

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 Michigan/University Library, Ann Arbor Campus, with its principal offices at 818 Hatcher South, Ann Arbor, MI 48109-1205 ("U of M"), and is effective on the date of the execution of this Agreement (the "Effective Date"). Google and U of M herein are sometimes referred to hereinafter individually as a "Party" and collectively as the "Parties".

Background

1. U of M is a leading academic institution and has amassed an enormous collection of works in various media.
2. Google is a leader in providing the public with access to billions of web pages through a search engine that processes requests in less than half a second, and responds to more than 150 million search queries per day.
3. Google and the U of M share a mutual interest in making information available to the public. The Parties believe that working collaboratively will create mutually beneficial knowledge about standards and automated methods for organizing and indexing digitized works and to refine standard requirements for repositories of digital content.
4. Accordingly, the Parties desire to enter a nonexclusive agreement whereby Google will digitize works from the U of M collection to include them in Google's search services, and to make them available to the University of Michigan for preservation, archival or other purposes of its choosing (e.g., inclusion in Michigan's search services).

Definitions

1. **DEFINITIONS.** Capitalized terms will have the meanings set forth below unless defined elsewhere in the Agreement.

1.1 "Available Content" means the U of M print book and journal Collection, but excludes Special Collections materials. Available Content also includes U of M Digital Content in an amount corresponding to the amount of digital content that Google provides to U of M via the U of M Digital Copy.

1.2 "Brand Features" means trade names, trademarks, service marks, logos, and other distinctive brand features, of which Google's Brand Features include but are not limited to Google, the Google logo, other marks that incorporate the word "GOOGLE," PAGERANK, and of which U of M's brand features include but are not limited to the University of Michigan name, University of Michigan identification marks, and the University Library name and logo.

1.3 "Digitize" means to convert content from a tangible, analog form into a digital representation of that content.

1.4 "Distribution Price" means an amount equal to or greater than a per-page amount multiplied by the number of Digitized pages involved. The per-page amount shall be equal to the amount charged by Google for distributing to the general public the same Digitized pages ("Google Amount"). If there exists no Google Amount for the same Digitized pages, the per-page amount shall be the amount charged by Google for distributing to the general public similar pages digitized pursuant to the same Project Plan ("Similar Google Amount"). To the extent no Google Amount or Similar Google Amount exists, the per-page amount shall be an amount mutually agreed upon in good faith by Google and U of M.

1.5 "End User" means a person or entity that uses the Services.

1.6 "Enterprise Search Services" means the Search Services provided by Google to companies for use by employees of those companies and others.

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

1.8 "Google Search Services" means the Search Services provided by Google directly through the web sites located at www.google.com and corresponding international and other domains (e.g., www.google.de, www.google.info, etc).

1.9 "U of M Collection". means materials identified in section 1.2 above.

1.10 "U of M Digital Copy" means a digital copy transferred by Google to U of M of the Available Content that is Digitized by Google.

1.11 "Partner Search Services" means the Search Services provided by Google to an End User via a partner site that has entered into an agreement with Google to provide some or all of the Search Services through its own website.

1.12 "Pilot Project" means the onsite work at the University of Michigan, beginning from the Effective Date of this contract and ending on April 15, 2005.

1.13 "Project" means a project for Digitizing certain Selected Content.

1.14 "Initial Term" means the first six years of the Project, including the Pilot Project period.

1.15 "Project Form" means a form, pursuant to this Agreement, that contains the details of a Project Plan, similar to the sample attached as Exhibit A.

1.16 "Project Plan" means a plan for implementing a Project. The Project Plan shall include the following: (1) instructions by U of M regarding how the Selected Content is to be collected and returned by Google; (2) if required, the amount of time available to U of M for performing conservation efforts; (3) the amount of time available to Google from receipt of the Selected Content until it is due to be returned to U of M; and (4) a budget for the Project.

1.17 "Requested Portion" means a portion of the U of M Digital Copy requested by a third party.

1.18 "Search Services" means the search services provided by Google to an End User pursuant to which the End User can view, inter alia, content consisting of or derived from the Google Digital Copy (subject to the restrictions set forth in this Agreement) in response to search or browsing requests.

1.19 "Selected Content" means the portion of the Available Content that Google desires to Digitize or incorporate into the Services, both collectively and its component parts, including any and all other works of authorship included therein.

