

Google Cloud Marketplace Vendor Agreement

This Google Cloud Marketplace Vendor Agreement (“Agreement”) is entered into by Google and the entity agreeing to these terms (“Vendor” or “You”) and governs Vendor’s interaction with and participation in Marketplace as a vendor.

The Agreement is effective as of the date on which Vendor clicks to accept it (the “Effective Date”). If you are accepting on behalf of Vendor, you represent and warrant that (i) you have full legal authority to bind Vendor to this Agreement; (ii) you have read and understand this Agreement; and (iii) you agree, on behalf of Vendor, to this Agreement.

1. Marketplace Eligibility; Listing of Products.

- 1.1. Marketplace Eligibility. The Marketplace is an online marketplace where vendors may list products for purchase, procurement, deployment, and use by GCP customers. To participate in the Marketplace, You must open and maintain a Vendor Account and Payment Account and must provide all information requested by Google to approve You to participate in the Marketplace. You represent that all information You provide to Google in connection with the Marketplace is complete and accurate.
- 1.2. Submission and Review of Products and Other Vendor Materials. You will submit Products You wish to list on the Marketplace and all related Listing Materials, Vendor Brand Features, and Product EULAs (collectively, inclusive of Products, “Vendor Materials”) as required by Google and will keep Vendor Materials current. Google may approve or reject Vendor Materials for the Marketplace in its discretion. Without limiting the foregoing, in order to make a Product available through the Marketplace, You must:
 - (a) submit the Product for initial review and approval by Google in accordance with Google’s standard Marketplace listing process;
 - (b) comply at all times with the Listing Requirements applicable to the Product and ensure that each transaction for the Product on the Marketplace complies with those Listing Requirements; and
 - (c) promptly (but no later than 30 days following the change) notify Google and submit the Product for Google’s re-review if You make a change to the Product that: (i) results in the Product no longer complying with the Listing Requirements; or (ii) renders any of the supporting documentation provided by You to verify compliance with the Listing Requirements inaccurate or untrue.
- 1.3. Approval for Listing Products. If Google approves Your Product for listing on the Marketplace, Google will provide You with a Product Validation Letter for the Product. By listing Your Product on the Marketplace, You agree to the terms and conditions of the Product Validation Letter applicable to the Product.
 - 1.3.1. Pre-Approval for Existing Products. If Your Product was listed on the Marketplace prior to the Effective Date, then, subject to Section 1.3.2 (Reapproval for Modified Products), Section 3.7 (Verification of Listing Requirements), and 14.1 (Modifications), (a) unless otherwise requested by Google, You will not be required to submit Your Product for approval in accordance with Section 1.2(a); and (b) the percentage used for Vendor Net Revenue for such Product will be deemed to be the percentage used in the definition of “Revenue Split” under Your prior version of this Agreement, provided that if such percentage was 97%, then the percentage used for Vendor Net Revenue for such Product will be as described in the Vendor Net Revenue Schedule.
 - 1.3.2. Reapproval for Modified Products. If You make a change to the Product and submit the Product for Google re-review pursuant to Section 1.2(c), Google will re-review the Product and if approved, Google will provide You a new Product Validation Letter for the Product.

2. Agent Status.

- 2.1. Appointment of Payment Agent. For Agency Transactions (defined at

<https://cloud.google.com/terms/marketplace-agency-jurisdictions>, such URL, the “Agency Jurisdictions Page”), You (a) hereby appoint Google and/or the applicable Google Affiliates (including those set forth at the Agency Jurisdictions Page) as Your authorized payment agent to act on Your behalf for the limited purposes of facilitating transactions for Your Products through the Marketplace and receiving, processing and settling payments due to You for Customers’ purchases of Your Products through the Marketplace (“Payment Agent”); (b) acknowledge that the Payment Agent will (i) receive on Your behalf amounts that Customers pay when they purchase, procure, deploy, or use Your Products through the Marketplace, (ii) process purchases, returns, and chargebacks arising out of Customers’ purchases of Your Products through the Marketplace, and (iii) pay You the Vendor Net Revenue in accordance with Section 3 (Commercial Terms); and (c) You acknowledge that payment received by the Payment Agent (including authorization of the payment by the issuer or account holding institution) will constitute payment to You, and Customer’s payment obligation for Your Product will be deemed completed and discharged at that time.

2.2. Merchant of Record Transactions. For transactions not defined as Agency Transactions at the Agency Jurisdictions Page, Google is the merchant of record and Your reseller for such transactions. Please see Section 13 (Google as Merchant of Record) for additional terms related to such transactions.

3. Commercial Terms.

3.1. Product Pricing and Changes.

3.1.1. Product Pricing. Subject to Section 13 (Google as Merchant of Record), You will set prices for Products on the Marketplace through the mechanism Google makes available, provided that any price changes for Subscription Products will not become effective during any Customer’s then-current subscription term for the Subscription Product.

3.1.2. Price Changes. You will provide written notice to Google or the Customer (as applicable) of any change in a Product’s price at least 30 days before the change becomes effective.

