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**Google LLC.**  
1600 Amphitheatre Parkway  
Mountain View, California 94043

**Order Form:**  
**Apigee Products and Services**

**CUSTOMER INFORMATION - REQUIRED**

<b>CUSTOMER</b> (Enter Company's Full Legal Name):		
	<b>Corporate Contact Information:</b>	<b>Billing Contact Information:</b> (Contact who will review the invoice if different from Corporate Contact)
<b>Name:</b>	Markit on Demand Inc.	IHS Markit – Accounts Payable
<b>Address:</b>	5775 Flatiron Parkway, Suites 100, 115, 120, 200, 205 & 207	15 Inverness Way East
<b>City, State, Zip:</b>	Boulder, CO 80301	Englewood, CO 80112
<b>Phone:</b>		
<b>Email:</b>		<b>Billing Contact Email:</b> accountspayable.unitedstates@ihsmarkit.com <b>Invoice Delivery Email:</b> (List email that should receive invoice, if different from Billing Contact Email)

**ACCOUNT INFORMATION - REQUIRED**

<b>Customer Support Contact:</b> <ul style="list-style-type: none"> <li><b>Name:</b> David Rush</li> <li><b>Email:</b> david.rush@ihsmarkit</li> <li><b>Phone:</b></li> </ul>	<b>Purchase Order Required:</b> Yes <input type="checkbox"/> No <input type="checkbox"/> <b>If Yes, Purchase Order #:</b>  <b>Tax Exempt:</b> Yes <input type="checkbox"/> No <input type="checkbox"/> (If Yes is checked, please provide certificate)  <b>VAT or applicable tax # (Non-U.S. Customers only):</b>
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**ACCOUNT MANAGER TO COMPLETE THIS SECTION – REQUIRED**

<b>Account Manager:</b> Mark Tespic	<b>Google Legal Customer ID (required):</b> N/A
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Products Ordered:

Product Sku	Product Description	Term	Qty	Unit Price	Total
APGEOPP9000	Edge for Private Cloud (unlimited calls)	Perpetual	1	\$2,287,500	\$2,287,500
APGEOPM9000	First Year Annual Support	12 months	1	\$457,500	\$457,500
				Sub Total	\$2,745,000
				Tax	-
				Grand Total	\$2,745,000

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**1. Product Invoicing and Other Terms:**

All Products and Support ordered in the table above in this Order Form will be invoiced as follows:

- a. \$150,000 (\$100,000 for APGEOPP9000 and \$50,000 for APGEPM9000) invoiced upon the Effective Date.
- b. \$2,595,000 (\$2,187,500 for APGEOPP9000 and \$407,500 for APGEOPM9000) invoiced on December 1, 2018.

**Note 1** – Customer will have unlimited license deployment rights of the above Software licenses for exclusive benefit of Customer and current Affiliates for a period of thirty-six (36) months from the Order Form Effective Date (the “Unlimited Deployment Period”). The Software licenses have no core restrictions and can be deployed as production or non-production instances at any Customer location or servers. The Software licenses can be deployed at both Customer internally and externally (including 3rd party hosting providers) managed data centers. The Software licenses will not have API call volume restrictions during or after the Unlimited Deployment Period.

After the end of the Unlimited Deployment Period, Customer shall be perpetually licensed for the total number of active licenses deployed at Customer during the Unlimited Deployment Period. No later than thirty (30) days after the Unlimited Deployment Period, Customer agrees to provide Google with a written report of all active messages processors deployed by Customer and becomes the Customer’s perpetual license entitlement.

A message processor processes API requests. The message processor evaluates an incoming request, executes any Google policies, and calls the back-end systems and other systems to retrieve data. Once those responses have been received, the message processor formats a response and returns it to the client.

Upon prior notice, and not more than once a year, Google may audit Customer’s compliance with this section and Customer agrees to cooperate with Google’s audit and provide reasonable assistance and access to information to verify accuracy of Customer’s written reports for licenses deployed.

Customer is responsible for monitoring Customer’s use of the Software. If Customer is aware that its use of the Software is greater than the deployment restrictions or other license restrictions, if applicable and as stated in the Order Form and/or Documentation, Customer shall notify Google of such excess use. Google will invoice Customer for the additional Fees as agreed to by the parties for the period commencing on the date of excess use through the remainder of the Initial Term or then current Extension Term, and the unpaid Fees shall be payable in accordance with the General Terms.

