

## Google Site Search License Agreement

This Agreement for the Google Site Search (the "Agreement") is made and entered into by and between Google Inc. ("Google") and the customer identified in the Order Form ("Customer"). This Agreement is effective as of the date Customer clicks the "I Accept" button below or, if applicable, the date the Agreement is countersigned (the "Effective Date"). If you are accepting on behalf of Customer, you represent and warrant that: (i) you have full legal authority to bind your employer, or the applicable entity, to these terms and conditions; (ii) you have read and understand this Agreement; and (iii) you agree, on behalf of the party that you represent, to this Agreement. If you do not have the legal authority to bind Customer, please do not click the "I Accept" button below (or, if applicable, do not sign this Agreement). This Agreement and the applicable Ordering Document set forth the terms and conditions under which Customer may use the Services. The Ordering Document will reference and be governed by this Agreement. This Agreement is effective as of the Effective Date.

### 1. Services.

1.1 Generally. Google will provide the Services to Customer during the Term of this Agreement. After the Effective Date, Google will upgrade Customer's Custom Search Engine account to a Google Site Search account. All Queries sent to Google must originate from the Site, and will comply with the Documentation. Google will receive Queries from Customer at Google's network interface, process the Queries using Google's search engine, and then display Results on a Results Page.

1.2 Modifications. Google may make commercially reasonable modifications to the Services, or particular components of the Services, from time to time. Google will use commercially reasonable efforts to notify Customer of any such changes. Google may also make additional applications, features or functionality available from time to time through the Service, the use of which may be contingent upon Customer's agreement to additional terms.

1.3 Documents and Queries. The number of documents with which Customer can use the Service, as well as the number Queries Customer is allowed for the Services per year, will be

limited by the applicable SKU. If Customer exceeds the number of Queries or number of documents, Google will provide Customer the option to upgrade to a higher SKU with additional Queries, or an additional number of documents at an additional cost, or Google will terminate the Service.

1.4 Results. The Results will be determined by some or all of the following: (a) the web sites over which the search is to be restricted or filtered, as designated by Customer; (b) Customer created labels; or (c) other Services features that Google may make available from time to time as described in the Documentation.

#### 1.5 Advertising.

a. From Google. Customer may choose to display Ads on the Results Page in its sole discretion via the Admin Console. If Customer elects to display Ads on the Results Page, Customer must register for an AdSense Account and be subject to Google's terms and conditions as they relate to the placement of Ads.

b. From Customer or Third Parties. Customer may display its own advertisements, or third party advertisements, on the Results Page. If Customer chooses to do so, it must ensure that these advertisements cannot be confused with Ads.

1.6 Privacy Policy. Google will comply with the Privacy Policy. Changes to the Privacy Policy will be made as stated therein.

1.7 Data Transfer. As part of providing the Service, Google may store and process Customer Data in the United States or any other country in which Google or its agents maintain facilities. By using the Services, Customer consents to this transfer, processing and storage of Customer Data.

#### 2. Customer Obligations.

2.1 Queries and Results. Customer will receive Queries from End Users and will forward the Queries directly to Google. Customer will not frame Results, except as otherwise agreed to in writing between Customer and Google. Google will not receive Queries directly from End Users, and is not responsible for the transmission of data between the Site and Google's network interface.

2.2 Compliance. Customer will comply with this Agreement, the

Acceptable Use Policy, and the Documentation. Customer agrees that its use of the GSS API is subject to its compliance with the GSS API Terms.

### 2.3 Metadata Content.

a. Generally. As part of providing the Services, Google will crawl and index the Site, including the Metadata Content on the Site. Google will only use the Metadata Content to provide the Services and for algorithmic learning purposes to improve Google's search functionality. For example, Google may use Metadata Content to configure the Services, improve search ranking, or enable richer snippet presentation. In addition, the use of Metadata Content may enable additional advanced features, such as search boxes within results and attribute layout of the Services.

b. License. Therefore, by using the Services, Customer grants to Google a limited, irrevocable, royalty-free, and non-exclusive license, during the Term, to reproduce, adapt, modify, translate, publicly perform, publicly display and distribute Metadata Content solely to enable Google to provide the Services to Customer, to improve the search functionality of the Services, and to improve Google's overall search functionality.

c. Reservation of Customer Rights. Except for the license granted above, Customer retains all right, title and interest in and to the Metadata Content.

### 2.4 Display of Brand Features.

a. Generally. Customer may choose whether or not to display Google Brand Features in the Services in its sole discretion. The default setting for the Services allows Customer to display Google Brand Features. Customer may change the default setting via the Admin Console.

b. Google Brand Features. If Customer displays Google Brand Features in the Services, then Customer will comply with the Site Search Branding Guidelines, the WebSearch Branding Guidelines, and the Trademark Guidelines. If there is a conflict between the Site Search Branding Guidelines and the WebSearch Branding Guidelines, the Site Search Branding Guidelines will control. Graphics used by Customer, if any, will link to the Landing Page.

### 3. Ownership.

3.1 Generally. Except as expressly set forth herein, this Agreement does not grant either party any rights, implied or otherwise, to the other's content or any of the other's Intellectual Property Rights. Intellectual Property Rights in and to the content accessed through the Services are the property of the applicable content owner and may be protected by applicable laws.

3.2 Brand Features. Any use of a party's Brand Features will inure to the benefit of the party holding rights in those Brand Features. Each party agrees not to: (a) challenge or assist others to challenge the other party's Brand Features or registration thereof (except to protect such party's rights with respect to its own Brand Features); or (b) attempt to register any Brand Features that are confusingly similar to those of the other party.

### 4. Payment Terms.

4.1 Purchase Process. Google will provide IBM an Ordering Document for each purchase, to confirm the Services, quantity and price and which will contain no additional terms. This form will not be binding until accepted in writing by IBM (which includes acceptance by way of submission of a Purchase Order to Google).

4.2 Payment. All Fees are due forty-five (45) days from the date of an undisputed invoice ("Invoice Date"), provided that such invoice is received by IBM electronically within one (1) business day of the applicable Invoice Date. All payments due are in U.S. dollars. Payments made via wire transfer must include the following instructions:

Wells Fargo Bank  
Palo Alto, California USA  
ABA# 121000248

Google Inc.  
Account # 4375669785

4.3 Taxes. Customer is responsible for any Taxes, and Customer will pay Google for the Appliance without any reduction for such amounts. If Google is obligated to collect or pay Taxes, the Taxes will be invoiced to Customer, unless Customer provides Google with a valid tax exemption certificate authorized by the appropriate taxing authority. If Customer is required by law to withhold any Taxes from its payments to Google, Customer must provide

Google with an official tax receipt or other appropriate documentation to support such withholding.

4.4 Invoice Disputes. Any invoice disputes must be submitted prior to the invoice due date. If the parties determine that certain billing inaccuracies are attributable to Google, Google will not issue a corrected invoice, but will instead issue a credit memo specifying the incorrect amount in the affected invoice. If the disputed invoice has not yet been paid, Google will apply the credit memo amount to the disputed invoice and Customer will be responsible for paying the resulting net balance due on that invoice.

4.5 Delinquent Payments. Delinquent payments shall bear interest at the rate of one-and-one-half percent per month (or the highest rate permitted by law, if less) from the payment due date until paid in full. Customer will be responsible for all reasonable expenses (including attorneys' fees) incurred by Google in collecting delinquent amounts, except where such delinquent amounts are due to Google's billing inaccuracies.

#### 4.6 Purchase Orders.

a. Required. If Customer's Ordering Document is a Quote, then a purchase order is required. If Customer's Ordering Document is an Order Form, and Customer wants a purchase order number on its invoice, Customer will inform Google and will issue a purchase order to Google. If Customer requires a purchase order, and fails to provide the purchase order to Google, then Google will not be obligated to provide the Appliance until the purchase order has been received by Google.

b. Not Required. If Customer's Ordering Document is an Order Form, and Customer does not require a Purchase Order number to be included on the invoice, Customer must select "No" in the Purchase Order section of the Order Form. If Customer waives the Purchase Order requirement, then: (a) Google will invoice Customer without a Purchase Order; and (b) Customer agrees to pay invoices without a Purchase Order.

5. Support. Subject to Customer's payment of the Fees, Google will provide TSS in accordance with the TSSG to Customer for the License Term. Google may change the TSS from time to time, but not if the changes materially adversely impact Customer.

#### 6. Confidential Information.

6.1 Obligations. Each party will: (a) protect the other party's Confidential Information with the same standard of care it uses to protect its own Confidential Information, but with no less than a reasonable standard of care; and (b) not disclose the Confidential Information, except to affiliates, employees and agents who need to know it and who have agreed in writing to keep it confidential. Each party (and any affiliates, employees and agents to whom it has disclosed Confidential Information) may use Confidential Information only to exercise rights and fulfill obligations under this Agreement, while using reasonable care to protect it. Each party is responsible for any actions of its affiliates, employees and agents in violation of this Section.

6.2 Exceptions. Confidential Information does not include information that: (a) the recipient already knew; (b) becomes public through no fault of the recipient; (c) was independently developed by the recipient; or (d) was rightfully given to the recipient by another party.

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

7. Publicity. Customer agrees that Google may include Customer's name or Brand Features in a list of Google customers. Customer also agrees that Google may verbally reference Customer as a customer of the Google products or services that are the subject of this Agreement. This section is subject to Section 3.2.

8. Disclaimer. EXCEPT AS EXPRESSLY PROVIDED IN THIS AGREEMENT, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, GOOGLE DOES NOT MAKE ANY OTHER WARRANTY OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, INCLUDING WITHOUT LIMITATION WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR USE AND NONINFRINGEMENT. GOOGLE DOES NOT WARRANT THAT THE SERVICES WILL BE ERROR-FREE OR UNINTERRUPTED. THE SERVICES ARE NOT DESIGNED, MANUFACTURED, OR INTENDED FOR HIGH RISK ACTIVITIES.

9. Term and Termination.

9.1 Term. Subject to the Customer's payment of the Fees, the

term for the license granted in this Agreement will begin on the Service Commencement Date, and will continue for the License Term, unless terminated earlier as set forth below.

9.2 Termination for Breach. Either party may terminate this Agreement if: (i) the other party is in material breach of the Agreement and fails to cure that breach within thirty days after receipt of written notice; (ii) the other party ceases its business operations or becomes subject to insolvency proceedings and the proceedings are not dismissed within ninety days; or (iii) the other party is in material breach of this Agreement more than two times notwithstanding any cure of such breaches.

9.3 Effect of Termination.

a. Termination for Google's Breach. If the Agreement is terminated for Google's breach, the licenses granted herein regarding Customer's use of the Services may, at Customer's option, continue for the remainder of the License Term, subject to Customer's continued compliance with this Agreement.

b. Termination for Customer's Breach. If the Agreement is terminated for Customer's breach, then: (i) the License Term, and all other rights and licenses granted by one party to the other, or any services provided by Google to Customer, will cease immediately; (ii) upon request, each party will promptly return all Confidential Information of the other party; (iii) all payments owed by Customer to Google are immediately due.

c. Expiration of the License Term. The Services will cease functioning upon the expiration of the License Term.

10. Indemnification.

10.1 By Customer. Customer will indemnify, defend, and hold harmless Google from and against all liabilities, damages, and costs (including settlement costs and reasonable attorneys' fees) arising out of a third party claim: (i) regarding Customer Data or Customer Domain Names; (ii) that Customer Brand Features infringe or misappropriate any patent, copyright, trade secret or trademark of a third party; or (iii) regarding Customer's, or its End Users', use of the Services in violation of the Agreement.

10.2 By Google. Google will indemnify, defend, and hold harmless Customer from and against all liabilities, damages, and costs (including settlement costs and reasonable attorneys' fees) arising

out of a third party claim that Google's technology used to provide the Services or any Google Brand Feature infringe or misappropriate any patent, copyright, trade secret or trademark of such third party. Notwithstanding the foregoing, in no event shall Google have any obligations or liability under this Section arising from: (i) use of any Services or Google Brand Features in a modified form or in combination with materials not furnished by Google, and (ii) any content, information or data provided by Customer, End Users or other third parties.

### 10.3 Possible Infringement.

a. Repair, Replace, or Modify. If Google reasonably believes the Services infringe a third party's Intellectual Property Rights, then Google will: (a) obtain the right for Customer, at Google's expense, to continue using the Services; (b) provide a non-infringing functionally equivalent replacement; or (c) modify the Services so that they no longer infringe.

b. Suspension or Termination. If Google does not believe the foregoing options are commercially reasonable, then Google may suspend or terminate Customer's use of the impacted Services. If Google terminates the impacted Services, then Google will provide a pro-rata refund of the unearned Fees actually paid by Customer applicable to the period following termination of the Services.

10.4 General. The party seeking indemnification will promptly notify the other party of the claim and cooperate with the other party in defending the claim. The indemnifying party has full control and authority over the defense, except that: (a) any settlement requiring the party seeking indemnification to admit liability or to pay any money will require that party's prior written consent, such consent not to be unreasonably withheld or delayed; and (b) the other party may join in the defense with its own counsel at its own expense. THE INDEMNITIES ABOVE ARE THE ONLY REMEDY UNDER THIS AGREEMENT FOR VIOLATION OF A THIRD PARTY'S INTELLECTUAL PROPERTY RIGHTS.

### 11. Limitation of Liability.

11.1 Limitation on Indirect Liability. NEITHER PARTY WILL BE LIABLE UNDER THIS AGREEMENT FOR LOST REVENUES OR INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, EXEMPLARY, OR PUNITIVE DAMAGES, EVEN IF THE PARTY



KNOW OR SHOULD HAVE KNOWN THAT SUCH DAMAGES WERE POSSIBLE AND EVEN IF DIRECT DAMAGES DO NOT SATISFY A REMEDY.

11.2 Limitation on Amount of Liability. NEITHER PARTY MAY BE HELD LIABLE UNDER THIS AGREEMENT FOR MORE THAN THE AMOUNT PAID BY CUSTOMER TO GOOGLE DURING THE TWELVE MONTHS PRIOR TO THE EVENT GIVING RISE TO LIABILITY.

11.3 Exceptions to Limitations. These limitations of liability do not apply to breaches of confidentiality obligations, violations of a party's Intellectual Property Rights by the other party, or indemnification obligations.

12. GSS API. Customer may choose to use the GSS API, or not, in its sole discretion. If Customer uses the GSS API, then its use is subject to this Section 12.

12.1 Handling of Data. The GSS Implementation must be designed to store, handle, and transmit GSS Data securely and in a manner at least as secure as any protocols described in the API Documentation.

12.2 Interaction with GSS Servers. The GSS Implementation must not interfere with the normal functioning of the GSS Servers, and Customer acknowledges that Google may monitor GSS API activity in order to prevent such interference. Except as expressly permitted by the API Documentation, Customer will not to use any automated means (for example scraping, robots or "bug" testing) to access, query or otherwise collect GSS related information.

12.3 Updates.

a. Updates. Google may change the GSS API and the API Documentation from time to time. These changes may require Customer to update the GSS Implementation to ensure proper operation.

13. Miscellaneous.

13.1 Notices. All notices must 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: (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.

13.2 Assignment. Neither party may assign or transfer any part of this Agreement without the written consent of the other party, except assignment of the Agreement in its entirety 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 incurred under the Agreement prior to the assignment. Any other attempt to transfer or assign is void.

13.3 Change of Control. Upon a change of control (for example, through a stock purchase or sale, merger, or other form of corporate transaction), (a) the party experiencing the change of control will provide written notice to the other party within 30 days after the change of control, and (b) the other party may immediately terminate this Agreement any time between the change of control and thirty days after it receives the written notice in subsection (a).

13.4 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.

13.5 No Agency. The parties are independent contractors; this Agreement does not create an agency, partnership or joint venture.

13.6 No Waiver. Failure to enforce any provision of this Agreement will not constitute a waiver.

13.7 Severability. If any provision of this Agreement is found unenforceable, it and any related provisions will be interpreted to best accomplish the unenforceable provision's essential purpose.

13.8 No Third-Party Beneficiaries. There are no third-party beneficiaries to this Agreement.

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

13.10 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.

13.11 Amendments. Any amendments to this Agreement must be agreed upon in writing.

13.12 Survival. Those provisions that by their nature should survive termination of this Agreement, will survive termination of this Agreement.

13.13 Entire Agreement. This Agreement, the Ordering Document, and all documents referenced herein or therein or attached to this Agreement, is the parties' entire agreement relating to its subject and supersedes any prior or contemporaneous agreements on that subject. The terms located at a URL and referenced in this Agreement or in the Ordering Documents are hereby incorporated by this reference. If there is a conflict between the documents that make up this Agreement, the documents will control in the following order: the Ordering Document, the Agreement, and the terms located at any URL. This Agreement supersedes the online terms Customer accepted in order to create its Custom Search Engine Account.

#### 14. Definitions.

"Admin Console" means the online tool provided by Google to Customer for certain administration functions related to the Services.

"Ads" means Google served advertisements.

"Acceptable Use Policy" means the acceptable use policy for the Services available at [http://support.google.com/enterprise/doc/gss/terms/gss\\_aup.html](http://support.google.com/enterprise/doc/gss/terms/gss_aup.html), or other such URL as may be provided by Google.