3.2. Payment Terms. Google or Your applicable Payment Agent will, on or before the last business day of each calendar month during the Term, pay You the Vendor Net Revenue for the previous calendar month. All payments of the Vendor Net Revenue will be made directly to the Payment Account. Payments will be transferred by the ACH Network (or by other means determined by Google). Google will not be obligated to make a payment if the Vendor Net Revenue due at the time is less than \$100.00 USD or foreign currency equivalent. Such unpaid Vendor Net Revenue will carry over and be included in the Vendor Net Revenue for the following calendar month. In no event will Google be obligated to make payments for any balance less than \$1.00 USD or foreign currency equivalent. The parties agree that Google’s payment of Vendor Net Revenue to You does not constitute a royalty payment for the license rights granted in Section 5.1.

3.3. Reports. On a monthly basis during the Term, Google will provide You with reports related to Customer purchases of Products in the form generally made available to other Marketplace vendors.

3.4. Refunds. Subject to Section 13 (Google as Merchant of Record), Google may provide Customers a refund of Customer Charges solely (a) as directed by You; (b) if the charges fall within clauses (b) through (e) of the definition of Net Revenue Exclusions; (c) as required by Google’s agreement with the Customer governing the Customer’s purchase of the applicable Product; or (d) pursuant to Sections 12.4 (Compliance Terminations) and/or 12.5.1.

3.5. Offsets. Subject to Section 13 (Google as Merchant of Record), Google may deduct from amounts owed to You under this Agreement, or require You to reimburse Google for, (a) amounts refunded in accordance with Section 3.4 (Refunds); and (b) amounts overpaid to You in connection with this Agreement, including Vendor Net Revenue previously paid to You based on Net Revenue Exclusions.

3.6. Taxes.

3.6.1. U.S. Customers. Taxes are not included in the Vendor Net Revenue paid to You relating to purchases of Products by Customers located within the United States. If You are required to charge Taxes on Google’s payment of the Vendor Net Revenue, Google will pay correctly-invoiced Taxes, unless Google provides a valid tax exemption certificate.

- 3.6.2. Non-U.S. Customers. Taxes are included in the Vendor Net Revenue paid to You relating to purchases of Products by Customers located outside of the United States.
- 3.6.3. Tax Withholding. If Google is legally required to withhold any Taxes, Google will pay You net of the withheld taxes. Google will timely provide You with withholding certificates, tax information returns, or other legally required documentation showing the amounts of any reportable payments and amounts withheld (if any).
- 3.6.4. Transaction Taxes. Subject to Section 13 (Google as Merchant of Record), if You are legally obligated to collect transaction Taxes, such as VAT or GST, on sales of Products to Customers (or where VAT marketplace rules apply, on deemed sales to Google), You will notify Google of this requirement.
- 3.6.5. Tax Documentation. You will timely provide customary tax documentation reasonably requested by Google.

3.7. Verification of Listing Requirements.

- 3.7.1. Verification of Compliance with Listing Requirements. Upon Google's request, You will verify to Google or to Google's third-party reviewer, through the provision of supporting documentation, that all Products listed on the Marketplace and transactions for Products through the Marketplace comply with the Listing Requirements. You must notify the Marketplace Compliance Team via email at gcp-marketplace-compliance@google.com within 72 hours if You become aware of any transaction for the Product that is not in compliance with the Listing Requirements, including: (i) transaction date; and (ii) Marketplace offer ID or Marketplace entitlement ID.
- 3.7.2. Grace Period for Non Compliant Products and Transactions. If Google becomes aware that any Product listed on the Marketplace (or any transaction for a Product through the Marketplace) is not in compliance with any of the Listing Requirements, Google will notify You of such noncompliance. You will have a 60-day grace period beginning from the date on which the notice of noncompliance was sent to You ("**Grace Period**") to bring the non-compliant Product or transaction into compliance with the Listing Requirements and obtain Google's written confirmation that the non-compliance issue has been remediated for the Product or transaction (as applicable) ("**Remediation Confirmation**").
- 3.7.3. Remediation. If You do not obtain the Remediation Confirmation within the Grace Period, then notwithstanding the Vendor Net Revenue applicable to the Product, Google may decrease the Vendor Net Revenue to 80% of the Net Revenue for such Product or non-compliant transaction, as applicable, on a go-forward basis until You bring the non-compliant Product or transaction into compliance with the Listing Requirements and obtain the Remediation Confirmation. Once the Remediation Confirmation has been provided to You, Google will restore the Vendor Net Revenue percentage to the percentage in place prior to the reduction in accordance with this Section 3.7.3 for such Product or affected transaction, as applicable, on a go-forward basis.

4. **Reseller Program**. You acknowledge that GCP Resellers may purchase Your Products through the Marketplace and resell those Products to Resold Customers. If Your Products are purchased by GCP Resellers for resale to a Resold Customer, then for such transactions, (a) sections or provisions of this Agreement that apply to Customers related to the transaction for Products will apply to GCP Resellers, and (b) sections or provisions of this Agreement that apply to Customers related to the access to or use of Products will apply to Resold Customers.

5. **Intellectual Property; Licenses**.

- 5.1. License to Google. You grant Google a limited, non-exclusive, sublicensable (solely to Google's Affiliates) license to:
 - (a) use, configure, host, install, distribute, list for sale, sell, reproduce, display, and perform the Products; and
 - (b) use, distribute, reproduce, and publicly perform and display all Vendor Materials other than Products;

in each case solely to (1) operate the Marketplace, including enabling Customer discovery, purchase, procurement, deployment, and use of Products, and (2) market the Products and the

Marketplace, including education, demonstrations, and sales processes support. Without limiting the foregoing, You acknowledge and agree that Google may sublicense to GCP Resellers the rights granted under this Section 5.1 solely to facilitate the GCP Resellers' resale and marketing of the Products to Resold Customers. Google's exercise of its rights in this Section 5.1 with respect to Vendor Brand Features will be in accordance with any trademark guidelines provided to Google in writing.

- 5.2. License to Customers. For each Product listed on the Marketplace, You will provide to Google a Product EULA that will govern Customer's use of the applicable Product. You will license, or grant access rights to, Products to Customers under the Product EULA.
- 5.3. License to Vendor. Google grants You a limited, non-exclusive, worldwide, royalty-free license to use, in accordance with the Google Trademark Guidelines, the Marketplace Brand Features solely for marketing purposes related to your Products' availability on the Marketplace or your participation as a Marketplace vendor.
- 5.4. Ownership. Neither party grants the other any rights or licenses not expressly set forth in this Agreement, whether by implication, estoppel, waiver, or otherwise. As between the parties, (a) You retain all ownership and other rights (including intellectual property rights) in the Vendor Materials (including any associated goodwill) and (b) Google and its Affiliates retain all ownership and other rights (including intellectual property rights) in the Marketplace, Vendor Console, and Marketplace Brand Features (including any associated goodwill).

6. Additional Responsibilities.

- 6.1. Products and Customer Relationships. You are solely responsible for the Products, Your relationships with Customers (including any enforcement of or disputes under the Product EULA), and Your acts or omissions relating to the Products or Your Customer relationships. For transactions with a Customer for Your Product through the Marketplace, You will not charge or seek to collect any fees for such transactions from the Customer, provided that this restriction does not (a) apply to any Product usage overages that are Your responsibility to charge or collect based on the applicable transaction or (b) prohibit You from selling Products to customers through channels other than the Marketplace. You will not include in any Private Offer any terms that contradict or seek to amend the terms set forth in the listing for the applicable Product. You acknowledge that Google may require limited access to certain GCP projects or accounts in order to set up and/or configure Your Products for listing in the Marketplace.
- 6.2. Product Support. You are solely responsible for providing Customers with all customer and technical support for the Products. Your response times for and attention to Customer support requests for Products must be at least as urgent as those for the support requests for versions of similar products You offer through other sales channels.
- 6.3. Vendor Representations and Warranties. You represent and warrant that:
 - 6.3.1. You have full power and authority to enter into and perform this Agreement;
 - 6.3.2. in connection with this Agreement, You and the Vendor Materials will comply with Applicable Laws; and
 - 6.3.3. You have all necessary rights in the Vendor Materials and Third-Party Materials to grant Google the rights in this Agreement and make your Products available to Customers.
- 6.4. Notice of Violations; Security Events. You will promptly notify Google if (a) any Vendor Materials are the subject of any allegation, claim, or complaint regarding the applicable Vendor Material's violation or infringement of Applicable Laws or third party rights (including intellectual property rights); (b) You have identified a critical security vulnerability affecting a Product; or (c) there has been a Security Incident in connection with a Product.
- 6.5. Partner Information Protection Addendum. With respect to Google-Provided Data, You will comply with the Marketplace Partner Information Protection Addendum.
- 6.6. Anti-Corruption. In connection with its performance under this Agreement, each party will comply with all Applicable Laws related to commercial and public anti-bribery, including the U.S. Foreign Corrupt Practices Act of 1977 and the UK Bribery Act of 2010, which prohibit corrupt offers of anything of value, either directly or indirectly to anyone, including Government Officials, to obtain or keep business or to secure any other improper commercial advantage. Neither party will make any facilitation payments, which are payments to induce officials to perform routine functions they are

otherwise obligated to perform. Each party will use commercially reasonable and good faith efforts to comply with the other party's due diligence process, including providing requested information. "Government Officials" include any government employee; candidate for public office; and employee of government-owned or government-controlled companies, public international organizations, and political parties.

6.7. Export. You will comply with all Applicable Laws related to export and re-export ("Export Control Laws"), including (a) the Export Administration Regulations ("EAR") maintained by the U.S. Department of Commerce; (b) trade and economic sanctions maintained by the U.S. Treasury Department's Office of Foreign Assets Control; and (c) the International Traffic in Arms Regulations ("ITAR") maintained by the U.S. Department of State. You will provide Google with all accurate information needed to comply with all applicable Export Control Laws related to the distribution of Products through the Marketplace.