**Note 2** - Annual Support fees for the above perpetual Software licenses for the second, third, fourth and fifth annual Support periods will be \$457,500 per year. Support fees for the sixth, seventh and eighth annual Support periods will not increase by more than 3% of the annual Support fees charged during the previous year.


**2. Order Form Terms and Conditions**

License Terms. This Order Form is subject to and incorporates by reference the Google General Terms and Conditions for Apigee Products attached to this Order Form (the “Agreement”). All capitalized terms used in this Order Form have the meanings stated in the Agreement, unless stated otherwise.

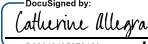
By signing this Order Form, each party represents and warrants that: (a) it has read and understands the Agreement that is incorporated by reference to this Order Form and agrees to be bound by the terms of the Agreement, and (b) it has full power and authority to accept the Agreement and this Order Form.

This Order Form has been signed by the parties’ authorized representatives and is effective on the last signature date below (“Effective Date”).

**Google LLC. (“Google”)**

By:   
DocuSigned by: 7E405F53001E4D0  
 Print Name: Chet Kapoor  
 Title: VP, Apigee

**Customer**

By:   
DocuSigned by: 0028124950F0429  
 Print Name: Catherine Allegra  
 Title: Global Head - Markit Digital

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Date: Sep-18-2018 | 15:57 PDT

Date: Sep-18-2018 | 14:52 PDT

**GOOGLE GENERAL TERMS AND CONDITIONS FOR APIGEE PRODUCTS****1. DEFINITIONS.**

**"Admin Console"** means the online console(s) and/or tool(s) provided by Google to Customer for administering the Cloud Services.

**"Affiliate"** means any entity that directly or indirectly Controls, is Controlled by, or is under common Control with a party.

**"Agreement"** means these General Terms and Conditions, any Exhibits and attachments hereto, and any fully executed Order Form(s).

**"Allegation"** means an unaffiliated third party's allegation.

**"Apigee Products"** means the Cloud Services, and/or Software procured by Customer under the Agreement.

**"AUP"** means the acceptable use policy for the Cloud Services at: [cloud.google.com/terms/aup](https://cloud.google.com/terms/aup).

**"Cloud Services"** means the cloud service offerings as further described in the Documentation and on the Order Form.

**"Confidential Information"** means information that one party (or an Affiliate) discloses to the other party under this Agreement, and that is marked as confidential or would normally be considered confidential information under the circumstances. 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 data provided by or on behalf of Customer or Customer's end users via the Cloud Services under Customer's Google account.

**"Customer Equipment"** means Customer's computer hardware, software, and network infrastructure used to access the Apigee Products.

**"Data Processing and Security Terms"** means the data processing and security terms for the Cloud Services on Google's website at [https://specs.apigee.com/files/Apigee\\_DPST\\_2.0.pdf](https://specs.apigee.com/files/Apigee_DPST_2.0.pdf).

**"Documentation"** means the description of the Apigee Products, Professional Services and/or Training Services purchased by Customer contained in the applicable specification sheet available on Google's website, which is currently <http://apigee.com/about/specification-sheets>.

**"Extension Term"** means each additional period that is mutually agreed in writing by the parties for which the term for the applicable Apigee Products is extended.

**"Feedback"** means feedback or suggestions about the Apigee Products provided to Google by Customer or its Users.

**"Fees"** means the applicable fees for Apigee Products, for each Services and any applicable Taxes.

**"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 Apigee Products 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.

**"Initial Term"** means the first term for the Apigee Products defined in the applicable Order Form, or if no such term period is defined, twelve (12) months, commencing on the Effective Date.

**"Indemnified Liabilities"** means any (a) settlement amounts approved by the indemnifying party; and (b) damages and costs finally awarded against the indemnified party and its Affiliates by a court of competent jurisdiction.

**"Intellectual Property Rights"** means all patent rights, copyrights, trademark rights, rights in trade secrets, database rights, moral rights, and any other intellectual property rights (registered or unregistered) throughout the world.

**"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.

**"Non-Production"** means the use of the Apigee Products for testing, development, and quality assurance purposes only.

**"Order Form"** means an order form executed by Customer and/or its Affiliate and Google, which specifies the Apigee Products, Professional Services, Training Services and/or Support to be provided to Customer and/or its Affiliate. Except as otherwise provided on the Order Form, each Order Form shall be subject to the terms and conditions of this Agreement and incorporated by reference into this Agreement. For any order by Customer or its Affiliate for the benefit of Customer's Affiliate(s), the term "Customer" shall refer to Customer and such Affiliate(s).

