

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
The Authors Guild, Inc., Association of American
Publishers, Inc., et al.,

Plaintiffs,

v.

Google Inc.,

Defendant.
-----X

Case No. 05 CV 8136-[JESDC](#)

[AMENDED](#) SETTLEMENT
AGREEMENT

AWAITING
COURT
APPROVAL

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AMENDED SETTLEMENT AGREEMENT

WHEREAS, Plaintiffs, individually and on behalf of the Amended Settlement Class, have alleged that Defendant Google Inc. has violated the copyright laws of the United States; and

WHEREAS, Google believes that its conduct was lawful at all times in all respects, and has not admitted any of the allegations of copyright infringement in the complaint or amended complaints filed by Plaintiffs in the Action; and

WHEREAS, certain libraries have granted Google access to their collections with the intention of providing great benefits to researchers and the reading public, and those libraries believe that their conduct was lawful at all times and in all respects; and

WHEREAS, Class Counsel have conducted a thorough investigation into the facts and issues raised in the Action; and

WHEREAS, Class Counsel, while continuing to believe that the claims asserted in the Action have substantial merit, have also weighed the benefits of a possible settlement against the possible outcomes, risks, and delay of continued litigation, including the likelihood of appeals from rulings on the merits in favor of either Plaintiffs or Google; and

WHEREAS, Plaintiffs and Google, in consideration of all of the circumstances and after prolonged and adversarial arms' length settlement negotiations, wish to settle and finally resolve all actual and potential claims pertaining to the matters asserted in the Action; and

WHEREAS, Plaintiffs and Class Counsel conclude that this Amended Settlement Agreement is fair, reasonable, adequate and in the best interests of the Amended Settlement Class in light of the risks inherent in prosecuting the Action and the benefits obtained under this Amended Settlement Agreement; and

WHEREAS, Plaintiffs and Google further conclude that the Settlement will be of great benefit to copyright owners (including authors and publishers) and to libraries, researchers, and the reading public; and

WHEREAS, Google has agreed to enter into this [Amended](#) Settlement Agreement to conclude finally and definitively all claims brought in the Action and to reduce further expense, inconvenience, and the distraction of burdensome and protracted litigation, notwithstanding that Google does not admit any wrongdoing alleged in the Action; and

WHEREAS, Plaintiffs and Google agree to seek certification of the [Amended](#) Settlement Class only for settlement purposes.

NOW, THEREFORE, it is agreed by and among the undersigned that the claims of Plaintiffs in the Action shall be settled with Google, subject to approval of the Court as required by Rule 23(e) of the Federal Rules of Civil Procedure, on the following terms and conditions:

ARTICLE I — DEFINITIONS

As used in this [Amended](#) Settlement Agreement and in other agreements that refer to the definitions in this [Amended](#) Settlement Agreement, the following terms are defined as set forth below. Additional terms are defined elsewhere in this [Amended](#) Settlement Agreement.

1.1 “[Access Uses](#)” means uses that may display Protected material from a Book or Insert to users of Google Products and Services in addition to material that is allowed to be displayed in Snippet Display, Front Matter Display or Preview Uses. Institutional Subscriptions, Consumer Purchase and the Public Access Service are the only Access Uses authorized as of the Effective Date.

1.2 “[Accommodated Service](#)” has the meaning set forth in Section 7.2(g) (Accommodated Service).

1.3 “[Action](#)” means The Authors Guild, Inc., et al. v. Google Inc., Case No. 05 CV 8136 (S.D.N.Y.).

1.4 “[Additional Contemplated Rightsholder Services Provider](#)” has the meaning set forth in Section 3.7 (Contemplated Rightsholder Services).

1.5 “Adjunct Product” has the meaning set forth in Section 4.1(a)(ix) (Adjunct Products).

1.6 “Administrative Costs” means the reasonable costs of (a) preparing and providing notice ~~to the Settlement Class~~ pursuant to ~~the Article XII~~ (Class Notice Program) or as otherwise ordered by the Court; (b) setting up and operating the Settlement Administration Program and the Registry; and (c) any escrow fees paid to the Depository Bank and payments to an independent third party for services and expenses in connection with administration of the Settlement Fund, including the preparation and mailing of tax forms and tax returns.

1.7 “Advertising Uses” has the meaning set forth in Section 3.14 (Advertising Uses).

1.8 “Affiliate” of an entity means any legally recognizable entity that directly or indirectly Controls, is Controlled by, or is under common Control with such first entity, where “Control” means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies, whether through the ownership of voting shares, by contract, or otherwise, for so long as such Control exists.

1.9 “Affiliate Program” has the meaning set forth in Section 4.5(b)(v) (Sale of Consumer Purchases through Affiliate Programs and Resellers).

1.10 “Alternative Accommodated Service Provider” has the meaning set forth in Section 7.2(g)(ii)(2) (Alternative Accommodated Service Provider).

1.11 “Amended Settlement Agreement” means this agreement and all of its attachments, as each may be amended from time to time pursuant to Section 17.27 (Amendments).

1.12 “Amended Settlement Agreement Date” means the date set forth at the end of this Amended Settlement Agreement.

1.13 “Amended Settlement Class” means all Persons that, as of January 5, 2009, have a Copyright Interest in one or more Books or Inserts. All Amended Settlement Class members are either members of the Author Sub-Class or the Publisher Sub-Class, or both. Excluded from the Amended Settlement Class are Google, the members of

Google's Board of Directors and its executive officers, and the departments, agencies and instrumentalities of the United States Government, and the Court.

1.14 “Arbitrator” has the meaning set forth in Section 9.3(a) (AAA Arbitration).

~~1.12~~1.15 “Associational Plaintiffs” means The Authors Guild, Inc. and the Association of American Publishers, Inc.

~~1.13~~1.16 “Audited Party” has the meaning set forth in Section 8.2(c)(i) (Audited Parties).

~~1.14~~1.17 “Author Sub-Class” means members of the Amended Settlement Class who are authors, and their heirs, successors and assigns, and any other members of the Amended Settlement Class who are not members of the Publisher Sub-Class.

~~1.15~~1.18 “Author-Publisher Procedures” means the document attached hereto as Attachment A (Procedures Governing Author Sub-Class and Publisher Sub-Class Under the Amended Settlement Agreement).

~~1.16~~1.19 “Book” means a written or printed work that ~~(a) if a “United States work,” as defined in 17 U.S.C. § 101, has been registered with the United States Copyright Office as of the Notice Commencement Date, (b) on or before the Notice Commencement Date, was~~ as of January 5, 2009 (a) had been published or distributed to the public or made available for public access as a set of written or printed sheets of paper bound together in hard copy form under the authorization of the work’s U.S. copyright owner, ~~and (c) as of the Notice Commencement Date, is~~ (b) was subject to a Copyright Interest, ~~and (c) (1) if a “United States work,” as defined in 17 U.S.C. § 101, was registered with the United States Copyright Office, and (2) if not a United States work, either (x) was registered with the United States Copyright Office, or (y) had a place of publication in Canada, the United Kingdom or Australia, as evidenced by information printed in or on a hard copy of the work. Relevant information printed in or on a hard copy of the work may include, for example, a statement that the book was “Published in [Canada] or [the UK] or [Australia],” or the location or address of the publisher in one of those three countries.~~ The term “Book” does not include: (i) Periodicals, (ii) personal papers (e.g., unpublished diaries or bundles of notes or letters), (iii) written or printed works in which more than ~~thirty-five~~twenty percent (~~35~~20%) of the pages of text (not including tables of contents, indices, blank pages, title pages, copyright pages and verso pages) contain more than ~~fifty~~twenty percent (~~50~~20%) music notation ~~and, with or without~~ lyrics interspersed, ~~if any~~ (for purpose of this calculation, “music notation”

means notes on a staff or tablature), (iv) written or printed works in, or as they become in, the public domain under the Copyright Act in the United States, ~~or~~ (v) Government Works, or (vi) calendars. References in this Settlement Agreement to a Book include all Inserts contained in the Book, except where this Settlement Agreement provides otherwise.

~~1.17~~1.20 “Book Annotation” means user-generated text that is both (a) associated with the content on the page of a Book and (b) displayed on or over any web page on which a page of a Book appears.

~~1.18~~1.21 “Books Database” has the meaning set forth in Section 3.1(b)(ii) (Books Database).

~~1.19~~1.22 “Business Day” means any day other than Saturday, Sunday, New Year’s Day, the observance of the Birthday of Martin Luther King, Jr., Presidents’ Day, Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans Day, Thanksgiving Day, Christmas Day and any other day appointed as a federal or New York state holiday.

~~1.20~~1.23 “Cash Payment” has the meaning set forth in Section 5.1(a) (Cash Payments).

~~1.21~~1.24 “Charter” means the certificate of incorporation and bylaws of the Registry.

~~1.22~~1.25 “Claim” has the meaning set forth in Section 10.1(a) (Claim).

~~1.23~~1.26 “Claim Form” has the meaning set forth in Section 13.1 (Registration and Completing Claims).

~~1.24~~1.27 “Claimant” has the meaning set forth in Section 13.1 (Registration and Completing Claims).

~~1.25~~1.28 “Class Counsel” means the firms of Boni & Zack LLC, Milberg LLP, and Kohn, Swift & Graf, PC, as counsel for the Author Sub-Class, and the firm of Debevoise & Plimpton LLP, as counsel for the Publisher Sub-Class.

~~1.26~~1.29 “Class Notice Program” means the class notice program described in Article XII (Class Notice Program).

~~1.27~~1.30 “Collection” means the Books held by a Fully Participating Library or a Cooperating Library that have been Digitized or are targeted for Digitization pursuant to a Digitization Agreement between Google and such Fully Participating Library or such Cooperating Library, which Books may be some or all of such Fully Participating Library’s or such Cooperating Library’s holdings.

~~1.28~~1.31 “Commercially Available” means, with respect to a Book, that the Rightsholder of such Book, or such Rightsholder’s designated agent, is, at the time in question, offering the Book (other than as derived from a Library Scan) for sale new, from sellers anywhere in the world, through one or more then-customary channels of trade ~~into purchasers within~~ the United States, Canada, the United Kingdom or Australia.

~~1.29~~1.32 “Competent Authority” means an individual who is employed in one of the professional occupations that is qualified to diagnose Print Disabilities under the federal law and regulations that govern the National Library Service for the Blind and Physically Handicapped or is licensed or otherwise certified or authorized under applicable state law or regulations to diagnose the existence of a Print Disability pursuant to standard and generally accepted methods of clinical evaluation.

~~1.30~~1.33 “Confidential Information” has the meaning set forth in Section 15.1 (Confidential Information).

~~1.31~~1.34 “Consumer Price Index” has the meaning set forth in Section 8.2(c)(iii) (Adjustment to Audit Costs).

~~1.32~~1.35 “Consumer Purchase” and “Consumer Purchases” mean a service provided by Google that allows a user, for a fee, to access and view Online the full contents of a Display Book, as specified in and subject to Section 4.2 (Consumer Purchases).

~~1.33~~1.36 “Consumer Subscription” has the meaning set forth in Section 4.7(~~c~~) (Consumer Subscription Models).

~~1.34~~1.37 “Contemplated Rightsholder Services” means Consumer Purchases and Institutional Subscriptions.

~~1.35~~1.38 “Continuous Preview” has the meaning set forth in Section 4.3(c)(iii) (Continuous Preview).

~~1.36~~1.39 “Cooperating Library” means any library physically located in the United States and organized as or within a not-for-profit or government entity that (a) has signed or signs a Digitization Agreement with Google not later than two (2) years after the Effective Date (unless an extension of such time is approved by the Registry), (b) provides Books to Google for Digitization but agrees that Google will not provide to such library a Digital Copy of such Books unless otherwise authorized by the Rightsholder, (c) agrees to delete or permanently render unusable promptly any Digital Copies of Books previously provided by Google to such library or that such library receives from Google in the future, and (d) enters into a Library-Registry (Cooperating) Agreement.

~~1.37~~1.40 “Copyright Act” means the Copyright Act of 1976, as amended, 17 U.S.C. § 101 *et seq.*

~~1.38~~1.41 “Copyright Interest” means (a) ownership (including joint ownership) of a United States copyright interest or (b) an exclusive license of a United States copyright interest, in each case only if and to the extent the interest is implicated by a use that is authorized or for which compensation could be payable under this Amended Settlement Agreement.

~~1.39~~1.42 “Coupling Requirement” has the meaning set forth in Section 3.5(b)(iii) (Coupling Requirement).

~~1.40~~1.43 “Court” means the U.S. District Court for the Southern District of New York.

~~1.41~~1.44 “Creative Commons License” means a Creative Commons license or similar contractual permission for use that is published by the Creative Commons Corporation at <http://www.creativecommons.org> (or successor website).

1.45 “Decision” has the meaning set forth in Section 9.7 (Decision).

~~1.42~~1.46 “Depository Bank” means Citizens Bank.

~~1.43~~1.47 “Designated Representative” means a Person designated from time to time by the Fully Participating Libraries and the Cooperating Libraries pursuant to Attachment 1 to Exhibit C of the Library-Registry (Fully Participating) Agreement and Attachment 1 to Exhibit C of the Library-Registry (Cooperating) Agreement (Selection of Designated Representative and Security Representatives and Establishment of Governance Rules) to convey to Google and/or the Registry, as applicable, instructions, decisions and positions of the Fully Participating Libraries and the Cooperating Libraries, or only the Fully Participating Libraries, as the case may be, on matters to which Section 7.4(a) (Designated Representative and Security Representatives) of this Amended Settlement Agreement refers.

~~1.44~~1.48 “Digital Copy” of a Book or Insert means a set (or portion thereof) of electronic files created by or for Google or provided to Google in connection with GBS, including the image files of the individual pages of the Book or Insert along with text (currently generated from OCR technology), coordinate information for the text, information about the ordering of pages along with page-level metadata such as page number and other similar information, regardless of the means or technology used to prepare such copy, whether now known or hereafter developed, and any digital copy of such set of electronic files.

~~1.45~~1.49 “Digitization Agreement” means an agreement between Google and a library to Digitize works held by that library, as such agreement may be amended from time to time.

~~1.46~~1.50 “Digitize” means to convert a work from a hard copy (not including microform) format into an electronic representation, using any means and any technology, whether now known or hereafter developed, including making necessary technical adaptations to achieve such conversion (but not including adapting or altering the content of such written work). “Digitization,” “Digitizing” and “Digitized” have corresponding meanings.

~~1.47~~1.51 “Display Books” means Books for which one or more Display Uses are authorized pursuant to this Amended Settlement Agreement.

~~1.48~~1.52 “Display Uses” means the following: Snippet Display, Front Matter Display, Access Uses and Preview Uses.

~~1.49~~1.53 “Effective Date” means the first date upon which each and all of the following events shall have occurred: (a) the Final Approval Date has occurred; (b) the Court has entered the Final Judgment and Order of Dismissal with prejudice as to Google against Plaintiffs and all Rightsholders; and (c) the time for any appeal from the Final Judgment and Order of Dismissal in the Action and the Court’s approval of this Amended Settlement Agreement has expired, or, if appealed, the Final Judgment and Order of Dismissal has been affirmed in its entirety by the court of last resort to which any such appeal has been taken and such affirmance has become no longer subject to further appeal or review. Neither Rule 60 of the Federal Rules of Civil Procedure nor the All Writs Act, 28 U.S.C. § 1651, shall be taken into consideration in calculating the above-stated time periods.

~~1.50~~1.54 “Entire Insert” means an Insert that is an entire work, including forewords, afterwords, introductions, entire works included in anthologies, and entire poems, short stories, song lyrics or essays.

~~1.51~~1.55 “Expression” means either (a) Protected expression, which, in the case of text, means no fewer than three (3) contiguous words, or (b) any contiguous set of ten (10) or more words from a Book or Insert, not counting expression that is not Protected.

~~1.52~~1.56 “Fiction” has the meaning set forth in Section 4.3(b)(i)(1) (Standard Preview).

~~1.53~~1.57 “Final Approval Date” means the date the Court has certified the Amended Settlement Class and approved this Amended Settlement Agreement in all respects, pursuant to Rule 23 of the Federal Rules of Civil Procedure.

~~1.54~~1.58 “Final Fairness Hearing” has the meaning set forth in Article XIV (Final Fairness Hearing).

~~1.55~~1.59 “Final Settlement Deposit” has the meaning set forth in Section 5.3(b) (Final Settlement Deposit).

~~1.56~~1.60 “Fixed Preview” has the meaning set forth in Section 4.3(b)(iii) (Fixed Preview).

~~1.57~~1.61 “Front Matter Display” means the display to users of Google Products and Services of one or more of the title page, copyright page, table of contents, other pages that appear prior to the table of contents at the front of the Book, and indexes of a Book.

~~1.58~~1.62 “Fully Participating Library” means a library physically located within the United States and organized as or within a not-for-profit or government entity that (a) has signed or signs a Digitization Agreement with Google not later than two (2) years after the Effective Date (unless an extension of such time is approved by the Registry) and (b) enters into a Library-Registry (Fully Participating) Agreement.

~~1.59~~1.63 “Google” means Google Inc. and its Affiliates.

~~1.60~~1.64 “Google Book Search,” or “GBS,” means the program(s) pursuant to which Google, having Digitized works obtained pursuant to the Google Partner Program, the GLP or other means authorized by the Book’s Rightsholder or the Registry (or having obtained works in Digitized form through such programs or other means authorized by the Book’s Rightsholder or the Registry), transmits Online (a) information about such works and (b) portions of, and in some cases all of, the Digitized works, whatever such program(s) may be called by Google from time to time.

~~1.61~~1.65 “Google Library Project” or the “GLP” means the program(s) pursuant to which Google obtains Books and other works from libraries or other sources (including through book drives, from Rightsholders directly or elsewhere, but not including the Google Partner Program), for the purposes of Digitizing them (if not obtained in Digitized form) and including them in GBS, whatever such program(s) may be called by Google from time to time.

~~1.62~~1.66 “Google Partner Program” means the program(s) pursuant to which Persons who have Copyright Interests in works contract with Google (other than by operation of this Amended Settlement Agreement) to grant to Google the right to include such works in GBS, whatever such program(s) may be called by Google from time to time.

~~1.63~~1.67 “Google Products and Services” means any and all products and services offered to the public by Google directly or indirectly through third parties from time to time, now or in the future, whereby Google makes information accessible to a user Online, using any means and any technology, whether now known or hereafter developed. Google Products and Services include GBS.

~~1.64~~1.68 “Government Works” means written or printed works covered by Section 105 of the Copyright Act or state law equivalents thereto.

~~1.65~~1.69 “Gross Revenues” ~~has the meaning set forth in Section 6.3(a)(i) (Unclaimed Funds Non-Subscription Revenue Models).~~

~~1.66~~—“Higher Education Institution” means an Institution of Higher Education, as defined by the Carnegie Classifications of Institutions of Higher Education from time to time or, if and when the Carnegie Foundation for the Classification of Teaching is no longer classifying colleges and universities in the United States, as such term or its successor term is defined by any successor classification system used to classify colleges and universities in the United States.

~~1.67~~1.70 “Host Site” means an institution authorized under this Amended Settlement Agreement to host the Research Corpus pursuant to the requirements of Section 7.2(d)(ii) (Host Sites).

~~1.68~~1.71 “Host Site-Registry Agreement” has the meaning set forth in Section 7.2(d)(ii) (Host Sites).

~~1.69~~1.72 “Hosting Fully Participating Library” has the meaning set forth in Section 7.2(b)(~~ix~~x)(1) (Fully Participating Libraries Hosting for Other Fully Participating Libraries).

~~1.70~~1.73 “Inconsequential Breach” means a breach that (a) is not the result of reckless, willful or intentional misconduct by Google, a Host Site or a Fully Participating Library, (b) does not lead to, or present an immediate risk of, any Unauthorized Access, Prohibited Access or Third-Party Unauthorized Access, (c) does not represent an extensive or systematic failure to comply with the Security Standard or the applicable then-current Security Implementation Plan and (d) when identified, is promptly corrected or cured.

~~1.71~~1.74 “Initial Settlement Deposit” has the meaning set forth in Section 5.3(a) (Initial Settlement Deposit).

~~1.72~~1.75 “Insert” means the following content, if and to the extent such content is independently Protected by the Copyright Act and, if a “United States work” as

defined in 17 U.S.C. § 101, is covered by a registration with the United States Copyright Office as of ~~the Notice Commencement Date~~ January 5, 2009, either as a stand-alone work or as part of another, registered work from which it was excerpted, and is either (a) contained in a Book if there is no Person who has a Copyright Interest in such content ~~and as well as~~ a Copyright Interest in such Book's Principal Work, (b) contained in a Public Domain Book, or (c) contained in a Government Work that, on or before ~~the Notice Commencement Date~~, January 5, 2009, was published or distributed to the public or made available for public access: (i) text, such as forewords, afterwords, prologues, epilogues, essays, poems, quotations, letters, song lyrics, or excerpts from other Books, Periodicals or other works; and (ii) ~~children's Book illustrations~~; (iii) ~~musical notation (i.e., notes on a staff or tablature)~~; and (iv) tables, charts and graphs. The term "Insert" does not include (1) pictorial works, such as photographs, illustrations ~~(other than children's Book illustrations)~~, maps ~~or~~, paintings, or music notation (i.e., notes on a staff or tablature) or (2) works that are in, or as they become in, the public domain under the Copyright Act in the United States.

~~1.73~~ 1.76 "Institutional Consortium" means a group of libraries, companies, institutions or other entities located within the United States that is a member of the International Coalition of Library Consortia ~~with the exception of Online Computer Library Center (OCLC) affiliated networks~~.

~~1.74~~ 1.77 "Institutional Subscription" means any service of a limited duration provided by Google to an institution for a fee that allows Online access to and viewing of the full contents of the Institutional Subscription Database, as specified in and subject to Section 4.1 (Institutional Subscriptions).

~~1.75~~ 1.78 "Institutional Subscription Database" has the meaning set forth in Section 4.1(a)(v) (Versions of Institutional Subscriptions).

~~1.76~~ 1.79 "ISBN" means International Standard Book Number or, if and when ISBNs are no longer being issued, the number issued pursuant to any successor system used internationally to uniquely identify books and book-like products.

~~1.77~~ 1.80 "Library Building" means a building physically located in the United States that, in whole or in part, is used by a Public Library and the part so used is predominantly used for the storage of, and access to, such Public Library's library books or library services.

~~1.78~~1.81 “Library Digital Copy” or “LDC” means the set (or portion thereof) of all Digital Copies of Books in a Fully Participating Library’s Collection, which Digital Copies are made by copying the Library Scan (or are otherwise made pursuant to Section 7.2(a) (Making of Library Digital Copies)), and which Google provides to the Fully Participating Library.

~~1.79~~1.82 “Library Link” means a link placed on pages in Google Book Search dedicated to a single Library Work that directs a user to existing Online sources, which, free of charge to the user (and with no out-of-pocket payments by Google to third-party providers of such sources), assists such user in finding that Library Work in a library.

~~1.80~~1.83 “Library-Registry Agreement” means an agreement substantially similar in form to one of the agreements attached hereto as Attachment B (Form of Library-Registry Agreements) between the Registry and a Fully Participating Library, Cooperating Library or Public Domain Library. The Library-Registry (Fully Participating) Agreement attached hereto as Attachment B-1 is for Fully Participating Libraries. The Library-Registry (Cooperating) Agreement attached hereto as Attachment B-2 is for Cooperating Libraries. The Library-Registry (Public Domain) Agreement attached hereto as Attachment B-3 is for Public Domain Libraries.

~~1.81~~1.84 “Library Scan” means the Digital Copy of a Library Work Digitized by or for Google or by or for a Fully Participating Library or a Cooperating Library and received by Google, and all Digital Copies of such Digital Copy.

~~1.82~~1.85 “Library Work” means a Book that a Fully Participating Library or a Cooperating Library makes available to Google, either in hard copy (not including microform) format to be Digitized, or in a form Digitized by or for such Fully Participating Library or Cooperating Library, for the Google Library Project.

~~1.83~~1.86 “Limited Subscription” means an Institutional Subscription offered to a library that allows the subscribing library access only to the Books Digitized from that library, or only to the Books held by that library.

~~1.84~~1.87 “List Price” means the then-current price for Institutional Subscriptions and Consumer Purchases determined in accordance with Sections 4.1 (Institutional Subscriptions) and 4.2 (Consumer Purchases), respectively.

~~1.85~~1.88 “Metadata” means data that describes other data (*e.g.*, a library catalog of publications and the author, title, publisher, ISBN, and date of publication of the publications in the catalog are all types of Metadata).

~~1.86~~1.89 “Net Advertising Revenues” means, subject to Section 4.5(b) (Discounting, Special Offers and Subsidies) and Section 4.6(b) (Exceptions), the revenues actually received by Google for Advertising Uses displayed to U.S. users, less ten percent (10%) for Google’s operating costs.

~~1.87~~1.90 “Net Purchase Revenues” means, subject to Section 4.5(b) (Discounting, Special Offers and Subsidies) and Section 4.6(b) (Exceptions), the revenues actually received by Google from subscribers or purchasers within the U.S. from all Revenue Models other than Advertising Uses, less ten percent (10%) for Google’s operating costs.

~~1.88~~1.91 “No Display Books” are Books for which no Display Uses are authorized pursuant to this Amended Settlement Agreement.

~~1.89~~1.92 “No Preview” has the meaning set forth in Section 4.3(b)(ii) (No Preview).

~~1.90~~1.93 “Non-Consumptive Research” means research in which computational analysis is performed on one or more Books, but not research in which a researcher reads or displays substantial portions of a Book to understand the intellectual content presented within the Book. Categories of Non-Consumptive Research include:

(a) Image Analysis and Text Extraction – Computational analysis of the Digitized image artifact to either improve the image (*e.g.*, de-skewing) or extracting textual or structural information from the image (*e.g.*, OCR).

(b) Textual Analysis and Information Extraction – Automated techniques designed to extract information to understand or develop relationships among or within Books or, more generally, in the body of literature contained within the Research Corpus. This category includes tasks such as concordance development, collocation extraction, citation extraction, automated classification, entity extraction, and natural language processing.

(c) Linguistic Analysis – Research that performs linguistic analysis over the Research Corpus to understand language, linguistic use, semantics and syntax as they evolve over time and across different genres or other classifications of Books.

(d) Automated Translation – Research on techniques for translating works from one language to another.

(e) Indexing and Search – Research on different techniques for indexing and search of textual content.

~~1.91~~1.94 “Non-Display Uses” means uses that do not display Expression from Digital Copies of Books or Inserts to the public. By way of example, display of bibliographic information, full-text indexing without display of Expression (such as listing the number or location of search matches), geographic indexing of Books, algorithmic listings of key terms for chapters of Books, and internal research and development using Digital Copies are all Non-Display Uses.

~~1.92~~1.95 “Not Counted Library Work” means any Library Work with respect to the Library Scan of which Google has reasonable quality, legal, or technical concerns that are not solely editorial-based concerns.

~~1.93~~1.96 “Notice” has the meaning set forth in Article XII (Class Notice Program).

~~1.94~~1.97 “Notice Commencement Date” means ~~the first date of the Class Notice Program, as agreed between Plaintiffs and Google and approved by the Court.~~January 5, 2009.

~~1.95~~1.98 “OCR” means optical character recognition.

~~1.96~~1.99 “Online” means over the Internet or other data or communication network, with or without caching, through a browser or other computer program used for accessing sites or information on a network.

~~1.97~~1.100 “Online Book Page” means any page in Google Products and Services dedicated to a single Book, including any Preview Use page, any Snippet

Display page, any page of a Book displayed in Google Products and Services, and search results pages resulting from a search within a single Book. Any general search results page in which the search is performed over multiple Books and/or over other content such as web pages in response to a user query is not considered to be a page dedicated to a single Book, even if a single Book is the sole search result of a given search on the search results page.

~~1.98~~1.101 “Opt-Out Deadline” means the deadline fixed by the Court to opt out of the Settlement pursuant to Rule 23 of the Federal Rules of Civil Procedure.

~~1.99~~ “Other Library” means a library physically located within the United States and organized as or within a not-for-profit or government entity that has signed a Digitization Agreement with Google, but has not entered into a Library-Registry Agreement.

~~1.100~~1.102 “Partial Insert” means an Insert other than an Entire Insert.

~~1.101~~1.103 “Participating Libraries” means Fully Participating Libraries, Cooperating Libraries, Public Domain Libraries and Other Libraries.

~~1.102~~1.104 “Periodical” means a newspaper, magazine, comic book, or journal and any other publication (a) that is published at a stated frequency with the intent to continue publication indefinitely; (b) whose continuity shows from issue to issue (*e.g.*, by serialization of articles or by successive issues carrying the same style, format, theme, or subject matter); (c) whose primary purpose is to transmit information; (d) whose content consists of original or reprinted articles on one topic or many topics, listings, photographs, illustrations, graphs, a combination of advertising and nonadvertising matter, comic strips, legal notices, editorial material, cartoons, or other subject matter; and (e) for which the primary distribution of each issue is made before that of each succeeding issue; including any book form compilation of any of the foregoing.

~~1.103~~1.105 “Person” means a natural person and any corporation, partnership, limited liability company, association, whether incorporated or not, and any other entity organized under United States federal or state law, or under foreign law.

~~1.104~~1.106 “Plaintiffs” means Representative Plaintiffs and Associational Plaintiffs.

~~1.105~~1.107 “Plan of Allocation” means the Plan of Allocation attached hereto as Attachment C (Plan of Allocation).

~~1.106~~1.108 “Preview Uses” means uses that may display Protected material from a Book to users of Google Products and Services in addition to material that is allowed to be displayed in Snippet Display or Front Matter Display, as specified in and subject to Section 4.3 (Preview Uses).

~~1.107~~1.109 “Price Change Cut Off Date” has the meaning set forth in Section 4.1(a)(viii)(2) (Registry Proposed Adjustments).

~~1.108~~1.110 “Pricing Algorithm” has the meaning set forth in Section 4.2(b)(i)(2) Settlement Controlled Price).

~~1.109~~1.111 “Pricing Bin” has the meaning set forth in Section 4.2(c)(i) (Pricing Bins).

~~1.110~~1.112 “Pricing Strategy” has the meaning set forth in Section 4.1(a)(vi) (Pricing Strategy).

~~1.111~~1.113 “Principal Work” means a Book’s principal written work. A Principal Work can be a collective work, such as a collection of short stories or plays. A Book contains only one Principal Work but may contain other text, such as a foreword, afterword and annotations. A foreign language translation or an abridged version of a Principal Work is a different Principal Work. Two (2) or more Books that contain the same Principal Work but that each contains different or additional Protected Expression are considered to be different Books. By way of example, two (2) Books that have the same Principal Work (e.g., *The Old Man and the Sea* [To Kill a Mockingbird](#)) but have different forewords or additional annotations (e.g., the ~~Hueber Verlag~~[J.B. Lippincott](#) and the ~~Scribner~~[Harper Collins](#) editions) are different Books under this Amended Settlement Agreement. A hard cover Book and a soft cover Book may have the same Principal Work, but are considered different Books under this Amended Settlement Agreement (even if they contain no additional matter) if the hard cover Book and the soft cover Book have different ISBNs.

~~1.112~~1.114 “Print Disability” means any condition in which a user is unable to read or use standard printed material due to blindness, visual disability, physical limitations, organic dysfunction, or dyslexia.

~~1.113~~1.115 “Prohibited Access” means reproduction or display by a Fully Participating Library or Host Site of any Digital Copy of a Book that is prohibited by the applicable Library-Registry Agreement or the applicable Host Site-Registry Agreement, and is not otherwise authorized by the Rightsholder.

~~1.114~~1.116 “Protected,” when used in connection with “works,” “material,” “Expression,” or “content” means works, material, Expression or content as to which a Person has a Copyright Interest under Section 106 of the Copyright Act, without giving effect to Sections 107 through 122 of the Copyright Act.

~~1.115~~1.117 “Public Access Service” means a service provided by Google to each Public Library and each not-for-profit Higher Education Institution that allows users to search and view the entire then-current Institutional Subscription Database, as specified in and subject to Section 4.8 (Public Access Service).

~~1.116~~1.118 “Public Domain Book” means a written or printed work that would be a “Book” but for the work being in the public domain under the Copyright Act in the United States, without regard to whether such work contains an Insert; provided, however, that, if the work is a “United States work” as defined in 17 U.S.C. § 101, it need not have been registered with the United States Copyright Office to be considered to be a Public Domain Book.

~~1.117~~1.119 “Public Domain Funds” has the meaning set forth in Section 6.3(b) (Public Domain Funds).

~~1.118~~1.120 “Public Domain Library” means a library physically located in the United States and organized as or within a not-for-profit or government entity that (a) will not provide materials to Google for Digitization when it knows that those materials are Books, (b) agrees to delete or permanently render unusable promptly any Digital Copies of Books previously provided by Google to such library or that such library receives from Google in the future, and (c) enters into a Library-Registry (Public Domain) Agreement.

~~1.119~~1.121 “Public Library” means a library that (a) is accessible by the public, (b) is, or is part of, a not-for-profit or government-funded institution other than a not-for-profit or government-funded institution that is classified under the Carnegie Classification of Institutions of Higher Education, and (c) allows patrons to take books and other materials off the premises but may also have non-circulating reference

collections or provide other library services; however, “Public Library” does not include any library primarily funded or managed by the federal government or an agency thereof.

~~1.120~~1.122 “Publisher Sub-Class” means members of the Amended Settlement Class that are (a) companies that publish books, and their exclusive licensees, successors and assignees, and (b) companies that publish Periodicals and have a Copyright Interest in one or more Inserts, and their exclusive licensees, successors, and assignees.

~~1.121~~1.123 “Qualified User” means a Person who (a) wishes to conduct Non-Consumptive Research, (b) is (i) affiliated with a Fully Participating Library or a Cooperating Library or (ii) a suitably qualified individual (1) who has the resources to perform such Non-Consumptive Research, (2) who has an affiliation described below, (3) who is pre-registered by a Fully Participating Library or a Cooperating Library (*i.e.*, registered prior to conducting Non-Consumptive Research), and (4) for whose use of the Research Corpus such Fully Participating Library or Cooperating Library takes responsibility, and (c) is bound by an agreement described in Section 7.2(d)(xi)(2) (Research Agenda). A for-profit entity may only be a “Qualified User” if both the Registry and Google give their prior written consent. Except as set forth in the preceding sentence, a Qualified User must have an affiliation with one of the following:

a) ~~(a)~~ an accredited United States two (2)- or four (4)-year college or university;

b) ~~(b)~~ a United States not-for-profit research organization, such as a museum, observatory or research lab;

c) ~~(c)~~ a United States governmental agency (federal, state or local); or

d) ~~(d)~~ to the extent that an individual does not come within clauses (a) through (c) above in this Section ~~1.121~~1.123 (Qualified User), an individual may become a “Qualified User” by demonstrating to a Fully Participating Library or a Cooperating Library that he or she (directly or through the entities with which he or she is affiliated) has the necessary capability and resources to conduct Non-Consumptive Research, provided that such individual (or the entities with which he or she is affiliated) may be required by the Registry to enter into other terms and conditions with respect to such Non-Consumptive

Research and the commercial exploitation of any of the results thereof consistent with the restrictions set forth in this [Amended Settlement Agreement](#).

~~1.122~~[1.124](#) “Registered Rightsholder” means any Person who is a Rightsholder and who has registered with the Registry his, her or its Copyright Interest in a Book or Insert.

~~1.123~~[1.125](#) “Registry” means the registry established pursuant to ~~Article~~ ARTICLE VI —(Establishment and Charter of Registry). In addition, the term “Registry” means the Settlement Administrator until such time as the Registry is fully operational.

~~1.124~~[1.126](#) “Removed” means, with respect to a Book that is removed pursuant to Section 3.5(a) (Right to Remove) and subject to Section 3.5(b)(vi) (Continuing Obligations), that ~~Digital Copies of such Book are not accessible (including through the Research Corpus)~~, other than on back-up tapes or other electronic back-up storage media—~~;~~

(a) if the request is made on or before April 5, 2011, Digital Copies of the Book are not accessible to Google or Fully Participating Libraries; and

(b) if the request is made after April 5, 2011, but on or before March 9, 2012, Digital Copies of the Book are not accessible to Google except that Google may use Digital Copies for the purpose of (i) providing Digital Copies, as authorized under this Amended Settlement Agreement, and making ongoing technological updates for Fully Participating Libraries and Host Sites and (ii) acting as a Host Site as authorized by Section 7.2(d)(ii) (Host Sites).

“Remove” and “Removal” have corresponding meanings.

~~1.125~~[1.127](#) “Representative Plaintiffs” means the following Persons, who, subject to Court approval, represent the Author Sub-Class: Paul Dickson, Joseph Goulden, Daniel Hoffman, Betty Miles, ~~and~~ Herbert Mitgang, [Maureen Duffy, Daniel Jay Baum, Margaret Drabble and Robert Pullan](#); and the following Persons, who, subject to Court approval, represent the Publisher Sub-Class: The McGraw-Hill Companies, Inc.,

Pearson Education, Inc., Penguin Group (USA) Inc., Simon & Schuster, Inc., ~~and~~ John Wiley & Sons, Inc., [Harlequin Enterprises Limited](#), [Macmillan Publishers Limited](#), [Melbourne University Publishing Limited](#) and [The Text Publishing Company](#).

~~1.126~~[1.128](#) “Requesting Fully Participating Library” has the meaning set forth in Section 7.2(b)(x)(1) (Fully Participating Libraries Hosting for Other Fully Participating Libraries).

~~1.127~~[1.129](#) “Required Library Services” has the meaning set forth in Section 7.2(e)(i) (Obligation).

~~1.128~~[1.130](#) “Required Library Services Requirement” means the requirement set forth in Section 7.2(e)(i) (Obligation).

~~1.129~~[1.131](#) “Research Agenda” means a document that describes a research project in sufficient detail to demonstrate that it will be Non-Consumptive Research.

~~1.130~~[1.132](#) “Research Corpus” means a set of all Digital Copies of Books made in connection with the Google Library Project, other than Digital Copies of Books that have been Removed by Rightsholders [on or before April 5, 2011](#) pursuant to Section 3.5 (Right to Remove or Exclude) or withdrawn pursuant to Section 7.2(d)(iv) (Right to Withdraw Library Scans), which Google provides to a Host Site or that Google, if and as a Host Site, uses.

~~1.131~~[1.133](#) “Revenue ~~Model~~Models” means Institutional Subscriptions, Consumer Purchases, Advertising Uses, Public Access Service and any other revenue models agreed between the Registry and Google pursuant to Section 4.7 (~~New~~[Additional Revenue Models](#)).

~~1.132~~[1.134](#) “Rightsholder” means a member of the [Amended](#) Settlement Class who does not opt out of the Settlement by the [Supplemental](#) Opt-Out Deadline.

~~1.133~~[1.135](#) “Rightsholder Releasers” has the meaning set forth in Section 10.1(m) (Rightsholder Releasers).

~~1.134~~1.136 “Security Implementation Plan” means an implementation plan describing the processes and procedures that Google, a Fully Participating Library, or a Host Site, as the case may be, will employ in order to comply with the Security Standard.

~~1.135~~1.137 “Security Representatives” has the meaning set forth in Section 8.2(b) (Changes to Security Standard).

~~1.136~~1.138 “Security Standard” means the security standard set forth in Attachment D (Security Standard).

~~1.137~~1.139 “Settlement” means the settlement of the Action as set forth in this Amended Settlement Agreement.

~~1.138~~1.140 “Settlement Administration Program” means the Settlement administration program described in Article XIII (Settlement Administration Program).

~~1.139~~1.141 “Settlement Administrator” means Rust Consulting, Inc.

~~1.140~~ “Settlement Agreement” means this agreement and all of its attachments, as each may be amended from time to time pursuant to Section 17.27 (Amendments).

1.142 “Settlement Agreement” means the original Settlement Agreement and all of its attachments, as filed with the Court on October 28, 2008.

~~1.141~~ “Settlement Agreement Date” means the date set forth at the end of this Settlement Agreement.

~~1.142~~ “Settlement Class” means all Persons that, as of the Notice Commencement Date, have a Copyright Interest in one or more Books or Inserts. All Settlement Class members are either members of the Author Sub-Class or the Publisher Sub-Class, or both. Excluded from the Settlement Class are Google, the members of Google’s Board of Directors and its executive officers.

1.143 “Settlement Controlled Price” has the meaning set forth in Section 4.2(b)(i)(2) (Settlement Controlled Price).

1.144 “Settlement Discussions Confidentiality Agreement” means the Settlement Discussions Confidentiality Agreement dated August 18, 2006 between Google and certain representatives of Plaintiffs.

1.145 “Settlement Fund” means the Initial Settlement Deposit, the Final Settlement Deposit and the Supplemental Deposit, and all interest accrued thereon. The Settlement Fund will be held and administered in an account at the Depository Bank.

1.146 “Settlement Website” has the meaning set forth in Article XII (Class Notice Program).

1.147 “Snippet Display” means uses that display to users of Google Products and Services up to three (3) “snippets” (each snippet being about three (3) to four (4) lines of text) per search term per user.

1.148 “Standard Preview” has the meaning set forth in Section 4.3(b)(i)(1) (Standard Preview).

