement and the Documentation are incorporated by reference into the Agreement. After the Effective Date, Google may provide an updated URL in place of any URL in this Agreement.

16.14 Conflicting Terms. If there is a conflict between the documents that make up this Agreement, the documents will control in the following order: the Agreement, and the terms at any URL.

16.15 Definitions.

- "Account" means Customer's Google Cloud Platform account.
- "Admin Console" means the online console(s) and/or tool(s) provided by Google to Customer for administering the Services.
- "Affiliate" means any entity that directly or indirectly Controls, is Controlled by, or is under common Control with a party.
- "Allegation" means an unaffiliated third party's allegation.
- "Application(s)" means any web or other application Customer creates using the Services, including any source code written by Customer to be used with the Services, or hosted in an Instance.
- "AUP" means the acceptable use policy set forth here for the Services: <http://cloud.google.com/terms/aup>
- "Brand Features" means the trade names, trademarks, service marks, logos, domain names, and other distinctive brand features of each party, respectively, as secured by such party from time to time.
- "Committed Purchase(s)" have the meaning set forth in the Service Specific Terms.
- "Confidential Information" means information that one party (or an Affiliate) discloses to the other party under this Agreement, and which is marked as confidential or would normally under the circumstances be considered confidential information. It does not include information that is independently developed by the recipient, is rightfully given to the recipient by a third party without confidentiality obligations, or becomes public through no fault of the recipient. Subject to the preceding sentence, Customer Data is considered Customer's Confidential Information.
- "Control" means control of greater than fifty percent of the voting rights or equity interests of a party.

- "Customer Data" means content provided to Google by Customer (or at its direction) via the Services under the Account.
- "Customer End Users" means the individuals Customer permits to use the Application.
- "Data Processing and Security Terms" means the terms set forth at: <https://cloud.google.com/terms/data-processing-terms>.
- "Documentation" means the Google documentation (as may be updated from time to time) in the form generally made available by Google to its customers for use with the Services including the following: (a) Google App Engine, set forth here: <https://cloud.google.com/appengine/>; (b) Google Cloud SQL, set forth here: <https://cloud.google.com/sql>; (c) Google Cloud Storage, set forth here: <https://cloud.google.com/storage>; (d) Google Prediction API, set forth here: <https://cloud.google.com/prediction>; (e) Google BigQuery Service, set forth here: <https://cloud.google.com/bigquery/>; (f) Google Compute Engine, set forth here: <https://cloud.google.com/compute/>; and (g) Google Cloud Datastore, set forth here: <https://cloud.google.com/datastore/>.
- "Emergency Security Issue" means either: (a) Customer's or Customer End Users' use of the Services in violation of the AUP, which could disrupt: (i) the Services; (ii) other customers' or their customer end users' use of the Services; or (iii) the Google network or servers used to provide the Services; or (b) unauthorized third party access to the Services.
- "Fee Accrual Period" means a calendar month or another period specified by Google in the Admin Console.
- "Fee Threshold" means the threshold (as may be updated from time to time), as applicable for certain Services, as set forth here: <https://cloud.google.com/skus/>.
- "Feedback" means feedback or suggestions about the Services provided to Google by Customer.
- "Fees" means the applicable fees for each Service and any applicable Taxes. The Fees for each Service are set forth here: <https://cloud.google.com/skus/>.
- "High Risk Activities" means uses such as the operation of nuclear facilities, air traffic control, or life support systems, where the use or failure of the Services could lead to death, personal injury, or environmental damage.
- "HIPAA" means the Health Insurance Portability and Accountability Act of 1996 as it may be amended from time to time, and any regulations issued under it.
- "Indemnified Liabilities" means any (i) settlement amounts approved by the indemnifying party; and (ii) damages and costs finally awarded against the indemnified party and its Affiliates by a court of competent jurisdiction.

