

## **Google Cloud Partner Success Services Agreement**

### **June 2019**

To receive the Services described below, Partner (“Partner”) agrees to the terms of this Google Cloud Partner Success Services Agreement (“Agreement”). Together with any applicable Order Form, this Google Cloud Partner Success Services Agreement governs Partner’s receipt of Services from the Google entity referenced in the applicable Order Form (“Google”).

#### **1. Services.**

- 1.1 Services. Google will provide Services, including Deliverables, to Partner in accordance with this Agreement, subject to Partner fulfilling its obligations under Section 2.1 (Cooperation).
- 1.2 Change Orders. Any changes to an Order Form require a written amendment signed by Partner and Google.
- 1.3 Compliance with Partner’s Onsite Policies and Procedures. Google’s Personnel performing Services at Partner’s or Customer’s facilities will comply with Partner’s or Customer’s reasonable onsite policies and procedures made known to Google in writing in advance of execution of the applicable Order Form.
- 1.4 Communication with Customer. Partner will be responsible for all project management and relationship management with the Customer. Google will not interface directly with the Customer, unless agreed upon by Partner and Google. Customer is not a party to this Agreement or any Order Form under this Agreement. Partner will not make any representations or warranties to Customer or any other third party on Google’s behalf or in any capacity regarding the Services or Deliverables.

#### **2. Partner Obligations.**

- 2.1 Cooperation. Partner will provide reasonable and timely cooperation in connection with Google’s provision of the Services, and Partner will ensure Customer provides the same cooperation. Google will not be liable for any delay caused by Partner’s or Customer’s failure to provide Google with information, materials, consents or access to Partner or Customer’s facilities, networks or systems required for Google to perform the Services. If Google informs Partner of such failure and Partner does not cure the failure, or cause the Customer to cure the failure, within 30 days, then: i) Google may terminate any incomplete Services and ii) Partner will pay for any fees due under Section 7.4(b) (Effect on Payment).
- 2.2 Consents. Partner is responsible for any consents and notices required to permit Partner’s and Customer’s use and receipt of the Services. Partner will have all rights required from Customer and applicable third parties and comply with all applicable laws when providing any materials, data, technology, or information to Google under this Agreement.
- 2.3 No Personal Data. Partner acknowledges that Google does not need to process Personal Data to perform the Services. Partner will not provide Google with access to Personal Data unless the parties have agreed in a separate agreement on the scope of work and any terms applicable to Google’s processing of such Personal Data.

#### **3. Payment Terms.**

- 3.1 Payment. Partner will pay all Fees for Services ordered under this Agreement. Google will invoice Partner for the Fees. Partner will pay all invoiced amounts by the Payment Due Date. All payments are

due in the currency stated in the invoice. Wire transfer payments must include the bank information stated in the invoice. Fees for some Services may be non-cancellable, as specified on an Order Form.

- 3.2 **Taxes.** Unless Partner provides a timely and valid tax exemption certificate, Partner will pay any invoiced Taxes for the Services. Without limiting Partner's obligation to pay Fees, Partner will withhold Taxes if legally required.
- 3.3 **Invoice Disputes.** Partner must submit any invoice disputes to [collections@google.com](mailto:collections@google.com) before the Payment Due Date. If the parties determine that Fees were incorrectly invoiced, Google will issue a credit equal to the agreed amount.
- 3.4 **Overdue Payments.**
- (a) Partner's payment of Fees is overdue if Google has not received it by the Payment Due Date. If Partner's payment is overdue, Google may (i) charge interest on overdue amounts at 1.5% per month (or the highest rate permitted by law, if less) from the Payment Due Date until paid in full, and (ii) Suspend the Services or terminate the applicable Order Form.
- (b) Partner will reimburse Google for all reasonable expenses (including attorneys' fees) incurred by Google in collecting overdue payments except where such payments are due to Google's billing inaccuracies.
- 3.5 **Expenses.** Partner will reimburse expenses: (a) as specifically stated in the applicable Order Form; or (b) up to the amounts specified as "expenses" in the applicable Order Form that are actual, reasonable, and necessary.

