

Blanket Purchase Agreement Number: GSQ0009AE0027

Solicitation Number: RFQ 348667

Attachment B

GOOGLE ENTERPRISE EARTH PURCHASE AGREEMENT

Google Enterprise Earth Products

This Google Enterprise Earth Purchase Agreement (the "**Agreement**") is made and entered into by and between Google Inc. ("**Google**") and the customer identified in the Order Form ("**Customer**"). This Agreement and the corresponding Order Form set forth the terms and conditions under which Customer may license and use those Products set forth either in the Order Form or in purchase orders provided to and accepted by Google from time to time hereinafter in accordance with Section 5. The Order Form shall reference and be governed by this Agreement.

WHEREAS Customer wishes to purchase Google Enterprise Earth products and services for its internal business; and

WHEREAS the parties have come to agreement on a common set of terms pursuant to which Google will provide Customer with Google Enterprise Earth products;

NOW, THEREFORE, the parties agree as follows:

1. DEFINITIONS

The following capitalized terms shall have the meanings set forth below.

- 1.1 "**Database**" means the database provided by Google and intended for use with the Software (excluding any data provided by Customer).
- 1.2 "**Documentation**" means that certain Google proprietary documentation in the form generally made available by Google to its customers for use with the Solution.
- 1.3 "**Fees**" means the applicable fees for Products set forth in a Quote or Order Form and any applicable taxes.
- 1.4 "**Hardware**" means the Google proprietary computer hardware which may be supplied for use solely with any Software.
- 1.5 "**Order Form**" means the Google Enterprise Earth Order Form issued by Google to provide specific Products or services to Customer subject to the terms and conditions of this Agreement. Each Order Form will incorporate this Agreement and will contain, without limitation: (i) Product and/or service description (including the license term for any Product, if applicable); (ii) price; (iii) Support Period; and (iv) a reference number.
- 1.6 "**Product**" means the Solution and Documentation made generally commercially available.
- 1.7 "**Quote**" means the written offer by Google to provide specific Products or services to Customer subject to the terms and conditions of this Agreement. Each Quote will incorporate this Agreement and will contain, without limitation: (i) Product and/or service description (including the license term for any Product, if applicable); (ii) price; (iii) Support Period; and (iv) a reference number.
- 1.8 "**Software**" means the Google proprietary computer software, in binary executable form only, identified in a Quote or Order Form for Google Enterprise Earth products.
- 1.9 "**Solution**" means the combined Software, Database, and Hardware (if any).
- 1.10 "**Support Period**" means the duration of time specified in a Quote or Order Form during which Google will provide technical support services to Customer for a particular Product.