1.20 "Services" means collectively the Google Search Services, the Partner Search Services, and the Enterprise Search Services.

1.21 "U of M Digital Content" means content that U of M already has in its possession in Digitized form, as of the Effective Date.

1.22 "Website," "World Wide Web," "the Internet," and other technical terms in this Agreement and project plans refers to the current common usage of such terms and successor facilities of equal or greater capability.

2. RESPONSIBILITIES

2.1 Identifying Content to be Digitized. The parties shall cooperate to identify Available Content to be Digitized. Upon agreeing to such Selected Content, the Parties shall cooperate in good faith and with diligence to develop a timetable for completing the Project Plan for the Selected Content. The Parties shall then memorialize the Project Plan in a Project Form.

2.2 Collecting the Selected Content. Upon commencement of a Project, U of M shall be responsible for performing any conservation efforts that U of M determines are required for the associated Selected Content. On a rolling basis, as this conservation effort is completed, U of M shall provide the conserved Selected Content to Google for Digitizing. If agreed upon by the parties in a particular Project Plan, this collection function may instead be assigned to Google.

2.3 Locating the Digitization Operation. For each Project, U of M shall attempt in good faith to provide Google with adequate physical space to Digitize the Selected Content. If U of M is unable to provide such space, U of M shall cooperate with Google to identify and obtain space that Google can use at reasonable rates. The location of any such physical spaces shall be mutually agreed upon by the parties.

2.3.1 Transporting and Storing the Selected Content. On a Project-specific and material-specific basis, U of M may authorize Google to remove some or all of the Selected Content from U of M premises to perform digitization in facilities controlled by Google. All risk of loss, damage, or destruction of the materials will lie with Google from the time Google accepts possession of the materials until such time as they are returned to U of M on U of M premises. Google will carry reasonably sufficient insurance against the risk of loss, damage or destruction of materials entrusted to Google's custody. In general, for all materials, Google will provide a transport method and temporary storage area that is reasonably clean, dry, cool, free from insects and other pests, protected from fire, and secure against theft and vandalism. Because the value of the materials and the environmental conditions necessary for transporting them and maintaining them in good condition will vary based on the particular materials involved, U of M will inform Google of the requirements for transport and storage of particular materials on a Project-specific basis. For insurance purposes, U of M (relying on guidelines from its Risk Management office) will provide Google with a good faith estimate of the value of any materials approved for removal from U of M premises, and will provide Google with an itemized list of any such materials.

2.3.2 On-Site (i.e., not transported) Conversion of Selected Content. The terms in 2.3.1 regarding insurance, accessibility to print materials for U of M users, and precautions taken to ensure protection of the materials shall also apply to materials digitized on-site in the Buhr storage facility.

2.4 Digitizing the Selected Content. Google will be responsible for Digitizing the Selected Content. Subject to handling constraints or procedures specified in the Project Plan, Google shall at its sole discretion determine how best to Digitize the Selected Content, so long as the resulting digital files meet benchmarking guidelines agreed to by Google and U of M, and the U of M Digital Copy can be provided to U of M in a format agreed to by Google and U of M. U of M will engage in ongoing review (through sampling) of the resulting digital files, and shall inform Google of files that do not meet benchmarking guidelines or do not comply with the agreed-upon format. Should U of M encounter a persistent failure by Google to meet these guidelines or supply the agreed-upon format, U of M may stop new work until this failure can be rectified. Any restrictions on Google's discretion shall be specified on a project-by-project basis via the corresponding Project Form(s) or by amendment to this Agreement.

2.5 U of M Digital Copy. Google agrees to provide to U of M a 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. Digitized 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 (not to exceed thirty days for material received by Google, unless otherwise agreed to by the parties). Within thirty (30) days after the Selected Content is Digitized, or in a timeframe mutually agreed by the Parties, Google shall provide the U of M Digital Copy

to the U of M. Unless otherwise agreed by the Parties in writing, the U of M Digital Copy will consist of a set of image and OCR files and associated information indicating at a minimum (1) bibliographic information consisting of the title and author of each Digitized work, (2) which image files correspond to that Digitized work, and (3) the logical order of those image files. Google shall provide the U of M Digital Copy via a network connection, or in any other manner mutually agreed upon by the Parties.

