Google Cloud Platform Terms of Service - India Billing Accounts

Last modified: August 27, 2020 | [Previous Versions](#)

Google Cloud Platform Agreement

By using the Services, the Customer agrees to these Terms of Services. The Services are provided by Google Asia Pacific Pte. Ltd. (Co. Reg. No. 200817984R), with offices at 70 Pasir Panjang Road, #03- 71, Mapletree Business City II, Singapore 117371 ("Google").

These Google Cloud Platform Terms of Service ("ToS") are pursuant to the Agreement entered into by Google Cloud India Private Limited ("GCI") and the person agreeing to these terms ("Customer") and is effective as of the date Customer clicks to accept the Agreement (the "Effective Date"). This ToS governs Customer's access to and use of the Services.

If you are accepting on behalf of Customer, you represent and warrant that: (i) you have full legal authority to bind your employer, or the applicable entity, to these terms and conditions; (ii) you have read and understand this ToS; and (iii) you agree, on behalf of the party that you represent, to this ToS. Capitalized terms not defined in this ToS have the meanings given to those terms in the Agreement.

1. Provision of Services.

1.1 Services Use. During the Term, Google will provide the Services in accordance with the ToS, including the SLAs, and Customer may use the

Services, and integrate the Services into any Application that has material value independent of the Services, in accordance with the ToS.

1.2 Admin Console. Customer will have access to the Admin Console, through which Customer may manage its use of the Services.

1.3 Modifications.

(a) To the Services. Google may make commercially reasonable updates to the Services from time to time. Google will inform Customer if Google makes a material change to the Services that has a material impact on Customer's use of the Services.

(b) To the ToS. Google may make changes to this ToS (and any linked documents) from time to time. Unless otherwise noted by Google, material changes to the ToS will become effective 30 days after they are posted, except to the extent the changes apply to new functionality in which case they will be effective immediately. Google will provide at least 90 days' advance notice for materially adverse changes to any SLAs by either: (i) sending an email to the Notification Email Address (ii) posting a notice in the Admin Console; or (iii) posting a notice to the applicable SLA webpage. If a Customer does not agree to the revised ToS, Customer may stop using the Services. This ToS is coterminous along with the agreement. Customer may also terminate this ToS for convenience under Section 8.4 (Termination for Convenience). Customer's continued use of the Services after such material change will constitute Customer's consent to such changes. Google will post any modification to this ToS to https://cloud.google.com/terms.

(c) <u>To the Data Processing and Security Terms</u>. 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.

(d) <u>Discontinuation of Services</u>. Google will notify Customer at least 12 months before discontinuing any Service (or associated material functionality) unless Google replaces such discontinued Service or functionality with a materially similar Service or functionality. Further, Google will notify Customer at least 12 months before significantly modifying a Customer-facing Google API in a backwards-compatible manner. Nothing in this Section 1.4(d) (Discontinuation of Services) limits Google's ability to make changes required to comply with applicable law, address a material security risk, or to avoid a

substantial economic or material technical burden. This Section 1.4(d) (Discontinuation of Services) does not apply to pre-general availability Services, offerings, or functionality.

1.4 Software. Google may make Software available to Customer, including third-party software. Customer shall be allowed to use the Software solely in connection with Customer's use of the Services. Some Software may be subject to third party license terms, which Customer shall abide by. In the event of a conflict between this Services Schedule and any third party license terms, the third party license terms will prevail with respect to such third party Software.

1.5 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. Customer Obligations.

2.1 Compliance. Customer will (a) ensure that Customer and its End Users' use of the Services complies with the ToS, (b) use commercially reasonable efforts to prevent and terminate any unauthorized access or use of, or access to, the Services, and (c) promptly notify Google of any unauthorized use of, or access to, the Services, Account or Customer's password of which Customer becomes aware. Google reserves the right to investigate any potential violation of the AUP by Customer, which may include reviewing Customer's Applications, Customer Data, or Projects.

2.2 Privacy. Customer is responsible for any consents and notices required to permit (a) Customer's use and receipt of the Services and (b) Google's

accessing, storing, and processing of data provided by Customer (including Customer Data, if applicable) under the ToS.

