

THE INFORMATION IN THIS BOX IS NOT A PART OF THE CONTRACT AND IS FOR COUNTY USE ONLY

Contract Number

24-161

SAP Number

San Bernardino County Fire Protection District

Department Contract Representative
Telephone Number

Dan Munsey
387-5779

Contractor
Contractor Representative
Telephone Number
Contract Term
Original Contract Amount
Amendment Amount
Total Contract Amount
Cost Center

Avenza Systems, Inc.

Indefinite

Non-financial

Non-financial

Briefly describe the general nature of the contract:

Non-financial Terms and Conditions Agreement, including non-standard terms, with Avenza Systems, Inc. for Avenza Maps, beginning upon download, installation, or use of the services and continuing until terminated by either party.

FOR COUNTY USE ONLY

Approved as to Legal Form

► *Bonnie Uphold*

Bonnie Uphold, Supervising Deputy County Counsel

Date 2/21/2024

Reviewed for Contract Compliance

►

Date

Reviewed/Approved by Department

►

Date

Map Store Publisher Agreement

Avenza Systems Inc. ("Avenza") has created a software application ("Avenza Maps") for acquiring, rendering and using digital maps on mobile devices, and accompanying e-commerce mechanisms for selling, distributing and deploying maps for use on mobile devices ("Map Stores"). "You" are the creator, owner and/or publisher of map products ("Licensed Maps") and agree to offer, sell and distribute your map products via the Map Stores as a Map Store Vendor.

By clicking below you agree to the terms and conditions of becoming an Avenza Maps Map Store Vendor effective on the date of submission.

Both parties, acknowledge and agree to the following:

1. Appointment of Agent

1. You appoint Avenza Systems Inc. and its subsidiaries (collectively "Avenza") as Your agent for the sale, marketing and delivery of the Licensed Maps to end-users through the Avenza Map Store, in accordance with the Avenza Maps End User License Agreement. For purposes of this agreement, the term "end-user" includes individuals as well as authorized institutional customers approved by Avenza. The parties acknowledge and agree that Your appointment of Avenza as Your agent is mutually non-exclusive.
2. You hereby acknowledge that Avenza will market and make the Licensed Maps available for download by end-users via purchase through one or more digital distribution platforms for mobile apps and in-app purchases, as well as other methods, systems and environments as Avenza may create, employ or participate in now or at any time in the future, collectively referred to as the "App Stores", and you grant permission for Avenza to do so on Your behalf, pursuant to its own publisher or developer agreement with each individual App Store.
3. Subject to section 1.2 of this agreement You accept that Avenza's relationship with other marketing partners, Affiliates, and App Stores are governed by separate agreements between Avenza and those third-parties. You agree that all relevant terms thereof apply to this agreement.
4. In furtherance of sections 1.2 and 1.3 of this agreement, You hereby authorize Avenza to:
 1. conduct business on Your behalf in accordance with the App Stores in-app purchase programs

guidelines and agreements.

2. use Avenza's own App Store accounts and any applicable vendor accounts to:
 - i. create unique product ID codes ("SKU") for individual or aggregated Licensed Maps based on price point, as it sees fit, pursuant to the terms of each App Stores vendor rules and governances.
 - ii. transact with each App Store system for the purpose of managing prices, selling Licensed Maps, collecting payments, securing against illegal use and duplication and delivering purchases to end-users.
 - iii. manage all elements of the SKU insofar as it is represented in the App Stores, including but not limited to product descriptions, pricing and preview images.
3. Market, solicit and obtain orders on Your behalf for Licensed Maps. These transactions are subject to applicable App Store fees and agent and Affiliate commissions and other charges and fees as defined herein and in Schedule A.
4. Enable members of Avenza's Affiliate program ("Affiliates") to market, solicit and obtain orders of Licensed Maps on Your behalf. As per terms of the Affiliate Program, Affiliates may market and promote Licensed Maps via websites, retail locations and advertisements. You authorize Avenza to retain a portion of the proceeds of Affiliate sales of Licensed Maps and to remit to the Affiliate as defined in Schedule A.