**"Professional Services"** means the installation, configuration or other professional services described and identified in the Order Form (and as described in the applicable specification sheet available on Google's website at <http://apigee.com/about/specification-sheets> or as set forth in a mutually executed Statement of Work).

**"Services"** means Professional Services, Support, or to prevent or address Cloud Services technical problems

**"Software"** means any Google binary software programs that is either (a) licensed by Google to Customer on an Order Form and as further described in the Documentation and/or (b) made available to Customer for download by Google, which may be provided at no additional cost to Customer.

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**"Support"** has the meaning set forth in Section 7.

**"System User(s)"** means each individual User with the unique account ID and authorization credentials used to access any of the organization or environment combinations via the Apigee Products user interface or APIs. System Users may not share their credentials with any other individuals or systems at any time.

**"Taxes"** means any duties, customs fees, or taxes (other than Google's income tax) including indirect taxes such as "goods and services tax" and "value-added tax" associated with the purchase of the Services, including any related penalties or interest.

**"Term"** means the Initial Term and any Extension Term applicable to each Apigee Product.

**"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).

**"Training Materials"** means training courses, documentation, and other associated materials for training provided by Google during the Training Services.

**"Training Services"** means the training service offerings as described and identified on the Order Form (and as described in the applicable specification sheet available on Google's website at <http://apigee.com/about/specification-sheets> or as set forth in a mutually executed Statement of Work).

**"Updates"** means all bug fixes, enhancements, and workarounds that Google generally makes available at no additional charge to its customers of the Software or Cloud Services listed on the Order Form (as applicable) who are current in payment of applicable fees.

**"User"** means an employee, agent, independent contractor or 3<sup>rd</sup> party developer of Customer and/or its Affiliates who is authorized to use the Apigee Products by the Customer and/or whose information is transmitted through the Apigee Products.

## 2. GOOGLE OBLIGATIONS.

**2.1.** During the Term of this Agreement, Google will: (i) make the Apigee Products available to Customer in accordance with the Documentation, and pursuant to the terms of this Agreement; (ii) not use or access Customer Data except to provide the Apigee Products and Services or in accordance with Customer's instructions.

**2.2. Admin Console.** As part of receiving the Cloud Services, Customer will have access to the Admin Console, through which Customer may administer the Cloud Services.

**2.3. Cloud Services Deployment Region.** Customer may select on an Order Form the region(s) for deployment of the core runtime (messaging processing) components of the Cloud Services. If a region selection is not made by Customer, Google may deploy the core runtime components of the Cloud Services anywhere Google or its agents maintain facilities.

## 3. CUSTOMER OBLIGATIONS.

**3.1.** As between the parties, Customer is responsible for: (i) all activities conducted under a System User login; (ii) obtaining and maintaining any Customer Equipment and any ancillary services needed to connect to, access or otherwise use the Apigee Products; (iii) ensuring that the Customer Equipment and any ancillary services are compatible with the Apigee Products and comply with all requirements set forth in the Documentation (iv) obtaining and maintaining any required consents necessary to permit the processing of Customer Data under this Agreement and (v) its Users, Customer Data and use of the Apigee Products and making sure its Users, Customer Data, and use of the Apigee Products comply with the AUP.

**3.2.** Customer will use the Apigee Products in accordance with this Agreement, in compliance with applicable law, and shall not: (a) resell, sublicense, lease, time-share or otherwise make the Apigee Products available to any third party; (b) send or store infringing or unlawful material using the Apigee Products; (c) attempt to gain unauthorized access to, or disrupt the integrity or performance of, the Apigee Products or the data contained therein; (d) allow sharing of a System User account by more than one individual; (e) modify, copy or create derivative works based on the Apigee Products; (f) reverse engineer the Apigee Products; (g) propagate any virus, worms, Trojan horses, or other programming routine intended to damage any system or data; (h) access the Apigee Products for the purpose of building a competitive product or service or copying its features or user interface; and (i) use the Apigee Products, or permit it to be used, for purposes of product evaluation, benchmarking or other comparative analysis intended for publication without Google's prior written consent. In the event Customer has a Non-Production license to the Apigee Products, Customer shall only use such Apigee Products for Non-Production purposes; (j) process or store any Customer Data that is subject to the International Traffic in Arms Regulations maintained by the Department of State; or (k) use the Apigee Products for High Risk Activities. Unless otherwise specified in writing by Google, Google does not intend uses of the Cloud Services to create obligations under HIPAA, and makes no representations that the Cloud Services satisfy HIPAA requirements. If Customer is (or becomes) a Covered Entity or Business Associate, as defined in HIPAA, Customer will not use the Cloud 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.

