



Google Enterprise Earth Purchase Agreement

This Google Enterprise Earth Purchase Agreement (the "**Agreement**") is entered into by and between Google Inc. ("**Google**") and the customer identified in the Ordering Document ("**Customer**"). This Agreement is effective as of the date Customer clicks the "I Accept" button below or, if applicable, the date the Agreement is countersigned (the "Effective Date"). If you are accepting on behalf of Customer, you represent and warrant that: (i) you have full legal authority to bind your employer, or the applicable entity, to these terms and conditions; (ii) you have read and understand this Agreement; and (iii) you agree, on behalf of the party that you represent, to this Agreement. If you do not have the legal authority to bind Customer, please do not click the "I Accept" button below (or, if applicable, do not sign this Agreement). This Agreement and the applicable Order Form set forth the terms and conditions under which Customer may access and use the Product. The Order Form is incorporated into and governed by this Agreement.

1. Licenses.

1.1 Using the Product. Subject to this Agreement, and in consideration of Customer's payment of all Fees, Google grants to Customer, and Customer agrees to comply with, a non-sublicensable, non-transferable (except as set forth in Section 16.2), non-exclusive, terminable, limited license to use the Product during the License Term to display Customer's geospatial data in the Customer Solution to its employees, contractors, or agents.

1.2 Customer Creating Fused Databases or Intermediate Data Products for Third Parties.

a. License. Subject to this Agreement, and in consideration of Customer's payment of all Fees, Google grants to Customer, and Customer agrees to comply with, a non-sublicensable, non-transferable (except as set forth in Section 16.2), non-exclusive, terminable, limited license to use the Product during the License Term to create Fused Databases or Intermediate Data Products, or both, for physical delivery to its third party customers. Customer may only charge its third party customers a fee for these Fused Databases or Intermediate Data Products, or both, if Customer enters into a separate written agreement with Google permitting this use.

b. License Agreements. Customer must enter into an enforceable License Agreement with third party customers before providing these customers with the Fused Databases or Intermediate Data Products described in Section 1.2(a), as applicable. The one exception to the preceding sentence is where a U.S. state or federal government entity provides a Fused Database or Intermediate Data Products, or both,

to another U.S. state or federal government entity at no charge. Customer will keep copies of all License Agreements.

c. Restrictions. Customer will not hold itself out as an agent, employee, partner, or franchisee of Google. Customer will not knowingly make any representation or warranty which are, or enter into any License Agreement which is, inconsistent with this Agreement or the Documentation.

1.3 Customer Purchasing Google Intermediate Data Products.

a. License. For any Google Intermediate Data Products sold by Google to Customer via an Ordering Document, subject to this Agreement and in consideration of Customer's payment of all Fees, Google grants to Customer, and Customer agrees to comply with, a non-sublicensable, non-transferable (except as set forth in Section 16.2), non-exclusive, terminable, limited license to use the Google Intermediate Data Products during the License Term to create Fused Databases, which Fused Databases Customer may distribute along with the data supplied by the Intermediate Data Products.

b. Restrictions. The license in Section 1.3(a) is limited to Customer's use as part of a Fused Database, and may only be used within Customer's Primary Earth Server. While Customer may use the Intermediate Data Products to create a Fused Database and may distribute the Fused Database, Customer may not redistribute the Google Intermediate Data Products themselves.

1.4 Customer Hosting Fused Databases for Third Party Access.

a. Not for a Fee. Customer may host a Fused Database for third parties, and provide third party access to the hosted Fused Database without ordering the appropriate service from Google, but only if: (i) Customer does not charge any fees for access to the hosted Fused Database; (ii) the Fused Database is used only for Customer's original business purposes, and is not altered to satisfy the third party's business purposes.

b. For a Fee. Customer may not host a Fused Database for third parties, and provide third party access to the hosted Fused Database for a fee, unless Customer enters into a separate written agreement with Google permitting this use.

1.5 Software Backups.

a. Earth Fusion and Earth Server Cold Backups. Customer may maintain a "cold" backup of its Earth Fusion and of its Primary Earth Server. Customer may also maintain duplicate copies of production hard drives, for swapping into production machines for recovery purposes. Cold Backups are not permitted to reside either behind load balancing, or in production, environments. Customer does not have to order a backup copy of Earth Fusion or Earth Server in order to maintain these "cold" backups for its Fusion or Earth Server configurations.

b. Earth Server Hot Backup. Customer may only use a Backup Earth Server as: (i) a hot backup if the Primary Earth Server is disabled due to a critical hardware or Software failure; or (ii) a hot Backup Earth Server in a load balancing situation in a production environment. In either case, the Backup Earth Server will be used only until the circumstances requiring the use as a hot backup is cured. Customer must order a backup copy of Earth Server via an Ordering Document in order to maintain this hot backup.

1.6 Emergency Use. If there is an Emergency that affects Customer, Customer may temporarily exceed the User usage limits for its copies of Earth Server. If Customer exceeds the User usage limits allowed, within two weeks after initially exceeding such limits it must: (a) notify Google in writing regarding this Emergency use; and (b) do one of the following: (i) return to the required User usage limits, (ii) submit a written request for an extension of the Emergency use, or (iii) purchase additional Earth Server licenses. Customer's Emergency use in excess of the User usage limits cannot exceed ten days per calendar year without Google's prior written consent.

1.7 Copies; Earth Fusion Grid Configuration. Customer may make a minimum number of copies of the Software, Fused Database, and Intermediate Data Products, only as reasonably necessary to exercise Customer's license rights in this Section. Customer may only install Google Earth Fusion software in a Grid Configuration if Customer has ordered the appropriate Fusion Pro Grid License from Google pursuant to an Ordering Document.

2. Restrictions.

2.1 Compliance. Customer will only use the Solution in compliance with the Acceptable Use Policy and consistent with the applicable Documentation. Customer's use of the Earth APIs is subject to Customer's compliance with the Earth API Terms. Google may update the Earth API Terms and the AUP periodically. If Customer wants to print or display Hosted Content, then Customer must comply with the Permission Guidelines when doing so.

2.2 Territory. The Customer entity signing this Agreement must be located in the Territory. Note that the Territory is neither an End User restriction, nor a restriction on where Customer may have subsidiaries or affiliates.

2.3 Closed Customer Solution. If the Customer Solution is not accessible by the public, then Customer: (a) must restrict access to the Customer Solution only to its employees or contractors; and (b) may, despite Section 2.5, remove or conceal the Google Brand Features within the Customer Solution.

2.4 Development Kits. Development Kits may only be used for development or educational purposes, or both. The components of a Development Kit may only be installed on a single machine and may not be used in a production environment, nor

may any associated Intermediate Data Products or Fused Databases be used in a production environment.

2.5 Portable Fused Databases and Earth Servers.

a. Creation of Portable Fused Databases. Customer may enable its Primary Earth Server to create portable Fused Databases. In order to operate a portable Fused Database, applicable Users must be licensed to use Portable Earth Server.

b. Purchasing Portable Earth Server. Customer may order Portable Earth Server via an Ordering Document. Portable Earth Servers cannot be installed in fixed network environments. The Ordering Document will contain the applicable SKU(s) that list the number of Concurrent Users allowed for each Portable Earth Server. Customer may only provide Portable Earth Server to those Concurrent Users who are licensed to use Portable Earth Server.

2.6 General Restrictions. Customer will not, and will not allow others to: (a) copy the Software, except as provided in Sections 1.7 and 5.2; (b) use the Product for High Risk Activities; (c) use the Product to create a substantially similar product or service; (d) display any advertising in connection with its use of the Product; (e) subject to Section 2.2, remove, modify, or obscure any Brand Features, links, or notices appearing in the Solution or the Hosted Content; or (f) unless expressly permitted by Google, loan, sell, lease or use the Solution for timesharing or service bureau purposes.

2.7 Third Party Components. If Google embeds, includes or provides any third party component to Customer for use with the Solution, such component may only be used in conjunction with the Solution, and this use is subject to this Agreement and such component may only be used in accordance with the Documentation. If the Solution includes components governed by open source licenses with provisions inconsistent with this Agreement, those components are instead governed solely by the applicable open source licenses. If the Solution includes components covered by open source licenses requiring the provision of corresponding source code for those components, Google hereby offers such source code consistent with those licenses.

3. Ownership.

3.1 Generally. Except as expressly set forth herein, this Agreement does not grant either party any rights, implied or otherwise, to the other's content or any of the other's Intellectual Property Rights. Intellectual Property Rights in and to the content accessed through the Product are the property of the applicable content owner.

3.2 Brand Features. Any use of a party's brand features will inure to the benefit of the party holding intellectual property rights to those Brand Features. A party may revoke the other party's right to use its Brand Features pursuant to this Agreement with written notice to the other and a reasonable period to stop the use.

4. Payment Terms.

4.1 Purchase Process. Google will provide Customer an Ordering Document for each purchase, to confirm the Product, quantity and price.

4.2 Payment. All Fees are due thirty days from the invoice date. All payments due are in U.S. dollars. Title to the Hardware will pass to Customer upon receipt of all Fees by Google. Payments made via wire transfer must include the following instructions:

Wells Fargo Bank
Palo Alto, California USA
ABA# 121000248

Google Inc.
Account # 4375669785

4.3 Taxes. Customer is responsible for any Taxes, and Customer will pay Google for the Appliance without any reduction for such amounts. If Google is obligated to collect or pay Taxes, the Taxes will be invoiced to Customer, unless Customer provides Google with a valid tax exemption certificate authorized by the appropriate taxing authority. If Customer is required by law to withhold any Taxes from its payments to Google, Customer must provide Google with an official tax receipt or other appropriate documentation to support such withholding.

4.4 Invoice Disputes. Any invoice disputes must be submitted prior to the invoice due date. If the parties determine that certain billing inaccuracies are attributable to Google, Google will not issue a corrected invoice, but will instead issue a credit memo specifying the incorrect amount in the affected invoice. If the disputed invoice has not yet been paid, Google will apply the credit memo amount to the disputed invoice and Customer will be responsible for paying the resulting net balance due on that invoice.

4.5 Delinquent Payments. Customer will be responsible for all reasonable expenses (including attorneys' fees) incurred by Google in collecting delinquent amounts, except where such delinquent amounts are due to Google's billing inaccuracies.

4.6 Purchase Orders.

a. Required. If Customer's Ordering Document is a Quote, then a purchase order is required. If Customer's Ordering Document is an Order Form, and Customer wants a purchase order number on its invoice, Customer will inform Google and will issue a purchase order to Google. If Customer requires a purchase order, and fails to provide the purchase order to Google, then Google will not be obligated to provide the Appliance until the purchase order has been received by Google.

b. Not Required. If Customer's Ordering Document is an Order Form, and Customer does not require a Purchase Order number to be included on the invoice, Customer

must select “No” in the Purchase Order section of the Order Form. If Customer waives the Purchase Order requirement, then: (a) Google will invoice Customer without a Purchase Order; and (b) Customer agrees to pay invoices without a Purchase Order.

5. Technical Support Services; Training.

5.1 TSS. Google will provide TSS to Customer in accordance with the TSS Guidelines to Customer for the Support Period. Unless otherwise agreed in writing, to receive TSS Customer must provide Google with all reasonably required access to the Solution in accordance with the TSS Guidelines. If Customer fails to provide this access to Google, Google will not be liable to provide TSS to Customer. Google may change the TSS from time to time, but will not make a materially adverse change.

5.2 Updates. Customer will only receive Updates if Customer is receiving TSS. Customer’s use of Updates is subject to this Agreement and the Ordering Document. Customer will install Updates in accordance with the TSSG. Customer may make a copy of an Update to a physical medium solely for the purpose of facilitating the installation of that Update. Customer will promptly erase or destroy the copy of the Update once that Update is installed.

5.3 Lapsed Support. If Customer allows its TSS to lapse, continues to use the Software without receiving TSS, and then renews the TSS, Google will bill Customer, and Customer agrees to pay, not only for the renewal TSS Support Period, but also for the Lapsed Support Period.

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

6. Export Compliance. Customer will comply with, and will obtain all authorization from government authorities required by the Export Control Laws. Customer will not use the Product, directly or indirectly, for purposes of nuclear activities, biological weapons, chemical weapons, missile technology, or other end uses prohibited by the Export Control Laws.

7. Delivery.

7.1 Delivery Methods. Google will only deliver the Product and Intermediate Data Products to Customer on physical media if Customer orders physical media on the Ordering Document. Otherwise, Google will deliver the Product and Intermediate Data Products solely via electronic shipment or download, and Google will provide Customer with instructions on downloading the Product. Google will only deliver the Product

outside of the United States via electronic shipment or download if Customer agrees, in writing, to bear responsibility for any applicable customs fees or duties for import. Physical shipments will be delivered by the shipping method indicated on the Ordering Document.

7.2 Prerequisites; Risk of Loss. The Product will not be made available for download, or shipped, as applicable, until Google receives either a complete: (a) purchase order referencing a Google quote and this Agreement; or (b) executed Google order form. Google will bear the risk of loss for the Product until the Product is received by Customer, at which point this risk shifts to Customer.

8. Confidential Information.

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

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

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

9. Term and Termination.

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

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

within ninety days; or (iii) the other party is in material breach of this Agreement more than two times notwithstanding any cure of such breaches.

9.3 Effect of Termination.

a. Creation of Portable Fused Databases. If the Agreement is terminated for Google's breach, the licenses granted herein regarding Customer's use of the Product may, at Customer's option, continue for the remainder of the License Term, subject to Customer's continued compliance with this Agreement.

b. Termination for Customer's Breach. If the Agreement is terminated for Customer's breach, then: (i) the License Term, and all other rights and licenses granted by one party to the other, or any services provided by Google to Customer, will cease immediately; (ii) upon request, each party will promptly return or destroy all Confidential Information of the other party; and (iii) all payments owed by Customer to Google will become immediately due.

b. Expiration of the License Term. Customer's license to use the Product will cease upon the expiration of the License Term and, upon request, each party will promptly return or destroy all Confidential Information of the other party.

10. Limited Warranty.

10.1 Limited Warranty. Google warrants to Customer that the Solution will substantially conform to the specifications set forth in the Documentation for ninety days from the date the Solution is provided to Customer. Google's entire liability and Customer's sole and exclusive remedy with respect to breach of this warranty will be at Google's option: (a) repair of the Solution in accordance with the TSS Guidelines; (b) replacement of the defective component or entire Solution, as applicable; or (c) refund of the purchase price paid for the Solution.

10.2 Exclusions. The limited warranty set forth in Section 10.1 above will not apply to defects or errors in the Solution that are caused by: (i) Customer's failure to follow the installation, operation and maintenance instructions set forth in the Documentation; (ii) Customer's mishandling, abuse, misuse, negligence, or improper storage of the Solution (including without limitation use with incompatible equipment); or (iii) modifications or repairs not made by Google.

11. Disclaimer. Except as expressly provided for herein, to the maximum extent permitted by applicable law, GOOGLE DOES NOT MAKE ANY OTHER WARRANTY OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, INCLUDING WITHOUT LIMITATION WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR USE AND NONINFRINGEMENT. Google does not warrant that the operation of the product will be error-free or uninterrupted.

12. Limitation of Liability.

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

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

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

13. Indemnification.

13.1 By Google. Google will indemnify, defend, and hold harmless Customer from and against all liabilities, damages, and costs (including settlement costs and reasonable attorneys' fees) arising out of a third party claim that the Solution used in accordance with the Documentation and this Agreement infringes or misappropriates any patent, copyright, trade secret or trademark of that third party.

13.2 Exceptions. The obligations set forth in Section 13.1 do not apply if the third party claim is caused by, or results from: (a) Customer's combination or use of the Solution with software, services, or products developed by Customer or third parties, if the claim would have been avoided by the non-combined or independent use of the Solution; (b) modification of the Solution by anyone other than Google if the third party claim would have been avoided by use of the unmodified Solution; (c) Customer's continued allegedly infringing activity after being notified thereof or after being provided modifications that would have avoided the alleged infringement; (d) Customer's use of the Solution in violation of this Agreement or the Documentation; or (e) use of other than Google's most current release of the Product if the third party claim would have been avoided by use of the most current release.

13.3 By Customer. Customer will indemnify, defend, and hold harmless Google from and against all liabilities, damages, and costs (including settlement costs and reasonable attorneys' fees) arising out of: (a) a third party claim made against Google for infringement or misappropriation of any patent, copyright, trade secret or trademark of that third party based on conduct by Customer as described in Section 13.2; or (b) Customer's breach of Section 6 (Export Compliance).

13.4 Possible Infringement.

a. Repair, Replace, or Modify. If Google reasonably believes the Product infringes a third party's Intellectual Property Rights, then Google will: (a) obtain the right for

Customer, at Google's expense, to continue using the Product; (b) provide a non-infringing functionally equivalent replacement; or (c) modify the Product so that it no longer infringes.

b. Termination and Refund. If Google does not believe the options in Section 13.4(a) are commercially reasonable, then Google may terminate the license for the allegedly infringing Product. If Google terminates the license, Google will provide a pro-rata refund of the unearned Fees actually paid by Customer applicable to the period of the License Term following termination of the license.

13.5 General. The party seeking indemnification will promptly notify the other party of the claim and cooperate with the other party in defending the claim. The indemnifying party has full control and authority over the defense, except that: (a) any settlement requiring the party seeking indemnification to admit liability or to pay any money will require that party's prior written consent, such consent not to be unreasonably withheld or delayed; and (b) the other party may join in the defense with its own counsel at its own expense. THE INDEMNITIES ABOVE ARE A PARTY'S ONLY REMEDY UNDER THIS AGREEMENT FOR VIOLATION BY THE OTHER PARTY OF A THIRD PARTY'S INTELLECTUAL PROPERTY RIGHTS.