6.8. Compliance Verification Process. You acknowledge that, as part of Google's operation of the Marketplace, Google and/or Your applicable Payment Agent may be required by law, or may in its discretion choose, to perform a compliance verification process (including but not limited to identity verification) with respect to You and/or Customers ("Compliance Process"), which may include making additional inquiries or checking data You provide against third party databases. You agree to provide Google and/or Your applicable Payment Agent with all information requested to enable Google to complete the Compliance Process.

7. **Disclaimer of Warranties**. EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, GOOGLE, GOOGLE AFFILIATES, AND YOU MAKE NO WARRANTIES OF ANY KIND, WHETHER IMPLIED, STATUTORY, OR OTHERWISE, INCLUDING WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, OR NON-INFRINGEMENT. GOOGLE PROVIDES THE MARKETPLACE, VENDOR ACCOUNT, VENDOR CONSOLE, MARKETPLACE BRAND FEATURES, AND ALL OTHER MATERIALS "AS IS" AND "AS AVAILABLE". GOOGLE DOES NOT GUARANTEE ANY CUSTOMERS WILL PURCHASE, PROCURE, DEPLOY, OR USE ANY PRODUCTS. YOUR USE OF ANY MATERIAL DOWNLOADED OR OTHERWISE OBTAINED THROUGH THE MARKETPLACE IS AT YOUR OWN RISK.

8. Confidentiality.

8.1. Duty. The recipient will not disclose the discloser's Confidential Information, except to employees, Affiliates, contractors, agents, or professional advisors ("**Delegates**") who need to know it and who have a legal obligation to keep it confidential. The recipient will use the discloser's Confidential Information only to exercise rights and fulfill obligations under this Agreement, and will ensure that such Delegates use the discloser's Confidential Information only to exercise rights and fulfill obligations under this Agreement while using reasonable care to protect the Confidential Information. The recipient will ensure that its Delegates are also subject to the same non-disclosure and use obligations. For clarity, Vendor Materials provided for listing on the Marketplace may be made available or displayed to prospective customers of Products. The terms of this Agreement are Confidential Information of both parties.

8.2. Required Disclosure. The recipient or its Affiliate may disclose Confidential Information when required by law, provided that the recipient or its Affiliate uses commercially reasonable efforts to (a) promptly notify the other party before any such disclosure of its Confidential Information, and (b) comply with the other party's reasonable requests regarding its efforts to oppose or limit the disclosure. Notwithstanding the foregoing, subsections (a) and (b) above will not apply if the recipient determines that complying with

(a) and (b) could (i) result in a violation of Applicable Law; (ii) obstruct a governmental investigation; or (iii) lead to death or serious physical harm to an individual.

9. Limitations of Liability.

9.1. Limitation on Indirect Liability. To the extent permitted by Applicable Laws and subject to Section 9.3 (Unlimited Liabilities), neither party (nor Your applicable Payment Agent) will have any Liability arising out of or relating to this Agreement for any (a) indirect, consequential, special, incidental, or punitive damages or (b) lost revenues, profits, savings, or goodwill.

9.2. Limitation on Amount of Liability. Each party's (and Your applicable Payment Agent's) total aggregate Liability for damages arising out of or relating to this Agreement is limited to the

Vendor Net Revenue paid or payable by Google during the 12-month period before the event giving rise to Liability.

9.3. Unlimited Liabilities. Nothing in this Agreement excludes or limits either party's Liability for:

- (a) its fraud or fraudulent misrepresentation;**
- (b) its obligations under Section 10 (Indemnification);**
- (c) its breach of Section 8 (Confidentiality);**
- (d) its infringement of the other party's intellectual property rights;**
- (e) its payment obligations under this Agreement; or**
- (f) matters for which Liability cannot be excluded or limited under Applicable Laws.**

10. Indemnification.

- 10.1. Obligations. You will defend Google and its Affiliates and indemnify them against Indemnified Liabilities in any Third-Party Legal Proceeding to the extent arising from (a) an allegation that any Vendor Materials infringe, misappropriate, or violate a third party's intellectual property rights or Applicable Laws or do not comply with any licenses governing Third-Party Materials included in the Vendor Materials; (b) a Customer's use of a Product, including claims of product liability or any damage or loss caused by the use of a Product; (c) any disputes or claims arising under the Product EULA; (d) nonpayment, underpayment, or failure to collect and remit or deduct any applicable sales, use, goods and services, value-added, withholding, or other similar Tax (including any associated penalties and interest), except to the extent caused by Google's non-compliance with its obligations under Applicable Laws, unless such non-compliance is attributable to inaccurate information provided by You in connection with the Marketplace; or (e) Your use of Marketplace Data.
- 10.2. Exceptions. Your obligations under Section 10.1 (Obligations) do not extend to claims to the extent the underlying allegation arises solely from (a) breach by Google of its material obligations hereunder; (b) combination of the Product with materials You did not provide, unless that combination is (i) required for use of the Product in connection with the Marketplace, (ii) authorized in the Product documentation, or (iii) otherwise directed by You in writing; (c) Google's technology used to provide the Marketplace; or (d) Google's Brand Features.
- 10.3. Conditions. Your obligations under Section 10.1 (Obligations) are conditioned on the following:
 - 10.3.1. Google must promptly notify You in writing of any allegation that preceded the Third-Party Legal Proceeding and cooperate reasonably with You to resolve the allegation or proceeding. If breach of this Section 10.3.1 prejudices the defense of the Third-Party Legal Proceeding, Your obligations under Section 10.1 (Obligations) will be reduced in proportion to the prejudice.
 - 10.3.2. Google must tender sole control of the indemnified portion of the Third-Party Legal Proceeding to You, subject to the following: (a) Google may appoint its own non-controlling counsel, at its own expense; and (b) any settlement requiring Google to admit liability, pay money, or take (or refrain from taking) any action, will require Google's prior written consent (not to be unreasonably withheld, conditioned, or delayed).
- 10.4. Remedies. In the event an injunction preventing continued use of Products is threatened or granted, You will, at Your sole option and expense,: (a) procure the right to continue providing the Products in compliance with this Agreement; or (b) modify the Products to make them non-infringing. If You are unable to do either despite commercially reasonable efforts, You will remove the affected Product from the Marketplace in accordance with Section 11.1 (Removal By Vendor).

11. Product Takedowns.

- 11.1. Removal By Vendor. Subject to Section 12.5 (Wind Down), You may remove any Product from the Marketplace at any time by providing Google at least 30 days' prior written notice.
- 11.2. Removal By Google. Google may hide, prohibit access to, or remove any Product from the

Marketplace at any time for any reason, including if Google reasonably believes that the Product: (a) violates this Agreement; (b) may adversely affect Google or Customers; (c) impacts the integrity of Google's or a Customer's network or servers (including if Customers cannot access the Product or otherwise experience difficulty); or (d) is not meeting Marketplace standards.

- 11.3. Notice and Cure. Google will use commercially reasonable efforts to provide You with 7 days' notice before Google removes a Product from the Marketplace under Section 11.2 (Removal by Google), unless Google otherwise determines in its discretion that removal is necessary to avoid harm, liability, or reputational damage to Google, the Marketplace, or a Customer.

12. Term and Termination.

- 12.1. Term. This Agreement begins on the Effective Date and will remain in effect for one-year ("Initial Term"). At the end of the Initial Term or any Renewal Term, this Agreement will automatically renew for an additional one-year period (each a "Renewal Term") unless a party provides written notice to the other party of its intent not to renew this Agreement at least 90 days prior to the end of the then-current Initial Term or Renewal Term. The "Term" of this Agreement begins on the Effective Date and continues until this Agreement is terminated in accordance with this Section 12.
- 12.2. Termination. Either party may terminate this Agreement (a) for convenience at any time upon 30 days' notice to the other party; or (b) immediately if the party is required to do so by Applicable Laws, if a Product violates Applicable Laws, or if Google reasonably determines that immediate termination is necessary to avoid harm, liability, or reputational damage to Google, the Marketplace, or a Customer.
- 12.3. Effect of Termination. Upon termination of this Agreement and subject to Section 12.5 (Wind Down), (a) all Products will be removed from the Marketplace; and (b) You must cease use of any Vendor Account credentials.
- 12.4. Compliance Terminations. If a Customer has purchased Your Product through the Marketplace and either You do not or the Customer does not successfully complete Google's Compliance Process, Google and/or Your applicable Payment Agent may (a) decline to process and/or terminate the Customer's purchase of the Product and/or cease all billing activities with the Customer for that Product; and (b) refund to the Customer any pro-rated prepaid fees for the Product, to the extent the refund is permitted by Applicable Laws. You acknowledge and agree that Google may offset against amounts owed to You under this Agreement or require You to reimburse Google for any Vendor Net Revenue paid to You based on any amounts refunded to the Customer in accordance with the previous sentence.
- 12.5. Wind Down.
- 12.5.1. Except where prohibited by Applicable Laws, when this Agreement is terminated or a Product is removed from the Marketplace, a wind down period will apply as to any Product that was purchased by a Customer before the date of termination or removal, as applicable. The "Wind Down Period" for each affected Product will begin on the date of termination or Product removal, as applicable, and end (a) for non-Subscription Products, six months after such date and (b) for Subscription Products, on the date that the last Customer subscription term for such Product expires or terminates. Notwithstanding the preceding sentence, (i) Google can elect not to apply a Wind Down Period if Google terminates this Agreement pursuant to clause (b) of Section 12.2 (Termination), (ii) Google may terminate the Wind Down Period if any of the circumstances set forth in clause (a) of Section 12.2 (Termination) occurs during the Wind Down Period, and (iii) the parties may mutually agree to terminate the Wind Down Period prior to its expiration. If the Wind Down Period does not apply or is terminated early in accordance with this Section 12.5.1, Google may refund prorated prepaid fees to the affected Customer, and You agree that Google may offset against amounts owed to You under this Agreement or require You to reimburse Google for any Vendor Net Revenue paid to You based on amounts refunded to the Customer in accordance with this sentence.
- 12.5.2. During the Wind Down Period, (a) the terms of this Agreement will continue to apply to the applicable Products; and (b) You will continue to allow the procurement, deployment, and use of such Products by existing Customers of the Products and will continue to support such Products, in each case in accordance with the terms of this Agreement and the applicable Product EULA. Upon the termination of this Agreement and any

applicable Wind Down Period, Google and/or Your applicable Payment Agent will pay any remaining Vendor Net Revenue to Vendor within 90 days after termination or expiration of the applicable Wind Down Period. Google will have no responsibility or liability to Customer or You for any Customer's use of the Product after the end of the Wind Down Period.