2.3 Restrictions. Customer will not, and will not allow End Users to: (a) copy, modify, or create a derivative work of the Services; (b) reverse engineer, decompile, translate, disassemble, or otherwise attempt to extract any or all of the source code of the Services (and except to the extent such restriction is expressly prohibited by applicable law); (c) sell, resell, sublicense, transfer or distribute any or all of the Services; or (d) access or use the Services (i) for High Risk Activities; (ii) in violation of the AUP; (iii) in a manner intended to avoid incurring Fees (including creating multiple Applications, Accounts, or Projects to simulate or act as a single Application, Account, or Project (respectively)) or to circumvent Service-specific usage limits or quotas; (iv) to engage in cryptocurrency mining without Google's prior written approval; (v) 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, unless otherwise described in the Service Specific Terms, (vi) for materials or activities that are subject to the International Traffic in Arms Regulations (ITAR) maintained by the United States Department of State; (vii) in a manner that breaches, or causes the breach of, Export Control Laws; or (viii) to transmit, store, or process health information subject to United States HIPAA regulations except as permitted by an executed HIPAA BAA.

2.4 Documentation. Google may provide Documentation for Customer's use of the Services.

2.5 <u>Copyright</u>. Google provides information to help copyright holders manage their intellectual property online, but Google cannot determine whether something is being used legally without input from the copyright holders. Google will respond to notices of alleged copyright infringement and may terminate repeat infringers in appropriate circumstances as required to maintain safe harbor for online service providers under the U.S. Digital Millennium Copyright Act. If Customer believes a person or entity is infringing Customer's or its End User's copyrights and would like 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.

3. <u>Suspension</u>.

3.1 <u>AUP Violations</u>. If Google becomes aware that Customer's or any Customer End User's use of the Services violates the AUP, Google will give Customer notice of the violation by requesting that Customer correct the violation. If Customer fails to correct the violation within 24 hours of Google's request, then Google may Suspend all or part of Customer's use of the Services until the violation is corrected.

3.2 <u>Other Suspension</u>. Notwithstanding Section 3.1 (AUP Violations), Google may immediately Suspend all or part of Customer's use of the Services if: (a) it believes Customer's or any Customer End User's use of the Services could adversely impact the Services, other customers' or their end users' use of the Services, or the Google network or servers used to provide the Services; (b) there is suspected unauthorized third-party access to the Services; (c) Google believes it is required to Suspend immediately to comply with applicable law; or (d) Customer is in breach of Section 2.3 (Restrictions). Google will lift any

such Suspension when the circumstances giving rise to the Suspension have been resolved. At Customer's request, unless prohibited by applicable law, Google will notify Customer of the basis for the Suspension as soon as is reasonably possible.

4. Intellectual Property Rights; Use of Customer Data; Feedback; Benchmarking.

4.1 Intellectual Property Rights. Except as expressly stated in this ToS, this ToS 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 Customer Applications and Google owns all Intellectual Property Rights in the Services and Software.

4.2 Protection of Customer Data. Google will only access or use Customer Data to provide the Services and TSS to Customer or as otherwise instructed by Customer and will not use it for any other Google products, services, or advertising. Google has implemented and will maintain administrative, physical, and technical safeguards to protect Customer Data, as further described in the Data Processing and Security Terms.

4.3 Customer Feedback. At its option, Customer may provide feedback or suggestions about the Services to Google ("Feedback"). If Customer provides Feedback, then Google and its Affiliates may use that Feedback without restriction and without obligation to Customer.

4.4 Benchmarking. Customer may conduct benchmark tests of the Services (each a "Test"). Customer may only publicly disclose the results of such Tests

if it (a) obtains Google's prior written consent, (b) provides Google all necessary information to replicate the Tests, and (c) allows Google to conduct benchmark tests of Customer's publicly available products or services and publicly disclose the results of such tests. Notwithstanding the foregoing, Customer may not do either of the following on behalf of a hyperscale public cloud provider without Google's prior written consent: (i) conduct (directly or through a third party) any Test of the Services, or (ii) disclose the results of any such Test.

5. <u>Disclaimer</u>. **Except as expressly provided for in the ToS, to the fullest extent permitted by applicable law, Google (a) does not make any warranties of any kind, whether express, implied, statutory, or otherwise, including warranties of merchantability, fitness for a particular use, title, noninfringement, or error-free or uninterrupted use of the Services or Software and (b) makes no representation about content or information accessible through the Services.**

6. <u>Limitation of Liability</u>.

6.1 <u>Limitation on Indirect Liability</u>. To the extent permitted by applicable law and subject to Section 6.3 (Unlimited Liabilities), neither party will have any Liability arising out of or relating to the ToS for any (a) indirect, consequential, special, incidental, or punitive damages or (b) lost revenues, profits, savings, or goodwill.