#### **4. Intellectual Property.**

- 4.1 **Background IP.** Partner owns all rights, title and interest in Partner's Background IP. Google owns all rights, title and interest in Google's Background IP. Partner grants Google a license to use Partner's Background IP to provide the Services (with a right to sublicense to Google Affiliates and subcontractors). Except for the license rights under Sections 4.2 (Google Technology) and 4.3 (Deliverables), neither party will acquire any right, title, or interest in or to the other party's Background IP under this Agreement.
- 4.2 **Google Technology.** Google owns all rights, title and interest in Google Technology. To the extent Google Technology is incorporated into Deliverables, Google grants Partner (a) subject to Section 4.6 (Customer Agreement), the right to grant to its Customer a limited, worldwide, non-exclusive, perpetual, fully-paid, non-transferable license (with the right to sublicense to Affiliates) to use the Google Technology in connection with the Deliverables for Customer's internal business purposes and (b) a limited, worldwide, non-exclusive, perpetual, fully-paid non-transferable license (with the right to sublicense to Affiliates) to use the Google Technology in connection with the Deliverables to deliver advisory services to its Customers.
- 4.3 **Deliverables.** Google grants Partner (a) subject to Section 4.6 (Customer Agreement), the right to grant to its Customer a limited, worldwide, non-exclusive, perpetual, fully-paid, non-transferable license (with the right to sublicense to Affiliates) to use, reproduce and modify the Deliverables for Customer's internal business purposes and (b) a limited, worldwide, non-exclusive, perpetual, fully-paid non-transferable license (with the right to sublicense to Affiliates) to use, reproduce and modify the Deliverables to deliver advisory services to its Customers.

- 4.4 **Feedback.** At its option, Partner may provide feedback and suggestions about the Services to Google (“**Feedback**”). If Partner provides Feedback, then Google and its Affiliates may use that Feedback without restriction and without obligation to Partner.
- 4.5 **Non-exclusivity.** Google reserves all rights to create, develop, modify, use, and distribute products and services similar to the Services and Deliverables, and Google will not be restricted from using any of the Services or Deliverables to provide similar offerings to other partners or Google customers.
- 4.6 **Customer Agreement.** Partner’s right to grant a license to Google Technology and Deliverables to its Customers is subject to the Partner entering into an agreement with each Customer that (a) protects Google’s Intellectual Property Rights and Confidential Information to the same extent as this Agreement, (b) does not make any warranties or incur any liability on behalf of Google for the Services and Deliverables, (c) does not involve Google accessing the Customer’s Personal Data, and (d) provides the right for Partner to disclose Customer’s Confidential Information to Google, as needed, to perform the Services.

## **5. Confidentiality.**

- 5.1 **Confidentiality Obligations.** Subject to Section 5.2 (Disclosure of Confidential Information), the recipient will use the other party’s Confidential Information only to exercise its rights and fulfill its obligations under the Agreement. The recipient will use reasonable care to protect against disclosure of the other party’s Confidential Information to parties other than the Customer, the recipient’s employees, Affiliates, agents, or professional advisors (“**Delegates**”) who need to know it and who have a legal obligation to keep it confidential. The recipient will ensure that its Delegates are also subject to the same non-disclosure and use obligations.
- 5.2 **Disclosure of Confidential Information.**
- (a) **General.** Regardless of any other provision in the Agreement, the recipient may disclose the other party’s Confidential Information (i) with the other party’s written consent or (ii) in accordance with a Legal Process request, subject to Section 5.2(b) (Legal Process Notification).
- (b) **Legal Process Notification.** The recipient will use commercially reasonable efforts to notify the other party before disclosing that party’s Confidential Information in accordance with Legal Process. Notice is not required before disclosure if the recipient is informed that (i) it is legally prohibited from giving notice or (ii) the Legal Process relates to exceptional circumstances involving danger of death or serious physical injury.
- (c) **Opposition.** The recipient will comply with the other party’s reasonable requests to oppose disclosure of its Confidential Information.

## **6. Warranties and Remedies.**

- 6.1 **Mutual Warranty.** Each party represents and warrants that it has full power and authority to enter into the Agreement.
- 6.2 **Google Warranty.** Google will perform the Services in a professional and workmanlike manner, in accordance with practices used by other service providers performing services similar to the Services. Google will use Personnel with the requisite skills, experience, and qualifications to perform the

Services. Any claim that Google has breached this warranty must be made within 30 days after Google has provided the Services.

6.3 **Remedies.** Google's entire Liability and Partner's sole remedy for Google's failure to provide Services that conform with Section 6.2 (Google Warranty) will be for Google to at its option: (1) use commercially reasonable efforts to re-provide the Services or (2) terminate the Order Form and refund any applicable Fees received for the nonconforming Services.

6.4 **Disclaimer.** Except as expressly provided for in the Agreement, to the fullest extent permitted by applicable law, Google does not make any warranties of any kind, whether express, implied, statutory, or otherwise, including warranties of merchantability, fitness for a particular use, noninfringement, or error-free or uninterrupted use of the Services.

## 7. **Term; Termination.**

7.1 **Agreement Term.** The Agreement will start on the Effective Date and continue until its termination as described in the remainder of this Section 7 (Term; Termination).

7.2 **Termination for Convenience.** Subject to any financial commitments in an Order Form or addendum to the Agreement, either party may terminate the Agreement or an Order Form for convenience on 30 days' prior written notice to the other party.

### 7.3 **Termination for Breach.**

(a) **Termination of an Order Form.** Either party may terminate an Order Form if the other party is in material breach of this Agreement and fails to cure that breach within 30 days after receipt of written notice.

(b) **Termination of the Agreement.** Either party may terminate the Agreement if the other party: (i) is in material breach of the Agreement and fails to cure that breach within 30 days after receipt of written notice; or (ii) ceases its business operations or becomes subject to insolvency proceedings and such proceedings are not dismissed within 90 days.

7.4 **Effects of Termination.** If the Agreement terminates or expires, then unless otherwise agreed in writing between the Parties, all Order Forms also terminate or expire. The termination or expiration of one Order Form will not affect other Order Forms. If an Order Form terminates or expires, then:

(a) **Effect on Services.** The rights under the Agreement granted by one party to the other regarding the Services will cease immediately except as described in this Section 7.4 (Effects of Termination); and Google will stop work on the Services; and

(b) **Effect on Payment.** Partner will pay for: (i) Services, including work-in-progress, performed before the effective date of termination or expiration and (b) any remaining non-cancellable Fees. Google will send Partner a final invoice for payment obligations under the Order Form.

(c) **Survival.** The following Sections of the Agreement will survive expiration or termination of the Agreement: 3 (Payment), 4 (Intellectual Property), 5 (Confidentiality), 6.3 (Remedies), 6.4 (Disclaimer), 7.4 (Effects of Termination), 8 (Defense and Indemnity), 9 (Limitation of Liability), 11 (General), and 12 (Definitions),.

## **8. Indemnification.**

- 8.1 Google Indemnification Obligations. Google will defend Partner and its Affiliates participating under the Agreement (“Partner Indemnified Parties”), and indemnify them against Indemnified Liabilities in any
- 8.1.a Third-Party Legal Proceeding to the extent arising from an allegation that Partner Indemnified Parties’ use in accordance with the Agreement of Google Indemnified Materials infringes the third party’s Intellectual Property Rights.
- 8.2 Partner Indemnification Obligations. Partner will defend Google, its Personnel, and its Affiliates, and indemnify them against Indemnified Liabilities in any Third-Party Legal Proceeding to the extent arising from any Partner Indemnified Materials.
- 8.3 Indemnification Exclusions. Sections 8.1 (Google Indemnification Obligations) and Section 8.2 (Partner Indemnification Obligations) will not apply to the extent the underlying allegation arises from:
- (a) the indemnified party’s breach of the Agreement; or
  - (b) modifications to the Google Indemnified Materials or Partner Indemnified Materials (as applicable) by anyone other than the indemnifying party; or
  - (c) combination of the Google Indemnified Materials or Partner Indemnified Materials (as applicable) with materials not provided by the indemnifying party under the Agreement, unless the combination is required by the Agreement; or
  - (d) compliance with the indemnified party’s instructions, design or request for customized features.
- 8.4 Indemnification Conditions. Sections 8.1 (Google Indemnification Obligations) and 8.2 (Partner Indemnification Obligations) are conditioned on the following:
- (a) The indemnified party must promptly notify the indemnifying party in writing of any allegation(s) that preceded the Third-Party Legal Proceeding and cooperate reasonably with the indemnifying party to resolve the allegation(s) and Third-Party Legal Proceeding. If breach of this Section 8.4(a) prejudices the defense of the Third-Party Legal Proceeding, the indemnifying party’s obligations under Section 8.1 (Google Indemnification Obligations) or 8.2 (Partner Indemnification Obligations) (as applicable) will be reduced in proportion to the prejudice.
  - (b) The indemnified party must tender sole control of the indemnified portion of the Third-Party Legal Proceeding to the indemnifying party, subject to the following: (i) the indemnified party may appoint its own non-controlling counsel, at its own expense; and (ii) any settlement requiring the indemnified party to admit liability, pay money, or take (or refrain from taking) any action, will require the indemnified party’s prior written consent, not to be unreasonably withheld, conditioned, or delayed.
- 8.5 Remedies.
- (a) If Google reasonably believes the Services or Deliverables might infringe a third party’s Intellectual Property Rights, then Google may, at its sole option and expense: (i) procure the right for Partner to continue using the Services or Deliverables; (ii) modify the Services or Deliverables to make them non-infringing without materially reducing their functionality; or (iii) replace the Services or Deliverables with a non-infringing, functionally equivalent alternative.

(b) If Google does not believe the remedies in Section 8.5(a) (Remedies) are commercially reasonable, then Google may (a) terminate the impacted Services and Partner's use of the impacted Deliverables and (b) provide a pro-rated refund of any Fees paid for such Services or Deliverables.

8.6 **Sole Rights and Obligations.** Without affecting either party's termination rights, this Section 8 (Indemnification) states the parties' sole and exclusive remedy under the Agreement for any third party allegations of Intellectual Property Rights infringement covered by this Section 8 (Indemnification).

## 9. **Liability.**

### 9.1 **Limited Liabilities.**

(a) **To the extent permitted by applicable law and subject to Section 9.2 (Unlimited Liabilities), neither party will have any Liability arising out of or relating to the Agreement for any:**

- (i) **indirect, consequential, special, incidental, or punitive damages; or**
- (ii) **lost revenues, profits, savings, or goodwill.**

(b) **Each party's total aggregate Liability for damages arising out of or relating to the Agreement is limited to the Fees Partner paid under this Agreement during the 12 month period before the event giving rise to Liability.**

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

- (a) **death, personal injury, or tangible personal property damage resulting from its negligence or the negligence of its employees or agents;**
- (b) **its fraud or fraudulent misrepresentation;**
- (c) **its obligations under Section 8 (Indemnification);**
- (d) **its infringement of the other party's Intellectual Property Rights;**
- (e) **its payment obligations under the Agreement; or**
- (f) **matters for which liability cannot be excluded or limited under applicable law.**

10. **Insurance.** During the term of the Agreement, each party will maintain, at its own expense, appropriate insurance coverage applicable to performance of the party's respective obligations under the Agreement, including general commercial liability, worker's compensation, automobile liability, and professional liability.

## 11. **Miscellaneous.**

11.1 **Notices.** Google will provide notice to Partner under the Agreement by sending an email to the Notification Email Address. Partner will provide notice to Google by sending an email to [legal-notices@google.com](mailto:legal-notices@google.com). Notice will be treated as received when the email is sent. Partner is responsible for keeping its Notification Email Address current throughout the Term.

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

11.3 **Assignment.** Neither party may assign any the 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.

- 11.4 Change of Control. If a party experiences a change of Control other than an internal restructuring or reorganization: (a) that party will give written notice to the other party within 30 days after the change of Control; and (b) the other party may immediately terminate the Agreement any time within 30 days after it receives that written notice.
- 11.5 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.
- 11.6 No Agency. The Agreement does not create any agency, partnership, or joint venture between the parties.
- 11.7 No Waiver. Neither party will be treated as having waived any rights by not exercising (or delaying the exercise of) any rights under the Agreement.
- 11.8 Severability. If any part of the Agreement is invalid, illegal or unenforceable, the rest of the Agreement will remain in effect.
- 11.9 No Third-Party Beneficiaries. The Agreement does not confer any benefits on any third party unless it expressly states that it does.
- 11.10 Equitable Relief. Nothing in the Agreement will limit either party's ability to seek equitable relief.
- 11.11 Governing Law. All claims arising out of or relating to the Agreement or the Services will be governed by California law, excluding that state's conflict of laws rules, and will be litigated exclusively in the federal or state courts of Santa Clara County, California; the parties consent to personal jurisdiction in those courts.
- 11.12 Amendments. Except as specifically described otherwise in the Agreement, any amendment to the Agreement must be in writing, expressly state that it is amending the Agreement, and be signed by both parties.
- 11.13 Independent Development. Nothing in the 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 the Agreement, provided that the party does not violate its obligations under this Agreement in doing so.
- 11.14 Entire Agreement. The Agreement states all terms agreed between the parties, and supersedes any prior or contemporaneous agreements between the parties, relating to the subject matter of the Agreement. In entering into the 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 the Agreement. Nothing in the Agreement grants any right for Partner to use materials, products or services that are made available to Google customers under a separate license or agreement.
- 11.15 Conflicting Terms. If there is a conflict among the documents that make up the Agreement, then the documents will control in the following order: the applicable Order Form and the Agreement.

- 11.16 Conflicting Languages. If the Agreement is translated into any other language, and there is a discrepancy between the English text and the translated text, the English text will control.
- 11.17 Counterparts. The parties may execute the Agreement in counterparts, including facsimile, PDF, and other electronic copies, which taken together will constitute one instrument.
- 11.18 Electronic Signatures. The parties consent to electronic signatures.
- 11.19 Headers. Headings and captions used in the Agreement are for reference purposes only and will not have any effect on the interpretation of the Agreement.

## **12. Definitions.**

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

“Background IP” means all Intellectual Property owned or licensed by a party (a) before the Effective Date of the applicable Order Form or (b) independent of the Services.

“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. Confidential Information does not include information that is independently developed by the recipient, is shared with the recipient by a third party without confidentiality obligations, or is or becomes public through no fault of the recipient. Partner’s Confidential Information may include Customer’s confidential information.

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

“Customer” means the third party end user that is receiving advisory services from the Partner related to Google products or services.

“Deliverables” means work product created specifically for Partner by Google Personnel as part of the Services and specified as Deliverables as part of an Order Form.

“Effective Date” means the date of the last party’s signature of this Agreement.

“Fees” means the applicable fees for the Services as specified in an Order Form, including any reimbursable expenses (if applicable).

“Google Indemnified Materials” means Deliverables and Google Technology (in each case, excluding any open source software). Google Indemnified Materials do not include Partner Background IP.

“Google Technology” means: (a) Google Background IP, (b) all Intellectual Property and know-how applicable to Google products and services, and (c) tools, code, algorithms, modules, materials, documentation, reports and technology developed in connection with the Services that have general application to Google’s other customers and partners, including derivatives of and improvements to Google’s Background IP. Google Technology does not include Partner Background IP or Partner Confidential Information.

“Including” or “including” means including but not limited to.



“Indemnified Liabilities” means any (i) settlement amounts approved by the indemnifying party, and (ii) damages and costs in a final judgment awarded against the indemnified party and its Affiliates by a court of competent jurisdiction.

“Intellectual Property” or “IP” means anything protectable by an Intellectual Property Right.

“Intellectual Property Right(s)” means all patent rights, copyrights, trademark rights, rights in trade secrets (if any), design rights, database rights, domain name rights, moral rights, and any other intellectual property rights (registered or unregistered) throughout the world.

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

“Notification Email Address” means the email address(es) designated by Partner in the applicable Order Form.

“Order Form” means an order form or other document issued by Google under this Agreement, including data sheets associated with Services described in the order form, and executed by Partner and Google specifying the Services Google will provide to Partner.

“Partner Indemnified Materials” means Partner Background IP, and any other information, materials, or technology provided to Google by Partner or Customer in connection with the Services (in each case, excluding any open source software). Partner Indemnified Materials do not include Google Technology or Deliverables.

“Payment Due Date” means 30 days from the invoice date.

“Personal Data” means personal data that (a) has the meaning given in the General Data Protection Regulation (EU) 2016/679 of the European Parliament and of the Council of April 27, 2016 (“GDPR”) and (b) would cause Google to be subject to GDPR as a data processor for Partner.

“Personnel” means a party’s and its Affiliates’ respective directors, officers, employees, agents, and subcontractors.

“Services” means the then-current partner advisory services described at [g.co/cloudpsoterm](http://g.co/cloudpsoterm)s and similar advisory services designed to help Partner deliver professional services to Customer for Google products and services.

“Tax(es)” means all government-imposed taxes, except for taxes based on Google’s net income, net worth, asset value, property value, or employment.

“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).

“Trademark Guidelines” means Google’s Brand Terms and Conditions, located at: <http://www.google.com/permissions/trademark/brand-terms.html>.