

COOPERATIVE AGREEMENT

This COOPERATIVE AGREEMENT (the "Agreement") is entered into by and between Google Inc., a Delaware corporation with offices at 1600 Amphitheatre Parkway, Mountain View, California 94043 ("Google"), and The Regents of the University of California on behalf of its California Digital Library with its principal offices at 415 20th Street, 4th Floor, Oakland California, 94612 ("University"), and is effective as of the last date this Agreement is signed by the parties (the "Effective Date"). Google and University herein are sometimes referred to hereinafter individually as a "Party" and collectively as the "Parties".

RECITALS

WHEREAS, University is a leading academic institution and has amassed an enormous collection of works in various media located at various University Libraries;

WHEREAS, Google provides the public with access to web pages on the Internet, among other products and services;

WHEREAS, Google and the University share a mutual interest in making information available to the public; and

WHEREAS, Subject to the terms set forth herein, Google will digitize works from the University Libraries' collection to include them in Google's services, and provide access to the digitized works to the University as described herein.

NOW THEREFORE, in consideration of the mutual covenants set forth herein, Google and University hereby agree as follows:

DEFINITIONS

1. **DEFINITIONS.** Capitalized terms will have the meanings set forth below:

1.1 "Available Content" means selections from the University Libraries' holdings as identified by Google and the University. Without limiting the foregoing, "Available Content" also includes the University Libraries' Digital Content.

1.2 "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.

1.3 "Digitize" means to convert content from a tangible, analog form into a digital electronic representation of that content. "Digitization", "Digitizing" and "Digitized" shall have corresponding meanings.

1.4 "End User" means a person that accesses or uses the Google Services.

1.5 "Google Digital Copy" means a digital copy retained by Google of the Selected Content that is Digitized by Google.

1.6 "Google Services" means Google's products and services that are accessible through and otherwise provided by various computer and electronic technologies, networks (syndicated and otherwise) and systems, including without limitation, mobile wireless services and Internet-based services accessible through the Google Sites and any Google syndication partner sites.

- 1.7 “Google Site” means any web site located at a Google-owned domain, including all subdomains and directories thereof, and all successor sites thereto.
- 1.8 “Hosted Solution” shall have the meaning set forth in Section 4.6.
- 1.9 “Initial Term” shall have the meaning set forth in Section 8.1.
- 1.10 “Other Library” means any library (including any libraries affiliated or associated with any university or other educational institution, other than University) with which Google has an agreement as of the Effective Date concerning Digitization by Google of content from that library.
- 1.11 “University Digital Copy” means the Digitized copy of the Selected Content as specified in Section 4.7.
- 1.12 “University Libraries’ Digital Content” means content that University Libraries already have in their possession in Digitized form, as of the Effective Date.
- 1.13 “University Libraries” means those libraries of the ten campuses of the University of California set forth on Exhibit A and the University’s Office of the President’s California Digital Library.
- 1.14 “University Library Patrons” means the sum total of all individuals and organizations that the University Libraries serve from their websites.
- 1.15 “Project” means a project for Digitizing certain Selected Content.
- 1.16 “Project Plan” means a written plan for implementing a Project. The Project Plan shall include the following: (1) timetable for Digitizing the Selected Content, (2) instructions by University regarding how the Selected Content is to be collected and returned by Google; (3) material handling processes for the Selected Content, (4) if required, the amount of time available to University for performing conservation efforts; (5) the amount of time available to Google from receipt of the Selected Content until it is due to be returned to University; and (6) a budget for the Project.
- 1.17 “Renewal Term” shall have the meaning set forth in Section 8.1.
- 1.18 “Selected Content” means the portion of the Available Content that Google desires to Digitize or incorporate into the Google Services, both collectively and its component parts, including any and all other works of authorship included therein.
- 1.19 “Term” shall have the meaning set forth in Section 8.1.

TERMS

2. DIGITIZATION OPERATIONS.

2.1 Locating the Digitization Operation. Selected Content will be digitized at a designated Digitization facility. The facility will be located at a site controlled by the University or at one controlled by Google. Where the facility is controlled by the University, the University shall provide Google with adequate physical space to Digitize the Selected Content. If University is unable to provide such space, University shall cooperate with Google to identify and obtain space that Google can use at reasonable rates. If the facility is provided by Google, Google shall pay for any and all fees and costs associated with the use of said space; University shall not be liable for any such fees and costs. Where the facility is controlled by Google, then Google may remove some or all of the Selected Content from University premises to perform Digitization in its facilities. Site selection will be agreed by both parties and specified in the “Project Plan”.

