

Pass-through Terms of Service for Google Professional Services

The following Terms of Service govern Google's performance and delivery of certain services and deliverables as described below.

1. Definitions.

"Affiliate" means any entity that directly or indirectly controls, is controlled by, or is under common control with, a party.

"Background IP" means all Intellectual Property owned or licensed by a party (a) before the provision of any Professional Services; or (b) independent of the Professional Services.

"Brand Features" means each party's trade names, trademarks, logos, domain names, and other distinctive brand features.

"Confidential Information" means information that one party (or an Affiliate) discloses to the other party under the Terms of Service, and that is marked as confidential or would normally be considered confidential information under the circumstances. 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.

"Deliverables" means any tangible or intangible work product (including third party materials) specific to the Customer to be provided by Google to Customer in connection with the Professional Services.

"Developed IP" means any Intellectual Property (other than Background IP) created or discovered by or on behalf of either party in connection with the Terms of Service.

"Fees" means the applicable fees for the Professional Services, including any reimbursable expenses (if applicable). The Fees for the Professional Services are stated in the applicable Ordering Document or other Partner document.

"Google Product" means any Google services or products made available to Customer under a separate agreement.

"Including" or **"including"** means "including but not limited to," and any examples listed are illustrative and not the sole examples of a particular concept.

"Indemnified Liabilities" means any (a) settlement amounts approved by the indemnifying party; and (b) damages and costs in a final judgment awarded against the indemnified part(ies) by a competent court.

“Intellectual Property” or **“IP”** means anything protectable by an Intellectual Property Right.

“Intellectual Property Rights” means all patent rights, copyrights, trademark rights, rights in trade secrets (if any), design rights, database rights, domain name rights, moral rights, and any other intellectual property rights (registered or unregistered) throughout the world.

“Ordering Document” means an order form or statement of work issued by a Partner, referencing the Terms of Service and signed by Customer and Partner (as applicable). An Ordering Document will describe, at a minimum, the following: (a) details of the Google Professional Services being ordered; (b) the Fees; and (c) the applicable form of payment.

“Partner” means a third party entity authorized by Google to resell the Professional Services.

“Personnel” means a party’s directors, officers, employees, agents, other staff and subcontractors.

“Product Agreement” means the separate agreement (if any) entered into between Google and Customer with respect to a Google Product, as amended from time to time in accordance with its terms.

“Professional Services” means Google professional services ordered by Customer subject to the Terms of Service, as more fully described in the datasheet associated with the applicable SKU referenced in an applicable Ordering Document.

“Third-Party Legal Proceeding” means any formal legal proceeding filed by an unaffiliated third party before a court or government tribunal (including any civil, administrative, investigative or appellate proceeding).

“Trademark Guidelines” means Google’s guidelines for third party use of Google’s Brand Features, located at: <http://www.google.com/permissions/guidelines.html>.

2. **Professional Services.**

2.1 **Professional Services.** Google will provide Professional Services and Deliverables to Customer in accordance with the Terms of Service, subject to Customer fulfilling its obligations under Section 2.2 (Customer Cooperation). The scope of the Google Professional Services will be detailed in the Ordering Document.

2.2 Customer Cooperation. Time will not be of the essence for performance of the Professional Services or delivery of the Deliverables. Customer will provide reasonable and timely cooperation in connection with Google's performance of the Professional Services and delivery of the Deliverables. Customer will fulfill any responsibility described in the Ordering Document. Customer will also provide any information that Google needs to provide Professional Services or that is necessary for a Deliverable. If necessary, Customer will provide access to customer controlled facilities and locations. All information that Customer provides Google will be accurate in all material respects. If Customer's failure to comply with the foregoing causes any delay in Google's performance of the Professional Services or delivery of the Deliverables, neither Google nor Partner will be liable for such delay. Partner may charge additional reasonable fees or cancel any uncompleted Professional Services or Deliverables by notifying Customer in writing (email permitted).

2.3 Personnel. Google will determine its Personnel assigned to perform the Professional Services. If Customer has a reasonable basis for requesting a change of such Personnel, Google will reasonably consider the request and use reasonable efforts to replace the assigned Personnel with alternative Google Personnel.

3. **Payments**. If Customer orders Professional Services from a Partner: (a) Customer will pay Partner for the Professional Services; (b) all payment terms are to be decided upon between Customer and Partner; (c) there will not be an Ordering Document between Google and Customer; (d) Google will provide to Partner any refunds or credits that may be due to Customer; and (e) any obligation on the part of Partner to provide any such refunds or credits to Customer will depend on the terms decided upon between Customer and Partner.

4. **Intellectual Property**.

4.1 Background IP. Except for the license rights under Section 5 (Licenses), neither party will own or acquire any right, title, or interest in or to the other party's Background IP under the Terms of Service.

4.2 Deliverables and Developed IP.

(a) Title to Deliverables. Subject to Sections 4.1 (Background IP) and 4.2(b) (Ownership of Developed IP), title to the Deliverables will transfer to Customer upon delivery.