2. LICENSE

- **2.1 License.** Subject to the terms and conditions of this Agreement, and in consideration of Customer's payment of all Fees, Google grants to Customer (and Customer agrees to comply with) a non-sublicensable, non-transferable, non-exclusive, terminable, limited license to use the Software, Database, Hardware, if applicable, and Documentation. A license key that enables the Software may be required and forwarded to Customer electronically. Customer may only use the Product in accordance with the applicable Documentation and for Customer's internal business purposes. Customer will not redistribute or resell any images or data generated by the Solution (the "**Images**") on a stand-alone basis, as part of a product or service of which the Images are a primary commercial component, or as part of a product or service (including without limitation image publishing or distribution services, software or products) that competes with Google or any of its licensors. Customer further will not crop any Image to remove any Brand Feature (as defined below) or proprietary notice of Google or its licensors. If any such proprietary notices are not retained in legible form, Customer shall reproduce such notices alongside the Image. In addition, if Customer accesses a Database hosted by Google (e.g., in connection with Customer's use of Google Earth Pro), to the extent Customer prints, creates movies of, or otherwise exports or copies Images containing content from such Google-hosted Database, such content may only include satellite and aerial Earth imagery, terrain, place names, borders, and roads information. Such Images shall not include other content from the Google-hosted Database, including without limitation content from the "Featured Content" layer, and Customer may only copy, distribute, and/or display such Images during the license term for the Software used to access the Google-hosted Database (e.g., Google Earth Pro).
- **2.2 Additional License Restrictions.** Except as otherwise expressly provided in this Agreement, Customer has no right to transfer, sublicense or otherwise distribute the Product, in whole or in part, to any third party. Customer agrees not to, or to allow others to: (i) adapt, alter, modify, decompile, translate, disassemble, create derivative works from, or reverse engineer the Product or any component thereof, including without limitation, the source code and any other underlying ideas or algorithms of the Software (except to the extent applicable laws specifically prohibit such restriction); (ii) create license keys that enable the Software; (iii) copy the Software except as provided in Sections 2.3 and 4; (iv) use the Product for High Risk Activities (as defined below); (v) transfer, sublicense, loan, sell, lease or use for timesharing or service bureau purposes the Product or any component thereof; or (vi) otherwise transfer, distribute, display, or use the Product or any Images so as to violate applicable law. For the avoidance of doubt, Customer agrees to comply with all applicable U.S. export and reexport control laws and regulations, including the Export Administration Regulations ("**EAR**") maintained by the U.S. Department of Commerce, trade and economic sanctions maintained by the Treasury Department's Office of Foreign Assets Control, and the International Traffic in Arms Regulations ("**ITAR**") maintained by the Department of State. Specifically, Customer agrees not to directly or indirectly sell, export, reexport, transfer, divert, or otherwise dispose of the Products, Images, or any component thereof to any destination, entity, or person prohibited by the laws or regulations of the United States, without obtaining prior authorization from the competent government authorities as required by those laws and regulations. For the avoidance of doubt, nothing in this Agreement grants to Customer any rights whatsoever in or relating to the source code of the Software.
- **2.3 Back-up Use.** In the event Customer acquires a Product identified in a Quote or Order Form as a Back-up Product ("**Back-up Product**"), Customer's license to use the Back-up Product is further restricted as follows: (i) Customer may use the Back-up Product for the sole purpose of acting as a 'hot' back-up in the event a similarly configured Solution for which Customer has obtained a license from Google pursuant to this Agreement (the "**Primary System**"), is disabled due to a critical Hardware or Software failure of the Primary System; and (ii) Customer agrees

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that upon restoration of the Primary System, Customer will cease all further use of the Back-up Product, unless a subsequent critical failure of the Primary System occurs. For the avoidance of doubt, Customers acquiring a Solution in which the Software is not installed on Hardware may make a minimum number of back-up copies of the Software and Database (if hosted by Customer), only as reasonably necessary to exercise Customer's license rights granted in Section 2.1.

- **2.4 Third Party Components.** Any third party component (including without limitation third party content) embedded, included or otherwise provided for use with the Products may only be used in conjunction with such Products ordered hereunder, and such use shall be subject to all the terms and conditions of this Agreement and the Documentation. Google will have no liability for any defects in or damages to any third party computer system for use with a Solution (as opposed to the Solution itself, support for which is governed by Section 4.1), and use of such third party system will further be subject to the manufacturer's terms and conditions. Notwithstanding the foregoing, to the extent that the Products include some components that are governed by open source licenses including provisions prohibiting their distribution by Customer under this Agreement, those components are instead governed solely by the respective appropriate licenses. To the extent Products include some components covered by open source licenses requiring the provision of corresponding source code for those components, Google hereby offers the provision of such source code consistent with such licenses.

3. OWNERSHIP

- **3.1 Intellectual Property Rights; Title.** For purposes of this Agreement, "**Intellectual Property Rights**" means any and all rights existing from time to time under patent law, copyright law, semiconductor chip protection law, moral rights law, trade secret law, trademark law, unfair competition law, publicity rights law, privacy rights law, and any and all other proprietary rights, and any and all applications, renewals, extensions and restorations thereof, now or hereafter in force and effect worldwide. All ownership rights, title, and Intellectual Property Rights in and to the Products shall remain in Google and/or its licensors, except that title to any Hardware shall pass to Customer upon receipt of all Fees by Google. Customer's title shall be further subject to Customer's return of such Hardware pursuant to this Agreement, if applicable.
- **3.2 Brand Features.** Any trade names, trademarks, service marks, logos, trade dress, and any other distinctive or proprietary symbols, labels, designs or designations ("**Brand Features**") as well as any copyright or other proprietary notices appearing on or in the Product or any Image (as displayed in the Solution) shall be maintained and shall not be removed, modified, or altered by Customer. Customer agrees not to challenge or assist others to challenge Google's or Google's licensors' Brand Features or registration thereof (except to protect Customer's rights with respect to its own Brand Features) nor shall Customer attempt to register any Brand Features that are confusingly similar to those of Google or Google's licensors. Except as provided for pursuant to this Agreement, neither party shall acquire any right, title or interest in or to the other party's Brand Features.

