

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 1st and 2nd Floors, Gordon House, Barrow Street, Dublin 4, Ireland ("Google"), and The British Library, with its principal offices at 96 Euston Road, London NW1 2DB ("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 and Google Group Companies provide 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 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 print collection as identified by Google and the Library. Without limiting the foregoing, "Available Content" also includes Library Digital Content.

1.2 "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.

1.3 "Confidential Information" means information disclosed by (or on behalf of) one Party to the other Party in connection with or in anticipation of this Agreement that is marked as confidential or, from its nature, content or the circumstances in which it is disclosed, might reasonably be supposed to be confidential. It 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 lawfully given to the recipient by a third party.

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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 and Google Group Companies' 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 or Google Group Company syndication partner sites.

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

1.8 "Group Company" means in relation to each of the Parties:

- (a) any parent company of that Party; and
- (b) any corporate body of which that Party directly or indirectly has control or which is directly or indirectly controlled by the same person or group of persons as that Party;

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

1.10 "Intellectual Property Rights" means all copyright or trade marks (registered or unregistered) throughout the world.

1.11 "Library Brand Features" means such trade names, trademarks, logos and other distinctive brand features of Library as expressly authorised by Library from time to time for use in accordance with clause 7.1.

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

1.13 "Library Digital Content" means content that Library already has in its possession in digitized form.

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

1.15 "Project Plan" means a written plan for implementing a Project. The Project Plan shall include the following: (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.

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

1.17 "Selected Content" means the portion of the Available Content that Google desires to Digitize or incorporate into the Google Services, both collectively and its component parts, including any and all other works of authorship included therein.

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1.18 "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.

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

TERMS

2. DIGITIZATION OPERATIONS.

2.1 Identifying and Collecting Content to be Digitized. The Parties shall in good faith identify Available Content that Google may elect to Digitize; provided that Library agrees to commit no less than 250,000 volumes to the Digitization efforts under this Agreement. The Parties shall cooperate in good faith and with diligence to develop a timetable for completing the Project Plan for Digitizing the Selected Content.

2.2 Collecting the Selected Content. Library shall be responsible for locating, pulling and moving the Selected Content to and from the designated location on the Library premises (or such other location as may be agreed between the Parties in the applicable Project Plan) 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.

2.3 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. 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.

2.4 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 £6,000.00 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

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government representatives (such as the local Ministry of Culture).

2.5 Digitizing the Selected Content. Subject to handling constraints or procedures specified in the Project Plan, Google shall in its sole discretion determine how best to Digitize the Selected Content. While the Selected Content is within Google's possession, Google shall use commercially reasonable efforts to minimize damage to the Selected Content, including handling the Selected Content in accordance with handling instructions set forth in the Project Form, if any.

2.6 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.

2.7 Provision of Catalog Records. Library shall provide Google with complete catalog records (to the extent Library owns or has adequate authorization to provide such records to Google), including all Standard Metadata fields for the complete Library collection within 30 days of Google's written request. Library 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 Services.

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, (h) creation of Standard Metadata, and (i) 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

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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 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.

4.3.1 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 are, and at all times will remain the exclusive property of Google or its Group Companies or partners of Google or its Group Companies; nothing in this Agreement implies any transfer to Library of any ownership interest in the Google Services. Library acknowledges and agrees that Google and its Group Companies retain control of the Google Services, and that the design, layout, content, functions and features of the Google Services are at Google's and its Group Companies' 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.

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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 website. Library may not charge, receive payment or other consideration for the Library Digital Copy in connection with Library's website. 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 use best endeavours to 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

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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. The recipient of any Confidential Information will not disclose that Confidential Information, except to Group Companies, employees, and/or professional advisors who need to know it and who have agreed in writing (or in the case of professional advisors are otherwise bound) to keep it confidential. The recipient will allow those people and entities to use such Confidential Information only to exercise rights and fulfill obligations under this Agreement, while using reasonable care to keep it confidential. The recipient may also disclose Confidential Information when required by law after giving reasonable notice to the discloser.

6.2 Publicity. Neither Party will issue any press release regarding this Agreement without the other's prior written approval.

7. LIBRARY BRAND FEATURES

7.1 Library grants to Google and its Group Companies a non-exclusive and non-sublicensable licence during the Term to include the Library Brand Features in presentations, marketing materials, and customer lists. At Library's request, Google will provide Library with a sample of such use of the Library Brand Features.

7.2 All goodwill arising from the use by Google or its Group Companies of the Library Brand Features shall belong to Library.

7.3 Library may revoke the licence granted under clause 7.1 above at any time on reasonable written notice.

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8. TERM AND TERMINATION

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

8.2 A Party may suspend performance and/or terminate this Agreement, with immediate effect, if the other Party:

(a) is in material breach of this Agreement where the breach is incapable of remedy; or

(b) is in material breach of this Agreement where the breach is capable of remedy and fails to remedy that breach within thirty days after receiving written notice of such breach.

8.3 A Party may suspend performance and/or terminate this Agreement with immediate effect, if in respect of the other Party any of the following events occur:

(a) it is, or is deemed for the purposes of any applicable law to be, unable to pay its debts as they fall due for payment;

(b) a petition is presented or documents filed with a court or any registrar or any resolution is passed for its winding-up, administration or dissolution or for the seeking of relief under any applicable bankruptcy, insolvency, company or similar law;

(c) any liquidator, trustee in bankruptcy, judicial custodian, compulsory manager, receiver, supervisor, administrative receiver, administrator or similar officer is appointed in respect of it or any of its assets;

(d) any event analogous to the events listed in (a) to (c) above takes place in respect of it in any jurisdiction.

8.4 Clause 8.3 above does not apply to a petition for winding-up presented by a creditor which is being contested in good faith and with due diligence and which is discharged or struck out within 15 UK business days.

8.5 Google may suspend performance and/or terminate this Agreement, with immediate effect if Google reasonably determines that it is commercially impractical to continue performing its obligations under this Agreement in light of applicable laws.

8.6 Upon the expiration or termination of this Agreement for any reason, if requested, each Party shall use its reasonable endeavours to promptly return to the other Party, or destroy and confirm in writing the destruction of, all Confidential Information disclosed to it by the other Party.

9. WARRANTIES AND DISCLAIMER

9.1 Each Party 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) it will use reasonable care and skill in complying with its obligations under this Agreement.

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9.2 No conditions, warranties or other terms apply to any goods or services supplied by either Party under this Agreement unless expressly set out in this Agreement. Subject to clause 11.1(b), no implied conditions, warranties or other terms apply (including any implied terms as to satisfactory quality, fitness for purpose or conformance with description).

10. INDEMNIFICATION.

10.1 By Google. Subject to clause 10.2, Google shall indemnify Library against: (i) all damages and costs finally awarded against Library in relation to a claim from a third party that Google's use or distribution of the Google Digital Copy infringe(s) any Intellectual Property Rights of such third party (a "Library IP Claim"), (ii) settlement costs approved in writing by Google in relation to such Library IP Claim, (iii) reasonable legal fees necessarily incurred by Library in relation to such Library IP Claim and (iv) reasonable costs necessarily incurred by Library in complying with clause 10.1(b) in each case provided that Library:

- (a) notifies Google of the Library IP Claim promptly after becoming aware of it;
- (b) provides Google with reasonable information, assistance and cooperation in responding to and, where applicable, defending such Library IP Claim; and
- (c) gives Google full control and sole authority over the defence and settlement of such Library IP Claim. Library may appoint its own supervising counsel of its choice at its own expense.

10.2 The indemnity set out in clause 10.1 will not apply to any third party claim that relates to Library's use or distribution of the Library Digital Copy.

10.3 By Library. Library shall indemnify Google against: (i) all damages and costs finally awarded against Google or any Google Group Company in relation to a claim from a third party that Library's use or distribution of the Library Digital Copy (including without limitation, any use or distribution of the Library Digital Copy by a third party authorized by Library) infringe(s) any Intellectual Property Rights of such third party (a "Google IP Claim"), (ii) settlement costs awarded against Google or any Google Group Company approved in writing by Library in relation to such Google IP Claim, (iii) reasonable legal fees necessarily incurred by Google or any Google Group Company in relation to such Google IP Claim and (iv) reasonable costs necessarily incurred by Google in complying with clause 10.3(b) provided that Google:

- (a) notifies Library of the Google IP Claim promptly after becoming aware of it;
- (b) provides Library with reasonable information, assistance and cooperation in responding to and, where applicable, defending such Google IP Claim; and
- (c) gives Library full control and sole authority over the defence and settlement of such Google IP Claim. Google may appoint its own supervising counsel of its choice at its own expense.

11. LIMITATION OF LIABILITY.

11.1 Nothing in this Agreement shall exclude or limit either party's liability for:

- (a) death or personal injury resulting from the negligence of either party or their servants, agents or employees;
- (b) fraud or fraudulent misrepresentation;

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- (c) misuse of Confidential Information;

11.2 Nothing in this Agreement shall exclude or limit either party's liability under clause 10 (Indemnification).

11.3 Subject to clauses 11.1 and 11.2, neither party shall be liable under this Agreement (whether in contract, tort or otherwise) for any special, indirect or consequential losses (whether or not such losses were within the contemplation of the parties at the date of this Agreement) suffered or incurred by the other party.

11.4 Subject to clauses 11.1 and 11.2 each party's total liability under or in connection with this Agreement (whether in contract, tort or otherwise) is limited to £125,000.

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 All notices of termination or breach must be in English, in writing, addressed to the other party's Legal Department and sent to Library's address set out at the head of this Agreement or to legal-notices@google.com (as applicable) or such other address as either party has notified the other in accordance with this clause. All notices shall be deemed to have been given on receipt as verified by written or automated receipt or electronic log (as applicable). All other notices must be in English, in writing, addressed to the other party's primary contact and sent to their then current postal address or email address.

12.3 Neither party may assign or transfer any of its rights or obligations under this Agreement without the prior written consent of the other, except for an assignment or transfer to any Group Company where the assignee or transferee has agreed in writing to be bound by the terms of this Agreement and the assignor or transferor has notified the other party of such assignment.

12.4 Either party may sub-contract its obligations under this Agreement, in whole or in part, without the prior written consent of the other, provided that the sub-contracting party remains fully liable for all such sub-contracted obligations and accepts full liability as between the parties for the actions and/or inactions of its sub-contractors as if such actions and/or inactions were its own.

12.5 Except as expressly stated otherwise, nothing in this Agreement shall create or confer any rights or other benefits in favour of any person other than the Parties to this Agreement

12.6 Except as expressly stated otherwise, nothing in this Agreement shall create an agency, partnership or joint venture of any kind between the Parties.

12.7 Neither Party shall be liable for failure to perform or delay in performing any obligation under this Agreement if the failure or delay is caused by any circumstances beyond its reasonable control.



12.8 Failure or delay in exercising any right or remedy under this Agreement shall not constitute a waiver of such (or any other) right or remedy.

12.9 The invalidity, illegality or unenforceability of any term (or part of a term) of this Agreement shall not affect the continuation in force of the remainder of the term (if any) and this Agreement.

12.10 Subject to clause 11.1(b), this Agreement sets out all terms agreed between the Parties and supersedes all previous agreements between the Parties relating to its subject matter. Each Party acknowledges that, in entering into this Agreement it has not relied on, and shall have no right or remedy in respect of, any statement, representation or warranty (whether made negligently or innocently) not expressly set out in this Agreement.

12.11 This Agreement is governed by English law and the Parties submit to the exclusive jurisdiction of the English courts in relation to any dispute (contractual or non-contractual) concerning this Agreement.

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

By: _____

Print Name:

Title:

Date:

Library:

By: LAB 5th

Print Name: LYNNETTE BRINDLEY

Title: CEO

Date: 30 MARCH 2011

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