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# Summary of Comments on Google Services Agreement Annotated by KAA 2.10.14.pdf

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This page contains no comments

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## EXHIBIT 10.25

### Introduction

The confidential portions of this exhibit have been filed separately with the Securities and Exchange Commission pursuant to a confidential treatment request in accordance with Rule 24b-2 of the Securities and Exchange Act of 1934, as amended. REDACTED PORTIONS OF THIS EXHIBIT ARE MARKED BY AN \*\*\*.

### <sup>1</sup>GOOGLE SERVICES AGREEMENT

#### COMPANY INFORMATION

#### TERM

TERM: Starting on February 1, 2013<sup>2</sup> ("Effective Date") and continuing through January 31, 2015<sup>3</sup> (inclusive)

#### SEARCH SERVICES


#### xWEBSEARCH SERVICE ("WS") Search Fees

\*\*\*


\*\*\*

 Number: 1 Author: Ken Subject: Highlight Date: 2/6/2014 8:01:45 AM -05'00'

It's unusual to include a party name in a title. It's perhaps redundant: "The Google services agreement between Google and Verto." And if everyone used this approach, it would get annoying.

 Number: 2 Author: Ken Subject: Highlight Date: 2/6/2014 8:03:03 AM -05'00'

It's clearer not to use the term "Effective Date" for the start date of performance, as a contract is effective when it has been signed by all the parties. MSDC 2.42.

 Number: 3 Author: Ken Subject: Comment on Text Date: 2/7/2014 7:04:35 PM -05'00'

Using "through" renders "inclusive" redundant. MSCD 10.10.

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## ADVERTISING SERVICES

### CURRENCY

\* AUD JPY

\* CAD KRW

\* EUR USD

\* GBP Other

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<sup>1</sup>This Google Services Agreement (<sup>2</sup>Agreement") is entered into by Google Inc. ("Google") and Vertro, Inc. (<sup>3</sup>Company) <sup>4</sup>and is effective as of the Effective Date.

### <sup>5</sup> Definitions.

In this Agreement:

<sup>6</sup>1. "Ad" means an individual advertisement provided through <sup>7</sup>the applicable Advertising Service.

1.2. "Ad Deduction" means, for each of the Advertising Services, for any period <sup>8</sup>during the Term, the Deduction Percentage (listed on the front pages of this Agreement) of Ad Revenues.

1.3. "Ad Revenues" means, for any period during the Term, revenues that are recognized by Google in connection with Company's use of the applicable Advertising Service and attributed to Ads in that period.

1.4. "Ad Set" means a set of one or more Ads.

1.5. "Advertising Services" means the advertising services selected on the front pages of this Agreement.

- 
- T** Number: 1 Author: Ken Subject: Comment on Text Date: 2/8/2014 10:26:22 AM -05'00'  
A short set of recitals would be helpful for those readers (such as contract-drafting commentators!) who don't have intimate knowledge of the business.
- 
- T** Number: 2 Author: Ken Subject: Highlight Date: 2/6/2014 8:05:41 AM -05'00'  
This defined term is unnecessary. It adds clutter, and the unnecessary initial capitals make a contract harder to read. MSCD 2.110.
- 
- T** Number: 3 Author: Ken Subject: Highlight Date: 2/6/2014 8:07:45 AM -05'00'  
Using the definite article ("the Company" instead of "Company") would result in prose that's less stilted. MSCD 2.98.
- 
- T** Number: 4 Author: Ken Subject: Highlight Date: 2/6/2014 8:08:39 AM -05'00'  
No, it's effective when everyone has signed it. Timing of performance is a different matter. MSCD 2.42.
- 
- T** Number: 5 Author: Ken Subject: Comment on Text Date: 2/8/2014 10:25:14 AM -05'00'  
It's unhelpful to start the contract with a definition section. Instead, start with the deal terms, as that's what the reader is interested in. MSCD 6.71.
- 
- T** Number: 6 Author: Ken Subject: Highlight Date: 2/6/2014 8:09:59 AM -05'00'  
Enumerating the elements of a definition section wastes space and distracts the reader. MSCD 6.18.
- 
- T** Number: 7 Author: Ken Subject: Highlight Date: 2/6/2014 8:38:24 AM -05'00'  
Why not just "an"? Applies to other instances in this contract.
- 
- T** Number: 8 Author: Ken Subject: Highlight Date: 2/6/2014 8:29:14 AM -05'00'  
Is this necessary? The contract necessarily applies only during the term.

1.6. "Affiliate" of a party means any <sup>1</sup>corporate <sup>2</sup>entity that directly or indirectly controls, is controlled <sup>3</sup>by or is under common control with that party.

1.7. "Alternative Search Query" \*\*\*

1.8. "Approved Client Application" \*\*\*

1.9. "Brand Features" means each party's trade names, trademarks, logos and other <sup>4</sup>distinctive brand features.

1.10. "Company Content" means any content served to End Users that is not provided by Google.

1.11. "Confidential Information" means information disclosed by <sup>5</sup>(or on behalf of) one party to the other party under this Agreement that is marked as confidential or would normally be considered confidential under the circumstances in which it is presented. <sup>6</sup>It does not include information that the recipient already knew, that becomes public through no fault of the recipient, that was independently developed by the recipient, or that was lawfully given to the recipient by a <sup>7</sup>third party.

1.12. "End Users" means <sup>8</sup>individual human end users of a Site or Approved Client Application.

1.13. "Equivalent Ads" means any <sup>9</sup>third party or Company sourced advertisements that are the same as or <sup>10</sup>substantially similar in nature to the AFS Ads.

1.14. "Google Branding Guidelines" \*\*\*

1.15. "Google Client Application Guidelines" \*\*\*

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1.16. "Google Program Guidelines" means the policy and implementation guidelines applicable to the Services <sup>11</sup>and as provided by Google to Company <sup>12</sup>from time to time.

1.17. "Intellectual Property Rights" means all copyrights, moral rights, patent rights, trademarks, rights in or relating to Confidential Information and any other intellectual property or similar rights (registered or unregistered) <sup>13</sup>throughout the world.

1.18. "Net Ad Revenues" means, for each of the Advertising Services, for any period during the Term, Ad Revenues for that period minus the Ad Deduction (if any) for that period.

1.19. "Request" means a request from Company or an End User (as applicable) to Google for a Search Results Set <sup>14</sup>and/or an Ad Set <sup>15</sup>(as applicable).

1	Number: 1	Author: Ken	Subject: Comment on Text	Date: 2/8/2014 9:57:39 AM -05'00'	Redundant?
2	Number: 2	Author: Ken	Subject: Comment on Text	Date: 2/8/2014 9:58:49 AM -05'00'	So an individual who controls a company isn't an "Affiliate"?
3	Number: 3	Author: Ken	Subject: Comment on Text	Date: 2/9/2014 9:55:48 PM -05'00'	In many places, this contract does not use the serial comma. Using the serial comma (i.e., inserting a comma after "by") would, depending on the context, help eliminate ambiguity. MSCD 12.55. In some places, this contract does use the serial comma, e.g. 14.2. Consistency?
4	Number: 4	Author: Ken	Subject: Highlight	Date: 2/8/2014 9:59:16 AM -05'00'	So if a brand feature isn't distinctive, it's not a "Brand Feature"? That could be confusing.
5	Number: 5	Author: Ken	Subject: Comment on Text	Date: 2/8/2014 9:59:35 AM -05'00'	Why the parentheses?
6	Number: 6	Author: Ken	Subject: Highlight	Date: 2/8/2014 10:00:17 AM -05'00'	It's best to structure an autonomous definition as a single sentence, to avoid the temptation to "stuff" it. MSCD 6.15, 6.31. Perhaps add "except Excluded Information" to the first sentence, omit the second sentence, and create a new defined term "Excluded Information."
7	Number: 7	Author: Ken	Subject: Comment on Text	Date: 2/7/2014 11:12:27 PM -05'00'	"Third party" is archaic: it's a relic of the days when parties were referred to as "party of the first part" and "party of the second part." MSCD 2.107, 13.738. Use instead "nonparty" or "Person," whichever is appropriate. Applies throughout this contract.
8	Number: 8	Author: Ken	Subject: Comment on Text	Date: 2/8/2014 10:01:06 AM -05'00'	Redundant?
9	Number: 9	Author: Ken	Subject: Highlight	Date: 2/8/2014 10:04:30 AM -05'00'	See comment to 1.11. And in this context, "third party" is used as part of an adjectival phrase, so need hyphen between "third" and "party". Furthermore, is the reference to third-party-sourced advertisements instead of third-party advertisements? If so, you'd need to say "third-party-", with the extra hyphen, as well as adding a hyphen between "Company" and "sourced".
10	Number: 10	Author: Ken	Subject: Comment on Text	Date: 2/7/2014 11:15:10 PM -05'00'	It's not clear what order of magnitude is indicated by "substantially". MSCD 13.621. Consider using a different standard.
11	Number: 11	Author: Ken	Subject: Highlight	Date: 2/6/2014 8:25:53 AM -05'00'	Replace with a comma.
12	Number: 12	Author: Ken	Subject: Highlight	Date: 2/6/2014 9:48:34 AM -05'00'	Not ideal, as it means "once in a while." What this should convey instead is that Google might update the guidelines, and the most recent guidelines govern. Applies to all six instance of this phrase in this contract.
13	Number: 13	Author: Ken	Subject: Comment on Text	Date: 2/8/2014 10:06:09 AM -05'00'	Redundant: "all" means all.
14	Number: 14	Author: Ken	Subject: Highlight	Date: 2/6/2014 8:33:35 AM -05'00'	Don't use "and/or": it's confusing. MSCD 11.73.
15	Number: 15	Author: Ken	Subject: Highlight	Date: 2/8/2014 10:06:50 AM -05'00'	It's not clear what is meant by the two instances of this. Use "respectively" instead?



- 1.20. "Results" means Search Results Sets, Search Results, Ad Sets or Ads.
- 1.21. "Results Page" means <sup>1</sup>any Site page that contains any Results.
- 1.22. "Search Box" means a search box (or other means approved by Google) for the purpose of sending search queries to Google as part of a Request.
- 1.23. "Search Query" \*\*\*
- 1.24. "Search Result" means an individual search result provided through the applicable Search Service.
- 1.25. "Search Results Set" means a set of one or more Search Results.
- 1.26. "Search Services" means the search services selected on the front pages of this Agreement.
- 1.27. "Services" means the Advertising Services and/or Search Services (as applicable).
- 1.28. <sup>2</sup>Site(s)" means the Web site(s) located at the URL(s) listed on the front pages of this Agreement, together with the additional URL(s) approved by Google from time to time under <sup>3</sup>subsection 7.3(a) <sup>4</sup>below.

## <sup>5</sup>Launch, Implementation and Maintenance of Services.

### 2.1. Launch.

The parties <sup>7</sup>will each use reasonable <sup>8</sup>efforts <sup>9</sup>to launch the Services into live use <sup>6</sup>within 30 days <sup>10</sup>from the Effective Date. <sup>10</sup>Company will not launch its implementation of the Services into live use, and this implementation will not be <sup>11</sup>payable by Google, until Google has approved the implementation in writing, which approval <sup>12</sup>will not be unreasonably withheld or delayed.

