Google North America

April 2023

GOOGLE SUPPLIER PURCHASE ORDER TERMS AND CONDITIONS

Introduction; Applicable Terms.

(A) If the Google entity ("**Google**") and the vendor entity ("**Contractor**") identified in the Purchase Order have executed a separate written agreement governing the Services, Deliverables, or Products specified in the Purchase Order ("**Existing Agreement**"), then the Existing Agreement will apply to those Services, Deliverables, or Products.

(B) Otherwise, the terms and conditions below ("**T&Cs**"), together with the Purchase Order, form an "**Agreement**" during the Term between Google and Contractor for the Services, Deliverables, and Products specified in the Purchase Order. If these T&Cs conflict with the Purchase Order, these T&Cs govern. Terms referencing Services, Deliverables, and Products apply only to the extent that such items are ordered in the Purchase Order.

(C) Google objects to any additional or different terms in any Contractor documents, including quotations, acknowledgments, or online terms. Those Contractor terms will be considered material alterations to the Agreement and are void.

1. **Definitions**.

1.1 "**Background IP**" means all Intellectual Property owned or licensed by a party (A) before starting the Services, or (B) independent of the Agreement.

1.2 "**Deliverables**" means any work product (including third party materials) provided by Contractor to Google under this Agreement.

1.3 "**Developed IP**" means any Intellectual Property created or discovered by Contractor or Google in connection with this Agreement.

1.4 "**Inspection Period**" means a 30 day period following Google's receipt of the applicable Services or Deliverables, unless otherwise specified in the Purchase Order.

1.5 "**Intellectual Property**" means anything protectable by an Intellectual Property Right.

1.6 "**Intellectual Property Right(s)**" means all registered or unregistered intellectual property rights throughout the world, including rights in patents, copyrights, trademarks, trade secrets, designs, databases, domain names, and moral rights.

1.7 "**Personnel**" means Contractor (if an individual) and all employees and agents of Contractor and its subcontractors and their agents.

1.8 "**Product**" means any tangible goods or non-customized software offered or provided by Contractor.

1.9 "**Purchase Order**" means an ordering document (including any incorporated attachments) for Services, Deliverables, or Products submitted to Contractor by Google.

1.10 "**Services**" means all services specified or provided under this Agreement.

1.11 "**Tax(es)**" means all government-imposed tax obligations (including taxes, duties, and withholdings), except those based on Contractor's or Personnel's net income, net worth, asset value, property value, or employment.

1.12 "**Term**" means the term of the Agreement starting on Contractor's acknowledgement of or commencement of performance under the Purchase Order and ending on Google's acceptance or final rejection of all Services, Deliverables, and Products, unless terminated earlier in accordance with this Agreement.

1.13 "**Transfer Law**" means (A) applicable law implementing Council Directive 2001/23/EC; and (B) any other laws, directives, regulations and rules implementing provisions to safeguard and transfer employee rights on a change in service provider, in any jurisdiction applicable to Contractor and the Services under this Agreement.

1.14 In this Agreement, (A) "**include**" or "**including**" means "including but not limited to", and (B) examples are illustrative and not the sole examples of a particular concept.

2. **Services, Deliverables, and Products**.

2.1 Requirements.

(A) Ordering. Contractor will provide Services, Deliverables, and Products as specified in the Purchase Order.

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(B) Software Requirements. If Contractor includes any customized software in the Services or Deliverables, then Contractor will develop all such software in compliance with Google-provided software guidelines.

(C) Product Supply. Attachment A (Product Supply) will apply to the extent that Google orders any Product.

(D) Other Services. For the purposes of the Attachments described below, references to "ISA" will mean "T&Cs" and "SOW" will mean "Purchase Order":

(1) Marketing Services. The Marketing Services Attachment at g.co/legal/msa-na will apply to the extent that Contractor provides any Marketing Services (as defined in such Attachment), such as any creative design, advertising, marketing, or production Services.

(2) SaaS Services. The Software as a Service Attachment at g.co/legal/saas-na will apply to the extent that Contractor provides any software as a service, cloud, or other hosted software Services.

(3) Research Services. The Research Services Attachment at g.co/legal/rsa-na will apply to the extent that Contractor provides any research Services.

2.2 Inspection; Acceptance; Rejection.

(A) Inspection. Google may inspect the Services and Deliverables during the Inspection Period.

(B) Acceptance. Any Services or Deliverables not rejected within the Inspection Period will be deemed accepted. Acceptance does not reduce any applicable warranties under this Agreement.

(C) Rejection; Corrections. During the Inspection Period, Google may reject Services and Deliverables that do not meet this Agreement's warranties or specifications. Google will provide a written explanation for any rejected Services or Deliverables. If requested by Google during the Inspection Period, Contractor will correct and re-deliver any rejected Services and Deliverables at no cost to Google, under agreed deadlines, and subject to further Inspection Period(s). Otherwise, Google's rejection is final and Google will have no obligation to pay for the rejected Services and Deliverables.

2.3 Notice of Delays. Contractor will promptly notify Google in writing of anything that is likely to cause a delay in the delivery of any Deliverable.

3. **Payment.**

3.1 Invoices.

(A) Submitting Invoices. Contractor will invoice Google in accordance with the fee(s) specified in the Purchase Order. Contractor will submit itemized invoices to the online portal specified by Google according to the portal's instructions. Unless otherwise specified in the Purchase Order, Contractor will invoice Google monthly in arrears and only for accepted Services and Deliverables.

(B) Disputing Invoices. Google will only initiate invoice disputes in good faith, and will provide a written description of the disputed amounts. Upon Google's request, Contractor will issue separate invoices for undisputed and disputed amounts. Payment of any undisputed amounts will not compromise Google's right to object to the disputed amounts. Disputed amounts will not be due until the dispute is finally resolved, and will then be payable according to Subsection (C) (Paying Invoices).

(C) Paying Invoices. Google will pay Contractor within 45 days after Google receives a correct invoice. Google is not required to pay any invoice submitted more than 180 days after the end of the applicable Inspection Period for the Services or Deliverables.

3.2 Expenses.

(A) Expenses Eligible for Reimbursement. Google will reimburse Contractor for expenses up to the amounts specified in the Purchase Order, and only if they are:

(1) actual, reasonable, and necessary (without mark-ups or commissions);

(2) approved in advance and in writing by Google; and

(3) accompanied by receipts and other documentation that Google may request establishing the type, date, amount, payment, and purpose for such expenses.

(B) Contractor Responsible for Personnel's Expenses. Contractor is solely responsible for reimbursing Personnel's expenses and will do so in accordance with all applicable laws and regulations.

3.3 Right to Offset Payment. In addition to other rights and remedies Google may have, Google may offset any payment obligations to Contractor that Google may incur under this Agreement against any fees owed to Google and not yet paid by Contractor under this Agreement or any other agreement between Contractor and Google. Google may also withhold and offset against its payment obligations under this Agreement, or require Contractor to pay to Google within 30 days of receipt of Google's invoice, any amounts Google may have overpaid to Contractor in prior periods.

3.4 Taxes.

(A) Invoicing. For Services performed within the United States, Taxes are not included in the fees and will be separately itemized on Contractor's invoices if applicable. Otherwise, Taxes are included in the fees. Any Services provided from India (including any subcontracted Services) are exports that are not subject to Taxes.

(B) Payment. Google will pay correctly-stated Taxes unless Google provides a valid Tax exemption certificate. Google will withhold Taxes if legally required.

(C) Tax Documentation. Contractor will timely provide customary tax documentation reasonably requested by Google.

3.5 Bank Charges. The party receiving payment will be responsible for bank and credit card charges assessed by its bank or the credit card issuer.

4. **Intellectual Property and Deliverables**.

4.1 Background IP. Except for the license rights under Section 5 (Licenses), neither party will own or acquire any right, title, or interest to the other party's Background IP under this Agreement.

4.2 Third Party Materials. Contractor will not incorporate any third party's Intellectual Property or any open source materials into any Deliverable without Google's prior written approval of: (A) such incorporation; and (B) any applicable license terms.

4.3 Developed IP; Deliverables.

(A) Title to Deliverables. Title to the Deliverables will transfer to Google upon delivery.

(B) Ownership of Developed IP. Google owns any Developed IP. Contractor assigns all right, title, and interest in the Developed IP, including Intellectual Property Rights, to Google. Contractor will procure the assignment to Google of all rights in the Developed IP not owned by Contractor. If applicable law prevents future assignments, Contractor will assign (or will procure the assignment of) such rights as they are created.

(C) License to Developed IP if Assignment Fails. If applicable law prevents Contractor from transferring ownership of any Developed IP to Google, Contractor grants to Google a perpetual, irrevocable, exclusive, royalty-free, fully-paid, transferrable, worldwide license (with the right to sublicense) to:

(1) reproduce, prepare derivative works of, distribute, publicly perform, publicly display, and otherwise use such Developed IP; and

(2) make, use, sell, offer for sale, import, export any component of, and otherwise dispose of such Developed IP.

(D) Assistance to Accomplish Assignment. If requested by Google, Contractor will timely perform all acts reasonably necessary to accomplish the assignments and other transactions specified in this Agreement.

(E) Moral Rights in Deliverables. Contractor will not assert, and to the extent permitted by applicable law, otherwise waives, any moral rights in the Deliverables and Developed IP. Contractor will ensure that Personnel and other third parties who have moral rights in the Deliverables and Developed IP will also not assert, and to the extent permitted by applicable law, will waive, those moral rights.

5. **Licenses**.

5.1 Google Background IP and Developed IP. If Google permits Contractor to use any of Google's Background IP or the Developed IP to provide Google with the Services or Deliverables, then subject to this Agreement, Google grants to Contractor a limited, non-exclusive, non-transferable, royalty-free, fully-paid, worldwide license (with the right to sublicense to its delegates and subcontractors authorized by Google under Section 12.9 (Subcontracting)) to do the following, during the Term, solely for the purpose of, and only to the extent needed for, performing the Services and providing the Deliverables:

(A) reproduce, prepare derivative works of, distribute, publicly perform, publicly display, and otherwise use such Background IP and Developed IP;

(B) make, use, and import such Background IP and Developed IP; and

(C) use brand features provided by Google under this Agreement, subject to the Google Brand Features Guidelines at http://www.google.com/permissions/, and any restrictions specified in the Purchase Order or by the Purchase Order's specified Google point of contact.

5.2 Contractor Background IP. If Contractor's Background IP is incorporated in, or is necessary to use, any Deliverable:

(A) Subject to Section 4.2 (Third Party Materials), Contractor will describe its Background IP in writing if requested by Google; and

(B) Contractor grants to Google and its affiliates a perpetual, irrevocable, non-exclusive, royalty-free, fully-paid, worldwide license (with the right to sublicense) to do the following:

(1) reproduce, prepare derivative works of, distribute, publicly perform, publicly display, and otherwise use such Background IP in connection with the Deliverables and Developed IP; and

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(2) make, use, sell, offer for sale, import, export any component of, and otherwise dispose of such Background IP in connection with the Deliverables and Developed IP.

6. **Confidentiality; Publicity; Privacy and Security**.

6.1 Definition. "**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. Each party's Background IP is its Confidential Information. The Developed IP and Deliverables are Google's Confidential Information.