12.6. Survival. The following sections survive termination of this Agreement: Sections 5.4 (Ownership), 7 (Disclaimer of Warranties), 8 (Confidentiality), 9 (Limitations of Liability), 10 (Indemnification), 12 (Term and Termination), 14 (General Terms) and 15 (Definitions).

13. Google as Merchant of Record. For transactions where Google acts as the merchant of record and reseller of Your Products to the Customer in accordance with Section 2 (Appointment), this Agreement is amended as follows:

13.1. Product Pricing. Section 3.1.1 (Product Pricing) of this Agreement is deleted in its entirety and replaced with the following: "Google will set the price for the Products, but You may suggest pricing for Your Products through the mechanism Google makes available."

13.2. Refunds. Section 3.4 (Refunds) of this Agreement is deleted in its entirety and replaced with the following: "Google may provide Customers a partial or full refund of Customer Charges in its discretion."

13.3. Offsets. Section 3.5 (Offsets) of this Agreement is deleted in its entirety and replaced with the following: "Google may deduct from amounts owed to You under this Agreement, or require You to reimburse Google for, (a) amounts refunded (i) in accordance with Sections 12.4 (Compliance Terminations) and/or 12.5.1 of this Agreement or (ii) as required by Google's agreement with the Customer with respect to its purchase of the applicable Product; and (b) amounts overpaid to You in connection with this Agreement, including Vendor Net Revenue previously paid to You based on Net Revenue Exclusions."

13.4. Transaction Taxes. Section 3.6.4 (Transaction Taxes) does not apply.

14. General Terms.

14.1. Modifications. Google may make changes to this Agreement (including the URL Terms) from time to time. Google will post any change to this Agreement to <https://cloud.google.com/terms/marketplace-vendor-agreement> or, for URL Terms, the page where the applicable URL Terms are located. Unless You separately agree to the changes (e.g., via a click-to-accept), You hereby agree that changes to this Agreement will become effective 30 days after they are posted and that You are bound by such changes, except to the extent the changes apply to new Marketplace functionality or new Marketplace product categories or are required by Applicable Law, in which case they will be effective immediately. If You do not agree to the revised Agreement, You will stop using the Marketplace. You may also terminate this Agreement for convenience under Section 12.2 (Termination). Your continued use of the Marketplace after such change will constitute Your consent and agreement to such changes.

14.2. Notices. Notices to be provided under this Agreement must be in writing. Google will provide notices under this Agreement to You by sending an email to the Notification Email Address. Vendor will provide notices under this Agreement to Google by sending an email to legal-notices@google.com. Notice will be treated as received when the email is sent. Vendor is responsible for keeping its Notification Email Address current throughout the term.

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

14.4. Assignment. Neither party may assign 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 has notified the other party of the assignment; and (c) if You are the assigning party, the assignee must provide all information and documentation required to onboard onto the Marketplace as a vendor. Any other attempt to assign is void.

14.5. Change of Control. If You experience a change of Control other than an internal restructuring or reorganization, then You will give written notice to Google within 30 days after the change of Control (such notice will include the identity of the entity with which You have entered into or undergone a change of Control).

14.6. Subcontracting; Use of Affiliates. Google may subcontract obligations under this Agreement but will

remain liable to You for any subcontracted obligations. Google may also permit its Affiliates, contractors, and GCP Resellers (solely in accordance with GCP Resellers' resale and marketing of the Products to Resold Customers as set forth in Section 4 (Reseller Program)) to perform Google's obligations or exercise Google's rights under this Agreement, including in Section 5 (Intellectual Property; Licenses), and will remain responsible for their compliance with its obligations in this Agreement.