### **3.3. Suspension of Cloud Services**

(a) Suspension/Removals. If Customer becomes aware that any Customer Data violates the AUP, Customer will immediately remove the relevant Customer Data. If Customer fails to suspend or remove as noted in the prior

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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 suspend Cloud Services until such violation is corrected.

- (b) Emergency Security Issues. Despite the foregoing, if there is an Emergency Security Issue, then Google may automatically suspend Customer's use of the Cloud Services. Suspension will be to the minimum extent required, and of the minimum duration, to prevent or resolve the Emergency Security Issue. If Google suspends Customer's use of the Cloud Services 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.
- (c) "Emergency Security Issue" means either: (a) Customer's or Customer Users' use of the Cloud Services in violation of the AUP, which could disrupt: (i) the Cloud Services; (ii) other customers' or their customer end users' use of the Cloud Services; or (iii) the Google network or servers used to provide the Cloud Services; or (b) unauthorized third party access to the Cloud Services.

#### **4. PAYMENT TERMS.**

**4.1. Invoicing.** The Fees for the Apigee Products, Support, Professional Services and Training Services are as stated in an Order Form and are effective during the Initial Term. Unless otherwise stated in the Order Form, Fees for the Initial Term are due and payable upon the initial invoice date. Any additional fees that are subject to calculation in arrears will be invoiced at the end of the month that they were accrued for (e.g. API call overages). Fees for any Extension Terms are due in accordance with the above, except that they are due on the effective date of the renewal period. Google shall submit invoices to the Customer electronically via email to the address provided on the Order Form or the Customer's purchase order. Google has no obligation to provide multiple invoices.

**4.2. Payment.** All fees are due 30 days from the invoice date. Customer's obligation to pay all Fees is non-cancellable, and except as expressly provided in this Agreement, upon payment, all payments made by Customer are non-refundable. All payments due are in the currency stated in the invoice. Payments made by wire transfer must include the bank information provided by Google.

**4.3. Taxes.** Customer is responsible for paying any Taxes, and Customer will pay the Fees to Google without any deduction. If Google is obligated to collect or remit Taxes imposed on Customer, the appropriate amount will be invoiced to and paid by Customer, unless Customer provides Google with a timely and valid tax exemption certificate (or other documentation as required for the exemption) authorized by the appropriate taxing authority. Customer acknowledges that in some jurisdictions, sales tax is due on the total purchase price at the time of sale and must be invoiced and collected by Google at the time of the sale.

**4.4. Invoice Disputes.** 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.

**4.5. Delinquent Payments.** Delinquent payments may bear interest at the rate of one-and-one-half percent 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 except where such delinquent amounts are due to Google's billing inaccuracies. If Customer is delinquent on payments, access to Apigee Products and all of the Services may be suspended or terminated for breach under Section 14.2.

**4.6. Travel Expenses.** Customer shall reimburse Google for travel and related expenses for (a) as specifically stated in the applicable Order Form; or (b) for all actual, reasonable, necessary and pre-approved travel and related expenses incurred by Google in performance of Professional Services or Training Services. Customer shall be responsible for its own travel and out-of-pocket expenses associated with attending any training services at a Google facility.

#### **4.7. Purchase Orders**

- a. **Required.** If Customer requires a purchase order number on its invoice, Customer will select "Yes" in the purchase order section of the Order Form and issue a purchase order to Google. If Customer requires a purchase order, and fails to provide the purchase order to Google, then Google will not be obligated to provide the Services until Google has received the purchase order. If Customer requires an updated purchase order to cover its actual usage under this Agreement, then Customer will provide an additional purchase order to Google. If Customer fails to provide an additional purchase order to cover its actual usage, then Customer waives any purchase order requirement and (i) Google will invoice Customer without a purchase order number; and (ii) Customer will pay invoices without a purchase order number referenced.
- b. **Not Required.** If Customer does not require a purchase order number to be included on the invoice, Customer must select "No" in the purchase order section of the Order Form. If Customer waives the purchase order requirement, then: (i) Google will invoice Customer without a purchase order; and (ii) Customer will pay invoices without a purchase order.