- "Instance" means a virtual machine instance, configured and managed by Customer, which runs on the Services. Instances are more fully described in the Documentation.
- "Intellectual Property Rights" means current and future worldwide rights under patent, copyright, trade secret, trademark, and moral rights laws, and other similar rights.
- "Legal Process" means a data disclosure request made under law, governmental regulation, court order, subpoena, warrant, governmental regulatory or agency request, or other valid legal authority, legal procedure, or similar process.
- "Package Purchase" has the meaning set forth in the Service Specific Terms.
- "Project" means a grouping of computing, storage, and API resources for Customer, and via which Customer may use the Services. Projects are more fully described in the Documentation.
- "Reserved Capacity Units" have the meaning set forth in the Service Specific Terms.
- "Reserved Unit Term" has the meaning set forth in the Service Specific Terms.
- "Reserved Units" have the meaning set forth in the Service Specific Terms.
- "Service Specific Terms" means the terms specific to one or more Services set forth here: <https://cloud.google.com/terms/service-terms>, except the terms relating to (a) Google Translate API; and (b) Fees for Google Cloud Datastore set forth at that Service Specific Terms URL do not apply.
- "Services" means the services as set forth here: <https://cloud.google.com/terms/services> (including any associated APIs); and TSS, but the Services do not include Google Translate API.
- "SLA" means the Service Level Agreement as applicable to: (a) Google App Engine set forth here: <https://cloud.google.com/appengine/sla>; (b) Google Cloud Storage set forth here: <https://cloud.google.com/storage/sla>; (c) Google Prediction API set forth here: <https://cloud.google.com/prediction/sla>; (d) Google BigQuery Service set forth here: <https://cloud.google.com/bigquery/sla>; (e) Google Cloud SQL set forth here: <https://cloud.google.com/sql/sla>; (f) Google Compute Engine set forth here: <https://cloud.google.com/compute/sla>; (g) VPN set forth here: <https://cloud.google.com/vpn/sla>; (h) Google Cloud DNS set forth here: <https://cloud.google.com/dns/sla>; (i) Google Cloud Datastore set forth here: <https://cloud.google.com/datastore/sla>; (j) Google Cloud Dataflow set forth here: <https://cloud.google.com/dataflow/sla>; (k) Google Cloud Pub/Sub set forth here: <https://cloud.google.com/pubsub/sla>; and (l) Google Container Engine set forth here: <https://cloud.google.com/container-engine/sla>.
- "Software" means any downloadable tools, software development kits or other such proprietary computer software provided by Google in connection with the Services, which may be downloaded by Customer, and any updates Google may make to such Software from time to time.

- "Taxes" means any duties, customs fees, or taxes (other than Google's income tax) associated with the purchase of the Services, including any related penalties or interest.
- "Term" has the meaning set forth in Section 9 of this Agreement.
- "Terms URL" means the following URL set forth here: <https://cloud.google.com/terms/>.
- "Third-Party Legal Proceeding" means any formal legal proceeding filed by an unaffiliated third party before a court or government tribunal (including any appellate proceeding).
- "Token" means an alphanumeric key that is uniquely associated with Customer's Account.
- "Trademark Guidelines" means Google's Guidelines for Third Party Use of Google Brand Features, located at: <http://www.google.com/permissions/guidelines.html>.
- "TSS" means the technical support service provided by Google to the administrators under the TSS Guidelines.
- "TSS Guidelines" means Google's technical support services guidelines then in effect for the Services. TSS Guidelines are at the following URL: <http://support.google.com/enterprise/terms> (under Google Cloud Platform Services).

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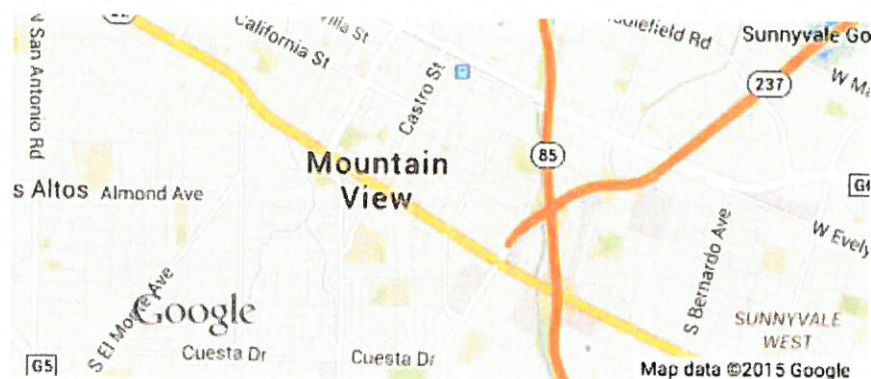
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