

Product Passthrough Terms – Google Search Appliance (GSA)

Customer has entered into a certain written agreement (the “Agreement”) pursuant to which Customer has purchased the right to access and use the Product. These Product Passthrough Terms set forth the terms and conditions under which Customer may license and use such Product.

1. License.

- 1.1 License Grant. Subject to the terms and conditions of these Product Passthrough Terms, Customer is granted a non-sublicensable, non-transferable, non-exclusive, limited license to use the Product during the License Term. A license key that enables the Software may be required and forwarded to Customer electronically. Customer will only use the Product to create an index of, and to search for, Customer Content. This license grant is limited to indexing the number of Documents specified on the Ordering Document.
- 1.2 Other Users. Customer may allow Other Users to use the Appliance for the purposes authorized in these Product Passthrough Terms, and subject to the terms of these Product Passthrough Terms. Customer is responsible for the behavior of the Other Users in connection with these Product Passthrough Terms.
- 1.3 Shipment and License Keys. The Product will not be shipped until Provider receives either: (a) a complete and duly executed Ordering Document; or (b) a purchase order from Customer referencing a quote. Upon shipment, Provider may provide Customer with a temporary license key and will transmit a permanent license key upon confirmation of receipt of full payment.

2. Restrictions.

- 2.1 Generally. Customer will not, and will not allow others to: (a) adapt, alter, modify, decompile, translate, disassemble, or reverse engineer the Product or any component thereof; (b) alter the number of Documents; (c) create license keys that enable the Software; (d) copy the Software except as provided in Section 6.2; (e) use the Product for High Risk Activities; (f) transfer, sublicense, loan, sell, lease or use for timesharing or service bureau purposes the Product or any component of the Product; or (g) remove or alter any Brand Features or other proprietary notices on or in the Product.
- 2.2 Restricted Use Appliances. Customer may only use Restricted Use Appliances as specified in the Ordering Document in one of the following capacities: (a) as a hot backup in a load balance situation (if a single Appliance cannot carry the load, Customer must purchase an additional production Appliance); (b) as a hot backup if the Primary System is disabled due to a critical Hardware or Software failure, and only until the failure requiring the use as a hot backup is cured; or (c) as a platform and test environment to assist in its designing, developing and testing applications for use with Provider's other authorized products – in which case the Restricted Use Appliance may only index the same Customer Content as the Primary System, but may not be used in a commercial or production use.
- 2.3 Third Party Components. Any third party component embedded, included or provided for use by Provider with the Products may only be used in conjunction with such Products ordered under the Ordering Document, which use is subject to these Product Passthrough Terms. However, to the extent Products include components governed by open source licenses with provisions inconsistent with these Product Passthrough Terms, those components are instead governed solely by the applicable open source licenses. To the extent Products include components governed by open source licenses requiring the provision of corresponding source code for those components, Provider hereby provides that source code consistent with those licenses.

3. Ownership.

- 3.1 Generally. Except as expressly set forth herein, these Product Passthrough Terms do not grant Customer any rights, implied or otherwise, to the Provider's content or any of the Provider's intellectual property. Intellectual Property Rights in and to the content accessed through the Appliance are the property of the applicable content owner and may be protected by applicable laws.
- 3.2 Branding. Customer may display a Graphic with the results page or the search box (or other means used by an end user to enter a search query) and may link to the Provider's site located at:

www.google.com (or such other URL as may be updated by Provider). Customer's use of Graphics is subject to Provider's then current Brand Feature Guidelines.