2.2 Identifying and Collecting Content to be Digitized. The Parties shall in good faith identify Available Content that Google may elect to Digitize; provided that University agrees to commit no less than two and a half million (2,500,000) volumes to the Digitization efforts under this Agreement. In addition, University agrees that for a period of sixty (60) days from the Effective Date, University will provide or provide Google with access to no less than six hundred (600) books of Selected Content per

day to Digitize. University will use reasonable efforts to provide or provide Google with access to no less than three thousand (3,000) books (or such amount that is mutually agreed to by the Parties) of Selected Content per day to Digitize commencing on the sixty-first (61st) day after the Effective Date but in no event later than ninety (90) days from the Effective Date. The Parties shall cooperate in good faith and with diligence to develop a timetable for completing the Project Plan for Digitizing the Selected Content.

2.3 Collecting the Selected Content. Where Selected Content is Digitized in facilities controlled by the University, the University shall be responsible for locating, pulling and moving the Selected Content to and from the designated Digitization facility as well as re-shelving the Selected Content when the Digitization is complete. Where Selected Content is Digitized in facilities controlled by Google, the University shall be responsible for locating, pulling, and later reshelving the Selected Content. If agreed upon by the Parties in a particular Project Plan, the collection, pulling, moving, and reshelving functions may be assigned to Google. Google will be responsible for arranging and paying for any and all costs and fees associated with transporting the Selected Content to and from University and storing it during a Project. Google agrees that each Digitization facility it controls will, at all times be reasonably clean, dry, cool, protected from fire and secure against theft and vandalism and at no time shall smoking be permitted in any Digitization facility. Google personnel, agents, contractors and other representatives involved in the Digitization and/or handling of the Selected Content will satisfy and comply with the standards mutually agreed by the Parties in the Project Plan. Upon commencement of a Project, University shall at its sole discretion perform any conservation efforts, at its expense, that it determines are required and/or desirable for the Selected Content prior to Digitization. On a rolling basis, as this conservation effort is completed, University shall provide the conserved Selected Content to Google for Digitizing.

2.4 Digitizing the Selected Content. Subject to handling constraints or procedures specified in the Project Plan, Google shall in its sole discretion determine how best to Digitize the Selected Content. While the Selected Content is within Google's possession, Google shall use commercially reasonable efforts to minimize damage to the Selected Content, including handling the Selected Content in accordance with handling instructions set forth in the Project Plan, if any. If the University establishes that Selected Content was not returned in substantially the same condition, Google will, at Google's option and the University's sole remedy, either replace the Selected Content in question or pay the University for the repair or replacement of such Selected Content up to a maximum as may be specified in the Project Plan.

2.5 Return of the Selected Content. Google shall return the Selected Content to the library from which Google obtained it and in the like manner in which it was collected after Google completes Digitizing the Selected Content. Google will use reasonable commercial efforts to ensure that Selected Content is returned within ten (10) business days of its being scanned or after a determination is made by Google that Selected Content will not be scanned. Notwithstanding the foregoing, Google agrees that no materials in a Project will be off University's shelves for longer than fifteen (15) business days or for a longer period as may be specified in the Project Plan.

3. COSTS

3.1 Costs paid by University. In addition to costs mutually agreed upon by the Parties, University shall be responsible for the following costs: (a) those related to locating and pulling the Selected Content as well as re-shelving the Selected Content when the Digitization is complete, (b) those related to University employees and agents whose participation is contemplated by this Agreement, (c) network bandwidth and data storage required by University to receive all of the University Digital Copy, (d) existing bandwidth available for use by Google to transfer Digitized files from University facilities to Google's data centers to the extent that University provides the Digitization facility, (e) University space that may be available and acceptable to Google for the Digitization, (f) transportation of Selected Content to and from the University facility in which the Selected Content is normally kept to and from the Digitization facility provided by the University, (g) any conservation efforts that University elects to

undertake on the Selected Content prior to Digitizing, and (h) barcoding and associated data entry to barcode the Selected Content.