1.149 “Specified Price” has the meaning set forth in Section 4.2(b)(i)(1) (Specified Price).

1.150 “Standard Revenue Split for Advertising” has the meaning set forth in Section 4.5(a)(ii) (Net Advertising Revenues).

1.151 “Standard Revenue Split for Purchases” has the meaning set forth in Section 4.5(a)(~~ii~~) (Net Purchase Revenues).

1.152 “Standard Revenue Splits” has the meaning set forth in Section 4.5(a)(iii) (Agreed Revenue Splits).

~~1.152~~1.153 “Summary Notice” has the meaning set forth in Article XII (Class Notice Program).

~~1.153~~1.154 “Supplemental Deposit” has the meaning set forth in Section 5.3(c) (Supplemental Deposit).

~~1.154~~1.155 “Supplemental Notice” has the meaning set forth in Article XII (Class Notice Program).

1.156 “Supplemental Opt-Out Deadline” means the deadline fixed by the Court to opt out of the Amended Settlement Agreement pursuant to Rule 23 of the Federal Rules of Civil Procedure.

1.157 “Third-Party Required Library Services Provider” has the meaning set forth in Section 7.2(e)(ii) (Third-Party Required Library Services Provider).

~~1.155~~1.158 “Third-Party Unauthorized Access” means any access (other than Prohibited Access) by any third party to any Digital Copy of a Book that is not authorized by this Amended Settlement Agreement, the applicable Library-Registry Agreement, or the applicable Host Site-Registry Agreement, and is not otherwise authorized by the Rightsholder.

~~1.156~~1.159 “Unauthorized Access” means any display or reproduction in the United States by Google of any Digital Copy of a Book or Insert that is not authorized by this Amended Settlement Agreement or the Rightsholder.

~~1.157~~1.160 “~~Unclaimed Funds—Non-Subscription~~Works Fiduciary” has the meaning set forth in Section ~~6.3(a)(i) (Unclaimed Funds Non-Subscription Revenue Models)~~.

~~1.158~~ “~~Unclaimed Funds—Subscription~~” has the meaning set forth in Section ~~6.3(a)(ii) (Unclaimed Funds-Subscription Revenue Models)~~6.2(b) (Organizational Structure).

~~1.159~~1.161 “Unclaimed Funds” ~~means~~ has the meaning set forth in Section 6.3(a) (Unclaimed Funds—Non-Subscription and Unclaimed Funds—Subscription).

~~1.160~~1.162 “United States” or “U.S.” means the states and territories, the District of Columbia, and the possessions of the United States of America.

ARTICLE II — SETTLEMENT BENEFITS – OVERVIEW AND AUTHORIZATIONS

2.1 Benefits to the Amended Settlement Class – Overview.

(a) Google Book Search. Google is authorized to, in the United States, sell subscriptions to the Institutional Subscription Database, sell individual Books, place advertisements on Online Book Pages, and make other commercial uses of Books, all as further described in this Amended Settlement Agreement. Google shall pay to the Registry, for the benefit of the Rightsholders, seventy percent (70%) of all revenues earned by Google through uses of Books in Google Products and Services in the United States authorized under this Amended Settlement Agreement, less ten percent (10%), for Google's operating costs, deducted from such revenues prior to such calculation (*i.e.*, sixty-three percent (63%) of all revenues earned by Google through uses of Books in Google Products and Services in the United States authorized under this Amended Settlement Agreement). The Registry will distribute the revenues to Rightsholders pursuant to the provisions of the Plan of Allocation.

(b) Cash Payment. Google shall pay a minimum of forty-five million United States dollars (U.S. \$45 million) into the Settlement Fund to pay Amended Settlement Class members whose Books and Inserts have been Digitized ~~prior to the Opt Out~~ Deadline on or before May 5, 2009. Such forty-five million United States dollars (U.S. \$45 million) will be distributed from the Settlement Fund in the form of Cash Payments of at least sixty United States dollars (U.S. \$60) per Principal Work; fifteen United States dollars (U.S. \$15) per Entire Insert; and five United States dollars (U.S. \$5) per Partial Insert in accordance with the Plan of Allocation. To the extent that funds greater than forty-five million United States dollars (U.S. \$45 million) are required in order to pay every such Amended Settlement Class member his, her or its Cash Payment, Google shall make an additional payment to enable such Cash Payments to be made to the Rightsholders from the Settlement Fund. To the extent funds remain from the forty-five million United States dollars (U.S. \$45 million) after all Cash Payments are made, such excess will be distributed pursuant to the Plan of Allocation.

(c) Registry/Notice/Claims Administration Funding. Google ~~shall~~ is obligated to pay thirty-four and one-half million United States dollars (U.S. \$34.5 million) (of which twelve million United States dollars (U.S. \$12 million) has been paid) to fund the launch and the initial operations of the Registry and to fund other Administrative Costs. The Registry will be responsible for locating and collecting information from Rightsholders, identifying and coordinating payments to Rightsholders, and otherwise representing the interests of Rightsholders under this Amended Settlement Agreement.

(d) Attorneys' Fees and Costs. Google shall pay Plaintiffs' attorneys' fees and costs in accordance with Section 5.5 (Attorneys' Fees).

(e) Summary Only. This Section 2.1 (Benefits to the Amended Settlement Class – Overview) is a summary of some of the provisions of this Amended Settlement Agreement and is subject to all of the other provisions of this Amended Settlement Agreement.

2.2 Authorization of Google, Fully Participating Libraries and Cooperating Libraries. In exchange for the benefits conferred in this Amended Settlement Agreement on Plaintiffs and Rightsholders, Rightsholders, as of the Effective Date, authorize (a) Google to make Display Uses and Non-Display Uses of their Books and Inserts in GBS and other Google Products and Services, (b) each Fully Participating Library to use its Library Digital Copy and (c) each Host Site to make the Research Corpus available, all in accordance with the terms and conditions of this Amended Settlement Agreement, a Library-Registry Agreement or a Host Site-Registry Agreement, as applicable. As of the Effective Date, Rightsholders authorize Google, the Fully Participating Libraries, the Cooperating Libraries and the Host Sites to engage in the activities, and only the activities, set forth in this Amended Settlement Agreement, a Library-Registry Agreement or a Host Site-Registry Agreement, as applicable, and only in accordance with such terms and conditions as are applicable to those activities; provided that the remedy for any breach of a term or condition of this Amended Settlement Agreement or a Library-Registry Agreement shall not be termination of such authorizations except as provided in Section 3.7(b) (Failure to Provide Contemplated Rightsholder Services). This Amended Settlement Agreement does not authorize Google, any Participating Library or any Host Site to make any uses of Books and Inserts other than those uses that are authorized under this Amended Settlement Agreement. This Amended Settlement Agreement neither authorizes nor prohibits, nor releases any Claims with respect to, (i) the use of any work or material that is in the public domain under the Copyright Act in

the United States, (ii) the use of books in hard copy (~~including such term does not include~~ microform) format other than the creation and use of Digital Copies of Books and Inserts, or (iii) any Participating Library's Digitization of Books if the resulting Digitized Books are neither provided to Google pursuant to this [Amended](#) Settlement Agreement nor included in any LDC, or the use of any such Digitized Books that are neither provided to Google pursuant to this [Amended](#) Settlement Agreement nor included in any LDC.

2.3 Author-Publisher Procedures. All rights of Books Rightsholders under this [Amended](#) Settlement Agreement are subject to the Author-Publisher Procedures.

2.4 Non-Exclusivity of Authorizations. The authorizations granted to Google in this [Amended](#) Settlement Agreement are non-exclusive only, and nothing in this [Amended](#) Settlement Agreement shall be construed as limiting any Rightsholder's right to authorize, through the Registry or otherwise, any Person, including direct competitors of Google, to use his, her or its Books or Inserts in any way, including ways identical to those provided for under this [Amended](#) Settlement Agreement.

ARTICLE III — GOOGLE BOOK SEARCH – RIGHTS, BENEFITS AND OBLIGATIONS

3.1 Digitization, Identification and Use of Books.

(a) Non-Exclusive Digitization Rights. As of the Effective Date, in the United States (i) Google may, on a non-exclusive basis, Digitize all Books and Inserts obtained by Google from any source (whether obtained before or after the Effective Date), (ii) Fully Participating Libraries and Cooperating Libraries may provide Books and Inserts to Google in hard copy (~~not~~ including microform) format to be Digitized (or in a form Digitized by or for such Fully Participating Library or Cooperating Library), and (iii) Google and Fully Participating Libraries may use such Books and Inserts as provided in this [Amended](#) Settlement Agreement and the Library-Registry (Fully Participating) Agreements. The authorizations to use Books and Inserts provided for by this [Amended](#) Settlement Agreement or a Library-Registry Agreement are not transfers of copyright ownership to such Books or Inserts, and nothing in this [Amended](#) Settlement Agreement or a Library-Registry Agreement shall operate to transfer any copyright ownership in Books or Inserts. The foregoing authorization for Google to Digitize Books and Inserts includes authorization of Google's contractors to Digitize Books and Inserts for Google, including libraries that may Digitize Books and Inserts, or portions thereof, at Google's request.

(b) Identification of Digitized Books and Government Works.

(i) List of Digitized Books and Government Works. ~~As of the Notice Commencement Date, and upon Plaintiffs' request, Google will provide~~ Google has previously provided Plaintiffs, in a form mutually agreed, with a list of the Books, Public Domain Books with a copyright date after 1922 and Government Works that Google has Digitized as of ~~the Notice Commencement Date~~ January 5, 2009 and the date each Book, Public Domain Book with a copyright date after 1922 or Government Work was Digitized by Google, and a separate list of all Books, Public Domain Books with a copyright date after 1922 and Government Works that Google reasonably ~~anticipates~~ anticipated it ~~will Digitize on or before the Opt Out Deadline, in each case, to the extent that Google is permitted to do so under then-existing contracts with Metadata providers. Google and Plaintiffs will cooperate to obtain such Metadata providers' permission for Google to provide Plaintiffs with such lists; provided, however, that the Registry shall be responsible for payment of any additional license fees to the extent required by such providers. Further, as soon as practicable, Google will provide Plaintiffs, in a form mutually agreed,~~ would Digitize on or before May 5, 2009. On November 2, 2009, Google provided Plaintiffs with a final list of all Books, Public Domain Books with a copyright date after 1922 and Government Works that Google Digitized on or before ~~the Opt Out Deadline~~ May 5, 2009.

(ii) Books Database. ~~As of the Notice Commencement Date, Google, with or through the Registry, will make~~ Google has made a searchable online database available to members of the Amended Settlement Class through the Internet (1) for the purpose of identifying all Books, Public Domain Books with a copyright date after 1922 and Government Works that Google has Digitized or reasonably anticipates that it might Digitize under this Amended Settlement Agreement, and (2) for purposes of Article V (Other Settlement Benefits), identifying whether such Books, Public Domain Books with a copyright date after 1922 or Government Works have been Digitized as of the Notice Commencement Date or Google reasonably anticipates that it might Digitize such Books, Public Domain Books or Government Works ~~prior to the Opt Out Deadline~~ on or before May 5, 2009. Such database shall be referred to in this Amended Settlement Agreement as the "Books Database." The Books Database ~~will support~~ supports queries by author, title, publisher, ISBN, and date of publication. The inclusion of a work within the Books Database does not, in and of itself, mean that the work is a Book within the meaning of Section 1.19 (Book).

(iii) Books. Google will also allow members of the [Amended Settlement Class](#) to submit bibliographic information (*e.g.*, title, author, and publication date) for Books not in the Books Database.

(iv) Inserts.

(1) Submission. The Books Database will allow each member of the [Amended Settlement Class](#) to submit identifying information regarding his, her or its Inserts, such as the Books, Public Domain Books with a copyright date after 1922 or Government Works in which such Inserts were published, the location of such Inserts within Books, Public Domain Books with a copyright date after 1922 or Government Works and any other identifying information about such Inserts (*e.g.*, whether the Insert is an introduction, a foreword, etc.).

(2) Insert Identification. For content that may be an Insert, the Books Database will allow any Person who might be a member of the [Amended Settlement Class](#) to submit a digital copy of his, her or its content that may be an Insert or to otherwise identify such content that may be an Insert, and Google will perform searches to identify Books, Public Domain Books with a copyright date after 1922 or Government Works, if any, that contain such submitted content. If Google identifies any Books, Public Domain Books with a copyright date after 1922 or Government Works that may contain such submitted content, Google will notify such Person of such Books, Public Domain Books with a copyright date after 1922 or Government Works in order to enable him, her or it to determine whether the submitted content is an Insert in such Books, Public Domain Books with a copyright date after 1922 or Government Works and the pages on which such content appears. Google shall have no liability for failure to identify an Insert under this Section 3.1(b)(iv)(2) (Insert Identification).

3.2 Initial Display and No Display Book Classification.

(a) General Guidelines. Pursuant to Section 3.2(b). (Display/No Display Classification), Google and the Registry will classify all Books in one of two categories, either Display Books, as described in Section 3.3 (Display Books), or No Display Books, as described in Section 3.4 (No Display Books).

(b) Display/No Display Classification. Google will initially classify a Book as No Display if it is determined to be Commercially Available as of the Notice Commencement Date, and Display if it is determined not to be Commercially Available as of the Notice Commencement Date. A Rightsholder, Google, or the Registry (pursuant to Section 3.2(e)(i) (Change Requests by Rightsholders)), may change a Book's classification as Display or No Display as set forth in this Article III (Google Book Search – Rights, Benefits and Obligations).

(c) Notification of Display/No Display Classification. The Books Database will identify whether a Book has been classified as a Display Book or a No Display Book.

(d) Commercial Availability, In Print/Out of Print and Public Domain Determination.

(i) Basis for Determination. Google shall determine whether a Book is Commercially Available or not Commercially Available based on ~~an~~ an analysis of multiple third-party databases as well as ~~an~~ an analysis of the Book's retail availability based on information that is publicly available ~~on the Internet to it on the Internet.~~ Google will use third-party databases from a range of United States, Canadian, United Kingdom, and Australian sources that can be obtained on fair and commercially reasonable terms. When analyzing the third-party databases, Google will use the publishing status, product availability and/or availability codes to determine whether or not the particular database being used considers that Book to be ~~offered for sale new through one or more then customary channels of trade in the United States~~ Commercially Available. When analyzing information that is publicly available to it on the Internet, Google will determine retail availability by consulting various sources to determine whether the Book is ~~available for sale new~~ Commercially Available. Each of these sources may contain errors; ~~by combining information from multiple sources,~~ Google, however, shall use commercially reasonable efforts to determine whether a Book is Commercially Available or is not Commercially Available ~~in a manner that is~~ using a methodology reasonably agreed to by Google and the Registry that is designed to minimize the overall error rate. All Books for which Google does not have information from the sources identified above will be determined to be not Commercially Available. Rightsholders may provide information directly to Google that a Book is ~~being offered for sale new through one or more then customary channels of trade in the United~~

~~States~~Commercially Available when they submit their Claim ~~Form~~Forms, through the Books Database or, at any time after such submission, to Google or the Registry. When ~~Rightsholders provide such information to Google, unless~~Google receives such information from Rightsholders or the Registry or Rightsholders otherwise assert that their Books are Commercially Available, such Books promptly shall be classified as Commercially Available. If Google reasonably believes that ~~the~~such information ~~or assertion~~ is inaccurate, ~~the Book shall be determined to be Commercially Available and Google shall change~~then Google may challenge the classification ~~of the Book to a No Display Book within thirty (30) days of receipt of such information~~pursuant to Article IX (Dispute Resolution).

(1) In-Copyright Principal Work. If a Book's Principal Work is not in the public domain under the Copyright Act in the United States and that Book is Commercially Available, then any other Book that has the same Principal Work (such as a previous edition) is also deemed to be Commercially Available, whether or not such other Book is at the time in question also Commercially Available.

(2) Public Domain Principal Work. If a Book's Principal Work is in the public domain under the Copyright Act in the United States, and that Book is Commercially Available and also contains an Insert (*i.e.*, content that qualifies as an Insert and is not in the public domain under the Copyright Act in the United States), then any earlier edition of such Book that contains such Insert is also deemed to be Commercially Available.

(ii) In-Print/Out-of-Print. Google's initial determination of whether or not a Book is Commercially Available will be used to initially classify Books as "In-Print" or "Out-Of-Print," as such classifications are defined in the Author-Publisher Procedures, and only for purposes of the Settlement. Google shall provide the Registry with the determination as to whether a Book is Commercially Available as of the Notice Commencement Date and thereafter from time to time. Classification of Books as In-Print or Out-Of-Print pursuant to the terms of the Author-Publisher Procedures shall be the responsibility of the Registry. If the Registry re-classifies a Book as Out-Of-Print, the Registry will direct Google to change the classification of the Book to a Display Book, which Google shall do within thirty (30) days unless the Rightsholder of the Book, subject to Section 3.2(e)(i) (Change Requests by Rightsholders), expressly requests that the Book be treated as a No Display Book. If the Registry re-classifies a Book as In-Print, the

Registry will direct Google to change the classification of the Book to a No Display Book only upon the express request of the Rightsholder of the Book, subject to Section 3.2(e)(i) (Change Requests by Rightsholders).

(iii) Mistakes. If a Book was mistakenly determined by Google not to be Commercially Available, then the Rightsholder of the Book may notify Google, or may authorize the Registry to notify Google, of such mistaken determination. To verify the claim, the Registry will provide, upon Google's reasonable request, information supporting any assertion by the Rightsholder of the Book that the Book is Commercially Available. If the Rightsholder ~~demonstrates~~asserts that the Book is Commercially Available, then, as Google's sole obligation and the Rightsholder's sole remedy (subject to Section 3.2(d)(iv) (Disputes)), Google promptly shall correct the determination as to whether the Book is Commercially Available ~~within thirty (30) days~~.

(iv) Disputes. The Registry and Google shall work together to resolve any disputes regarding the determination of whether a Book is Commercially Available. If they are unable to do so, then the dispute shall be resolved pursuant to Article IX (Dispute Resolution). If the Arbitrator, in such dispute, finds in favor of the Rightsholder, then Google shall pay the Rightsholder's reasonable attorneys' fees and costs, including arbitration costs.

(v) Safe Harbor Public Domain Determination.

(1) Safe Harbor Process. Attachment E (Public Domain) sets forth the process by which Google may determine whether a book is a Public Domain Book for the sole purpose of determining whether Section 3.2(d)(v)(3) (Safe Harbor) is applicable. Attachment E (Public Domain) may be amended by Google and the Registry from time to time if Google develops and provides to the Registry additional or different processes for determining whether a book is a Public Domain Book. If the Registry reasonably believes that such processes do not identify Public Domain Books accurately, then the Registry shall notify Google thereof. Google shall respond to such notice within thirty (30) days, either by modifying such process or by explaining how such process can reasonably identify Public Domain Books accurately. Any disputes as to whether the process can reasonably identify Public Domain Books for purposes of determining

the applicability of Section 3.2(d)(v)(3) (Safe Harbor) shall be resolved pursuant to Article IX (Dispute Resolution).

(2) List. Google shall identify to the Registry books that it has determined to be Public Domain Books pursuant to the process set forth in Attachment E (Public Domain) and for which Google wants the safe harbor described in Section 3.2(d)(v)(3) (Safe Harbor). For each such book, Google shall provide the supporting reasons and information that Attachment E (Public Domain) requires. At any time, the Registry or a Rightsholder may notify Google that it or a Rightsholder believes that any such book is not a Public Domain Book (with supporting reasons and information) and, upon receipt of such notice, Google shall promptly review the supporting reasons and information and shall either (a) re-classify the Book as in copyright or (b) notify the Registry and any notifying Rightsholder that Google continues to believe the book is a Public Domain Book. Any disputes with respect to whether a book is a Public Domain Book shall be resolved pursuant to Article IX (Dispute Resolution); in any such dispute, the burdens of proof as to whether the book is in copyright or in the public domain under the Copyright Act in the United States (and the allocation and shifting of such burdens) shall be as if the action were one for copyright infringement brought under the Copyright Act.

(3) Safe Harbor. If, with respect to a book, Google has followed the process set forth in Attachment E (Public Domain) and neither the Registry nor a Rightsholder has notified Google pursuant to Section 3.2(d)(v)(2) (List), then Google may treat such book as if it is in the public domain under the Copyright Act in the United States for the purposes of this Amended Settlement Agreement, and Google will have no liability or obligation (a) for any use of such book to the extent that such use would be authorized under this Amended Settlement Agreement if such book were a Display Book or (b) for providing downloadable versions of such book. If the Registry or a Rightsholder has notified Google pursuant to Section 3.2(d)(v)(2) (List), Google otherwise obtains actual knowledge that a Book is not in the public domain under the Copyright Act in the United States, or a Book is determined to be in copyright pursuant to Article IX (Dispute Resolution), then, commencing five (5) Business Days from the date of such notice, knowledge or determination, the foregoing limitation on Google's liability or obligation will not apply.

(e) Change of Display/No Display Classification.

(i) Change Requests by Rightsholders. For all Books, the Registered Rightsholder of the Book or ~~the Registry, for unclaimed Books,~~ the Unclaimed Works Fiduciary (subject to the last sentence of this Section 3.2(e)(i) (Change Requests by Rightsholders)) may direct Google or the Registry to change the classification of a Book or group of Books to a Display Book or Display Books or to a No Display Book or No Display Books or to include in, or, pursuant to Section 3.5 (Right to Remove or Exclude), exclude any or all of his, her or its Books or group of Books from, one or more of the Display Uses. In the event the Rightsholder directs that any of his, her or its Books be included in one or more of the Display Uses, (1) the provisions of Section 3.5(b)(iii) (Coupling Requirement) will apply to such Books, (2) such Books will be considered Display Books, and (3) such Display Uses will be deemed authorized. Google will implement a direction to change the classification of a Book within thirty (30) days after Google receives notice of such direction. The Registry shall be able to direct Google to change the classification of a Book to a Display Book or a group of Books to Display Books. A direction to change the classification of a Book to a No Display Book or a group of Books to No Display Books, however, must be initiated by the Rightsholder of the Book or Books.

(ii) Change Requests by Google. At any time after one (1) year from the Final Approval Date, Google shall have the right to request that the classification of a Book be changed to a Display Book if Google believes that the Book is not Commercially Available at that time, or if Google believes that a mistake was made in initially determining the Book to be Commercially Available. Upon receipt of such a request from Google, the Registry shall have one hundred and twenty (120) days to attempt to contact the Rightsholder of the Book to inform such Rightsholder of such request and/or collect evidence with respect to whether the Book is Commercially Available. The Registry shall notify Google if it is able to contact such Rightsholder and will inform Google whether such Rightsholder wants the Book to remain classified as a No Display Book. If the Rightsholder of the Book provides evidence that the Book is Commercially Available or otherwise directs Google that he, she or it wants the Book to remain a No Display Book, or if the Registry otherwise determines that the Book is Commercially Available, then the Registry will notify Google, and Google will not change the classification of the Book to a Display Book at that time on that basis. If, by the end of the one hundred twenty (120)-day period, the Registry is unable to contact the Rightsholder or to find accurate evidence regarding whether the Book is Commercially

Available, then the Registry shall inform Google and Google may change the classification of the Book to a Display Book, subject to Section 3.5 (Right to Remove or Exclude).

3.3 Display Books.

(a) Display and Non-Display Uses. Subject to Section 3.5 (Right to Remove or Exclude) and Section 4.3 (Preview Uses), Google may make Display Uses and Non-Display Uses of all Display Books: provided, however, that Google will not make Display Uses of any Book that Google has classified as not Commercially Available until the later of the Effective Date or sixty (60) days after notifying the Registry that Google has classified such Book as not Commercially Available. If, within such sixty (60)-day period, a dispute under Section 3.2(d)(iv) (Disputes) arises between the Rightsholder or the Registry and Google regarding whether such Book is Commercially Available, Google will not make Display Uses of the Book unless and until Google prevails under Article IX (Dispute Resolution).

(b) Inserts in Display Books. If a Book is classified as a Display Book, then, subject to Section 3.5 (Right to Remove or Exclude), Google may make Display Uses and Non-Display Uses of all Inserts in such Book. If a Book is classified as a No Display Book, then all Inserts in that Book are also subject to Section 3.4 (No Display Books).

(c) Inserts in Government Works and Public Domain Books. Google may use all Inserts in Government Works and Public Domain Books in connection with any uses of such Government Works and Public Domain Works in Google Products and Services, subject to Section 3.5(b) (Right to Exclude from Display Uses and Revenue Models).

(d) Accommodation of Print Disabilities. Google may provide the Display Uses in a manner that accommodates users with Print Disabilities so that such users have a substantially similar user experience as users without Print Disabilities.

(e) Change to No Display. Rightsholders of Books may, pursuant to Section 3.2(e)(i) (Change Requests by Rightsholders), direct Google or the Registry to change the classification of a Display Book to a No Display Book.

(f) Author Landing Page Links. If, in any Display Use of a Book in GBS for which Display Use is authorized pursuant to this Amended Settlement Agreement, Google presents any web page (i) dedicated to an individual author that includes hyperlinks to that author's Books and other features, or (ii) with content from a Book that includes a hyperlink to the website of the publisher of such Book, then Google will also include on such page a hyperlink (or similar or appropriate technology) to that author's website, in either case only if (1) the Registry provides Google with such hyperlink, and (2) such website promotes the author's works, or provides relevant information about the author, and is otherwise appropriate for such purposes; provided that Google may remove any such hyperlink if Google becomes aware that such hyperlink no longer functions to link to such website.

(g) Display Use Attributes. With respect to their Display Books, Google and the Rightsholders may negotiate and Rightsholders may authorize Google to modify or remove the restrictions that are placed on Google in Section 4.1(d) (Basic Features of Institutional Subscriptions) and 4.2(a) (Basic Features of Consumer Purchase), and comparable restrictions that may apply to additional Revenue Models that may be agreed pursuant to Section 4.7 (Additional Revenue Models).

3.4 No Display Books.

(a) Non-Display Uses. Subject to Section 3.5 (Right to Remove or Exclude), Google may make Non-Display Uses of all No Display Books.

(b) Change to Display. Rightsholders of Books may, pursuant to Section 3.2(e)(i) (Change Requests by Rightsholders), direct Google or the Registry to change the classification of a No Display Book to a Display Book, or to include any or all of their No

Display Books in one or more of the Display Uses, in which case such Books will then be considered to be Display Books, and Article IV (Economic Terms for Google's Use of Books) shall apply.

3.5 Right to Remove or Exclude.

(a) Right to Remove.

(i) Right to Remove. A Rightsholder of a Book may direct that his, her or its Book not be Digitized, or if already Digitized, that the Book be Removed. If a Book has not yet been Digitized when Google receives a Removal request for that Book, Google will use reasonable efforts not to Digitize that Book, but, in any event, will comply with the request to Remove. Google will implement a Rightsholder's Removal direction ~~within~~ as soon as reasonably practicable, but in any event no later than thirty (30) days after notice from the Registry, and in accordance with Section 3.5(b) (Right to Exclude from Display Uses and Revenue Models), will simultaneously act promptly to exclude a Book for which it has received a Removal request. A Fully Participating Library will implement a Rightsholder's Removal direction ~~within~~ for a Book as soon as reasonably practicable, but in any event no later than ninety (90) days after notice from the Registry.

(ii) Back-up Storage. Google and Fully Participating Libraries may maintain Books on back-up tapes or on any other back-up storage media subject to compliance with the Security Standard. If any back-up tape or other back-up storage media containing such Book is restored, then any Book that has been Removed pursuant to Section 3.5(a)(i) (Right to Remove) shall also be Removed from any copy made from the back-up tape or other back-up storage media.