4. SERVICES AND SUPPORT

- **4.1 Technical Support Services ("TSS").** Google shall provide TSS in accordance with Google's then current Technical Support Services Guidelines ("**TSS Guidelines**") for the Products during the Support Period. TSS Guidelines for each Product class are password protected and may be accessed at the following URL: <http://support.google.com/enterprise/terms> or such other URL as may be updated by Google). TSS includes certain updates as described in

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the TSS Guidelines and shall be made available to Customer provided Customer has paid all applicable fees for Technical Support Services. Customer's use of any updates shall be subject to the same terms applicable to the Product as set forth under this Agreement. Customer agrees that such updates shall be installed as required by the terms of the applicable TSS Guidelines. Furthermore, Customer may make a copy of an update to a physical medium solely for the purpose of facilitating the installation of such update onto the Solution, and Customer agrees to immediately erase or destroy such copy once the applicable update is installed on the Solution. TSS may also include repair or replacement of Hardware (if applicable) that is defective or damaged (beyond normal wear and tear during shipment), provided (i) Customer promptly complies with all procedures stated in the applicable TSS Guidelines, and (ii) such defect or damage to the Hardware was not caused by Customer's abuse, misuse, accident, alteration, or unauthorized modification or installation. TO THE MAXIMUM EXTENT PERMITTED BY LAW, THE FOREGOING SHALL BE GOOGLE'S ENTIRE LIABILITY AND CUSTOMER'S SOLE AND EXCLUSIVE REMEDY FOR DEFECTIVE OR DAMAGED HARDWARE. Unless otherwise agreed in writing, in order to receive TSS, Customer agrees to provide Google with full and timely access to the Solution as provided in the applicable TSS Guidelines. Failure to provide such access will be at Customer's own risk and without liability to Google.

- **4.2 Training.** Customer may purchase optional training as may be available by Google from time to time. Training will be conducted at a Google facility, unless prior arrangements have been made with Google to conduct training at Customer's facility. Customer shall be responsible for any travel and expenses of its personnel attending training. In the event training is provided at Customer's site, Customer shall procure reasonable training facilities following Google's recommended requirements and Customer shall be responsible for all travel and expenses associated with the Google instructor's travel to Customer's site.
- **4.3 Other Services.** Customer may purchase other services as may be available by Google from time to time, including without limitation installation of the Solution and formatting or porting Licensee's data for use with the Solution. Such services will be provided in accordance with Google's then current services policy for such services, provided Customer has paid all applicable fees for such services. Customer shall be responsible for all travel and expenses associated with the Google personnel's travel to Customer's site.

5. PURCHASES; PAYMENT TERMS; TAXES

- **5.1 Purchase Process.** For each purchase of Products and/or services by Customer hereunder, Google will issue either a Quote or an Order Form to Customer to confirm the exact Product and/or services and price. In order to place a purchase hereunder, Customer shall provide either: (i) a written purchase order to Google which references the Quote and this Agreement; or (ii) an Order Form agreed to and signed by Customer. The parties agree that none of the terms and conditions of any such purchase order (or subsequent purchase orders from Customer) shall apply to or modify the Agreement, and that any terms or conditions in such purchase orders are null and void.
- **5.2 Payment Terms.** For credit-approved Customers, all Fees shall be due thirty (30) days from the invoice date. Delinquent payments shall bear interest at the rate of one-and-one-half percent (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 incurred by Google in collecting unpaid or delinquent amounts, except where such unpaid or delinquent amounts are due to billing inaccuracies attributable to Google. All payments due are in U.S. dollars unless otherwise indicated above. Payments made via wire transfer must include the following instructions:

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Wells Fargo Bank	ABA# 121000248	Account # 4375669785
Palo Alto, California USA	Google Inc.	

- **5.3 Other Services.** Customer may purchase other services as may be available by Google from time to time, including without limitation installation of the Solution and formatting or porting Licensee's data for use with the Solution Such services will be provided in accordance with Google's then current services policy for such services, provided Customer has paid all applicable fees for such services. Customer shall be responsible for all travel and expenses associated with the Google personnel's travel to Customer's site.

