

## Google Maps API Premier License Agreement

This agreement for the purchase of Google Maps API Premier (the “Agreement”) is made and entered into by and between Google Inc. (“Google”) and the customer purchasing from the Reseller (“Customer”). This Agreement and the corresponding Ordering Document set forth the terms and conditions under which Customer may purchase, license and use the Product.

### 1. Licenses.

- 1.1 From Google to Customer. Subject to this Agreement, and in consideration of Customer’s payment of Fees, Google grants to Customer, and Customer agrees to comply with a non-sublicensable, non-transferable, non-exclusive, terminable, limited license to: (a) use the Services and the Product to display the Content and Track Assets in the Territory solely in the Customer Implementation; and (b) access, use, publicly perform and publicly display the Content in the Territory in the Customer Implementation.
- 1.2 From Customer to Google. When Customer submits queries via the Services that include Customer Content, Google requires a license to that Customer Content so it can process the query and return results to Customer. Therefore, by submitting Customer Content to Google through the Services, Customer grants to Google a limited, irrevocable, royalty-free, and non-exclusive license, in the Territory, during the License Term, to reproduce, adapt, modify, translate, publicly perform, publicly display and distribute this Customer Content solely to enable Google to provide the Services to Customer.

### 2. Restrictions.

- 2.1 License Restrictions. Customer may only use the Product and the Services pursuant to the Agreement, the Legal Notices, and the AUP. Customer will not use, distribute, or sell any Content outside of the Customer Implementation or as part of a product or service that competes with Google. Customer may only use the Product in the Licensed Configuration specified in the applicable Ordering Document. Customer and its End Users will not use the Product for High Risk Activities. Professional Batch Geocoding is allowed only if Customer specifically orders this service on an Ordering Document.
- 2.2 Client IDs. Client IDs are required, must be used according to the Documentation, and will be forwarded to Customer electronically. Google may not respond to requests with an invalid Client ID. Customer’s failure to use a Client ID provided by Google will nullify the application of the SLA, and will relieve Google of its obligations to provide TSS.
- 2.3 Third Party Components. Any third party component embedded, included or provided by Google for use with the Products may only be used in conjunction with the Products, and this use is subject to this Agreement and the Documentation. However, to the extent Products include components governed by open source licenses with provisions inconsistent with this Agreement, those components are instead governed solely by the applicable open source licenses. To the extent Products include 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 those licenses.

### 3. Customer Obligations.

#### 3.1 Advertising.

- a. From Google. Customer can configure the Services to display Ads, or not, to End Users in its sole discretion. If Customer elects to display Ads in the Customer Implementation, Customer must register for an AdSense Account and be subject to Google’s terms and conditions as they relate to the placement of Ads within the Customer Implementation.
- b. From Customer. Customer may also display its own advertisements within the Customer Implementation, or on the website which displays the Customer Implementation. If Customer chooses to do so, it must ensure that these advertisements cannot be confused with Ads.
- c. From Third Parties. Customer may only display third party advertisements on the website which displays the Customer Implementation, and not within the Customer Implementation itself. If Customer chooses to do so, it must ensure that these advertisements cannot be confused with Ads.

- 3.2 Compliance. Customer will use commercially reasonable efforts to have the End Users comply with the Maps Terms and the Legal Notices, and will notify Google if Customer becomes aware of any End User’s non-compliance. Google may update the Maps Terms, the Legal Notices, the AUP, or all three, periodically. Customer’s use of the Maps APIs is subject to Customer’s compliance with the Maps API Terms.

- 3.3 Linking to Maps Terms. If Customer is using a Javascript API or Maps API for Flash to receive the Content, a link to the Maps Terms is provided on the Content. If Customer is using a static Maps API to receive the Content, Customer will incorporate a link to the Maps Terms and the Legal Notices in a license agreement governing End Users’ use of the Customer Implementation.

4. Ownership.

4.1 Generally. Except as expressly set forth herein, 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 Rights. Intellectual Property Rights in and to the content accessed through the Product and Services are the property of the applicable content owner and may be protected by applicable laws.