14. Publicity. Neither party will make any public statement regarding the relationship contemplated by this Agreement, without the other party's prior written consent.

15. Government Purposes. The Product was developed solely at private expense and is commercial computer software and related documentation within the meaning of the applicable civilian and military Federal acquisition regulations and any supplements thereto. If the user of the Product is an agency, department, employee, or other entity of the United States Government, under FAR 12.212 and DFARS 227.7202, the use, duplication, reproduction, release, modification, disclosure, or transfer of the Product, including technical data or manuals, is governed by the terms and conditions contained in this Agreement, which is Google's standard commercial license agreement.

16. Verification and Audit.

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

16.2 Audit. Google will have the right, no more than once per calendar year, and upon at least thirty days prior written notice, to appoint a nationally recognized certified public accountant or independent auditor to examine Customer's use of the Product, and the related records, to verify such Customer's compliance with this Agreement. Audits will be conducted during regular business hours at Customer's facilities and will not unreasonably interfere with Customer's business activities. Customer will provide Google with reasonable access to the relevant Customer records and facilities.

16.3 Underpayment. If an audit reveals that Customer has underpaid fees to Google during the period audited, then Google will invoice Customer, and Customer will promptly pay Google, for the underpaid fees based on the higher of the price specified in this Agreement or Google's price list in effect at the time the audit is completed. If the underpaid fees exceed five percent of the license fees paid by Customer for the Solution during the preceding six month period, then Customer will also pay Google's reasonable costs of conducting the audit.

17. Miscellaneous.

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

17.2 Assignment. Neither party may assign or transfer any part of this agreement without the written consent of the other party, except to an Affiliate but only if: (a) the assignee agrees in writing to be bound by the terms of this agreement; and (b) the assigning party remains liable for obligations under the Agreement. Any other attempt to transfer or assign is void.

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

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

17.5 No Agency. The parties are independent contractors, and this Agreement does not create an agency, partnership or joint venture.

17.6 No Waiver. Failure to enforce any provision of this Agreement will not constitute a waiver.

17.7 Severability. If any provision of this Agreement is found unenforceable, the balance of the Agreement will remain in full force and effect.

17.8 No Third-Party Beneficiaries. There are no third-party beneficiaries to this Agreement.

17.9 Equitable Relief. Nothing in this Agreement will limit either party's ability to seek equitable relief.

17.10 Governing Law. This Agreement is governed by California law, excluding California's choice of law rules. FOR ANY DISPUTE ARISING OUT OF OR RELATING TO THIS AGREEMENT, THE PARTIES CONSENT TO PERSONAL JURISDICTION IN, AND THE EXCLUSIVE VENUE OF, THE COURTS IN SANTA CLARA COUNTY, CALIFORNIA.

17.11 Amendments. Any amendments to this Agreement must be agreed upon in writing.

17.12 Survival. Those provisions that by their nature should survive termination of this Agreement, will survive termination of this Agreement, including at least Section 6.

17.13 Entire Agreement. This Agreement, any Ordering Document and all documents referenced herein or therein is the parties' entire agreement relating to its subject and supersedes any prior or contemporaneous agreements on that subject. If there is a conflict between the documents that make up this Agreement, the documents will control in the following order: the Ordering Document, the Agreement, and the terms located at any URL.

18. Definitions.

"Acceptable Use Policy" or "AUP" means the acceptable use policy for the Product available at http://support.google.com/enterprise/doc/gme/terms/maps_AUP.html or other such URL as may be provided by Google.

"Affiliate" means, with respect to either Google or Customer, any entity that directly or indirectly Controls, is Controlled by, or is under common Control with such party.

"Backup Earth Server" means a copy of the Earth Server software identified on an Ordering Document as backup software.

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

"Concurrent Users" mean those Users who are simultaneously viewing the content streamed from a Portable Earth Server.

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

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

“Customer Solution” means Customer’s Fused Database, hosted on Customer hardware using the Earth Server, and accessed by Users using either the Earth Enterprise Client or the Earth APIs.

“Development Kit” means a software bundle including one non-production license of Earth Fusion, one non-production license of Earth Server, and one non-production license of the 10-concurrent user Portable Server, all of which are licensed for the license term specified on the applicable Ordering Document or, if a license term is not specified on the Ordering Document, then for a period of twelve months.