- c. Any terms and conditions on a purchase order do not apply to this Agreement and are null and void.

## 5. TERMS OF THE APIGEE PRODUCTS.

**5.1. Grant of Rights.** Subject to the terms of the Agreement, Google grants Customer (and its Affiliates for whom Customer enables access to the Apigee Products), a non-exclusive, non-transferable (except to a successor in interest as permitted hereunder) right to use the Apigee Products listed on the applicable Order Form during the Term. Customer's right to use the Apigee Products is limited to the volume and other restrictions contained herein and in the Order Form and the Documentation.

**5.2. Free Software License.** Notwithstanding Section 5.1 above, Customer acknowledges that the Software includes some components that are licensed to Customer and its Affiliates under "free software" or "open source" licenses which, among other rights, permit the user to copy, modify and redistribute certain programs, or portions thereof, and/or have access to the source code for such components ("Free Software Licenses"). Google shall provide a list of open source components for a particular version of the Software upon Customer's request. To the extent stated in any applicable Free Software License, the terms of such licenses will apply in lieu of the terms of Section 5.1 of this Agreement. To the extent the terms of any Free Software License prohibit any of the restrictions in this Agreement with respect to such components, such restrictions will not apply to such components.

## 6. PROFESSIONAL SERVICES.

Customer may procure Professional Services and standard Training courses that are described in the applicable Documentation specification sheet found at <http://apigee.com/about/specification-sheets>. The "Edge Acceleration Service", "Apigee Service Units", "Digital Transformation Units", and standard "Training" are bought as pre-paid package and are not offered on a time and materials basis.

**7. SUPPORT.** Google shall provide technical support provided Customer is current on payment of Support fees and all other Fees on the Order Form. Such support shall be provided in accordance with the material terms and conditions described in Google's technical support policy, a copy of which may be found at <http://apigee.com/about/specification-sheets> ("Support").

## 8. OWNERSHIP.

**8.1.** As between Customer and Google, Customer shall retain all ownership rights in the Customer Data (as defined in Section 1) and Customer Confidential Information (including that Customer Data and Customer Confidential Information which is included in any Professional Services materials and/or Training Materials). Except as otherwise expressly identified in a mutually executed statement of work, as between Customer and Google, Google shall have and retain all ownership rights in the Apigee Products, Training Materials, and all work developed or created by Google during the course of providing Professional Services or Training Services to Customer (if any). Google hereby grants Customer a royalty-free, fully paid-up, nonexclusive license to use all work developed or created by Google that is provided to Customer as a result of providing Professional Services and/or Training Services (including any such Professional Service materials and/or Training Materials) to Customer on the same terms and conditions as the Apigee Products. In addition to the foregoing, in the event Google assists Customer in defining policies for its APIs ("Policy Definitions") and then configures the Apigee Products with the Policy Definitions, Google hereby grants Customer a royalty-free, fully paid-up, nonexclusive, perpetual, irrevocable, worldwide, transferable (to the extent set forth in Section 15.7) license to use, copy, and distribute the Policy Definitions solely for its internal business purposes.

**8.2.** If Customer provides Google Feedback about the Apigee Products, then Google may use that information without obligation to Customer and Customer irrevocably assigns to Google all right, title, and interest in such Feedback.

**8.3.** No license, right or interest in any Google or Customer trademark, trade name or service mark is granted hereunder.

## 9. CONFIDENTIALITY.

**9.1. Obligations.** Subject to Section 9.2 (Disclosure of Confidential Information), the recipient will not disclose the discloser's Confidential Information, except to employees, Affiliates, agents or professional advisors ("Delegates") who need to know it and who have a legal obligation to keep it confidential. The recipient will use the Confidential Information only to exercise rights and fulfill obligations under this Agreement, while using reasonable care to keep it confidential. The recipient will ensure that its Delegates are also subject to the same non-disclosure and use obligations.