6.2 <u>Limitation on Amount of Liability</u>. Each party's total aggregate Liability for damages arising out of or relating to the ToS is limited to the Fees Customer paid to GCI under the Agreement during the 12 month period before the event giving rise to Liability under this ToS.

6.3 Unlimited Liabilities. Nothing in the ToS excludes or limits either party's Liability for:

(a) its fraud or fraudulent misrepresentation;

(b) its obligations under Section 13 (Indemnification);

(c) its infringement of the other party's Intellectual Property Rights;

(d) its payment obligations under the Agreement; or

(e) matters for which liability cannot be excluded or limited under applicable law.

7. Indemnification.

7.1 Google Indemnification Obligations. Google will defend Customer and its Affiliates participating under the ToS ("Customer Indemnified Parties"), and indemnify them against Indemnified Liabilities in any Third-Party Legal Proceeding to the extent arising from an allegation that the Customer Indemnified Parties' use of (a) Google's technology used to provide the Services, or (b) any Google Brand Feature, infringes the third party's Intellectual Property Rights.

7.2 Customer Indemnification Obligations. Customer will defend Google and its Affiliates participating under this ToS and indemnify them against Indemnified Liabilities in any Third-Party Legal Proceeding to the extent arising from (a) any Application, Project, Customer Data, or Customer Brand Features; or (b) Customer's or an End User's use of the Services in breach of the AUP or Section 2.3 (Restrictions).

7.3 <u>Exclusions</u>. Sections 7.1 (Google Indemnification Obligations) and 7.2 (Customer Indemnification Obligations) will not apply to the extent the underlying allegation arises from (a) the indemnified party's breach of the ToS or (b) a combination of the indemnifying party's technology or Brand Features with materials not provided by the indemnifying party under the ToS, unless the combination is required by the ToS.

7.4 <u>Conditions</u>. 7.1 (Google Indemnification Obligations) and 7.2 (Customer Indemnification Obligations) are conditioned on the following:

(a) The indemnified party must promptly notify 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 7.4(a) prejudices the defense of the Third-Party Legal Proceeding, the indemnifying party's obligations under Section 7.1 (Google Indemnification Obligations) or 7.2 (Customer Indemnification Obligations) (as applicable) will be reduced in proportion to the prejudice.

(b) The indemnified party must tender 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.

7.5 <u>Remedies</u>.

(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: (i) procure the right for Customer to continue using the Services; (ii) modify the Services to make them non-infringing without materially reducing their functionality; or (iii) replace the Services with a non-infringing, functionally equivalent alternative.

(b) If Google does not believe the remedies in Section 7.5(a) are commercially reasonable, then Google may Suspend or terminate Customer's use of the impacted Services.

7.6 Sole Rights and Obligations. Without affecting either party's termination rights, this Section 7 (Indemnification) states the parties' sole and exclusive remedy only rights and obligations under this Agreement for any third-party allegations of Intellectual Property Rights infringement covered by this Section 7 (Indemnification).

8. Subcontracting. Google may subcontract obligations under the Agreement but will remain liable to Customer for any subcontracted obligations.

9. 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.

10. Governing Law. 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.

11. Definitions.

- "Admin Console" means the online console(s) or dashboard 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.

- "Application" means a software program that Customer creates or hosts using the Services.

- "AUP" means the then-current acceptable use policy for the Services stated: http://cloud.google.com/terms/aup.

- "BAA" or "Business Associate Agreement" is an amendment to the Agreement covering the handling of Protected Health Information (as defined in HIPAA).

- "Customer Data" means content provided to Google by Customer (or at its direction) via the Services under the Account.

- "Customer End Users" means data provided to Google by Customer or End Users through the Services under the Account.

- "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 at https://cloud.google.com/docs/.

- "Google API" means any application programming interface provided by Google as part of the Services.

- "High Risk Activities" means activities where the use or failure of the Services would reasonably be expected to lead to death, personal injury, or environmental damage (such as the creation or operation of nuclear facilities, air traffic control, life support systems, or weaponry).

- "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.

- "including" means including but not limited to.

- "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.

- "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 an information disclosure request made under law, governmental regulation, court order, subpoena, warrant, or other valid legal authority, legal procedure, or similar process.

- "Liability" means any liability, whether under contract, tort (including negligence), or otherwise, regardless of whether foreseeable or contemplated by the parties.