### 2.2. Implementation and Maintenance.

(a) <sup>13</sup>For the remainder of the Term, Google will make available and Company will implement and maintain <sup>15</sup>each of the Services on <sup>16</sup>each of the Sites and Approved Client Applications. <sup>14</sup>For clarity, Company may not implement the Services on a property that is not a Site or Approved Client Application.

(b) <sup>17</sup>Company will ensure that Company:

- 
- T** Number: 1 Author: Ken Subject: Highlight Date: 2/6/2014 8:37:14 AM -05'00'  
Drafters are prone to overusing "any." Here, I'd say "means a Site page that contains Results." See <http://www.adamsdrafting.com/my-name-is-ken-adams-and-im-an-any-addict/>.
- 
- T** Number: 2 Author: Ken Subject: Highlight Date: 2/6/2014 8:39:42 AM -05'00'  
Don't use "(s)". MSCD 17.28.
- 
- T** Number: 3 Author: Ken Subject: Highlight Date: 2/6/2014 8:42:08 AM -05'00'  
Use "section" instead. MSCD 4.94.
- 
- T** Number: 4 Author: Ken Subject: Highlight Date: 2/6/2014 8:42:45 AM -05'00'  
This sort of notation is more annoying than it is helpful. MSCD 4.92.
- 
- T** Number: 5 Author: Ken Subject: Highlight Date: 2/8/2014 10:09:12 AM -05'00'  
I'd use instead "Launching, Implementing, and Maintaining Services." Abstract nouns are wordy and bureaucratic. MSCD 17.7. Applies elsewhere.
- 
- T** Number: 6 Author: Ken Subject: Comment on Text Date: 2/6/2014 9:19:29 AM -05'00'  
Simpler to say "no later than 30 days after." MSCD 10.49.
- 
- T** Number: 7 Author: Ken Subject: Highlight Date: 2/8/2014 10:12:24 AM -05'00'  
This contract uses "will" to convey obligations. Presumably Google has opted not to use "shall". It has company in that, but it doesn't represent a triumph of modern drafting; instead, the baby has been thrown out with the bathwater, as the distinction between the categories of contract language is muddled. Yes, you avoid overuse of "shall," but only the relatively harmless instances; the bigger problems aren't fixed by getting rid of "shall". (I've noted some in my comments to this contract.) I recommend retaining "shall," but only for purposes of imposing an obligation on the subject of the sentence. MSCD 3.46–82.
- 
- T** Number: 8 Author: Ken Subject: Comment on Text Date: 2/6/2014 9:17:21 AM -05'00'  
Elsewhere, the phrase "commercially reasonable efforts" is used. Why the inconsistency?
- 
- T** Number: 9 Author: Ken Subject: Comment on Text Date: 2/6/2014 9:27:32 AM -05'00'  
Isn't only Company launching the Services?
- 
- T** Number: 10 Author: Ken Subject: Comment on Text Date: 2/6/2014 9:20:49 AM -05'00'  
Better to signal that the first sentence is subject to the second sentence.
- 
- T** Number: 11 Author: Ken Subject: Comment on Text Date: 2/6/2014 9:15:33 AM -05'00'  
Awkward. MSCD 3.244.
- 
- T** Number: 12 Author: Ken Subject: Comment on Text Date: 2/6/2014 9:23:02 AM -05'00'  
What category of contract language is this? Prohibition, with remedies for breach? Or a condition? MSCD 3.267.
- 
- T** Number: 13 Author: Ken Subject: Comment on Text Date: 2/8/2014 10:17:58 AM -05'00'  
Each section should be clear when read on its own; it's not clear what "remainder" refers to. Perhaps say instead "After the Company launches the Services."
- 
- T** Number: 14 Author: Ken Subject: Comment on Text Date: 2/6/2014 9:29:59 AM -05'00'  
Redundant, like "For the avoidance of doubt." MSCD 13.220.
- 
- T** Number: 15 Author: Ken Subject: Comment on Text Date: 2/6/2014 9:28:19 AM -05'00'  
Delete?
- 
- T** Number: 16 Author: Ken Subject: Comment on Text Date: 2/6/2014 9:28:29 AM -05'00'  
Delete?
- 
- T** Number: 17 Author: Ken Subject: Comment on Text Date: 2/8/2014 10:42:47 AM -05'00'  
Awkward to impose on a party an obligation to cause itself to arrange things a certain way. Say instead "Company will retain control over," or something along those lines.

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- (1) (2) is the technical and editorial decision maker in relation to each page, including Results Pages, and each Approved Client Application on which the Services are implemented; and
- (ii) has control over the way in which the Services are implemented on each of those pages and Approved Client Applications.
- (c) Company will (3) ensure that the Services are implemented and maintained in accordance with:
- (i) the applicable Google Branding Guidelines;
- (ii) the applicable Google Program Guidelines;
- (iii) the mock (4) ups and specifications for the Services included in the exhibits to this Agreement; and
- (iv) Google technical protocols (5) if any and any other technical requirements and specifications applicable to the Services that (6) are provided to Company by Google from time to time.
- (d) \*\*\*
- (e) Company will ensure that (i) every Search Query generates a WS Request, (ii) every Request is generated by a Search Query and (iii) every Request contains the Search Query that generated that Request.
- (f) Google will (7) upon receiving a Request sent in compliance with this Agreement, provide a Search Results Set and/or an Ad Set (as applicable) when available. Company will then display the Search Results Set and/or Ad Set (as applicable) on the applicable Site.
- (g) (8) Company will ensure that at all times during (9) the applicable Term, Company (10)
- (i) has a clearly labeled and easily accessible privacy policy in place relating to the Site(s) and Approved Client Application(s); and
- (ii) provides (11) the End User with clear and comprehensive information about cookies and other information (12) stored or accessed on the End User's device in connection with the Services, including information about End Users' options for (13) cookie management.
- (h) Company will use (15) commercially reasonable efforts to ensure that (16) an End User (14) gives consent to (17) the storing and accessing of cookies and other information on the End User's device in connection with the Services (18) where such consent is required by law.

1	Number: 1	Author: Ken	Subject: Comment on Text	Date: 2/6/2014 9:45:10 AM -05'00'	Romanette is old-fashioned and takes up unnecessary space, so it should come further down in the enumeration hierarchy. MSCD 4.38.
2	Number: 2	Author: Ken	Subject: Comment on Text	Date: 2/6/2014 9:42:11 AM -05'00'	Bureaucratic. Use a verb instead. MSCD 17.7.
3	Number: 3	Author: Ken	Subject: Comment on Text	Date: 2/8/2014 10:34:28 AM -05'00'	2.2(a) says Company "will implement and maintain the Services". Using "ensure" here is inconsistent with that, in that it suggests that someone else will be implementing and maintaining the Services. Furthermore, "cause" is a better choice than "ensure". MSCD 3.116. Applies to other uses of "ensure" in this contract.
4	Number: 4	Author: Ken	Subject: Comment on Text	Date: 2/8/2014 10:32:09 AM -05'00'	Add hyphen or make one word.
5	Number: 5	Author: Ken	Subject: Comment on Text	Date: 2/8/2014 10:20:05 AM -05'00'	Simpler to say "any Google technical protocols".
6	Number: 6	Author: Ken	Subject: Comment on Text	Date: 2/6/2014 9:47:18 AM -05'00'	Use the active voice. MSCD 3.10.
7	Number: 7	Author: Ken	Subject: Comment on Text	Date: 2/8/2014 10:36:35 AM -05'00'	Instead of sticking this in the middle of the verb structure, move it to the front. MSCD 17.6.
8	Number: 8	Author: Ken	Subject: Comment on Text	Date: 2/8/2014 10:38:22 AM -05'00'	See comment at beginning of 2(b).
9	Number: 9	Author: Ken	Subject: Comment on Text	Date: 2/6/2014 9:59:09 AM -05'00'	Does this make sense?
10	Number: 10	Author: Ken	Subject: Comment on Text	Date: 2/6/2014 10:00:09 AM -05'00'	It's best to structure whatever precedes a colon as a full independent clause. MSCD 4.32.
11	Number: 11	Author: Ken	Subject: Comment on Text	Date: 2/6/2014 10:01:18 AM -05'00'	Instead "End Users"?
12	Number: 12	Author: Ken	Subject: Comment on Text	Date: 2/8/2014 10:44:31 AM -05'00'	Passive voice plus no by-agent. MSCD 3.12. Who is the actor?
13	Number: 13	Author: Ken	Subject: Comment on Text	Date: 2/6/2014 10:02:22 AM -05'00'	Use instead "managing cookies": verbs good, abstract nouns bad. MSCD 17.7.
14	Number: 14	Author: Ken	Subject: Comment on Text	Date: 2/6/2014 10:07:42 AM -05'00'	Use "consents".
15	Number: 15	Author: Ken	Subject: Comment on Text	Date: 2/6/2014 10:04:23 AM -05'00'	Redundant. MSCD 8.16.
16	Number: 16	Author: Ken	Subject: Comment on Text	Date: 2/6/2014 10:08:43 AM -05'00'	Say "each End User".
17	Number: 17	Author: Ken	Subject: Comment on Text	Date: 2/6/2014 10:08:20 AM -05'00'	Use "Company storing and accessing cookies"?
18	Number: 18	Author: Ken	Subject: Comment on Text	Date: 2/6/2014 10:09:17 AM -05'00'	Use ", if that consent".

### 2.3. Alternative Search Queries.

- (a) \*\*\*
- (b) \*\*\*
- (c) \*\*\*
- (d) \*\*\*

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### 2.4. Client IDs; Channel IDs.

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### 2.5. Custom Search Ads Protocol.

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## 3. Policy and Compliance Obligations.

### 3.1. Policy Obligations.

Company will not, and <sup>1</sup>will not knowingly or negligently allow any third party to:

- (a) modify, obscure or prevent the display of <sup>2</sup>all, or any part of, any Results;
- (b) edit, filter, truncate, append terms to or otherwise modify any Search Query;
- (c) implement any click <sup>3</sup>tracking or other monitoring of Results;
- (d) display any Results in pop-ups, pop-unders, exit windows, expanding buttons, animation or other similar methods;
- (e) interfere with the display of or frame any Results Page or any page accessed by clicking on any Results;

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 Number: 1 Author: Ken Subject: Comment on Text Date: 2/6/2014 8:45:49 PM -05'00'  
This is problematic. See <http://www.adamsdrafting.com/shall-not-negligently/>.

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 Number: 2 Author: Ken Subject: Comment on Text Date: 2/8/2014 10:46:01 AM -05'00'  
Instead "all or part of".

---

 Number: 3 Author: Ken Subject: Comment on Text Date: 2/8/2014 10:46:40 AM -05'00'  
Hyphen.

