

COOPERATIVE AGREEMENT

This COOPERATIVE AGREEMENT (the "Agreement") is entered into by and between Google Inc., a Delaware corporation with offices at 1600 Amphitheatre Parkway, Mountain View, California 94043 ("Google"), and the Regents of the University of Michigan/University Library, Ann Arbor Campus, with its principal offices at 818 Hatcher South, Ann Arbor, MI 48109-1205 ("U of M"), and is effective on the date of the execution of this Agreement (the "Effective Date"). Google and U of M herein are sometimes referred to hereinafter individually as a "Party" and collectively as the "Parties".

Background

1. U of M is a leading academic institution and has amassed an enormous collection of works in various media.
2. Google is a leader in providing the public with access to billions of web pages through a search engine that processes requests in less than half a second, and responds to more than 150 million search queries per day.
3. Google and the U of M share a mutual interest in making information available to the public. The Parties believe that working collaboratively will create mutually beneficial knowledge about standards and automated methods for organizing and indexing digitized works and to refine standard requirements for repositories of digital content.
4. Accordingly, the Parties desire to enter a nonexclusive agreement whereby Google will digitize works from the U of M collection to include them in Google's search services, and to make them available to the University of Michigan for preservation, archival or other purposes of its choosing (e.g., inclusion in Michigan's search services).

Definitions

1. **DEFINITIONS.** Capitalized terms will have the meanings set forth below unless defined elsewhere in the Agreement.

1.1 "Available Content" means the U of M print book and journal Collection, but excludes Special Collections materials. Available Content also includes U of M Digital Content in an amount corresponding to the amount of digital content that Google provides to U of M via the U of M Digital Copy.

1.2 "Brand Features" means trade names, trademarks, service marks, logos, and other distinctive brand features, of which Google's Brand Features include but are not limited to Google, the Google logo, other marks that incorporate the word "GOOGLE," PAGERANK, and of which U of M's brand features include but are not limited to the University of Michigan name, University of Michigan identification marks, and the University Library name and logo.

1.3 "Digitize" means to convert content from a tangible, analog form into a digital representation of that content.

1.4 "Distribution Price" means an amount equal to or greater than a per-page amount multiplied by the number of Digitized pages involved. The per-page amount shall be equal to the amount charged by Google for distributing to the general public the same Digitized pages ("Google Amount"). If there exists no Google Amount for the same Digitized pages, the per-page amount shall be the amount charged by Google for distributing to the general public similar pages digitized pursuant to the same Project Plan ("Similar Google Amount"). To the extent no Google Amount or Similar Google Amount exists, the per-page amount shall be an amount mutually agreed upon in good faith by Google and U of M.

1.5 "End User" means a person or entity that uses the Services.

1.6 "Enterprise Search Services" means the Search Services provided by Google to companies for use by employees of those companies and others.

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

1.8 "Google Search Services" means the Search Services provided by Google directly through the web sites located at www.google.com and corresponding international and other domains (e.g., www.google.de, www.google.info, etc).

1.9 "U of M Collection". means materials identified in section 1.2 above.

1.10 "U of M Digital Copy" means a digital copy transferred by Google to U of M of the Available Content that is Digitized by Google.

1.11 "Partner Search Services" means the Search Services provided by Google to an End User via a partner site that has entered into an agreement with Google to provide some or all of the Search Services through its own website.

1.12 "Pilot Project" means the onsite work at the University of Michigan, beginning from the Effective Date of this contract and ending on April 15, 2005.

1.13 "Project" means a project for Digitizing certain Selected Content.

1.14 "Initial Term" means the first six years of the Project, including the Pilot Project period.

1.15 "Project Form" means a form, pursuant to this Agreement, that contains the details of a Project Plan, similar to the sample attached as Exhibit A.

1.16 "Project Plan" means a plan for implementing a Project. The Project Plan shall include the following: (1) instructions by U of M regarding how the Selected Content is to be collected and returned by Google; (2) if required, the amount of time available to U of M for performing conservation efforts; (3) the amount of time available to Google from receipt of the Selected Content until it is due to be returned to U of M; and (4) a budget for the Project.

1.17 "Requested Portion" means a portion of the U of M Digital Copy requested by a third party.

1.18 "Search Services" means the search services provided by Google to an End User pursuant to which the End User can view, inter alia, content consisting of or derived from the Google Digital Copy (subject to the restrictions set forth in this Agreement) in response to search or browsing requests.

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

1.20 "Services" means collectively the Google Search Services, the Partner Search Services, and the Enterprise Search Services.

1.21 "U of M Digital Content" means content that U of M already has in its possession in Digitized form, as of the Effective Date.

1.22 "Website," "World Wide Web," "the Internet," and other technical terms in this Agreement and project plans refers to the current common usage of such terms and successor facilities of equal or greater capability.

2. RESPONSIBILITIES

2.1 Identifying Content to be Digitized. The parties shall cooperate to identify Available Content to be Digitized. Upon agreeing to such Selected Content, the Parties shall cooperate in good faith and with diligence to develop a timetable for completing the Project Plan for the Selected Content. The Parties shall then memorialize the Project Plan in a Project Form.