(b) Ownership of Developed IP. As between the parties, and subject to Section 5.3 (License to Developed IP):

(i) Google owns any Developed IP; and

(ii) to the extent that Customer or any of its Personnel owns any rights in the Developed IP, Customer assigns to Google (or agrees to procure the assignment to Google of) all rights (including Intellectual Property Rights), title, and interest in or to the Developed IP, provided

however that if applicable law prevents future assignments, Customer will assign (or will procure the assignment of) such rights as these are created.

(c) Moral Rights. Customer will not assert, and to the extent permitted by applicable law, otherwise waives, any moral rights in the Developed IP. Customer will ensure that its Personnel and other third parties in its control who have moral rights in the Developed IP will also not assert, and to the extent permitted by applicable law, will waive, those moral rights.

5. Licenses.

5.1 Google IP. Subject to Customer's payment of applicable Fees, Google grants a limited, non-exclusive, royalty-free, fully-paid, worldwide license (with the right to sublicense to Affiliates only) to Customer to do the following for Customer's internal business purposes:

(a) use the Developed IP solely in connection with the Deliverables; and

(b) use any Google Background IP included in the Deliverables solely in connection with the Deliverables.

5.2 Customer Background IP. Customer grants to Google and its Personnel a limited, non-exclusive, non-transferable, royalty-free, fully-paid, worldwide license (with the right to sublicense) to reproduce, maintain, prepare derivative works of, distribute and use Customer Background IP solely in connection with Google's performance of Professional Services and creation and delivery of the Deliverables under the Terms of Service.

5.3 License to Developed IP. If applicable law prevents Customer from assigning ownership to Google of any Developed IP, Customer grants Google a perpetual, irrevocable, exclusive, royalty-free, fully-paid, transferable, worldwide license (with the right to sublicense) to:

(a) reproduce, prepare derivative works of, distribute, publicly perform, publicly display and otherwise use such Developed IP; and

(b) make, use, sell, offer for sale, import, export any component of and otherwise dispose of such Developed IP.

6. Confidentiality. The recipient will not disclose the Confidential Information, except to its Personnel, Affiliates, or professional advisors ("Delegates") who need to know it and who have a legal obligation to keep it confidential. The recipient will use the Confidential Information only to exercise rights and fulfill obligations under the Terms of Service, while using reasonable care. The recipient will ensure that its Delegates are also subject to the same non-disclosure and use obligations. The recipient may disclose Confidential Information when required by law after giving reasonable notice to the discloser, if permitted by law. Except for the limited use rights under the Terms of Service, neither party acquires any right, title, or interest in the other party's Confidential Information.

7. Publicity. Unless Customer agrees to different terms with the Reseller, then in connection with Customer's purchase and receipt of the Professional Services, (a) Customer may state publicly that it is a Google customer and display Google Brand Features consistent with the Trademark Guidelines, and (b) Google may (i) orally state that Customer is a Google customer and (ii) include Customer's name or Customer Brand Features in a list of Google customers (whether in Google's online or offline promotional materials). Any use of a party's Brand Features will inure to the benefit of the party holding Intellectual Property Rights to those Brand Features. A party may revoke the other party's right to use its Brand Features under this Section with written notice to the other party and a reasonable period to stop the use.

8. Warranties and Disclaimers.

8.1 Google Warranties.

(a) Quality. Google will perform the Professional Services in a professional and workmanlike manner, with reasonable skill and care, in accordance with generally-accepted industry standards. All of Google's Personnel performing the Professional Services have the requisite skills, experience, and qualifications.

(b) No Conflicts. There are no actual or potential conflicts of interest concerning the provision of the Services.

(c) Compliance with Customer's Onsite Policies and Procedures. If Google's Personnel perform Professional Services onsite at Customer's facilities, they will comply with Customer's reasonable procedures and policies made known to Google in writing in advance.

8.2 Remedies. Google's entire liability and Customer's sole remedy for failure to provide Professional Services or Deliverables that conform with Section 8.1(a) (Quality) will be for Google to use reasonable efforts to re-perform the applicable Professional Services or to terminate the applicable Ordering Document, and refund any applicable Fees received for the nonconforming Professional Services.

8.3 Disclaimers. TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, EXCEPT AS EXPRESSLY PROVIDED FOR IN THIS SECTION 8, GOOGLE DISCLAIMS ALL WARRANTIES OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, INCLUDING WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR USE AND NONINFRINGEMENT. GOOGLE MAKES NO REPRESENTATIONS ABOUT ANY GOOGLE PRODUCTS OR ANY CONTENT OR INFORMATION MADE ACCESSIBLE OR AVAILABLE BY OR THROUGH THE PROFESSIONAL SERVICES.

9. Termination.

9.1 Effects of Termination.

(a) Effects of Termination on Professional Services and Deliverables. If there is a termination of the agreement between the Customer and Partner, Google will immediately stop work on any Professional Services and Deliverables that remain incomplete as of the effective date of termination.