3.2 Costs borne by Google. In addition to costs mutually agreed upon by the Parties, Google shall be responsible for the following costs: (a) those related to Google employees whose participation is contemplated by this Agreement, (b) hardware and software required to Digitize the Selected Content, (c) space required to Digitize the Selected Content (to the extent not provided by University), (d) transportation of Selected Content from the University facility where the Selected Content is normally kept to a Google designated facility (to the extent not provided by University), and (e) all costs related to barcoding and inventory record building for materials selected for Digitizing that do not have a barcode when pulled from the shelf ("dumb barcoding"); provided that (i) Google will bear such barcoding costs only if University personnel are unable to insert a barcode from University records and, in such case, University personnel will dumb barcode the work and the costs will be billed to Google on a mutually agreed upon time and materials basis (such agreement to be in writing and signed by both parties) not to exceed \$0.50 per work barcoded; and (ii) the Parties will determine the appropriate flow of works so that University will barcode at Google's expense not more than six (6) months ahead of the Digitizing schedule for such works. University agrees to provide to Google its current costs to barcode works.

3.3 Budgets. Notwithstanding the foregoing, University and Google may jointly develop a budget for each Project Plan, pursuant to which the Parties can allocate the cost of researching and identifying the Selected Content and performing any required copyright research and clearances, conservation, and metadata development as may be required. Any such budget will take precedence over the provisions of Sections 3.1 and 3.2 above.

4. OWNERSHIP AND USE OF DIGITAL COPIES AND SERVICES

4.1 Copyright Status. The Parties understand that the Selected Content may include some works that will be treated hereunder as public domain works and some works that will be treated hereunder as in-copyright works. Both Google and University agree and intend to perform this Agreement in compliance with copyright law. Each Party will be responsible for the determination of how to treat a work for each jurisdiction at its sole discretion. Notwithstanding such determination, if either Party believes a work (or portion thereof) should be treated as an in-copyright work in either the United States or another jurisdiction, and so notifies the other Party, then, within forty-eight (48) hours of such notice, such work (or portion thereof) shall be treated as an in-copyright work for use in the relevant country. In addition, Google will implement processes whereby any person or entity can request Google not to Digitize any Available Content or to cease the display or use of any Digitized Selected Content which Google will comply with so long as Google determines that the person or entity making the request is the copyright holder or has apparent authority to act on behalf of the copyright holder.

4.2 Ownership and use of Google Digital Copy. As between Google and University and subject to the provisions in this Section 4, Google shall own all rights, title, and interest in and to the Google Digital Copy.

4.3 Google use of Google Digital Copy. Subject to the restrictions set forth herein, Google may use the Google Digital Copy, in whole or in part at Google's sole discretion, subject to copyright law, as part of the Google Services. Google agrees that to the extent that it or its successors use any Digitized Selected Content in connection with any Google Services, it shall provide a service at no cost to End Users (1) for both search and display of search results and (2) for access to the display of the full text of public domain works contained in the Digitized Selected Content. To the extent portions of the Google Digital Copy are either in the public domain or where Google has otherwise obtained authorization, Google shall have the right, in its sole discretion, among other things, to (a) index the full text or content, (b) serve and display full-sized digital images corresponding to those portions, (c) make available full text of content for printing and/or download, and (d) make copies of such portions of the Google Digital Copy and provide, license, or sell such copies (including, without limitation, to its syndication partners). For all

other portions of the Google Digital Copy, Google may index the full text or content but may not serve or display the full-sized digital image or make available for printing, streaming and/or download the full content unless Google has permission or license from the copyright owner to do so; Google instead may serve and display (1) an excerpt that Google reasonably determines would constitute fair use under copyright law and (2) bibliographic (e.g., title, author, date, etc) and other non-copyrighted information. In the event that Google has received a license or other permission from the applicable copyright holder to use in-copyright works in the Google Digital Copy, Google may use those works in any manner permitted under the terms of such license.

4.4 Security and Privacy Regarding Google's Use of the Google Digital Copy. Google shall implement commercially reasonable technological measures (e.g., through use of the robots.txt protocol) to restrict automated access to any portion of the Google Digital Copy that is in-copyright. Google agrees that the security measures applied to in-copyright portions of the Google Digital Copy will be the same or equivalent to those employed to protect the information contained in Google's index. In addition, Google shall maintain on its website a privacy policy that governs collection and use of information that Google obtains from End Users.