(iii) Limitations on Right to Remove. The right to Remove under Section 3.5(a)(i) (Right to Remove) is limited to requests made ~~within twenty-seven (27) months from the Notice Commencement Date~~ on or before April 5, 2011 for Removal as described in Section 1.126(a) (Removed) or after April 5, 2011 but on or before March 9, 2012, for Removal as described in Section 1.126(b) (Removed). Thereafter, requests will be honored only to the extent that the Books have not yet been Digitized as of the date the request is made; if the Books at issue have already been Digitized, the

Rightsholder may request exclusion from particular Display Uses (under Section 3.5(b)(i) (Right to Exclude)) but not Removal (under Section 3.5(a)(i) (Right to Remove)).

(b) Right to Exclude from Display Uses and Revenue Models.

(i) Right to Exclude. Any Rightsholder of a Book at any time may direct Google or the Registry to exclude his, her or its Book, or any portion thereof, from any one or more, or all, Display Uses, Revenue Models or the Book Annotation sharing feature under Section 3.10(c)(ii) (Hyperlinks and Book Annotations), and any Rightsholder of an Insert at any time may direct that his, her or its Insert, or any portion thereof, be excluded from all (but not less than all) Display Uses; provided that any Rightsholder of an Insert may only direct that his, her or its Insert, or any portion thereof, be excluded but not the entire Book, Public Domain Book or Government Work in which its Insert is contained. Google shall implement any such direction as follows. Google will implement a Rightsholder's exclusion direction ~~within~~promptly, but in any event no later than thirty (30) days after notice from the Registry or from resolution of the dispute in favor of such Rightsholder (in the case of a challenge under Section 3.5(b)(ii) (Challenging Insert Exclusion Requests) or Section 3.5(b)(vii) (Government Works and Public Domain Works)). Google shall use commercially reasonable efforts to develop a mechanism for excluding no more of Books or Inserts than Rightsholders direct. If, after using such commercially reasonable efforts, Google is unable to limit its exclusion to the Insert or portion of the Book or Insert directed by a Rightsholder, Google may exclude up to the entire page or pages on which such Insert or portion appears. If, however, Google or the Registry develops a tool that enables Rightsholders to specify with precision the location and amount of material in an Insert or portion of a Book or Insert that is less than an entire page and for which the Rightsholder has directed exclusion, Google shall, upon receipt of such direction, exclude such Inserts or portions of Books or Inserts, but no more than that, from Display Uses as directed.

(1) Exclusion from Library Digital Copy. Notwithstanding Section 3.5(b)(i) (Right to Exclude), no Rightsholder may direct that his, her or its Book or Insert be excluded from any Library Digital Copy provided, however, that, in the case of a Book, a Rightsholder of the Book may request Removal of such Book pursuant to Section 3.5(a) (Right to Remove).

(ii) Challenging Insert Exclusion Requests. The Rightsholder of a Book that contains an Insert that the Rightsholder of the Insert has directed be excluded may challenge such direction under law or contract rights, and any dispute regarding such challenge shall be resolved pursuant to Article IX (Dispute Resolution). In addition, if (a) the Rightsholder of a Book that contains an Insert for which the Insert Rightsholder has directed exclusion is not a Registered Rightsholder or (b) the Registered Rightsholder of the Book that contains such Insert (1) determined not to challenge such exclusion pursuant to the previous sentence and (2) does not object to Google making such challenge, then Google may challenge whether the Rightsholder of the Insert would have a right under the Copyright Act to exclude such Insert. Google and the Registry will develop a process to implement the foregoing. Any dispute regarding such challenge shall be resolved pursuant to Article IX (Dispute Resolution).

(iii) Coupling Requirement. Notwithstanding Section 3.5(b)(i) (Right to Exclude), if the Rightsholder of any Library Work authorizes Consumer Purchase or any ~~new~~additional Revenue Model that may be developed pursuant to Section 4.7 (~~New~~Additional Revenue Models) (except for any ~~new~~additional Revenue Model in which access to the Library Scan of that Library Work is provided to users free of charge) of or for such Library Work and Google uses a Library Scan of such Library Work for Consumer Purchase or for such ~~new~~additional Revenue Model, then the Rightsholder authorizes Google to include such Library Work in all Institutional Subscriptions (the “Coupling Requirement”); provided, however, that if a Library Work is Commercially Available as of the Notice Commencement Date or becomes Commercially Available at any time during the two (2)-year period after the Notice Commencement Date, the Coupling Requirement will not apply to that Library Work; provided, further, that if, at any time after the end of such two (2)-year period, the Library Work ceases to be Commercially Available, then the Coupling Requirement shall thereafter apply to such Library Work if Google is using the Library Scan for Display Uses.

(iv) Mistakes and the Coupling Requirement. If, as of the Notice Commencement Date, a Library Work for which Google uses a Library Scan for Consumer Purchase or any ~~new~~additional Revenue Model that may be developed pursuant to Section 4.7 (~~New~~Additional Revenue Models) (except for any ~~new~~additional Revenue Model in which access to the Library Scan of that Library Work is provided to users free of charge) is not Commercially Available but Google mistakenly determined such Library Work to be Commercially Available, and such Library Work does not

become Commercially Available at any time during the two (2)-year period following the Notice Commencement Date, then, upon a determination that the Library Work is not Commercially Available after such two (2)-year period, the Coupling Requirement will apply to such Library Work if Google is using a Library Scan for Display Uses. If, as of the Notice Commencement Date or at any time during the two (2)-year period following the Notice Commencement Date, such Library Work is mistakenly determined to be not Commercially Available, then, upon determination that the Library Work is Commercially Available, the Coupling Requirement will not apply to such Library Work; provided, however, that if, at any time after the end of such two (2)-year period, the Library Work ceases to be Commercially Available, then the Coupling Requirement shall thereafter apply to such Library Work if Google uses a Library Scan for Display Uses.

(v) Waiver of Coupling Requirement. Google and the Registry may, with the consent of a Fully Participating Library or a Cooperating Library, agree to waive the Coupling Requirement as to Library Works of which such Fully Participating Library or Cooperating Library is the source and for which Google uses a Library Scan for Display Uses; provided, however, that for any Library Work for which a Library Scan is constructed from more than one physical copy of a Library Work, such waiver requires the consent of all Fully Participating Libraries and Cooperating Libraries that are the source of copies of such Library Work. Any Fully Participating Library and Cooperating Library may also agree to such a waiver in its Digitization Agreement with Google or upon notice to Google, in which event Google shall notify the Registry of such waiver. Google and the Registry may, with the consent of all of the Fully Participating Libraries and the Cooperating Libraries, acting through the Designated Representative, agree to waive the Coupling Requirement as to all Library Works subject to the Coupling Requirement.

(vi) Continuing Obligations. If Google is authorized to make a Display Use of a Book and, subsequent to such authorization, a Rightsholder Removes such Book or excludes such Book or an Insert contained therein, Google shall cease such Display Use except that Google may make such Display Use of such Book or Insert to the extent necessary to fulfill its obligations as of the date of such Removal or exclusion request to any user who previously purchased access to or use of the Book through any Institutional Subscription (for a period not to exceed ten (10) months or the term of the Institutional Subscription, whichever is less, after the date of such Removal or exclusion request) or Consumer Purchase or any substantially

similar Google Product or Service based on authorizations granted to Google under a separate agreement entered into directly with the Rightsholder.

(vii) Government Works and Public Domain Works. If a Rightsholder of an Insert in a Government Work or a Public Domain Book (not an Insert in a Book) directs Google to exclude its Insert from Display Uses, Google may elect to reject such direction. In the event of such a rejection, such Rightsholder may, notwithstanding any release in this Amended Settlement Agreement, bring either a judicial action in United States federal court against Google with respect to Google's use of the Insert, in which judicial action the Rightsholder may seek to recover any and all relief available pursuant to the Copyright Act or, alternatively, the Rightsholder may initiate dispute resolution under Article IX (Dispute Resolution) with respect to Google's rejection of the Rightsholder's direction. If the Rightsholder prevails in such arbitration, (i) the Arbitrator shall issue an order prohibiting Google from making any and all Display Uses of such Insert that the Arbitrator determines would be an infringement of such Rightsholder's Copyright Interest, (ii) Google shall pay the Rightsholder's reasonable attorneys' fees and costs, including the cost of the arbitration, and (iii) the foregoing and any other injunctive relief deemed appropriate by the Arbitrator shall be Google's sole obligation and the Rightsholder's sole remedy for rejecting the Rightsholder's direction for exclusion of its Insert in a Government Work or Public Domain Book from Display Uses (in addition to any award of injunctive relief, to prevent a continuing infringement of such Rightsholder's Copyright Interest in his, her or its Insert, that may be awarded by the Arbitrator). Pending the Decision of the Arbitrator, Google shall stop any and all Display Uses of the Insert.

(c) Take-Down or Transfer Requests.

(i) Definitions. As used in this Section 3.5(c) (Take-Down or Transfer Requests), the following terms have the following meanings:

(1) "Counter-Notice" means a request, in the form of notice attached as Exhibit B to the Author-Publisher Procedures, that states, under penalty of perjury, that the Initial Authorizing Rightsholder has the good faith belief that he, she or it has rights in a Book that is the subject of a Take Down Request or a Transfer Request necessary to authorize Google to exploit such Book as it is being exploited in such Other Google Program.

(2) “Educational Books” means Books that, when published, were intended primarily for sale to educational markets (*i.e.*, K-12, higher education, continuing education, vocational, professional, self-study, and similar educational markets) for use in educational programs.

(3) “Initial Authorizing Rightsholder” means the Person who had given Google permission to use a Book that is the subject of a Take Down Request or a Transfer Request.

(4) “Notifying Rightsholder” means a Rightsholder who has a good faith belief that Google is exploiting a Book in an Other Google Program without the necessary authorization from such Rightsholder.

(5) “Other Google Program” means a Google program other than, but similar to, the Revenue Models, including the Google Partner Program.

(6) “Take Down Request” means a request, in the form of notice attached as Exhibit A to the Author-Publisher Procedures, that Google remove a Book from an Other Google Program.

(7) “Transfer Request” means a request, in the form of notice attached as Exhibit A to the Author-Publisher Procedures, to transfer a Book from an Other Google Program to one or more Display Uses in one or more of the Revenue Models.

(ii) Procedures. The following procedures will apply to each Book classified as In-Print under the Author-Publisher Procedures (except for Educational Books) that is the subject of a contract between an author and a publisher regarding publication of such Book executed prior to 1992 and that has not been amended thereafter to expressly grant or retain all electronic rights pertinent to an Other Google Program if such Book is displayed in an Other Google Program.

(1) If Google receives a Take Down Request or a Transfer Request from the Registry, Google shall send a copy to the Initial Authorizing Rightsholder.

(2) If the Initial Authorizing Rightsholder fails to respond within thirty (30) days, then, if the request satisfies the requirements set forth in the Author-Publisher Procedures, Google shall take down such Book or transfer such Book into the Revenue Models, as specified in the request. If Google transfers such Book into the Revenue Models, such Book shall become subject to this [Amended](#) Settlement Agreement.

(3) If the Initial Authorizing Rightsholder responds to a Take Down Request by filing a Counter-Notice, the Registry will forward the Counter-Notice to Google and the Notifying Rightsholder. If the Counter Notice requirements set forth in the Author-Publisher Procedures are met, Google may, in its discretion, take down, maintain or restore access to such Book in the Other Google Program.

(4) If the Initial Authorizing Rightsholder responds to a Transfer Request by filing a notice of objection with the Registry, then Google shall not include such Book in the Revenue Models and shall stop displaying such Book in the Other Google Program while the Notifying Rightsholder and the Initial Authorizing Rightsholder resolve the dispute. Google shall only restore access to such Book in any of the Revenue Models or the Other Google Program once (a) the Initial Authorizing Rightsholder and the Notifying Rightsholder jointly authorize Google to do so or (b) either the Initial Authorizing Rightsholder or the Notifying Rightsholder obtains a court (or, if the contract between the author and publisher regarding publication of such Books permits, arbitration) ruling giving it authority to direct Google to do so.

(5) In any disputes between an Initial Authorizing Rightsholder and a Notifying Rightsholder over which of them has the right to authorize Google to exploit a Book in the Other Google Program or in the Revenue Models, Google will not be named as a party or brought into the dispute in any manner and will have no liability or responsibility with respect to any such dispute.

3.6 Technical Adaptations. Except with respect to Books Removed under Section 3.5(a) (Right to Remove), Google may make technical adaptations to (but not adapt or alter the content of) all Books (whether Display or No Display) and Inserts as reasonably necessary to preserve, maintain, manage, and keep technologically current its copies of the Books and Inserts.

3.7 Contemplated Rightsholder Services.

(a) Obligation. Google shall implement both of the Contemplated Rightsholder Services (*i.e.*, Institutional Subscriptions and Consumer Purchases) within five (5) years after the Effective Date. If Google discontinues both of the Contemplated Rightsholder Services prior to the fifth (5th) anniversary of the Effective Date, Google shall implement comparable replacement monetization opportunities for the Rightsholders within a period of one year from the date that Google discontinues the Contemplated Rightsholder Services. Google's sole obligation and the sole remedy for any failure under this Section 3.7(a) (Obligation) is set forth in Sections 3.7(b) (Failure to Provide Contemplated Rightsholder Services) through (d) (Third-Party Required Library Services Provider).

(b) Failure to Provide Contemplated Rightsholder Services. If (i) Google fails to implement either of the Contemplated Rightsholder Services within five (5) years after the Effective Date or (ii) Google discontinues both of the Contemplated Rightsholder Services prior to the fifth (5th) anniversary of the Effective Date, and does not implement comparable replacement monetization opportunities for the Rightsholders within a period of one year from the date that Google discontinues the Contemplated Rightsholder Services, then, in either case, Google's right to make any and all Non-Display Uses and Display Uses shall terminate ninety (90) days after notice to Google by the Registry, except as may be authorized by the Registry; provided, however, that if Google subsequently offers one of the Contemplated Rightsholder Services, Google's rights to make any and all Non-Display Uses and Display Uses shall be immediately re-instated. Notwithstanding the foregoing, if Google believes that any actions or inactions of the Registry have proximately caused Google to fail to provide the Contemplated Rightsholder Services, then Google will provide the Registry with notice describing the Registry's actions or inactions within such ninety (90)-day notice period, and the Registry's notice of termination will have no effect and Google may continue to make any and all Non-Display Uses and Display Uses. Any dispute over whether any action or inaction of the Registry has proximately caused Google to fail to provide the Contemplated Rightsholder Services shall be subject to the dispute resolution provisions of Article IX (Dispute Resolution) and Google may make any and all Non-Display and Display Uses pending the Decision of the Arbitrator.

(c) Additional Contemplated Rightsholder Services Provider. In addition, if (i) Google fails to implement both of the Contemplated Rightsholder Services within five (5) years after the Effective Date or (ii) Google discontinues both of the Contemplated Rightsholder Services and does not implement comparable replacement monetization opportunities for the Rightsholders within a period of one year from the date that Google discontinues the Contemplated Rightsholder Services, then, in either case, the Registry on the one hand and/or the Fully Participating Libraries and the Cooperating Libraries on the other hand, acting reasonably, may work to find one or more provider(s) that can provide Consumer Purchases, Institutional Subscriptions and/or the ~~new~~additional Revenue Models listed in Section 4.7 (~~New~~Additional Revenue Models), and/or Required Library Services, on substantially the same terms described in this Amended Settlement Agreement. Any such arrangement shall be subject to the consent of the Registry, on the one hand, and the Fully Participating Libraries and the Cooperating Libraries acting through the Designated Representative, on the other hand (but in the case of the Fully Participating Libraries and the Cooperating Libraries only as to Library Scans), which consent of the Registry and the Fully Participating Libraries and the Cooperating Libraries shall not be unreasonably withheld or delayed (any such provider is referred to in this Amended Settlement Agreement as an “Additional Contemplated Rightsholder Services Provider”). If an Additional Contemplated Rightsholder Services Provider is identified and the foregoing required consent is obtained, then Google will provide such Additional Contemplated Rightsholder Services Provider with Digital Copies of the Library Scans (so long as the Digital Copies are not restricted from further distribution under the Digitization Agreement between Google and a Fully Participating Library or a Cooperating Library) and Digital Copies of other Books that may be provided by Google without restriction. Such Digital Copies may be used by the Additional Contemplated Rightsholder Services Provider solely to provide the Contemplated Rightsholder Services and/or the ~~new~~additional Revenue Models listed in Section 4.7 (~~New~~Additional Revenue Models) and/or Required Library Services in accordance with the terms of this Amended Settlement Agreement and, in addition, with respect to Digital Copies of Library Scans only, the terms of Google’s agreements with each of the Fully Participating Libraries and the Cooperating Libraries. Such Additional Contemplated Rightsholder Services Provider is, in connection with any Claim arising out of its making available Digital

Copies of Books, deemed to be a successor of Google for purposes of Section 10.1(g) (Google Releases).

(d) Third-Party Required Library Services Provider.

If Google provides a Digital Copy of the Library Scans to a Third-Party Required Library Services Provider under Section 7.2(e) (Required Library Services Requirement), then the Contemplated Rightsholder Services may also be provided by the Third-Party Required Library Services Provider in addition to the Required Library Services, and Google will have no obligation to provide Contemplated Rightsholder Services and will have no liability or obligation with respect to Contemplated Rightsholder Services provided by the Third-Party Required Library Services Provider.

(e) Google's Exclusion of Books.

Google may, at its discretion, exclude particular Books from one or more Display Uses for editorial or non-editorial reasons. However, Google's right to exclude Books for editorial reasons (*i.e.*, not for quality, user experience, legal or other non-editorial reasons) is an issue of great sensitivity to Plaintiffs and Google. Accordingly, because Plaintiffs, Google and the libraries all value the principle of freedom of expression, and agree that this principle is an important part of GBS and other Google Products and Services, Google agrees to notify the Registry of any such exclusion of a Book for editorial reasons and of any information Google has that is pertinent to the Registry's use of such Book other than Confidential Information of Google and other than information that Google received from a third party under an obligation of confidentiality.

(i) Digital Copy of Excluded Books.

Google will provide to the Registry a Digital Copy of any Book that Google excludes for editorial reasons. The Registry may, subject to Section 3.5 (Right to Remove ~~and~~or Exclude), engage, with the consent (not to be unreasonably withheld) of the Fully Participating Library or the Cooperating Library from which the Library Scan of such Book was made (including, if Google constructed a Digital Copy of a Book pursuant to Section 7.2(a)(i) (Fully Participating Library Collections) from one or more physical Books, all such libraries that were the source of such physical Books), a Third-Party Required Library Services Provider that, once engaged, may make available to users a Digital Copy of that Book for uses comparable to Display Uses and Non-Display Uses; provided that, if a Book is not then Commercially Available and the

Third-Party Required Library Services Provider makes available the Book for a fee, then the Third-Party Required Library Services Provider must also offer the Required Library Services (Section 7.2(e) (Required Library Services Requirement)) for the Book to the extent required by such Fully Participating Library or Cooperating Library. Such Third-Party Required Library Services Provider is, in connection with any Claim arising out of its making available such Digital Copy of the Book, deemed to be a successor of Google for purposes of Section 10.1(g) (Google Releases).

~~3.8 — Effect of Other Agreements and Changes in Law.~~

~~(a) — Effect of Other Agreements. The Registry (and any substantially similar entity organized by Rightsholders that is using any data or resources that Google provides, or that is of the type that Google provides, to the Registry relating to this Settlement) will extend economic and other terms to Google that, when taken as a whole, do not disfavor or disadvantage Google as compared to any other substantially similar authorizations granted to third parties by the Registry (or any substantially similar entity organized by Rightsholders that is using any data or resources that Google provides, or that is of the type that Google provides, to the Registry relating to this Settlement) when such authorizations (i) are made within ten (10) years of the Effective Date and (ii) include rights granted from a significant portion of Rightsholders other than Registered Rightsholders. With respect to any such authorization, the Registry promptly will provide Google with notice that an authorization has been granted with sufficient detail of the terms to allow Google to obtain the benefits of such authorization pursuant to this Section 3.8(a) (Effect of Other Agreements).~~

3.8 ~~(b)~~ Effect of Changes in Law. Google will be able to take advantage of any future legislative change(s), such as legislation allowing the use of orphan works (if enacted), that put Google at a competitive disadvantage in its use of Books in any Google Products and Services that are subject to this Amended Settlement Agreement; provided, however, that Google may choose to receive the benefit of such change(s) only if a third party is actually taking advantage of such law(s) in connection with services that competitively disadvantage Google in its provision of any such Google Products and Services; provided, further, that no changes in the “fair use” doctrine as codified in Section 107 of the Copyright Act shall trigger this Section ~~3.8(b)~~3.8 (Effect of Changes in Law).

3.9 Distribution Arrangements. When Google may make any Snippet Display of a Book under this Amended Settlement Agreement, Google may also allow third parties that have entered into agreements with Google (a) to display snippets served by Google on their websites in response to user interactions on their websites and (b) to

cache temporarily snippets transmitted by Google as described in the foregoing clause (a) for future display on their websites in response to user interactions on their websites.

3.10 Specific Prohibitions.

(a) Prohibitions on Display. Except as expressly permitted by this Amended Settlement Agreement or otherwise by Registered Rightsholders or ~~the Registry, for unclaimed works, by the Unclaimed Works Fiduciary,~~ Google shall not (i) display any Expression from Books or Inserts; (ii) display any Expression from Books or Inserts in a manner that would constitute a derivative work of such Books or Inserts under the Copyright Act; or (iii) display summaries or abstracts of, or compilations from, Books or Inserts created using Digital Copies.

(b) Prohibitions on Linking. Except as expressly permitted by this Amended Settlement Agreement or otherwise by Registered Rightsholders or, for unclaimed Books, by the Unclaimed Works Fiduciary, Rightsholders or the Registry, Google shall not create hyperlinks to Preview Use Book pages permitted by the terms of this Amended Settlement Agreement from revenue generating products or services if the effect of those links in the aggregate is to detract from revenue under this Amended Settlement Agreement that the Rightsholder(s) of such Book(s) would realize if the links did not exist, unless such services or products (i) are search services (including, for example, Google Web Search, Google Earth and other Google services that show search results by browsing instead of by entering a search query), or (ii) have the effect of making discovery of Books easier, more efficient, more widespread, or more useful. If Plaintiffs or any Rightsholders believe that this Section 3.10(b) (Prohibitions on Linking) has been violated, as Plaintiffs' and Rightsholders' sole remedy and Google's sole obligation, the Registry will notify Google of the existence of such links and if it is agreed or an Arbitrator, pursuant to Article IX (Dispute Resolution), determines that this Section 3.10(b) (Prohibitions on Linking) has been violated, Google will expeditiously remove said links or come to a separate agreement with the Registry to permit them.

(c) Integrity of the Text.

(i) No Alteration of Text. Except as expressly authorized by the [Registered](#) Rightsholder or ~~the Registry, for unclaimed works, by the Unclaimed Works Fiduciary~~, or in this [Amended](#) Settlement Agreement, Google may not intentionally alter the text of a Book or Insert when displayed to users. Changes in the formatting or presentation of text are not considered to be alteration of the text, *e.g.*, for the Accommodated Service.

(ii) Hyperlinks and Book Annotations. Except as expressly authorized by the [Registered](#) Rightsholder or ~~the Registry, for unclaimed Books, by the Unclaimed Works Fiduciary~~, Google may not add hyperlinks to any content within a page of a Book or facilitate the sharing of Book Annotations, except that Google may:

(1) add hyperlinks within the Book for specific internal references from text contained within the Book to other sections of the Book, such as from a table of contents entry to the referenced page, from a page number in the index to the page, or from internal references in the Book to footnotes, endnotes, bibliographical material, appendices, figures, and illustrations,

(2) add a hyperlink from an explicit reference in the Book to an online version of an external source cited in a footnote, endnote, or bibliographical material,

(3) add a hyperlink to a URL that the Rightsholder included in a Book,

(4) temporarily highlight or otherwise emphasize words in response to a user's action, so long as such highlight or emphasis appears only on the user's monitor and/or on a page printed by such user, and

(5) Subject to the Rightsholder's right to exclude its Books from the Book Annotation sharing feature, allow a user to make Book Annotations for the user's own personal use and to share those Book Annotations with a limited number of other users, provided that the feature that enables Book Annotations within Google Products and Services is subject to the following limitations:

- a) Book Annotations may not be shared with the general public, and
- b) Book Annotations may not be accessible to any user who has not expressly chosen to access it either by active selection or by participation in a group such as a class for which this feature is used, and
- c) Book Annotations may not be displayed with the Book for other users who do not already have the right to view the Book, and
- d) for sharing of a Book Annotation in connection with Consumer Purchase, the user may only share such Book Annotation with no more than twenty-five (25) individuals and the user must identify (*e.g.*, by name, login or user id) each individual with whom such Book Annotation will be shared, and
- e) for sharing of a Book Annotation as part of an Institutional Subscription, the user may only share such Book Annotation with the following other users of such Institutional Subscription: instructors and students in a single academic course sharing such Book Annotation in connection with such course during an academic year or with students of the same course during a subsequent academic year, and employees of the subscriber of the Institutional Subscription sharing such Book Annotation in connection with a discrete work project during the course of that project.

(iii) Advertising Content. Google may not place on, behind or over the contents of a Book or portion thereof (including on Preview Use pages or Snippet Display pages), as displayed to a user, any pop-up, pop-under, or any other types of advertisements or content of any kind. In addition to a Rightsholder's right to exclude one or more of his, her or its Books from Advertising Uses pursuant to Section 3.5(b)(i) (Right to Exclude), the ~~Registry is authorized to act on behalf of Rightsholders that are not Registered Rightsholders to~~ Unclaimed Works Fiduciary may exclude from Advertising Uses one or more unclaimed Books ~~of such Rightsholders~~ if Google displays animated, audio or video advertisements in conjunction

with those Books and the Registry determines that exclusion from such Advertising Uses is in the best interests of ~~such~~ Rightsholders of such unclaimed Books.

3.11 Hosted Version for Rightsholders. Upon request by a Rightsholder of a Book, Google will provide a hosted version of such Book for use in conjunction with such Rightsholder's website, similar to Google's hosted version of Books in the Google Partner Program. Such hosted version will contain the "look and feel" of the Rightsholder's website with minimal Google branding, which branding may be tailored by the Rightsholder upon the Rightsholder's further reasonable request.

3.12 Use of Digital Copies. Except as permitted by Sections 3.7(c) (Additional Contemplated Rightsholder Services Provider), 3.7(e) (Google's Exclusion of Books), 7.2(b)(ix) (Other Uses), 7.2(e)(ii) (Third-Party Required Library Services Provider) or 7.2(g)(ii)(2) (Alternative Accommodated Service Provider), neither Rightsholders nor the Registry may authorize any Person to use Digital Copies of their Books or Inserts made by or for Google without Google's consent; provided that Rightsholders may authorize any Fully Participating Library to use Digital Copies of their Books or Inserts in such Fully Participating Library's LDC consistent with such Fully Participating Library's Digitization Agreement with Google.