(f) display any content between any Results and any page accessed by clicking on those Results or place any interstitial content immediately before any Results Page containing any Results;

(g) enter into any type of co-branding, white<sup>[1]</sup> labeling or sub-syndication arrangement with any third party in connection with any Results or Ad revenue;

(h) directly or indirectly, <sup>[2]</sup> offer incentives to End Users to generate impressions, Requests or clicks on Results, (ii) fraudulently generate impressions, Requests or clicks on Results or (iii) modify impressions, Requests or clicks on Results;

(i) "crawl", "spider", index or in any non-transitory manner store or cache information obtained from the Services (including Results); or

(j) display on any Site or Approved Client Application, <sup>[3]</sup> any content that violates or encourages conduct that would violate the Google Program Guidelines, Google technical protocols and any other technical requirements and specifications applicable to the Services that <sup>[4]</sup> are provided to Company by Google from time to time.

### 3.2. Compliance Obligations.

Company <sup>[5]</sup> will not knowingly or negligently allow any <sup>[6]</sup> use of or access to the Services through any Site or Approved Client Application that <sup>[7]</sup> is not in compliance with <sup>[8]</sup> the terms of this Agreement. Company will use commercially reasonable efforts to <sup>[9]</sup> monitor for any such access or use and will, if any such access or use <sup>[10]</sup> is detected, take all reasonable steps requested by Google to <sup>[11]</sup> disable this access or use. If Company <sup>[12]</sup> is not in compliance with this Agreement <sup>[13]</sup> at any time, Google may <sup>[14]</sup> with notice to Company, <sup>[15]</sup> suspend <sup>[16]</sup> provision of <sup>[17]</sup> (or any part of) the applicable Services until Company implements adequate corrective <sup>[18]</sup> modifications as reasonably <sup>[19]</sup> required and determined by Google.

### 4. Conflicting Services.

\*\*\*

### 5. Third Party Advertisements.

\*\*\*

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## Page: 8

 Number: 1	Author: Ken	Subject: Comment on Text	Date: 2/6/2014 10:10:39 AM -05'00'
Hyphen.			
 Number: 2	Author: Ken	Subject: Comment on Text	Date: 2/8/2014 10:52:41 AM -05'00'
Save 15 words by saying "offer incentives to End Users to generate, fraudulently generate, or modify impressions, Requests, or clicks on Results"?			
 Number: 3	Author: Ken	Subject: Comment on Text	Date: 2/8/2014 10:57:08 AM -05'00'
Omit.			
 Number: 4	Author: Ken	Subject: Comment on Text	Date: 2/6/2014 10:12:49 AM -05'00'
Why the passive voice? MSCD 3.10.			
 Number: 5	Author: Ken	Subject: Comment on Text	Date: 2/8/2014 10:58:28 AM -05'00'
See comment to 3.1.			
 Number: 6	Author: Ken	Subject: Comment on Text	Date: 2/8/2014 12:10:21 AM -05'00'
Use verbs instead, with an actor? MSCD 17.7.			
 Number: 7	Author: Ken	Subject: Comment on Text	Date: 2/8/2014 12:08:52 AM -05'00'
Use "does not comply". Abstract nouns bad, adjectives better, verbs best.			
 Number: 8	Author: Ken	Subject: Comment on Text	Date: 2/8/2014 12:13:05 AM -05'00'
Redundant. Is omitted in the next sentence.			
 Number: 9	Author: Ken	Subject: Comment on Text	Date: 2/8/2014 11:00:06 AM -05'00'
Add "the Services"?			
 Number: 10	Author: Ken	Subject: Comment on Text	Date: 2/8/2014 12:11:16 AM -05'00'
Why passive voice? MSCD 3.10.			
 Number: 11	Author: Ken	Subject: Comment on Text	Date: 2/8/2014 11:00:40 AM -05'00'
Say instead "prevent"?			
 Number: 12	Author: Ken	Subject: Comment on Text	Date: 2/6/2014 10:15:08 AM -05'00'
Use instead the verb "comply". MSCD 17.7.			
 Number: 13	Author: Ken	Subject: Comment on Text	Date: 2/6/2014 10:17:57 AM -05'00'
Redundant. MSCD 3.197.			
 Number: 14	Author: Ken	Subject: Comment on Text	Date: 2/8/2014 12:11:37 AM -05'00'
Use "by" instead.			
 Number: 15	Author: Ken	Subject: Comment on Text	Date: 2/8/2014 12:13:18 AM -05'00'
Omir.			
 Number: 16	Author: Ken	Subject: Comment on Text	Date: 2/6/2014 10:18:36 AM -05'00'
Use instead the verb "provide". MSCD 17.7.			
 Number: 17	Author: Ken	Subject: Comment on Text	Date: 2/8/2014 12:13:42 AM -05'00'
Use instead "some or all".			
 Number: 18	Author: Ken	Subject: Comment on Text	Date: 2/8/2014 12:14:06 AM -05'00'
Use verb instead. MSCD 17.7.			
 Number: 19	Author: Ken	Subject: Comment on Text	Date: 2/8/2014 12:14:21 AM -05'00'
Redundancy?			



## 6. Approved Client Applications.

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## 7. Changes and Modifications.

### 7.1. By Google.

If Google modifies the Google Branding Guidelines,<sup>1</sup> Google Program Guidelines, or the Google technical protocols and<sup>2</sup> the modification requires<sup>3</sup> action by Company, Company will take<sup>4</sup> the necessary action no later than 30 days<sup>5</sup> from receipt of notice from Google. Any<sup>6</sup> modifications to the Google Branding Guidelines or Google Program Guidelines<sup>7</sup> will be<sup>8</sup> generally applied to Google's similarly situated customers in the same region who are using the specific Service<sup>9</sup> impacted by<sup>10</sup> the modification.

### 7.2. By Company.

Company will provide Google with at least 15<sup>11</sup> days prior notice of any change in code or serving technology<sup>12</sup> that could reasonably be expected to affect<sup>13</sup> the delivery or display of any Results.

### 7.3. Site and Approved Client Application List Changes.

(a) Company<sup>14</sup> may notify Google from time to time<sup>15</sup> that it wishes to add or remove URL(s) to those comprising the Site(s) \*\*\* by<sup>16</sup> sending notice to Google at least 45 days before Company wishes the addition or deletion to take effect. Google may<sup>18</sup> approve or disapprove the request<sup>17</sup> in its reasonable discretion,<sup>19</sup> and its approval or disapproval to be in writing.

(b) If<sup>20</sup> there is a change in control of any Site or Approved Client Application<sup>21</sup> such that the conditions set out in<sup>22</sup> Section 2.2(b)(i) or 2.2(b)(ii) are not met:

(i) Company<sup>23</sup> will provide notice to Google at least 30 days before the change; and

(ii) unless the entire Agreement is assigned to the third party controlling the Site or Approved Client Application in compliance with Section 16.3 (Assignment) below, from the date of that change in control of the Site or Approved Client Application, that Site or Approved Client Application will be treated as removed from this Agreement. Company will ensure that from that date, the Services are no longer implemented on that Site or Approved Client Application.

## 8. Intellectual Property.

1	Number: 1	Author: Ken	Subject: Comment on Text	Date: 2/8/2014 11:02:12 AM -05'00'	Add "the".
2	Number: 2	Author: Ken	Subject: Comment on Text	Date: 2/6/2014 8:48:35 PM -05'00'	Use "that" instead.
3	Number: 3	Author: Ken	Subject: Comment on Text	Date: 2/8/2014 12:15:30 AM -05'00'	Reads easier to say "that Company take any action".
4	Number: 4	Author: Ken	Subject: Comment on Text	Date: 2/8/2014 12:15:52 AM -05'00'	Use instead "that".
5	Number: 5	Author: Ken	Subject: Comment on Text	Date: 2/6/2014 8:49:51 PM -05'00'	Use instead "after Google notifies it of that modification." MSCD 17.7.
6	Number: 6	Author: Ken	Subject: Comment on Text	Date: 2/6/2014 8:54:05 PM -05'00'	Should be singular, to match reference at the end of the sentence.
7	Number: 7	Author: Ken	Subject: Comment on Text	Date: 2/6/2014 8:53:12 PM -05'00'	Because this uses the passive voice, it's not made clear who the actor is. Use the active voice instead. MSCD 3.12.
8	Number: 8	Author: Ken	Subject: Comment on Text	Date: 2/6/2014 8:53:28 PM -05'00'	What purpose does this serve?
9	Number: 9	Author: Ken	Subject: Comment on Text	Date: 2/6/2014 8:50:57 PM -05'00'	Jargon.
10	Number: 10	Author: Ken	Subject: Comment on Text	Date: 2/6/2014 8:54:21 PM -05'00'	Use "that" instead.
11	Number: 11	Author: Ken	Subject: Comment on Text	Date: 2/6/2014 8:55:01 PM -05'00'	Add apostrophe after "days". MSCD 13.465.
12	Number: 12	Author: Ken	Subject: Comment on Text	Date: 2/6/2014 8:56:07 PM -05'00'	Expected by whom? Use "likely" instead?
13	Number: 13	Author: Ken	Subject: Comment on Text	Date: 2/6/2014 8:56:38 PM -05'00'	Delete. MSCD 17.27.
14	Number: 14	Author: Ken	Subject: Comment on Text	Date: 2/6/2014 8:57:53 PM -05'00'	It isn't a right to notify, it's a right to take the action in question. Adjust accordingly.
15	Number: 15	Author: Ken	Subject: Comment on Text	Date: 2/8/2014 12:20:25 AM -05'00'	Restructure provision to say that Company may add or remove, subject to conditions. Saying that Company may tell Google that it wishes to add or remove isn't the same thing.
16	Number: 16	Author: Ken	Subject: Comment on Text	Date: 2/6/2014 8:59:32 PM -05'00'	Use "notifying" instead. MSCD 17.7. And note the redundancy in "Company many notify ... by sending notice".
17	Number: 17	Author: Ken	Subject: Comment on Text	Date: 2/6/2014 9:01:02 PM -05'00'	Awkward.
18	Number: 18	Author: Ken	Subject: Comment on Text	Date: 2/8/2014 12:21:13 AM -05'00'	Say instead that change will take place unless Google disapproves.
19	Number: 19	Author: Ken	Subject: Comment on Text	Date: 2/8/2014 12:22:30 AM -05'00'	Wordy. Instead use adverbial phrase "in writing".
20	Number: 20	Author: Ken	Subject: Comment on Text	Date: 2/8/2014 11:19:30 AM -05'00'	This refers not to actual change but to prospective change. Say instead, "If a change in control of one or more Sites or Approved Client Applications would result in the Company failing to company with section 2.2(b),
21	Number: 21	Author: Ken	Subject: Comment on Text	Date: 2/6/2014 9:02:00 PM -05'00'	Why the parentheses?
22	Number: 22	Author: Ken	Subject: Comment on Text	Date: 2/6/2014 9:04:42 PM -05'00'	Use a small "s". MSCD 4.96. And why capital "S" in "Section" but small "s" in "subsection"?
23	Number: 23	Author: Ken	Subject: Comment on Text	Date: 2/6/2014 9:06:10 PM -05'00'	So this is an obligation, breach of which gives rise to remedies? Or is it a condition? If it's the latter, it should be worded appropriately. MSCD

## 6. Approved Client Applications.

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## 7. Changes and Modifications.