6. DELIVERY No shipment or other delivery of any Products will occur prior to Google's receipt of (i) a complete and duly executed purchase order referencing a Quote and this Agreement or (ii) a complete and duly executed Order Form. For all physical shipments, Products will be shipped F.O.B. destination, otherwise for Product available for electronic shipment or download, Google will provide Customer with instructions on downloading such Products. Upon shipment, Google may provide Customer with a temporary license key and will transmit a permanent license key upon receipt of full payment.

7. TERM AND TERMINATION

- **7.1 Term** The term of this Agreement shall be for a period of one year from the Effective Date (the "**Initial Term**"), unless earlier terminated as set forth herein. This Agreement shall automatically renew for subsequent one year periods (each a "**Renewal Term**") unless either party provides notice to the other of its intent not to renew at least thirty (30) days prior to the start of a Renewal Term. For purposes of this Agreement, the Initial Term and/or Renewal Term may also be referred to as the "**Term**".
- **7.2 Termination.** Without prejudice to any right and remedy set forth in this Agreement and/or at law or in equity, either party may, by written notice of default to the other party terminate this Agreement, in whole or in part, (a) if the other party materially breaches this Agreement, and the breaching party does not cure such material breach within thirty (30) calendar days after receipt of written notice of such breach; or (b) immediately following the failure to resolve the suspension of business, insolvency, institution of bankruptcy, liquidation proceedings by or against the other party, appointment of a trustee or receiver for either party's property or business, or any assignment, reorganization or arrangement by either party for the benefit of its creditors. Google may immediately terminate this Agreement, in whole or in part, if (i) Customer is in breach of Section 2 (License), Section 3 (Ownership) or Section 8 (Confidentiality); or (ii) Customer is in material breach of this Agreement more than twice notwithstanding any cure of such breaches.
- **7.3 Effect of Expiration or Termination.** Upon expiration or termination of this Agreement, all licenses, and any other rights and services provided by Google to Customer as set forth in this Agreement, shall cease immediately, provided that, for termination other than due to Customer's breach, the licenses granted herein for Customer's use of the Products shall continue for the remainder of the applicable license term, subject to Customer's continued compliance with this Agreement. If this Agreement is terminated for Customer's breach, Customer must immediately return the Product to Google via Google's authorized return shipment process for receipt by Google, at which time Customer's title in the Hardware (if any) shall revert to Google.

8. CONFIDENTIALITY

In connection with performance of its obligations hereunder, a party (the "**Discloser**") may disclose to the other party certain information it considers confidential and/or proprietary ("**Confidential**")

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Information") to the other party (the "**Recipient**") including, but not limited to, tangible, intangible, visual, electronic, present, or future information such as: (a) trade secrets; (b) financial information, including pricing; (c) technical information, including research, development, procedures, algorithms, data, designs, and know-how; (d) business information, including operations, planning, marketing interests, and products; and (e) the terms of this Agreement and the discussions, negotiations and proposals related thereto. The Recipient will only have a duty to protect Confidential Information disclosed to it by the Discloser: (1) if it is clearly and conspicuously marked as "confidential" or with a similar designation; (2) if it is identified by the Discloser as confidential and/or proprietary before, during, or promptly after presentation or communication; or (3) if it is disclosed in a manner in which the Discloser reasonably communicated, or the Recipient should reasonably have understood under the circumstances that the disclosure should be treated as confidential, whether or not the specific designation "confidential" or any similar designation is used. Customer acknowledges that the Documentation and the source and object code of the Software remains a confidential trade secret of Google and/or its licensors. Customer is not entitled to review either the object code or the source code of the Software for any reason at any time. Recipient shall not disclose or cause to be disclosed any Confidential Information of Discloser, except to those employees, agents, representatives, or contractors of the parties who require access to the Confidential Information to perform under this Agreement ("**Authorized Personnel**") and who are bound by written agreement not to disclose third-party confidential or proprietary information disclosed to Recipient, or as such disclosure may be required by law or governmental regulation. Furthermore, Recipient agrees to be responsible for any act and/or omission of any Authorized Personnel in breach of this Section. Recipient shall protect the Confidential Information of Discloser by using the same degree of care, but no less than a reasonable degree of care, that it uses to protect its own confidential information of a like nature to prevent its unauthorized use, dissemination or publication to any unauthorized third parties. A party's Confidential Information shall not include information that: (i) is or becomes publicly available through no act or omission of Recipient; (ii) was in the Recipient's lawful possession prior to the disclosure and was not obtained by Recipient either directly or indirectly from the Discloser; (iii) is lawfully disclosed to the Recipient by a third party without restriction on Recipient's disclosure, and where Recipient was not aware that the information was the confidential information of Discloser; or (iv) is independently developed by the Recipient without violation of this Agreement. Recipient may disclose Confidential Information solely as needed to comply with a court order, subpoena, or other government demand (provided that Recipient first notifies Discloser and gives Discloser the opportunity to challenge such court order, subpoena, or government demand). Each party acknowledges that damages for improper disclosure of Confidential Information may be irreparable; therefore, the injured party is entitled to seek equitable relief, including temporary restraining order(s) or preliminary or permanent injunction, in addition to all other remedies, for any violation or threatened violation of this Section 8 or Section 3 (Ownership; Restricted Use). In the event that Customer returns the Product to Google, Customer will use commercially reasonable efforts to remove Customer's Confidential Information contained on the Product, if any, before returning the Product to Google. A Recipient's duty to protect Confidential Information expires five (5) years from the date of disclosure.