- 14.7. Force Majeure. Neither party will be liable for failure or delay in performance of its obligations to the extent caused by circumstances beyond its reasonable control, including acts of God, natural disasters, terrorism, riots, or war.
- 14.8. No Agency. Except as set forth in Section 2 (Appointment), this Agreement does not create any agency, partnership, or joint venture between the parties.
- 14.9. No Waiver. Neither party will be treated as having waived any rights by not exercising (or delaying the exercise of) any rights under this Agreement.
- 14.10. Severability. If any part of this Agreement is invalid, illegal, or unenforceable, it will be modified where practicable to the extent necessary so as to be enforceable (giving effect to the intention of the parties), or severed if such modification is not possible, and the rest of this Agreement will remain in effect.
- 14.11. No Third-Party Beneficiaries. This Agreement does not confer any benefits on any third party unless it expressly states that it does.
- 14.12. Counterparts. The parties may execute this Agreement in counterparts, including facsimile, PDF, and other electronic copies, which taken together will constitute one instrument.
- 14.13. Independent Development. Nothing in this Agreement will be construed to limit or restrict either party from independently developing, providing, or acquiring any materials, services, products, programs, or technology that are similar to the subject of this Agreement, provided that the party does not breach its obligations under this Agreement in doing so.
- 14.14. No Obligation to List. The parties acknowledge that neither party is obligated by this Agreement to list any Product on the Marketplace, and each party may remove a Product from the Marketplace in accordance with Section 11 (Product Takedowns).
- 14.15. Equitable Relief. Nothing in this Agreement will limit either party's ability to seek equitable relief.
- 14.16. Governing Law. ALL CLAIMS ARISING OUT OF OR RELATING TO THIS AGREEMENT 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; THE PARTIES CONSENT TO PERSONAL JURISDICTION IN THOSE COURTS.
- 14.17. Entire Agreement. This Agreement states all terms agreed between the parties relating to its subject matter, and the parties hereby agree that this Agreement completely replaces any prior agreements between Vendor and Google in relation to its subject matter, notwithstanding any language in such prior agreements to the contrary. If any Products have been listed on the Marketplace before the Effective Date, then, as of the Effective Date, such Products will be governed by this Agreement. In entering into this Agreement, neither party has relied on, and neither party will have any right or remedy based on, any statement, representation, or warranty (whether made negligently or innocently), except those expressly stated in this Agreement. The URL Terms and any Product Validation Letters are incorporated by reference into this Agreement. After the Effective Date, Google may provide an updated URL in place of any URL in this Agreement. For clarity, this Agreement does not modify or supersede any Vendor GCP Agreement for Vendor's use of GCP.
- 14.18. Conflicting Terms. If there is a conflict between the documents that make up this Agreement, the documents will control in the following order (of decreasing precedence): Product Validation Letter, this Agreement (excluding the URL Terms), and the URL Terms (unless any of the URL Terms expressly state that its terms will control over those in this Agreement).
- 14.19. Conflicting Languages. If this Agreement is translated into any other language, and there is a discrepancy between the English text and the translated text, the English text will govern.
- 14.20. Headers. Headings and captions used in this Agreement are for reference purposes only and will

not have any effect on the interpretation of this Agreement.

15. Definitions.

“48-Hour Cancellation” means the cancellation by a Customer of the purchase of a Product that was not purchased through a Private Offer within 48 hours after (a) the purchase of the Product or (b) the conversion to a paid purchase from a free trial for the Product.

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

“Applicable Laws” means all applicable laws, rules, regulations, or orders, including those relating to data privacy, data transfer, international communications, or the export of technical or personal data.

“Brand Features” means the trade names, trademarks, service marks, logos, domain names, and other distinctive brand features of each party, respectively, as owned, claimed, (or licensed) by such party from time to time.

“BYOL Product” means a bring-your-own-license Product that a Customer may deploy and/or enable via Marketplace using a license key that is separately provisioned, obtained, or purchased outside of the Marketplace.

“Confidential Information” means information that one party (or an Affiliate) discloses to the other party under this Agreement, and which is marked as confidential or would normally under the circumstances be considered confidential information. It does not include information that is independently developed by the recipient, is rightfully given to the recipient by a third party without confidentiality obligations, or becomes public through no fault of the recipient. For clarity, Vendor Materials are not Confidential Information.

“Control” means control of greater than 50% of the voting rights or equity interests of a party.

“Customer Charges” means the charges for Customers’ purchase, procurement, deployment, and use of Products from the Marketplace.

“Customer(s)” means any person or entity who purchases, procures, deploys, or uses Products from the Marketplace.

“GCP” means the services that comprise the Google Cloud Platform at <https://cloud.google.com/cloud/services> or such other URL as Google may determine (including any associated APIs).

“GCP Reseller(s)” means an authorized reseller and/or supplier of GCP, including resellers and/or suppliers purchasing GCP via a Google authorized distributor for onward resale.

“Google” means Google LLC, with registered address at 1600 Amphitheatre Parkway, Mountain View, California 94043, United States.

“Google-Provided Data” means information relating to a Customer that Google provides or makes available to Vendor.

“Google Trademark Guidelines” means Google’s trademark guidelines located at <http://www.google.com/permissions/guidelines.html>.

“including” means including but not limited to.

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

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

“Listing Materials” means Product descriptions, Vendor information, and other Product listing materials provided to Google in connection with Your Products.

“Listing Requirements” means any product, technical, operational, content, and other requirements that are provided by Google, including those identified at <https://cloud.google.com/marketplace/docs/partners/get-started#requirements> (or such other URL as Google may determine), and any approval criteria, conditions, or requirements specified by Google for the Product in the Product Validation Letter.

“Marketplace” means the “Google Cloud Marketplace”, “GCP Marketplace”, “Google Cloud Launcher”, or other GCP online marketplace operated by Google, which allows the purchase, procurement, deployment, and/or use by Customers of software or services.