2.5.1 Google may delay transferring Digitized Selected Content to U of M if it decides not to use that content due to a dispute with a third-party. In this case, Google must inform U of M, in writing, of the details of the dispute and the specific content to be delayed. Google may delay transfer of this content until such time as Google makes any use (including indexing) of that Digitized content (or the same content acquired from another source, if that Digitized content is in the public domain or out-of-print) beyond storage in a dark archive.

2.5.2 Within 3 years of the time Google has transferred Digitized Selected Content to U of M, if Google decides not to use that content due to a dispute with a third-party, U of M will destroy that content (so long as it is in print and protected by copyright) from the U of M Digital Copy. In this case, Google must inform U of M in writing of the details of the dispute and the specific content to be destroyed. If, at any time, Google subsequently makes any use (including indexing) of that Digitized content (or the same content acquired from another source, if that Digitized content is in the public domain or out-of-print) beyond storage in a dark archive, Google will retransfer that Digitized Content to U of M.

2.6 Returning the Selected Content. Once completed with the Digitizing process, Google will be responsible for returning the Selected Content to the source from which Google obtained it and in the like manner in which it was collected, within three (3) weeks unless otherwise specified in the Project Form or otherwise agreed upon by the parties. If Google reasonably determines that it will require longer to Digitize some or all of the Selected Content than the time frame set forth in the Project Form, the Parties will discuss in good faith whether a time extension is feasible. If the Parties agree upon an extension, they shall record such agreement as an amendment to the Project Form. If the Parties can not agree upon an extension, Google shall return the Selected Content within the time frames set forth in the Project Form.

2.7 Responsibility for damage to the Selected Content. While certain Selected Content is within Google's possession, Google shall make 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 Form, if any. If Google, due to its negligence, damages certain Selected Content, Google shall, at its own cost, have the damaged Selected Content restored to the condition in which Google received it. Restoration of all materials must be performed by or under the management of U of M Conservation Services.

3. COSTS

3.1 Costs borne by U of M. U of M shall bear the following costs: U of M employees (other than staff scanning operators and staff employed to pull and return materials to the shelves, including reshelving) whose participation is contemplated by this Agreement (including all cost of U of M employees required to provide Selected Content to Google as well as project management costs incurred by U of M), network bandwidth and data storage required by U of M to receive some or all of the U of M Digital Copy or existing bandwidth available for use by Google to transfer Digitized files from U of M facilities to Google's data centers and U of M space that may be available to Google.

3.2 Costs borne by Google. Google shall bear the following costs: Google employees or agents whose participation is contemplated by this Agreement (including all cost of Google employees required between receipt/collection of the Selected Content from U of M and return of the Selected Content to U of M), hardware and software required to Digitize the Selected Content, space required to Digitize the Selected Content (to the extent not provided by U of M), transportation of Selected Content from the U of M facility in which the Selected Content is normally kept (if required), and resolving copyright issues associated with Google's use of the Google Digital Copy.

3.3 Budgets. Notwithstanding the foregoing, U of M 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, conducting conservation assessments, performing conservation work, and

performing any required copyright research and clearances. Any such budget shall take precedence over the general obligations set forth above in sections 3.1 and 3.2.

4. OWNERSHIP AND USE OF DIGITAL COPIES AND SERVICES

4.1 Copyright Law. Both Google and U of M agree and intend to perform this Agreement pursuant to copyright law. If at any time, either party becomes aware of copyright infringement under this agreement, that party shall inform the other as quickly as reasonably possible.

4.2 Copyright Status. As Selected Content is provided by U of M to Google for Digitizing, U of M shall to the best of its knowledge notify Google which portions of the Selected Content are in the public domain and which portions may be subject to copyright. Notwithstanding the foregoing, Google shall be responsible for ensuring that Google's digitization and its use of the Google Digital Copy is authorized by the relevant copyright holders or by law. If either party reasonably determines that a portion of the Selected Content that was previously thought to be in the public domain is actually subject to copyright, that party shall promptly notify the other party in a writing that particularly identifies the portion(s) and provides an explanation for why the portion(s) are believed to be subject to copyright.

4.3 Searching Free to the Public: Google agrees that to the extent that it or its successors make Digitized Available Content searchable via the Internet, it shall provide an interface for both searching and a display of search results that shall have no direct cost to end users. Violations of this subsection, 4.3, not cured within thirty days of notification by U of M shall terminate U of M's obligations under section 4.4.

4.4 Ownership and use of U of M Digital Copy. Neither U of M nor Google shall have any ownership or license rights to the Available Content that is Digitized (i.e., to the materials underlying the digitization process), except where UM already has such rights. As between Google and U of M and subject to the provisions in this section 4, U of M shall own all rights, title, and interest to the U of M Digital Copy.

4.4.1 Use of U of M Digital Copy on U of M Website. U of M shall have the right to use the U of M Digital Copy, in whole or in part at U of M's sole discretion, as part of services offered on U of M's website. U of M shall implement technological measures (e.g., through use of the robots.txt protocol) to restrict automated access to any portion of the U of M Digital Copy or the portions of the U of M website on which any portion of the U of M Digital Copy is available. U of M shall also make reasonable efforts (including but not limited to restrictions placed in Terms of Use for the U of M website) to prevent third parties from (a) downloading or otherwise obtaining any portion of the U of M Digital Copy for commercial purposes, (b) redistributing any portions of the U of M Digital Copy, or (c) automated and systematic downloading from its website image files from the U of M Digital Copy. U of M shall restrict access to the U of M Digital Copy to those persons having a need to access such materials and shall also cooperate in good faith with Google to mutually develop methods and systems for ensuring that the substantial portions of the U of M Digital Copy are not downloaded from the services offered on U of M's website or otherwise disseminated to the public at large.

4.4.2 Use of U of M Digital Copy in Cooperative Web Services. Subject to the restrictions set forth in this section, U of M shall have the right to use the U of M Digital Copy, in whole or in part at U of M's sole discretion, as part of services offered in cooperation with partner research libraries such as the institutions in the Digital Library Federation. Before making any such distribution, U of M shall enter into a written agreement with the partner research library and shall provide a copy of such agreement to Google, which agreement shall: (a) contain limitations on the partner research library's use of the materials that correspond to and are at least as restrictive as the limitations placed on U of M's use of the U of M Digital Copy in section 4.4.1; and (b) shall expressly name Google as a third party beneficiary of that agreement, including the ability for Google to enforce the restrictions against the partner research library.

4.5 Ownership and use of Google Digital Copy. Neither U of M nor Google shall have any ownership or license rights to the Available Content that is digitized (i.e., to the materials underlying the digitization process), except where UM already owns such rights. As between Google and U of M and subject to the provisions in this section 4, Google shall own all rights, title, and interest to the Google Digital Copy.

4.5.1 Google use of Google Digital Copy. Subject to the restrictions set forth in this section, Google may use the Google Digital Copy, in whole or in part at Google's sole discretion, as part of the Services. For portions of the Google Digital Copy that correspond to works mutually identified as being in the public domain or for which Google has obtained permission from the relevant copyright owner(s), Google may among other things index the full text and serve and display full-sized digital images corresponding to those portions. For all other portions of the Google Digital Copy, Google may index the full text but may not serve or display the full-sized digital image unless Google has appropriate legal authority 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. If U of M discovers that digital images being served and displayed full-size by Google are subject to copyright restrictions, U of M shall notify Google in writing and Google shall cease serving and displaying such images full-size. Furthermore, to address situations where Google believed it had the right to serve full-sized digital images but was incorrect in such belief, Google shall implement processes (e.g., notice and takedown) that facilitate the ability of copyright owners to request removal of such digital images from the index.

4.5.2 Security and Privacy Regarding Google's Use of the Google Digital Copy. Google shall implement technological measures (e.g., through use of the robots.txt protocol) to restrict automated access to any portion of the Google Digital Copy or the portions of the Google website on which any portion of the Google Digital Copy is available. In addition, Google shall maintain on its website a privacy policy that governs collection and use of information that Google obtains from a user of the Google Search Services.

4.5.3 Distribution of Google Digital Copy. 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, to make copies of such portions of the Google Digital Copy and to provide, license, or sell such copies to any party, subject to such copies being used consistent with the copyright-related restrictions set forth in section 4.5.1.

4.6 Ownership and Control of Services. As between the parties, the Services and all content therein is, and at all times will remain, the exclusive property of Google or its partners; nothing in this Agreement implies any transfer to U of M of any ownership interest in the Services. U of M acknowledges and agrees that Google retains control of the Services, and that the design, layout, content, functions and features of the 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 Services.