4.5 Ownership and Control of Google Services. As between the Parties, the Google Services and all content therein are, and at all times will remain the exclusive property of Google or its partners; nothing in this Agreement implies any transfer to University of any ownership interest in the Google Services. University acknowledges and agrees that Google retains control of the Google Services, and that the design, layout, content, functions and features of the Google Services are at Google's discretion. Notwithstanding anything to the contrary in this Agreement, Google is not required to make any or all of the Google Digital Copy available through the Google Services.

4.6 Hosted Solution. During the Term, Google will provide searchable access to the Google Digital Copy at no charge to University and to University Library patrons via a website that will be hosted by Google (the "**Hosted Solution**"). The design, layout, content, functions and features of the Hosted Solution will be determined by Google but substantially similar to that provided by Google to any Other Library.

4.7 University Digital Copy. Unless otherwise agreed by the Parties in writing, the "**University Digital Copy**" means the digital copy of the Selected Content that is Digitized by Google consisting of (a) a set of image and OCR files, (b) associated meta-information about the files including bibliographic information consisting of title and author of each Digitized work and technical information consisting of the date of scanning the work, information about which image files correspond to what Digitized work, and information pertaining to the logical order of image files that make up a Digitized work, (c) a list of works that are supplied for Digitization but not actually Digitized, and (d) the image coordinates for each Digitized Work ("**Image Coordinates**"); provided that Image Coordinates will only be provided (i) so long as University complies with the volume commitments set forth in Section 2.2 and (ii) pursuant to the restrictions on University's use and distribution of such Image Coordinates set forth in Section 4.10.

4.7.1 Google agrees to provide to University access to one copy of all Digitized Selected Content that has been "Successfully Processed" within thirty (30) days after the Selected Content is Digitized, or in a timeframe mutually agreed by the Parties. Selected Content is "**Successfully Processed**" when Google determines it has satisfactorily gone through all stages of Google's Digitization, post processing and quality assurance procedures. In addition Google will provide the University with the ability to sample the files for two hundred and fifty (250) Digitized works per month to assess quality. Google agrees that the quality and type of files provided to University in the University Digital Copy will be substantially similar to the quality and type of files provided to any Other Library. Further, the quality and type of files supplied by Google to the University will conform to a minimum specification established by Google in consultation with the University and by those Other Libraries. Google shall provide the University Digital Copy via a network connection, or in any other manner mutually agreed upon by the Parties. Notwithstanding anything to the contrary herein, Google may withhold any works in dispute from

the University Digital Copy and the University will delete any such works that were previously provided to University as part of the University Digital Copy.

4.8 Ownership and use of University Digital Copy. As between Google and University and subject to the restrictions in this Section 4, University shall own all rights, title, and interest to the University Digital Copy. Without limiting the foregoing, University shall not display or otherwise use the University Digital Copy except as expressly permitted in this Agreement.

4.9 Use of University Digital Copy. University shall have the right to use the University Digital Copy, in whole or in part at University's sole discretion, subject to copyright law, as part of services offered to the University Library Patrons. University may not charge, receive payment or other consideration for the use of the University Digital Copy except that University may charge for use of any services supplemental to the original work that the University supplies that add value to the University Digital Copy (for example, University may charge University Library Patrons for access to annotations to works from professors and scholars but the original work will always be accessible without a fee), and to recover copying costs actually incurred. University agrees that to the extent it makes any portion of the University Digital Copy publicly available, that it will identify the works, in a statement on a web page or other access point to be mutually agreed to by the Parties, as "Digitized by Google" or in a substantially similar manner. University shall implement technological measures (e.g., through use of the robots.txt protocol) to restrict automated access to any portion of the University Digital Copy or the portions of the University website on which any portion of the University Digital Copy is available. University shall also prevent third parties from (a) downloading or otherwise obtaining any portion of the University Digital Copy for commercial purposes, (b) redistributing any portions of the University Digital Copy, or (c) automated and systematic downloading from its website image files from the University Digital Copy. University shall develop methods and systems for ensuring that substantial portions of the University Digital Copy are not downloaded from the services offered on University's website or otherwise disseminated to the public at large. University shall also implement security and handling procedures for the University Digital Copy which procedures shall be mutually agreed by the Parties. Except as expressly allowed herein, University will not share, provide, license, or sell the University Digital Copy to any third party.

4.10 Distribution of the University Digital Copy.

(a) University shall not share, provide, license, distribute or sell the Image Coordinates to any entity in any manner. University may use the Image Coordinates only as part of the University Digital Copy for the services provided to University Library Patrons set forth in Section 4.9 above.

(b) Subject to the restrictions contained herein, University shall have the right to distribute (1) no more than ten percent (10%) of the University Digital Copy (but not any portion of the Image Coordinates) to (i) other libraries and (ii) educational institutions, in each case for non-commercial research, scholarly or academic purposes and (2) all or any portion of public domain works contained in the University Digital Copy (but not any portion of the Image Coordinates) to research libraries for research, scholarly and academic purposes by those libraries and the faculty, students, scholars and staff authorized by said libraries to access their commercially licensed electronic information products. Any recipient of the University Digital Copy under this Section 4.10 is referred to herein as a "**Recipient Institution.**" Prior to any distribution by University to a Recipient Institution, Google and the Recipient Institution must have entered into a written agreement on terms acceptable to Google governing the use of the University Digital Copy and that, among other things, provide an indemnity to Google. In addition, any distribution by University to a Recipient Institution is subject to a written agreement that (A) prohibits that Recipient Institution from redistributing without first obtaining the prior written consent of Google, (B) makes Google an express third party beneficiary of such agreement, (C) provides an indemnity to Google from the Recipient Institution for the Recipient Institution's use of the Selected Content, (D) contains limitations at least as restrictive as the restrictions on University set forth in Section 4.9, (E) contains limitations on the use of the University Digital Copy consistent with copyright law and the limitations set forth in clauses (1) and (2) above, and (E) requires each Recipient Institution, to the extent it makes any

portion of the University Digital Copy publicly available, to identify the works, in a statement on the applicable web page or other access point, as "Digitized by Google" or in a substantially similar manner.

5. ACCESS, AUTHORIZATION AND SUPPORT

5.1 Access. Google shall have the right to access Selected Content during University business/staff hours as required to exercise its rights and perform its obligations hereunder. If requested by Google, University shall provide Google with access to Selected Content outside of University business hours provided that Google notify University at least two (2) days in advance of its intent to access such materials.

5.2 Authorization. The University program manager responsible for the Selected Content involved in any Project Plan shall have authority to agree with Google on the time frames and procedures (e.g., collection, conservation, and handling) associated with that Selected Content. If Google in good faith believes that the time frames and procedures requested by the University program manager are unreasonable, Google shall escalate the matter to the University administrative contact; in which case Google, the University program manager, and the administrative contact shall meet to resolve the issue.

5.3 Support from University. University shall appoint one person to serve as the administrative contact for Google, should administrative questions or issues arise during the course of this Agreement. This administrative contact shall be available during regular University business hours (9:00 a.m. to 5:00 p.m., Monday through Friday) at a telephone number and e-mail address to be provided by University. University shall also appoint one person to serve as the technical contact for Google, for obtaining or regulating the use of the University Digital Copy. This technical contact shall be available during regular University business hours at a telephone number and e-mail address to be provided by University. Upon execution of this contract, both Google and University shall identify these individuals in writing, which may be email.

5.4 Support from Google. Google will appoint specific persons for technical and administrative contact purposes, as identical to the conditions specified in 5.3 for University contacts.

6. CONFIDENTIALITY

6.1 Confidentiality. By virtue of this Agreement, each Party may have access to information of the other Party which is considered confidential and proprietary, including product plans, customer lists, and proprietary technology or methods ("**Confidential Information**"), whether disclosed in tangible or intangible form. Information disclosed in tangible form will be considered Confidential Information if it is marked as "Confidential". Information disclosed in intangible form will be considered Confidential Information if the disclosing Party clearly indicates that it is confidential at the time of disclosure.

6.2 Obligations. Each Party shall exercise at least the same degree of care to avoid the publication or dissemination of the Confidential Information of the other Party as it affords to its own confidential information of a similar nature which it desires not to be published or disseminated. The receiving Party shall not use Confidential Information of the disclosing Party except in connection with this Agreement and the matters contemplated hereby. The obligation of the Parties not to disclose Confidential Information survives termination or cancellation of this Agreement.

6.3 Exceptions. Neither Party is obligated to protect Confidential Information of the other Party that: (i) is received by the receiving Party from a third party which is not known to the receiving Party to be under a confidentiality obligation to the disclosing Party, or (ii) is known to or developed by the receiving Party independently without use of, or reference to, the Confidential Information, or (iii) is or becomes generally available to the public by other than a breach of duty hereunder by the receiving Party, (iv) has been or is hereafter furnished to others by the disclosing Party without restriction on disclosure, or (v) is required to be disclosed by any law, governmental authority or legal process

("Process"); provided that (a) the Recipient shall promptly notify the Discloser of such Process; and (b) the Recipient shall not produce or disclose Confidential Information in response to the Process unless the Discloser has (1) requested protection from the appropriate court or other legal or governmental authority requiring the Process and such request has been denied, (2) consented in writing to the production or disclosure of the Confidential Information in response to the Process, or (3) taken no action to protect its interest in the Confidential Information within fourteen (14) business days after the Recipient has given notice of its obligation to produce or disclose Confidential Information in response to the Process. The Discloser agrees that it will indemnify, defend, and hold harmless the Recipient for all damages, costs, liabilities, and fees, including reasonable attorney's fees, arising out of any third party claims that the failure to comply with the Process violates an applicable law, provided that Recipient's failure to comply is a result of adhering to the foregoing provisions; provided that the Recipient (i) promptly notifies the Discloser of such claim, (ii) provides the Discloser with reasonable information, assistance and cooperation in defending the claim, lawsuit or proceeding, and (iii) gives the Discloser full control and sole authority over the defense and settlement of such claim. The Recipient may join in defense with counsel of its choice at its own expense.

6.4 PR. Neither Party will issue any public announcement regarding the existence or content of this Agreement without the other Party's prior written approval. Google may include the name "University of California" and the University unofficial seal in lists of other partner libraries, subject to the following: Google may use the University's name and unofficial seal in presentations and promotional/marketing materials only with the University's prior written permission. In lieu of submitting individual requests prior to each such use, Google may submit a plan for such presentations and promotional/marketing materials for University's review and approval.

7. BRAND FEATURES

7.1 Ownership. Each Party shall own all right, title and interest relating to its Brand Features. Some, but not all examples of Google Brand Features are located at: <http://www.google.com/permissions/trademarks.html> (or such other URLs Google may provide from time to time). Except to the limited extent expressly provided in this Agreement, neither Party grants, and the other Party shall not acquire, any right, title or interest (including, without limitation, any implied license) in or to any Brand Features of the first Party; and all rights not expressly granted herein are deemed withheld. All use by Google of University Brand Features (including any goodwill associated therewith) shall inure to the benefit of University and all use by University of Google Brand Features (including any goodwill associated therewith) shall inure to the benefit of Google. No Party shall challenge or assist others to challenge the Brand Features of the other Party (except to protect such Party's rights with respect to its own Brand Features) or the registration thereof by the other Party, nor shall either Party attempt to register any Brand Features or domain names that are confusingly similar to those of the other Party.

7.2 License to University Brand Features. Subject to the terms and conditions of this Agreement, University grants to Google a limited, nonexclusive and nonsublicensable license during the Term to display those University Brand Features expressly authorized for use in this Agreement, solely for the purposes expressly set forth herein. Notwithstanding anything to the contrary, University may revoke the license granted herein to use University's Brand Features upon providing Google with written notice thereof and a reasonable period of time to cease such usage.

8. TERM AND TERMINATION

8.1 Term. This Agreement is effective as of the Effective Date and continues in full force and effect for a period of six (6) years, unless earlier terminated as provided herein (the "Initial Term"). Upon the expiration of the Initial Term, this Agreement shall automatically renew for additional one year terms (each a "Renewal Term") unless either Party notifies the other Party to the contrary at least thirty (30)

days before the end of either the Initial Term or a Renewal Term. The “Term” of this Agreement shall comprise the Initial Term and any Renewal Terms.

8.2 Termination. Either Party may suspend performance and/or terminate this Agreement: (i) if the other Party materially breaches any material term or condition of this Agreement and fails to cure such breach within thirty (30) days after receiving written notice thereof; or (ii) if the other Party becomes insolvent or makes any assignment for the benefit of creditors or similar transfer evidencing insolvency, or suffers or permits the commencement of any form of insolvency or receivership proceeding, or has any petition under bankruptcy law filed against it, which petition is not dismissed within sixty (60) days of such filing, or has a trustee, administrator or receiver appointed for its business or assets or any part thereof.