### 7.1. By Google.

If Google modifies the Google Branding Guidelines, Google Program Guidelines, or the Google technical protocols and the modification requires action by Company, Company will take the necessary action no later than 30 days from receipt of notice from Google. Any modifications to the Google Branding Guidelines or Google Program Guidelines will be generally applied to Google's similarly situated customers in the same region who are using the specific Service impacted by the modification.

### 7.2. By Company.

Company will provide Google with at least 15 days prior notice of any change in code or serving technology that could reasonably be expected to affect the delivery or display of any Results.

### 7.3. Site and Approved Client Application List Changes.

(a) Company may notify Google from time to time that it wishes to add or remove URL(s) to those comprising the Site(s) \*\*\* by sending notice to Google at least 45 days before Company wishes the addition or deletion to take effect. Google may approve or disapprove the request in its reasonable discretion, this approval or disapproval to be in writing.

(b) If there is a change in control of any Site or Approved Client Application (such that the conditions set out in Section 2.2(b)(i) or 2.2(b)(ii) are not met):

(i) Company will provide<sup>24</sup> notice to Google at least 30 days before the change; and

(ii) unless<sup>25</sup> the entire Agreement is assigned to the third party controlling the Site or Approved Client Application in compliance with Section 16.3 (Assignment) below, from the date of that change in control of the Site or Approved Client Application, that Site or Approved Client Application<sup>27</sup> will be treated as<sup>28</sup> removed from this Agreement.<sup>26</sup> Company will ensure that from that date, the Services are no longer implemented on that Site or Approved Client Application.

## 8. Intellectual Property.

 Number: 24 Author: Ken Subject: Comment on Text Date: 2/8/2014 12:23:18 AM -05'00'


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Use verb instead of abstract noun. MSCD 17.7.

 Number: 25 Author: Ken Subject: Comment on Text Date: 2/6/2014 9:10:11 PM -05'00'

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It's problematic to refer to assignment of an agreement. See <http://www.adamsdrafting.com/rethinking-the-no-assignment-provision/>.

 Number: 26 Author: Ken Subject: Comment on Text Date: 2/8/2014 11:29:09 AM -05'00'

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Don't tack an extra sentence at the end of the final enumerated clause of a set of tabulated enumerated clauses. MSCD 4.37.

 Number: 27 Author: Ken Subject: Comment on Text Date: 2/6/2014 9:12:00 PM -05'00'

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Use instead "will be deemed". MSCD 13.141.

 Number: 28 Author: Ken Subject: Comment on Text Date: 2/6/2014 9:13:14 PM -05'00'

---

Word choice?

Except to the extent expressly stated otherwise in this Agreement, neither party will acquire any right, title or interest in any Intellectual Property Rights belonging to the other party, or to the other party's licensors.

## 9. Brand Features.

9.1. Google grants to Company a non-exclusive and non-sublicensable license during the Term to use the Google Brand Features solely to fulfill Company's obligations in connection with the Services in accordance with this Agreement and the Google Branding Guidelines. Google may revoke this license at any time upon notice to Company. Any goodwill resulting from the use by Company of the Google Brand Features will belong to Google.

9.2. Google may include Company's Brand Features in customer lists. Google will provide Company with a sample of this usage if requested by Company.

## 10. Payment.

### 10.1. Company Payments.

The confidential portions of this exhibit have been filed separately with the Securities and Exchange Commission pursuant to a confidential treatment request in accordance with Rule 24b-2 of the Securities and Exchange Act of 1934, as amended. REDACTED PORTIONS OF THIS EXHIBIT ARE MARKED BY AN \*\*\*.

#### (a) Search Services.

The Search Fees owed to Google under this Agreement will be calculated using the number of Requests for Search Results Sets as reported by Google.

#### (b) Offset.

Google will, unless it has notified Company otherwise, offset the Search Fees payable by Company under this Agreement against Google's payment obligations to Company under this Agreement.

#### (c) Invoices.

Even if the Search Fees are offset under subsection 10.1(b), Google will invoice or send a statement of financial activity to Company for Search Fees in the month after the Search Fees are incurred. Company will pay the invoice amount, if any, to Google within 30 days of the date of invoice.

1	Number: 1	Author: Ken	Subject: Comment on Text	Date: 2/6/2014 9:15:24 PM -05'00'	Pointless rhetorical emphasis. MSCD 1.60.
1	Number: 2	Author: Ken	Subject: Comment on Text	Date: 2/8/2014 11:30:55 AM -05'00'	Say instead "or licensed by".
1	Number: 3	Author: Ken	Subject: Comment on Text	Date: 2/6/2014 9:17:47 PM -05'00'	Consider using just "interest", as it's broad enough to encompass the other two.
1	Number: 4	Author: Ken	Subject: Comment on Text	Date: 2/6/2014 9:18:08 PM -05'00'	Omit.
1	Number: 5	Author: Ken	Subject: Comment on Text	Date: 2/6/2014 9:20:13 PM -05'00'	Move to after "the Google Brand Features".
1	Number: 6	Author: Ken	Subject: Comment on Text	Date: 2/6/2014 9:19:21 PM -05'00'	This is language of performance; add "hereby". MSCD 3.20.
1	Number: 7	Author: Ken	Subject: Comment on Text	Date: 2/8/2014 11:33:35 AM -05'00'	Redundant. MSCD 3.38.
1	Number: 8	Author: Ken	Subject: Comment on Text	Date: 2/8/2014 12:25:19 AM -05'00'	Use instead "comply with". MSCD 3.138.
1	Number: 9	Author: Ken	Subject: Comment on Text	Date: 2/8/2014 11:36:40 AM -05'00'	Syntactic ambiguity: does this modify "use" or "fulfill"? MSCD
1	Number: 10	Author: Ken	Subject: Comment on Text	Date: 2/8/2014 4:12:58 PM -05'00'	Use "terminate" instead. See <a href="http://www.adamsdrafting.com/revoke/">http://www.adamsdrafting.com/revoke/</a> .
1	Number: 11	Author: Ken	Subject: Comment on Text	Date: 2/8/2014 4:15:15 PM -05'00'	Redundant. MSCD 3.197. Perhaps use instead "for any reason".
1	Number: 12	Author: Ken	Subject: Comment on Text	Date: 2/8/2014 12:25:59 AM -05'00'	Add "giving".
1	Number: 13	Author: Ken	Subject: Comment on Text	Date: 2/6/2014 9:21:06 PM -05'00'	Omit. MSCD 17.27.
1	Number: 14	Author: Ken	Subject: Comment on Text	Date: 2/6/2014 9:21:52 PM -05'00'	Word choice.
1	Number: 15	Author: Ken	Subject: Comment on Text	Date: 2/6/2014 9:21:42 PM -05'00'	Why the passive voice? MSCD 3.10.
1	Number: 16	Author: Ken	Subject: Comment on Text	Date: 2/8/2014 12:28:00 AM -05'00'	Would make more sense as language of policy. MSCD 3.240.
1	Number: 17	Author: Ken	Subject: Comment on Text	Date: 2/9/2014 5:39:45 PM -05'00'	What category of contract language is this? Use of "will" suggests that it's language of obligation or language of policy, but that can't be right.
1	Number: 18	Author: Ken	Subject: Comment on Text	Date: 2/7/2014 11:22:52 PM -05'00'	Instead of sticking this in the middle of the verb structure, move it to the front. MSCD 17.6.
1	Number: 19	Author: Ken	Subject: Comment on Text	Date: 2/9/2014 5:38:47 PM -05'00'	Use instead "set off". See <a href="http://www.adamsdrafting.com/setoff-and-offset/">http://www.adamsdrafting.com/setoff-and-offset/</a> .
1	Number: 20	Author: Ken	Subject: Comment on Text	Date: 2/8/2014 12:30:46 AM -05'00'	Instead "any amounts that Company is obligated to pay".
1	Number: 21	Author: Ken	Subject: Comment on Text	Date: 2/8/2014 12:35:11 AM -05'00'	Awkward parentheses. And what's a statement of financial activity?
1	Number: 22	Author: Ken	Subject: Comment on Text	Date: 2/8/2014 12:31:42 AM -05'00'	Suggests that this is an obligation of Google, which doesn't make sense.
1	Number: 23	Author: Ken	Subject: Comment on Text	Date: 2/8/2014 12:33:32 AM -05'00'	Awkward.
1	Number: 24	Author: Ken	Subject: Comment on Text	Date: 2/8/2014 12:35:51 AM -05'00'	

## 10.2. Google Payments.

(a) For each applicable Advertising Service, Google will pay Company an amount equal to the Revenue Share Percentage (listed on the front pages of this Agreement) of Net Ad Revenues attributable to a <sup>1</sup>calendar month. This payment <sup>2</sup>will be made in the month following the calendar month in which the applicable Ads were displayed.

(b) Google's payments for Advertising Services under this Agreement will be based on Google's accounting <sup>3</sup>which <sup>4</sup>may be filtered to exclude (i) invalid queries, impressions, conversions or clicks, and (ii) any amounts <sup>5</sup>refunded to advertisers in connection with Company's failure to comply with this Agreement, as reasonably determined by Google.

## 10.3. All Payments.

(a) As between Google and Company, Google is responsible for <sup>6</sup>all taxes (if any) <sup>7</sup>associated with the transactions between Google and advertisers in connection with Ads displayed on the Sites. Company is responsible for all taxes (if any) associated with the Services, other than taxes based on Google's net income. All <sup>8</sup>payments to Company from Google <sup>9</sup>in relation to the Services <sup>10</sup>will be treated as inclusive of tax (if applicable) and <sup>11</sup>will not be adjusted. If Google is obligated to withhold any taxes from its payments to Company, Google will notify Company of this and <sup>12</sup>will make the payments net of the withheld amounts. Google will provide Company with original or certified copies <sup>14</sup>of tax payments (or other sufficient evidence <sup>15</sup>of tax payments) <sup>13</sup>if any of these payments are made by Google.

(b) All payments due to Google or to Company <sup>16</sup>will be in the currency specified in this Agreement and made by electronic transfer to <sup>17</sup>the account notified to the paying party by the other party for that purpose, and the party receiving payment will be responsible for any bank charges assessed by the recipient's bank.

(c) In addition to other rights and remedies Google <sup>18</sup>may have, Google may offset any payment obligations to Company that Google <sup>19</sup>may incur under this Agreement against any product or service fees <sup>20</sup>owed to Google and not yet paid by Company under this Agreement or any other agreement between Company and Google. Google may also withhold and offset against its payment obligations under this Agreement, or require Company to pay to Google within 30 days of any invoice, any amounts Google may have overpaid to Company <sup>21</sup>in prior periods.

## 11. Warranties; Disclaimers.

### 11.1. Warranties.

1	Number: 1	Author: Ken	Subject: Comment on Text	Date: 2/9/2014 5:40:38 PM -05'00'	Potentially confusing. MSCD 10.67 and <a href="http://www.adamsdrafting.com/referring-to-the-gregorian-calendar/#comment-1124468232">http://www.adamsdrafting.com/referring-to-the-gregorian-calendar/#comment-1124468232</a> .
2	Number: 2	Author: Ken	Subject: Comment on Text	Date: 2/9/2014 5:41:27 PM -05'00'	Instead of passive voice with missing by-agent, use the active voice. MSCD 3.12.
3	Number: 3	Author: Ken	Subject: Comment on Text	Date: 2/6/2014 9:31:12 PM -05'00'	Add comma before. MSDC 12.41.
4	Number: 4	Author: Ken	Subject: Comment on Text	Date: 2/6/2014 9:31:30 PM -05'00'	Why the passive voice? MSCD 3.10.
5	Number: 5	Author: Ken	Subject: Comment on Text	Date: 2/7/2014 11:25:24 PM -05'00'	Why the passive voice? MSCD 3.10. In this instance, it allowed the drafter to drop the actor.
6	Number: 6	Author: Ken	Subject: Comment on Text	Date: 2/9/2014 5:31:31 PM -05'00'	Say instead "any taxes"?
7	Number: 7	Author: Ken	Subject: Comment on Text	Date: 2/9/2014 5:31:54 PM -05'00'	Word choice?
8	Number: 8	Author: Ken	Subject: Comment on Text	Date: 2/9/2014 5:33:05 PM -05'00'	Say instead "all amounts that Google pays Company"?
9	Number: 9	Author: Ken	Subject: Comment on Text	Date: 2/9/2014 5:34:36 PM -05'00'	Word choice?
10	Number: 10	Author: Ken	Subject: Comment on Text	Date: 2/6/2014 9:33:03 PM -05'00'	What category of contract language is this, language of obligation or language of policy? MSCD chapter 3.
11	Number: 11	Author: Ken	Subject: Comment on Text	Date: 2/9/2014 5:36:13 PM -05'00'	Could be clearer.
12	Number: 12	Author: Ken	Subject: Comment on Text	Date: 2/6/2014 9:34:07 PM -05'00'	What category of contract language is this, language of obligation or language of discretion?
13	Number: 13	Author: Ken	Subject: Comment on Text	Date: 2/6/2014 9:35:39 PM -05'00'	Use instead "of any tax payments".
14	Number: 14	Author: Ken	Subject: Comment on Text	Date: 2/6/2014 9:34:47 PM -05'00'	Delete.
15	Number: 15	Author: Ken	Subject: Comment on Text	Date: 2/6/2014 9:35:01 PM -05'00'	Delete.
16	Number: 16	Author: Ken	Subject: Comment on Text	Date: 2/6/2014 9:36:49 PM -05'00'	Rephrase as language of obligation (in the active voice) instead of language of policy.
17	Number: 17	Author: Ken	Subject: Comment on Text	Date: 2/6/2014 9:38:13 PM -05'00'	Awkward. See <a href="http://www.adamsdrafting.com/the-date-notified/">http://www.adamsdrafting.com/the-date-notified/</a> .
18	Number: 18	Author: Ken	Subject: Comment on Text	Date: 2/6/2014 9:43:18 PM -05'00'	This "may" doesn't connote discretion, it mean "might," and it's redundant. MSCD 3.335 and <a href="http://www.adamsdrafting.com/making-mischief-with-may-in-litigation-involving-the-merger-of-jpmorgan-and-bear-stearns/">http://www.adamsdrafting.com/making-mischief-with-may-in-litigation-involving-the-merger-of-jpmorgan-and-bear-stearns/</a> .
19	Number: 19	Author: Ken	Subject: Comment on Text	Date: 2/6/2014 9:43:37 PM -05'00'	Same comment.
20	Number: 20	Author: Ken	Subject: Comment on Text	Date: 2/9/2014 5:42:48 PM -05'00'	Why the passive voice? MSCD 3.10.
21	Number: 21	Author: Ken	Subject: Comment on Text	Date: 2/7/2014 11:26:34 PM -05'00'	Use instead "previously"?



Each party <sup>1</sup>warrants that (a) <sup>2</sup>has full power and authority to enter into this Agreement<sup>3</sup> and (b) entering into or performing under this Agreement will not <sup>4</sup>violate any agreement it has with a third party.

The confidential portions of this exhibit have been filed separately with the Securities and Exchange Commission pursuant to a confidential treatment request in accordance with Rule 24b-2 of the Securities and Exchange Act of 1934, as amended. REDACTED PORTIONS OF THIS EXHIBIT ARE MARKED BY AN \*\*\*.

### 11.2. Disclaimers.

<sup>5</sup>Except as expressly provided for in this Agreement and to the maximum extent permitted by <sup>7</sup>applicable law, <sup>8</sup>NEITHER PARTY MAKES ANY WARRANTY <sup>9</sup>OF ANY KIND, <sup>6</sup>WHETHER IMPLIED, STATUTORY, OR OTHERWISE AND <sup>10</sup>DISCLAIMS<sup>11</sup>, WITHOUT LIMITATION, WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR USE, AND NONINFRINGEMENT.

### 12. <sup>12</sup>Indemnification.

#### 12.1. By Company.

Company will indemnify, <sup>13</sup>defend, and <sup>14</sup>hold harmless Google <sup>15</sup>from and against all liabilities, damages, and costs (including settlement costs) arising out of a third party claim<sup>16</sup> (a) arising from any Company Content, Sites or Company Brand Features; (b) arising from Company's breach of this Agreement; or (c) arising from any Approved Client Applications.

#### 12.2. By Google.

Google will indemnify, defend, and hold harmless Company from and against all liabilities, damages, and costs (including settlement costs) arising out of a third party claim: (a) that Google's technology used to provide the Services or any Google Brand Features infringe(s) or misappropriate(s) any copyright, trade secret, trademark or US patent of that third party; or (b) arising from Google's breach of this Agreement. <sup>17</sup>For purposes of clarity, Google will not have any obligations or liability under this Section 12 (Indemnification) arising from any Search Results, Ads, content appearing in Search Results or Ads, or content to which Search Results or Ads link.

#### 12.3. General.

The party seeking indemnification <sup>18</sup>will promptly notify the other party of the claim and cooperate with the other party in defending the claim. The indemnifying party <sup>19</sup>has full <sup>20</sup>control

- 
- T** Number: 1 Author: Ken Subject: Comment on Text Date: 2/7/2014 11:27:48 PM -05'00'  
Why use "warrants"? This is a simple statement of fact, so it's language of declaration. Use a different verb. MSCD 3.270, 13.736.
- 
- T** Number: 2 Author: Ken Subject: Comment on Text Date: 2/9/2014 5:45:01 PM -05'00'  
Note that it's not clear that any remedy is available for inaccuracy in this statement of fact. See <http://www.adamsdrafting.com/this-statement-of-fact-is-in-every-m-and-a-contract/>.
- 
- T** Number: 3 Author: Ken Subject: Comment on Text Date: 2/9/2014 5:46:19 PM -05'00'  
Best to use semicolons between enumerated clauses only if the enumerated clauses are preceded by a colon. MSCD 4.33.
- 
- T** Number: 4 Author: Ken Subject: Comment on Text Date: 2/9/2014 9:39:31 PM -05'00'  
Use "breach". MSCD 3.140. Elsewhere "breach" is used, e.g. 12.1; consistency.
- 
- T** Number: 5 Author: Ken Subject: Comment on Text Date: 2/7/2014 11:31:48 PM -05'00'  
The two elements of the text in all capitals could be consolidated into one.
- 
- T** Number: 6 Author: Ken Subject: Comment on Text Date: 2/6/2014 9:53:57 PM -05'00'  
Needless elaboration. MSCD 1.55.
- 
- T** Number: 7 Author: Ken Subject: Comment on Text Date: 2/9/2014 9:33:06 PM -05'00'  
Redundant.
- 
- T** Number: 8 Author: Ken Subject: Comment on Text Date: 2/7/2014 8:08:00 PM -05'00'  
This sentence doesn't need to be emphasized. MSCD 16.26, 16.30. And any emphasis certainly shouldn't be in all capitals. MSCD 16.32.
- 
- T** Number: 9 Author: Ken Subject: Comment on Text Date: 2/6/2014 9:53:38 PM -05'00'  
Needless rhetorical emphasis. MSCD 1.60.
- 
- T** Number: 10 Author: Ken Subject: Comment on Text Date: 2/6/2014 9:55:18 PM -05'00'  
Unnecessary term of art. MSCD 13.161.
- 
- T** Number: 11 Author: Ken Subject: Comment on Text Date: 2/6/2014 9:54:22 PM -05'00'  
Redundant.
- 
- T** Number: 12 Author: Ken Subject: Comment on Text Date: 2/6/2014 10:17:43 PM -05'00'  
See my indemnification language at <http://www.adamsdrafting.com/my-indemnification-language/>.
- 
- T** Number: 13 Author: Ken Subject: Comment on Text Date: 2/6/2014 10:04:27 PM -05'00'  
Delete. MSCD 13.334. For more specific provisions, see <http://www.adamsdrafting.com/my-indemnification-language/>.
- 
- T** Number: 14 Author: Ken Subject: Comment on Text Date: 2/6/2014 10:02:12 PM -05'00'  
Delete: it's not only pointless, it can cause mischief. MSCD 13.323.
- 
- T** Number: 15 Author: Ken Subject: Comment on Text Date: 2/6/2014 10:05:03 PM -05'00'  
See <http://www.adamsdrafting.com/indemnify-from-versus-indemnify-for/> and <http://www.adamsdrafting.com/indemnify-for-from-and-against/>.
- 
- T** Number: 16 Author: Ken Subject: Comment on Text Date: 2/6/2014 10:07:16 PM -05'00'  
insert arising from the following, and eliminate "arising from" from the enumerated clauses. But either way, it's awkward to have instances of "arising from" in quick succession.
- 
- T** Number: 17 Author: Ken Subject: Comment on Text Date: 2/6/2014 10:16:22 PM -05'00'  
Like "For the avoidance of doubt," a sign of inefficiency. MSCD 13.220.
- 
- T** Number: 18 Author: Ken Subject: Comment on Text Date: 2/6/2014 10:18:14 PM -05'00'  
Looks like an obligation, but it should be a condition. MSCD 3.267.
- 
- T** Number: 19 Author: Ken Subject: Comment on Text Date: 2/6/2014 10:19:07 PM -05'00'  
Should be "will have". MSCD 3.242.
- 
- T** Number: 20 Author: Ken Subject: Comment on Text Date: 2/9/2014 9:34:48 PM -05'00'  
Use as a verb instead an abstract noun. MSCD 17.7.

<sup>1</sup>and authority over the defense, except that any settlement requiring the party seeking indemnification to admit liability or to pay any money <sup>2</sup>will require that party's prior written consent, such consent <sup>3</sup>not to be unreasonably withheld or delayed. The other party may join in the defense with its own counsel at its own expense. <sup>4</sup>THE INDEMNITIES IN SUBSECTIONS 12.1(a) and 12.2(a) ARE THE ONLY REMEDY UNDER THIS AGREEMENT FOR VIOLATION OF A THIRD PARTY'S INTELLECTUAL PROPERTY RIGHTS.

### 13. Limitation of Liability.

#### 13.1. Limitation.

(a) <sup>5</sup>NEITHER PARTY WILL BE LIABLE UNDER THIS AGREEMENT FOR LOST REVENUES OR <sup>6</sup>INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, EXEMPLARY, OR PUNITIVE DAMAGES, EVEN IF THE PARTY KNEW OR SHOULD HAVE KNOWN THAT SUCH DAMAGES WERE POSSIBLE AND EVEN IF DIRECT DAMAGES DO NOT SATISFY A REMEDY.