4.7 No other rights. Except as set forth above, nothing in this subsection shall be interpreted as a grant of right from either party to the other party.

5. ACCESS, AUTHORIZATION, AND SUPPORT

5.1 Access. On a project-specific basis, Google shall have the right to access Selected Content during U of M business/staff hours (8:00am to 5:00pm, Monday through Friday) without first being required to notify U of M. On a project-specific basis, U of M may make reasonable efforts to provide Google with access to Selected Content outside of U of M business hours provided that Google notify U of M at least three days in advance of its desire to access such materials.

5.2 Authorization. The U of M 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, handling) associated with that Selected Content. If Google in good faith believes that the time frames and procedures requested by the U of M program manager are unreasonable, Google shall escalate the matter to the U of M administrative contact; in which case Google, the U of M program manager, and the administrative contact shall meet to resolve the issue.

5.3 Support. U of M 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 business hours at a telephone number and e-mail address to be provided by U of M. U of M shall also appoint one person to serve as the technical contact for Google, for obtaining or regulating the use of the U of M Digital Copy. This technical contact shall be available during

regular U of M business hours (8:30 to 4:30, Monday through Friday) at a telephone number and e-mail address to be provided by U of M. Upon execution of this contract, both Google and U of M shall identify these individuals in writing, and the resulting document shall serve as an addendum to this contract.

6. CONFIDENTIALITY

6.1 Confidential Information. By virtue of this Agreement, each Party may have access to information of the other Party which is considered confidential and proprietary, including the terms of this Agreement, Project Plan or Project Form, 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" or a similar designation. 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 the furtherance of this Agreement or the performance of its obligations hereunder. The obligation of the Parties not to disclose Confidential Information survives expiration, termination or cancellation of this Agreement.

6.3 Exceptions. Neither Party is obligated to protect Confidential Information of the other Party that: (i) is rightfully received by the receiving Party from another party without restriction, 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 known 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) required to be disclosed by any governmental authority. Google understands that U of M, as a public institution, is subject to the Michigan Freedom of Information Act, and any disclosure of Confidential Information required by that statute will not constitute a breach of this agreement.

7. MARKETING

7.1 Press Releases or Announcements. Other than as has been mutually agreed upon by the Parties, neither Party may make any press announcements about the relationship or this Agreement without the prior written approval of the other Party, which will not be unreasonably withheld or delayed. U of M and Google, as practicable, will coordinate regarding the timing of any press release(s) and will mutually agree upon appropriate talking points.

7.2 License to Marks. Each party will submit all materials of any kind containing the other party's Brand Features (other than its name in customer lists) to the other party for approval prior to release to the public. Except as set forth in this section, nothing in this Agreement shall be deemed to grant to one party any right, title or interest in or to the other party's Brand Features. All use by Google of U of M's Brand Features (including any goodwill associated therewith) shall inure to the benefit of U of M and all use by U of M of Google's Brand Features (including any goodwill associated therewith) shall inure to the benefit of Google. At no time during the Term shall one party challenge or assist others to challenge the Brand Features of the other party (except to the extent required to protect 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

8. TERM AND TERMINATION

8.1 Term This Agreement is effective as of the Effective Date and continues in full force and effect until April 30, 2009, unless earlier terminated as provided herein at the end of the Pilot Project. 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 Pilot Project, the Initial Term or a Renewal Term. The "Term" of this Agreement shall comprise the Initial Term and any Renewal Terms.

8.2 Effect of Expiration or Termination. Within thirty (30) days after expiration or termination of this Agreement for any reason, each Party shall return to the other Party (or, at that Party's request,

destroy) any Confidential Information of that Party that is in its possession. The following sections survive expiration or termination of this Agreement: 1, 2.51, 2.5.2, 2.6, 2.7, 4.4 (so long as Google or a successor continues to exist), 4.5, 4.7, 4.8, 6, 8.2, and 9-12.

9. WARRANTIES AND DISCLAIMER

9.1 Mutual Warranties. Each Party represents and warrants to the other that (i) it has full right, power and authority to enter into this Agreement and to perform all of its obligation hereunder; (ii) this Agreement constitutes its valid and binding obligation, enforceable against it in accordance with its terms; and (iii) its execution, delivery and performance of this Agreement will not result in a breach of any material agreement or understanding to which it is a Party or by which it or any of its material properties may be bound.