2. Map Store Content

1. As a Map Store vendor, you agree that you have responsibilities relating to the Licensed Maps you provide to Avenza, intended for sale and/or download in the Map Store.
 1. You certify that you own the rights to distribute and sell the Licensed Maps, and that Licensed maps do not contain any proprietary, military or other sensitive or objectionable information for which you do not have permission to distribute, and are not subject to any embargo or export law restrictions.

2. You certify and agree that your use of the Map Store is strictly for sale or free distribution of Licensed Maps to the general public, and is in no way a use of the map store as a platform, archive, storage or distribution system to support the storage or distribution of maps for other commercial purposes including the distribution to your internal or external workforces or other third parties for work or professional use of any kind including but not limited to emergency response, search and rescue, academic research and other fieldwork, military, defense and intelligence, and governmental work related activities of any kind. If you do wish to use the Map Store for government, commercial, professional or work activities, you agree to make the necessary efforts to purchase the appropriate Avenza Cloud subscription or licensing options by contacting the Avenza's sales department at sales@avenza.com and that you will comply with the Avenza Maps app terms of use by requiring that all end users will have a valid Avenza Maps Pro subscription.
 3. You acknowledge that ownership, control, risk of loss, and interest in the Licensed Maps, at all times, remains with you.
 4. You agree to deliver to Avenza the Licensed Maps, related information and metadata, in a format and manner prescribed by Avenza, according to its current business practices and at your expense subject to change at any time at the discretion of Avenza.
 5. You agree to allow Avenza to make copies of, reformat, add security features and prepare Licensed Maps for optimal distribution from the Map Store and optimal use within the Avenza Maps App.
 6. You indemnify and hold Avenza harmless from all claims resulting from the use and distribution of Licensed Maps, including but not limited to, inaccurate information contained in any Licensed Map, copyright infringement, and inaccurate geospatial referencing metadata attached to any Licensed Map.
 7. You agree that Avenza, at its sole discretion and for any reason, shall be permitted to refuse or deny any Licensed Map from being made available in the Map Store.
2. As a party to this agreement, Avenza has responsibilities regarding Licensed Maps intended for sale/download in the Avenza Map Store.
 1. Avenza will provide hosting services to You, in order to allow for the storage of, and end-user access to, the Licensed Maps and all related

content.

2. Avenza may use screenshots and/or images thumbnails, trademarks and logos associated with the Licensed Maps for promotional purposes in marketing materials, without royalty, compensation or any other cost.
3. Avenza, at its sole discretion, may remove, or refuse to include, any Licensed Map in the Map Store should it be deemed to not be in compliance with the requirements of this agreement, any other terms or conditions of the Map Store, if it does not include the sufficient metadata or georeferencing, or if it fails any minimum performance or accuracy standards that Avenza may require of Map Store content, or for any other reason.
3. You hereby certify that all of the Licensed Maps You deliver to Avenza under this agreement are authorized for export from the United States in accordance with all the requirements of all the United States Export Administration Regulations.
4. You hereby certify that all of the Licensed Maps You deliver to Avenza under this agreement are authorized for export from your country of residence in accordance with all the requirements of any and all export laws, regulations and/or guidelines of your country.

3. Map Store Transactions

1. Commissions, Fees and Taxes

Map Store transactions can originate from either of the Avenza Maps website (<https://store.avenza.com/products>) or from within the Avenza Maps app, or any distribution platform Avenza may decide to use, at their sole discretion, in the future. Transactions completed on the Avenza Maps Website are processed and completed by a third-party payment processor ("Processor"). Transactions originating in the app are processed and completed by the App Stores and are subject to agreements between Avenza and each App Store owner. Pursuant thereto,

1. You agree that You and Avenza shall each be entitled to 50% of the net of all amounts received from the sale of Licensed Maps to end-users, net of any taxes, refunds, credits, commissions, Affiliate fees, Processor fees and other costs.
2. You agree that for each Licenced Map sold as the result of an Affiliate marketing activity, a portion of the proceeds will be remitted to the

Affiliate according to the agreement between Avenza and the Affiliate.

3. In the event that the sale or delivery of any Licensed Map to any end-user is subject to any sales, use, goods and services, value-added, withholding or other tax, under applicable law, the tax will be charged and collected by App Stores or by Avenza, as the case may be.
4. You shall indemnify and hold Avenza harmless against any and all claims by any tax authority for any underpayment of any sales, use, goods and services, value added or other tax or levy, and any penalties and/or interest thereon.
5. In the event that any price payable by any end-user for any of the Licensed Maps is subject to (i) any withholding or similar tax; or (ii) any sales, use, goods and services, value-added, or other tax or levy not collected by any App Stores or Avenza; or (iii) any other tax or other government levy of whatever nature, the full amount of that tax or levy shall be solely for Your account, and shall not reduce the commission to which Avenza is entitled under this agreement.

2. Proceeds of Map Store Sales

Upon collection of any amounts from the sale of any Licensed Map, Avenza shall deduct the full amount of its commission, and any commission due to any Affiliate and shall remit to You, or issue a credit in Your favour, the remainder of those receipts. Schedule A contains detailed information about how remittances are calculated and fulfilled in accordance with Avenza standard business practices.

4. Change of Map Store Status

You acknowledge and agree that the form and nature of the services which Avenza provides in the operation of the Map Store may change from time to time without prior notice to you.

5. Change of Content Status

In the event that You no longer have the legal right to distribute the Licensed Maps, or to authorize Avenza to allow access to those Licensed Maps by end-users, You shall promptly notify Avenza to have those Licensed Maps removed from any App Stores. Your withdrawal of Licensed Maps from the Map Store shall not relieve You of any of Your obligations to Avenza under this agreement, or any liability to Avenza and/or any end-user with respect to those Licensed Maps.

6. Change of Vendor Status

Avenza reserves the right to suspend or terminate at any time, at its sole discretion, Your vendor account and/or access to the Licensed Maps by end-users, with or without cause.

7. Changes to this Agreement

Avenza reserves the right to make changes to this agreement at any time at its sole discretion. Should there be any changes, Avenza will notify You within 30 days of any such changes.

8. Termination of Agreement

This agreement shall continue in perpetuity, however, either party may terminate it with or without cause with 30 days written notice to the other party.

9. Consequences

You acknowledge and agree that it is Your responsibility to consult with Your own legal and tax advisors with respect to Your legal and tax obligations that may have been established by this agreement.

Schedule A - Calculation of Map Store Remittances and Commissions

Pursuant to section 3, examples of how remittances are calculated and fulfilled in accordance with Avenza standard business practices appear below.

Map Store Remittances are subject to the following general conditions:

1. All remittances shall be made in US Dollars, at a minimum of \$100.00 and only upon request by You via email.
2. Only reconciled balances are available for payment, whereby reconciled balances means that Avenza has received payment from the applicable App Store, verified the amount received and reconciled the transactions and purchases corresponding thereto with its own transaction records.
3. Remittances shall be delivered by your choice of:
 1. Cheque via standard post
 2. PayPal transfer
 3. Wire transfer subject to bank fees payable by you via deduction from the remittance.
 4. Credit against other Avenza products or services purchased.
4. For the purposes of reconciliation and payment, each individual App Store closes each accounting period according to its own schedule and timing and releases

payment to Avenza according thereto. Avenza reconciles these transactions and posts them to Your account as soon as possible following the close of the period in which the corresponding amount was received by Avenza from the applicable App Store.

5. All payments made to Avenza by Google are in Canadian dollars and all such receipts will be converted to United States dollars at the prevailing rate of exchange at the time prior to being reconciled, reported and posted to Your account.
6. Avenza shall not be liable for any differences resulting from any currency exchange relating to any transaction for payments coming from the App Stores to Avenza or for any payments to you by Avenza.