4.2 Brand Features. Any use of a party's Brand Features will inure to the benefit of the party holding rights in those Brand Features. Each party agrees not to: (a) challenge or assist others to challenge the other party's Brand Features or registration thereof (except to protect such party's rights with respect to its own Brand Features) attempt to register any Brand Features that are confusingly similar to those of the other party.

5. Export Compliance. Customer will comply with, and will obtain all prior authorization from the competent government authorities required by, the Export Control Laws. This Section 5 will survive termination or cancellation of this Agreement.

6. Services and Support.

6.1 TSS. Google will provide TSS in accordance with the TSSG to Customer for the Support Period. Unless otherwise agreed in writing, to receive TSS Customer must provide Google with all reasonably required access to the Product in accordance with the TSSG. Customer's failure to provide this access will be at Customer's own risk and without liability to Google. Google may change the TSS from time to time, but not if the changes materially adversely impact Customer.

6.2 Updates. TSS includes Updates. Customer's use of Updates is subject to this Agreement and the Ordering Document. Customer will install Updates in accordance with the TSSG.

6.3 Training. Google may provide optional training periodically. Training will be conducted at a Google facility, unless prior arrangements have been made with Google to conduct the training elsewhere. Customer is responsible for any travel and expenses of its personnel attending training. If training is provided at Customer's site, Customer must procure reasonable training facilities following Google's recommended requirements and Customer will be responsible for all travel and expenses associated with the Google instructor's travel to Customer's location.

7. Reporting. Customer will promptly report to Reseller in writing if, after the effective date of an Ordering Document, any changes occur such that: (a) the Customer Implementation provides Navigation; (b) the Customer Implementation enables a device to detect its own location through use of a Sensor, in order to display the location of the device on a map or to calculate a route; (c) the Customer Implementation is placed behind or withdrawn from behind a Customer's firewall; and (c) the number of Assets Tracked per country per month.

8. Delivery. The Product will not be made available for download until Google receives an executed purchase order from the Reseller referencing this Agreement. For electronic shipment or download, Google will provide Customer with instructions on downloading the Product. Upon shipment, Google may provide Customer with a temporary Client ID and will transmit a permanent Client ID upon receipt of full payment.

9. Confidentiality.

9.1 Obligations. Each party will: (a) protect the other party's Confidential Information with the same standard of care it uses to protect its own Confidential Information, but in no event less than reasonable care; and (b) not disclose the Confidential Information, except to Affiliates, employees and agents who need to know it and who have agreed in writing to keep it confidential. Each party (and any Affiliates, employees and agents to whom it has disclosed Confidential Information) may use Confidential Information only to exercise rights and fulfill obligations under this Agreement, while using reasonable care to protect it. Each party is responsible for any actions of its Affiliates, employees and agents in violation of this Section.

9.2 Exceptions. Confidential Information does not include information that: (a) the recipient already knew; (b) becomes public through no fault of the recipient; (c) was independently developed by the recipient; or (d) was rightfully given to the recipient by another party

9.3 Required Disclosure. Each party may disclose the other party's Confidential Information when required by law, but only after it, if legally permissible: (a) uses commercially reasonable efforts to notify the other party; and (b) gives the other party the chance to challenge the disclosure.

9.4 Publicity. Neither party may make any public statement regarding the relationship contemplated by this Agreement without the other's prior written approval.

10. Term and Termination.

10.1 Term. Subject to Customer's payment of Fees, the term for the license granted in this Agreement for the Product will begin on the Shipment Date and will continue for the License Term, unless terminated earlier as set forth below. The term of this Agreement will begin on the Effective Date and will continue until terminated as set forth below, or until the conclusion of the License Term, whichever is earlier.

10.2 Termination for Breach. Either party may terminate this Agreement if: (i) the other party is in material breach of the Agreement and fails to cure that breach within thirty days after receipt of written notice; (ii) the other party ceases its business operations or becomes subject to insolvency proceedings and the proceedings are not dismissed within ninety days; or (iii) the other party is in material breach of this Agreement more than two times notwithstanding any cure of such breaches.

10.3 Effect of Termination.

- a. Termination for Google's Breach. If the Agreement is terminated for Google's breach, the licenses granted herein regarding Customer's use of the Product may, at Customer's option, continue for the remainder of the License Term, subject to Customer's continued compliance with this Agreement.
- b. Termination for Customer's Breach. If the Agreement is terminated for Customer's breach, then: (i) the License Term, and all other rights and licenses granted by one party to the other, or any services provided by Google to Customer, will cease immediately; (ii) upon request, each party will promptly return all Confidential Information of the other party; (iii) all payments owed by Customer to Google are immediately due; and (iv) Customer must delete any data it received from Google as part of receiving the Services.
- c. Expiration of the License Term. The Product will cease functioning upon the expiration of the License Term.

11. Representations. Each party has the rights, power and authority necessary to enter into this Agreement. Google will provide the Services in accordance with the Service Level Agreement.

12. Disclaimer. EXCEPT AS EXPRESSLY PROVIDED FOR HEREIN, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, GOOGLE, ITS LICENSORS, AND THEIR SUPPLIERS DO NOT MAKE ANY OTHER WARRANTY OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, INCLUDING WITHOUT LIMITATION WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR USE AND NONINFRINGEMENT. GOOGLE, ITS LICENSORS, AND THEIR SUPPLIERS, DO NOT WARRANT THAT THE OPERATION OF THE SOFTWARE WILL BE ERROR-FREE OR UNINTERRUPTED. THE PRODUCT IS NOT DESIGNED, MANUFACTURED, OR INTENDED FOR HIGH RISK ACTIVITIES.

13. Limitation of Liability.

13.1 Limitation on Indirect Liability. NEITHER PARTY WILL BE LIABLE UNDER THIS AGREEMENT FOR LOST REVENUES OR INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, EXEMPLARY, OR PUNITIVE DAMAGES, EVEN IF THE PARTY KNEW OR SHOULD HAVE KNOWN THAT SUCH DAMAGES WERE POSSIBLE AND EVEN IF DIRECT DAMAGES DO NOT SATISFY A REMEDY.

13.2 Limitation on Amount of Liability. NEITHER PARTY MAY BE HELD LIABLE UNDER THIS AGREEMENT FOR MORE THAN THE AMOUNT PAID BY CUSTOMER TO GOOGLE DURING THE TWELVE MONTHS PRIOR TO THE EVENT GIVING RISE TO LIABILITY.

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

13.4 Google's Licensors and their Suppliers. To the maximum extent permitted by law: (a) Section 13.1 applies to Google's licensors and their suppliers; and (b) GOOGLE'S LICENSORS AND THEIR SUPPLIERS MAY NOT BE HELD LIABLE UNDER THIS AGREEMENT.

14. Indemnification.

14.1 By Google. Google will defend and indemnify, or at its option settle, Customer from and against all liabilities, damages, and costs, arising out of a third party claim that the Product used in accordance with the Documentation and this Agreement infringes or misappropriates any patent, copyright, trade secret or trademark of that third party.

14.2 Exceptions. The obligations set forth in Section 14.1 do not apply if the third party claim is caused by, or results from: (a) Customer's combination or use of the Product with software, services, or products developed by Customer or third parties, if the claim would have been avoided by the non-combined or independent use of the Product; (b) modification of the Product, Services, or Content, by anyone other than Google if the third party 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 Content in a manner not in accordance with this Agreement or the Documentation; or (e) use of other than Google's most current release of the Product if the third party claim would have been avoided by use of the most current release or revision.

14.3 By Customer. Customer will defend and indemnify, or at its option settle, Google from and against all liabilities damages, and costs arising out of: (a) a third party claim made against Google for infringement of the third party rights listed in Section 14.1 based on conduct by Customer as described in Section 14.2; or (b) Customer's breach of Section 5 (Export Compliance).

#### 14.4 Possible Infringement.

- a. Repair, Replace, or Modify. If Google reasonably believes the Product infringes a third party's intellectual property rights, then Google will: (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.
- b. Termination and Refund. If Google does not reasonably believe the options in Section 14.4(a) are commercially reasonable, Google may terminate the license for the allegedly infringing Product and refund the Fees paid by Customer through the date a third party occurs for the allegedly infringing Product, less depreciation for use assuming straight line depreciation over License Term.

14.5 General. The party seeking indemnification must promptly notify the other party of the claim and cooperate with the other party in defending the claim. The indemnification in Sections 14.1 and 14.2 is limited to the payment by the indemnifying party of all damages and costs finally awarded for such claim, or settlement costs approved in writing by the indemnifying party. The indemnifying party has full control and authority over the defense, except that: (a) any settlement requiring the party seeking indemnification to admit liability or to pay any money will require that party's prior written consent, which will not be unreasonably withheld or delayed; and (b) the other party may join in the defense with its own counsel at its own expense. THE FOREGOING STATES GOOGLE'S ENTIRE LIABILITY AND YOUR SOLE AND EXCLUSIVE REMEDY FOR INTELLECTUAL PROPERTY RIGHTS INFRINGEMENT.

#### 15. Verification and Audit.

15.1 Verification. At Google's or the Reseller's written request, not more than twice per calendar year during the license term, Customer will provide Google or the Reseller with a certification signed by an officer of Customer verifying the Product is being used pursuant to terms of this Agreement.

15.2 Audit. Upon at least thirty days prior written notice, Google may audit Customer's use of the Product to ensure that Customer is in compliance with this Agreement. Audits will be conducted during regular business hours at Customer's facilities and will not unreasonably interfere with Customer's business activities. Customer will provide Google with reasonable access to the relevant Customer records and facilities.

15.3 Underpayment. If an audit reveals that Customer has underpaid fees to Google during the period audited, then Google will invoice Reseller, and Reseller will promptly pay Google, for the 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 to Customer due to the underpayment. If the underpaid fees exceed five percent of the license fees paid by Customer for the Product during the preceding six month period, then Customer will also pay Google's reasonable costs of conducting the audit.

16. Government Purposes. The Product was developed solely at private expense and is commercial computer software and related documentation within the meaning of the applicable civilian and military Federal acquisition regulations and any supplements 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 governed by the terms, conditions and covenants contained in the Google standard commercial license agreement, as contained herein.

#### 17. Miscellaneous.

17.1 Notices. All notices must be in writing and addressed to the attention of the other party's Legal Department and primary point of contact. Notice will be deemed given: (a) when verified by written receipt if sent by personal courier, overnight courier, or mail; or (b) when verified by automated receipt or electronic logs if sent by facsimile or email.

17.2 Assignment. Neither party may assign or transfer any part of this agreement without the written consent of the other party, except to an Affiliate but only if: (a) the assignee agrees in writing to be bound by the terms of this agreement; and (b) the assigning party remains liable for obligations incurred under the Agreement prior to the assignment. Any other attempt to transfer or assign is void. If Customer is using the Services in connection with an unlimited SKU, then Customer may not assign this Agreement in whole or in part, even if to an Affiliate, without Google's prior written consent, not to be unreasonably withheld.

17.3 Change of Control. Upon a change of Control (for example, through a stock purchase or sale, merger, or other form of corporate transaction): (a) the party experiencing the change of control will provide written notice to the other party within thirty days after the change of Control; and (b) the other party may immediately terminate this agreement any time between the change of Control and thirty days after it receives the written notice in subsection (a).

17.4 Force Majeure. Neither party will be liable for inadequate performance to the extent caused by a condition (for example, natural disaster, act of war or terrorism, riot, labor condition, governmental action, and Internet disturbance) that was beyond the party's reasonable control.

- 17.5 No Agency. The parties are independent contractors, and this Agreement does not create an agency, partnership or joint venture.
- 17.6 No Waiver. Failure to enforce any provision of this Agreement will not constitute a waiver.
- 17.7 Severability. If any provision of this Agreement is found unenforceable, it and any related provisions will be interpreted to best accomplish the unenforceable provision's essential purpose.
- 17.8 No Third-Party Beneficiaries. There are no third-party beneficiaries to this Agreement.
- 17.9 Equitable Relief. Nothing in this Agreement will limit either party's ability to seek equitable relief.
- 17.10 Governing Law. This Agreement is governed by California law, excluding California's choice of law rules. FOR ANY DISPUTE RELATING TO THIS AGREEMENT, THE PARTIES CONSENT TO PERSONAL JURISDICTION IN, AND THE EXCLUSIVE VENUE OF, THE COURTS IN SANTA CLARA COUNTY, CALIFORNIA.
- 17.11 Amendments. Any amendments to this Agreement must be agreed upon in writing.
- 17.12 Survival. Those provisions that by their nature should survive termination of this Agreement, will survive termination of this Agreement.
- 17.13 Entire Agreement. This Agreement is the parties' entire agreement relating to its subject and supersedes any prior or contemporaneous agreements on that subject. The terms located at a URL and referenced in this Agreement are hereby incorporated by this reference. If there is a conflict between the documents that make up this Agreement, the documents will control in the following order: the Ordering Document, the Agreement, and the terms located at any URL.

## 18. Definitions.

"Acceptable Use Policy" or "AUP" means the means the acceptable use policy for the Services available at [support.google.com/enterprise/doc/gme/terms/maps\\_AUP.html](https://support.google.com/enterprise/doc/gme/terms/maps_AUP.html) or other such URL as may be provided by Google.

"Ads" means advertisements served by Google through the Product.

"AdSense Account" means the Google AdSense account registered by Customer with Google. Unless otherwise agreed to in writing by Google, Customer's use of AdSense Accounts is subject to the Google AdSense Agreement located here: [https://www.google.com/adsense/static/en\\_US/LocalizedTerms2.html](https://www.google.com/adsense/static/en_US/LocalizedTerms2.html).

"Affiliate" means any entity that directly or indirectly controls, is controlled by, or is under common control with such party.

"Assets" means those assets actively Tracked by Customer, such as personnel, vehicles or other assets.

"Billing Units" means the number of Page Views, Assets Tracked, or number of End Users, or all three, as applicable. Billing Units will be determined by the nature of the Services ordered by Customer.

"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.

"Client ID" means an alphanumeric key assigned to Customer by Google that is uniquely associated with Customer's Google account. Client IDs will be issued after the Effective Date, and after Customer supplies Google with its account information.

"Confidential Information" means information disclosed by a party to the other party under this agreement that is marked as confidential or would normally be considered confidential under the circumstances.

"Content" means any content provided through the Services (whether created by Google or its third party licensors), and includes, but is not limited to, map and terrain data, photographic imagery, traffic data.

"Control" means control over greater than fifty percent of the voting rights or equity interests of a party.

"Customer Content" means any content that you provide in your Customer Implementation, including data, images, video, or software. Customer Content does not include the Content.

"Customer Implementation" means a software application or website that uses the Product to obtain and display Content in conjunction with Customer Content, according to this Agreement.

"Documentation" means the Google proprietary documentation in the form generally made available by Google to its customers for use with the Software.

"End Users" mean the individual human end users who use the Customer Implementation.

“Export Control Laws” means all applicable 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.

“Effective Date” has the meaning given to it in the Ordering Document.

“Fees” means the applicable fees for Products set forth in an Ordering Document and any applicable Taxes.

“Geocoding” means the online or offline assigning of a longitude/latitude coordinate to an address in relation to the Content by means of interpolation, or information in the form of either the street address or intersection of streets, at which a point of interest or address, is located, and additionally may include a raster image depicting this location on a map.

“High Risk Activities” means 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.

“Intellectual Property Rights” means current and future worldwide rights under patent law, copyright law, trade secret law, trademark law, moral rights law, and other similar rights.

“Legal Notices” mean the legal notices set forth at the following URL (or such other URL as may be updated by Google) [http://www.maps.google.com/help/legalnotices\\_maps.html](http://www.maps.google.com/help/legalnotices_maps.html)

“Licensed Configuration” means the Billing Unit metrics and Customer domain as specified in an Ordering Document.

“License Term” means the means the period of time during which Customer is authorized to use the Services, and will be set forth in the Ordering Document.

“Maps APIs” means the APIs referenced at [support.google.com/enterprise/doc/gme/terms/maps\\_included\\_APIs.html](http://support.google.com/enterprise/doc/gme/terms/maps_included_APIs.html) or other URL as Google may periodically provide.

“Maps API Terms” means the terms found at the following URL, <http://code.google.com/apis/maps/documentation/>, or other URL as Google may provide from time to time.

“Maps Terms” mean the terms for Google Maps set forth at the following URL, [http://maps.google.com/help/terms\\_maps.html](http://maps.google.com/help/terms_maps.html), or other URL as may be periodically updated by Google.

“Navigation” is where a Customer Implementation: provides real-time, visual or audible “turn-by-turn” directions based on position input from a Sensor, and accesses the Content in doing so.

“Ordering Document” means either the Reseller purchasing document, which will contain: (i) a Product description (including the License Term, if applicable); (ii) a description of the Licensed Configuration; (iii) price; and (iv) a reference number.

“Overage” means: (a) for Page Views, when Customer’s number of Page Views exceeds the applicable Licensed Configuration; and (b) for Asset Tracking, when either Customer’s number of Tracked Assets exceeds the applicable Licensed Configuration, or when the Customer moves from Tier 2 to Tier 1.

“Page View” means a single load of the script from the Javascript API, Maps API for Flash, or static Maps API by the End User’s browser.

“Product” means the Software and Documentation.

“Professional Batch Geocoding” means Customer’s Geocoding address or POI data, and the reselling or distributing of this data to third parties.

“Reseller” means the Google authorized reseller from whom Customer purchased the Product.

“Routing” means one or more textual, audible, or visual routing directions between a single origin and one or more destinations, and the travel time or distance, or both, for the entire, or any portion of, the route.

“Sensor” means the use of any technology to automatically determine an End User’s location.

“Services” means the Google Maps API Premier service, described here <http://www.google.com/enterprise/maps/>, or at other such URL provided by Google periodically, and your use of the Software to display the Content and the Customer Content, or to Track Assets, in the Customer Implementation.

“Service Level Agreement” or “SLA” means the Google Maps Service Level Agreement available at the following URL: <http://www.google.com/enterprise/maps/sla.html>.

“Shipment Date” means the date upon which Google provides Customer the Client ID for the Product.

“Software” means the Google proprietary application program interface provided by Google to Customer pursuant to an Ordering Document.

“Support Period” means the duration of time specified in an Ordering Document during which Google will provide technical support services to Customer for a particular Product.

“Taxes” means any duties, customs fees, or taxes (other than Google’s income tax) associated with the sale of the Services, including any related penalties or interest.

“Territory” means the United States and Canada.

“Tier 1 Asset Tracking Applications” or “Tier 1” means any application in which a Customer uses the Product to Track Assets, with Routing allowed.

“Tier 2 Asset Tracking Applications” or “Tier 2” means any application in which a Customer uses the Product to Track Assets, with Routing prohibited.

“Track” means the use of an application to locate a moving physical asset on a map based on current latitude/longitude coordinates, which are provided to the application via a personal sensor.

“TSS” means the technical support services provided by Google, in accordance with Google’s TSSG, for the Products, and for the time period, set forth in the Ordering Document.

“TSSG” means Google’s then current Technical Support Services Guidelines, which may be accessed at the following URL: <http://support.google.com/enterprise/terms>.

“Updates” is defined in the TSSG.