- 3.3 **Brand Features.** Any use of a Provider's Brand Features will inure to the benefit of the Provider. Customer will not: (a) challenge or assist others to challenge Provider's Brand Features or registration thereof (except to protect Customer's rights with respect to its own Brand Features); or (b) attempt to register any Brand Features that are confusingly similar to those of Provider.
4. **Delivery and Risk of Loss.** Upon receipt of the Product by Customer, Customer bears all risk of loss for the Product.
5. **Technical Support Services.**
 - 5.1 **Generally.** Provider will provide TSS to Customer for the Products for the Support Period in accordance with the TSSG in effect when the Products are ordered. Unless otherwise agreed in writing, to receive TSS Customer must provide Provider with all reasonably required access to the Appliance in accordance with the TSSG. Customer's failure to provide such access will be at Customer's own risk and without liability to Provider.
 - 5.2 **Software Updates.** TSS includes Updates. Customer's use of Updates is subject to these Product Passthrough Terms. 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 onto the Appliance. Customer will immediately erase or destroy the copy of the Update once that Update is installed on the Appliance.
 - 5.3 **Changes to TSS.** If there are material changes to the TSS, Customer will be notified. If the change has a material adverse impact on Customer and Customer does not agree to the change, Customer must so notify Provider within thirty days after receiving notice of the change. If Customer notifies Provider as required, then Customer will remain governed by the TSS in effect immediately prior to the change until the end of the then-current term for the TSS. If the TSS are renewed, they will be renewed under Provider's then current TSSG.
 - 5.4 **Additional Support.** Customer's Agreement may provide for other technical support or other services to be provided to Customer. Provider will have no obligations with respect to such technical support or services.
6. **Confidential Information.** 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 Confidential Information only to exercise rights and fulfill obligations under these Product Passthrough Terms, and that they keep it confidential. The recipient may also disclose Confidential Information when required by law after giving reasonable notice to the discloser, if permitted by law.
7. **Limited Warranty.**
 - 7.1 **Limited Warranty.** Provider warrants to Customer that: (a) Hardware will be free from defects in material and workmanship, and will substantially conform to all material aspects of the Documentation, for a period of ninety days from the later of: (i) installation of the Appliance; or (ii) ten days after the Shipment Date; and (b) Software will substantially achieve the functionality described in the Documentation for a period of ninety days from the later of: (i) installation of the Appliance; or (ii) ten days after the Shipment Date.
 - 7.2 **Exclusions.** The limited warranty set forth in Section 7.1 above will not apply to defects or errors in the Appliance that are caused by: (i) Customer's failure to follow Provider's environmental, installation, operation or maintenance instructions or procedures in the Documentation; (ii) Customer's mishandling, abuse, misuse, negligence, or improper storage, servicing, or operation of the Appliance (including without limitation use with incompatible equipment); or (iii) modifications to, repairs to or improper installation of the Appliance.
 - 7.3 **Exclusive Remedy.** Customer's sole and exclusive remedy with respect to breach of the above warranty will be at Partner's option: (a) repair of the Product in accordance with the TSSG; (b)

replacement of the defective component or entire Appliance, as applicable; or (c) refund of the purchase price paid for the Appliance.

8. **Disclaimer.** Except as expressly provided in this agreement, to the maximum extent permitted by applicable law, there are NO OTHER WARRANTIES OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, INCLUDING WITHOUT LIMITATION WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR USE AND NONINFRINGEMENT. Provider does not warrant that the operation of the APPLIANCE will be error-free or uninterrupted. THE PRODUCT is not designed, manufactured, or intended FOR HIGH RISK ACTIVITIES.
9. **Publicity.** Provider may include Customer's name or Brand Features in a list of Provider's customers. Provider may also verbally reference Customer as a customer of the Provider products or services that are the subject of these Product Passthrough Terms. This section is subject to Section 3.3.

10. **Term and Termination.**

- 10.1 **Term.** Subject to Customer's payment, the term of the license granted in these Product Passthrough Terms for any Product will begin on the Shipment Date and will continue for the License Term, unless terminated earlier as set forth below.
- 10.2 **Termination for Breach.** Provider or Customer may terminate these Product Passthrough Terms if: (i) the other is in material breach of these Product Passthrough Terms and fails to cure that breach within thirty days after receipt of written notice; (ii) the other ceases its business operations or becomes subject to insolvency proceedings and the proceedings are not dismissed within ninety days; or (iii) the other is in material breach of these Product Passthrough Terms more than two times notwithstanding any cure of such breaches.
- 10.3 **Effect of Termination.** If these Product Passthrough Terms are terminated, then: (i) the License Term and all other rights and licenses granted by one party to the other, or any services provided by Provider to Customer, will cease immediately; (ii) Provider and Customer will each promptly return all Confidential Information of the other; (iii) all payments owed by Customer are immediately due; and (iv) Customer must immediately return the Product to Provider via Provider's authorized return shipment process and, upon receipt by Provider, title in the Hardware will revert to Provider.
- 10.4 **Expiration of the License Term.** The Appliance will cease functioning upon the expiration of the License Term. Customer may: (a) return the non-functioning Appliance to Provider in accordance with the TSS; or (b) retain possession of the Hardware, but only if Customer erases all Software as instructed by Provider. If Customer chooses to retain the Hardware and delete the Software, Customer must provide written certification to Provider of this deletion within ten business days of the expiration of the License Term.

11. **Possible Infringement.**

- 11.1 **Options.** If Provider reasonably believes the Appliance infringe a third party's copyright, trademark rights, or trade secrets, then Provider will: (a) obtain the right for Customer, at no expense to Customer, to continue to use the Appliance; (b) provide a non-infringing replacement with substantially the same functionality; or (c) modify the Appliance so that they no longer infringe.
- 11.2 **Termination and Refund.** If Provider does not reasonably believe the options in Section 11.1 are commercially reasonable, Provider may terminate the license for the allegedly infringing Appliance.

12. **Product Development.** The Product is commercial within the meaning of the applicable civilian and military Federal acquisition regulations and any supplements thereto.

13. **Export Compliance.** Customer will comply with, and will obtain all prior authorization from the competent government authorities required by, the Export Control Laws.

14. **Miscellaneous.**

- 14.1 **Force Majeure.** Provider will not be liable for failure or delay in performance to the extent caused by circumstances beyond its reasonable control.

- 14.2 No Waiver. Failure to enforce any provision of these Product Passthrough Terms will not constitute a waiver.
- 14.3 No Agency. These Product Passthrough Terms do not create any agency, partnership or joint venture.
- 14.4 No Third-Party Beneficiaries. There are no third-party beneficiaries to these Product Passthrough Terms.
- 14.5 Survival. The following sections will survive expiration or termination of these Product Passthrough Terms: Sections 3, 6, 10.3, 13, 14 and 15.
- 14.6 Severability. If any term (or part of a term) of these Product Passthrough Terms is invalid, illegal, or unenforceable, the rest of these Product Passthrough Terms will remain in effect.
- 14.7 Conflicting Terms. If there is a conflict between any terms of these Product Passthrough Terms and any other document that makes up the entire agreement as needed for Customer to use the Product, the terms of these Product Passthrough Terms will take precedence.

15. **Definitions.**

“Admin Console” means the web based administrative console through which Customer can configure and administer the Appliance, and link to Provider’s online help center.

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

“Appliance” means the Software and Hardware.

“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.

“Brand Features Guidelines” means the guidelines for third party use of Provider’s Brand Features, accessed at <http://www.google.com/permissions/guidelines.html> (or other such URL as periodically provided by Provider).

“Confidential Information” means information disclosed by a party to the other party under these Product Passthrough Terms that is marked as confidential or would normally be considered confidential under the circumstances. Information provided to Provider by Customer during Provider’s provision of TSS is Customer’s Confidential Information.

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

“Customer Contacts” is defined in the TSSG.

“Customer Content” means content owned by, or lawfully licensed to, Customer. Customer Content may be located on servers that are owned and operated by Customer, or operated on Customers behalf.

“Documents” means the number of documents Customer may index, and is set forth on the Ordering Document.

“Documentation” means Provider’s proprietary documentation in the form generally made to Customers for use with the Appliance, including documentation provided via the Admin Console help center.

“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.

“Fees” means all applicable fees as set forth in the Ordering Document.

“GES Site” means the secure site and online portal provided by Provider, accessed at <https://support.google.com/enterprise> (or such other URL as may be updated by Provider from time to time), which includes Documentation and an online knowledge base, and which links to related public content hosted elsewhere.

“Graphic” means an unaltered graphic in the form provided by Provider for the purpose of identifying that the search function is provided by Provider. Graphics may be accessed at: www.google.com/stickers.html (or other URL as may be updated by Provider).

“Hardware” means the Provider proprietary computer hardware.

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

“Intellectual Property Rights” means any and all rights existing from time to time under patent law, copyright law, semiconductor chip protection law, moral rights law, trade secret law, trademark law, unfair competition law, publicity rights law, privacy rights law, and any and all other proprietary rights, and any and all applications, renewals, extensions and restorations thereof, now or hereafter in force and effect worldwide.

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

“Ordering Document” means the purchasing document provided to Provider for the Product.

“Other Users” means Customer’s Affiliates, agents, contractors, or authorized end users.

“Partner” means the entity Customer is paying to provide access to and use of the Product.

“Primary System” means an Appliance for which Customer has obtained a license from Provider.

“Product” means the Appliance and the Documentation.

“Provider” means the third party provider of the Product.

“Restricted Use Appliance” means an Appliance identified on an Ordering Document as a hot back-up or development Appliance.

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

“Software” means the Provider proprietary computer software, in binary executable form only, which is installed on the Hardware.

“Support Period” means the period of time, set forth in the Ordering Document, during which Provider will provide TSS. Unless otherwise agreed to in writing, the Support Period will begin upon the later of: (i) Provider’s installation of the Products; or (ii) ten days following the Shipment Date and will run concurrent to the Term specified in the Ordering Document.

“TSS” means the technical support services provided by Provider, in accordance with Provider’s TSSG, for the Products identified in the Ordering Document for Support Period.

“TSSG” means Provider’s then current Technical Support Services Guidelines, which may be accessed at the following URL: <http://support.google.com/enterprise/terms> (or other such URL as Provider provides periodically).

“Updates” is defined in the TSSG.