(b) NEITHER PARTY WILL BE LIABLE UNDER THIS AGREEMENT FOR MORE THAN THE SUM OF FEES PAID TO <sup>7</sup>SUCH PARTY UNDER THIS AGREEMENT AND AD REVENUES RECEIVED <sup>8</sup>AND RETAINED BY SUCH PARTY DURING THE 12 MONTHS BEFORE THE CLAIM ARISES.

#### 13.2. Exceptions to Limitations.

<sup>9</sup>These limitations of liability do not apply to Company's breach of Section 4 (Conflicting Services), <sup>11</sup>breaches of confidentiality obligations contained in this Agreement, <sup>10</sup>violations of a party's Intellectual Property Rights by the other party, or <sup>12</sup>indemnification obligations contained in this Agreement.

### 14. Confidentiality; PR.

#### 14.1. <sup>13</sup>Confidentiality.

The recipient of any Confidential Information will not disclose that Confidential Information, except to Affiliates, employees, and/or agents <sup>14</sup>who need to know it and who have agreed in writing to keep it confidential. The recipient <sup>15</sup>will ensure that those people and entities use Confidential Information only to <sup>16</sup>exercise rights and fulfill obligations under this Agreement and keep the Confidential Information confidential. The recipient may also disclose Confidential Information when required by law after giving the discloser reasonable notice and the opportunity to seek confidential treatment, a protective order or similar remedies or relief prior to disclosure. The parties acknowledge that Company will be required to file a <sup>17</sup>redacted copy of

1	Number: 1	Author: Ken	Subject: Comment on Text	Date: 2/9/2014 9:35:01 PM -05'00'
	Redundant?			
1	Number: 2	Author: Ken	Subject: Comment on Text	Date: 2/6/2014 10:21:56 PM -05'00'
	Awkward way to express a condition. See MSCD 3.246.			
1	Number: 3	Author: Ken	Subject: Comment on Text	Date: 2/6/2014 10:24:16 PM -05'00'
	Awkward way to express prohibition. See MSCD 3.223.			
1	Number: 4	Author: Ken	Subject: Comment on Text	Date: 2/6/2014 10:25:23 PM -05'00'
	Eliminate emphasis. MSCD 16.26.			
1	Number: 5	Author: Ken	Subject: Comment on Text	Date: 2/6/2014 10:25:50 PM -05'00'
	Eliminate emphasis. MSCD 16.26.			
1	Number: 6	Author: Ken	Subject: Comment on Text	Date: 2/6/2014 10:27:03 PM -05'00'
	Could this litany be eliminated? It's widely misunderstood. MSCD 13.105.			
1	Number: 7	Author: Ken	Subject: Comment on Text	Date: 2/6/2014 10:28:03 PM -05'00'
	Use of "such" instead of "that" is a hallmark of unduly legalistic prose. MSCD 13.635.			
1	Number: 8	Author: Ken	Subject: Comment on Text	Date: 2/6/2014 10:28:45 PM -05'00'
	Redundant? Potentially confusion?			
1	Number: 9	Author: Ken	Subject: Comment on Text	Date: 2/6/2014 10:29:29 PM -05'00'
	Which?			
1	Number: 10	Author: Ken	Subject: Comment on Text	Date: 2/9/2014 9:42:37 PM -05'00'
	Redundant, as the only remedy for this is through indemnification, which is included in this section.			
1	Number: 11	Author: Ken	Subject: Comment on Text	Date: 2/9/2014 9:43:05 PM -05'00'
	More economical to refer to section number.			
1	Number: 12	Author: Ken	Subject: Comment on Text	Date: 2/9/2014 9:43:23 PM -05'00'
	More economical to refer to section number.			
1	Number: 13	Author: Ken	Subject: Comment on Text	Date: 2/7/2014 11:39:13 PM -05'00'
	See my document-assembly confidentiality-agreement template, currently at <a href="http://koncision.com">koncision.com</a> . The provisions it contains have been extensively researched and use language that complies with MSCD, and the questionnaire offers copious guidance.			
1	Number: 14	Author: Ken	Subject: Comment on Text	Date: 2/6/2014 10:31:57 PM -05'00'
	For any reason?			
1	Number: 15	Author: Ken	Subject: Comment on Text	Date: 2/6/2014 10:32:56 PM -05'00'
	Is the recipient acting as guarantor, or is this in effect an "efforts" obligation?			
1	Number: 16	Author: Ken	Subject: Comment on Text	Date: 2/6/2014 10:33:21 PM -05'00'
	Whose rights and obligations?			
1	Number: 17	Author: Ken	Subject: Comment on Text	Date: 2/9/2014 9:48:55 PM -05'00'
	Company is required to file just a copy, not a redacted copy. Can address redaction with language of obligation or language of discretion, as appropriate.			

this Agreement with the Securities and Exchange Commission and all exhibits and appendices <sup>1</sup>hereto as an exhibit to its next periodic filing and will also be required to file a summary of the material terms of this Agreement in a Form 8-K to be filed with the Securities and Exchange Commission within four business days of <sup>3</sup>execution of this Agreement. The parties will <sup>2</sup>work together to create a <sup>4</sup>mutually agreeable redacted Agreement for <sup>5</sup>such periodic filing and a mutually agreeable summary for the Form 8-K.

The confidential portions of this exhibit have been filed separately with the Securities and Exchange Commission pursuant to a confidential treatment request in accordance with Rule 24b-2 of the Securities and Exchange Act of 1934, as amended. REDACTED PORTIONS OF THIS EXHIBIT ARE MARKED BY AN \*\*\*.

#### 14.2. Exceptions.

<sup>6</sup>Notwithstanding Section 14.1 (Confidentiality), Google may (a) inform advertisers of Company's participation in the Google AdSense Program, <sup>7</sup>and (b) share with advertisers Site-specific statistics, the Site URL, and related information collected by Google through <sup>8</sup>its provision of the Advertising Service to Company. Disclosure of information by Google under this <sup>10</sup>subsection 14.2 will be subject to <sup>11</sup>the terms of the Google Privacy Policy <sup>12</sup>located at the following URL: <http://www.google.com/privacypolicy.html> (or a different URL Google <sup>13</sup>may provide to Company from time to time).

#### 14.3. PR.

Neither party will issue any public statement regarding this Agreement without the other party's prior written approval.

### 15. Term and Termination.

#### 15.1. Term.

The term of this Agreement is the Term stated on the front pages of this Agreement, unless <sup>14</sup>earlier terminated as provided in this Agreement.

#### 15.2. Termination.

(a) Either party may terminate this Agreement <sup>15</sup>with notice if the other party is in <sup>16</sup>material breach of this Agreement. <sup>17</sup>

(i) where the breach is incapable of <sup>18</sup>remedy;

---

	Number: 1	Author: Ken	Subject: Comment on Text	Date: 2/13/2014 5:16:03 PM -05'00'
It's best to omit this sort of "here-" and "there-" word. MSCD 13.260 and <a href="http://www.adamsdrafting.com/herein/">http://www.adamsdrafting.com/herein/</a> .				
	Number: 2	Author: Ken	Subject: Comment on Text	Date: 2/6/2014 10:36:24 PM -05'00'
Awkward.				
	Number: 3	Author: Ken	Subject: Comment on Text	Date: 2/6/2014 10:36:03 PM -05'00'
Jargon. MSCD 5.8.				
	Number: 4	Author: Ken	Subject: Comment on Text	Date: 2/6/2014 10:37:25 PM -05'00'
Awkward. MSCD 13.433.				
	Number: 5	Author: Ken	Subject: Comment on Text	Date: 2/6/2014 10:37:47 PM -05'00'
See comment in 13.1(b).				
	Number: 6	Author: Ken	Subject: Comment on Text	Date: 2/6/2014 10:39:25 PM -05'00'
Better to use instead "subject to" in the provision being undercut. MSCD 13.471.				
	Number: 7	Author: Ken	Subject: Comment on Text	Date: 2/6/2014 10:40:40 PM -05'00'
Omit. MSCD 4.33.				
	Number: 8	Author: Ken	Subject: Comment on Text	Date: 2/6/2014 10:41:08 PM -05'00'
Bureaucratic. MSCD 17.7.				
	Number: 9	Author: Ken	Subject: Comment on Text	Date: 2/9/2014 9:57:16 PM -05'00'
Redundant.				
	Number: 10	Author: Ken	Subject: Comment on Text	Date: 2/9/2014 9:56:45 PM -05'00'
Isn't a subsection.				
	Number: 11	Author: Ken	Subject: Comment on Text	Date: 2/6/2014 10:41:30 PM -05'00'
Omit.				
	Number: 12	Author: Ken	Subject: Comment on Text	Date: 2/9/2014 9:57:04 PM -05'00'
Redundant.				
	Number: 13	Author: Ken	Subject: Comment on Text	Date: 2/6/2014 10:42:27 PM -05'00'
See comment in 10.3(c).				
	Number: 14	Author: Ken	Subject: Comment on Text	Date: 2/6/2014 10:43:48 PM -05'00'
Awkward.				
	Number: 15	Author: Ken	Subject: Comment on Text	Date: 2/6/2014 10:45:51 PM -05'00'
What does this mean?				
	Number: 16	Author: Ken	Subject: Comment on Text	Date: 2/6/2014 10:46:51 PM -05'00'
Which of the two meanings of "material" is this intended to convey? MSCD 9.3.				
	Number: 17	Author: Ken	Subject: Comment on Text	Date: 2/7/2014 11:44:04 PM -05'00'
Would read more easily if you added "in the following circumstances".				
	Number: 18	Author: Ken	Subject: Comment on Text	Date: 2/7/2014 11:42:00 PM -05'00'
Awkward. Better would be "being remedied". Even better would be "if the breach cannot be remedied".				

(ii) where the breach is capable of <sup>1</sup>remedy and the party in breach fails to remedy that breach within 30 days after receiving notice from the other party; or

(iii) more than twice even if the previous breaches were remedied.

<sup>2</sup>(b) Either party may terminate this Agreement effective January 31, 2014 by providing notice of termination to the other party at least <sup>3</sup>sixty (60) days prior to January 31, 2014.

(c) Google <sup>4</sup>reserves the right to suspend or terminate Company's use of any Services that <sup>5</sup>are alleged or reasonably believed by Google to <sup>6</sup>infringe or violate a <sup>7</sup>third party right. If any <sup>8</sup>suspension of a Service under this subsection 15.2(c) continues for more than 6 months, Company may immediately terminate this Agreement upon notice to Google.

(d) Google may terminate this Agreement, or the <sup>10</sup>provision of any Service, immediately <sup>9</sup>with notice if pornographic content that is illegal under U.S. law is displayed on any Site.

The confidential portions of this exhibit have been filed separately with the Securities and Exchange Commission pursuant to a confidential treatment request in accordance with Rule 24b-2 of the Securities and Exchange Act of 1934, as amended. REDACTED PORTIONS OF THIS EXHIBIT ARE MARKED BY AN \*\*\*.

(e) Upon the <sup>11</sup>expiration or termination of this Agreement for any reason:

(i) all rights and licenses granted by each <sup>12</sup>party will cease immediately; and

<sup>13</sup>(ii) if <sup>14</sup>requested, each party will use commercially reasonable efforts to promptly return to the other party, or destroy and certify the destruction of, all Confidential Information disclosed to it by the other party.

## 16. <sup>15</sup>miscellaneous.

<sup>16</sup>16.1. Compliance with Laws. Each party will comply with all applicable laws, rules, and regulations in <sup>17</sup>fulfilling its obligations under this Agreement.

<sup>18</sup>16.2. Notices. All notices <sup>19</sup>will be in writing and addressed to the attention of the other party's Legal Department and primary point of contact. Notice will be deemed given <sup>20</sup>(a) when verified by written receipt if sent by personal courier, overnight courier, or mail; or (b) when verified by automated receipt or electronic logs if sent by facsimile or email.

16.3. Assignment. Neither party may assign or transfer <sup>21</sup>any part of this Agreement without the written consent of the other party, except to an Affiliate but only if (a) the assignee agrees in writing to be bound by the terms of this Agreement and (b) the assigning party remains liable for obligations under this Agreement. Any other attempt to transfer or assign <sup>22</sup>is void.

1	Number: 1	Author: Ken	Subject: Comment on Text	Date: 2/7/2014 7:02:36 PM -05'00'	A blanket right to remedy breaches is problematic. See <a href="http://www.adamsdrafting.com/the-problem-with-curing-breach/">http://www.adamsdrafting.com/the-problem-with-curing-breach/</a> .
2	Number: 2	Author: Ken	Subject: Comment on Text	Date: 2/7/2014 7:05:56 PM -05'00'	Simpler and more usual to make term one year shorter but provide for automatic extension unless notice?
3	Number: 3	Author: Ken	Subject: Comment on Text	Date: 2/7/2014 11:48:27 PM -05'00'	Except this and one other instance of words-and-digits, just digits are used for numbers over ten. (Using words and digits is annoying and invites inconsistency. MSCD 14.1.)
4	Number: 4	Author: Ken	Subject: Comment on Text	Date: 2/7/2014 7:15:44 PM -05'00'	When it comes to the verb structure you use for a given category of contract language, don't improvise. Here, use "may" instead of opting for the only use of "reserves the right to" in this contract.
5	Number: 5	Author: Ken	Subject: Comment on Text	Date: 2/7/2014 7:16:20 PM -05'00'	Why the passive voice? MSCD 3.10.
6	Number: 6	Author: Ken	Subject: Comment on Text	Date: 2/7/2014 7:16:57 PM -05'00'	Redundancy?
7	Number: 7	Author: Ken	Subject: Comment on Text	Date: 2/7/2014 7:17:38 PM -05'00'	Awkward. At a minimum, needs a hyphen between "third" and "party".
8	Number: 8	Author: Ken	Subject: Comment on Text	Date: 2/7/2014 7:18:06 PM -05'00'	Verb would be better. MSCD 17.7.
9	Number: 9	Author: Ken	Subject: Comment on Text	Date: 2/9/2014 9:59:09 PM -05'00'	Awkward.
10	Number: 10	Author: Ken	Subject: Comment on Text	Date: 2/7/2014 7:18:52 PM -05'00'	Verb would be better. MSCD 17.7.
11	Number: 11	Author: Ken	Subject: Comment on Text	Date: 2/7/2014 7:20:50 PM -05'00'	On the whole, it's preferable not to distinguish between expiration and termination. MSCD 13.648.
12	Number: 12	Author: Ken	Subject: Comment on Text	Date: 2/7/2014 7:22:05 PM -05'00'	Add "to the other party".
13	Number: 13	Author: Ken	Subject: Comment on Text	Date: 2/7/2014 7:24:13 PM -05'00'	Exception for electronic information stored on servers?
14	Number: 14	Author: Ken	Subject: Comment on Text	Date: 2/7/2014 7:22:55 PM -05'00'	Add "by the other party,".
15	Number: 15	Author: Ken	Subject: Comment on Text	Date: 2/9/2014 10:02:25 PM -05'00'	See the boilerplate in my document-assembly confidentiality-agreement template, currently at <a href="http://koncision.com">koncision.com</a> .
16	Number: 16	Author: Ken	Subject: Comment on Text	Date: 2/7/2014 7:25:47 PM -05'00'	In other articles, section headings are bold and on separate line. (Perhaps inconsistency created when put on EDGAR.)
17	Number: 17	Author: Ken	Subject: Comment on Text	Date: 2/7/2014 7:26:45 PM -05'00'	I'd use "complying with". MSCD 3.139.
18	Number: 18	Author: Ken	Subject: Comment on Text	Date: 2/7/2014 7:29:59 PM -05'00'	This raises various issues. See the notices provision in my confidentiality-agreement template, currently at <a href="http://koncision.com">koncision.com</a> .
19	Number: 19	Author: Ken	Subject: Comment on Text	Date: 2/7/2014 7:28:36 PM -05'00'	What category of contract language is this? Seems like language of policy, but that doesn't work. Choice is between language of obligation (unlikely) and making it a condition (my choice). MSCD chapter 3.
20	Number: 20	Author: Ken	Subject: Comment on Text	Date: 2/7/2014 7:32:58 PM -05'00'	Better to use consistent enumeration for enumerated clauses, instead in using "(a)" hierarchy then shifting to "(i)" hierarchy in subsections. MSCD 4.38.
21	Number: 21	Author: Ken	Subject: Comment on Text	Date: 2/7/2014 7:31:27 PM -05'00'	See comment to 7.3(b)(ii).
22	Number: 22	Author: Ken	Subject: Comment on Text	Date: 2/7/2014 7:36:22 PM -05'00'	Should be "will be". MSCD 3.242.



16.4. Change of Control. Upon the earlier of (i) entering into an agreement providing for a Change of Control (as defined below), (ii) the board of directors of a party recommending its shareholders approve a Change of Control, or (iii) the occurrence of a Change of Control (each, a "Change of Control Event"), the party experiencing the Change of Control Event will provide notice to the other party promptly, but no later than 90 days, after the occurrence of the Change of Control Event. The other party may terminate this Agreement by sending notice to the party experiencing the Change of Control Event and the termination will be effective upon the earlier of delivery of the termination notice or 3 days after the occurrence of the Change of Control Event. For purposes of this Agreement, "Change of Control" means (i) a merger, consolidation or other reorganization to which either party is a party, if the individuals and entities who were stockholders immediately prior to the effective date of the transaction have "beneficial ownership" (as defined in the Securities Exchange Act of 1934, as amended) of less than fifty (50%) percent of the total combined voting power for election of directors of the surviving entity following the effective date of the transaction, or (ii) the sale of all or substantially all of a party's assets. Notwithstanding anything to the contrary herein, a Change of Control Event of Inuvo, Inc., Company's parent company, will be deemed a Change of Control Event of Company.

16.5. Governing Law. This Agreement is governed by California law, excluding California's choice of law rules. FOR ANY DISPUTE ARISING OUT OF OR RELATING TO THIS AGREEMENT, THE PARTIES CONSENT TO PERSONAL JURISDICTION IN, AND THE EXCLUSIVE VENUE OF, THE COURTS IN SANTA CLARA COUNTY, CALIFORNIA.

16.6. Equitable Relief. Nothing in this Agreement will limit either party's ability to seek equitable relief.

16.7. Entire Agreement; Amendments. This Agreement is the parties' entire agreement relating to its subject and supersedes any prior or contemporaneous agreements on that subject. Any amendment must be in writing signed (including by electronic signature) by both parties and expressly state that it is amending this Agreement.

16.8. No Waiver. Failure to enforce any provision will not constitute a waiver.

The confidential portions of this exhibit have been filed separately with the Securities and Exchange Commission pursuant to a confidential treatment request in accordance with Rule 24b-2 of the Securities and Exchange Act of 1934, as amended. REDACTED PORTIONS OF THIS EXHIBIT ARE MARKED BY AN \*\*\*.

16.9. Severability. If any provision of this Agreement is found unenforceable, the balance of this Agreement will remain in full force and effect.

16.10. Survival. The following sections of this Agreement will survive any expiration or termination of this Agreement: 8 (Intellectual Property), 12 (Indemnification), 13 (Limitation of Liability), 14 (Confidentiality; PR) and 16 (Miscellaneous).

1	Number: 1	Author: Ken	Subject: Comment on Text	Date: 2/7/2014 7:48:38 PM -05'00'	Too many lines for a single block of text. Break it up into subsections. MSCD 4.56.
2	Number: 2	Author: Ken	Subject: Comment on Text	Date: 2/7/2014 7:39:27 PM -05'00'	Add "a party".
3	Number: 3	Author: Ken	Subject: Comment on Text	Date: 2/7/2014 7:37:49 PM -05'00'	I recommend against this kind of cross-reference. MSCD 6.87.
4	Number: 4	Author: Ken	Subject: Comment on Text	Date: 2/7/2014 7:38:33 PM -05'00'	Add "that".
5	Number: 5	Author: Ken	Subject: Comment on Text	Date: 2/7/2014 7:43:07 PM -05'00'	Strictly speaking, "and" makes more sense. MSCD 13.675.
6	Number: 6	Author: Ken	Subject: Comment on Text	Date: 2/7/2014 7:39:00 PM -05'00'	Omit. MSCD 17.27.
7	Number: 7	Author: Ken	Subject: Comment on Text	Date: 2/7/2014 7:39:58 PM -05'00'	Add "with respect to a party".
8	Number: 8	Author: Ken	Subject: Comment on Text	Date: 2/9/2014 10:14:25 PM -05'00'	Instead, "any such event,".
9	Number: 9	Author: Ken	Subject: Comment on Text	Date: 2/7/2014 7:09:16 PM -05'00'	But see "four" in 14.1. Why the inconsistency in whether to use words or digits? MSCD 14.9.
10	Number: 10	Author: Ken	Subject: Comment on Text	Date: 2/7/2014 7:53:43 PM -05'00'	State when.
11	Number: 11	Author: Ken	Subject: Comment on Text	Date: 2/7/2014 7:54:56 PM -05'00'	Add ", with respect to either party,"
12	Number: 12	Author: Ken	Subject: Comment on Text	Date: 2/9/2014 10:15:54 PM -05'00'	Redundant.
13	Number: 13	Author: Ken	Subject: Comment on Text	Date: 2/7/2014 7:57:38 PM -05'00'	Replace with "that".
14	Number: 14	Author: Ken	Subject: Comment on Text	Date: 2/7/2014 7:58:20 PM -05'00'	Appropriate word for a contract but not for a merger.
15	Number: 15	Author: Ken	Subject: Comment on Text	Date: 2/9/2014 10:17:05 PM -05'00'	First sentence of this section uses "shareholders". Consistency.
16	Number: 16	Author: Ken	Subject: Comment on Text	Date: 2/7/2014 7:59:17 PM -05'00'	Stodgy lawyerism. Use "before" instead. MSCD 17.14.
17	Number: 17	Author: Ken	Subject: Comment on Text	Date: 2/7/2014 8:03:26 PM -05'00'	Say instead "that merger, consolidation or other reorganization".
18	Number: 18	Author: Ken	Subject: Comment on Text	Date: 2/7/2014 8:02:03 PM -05'00'	Say instead "as then in effect". MSDC 13.33.
19	Number: 19	Author: Ken	Subject: Comment on Text	Date: 2/7/2014 7:46:51 PM -05'00'	See comment to 15.2(b). Also, logic requires either deleting the percent symbol or moving the parentheses after "percent".
20	Number: 20	Author: Ken	Subject: Comment on Text	Date: 2/9/2014 10:18:19 PM -05'00'	Omit. MSCD 17.27.
21	Number: 21	Author: Ken	Subject: Comment on Text	Date: 2/7/2014 8:04:35 PM -05'00'	Use instead "that".
22	Number: 22	Author: Ken	Subject: Comment on Text	Date: 2/7/2014 11:58:27 PM -05'00'	Awkward. MSCD 13.466.
23	Number: 23	Author: Ken	Subject: Comment on Text	Date: 2/9/2014 9:52:51 PM -05'00'	This word is not only helpfully legalistic, it's also potentially confusing. See <a href="http://www.adamsdrafting.com/herein/">http://www.adamsdrafting.com/herein/</a> .
24	Number: 24	Author: Ken	Subject: Comment on Text	Date: 2/7/2014 8:08:37 PM -05'00'	