8.3 Effect of Expiration or Termination. After expiration or termination of this Agreement for any reason: (i) each Party shall within thirty (30) days return to the other Party (or, at that Party’s request, destroy) any Confidential Information of that Party that is in its possession, (ii) Google shall within thirty (30) days return to the University any Selected Content that it has in its possession or in transit at termination in a manner specified in Section 2.5, (iii) the University shall within ninety (90) days download any digitized Selected Content that has been created by Google during the Term but not yet downloaded by the University at termination, in a manner specified in Section 4.7.1. The following sections survive expiration or termination of this Agreement: 1, 2.4, 2.5, 4 (excluding Section 4.6), 6, 8.3, 9, 10 and 11.

9. DISCLAIMER OF WARRANTIES

9.1 Mutual Warranties. Each Party represents and warrants to the other that (i) the individual who executes this Agreement has full power and authority to do so; and (ii) this Agreement constitutes its valid and binding obligation, enforceable against it in accordance with its terms.

9.2 Disclaimer. THE WARRANTIES EXPLICITLY SET FORTH ABOVE ARE THE ONLY WARRANTIES PROVIDED HEREIN AND ARE IN LIEU OF ALL OTHER WARRANTIES BY THE PARTIES, EXPRESS OR IMPLIED, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, WITH RESPECT TO THE SUBJECT MATTER OF THIS AGREEMENT. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, BOTH PARTIES SPECIFICALLY DISCLAIM ANY WARRANTY REGARDING NON-INFRINGEMENT OF THIRD PARTY INTELLECTUAL PROPERTY.

10. INDEMNIFICATION

10.1 By Google. Google shall defend, indemnify, and hold harmless University from and against any and all liabilities, damages, charges, fees, including reasonable attorneys’ fees, costs, and expenses arising out of or in any way related to a third party claim, lawsuit, and/or any other legal, quasi-legal, or administrative proceeding alleging that any or all of the following violate any applicable law, including, but not limited to, an allegation of copyright infringement: University’s provision of Available Content to Google for digitization to the extent such provision is alleged to be direct or secondary copyright infringement; Google’s Digitization of Available Content; the use or distribution of Google Digital Copy(ies); and/or the use of the Google Digital Copy in connection with Google Services. The foregoing indemnification excludes any third party claim that relates to University’s use or distribution of the University Digital Copy.

10.2 By University. University shall defend, indemnify, and hold harmless Google from and against any and all liabilities, damages, charges, fees, including reasonable attorneys’ fees, costs and expenses arising out of or in any way related to a third party claim, lawsuit, and/or any other legal, quasi-legal, or administrative proceeding alleging that any or all of the following violate any applicable law including, but not limited to, an allegation of copyright infringement: University’s use or University’s distribution of the University Digital Copy. The foregoing indemnification excludes any third party claim that relates to University’s provision of Available Content to Google for digitization to the extent such

provision is alleged to be direct or secondary copyright infringement; Google's Digitization of Available Content; the Google Digital Copy; the use or distribution of Google Digital Copy(ies); and/or the use of the Google Digital Copy in connection with Google Services.

10.3 General. The foregoing obligations shall exist only if the Party seeking indemnification ("Indemnitee"): (i) promptly notifies the Indemnitor of such claim, (ii) provides the Indemnitor with reasonable information, assistance and cooperation in defending the claim, lawsuit or proceeding, and (iii) gives the Indemnitor full control and sole authority over the defense and settlement of such claim. The Indemnitee may join in defense with counsel of its choice at its own expense.

11. LIMITATION OF LIABILITY

IN NO EVENT WILL EITHER PARTY BE LIABLE TO THE OTHER FOR LOST PROFITS OR ANY FORM OF INDIRECT, SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES OF ANY CHARACTER FROM ANY CAUSES OF ACTION OF ANY KIND WITH RESPECT TO THIS AGREEMENT, WHETHER BASED ON BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), OR OTHERWISE, AND WHETHER OR NOT THE OTHER PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGE, AND (B) EACH PARTY'S LIABILITY UNDER THIS AGREEMENT SHALL BE LIMITED TO ONE MILLION DOLLARS (\$1,000,000). The Parties agree that (i) the mutual agreements made in this Section 11 reflect a reasonable allocation of risk, and (ii) that each Party would not enter into the Agreement without these limitations on liability. The foregoing limitations, however, are not applicable to any damages arising from a breach of Section 6, Confidentiality, to any monetary obligations arising out of the indemnification obligations in Section 10, Indemnification, including, but not limited to, indemnification for allegations of copyright infringement, or to any damages related to actions for personal injury or willful misconduct.