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, GOOGLE SPECIFICALLY DISCLAIMS ANY WARRANTY REGARDING NON-INFRINGEMENT OF THIRD PARTY INTELLECTUAL PROPERTY.

10. INDEMNIFICATION.

10.1 By Google. Google shall defend and indemnify the U of M, its Regents, employees, and agents against any third party claim based on an allegation that the U of M's (or its Regents', employees', or agents') or Google's actions, pursuant to this Agreement, violate that third party's copyrights or other legal rights. The foregoing indemnification includes U of M's receipt of the U of M Digital Copy, but excludes any third party claim that relates to U of M's use or distribution of the U of M Digital Copy or that arises from U of M's (or its Regents', employees' and agents') negligence under this Agreement. Google shall select counsel reasonably appropriate for such defense and shall pay for all costs incurred by such counsel. In addition, Google shall pay any damage awards or settlement costs that may be incurred. U of M may participate in the defense with counsel of its own choice, at its own expense.

10.2 By U of M. U of M shall defend and indemnify Google, its employees and agents against any third party claim based on an allegation that U of M's use or distribution of the U of M Digital Copy violates third party copyrights or other legal rights. U of M shall also defend and indemnify Google, its employees and agents against any third party claim based on an allegation that any third party's use or distribution of the U of M Digital Copy violates third party copyrights or other legal rights. U of M shall select counsel reasonably appropriate for such defense and shall pay for all costs incurred by such counsel. In addition, U of M shall pay any damage awards or settlement costs that may be incurred. Google may participate in the defense with counsel of its own choice, at its own expense.

10.3 Disclaimer. EXCEPT AS EXPRESSLY SET FORTH IN THIS SECTION 10, EACH PARTY EXPRESSLY DISCLAIMS ANY FURTHER OBLIGATION TO INDEMNIFY, DEFEND OR HOLD HARMLESS THE OTHER PARTY FROM ANY THIRD PARTY CLAIM OR ACTION. THE FOREGOING PROVISIONS OF THIS SECTION 10 STATE THE ENTIRE LIABILITY AND OBLIGATIONS OF INDEMNIFYING PARTY, AND THE EXCLUSIVE REMEDY OF INDEMNIFIED PARTY, WITH RESPECT TO ANY ACTUAL OR ALLEGED INFRINGEMENT OF ANY INTELLECTUAL PROPERTY RIGHTS UNDER THIS AGREEMENT.

11. LIMITATION OF LIABILITY

EXCEPT FOR DAMAGES ARISING FROM BREACH OF SECTION 6 (CONFIDENTIALITY) OR DAMAGES ARISING FROM BREACH OF SECTIONS 4.4 - 4.6 (AND ASSOCIATED SUBSECTIONS), 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. EXCEPT FOR DAMAGES ARISING FROM BREACH OF SECTION 6 (CONFIDENTIALITY)

OR DAMAGES ARISING FROM BREACH OF SECTIONS 4.4 - 4.6 (AND ASSOCIATED SUBSECTIONS), EACH PARTY'S LIABILITY UNDER THIS AGREEMENT SHALL BE LIMITED TO THE FEES EXPENDED BY THE OTHER PARTY AS OF THE DATE OF SUCH CLAIM.

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 Services. U of M shall not be obligated to participate in any Project Plan to the extent U of M does not have sufficient funds to perform its budgeted obligations under that Project Plan. Furthermore, notwithstanding anything in this Agreement to the contrary, in the event 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 U of M with respect to digitizing or delivering the U of M Digital Copy with respect to such Selected Content.

12.2 **Assignment.** Neither Party may assign this Agreement without the other Party's prior written consent, which consent shall not be unreasonably withheld. Any attempt to assign this Agreement other than as permitted above will be null and void. Subject to the foregoing, this Agreement is binding upon and shall inure to the benefit of each of the Parties, and the successors and permitted assigns of each.