“Documentation” means that certain Google proprietary documentation in the form generally made available by Google to its customers for use with the Solution.

“Export Control Laws” means all applicable export and reexport control laws and regulations, including the Export Administration Regulations (“EAR”) maintained by the U.S. Department of Commerce, trade and economic sanctions maintained by the Treasury Department’s Office of Foreign Assets Control, and the International Traffic in Arms Regulations (“ITAR”) maintained by the Department of State.

“Earth APIs” means the APIs referenced in the Documentation. Customer may use the Earth APIs to access an Earth Server.

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

“Earth Client” means Google Earth Enterprise Client, the Google Earth plug-in, or the Google Earth Android Client, all of which are downloadable Google software that Customer may use to access an Earth Server.

“Earth Fusion” means the Google Earth Fusion software as more fully described in the Documentation. Each Earth Fusion software license may only be installed on the hardware configuration as specified in the Ordering Document.

“Earth Pro” means Google’s Earth Pro software as described here: http://earth.google.com/enterprise/earth_pro.html “Earth Server” means the Google Earth server software, as more fully described in the Documentation, installed by Customer on Customer hardware. If the Earth Server is not accessible by the public, then it may only be used by up to one thousand Users. If the Earth Server is accessible by the public, then the preceding User limit does not apply, but Customer must purchase sufficient Product during the Term for the number of Users or the Product may not function correctly. Each Earth Server software license may only be installed on the hardware configuration as specified in the Ordering Document

“Emergency” means a force majeure event as described in Section 17.4.

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

“Fused Database” means all data components of a fully built 2D or 3D globe, which together can be hosted by an Earth Server.

“Grid Configuration” means the installation of multiple Earth Fusions configured to operate together to speed-up data processing.

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

“Hosted Content” means any content streamed by Google to Customer in response to Customer’s use of the Software (whether created by Google or its third party licensors), and includes, but is not limited to photographic imagery, basemap data, and terrain data.

“Intermediate Data Products” means any data generated by the Earth Fusion software in KIP, KTP, KVP, or KMP format.

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

“Lapsed Support Period” means the time period between the conclusion of a previous Support Period, and a renewal Support Period, during which Customer does not receive TSS from Google.

“License Agreement” means an agreement between Customer and its third party customers. These agreements must: (a) disclaim, to the extent permitted by applicable law, Google’s liability for any damages, whether direct, indirect, incidental or consequential; (b) disclaim all warranties with respect to the Product, including without limitation warranties for merchantability, fitness for a particular purpose, and non-infringement; (c) include confidentiality obligations no less protective of Google’s Confidential Information than the confidentiality obligations in this Agreement; (d) include a clear statement of Google’s ownership of the Product; (e) not include any obligations on Google.

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

“Ordering Document” means either an order form or quote, issued by Google to provide the Product to Customer. The Ordering Document will incorporate this Agreement and

will contain the: (i) SKU (including the License Term, if applicable); (ii) price; and (iii) Support Period.

“Permission Guidelines” means the guidelines for Customer’s use of Hosted Content, which may be accessed at the following URL:

<http://www.google.com/permissions/geoguidelines.html>, and which URL may be updated by Google periodically.

“Portable Earth Server” means the Google software which enables Customer to store a Fused Database on a portable storage device, and then allows a certain number of Concurrent Users to access this Fused Database without network connectivity.

“Primary Earth Server(s)” means Customer’s primary implementation of Earth Server for which Customer has obtained a license from Google pursuant to this Agreement.

“Primary Fusion” means Customer’s primary implementation of Earth Fusion for which Customer has obtained a license from Google pursuant to this Agreement.

“Product” means the Solution and Documentation made generally available to Google customers.

“Shipment Date” means the date of shipment by Google or its agent.

“Software” means the Google proprietary computer software, in binary executable form only, identified in an Ordering Document for Google Enterprise Earth products. The Software includes Earth Fusion, Earth Server, the Portable Server and the Earth Client.

“Solution” means the combined Software, Intermediate Data Products, and associated Earth APIs.

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

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

“Territory” means the United States and Canada.

“Third Party Components” means any third party component, which can include third party content, embedded, included or otherwise provided for use with the Products.

“TSS” means the Technical Support Services provided by Google, in accordance with the TSS Guidelines, for the Products identified in the Ordering Document for the time period set forth in the Ordering Document.

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

“User” means an individual human end user requesting at least a single tile from the Earth Server, by any means, during the License Term.