16.4. Change of Control. Upon the earlier of (i) entering into an agreement providing for a Change of Control (as defined below), (ii) the board of directors of a party recommending its shareholders approve a Change of Control, or (iii) the occurrence of a Change of Control (each, a "Change of Control Event"), the party experiencing the Change of Control Event will provide notice to the other party promptly, but no later than 3 days, after the occurrence of the Change of Control Event. The other party may terminate this Agreement by sending notice to the party experiencing the Change of Control Event and the termination will be effective upon the earlier of delivery of the termination notice or 3 days after the occurrence of the Change of Control Event. For purposes of this Agreement, "Change of Control" means (i) a merger, consolidation or other reorganization to which other party is a party, if the individuals and entities who were stockholders immediately prior to the effective date of the transaction have "beneficial ownership" (as defined in the Securities Exchange Act of 1934, as amended) of less than fifty (50%) percent of the total combined voting power for election of directors of the surviving entity following the effective date of the transaction, or (ii) the sale of all or substantially all of a party's assets. Notwithstanding anything to the contrary herein, a Change of Control Event of Inuvo, Inc., Company's parent company, will be deemed a Change of Control Event of Company.

16.5. Governing Law. This Agreement is governed by California law, excluding California's choice of law rules. FOR ANY DISPUTE ARISING OUT OF OR RELATING TO THIS AGREEMENT, THE PARTIES CONSENT TO PERSONAL JURISDICTION IN, AND THE EXCLUSIVE VENUE OF, THE COURTS IN SANTA CLARA COUNTY, CALIFORNIA.

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16.10. Survival. The following sections of this Agreement will survive any expiration or termination of this Agreement: 8 (Intellectual Property), 12 (Indemnification), 13 (Limitation of Liability), 14 (Confidentiality; PR) and 16 (Miscellaneous).

- T** Number: 25 Author: Ken Subject: Comment on Text Date: 2/7/2014 8:11:53 PM -05'00'  
Unhelpful way to address a legitimate issue. MSCD 13.18; <http://www.adamsdrafting.com/ arising-out-of-or-related-to-no-thank-you/>.
- 
- T** Number: 26 Author: Ken Subject: Comment on Text Date: 2/9/2014 10:19:53 PM -05'00'  
I'd use "limits". MSCD 3.242.
- 
- T** Number: 27 Author: Ken Subject: Comment on Text Date: 2/7/2014 8:14:15 PM -05'00'  
Add something more to make it clear that this is a condition. MSCD 3.266.
- 
- T** Number: 28 Author: Ken Subject: Comment on Text Date: 2/7/2014 8:12:56 PM -05'00'  
Unhelpful rhetorical emphasis. MSCD 1.60.
- 
- T** Number: 29 Author: Ken Subject: Comment on Text Date: 2/9/2014 10:21:09 PM -05'00'  
A bit too short and sweet.
- 
- T** Number: 30 Author: Ken Subject: Comment on Text Date: 2/7/2014 11:51:59 PM -05'00'  
This kind of rudimentary severability provision is problematic. See <http://www.adamsdrafting.com/koncsions-severability-provision-now-featuring-language-of-intention/>.
- 
- T** Number: 31 Author: Ken Subject: Comment on Text Date: 2/7/2014 11:55:15 PM -05'00'  
Although it's standard, the concept of "survival" is unhelpful. MSCD 13.638. Also <http://www.adamsdrafting.com/delaware-court-of-chancery-cites-mscd/>.

16.11. Independent Contractors. <sup>1</sup>The parties are independent contractors and this Agreement does not create an agency, partnership, or joint venture.

16.12. No Third Party Beneficiaries. <sup>2</sup>There are no <sup>3</sup>third-party beneficiaries to this Agreement.

16.13. <sup>4</sup>Force Majeure. Neither party will be liable for inadequate performance to the extent caused by a condition (for example, natural disaster, act of war or terrorism, riot, labor condition, governmental action, and Internet disturbance) that was beyond the party's reasonable control.

16.14. Counterparts. The parties may execute this Agreement in counterparts, including facsimile, PDF or other electronic copies, which taken together will constitute one instrument.

Signed:

Google Company

By: 2013.01 /s/ Nikesh Arora By: /s/ Rich Howe

Print Name: Nikesh Arora Print Name: Rich Howe

Title: President, Global Sales and Business Development Group, Google, Inc. Title: Chairman/  
CEO

Date: Date:

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EXHIBIT A

AFS Revenue Share Percentage

\*\*\*.

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EXHIBIT B

Alternative Search Queries

---

 Number: 1      Author: Ken      Subject: Comment on Text      Date: 2/7/2014 8:20:37 PM -05'00'

This promises more than it can deliver. Use instead language of intention. MSCD 3.322.

---

 Number: 2      Author: Ken      Subject: Comment on Text      Date: 2/7/2014 11:05:42 PM -05'00'

This doesn't explain the underlying mechanism. Perhaps say instead "This agreement does not confer ..."

---

 Number: 3      Author: Ken      Subject: Comment on Text      Date: 2/7/2014 11:02:07 PM -05'00'

This provision seeks to preclude intended beneficiaries, so it would be best to make that clear, by using the word "intended" or otherwise.

---

 Number: 4      Author: Ken      Subject: Comment on Text      Date: 2/7/2014 11:08:02 PM -05'00'

See <http://www.adamsdrafting.com/revisiting-my-force-majeure-language/> and <http://www.adamsdrafting.com/are-we-bored-with-force-majeure-yet/>.

1. Directory Search. \*\*\*

(a) "Directory Search Terms" \*\*\*

(b) \*\*\*.

(c) \*\*\*.

(d) \*\*\*

(e) \*\*\*.

2. Suggested Search. \*\*\*:

(a) "Suggested Search Terms" \*\*\*

(b) \*\*\*.

(c) \*\*\*.

(d) \*\*\*.

(e) \*\*\*.

(f) \*\*\*.

(g) \*\*\*.

3. Related Search - Generated by Company. \*\*\*:

(a) "Company-Generated Related Search Terms" \*\*\*.

(b) \*\*\*.

(c) \*\*\*.

(d) \*\*\*.

(e) \*\*\*.

(f) \*\*\*.

(g) \*\*\*.

4. Referral Traffic. \*\*\*:

This page contains no comments



(a) "Referral Sources" \*\*\*.

(b) \*\*\*.

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(c) \*\*\*:

i. \*\*\*

ii. \*\*\*

iii. \*\*\*

(d) \*\*\*.

(e) \*\*\*

5. Search History. \*\*\*:

(a) "Search History Terms" \*\*\*.

(b) \*\*\*

(c) \*\*\*

i. \*\*\*

ii. \*\*\*

iii. \*\*\*

(d) \*\*\*.

(e) \*\*\*.

(f) \*\*\*.

(g) \*\*\*.

6. End User Location Queries. \*\*\*:

(a) "End User Location Query" \*\*\*

This page contains no comments

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## EXHIBIT C

### Client Application Guidelines

1. Introduction. \*\*\*.
2. Compliance.
  - 2.1. Accessing the Services. \*\*\*.
  - 2.2. Enforcement. \*\*\*
3. End User Choice. \*\*\*
4. No Misleading, Deceptive or Harmful Practices.
  - 4.1. Clear Download and Installation Choices.
    - (a) \*\*\*.
    - (b) \*\*\*
    - (c) \*\*\*
    - (d) \*\*\*
    - (e) \*\*\*
  - 4.2. Prohibited Behavior. \*\*\*:
    - (a) \*\*\*.
    - (b) \*\*\*.
    - (c) \*\*\*
    - (d) \*\*\*
    - (e) \*\*\*

This page contains no comments

(f) \*\*\*

(g) \*\*\*

(h) \*\*\*

(i) \*\*\*

4.3. Personally Identifiable Information. \*\*\*.

4.4. Transparency.

(a) \*\*\*

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(b) \*\*\*

4.5. No Misleading Google Branding or Attribution. \*\*\*

4.6. Advertisements. \*\*\*

5. Changes to an End User's Settings.

5.1. Restriction. \*\*\*

5.2. Changes to Browser Default Search Engine and/or Homepage.

(a) Changes to Browser Default Search Engine. \*\*\*

(b) Changes to Browser Default Homepage. \*\*\*

(c) General. \*\*\*

5.3. Expected Changes to End User Settings. \*\*\*

5.4. Minor Changes to End User Settings. \*\*\*

6. EULA and Privacy Policy. \*\*\*

7. Results Page Requirements. \*\*\*

8. Third Party Distribution of Approved Client Applications.

This page contains no comments

8.1. Additional Offers; Definition of Bundled Applications. \*\*\*

8.2. Distribution with Bundled Applications. \*\*\*

(a) \*\*\*

(b) \*\*\*

(c) \*\*\*

(d) \*\*\*

(e) \*\*\*

(f) \*\*\*

9. Deactivation and Uninstallation. \*\*\*

10. Information. \*\*\*

11. Legal. \*\*\*

12. Updates. \*\*\*

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#### APPENDIX A

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#### APPENDIX B

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## APPENDIX C-1

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## APPENDIX C-2

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## EXHIBIT D

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## EXHIBIT E

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## EXHIBIT F

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## EXHIBIT G

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EXHIBIT H

Google Confidential GoogleInc.;GoogleServicesAgreement;v2.4;August2012

1

\*\*\*

Google Confidential GoogleInc.;GoogleServicesAgreement;v2.4;August2012

18

**3. Related Search - Generated by Company.**

\*\*\*.

(a) "Company-Generated Related Search Terms" \*\*\*.

(b) \*\*\*.

(c) \*\*\*.

(d) \*\*\*.

(e) \*\*\*.

(f) \*\*\*.

(g) \*\*\*.

**(a) Company-Generated Related Search Terms" \*\*\*.**

---

End of Document

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