12.3 **Notices.** Any notice required or permitted by this Agreement will be deemed given if sent by facsimile or by registered mail, postage prepaid, addressed to the other Party at the address set forth at the top of this Agreement. Delivery will be deemed effective upon transmission by facsimile (with receipt acknowledgement) or three (3) days after deposit with postal authorities. Unless otherwise specified by Google, notices directed to Google shall be sent to Google Inc., Attn: General Counsel, 2400 Bayshore Pkwy, Mountain View, CA 94043, or via facsimile to Google Inc., Attn: General Counsel, 650-618-1499. Unless otherwise specified by U of M, notices directed to U of M shall be sent to University Library, Attn: Associate University Librarian LIT, University of Michigan, Ann Arbor, MI 48109-1205.

12.4 **Independent Contractors.** The Parties to this Agreement are independent Parties and nothing herein shall be construed as creating an employment, agency, joint venture or partnership relationship between the Parties. Neither Party shall have any right, power or authority to enter into any agreement for or on behalf of, or incur any obligation or liability, or to otherwise bind, the other Party.

12.5 **Severability.** If any term or provision of this Agreement is held to be invalid, illegal, or otherwise void against public policy, such term or provision shall be stricken and shall not affect the validity or enforceability of the remaining terms and provisions of this Agreement.

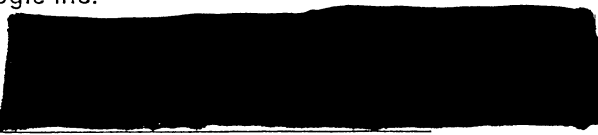
12.6 **Force Majeure.** Performance by either party under this Agreement shall be excused during the period such performance is prevented or delayed by government restrictions, war or warlike activity (e.g., acts of terrorism), insurrection or civil disorder, labor disputes, or any other causes similarly or dissimilar to the foregoing that are beyond the control of either party and are not foreseeable at the time the Agreement (or relevant amendment) is executed.

12.7 **General.** The Agreement shall be governed by Federal law without giving effect to applicable conflict of laws provisions. In the event of any dispute or litigation arising out of or relating to this Agreement, each Party agrees that it shall attempt to resolve such dispute in good faith. If such dispute cannot be resolved within thirty days of being raised, the dispute shall be elevated to the highest level at each Party. If the dispute still cannot be resolved within an additional thirty days, the aggrieved party may file a lawsuit in the state or federal courts with jurisdiction to hear such suits in the State of Michigan. This Agreement, including any Project Forms and attached Exhibits, constitutes the entire understanding and agreement with respect to its subject matter, and supersedes any and all prior or contemporaneous representations, understandings and agreements whether oral or written between the Parties relating to the subject matter of this Agreement, all of which are merged in this Agreement. For avoidance of doubt, as of the Effective Date, this Agreement supersedes and replaces any other Cooperative Agreements between the parties to the extent they exist. No modification of or amendment to this Agreement, nor any waiver of any rights under this Agreement, will be effective unless in writing signed by the Party to be charged, and the waiver of any breach or default will not constitute a waiver of any other right hereunder or any subsequent breach or default. All amendments or modifications of this

Agreement shall be binding upon the Parties despite any lack of consideration so long as such amendment or modifications are in writing and executed by the Parties. If any provision of this Agreement is found to be invalid or unenforceable pursuant to judicial decree or decision, the remainder of this Agreement shall remain valid and enforceable according to its terms. In such event, the Parties agree to negotiate in good faith, a legal and enforceable substitute provision which most nearly conforms to the Parties' intention in entering into this Agreement. 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 may be executed by exchange of signature pages by facsimile and/or in any number of counterparts, each of which shall be an original as against any Party whose signature appears thereon and all of which together shall constitute one and the same instrument.

Accepted and Agreed:


Google Inc.

By: 
(Authorized signature)

Name: David Drummond

Title: V.P., Corporate Development

On behalf of the Regents of the University of Michigan

By: 
(Authorized signature)

Name: Timothy Slottow

Title: Executive Vice President and
Chief Financial Officer

EXHIBIT A

SAMPLE PROJECT FORM

Project Name:

Program Manager:

Estimated Start Date:

Estimated Completion Date:

Description of Works Involved:

Out-of-circulation Time:

Location of Works:

Conservation Requirements:

Collection Instructions:

Transportation Instructions:

Special Handling Instructions:

Infrastructure Requirements (e.g., space, power, scanner size and quantity, environmental parameters, etc.):

Hours of Operation:

Known Copyright Restrictions:

Budget Allocations (if any):

Other comments: