

# Google Terms of Service for Apigee Products

Last modified: January 16, 2020 | [Previous Versions](#) (#previous\_versions)

signed an offline variant of this Agreement for use of the Cloud services, the terms below do not apply to you, and your offline terms govern your use of the Cloud Services.

These Google Terms of Service for Apigee Products (the “Agreement”) are made and entered into between Google and the entity or person agreeing to these terms (“Customer”). “Google” means Google LLC, with offices at 1600 Amphitheatre Parkway, Mountain View, California 94043.

This Agreement is effective as of the date Customer clicks to accept the Agreement (the “Effective Date”). If you are accepting on behalf of Customer, you represent and warrant that: (i) you are 18 years of age or older; (ii) you have full legal authority to bind Customer to this Agreement; (iii) you have read and understand this Agreement; and (iv) you agree, on behalf of Customer, to this Agreement. If you do not have the legal authority to bind Customer, please do not click to accept. This Agreement governs Customer’s access to and use of the Cloud Services. For an offline variant of this Agreement, you may [contact](#) (/contact-apigee) Google for more information.

## 1. DEFINITIONS.

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

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

“**Agreement**” means these Google Terms of Service for Apigee Products and any fully executed order document.

“**Allegation**” means an unaffiliated third party’s allegation.

**“AUP”** means the acceptable use policy for the Cloud Services at <https://cloud.google.com/terms/aup> (/terms/aup).

**“Brand Features”** means the trade names, trademarks, service marks, logos, domain names, and other distinctive brand features of each party, respectively, as secured by such party from time to time.

**“Cloud Services”** means the Edge Cloud service offerings purchased by Customer at <https://cloud.google.com/apigee/pricing> (/apigee/pricing).

**“Confidential Information”** means information that one party (or an Affiliate) discloses to the other party under this Agreement, and that is marked as confidential or would normally be considered confidential information under the circumstances. It does not include information that is independently developed by the recipient, is rightfully given to the recipient by a third party without confidentiality obligations, or becomes public through no fault of the recipient. Subject to the preceding sentence, Customer Data is considered Customer’s Confidential Information.

**“Control”** means control of greater than fifty percent of the voting rights or equity interests of a party.

**“Customer Data”** means data provided by or on behalf of Customer or Customer’s end users via the Cloud Services under Customer’s Google account.

**“Customer Equipment”** means Customer’s computer hardware, software, and network infrastructure used to access the Cloud Services.

**“Data Processing and Security Terms”** means the data processing and security terms for the Cloud Services on Google’s website at <https://cloud.google.com/apigee/terms/data-processing-and-security> (/apigee/terms/data-processing-and-security).

**“Deprecation Policy”** means the deprecation policy for the Cloud Services at <https://docs.apigee.com/release/deprecation> (/docs.apigee.com/release/deprecation/).

**“Documentation”** means the description of the Cloud Services at <https://cloud.google.com/apigee/pricing> (/apigee/pricing).

**“Emergency Security Issue”** means either: (a) Customer’s or Customer Users’ use of the Cloud Services in violation of the AUP, which could disrupt (i) the Cloud Services, (ii) other customers’ or their customer end users’ use of the Cloud Services, or (iii) the Google network or servers used to provide the Cloud Services; or (b) unauthorized third party access to the Cloud Services.

**“Feedback”** means feedback or suggestions about the Cloud Services provided to Google by Customer or its Users.

**“Fees”** means the applicable fees for the Cloud Services listed at <https://cloud.google.com/apigee/pricing> (/apigee/pricing), plus any overage fees for excess API calls and System Users according to the following table, and any applicable Taxes:

## Overage Fees (no proration)

EXCESS	EDGE TEAM	EDGE BUSINESS
API Calls	\$400 for every 1-1,500,000	\$5,000 for every 1-30,000,000
System Users	\$2,500 per User during any annual period	\$5,000 per User during any annual period

**“Fee Accrual Period”** means the calendar month, quarter or annual period of the Cloud Services purchased by Customer.

**“High Risk Activities”** means uses such as the operation of nuclear facilities, air traffic control, or life support systems, where the use or failure of the Cloud Services could lead to death, personal injury, or environmental damage.

**“HIPAA”** means the Health Insurance Portability and Accountability Act of 1996 as it may be amended from time to time, and any regulations issued under it.

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

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

**“Legal Process”** means a data disclosure request made under law, governmental regulation, court order, subpoena, warrant, governmental regulatory or agency request, or other valid legal authority, legal procedure, or similar process.

**“Software”** means any Google binary software programs that are provided by Google in connection with the Cloud Services or made available to Customer for download by Google, and any updates Google may make to such Software from time to time.

**“Support”** means Google’s technical support policy then in effect for the Cloud Services, a copy of which may be found at <https://apigee.com/about/specification-sheets> ([//apigee.com/about/specification-sheets/](https://apigee.com/about/specification-sheets/)).

**“System User”** means each individual User with the unique account ID and authorization credentials used to access any of the organization or environment combinations via the Cloud Services user interface or APIs. System Users may not share their credentials with any other individuals or systems at any time.

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

**“Term”** has the meaning set forth in Section 13.1.

**“Trademark Guidelines”** means Google’s Guidelines for Third Party Use of Google Brand Features, located at <https://www.google.com/permissions/guidelines.html>

([//www.google.com/permissions/guidelines.html](https://www.google.com/permissions/guidelines.html)).

“**Terms URL**” means the following URL set forth here: <https://cloud.google.com/apigee/google-terms-service-apigee-products> (#).

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

“**User**” means an employee, agent, independent contractor or third party developer of Customer and/or its Affiliates who is authorized to use the Cloud Services by the Customer and/or whose information is transmitted through the Cloud Services.

## 2. GOOGLE OBLIGATIONS.

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

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

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

**2.4. Modifications.** Google may make commercially reasonable updates to the Cloud Services from time to time. Google may make changes to this Agreement, including pricing (and any linked documents) from time to time. Unless otherwise noted by Google, material changes to the Agreement will become effective 30 days after they are posted, except if the changes apply to new functionality in which case they will be effective immediately. If Customer does not agree to the revised Agreement, please stop using the Cloud Services. Google will post any modification to this Agreement to the Terms URL.

### 3. CUSTOMER OBLIGATIONS.

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

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

### 3.3. Suspension and Removals.

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

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

### 3.4 Other Google Services; Third Party Services.

The Cloud Services allow you to connect to other Google services or to non-Google (third party) services. Your use of other Google services or third party services is not governed by this Agreement. Your use of other Google services is governed by the [Google Cloud Platform Terms of Service \(/terms\)](#). Your use of third party services is governed by separate terms and conditions between you and the third parties associated with the services. You must not use the Cloud Services to access Google services or third party services in a manner that violates the terms and conditions of such Google services or third party services. You are solely responsible for ensuring that you have the necessary rights to connect to and use any third party services. Google does not operate, support, endorse, monitor, control, or assume any responsibility or liability whatsoever for third party services. Google is not responsible for the security practices or privacy policies of third party services.

## 4. PAYMENT TERMS.

**4.1. Billing.** At the beginning of the applicable Fee Accrual Period, Google will issue an electronic bill to Customer for the Fees. Customer will be responsible for all Fees and will pay all Fees in the currency set forth in the electronic bill. If Customer elects to pay by credit card, debit

card, or other non-invoiced form of payment, Google will charge (and Customer will pay) all Fees immediately as and when due. If Customer elects to pay by invoice (and Google agrees), all Fees are due as set forth in the invoice (or if no due date is set forth in the invoice, 30 days from the invoice date). Any API call overage, System User overage, or additional Fees that are subject to calculation in arrears will be billed electronically at the end of the period in which they are accrued. Such amounts are due in accordance with this Agreement. Customer's obligation to pay all Fees is non-cancellable. Google's measurement of Customer's use of the Cloud Services is final. Google has no obligation to provide multiple bills. Payments made via wire transfer must include the bank information provided by Google.

#### **4.2. Taxes.**

- a. Customer is responsible for any Taxes, and Customer will pay Google for the Cloud Services without any reduction for Taxes. If Google is obligated to collect or pay Taxes, the Taxes will be invoiced to Customer, unless Customer provides Google with a timely and valid tax exemption certificate authorized by the appropriate taxing authority. In some states the sales tax is due on the total purchase price at the time of sale and must be invoiced and collected at the time of the sale. If Customer is required by law to withhold any Taxes from its payments to Google, Customer must provide Google with an official tax receipt or other appropriate documentation to support such withholding. If under the applicable tax legislation the Cloud Services are subject to local VAT and the Customer is required to make a withholding of local VAT from amounts payable to Google, the value of Cloud Services calculated in accordance with the above procedure will be increased (grossed up) by the Customer for the respective amount of local VAT and the grossed up amount will be regarded as a VAT inclusive price. Local VAT amount withheld from the VAT-inclusive price will be remitted to the applicable local tax entity by the Customer and Customer will ensure that Google will receive payment for its services for the net amount as would otherwise be due (the VAT inclusive price less the local VAT withheld and remitted to applicable tax authority).
- b. If required under applicable law, Customer will provide Google with applicable tax identification information that Google may require to ensure its compliance with applicable tax regulations and authorities in applicable jurisdictions. Customer will be liable to pay (or reimburse Google for) any taxes, interest, penalties or fines arising out of any mis-declaration by the Customer.



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

**4.4. 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 Google in collecting such delinquent amounts. If Customer is late on payment for the Cloud Services, Google may suspend the Cloud Services or terminate the Agreement for breach pursuant to Section 13.2.

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

## **5. ADDITIONAL TERMS.**

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

**5.2. Third Party Components.** Third party components (which may include open source software) of the Cloud Services may be subject to separate license agreements. To the limited

extent a third party license expressly supersedes this Agreement, that third party license governs Customer's use of that third party component.

**5.3. Deprecation of Cloud Services.** Subject to the Deprecation Policy, Google may discontinue any Cloud Services or any portion or feature for any reason at any time without liability to Customer.

**5.4. Evaluation Accounts.** Evaluation accounts have a 60 day term and are only available for internal, non-commercial, non-production evaluation of the Cloud Services. Evaluation accounts may not process any personal data using the Cloud Services, and are not subject to the Data Processing and Security Terms. Customer may not use Evaluation accounts to engage in mining cryptocurrency. Certain Cloud Services and features may not be available for Evaluation accounts and Customer may not be able to convert an Evaluation account into a standard account. The SLA and Support do not apply to, and are not available for, Evaluation accounts.

**5.5. Limits.** Certain Cloud Services products have specific limits for the number System Users or monthly, quarterly, or annual API calls for combined production and non-production API call usage as further defined in the Documentation. In the event Customer exceeds such limits in any calendar month, quarter, or annual period, Google will invoice Customer electronically for the excess API calls or System Users based on the API call and System User overage Fees. The total invoiced amount will be calculated based on the actual number of excess API calls or System Users. Customer may review its API call usage and System User amounts through the Cloud Services reporting tools.

**6. SUPPORT.** Google will provide Support provided Customer is current on payment of all Fees. Such Support will be provided in accordance with the material terms and conditions described in Google's technical support policy, a copy of which may be found at <https://apigee.com/about/specification-sheets> ([//apigee.com/about/specification-sheets/](https://apigee.com/about/specification-sheets/)).

## **7. INTELLECTUAL PROPERTY RIGHTS.**

**7.1. Ownership.** As between Customer and Google, Customer will retain all ownership rights in the Customer Data and Customer Confidential Information. As between Customer and Google,

Google will have and retain all ownership rights in the Cloud Services.

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

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

## **8. CONFIDENTIAL INFORMATION.**

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

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

**9. DATA PROCESSING AND SECURITY TERMS.** The Data Processing and Security Terms are incorporated by this reference into this Agreement. Google may only change the Data Processing and Security Terms where such change is required to comply with applicable law, applicable regulation, court order, or guidance issued by a governmental regulator or agency,

where such change is expressly permitted by the Data Processing and Security Terms, or where such change:

- a. is commercially reasonable;
- b. does not result in a degradation of the overall security of the Cloud Services;
- c. does not expand the scope of or remove any restrictions on Google's processing of Customer Personal Data, as described in Section 5.2 (Scope of Processing) of the Data Processing and Security Terms; and
- d. does not otherwise have a material adverse impact on Customer's rights under the Data Processing and Security Terms.

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

Notwithstanding anything to the contrary in this Agreement, a change to the Data Processing and Security Terms under this Section will not require a written document signed by Customer and Google.

## **10. WARRANTIES.**

**10.1. Mutual Warranties.** Each party represents and warrants that: (i) it has the legal power to enter into and perform under this Agreement; (ii) its signatory to this Agreement is 18 years of age or older; and (iii) it will comply with all laws and regulations applicable to its performance hereunder (in the case of Google) or applicable to its use of the Cloud Services (in the case of Customer). Google warrants that it will provide the Cloud Services in accordance with the applicable SLA (if any).

**10.2. DISCLAIMER.** EXCEPT AS EXPRESSLY PROVIDED FOR IN THIS AGREEMENT, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, GOOGLE AND ITS SUPPLIERS DO NOT MAKE ANY OTHER WARRANTY OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, INCLUDING WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR USE AND NONINFRINGEMENT. GOOGLE AND ITS SUPPLIERS ARE NOT RESPONSIBLE OR LIABLE FOR THE DELETION OF OR FAILURE TO STORE ANY CUSTOMER DATA AND OTHER COMMUNICATIONS MAINTAINED OR TRANSMITTED THROUGH USE OF THE CLOUD

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

## 11. INDEMNIFICATION.

**11.1. Customer Indemnification Obligations.** Unless prohibited by applicable law, Customer will defend and indemnify Google and its Affiliates against Indemnified Liabilities in any Third-Party Legal Proceeding to the extent arising from (i) any Customer application, Customer organization or environment in the Cloud Services, Customer Data, or Customer Brand Features; or (ii) Customer's, or its Users', use of the Cloud Services in violation of the AUP.

**11.2. Google's Indemnification Obligations.** Google will defend and indemnify Customer and its Affiliates against Indemnified Liabilities in any Third-Party Legal Proceeding to the extent arising solely from an Allegation that use of Google's technology used to provide the Cloud Services (excluding any open source software) infringes or misappropriates the third party's Intellectual Property Rights.

**11.3. Exclusions.** This Section 11 will not apply to the extent the underlying Allegation arises from:

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

**11.4. Conditions.** Sections 11.1 and 11.2 will apply only to the extent:

- a. The indemnified party has promptly notified the indemnifying party in writing of any Allegation(s) that preceded the Third-Party Legal Proceeding and cooperates reasonably with the indemnifying party to resolve the Allegation(s) and Third-Party Legal Proceeding. If a breach of this Section 11.4(a) prejudices the defense of the Third-Party Legal

Proceeding, the indemnifying party's obligations under Section 11.1 or 11.2 (as applicable) will be reduced in proportion to the prejudice.

- b. The indemnified party tenders sole control of the indemnified portion of the Third-Party Legal Proceeding to the indemnifying party, subject to the following: (i) the indemnified party may appoint its own non-controlling counsel, at its own expense; and (ii) any settlement requiring the indemnified party to admit liability, pay money, or take (or refrain from taking) any action, will require the indemnified party's prior written consent, not to be unreasonably withheld, conditioned, or delayed.

### **11.5. Remedies.**

- a. If Google reasonably believes the Cloud 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 Cloud Services; (ii) modify the Cloud Services to make them non-infringing without materially reducing their functionality; or (iii) replace the Cloud Services with a non-infringing, functionally equivalent alternative.
- b. If Google does not believe the remedies in Section 11.5(a) are commercially reasonable, then Google may suspend or terminate Customer's use of the impacted Cloud Services.

**11.6. Sole Rights and Obligations.** Without affecting either party's termination rights, this Section 11 states the parties' only rights and obligations under this Agreement for any third party's Intellectual Property Rights Allegations and Third-Party Legal Proceedings.

## **12. LIMITATION OF LIABILITY.**

**12.1. LIMITATIONS.** TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW AND SUBJECT TO SECTION 12.2 (EXCEPTIONS TO LIMITATIONS), (A) NEITHER PARTY HAS ANY LIABILITY ARISING OUT OF OR RELATING TO THIS AGREEMENT FOR: (I) LOST REVENUES; (II) INDIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL LOSSES (WHETHER OR NOT FORESEEABLE OR CONTEMPLATED BY THE PARTIES AT THE EFFECTIVE DATE); OR (III) EXEMPLARY OR PUNITIVE DAMAGES, AND (B) EACH PARTY'S TOTAL LIABILITY ARISING OUT OF OR RELATING TO THIS AGREEMENT IS LIMITED TO THE FEES CUSTOMER PAID TO GOOGLE UNDER THIS AGREEMENT DURING THE 12 MONTHS BEFORE THE LIABILITY AROSE.

**12.2. EXCEPTIONS TO LIMITATIONS.** These limitations of liability do not apply to violations of a party's Intellectual Property Rights by the other party, indemnification obligations, or Customer's payment obligations.

### **13. TERM AND TERMINATION.**

**13.1. Term.** The "Term" of this Agreement will begin on the Effective Date and continue until the Agreement is terminated as set forth in this Section 13 of the Agreement.

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

**13.3. Termination for Inactivity.** Google reserves the right to terminate the provision of the Cloud Services to Customer's account or any organization thereof upon 30 days advance notice (or, in the case of Evaluation accounts and organizations, without notice) if, for a period of 60 days, (i) Customer has not accessed the Admin Console or the applicable organization has had no network activity and (ii) such account or organization has not incurred any Fees for such Cloud Services.

**13.4. Termination at End of Fee Accrual Period.** Customer may stop using the Cloud Services at any time. Customer may terminate this Agreement on prior written notice effective as of the end of the Fee Accrual Period in which such notice is given, and upon termination must cease use of the applicable Cloud Services. Google may terminate this Agreement at any time without liability to Customer effective as of the end of the current Fee Accrual Period.

**13.5. Effect of Termination.** If the Agreement is terminated, then: (a) the rights granted by one party to the other will immediately cease; (b) all Fees owed by Customer to Google are immediately due upon receipt of the final invoice; (c) Customer will delete Customer organizations and environments in the Cloud Services and any Customer Data; and (d) upon

request, each party will use commercially reasonable efforts to return or destroy all Confidential Information of the other party.

**13.6. Survival.** The parties' rights and obligations under Sections 4, 7, 8, 10.2, 11, 12, 13.5 and 14 will survive termination of this Agreement.

## 14. GENERAL.

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

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

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

**14.4. Amendments; Entire Agreement.** Except as set forth in Sections 2.4 and 9, no amendment or waiver of any provision of this Agreement will be effective unless in writing and signed by Customer and Google. Notwithstanding any language to the contrary therein, no



terms stated in a purchase order or in any other order document (other than a mutually executed order document expressly incorporated herein) will be incorporated into this Agreement, and all such terms will be void. This Agreement, which includes all documents referenced herein, represents the entire agreement of the parties, and supersedes all prior or contemporaneous agreements, proposals or representations, written or oral, concerning its subject matter. If Customer has entered into an offline variant of this Agreement with Google or one of its Affiliates with respect to the Cloud Services, the terms of that offline agreement take precedence over this Agreement.

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

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

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

**14.8. Conflicting Terms.** If there is a conflict among the documents that make up this Agreement, the documents will control in the following order: the Data Processing and Security Terms, the Agreement and the terms at any other URL.

**14.9. Governing Law.**

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

- b. For U.S. Federal Government Entities. If Customer is a U.S. federal government entity, then the following applies: ALL CLAIMS ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE CLOUD SERVICES WILL BE GOVERNED BY THE LAWS OF THE UNITED STATES OF AMERICA, EXCLUDING ITS CONFLICT OF LAWS RULES. SOLELY TO THE EXTENT PERMITTED BY FEDERAL LAW: (I) THE LAWS OF THE STATE OF CALIFORNIA (EXCLUDING CALIFORNIA'S CONFLICT OF LAWS RULES) WILL APPLY IN THE ABSENCE OF APPLICABLE FEDERAL LAW; AND (II) FOR ALL CLAIMS ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE CLOUD SERVICES, THE PARTIES CONSENT TO PERSONAL JURISDICTION IN, AND THE EXCLUSIVE VENUE OF, THE COURTS IN SANTA CLARA COUNTY, CALIFORNIA.
- c. For All Other Entities. If Customer is any entity not listed in Section 14.9(a) or (b), then the following applies: ALL CLAIMS ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE CLOUD 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.

### Previous Versions

- October 31, 2018 (/apigee/google-terms-service-apigee-products/index-20181031)
- September 19, 2019 (/apigee/google-terms-service-apigee-products/index-20190919)

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