

## COOPERATIVE AGREEMENT

This COOPERATIVE AGREEMENT (the "Agreement") is entered into by and between Google Ireland Limited, a company incorporated in Ireland with its registered office at 1<sup>st</sup> and 2<sup>nd</sup> Floors, Gordon House, Barrow Street, Dublin 4, Ireland ("Google"), and the National Library of the Netherlands, with its principal offices at Prins Willem Alexanderhof 5 2595 BE Den Haag, The Netherlands ("Library"), and is effective as of the date signed by Google below (the "Effective Date"). Google and Library herein are sometimes referred to hereinafter individually as a "Party" and collectively as the "Parties".

### RECITALS

WHEREAS, Library 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 Library share a mutual interest in making information available to the public; and

WHEREAS, Google will digitize works from the Library collection to include them in Google's services, and provide access to the digitized works to the Library as described herein.

NOW THEREFORE, in consideration of the mutual covenants set forth herein, Google and Library hereby agree as follows:

### DEFINITIONS

1. **DEFINITIONS**. Capitalized terms will have the meanings set forth below:

1.1 "Available Content" means the Library's print collection as identified by Google and the Library.

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 "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 Library, 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.

1.4 "Digitize" means to convert content from a tangible, analog form into a digital electronic representation of that content. "Digitization", "Digitizing" and "Digitized" shall have corresponding meanings.

1.5 "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 "Library Digital Copy" shall have the meaning set forth in Section 4.7.

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

1.11 "Project Plan" means a written plan for implementing a Project. The Project Plan shall include the following: (a) timetable for Digitizing the Selected Content, (b) instructions by Library regarding how the Selected Content is to be collected and returned by Google; (c) material handling processes for the Selected Content, (d) if required, the amount of time available to Library for performing conservation efforts; (e) the amount of time available to Google from receipt of the Selected Content until it is due to be returned to Library; and (f) a budget for the Project.

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

1.13 "Selected Content" means the portion of the Available Content that Google desires to Digitize or incorporate into the Google Services, both collectively and its component parts.

1.15 "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 sections), publisher (and publisher information), classification information (including Library of Congress classification, Dewey classification or similar), subjects, language description and other types of bibliographic information not subject to copyright protection. Standard Metadata may also include any other item that Google and Library may hereafter agree, in writing, will constitute Standard Metadata.

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

## TERMS

### 2. DIGITIZATION OPERATIONS.

2.1 Non-Exclusivity of Agreement. The Parties agree that the rights and authorizations granted in this Agreement are non-exclusive. Nothing in this Agreement shall be construed as limiting Library's rights to enter into agreements with third parties to Digitize works from Library's collection in anyway, including ways identical to those provided in this Agreement.

2.2 Identifying and Collecting Content to be Digitized. The Parties shall in good faith identify Available Content that Google may elect to Digitize; provided that Library agrees to commit no less than 160,000 volumes to the Digitization efforts under this Agreement. The Parties intend for the Selected Content targeted for Digitization to be in the public domain under Dutch copyright law. The Parties shall cooperate in good faith and with diligence to develop a timetable for completing the Project Plan for Digitizing the Selected Content.

2.3 Collecting the Selected Content. Library shall be responsible for locating, pulling and moving the Selected Content to and from the designated location on the Library premises where Google can collect it as well as re-shelving the Selected Content when the Digitization is complete. Upon commencement of a Project, Library 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, Library shall provide the conserved Selected Content to Google for Digitizing. If agreed upon by the Parties in a particular Project Plan, this collection function may instead be assigned to Google.

2.4 Transporting and Storing the Selected Content. Google may remove some or all of the Selected Content from Library premises to perform Digitization in facilities controlled by Google and located within Europe. Google will provide and be responsible for commercially reasonable transport methods and temporary storage areas. Google will carry reasonable and sufficient insurance insuring against the risk of loss, damage or destruction of materials entrusted to Google during transport and while the materials are in Google's custody.

2.5 Required Information for the Selected Content. As soon as possible after the Effective Date (but in no event later than 10 days after the Effective Date), Library will provide Google (a) a good faith estimate of the value of any Selected Content included in the project at a level of detail determined by Google (for example, Google may require the average value of all the Selected Content included in the project, the value of each item of Selected Content, or both) and (b) a summary of the Library's collection to identify material of particularly high value (in excess of \$10,000.00 per item of Selected Content) that Google may choose not to remove from the Library premises. The Parties will discuss selection parameters and approaches for high value content. In cases where Google is considering shipping Selected Content across a border, Library will provide Google (i) a list of all Selected Content expected to be considered in the project as soon as possible after the Effective Date to be used for obtaining any appropriate government approvals (such as the local Ministry of Culture) and the Parties agree to discuss approaches for obtaining any such government approvals and (ii) an itemized customs manifest of each shipment of Selected Content prior to each and every shipment, if Google is considering shipping Selected Content across any border regulated by Customs. This customs manifest will be given to Google and to Google's agent, if Google assigns an agent, according to procedures that will be specified by Google. The customs manifest will include for each item of Selected Content, the Title, Author, Publication date, Country of Publication, and value of each such item as determined by Library, and the assigned barcode of the item. The Library agrees to assist Google with any other information that may be required by Customs, transportation officials, or by other government representatives (such as the local Ministry of Culture).

2.6 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 Form, if any.

2.7 Return of the Selected Content. Google shall return the Selected Content to the designated location on the Library premises where Google obtained it and in the like manner in which it was collected after Google completes Digitizing the Selected Content.

2.8 Provision of Catalog Records. Library shall provide Google with complete catalog records, including all Standard Metadata fields for the complete Library collection within 30 days of Google's written request. Google has authorization to use and receive such records from the Library pursuant to a separate agreement between Google and OCLC. Google, Library and OCLC will collaborate and define the most appropriate way for Library to provide to Google complete catalog records.

### 3. COSTS

3.1 Costs paid by Library. In addition to costs mutually agreed upon by the Parties, Library shall be responsible for the following costs: (a) those related to locating, pulling and moving the Selected Content to and from the designated location on the Library premises as well as re-shelving the Selected Content when the Digitization is complete, (b) those related to Library employees and agents whose participation is contemplated by this Agreement, (c) network bandwidth and data storage required by Library to receive all of the Library Digital Copy (d) existing bandwidth available for use by Google to transfer Digitized files from Library facilities to Google's data centers to the extent that Library provides the Digitization facility, (e) Library space that may be available and acceptable to Google for the Digitization, (f) transportation of Selected Content to and from the Library facility in which the Selected Content is normally kept to and from the Digitization facility provided by the Library, (g) any conservation efforts that Library elects to undertake on the Selected Content prior to Digitizing, and (h) barcoding and associated data entry to barcode the Selected Content.

3.2 Costs borne by Google. In addition to costs mutually agreed upon by the Parties, Google shall be responsible for the following costs: (a) those related to Google employees whose participation is contemplated by this Agreement, (b) hardware and software required to digitize the Selected Content, (c) space required to digitize the Selected Content (to the extent not provided by Library), (d) transportation of Selected Content from the Library facility where the Selected Content is normally kept to a Google designated facility (to the extent not provided by Library), and (e) insurance against the risk of loss, damage, or destruction of materials entrusted to Google during transport and while the materials are in Google's custody.

3.3 Budgets. Notwithstanding the foregoing, Library and Google may jointly develop a budget for each Project Plan, pursuant to which the Parties can allocate the cost of researching and identifying the Selected Content, conducting conservation assessments, performing conservation work, and performing any required copyright research and clearances. Any such budget will take precedence over the provisions of Sections 3.1 and 3.2 above.

### 4. OWNERSHIP AND USE OF DIGITAL COPIES AND SERVICES

4.1 Copyright Status. The Parties understand that the Selected Content may include some works that will be treated hereunder as public domain works and some works that will be treated hereunder as in-copyright works. Both Google and Library agree and intend to perform this Agreement in compliance with copyright law. Each party will be responsible for the determination of how to treat a work for each jurisdiction at its sole discretion. Notwithstanding such determination, if either Party

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 Library 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 Library already owns such rights. As between Google and Library 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. 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 be in compliance with Dutch 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.

4.3.1 Failure to Provide Access. Google agrees that to the extent that it or its successors use a work included in the Digitized Selected Content that Google has determined to be in the public domain in connection with any Google Services, it shall provide a service at no cost to end users for access to the display of the full text of the Digital Copy of that public domain work. If Google fails to offer such a free service to end users with respect to public domain works (unless the Digital Copy of such work is excluded by Google for quality, technical, or legal reasons) for (a) any period of six (6) contiguous months or (b) 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 Sections 4.7 and 4.8 of this Agreement regarding use or distribution the Digital Copy of that public domain work for which Google failed to offer such services will terminate, provided Library 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.

4.4 Ownership and Control of Google Services. As between the Parties, the Google Services and all content therein (except for the Selected Content) are, and at all times will remain the exclusive property of Google or its partners; nothing in this Agreement implies any transfer to Library of any ownership interest in the Google Services. Library acknowledges and agrees that Google retains control of the Google Services, and that the design, layout, content, functions and features of the Google Services are at Google's discretion. Notwithstanding anything to the contrary in this Agreement, Google is not required to make any or all of the Google Digital Copy available through the Google Services.

4.5 Library Digital Copy. Google shall provide the Library with access to download one copy of the Library Digital Copy in a timeframe mutually agreed by the Parties. Unless otherwise agreed by the Parties in writing, the “**Library Digital Copy**” means Digital Copies of the Selected Content that is Digitized by Google. Google shall provide the Library Digital Copy via a network connection, or in any other manner mutually agreed upon by the Parties. Notwithstanding anything to the contrary herein, Google may withhold any works in dispute from the Library Digital Copy and the Library will delete any such works that were previously provided to Library as part of the Library Digital Copy.

4.6 Ownership and use of Library Digital Copy. Neither Library nor Google shall have any ownership or license rights to the Available Content that is digitized through this Agreement (i.e., to the materials underlying the digitization process), except where Library already has such rights. As between Google and Library and subject to the restrictions in this Section 4, Library shall own all rights, title, and interest to the Library Digital Copy. Without limiting the foregoing, Library shall not display or otherwise use the Library Digital Copy except as expressly permitted in this Agreement.

4.7 Use of Library Digital Copy on Library Website. Library shall have the right to use the Library Digital Copy, in whole or in part at Library’s sole discretion, as part of services offered on Library’s websites. Library shall have the right to provide access to (portions of) the Library Digital Copy to individuals in different formats (including print-on-demand) for research, scholarly, or academic purposes, all of which must be noncommercial (unless otherwise agreed upon in writing by Google). Library may not charge, receive payment or other consideration for the Library Digital Copy in connection with Library’s websites; provided that Library may charge to recover its printing and production costs. Library shall implement technological measures (e.g., through use of the robots.txt protocol) to restrict automated access to any portion of the Library Digital Copy or the portions of the Library website on which any portion of the Library Digital Copy is available. Library shall also prevent third parties from (a) downloading or otherwise obtaining any portion of the Library Digital Copy for commercial purposes, (b) redistributing any portions of the Library Digital Copy, or (c) automated and systematic downloading from its website image files from the Library Digital Copy. Library shall develop methods and systems for ensuring that substantial portions of the Library Digital Copy are not downloaded from the services offered on Library’s website or otherwise disseminated to the public at large. Library shall also implement security and handling procedures for the Library Digital Copy which procedures shall be mutually agreed by the Parties. Except as expressly allowed herein, Library will not share, provide, license, or sell the Library Digital Copy to any third party. All restrictions and requirements set forth in this Agreement regarding use or distribution (including without limitation those set forth in this Section 4.7) of the works contained in the Library Digital Copy shall terminate fifteen (15) years following the date that Google has made a Digital Copy of such work available to Library

4.8 Non-Profit Uses. Library may provide all or any portion of the Library Digital Copy that is, at the time of such provision, a Digital Copy of a public domain work to (a) academic institutions or research or public libraries, or (b) when requested by Library 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 Google Book Search (provided, however, that Google acknowledges and agrees that print-on-demand services are not substantially similar to any such services and Library may provide such portions of the Library Digital Copy to an entity set forth in this clause (b) solely for such entity to provide print-on-demand services for Library without Google’s consent), such agreement not to be unreasonably withheld or delayed (each entity in clauses (a) and (b) 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 Library providing any portion of the Library Digital Copy to such Additional Institution, the form of which Google will provide to Library. Such agreement will prohibit such Additional Institution from redistributing such portions of the Library 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 Library 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 Google Book Search, and require such Additional Institution (i) to use reasonable efforts to prevent third parties from bulk downloading substantial portions of such Digital Copies of such works, and (ii) 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.

4.9 Europeana. For clarity, nothing in this Agreement restricts Library from allowing Europeana to crawl the Standard Metadata of the Digital Copies provided to Library by Google.

## 5. ACCESS, AUTHORIZATION AND SUPPORT

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

5.2 Authorization. The Library 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 Library program manager are unreasonable, Google shall escalate the matter to the Library administrative contact; in which case Google, the Library program manager, and the administrative contact shall meet to resolve the issue.

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

## 6. CONFIDENTIALITY; PUBLICITY

6.1 Confidentiality "**Confidential Information**" is information disclosed by one party to the other party under this Agreement that is marked as confidential or would normally under the circumstances be considered confidential information of the disclosing party. Confidential Information does not include information that the recipient already knew, that becomes public through no fault of the recipient, that was independently developed by the recipient, or that was rightfully given to the recipient by another party. The recipient will not disclose the Confidential Information, except to affiliates, employees, and agents who need to know it and who have agreed in writing to keep it confidential. The recipient, its affiliates, employees and agents may use Confidential Information only to exercise rights and fulfill obligations under this agreement, while using reasonable care to protect it. The recipient may also disclose Confidential Information when required by law after giving reasonable notice to the discloser. Furthermore, the Agreement may be disclosed by either Party provided that the Parties cooperate and agree upon the timing and the manner of any such disclosure.

6.2 Publicity. Except as mutually agreed upon by the Parties, neither Party may make any press announcements regarding this Agreement or the relationship contemplated by this agreement without the other's prior written approval, which will not be unreasonably withheld or delayed. Library and Google, as practicable, will coordinate regarding the timing of any press release(s) and will mutually agree upon appropriate talking points.

## 7. **BRAND FEATURES**

7.1 **Ownership.** Each Party shall own all right, title and interest relating to its Brand Features. Some, but not all examples of Google Brand Features are located at: <http://www.google.com/permissions/trademarks.html> (or such other URLs Google may provide from time to time). Except to the limited extent expressly provided in this Agreement, neither Party grants, and the other Party shall not acquire, any right, title or interest (including, without limitation, any implied license) in or to any Brand Features of the first Party; and all rights not expressly granted herein are deemed withheld. All use by Google of Library Brand Features (including any goodwill associated therewith) shall inure to the benefit of Library and all use by Library 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 Library Brand Features.** Subject to the terms and conditions of this Agreement, Library grants to Google a limited, nonexclusive and nonsublicensable license during the Term to display those Library Brand Features expressly authorized for use in this Agreement, solely for the purposes expressly set forth herein. Google may include Library's Brand Features in presentations, marketing materials, and customer lists. Upon Library's request, Google will furnish Library with a sample of such usage. Notwithstanding anything to the contrary, Library may revoke the license granted herein to use Library's Brand Features upon providing Google with written notice thereof and a reasonable period of time to cease such usage.

7.3 **License to Google Brand Features.** Subject to the terms and conditions of this Agreement, Google grants to Library a limited, nonexclusive and nonsublicensable license during the Term to display those Google Brand Features expressly authorized for use in this Agreement, solely for the purposes expressly set forth herein. Library may include Google's Brand Features in presentations, marketing materials, and customer lists. Upon Google's request, Library will furnish Google with a sample of such usage. Notwithstanding anything to the contrary, Google may revoke the license granted herein to use Google's Brand Features upon providing Library with written notice thereof and a reasonable period of time to cease such usage.

## 8. **TERM AND TERMINATION**

8.1 **Term.** This Agreement is effective as of the Effective Date and continues in full force and effect for a period of six (6) years, unless earlier terminated as provided herein (the "**Initial Term**"). Upon the expiration of the Initial Term, this Agreement shall automatically renew for additional one year terms (each a "**Renewal Term**") unless either Party notifies the other Party to the contrary at least thirty (30) days before the end of either the Initial Term or a Renewal Term. The "**Term**" of this Agreement shall comprise the Initial Term and any Renewal Terms. The Parties acknowledge it is their intent to commence the Digitization activities contemplated under this Agreement by January 1, 2013

8.2 **Termination.** Either Party may suspend performance and/or terminate this Agreement: (i) if the other Party materially breaches any material term or condition of this Agreement and fails to cure such breach within thirty (30) days after receiving written notice thereof; (ii) if the other Party becomes insolvent or makes any assignment for the benefit of creditors or similar transfer evidencing insolvency, or suffers or permits the commencement of any form of insolvency or receivership proceeding, or has any petition under bankruptcy law filed against it, which petition is not dismissed within sixty (60) days of such filing, or has a trustee, administrator or receiver appointed for its business or assets or any part thereof. In addition, Google may immediately suspend or terminate this Agreement if Google reasonably determines that it is commercially impractical to continue performing its obligations in light of applicable laws.



8.3 Effect of Expiration or Termination. Within thirty (30) days after expiration or termination of this Agreement for any reason, each Party shall return to the other Party (or, at that Party's request, destroy) any Confidential Information of that Party that is in its possession. The following sections survive expiration or termination of this Agreement: 1, 4, 6, 8.3, and 9-12.

## 9. WARRANTIES AND DISCLAIMER

9.1 Mutual Warranties. Each Party represents and warrants to the other that (a) it has full power and authority to enter into this Agreement and to perform its obligations hereunder; and (b) this Agreement constitutes its valid and binding obligation, enforceable against it in accordance with its terms.

9.2 Disclaimer. THE WARRANTIES EXPLICITLY SET FORTH ABOVE ARE THE ONLY WARRANTIES PROVIDED HEREIN AND ARE IN LIEU OF ALL OTHER WARRANTIES BY THE PARTIES, EXPRESS OR IMPLIED, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, WITH RESPECT TO THE SUBJECT MATTER OF THIS AGREEMENT. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, GOOGLE SPECIFICALLY DISCLAIMS ANY WARRANTY REGARDING NON-INFRINGEMENT OF THIRD PARTY INTELLECTUAL PROPERTY.

## 10. INDEMNIFICATION.

10.1 By Google. Google shall defend Library against any third party lawsuit or proceeding brought against Library based on or otherwise arising out of a claim that Google's use or distribution of the Google Digital Copy constitutes a violation of that third party's copyrights. The foregoing indemnification excludes any third party claim that relates to Library's use or distribution of the Library Digital Copy. Google shall select counsel reasonably appropriate for such defense and shall pay for all costs incurred by such counsel. In addition, Google shall pay any damage awards or settlement costs that may be incurred. Library may participate in the defense with counsel of its own choice, at its own expense.

10.2 By Library. Library shall defend Google against any third party lawsuit or proceeding that relates to Library's use or distribution of the Library Digital Copy, including without limitation, any such use by a third party. Library shall select counsel reasonably appropriate for such defense and shall pay for all costs incurred by such counsel. In addition, Library shall pay any damage awards or settlement costs that may be incurred. Google may participate in the defense with counsel of its own choice, at its own expense.

10.3 General. Indemnification provided under Sections 10.1 and 10.2 shall be limited to (a) payment by the indemnifying party ("**Indemnitor**") of all damages and costs finally awarded for such claim, or (b) settlement costs approved in writing by the Indemnitor. The foregoing obligations shall exist only if the party seeking indemnification ("**Indemnitee**"): (a) promptly notifies the Indemnitor of such claim, (b) provides the Indemnitor with reasonable information, assistance and cooperation in defending the lawsuit or proceeding, and (c) gives the Indemnitor full control and sole authority over the defense and settlement of such claim. The Indemnitee may join in defense with counsel of its choice at its own expense. The Indemnitor shall only reimburse the Indemnitee for expenses incurred by the Indemnitee with the Indemnitor's prior written approval.

## 11. LIMITATION OF LIABILITY

EXCEPT FOR DAMAGES ARISING FROM BREACH OF SECTION 6 (CONFIDENTIALITY) OR INDEMNIFICATION PAYMENT OBLIGATIONS TO THIRD PARTIES UNDER SECTION 10, (A) IN NO EVENT WILL EITHER PARTY BE LIABLE TO THE OTHER FOR LOST PROFITS OR ANY FORM OF INDIRECT, SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES OF ANY CHARACTER FROM ANY CAUSES OF ACTION OF ANY KIND WITH RESPECT TO THIS AGREEMENT, WHETHER BASED ON BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), OR OTHERWISE, AND WHETHER OR NOT THE OTHER PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGE, AND (B) EACH PARTY'S LIABILITY UNDER THIS AGREEMENT SHALL BE LIMITED TO TEN THOUSAND DOLLARS (\$10,000). The Parties agree that (i) the mutual agreements made in this Section 11 reflect a reasonable allocation of risk, and (ii) that each party would not enter into the Agreement without these limitations on liability.

## 12. GENERAL PROVISIONS

12.1 No Obligation. Notwithstanding the foregoing, Google shall have no obligation to digitize any portion of the Available Content nor to use any portion of the Google Digital Copy as part of the Google Services. Library shall not be obligated to participate in any Project Plan to the extent Library does not have sufficient funds to perform its budgeted obligations under that Project Plan. Furthermore, notwithstanding anything in this Agreement to the contrary, if Google determines, at its sole discretion, not to digitize some or all Selected Content in connection with one or more specific Projects, whether due to cost issues, conservation concerns or otherwise, Google shall have no obligation to the Library with respect to digitizing or delivering the Library Digital Copy with respect to such Selected Content.

### 12.2 Miscellaneous.

(a) Notices. All notices must be in writing and addressed to the attention of the other party's Legal Department and primary point of contact. Notice will be deemed given (a) when verified by written receipt if sent by personal courier, overnight courier, or mail; (b) when verified by automated receipt or electronic logs if sent by facsimile or email.

(b) Assignment. Neither Party may assign or transfer any part of this agreement without the written consent of the other party, except to an affiliate but only if (a) the assignee agrees in writing to be bound by the terms of this agreement and (b) the assigning party remains liable for obligations under the agreement. Any other attempt to transfer or assign is void.

(c) Change of Control. Upon a change of control (for example, through a stock purchase or sale, merger, or other form of corporate transaction), (i) the party experiencing the change of control will provide written notice to the other party within 30 days after the change of control, and (ii) the other party may immediately terminate this agreement any time between the change of control and 30 days after it receives the written notice in subsection (i).

(d) Force Majeure. Neither Party will be liable for inadequate performance to the extent caused by a condition (for example, natural disaster, act of war or terrorism, riot, labor condition, governmental action, and Internet disturbance) that was beyond the party's reasonable control.

(e) No Waiver. Failure to enforce any provision will not constitute a waiver.

(f) Severability. If any provision is found unenforceable, it and any related provisions will be interpreted to best accomplish the unenforceable provision's essential purpose.

(g) No Agency. The parties are independent contractors, and this agreement does not create an agency, partnership or joint venture.

(h) No Third-Party Beneficiaries. There are no third-party beneficiaries to this Agreement.

(i) Equitable Relief. Nothing in this Agreement will limit either party's ability to seek equitable relief.

(j) Governing Law. This agreement is governed by California law, excluding California's choice of law rules. FOR ANY DISPUTE RELATING TO THIS AGREEMENT, THE PARTIES CONSENT TO PERSONAL JURISDICTION IN, AND THE EXCLUSIVE VENUE OF, THE COURTS IN SANTA CLARA COUNTY, CALIFORNIA.

(k) Amendments. Any amendment must be in writing and expressly state that it is amending this agreement.

(l) Counterparts. The parties may execute this agreement in counterparts, including facsimile, PDF, and other electronic copies, which taken together will constitute one instrument.

(m) Entire Agreement. This Agreement is the parties' entire agreement relating to its subject and supersedes any prior or contemporaneous agreements on that subject.

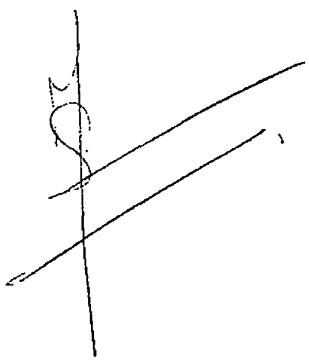
(n) Other Rights. This Agreement does not affect any right that either Party would have had, or shall have, independent of the Agreement under applicable law.

***[Rest of page left intentionally blank.]***

IN WITNESS WHEREOF, this Agreement has been executed by persons duly authorized as of the "Effective Date", which shall be the date written by Google below.

**Google Ireland Limited**

**Library: National Library of the Netherlands**

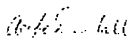


By: \_\_\_\_\_

Print Name:

Title:

Date:

  
**Aoife Dowdall**  
Contracts Administrator  
Google Ireland Limited

2010.06.

29

09:45:12

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By: \_\_\_\_\_

Print Name: **Bas Savenije**

Title: **Director General**

Date: **28 June 2010**

