

## **DIR-CPO-4500**

### **Appendix E**

# **Giza Tile Serving Appliance - Service Level Agreement**

This Service Level Agreement governs the use of the Giza Tile Serving Appliance developed by Applied Geographics, Inc. (AppGeo). By purchasing the Giza Tile Serving Appliance (Giza), the customer accepts the terms of this Service Level Agreement (SLA). The parties to this SLA are Applied Geographics (AppGeo) and \_\_\_\_\_(the Customer).

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## 1. Term of Agreement

AppGeo will provide one (1) year of usage of Giza. The Effective Date is the date upon which the Giza appliance service is turned on for the customer. This Agreement shall terminate one-year from the Effective Date unless renewed in writing by the Parties on or before the Effective Date, or terminated in writing with 60 days advance notice by either party.

## 2. Uptime and Scheduled Maintenance

1. The annual uptime percentage will be a minimum of 99%
2. Downtime is any period of time when the Giza is not functioning properly and is unable to produce WMS/WMTS services as intended. Downtime is calculated in minutes and begins when AppGeo identifies any system problems and/or is notified by customer that there is a service interruption.
3. Uptime is calculated by multiplying 24 hrs times 60 minutes times the number of days in a particular month (e.g., 31 for January). This figure is called “minutes per month”. Next, any downtime is subtracted from the “minutes per month” figure, to arrive at “uptime minutes per month.” “Uptime” is the ratio of “uptime minutes per month” divided by “minutes per month.”
4. If any “scheduled maintenance” is required, AppGeo will notify Customer at least one week in advance, and scheduled maintenance will not exceed 8 hours in any given month. AppGeo will notify the Customer of any scheduled maintenance. Maintenance is generally scheduled during non-business hours to minimize user disruption. In months where there is scheduled maintenance, the minutes of maintenance will be subtracted from the “minutes per month”, and will not be counted as downtime.
5. AppGeo is not responsible for downtime caused by factors not within AppGeo’s control. Such downtime will not be counted against the service level commitment stated above. These include but are not limited to downtime caused by:
  1. The negligence, actions or omissions of the Customer or its employees, its contractors or agents, or end users of the web application
  2. Systemic internet issues or any other action or omission of any telecommunication or services provider
  3. Force majeure events such as:
    - Compliance with any act, order, demand or request of any government, governmental authority, or government agency

- Labor disputes, work stoppages or slowdowns of any kind
  - Fires, hurricanes, earthquakes, floods, tornadoes, or other natural disasters
  - War, rebellion, act of terrorism, or civil disorder
4. Any other cause beyond AppGeo's reasonable control, to include downtime of the cloud service provider and hosting environment for Giza
  5. Limitations or errors existing in the content served by Giza, to include imagery data or other raster data types and formats

### 3. Issue Reporting

The Customer should inform the AppGeo point of contact and provide as much information about the failure as possible including the date and time that the failure began, and the types and numbers of users affected. The Customer is free to report issues regarding the following to the AppGeo point of contact, however, AppGeo will not consider such issues to be failures that are subject to this agreement.

### 4. Response and Issue Resolution

#### 1. Business Hours

1. Business hours are: 8AM Eastern - 8PM Eastern. Business hours apply to all weekdays, Monday through Friday, and excluding weekends and holidays.
2. Expanded hours of technical support coverage will require a change order to the statement of work and pricing.

#### 2. The following describes three levels of potential performance defects:

1. **Severe:** the service is completely inaccessible or major features are not functional (This is the only level of performance defect that counts as downtime.)
2. **Medium:** the service is available but performance is degraded that inhibits the end user experience
3. **Low:** the service is available and functional but there is a minor error that does not impact the end user experience

#### 3. When there is a problem, AppGeo will be notified by Customer who will describe the situation and issues and will identify the classification of defect being reported. During business hours, AppGeo will respond to reports of Severe issues within 2 hours, Medium

within 4 hours, and Low within 3 business days. AppGeo will use commercially reasonable efforts to resolve Severe issues within 4 hours, Medium within 1 business day, and Low within 10 business days. If failure occurs outside of normal business hours or on a holiday, troubleshooting and steps to restore the web application will begin at the start of the next business day. For an alternative response resolution program, a separate service contract would be necessary.

4. Methods of Contact. Any downtime or significant issues should be reported to AppGeo via email to [gizahelpdesk@appgeo.com](mailto:gizahelpdesk@appgeo.com)
5. Notifications
  1. AppGeo will let the Customer point of contact know when troubleshooting begins. AppGeo will provide an estimated time to application restoration if such an estimate is possible.
  2. Upon resolution of the issue, AppGeo will let the Customer point of contact know that the application is fully restored.

## 5. Software Updates

Customer will be provided with all standard subscription upgrades to Giza for no additional charge. Updates will be made available to Customer when they are made generally available to all Giza subscriber installations. Customer will be provided documentation on version updates and AppGeo will be available to answer any questions from Customer

## 6. Customer Responsibilities

1. The Customer must designate a point of contact including an email address and phone number. The point of contact will be the receiver of communications from AppGeo regarding application availability and issues.
2. The Customer must promptly inform AppGeo of any changes to their point of contact. AppGeo is not responsible for lapses in communication with the Customer due to incorrect point of contact information.