### 9.2. Disclosure of Confidential Information.

a. **General.** Subject to Section 9.2(b) (Notification), the recipient may disclose the discloser's Confidential Information (i) in accordance with a Legal Process or (ii) with the discloser's written consent. If another Section of this Agreement conflicts with Section 9.2 (a), Section 9.2(a) will control.

b. **Notification.** Before the recipient discloses the discloser's Confidential Information in accordance with a Legal Process, the recipient will use commercially reasonable efforts to promptly notify the discloser. Google will give such notice using the Notification Email Address. The recipient does not need to provide notice before disclosure if the



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recipient is informed that (i) it is legally prohibited from giving notice or (ii) the Legal Process relates to exceptional circumstances involving danger of death or serious physical injury to any person.

**9.3. Opposition.** The recipient will comply with the discloser's reasonable requests opposing disclosure of its Confidential Information.

**10. DATA PROCESSING AND SECURITY TERMS.** The Data Processing and Security Terms are incorporated by this reference into this Agreement. 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:

- a. is commercially reasonable;
- b. does not result in a degradation of the overall security of the Services;
- c. 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
- d. 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. Notwithstanding anything to the contrary in this Agreement, a change to the Data Processing and Security Terms under this Section will not require a written document signed by Customer and Google.

## **11. WARRANTIES.**

**11.1. Mutual Warranties.** Each party represents and warrants: that (i) it has the legal power to enter into and perform under this Agreement; (ii) its signatory to this Agreement is 18 years of age or older; and (iii) it shall comply with all laws and regulations applicable to its performance hereunder (in the case of Google) or applicable to its use of the Apigee Products (in the case of Customer).

**11.2. Professional Services Warranty.** Google warrants (i) it will provide the Professional Services in a professional and workmanlike manner consistent with good industry practices; and (ii) that for a period of thirty (30) days after completion, the Professional Services will materially conform to their description on the Order Form and the Professional Services Documentation (or, for any additional Professional Services, in a mutually executed Statement of Work). As Customer's sole and exclusive remedy and Google's entire liability for any breach of the foregoing warranty, Google will re-perform the Professional Services, or, if Google is unable to do so, refund the fees paid to Google for such deficient Professional Services.

**11.3. Cloud Services Warranty.** Google warrants that the Cloud Services will substantially conform in all material respects in accordance with the Cloud Services Documentation. Customer will provide prompt written notice of any non-conformity. As Customer's sole and exclusive remedy and Google's entire liability for any breach of the foregoing warranty, Google will fix, provide a work around, or otherwise repair or replace the nonconforming portion of the Cloud Services, or, if Google is unable to do so, terminate the applicable Order Form for the Cloud Services and return the Cloud Services Fees paid to Google for the period beginning with Customer's notice of nonconformity through the remainder of the Initial Term or then-current Extension Term, as applicable. In addition, Google warrants that the Cloud Services will meet the requirements set forth in the Cloud Service Level Agreement ("SLA"), as described on Google's website at <http://apigee.com/about/specification-sheets> for the applicable specification sheet of Cloud Services purchased by Customer. In the event of a breach of the foregoing warranty, as Customer's sole and exclusive remedy, Google will provide the remedy set forth in the SLA.

**11.4. Warranty for Software Deployed On-Premises.** Google warrants to Customer that for a period of three (3) months from delivery, the Software will substantially conform in all material respects to the Software Documentation ("Software Warranty"). The Software Warranty does not apply to: (a) Software that has been modified by any party other than Google; or (b) Software that has been improperly installed or used in a manner other than as authorized under the Agreement to the extent such modification(s) or improper installation causes the Software to be nonconforming. As Customer's sole and exclusive remedy and Google's entire liability for any breach of the foregoing warranty, Google will repair or replace any nonconforming Software so that it operates as warranted or, if Google is unable to do so, terminate the license for such Software and return the license fees paid to Google for the nonconforming Software. Any claim submitted under subsection must be submitted in writing to Google within the specified warranty period.

**11.5. 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 APIGEE PRODUCTS. CUSTOMER IS SOLELY RESPONSIBLE



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FOR SECURING AND BACKING UP ITS CUSTOMER DATA. NEITHER GOOGLE, NOR ITS SUPPLIERS, WARRANTS THAT THE OPERATION OF THE APIGEE PRODUCTS WILL BE ERROR-FREE OR UNINTERRUPTED. NEITHER THE SOFTWARE NOR THE CLOUD SERVICES ARE DESIGNED, MANUFACTURED, OR INTENDED FOR HIGH RISK ACTIVITIES.

