

Product Passthrough Terms – Google Apps for Work (for Customers)

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 access and use such Product.

1. Product.

- 1.1 Facilities and Data Transfer. All facilities used to store and process Customer Data will adhere to reasonable security standards no less protective than the security standards at facilities where Provider stores and processes its own information of a similar type. Provider has implemented at least industry standard systems and procedures to ensure the security and confidentiality of Customer Data, protect against anticipated threats or hazards to the security or integrity of Customer Data, and protect against unauthorized access to or use of Customer Data. As part of providing the Product, Provider may transfer, store and process Customer Data in the United States or any other country in which Provider or its agents maintain facilities. By using the Product, Customer consents to this transfer, processing and storage of Customer Data.
- 1.2 Modifications.
 - a. To the Product. Provider may make commercially reasonable changes to the Product, from time to time. If Provider makes a material change to the Product, Customer may be informed of such change, provided that Customer has subscribed with Provider to be informed about such change.
 - b. To URL Terms. Provider may make commercially reasonable changes to the URL Terms from time to time. If Provider makes a material change to the URL Terms, Customer may be informed of such change through the Notification Email Address or via the Admin Console. If the change has a material adverse impact on Customer and Customer does not agree to the change, Customer must so notify Partner or Provider via the Help Center within thirty days after receiving notice of the change. Upon such notification, Customer will remain governed by the URL Terms in effect immediately prior to the change until the end of the then-current term for the affected Product. If the affected Product is renewed, they will be renewed under Provider’s then current URL Terms.
- 1.3 Customer Domain Name Ownership. Prior to providing the Product, Provider or Partner may verify that Customer owns or controls the Customer Domain Names. If Customer does not own, or control, the Customer Domain Names, then Provider will have no obligation to provide Customer with the Product.
- 1.4 Federal Information Security Management Act (FISMA). The Provider’s Product known as “Google Apps Core Services” received a FISMA “Authorization to Operate” for a Moderate impact system. Provider will continue to maintain a System Security Plan (SSP) for the Google Apps Core Services, based on NIST 800-53 Rev. 3, or a similarly applicable standard. If Provider does not maintain this SSP as stated, Customer’s sole and exclusive remedy, and Provider’s entire liability, will be Customer’s ability to terminate use of the Product upon thirty days prior written notice.

2. Customer Obligations.

- 2.1 Compliance. Customer will use the Product in accordance with the Acceptable Use Policy. Provider may make new applications, features or functionality for the Product available from time to time, the use of which may be contingent upon Customer’s agreement to additional terms. In addition, Provider will make other Non-Google Apps Products (beyond the Product) available to Customer and its End Users in accordance with the Non-Google Apps Product Terms and the applicable product-specific Provider terms of service. If Customer does not desire to enable any of the Non-Google Apps Products, Customer can enable or disable them at any time through the Admin Console.
- 2.2 Customer Administration of the Product. Customer may specify one or more Administrators through the Admin Console who will have the rights to access Admin Account(s) and to administer the End User Accounts. Customer and Partner are responsible for: (a) maintaining the confidentiality of the password and Admin Account(s); (b) designating those individuals who are authorized to access the Admin Account(s); and (c) ensuring that all activities that occur in connection with the Admin Account(s) comply with these

Product Passthrough Terms. Customer agrees that Provider's responsibilities do not extend to the internal management or administration of the Product for Customer and that Provider is merely a data-processor.

