

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 Board of Regents of the University of Wisconsin System, d/b/a the University of Wisconsin-Madison, General Library System, with its principal offices at 728 State Street, Madison Wisconsin, 53706 ("University"), and is effective as of the date signed by Google below (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;

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, Google will digitize selected works from the University 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 the University print collection as identified by Google and the University. Without limiting the foregoing, "Available Content" also includes University Digital Content and any works that Google has obtained the permission of the copyright holder to Digitize.

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 "Committee on Institutional Cooperation" or "CIC" means the consortium of twelve (12) research libraries (including the University) that collaborate on library related initiatives. The other eleven member libraries of the CIC are: University of Chicago, University of Illinois, Indiana University, University of Iowa, University of Michigan, Michigan State University, University of Minnesota, Northwestern University, The Ohio State University, Penn State University, and Purdue University.

1.4 "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.

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



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

1.7 "Google Services" means the 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.

1.8 "Google Site" means any web site located at a Google-owned domain, including all subdomains and directories thereof, and all successor sites thereto.

1.9 "Hosted Solution" shall have the meaning set forth in Section 4.6.

1.10 "Initial Term" shall have the meaning set forth in Section 8.1.

1.11 "Member Library" means any library that is a member of the CIC.

1.12 "University Digital Copy" shall have the meaning set forth in Section 4.7.

1.13 "University Digital Content" means content that University already has in its possession in digitized form prior to or during the Term and for which University has the right to redistribute to third parties. The rights and privileges that University has in and to the University Digital Content shall not be affected in any way by the terms of this Agreement.

1.14 "Project" means a project for digitizing certain Selected Content.

1.15 "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.

1.16 "Renewal Term" shall have the meaning set forth in Section 8.1.

1.17 "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.

1.18 "Term" shall have the meaning set forth in Section 8.1.

TERMS

2. DIGITIZATION OPERATIONS.

2.1 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 500,000 volumes to the Digitization efforts under this Agreement. The Parties shall cooperate in good faith and with diligence to develop a timetable for completing the Project Plan for Digitizing the Selected Content.

2.2 Collecting the Selected Content. 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. Upon commencement of a Project, University shall perform any conservation efforts that the Parties determine are required for the associated Selected Content. On a rolling basis, as this conservation effort is completed, University 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. 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.

2.4 Transporting and Storing the Selected Content. Google may remove some or all of the Selected Content from University premises to perform Digitization in facilities controlled by Google. If Google elects to remove any such Selected Content, then it will provide and be responsible for commercially reasonable transport methods and temporary storage areas.

2.5 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.

2.6 Return of the Selected Content. Google shall return the Selected Content to the source from which Google obtained it and in the like manner in which it was collected after Google completes Digitizing the Selected Content.

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, 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, (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), and (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).

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, conducting conservation assessments, performing conservation work, and performing any required copyright research and clearances. 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 receives a written request from a person or entity requesting to discontinue the display or use of any Digitized Selected Content, such Party will promptly notify and forward such request to the other Party and both Parties will comply with the request or demand so long as each Party 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. 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.

4.1.1. With the exception of specific cases, as addressed in Section 4.1 above, University views all U.S. government documents (Federal and State) as public domain and will provide open access to those titles in the University Digital Copy. Google will provide the University with the complete Digitized version of these works in the University Digital Copy (so long as such works are Digitized by Google), regardless of how Google elects to treat them.

4.2 Ownership and use of Google Digital Copy. Neither University 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 University already owns such rights. 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 its copy of 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, as part of the Google Services. 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 serve and display such content only in compliance with copyright law. 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. 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 its patrons, researchers and staff 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 with consideration of feedback from Google's library partners that receive a Hosted Solution.

4.7 University Digital Copy. Google shall provide the University with access to download one copy of the University Digital Copy in a timeframe mutually agreed by the Parties. Unless otherwise agreed by the Parties in writing, the "**University Digital Copy**" means a 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 such as which image files correspond to that Digitized work, and (c) the logical order of those image files. Google shall provide the University Digital Copy via a network connection, or in any other manner mutually agreed upon by the Parties. In addition Google will provide the University with the ability to sample the files for fifty (50) Digitized works per quarter to assess quality. Google agrees that the quality of files provided to University in the University Digital Copy will be substantially similar to the quality of files provided to any other library with which Google has an agreement as of the Effective Date concerning Digitization by Google of content from that library. 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. Neither University nor Google shall have any ownership or license rights to the Available Content that is digitized through this Agreement (i.e., to the materials underlying the digitization process), except where University already has such rights. 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 on University Website. 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 openly on University's website and internally for research, scholarly and academic purposes. University may not charge, receive payment or other consideration for the University Digital Copy in connection with University's website. 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 the applicable web page or other access point, as "Digitized by Google" or in a substantially similar manner. University shall implement reasonable 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 make reasonable efforts (including but not limited to restrictions placed in University's online terms and conditions governing the use of its website) 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 provide (in whole or in part), license, or sell the University Digital Copy to any third party.