## **12. INDEMNIFICATION.**

**12.1. Customer Indemnification Obligations.** Subject to Section 12.4 (Conditions), and unless prohibited by applicable law, Customer will defend Google and its Affiliates and indemnify it against Indemnified Liabilities in any Third-Party Legal Proceeding to the extent arising from (i) any Customer Data; or (ii) Customer's, or its Users', use of the Cloud Services in violation of the AUP.

**12.2. Google's Indemnification Obligations.** Subject to Section 12.4 (Conditions), Google will defend Customer and indemnify it against Indemnified Liabilities in any Third-Party Legal Proceeding to the extent arising from an Allegation that Customer's use in accordance with this Agreement of Google's technology used to provide the Apigee Products (excluding any open source software) infringes the third party's Intellectual Property Rights.

**12.3. Exclusions.** This Section 12 will not apply to the extent the underlying Allegation arises from:

- (a) the indemnified party's breach of this Agreement;
- (b) modifications of Google's technology by anyone other than Google; or
- (c) Customer's combination of Google's technology with materials not provided by Google.

**12.4. Conditions.** Sections 12.1 and 12.2 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 12.4(a) prejudices the defense of the Third-Party Legal Proceeding, the indemnifying party's obligations under Section 12.1 or 12.2 (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.

**12.5. Remedies.**

- (a) If Google reasonably believes the Apigee Products might infringe a third party's Intellectual Property Rights, then Google may, at its sole option and expense: (i) procure the right for Customer to continue using the Apigee Products; (ii) modify the Apigee Products to make them non-infringing without materially reducing their functionality; or (iii) replace the Apigee Products with a non-infringing, functionally equivalent alternative.
- (b) If Google does not believe the remedies in Section 12.5(a) are commercially reasonable, then Google may suspend or terminate Customer's use of the impacted Apigee Products.

**12.6. Sole Rights and Obligations.** Without affecting either party's termination rights, this Section 12 states the parties' only rights and obligations under this Agreement for any third party's Intellectual Property Rights Allegations and Third-Party Legal Proceedings.

## **13. LIMITATION OF LIABILITY.**

**13.1. LIMITATIONS.** TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW AND SUBJECT TO SECTION 13.2 (EXCEPTIONS TO LIMITATIONS),

- a. NEITHER PARTY HAS ANY LIABILITY ARISING OUT OF OR RELATING TO THIS AGREEMENT FOR: (I) THE OTHER PARTY'S LOST REVENUES; (II) INDIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL LOSSES (WHETHER OR NOT FORESEEABLE OR CONTEMPLATED BY THE PARTIES AT THE EFFECTIVE DATE); OR (III) EXEMPLARY OR PUNITIVE DAMAGES.
- b. EACH PARTY'S TOTAL AGGREGATE LIABILITY FOR DIRECT DAMAGES ARISING OUT OF OR RELATING TO THIS AGREEMENT IS LIMITED TO THE FEES CUSTOMER PAID UNDER THE AGREEMENT DURING THE 12 MONTHS BEFORE THE LIABILITY AROSE. NOTWITHSTANDING THE FOREGOING, GOOGLE'S BREACH OF SECTION 9 (CONFIDENTIALITY) IS LIMITED TO THE FEES CUSTOMER PAID UNDER THE AGREEMENT DURING THE 36 MONTHS BEFORE THE LIABILITY AROSE.

**13.2. EXCEPTIONS TO LIMITATIONS.** NOTHING IN THIS AGREEMENT EXCLUDES OR LIMITS EITHER PARTY'S LIABILITY FOR: (A) DEATH OR PERSONAL INJURY RESULTING FROM ITS NEGLIGENCE OR THE NEGLIGENCE OF ITS

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EMPLOYEES OR AGENTS; (B) FRAUD OR FRAUDULENT MISREPRESENTATION; (C) THE PARTIES' INDEMNIFICATION OBLIGATIONS; (D) INFRINGEMENT OF THE OTHER PARTY'S INTELLECTUAL PROPERTY RIGHTS; (E) CUSTOMER'S PAYMENT OBLIGATIONS; OR (F) MATTERS FOR WHICH LIABILITY CANNOT BE EXCLUDED OR LIMITED UNDER APPLICABLE LAW.