9. LIMITED WARRANTY

- **9.1 Limited Warranty.** Google warrants to Customer that the Solution will substantially achieve the functionality described in the functional specifications set forth in the Documentation for a period of ninety (90) days from the date of shipment or transmission to Customer. Google's entire liability and Customer's sole and exclusive remedy with respect to breach of this warranty will be at Google's option, either (a) repair of the Product in accordance with Google's TSS Guidelines; (b) replacement of the defective component or entire Solution, as applicable; or (c) refund of the purchase price paid for the Solution.

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- **9.2 Exclusions.** The limited warranty set forth in Section 9.1 above will not apply to defects or errors in the Solution that are caused by: (i) Customer's failure to follow Google's environmental, installation, operation, or maintenance instructions or procedures in the Documentation; (ii) Customer's mishandling, abuse, misuse, negligence, or improper storage, servicing, or operation of the Solution (including without limitation use with incompatible equipment); (iii) modifications, repairs, or improper installation not made by Google; or (iv) power failures, surges, fire, flood, accident, actions of third parties, or other like events outside Google's reasonable control. Without limiting the generality of the exclusions set forth in this Section 9.2, Google does not warrant that the operation of the Solution will be error-free or uninterrupted.
- **9.3 Disclaimer** EXCEPT AS EXPRESSLY SPECIFIED IN SECTION 9.1 ABOVE, ALL EXPRESS OR IMPLIED CONDITIONS, REPRESENTATIONS, AND WARRANTIES, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR NON-INFRINGEMENT AND ANY IMPLIED WARRANTY ARISING FROM COURSE OF PERFORMANCE, COURSE OF DEALING, OR USAGE OF TRADE, ARE HEREBY DISCLAIMED EXCEPT TO THE EXTENT THAT THESE DISCLAIMERS ARE HELD TO BE LEGALLY INVALID. GOOGLE MAKES NO WARRANTIES OR REPRESENTATIONS WITH RESPECT TO ANY THIRD PARTY SOFTWARE, HARDWARE, OR CONTENT PROVIDED AS PART OF, OR IN CONNECTION WITH, THE PRODUCT. IN ADDITION, GOOGLE EXPRESSLY DISCLAIMS ANY WARRANTY OR REPRESENTATION TO ANY PERSON OTHER THAN CUSTOMER WITH RESPECT TO THE PRODUCT OR ANY PART THEREOF. THE PRODUCT AND SERVICES PROVIDED BY GOOGLE AND ITS LICENSORS ARE OTHERWISE PROVIDED "AS IS". GOOGLE AND ITS LICENSORS DO NOT WARRANT THAT THE PRODUCT, THE SERVICES, OR ANY PORTION THEREOF ARE ERROR OR BUG FREE, OR THAT CUSTOMER'S USE OF THE PRODUCT OR SERVICES WILL BE UNINTERRUPTED. GOOGLE AND ITS LICENSORS ASSUME NO RESPONSIBILITY FOR THE PROPER INSTALLATION AND USE OF THE PRODUCT. GOOGLE AND ITS LICENSORS MAKE NO REPRESENTATIONS ABOUT ANY IMAGES OR OTHER CONTENT OR INFORMATION MADE ACCESSIBLE BY THE PRODUCT. SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OF IMPLIED WARRANTIES, SO THE ABOVE EXCLUSION MAY NOT APPLY TO CUSTOMER. IN THAT EVENT, TO THE EXTENT PERMISSIBLE, ANY IMPLIED WARRANTIES ARE LIMITED IN DURATION TO NINETY (90) DAYS FROM THE DATE OF SHIPMENT OR TRANSMISSION OF THE APPLICABLE PRODUCT. THE PRODUCT IS NOT FAULT TOLERANT AND IS NOT DESIGNED, MANUFACTURED, OR INTENDED FOR USES SUCH AS THE OPERATION OF NUCLEAR FACILITIES, AIR TRAFFIC CONTROL, OR LIFE SUPPORT SYSTEMS, WHERE THE FAILURE OF THE PRODUCT COULD LEAD TO DEATH, PERSONAL INJURY, OR ENVIRONMENTAL DAMAGE ("**High Risk Activities**").

10. LIMITATION OF LIABILITY EXCEPT FOR (A) BREACHES OF ANY CONFIDENTIALITY OBLIGATIONS CONTAINED IN THIS AGREEMENT; (B) CUSTOMER'S INFRINGEMENT OR MISAPPROPRIATION OF GOOGLE'S OR ITS LICENSOR'S INTELLECTUAL PROPERTY RIGHTS; (C) CUSTOMER'S BREACH OF ANY LICENSE GRANTED IN THIS AGREEMENT TO USE THE PRODUCT OR IMAGES; OR (D) ANY AMOUNTS PAYABLE TO THIRD PARTIES PURSUANT TO THE PARTIES' INDEMNIFICATION OBLIGATIONS HEREUNDER, IN NO EVENT WILL EITHER PARTY OR GOOGLE'S LICENSORS BE LIABLE (i) FOR ANY INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, EXEMPLARY OR PUNITIVE DAMAGES INCLUDING, BUT NOT LIMITED TO, DAMAGES FOR LOST DATA, LOST PROFITS, OR COSTS OF PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES, HOWEVER CAUSED (INCLUDING BUT NOT LIMITED TO USE, MISUSE, INABILITY TO USE, OR INTERRUPTED USE) AND UNDER ANY THEORY OF LIABILITY, INCLUDING BUT NOT LIMITED TO CONTRACT OR TORT AND WHETHER OR NOT EITHER PARTY WAS OR SHOULD HAVE BEEN AWARE OR ADVISED OF THE POSSIBILITY OF SUCH DAMAGE, AND REGARDLESS OF WHETHER ANY REMEDY SET FORTH IN THIS AGREEMENT

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FAILS OF ITS ESSENTIAL PURPOSE; OR (ii) FOR ANY CLAIM ATTRIBUTABLE TO ERRORS, OMISSIONS, OR OTHER INACCURACIES IN THE PRODUCT OR DESTRUCTIVE PROPERTIES OF THE PRODUCT. IN NO EVENT SHALL GOOGLE'S AND/OR ITS LICENSORS' TOTAL AGGREGATE LIABILITY EXCEED THE AMOUNT OF FEES PAID BY CUSTOMER DURING THE SIX (6) MONTHS IMMEDIATELY PRECEDING THE DATE ON WHICH SUCH CLAIM ARISES.

11. INDEMNIFICATION

- 11.1 Subject to this Section 11, Google will defend, or at its option settle, any third party lawsuit or proceeding brought against Customer by a third party based upon a claim that the Product used in accordance with the Documentation and this Agreement infringes any copyright, trade secret, or trademark right of a third party ("IP Claim"), provided that Customer: (a) promptly notifies Google in writing of any such IP Claim; (b) gives Google sole control and authority to direct the investigation, preparation, defense and settlement of the IP Claim; and (c) assists and fully cooperates in the defense of same. Indemnification shall be provided for any claim covered under this Section 11 and shall be limited to payment of any final award of damages assessed against Customer resulting from such IP Claim, including any awarded costs, or any settlement amount agreed to by Google in writing. Google will not be responsible for any settlement it does not approve in writing prior to such settlement.
- 11.2 Following notice of an IP Claim or any facts which may give rise to such IP Claim, Google may, in its sole discretion and at its option, (a) procure for Customer the right to continue to use the Product, (b) replace the Product, or (c) modify the Product to avoid the alleged infringement. If Google determines that it is not commercially reasonable to perform any of these alternatives, Google, in its sole discretion, shall have the option to terminate the license for the allegedly infringing Product and refund the Fees actually paid by Customer through the date an IP claim occurs for such allegedly infringing Product, less depreciation for use assuming straight line depreciation over the remaining Support Period for the Product subject to the IP Claim.
- 11.3 In no event will Google have any obligations under this Section 11 or any liability for any claim or action if the IP Claim is caused by, or results from: (a) Customer's combination or use of the Product or any Images with software, services, or products developed by Customer or third parties, if such IP Claim would have been avoided by the non-combined or independent use of the Product or Images, (b) modification of the Solution or Images by anyone other than Google if such IP Claim would have been avoided by use of the unmodified Product, (c) Customer's continued allegedly infringing activity after being notified thereof or after being provided modifications that would have avoided the alleged infringement, (d) Customer's use of the Product or Images in a manner not in accordance with this Agreement or the Documentation, (e) any content, information, or data provided to Google by Customer or any third parties, (f) use of other than Google's most current release of the Product if the claim or action would have been avoided by use of the most current release or revision, or (g) Customer's negligence, misrepresentation, error, or omission. Customer will defend and indemnify Google and Google's affiliates and licensors, or at Customer's option settle, in the same manner as provided in this Section 11, any claims made against Google or Google's affiliates or licensors based on any conduct by Customer described in subsections (a) through (g) of this subsection 11.3.
- 11.4 THE FOREGOING STATES GOOGLE'S ENTIRE LIABILITY AND CUSTOMER'S SOLE AND EXCLUSIVE REMEDY FOR INTELLECTUAL PROPERTY RIGHTS INFRINGEMENT.

12. U.S. GOVERNMENT RESTRICTED RIGHTS

The Product is commercial within the meaning of the applicable civilian and military Federal acquisition regulations and any supplement thereto. If the user of the Product is an agency,

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department, employee, or other entity of the United States Government, the use, duplication, reproduction, release, modification, disclosure, or transfer of the Product, including technical data or manuals, is restricted by the terms, conditions and covenants contained in this Agreement. In accordance with Federal Acquisition Regulation 12.212 for civilian agencies and Defense Federal Acquisition Regulation Supplement 227.7202 for military agencies, the use of the Software is further restricted by this Agreement.

13. AFFILIATES

Customer may not assign or otherwise transfer its rights or delegate its obligations under this Agreement, in whole or in part, without the prior written consent of Google, unless such assignment is to an Affiliate, as defined below, provided that (i) Customer notifies Google in writing of such assignment, (ii) such Affiliate is not a competitor of Google, and (iii) such Affiliate expressly assumes, in a writing promptly provided to Google, the performance of all of the terms of this Agreement. Any attempted assignment in derogation hereof shall be null and void. The parties agree that any Affiliate granted any rights herein shall be bound by the terms and conditions of this Agreement and the TSS Guidelines; that Customer shall be responsible for all actions of any of its Affiliates affecting any rights or obligations under this Agreement and the TSS Guidelines; and the cumulative use of the Product and TSS by Customer and its Affiliates shall not exceed the licensed limits stated on each Quote or Order Form and in the TSS Guidelines. An "**Affiliate**" is any entity that directly or indirectly controls, is controlled by, or is under common control with Customer. For these purposes, "control" includes control over greater than fifty percent (50%) of the voting rights or equity interests of such party.

14 VERIFICATION AND AUDIT. At Google's written request, not more than two times per calendar year for so long as Customer is authorized to use the Product, Customer will furnish Google with a certification signed by an officer of Customer verifying that the Product is being used pursuant to terms of this Agreement. Upon at least thirty (30) days prior written notice, Google may audit Customer's use of the Product to ensure that Customer is in compliance with this Agreement. Any such audit will be conducted during regular business hours at Customer's facilities and will not unreasonably interfere with Customer's business activities. The audit right granted by this Section 13 may be exercised no more than twice per calendar year. Customer will provide Google with access to the relevant Customer records and facilities. If an audit reveals that Customer has underpaid fees to Google during the period audited, then Google will invoice Customer, and Customer will promptly pay Google for such underpaid fees based on either the price specified in this Agreement or Google's price list in effect at the time the audit is completed, whichever is applicable, and for any interest that may have accrued due to such underpayment. If the underpaid fees exceed five percent (5%) of the license fees paid by Customer for the Product during the preceding six (6) month period, then Customer will also pay Google's reasonable costs of conducting the audit.