12. GENERAL PROVISIONS

12.1 No Obligation. Notwithstanding the foregoing, Google shall have no obligation to Digitize any portion of the Available Content nor to use any portion of the Google Digital Copy as part of the Google Services. Likewise, notwithstanding anything in this Agreement to the contrary, University shall not be obligated to participate in the digitization program described in this Agreement with respect to any or all of the Available Content. Furthermore, notwithstanding anything in this Agreement to the contrary, if Google determines, at its sole discretion, not to Digitize some or all Selected Content in connection with one or more specific Projects, whether due to cost issues, conservation concerns or otherwise, Google shall have no obligation to the University with respect to Digitizing or delivering the University Digital Copy with respect to such Selected Content.

12.2 Miscellaneous. Neither Party may assign any of its rights or delegate any of its duties under this Agreement without the prior written consent of the other Party, except that either Party may assign its rights and delegate its duties under this Agreement upon written notice to the other Party to a division or an affiliate thereof (that is not a competitor of the non-assigning Party), provided such division or affiliate agrees to be bound by all of the terms hereof. Any attempted assignment, delegation or transfer in derogation hereof shall be null and void. This Agreement shall be binding upon the successors and permitted assigns of both Parties. Unless provided for to the contrary in this Agreement, any and all notices or other communications or deliveries required or permitted to be made under this Agreement shall be sent to the respective party at the respective address identified above. Notice shall be deemed received (i) upon receipt when delivered personally or (ii) upon verification of receipt of registered or certified mail, return receipt requested. Contact information shall be updated in writing as necessary to ensure that each Party has current information regarding all such contacts. The Parties hereto are and shall remain independent contractors, and nothing herein shall be deemed to create an agency, partnership, or joint venture between the Parties hereto. This Agreement does not affect any right that either Party would have had, or shall have, independent of the Agreement under applicable law. Neither

Party shall be liable for failing or delaying performance of its obligations resulting from any condition beyond its reasonable control, including but not limited to, governmental action, acts of terrorism, earthquake, fire, flood or other acts of God, labor conditions, power failures, and Internet disturbances. If any provision of this Agreement shall be adjudged by any court of competent jurisdiction to be unenforceable or invalid, that provision shall be limited or eliminated to the minimum extent necessary so that this Agreement shall otherwise remain in full force and effect and remain enforceable between the Parties. The failure of either Party to act in the event of a breach of this Agreement by the other shall not be deemed a waiver of such breach or a waiver of future breaches. No provision of this Agreement is intended to confer any rights, benefits, remedies, obligations, or liabilities hereunder upon any person or entity other than the Parties and their respective successors and assigns. The section and paragraph headings used in this Agreement are inserted for convenience only and shall not affect the meaning or interpretation of this Agreement. This Agreement sets forth the entire understanding and agreement between the Parties, supersedes any and all previous agreements on the subject matter, whether written or oral, and may be amended only in a writing signed by both Parties. This Agreement shall be governed by the laws of the State of California, without regard to its principles of conflicts of law. Any litigation hereunder shall be brought in any state or federal court of competent jurisdiction in Santa Clara or Alameda County, California; the Parties agree that venue shall be proper in, and consent to the personal jurisdiction of, such courts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original and all of which, when taken together, shall constitute one and the same instrument.

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IN WITNESS WHEREOF, this Agreement has been executed by persons duly authorized as of the "Effective Date", which shall be the date written by Google below.

Google

By: David Eun

Print Name: DAVID EUN

Title: VP, Content Partnerships

Date: Aug 3, 2006

The Regents of the University of California:

By: Robert Dynes

Print Name: ROBERT DYNES

Title: PRESIDENT U.C.

Date: July 27/06

[Signature Page to Cooperative Agreement]

EXHIBIT A

University Library, UC Berkeley
University Library, UC Davis
University Library, UC Irvine
University Library, UCLA
University Library, UC Merced
University Library, UC Riverside
University Library, UC San Diego
University Library, UC San Francisco
University Library, UC Santa Barbara
University Library, UC Santa Cruz

California Digital Library