## 7. Monitoring

1. Giza is automatically monitored for availability at five (5) minute intervals 24 hours per day. If failure is detected, depending on the nature of the failure, AppGeo may inform the client at its discretion. For any significant outages, categorized as “severe” or

“medium”, where service is interrupted for over 4 hours, AppGeo will conduct a root cause analysis and share the results with Customer.

2. The monitoring package maintains statistics on the uptime of the cloud and hosting infrastructure. AppGeo reviews these statistics both weekly and monthly. AppGeo can provide monthly uptime statistics to the Customer upon request.

## 8. Remedies, Limitation Upon Liability, and Standard of Care

AppGeo represents and warrants that its services will be performed in a reasonable and workmanlike manner.

EXCEPT AS OTHERWISE PROVIDED IN THIS SECTION, IN NO EVENT WILL APPGEO'S LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT, WHETHER ARISING OUT OF OR RELATED TO BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, EXCEED THE FOLLOWING:

1. For any month where there is a service interruption, AppGeo will log the duration of interruption and calculate downtime. The service interruption log will be shared with Customer and can be examined on-line at any time.
2. If AppGeo fails to meet the annual uptime goal for three consecutive months, or if AppGeo fails to address defects and downtime when reported by Customer, AppGeo will be prepared to provide a no cost extension of service to compensate Customer for downtime beyond the SLA level. Extensions of service will be calculated at the following rate: the service term will be extended for 1 week (7 days) for each 1 percent of time below the 99.9% uptime goal, as calculated as an average for the three consecutive months the goal is missed.

THIS SERVICE LEVEL AGREEMENT SETS FORTH THE CUSTOMER'S SOLE AND EXCLUSIVE REMEDY FOR ANY FAILURE OF SERVICE AVAILABILITY OR NON-PERFORMANCE. THIS SECTION IS THE SOLE WARRANTY GIVEN IN CONNECTION WITH THE SERVICES AND ANY DELIVERABLES HEREUNDER, AND IS MADE EXPRESSLY IN LIEU OF ALL OTHER WARRANTIES AND REPRESENTATIONS, EXPRESS OR IMPLIED, INCLUDING ANY IMPLIED WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE, MERCHANTABILITY, INFRINGEMENT OR OTHERWISE, AND THE FOREGOING REMEDIES ARE THE CUSTOMER'S SOLE AND EXCLUSIVE REMEDIES FOR ANY AND ALL WARRANTY OR OTHER CLAIMS RELATING TO THE SERVICES OR ANY DELIVERABLES.

Other limitations of liability shall be in accordance with Section 10.L. Limitation of Liability of Appendix A.

## 9. Compensation and Expenses

Pricing, Purchase Orders, Invoices, and Payments shall be in accordance with Sections 8.A. – 8.J. of Appendix A.

## 10. Additional Terms

1. Indemnification shall be in accordance with Section 10.A. of Appendix A.
2. Relationship Between the Parties. The relationship between the Parties is that of independent contractors. Nothing contained in this Agreement shall be construed as creating any agency, partnership, joint venture or other form of joint enterprise, employment or fiduciary relationship between the Parties, and neither Party shall have authority to contract for or bind the other Party in any manner whatsoever.
3. Notice. All notices concerning this Agreement shall be sufficient if in writing and delivered by hand delivery or certified or overnight mail, postage prepaid, to the other party at the address set forth in the introductory paragraph to this Agreement.
4. Entire Agreement. DIR Contract No. DIR-CPO-4500 and this agreement is the entire agreement of the parties hereto and supersedes all prior representations, proposals, discussions, and communications, whether oral or in writing. In the event of a conflict in terms, DIR Contract No. DIR-CPO-4500 has precedence.
5. No Assignment. Neither Party may assign, transfer or delegate any or all of its rights or obligations under this Agreement, without the prior written consent of the other Party; provided, that, upon prior written notice to the other Party, either party may assign the Agreement to an affiliate of such Party or to a successor of all or substantially all of the assets of such Party through merger, reorganization, consolidation or acquisition. No assignment shall relieve the assigning Party of any of its obligations hereunder. Any attempted assignment, transfer or other conveyance in violation of the foregoing shall be null and void. This Agreement shall be binding upon and shall inure to the benefit of the Parties hereto and their respective successors and permitted assigns.
6. Choice of Law shall be in accordance with Section 4.F of Appendix A.
7. Severability. In case one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision hereof and this Agreement will be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.
8. Amendment and Waiver. This Agreement may only be amended, modified or supplemented by an agreement in writing signed by each Party hereto. No waiver by any Party of any of the provisions hereof shall be effective unless explicitly set forth in writing and signed by the Party so waiving. Except as otherwise set forth in this Agreement, no failure to exercise, or delay in exercising, any right, remedy, power or privilege arising from this Agreement shall operate or be construed as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege.

9. Counterparts. This Agreement may be executed in counterparts, including electronic signatures, each of which shall be deemed an original and all of which together shall constitute one and the same Agreement.