- 2.3 End User Consent. Customer's Administrators may have the ability to access, monitor, use, or disclose data available to End Users within the End User Accounts. Customer will obtain and maintain all required consents from End Users to allow: (i) Customer's access, monitoring, use and disclosure of this data and Provider providing Customer with the ability to do so, and (ii) Provider to provide the Product.
 - 2.4 Unauthorized Use. Customer will use commercially reasonable efforts to prevent unauthorized use of the Product, and to terminate any unauthorized use. Customer or Reseller will promptly notify Provider of any unauthorized use of, or access to, the Product of which it becomes aware.
 - 2.5 Restrictions on Use. Unless Provider specifically agrees in writing, Customer will not, and will use commercially reasonable efforts to make sure a third party does not: (a) sell, resell, lease, or the functional equivalent, the Product to a third party (unless expressly authorized in these Product Passthrough Terms); (b) attempt to reverse engineer the Product or any component; (c) attempt to create a substitute or similar service through use of, or access to, the Product; (d) use the Product for High Risk Activities; or (e) use the Product to store or transfer any Customer Data that is controlled for export under Export Control Laws. Customer is solely responsible for any applicable compliance with HIPAA.
 - 2.6 Third Party Requests. Customer is responsible for responding to Third Party Requests. Provider will, to the extent allowed by law and by the terms of the Third Party Request: (a) promptly notify Customer of its receipt of a Third Party Request; (b) comply with Customer's reasonable requests regarding its efforts to oppose a Third Party Request; and (c) provide Customer with the information or tools required for Customer to respond to the Third Party Request. Customer will first seek to obtain the information required to respond to the Third Party Request on its own, and will contact Provider only if it cannot reasonably obtain such information.
3. Technical Support Services.
 - 3.1 By Customer. Customer or Partner will, at its own expense, respond to questions and complaints from End Users or third parties relating to Customer's or End Users' use of the Product. Customer or Partner will use commercially reasonable efforts to resolve support issues before escalating them to Provider.
 - 3.2 By Provider. If Customer or Partner cannot resolve a support issue consistent with the above, then Customer or Partner (as applicable based on the agreement between Provider and Partner) may escalate the issue to Provider in accordance with the TSS Guidelines. Provider will provide TSS to Customer or Partner (as applicable) in accordance with the TSS Guidelines.
4. Suspension.
 - 4.1 Of End User Accounts by Provider. If Provider becomes aware of an End User's violation of these Product Passthrough Terms, then Provider may specifically request that Customer Suspend the applicable End User Account. If Customer fails to comply with Provider's request to Suspend an End User Account, then Provider may do so. The duration of any Suspension by Provider will be until the applicable End User has cured the breach which caused the Suspension.
 - 4.2 Emergency Security Issues. Notwithstanding the foregoing, if there is an Emergency Security Issue, then Provider may automatically Suspend the offending use. Suspension will be to the minimum extent and of the minimum duration required to prevent or terminate the Emergency Security Issue. If Provider Suspends an End User Account for any reason without prior notice to Customer, at Customer's request, Provider will provide Customer the reason for the Suspension as soon as is reasonably possible.
5. Confidential Information.
 - 5.1 Obligations. Customer and Provider will: (a) protect the other's Confidential Information with the same standard of care it uses to protect its own Confidential Information; 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. Customer and Provider (and any Affiliates, employees and agents to whom it has disclosed Confidential Information) may use Confidential Information only to exercise rights and fulfill its obligations under these Product Passthrough Terms, while using reasonable care to protect it. Customer

and Provider, respectively, will be responsible for any actions of its Affiliates, employees and agents in violation of this Section.

5.2 Exceptions. Confidential Information does not include information that: (a) the recipient of the Confidential Information 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 a third party.

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

6. Intellectual Property Rights; Brand Features.

6.1 Intellectual Property Rights. Except as expressly set forth herein, these Product Passthrough Terms does not grant either Customer or Provider any rights, implied or otherwise, to the other's content or any of the other's intellectual property. As between the Customer and Provider, Customer owns all Intellectual Property Rights in Customer Data, and Provider owns all Intellectual Property Rights in the Product.

6.2 Display of Brand Features. Provider may display those Customer Brand Features authorized by Customer (such authorization is provided by Customer uploading its Brand Features into the Product), and within designated areas of the Service Pages. Customer may specify the nature of this use using the Admin Console. Provider may also display Provider Brand Features on the Service Pages to indicate that the Product are provided by Provider. Neither party may display or use the other party's Brand Features beyond what is allowed in these Product Passthrough Terms without the other's prior written consent.

6.3 Brand Features Limitation. Any use of Brand Features will inure to the benefit of the entity holding Intellectual Property Rights in those Brand Features. Any right to use its Brand Features pursuant to these Product Passthrough Terms may be revoked at any time with written notice to the other and a reasonable period to stop the use.

