

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 Trustees of the University of Illinois on behalf of the Committee on Institutional Cooperation (as described in Section 1.3 below) ("CIC") and each university listed as a member of CIC in Section 1.3 below that has agreed

research libraries (including the libraries affiliated with the University of Illinois at Urbana-Champaign and Chicago) affiliated with the CIC member institutions. These libraries have a long history of collaboration, and established processes for shared decision-making facilitated by the CIC Administrative Offices.

1.4 “CIC Administrative Offices” is the central CIC administrative staff operating under the administrative authority for the CIC vested in the Provosts of the member CIC Universities. CIC Administrative Offices are located at 1819 South Neil St, Suite D, Champaign, IL 61820. The fiscal agent for CIC is The Board of Trustees of the University of Illinois.

1.5 “Copyright Laws” means the U.S. Copyright Act, 17 U.S.C. §§ 101 et. seq., all other copyright laws, rules and regulations worldwide, and all international treaties creating or protecting copyrights, including the Berne Convention and the Universal Copyright Convention, as the same from time to time exist.

1.6 “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.

1.22 “Source CIC University” means the CIC University where the Selected Content was sourced.

1.23 “Term” shall have the meaning set forth in Section 8.1.

TERMS

2. DIGITIZATION OPERATIONS.

2.1 Identifying the Available and Selected Content to be Digitized. Google, the CIC Administrative Offices, and each CIC University shall collaborate to identify Available Content that Google may elect to Digitize. The CIC Universities agree that they will collectively co

Selected Content in Google's custody resulting from a single incident or event will not exceed one million dollars (\$1,000,000). Google will carry reasonably sufficient insurance with a reputable independent provider insuring against the risk of loss, damage, or destruction of materials entrusted to Google's custody, and will provide, upon request of a CIC University, a certificate of insurance evidencing such coverage. In general, 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. However, unless the CIC Administrative Offices or a CIC University makes Google aware that specific materials require non-standard care, transport, storage and/or processing and Google decides to go forward with digitization of such items, Google shall have no responsibility to undertake special efforts to address unique or fragile conditions in its transport, storage or handling of individual items. Each CIC University will provide Google with a good faith estimate of the value of any Selected Content approved for removal from the CIC University's premises and will provide Google with an itemized list of any such materials.

3. COSTS

3.1 Costs paid by each CIC University. In addition to costs mutually agreed upon by the Parties, each CIC University shall be responsible for the following costs: (a) those related to locating, pulling and moving the Selected Content to a designated location at the Source CIC University facility as well as re-shelving the Selected Content when the Digitization is complete, (b) those related to existing CIC University employees and agents whose participation is contemplated by this Agreement, (c) network bandwidth and data storage required by CIC University to receive all of the University Digital Copy, (d) any conservation efforts that Source CIC University elects to undertake on the Selected Content prior to Digitizing, and (e) 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 and other equipment or technology used to Digitize the Selected Content, (c) space required and other facilities used to Digitize the Selected Content, and (d) transportation of Selected Content from the Source CIC University facility where the Selected Content is normally kept to a Google designated facility and back to the Source CIC University facility where the Selected Content is normally kept, plus any incidental storage at a Google designated facility.

3.3 Budgets. Notwithstanding the foregoing, the CIC Administrative Offices or any CIC University and Google may jointly develop a budget to advance coordinated planning for each University Project Plan, pursuant to which the Parties may allocate the cost of researching and identifying the Available Content and/or Selected Content, conducting conservation assessments, performing conservation work, and performing any required copyright research and clearances. Any such budget agreed to in writing by the parties will take precedence over the provisions of Sections 3.1 and 3.2 above.

4. OWNERSHIP AND USE OF DIGITAL COPIES AND SERVICES

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(d) Use of All Other Works

(b) List of In-Copyright Works. Google will provide the CIC Administrative offices with a list of the In-Copyright Works contained in the Escrow Deposit.