2.2 Collecting the Selected Content. Upon commencement of a Project, U of M shall be responsible for performing any conservation efforts that U of M determines are required for the associated Selected Content. On a rolling basis, as this conservation effort is completed, U of M 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.

2.3 Locating the Digitization Operation. For each Project, U of M shall attempt in good faith to provide Google with adequate physical space to Digitize the Selected Content. If U of M is unable to provide such space, U of M shall cooperate with Google to identify and obtain space that Google can use at reasonable rates. The location of any such physical spaces shall be mutually agreed upon by the parties.

2.3.1 Transporting and Storing the Selected Content. On a Project-specific and material-specific basis, U of M may authorize Google to remove some or all of the Selected Content from U of M premises to perform digitization in facilities controlled by Google. All risk of loss, damage, or destruction of the materials will lie with Google from the time Google accepts possession of the materials until such time as they are returned to U of M on U of M premises. Google will carry reasonably sufficient insurance against the risk of loss, damage or destruction of materials entrusted to Google's custody. In general, for all materials, 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. Because the value of the materials and the environmental conditions necessary for transporting them and maintaining them in good condition will vary based on the particular materials involved, U of M will inform Google of the requirements for transport and storage of particular materials on a Project-specific basis. For insurance purposes, U of M (relying on guidelines from its Risk Management office) will provide Google with a good faith estimate of the value of any materials approved for removal from U of M premises, and will provide Google with an itemized list of any such materials.

2.3.2 On-Site (i.e., not transported) Conversion of Selected Content. The terms in 2.3.1 regarding insurance, accessibility to print materials for U of M users, and precautions taken to ensure protection of the materials shall also apply to materials digitized on-site in the Buhr storage facility.

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 at its sole discretion determine how best to Digitize the Selected Content, so long as the resulting digital files meet benchmarking guidelines agreed to by Google and U of M, and the U of M Digital Copy can be provided to U of M in a format agreed to by Google and U of M. U of M will engage in ongoing review (through sampling) of the resulting digital files, and shall inform Google of files that do not meet benchmarking guidelines or do not comply with the agreed-upon format. Should U of M encounter a persistent failure by Google to meet these guidelines or supply the agreed-upon format, U of M may stop new work until this failure can be rectified. Any restrictions on Google's discretion shall be specified on a project-by-project basis via the corresponding Project Form(s) or by amendment to this Agreement.

2.5 U of M Digital Copy. Google agrees to provide to U of M a copy of all Digitized Selected Content that has been "Successfully Processed" within thirty (30) days after the Selected Content is Digitized, or in a timeframe mutually agreed by the Parties. Digitized Selected Content is "Successfully Processed" when Google determines it has satisfactorily gone through all stages of Google's digitization, post processing and quality assurance procedures (not to exceed thirty days for material received by Google, unless otherwise agreed to by the parties). Within thirty (30) days after the Selected Content is Digitized, or in a timeframe mutually agreed by the Parties, Google shall provide the U of M Digital Copy

to the U of M. Unless otherwise agreed by the Parties in writing, the U of M Digital Copy will consist of a set of image and OCR files and associated information indicating at a minimum (1) bibliographic information consisting of the title and author of each Digitized work, (2) which image files correspond to that Digitized work, and (3) the logical order of those image files. Google shall provide the U of M Digital Copy via a network connection, or in any other manner mutually agreed upon by the Parties.

2.5.1 Google may delay transferring Digitized Selected Content to U of M if it decides not to use that content due to a dispute with a third-party. In this case, Google must inform U of M, in writing, of the details of the dispute and the specific content to be delayed. Google may delay transfer of this content until such time as Google makes any use (including indexing) of that Digitized content (or the same content acquired from another source, if that Digitized content is in the public domain or out-of-print) beyond storage in a dark archive.

2.5.2 Within 3 years of the time Google has transferred Digitized Selected Content to U of M, if Google decides not to use that content due to a dispute with a third-party, U of M will destroy that content (so long as it is in print and protected by copyright) from the U of M Digital Copy. In this case, Google must inform U of M in writing of the details of the dispute and the specific content to be destroyed. If, at any time, Google subsequently makes any use (including indexing) of that Digitized content (or the same content acquired from another source, if that Digitized content is in the public domain or out-of-print) beyond storage in a dark archive, Google will retransfer that Digitized Content to U of M.

2.6 Returning the Selected Content. Once completed with the Digitizing process, Google will be responsible for returning the Selected Content to the source from which Google obtained it and in the like manner in which it was collected, within three (3) weeks unless otherwise specified in the Project Form or otherwise agreed upon by the parties. If Google reasonably determines that it will require longer to Digitize some or all of the Selected Content than the time frame set forth in the Project Form, the Parties will discuss in good faith whether a time extension is feasible. If the Parties agree upon an extension, they shall record such agreement as an amendment to the Project Form. If the Parties can not agree upon an extension, Google shall return the Selected Content within the time frames set forth in the Project Form.

2.7 Responsibility for damage to the Selected Content. While certain Selected Content is within Google's possession, Google shall make 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. If Google, due to its negligence, damages certain Selected Content, Google shall, at its own cost, have the damaged Selected Content restored to the condition in which Google received it. Restoration of all materials must be performed by or under the management of U of M Conservation Services.

3. COSTS

3.1 Costs borne by U of M. U of M shall bear the following costs: U of M employees (other than staff scanning operators and staff employed to pull and return materials to the shelves, including reshelving) whose participation is contemplated by this Agreement (including all cost of U of M employees required to provide Selected Content to Google as well as project management costs incurred by U of M), network bandwidth and data storage required by U of M to receive some or all of the U of M Digital Copy or existing bandwidth available for use by Google to transfer Digitized files from U of M facilities to Google's data centers and U of M space that may be available to Google.

3.2 Costs borne by Google. Google shall bear the following costs: Google employees or agents whose participation is contemplated by this Agreement (including all cost of Google employees required between receipt/collection of the Selected Content from U of M and return of the Selected Content to U of M), hardware and software required to Digitize the Selected Content, space required to Digitize the Selected Content (to the extent not provided by U of M), transportation of Selected Content from the U of M facility in which the Selected Content is normally kept (if required), and resolving copyright issues associated with Google's use of the Google Digital Copy.

3.3 Budgets. Notwithstanding the foregoing, U of M 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 shall take precedence over the general obligations set forth above in sections 3.1 and 3.2.

4. OWNERSHIP AND USE OF DIGITAL COPIES AND SERVICES

4.1 Copyright Law. Both Google and U of M agree and intend to perform this Agreement pursuant to copyright law. If at any time, either party becomes aware of copyright infringement under this agreement, that party shall inform the other as quickly as reasonably possible.

4.2 Copyright Status. As Selected Content is provided by U of M to Google for Digitizing, U of M shall to the best of its knowledge notify Google which portions of the Selected Content are in the public domain and which portions may be subject to copyright. Notwithstanding the foregoing, Google shall be responsible for ensuring that Google's digitization and its use of the Google Digital Copy is authorized by the relevant copyright holders or by law. If either party reasonably determines that a portion of the Selected Content that was previously thought to be in the public domain is actually subject to copyright, that party shall promptly notify the other party in a writing that particularly identifies the portion(s) and provides an explanation for why the portion(s) are believed to be subject to copyright.

4.3 Searching Free to the Public: Google agrees that to the extent that it or its successors make Digitized Available Content searchable via the Internet, it shall provide an interface for both searching and a display of search results that shall have no direct cost to end users. Violations of this subsection, 4.3, not cured within thirty days of notification by U of M shall terminate U of M's obligations under section 4.4.

4.4 Ownership and use of U of M Digital Copy. Neither U of M 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 UM already has such rights. As between Google and U of M and subject to the provisions in this section 4, U of M shall own all rights, title, and interest to the U of M Digital Copy.

4.4.1 Use of U of M Digital Copy on U of M Website. U of M shall have the right to use the U of M Digital Copy, in whole or in part at U of M's sole discretion, as part of services offered on U of M's website. U of M shall implement technological measures (e.g., through use of the robots.txt protocol) to restrict automated access to any portion of the U of M Digital Copy or the portions of the U of M website on which any portion of the U of M Digital Copy is available. U of M shall also make reasonable efforts (including but not limited to restrictions placed in Terms of Use for the U of M website) to prevent third parties from (a) downloading or otherwise obtaining any portion of the U of M Digital Copy for commercial purposes, (b) redistributing any portions of the U of M Digital Copy, or (c) automated and systematic downloading from its website image files from the U of M Digital Copy. U of M shall restrict access to the U of M Digital Copy to those persons having a need to access such materials and shall also cooperate in good faith with Google to mutually develop methods and systems for ensuring that the substantial portions of the U of M Digital Copy are not downloaded from the services offered on U of M's website or otherwise disseminated to the public at large.

4.4.2 Use of U of M Digital Copy in Cooperative Web Services. Subject to the restrictions set forth in this section, U of M shall have the right to use the U of M Digital Copy, in whole or in part at U of M's sole discretion, as part of services offered in cooperation with partner research libraries such as the institutions in the Digital Library Federation. Before making any such distribution, U of M shall enter into a written agreement with the partner research library and shall provide a copy of such agreement to Google, which agreement shall: (a) contain limitations on the partner research library's use of the materials that correspond to and are at least as restrictive as the limitations placed on U of M's use of the U of M Digital Copy in section 4.4.1; and (b) shall expressly name Google as a third party beneficiary of that agreement, including the ability for Google to enforce the restrictions against the partner research library.

4.5 Ownership and use of Google Digital Copy. Neither U of M 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 UM already owns such rights. As between Google and U of M and subject to the provisions in this section 4, Google shall own all rights, title, and interest to the Google Digital Copy.