4.10 Contribution of University Digital Copy. Subject to the terms of this Section 4.10, University shall have the right to contribute the University Digital Copy to a central depository of digital works hosted by a Member Library. Prior to the provision of the University Digital Copy to any such Member Library, Google must have entered into a written agreement with the hosting Member Library and each Member Library that will have access to the University Digital Copy that (i) limits the use of the University Digital Copy to non-commercial research, scholarly and academic purposes consistent with the requirements of copyright law, (ii) requires the Member Library responsible for hosting the University Digital Copy to implement reasonable 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 website where the University Digital Copy is available, (iii) requires the Member Library make reasonable efforts (including but not limited to restrictions placed in online terms and conditions governing the use of the digital works) to 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, (iv) prohibits the Member Library from redistributing any portion of the University Digital Copy without first obtaining the prior written consent of Google, (v) provides an indemnity to Google for the Member Library's use of the Selected Content, and (vii) requires the Member Library to identify the works in the University Digital Copy, 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 (i) University is able to provide such access and (ii) Google notifies 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. Each Party 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 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 each Party. Each Party shall also appoint one person to serve as the technical contact for obtaining and regulating the use of the

University Digital Copy. This technical contact shall be available during regular 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.

6. CONFIDENTIALITY

6.1 Confidentiality. Disclosure of confidential and/or proprietary information disclosed hereunder, including the existence and content of the Agreement and any information provided pursuant to the Agreement, shall be governed by the confidentiality provisions of the Google Standard Mutual Non-Disclosure Agreement, which has been executed by the Parties prior to or concurrently with this Agreement, as of May 12, 2006 (the "NDA"). The confidentiality provisions of the NDA are hereby incorporated by reference into this Agreement.

6.2 PR. Neither Party will issue any public announcement regarding the existence or content of this Agreement without the other Party's prior written approval. Notwithstanding the foregoing, Google may include University's Brand Features in a list that includes Google's other library partners and, with University's prior written consent, in presentations, marketing materials, and customer lists. Upon University's request, Google will furnish University with a sample of such usage.

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. In addition, Google may immediately suspend or terminate this Agreement if Google reasonably determines that it is commercially impractical to continue performing its obligations in light of applicable laws.

8.3 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, 4 (excluding Section 4.6), 6, 8, 9, 10, 11 and 12.

9. WARRANTIES AND DISCLAIMER

9.1 Mutual Warranties. Each Party represents and warrants to the other that (i) it has full power and authority to enter into this Agreement and to perform its obligations hereunder; 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, GOOGLE SPECIFICALLY DISCLAIMS ANY WARRANTY REGARDING NON-INFRINGEMENT OF THIRD PARTY INTELLECTUAL PROPERTY.

10. INDEMNIFICATION.

10.1 By Google. Google shall defend University against any third party lawsuit or proceeding brought against University based on or otherwise arising out of a claim that Google's use or distribution of the Google Digital Copy constitutes a violation of that third party's copyrights. The foregoing indemnification excludes any third party claim that relates to University's use or distribution of the University Digital Copy. 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. University may participate in the defense with counsel of its own choice, at its own expense.

10.2 By University. University shall defend Google against any third party lawsuit or proceeding that relates to University's use or distribution of the University Digital Copy, including without limitation, any such use by a third party. University shall select counsel reasonably appropriate for such defense and shall pay for all costs incurred by such counsel. In addition, University 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 General. Indemnification provided under Sections 10.1 and 10.2 shall be limited to (a) payment by the indemnifying party ("**Indemnitor**") of all damages and costs finally awarded for such claim, or (b) settlement costs approved in writing by the Indemnitor. 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 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. The Indemnitor shall only reimburse the Indemnitee for expenses incurred by the Indemnitee with the Indemnitor's prior written approval.

11. LIMITATION OF LIABILITY

EXCEPT FOR DAMAGES ARISING FROM BREACH OF SECTION 6 (CONFIDENTIALITY) OR INDEMNIFICATION PAYMENT OBLIGATIONS TO THIRD PARTIES UNDER SECTION 10, (A) 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 TEN THOUSAND DOLLARS (\$10,000). 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.

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. University shall not be obligated to participate in any Project Plan to the extent University does not have sufficient funds to perform its budgeted obligations under that Project Plan. 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, which shall not unreasonably be withheld, 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; and provided further that Google may assign this Agreement without consent to a successor-in-interest in connection with a merger or the sale of all or substantially all of its assets. 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 (a) if to University at the address identified above and (b) if to Google to such address as provided at www.google.com/corporate/address.html or as otherwise provided in writing for such notice purposes. A second copy of every notice to Google shall be sent to the same address, "Attn: Legal Dept." Notice shall be deemed received (i) upon receipt when delivered personally, (ii) upon written verification of receipt from overnight courier, (iii) upon verification of receipt of registered or certified mail or (iv) upon verification of receipt via facsimile, provided that such notice is also sent simultaneously via first class mail. 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 and may be amended only in a writing signed by both Parties. To the extent that it does not waive the sovereign immunity of the University, 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 County, California; the Parties agree that venue shall be proper in, and consent to the personal jurisdiction of, such courts. This is not a waiver of personal service. 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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