6.2 Confidentiality Obligations. The recipient will not disclose the discloser's Confidential Information, except to employees, affiliates, agents, professional advisors, or third-party contractors ("**Delegates**") who need to know it and who have a legal obligation to keep it confidential. The recipient will use the Confidential Information only to exercise rights and fulfill obligations under this Agreement while using reasonable care to protect the Confidential Information. The recipient may disclose Confidential Information when legally compelled by a court or other government authority. To the extent permitted by law, recipient will promptly provide the discloser with sufficient notice of all available details of the legal requirement and reasonably cooperate with the discloser's efforts to challenge the disclosure, seek an appropriate protective order, or pursue such other legal action, as the discloser may deem appropriate. The recipient will ensure that its Delegates are also subject to the same non-disclosure and use obligations.

6.3 No Rights. Except for the limited rights under this Agreement, neither party acquires any right, title, or interest in the other party's Confidential Information.

6.4 Independent Development. Each party acknowledges that the recipient may develop or receive from third parties Intellectual Property that may be similar to the discloser's Confidential Information. This Agreement does not prevent the recipient from developing or purchasing products or services, for itself or others, that compete with those of the discloser, so long as the recipient does not do so in breach of this Agreement. Each party is free to use for any purpose any Residuals acquired by that party if that use does not breach the non-disclosure requirements of this Agreement. "**Residuals**" means information in intangible form that an individual retains in unaided memory without intentionally memorizing that information.

6.5 No Publicity. Neither party may make any public statement regarding this Agreement without the other's written approval.

6.6 Privacy and Security. Each party will comply with the Information Protection Addendum at https://business.safety.google/ipa, as applicable.

7. **Independent Contractor; Personnel**.

7.1 Not Employees. Contractor is an independent contractor. Contractor and Personnel are not Google employees. Contractor is responsible for:

(A) Personnel's acts and omissions;

(B) staffing, instructing, and managing Personnel performing Services;

(C) providing all equipment necessary for Personnel to perform Services, except where otherwise provided by Google at its discretion, including for security purposes; and

(D) determining Personnel's compensation (i.e., any stated rates for Services provided are not wage rates).

7.2 No Employee Compensation or Benefits. Contractor and Personnel (A) will not be entitled to any compensation, stock, options, or other rights or benefits provided to Google employees; (B) waive any right to them; and (C) promise never to claim them. Contractor will notify Personnel in writing of the above and will obtain a similar waiver from Personnel.

7.3 Income Tax Withholding for Personnel. Contractor is responsible for any income tax withholding applicable to Personnel.

7.4 Termination of Personnel. Contractor is responsible for all costs associated with terminating Personnel, including:

(A) costs arising under applicable law;

(B) costs arising under an agreement between Contractor and Personnel; and

(C) costs incurred by Google as a result of such termination.

7.5 No Transfer of Employment. Google and Contractor intend that the Transfer Law will not apply to Services or this Agreement.

8. **Representations and Warranties**.

8.1 Mutual. Each party represents and warrants that it has full power and authority to enter into and fulfill its obligations under this Agreement.

8.2 Contractor. Contractor represents and warrants that:

(A) Quality. Contractor's performance under this Agreement will be of professional quality and performed with reasonable skill and care consistent with generally-accepted industry standards. All Personnel performing Services have the requisite skills, experience, and qualifications.

(B) Specifications and Requirements. The Services and Deliverables will meet this Agreement's specifications and requirements.

(C) Viruses and Malicious Code. The Deliverables will be free from any viruses or other malicious code.

(D) No Conflicts. There are no actual or potential conflicts of interest concerning the Services.

(E) License Rights. Contractor has and will retain all necessary rights to grant the licenses in this Agreement and provide the Services and Deliverables to Google, at no greater cost to Google than specified in the Purchase Order.

(F) No Breach of Third-Party Obligations. Contractor and Personnel's fulfillment of their obligations under this Agreement will not breach any obligations they have to any third party.

(G) No Use of Third-Party Confidential Information. In performing the Services, Contractor will not use or bring to Google any third party's confidential or proprietary information unless Contractor obtains the third party's and Google's prior written consent.

(H) Compliance with Google's Procedures, Policies, and Code of Conduct. Contractor and Personnel will comply with:

(1) all procedures and policies provided by Google (including Google's environmental, health, safety, and security procedures) and related management systems, when performing Services at Google facilities or using Google-provided networks, systems, or equipment;

(2) the wage and benefits requirements at https://support.google.com/corporate-suppliers/answer/10208902 with respect to all Personnel that meet the eligibility requirements described at such URL; and

(3) Google's Supplier Code of Conduct at https://about.google/supplier-code-of-conduct/.

(I) Compliance with Laws. In connection with this Agreement, Contractor and Personnel will comply with all applicable laws and regulations, which may include those identified below. Contractor will use commercially reasonable and good faith efforts to comply with Google's due diligence process, including providing requested information.

(1) Import and Export. Contractor will comply with all applicable import and export laws and trade sanction regulations.

(2) Anti-Bribery. Contractor will comply with all applicable campaign finance and gift laws and anti-bribery laws, including the U.S. Foreign Corrupt Practices Act of 1977 and the UK Bribery Act of 2010, which prohibit corrupt direct or indirect offers of anything of value to anyone (including government officials) to obtain or keep business or to secure any other improper commercial advantage. Contractor will not: (i) make any facilitation payments to induce government officials to perform otherwise required functions; or (ii) directly or indirectly, pay, offer, or agree to give any campaign contributions or gifts to government officials in connection with the Services. "**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.

(3) Employment; Occupational Health and Safety. Unless otherwise expressly permitted in the Purchase Order, Contractor will use only W-2 employees (or the local equivalent under applicable law) to provide Services (including any subcontracted Services). Contractor will comply with all applicable employment and occupational health and safety laws and regulations, including those related to employment practices, wages, and worker classification (such as meal and rest break laws, wage notices, separation pay, and overtime laws).

(4) Tax. Contractor will comply with all applicable tax laws as to Personnel and the Services

(5) Modern Slavery. Contractor will comply with all applicable anti-human trafficking, forced labor, and modern slavery laws and rules. Contractor will take reasonable steps to ensure that no slavery, servitude, forced or compulsory labor, or human trafficking occurs in its provision of Services or supply chain.

(6) UK Living Wage. Contractor will comply with the UK Living Wage Attachment at https://support.google.com/legal/answer/10050280 for any Services performed in the United Kingdom.

(7) Lobby Disclosures and Ethics. Contractor will comply with the lobby disclosure and ethics requirements at https://support.google.com/legal/answer/13495990 to the extent the Services include government relations or lobbying activities.

9. **Defense and Indemnity.**

9.1 Obligations. Contractor will defend and indemnify Google, its affiliates, and their respective directors, officers, and employees against all settlement amounts approved by Contractor and any liabilities, damages, losses, costs, fees (including legal fees), and expenses in connection with any third-party claim or legal proceeding (including action by a government authority) to the extent arising from:

(A) Contractor's breach of warranty, negligence, willful misconduct, fraud, misrepresentation, or violation of applicable laws;

(B) any property damage, personal injury, or death related to Contractor's performance of the Services;

(C) Contractor's breach of Section 6 (Confidentiality; Publicity; Privacy and Security) or applicable data protection laws;

(D) any allegation by or on behalf of Personnel, including that Personnel are entitled to employee compensation, benefits, Transfer Law, or other rights or that is premised on Google or its affiliates jointly or otherwise employing Personnel; or

(E) any allegation that use of the Services or Deliverables infringes or misappropriates any third party's rights, including Intellectual Property Rights.

9.2 Exclusions. This Section 9 (Defense and Indemnity) will not apply to the extent the underlying allegation arises from:

(A) modifications to the Services or Deliverables not authorized or made by Contractor; or

(B) compliance with designs or instructions provided by Google in writing.

9.3 Control of Defense. Google will tender sole control of the indemnified portion of the legal proceeding to Contractor, but

(A) Google has the right to approve controlling counsel, such approval not to be unreasonably withheld (and which approval may be withheld or withdrawn if there is a conflict of interest);

(B) Google may appoint its own non-controlling counsel; and

(C) any settlement requiring Google to admit liability, pay money, or take (or refrain from taking) any action, will require Google's prior written consent.

10. **Limitations of Liability.**

10.1 Liability. IN SECTION 10 (LIMITATIONS OF LIABILITY), "**LIABILITY**" MEANS ANY LIABILITY, WHETHER UNDER CONTRACT, TORT (INCLUDING NEGLIGENCE), OR OTHERWISE (WHETHER OR NOT FORESEEABLE OR CONTEMPLATED BY THE PARTIES).

10.2 Limitations. SUBJECT TO SECTION 10.3 (EXCEPTIONS TO LIMITATIONS):

(A) NEITHER PARTY WILL HAVE ANY LIABILITY ARISING OUT OF OR RELATING TO THIS AGREEMENT FOR:

(1) THE OTHER PARTY'S LOST REVENUES OR PROFITS;

(2) INDIRECT, SPECIAL, INCIDENTAL, OR CONSEQUENTIAL LOSSES; OR

(3) EXEMPLARY OR PUNITIVE DAMAGES; AND

(B) EACH PARTY'S AGGREGATE LIABILITY ARISING OUT OF OR RELATING TO THIS AGREEMENT WILL NOT EXCEED THE GREATER OF:

(1) US$1,000,000; OR

(2) THE TOTAL AMOUNTS PAID AND PAYABLE BY GOOGLE TO CONTRACTOR UNDER THIS AGREEMENT FOR THE 12 MONTHS PRECEDING THE SUBJECT CLAIM.

10.3 Exceptions to Limitations. THIS AGREEMENT DOES NOT EXCLUDE OR LIMIT EITHER PARTY'S LIABILITY FOR:

(A) DEATH OR PERSONAL INJURY RESULTING FROM ITS NEGLIGENCE OR THE NEGLIGENCE OF ITS PERSONNEL;

(B) FRAUD OR FRAUDULENT MISREPRESENTATION;

(C) BREACH OF SECTION 5 (LICENSES);

(D) BREACH OF SECTION 6 (CONFIDENTIALITY; PUBLICITY; PRIVACY AND SECURITY);

(E) ITS OBLIGATIONS UNDER SECTION 3 (PAYMENT) AND SECTION 9 (DEFENSE AND INDEMNITY); OR

(F) MATTERS FOR WHICH LIABILITY CANNOT BE EXCLUDED OR LIMITED UNDER APPLICABLE LAW.

11. **Termination.**

11.1 Termination for Breach. Either party may immediately terminate this Agreement on written notice if:

(A) the other party breaches Section 6 (Confidentiality; Publicity; Privacy and Security), Section 8 (Representations and Warranties), or Section 12.2 (Insurance); or

(B) the other party is in material breach of this Agreement and fails to cure that breach within 30 days after receiving written notice from the first party identifying the breach.

11.2 Termination for Legal Cause. Either party may immediately suspend performance or terminate this Agreement if an applicable law or an applicable government or court order prohibits such performance.

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11.3 Termination for Convenience. Google may terminate this Agreement for convenience on written notice to Contractor, subject to Section 11.4(B) (Effects on Invoices).

11.4 Effects of Termination.

(A) Effects on Purchase Order. Unless otherwise specified in the termination notice, termination is effective immediately and Contractor will stop work immediately on receipt of the termination notice. Contractor will immediately deliver all Deliverables (including work product in progress) to Google in accordance with the terms of this Agreement. Termination of this Agreement terminates all licenses that Google granted under the Agreement, including Section 5.1 (Google Background IP and Developed IP).

(B) Effects on Invoices. Google will pay for accepted Services and Deliverables invoiced before the date of termination. However, if Google terminates for convenience, Contractor may also invoice Google for any Services and Deliverables not yet invoiced at a pro-rated price based on the percentage of work completed before the termination date.

(C) Survival. Sections 1 (Definitions), 3 (Payment), 4 (Intellectual Property and Deliverables), 5.2 (Contractor Background IP), 6 (Confidentiality; Publicity; Privacy and Security), 7 (Independent Contractor; Personnel), 8 (Representations and Warranties), 9 (Defense and Indemnity), 10 (Limitations of Liability), 11.4 (Effects of Termination), and 12 (General) will survive any termination of this Agreement.

12. **General.**

12.1 Equal Employment Opportunities. **Google is an equal opportunity employer and federal contractor or subcontractor. Consequently, as applicable, the parties will abide by the requirements of 41 CFR 60-1.4(a), 41 CFR 60-300.5(a), and 41 CFR 60-741.5(a) which are incorporated into this Agreement by reference. These regulations prohibit discrimination against qualified individuals based on their status as protected veterans or individuals with disabilities, and prohibit discrimination against all individuals based on their race, color, religion, sex, sexual orientation, gender identity or national origin. These regulations require that covered prime contractors and subcontractors take affirmative action to employ and advance in employment individuals without regard to race, color, religion, sex, sexual orientation, gender identity, national origin, disability, or veteran status. As applicable, the parties will also abide by the requirements of 41 CFR 61-300.10 regarding veteran's employment reports, and Executive Order 13496 (29 CFR Part 471, Appendix A to Subpart A), relating to the notice of employee rights under federal labor laws.**

12.2 Insurance. Contractor will maintain insurance policies in accordance with Attachment B (Insurance).

12.3 Property Damaged or Not Returned. Contractor will, at Google's option, promptly repair, replace, or compensate Google for the value of any Google property that is: (A) lost or damaged by Personnel; or (B) not returned on completion of the applicable Services.

12.4 Background Checks. To the extent applicable, Contractor will comply with the background check policies in Attachment C (Background Checks).

12.5 Records and Audit Rights.

(A) Maintaining Records. Contractor will maintain complete and accurate records relating to this Agreement.

(B) Right to Examine Deliverables. Google may examine the Deliverables at any time.

(C) Right to Audit Records. During the Term, and for one year after this Agreement terminates, Google or its third-party auditor may audit Contractor's relevant records to confirm Contractor's compliance with this Agreement. Google's auditor will only have access to those records reasonably necessary to confirm such compliance. Contractor will repay Google any overcharged amounts by, at Google's option, either: (1) promptly issuing a credit to Google; or (2) issuing a refund to Google within 30 days of Google's invoice date. Contractor will reimburse Google for all reasonable audit costs if the price discrepancy for any particular invoice exceeds 3 percent.

(D) Notice of Government Audits. If a government authority audits any portion of Contractor's business related to the Services or Deliverables, Contractor will promptly notify Google and provide Google with reasonably-requested information about the audit.

12.6 Notices. All notices must be in English and in writing. Notices of breach or termination must be addressed to the other party's Legal Department. The address for notices to Google's Legal Department is legal-notices@google.com. All other notices must be addressed to the other party's primary contact. Emails are written notices. Notice will be treated as given on receipt, as confirmed by written or electronic records.

12.7 Assignment. Contractor may not assign or transfer its rights or obligations under this Agreement without Google's written consent, and any attempt to do so is void. Google may assign or transfer any of its rights or obligations under this Agreement to an affiliate.

12.8 Change of Control. Without limiting Contractor's obligations under Section 12.7 (Assignment), if during the Term Contractor experiences a change of control (for example, through a stock purchase or sale, merger, or other form of corporate transaction) or sells all or substantially all of its assets, then Contractor will give written notice to Google within 30 days after such event.

12.9 Subcontracting. Contractor may not delegate or subcontract any of its obligations under this Agreement without Google's written consent. Contractor will remain liable for all subcontracted obligations and all acts or omissions of its subcontractors.

12.10 Business Continuity. Contractor will maintain a reasonable business continuity and recovery plan that is consistent with generally-accepted industry standards.

12.11 No Waiver. A party's delay or omission in exercising any right under this Agreement will not be treated as a waiver of that right. To be effective, a waiver must expressly state the right being waived under this Agreement and be signed by the waiving party.

12.12 No Agency. This Agreement does not create any agency, partnership, joint venture, or employment relationship.

12.13 No Third-Party Beneficiaries. There are no third-party beneficiaries under this Agreement unless the Agreement expressly states that there are. The parties can amend, rescind, or terminate this Agreement without any third-party beneficiary's consent.

12.14 Signatures. Purchase Orders do not need to be signed (unless a signature block is included). The Agreement is effective on Contractor's acknowledgement of or commencement of performance under the Purchase Order.

12.15 Entire Agreement. This Agreement states all the terms agreed between the parties and supersedes all other agreements between the parties relating to its subject matter. In entering into this Agreement, the parties have relied solely on the express statements in this Agreement. Neither party has relied on, and neither party will have any right or remedy based on, any other statement, representation, or warranty (whether made negligently or innocently). Any terms or conditions on a quote, invoice, or other similar document from Contractor related to this Agreement, including any online terms, are void. Any feedback or comments provided by Contractor relating to this Agreement are for technical or typographical issues only, and will not amend the Agreement's terms.

12.16 Amendments. Any amendment must be in writing, signed by both parties, and expressly state that it is amending this Agreement.

12.17 Severability. If any part of this Agreement is invalid, illegal, or unenforceable, the rest of this Agreement will remain in effect.

12.18 Order of Precedence. The terms in these T&Cs will take precedence over conflicting terms in the Purchase Order.

12.19 Governing Law. CALIFORNIA LAW WILL GOVERN ALL DISPUTES ARISING OUT OF OR RELATING TO THIS AGREEMENT, REGARDLESS OF ANY CONFLICT OF LAWS RULES. THESE DISPUTES WILL BE RESOLVED EXCLUSIVELY IN THE FEDERAL OR STATE COURTS OF SANTA CLARA COUNTY, CALIFORNIA, USA, AND THE PARTIES CONSENT TO PERSONAL JURISDICTION IN THOSE COURTS. THIS SECTION 12.19 (GOVERNING LAW) IS NOT INTENDED TO CREATE ANY CALIFORNIA STATUTORY OR COMMON LAW RIGHTS FOR ANY PERSONNEL WORKING OUTSIDE OF CALIFORNIA.

Attachment A

Product Supply

This Attachment will apply to the extent that Google orders any Product. To the extent this Attachment and the body of the T&Cs conflict, this Attachment will govern.

1. **Definitions**.

1.1 "**Defect**" or "**Defective**" means, with respect to a Product, a failure to meet the Product warranties in Sections 8.1 (Product Specifications) and 8.2 (Product Quality) of this Attachment.

1.2 "**Warranty Period**" means the 12-month period starting on the date Google accepts a Product, unless otherwise noted in the Purchase Order.

2. **Ordering Product and Services**.

2.1 Ordering. Contractor will provide Products at the prices, delivery dates, and delivery locations for Products specified in the Purchase Order.

2.2 Changes. Google may reschedule Products or change the delivery destination for Products at no cost to Google, except that if requested changes materially increase or decrease the cost to provide Products, the parties will negotiate an appropriate adjustment to their obligations under the Purchase Order.

3. **Product Payment**.

3.1 Product Invoices. Contractor will invoice Google upon Google's acceptance of the Products. Correct invoices for Product will include, at a minimum, complete bill-to address, Product part numbers and quantities, description of Products, unit prices, applicable tax or other charges, and extended totals. Google is not required to pay any invoice submitted 180 days or more after a Product is shipped.

3.2 Product Taxes. For Products provided from the United States, Taxes are not included in the fees and will be separately itemized on Contractor's invoices if applicable. Otherwise, Taxes are included in the fees.

4. **Product Delivery**.

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4.1 Product Shipping.

(A) Delivery Terms; Title Transfer. Unless otherwise specified in the Purchase Order, Contractor will deliver Products FCA (Incoterms 2020) to the applicable delivery destination. Title and risk of loss will transfer from Contractor to Google at the delivery destination.

(B) Trade Compliance. When Contractor is responsible for exporting or importing Product, Contractor will obtain all authorizations and permits necessary to fulfill all applicable governments' requirements for Product shipment.

(C) Import/Export Information. Upon Google's request, Contractor will provide Google with any information Google reasonably requests regarding Product importation, exportation, or distribution.

4.2 Product Packing. Contractor will package Products according to any instructions Google provides in the Purchase Order, and if none are provided, then according to good commercial practice to ensure safe arrival of the Products.

4.3 Advance Delivery. Google may refuse any delivery made more than 5 days before the delivery date and Contractor will re-deliver the Product on the correct date at Contractor's expense.

4.4 Excess Product. Google may return to Contractor, at Contractor's expense, any quantity of Product exceeding that specified in the Purchase Order.

4.5 Late Product Delivery.

(A) If a Product shipment (or part of a shipment) is likely to be delayed, Contractor will: (1) promptly notify Google in writing and immediately propose a new delivery date, (2) use best efforts to expedite delayed Product at Contractor's expense, and (3) issue Google a discount or refund on the purchase price for Product delivered late, unless otherwise agreed by the parties.

(B) In addition to the remedies in Subsection (A), Google may (1) cancel without liability the applicable Purchase Order or portions of the Purchase Order for delayed Product that is not yet delivered, or (2) source replacements for delayed Product from another supplier, at Contractor's reasonable expense.

5. **Inspection; Acceptance; Rejection; Defect Replacement**.

5.1 Inspection. Google may inspect Product on delivery.

(A) Acceptance. Any Product not rejected within 30 days of receipt will be deemed accepted by Google. Google's payment to Contractor for Product will not be treated as acceptance.

(B) Rejection. At Google's option, Google may: (1) return rejected Products, and Contractor will immediately replace returned Products, at Contractor's expense, including all freight costs; or (2) use the Defective Products and obtain a reduction in price.

5.2 Defect Replacement Procedure.

(A) Remedies. For Product that is discovered Defective during the Warranty Period, Contractor will, at its expense and at Google's option:

(1) replace or repair Defective Product and re-deliver such repaired or replaced Product to Google within a commercially reasonable time frame agreed to by Google,

(2) refund Google the Product purchase price within 30 days of receiving Google's notice that a Product is Defective, or

(3) reimburse Google for the reasonable cost to have the Product repaired within 30 days after receiving Google's invoice.

(B) Costs. Contractor is responsible for all costs, damages, and liabilities incurred by Google as a result of Defective Product.

(C) Google Property. All Products undergoing repair will at all times remain Google's property.

(D) Warranty. Contractor will warrant replacement Product for the longer of 90 days following Google's acceptance of the replacement Product or the remainder of the original Product's Warranty Period.

6. **Product License**.

6.1 Developed IP. For those portions of a Product that are Developed IP, T&Cs Section 4.3 (Developed IP; Deliverables) will apply.

6.2 Other Products. For those portions of a Product that are not Developed IP, Contractor grants to Google, its affiliates, distributors, and end users a perpetual, irrevocable, non-exclusive, worldwide, fully paid-up, royalty-free license to modify, sell, offer for sale, import, and otherwise use and dispose of the Product, including any bug fixes, updates, or upgrades developed by Contractor for the respective Product.

7. **Failure Analysis**. Upon Google's request, Contractor will perform a failure analysis of any returned Product that is suspected to be Defective. Contractor will use reasonable efforts to provide Google with (A) an initial assessment of the Defect's cause(s) within 1 week of receiving the returned Deliverable; and (B) a final assessment of the Defect's root cause within 3 weeks of receiving the returned Deliverable.

8. **Representations and Warranties**. Contractor represents and warrants that:

8.1 Product Specifications. The Products will comply with applicable specifications (in order of ascending precedence): (A) readily made available by Contractor to its customers; (B) identified in the Purchase Order; or (C) as the parties may otherwise agree to in writing. The Products will be of satisfactory quality and reasonably fit for any purpose made known to Contractor.

8.2 Product Quality. Products will be new, unused, and not refurbished at the time of delivery, and will be safe for any and all normal and foreseeable uses and free from defects in design, materials, and workmanship during the Warranty Period.

8.3 Title. Google will acquire from Contractor good and clear title to Product free and clear of all liens, security interests, claims, and encumbrances.

8.4 Software. For software provided by Contractor, the software will not damage, interfere with, or permit unauthorized access to any other existing products or systems on which it is installed or any information residing on those products or systems.

8.5 Pass-Through. Contractor will, to the extent it is contractually permitted to do so, provide to Google the benefits of manufacturers' or suppliers' warranties and guarantees for material or equipment incorporated into the Products, and will perform its responsibilities so that such warranties or guarantees remain in full effect.

8.6 Conflict Minerals. Contractor will comply with all applicable conflict minerals laws and materials disposal laws. Upon request, Contractor will provide a complete and accurate conflict mineral report detailing the source and chain of custody of conflict minerals (in a format that is at least as comprehensive as the EICC/GeSI reporting template) for each Product.

9. **Additional Defense and Indemnity Terms**.

9.1 Obligations. The following subsections are added to T&Cs Section 9.1 (Obligations):

(A) any property damage, personal injury, or death related to use of a Product; or

(B) any allegation that use, possession, import, distribution, or sale of the Products, alone or in combination with any other product, service, or technology, violates or infringes a third party's rights, including Intellectual Property Rights.

9.2 Remedies. If an injunction preventing continued use of any Products is threatened or granted, Contractor will do the following at its sole expense:

(A) procure the right to continue providing the Products in compliance with the Agreement;

(B) modify the Products to make them non-infringing without materially reducing their functionality; or

(C) replace the Products with a non-infringing, functionally-equivalent alternative.

10. **Termination and Survival**. Unless otherwise specified in the termination notice, termination cancels without liability all undelivered Products. Contractor's obligation to deliver non-cancelled Product and Sections 1, 3 (Product Payment), 5.1(B) (Rejection), 5.2 (Defect Replacement Procedure), 6 (Product License), 8 (Representations and Warranties), 9 (Additional Defense and Indemnity Terms), and 10 (Termination and Survival) of this Attachment will survive any termination of the Agreement.

11. **Governing Law**. If the United Nations Convention on Contracts for the International Sale of Goods and the Uniform Computer Information Transactions Act are otherwise applicable, the parties expressly exclude them from applicability under the Agreement and agree that T&Cs Section 12.19 (Governing Law) will control.

Attachment B

Insurance

During the Term and at its own expense, Contractor will maintain the following insurance coverage, with insurance carriers rated A- or better by A.M. Best Company:

1. **Standard Coverages.** Contractor may use any combination of the following insurance to meet the total limit requirements of this Section.

1.1 Commercial General Liability insurance, including contractual liability coverage, on an occurrence basis for bodily injury, death, "broad form" property damage, products and completed operations, and personal and advertising injury, with coverage limits of not less than US$1,000,000 per occurrence.

1.2 Workers' Compensation insurance as required by law in the state where the Services or Products will be provided, including employer's liability coverage for injury, disease and death, with coverage limits of not less than US$1,000,000 per accident and employee.

1.3 Umbrella (Excess) Liability insurance on an occurrence form, with coverage limits of not less than US$1,000,000 per occurrence.

2. **Specific Coverages**.

2.1 Auto Liability. If Contractor's provision of Services or Products includes Personnel driving, then Contractor will additionally maintain auto liability insurance coverage for all owned, non-owned and hired vehicles with coverage limits of not less than US$1,000,000 per occurrence for bodily injury and property damage.

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2.2 Professional Liability. If Contractor's provision of Services or Products includes consultative, design, or development services, then Contractor will additionally maintain professional liability insurance, with coverage limits of not less than US$1,000,000 per claim.

2.3 Commercial Crime. If Contractor's provision of Services or Products includes access to financial information, funds, payments, or other financial records, then Contractor will additionally maintain commercial crime insurance on an occurrence form with coverage limits of not less than US$1,000,000 annual aggregate.

2.4 Network Security and Privacy Liability. If Contractor will collect, store, process or otherwise access any data related to Google, its customers, or its employees, then Contractor will additionally maintain network security and privacy liability insurance with coverage limits of not less than US$1,000,000 per claim, that includes coverage for: (A) Contractor's unauthorized disclosure of, or failure to properly handle, personal or other confidential data; and (B) financial loss, including any related defense expense, resulting from Contractor's wrongful acts in rendering Services or providing Products. If Contractor's professional liability policy includes coverage for network security and privacy liability, then any combined single limit for the policy must be the sum of the limits required for each (i.e., US$2,000,000).

3. **Coverage Requirements.**

3.1 Primary Coverage. Contractor's policies will be considered primary without right of contribution from Google's insurance policies.

3.2 Policy Limits. Contractor's policies will apply to the full extent provided by the policies. The coverage requirements in Sections 1 (Standard Coverages) and 2 (Specific Coverages) above will not lower the coverage limits of Contractor's policies, and will not limit Contractor's obligations or liability under this Agreement (including indemnities).

3.3 Additional Insured. Contractor will name Google and its affiliates and their officers, directors, shareholders, employees, agents and assignees as additional insureds in each of the policies required above except for:

(A) workers' compensation,

(B) professional liability, and

(C) network security and privacy liability policies.

3.4 Waiver of Subrogation. Contractor will include a severability of interests and waiver of subrogation clause in favor of Google in each of the policies required above except for:

(A) professional liability, and

(B) network security and privacy liability policies.

3.5 Cancellation Notice. Contractor will provide Google with notice of cancellation of any policy required above in accordance with policy provisions.

4. **Contractor Responsible for Own Insurance Coverage.**

4.1 Contractor's Activities at Own Risk. All of Contractor's activities under this Agreement will be at Contractor's own risk.

4.2 No Benefit of Google Insurance Policies. Personnel will not be entitled to any benefits under Google's insurance policies.

4.3 Contractor Responsible for Subcontractor's Insurance Coverage. Contractor is solely responsible for ensuring that its subcontractors maintain insurance coverage that is usual, reasonable and customary for the services provided by such subcontractors to ensure that Contractor can meet its requirements and obligations under this Agreement.

5. **Certificates of Insurance.**

5.1 Evidence of Insurance Coverage. Upon Google's request, Contractor will provide evidence of required insurance coverage to Google or Google's third-party vendor.

5.2 Google Not Obligated to Review Insurance Coverage. Google's failure to request, review, or object to the terms of Contractor's certificates of insurance will not:

(A) waive any of Contractor's obligations under this Agreement;

(B) waive any of Google's rights under this Agreement; or

(C) limit or diminish Contractor's liability under this Agreement.

Attachment C

Background Checks

1. **Applicable Categories.** To the extent permitted under applicable law, Contractor will complete the background checks required below prior to Personnel performing Services, unless otherwise notified by Google. These background checks are not intended to affect the employment of Personnel by Contractor. They are required only to comply with legal obligations and to protect the safety and security of Google's personnel, customers, and confidential and personal information.

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1.1 Restricted Individuals. Contractor will ensure that Personnel are not restricted from performing Services by an applicable government authority, including the:

(A) U.S. Department of Treasury - Office of Foreign Assets Control;

(B) U.S. Department of Commerce - Bureau of Industry and Security; and

(C) U.S. Department of State - Directorate of Defense Trade Controls.

1.2 Criminal Court / Social Security Number. If the Services involve unescorted access to Google's facilities, remote access to internal Google systems, or access to an individual's personal property or personal information, Contractor will additionally perform the following checks on Personnel performing such Services:

(A) Criminal court checks for all counties of residence and work for the prior 7 years (or such period permitted by law); and

(B) Social Security number traces.

1.3 Education and Employment Verification. Contractor will perform education and employment verification for all Personnel that are provisioned with Google systems or badged facility access.

1.4 Driving History. If the Services involve driving, Contractor will additionally perform Department of Motor Vehicles driving history checks on Personnel performing such Services.

1.5 Credit. If the Services involve access to Google's or Google's users' financial information, Contractor will additionally perform credit checks on Personnel performing such Services.

1.6 Fingerprint. If the Services involve access to children or vulnerable persons, entering personal residences, or providing medical services, Contractor will additionally perform fingerprint checks on Personnel performing such Services.

1.7 Clinical and Scientific. If the Services involve clinical or scientific activities, Contractor will additionally perform the following checks on Personnel performing such Services:

(A) FDA Debarment List;

(B) FDA Disqualified/Restricted/Assurance List;

(C) PHS Administrative Action Bulletin Board;

(D) List of Excluded Individuals and Entities (LEIE) Database; and

(E) FDS Debarment/Disqualification List under the Application Integrity Policy (AIP).

2. **Proper Notices; Consents.** Contractor will provide all required background check notices to, and obtain signed consent from, Personnel.

3. **Personnel Eligibility Guidelines.**

3.1 Ineligible to Perform Services. Personnel may not perform any Services if a background check reveals the Personnel is restricted from performing the Services under Section 1.1 (Restricted Individuals) of this Attachment and the Personnel is not able to prove error.

3.2 May be Eligible to Perform Services, but Requires Additional Review.

(A) Issues Requiring Additional Review. Contractor must perform additional review to determine if Personnel is eligible to perform Services if a background check reveals any of the following:

(1) Criminal Conviction. Personnel has any felony or misdemeanor criminal conviction within the last 7 years (or such period permitted by law).

(2) Misrepresentation. Personnel misrepresents: (a) identification numbers (e.g., Social Security number); or (b) any educational or technical qualifications even if not required to perform the Services, including: (i) an educational degree not earned; (ii) an educational degree for which there is no record of it being earned; or (iii) a different major of study than recorded.

(3) Driving History Issues. For driving history checks: (a) Personnel's driver license is currently suspended or revoked; or (b) Personnel has: (i) two or more driving violations in a 3-year period; or (ii) two or more convictions in the last 5 years for driving while under the influence or driving while intoxicated.

(4) Credit Report Issues. For credit checks, Personnel's credit report shows: (a) one or more items in collections, public records or negative accounts; (b) unpaid collections balance greater than or equal to US$1,000; or (c) any pending bankruptcy or fraud case.

(B) Contractor to Perform Additional Review. Contractor is responsible for performing any additional review to decide whether Personnel is eligible to perform the Services.

4. **Verification of Background Checks.** Upon request, Contractor will provide to Google or its third-party vendor verification that it conducted background checks.

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