"API Documentation" means the documentation available at <http://code.google.com/apis/customsearch/>.

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

"Code" means JavaScript or similar programming which renders a

Search Box on a Site.

"Confidential Information" means information disclosed by a party to the other party under this agreement that is marked as confidential or would normally be considered confidential under the circumstances.

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

"Customer Data" means data provided by Customer as part of its use of the Services. Customer Data includes the Metadata Content.

"Documentation" means the Google proprietary documentation in the form generally made available by Google to its customers for use with the Software, including the documentation at <http://www.google.com/coop/docs/cse/>, which URL may be updated by Google periodically.

"End Users" mean the end users of the Services on Customer's Site.

"Fees" means the applicable fees for Services set forth in an Ordering Document and any applicable Taxes.

"Graphic" means an unaltered graphic in the form provided by Google for the purpose of identifying that the Services are provided by Google. Graphics may be accessed via the Site Search Branding Guidelines.

"GSS API" means the application program interface that enables you to implement certain features of Google Site Search on your website, your blog, or a collection of websites, and which is more fully describe in the API Documentation.

"GSS Data" means data that is transmitted between the GSS Implementation and GSS Servers in connection with the GSS API.

"GSS Implementation" means a more customized version of Google Site Search, based on the GSS API, developed by Customer pursuant to the API Documentation, and which is used to communicate with GSS Servers.

"GSS Servers" means the servers used to provide the Google Site

Search services.

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

"Intellectual Property Rights" means current and future worldwide rights under patent law, copyright law, trade secret law, trademark law, moral rights law, and other similar rights.

"Landing Page" means the Google site located at [www.google.com/sitesearch](http://www.google.com/sitesearch) or such other address as Google may designate from time to time during the Term.

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

"Metadata Content" means the publicly available data on Customer web sites, used by Customer to logically break up its web sites, such as metadata, profile page content, ratings, reviews, Nicknames, and comments. Customer may provide Metadata Content to Google via an on-page markup, or other available means.

"Nickname" means a Customer selected name that Customer uses to identify Metadata Content to End Users.

"Ordering Document" means either an order form or quote, issued by Google to provide the Services to Customer, subject to this Agreement. The Ordering Document will incorporate this Agreement and will contain: (i) a Services description and a License Term; (ii) price; and (iii) a reference number.

"Privacy Policy" means the terms at <http://www.google.com/privacy.html> or other such URL as may be provided by Google.

"Query" means a search query entered by End Users in the Search Box on the Site.

"Results" means search results, in response to Queries, returned by Google via the Services to the Results Page.

"Results Page" means the web page of the Customer Site to

which Google will return Results, and from which Customer will display Results to End Users.

"Search Box" means a Google search box, to be used in connection with the Services, into which End Users may enter a Query.

"Service Commencement Date" is the date upon which Google enters Customer's order for the Services into its internal systems and commences provisioning of the Services to Customer, and will be within one week of Google's receipt of the Ordering Document signed by Customer unless otherwise agreed by the parties.

"Services" means the Google Site Search services, which are designed to assist customers in providing customized Web search services on the Site. The Services more fully described at the following URL <http://www.google.com/sitesearch/>, which URL may be updated by Google periodically.

"Site" shall mean the Web site or sites, owned or controlled by Customer, on which Customer places Code and a Search Box.

"Site Search Branding Guidelines" means the branding guidelines for Site Search, the current version of which is located at <http://google.com/coop/docs/cse/branding.html>, which URL may be updated by Google periodically.

"Term" means the initial License Term for the Services, and any applicable renewal terms.

"Taxes" means any duties, customs fees, or taxes (other than Google's income tax) associated with the sale of the Services, including any related penalties or interest.

"Trademark Guidelines" means Google's Guidelines for Third Party Use of Google Brand Features, located at the following URL: <http://www.google.com/permissions/guidelines.html>, or other such URL as may be provided by Google.

"TSS" means the technical support services provided by Google, in accordance with Google's TSSG, for the Services, and for the time period, set forth in the Ordering Document.

"TSSG" means Google's then current Technical Support Services Guidelines, which may be accessed at the following

URL: <http://support.google.com/enterprise/terms>.

"Updates" means updates, refreshes, corrections and other modifications.

"WebSearch Branding Guidelines" means the branding guidelines for WebSearch, the current version of which is located at <http://www.google.com/wssynd/02brand.html>, which URL may be updated by Google periodically.



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