4.11 Release of In-Copyright Works Held in Escrow. Subject to the terms of this Section 4 Google agrees to enable download capability from the escrow to the CIC Administrative Offices or the applicable Source CIC University for one copy of the digital file for any In-Copyright Work(s) held in escrow in the event that any of the following release conditions (each, a "Release Condition") occurs:

- (a) the In-Copyright Work becomes in the public domain;
- (b) a Party has obtained permission through contractual agreements with copyright holders that includes the right to make a copy of the In-Copyright Work and to provide it to the CIC or Source CIC University;
- (c) well established case law exists that In-Copyright Works can be copied and held by the CIC Administrative Offices and/or the Source CIC University without infringing on the rights of a copyright holder;
- (d) if at any time Google is in material breach of its obligations under Section 4.3(b) or 4.6(a) and Google does not remedy any such failure within ninety (90) days after its occurrence (or, in the event such failure is caused by technical problems or causes similar to those described in Section 12.5, within such longer period as Google, working diligently, reasonably requires to remedy such problems); or
- (e) the CIC Administrative Offices or the Source CIC University and Google agree in writing that the release of a particular In-Copyright Work or Works is legally supported and appropriate under the terms of this Agreement.

The CIC Administrative Offices or the Source CIC University may provide written notice to Google if it believes that a Release Condition has occurred, which notice will describe such Release Condition to Google. Google will enable the downloading of such In-Copyright Works so long as Google is reasonably satisfied that the Release Condition has occurred. Google may also enable the downloading of In-Copyright Works (in a manner and timeframe deemed reasonable by the Parties) if it elects to cease holding the In-Copyright Works in escrow. All In-Copyright Works provided under this Section 4.11 will be used only as allowed under Section 4.14.

4.12 Ownership of University Digital Copy. As among the Parties, and subject to the restrictions in this Section 4 and the rights of the copyright holders and their licensees, each Source CIC University shall own all rights, title, and interests in and to the University Digital Copy of the Selected Content provided by such Source CIC University. Without limiting the foregoing, neither the CIC nor any CIC University shall display or otherwise use the University Digital Copy except as expressly permitted in this Agreement, or in subsequent written agreements with Google.

4.13 Contribution of University Digital Copy to a Central Depository. Subject to the terms of this Section 4, each CIC University shall have the right to contribute all or portions of its Public Domain Works contained in the University Digital Copy to a joint depository or depositories of digital works hosted by one or more of the CIC University libraries (such libraries are referred to herein as the "Hosting Libraries"). Prior to the provision of Public Domain Works to any such Hosting Library, the CIC Universities participating in the joint depository and the Hosting Libraries shall have entered into a written agreement and shall have provided a copy of that agreement to Google, which agreement shall (a) contain limitations on the Hosting Libraries' use and distribution of the University Digital Copy that are at least as restrictive as the limitations placed on the CIC Universities' use and distribution of the University Digital Copy under this Agreement (including the restrictions set forth in Section 4.14 herein); (b) expressly name Google as a third party beneficiary of that agreement for the purpose of enforcing such restrictions; (c) provide a written commitment to indemnify or otherwise assume full liability for any claims arising from the Hosting Libraries' use and distribution of the University Digital Copy along with assurance acceptable to Google that any claim resulting from such use and distribution under such assumption of liability will be satisfied; and (d) require the Hosting Libraries 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.

CIC Project Lead will be responsible for distributing information to the appropriate individuals or groups at the CIC Universities and for communicating information back to Google. The CIC University Project Lead will also be responsible for identifying an appropriate alternative point of contact for instances when he or she is not available or is not the appropriate contact and the alternative contact will be responsible for distributing the information to the CIC Universities.

5.3 Support. The CIC Administrative Offices shall also appoint one person to serve as the administrative contact for Google, should administrative questions or issues arise during the Term 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) for the CIC Administrative Offices at a telephone number and e-mail address to be provided by the CIC Administrative Offi

or alter another Party's Brand Features or use a Brand Feature of another Party in combination with other trademarks or create a unitary composite trademark involving another Party's Brand Features without the prior written consent of the other Party, which consent may be withheld in such other Party's sole and absolute discretion.

7.2 License to CIC University Brand Features. Subject to the terms and conditions of this Agreement, Google, each CIC University, and CIC grants to the other Parties a limited, nonexclusive, personal and nonsubiceus5.838ble,roy alt

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10.1 Definition of Use. As used in this Section 10, the word “use” means copying, distributing,

IN NO EVENT WILL ANY PARTY OR ITS REGENTS, TRUSTEES, DIRECTORS, OFFICERS, EMPLOYEES OR AGENTS BE LIABLE TO ANY OTHER PARTY NOR TO ANY THIRD PARTY CLAIMING THROUGH SUCH OTHER PARTY FOR ANY FORM OF INDIRECT, SPECIAL, INCIDENTAL, EXEMPLARY, OR CONSEQUENTIAL DAMAGES, INCLUDING LOST REVENUES AND LOST PROFITS, ARISING OUT OF OR IN CONNECTION WITH THE PERFORMANCE OR SUBJECT MATTER OF THIS AGREEMENT.

IN NO EVENT SHALL ANY PARTY'S COMBINED AGGREGATE LIABILITY HEREUNDER FOR ANY CAUSE WHATSOEVER ARISING OUT OF OR IN CONNECTION WITH THE PERFORMANCE OR SUBJECT MATTER OF THIS AGREEMENT EXCEED ONE MILLION DOLLARS (\$1,000,000.00).

THE FOREGOING LIMITATIONS OF LIABILITY SHALL APPLY TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, WHETHER THE ALLEGED LIABILITY IS BASED ON CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR ANY OTHER BASIS, EVEN IF AN AUTHORIZED REPRESENTATIVE OF A PARTY HAS BEEN ADVISED OF OR SHOULD HAVE KNOWN OF THE POSSIBILITY OF SUCH DAMAGES, AND WITHOUT REGARD TO THE SUCCESS OR EFFECTIVENESS OF OTHER REMEDIES.

The Parties agree that (i) the mutual agreements made in this Section 11 reflect a reasonable allocation of risk and (ii) that the Parties 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), 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 injury to or death of persons.

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. However, Google's decision to cease Digitization activities under this Agreement shall not be taken without prior consultation with the CIC enabling the CIC Universities to minimize investments in staff required under this Agreement. Likewise, notwithstanding anything in this Agreement to the contrary, no CIC University shall be obligated to participate in the Digitization program described in this Agreement with respect to any or all of the Available Content. However, a CIC University's decision not to participate in the Digitization program shall not be made without prior consultation with the CIC. The CIC will then inform Google of the decision of the CIC University as soon as possible to enable Google to minimize investments in operations required to perform the Digitization. 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 CIC or Universities with respect to digitizing or delivering the University Digital Copy with respect to such Selected Content.

12.2 Assignment. No Party may assign any of its rights or delegate any of its duties under this Agreement without the prior written consent of the other Parties, 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 Parties 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.

12.3 Notices. 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 the CIC, to the CIC Administrative Offices at the address identified above (b) if to a CIC University at the address identified on the signature sheet, and (c) 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 Goot

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 all Parties have current information regarding all such contacts.

12.4 Independent Contractors. Google, CIC and the CIC Universities are and shall remain independent contractors, and nothing herein shall be deemed to create an agency, partnership, or joint venture among them. This Agreement does not affect any right that either Party would have had, or shall have, independent of the Agreement under applicable law.

12.5 Force Majeure. No 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.

12.6 General. 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 any Party to act in the event of a breach of this Agreement by another 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

IN WITNESS WHEREOF, this Agreement has been executed by Google by persons duly authorized as of the "**Effective Date**", which shall be the date the Agreement is signed by Google below. Google's signatory to this Agreement represents and warrants that he or she has the power and authority to accept and bind Google to the terms of this Agreement.

Google Inc.

By: _____

Print Name:

Title:

Date:

**The Board of Trustees of the University of Illinois
on Behalf of
The Committee on Institutional Cooperation**

By: _____

Title: Comptroller

Attest: _____

Secretary

Approved: _____

CIC Director

Date: _____

IN WITNESS WHEREOF, CIC University agrees to the terms of the Agreement attached hereto and CIC University's signatory to this Agreement represents and warrants that he or she has the power and authority to accept and bind CIC University to the terms of this Agreement.

CIC University:

By: _____

Print Name:

Title:

Date: