AMENDED COOPERATIVE AGREEMENT

This AMENDED COOPERATIVE AGREEMENT (the "Amended 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 Rector and Visitors of the University of Virginia, a state-supported institution of higher education and agency of the Commonwealth of Virginia located in Charlottesville, Virginia ("University"), and is effective as of the date of the last signature below (the "Amended Agreement Effective Date"). Google and the University 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;

WHEREAS, Google will digitize 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;

WHEREAS, University and Google entered into a Cooperative Agreement (the "Original Agreement") dated November 8, 2006 (the "Original Agreement Effective Date"), pursuant to which Google is digitally scanning certain content from the University library collection and making such digitally scanned content available to University for certain uses;

WHEREAS, Google has entered into an Amended Settlement Agreement (the "Amended Settlement Agreement") in the form as filed with the United States District Court for the Southern District of New York on November 13, 2009 in connection with case number 05 CV 8136 between The Authors Guild Inc., et al. as Plaintiffs and Google as Defendant;

WHEREAS, The terms of the Amended Settlement Agreement affect the rights and obligations of Google under the Original Agreement, and this Amended Agreement reflects such changes to Google's rights and obligations, as well as other changes to the Original Agreement that the parties desire to make at this time or that are required by the Library-Registry (Fully Participating) Agreement;

WHEREAS, University and other libraries have entered or will enter into an agreement (the "Library-Registry (Fully Participating) Agreement") with the Registry organized pursuant to the Amended Settlement Agreement, and

WHEREAS, University and Google intend for this Amended Agreement to allow the terms of the Original Agreement, as modified herein, to continue to govern the treatment of digital copies of works not subject to the Amended Settlement Agreement (the "Non-Settlement Digital Copy," as more fully defined below) and to create additional terms to govern digital copies of works subject to the Amended Settlement Agreement (the "Settlement Digital Copy," as more fully defined below).
NOW THEREFORE, in consideration of the mutual covenants set forth herein, Google and University hereby agree as follows:

DEFINITIONS

1. DEFINITIONS. Capitalized terms defined in this Amended Agreement, including without limitation the Collective Terms attached hereto as Exhibit B (the "Collective Terms") shall have the meanings set forth in this Amended Agreement. Capitalized terms used but not defined in this Amended Agreement shall have the meanings set forth in the Amended Settlement Agreement, provided that any such term that is defined in both the Amended Agreement and the Amended Settlement Agreement shall have the meaning set forth in the Amended Settlement Agreement with respect to the Amended Settlement Digital Copy and shall have the meaning set forth in this Amended Agreement with respect to the Non-Settlement Digital Copy.

1.1 "Available Content" means the entire print library collection held by or under the control of the University of Virginia Library and including other printed works made available by the University to Google for Digitization under this Amended Agreement. Available Content also includes, without limitation, works made available by University in Digitized form. Those Books and Inserts included within the Available Content constitute the Books and Inserts targeted for Digitization for purposes of the Amended Settlement Agreement.

1.2 "Brand Features" means the trade names, trademarks, service marks, logos, domain names, and other distinctive brand features of each Party, respectively, as secured by such Party from time to time.

1.3 "Digitize" means to convert a work from a hard copy (including microform) format into an electronic representation, using any means and any technology, whether now known or hereafter developed, including making necessary technical adaptations to achieve such conversion (but not including adapting or altering the content of such written work). 'Digitization,' 'Digitizing' and 'Digitized' have corresponding meanings.

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

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

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

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

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

1.9 "University Digital Copy" means the Settlement Digital Copy and the Non-Settlement Digital Copy provided by Google to University. For the avoidance of doubt, the definition of "University Digital Copy" does not include Digital Copies provided to Google by University, unless such Digital Copies are Digitized by University (or its contractors) at the request (which request shall be in writing or electronic communication) of Google.
1.10 "University Digital Content" means content that the University of Virginia Library has in its possession in digitized form that the Library is authorized, as determined by the Library in its sole discretion, to share with Google.

1.11 "University of Virginia Library" means the comprehensive libraries of The University of Virginia not including Law, Darden or Health Sciences unless the Parties expressly agree to include such libraries by a written addendum to this Amended Agreement.

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

1.13 "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.

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

1.15 "Selected Content" means the Available Content.

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

1.17 "Digital Copy" means a set of electronic files, including (a) the image files of the individual pages of the Digitized Selected Content along with text (currently generated from optical character recognition technology "OCR"), (b) coordinate information for the text (i.e., the image coordinates), copyright notice, year, and place of publication for the text (if available through Google's processes), (c) information about the ordering of pages along with page-level metadata such as page number and other similar information, (d) a unique identifier for the work, and (e) the date the work was Digitized by Google, 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 provided that the Digital Copy of any such composite version of a work will contain metadata indicating that the Digital Copy contains pages from different copies of the work and the sources of the different copies.

1.18 "Non-Settlement Digital Copy" means the Digital Copies of the Selected Content Digitized by Google that are not governed, or that cease to be governed, by the Amended Settlement Agreement, including without limitation as a result of such Selected Content rising into the public domain.

1.19 "Settlement Digital Copy" means the Library Digital Copy as that term is defined in the Amended Settlement Agreement.

1.20 "Standard Metadata" means one or more of the following items of information for a particular work included in the Selected Content: unique identifiers (including one or more of LCCN, ISBN, ISSN and other unique identifier tracking information), title, author(s) or editor(s) (or similar), dates (including publication, first issue or other dates relating to publication or creation of the work), issue, volume, references or citations, type of material, number of pages (including total number and number within
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 the University has agreed to commit all circulating volumes from the University of Virginia Library system to the Digitization efforts under this Amended 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 a designated location at the University 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.

2.3 Transporting and Storing the Selected Content. Google will remove the Selected Content from University premises to perform Digitization in facilities controlled by Google. University agrees that the Selected Content may be transported to one or more Digitization facilities determined by Google. Google will provide the University with the address of and a reasonable opportunity to inspect all Digitization facilities subject to Google’s reasonable approval and University’s compliance with all of Google’s policies and procedures applicable to visits to Digitization facilities. Google will provide and be responsible for commercially reasonable transport methods and temporary storage areas. All risk of loss, damage or destruction of materials will lie with Google from the time that Google accepts possession of the materials until such time as they are returned to the University on University premises; provided that University agrees that Google’s obligation will not exceed $5,000 for any given text and that Google’s maximum liability for any damage or loss to Selected Content in Google’s custody resulting from a single incident or event will not exceed five million dollars ($5,000,000). Google will carry reasonable sufficient insurance with a reputable independent provider approved by the University insuring against the risk of loss, damage, or destruction of materials entrusted to Google’s custody, and will provide, at the University’s request, a certificate of insurance to the University naming the University as an additional insured. 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 University makes Google aware that specific materials require non-standard care, transport, and 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 or handling of individual items. University will provide Google with a good faith estimate of the value of any Selected Content approved for removal from University premises and will provide Google with an itemized list of any such materials.

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 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.

2.5 Return of the Selected Content. Google shall return the Selected Content to the designated location where Google obtained it in the like manner in which it was collected after Google completes Digitizing the Selected Content.
2.6 Provision of Catalog Records. University shall provide Google with complete catalog records (to the extent University owns or has adequate authorization to provide such records to Google), including all Standard Metadata fields for the University Collection within 30 days of Google's written request. University grants to Google a non-exclusive, world-wide license to use, copy, transmit, display and distribute such records (including the right to sublicense) for internal use and in connection with Google Products and Services.

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 pulling and moving the Selected Content to a designated location at the University 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 Amended Agreement, (c) network bandwidth and data storage required by University to receive all of the University Digital Copy (d) any conservation efforts that University elects to undertake on the Selected Content prior to Digitizing, and (e) any barcoding and associated data entry to barcode the Selected Content deemed appropriate by the University; provided University understands that Google will not bear the cost of barcoding and that only works that are barcoded may be included as 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 Amended Agreement, (b) hardware and software required to digitize the Selected Content, (c) space required to digitize the Selected Content (to the extent not provided by University), (d) transportation of Selected Content from the University facility where the Selected Content is normally kept to a Google designated facility (to the extent not provided by University), and (e) those costs that Google elects to incur to address any legal and copyright issues associated with Google's Digitization of in-copyright materials.

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, which is mutually approved and authorized in writing, 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 Amended Agreement in compliance with copyright law. Each Party will be responsible for the determination of how to treat a work for each jurisdiction at its sole discretion. Notwithstanding such determination, if either Party believes a work (or portion thereof) should be treated as an in-copyright work in either the United States or another jurisdiction, and so notifies the other Party, then, within forty-eight (48) hours of such notice, such work (or portion thereof) shall be treated as an in-copyright work for use in the relevant country. In addition, Google will implement processes whereby any person or entity can request Google not to Digitize any Available Content or to cease the display or use of any Digitized Selected Content which Google will comply with so long as Google determines that the person or entity making the request is the copyright holder or has apparent authority to act on behalf of the copyright holder.

4.2 Ownership and use of Google Digital Copy. 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 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. Google agrees that to the extent that it or its successors use any Digitized Selected Content in connection with any Google Services, it shall provide a service at no cost to End Users (1) for both search and display of search results and (2) for access to the display of the full text of public domain works contained in the Digitized Selected Content. To the extent portions of the Google Digital Copy are either in the public domain or where Google has otherwise obtained authorization, Google shall have the right, in its sole discretion, among other things, to (a) index the full text or content, (b) serve and display full-sized digital images corresponding to those portions, (c) make available full text of content for printing and/or download, and (d) make copies of such portions of the Google Digital Copy and provide, license, or sell such copies (including, without limitation, to its syndication partners). For all other portions of the Google Digital Copy, Google may index the full text or content but may not serve or display the full-sized digital image or make available for printing, streaming and/or download the full content unless Google has 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. 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, unless otherwise authorized by the holders (or their representatives) of the copyright(s) with respect to such portion or applicable law. 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 Amended 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 Amended Agreement, Google is not required to make any or all of the Google Digital Copy available through the Google Services.

4.6 [intentionally reserved]

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. 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 one hundred (100) 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 Original Agreement 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. In the event that University does not enter into a Library-Registry (Fully Participating) Agreement prior to the Effective Date, Google shall no longer have any obligation to provide Digital Copies of Books and Inserts contained in the Selected Content that were Digitized on or following the Amended Agreement Effective Date to University pursuant to this Amended Agreement, and University shall delete all Digital Copies of Books and Inserts contained in the Selected Content that were provided by Google to University on or following the Amended Agreement Effective Date.

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 Amended 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 Amended Agreement.

4.9 Use of University Digital Copy on University Website. Except as set forth in Section 4.11 and the Library-Registry (Fully Participating) Agreement, 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. The parties acknowledge that University may host more than one University website and agree that this Section 4.9 applies to each such website, provided that the domain for each such website is owned by University. 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 a web page or other access point to be mutually agreed to by the Parties, as “Digitized by Google” or in a substantially similar manner. University shall implement technological measures (e.g., through use of the robots.txt protocol) to restrict automated access to any portion of the University Digital Copy or the portions of the University website on which any portion of the University Digital Copy is available. University shall also implement reasonable policies and procedures designed 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 other than portions of or discrete individual texts from the University Digital Copy that have been used for scholarly or research purposes and will be disseminated in compliance with copyright law and as part of a scholarly project, website, or publication, 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. The University will provide Google with a copy of its procedures and will comply with any reasonable revision or addition recommended by Google.

4.10 Provision and Use of Non-Settlement Digital Copy. This Section shall apply to those portions of the Non-Settlement Digital Copy that are in the public domain.

(a) Provision of Public Domain Works. The Non-Settlement Digital Copy provided to University by Google may contain Digital Copies of public domain works that Google did not actually Digitize at University but has Digitized from another library. If (i) University has made and is continuing to make all works in the Selected Content accessible (or would have made such works available for Digitization but did not do so due to their condition, size, binding tightness, or other physical characteristics) to Google at a reasonable rate (the “reasonableness” of the rate will take into account the number of works remaining in the Selected Content that Google desires to Digitize, Google’s then-current ability to process such works and any operational issues or issues beyond the reasonable control of University that may result in variations in the rate or delays) unless Google is not then acting in good faith in the performance of any material obligation under this Amended Agreement (provided, however, that such condition in clause (i) shall continue in the event Google begins to act in good faith in the performance of such obligation again); and (ii) University is not then in an uncured material breach of this Amended Agreement unless Google is not then acting in good faith in the performance of any material obligation under this Amended Agreement (provided, however, that such condition in clause (ii) shall continue in the event Google begins to act in good faith in the performance of such obligation again); then Google will be required to return Digital Copies of works that Google has determined to be in the public domain to University that were Digitized, in whole or in part (which Digital Copies returned to University will be composites if Digitized in part at different libraries), at a different library if those public domain works are contained within the Selected Content and University either (1) made the public domain works available to Google for Digitization or (2) would have made such public domain works available for Digitization but did not do so due to their condition, size, binding tightness, or other physical characteristics. University shall provide Google with data regarding the Selected Content sufficient for Google to verify that a work Digitized at another library is included within the Selected Content.
(b) Non-Profit Uses. Notwithstanding the restrictions set forth in Section 4.9 of the Amended Agreement, University may provide all or any portion of the Non-Settlement Digital Copy that is, at the time of such provision, a Digital Copy of a public domain work to (i) academic institutions or research or public libraries, or (ii) when requested by University and agreed upon in writing by Google, other not-for-profit or government 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 (provided, however, that Google acknowledges and agrees that print-on-demand services are not substantially similar to any such services and University may provide such portions of the Non-Settlement Digital Copy to an entity set forth in this clause (i) solely for such entity to provide print-on-demand services for University without Google's consent), such agreement not to be unreasonably withheld or delayed (each entity in clauses (i) and (ii) being referred to as an "Additional Institution"), in each case for research, scholarly, or academic purposes, all of which must be noncommercial (unless otherwise agreed upon in writing by Google). Any Additional Institution must enter into a written agreement with Google prior to University providing any portion of the Non-Settlement Digital Copy to such Additional Institution, the form of which Google will provide to University. Such agreement will prohibit such Additional Institution from redistributing such portions of the Non-Settlement Digital Copy to other entities (beyond providing or making content available to scholars and other users for educational or research purposes), prohibit such Additional Institution from using such portions of the Non-Settlement Digital Copy to provide search or hosting services substantially similar to those provided by Google, including but not limited to those services substantially similar to GBS, and require such Additional Institution (A) to use reasonable efforts to prevent third parties from bulk downloading substantial portions of such Digital Copies 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 Digital Copies are available. University will have the right to approve those sections of the form of such agreement that grant any rights that materially differ from the rights granted to University with respect to the use of such portions of the Non-Settlement Digital Copy in this Amended Agreement.

(c) Failure to Provide Access. Beginning on the Amended Agreement Effective Date, if Google fails to offer a free service to end users with respect to any work in the Non-Settlement Digital Copy that Google has determined to be in the public domain that enables end users to search, view and print the full text of that public domain work (unless the Digital Copy of such work is excluded by Google for quality, technical, or legal reasons) for (i) any period of six (6) contiguous months or (ii) any two (2) periods of ninety (90) contiguous days, which periods occur in any period of twenty-four (24) contiguous months, then all restrictions and requirements set forth in Section 4.9 of this Amended Agreement regarding use or distribution the Digital Copy of that public domain work for which Google failed to offer such services by University or by any recipient entity will terminate, 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) No Restrictions. All restrictions and requirements set forth in this Amended Agreement regarding use or distribution (whether by University or by any recipient entity) (including without limitation those set forth in Sections 4.9 and this 4.10) of the works contained in the Non-Settlement Digital Copy that from time to time are in the public domain shall terminate fifteen (15) years following the date that Google has made a Digital Copy of such work available to University.

(e) Purpose. For clarity, University and Google acknowledge that none of the restrictions or requirements set forth in paragraph (b) above was created for the purpose of hindering University or any recipient entity from providing public user access to the public domain works contained in the Non-Settlement 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.

4.11 Provision and Use of Settlement Digital Copy. Effective as of the Effective Date, in addition to the terms of the Library-Registry (Fully Participating) Agreement, the following shall apply to University’s use of the University Digital Copy:

(a) **Removal.** University agrees that if a Rightsholder directs that its Book be Removed pursuant to Section 3.5 of the Amended Settlement Agreement and subject to certain limitations set forth therein, (i) Google shall have no obligation to provide or make available to University a Digital Copy of such Book and (ii) for Digital Copies previously made available to University, University shall comply with the terms of the Library-Registry (Fully Participating) Agreement relating to requests for Removal promptly upon notice by Google or the Registry.

(b) **Books Not Digitized at University.** The University Digital Copy provided to University by Google may contain Books and Inserts contained in University’s Selected Content that Google did not actually Digitize at University but has Digitized from another library, provided that Google may provide such Digital Copies only if it is permitted to do so pursuant to the terms of the Amended Settlement Agreement. If (i) University has made and is continuing to make all works in the Selected Content accessible (or would have made such works available for Digitization but did not do so due to their condition, size, binding tightness, or other physical characteristics) to Google at a reasonable rate (the “reasonableness” of the rate will take into account the number of works remaining in the Selected Content that Google desires to Digitize, Google’s then-current ability to process such works and any operational issues or issues beyond the reasonable control of University that may result in variations in the rate or delays) unless Google is not then acting in good faith in the performance of any material obligation under this Amended Agreement (provided, however, that such condition in clause (i) shall continue in the event Google begins to act in good faith in the performance of such obligation again), and (ii) University is not then in an uncured material breach of this Amended Agreement unless Google is not then acting in good faith in the performance of any material obligation under this Amended Agreement (provided, however, that such condition in clause (ii) shall continue in the event Google begins to act in good faith in the performance of such obligation again); then Google will be required to return Digital Copies of Books and Inserts to University that were Digitized, in whole or in part (which Digital Copies returned to University will be composites if Digitized in part at different libraries), at a different library if those Books or Inserts are contained within the Selected Content and University (1) made the Books or Inserts available to Google for Digitization or (2) would have made such Books or Inserts available for Digitization but did not do so due to their condition, size, binding tightness, or other physical characteristics. University shall provide Google with data regarding the Selected Content sufficient for Google to verify that a work Digitized at another library is included within the Selected Content. Notwithstanding anything to the contrary set forth herein, Google shall not be obligated to include In-copyright content Digitized from libraries other than University that is not subject to the Amended Settlement Agreement as part of any Digital Copy provided by Google to University.

(c) **Hosting of Settlement Digital Copy.** If University authorizes a Hosting Fully Participating Library to store and host University’s Library Digital Copy pursuant to Section 7.2(b)(x) of the Amended Settlement Agreement, then University, subject to the terms of the Library-Registry (Fully Participating) Agreement, may provide the Settlement Digital Copy to such Hosting Fully Participating Library for the purposes set forth in Section 7.2(b)(x) of the Amended Settlement Agreement.

4.12 **Redacted Information.** To the extent Google redacts any Information (including without limitation any illustrations, photographs, or other images) from any Digital Copy provided to University, Google shall provide University information identifying each location within such Digital Copy containing redacted
information, at the same time as Google makes the Digital Copy of the work (or improvements or updates thereto) available to University.

4.13 **Technological Updates and Replacements.** This paragraph shall be effective upon the Amended Agreement Effective Date with respect to works in the public domain as of and after such date; this paragraph shall be effective upon the Effective Date with respect to all other works in the University Digital Copy. Within a reasonable period of time after Google Improves a Digital Copy of any such work, Google will provide or make available to University a copy of the Improved Digital Copy. In addition, Google will provide or make available to University a copy of the Improved Digital Copy for each such work each time a Digital Copy of that work is Improved by (i) any Fully Participating Library or Cooperating Library to the extent Google is so permitted under a contract with such Fully Participating Library or Cooperating Library and provided that such Fully Participating Library or Cooperating Library makes the Improved Digital Copy available to Google, (ii) any third party that Improves the quality of a Digital Copy of such work to be used in the Accommodated Services under the terms of a Library-Registry (Fully Participating) Agreement, Library-Registry (Cooperating) Agreement, and/or the Amended Settlement Agreement, to the extent Google is so permitted under a contract with such third party and provided that such third party makes the Improved Digital Copy available to Google, or (iii) any third party to the extent Google is so permitted under a contract with such third party and provided that such third party makes the Improved Digital Copy available to Google. If University elects to download from Google a copy of the Improved Digital Copy of such any such work, University may download only the most current version of such file made available to it by Google. Google will make the Improved Digital Copy available to University within a reasonable period of time after it is created by another party and provided to Google as contemplated by this Section. For purposes of this Section, the term "improved" shall mean with respect to a Digital Copy, to make changes to a Digital Copy that materially improve the viewability of text or the fidelity of the work and shall not include changes made by Google to improve indexing, add content, or for other purposes (the resulting Digital Copy shall be an "Improved Digital Copy" and any such improvement shall be an "improvement"). Notwithstanding anything to the contrary set forth herein, with respect to works contained in the Non-Settlement Digital Copy that Google has not determined to be in the public domain, Google shall be required to provide or make available Improved Digital Copies of such works (i) only if the improvement materially improves the usability or quality of Digital Copies for preservation (it being acknowledged that University has an interest in maintaining high quality Digital Copies for preservation) or (ii) otherwise upon request by University, and Google will not unreasonably withhold consent to such request provided that Google may withhold consent for legal or reasonable other reasons. In connection with the furnishing of such Improved Digital Copies, Google agrees from time to time to (x) use delivery methods to be mutually agreed upon between Google and University that are reasonably appropriate to timely delivery of the volume of content being delivered; (y) employ mutually agreed upon technologies that provide reasonably appropriate downloading and throughput speeds to University; and (z) make available servers (or use some other mutually agreed upon mechanism for delivery of data) that have reasonably appropriate capacity and rate of connectivity. Google will also provide University access to download a copy of the file for any Digitized work previously provided to University that has become lost, damaged, or destroyed within thirty (30) days of any request by University.

4.14 **Institutional Subscription Terms and Subsidy.**

(a) **Subsidy.** From the date the full Institutional Subscription (whether such product is offered alone or in combination with other Google products) is first offered to Higher Education Institutions, Google shall provide to University a yearly subsidy credited against the annual subscription price of a version of the Institutional Subscription product that is limited to all of the Books and Inserts contained in the Institutional Subscription Database up to the full annual subscription price of such version of the Institutional Subscription equal to the price of one FTE for every fifty (50) Library Works that (1) were Digitized by Google from the Selected Content or provided by University to Google in Digitized form under this Amended Agreement and (2) are included in the Institutional Subscription Database. The subsidy for any Institutional Subscription term shall be calculated once per year on the date of commencement of the Institutional Subscription term and on each yearly anniversary thereof. For purposes of this Amended
Agreement, FTE shall mean full-time equivalent University students. If Google prices the annual subscription to such version of the Institutional Subscription other than on an FTE-basis, Google shall provide an equivalent subsidy to University credited against such annual subscription price. The percentage discount computed pursuant to this paragraph (a) is referred to herein as the "Applicable Discount."

(b) Limited Subscription in Lieu of Discount. If at any time following the date Google or its licensee first makes the Institutional Subscription generally available to Higher Education Institutions, University chooses to forego the discount for the Institutional Subscription set forth in Paragraph (a) of this Section, then, for as long as Google makes the Institutional Subscription generally available to Higher Education Institutions, Google will offer to University a limited subscription service allowing access to only those Books and Inserts contained in the Institutional Subscription Database for which Google is using any portion of a Library Scan Digitized by Google from the Selected Content (or provided by University to Google) to make such Book or Insert available in the Institutional Subscription (the "Limited Subscription"). Google will offer the Limited Subscription to University without charge under terms materially similar to those under which it offers the Institutional Subscription to Higher Education Institutions.

(c) Rightsholder Authorization. If, pursuant to authorization from a Rightsholder, Google or its licensee offers to users access to any portion of a Library Scan (other than where access is provided to users free of charge) of which University is the source prior to the Effective Date and the Book underlying such Library Scan is not Commercially Available, Google will require the applicable Rightsholder to authorize Google to provide University with access to such Library Scan without charge until the date Google makes the Institutional Subscription for Higher Education Institutions, or a beta product thereof, containing the Book on which such Library Scan is based available to University. Google shall provide University such access to such Library Scan pursuant to this paragraph and shall allow at least the uses and shall be subject to the restrictions set forth in Sections 4.1(d) through (f) of the Amended Settlement Agreement.

(d) Non-Settlement Works. If Google offers a subscription product or service in the United States that allows Higher Education Institutions access to and viewing of the full text of individual in-copyright works not subject to the Amended Settlement Agreement for such institutions' users in the United States (whether such product is offered alone or in combination with the Institutional Subscription) (the "Non-Settlement Subscription"), and provided that (1) University has made and is continuing to make all works in the Selected Content accessible (or would have made such works available for Digitization but did not do so due to their condition, size, binding tightness, or other physical characteristics) to Google at a reasonable rate (the "reasonableness" of the rate will take into account the number of works remaining in the Selected Content that Google desires to Digitize, Google's then-current ability to process such works and any operational issues or issues beyond the reasonable control of the University that may result in variations in the rate or delays) unless Google is not then acting in good faith in the performance of any material obligation under this Agreement (provided, however, that such condition in clause (1) shall continue in the event Google begins to act in good faith in the performance of such obligation again), and (2) the University is not then in an uncured material breach of this Agreement unless Google is not then acting in good faith in the performance of any material obligation under this Agreement (provided, however, that such condition in clause (2) shall continue in the event Google begins to act in good faith in the performance of such obligation again); then Google shall offer to the University the right to subscribe to, at the University's option:

(A) such Non-Settlement Subscription at an annual subscription price equal to the annual subscription price of such Non-Settlement Subscription (or, if the Non-Settlement Subscription is offered in combination with the Institutional Subscription, the portion of the total annual subscription price attributable to the Non-Settlement Subscription) less:
the Applicable Discount for the comparable period, times the annual subscription price of such Non-Settlement Subscription (or, if the Non-Settlement Subscription is offered in combination with the Institutional Subscription, the portion of the total annual subscription price attributable to the Non-Settlement Subscription), and times a percentage to be mutually agreed by Google and the University that will be based upon the percentage value provided by the Non-Settlement Works relative to the entire content in the Non-Settlement Subscription and which percentage may not be greater than the percentage that the number of works in the Non-Settlement Subscription that are Non-Settlement Works represents of the total number of works in the Non-Settlement Subscription. (For purposes of the Section, a “Non-Settlement Work” shall mean an in-copyright work not subject to the Amended Settlement Agreement that (i) is contained in the Available Content and (ii) either (A) is published on or before January 5, 2008 and was Digitized from the collection of any Participating Library (and such Digital Copy is used to provide access to such work within the Non-Settlement Subscription) or (B) is published after January 5, 2009 and was Digitized from the Available Content (and such Digital Copy is used to provide access to such work within the Non-Settlement Subscription));

or (B) access through such Non-Settlement Subscription solely to such portion of the works in such Non-Settlement Subscription that are works in the Available Content at an annual subscription price equal to the annual subscription price of such Non-Settlement Subscription (or, if the Non-Settlement Subscription is offered in combination with the Institutional Subscription, the portion of the total annual subscription price attributable to the Non-Settlement Subscription), times a percentage to be mutually agreed by Google and the University that will be based upon the percentage value provided by the Non-Settlement Works relative to the entire content in the Non-Settlement Subscription and which percentage may not be greater than the percentage that the number of works in the Non-Settlement Subscription that are Non-Settlement Works represents of the total number of works in the Non-Settlement Subscription, and times: 100% minus the Applicable Discount for the comparable period. If Google is offering a version of the full Non-Settlement Subscription that does not contain advertising to Higher Education Institutions, it shall make such version available to University pursuant to this paragraph.

4.15 Consent to Distribution.

(a) Settlement Works. If (i) Google enters into an agreement with a Rightsholder (or if at the request of University, a Rightsholder offers to enter into an agreement with Google and Google declines) pursuant to which such Rightsholder, without charge to Google, grants (or at the request of University, offers to grant) Google the right to copy and distribute Digital Copies of a Book of such Rightsholder without charge to users (and the right to sublicense such rights) (provided such Rightsholder holds rights in the Book sufficient to grant Google all such rights), and (ii) a Digital Copy of such Book is contained in the University Digital Copy, then for as long as Google has (or for as long as such Rightsholder offered to grant) such rights to copy and distribute set forth in clause (i) and subject to the terms of the Library-Registry (Fully Participating) Agreement, applicable law and authorization from the Rightsholder, University may distribute the Digital Copy of such Book contained in the University Digital Copy in accordance with all the terms and conditions set forth in Section 4.10 of this Amended Agreement that are applicable to University’s ability to distribute public domain works until such Book rises into the public domain.

(b) Non-Settlement Works. If (i) Google enters into an agreement with the rightsholder of an in-copyright work not subject to the Amended Settlement Agreement (or if at the request of University, the rightsholder offers to enter into an agreement with Google and Google declines) pursuant to which such rightsholder, without charge to Google, grants (or at the request of University, offers to grant) Google the right to copy and distribute Digital Copies of such work without charge to users (and the right to sublicense such rights) (provided such rightsholder holds rights in the work sufficient to grant Google all such rights), and (ii) a Digital Copy of such work is
contained in the University Digital Copy, then for as long as Google has (or for as long as such
rightsholder offered to grant) such rights to copy and distribute set forth in clause (i) and subject
to applicable law and authorization from the rightsholder, University may distribute the Digital
Copy of such work contained in the University Digital Copy in accordance with all the terms and
conditions set forth in Section 4.10 of this Amended Agreement that are applicable to University's
ability to distribute public domain works until such work rises into the public domain.

4.16 Certain Waivers. Google shall not require as a condition to its execution of any Digitization
Agreement or any amendment thereto with any Fully Participating Library or Cooperating Library or as a
condition to the receipt of particular benefits thereunder, that (i) such Fully Participating Library or
Cooperating Library waive as contemplated by Sections 3.5(b)(v) and 7.2(e) of the Amended Settlement
Agreement, the Coupling Requirement or the Required Library Services Requirement as to any Library
Scan as to which such Fully Participating Library or Cooperating Library is a source; or (ii) such Fully
Participating Library or Cooperating Library agree to restrict use or distribution of its Library Scans that
otherwise would be permitted in accordance with the terms of the Amended Settlement Agreement (such
as but not limited to use by a Third-Party Required Library Services Provider as contemplated by Section
7.2(e) of the Amended Settlement Agreement).

4.17 Misclassifications. Google shall reasonably cooperate with University at University's request
to develop a process by which University may investigate and report to Google what University believes to
be misclassifications of works as not being in the public domain, as well as a process by which Google
will consider such reported misclassifications.

4.18 Accommodated Service. Google hereby agrees to treat each Digital Copy (that was Digitized by
Google from the Available Content or provided to Google by University) of a work that Google has
determined to be in the public domain in the same manner that it is required to treat Digital Copies of
Books and Inserts by Section 7.2(g) of the Amended Settlement Agreement.

4.19 Technical Cooperation. Google will reasonably cooperate with University to establish mutually
agreed communications and dispute resolution procedures with the goal that issues related to technical
performance (including without limitation download issues) be addressed expeditiously.

4.20 Personal Uses. If (a) Google enters into an agreement with a rightsholder of an in-copyright work
not subject to the Amended Settlement Agreement regarding the display of Protected content from such
work and (b) pursuant to such agreement Google makes any use in a Non-Settlement Subscription
service or a service similar to the Consumer Purchase service (other than any use whereby access is
provided to users free of charge) of a Digital Copy of such work Digitized by Google from the Selected
Content or provided to Google by University in Digitized form under this Amended Agreement, then
the terms of service, authorization or license for such service(s) shall not prohibit any personal, non-
commercial uses of such work that would otherwise be permitted under the Copyright Act (or applicable
foreign copyright law) without the need for express authorization from the rightsholder and would not be in
violation of other applicable laws.

5. ACCESS, AUTHORIZATION AND SUPPORT

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

5.2 Authorization. The University program manager responsible for the Selected Content involved in
any Project Plan shall have authority to agree with Google on the time frames and procedures (e.g.,
collection, conservation, and handling) associated with that Selected Content. If Google in good faith
believes that the time frames and procedures requested by the University program manager are
unreasonable, Google shall escalate the matter to the University administrative contact; in which case
Google, the University program manager, and the administrative contact shall meet to resolve the issue. No changes to the Project Plan or costs’ allocation may be made without written authorization from the University Librarian.

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

6. CONFIDENTIALITY

6.1 Confidentiality. Disclosure of confidential and/or proprietary information disclosed hereunder, including the existence and content of the Amended Agreement and any information provided pursuant to the Amended Agreement, shall be governed by the confidentiality provisions of the Google Mutual Non-Disclosure Agreement (“NDA”), which is attached hereto as Exhibit A and incorporated by reference to this Amended Agreement. The Parties agree that this Amended Agreement is a public document as defined by the Virginia Freedom of Information Act and will be publicly disclosed subject to the Parties’ agreement on timing.

6.2 PR. Other than as has been mutually agreed upon by the Parties, neither Party may make any press releases about this Amended Agreement (or any amendments thereto) without the prior written approval of the other Party, which will not be unreasonably withheld or delayed. University and Google, as practicable, will coordinate regarding the timing of any press release(s) and will mutually agree upon appropriate talking points regarding the announcement of this Amended Agreement or any amendments thereto. Notwithstanding the foregoing, Google may include University’s Brand Features with prior written approval of the University Librarian in presentations, marketing materials, and customer lists so long as Google first furnishes the University with specific examples of such presentations, marketing materials, and customer lists and uses the University’s Brand Features only in a manner that is essentially similar to such prior reviewed and approved uses.

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 Amended 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 University of Google 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 Amended Agreement, University grants to Google a limited, nonexclusive and nonsublicensable license during the Term to display those University Brand Features expressly set forth herein. Notwithstanding anything to the contrary,
8. **TERM AND TERMINATION**

8.1 **Term.** This Amended Agreement is effective as of the Original Agreement 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 Amended 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 Amended Agreement shall comprise the Initial Term and any Renewal Terms.

8.2 **Termination.** Either Party may suspend performance and/or terminate this Amended Agreement: (i) if the other Party materially breaches any material term or condition of this Amended 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 Amended 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 Amended Agreement for any reason and subject to applicable law, 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 shall survive expiration or termination of this Amended Agreement: 1, 4, 6, 8, 9, 10, 11 and 12.

8.4 **Effectiveness.** The effectiveness of the provisions of this Amended Agreement is conditioned upon the effectiveness of the Amended Settlement Agreement. The terms of this Amended Agreement shall be void if the Amended Settlement Agreement does not become effective. In the event the terms of the Amended Settlement Agreement are amended and such amendment has a material adverse effect on the interests of University, then University may elect that the terms of this Amended Agreement shall be void as between Google and University. If this Amended Agreement is void for any reason specified in this Section 8.4, the Original Agreement shall be reinstated automatically as if this Amended Agreement had never been entered into.

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 Amended Agreement and to perform its obligations hereunder; and (ii) this Amended 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 AMENDED AGREEMENT, WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, GOOGLE AND THE UNIVERSITY SPECIFICALLY DISCLAIM ANY WARRANTY REGARDING NON-INFRINGEMENT OF THIRD PARTY INTELLECTUAL PROPERTY.

10. **DEFENSE AND LEGAL RESPONSIBILITIES.**
10.1 General Google Indemnification. Google shall defend and indemnify University, its Board of Visitors, and any and all officers, directors, employees, and agents (each, a “University Indemnitee”) against any third party claim (including without limitation any claim by a governmental entity) brought against any University Indemnitee or against Google (or any of its directors, officers, employees, or agents) to the extent such claim is based on an allegation that Google's actions under this Amended Agreement violate that party's copyrights or other legal rights. The foregoing indemnification and defense includes any third party claims alleging that (a) the University's participation in this Amended Agreement, release of Selected Content to Google for Digitization or University's receipt of the University Digital Copy or any portion thereof constitutes a violation of that third party's copyrights, (b) Google's use or distribution of the Google Digital Copy constitutes a violation of that third party's copyrights, or (c) based on the actions of any University Indemnitee in support of the Settlement but excludes any third party claim that relates to (i) University's (or any University Indemnitee's) use or distribution of the University Digital Copy or (ii) exercise of any right or compliance (or failure to comply) with any obligation under the Amended Settlement Agreement, its Library-Registry Agreement, any agreement with Rightsholders or the Registry, Exhibit B to this Amended Agreement, any agreement with other Participating Libraries, or any other agreement relating to the Settlement. Mixed claims that include claims that relate to University's use of distribution of the University Digital Copy and claims covered by Google's obligation to indemnify shall not vitiate this indemnification responsibility by Google on breach-of-contract grounds.

10.2 Defense and Legal Responsibilities of University. Consistent with and subject to the requirements of Virginia law, University shall defend, or at its option, settle any third party lawsuit brought against Google (its affiliates, employees or agents) or proceeding that relates to University's use or distribution of the University Digital Copy in violation of that party's copyrights or other legal rights, including without limitation, any such use by a third party. The University shall have the sole responsibility for defense of such actions and for payment of any attorney's fees, damage awards or settlement costs that may be incurred solely as a result of the University's use or distribution of its own Digital Copy. University agrees that Google may participate in the defense with counsel of its own choice, at its own expense. The foregoing shall not be interpreted as a waiver of the sovereign immunity of the Commonwealth of Virginia, nor assumption by the University of any liability or obligation for the acts or omissions of Google or for the acts or omissions of others contrary to state law governing the University as an agency of the Commonwealth of Virginia. Responsibilities under Section 10.2 shall be limited to (a) payment by University of all damages and costs finally awarded for such claim, or (b) settlement costs approved in writing by University. The foregoing obligations shall exist only if Google: (i) promptly notifies University of such claim, (ii) provides University with reasonable information, assistance and cooperation in defending the lawsuit or proceeding, and (iii) gives University full control and sole authority over the defense and settlement of such claim subject to applicable law. Google may join in defense with counsel of its choice at its own expense. University shall only reimburse Google for expenses incurred by it with University's prior written approval.

10.3 Google Contractor Indemnification. Google shall defend and indemnify each University Indemnitee from and against any claim by any person or entity (including without limitation any claim by any employee, contractor, subcontractor, or agent of Google) based on: (a) any actual or alleged personal injury, death, or property damage suffered by any of Google's directors, officers, employees, contractors, subcontractors, or agents in connection with performing work under this Amended Agreement; or (b) any actual or alleged status of any such person as an employee, contractor, subcontractor, or agent either of a University Indemnitee alone or of a University Indemnitee together with Google or any contractor, subcontractor, or agent of Google as a result of any work performed under this Amended Agreement, or any benefit to which any such person may be entitled as a result of such status; provided that the indemnity under this clause (b) will not apply to any claim to the extent it results from University knowingly creating or establishing the relationship of employer to such persons by, among other things, intentionally exercising direction, supervision, or control over such persons or by knowingly providing benefits to such persons. The foregoing indemnification under clause (a) excludes any such claim to the extent arising from the willful misconduct or negligence of University, its Regents, employees, contractors, or agents.
10.4 **Security Indemnity.**

(a) **Security Indemnity.** Google shall defend and indemnify each University Indemnitee from and against claims by the Registry pursuant to Sections 8.4(b) (Single or Non-Wilful/Intentional Breach of Security Implementation Plan) and 8.4(c) (Repeated or Wilful/Intentional Breaches of Security Implementation Plan) of the Amended Settlement Agreement (as incorporated into the Library-Registry (Fully Participating) Agreement), except for claims under Sections 8.4(b) and 8.4(c) resulting from wilful misconduct or intentional and knowing misconduct by any University Indemnitee and claims resulting from repeated breaches (a repeated breach shall be the second (or more) of the same breach (i.e., the second or more breach with the same root cause) within a six (6)-month period) of the Security Implementation Plan that create a significant risk of Prohibited Access, provided that with respect to claims for which indemnification is sought under Section 10.4(a) and (b) such indemnification will only apply if University in its Library-Registry (Fully Participating) Agreement has not elected, as described in Section 8.4(d)(i) of the Amended Settlement Agreement, to be subject to judicial actions or arbitrations under Article IX (Dispute Resolution) of the Amended Settlement Agreement allowing the Registry to seek all available remedies in equity and at law.

(b) **Reimbursement of Fees.** In the event that a claim is brought against a University Indemnitee pursuant to Sections 8.5 and/or 8.6 of the Amended Settlement Agreement (as incorporated into the Library-Registry (Fully Participating) Agreement), and the result of such claim is that a judgment is rendered against University (whether pursuant to arbitration or a negotiated agreement approved by Google, such approval not to be unreasonably withheld, delayed, or conditioned) under Section 8.4(b) or (c) of the Amended Settlement Agreement (as incorporated into the Library-Registry (Fully Participating) Agreement) with respect to the conduct underlying such claim and Google would have been required to indemnify such University Indemnitee pursuant to paragraph (a) of this Section had such claim been brought pursuant to Section 8.4(b) or (c) of the Amended Settlement Agreement (as incorporated into the Library-Registry (Fully Participating) Agreement), then Google will pay such monetary remedies determined pursuant to Section 8.4(b) or (c) of the Amended Settlement Agreement (as incorporated into the Library-Registry (Fully Participating) Agreement) and will reimburse each University Indemnitee for the reasonable legal fees and costs of outside legal counsel incurred in contesting such claim brought under Section 8.5, 8.6, 8.4(b) and/or 8.4(c).

10.5 **Procedures for Google Indemnification.** This Section 10.5 shall apply to any claim for which Google is obligated to defend or indemnify any University Indemnitee, pursuant to Sections 10.1, 10.3, or 10.4 above. For each such claim under Sections 10.1 or 10.3, Google shall either elect to defend such claim or permit the University Indemnitee to defend such claim at Google's sole cost and expense. For each such claim under Section 10.4(a), Google shall defend such claim at Google's sole cost and expense. In the event Google defends any such claim and consistent with the requirements of Virginia law: (1) Google shall select counsel reasonably appropriate for such defense and shall pay for all costs incurred by such counsel (including without limitation experts engaged by such counsel); (2) Google shall have sole control over the defense or settlement of any such claim, provided that, consistent with the requirements of Virginia law, settlement of any claim against any University Indemnitee shall be subject to approval of the University, which approval will not unreasonably be withheld, and to approval by the Governor of Virginia and Attorney General of Virginia where required by state law, which approval the University shall diligently seek, (3) such University Indemnitee shall provide reasonable assistance to Google in such defense or settlement; and (4) such University Indemnitee may participate in the defense of any such claim with counsel of its own choice, at its own expense. In addition, Google shall pay any damage awards or settlement costs (only for settlements made or consented to by Google) that may be incurred.

11. **LIMITATION OF LIABILITY**
EXCEPT FOR DAMAGES ARISING FROM BREACH OF SECTIONS 2.3, 6 (CONFIDENTIALITY) OR PAYMENT OBLIGATIONS 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 AMENDED 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 AMENDED 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 AMENDED 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 or 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 Amended Agreement and thus fail to provide the University with a University Digital Copy shall not be taken without prior consultation with the University enabling the University to minimize investments in staff required under Section 5.3 of this Amended Agreement. Likewise, notwithstanding anything in this Amended Agreement to the contrary, University shall not be obligated to participate in the Digitization program described in this Amended Agreement with respect to any or all of the Available Content. However, University's decision not to participate in the Digitization program shall not be made without prior consultation with Google enabling Google to minimize investments in operations required to perform the Digitization. Furthermore, notwithstanding anything in this Amended 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 Assignment. Neither Party may assign any of its rights or delegate any of its duties under this Amended Agreement without the prior written consent of the other Party, which shall not unreasonably be withheld.

12.3 Continuity. This Amended Agreement shall be binding upon the successors and permitted assigns of both parties.

12.4 Notices. Unless provided for to the contrary in this Amended Agreement, any and all notices or other communications or deliveries required or permitted to be made under this Amended Agreement shall be sent (a) if to University at the attention of the University Librarian 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.

12.5 Independent Contractors. 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 Amended Agreement does not affect any right that either Party would have had, or shall have, independent of the Amended Agreement under applicable law.

12.6 Force Majeure. 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.
12.7 **Enforceability.** If any provision of this Amended 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 Amended Agreement shall otherwise remain in full force and effect and remain enforceable between the parties.

12.8 **Non-Waiver in Event of Breach.** The failure of either Party to act in the event of a breach of this Amended Agreement by the other shall not be deemed a waiver of such breach or a waiver of future breaches.

12.9 **Limitation of Rights.** No provision of this Amended 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.

12.10 **Headings.** The section and paragraph headings used in this Amended Agreement are inserted for convenience only and shall not affect the meaning or interpretation of this Amended Agreement.

12.11 **Completeness/Amendment.** This Amended Agreement sets forth the entire understanding and agreement between the Parties and may be amended only in a writing signed by both Parties.

12.12 **Counterparts.** This Amended 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.

12.13 **No Conflict with Amended Settlement Agreement.** In the event that compliance with the terms of this Amended Agreement would cause Google to breach the Amended Settlement Agreement or would cause University to breach its Library-Registry (Fully Participating) Agreement, then such compliance with this Amended Agreement will be excused, but only to the extent that such compliance would result in such a breach.

12.14 **Collective Terms.** The provisions set forth in the Collective Terms attached hereto as Exhibit B are hereby incorporated into this Amended Agreement. University shall not have any right to participate in the selection of, giving instructions to, or exercising or waiving of rights through the Designated Representative or the Security Representative, as the case may be, unless University has executed a Library-Registry (Fully Participating) Agreement and agreed to the then-existing governance rules established from time to time by the Interested Institutions (including any rules as to the sharing of fees and costs of the Designated Representative and Security Representative, as the case may be).

[Rest of page left intentionally blank.]
IN WITNESS WHEREOF, this Amended Agreement has been executed by persons duly authorized as of the "Amended Agreement Effective Date", which shall be the date written by Google below.

Google
By: 
Print Name: Nitin Vaswani
Title: President, Media Sales and Business Development
Date: 2010.02 .18 15:49:05 -08'00'

University:
By: Leonard W. Sandridge
Print Name: 
Title: Executive Vice President and Chief Operating Officer
Date: 2/10/2010

[Signature Page to Amended Cooperative Agreement]
EXHIBIT A
NON-DISCLOSURE AGREEMENT

(attached)
This Mutual Non-Disclosure Agreement ("Agreement") is made and entered into between Google Inc., for itself and its subsidiaries and affiliates ("Google"), and "Participant" identified below, individually referred to as a "Party" and collectively referred to as the "Parties". The Parties wish to exchange Confidential Information (as defined below in Section 2) for the following purposes: (a) to evaluate whether to enter into a contemplated business transaction; and (b) if the Parties enter into an agreement related to such business transaction, to fulfill each Party's confidentiality obligations to the extent the terms set forth below are incorporated therein (the "Purpose"). The Parties have entered into this Agreement to protect the confidentiality of information in accordance with the following terms:

1. The Effective Date of this Agreement is October 26, 2016.

2. In connection with the Purpose, a Party may disclose certain information it considers confidential and/or proprietary ("Confidential Information") to the other Party. Notwithstanding, but not limited to, tangible, intangible, visual, electronic, present, or future Information such as: (a) trade secrets; (b) financial information, including pricing; (c) technical information, including research, development, procedures, algorithms, data, designs, and know-how; (d) business Information, including operations, planning, marketing, and products; (e) the terms of any agreement entered into between the Parties and the discussions, negotiations and proposals related to such agreement; and (f) information acquired during any facilities tour. Confidential Information shall not include the Cooperative Agreement entered into by the Parties; except that any disclosure of the Cooperative Agreement by a Party will only be with reasonable prior written notice to the other Party to allow the Parties to cooperate on the timing and manner of any disclosure in compliance with all applicable laws.

3. The Party receiving Confidential Information (a "Recipient") will only have a duty to protect Confidential Information disclosed to it by the other Party ("Discloser"); (a) it is clearly and conspicuously marked as "Confidential" or with a similar designation; (b) if it is identified by the Discloser as confidential and/or proprietary before, during, or promptly after presentation or communication; and/or (c) if it is disclosed in a manner in which the Discloser reasonably communicated, or the Recipient should reasonably have understood under the circumstances, including without limitation those described in Section 2 above, that the disclosure should be treated as confidential, whether or not the specific designation "Confidential" or any similar designation is used.

4. A Recipient will use the Confidential Information only for the Purpose described above. A Recipient will use the same degree of care, but no less than a reasonable degree of care, as the Recipient uses with respect to its own information of a similar nature to protect the Confidential Information and to prevent: (a) any use of Confidential Information in violation of this Agreement; and/or (b) communication of Confidential Information to any unauthorized third parties. Confidential Information may only be disseminated to employees, directors, agents or third party contractors of Recipient with a need to know provided, the Recipient shall be responsible for such persons or contractors complying with the confidentiality provisions of this Agreement.

5. Each Party agrees that it shall not do the following, except with the advance written approval of the other Party: (a) publicly use or release any articles, advertising, publicity or other matter announcing that the Parties are negotiating or have entered into the "Cooperative Agreement" or (b) make copies of documents containing Confidential Information except as may be needed by a Recipient's attorneys or employees or subject to paragraph 4 above.

6. This Agreement imposes no obligation upon a Recipient with respect to Confidential Information that: (a) was known to the Recipient before receipt from the Discloser; (b) is or becomes publicly available through no fault of the Recipient; (c) is rightfully received by the Recipient from a third party without any duty of confidentiality or (d) is independently developed by the Recipient without a breach of this Agreement; (e) is disclosed by the Recipient with the Discloser's prior written approval; (f) is required to be disclosed by the Virginia Freedom of Information Act; (g) is required to be disclosed by court order or other governmental demand; provided that, in the event that disclosure is required by court order or other governmental demand ("Process"), (i) the Recipient shall immediately notify the Discloser of such Process and (ii) the Recipient shall not produce or disclose Confidential Information in response to the Process unless the Discloser has: (a) requested protection from the legal or governmental authority requiring the Process and such request has been denied, (b) consented in writing to the production or disclosure of the Confidential Information in response to the Process, or (c) taken all action to protect its interest in the Confidential Information within 14 business days after receipt of notice from the Recipient of its obligation to produce or disclose Confidential Information in response to the Process, or such shorter period as may be required by such Process. In the event that disclosure is required under the Virginia Freedom of Information Act (the "Act"), the recipient of the disclosure request will notify the other Party as soon as reasonably possible and the Parties will cooperate to determine the timing and manner of any disclosure in compliance with the requirements of the Act.

7. EACH DISCLOSED WARRANTS THAT IT HAS THE RIGHT TO DISCLOSE ITS CONFIDENTIAL INFORMATION. NO OTHER WARRANTIES ARE MADE. ALL CONFIDENTIAL INFORMATION DISCLOSED HEREUNDER IS PROVIDED "AS IS".

8. This Agreement shall remain in effect until it is terminated by either Party with thirty (30) days written notice. Notwithstanding the foregoing, this Agreement shall survive with respect to Confidential Information that is disclosed before the effective date of termination.

9. Unless the Parties otherwise agree in writing, a Recipient's duty to protect Confidential Information expires five (5) years from the date of disclosure. A Recipient, upon Discloser's written request, will promptly return all Confidential Information received from the Discloser, together with all copies, or certify in writing that all such Confidential Information and copies thereof have been destroyed. Regardless of whether the Confidential Information is returned or destroyed, the Recipient may retain an archival copy of the Discloser's Confidential Information in the possession of outside counsel of its own choosing for use solely in the event a dispute arises hereunder and only in connection with such dispute.

10. This Agreement imposes no obligation upon a Party to exchange Confidential Information, process with any business opportunity, or purchase, sell, license, transfer or otherwise make use of any technology, services or products.

11. No Party acquires any intellectual property rights under this Agreement (including, but not limited to, patent, copyright, and trademark rights) except the limited rights necessary to carry out the Purpose as set forth in this Agreement.

12. Each Party acknowledges that damages for improper disclosure of Confidential Information may be inadequate; therefore, the injured Party is entitled to seek equitable relief, including injunction and preliminary injunction, in addition to all other remedies available to it.

13. This Agreement does not create any agency or partnership relationship. This Agreement will not be assignable or transferable by a Recipient without the prior written consent of Google.

14. This Agreement may be executed in two or more identical counterparts, each of which shall be deemed to be an original and all of which taken together shall be deemed to constitute the agreement between a duly authorized representative of each Party has signed the counterpart.

15. This Agreement constitutes the entire agreement between the Parties with respect to the subject matter hereof and supersedes any prior oral or written agreements, and all contemporaneous oral communications. All additions or modifications to this Agreement must be made in writing and must be signed by the Parties. Any failure to enforce a provision of this Agreement shall not constitute a waiver thereof or of any other provision.

Google Inc. By: [Signature]
Name: [Name]
Title: [Title]

Participant: 
By: Leonard W. Sandridge
Name: Executive Vice President and Chief Operating Officer
Title: [Title]
EXHIBIT B
COLLECTIVE AND CERTAIN AMENDED SETTLEMENT AGREEMENT RELATED TERMS
(Fully Participating Libraries)

This Exhibit B (the "Collective Terms") reflects provisions that supplement the Cooperative Agreement (the "Digitization Agreement") between The Rector and Visitors of the University of Virginia, (the "Institution") and Google Inc. ("Google") dated November 8, 2006, as amended as of February 18, 2010, and has been created in contemplation of the settlement of certain litigation to which Google is a party, as reflected in that certain Amended Settlement Agreement (the "Amended Settlement Agreement") in the form as filed with the United States District Court for the Southern District of New York on November 13, 2009 in connection with case number 05 CV 8136 between The Authors Guild Inc., et al. as Plaintiffs and Google as Defendant. Capitalized terms used in these Collective Terms that are not defined in these Collective Terms will have the meanings set forth in the Amended Settlement Agreement or, if not defined therein, in the Digitization Agreement. The effectiveness of the provisions of these Collective Terms is conditioned upon the effectiveness of the Amended Settlement Agreement. In the event the terms of the Amended Settlement Agreement are amended and such amendment represents a material change of interest to the Institution and is not acceptable to the Institution, then the Institution may elect that these Collective Terms shall be void as between Google and the Institution. Google and the Institution acknowledge their mutual expectation that the Institution is a Fully Participating Library as defined by the Amended Settlement Agreement. In the event of a conflict between these Collective Terms and other provisions of the Digitization Agreement, these Collective Terms will prevail as between Google and the Institution. In the event that compliance with these Collective Terms or the Digitization Agreement would cause Google to breach the Amended Settlement Agreement or would cause the Institution to breach its Library-Registry (Fully Participating) Agreement, then such compliance with these Collective Terms or the Digitization Agreement will be excused, but only to the extent that such compliance would result in such a breach.

1. Additional Defined Terms. The following capitalized terms, when used herein, will have the following meanings:

   a. "Institution Digital Copy" means the University Digital Copy.

   b. "Institution Library Scan" means a Library Scan derived in whole or in part from all or part of an Institution Library Work.

   c. "Institution Library Work" means a Book that the Institution previously has made or in the future makes available to Google as a Library Work.

   d. "Interested Institution" means any library that (i) is either a party to an existing Digitization Agreement and has executed an amendment to that Digitization Agreement or a party to a new Digitization Agreement that contains terms substantially identical to these Collective Terms (in the case of a Fully Participating Library) or the parallel "Collective Terms" that apply to the Cooperating Libraries that comport with the terms hereof, as may be amended from time to time and (ii) has entered into a Library-Registry (Fully Participating) Agreement or Library-Registry (Cooperating) Agreement.

2. Use Outside of Settlement.

   a. Google will not make use of any Institution Library Scan other than as authorized by the Amended Settlement Agreement unless Google ensures that the releases, rights, and protections that otherwise would have applied under the Amended Settlement Agreement and the coupling requirement set forth in Paragraphs 4(a) through 4(c) with respect to that Institution Library Scan apply.

   b. If (i) a rightsholder opts out of the Amended Settlement Agreement, (ii) Google makes an agreement with such rightsholder regarding the display of Protected content from any work that would have been a Book or Insert if the rightsholder had not opted out (an "Opted-Out Work"), and (iii) Google makes any use pursuant to such agreement (other than any use whereby access is provided to users free
of charge) of any digital copy of such Opted-Out Work provided to it by any Interested Institution or made by Google from a copy of such Opted-Out Work provided to it by any Interested Institution, then Google will offer to such rightsholder the opportunity to include such Opted-Out Work in a service similar to the Public Access Service and, to the extent Google is offering a service similar to the Institutional Subscription for works not covered by the Amended Settlement Agreement, in such service.


   a. Availability of Institutional Subscription and Public Access Service. Google shall make the full Institutional Subscription offered to Higher Education Institutions and the Public Access Service generally available (including to the Institution with respect to such Institutional Subscription) within a reasonable period of time following the Effective Date, but in no event later than two (2) years following the Effective Date.

   b. User Experience. Unless Google and the Institution agree otherwise, at a minimum, Google will provide the authorized users of the Institution (provided the Institution is a then current subscriber to the full Institutional Subscription offered to Higher Education Institutions) with First Class Access (as defined below) to the full Institutional Subscription offered to Higher Education Institutions. As used herein, "First Class Access" means a user experience consistent with Sections 4.1(d) through 4.1(f) of the Amended Settlement Agreement, and that will always include the features set forth or referred to in the last sentence of Section 4.1(d) of the Amended Settlement Agreement and in Sections 4.1(e)(2-4) and 4.1(f) of the Amended Settlement Agreement.

   c. Pricing Review.

      (1) Initial Report. Sixty (60) days after the date Google first makes an Institutional Subscription generally available to Higher Education Institutions and every two years on the anniversary of such date thereafter (each a "Pricing Review Date"), any Interested Institution may request (each such Interested Institution, together with such other Interested Institutions that so request or join in any such request, an "Initiating Library," and collectively the "Initiating Libraries") a review of the pricing of the Institutional Subscription to determine whether the Pricing Categories of Institutional Subscriptions offered to Higher Education Institutions and the revenue models referred to under Paragraph 3(d) below (collectively, the "Reviewable Subscriptions"), are being priced in accordance with the objectives set forth in Section 4.1(a)(i) of the Amended Settlement Agreement (a "Pricing Review") by providing written notice to Google and all other Interested Institutions prior to such Pricing Review Date. All Interested Institutions together may initiate only one Pricing Review per Pricing Review Date. For purposes of this Paragraph, "Pricing Category" shall mean a category for which there is a discrete price for a set of Books offered to a class of Higher Education Institutions as part of an Institutional Subscription as contemplated by Section 4.1(a)(iv)(2) of the Amended Settlement Agreement. The "Pricing Reviewer" will be an independent, qualified third party (independence and qualification determined in good faith by the Initiating Libraries) designated by the Initiating Libraries, acting through the Designated Representative consistent with Section 7.4 of the Amended Settlement Agreement, subject to approval by Google (which approval shall not be unreasonably withheld). The Pricing Reviewer shall prepare a report of its findings (the "Pricing Review Report") and shall provide such report to Google and all Interested Institutions. Google shall be responsible for the Pricing Reviewer's reasonable fees and costs incurred in conducting the Pricing Review and preparing the Pricing Review Report, up to the Pricing Review Cap. For the purposes hereof, the Pricing Review Cap shall mean (a) $100,000 per Pricing Review for each of the first two possible Pricing Reviews; and (b) for each Pricing Review thereafter, the lesser of (i) $75,000 per Pricing Review, or (ii) $50,000 per Pricing Review plus one-half of such fees and costs that exceed $50,000 in such particular Pricing Review, provided, however, that such $100,000, $50,000 and $75,000 figures will be subject to adjustment based on changes in the Consumer Price Index, based on a 2008 base year. With respect to any Pricing Review, the Interested Institutions shall be responsible for the Pricing Reviewer's fees and costs incurred in conducting the Pricing Review and preparing the Pricing Review Report in excess of the Pricing Review Cap. Google will provide or make available to the Pricing Reviewer the following information within a reasonable period of time following the written request of the Pricing Reviewer (the "Pricing Information"): (A) the number of postsecondary academic institutions that
have Institutional Subscriptions offered to Higher Education Institutions as of the most recent anniversary of the Effective Date broken out by Pricing Category; (B) a histogram showing the percentage of postsecondary academic institutions that pay each price within a Pricing Category; and (C) Google’s list price for each Pricing Category in the Institutional Subscriptions offered to Higher Education Institutions, as well as comparable information related to any pricing model referred to in Paragraph 3(d) below. The Pricing Reviewer may request in writing additional information from Google necessary to render a determination as set forth in this Paragraph. Google will evaluate any such request and will provide such requested information unless it reasonably determines that such information is not necessary for the Pricing Reviewer to render a determination (such information shall also be considered Pricing Information). The Pricing Information that has not otherwise been made publicly available by Google pursuant to Section 10(d)(1); (1) will be subject to Google’s reasonable confidentiality and production requirements; (2) will be deemed Google’s confidential Information; (3) may not be shared with any Fully Participating Library or Cooperating Library (except to the extent reflected in the Pricing Review Report as provided below) or other third party unless otherwise agreed to by Google or authorized in the non-disclosure agreement executed with Google by the Pricing Reviewer governing the Pricing Information; and (4) may be used by the Pricing Reviewer only for purposes described in this Paragraph. The Pricing Review Report shall not contain Pricing Information provided by Google unless Google otherwise agrees or the information is otherwise publicly available, but may contain conclusions based on such information that do not reveal the underlying information itself. The Pricing Reviewer shall execute a reasonable non-disclosure agreement provided by Google to govern the use and disclosure of the Pricing Information disclosed by Google. For each of the first ten (10) Pricing Review Dates, if the Interested Institutions do not initiate a Pricing Review, Google shall donate to the National Federation for the Blind or similar non-profit charitable organization selected by Google and approved by the Interested Institutions acting through the Designated Representative, such approval not to be unreasonably withheld: (a) $100,000 in lieu of each of the first two possible Pricing Reviews; and (b) $50,000 in lieu of each of the subsequent Pricing Reviews; provided, however, that such $100,000 and $50,000 figures will be subject to adjustment based on changes in the Consumer Price Index, based on a 2008 base year.

(2) Possible Pricing Challenge. Any Initiating Library may initiate an arbitration pursuant to this Paragraph within ninety (90) days of receipt of a particular Pricing Review Report with respect to relevant Reviewable Subscriptions. Any such arbitration will be the exclusive mechanism to resolve disputes between Google and the Initiating Libraries with respect to whether Google is pricing the Reviewable Subscriptions in accordance with the objectives set forth in Section 4.1(a)(i) of the Amended Settlement Agreement. The arbitration proceedings of all Initiating Libraries that submit requests for arbitration prior to the ninety (90) day deadline following the date the Pricing Review Report is provided to Initiating Libraries shall be combined into a single arbitration proceeding. No Initiating Library may initiate an additional, separate arbitration based on the same Pricing Review Report. The arbitration procedures shall be set forth in the Library-Registry Agreement, except as explicitly set forth herein. Any decision of the arbitrator(s) shall be based on the objectives set forth in Section 4.1(a)(i) of the Amended Settlement Agreement, and the arbitrator(s) will not be authorized to make any other findings or to award damages of any kind to either party. Any arbitrator(s) will not be authorized to make any other findings or to award damages of any kind to either party. All arbitrators designate representatives (the "Arbitration Representatives") who, along with the Arbitration Representatives’ legal counsel (provided such legal counsel are bound by or have been instructed by their clients, Google’s reasonable satisfaction, to comply with the same terms as the Arbitration Representatives with respect to such Pricing Information set forth herein), may have access to the Pricing Information subject to the same use restrictions applicable to the Pricing Reviewer. The Pricing Information may not be disclosed to the Initiating Libraries in the arbitration other than to the Arbitration Representatives. The Arbitration Representatives shall not disclose the Pricing Information to anyone (other than the relevant arbitrator(s)) including any individual at such Arbitration Representatives’ Initiating Library (including, but not limited to, employees, executives, directors, trustees, regents, governors, contractors, and agents) without Google’s prior written consent, which consent is not to be unreasonably withheld. Following the decision in any arbitration pursuant to this Paragraph, the relevant such Arbitration Representatives may not be involved in negotiations, or decisions with respect to such negotiations, with Google on behalf of an Initiating Library regarding the future price of the subscription for that institution. Each party to the arbitration shall be responsible for its own costs and expenses incurred in the arbitration.
(3) Pricing Adjustment. In the event any Initiating Library initiates an arbitration pursuant to Paragraph 3(c)(2) above, if the arbitrator(s) determine that the price of the relevant Reviewable Subscriptions should be lower than the existing price, then Google shall (1) adjust the price of each then-current relevant Reviewable Subscription by the Adjustment Amount (as defined in the following sentence) in the manner described below, and (2) charge no more than the arbitrator-determined pricing for any new or renewal relevant Reviewable Subscription for a period of at least two years following the date of the arbitrator(s)' decision (with arbitrator-approved price increases allowed within this two-year period). The "Adjustment Amount" for each relevant Reviewable Subscription will be (x) the excess of the existing price of the relevant Reviewable Subscription over the arbitrator-determined price, calculated on a monthly basis, multiplied by (y) the number of months of the relevant Reviewable Subscription occurring after the date of the notice to Google of the initiation of the relevant arbitration pursuant to Paragraph 3(c)(2) above through the date of expiration of the relevant term thereof. Google and the Institution (to the extent actually participating in the arbitration) agree to cooperate in expediting the selection of an arbitrator and the commencement and proceedings under any such arbitration, with the goals of (i) commencing arbitration proceedings as promptly as is reasonably practicable and (ii) having the time period between the date that the relevant arbitrator(s) commences substantive proceedings in the arbitration and the date of rendering of the arbitrator(s)' decision not be more than three months. If such time period exceeds three months (which the arbitrator(s) may increase in his, her or their discretion to up to six months), then the number of months referred to in clause (y) above will be decreased by such excess number of months to the extent corresponding to relevant months of the relevant Reviewable Subscription. The Adjustment Amount will be applied (in the form of a pro rata credit, discount or other equivalent method reasonably determined by Google) to reduce the balance remaining on the purchase price of such then-current relevant Reviewable Subscription for the period after the date of the arbitrator(s)' decision or, if the Adjustment Amount exceeds the amount remaining due for that period, such excess amount shall be refunded in cash by Google to the subscribing institution. Google's total liability in connection with the aggregate Adjustment Amounts for relevant Reviewable Subscriptions will not exceed Google's Net Revenues from all Institutional Subscriptions offered to Higher Education Institutions current and existing as of the date of the decision by the arbitrator(s). "Net Revenues" means total gross revenues received by Google from all Institutional Subscriptions offered to Higher Education Institutions less (i) the amount of any discounts to the Interested Institutions (to the extent such amounts otherwise would be included in gross revenues) and (ii) any revenue share payments that are paid by Google to the Registry in respect of such gross revenues for that period. If the aggregate Adjustment Amounts exceed Google's Adjustment Amount liability limit identified above, then the Adjustment Amount for each Reviewable Subscription subscriber will be adjusted on a pro rata basis (based on amounts paid by each institution) such that Google's total cash refund liability will not exceed the limit identified above.

d. New Revenue Models. If (1) Google makes available any new revenue model pursuant to Section 4.7 of the Amended Settlement Agreement, (2) such new revenue model includes the offering of access to any Library Scans, and (3) such new revenue model is offered to any Higher Education Institutions, then to the extent Google and/or the Registry sets such price, such new revenue model shall be priced (both as to initial pricing and pricing over time) in accordance with the objectives set forth in Section 4.1(a)(i) of the Amended Settlement Agreement, and the provisions of Paragraph 3(c) above, will apply to such pricing.

4. Google Coupling.

a. Coupling Relative to Consumer Purchase. If Google, to the extent authorized by the Rightsholder or the Amended Settlement Agreement, uses any portion of a Library Scan within the United States in Consumer Purchases or Other Revenue Models (as defined below), then Google will provide the following services (the "Designated Services") to United States users with respect to such Library Scan as follows:

(1) Commencing upon the Effective Date, free search services Online through Google Products and Services (including Preview Use or Snippet Display to the extent permitted under the Amended Settlement Agreement);
(2) Commencing upon the Effective Date, Library Links if there are online sources that can provide the information accessed through the Library Link free of charge to the user and without charge to Google;

(3) Commencing upon the initial public offering of the full Institutional Subscription, but not later than five (5) years from the Effective Date, inclusion of the Library Scan in Institutional Subscriptions offered to Higher Education Institutions (including in the Institutional Subscription referred to in Paragraph 3(a)) if authorized by the Rightsholder under the Amended Settlement Agreement; and

(4) Commencing upon the public offering of the Public Access Service, but not later than five (5) years from the Effective Date, inclusion of the Library Scan in the Public Access Service if authorized by the Rightsholder under the Amended Settlement Agreement.

b. **Worldwide Use.** If Google, to the extent authorized by the Rightsholder or the Amended Settlement Agreement, uses any Library Scan in Consumer Purchases, in any new revenue model that may be developed pursuant to Section 4.7 of the Amended Settlement Agreement or in any other manner in which Protected content is displayed that generates any revenue to Google (other than any use in which such Protected content is provided to users free of charge) in one or more countries other than the United States, and such Rightsholder has rights to authorize such uses both within the United States and in such other countries, then Google will permit Higher Education Institution subscribers to an Institutional Subscription that includes such Library Scan to make such Library Scan available through such Institutional Subscription to its users in the United States and such other countries.

c. **Effect of Failure to Satisfy Google Coupling.** If Google and any Additional Contemplated Rightsholder Services Provider and/or Third-Party Required Library Services Provider collectively fail at any time to provide any of the Designated Services as to a particular Library Scan, then Google shall not use, nor authorize any third party to use, that Library Scan in Consumer Purchases or Other Revenue Models (as defined below) unless and until Google and/or any Additional Contemplated Rightsholder Services Provider and/or Third-Party Required Library subsequently provides such Designated Service(s) with respect to the relevant Library Scan. For purposes of this Paragraph 4, "Other Revenue Models" means business models that may be agreed to by the Registry and/or Google under Section 4.7 of the Amended Settlement Agreement and that use Library Scans, except for any Google service in which access to a given Library Scan is provided to the public free of charge.

d. **Matters Related to Use of Digital Copies In Lieu of Library Scans.** The provisions of this Paragraph 4(d) will apply to the Institution only if the Institution has provided to Google and/or Google has created not less than 50,000 Institution Library Scans from the Institution’s Selected Content. From and after the date that the number of Excluded Replaced Books first exceeds the lesser of (1) 200,000, or two percent (2%) of all Books that are not Commercially Available as to which Library Scans at any time were made by or for Google (the "Exclusion Threshold"), then Google will, for all Excluded Replaced Books as to which a Library Scan at any time was made by or for Google from the Institution’s Selected Content and which becomes an Excluded Replaced Book following the date the Exclusion Threshold is reached, obtain for and provide to the Institution rights and functionality with respect to such Excluded Replaced Books materially equivalent to the rights and functionality of an Institutional Subscription then held by the Institution (and subject to the terms and conditions thereof) had the Excluded Replaced Book been available as part of such Institutional Subscription. An “Excluded Replaced Book” is a Book as to which (i) a Library Scan at any time was made by or for Google; (ii) the Rightsholder has (x) Removed the Book (when it existed as a Library Scan) pursuant to Section 3.5(a) of the Amended Settlement Agreement and subsequently restored such Book to the terms of the Amended Settlement Agreement and Google has not made a Library Scan of such Book following such restoration, or (y) excluded a Book that is not Commercially Available from Institutional Subscriptions pursuant to Section 3.5(b) of the Amended Settlement Agreement; (iii) a Digital Copy (other than a Library Scan) is made by or for Google subsequent or incident to such Removal or exclusion; and (iv) the Rightsholder has authorized and Google has offered, pursuant to the Amended Settlement Agreement, Consumer Purchases or any Other Revenue Models for the Book.
5. Research Corpus.

a. Cooperation in Research Corpus. Following the Effective Date, Google will exercise (when and if exercisable) all rights granted under Section 7.2(d) of the Amended Settlement Agreement to enable the creation and implementation of the Research Corpus at Host Sites as determined and conditioned in accordance with such Section. Google will provide to each Host Site, in a manner to be mutually agreed upon by Google and the Host Site(s), a set of Digital Copies of all Books (other than Books that have been Removed by Rightsholders pursuant to Section 3.5 of the Amended Settlement Agreement or Library Scans that have been withdrawn pursuant to Section 7.2(d)(iv) of the Amended Settlement Agreement) and Digital Copies of public domain works Digitized in connection with the Google Library Project, unless restricted by the library that provided such works (provided that Google shall cause or provide incentives to any library to impose any such restriction), to each of the Host Sites, subject to the Host Site(s) agreeing to the Host Site-Registry Agreement and a separate agreement with Google incorporating the terms of the Amended Settlement Agreement governing the Research Corpus and restrictions on sharing the content. Google shall offer Google Partner Program publishers the ability to include their works in the Research Corpus.

b. Google Support. Google will make appropriate personnel reasonably available to provide, at no charge, up to 100 personnel hours per Host Site, per year for two years following the Effective Date consisting of technical start-up advice related to the creation and operation of the Research Corpus to each Host Site, subject to the Host Site(s) executing services agreements with Google containing Google's customary terms and conditions for such services. In addition, Google shall provide not less than $5,000,000 in aggregate to be used at the direction of the Interested Institutions (acting through the Designated Representative in the manner set forth in Section 7.4 of the Amended Settlement Agreement) for the development of one or more Host Sites (including Google as a Host Site), of which $500,000 will be deposited into an escrow account by Google after the execution by at least one Fully Participating Library or Cooperating Library of a Digitization Agreement or an amendment to a Digitization Agreement incorporating these Collective Terms within fifteen business days after written request by such Fully Participating Library or Cooperating Library, an additional $1,000,000 will be deposited into an escrow account by Google within fifteen business days after the last date of execution of Digitization Agreements and/or amendments to Digitization Agreements incorporating these Collective Terms by at least three Fully Participating Libraries and/or Cooperating Libraries (excluding the first Fully Participating or Cooperating Library that triggered the initial $500,000 payment), and the remainder will be deposited by Google into the escrow account within fifteen business days after the Effective Date. The escrow account will be set up by the Interested Institutions, acting through the Designated Representative in the manner set forth in Section 7.4 of the Amended Settlement Agreement, with an independent third party approved by Google, such approval not to be unreasonably withheld. The costs for the creation and administration of the escrow account shall be paid out of the funds in escrow. The Interested Institutions may use the escrowed funds solely for the development of one or more Host Sites immediately upon their deposit into the escrow account by Google. Subject to the foregoing restriction, the Interested Institutions' use of the escrowed funds in the development of the Host Site(s) shall be at their sole discretion. The Interested Institutions, acting though the Designated Representative in the manner set forth in Section 7.4 of the Amended Settlement Agreement, shall designate a representative (which may be the Designated Representative) authorized to deal with Google with respect to the creation and administration of the escrow account, the deposit of the funds, and all other matters relating to the Host Site(s), and Google shall be obligated to deal only with such representative. The Interested Institutions shall be bound by the decision of such designated representative in the same manner as with respect to the Designated Representative under Section 7.4 of the Amended Settlement Agreement.

c. Content Improvements and Delivery. After the initial delivery of the Research Corpus to a Host Site, within thirty (30) days after Google Digitizes a Book required to be in the Research Corpus or materially improves a Digital Copy of a Book contained in the Research Corpus, Google will provide or make available a copy of the file for each such Digital Copy to the Host Site. In addition, Google will provide each Host Site access to download a copy of the electronic file for each such Digital Copy of a Book each time an electronic file for that Book is improved by (i) any Fully Participating Library or Cooperating Library provided that such library makes the improved file available to Google, (ii) any third
party that improves the quality of a Digital Copy of such Book to be used in the Accommodated Services under the terms of a Library-Registry (Fully Participating) Agreement, Library-Registry (Cooperating) Agreement, and/or the Amended Settlement Agreement, provided that such third party makes the improved file available to Google, or (iii) any third party to the extent Google is so permitted under a contract with such third party and provided that such third party makes the improved file available to Google. If a Host Site elects to download a copy of the improved electronic file for any such Book, the Host Site may download only the most current version of such file. Google will make improved versions of the files available to each Host Site within a reasonable period of time after they are created by another party and provided to Google as contemplated by this Paragraph. If an Interested Institution improves a Digital Copy of a Book, a public domain work or other work contained in the Institution Digital Copy, it shall provide the improved file to Google within a reasonable period of time. In connection with the furnishing of required content, Google agrees from time to time to (x) use delivery methods to be mutually agreed upon between Google and the Host Site that are reasonably appropriate to timely delivery of the volume of content being delivered; (y) employ mutually agreed upon technologies that provide reasonably appropriate downloading and throughput speeds to each Host Site; and (z) make available servers (or use some other mutually agreed upon mechanism for delivery of data) that have reasonably appropriate capacity and rate of connectivity.

d. Technical Cooperation. Google will reasonably cooperate with each Host Site to establish mutually agreed communications and dispute resolution procedures with the goal that Host Site issues related to technical performance (e.g. related to download issues) be addressed expeditiously.

6. Accommodated Service.

a. Availability of Accommodated Service. Google acknowledges its intent to make the Accommodated Service generally available within two (2) years following the Effective Date.

b. Reports and Notice. Following the Effective Date, Google will report, annually, to the Designated Representative on its progress to develop, provide, and maintain the Accommodated Service, including information about the time-frame in which Google believes that the Accommodated Service will be made available. Such reports will be considered Google's confidential information, except that the Designated Representative can disclose the reports to other Interested Institutions under the same confidentiality restrictions as are applicable to the Interested Institution of the Designated Representative. If Google determines that it will not implement the Accommodated Service during the period referred to in Section 7.2(g)(ii)(2)(a) of the Amended Settlement Agreement or not maintain it after its initial launch, it will promptly notify the Designated Representative (who may so notify the Interested Institutions).

c. Database. Following the initial public offering of the Accommodated Service, Google shall maintain an accessible, searchable, on-line database that will enable the public to determine which Library Works are currently accessible through the Accommodated Service.

7. Advertising and Institutional Subscription. The provisions of this Paragraph 7 will apply to the Institution only if the Institution has provided to Google and/or Google has Digitized not less than 50,000 Institution Library Scans from the Institution's Selected Content. The Institution acknowledges that the Institutional Subscription offered to Higher Education Institutions may contain advertising as determined by Google. However, Google agrees that in the event it offers an Institutional Subscription that does not contain advertising to any Higher Education Institution, it will offer such Institutional Subscription that does not contain advertising to the Institution (Google reserves the right to price such Institutional Subscription differently than the Institutional Subscription that contains advertising).

8. Commercial Availability and Classification by Google. Google will use the process set forth in Section 3.2(d) of the Amended Settlement Agreement to classify each work as Commercially Available or not and to correct mistakes made in initially classifying a work as Commercially Available (including when notified in writing by a Fully Participating Library or a Cooperating Library of any purported misclassification) in accordance with the terms of the Amended Settlement Agreement. If any Fully Participating Library or Cooperating Library notifies Google in writing that it believes in good faith that a
work may have been mistakenly classified as Commercially Available, or that the work may no longer be Commercially Available, Google will evaluate such information and, if in its reasonable judgment it concurs, notify the Registry to properly classify such work.


a. Exercise of Certain Rights. Google will exercise its rights under Section 3.5(b)(vi) of the Amended Settlement Agreement to the extent necessary to fulfill any relevant obligations of Google to the Institution.

b. No Obligation to Collect. Google will not condition availability of the Public Access Service on the relevant library agreeing to collect for Google amounts referred to in Section 4.8(a)(ii) of the Amended Settlement Agreement.

10. Information.

a. Institution Digital Copy. For each work contained in the Institution Digital Copy and in the equivalent of the Institution Digital Copy of each other Interested Institution, Google shall use commercially reasonable efforts to make available to the Institution (which may be accomplished through delivery to the Designated Representative for distribution to the various Interested Institutions) access to the following information in a generally accepted electronic format: (i) a unique identifier number for the work; (ii) whether Google is treating the work as being in the public domain in the U.S., along with the factual basis for such determination (but not analysis or reasoning with respect to such determination); (iii) whether the Registry has objected to a book as being in the public domain pursuant to Section 3.2(d)(v) of the Amended Settlement Agreement and the outcome of any dispute relating thereto; (iv) whether Google is treating the work as being a Government Work; (v) whether Google is treating the work as being subject to the Amended Settlement Agreement; (vi) the status of the work with respect to its Commercially Available classification if such work is governed by the Amended Settlement Agreement, including but not limited to any notices of suspected misclassification by the Registry pursuant to Section 3.2(d)(ii) of the Amended Settlement Agreement and any corrections to such classification made by Google, whether or not in response thereto; (vii) whether Google is using any portion of the work in Consumer Purchases or in any Other Revenue Model; (viii) whether Google is including the work in any of the Required Library Services; (ix) with respect to works that are Government Works or Public Domain Books, whether Google has received a request from a Rightsholder of any Insert in any such Government Work or Public Domain Book to Exclude such Insert from Display Uses (Including the identity of the Rightsholder and the relevant Insert), any determination by Google to accept or reject such request, and the resolution of any dispute relating thereto pursuant to Section 3.5(b)(vii) of the Amended Settlement Agreement; and (x) whether, if Google is aware, the work has been registered with the United States Copyright Office.

b. Information to Perform Obligations. Within a reasonable period following receipt of a written request from the Institution, Google shall provide to the Institution all data provided by the Registry to Google pursuant to Section 8.5(b) of the Amended Settlement Agreement, including all updates, as is reasonably necessary for the Institution to perform its obligations under its Library-Registry Agreement.

c. Public Disclosure of Public Domain Determinations. Google will make available to the general public the information described in Paragraph 10(e)(ii).

d. Pricing Strategy and Pricing Information.

(1) Pricing Strategy. Within a reasonable period following receipt of a written request, Google shall make available to the Designated Representative the initial Pricing Strategy and any subsequent Pricing Strategies relating to Institutional Subscriptions offered to Higher Education Institutions that are agreed upon by Google and the Registry pursuant to Section 4.1(a) of the Amended Settlement Agreement. The Designated Representative may distribute such pricing strategies to
Interested institutions. Google will inform the Institution of any Google Products and Services that meet the definition of "Adjunct Product" in the Amended Settlement Agreement and whether the Registry has elected to renegotiate under Section 4.1(a)(ix)(3) of the Amended Settlement Agreement.

(2) Pricing Information. Google will make publicly available the Pricing Information set forth in Section 3(c)(1)(A)-(C) provided by Google to the Pricing Reviewer within a reasonable period following Google's provision of such Pricing Information to the Pricing Reviewer; provided, however, with respect to the Pricing Information set forth in Section 3(c)(1)(B), Google shall only be required to make publicly available a histogram that includes only ranges of prices (but not individual prices) paid by post-secondary academic institutions set forth in increments of no greater than ten percent of the list price of the relevant Pricing Category; and provided further that Google will not make such Pricing Information available if the Interested Institutions (acting through the Designated Representative in the manner set forth in Section 7.4 of the Amended Settlement Agreement) instruct Google not to do so.

e. Google Exclusion Decisions. Within a reasonable period following receipt of a written request, Google will make available to the Designated Representative (who may then disclose same to the Interested Institutions): (i) a list of Books Google has Digitized or received Digital Copies of and a list of Books of which it is making Display Uses; and (ii) information concerning whether the exclusion of Books from one or more Display Uses was for editorial or non-editorial reasons, and if for non-editorial reasons, whether the exclusion was for quality, legal or technical concerns. For the avoidance of doubt, the Institution may publicly disclose the identity of Books excluded for editorial reasons at any time.

f. Required Library Services Information. Within a reasonable period following receipt of a written request, Google will disclose to the Designated Representative (who may then disclose same to the Interested Institutions) the following information to the extent reasonably necessary for the Institution to monitor and enforce Section 7.2(e) of the Amended Settlement Agreement and Paragraph 4(d) of these Collective Terms, including without limitation: (i) the number of Library Scans made by or for Google at any time; (ii) the number of such Library Scans that are Commercially Available; (iii) the number of Excluded Replaced Books; (iv) the number of Not Counted Library Works; (v) the number of Display Books; (vi) the number of No Display Books; (vii) the number of Library Scans that are not authorized to be included in Institutional Subscriptions pursuant to the terms of the Amended Settlement Agreement; (viii) the Required Library Services being provided for each of the Library Scans; and (ix) the number of Library Scans for which each of the Required Library Services is being provided. Google will identify, if requested by the Designated Representative, the relevant specific Books with respect to each category of information provided above, and the Designated Representative may request such additional information no more than once in any six-month period.

g. Confidentiality and Copying Restriction. The information made available by Google pursuant to Paragraphs 10(a)(iii), (vi) and (ix), 10(d)(1), and 10(f) above may not be shared by the Institution with third parties as Confidential Information of Google pursuant to the confidentiality provisions of the Digitization Agreement, except as provided therein, as otherwise required by law, with prior written approval from Google, for disclosure to another Interested Institution or (except as to information provided pursuant to Paragraphs 10(d) and 10(f)) for relevant disclosure on a confidential basis to a third party that is hosting the Institution's LDC. As to the information made available by Google pursuant to Paragraphs 10(a)(ii) (as to the factual basis information, but not Google's analysis or reasoning, only), (iv), (v), (vii), (viii) and (x), the Institution is free to use same internally or disclose same to another Interested Institution, and Google acknowledges that such information is not subject to the confidentiality provisions of the Digitization Agreement; however the Institution agrees that it will not publicly disclose any copy (whether in hard copy or digitally) of all or any substantial portion of any particular databasee originally provided by Google pursuant to any such Paragraph so long as such database is not first publicly disclosed by Google or any other person, except as may be provided in the Digitization Agreement, as may be otherwise required by law, or with prior written approval from Google. With respect to the identification of any Book pursuant to this Section 10, Google shall provide at least one unique identifier number used by Google to identify such Book and the bar-code or other identifier associated with the relevant Participating Library's Book used when Digitizing the Book.
h. **Quarterly Updates.** Except as otherwise set forth herein, following its initial provision, Google will update on a quarterly basis information provided pursuant to this Paragraph 10 that is required for the Interested Institution to meet its obligations with respect to the Collective Terms, Digitization Agreements, or Library-Registry Agreements. Except as otherwise set forth herein, within a reasonable period following receipt of a written request, Google will update the information provided by Google pursuant to this Paragraph 10 following its initial provision to the Institution, but in no event shall it be obligation to update such information more frequently than quarterly. The information provided under this Paragraph 10 shall be accurate as to Google’s knowledge at the time of its provision to the Designated Representative, the Institution or the public, as the case may be.

i. **Misclassification.** If the Institution informs Google of any works that it believes have been misclassified as not in the public domain (or of a systematic misclassification of works) and provides supporting reasons and information, as well as information regarding the processes used to verify such information, then Google shall use commercially reasonable efforts to appropriately consider such information (and to remedy any such systematic misclassification Google determines to exist). To the extent Google determines that any work is in the public domain as a result of the foregoing, it shall treat such work as being in the public domain.

j. **Enforcement by Google.** Google hereby agrees to enforce for the benefit of the Institution the following provisions of the Amended Settlement Agreement: Sections 6.5(b) (first sentence), 6.6(c), and 6.6(d), subject to any confidentiality and privacy restrictions.

11. **Designated Representative and Security Representatives Matters.** The Institution agrees to select, give instructions to, and exercise or waive certain rights through, the Designated Representative and the Security Representatives, as set forth in Section 7.4 of the Amended Settlement Agreement.

12. **Provisions of Digitization Agreements.** Google will reflect, in each Digitization Agreement with a Fully Participating Library or Cooperating Library that such library will not have any rights to participate in the selection of, giving instructions to or exercising or waiving certain rights through the Designated Representative or the Security Representatives, as the case may be, unless such Fully Participating Library or Cooperating Library agrees to the terms of Section 7.4 of the Amended Settlement Agreement and the then existing governance rules as established from time to time by the Fully Participating Libraries and the Cooperating Libraries (including any rules as to the sharing of fees and costs of the Designated Representative and the Security Representatives, as the case may be).

13. **References.** All references herein to provisions of the Amended Settlement Agreement are intended to mean and include, as reasonably appropriate, such provisions as incorporated into the Library-Registry Agreement (whether pursuant to an Exhibit thereto or otherwise) to which the Institution is a party.