- "Notification Email Address" means the email address(es) designated by Customer in the Admin Console.

- "Project" means collection of Google Cloud Platform resources configured by Customer via the Services.

- "Service Specific Terms" means the terms specific to one or more Services stated at https://cloud.google.com/terms/service-terms.

- "Services" means the then-current services as set forth at https://cloud.google.com/terms/services.

- "SLA" means each of the then-current service level agreements at https://cloud.google.com/terms/sla/.

- "Software" means any downloadable tools, software development kits or other such computer software provided by Google in connection with the Services, and any updates Google may make to such Software from time to time.

- "Terms URL" means the following URL set forth at https://cloud.google.com/terms/.

- "TSS" means the then-current technical support service provided by Google to Customer under the TSS Guidelines.

- "TSS Guidelines" means Google's technical support services guidelines then in effect for the Services. TSS Guidelines are at https://cloud.google.com/terms/tssg (under Google Cloud Platform Services).

Google Cloud Platform Services Agreement

This Google Cloud Platform Services Agreement (the "Agreement") is entered into by and between Google Cloud India Private Limited with its registered office located at Unit No-204, Signature Tower-II, Tower-A, 2nd Floor, Sector-15, Part II, Silokhera, Gurgaon-122001 India ("GCI") and the entity with a billing address in India, agreeing to these terms ("Customer").

GCI is appointed by Google Asia Pacific Pte Ltd ("Google"), as a non-exclusive reseller of the Services (as defined below) in India. This Agreement is effective when Customer clicks to accept it (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.

This Agreement sets out all terms agreed between the parties and supersedes all other agreements between the parties relating to its subject matter.

1. <u>The Services</u>.

1.1 GCI sells the Services to the Customer in India. The Customer agrees that its use of the Services is subject to this Agreement and Google's Terms of Services located at <u>https://cloud.google.com/terms/</u> ("ToS"). Capitalized terms used but not defined in this Agreement shall have the meaning attributed to them in the ToS.

1.2 <u>Accounts</u>. Customer must have an Account to use the Services, and is responsible for the information it provides to create the Account, the security

of its passwords for the Account, and for any use of its Account. GCI has no obligation to provide multiple accounts to Customer.

1.3 Modifications.

(a) To the Agreement. GCI may make commercially reasonable changes to this Agreement, including pricing (and any linked documents) from time to time. Unless otherwise noted by GCI, material changes to the Agreement will become effective 30 days after they are posted, except to the extent the changes apply to new functionality in which case they will be effective immediately. GCI will provide at least 90 days' advance notice for materially adverse changes to any SLAs by (i) sending an email to the Notification Email Address (ii) posting a notice in the Admin Console; or (iii) posting a notice to the applicable SLA webpage. If a Customer does not agree to the revised Agreement, please stop using the Services. Customer may also terminate this Agreement for convenience under Section 8.4 (Termination for Convenience). Customer's continued use of the Services after such material change will constitute Customer's consent to such changes.

2. Payment Terms.

2.1 Online Billing. At the end of the applicable Fee Accrual Period or as otherwise stated by GCI in the Admin Console, GCI will issue an electronic bill to Customer for all charges based on Customer's use of the Services during the applicable Fee Accrual Period (including, if any, the relevant Fee for TSS stated in the Fees definition below). Customer will pay all Fees in the currency stated in the invoice. If Customer elects to pay by credit card, debit card, or other non-invoiced form of payment, GCI 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 GCI agrees), all Fees are due as stated in the invoice. Customer's obligation to pay all Fees is non-cancellable. GCI's measurement of Customer's use of the Services is final. GCI has no obligation to provide multiple bills. Payments made via wire transfer must include the bank information provided by GCI.

2.2 <u>Taxes</u>.

(a) In consideration of services, Customer agrees to pay to GCI, the Fees as mentioned above plus applicable Taxes. If GCI is obligated to collect or pay Taxes, the Taxes will be invoiced to Customer, unless Customer provides GCI with a timely and valid tax exemption certificate authorized by the appropriate taxing authority.

(b) If required under applicable law, Customer will provide GCI with applicable tax identification information (Goods and Services Tax Identification Number ("GSTIN"), location where the services would be received by the customer, tax status etc.) that GCI may require to ensure its compliance with applicable tax regulations in India. The Customer acknowledges that all the details provided such as the GSTIN, location where the services would be received by the customer, tax status etc. are correct. The address and GSTIN provided are of the location where the services would be received by the Customer. Customer will be liable to pay (or reimburse GCI for) any taxes, interest, penalties or fines arising out of any mis-declaration by the Customer.

(c) If Customer is required by law to withhold any amounts for Income Tax on its payments to GCI, Customer must provide GCI in a timely manner with a withholding tax certificate or other appropriate documentation to support such withholding as per the applicable tax laws in India.

2.3 Invoice Disputes & Refunds. Any invoice disputes must be submitted before the payment due date. If the parties determine that certain billing inaccuracies are attributable to GCI, GCI 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, GCI 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 60 days after the invoice date. Refunds (if any) are at GCI'S discretion and will only be in the form of credit for the Services. Nothing in this Agreement obligates GCI to extend credit to any party.

2.4 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 GCI in collecting such delinquent amounts. If Customer is late on payment for the Services, GCI may Suspend the Services and / or terminate the Agreement for breach under Section 8.2 (Termination for Breach).

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

3. Customer Obligations.

3.1 Compliance. Customer will (a) ensure that Customer and its End Users' use of the Services complies with the Agreement, (b) use commercially reasonable efforts to prevent and terminate any unauthorized use of, or

access to, the Services, and (c) promptly notify GCI of any unauthorized use of, or access to, the Services, Account, or Customer's password of which Customer becomes aware. GCI reserves the right to investigate any potential violation of the AUP by Customer, which may include reviewing Customer Applications, Customer Data, or Projects.

3.2 <u>Privacy</u>. Customer is responsible for any consents and notices required to permit (a) Customer's use and receipt of the Services and (b) GCI's accessing, storing, and processing of data provided by Customer (including Customer Data, if applicable) under the Agreement.

3.3 <u>Restrictions</u>. Customer will not, and will not allow End Users to: (a) copy, modify or create a derivative work of the Services; (b) reverse engineer, decompile, translate, disassemble, or otherwise attempt to extract any or all of the source code of the Services (except to the extent such restriction is expressly prohibited by applicable law); (c) sell, resell, sublicense, transfer or distribute any or all of the Services; or (d) access or use the Services (i) for High Risk Activities; (ii) in violation of the AUP; (iii) in a manner intended to avoid incurring Fees (including creating multiple Customer Applications, Accounts, or Projects to simulate or act as a single Customer Application, Account, or Project (respectively)) or to circumvent Service-specific usage limits or quotas ; (iv) to engage in cryptocurrency mining without GCI or its Affiliates prior written approval; (v) to operate or enable any telecommunications service or in connection with any Customer Application that allows Customer End Users to place calls or to receive calls from any public switched telephone network, unless otherwise described in the Service Specific Terms; (vi) for materials or activities that are subject to the International Traffic in Arms Regulations (ITAR) maintained by the United

States Department of State; (vii) in a manner that breaches, or causes the breach of, Export Control Laws; or (viii) to transmit, store, or process health information subject to United States HIPAA regulations except as permitted by an executed HIPAA BAA.

3.4 Documentation. GCI or Google may provide Documentation for Customer's use of the Services.

4. Suspension.

4.1 AUP Violations. If GCI or its Affiliates becomes aware that Customer's or any Customer End User's use of the Services violates the AUP, GCI or its Affiliates will give Customer notice of the violation by requesting that Customer correct the violation. If Customer fails to correct the violation within 24 hours of Google's request, then GCI through Google may Suspend all or part of Customer's use of the Services until the violation is corrected.

4.2 Other Suspension. Notwithstanding Section 4.1 (AUP Violations) GCI may, through Google, immediately Suspend all or part of Customer's use of the Services if: (a) it believes Customer's or any Customer End User's use of the Services could adversely impact the Services, other customers' or their end users' use of the Services, or the Google network or servers used to provide the Services; (b) there is suspected unauthorized third-party access to the Services; (c) GCI believes it is required to Suspend immediately to comply with applicable law; or (d) Customer is in breach of Section 3.3 (Restrictions). GCI will lift any such Suspension when the circumstances giving rise to the Suspension have been resolved. At Customer's request, unless prohibited by applicable law, GCI will notify Customer of the basis for the Suspension as soon as is reasonably possible.

5. Intellectual Property Rights; Feedback; Benchmarking.

5.1 Intellectual Property Rights. Except as expressly stated 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 Customer Applications, and GCI's Affiliates own all Intellectual Property Rights in the Services and Software.

5.2 Customer Feedback. At its option, Customer may provide feedback or suggestions about the Services to GCI ("Feedback"). If Customer provides Feedback, then GCI and its Affiliates may use that Feedback without restriction and without obligation to Customer.

5.3 Benchmarking. Customer may conduct benchmark tests of the Services (each a "Test"). Customer may only publicly disclose the results of such Tests if it (a) obtains Google's prior written consent, (b) provides Google all necessary information to replicate the Tests, and (c) allows Google to conduct benchmark tests of Customer's publicly available products or services and publicly disclose the results of such tests. Notwithstanding the foregoing, Customer may not do either of the following on behalf of a hyperscale public cloud provider without Google's prior written consent: (i) conduct (directly or through a third party) any Test of the Services or (ii) disclose the results of any such Test.

6. Technical Support Services.

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

6.2 <u>By GCI</u>. Subject to payment of applicable support Fees, GCI through Google or its Affiliates will provide TSS to Customer during the Term in accordance with the TSS Guidelines. Certain TSS levels include a minimum recurring Fee as described at https://cloud.google.com/skus. If Customer downgrades its TSS level during any calendar month, GCI through Google or its Affiliates may continue to provide TSS at the same level and TSS Fees before the downgrade for the remainder of that month.

7. <u>Confidential Information</u>.

7.1 <u>Obligations</u>. The recipient will only use the disclosing party's Confidential Information to exercise its rights and fulfill its obligations under the Agreement, and will use reasonable care to protect against the disclosure of the disclosing party's Confidential Information. The recipient may disclose the Confidential Information only to its 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.

7.2 <u>Required Disclosure</u>. 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: (a) promptly notify the other party of such disclosure before disclosing; and (b) comply with the other party's reasonable requests regarding its efforts to oppose the disclosure. Notwithstanding the foregoing, subsections (a) and (b) above will not apply if the recipient

determines that complying with (a) and (b) could: (i) result in a violation of Legal Process; (ii) obstruct a governmental investigation; and/or (c) lead to death or serious physical harm to an individual.

8. <u>Term and Termination</u>.

8.1 <u>Agreement Term</u>. The "Term" of this Agreement will begin on the Effective Date and continue until the Agreement is terminated as stated in this Section 8 (Term and Termination).

8.2 <u>Termination for Breach</u>. Either party may terminate this Agreement if: (a) the other party is in material breach of the Agreement or the ToS and fails to cure that breach within 30 days after receipt of written notice or; (b) the other party ceases its business operations or becomes subject to insolvency proceedings and the proceedings are not dismissed within 90 days.

8.3 <u>Termination for Inactivity</u>.

GCI (either by itself or through Google) reserves the right to terminate the provision of the Service(s) to a Project upon 30 days advance notice if, for a period of 60 days (i) Customer has not accessed the Admin Console or the Project has had no network activity; and (ii) such Project has not incurred any Fees for such Service(s).

8.4 <u>Termination for Convenience</u>. 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. GCI may terminate this Agreement for its convenience at any time with 30 days' prior written notice to Customer.

8.5 <u>Effect of Termination</u>. If the Agreement is terminated, then: (a) all rights and access to the Services will terminate (including access to Customer Data, if applicable), unless otherwise described in this Agreement and (b) all Fees owed by Customer to GCI are immediately due upon receipt of the final electronic bill.

9. <u>Publicity</u>. Customer is permitted to state publicly that it is a customer of the Services, consistent with the Trademark Guidelines. If Customer wants to display GCI Brand Features in connection with its use of the Services, Customer must obtain written permission from GCI through the process specified in the Trademark Guidelines. GCI and its Affiliates may include Customer's name or Brand Features in a list of GCI and/or GCI Affiliate customers, online or in promotional materials. GCI and its Affiliates 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.

10. <u>Representations and Warranties</u>. 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, receipt or use, of the Services, as applicable.

11. <u>Disclaimer</u>. **Except as expressly provided for in the Agreement, to the fullest extent permitted by applicable law, GCI (a) does not make any**

warranties of any kind, whether express, implied, statutory, or otherwise, including warranties of merchantability, fitness for a particular use, title, noninfringement, or error-free or uninterrupted use of the Services or Software and (b) makes no representation about content or information accessible through the Services.

12. Limitation of Liability.

12.1 **Limitation on Indirect Liability. To the extent permitted by applicable law and subject to Section 12.3 (Unlimited Liabilities), neither party will have any Liability arising out of or relating to the Agreement for any (a) indirect, consequential, special, incidental, or punitive damages or (b) lost revenues, profits, savings, or goodwill.**

12.2 **Limitation on Amount of Liability. Each party's total aggregate Liability for damages arising out of or relating to the Agreement is limited to the Fees Customer paid during the 12 month period before the event giving rise to Liability.**

12.3 **Unlimited Liabilities. Nothing in the Agreement excludes or limits either party's Liability for:**

(a) its fraud or fraudulent misrepresentation;

(b) its obligations under Section 13 (Indemnification);

(c) its infringement of the other party's Intellectual Property Rights;

(d) its payment obligations under the Agreement; or

(e) matters for which liability cannot be excluded or limited under applicable law.

13. Indemnification.

13.1 Customer Indemnification Obligations. Customer will defend GCI and indemnify it against Indemnified Liabilities in any Third-Party Legal Proceeding to the extent arising from (a) any Application, Project, Customer Data, or Customer Brand Features; or (b) Customer's or an End User's use of the Services in breach of the AUP or Section 3.3 (Restrictions).

13.2 GCI Indemnification Obligations. Subject to Section 13.4 (Conditions), GCI will defend Customer ("Customer Indemnified Parties") and indemnify them against Indemnified Liabilities in any Third-Party Legal Proceeding to the extent arising from an Allegation that Customer's Indemnified Parties' use in accordance with this Agreement of (a) the Services or (b) any GCI or Google Brand Feature, in each case infringes the third party's Intellectual Property Rights.

13.3 Exclusions. Sections 13.1 (Customer Indemnification Obligations) and 13.2 (GCI Indemnification Obligations) will not apply to the extent the underlying allegation arises from (a) the indemnified party's breach of the Agreement or (b) a combination of the indemnifying party's technology or Brand Features with materials not provided by the indemnifying party under the Agreement, unless the combination is required by the Agreement.

13.4 Conditions. Sections 13.1 (Customer Indemnification Obligations) and 13.2 (GCI Indemnification Obligations) are conditioned on the following:

(a) The indemnified party must promptly notify 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 13.4(a) prejudices the defense of the Third-Party Legal Proceeding, the indemnifying party's obligations under Section 13.1 (Customer Indemnification Obligations) or Sections 13.2 (GCI Indemnification Obligations) (as applicable) will be reduced in proportion to the prejudice.

(b) The indemnified party must tender 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.

13.5 Remedies.

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

(b) If GCI or Google as the case may be, does not believe the remedies in Section 13.5(a) are commercially reasonable, then GCI (through Google) may Suspend or terminate Customer's use of the impacted Services.

13.6 Sole Rights and Obligations. Without affecting either party's termination rights, this Section 13 (Indemnification) states the parties' sole and exclusive remedy only rights and obligations under this Agreement for any third-party allegations of Intellectual Property Rights infringement covered by this Section 13 (Indemnification).

14. Miscellaneous.

14.1 Notices. GCI will provide notices under the Agreement to Customer by sending an email to the Notification Email Address. Customer will provide notices under the Agreement to GCI by sending an email to legal-notices@google.com. Notice will be treated as received when the email is sent. Customer is responsible for keeping its Notification Email Address current throughout the Term.

14.2 Emails. The parties may use emails to satisfy written approval and consent requirements under the Agreement.

14.3 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; and (b) the assigning party has notified the other party of the assignment. Any other attempt to assign is void. If Customer assigns this Agreement to an Affiliate in another jurisdiction such that there is a change in the Google contracting entity as defined at https://cloud.google.com/terms/google-entity, this Agreement is automatically assigned to the new GCI contracting entity.

14.4 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) that party will give written notice to the other party within thirty days after the change of Control.

14.5 Force Majeure. Neither party will be liable for failure or delay in performance to the extent caused by circumstances beyond its reasonable control, including acts of God, natural disasters, terrorism, riots, or war.

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

14.7 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.

14.8 Severability. If any of this Agreement is invalid, illegal, or unenforceable, the rest of the Agreement will remain in effect.

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

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

14.11 Governing Law. All claims arising out of or related to this Agreement will be governed by the laws of India. In case of any disputes the Courts at New Delhi shall have jurisdiction.

14.12 Amendments. Except as stated in Section 1.3(a) (Modifications: To the Agreement), any amendment must be in writing, signed by both parties, and expressly state that it is amending this Agreement.

14.13 <u>Survival</u>. The following Sections will survive expiration or termination of this Agreement: Section 2 (Payment Terms), Section 5 (Intellectual Property Rights; Feedback; Benchmarking), Section 7 (Confidential Information), Section 8.5 (Effect of Termination), Section 11 (Disclaimer), Section 12 (Limitation of Liability), Section 13 (Indemnification), and Section 14 (Miscellaneous).

14.14 <u>Entire Agreement</u>. 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 stated in this Agreement. The terms located at a URL referenced in this Agreement are incorporated by reference into the Agreement. After the Effective Date, GCI through Google may provide an updated URL in place of any URL in this Agreement.

14.15 <u>Conflicting Terms</u>. If there is a conflict between the documents that make up this Agreement, the documents will control in the following order: the Data Processing and Security Terms, the ToS, the Agreement, and the terms at any URL.

14.16 <u>Headers</u>. Headings and captions used in the Agreement are for reference purposes only and will not have any effect on the interpretation of the Agreement.

14.17 <u>Conflicting Languages</u>. If this Agreement is translated into any language other than English, and there is a discrepancy between the English text and

the translated text, the English text will govern unless expressly stated otherwise in the translation.

14.18 No Third-Party Beneficiaries. The Agreement does not confer any rights or benefits to any third party unless it expressly states that it does.

14.19 Definitions.

- "Account" means Customer's GCI Cloud Platform account.

- "Admin Console" means the online console(s) or dashboard provided by GCI or its Affiliates 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.

- "AUP" means the then-current acceptable use policy for the Services stated at http://cloud.google.com/terms/aup.

- "BAA" or "Business Associate Agreement" is an amendment to the Agreement covering the handling of Protected Health Information (as defined in HIPAA).

- "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.

- "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 50 percent of the voting rights or equity interests of a party.

- "Customer Application" means a software program that Customer creates or hosts using the Services.

- "Customer Data" means data provided to GCI and its Affiliates by Customer or End Users through the Services under the Account.

- "Customer End Users" means an individual that the Customer permits to use the Services or a Customer Application. For clarity, End Users may include employees of Customer Affiliates and other third parties.

- "Data Processing and Security Terms" means the terms stated 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 at https://cloud.google.com/docs/.

- "Fee Accrual Period" means a calendar month or another period specified by GCI in the Admin Console.

- "Fees" means the applicable fees for each Service and any applicable Taxes. The Fees for each Service are stated at https://cloud.google.com/skus/.

- "High Risk Activities" means activities where the use or failure of the Services would reasonably be expected to lead to death, personal injury, or environmental damage (such as the creation or operation of nuclear facilities, air traffic control, life support systems, or weaponry).

- "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.

- "including" means including but not limited to.

- "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.

- "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 an information disclosure request made under law, governmental regulation, court order, subpoena, warrant, or other valid legal authority, legal procedure, or similar process.

- "Liability" means any liability, whether under contract, tort (including negligence), or otherwise, regardless of whether foreseeable or contemplated by the parties.

- "Notification Email Address" means the email address(es) designated by Customer in the Admin Console.

- "Project" means a collection of Google Cloud Platform resources configured by Customer via the Services.

- "Service Specific Terms" means the terms specific to one or more Services stated at https://cloud.google.com/terms/service-terms.

- "Services" means the services as set forth at https://cloud.google.com/terms/services.

- "SLA" means each of the then-current service level agreements at https://cloud.google.com/terms/sla/.

- "Software" means any downloadable tools, software development kits or other such computer software provided by Google in connection with the Services, and any updates Google may make to such Software from time to time.

- "Suspend" or "Suspension" means disabling or limiting access to or use of the Services or components of the Services.

- "Taxes" means all taxes as per the applicable law including but not limited to any duties, or taxes (other than income tax), including indirect taxes such as goods and services tax ("GST") or such taxes associated with the purchase of the Services.

- "Term" has the meaning set forth in Section 8 (Term and Termination) of this Agreement.

- "Third-Party Legal Proceeding" means any formal legal proceeding filed by an unaffiliated third party before a court or governmental tribunal (including any appellate proceeding).

- "Trademark Guidelines" means Google's Guidelines for Third Party Use of GCI and/or Google Brand Features, at http://www.google.com/permissions/guidelines.html.

- "TSS" means the then-current technical support service provided by Google to Customer under the TSS Guidelines.

- "TSS Guidelines" means Google's technical support services guidelines then in effect for the Services. TSS Guidelines are https://cloud.google.com/terms/tssg (under Google Cloud Platform Services).