MISCELLANEOUS. This Agreement is personal to Customer. Except as set forth in Section 12 above, Customer may not assign or otherwise transfer Customer's rights or delegate Customer's obligations under this Agreement, in whole or in part, without the prior written consent of Google. Any attempted assignment in derogation hereof shall be null and void. The parties hereto are and shall remain independent contractors, and nothing herein shall be deemed to create an agency, partnership, or joint venture between the parties hereto. Both parties shall be responsible for performing their respective obligations as set forth herein. Upon termination or expiration, the following sections of this Agreement will survive: the last three sentences of Section 2.1 (License) and Sections 2.2 (Additional License Restrictions), 2.4 (Third Party Components), 3 (Ownership), 7 (Term and Termination), 8 (Confidentiality), 9 (Warranty Disclaimer), 10 (Limitation of Liability), 11 (Indemnification), 13 (Verification and Audit), and 14 (Miscellaneous). This Agreement shall be governed by and construed in accordance with the laws of the State of California, USA and the federal U.S. laws applicable therein, excluding its choice of law

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provisions, and Customer and Google agree to submit to the personal and exclusive jurisdiction of the courts located in Santa Clara County, California, USA. The parties specifically exclude from application to this Agreement the United Nations Convention on Contracts for the International Sale of Goods and the Uniform Computer Information Transactions Act. If any provision of this Agreement shall be adjudged by any court of competent jurisdiction to be unenforceable or invalid, that provision shall be limited or eliminated to the minimum extent necessary so that this Agreement shall otherwise remain in full force and effect and remain enforceable between the parties. The failure of either party to act in the event of a breach of this Agreement by the other shall not be deemed a waiver of such breach or a waiver of future breaches. All notices shall be in English and in writing and (a) if to Customer, sent to the address identified above and (b) if to Google, sent to the address identified above or as otherwise provided in writing for such notice purposes; provided, however, that all invoices and payments shall be sent to the attention of Google Finance, all legal notices shall be sent to the attention of the Google Legal Department, and all other correspondence shall be sent to the attention of the account manager specified by Google. Notice shall be deemed effective (i) upon receipt when delivered personally, (ii) upon written verification of receipt from express courier service, (iii) upon verification of receipt of registered or certified mail or (iv) upon verification of receipt via facsimile, provided that such notice is also sent simultaneously via first class mail. Neither party shall be liable for failing or delaying performance of its obligations (except for the payment of money) resulting from any condition beyond its reasonable control, including but not limited to, governmental action, acts of terrorism, earthquake, fire, flood or other acts of God, labor conditions, power failures, and Internet disturbances. The Product (and all third party components thereof) is commercial within the meaning of the applicable civilian and military Federal acquisition regulations and any supplement thereto. If the user of the Product is an agency, department, employee, or other entity of the United States Government, the use, duplication, reproduction, release, modification, disclosure, or transfer of the Product, including technical data or manuals, is restricted by the terms, conditions and covenants contained in this Agreement. In accordance with Federal Acquisition Regulation 12.212 for civilian agencies and Defense Federal Acquisition Regulation Supplement 227.7202 for military agencies, the use of the Software (and all third party components thereof) is further restricted by this Agreement. This Agreement constitutes a complete, absolute integration and the entire agreement between the parties hereto relating to the subject matters of this Agreement, and supersedes all prior representations, proposals, discussions, and communications, whether oral or in writing, and all contemporaneous oral communications, and any terms contained in any related purchase order(s) or other documents pertaining to the subject matter of this Agreement shall be null and void. This Agreement may be modified only in writing signed by both parties. In the event of a conflict between the terms and conditions of this Agreement and any individual Order Form, the Order Form shall govern. The parties may treat faxed documents as originals; however, this shall not preclude either party from requiring the exchange of original signatures.