#### **14. TERM AND TERMINATION.**

**14.1. Term.** This Agreement commences on the Effective Date and continues until the stated term in all Order Forms has expired or has otherwise been terminated. The Initial Term applicable to each Order Form commences upon execution of such Order Form and unless mutually agreed in writing by the parties, shall expire at the end of the then current Term.

**14.2. Termination for Breach.** A party may terminate this Agreement for cause: (i) upon 30 days written notice to the other party of a material breach of this Agreement if such breach remains uncured at the expiration of such period; (ii) immediately upon written notice if the other party becomes the subject of a bankruptcy, insolvency, receivership, liquidation, assignment for the benefit of creditors or similar proceeding; (iii) the other party is in material breach of this Agreement more than two times notwithstanding any cure of such breaches and (iv) as otherwise provided herein.

**14.3. Expired Order Form.** Either party may terminate this Agreement immediately by written notice if no Order Form is in effect.

**14.4. Effect of Termination.** If the Agreement expires or is terminated, then: (a) the rights granted by one party to the other will immediately cease; (b) all fees owed by Customer to Google are immediately due upon receipt of the final invoice; (c) Customer will delete the Software if deployed on premises within thirty (30) days of such termination; and (d) upon request, each party will use commercially reasonable efforts to return or destroy all Confidential Information of the other party.

**14.5. Survival.** The parties' rights and obligations under Sections 4, 8, 9, 11.5, 12, 13, 14.4 and 15 shall survive termination of this Agreement.

#### **15. GENERAL.**

**15.1.** The parties are independent contractors, and no partnership, franchise, joint venture, agency, fiduciary or employment relationship between the parties is created hereby. This Agreement does not confer any benefits on any third party unless it expressly states that it does.

**15.2.** Notices shall be in writing, sent using a recognized private mail carrier or the United States Postal Service or Royal Mail or the national mail carrier of the country in which the sender is situated and effective on proof of delivery.

**15.3.** Each party may include the other's name in its customer or vendor lists.

**15.4.** No amendment or waiver of any provision of this Agreement shall be effective unless in writing and signed by Customer and Google. To the extent of any conflict between this Agreement and any other schedule or attachment, this Agreement shall prevail unless expressly stated otherwise. Notwithstanding any language to the contrary therein, no terms stated in a purchase order or in any other order document (other than a statement of work, or other mutually executed order document expressly incorporated herein) shall be incorporated into this Agreement, and all such terms shall be void. This Agreement, which includes all Exhibits, documents referenced herein, statements of work and attachments hereto represents the entire agreement of the parties, and supersedes all prior or contemporaneous agreements, proposals or representations, written or oral, concerning its subject matter.

**15.5.** No failure or delay in exercising any right hereunder shall constitute a waiver of such right. Except as otherwise provided herein, remedies provided herein are in addition to, and not exclusive of, any other remedies of a party at law or in equity. If any provision of this Agreement is held by a court of competent jurisdiction to be contrary to law, such provision shall be modified by the court and interpreted so as best to accomplish the objectives of the original provision to the fullest extent permitted by law, and the remaining provisions shall remain in effect.

**15.6.** Neither party shall be liable to the other for any delay or failure to perform hereunder (excluding payment obligations) due to a natural disaster, actions or decrees of governmental bodies or communications line failure which (i) hinders, delays or prevents a party in performing any of its obligations, and (ii) is beyond the control of, and without the fault or negligence of, such party, and (iii) by the exercise of reasonable diligence such party is unable to prevent or provide against ("Force Majeure Event").

**15.7.** 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.

**15.8.** Each party agrees to comply fully with a export controls and sanctions administered by the United States Departments of Commerce and Treasury, as amended from time to time.

**15.9.** If there is a conflict among the documents that make up this Agreement, the documents will control in the following order: the Order Form, the Agreement, and the terms at any URL.

**15.10.** The parties may execute this Agreement in counterparts, including facsimile, PDF, and other electronic copies, which taken together will constitute one instrument. In lieu of parties executing future Order Forms or SOWs, Customer may issue a

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purchase order number, and it shall constitute Customer's electronic signature and consent to any purchase order and Google's invoice number shall constitute Google's electronic signature and consent to provide the Apigee Products and/or Services. Each party agrees that Customer's purchase order number or Google's invoice number, as issued by the respective party, shall be sufficient to verify that such party originated the document.

**15.11. 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 listed in Section 15.11(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.