

## Trakken GCP Terms of Usage

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### Definitions

In these Terms of Usage unless expressly stated otherwise:

**"Account"** means Customer's Google Cloud Platform account.

**"Admin Console"** means the online console(s) and/or tool(s) provided to Customer for administering the Services.

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

**"Allegation"** means an unaffiliated third party's allegation.

**"Application(s)"** means any web or other application Customer creates using the Services, including any source code written by Customer to be used with the Services, or hosted in an Instance.

**"AUP"** means the acceptable use policy set forth here for the Services: <http://cloud.google.com/terms/aup>.

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

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

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

**"Customer Data"** means content provided by Customer (or at its direction) via the Services under the Account.

**"Customer End Users"** means the individuals Customer permits to use the Application.

**"Documentation"** means the Google documentation (as may be updated from time to time) in the form generally made available by Google to its customers for use with the Services at <https://cloud.google.com/docs/>.

**"Fees"** means the applicable fees for each Service and any applicable Taxes. The Fees for each Service are set forth here: <https://cloud.google.com/skus/>.

**"High Risk Activities"** means activities where the use or failure of the Services could lead to death, personal injury, or environmental damage (such as operation of nuclear facilities, air traffic control, life support systems, or weaponry).

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

**"Instance"** means a virtual machine instance, configured and managed by Customer, which runs on the Services. Instances are more fully described in the Documentation.

**"Intellectual Property Rights"** means current and future worldwide rights under patent, copyright, trade secret, trademark, and moral rights laws, and other similar rights.

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

**"Project"** means a grouping of computing, storage, and API resources for Customer, and via which Customer may use the Services. Projects are more fully described in the Documentation.

**"Service Specific Terms"** means the terms specific to one or more Services set forth here: <https://cloud.google.com/terms/service-terms>.

**"Services"** means the services as set forth here: <https://cloud.google.com/terms/services> (including any associated APIs).

**"SLA"** means each of the then-current service level agreements at: <https://cloud.google.com/terms/sla/>.

**"Software"** means any downloadable tools, software development kits or other such proprietary computer software provided by Google in connection with the Services, which may be downloaded by Customer, and any updates Google may make to such Software from time to time.

**"Suspend" or "Suspension"** means disabling or limiting access to or use of the Services or components of the Services.

**"Taxes"** means any duties, customs fees, or taxes (other than Google's income tax) associated with the purchase of the Services, including any related penalties or interest.

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

**"Token"** means an alphanumeric key that is uniquely associated with Customer's Account.

**"Trademark Guidelines"** means Google's Guidelines for Third Party Use of Google Brand Features, located at: <http://www.google.com/permissions/guidelines.html>.

## 1. Provision of the Services.

- 1.1 TRAKKEN is official partner of the Google Cloud Platform and authorized to resell to Customer services of the Google Cloud Platform.
- 1.2 Subject to this Agreement, during the Term, Customer may: (a) use the Services, (b) integrate the Services into any Application that has material value independent of the Services, and (c) use any Software provided by Google as part of the Services. Customer may not sublicense or transfer these rights.
- 1.3 TRAKKEN and Google will provide the Services to Customer. As part of receiving the Services, Customer will have access to the Admin Console, through which Customer may administer the Services.
- 1.4 All facilities used to store and process an Application and Customer Data will adhere to reasonable security standards no less protective than the security standards at facilities where Google processes and stores its own information of a similar type. Google has implemented at least industry standard systems and procedures to (i) ensure the security and confidentiality of an Application and Customer Data, (ii) protect against anticipated threats or hazards to the security or integrity of an Application and Customer Data, and (iii) protect against unauthorized access to or use of an Application and Customer Data.
- 1.5 Customer may select where certain Customer Data will be stored ("Data Location Selection"), and Google will store it there in accordance with the Service Specific Terms. If a Data Location Selection is not covered by the Service Specific Terms (or a Data Location Selection is not made by Customer with respect to any Customer Data), Google may process and store the Customer Data anywhere Google or its agents maintain facilities. By using the Services, Customer consents to this processing and storage of Customer Data. Under this Agreement, Google is merely a data processor.

- 1.6 Customer must have an Account and a Token (if applicable) to use the Services, and is responsible for the information it provides to create the Account, the security of the Token and its passwords for the Account, and for any use of its Account and the Token. If Customer becomes aware of any unauthorized use of its password, its Account or the Token, Customer will notify TRAKKEN as promptly as possible. TRAKKEN has no obligation to provide Customer multiple Tokens or Accounts.
- 1.7 Google may: (i) make new applications, tools, features or functionality available from time to time through the Services and (ii) add new services to the "Services" definition from time to time (by adding them at the URL set forth under that definition), the use of which may be contingent upon Customer's agreement to additional terms.
- 1.8 Google may make commercially reasonable updates to the Services from time to time. If Google makes a material change to the Services, TRAKKEN will inform Customer.
- 1.9 TRAKKEN may make changes to this Agreement, including pricing (and any linked documents) from time to time. Unless otherwise noted by Google, material changes to the Agreement will become effective 30 days after they are posted, except if the changes apply to new functionality in which case they will be effective immediately. Google will provide at least 90 days' advance notice for materially adverse changes to any SLAs by either: (i) sending an email to Customer's primary point of contact; (ii) posting a notice in the Admin Console; or (iii) posting a notice to the applicable SLA webpage. If Customer does not agree to the revised Agreement, please stop using the Services. Google will post any modification to this Agreement to the Terms URL.
- 1.10 The Service Specific Terms and Data Processing and Security Terms are incorporated by this reference into the Agreement.

## **2. Payment Terms.**

- 2.1 Customer will pay TRAKKEN all Fees (other than Fees disputed in good faith) by the payment due date that is 30 days net after invoice date. Customer will pay all Fees in the currency and at the exchange rate (if any) specified in the applicable Service Agreement, such payment to be by electronic transfer to the account notified to it by TRAKKEN or such other means expressly agreed to in writing by the parties.
- 2.2 Any invoice disputes must be submitted prior to the payment due date. If the parties determine that certain billing inaccuracies are attributable to TRAKKEN or Google, TRAKKEN 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, TRAKKEN will apply the credit memo amount to the disputed invoice and Customer will be responsible for paying the resulting net balance due on that invoice. To the fullest extent permitted by law, Customer waives all claims relating to Fees unless claimed within sixty days after charged.

- 2.3 TRAKKEN shall have the right to charge statutory default interest on all late payments by Customer. If Customer is late on payment for the Services, TRAKKEN or Google may suspend the Services or terminate the Agreement for breach pursuant to Section 7.
- 2.4 For clarity, Customer is obligated to pay all applicable Fees without any requirement for TRAKKEN to provide a purchase order number on TRAKKEN's invoice (or otherwise).
- 2.5 Any account and related billing and payment information which Customer provides to TRAKKEN may be shared with third parties solely for the purposes of performing credit checks, effecting payment to TRAKKEN or servicing Customer's account.
- 2.6 If applicable, Customer will not exceed its total credit line as determined by TRAKKEN in its sole discretion (and made available if requested) and TRAKKEN will not be obliged to provide any Services in excess of such credit line. TRAKKEN reserves the right to change or retract any credit line at any time in its sole discretion.

### **3. Customer Obligations.**

- 3.1 Customer is solely responsible for its Applications, Projects, and Customer Data and for making sure its Applications, Projects, and Customer Data comply with the AUP. Google reserves the right to review the Application, Project, and Customer Data for compliance with the AUP. Customer is responsible for ensuring all Customer End Users comply with Customer's obligations under the AUP, the Service Specific Terms, and the restrictions in Sections 3.3 and 3.5 below.
- 3.2 Customer will obtain and maintain any required consents necessary to permit the processing of Customer Data under this Agreement.
- 3.3 Customer will not, and will not allow third parties under its control to: (a) copy, modify, create a derivative work of, reverse engineer, decompile, translate, disassemble, or otherwise attempt to extract any or all of the source code of the Services (subject to Section 3.4 below and except to the extent such restriction is expressly prohibited by applicable law); (b) use the Services for High Risk Activities; (c) sublicense, resell, or distribute any or all of the Services separate from any integrated Application; (d) create multiple Applications, Accounts, or Projects to simulate or act as a single Application, Account, or Project (respectively) or otherwise access the Services in a manner intended to avoid incurring Fees or exceed usage limits or quotas; (e) unless otherwise set forth in the Service Specific Terms, use the Services to operate or enable any telecommunications service or in connection with any Application that allows Customer End Users to place calls or to receive calls from any public switched telephone network; or (f) process or store any Customer Data that is subject to the International Traffic in Arms Regulations maintained by the U.S. Department of State.
- 3.4 Third party components (which may include open source software) of the Services may be subject to separate license agreements. To the limited extent a third party license expressly

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

- 3.5 TRAKKEN or Google may provide Documentation for Customer's use of the Services. The Documentation may specify restrictions (e.g. attribution or HTML restrictions) on how the Applications may be built or the Services may be used and Customer will comply with any such restrictions specified.
- 3.6 TRAKKEN and Google provide information to help copyright holders manage their intellectual property online, but TRAKKEN and Google cannot determine whether something is being used legally or not without their input.

#### **4. Suspension.**

- 4.1 If Customer becomes aware that any Application, Project, or Customer Data violates the AUP, Customer will immediately suspend the Application or Project and/or remove the relevant Customer Data (as applicable). Customer acknowledges that if Customer fails to suspend or remove as noted in the prior sentence within twenty-four hours, then TRAKKEN or Google may disable the Project or Application until such violation is corrected.
- 4.2 Notwithstanding Section 4.1 TRAKKEN or Google may immediately suspend all or part of Customer's use of the Services if: (a) TRAKKEN or Google believe Customer's or any Customer End User's use of the Services could adversely impact the Services, other customers' or their end users' use of the Services, or the Google network or servers used to provide the Services, which may include use of the Services for cryptocurrency mining without TRAKKEN's prior written approval; (b) there is suspected unauthorized third-party access to the Services; (c) TRAKKEN or Google believe it is required to Suspend immediately to comply with applicable law; or (d) Customer is in breach of Section 3.3. TRAKKEN or Google will lift any such Suspension when the circumstances giving rise to the Suspension have been resolved. At Customer's request, unless prohibited by applicable law, TRAKKEN will notify Customer of the basis for the Suspension as soon as is reasonably possible.

#### **5. Intellectual Property Rights; Use of Customer Data; Feedback; Benchmarking.**

- 5.1 Except as expressly set forth in this Agreement, 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. Customer owns all Intellectual Property Rights in Customer Data and the Application or Project (if applicable), and Google owns all Intellectual Property Rights in the Services and Software.
- 5.2 TRAKKEN and Google will not access or use Customer Data, except as necessary to provide the Services and TSS to Customer.

- 5.3 Customer may not publicly disclose directly or through a third party the results of any comparative or compatibility testing, benchmarking, or evaluation (each, a "Test") of the Services.

## **6. Technical Support Services**

- 6.1 Customer is responsible for technical support of its Applications and Projects.
- 6.2 Subject to payment of applicable support fees, TRAKKEN will provide support services to Customer during the Term.
- 6.3 Customer will contact TRAKKEN as first-level support and not Google.

## **7. Deprecation of Services**

- 7.1 Subject to Section 7.2, TRAKKEN and Google may discontinue any Services or any portion or feature for any reason at any time without liability to Customer.
- 7.2 TRAKKEN or Google will announce if it intends to discontinue or make backwards incompatible changes to the Services specified at the URL in the next sentence. Google will use commercially reasonable efforts to continue to operate those Services versions and features identified at <https://cloud.google.com/terms/deprecation> without these changes for at least one year after that announcement, unless (as Google determines in its reasonable good faith judgment):
- 7.2.1 required by law or third party relationship (including if there is a change in applicable law or relationship), or
- 7.2.2 doing so could create a security risk or substantial economic or material technical burden.

The above policy is the "Deprecation Policy."

## **8. Confidential Information.**

- 8.1 The recipient will not disclose the Confidential Information, except to Affiliates, employees, agents or professional advisors who need to know it and who have agreed in writing (or in the case of professional advisors are otherwise bound) to keep it confidential. The recipient will ensure that those people and entities use the received Confidential Information only to exercise rights and fulfill obligations under this Agreement, while using reasonable care to keep it confidential.
- 8.2 Notwithstanding any provision to the contrary in this Agreement, the recipient may also disclose Confidential Information to the extent required by applicable Legal Process;

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

## **9. Term and Termination.**

- 9.1 The "Term" of the Service Agreement will begin on the Effective Date and continue until the Agreement is terminated as set forth in Section 9 of this Agreement.
- 9.2 Either party may terminate this Agreement for breach 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. In addition, TRAKKEN may terminate any, all, or any portion of the Services or Projects, if Customer meets any of the conditions in Section 9.2(i), (ii), and/or (iii).
- 9.3 Customer may stop using the Services at any time. Customer may terminate this Agreement for its convenience at any time on prior written notice and upon termination, must cease use of the applicable Services.
- 9.4 TRAKKEN may terminate this Agreement for its convenience at any time without liability to Customer.
- 9.5 If the Agreement is terminated, then:
- 9.5.1 the rights granted by one party to the other will immediately cease;
- 9.5.2 all Fees owed by Customer to TRAKKEN are immediately due upon receipt of the final invoice;
- 9.5.3 Customer will delete the Software, any Application, Instance, Project, and any Customer Data; and
- 9.5.4 upon request, each party will use commercially reasonable efforts to return or destroy all Confidential Information of the other party.

## **10. Representations and warranties**



Each party represents and warrants that: (a) it has full power and authority to enter into the Agreement; and (b) it will comply with all laws and regulations applicable to its provision, or use, of the Services, as applicable. TRAKKEN warrants that Google will provide the Services in accordance with the applicable SLA (if any).

## **11. Disclaimer**

Except as expressly provided for in this agreement, to the maximum extent permitted by applicable law, TRAKKEN and Google do not make any other warranty of any kind, whether express, implied, statutory or otherwise, including warranties of merchantability, fitness for a particular use and noninfringement. TRAKKEN and Google are not responsible or liable for the deletion of or failure to store any customer data and other communications maintained or transmitted through use of the services. Customer is solely responsible for securing and backing up its application project, and customer data. Neither TRAKKEN nor Google warrant that the operation of the software will be error-free or uninterrupted. Neither the software nor the services are designed, manufactured or intended for high risk activities.

## **12. Limitation of Liability.**

- 12.1 To the maximum extent permitted by applicable law, 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 To the maximum extent permitted by applicable law, neither party may be held liable under this agreement for more than the amount paid by customer to TRAKKEN under this agreement during the twelve months prior to the event giving rise to liability.
- 12.3 These limitations of liability do not apply to violations of a party's Intellectual Property Rights by the other party, indemnification obligations, or Customer's payment obligations.

## **13. Indemnification.**

- 13.1 Unless prohibited by applicable law, Customer will defend and indemnify TRAKKEN against Indemnified Liabilities in any Third-Party Legal Proceeding to the extent arising from: (i) any Application, Project, Instance, Customer Data or Customer Brand Features; or (ii) Customer's, or Customer End Users', use of the Services in violation of the AUP.
- 13.2 TRAKKEN will defend and indemnify Customer and its Affiliates against Indemnified Liabilities in any Third-Party Legal Proceeding to the extent arising solely from an Allegation that use of (a) Google's technology used to provide the Services or (b) any Google Brand Feature infringes or misappropriates the third party's patent, copyright, trade secret, or trademark.

- 13.3 This Section 13 will not apply to the extent the underlying Allegation arises from:
- 13.3.1. the indemnified party's breach of this Agreement;
  - 13.3.2 modifications to the indemnifying party's technology or Brand Features by anyone other than the indemnifying party;
  - 13.3.3 combination of the indemnifying party's technology or Brand Features with materials not provided by the indemnifying party; or
  - 13.3.4 use of non-current or unsupported versions of the Services or Brand Features;
- 13.4 Sections 13.1 and 13.2 will apply only to the extent:
- 13.4.1 The indemnified party has promptly notified the indemnifying party in writing of any Allegation(s) that preceded the Third-Party Legal Proceeding and cooperates reasonably with the indemnifying party to resolve the Allegation(s) and Third-Party Legal Proceeding. If breach of this Section 13.4.1 prejudices the defense of the Third-Party Legal Proceeding, the indemnifying party's obligations under Section 13.1 or 13.2 (as applicable) will be reduced in proportion to the prejudice.
  - 13.4.2 The indemnified party tenders sole control of the indemnified portion of the Third-Party Legal Proceeding to the indemnifying party, subject to the following: (i) the indemnified party may appoint its own non-controlling counsel, at its own expense; and (ii) any settlement requiring the indemnified party to admit liability, pay money, or take (or refrain from taking) any action, will require the indemnified party's prior written consent, not to be unreasonably withheld, conditioned, or delayed.
- 13.5 If TRAKKEN or Google reasonably believe the Services might infringe a third party's Intellectual Property Rights, then TRAKKEN or Google may, at its sole option and expense: (a) procure the right for Customer to continue using the Services; (b) modify the Services to make them non-infringing without materially reducing their functionality; or (c) replace the Services with a non-infringing, functionally equivalent alternative.
- 13.6 If Google does not believe the remedies in Section 13.5 are commercially reasonable, then Google may Suspend or terminate Customer's use of the impacted Services.
- 13.7 Without affecting either party's termination rights, this Section 13 states the parties' only rights and obligations under this Agreement for any third party's Intellectual Property Rights Allegations and Third-Party Legal Proceedings.

#### **14. Miscellaneous.**

- 14.1 All notices must be in writing and addressed to the other party's legal department and primary point of contact. The email address for notices being sent to TRAKKEN's Legal

Department is info@trakken.de. Notice will be treated as given on receipt as verified by written or automated receipt or by electronic log (as applicable).

- 14.2 Neither party may assign any part of this Agreement without the written consent of the other, except to an Affiliate where: (a) the assignee has agreed in writing to be bound by the terms of this Agreement; (b) the assigning party remains liable for obligations under the Agreement if the assignee defaults on them; and (c) the assigning party has notified the other party of the assignment. Any other attempt to assign is void.
- 14.3 If a party experiences a change of Control (for example, through a stock purchase or sale, merger, or other form of corporate transaction): (a) that party will give 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 that written notice.
- 14.4 Neither party will be liable for failure or delay in performance to the extent caused by circumstances beyond its reasonable control.
- 14.5 If any term (or part of a term) of this Agreement is invalid, illegal, or unenforceable, the rest of the Agreement will remain in effect.
- 14.6 The Agreement is governed by German law under the exclusion of the CISG. The parties agree upon the sole place of jurisdiction at the courts of Hamburg in relation to any dispute (contractual or non-contractual including provisional measures) concerning this Agreement.
- 14.7 The following Sections will survive expiration or termination of this Agreement: 5, 8, 9.5, 12, 13, and 14.
- 14.8 This Agreement sets out all terms agreed between the parties and supersedes all other agreements between the parties relating to its subject matter.