7. Publicity. Customer agrees that Provider may include Customer's name or Brand Features in a list of Provider customers, online or in promotional materials. Customer also agrees that Provider may verbally reference Customer as a customer of the Provider's Product that is the subject of these Product Passthrough Terms.

8. Representations, Warranties and Disclaimers.

8.1 Representations and Warranties. Customer and Provider represent that each will comply with all laws and regulations applicable to its provision, or use, of the Product, as applicable (including applicable security breach notification law). Provider warrants that it will provide the Product in accordance with the applicable SLA.

8.2 Disclaimers. TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, EXCEPT AS EXPRESSLY PROVIDED FOR HEREIN, NEITHER PARTY MAKES 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. PROVIDER MAKES NO REPRESENTATIONS ABOUT ANY CONTENT OR INFORMATION MADE ACCESSIBLE BY OR THROUGH THE PRODUCT. CUSTOMER ACKNOWLEDGES THAT THE PRODUCT IS NOT A TELEPHONY SERVICE AND THAT THE PRODUCT IS NOT CAPABLE OF PLACING OR RECEIVING ANY CALLS, INCLUDING EMERGENCY PRODUCT CALLS, OVER PUBLICLY SWITCHED TELEPHONE NETWORKS.

9. Term and Termination.

9.1 Term. The term for the Product will be as decided upon between Partner and Customer. These Product Passthrough Terms will remain in effect for the Term.

9.2 Termination for Breach. The Services may be suspended or terminated, if: (i) Customer is in material breach of these Product Passthrough Terms and fails to cure that breach within thirty days after receipt of written notice; (ii) Customer ceases its business operations or becomes subject to insolvency proceedings and the proceedings are not dismissed within ninety days; or (iii) Customer is in material breach of these Product Passthrough Terms more than two times notwithstanding any cure of such breaches.

9.3 Effects of Termination. If Services are terminated, then: (i) the rights granted by Provider to Customer, and Customer to Provider will cease immediately (except as set forth in this Section); (ii) neither Customer nor Partner will have access to, or the ability to export, the Customer Data; (iii) Provider will begin to delete Customer Data; and (iv) upon request will promptly use commercially reasonable efforts to return or destroy all other Confidential Information of the other.

10. Miscellaneous.

10.1 Product Development. 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.

10.2 Force Majeure. Due to circumstances beyond Provider's controls, Provider may not be able to provide the Product.

10.3 No Waiver. Failure to enforce any provision of these Product Passthrough Terms will not constitute a waiver.

10.4 No Agency. These Product Passthrough Terms do not create any agency, partnership or joint venture.

10.5 No Third-Party Beneficiaries. There are no third-party beneficiaries to these Product Passthrough Terms. Customer's sole remedies will be set forth in its agreement with the Partner.

10.6 Survival. The following sections will survive expiration or termination of these Product Passthrough Terms: Sections 5, 6, 9.3, 10 and 12.

10.7 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.

10.8 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.

11. Additional Product Terms.

11.1 Ads. Provider does not serve Ads in the Product or use Customer Data for Ads purposes.

11.2 Aliases. Customer is solely responsible for monitoring, responding to, and otherwise processing emails sent to the "abuse" and "postmaster" aliases for Customer Domain Names but Provider may monitor emails sent to these aliases for Customer Domain Names to allow Provider to identify Product abuse.

11.3 Google Apps Vault Retention. If Customer is using Google Apps Vault, Provider will have no obligation to retain any archived Customer Data beyond the retention period specified by Customer. If Customer does not renew Google Apps Vault, Provider will have no obligation to retain any archived Customer Data.

12. Definitions.

"Acceptable Use Policy" means the acceptable use policy for the Product available at http://www.google.com/a/help/intl/en/admins/use_policy.html. The Acceptable Use Policy and such URL link may be updated or modified by Provider from time to time.

"Admin Account(s)" means the administrative account(s) provided to Customer for the purpose of administering the Product. The use of the Admin Account(s) requires a password, which Provider will provide to Customer or Partner.

"Admin Console" means the online tool Customer may use in reporting and certain other administration functions.

"Administrators" mean the Customer-designated technical personnel who administer the Product to End Users on Customer's behalf.

“Ads” means online advertisements displayed by Provider to End Users, excluding advertisements provided by any advertising products that are not part of the Product that Customer chooses to use in connection with the Product.

“Affiliate” means any entity that directly or indirectly controls, is controlled by, or is under common control with an entity.

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

“Confidential Information” means information disclosed or exchanged under these Product Passthrough Terms that is marked as confidential or would normally be considered confidential under the circumstances. Customer Data is Customer’s Confidential Information.

“Customer Data” means data, including email, provided, generated, transmitted or displayed via the Product by Customer, End Users, or Partner on behalf of Customer.

“Customer Domain Names” mean the domain names owned or controlled by Customer, which will be used in connection with the Product.

“Emergency Security Issue” means either: (a) Customer’s use of the Product in violation of the Acceptable Use Policy, which could disrupt: (i) the Product; (ii) other customers’ use of the Product; or (iii) the Provider network or servers used to provide the Product; or (b) unauthorized third party access to the Product.

“End Users” means the individuals Customer permits to use the Product.

“End User Account” means a Provider-hosted account established by Customer through the Product for an End User.

“Export Control Laws” means all applicable export and reexport control laws and regulations, including 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.

“Google Apps Core Services” means the applicable Product purchased by Customer from Partner which are more fully described here: http://www.google.com/a/help/intl/en/users/user_features.html. The Google Apps Core Services and such URL link may be updated or modified by Provider from time to time.

“Help Center” means the Provider help center accessible at <http://www.google.com/support/>. The Help Center and such URL link may be updated or modified by Provider from time to time.

“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.

“HIPAA” means the Health Insurance Portability and Accountability Act of 1996, as may be amended from time to time, and any regulations issued thereunder.

“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.

“Non-Google Apps Products” means Provider products which are not part of the Product, but which may be accessed by End Users using their End User Account login and password. The Non-Google Apps Products are set forth at the following URL: <http://www.google.com/support/a/bin/answer.py?hl=en&answer=181865>. The Non-Google Apps Products and such URL link may be updated or modified by Provider from time to time.

“Non-Google Apps Product Terms” means the terms found at the following URL: http://www.google.com/apps/intl/en/terms/additional_services.html. The Non-Google Apps Product Terms and such URL link may be updated or modified by Provider from time to time.

“Notification Email Address” means the email address designated by Customer to receive email notifications from Provider. Customer may provide a Partner email address for this purpose if it so chooses. Customer may change this email address through the Admin Console.

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

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

“Service Pages” mean the web pages displaying the Product to End Users.

“Product” means, as applicable, the Google Apps Core Services purchased from Partner.

“SLA” means the Service Level Agreement located here for applicable Google Apps Core Services: http://www.google.com/apps/intl/en/terms/reseller_sla.html. The SLA and such URL link may be updated or modified by Provider from time to time.

“Suspend” means the immediate disabling of access to the Product, or components of the Product, as applicable, to prevent further use of the Product.

“Term” means the term of these Product Passthrough Terms, which will continue for as long as Customer is receiving Product from Provider, unless terminated earlier pursuant to these Product Passthrough Terms, or pursuant to Customer’s agreement with Partner.

“Third Party Request” means a request from a third party for records relating to an End User’s use of the Product. Third Party Requests can be a lawful search warrant, court order, subpoena, other valid legal order, or written consent from the End User permitting the disclosure.

“TSS” means the technical support Product provided by Provider to the Administrators during the Term pursuant to the TSS Guidelines.

“TSS Guidelines” means Provider’s technical support Product guidelines then in effect for the Product. TSS Guidelines are at the following URL: <http://www.google.com/a/help/intl/en/admins/tssg.html>. The TSS Guidelines and such URL link may be updated or modified by Provider from time to time.

“URL Terms” means the Acceptable Use Policy, the SLA and the TSS Guidelines.