(c) Survival. Sections 1 (Definitions), 3 (Payment), 4 (Intellectual Property), 5.3 (License to Developed IP), 6 (Confidentiality), 8.2 (Remedies), 8.3 (Disclaimers), 9.1 (Effects of Termination), 10 (Defense and Indemnity), and 11 (General) will survive expiry or termination of the Terms of Service.

10. Defense and Indemnity.

10.1 Google Indemnification Obligations. Subject to Section 10.4 (Conditions), Google will defend and indemnify Customer against Indemnified Liabilities in any Third-Party Legal Proceeding to the extent arising from an allegation that Customer's use in accordance with the Terms of Service of any of the following (collectively, the "Google Indemnified Materials") infringes the third party's Intellectual Property Rights: (a) Deliverables including Developed IP and Google Background IP (in each case, excluding any open source software and any Developed IP licensed by Customer to Google); or (b) Google's Brand Features.

10.2 Customer Indemnification Obligations. Subject to Section 10.4 (Conditions), Customer will defend Google, its Personnel, and its Affiliates ("Google Indemnified Parties"), and indemnify them against Indemnified Liabilities in any Third-Party Legal Proceeding to the extent arising from an allegation that Google Indemnified Parties' use in accordance with the Terms of Service of any of the following (collectively, the "Customer Indemnified Materials") infringes the third party's Intellectual Property Rights: (a) Customer Background IP, any Developed IP licensed to Google by Customer and any other information, materials or technology provided to Google by Customer in connection with the Professional Services (in each case, excluding any open source software); or (b) Customer's Brand Features. If Customer is a U.S. (federal, state, or local) government agency, then Customer's indemnification obligations will apply to the extent permitted by law.

10.3 Exclusions. This Section 10 will not apply to the extent the underlying allegation arises from:

(a) modifications to the Google Indemnified Materials or Customer Indemnified Materials (as applicable) by anyone other than the indemnifying party;

(b) combination of the Google Indemnified Materials or Customer Indemnified Materials (as applicable) with materials not provided by the indemnifying party; or

(c) compliance with the indemnified party's instructions, design or request for customized features.

10.4 Conditions. Obligations under Sections 10.1 (Google Indemnification Obligations) and 10.2 (Customer's Indemnification Obligations) are conditioned on the following:

(a) The indemnified party must have promptly notified the indemnifying party in writing of any allegation(s) that preceded the Third-Party Legal Proceeding and must cooperate reasonably with the indemnifying party to resolve the allegation(s) and Third-Party Legal Proceeding. If breach of this Section 10.4(a) prejudices the defense of the Third-Party Legal Proceeding, the indemnifying party's obligations under Section 10.1 or 10.2 (as applicable) will be reduced in proportion to the prejudice.

(b) The indemnified party must tender 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.

10.5 Infringement Remedies.

(a) If Google reasonably believes the Professional Services or Deliverables (including the Developed IP and Google Background IP) might infringe a third party's Intellectual Property Rights, then Google may, at its sole option and expense: (i) procure the right for Google to provide the Professional Services or for Customer to use the Deliverables including the Developed IP and Google Background IP (as applicable) in accordance with the Terms of Service; (ii) modify the Professional Services or Deliverables to make them non-infringing without materially reducing their functionality; or (iii) replace the Professional Services or Deliverables with a non-infringing, functionally equivalent alternative.

(b) If Google notifies Customer that Google does not consider the remedies in Section 10.5(a) to be commercially reasonable in the circumstances, or if such remedies are not provided within ninety (90) days of an injunction:

(i) either party may terminate the work described in the Ordering Document immediately on written notice; or

(ii) Google may, with prior written notice, suspend or terminate Customer's use of the impacted Deliverables and provide a pro-rated refund of any Fees paid for such Professional Services to Partner for return to Customer.

10.6 Sole Rights and Obligations. Without affecting either party's termination rights, this Section 10 states the parties' only rights and obligations under the Terms of Service for any third party's Intellectual Property Rights allegations and Third-Party Legal Proceedings.

11. Miscellaneous.

- 11.1 Independent Development. Nothing in the Terms of Service will be construed to limit or restrict either party from independently developing, providing, or acquiring any materials, services, products, programs or technology that are similar to the subject of the Terms of Service t, provided that the party does not violate its obligations under the Terms of Service.
- 11.2 Force Majeure. Neither party will be liable for failure or delay in performance to the extent caused by circumstances beyond its reasonable control.
- 11.3 Severability. If any term (or part of a term) in the Terms of Service is invalid, illegal or unenforceable, the rest of the terms will remain in effect.
- 11.4 No Third-Party Beneficiaries. The Terms of Service do not confer any benefits on any third party unless it expressly states that it does.
- 11.5 Interpretation of Conflicting Terms. Unless stated otherwise in the applicable Ordering Document, if there is a conflict between any term of the Terms of Service and a term of an Ordering Document, the Terms of Service will govern.