AMENDMENT TO COOPERATIVE AGREEMENT

This Amendment to Cooperative Agreement (the "Amendment") is entered into by and between The University of Texas at Austin, a state agency and institution of higher education organized under the laws of the State of Texas, for and on behalf of the University Libraries ("University") and Google Inc. ("Google"). This Amendment is effective as of June 8, 2008 (the "Amendment Effective Date"), except as set forth herein.

Background

A. University and Google entered into a Cooperative Agreement dated January 8, 2007 (the "Agreement"), where Google is digitally scanning certain content from the University library collection and making such digitally scanned content available to University for certain uses.

B. Google has entered into a settlement agreement dated October 28, 2008 (the "Settlement Agreement") in a class action lawsuit filed against Google to conclude finally and definitively all claims brought in that lawsuit.

C. The terms of the Settlement Agreement affect the rights and obligations of Google under the Agreement, and this Amendment reflects such changes to Google's rights and obligations.

D. University and Google now desire in accordance with Section 12.11 of the Agreement to: (i) amend the Agreement through this Amendment with respect to certain terms, but in all other respects the Agreement shall continue in full force and effect; and (ii) add additional terms to the Agreement as set forth below.

Terms

1. Unless otherwise expressly stated herein, the capitalized terms in this Amendment shall have the meanings set forth in Attachment A hereto and the Agreement.

2. The term "Effective Date" in the preamble and throughout the Agreement shall be replaced with "Original Effective Date."

3. A Section 1.20 shall be added to the Agreement and shall read as follows: "1.20 'Digital Copy' means a set of electronic files, including the image files of the individual pages of the Digitized Selected Content along with text (currently generated from optical character recognition technology "OCR"), coordinate information for the text, copyright notice, year, and place of publication for the text (if available through Google's processes), information about the ordering of pages along with page-level Metadata such as page number and other similar information, regardless of the means or technology used to prepare such copy, whether now known or hereafter developed, and any digital copy of such set of electronic files. A Digital Copy of a work may be constructed by Google from one or more physical works into a composite version of the work, which may include alternative page images from different copies of the work that Google obtains from sources other than University."

4. Article 3, "Costs," shall be deleted and replaced with the following:

"3. Costs.

From the Amendment Effective Date, University and Google will jointly develop a budget for each yearly Project Plan, pursuant to which University will identify the costs (a) related to locating, pulling and moving the Selected Content to and from the designated location at the University facility so that Google can collect it 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 and (c) barcoding and associated data entry to barcode the Selected Content. Such budget will be effective only after set forth in an attachment to this Agreement signed by both Parties. Google shall fund each Project up to the amounts agreed to by the Parties at the commencement of each Project year, in August or as soon thereafter as the budget is agreed upon by the Parties. Funds provided by Google to University pursuant to this Section 3 may be used by University only in accordance with the budget. Funds unused at the end of the Project year shall be returned to Google by University, or at Google's option applied to the budget for the
next Project year. Upon Google's request, University shall provide documentation evidencing University's use of the funds in accordance with the budget.

5. The following sentences shall be added to the end of Section 4.1, "Copyright Status": "Notwithstanding anything in the contrary herein, Google shall have no obligation to include Digital Copies of in-copyright works Digitized from the Available Content in the University Digital Copy provided to University."

6. Section 4.10, "Distribution of the University Digital Copy" shall be deleted and replaced with the following: "4.10 Distribution of the University Digital Copy. This Section shall apply to those portions of the University Digital Copy that are in the public domain.

   (a) Notwithstanding the restrictions set forth in this Agreement, University shall have the right to provide any portion of the University Digital Copy that is in the public domain to (i) academic research libraries and (ii) when requested by University and agreed upon in writing by Google, other not-for-profit entities that are not providing search or hosting services substantially similar to those provided by Google, including but not limited to those services substantially similar to GBS, such agreement not to be unreasonably withheld (the entities in clauses (i) and (ii) being referred to as "Additional Institutions"), in each case for non-commercial users, unless otherwise agreed upon in writing by Google, research, scholarly, or academic purposes. Any Additional Institution must enter into a written agreement with Google prior to University providing any portion of the University Digital Copy that is in the public domain to such Additional Institution, the form of which Google will provide to University, that prohibits such Additional Institution from redistributing such portions of the University Digital Copy to other entities (beyond providing or making content available to users for educational or research purposes), and requiring such Additional Institution (A) to use reasonable efforts to prevent third parties from bulk downloading substantial portions of such works, and (B) to implement technological measures (e.g., through use of the robots.txt protocol) to restrict automated access to any part of such entity's website where substantial portions of such public domain works are available. University will have the right to approve those sections of the form that materially differ from the rights granted to University with respect to the use of such portions of the University Digital Copy that are in the public domain in the Agreement.

   (b) Beginning on the date fifteen (15) years following the date that a digital copy of a public domain work contained in the University Digital Copy has been provided by Google to University, notwithstanding the restrictions set forth in this Agreement, University shall have the right, in its sole discretion and without Google's consent, to provide all or any portion of such digital copy of such public domain work to any entity so long as (i) such entity is not providing search or hosting services that are substantially similar to those provided by Google, including but not limited to those services substantially similar to GBS (unless Google provides prior written approval), and (ii) the receiving entity enters into a written agreement with Google prior to University providing any portion of such digital copy of such public domain work to such receiving entity, the form of which Google will provide to University, prohibiting such entity from redistributing such digital copy of such public domain work to other entities (beyond providing or making content available to users for educational or research purposes), and requiring such entity (A) to use reasonable efforts to prevent third parties from bulk downloading substantial portions of such work, and (B) to implement technological measures (e.g., through use of the robots.txt protocol) to restrict automated access to any part of such entity's website where substantial portions of such digital copy of such public domain work are available. University will have the right to approve those sections of the form that materially differ from the rights granted to University with respect to the use of such portions of the University Digital Copy in the Agreement. Beginning on the date fifteen (15) years following the date that a digital copy of a public domain work contained in the University Digital Copy has been provided by Google to University, all restrictions and requirements set forth in the Agreement regarding University's use of that digital copy of such public domain work will terminate, except that the restrictions on distribution of those digital copies to other entities set forth in the preceding sentence will continue in effect, and that University also will be required to comply with the measures described in clauses (A) and (B) of that sentence.

   (c) Beginning on the Amendment Effective Date, if Google fails to offer for any contiguous twelve (12) month period a free service to end users with respect to any digital copy of any public domain work in the University Digital Copy that enables end users to search, view and print the full text of that public domain work (unless such digital copy of such public domain work is excluded by Google for quality, technical, or legal reasons), then all restrictions and requirements set forth in
this Agreement regarding use or distribution of the digital copy of that public domain work by University or by any recipient entity will terminate immediately, provided University has provided written notice to Google of such failure and Google has not remedied such failure within thirty (30) days following Google's receipt of such notice.

(d) All restrictions and requirements set forth in the Agreement regarding use or distribution (whether by University or by any recipient entity) (including those set forth in this Section 4.10) of the digital copies of public domain works contained in the University Digital Copy shall terminate on January 1, 2050.

(e) For clarity, University and Google acknowledge that none of the restrictions or requirements set forth in paragraphs (a) and (b) above was created for the purpose of hindering University or any recipient entity from providing public user access to the digital copies of public domain works contained in the University Digital Copy. Rather, the purpose of the continuing restrictions and requirements above is to allow Google to protect the benefit of Google's investment in light of the costs and resources related to Digitizing the Selected Content.

7. A Section 4.11 shall be added to the Agreement and shall read as follows: "4.11 Provision of Image Coordinates. Google shall provide University with Optical Character Recognition (OCR) image coordinates for each work contained in the University Digital Copy. Image coordinates for works contained in the University Digital Copy shall be subject to the rights and restrictions that are applicable to such works."

8. A Section 4.12 shall be added to the Agreement and shall read as follows: "4.12 Technological Updates and Replacements. Effective upon the Effective Date, for each work contained in the University Digital Copy that is in the public domain, Google will provide University access to download a copy of the file for each such Digitized work each time Google significantly improves a file for that work. In addition, Google will provide University access to download a copy of the file for each such Digitized work each time a file for that work is improved by (i) any Fully Participating Library (as that term is defined in the Settlement Agreement) or Cooperating Library (as that term is defined in the Settlement Agreement) (other than University) provided that such library makes the improved file available to Google or (ii) any third party to the extent Google is permitted under a contract with such third party and provided that such third party makes the improved file available to Google. If University elects to download a copy of the improved file for any such Digitized work, University may download only the most current version of such file. Google will make improved versions of the files available to University reasonably promptly after they are created by Google or created by another party and provided to Google pursuant to this Section. Google will also provide University access to download a copy of the file for any such Digitized work previously provided to University that has become lost, damaged, or destroyed; provided that in such event, University will be responsible for any costs to gain access to such copy and any such copy shall only be available for a reasonable period of time sufficient for University to obtain a copy."

9. A Section 4.13 shall be added to the Agreement and shall read as follows: "4.13 Institutional Subscription Discount. Google shall provide to University a subsidy on the full Institutional Subscription product offered to Higher Education Institutions (when such product is made generally available by Google) equal to one free FTE per fifty (50) in-copyright works from the Selected Content Digitized by Google or provided by University to Google in digital form under this Agreement that are included in the Institutional Subscription. For purposes of this Agreement, FTE shall mean full-time equivalent University students."
10. Term and Termination. The following Sections of this Amendment survive expiration or termination of the Agreement: 6 and 10.

11. Except as amended by this Amendment, all other terms of the Agreement remain in full force and effect.

IN WITNESS WHEREOF, this Amendment has been executed by persons duly authorized.

Google Inc.

By: [Signature]

Print Name: [Signature]

The University of Texas at Austin, a state agency and institution of higher education organized under the laws of the State of Texas, for and on behalf of the University Libraries

By: [Signature]

Print Name: Debra Y. Stevens

Title: Business Contracts Administrator

Date: April 2, 2009
"Effective Date" means the first date upon which each and all of the following events shall have occurred: (a) the Final Approval Date (as that term is defined in the Settlement Agreement) has occurred; (b) the Court (as that term is defined in the Settlement Agreement) has entered the Final Judgment and Order of Dismissal (as that term is defined in the Settlement Agreement) with prejudice as to Google against Plaintiffs and all Rightsholders (as that term is defined in the Settlement Agreement); and (c) the time for any appeal from the Final Judgment and Order of Dismissal in the Action (as that term is defined in the Settlement Agreement) and the Court's approval of this Settlement Agreement has expired, or, if appealed, the Final Judgment and Order of Dismissal has been affirmed in its entirety by the court of last resort to which any such appeal has been taken and such affirmance has become no longer subject to further appeal or review. Neither Rule 60 of the Federal Rules of Civil Procedure nor the All Writs Act, 28 U.S.C. § 1651, shall be taken into consideration in calculating the above-stated time periods.

"Higher Education institution" means an Institution of Higher Education, as defined by the Carnegie Classifications of Institutions of Higher Education from time to time or, if and when the Carnegie Foundation for the Classification of Teaching is no longer classifying colleges and universities in the United States, as such term or its successor term is defined by any successor classification system used to classify colleges and universities in the United States.

"Institutional Subscription" means any service of a limited duration provided by Google to an institution for a fee that allows Online (as that term is defined in the Settlement Agreement) access to and viewing of the full contents of the Institutional Subscription Database (as that term is defined in the Settlement Agreement), as specified in and subject to Section 4.1 (Institutional Subscriptions) of the Settlement Agreement.
## ATTACHMENT B

### YEARLY PROJECT BUDGET

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<thead>
<tr>
<th>Google Book Project</th>
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<tbody>
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<tr>
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<td>Supplies/ Misc</td>
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<td>Travel (to scanning centers)</td>
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<td><strong>Total</strong></td>
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</tr>
</tbody>
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Google Inc.

By: [Signature]

Print Name: Debra Y. Stevens

Title: Business Contracts Administrator

Date: April 2, 2009

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