“Marketplace AUP” means the then-current acceptable use policy for Marketplace described at <https://cloud.google.com/terms/marketplace-aup>.

“Marketplace Data” means, collectively, Vendor-Collected Data and Google-Provided Data.

“Marketplace Open Source Policies” means the policies and terms located at <https://cloud.google.com/terms/marketplace-open-source-terms>.

“Marketplace Partner Information Protection Addendum” or “Marketplace PIPA” means the then-current terms related to the treatment and protection of Google-Provided Data stated at <https://cloud.google.com/terms/marketplace-privacy-terms>.

“Net Revenue” means the Customer Charges collected by Google in connection with a Product, minus Net Revenue Exclusions.

“Net Revenue Exclusions” means (a) Taxes and foreign exchange costs; (b) charges for a Product subject to a 48-Hour Cancellation; (c) charges that arise through any fraudulent or invalid means; (d) charges that are subject to chargebacks, reversals, or rejections by a bank or credit card issuer; (e) charges for Products that are not actually delivered or provided to the applicable Customer; and (f) use of the Products by Google or its Affiliates solely to (i) develop or test the functionality of the Marketplace (including testing of the integration between Products and the Marketplace), (ii) assess customer support issues with the Marketplace or a Product, or (iii) market and/or demonstrate the Products to prospective customers.

“Notification Email Address” means (a) the Vendor email address provided to Google in connection with accepting this Agreement, or (b) any other email address provided to Google in connection with Marketplace for the purpose of receiving notices, e.g., an email address for the receipt of notices provided under a previous version of this Agreement or an email address for the receipt of notices provided as part of solution or Product validation or onboarding.

“Open Source Material(s)” means any materials that are available under an open source license, including those licenses identified by the Open Source Initiative at <https://opensource.org/licenses/alphabetical>, that are included or used in any of the Products.

“Payment Account” means the Vendor-owned payment account provided to Vendor by a third-party financial institution, approved by Google, and set up by Vendor as a designated settlement account through the Google vendor management system located at the following URL: <https://console.cloud.google.com/producer-portal/payments> or such other URL as Google may determine.

“Private Offer” means a quote and other terms for the purchase or procurement of a Product offered to a specific Customer.

“Process” or “Processing” means to access, create, collect, acquire, receive, record, consult, use, process, alter, store, maintain, retrieve, disclose, or dispose of. “Process” includes “processing” within the meaning of the GDPR.

“Product(s)” means the Vendor software, services or other offerings identified by Vendor and approved by Google for listing on the Marketplace, including any updates provided by Vendor to Google in accordance with this Agreement.

“Product EULA” means Vendor’s end user license agreement or other terms of service applicable to a Product.

“Product Specific Terms” means the then-current terms specific to one or more product types stated at <https://cloud.google.com/terms/marketplace-product-terms>.

“Product Validation Letter” means the letter provided by Google which expressly approves the listing of a Product on the Marketplace.

“Resold Customer(s)” means an entity to whom a GCP Reseller is permitted to resell GCP under a written agreement with Google.

“Security Incident” means actual or reasonable degree of certainty of unauthorized use, destruction, loss, control, alteration, acquisition, exfiltration, theft, retention, disclosure of, or access to, Marketplace Data. Security Incidents do not include unsuccessful access attempts or attacks that do not compromise the

confidentiality, integrity, or availability of Marketplace Data, including unsuccessful log-in attempts, pings, port scans, denial of service attacks, and other network attacks on firewalls or networked systems.

“Subscription Product” means a Product for which the Customer has either prepaid fees or committed to pay fees for such Product for a given time period.

“Tax(es)” means all applicable taxes, except for taxes based on either party’s net income, net worth, employment, or assets (including personal and real property).

“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).

“Third-Party Material(s)” means any materials not owned solely by You that are included, incorporated, or used in any of the Products, including Open Source Materials.

“URL Terms” means the Listing Requirements, Agency Jurisdictions Page, Marketplace Open Source Policies, Marketplace AUP, Marketplace PIPA, Product Specific Terms, and Vendor Net Revenue Schedule.

“Vendor” means the person or entity specified in the information table above who is registered with and approved by Google for listing of software or services via the Marketplace in accordance with the terms of this Agreement.

“Vendor Account” means an account issued by Google to Vendor that enables the listing of Products via the Marketplace.

“Vendor Console” means the console or other online tool that may be provided by Google to Vendor to manage administrative functions related to the Marketplace.

“Vendor GCP Agreement” means the agreement under which Google or its Affiliate has agreed to provide GCP to Vendor.

“Vendor-Collected Data” means any Customer information, content, or data that Vendor Processes in connection with a Product, other than Google-Provided Data.

“Vendor Net Revenue” means the percentage of Net Revenue payable to You in accordance with Section 3.2 (Payment Terms) and communicated to You by Google in a Product Validation Letter, through the Vendor Console, or otherwise through the Marketplace.

“Vendor Net Revenue Schedule” means the schedule located at <https://cloud.google.com/terms/marketplace-revenue-share-schedule>.

“Vendor Privacy Policy” means Vendor’s designated privacy policy or privacy statement used in connection with the Products.