3.13 Communication of Rightsholder Directions to Google. Rightsholders shall communicate to the Registry or, at their election and provided that Google implements an Online interface for such purpose, directly to Google, all directions for Removal, exclusion, inclusion, and pricing, and any other directions for Books and Inserts provided for in this Amended Settlement Agreement. If, however, a Rightsholder communicates directly with Google, then Google shall, before implementing any such direction, (a) notify the Registry and provide the Registry with the Rightsholder's contact information and direction and (b) subject to Section 13.2 (Validating and Challenging Claims), receive confirmation from the Registry that (i) for Books, the Person communicating with Google is an appropriate Rightsholder under the Author-Publisher Procedures, and (ii) Google is authorized to implement such direction under this Amended Settlement Agreement, including (for Books) the Author-Publisher Procedures. The Registry will promptly respond to any such notification and request for confirmation from Google and, in any event, within the same period of time as the Registry typically responds to requests directly from Rightsholders to the Registry.

3.14 Advertising Uses. Google may display advertisements on Preview Use pages and other Online Book Pages ("Advertising Uses"). Advertising on general search results pages in which the search is performed over multiple Books and/or over other content such as web pages in response to a user query is not considered to be an "Advertising Use," even if a single Book is the sole search result of a given search on a search results page. Except as set forth in Section 3.10(c)(iii) (Advertising Content) and

Section 3.5(b)(i) (Right to Exclude), this [Amended](#) Settlement Agreement does not otherwise limit Google's right to display advertising anywhere on Google Products and Services.

3.15 Extent of Rights and Authorizations.

(a) Books. A Book Rightsholder's rights and Google's authorizations under this [Amended](#) Settlement Agreement apply to all of the Protected Expression of such Rightsholder contained in a Book in which such Rightsholder holds a Copyright Interest.

(b) Inserts. A Rightsholder of an Insert has no rights under this [Amended](#) Settlement Agreement with respect to any Book or any portion of any Book in which such Insert appears, other than the Insert itself, *e.g.*, a Rightsholder of an Insert has no right to Remove the Book in which his, her or its Insert appears, or to authorize or to prohibit Display Uses of the Book in which his, her or its Insert appears.

(c) Other Content. If content (*e.g.*, text or images) in a Book is (i) in the public domain under the Copyright Act in the United States or (ii) subject to a Copyright Interest not owned by any Rightsholder of such Book or by any Rightsholder of any Insert in such Book, this [Amended](#) Settlement Agreement neither authorizes nor prohibits, nor releases any Claims with respect to, the use of such content.

ARTICLE IV — ECONOMIC TERMS FOR GOOGLE'S USE OF BOOKS

4.1 Institutional Subscriptions.

(a) General Guidelines for Pricing of Institutional Subscriptions.

(i) Objectives. The economic terms for Institutional Subscriptions of Books will be governed by two objectives: (1) the realization of revenue at market rates for each Book and license on behalf of

Rightsholders and (2) the realization of broad access to the Books by the public, including institutions of higher education. Plaintiffs and Google view these two objectives as compatible, and agree that these objectives will help assure both long-term revenue to the Rightsholders and accessibility of the Books to the public.

(ii) Parameters. Google and the Registry will use the following parameters to determine the price of Institutional Subscriptions: pricing of similar products and services available from third parties, the scope of Books available, the quality of the scan and the features offered as part of the Institutional Subscription. Plaintiffs and Google expect that the number of Books available through an Institutional Subscription will change over time. As such, the value and price of Institutional Subscriptions may also change over time.

(iii) FTE Basis. Pricing will be based on FTEs (Full-Time Equivalency). For Higher Education Institutions, FTE is defined as full-time equivalent students.

(iv) Pricing Bands. FTE-based pricing, including pricing bands, may vary across broad categories of institutions. The categories are:

(1) Corporate (may include per seat licensing in addition to FTE);

(2) Higher Education Institutions, which will be subdivided into sub-categories based on the Carnegie Classifications for Institutions of Higher Education within the United States;

(3) School (K-12) (no remote access without Registry approval);

(4) Government (no remote access without Registry approval) (may include per seat licensing in addition to FTE);

(5) Public (no remote access without Registry approval);
and

(6) Additional categories, as agreed between Google and the Registry. Subdividing the market into additional categories may be one mechanism used to ensure broad accessibility of Books to end users.

(v) Versions of Institutional Subscriptions. When Google offers any Institutional Subscription, Google will offer a version of the Institutional Subscription that provides access to all Books available for Institutional Subscriptions pursuant to this Amended Settlement Agreement (the “Institutional Subscription Database”) for a fee. In addition, Google may identify Institutional Subscriptions for a small number of discipline-based collections of Books that Google would offer as an alternative to the version of the Institutional Subscription that provides access to the entire Institutional Subscription Database. To provide an incentive for institutions to subscribe to the entire Institutional Subscription Database, Google shall design the pricing of the different versions of the Institutional Subscription such that the price for access to the entire Institutional Subscription Database will be less than the sum of the prices for access to the discipline-based collections.

(vi) Pricing Strategy. Prior to beginning to sell Institutional Subscriptions, Google shall propose an initial pricing strategy and, thereafter, Google shall propose subsequent pricing strategies, consistent with the objectives set forth in Section 4.1(a)(i) (Objectives) (each, a “Pricing Strategy”), to the Registry.

(1) Elements of Pricing Strategy. Each Pricing Strategy shall include:

a) Any discipline-based collections that would be offered as an Institutional Subscription, as an alternative to the version of the Institutional Subscription that provides access to the entire Institutional Subscription Database.

b) A target retail price for each Institutional Subscription for each of the classes of institutions identified in Section 4.1(a)(iv) (Pricing Bands), including Institutional Subscriptions for each of the discipline-based collections that may be offered, Institutional Subscriptions that provide access to the

entire Institutional Subscription Database, and any Limited Subscriptions.

c) The period of time over which Google will have the authorization to sell the versions of the Institutional Subscription at such target retail prices.

d) Any expected increases or decreases in the price of each version of the Institutional Subscription at annual anniversary points during the period in which the then-current Pricing Strategy will be in effect.

e) The amount of discount, if any, that Google is authorized to offer to institutions and to Institutional Consortia. Any discounts above the approved discount require Registry approval.

f) The Price Change Cut Off Date.

(2) Discounting. The initial Pricing Strategy will also include a discount from the List Prices that will be offered for a limited period of time to subscribers. This discount will be defined against the List Price and is designed to encourage potential customers to subscribe. The period for an initial discount will be included in the initial Pricing Strategy.

(3) Duration. The period for the initial Pricing Strategy to be in effect is expected to be between two (2) and three (3) years. Google and the Registry shall agree as to the periods for which subsequent Pricing Strategies will be in effect.

(4) Process.

a) Initial Pricing Strategies. The initial Pricing Strategy must be agreed upon by Google and the Registry before Google sells any Institutional Subscriptions. Google shall submit a proposed initial Pricing Strategy to the Registry by no later than

one year after the Effective Date. Following submission of the initial Pricing Strategy, Google and the Registry shall negotiate for a period of up to one hundred and eighty (180) days. If, after one hundred and eighty (180) days (or earlier, as mutually agreed), Google and the Registry do not reach agreement on the initial Pricing Strategy, the dispute shall be resolved pursuant to Article IX (Dispute Resolution).

b) Subsequent Pricing Strategies. Google shall submit subsequent proposed Pricing Strategies to the Registry at least ninety (90) days prior to the expiration of the then-current Pricing Strategy, and Google and the Registry shall negotiate for a period of up to ninety (90) days. If, after ninety (90) days (or earlier, as mutually agreed), Google and the Registry do not reach agreement on such proposed Pricing Strategy, the dispute shall be resolved pursuant to Article IX (Dispute Resolution). In the event of such a dispute, the then-current Pricing Strategy will continue to apply unless and until the earlier of (1) Google and the Registry agreeing on a subsequent Pricing Strategy or (2) the Arbitrator rendering a Decision.

(vii) Comparable Products and Services. FTE-based prices in the initial Pricing Strategy will be based upon then-current prices for comparable products and services, surveys of potential subscribers, and other methods for collecting data and market assessment. Google shall be responsible for collecting data comparing the target retail prices for the versions of the Institutional Subscription to the prices of similar products and services (including by use of a third party to collect such data if the Registry requests that Google use a third party, which third party will be subject to the Registry's approval not to be unreasonably withheld or delayed) and shall provide such data to the Registry.

(viii) Adjustments to Pricing Strategy.

(1) Google Proposed Adjustments. Google may propose adjustments to the then-current agreed upon Pricing Strategy. If Google and the Registry cannot agree to a change to the Pricing Strategy after negotiating for a period of sixty (60) days after Google's notice of its proposal for adjustments, then the dispute shall be resolved pursuant to Article IX (Dispute Resolution) consistent with the objectives set forth in

Section 4.1(a)(i) (Objectives). Such sixty (60)-day period may be changed by mutual written agreement of Google and the Registry. In the event of such a dispute, the then-current price will continue to apply unless and until the earlier of (a) Google and the Registry agreeing to changes to the Pricing Strategy or (b) the Arbitrator rendering a Decision; provided, however, that Google and the Registry may agree, or an Arbitrator pursuant to Article IX (Dispute Resolution) may require, that the new pricing be retroactive to sixty (60) days after the date of Google's notice of adjustments to the then-current agreed upon Pricing Strategy.

(2) Registry Proposed Adjustments. The Registry may propose adjustments to the then-current agreed upon Pricing Strategy. If Google and the Registry cannot agree to a change to the Pricing Strategy after negotiating for a period of sixty (60) days after the Registry's notice of its proposal for adjustments, then the dispute shall be resolved pursuant to Article IX (Dispute Resolution) consistent with the objectives set forth in Section 4.1(a)(i) (Objectives). Such sixty (60)-day period may be changed by mutual written agreement of Google and the Registry. In the event of such a dispute, the then-current price will continue to apply unless and until the earlier of (a) Google and the Registry agreeing to changes to the Pricing Strategy or (b) the Arbitrator rendering a Decision. If the renegotiation of the Pricing Strategy concludes, or if the Arbitrator renders a Decision, prior to the Price Change Cut Off Date, then any increase in the price resulting from the renegotiation or Decision will take effect for the academic year first starting after the Price Change Cut Off Date. If the renegotiation of the Pricing Strategy concludes, or if the Arbitrator renders a Decision, on or after the Price Change Cut Off Date, then any price increase will take effect not for the academic year first starting after the Price Change Cut Off Date, but in the next following academic year. In addition, any price increase will not apply to any then-existing subscriber contracts until they are renewed or extended. "Price Change Cut Off Date" means a date that is prior to the commencement of the academic year first starting after such date and that is set to provide Google with a reasonable period of time within which to sell the Institutional Subscription for that academic year without an intervening price increase for Institutional Subscriptions, which period of time reasonably approximates the typical sales cycle for comparable products and services.

(ix) Adjunct Products. Google will inform the Registry of any Google Products and Services that Google offers for a fee as an adjunct to any Institutional Subscription or (if Google and the Registry agree to offer

Consumer Subscriptions) Consumer Subscription, which product or service meets the following conditions:

(1) the preponderance of the value of such product or service to users of the subscription is realized through access to Books through such subscription, and

(2) such product or service exploits access to Books by users of the subscription in a manner that could not, with similar efforts, be similarly exploited by other entities ((1) and (2) together, an “Adjunct Product”).

(3) The Registry will have the right immediately to renegotiate and, if necessary, resolve pursuant to Article IX (Dispute Resolution), with Google the prices of the applicable Institutional Subscription(s) or Consumer Subscription(s) with which such Adjunct Product is used under the procedures set forth in Section 4.1(a)(viii) (Adjustments to Pricing Strategy), which revised prices will apply prospectively only. Google, at its sole discretion, may choose to remove access to Books as part of the Adjunct Product or modify the Adjunct Product in a manner that ensures that conditions in clauses (1) and (2) above are no longer met if Google wishes to avoid the Registry’s option of renegotiating or resolving pursuant to Article IX (Dispute Resolution). Renegotiation and resolution pursuant to Article IX (Dispute Resolution), as set forth in this Section 4.1(a)(ix) (Adjunct Products), shall be the Registry’s sole remedy and Google’s sole obligation for disputes under this Section 4.1(a)(ix) (Adjunct Products).

(b) Institutional Consortia. Google may work through Institutional Consortia to sell Institutional Subscriptions.

(c) Intermediaries. Google may work through intermediaries to sell Institutional Subscriptions, subject to Registry approval, which approval shall not be unreasonably withheld or delayed.

(d) Basic Features of Institutional Subscriptions. Institutional Subscriptions will enable users to view, copy/paste, and print pages of a Book, and may enable Book Annotations. With

respect to copy/paste, the user will not be able to select, copy and paste more than four (4) pages of the content of a Display Book with a single copy/paste command. Printing will be on a page-by-page basis or a page range basis, but the user will not be able to select a page range that is greater than twenty (20) pages with one print command for printing. Google will include a visible watermark on pages printed from the Institutional Subscription Database, which identifies the material as copyrighted and displays encrypted session identifying information provided by the subscribing institution during such session, and which could be used to identify the authorized user that printed the material or the access point from which the material was printed. Such watermark will not obscure the content of the printed pages.

(e) Institutional Subscription Terms and Conditions.

In its terms and conditions applicable to Institutional Subscriptions, (i) Google will (1) limit access to Books to appropriate individuals within the subscriber institution (*e.g.*, in the case of educational institutions, faculty, students, researchers, staff members, librarians, personnel and business invitees of the subscriber and walk-in users from the general public; in the case of corporate or government offices, personnel and business invitees; and, in the case of Public Libraries, library patrons and personnel), (2) permit users to view, copy/paste, and print pages of Books only to the extent authorized under this [Amended](#) Settlement Agreement, (3) permit users to make available the Books and Inserts in the Institutional Subscription Database to other users of that Institutional Subscription through hyperlinks, or similar or appropriate technology, when such Books and Inserts are served by Google, for course use (*e.g.*, e-reserves and course management systems), only to the extent authorized under this [Amended](#) Settlement Agreement, (4) not prohibit any uses of Books or Inserts that would otherwise be permitted under the Copyright Act without the need for express authorization from the Rightsholder, and (5) include the right for Google to restrict or terminate a user's account, including additional restrictions on printing and copy/paste, if the user distributes the copyrighted material from a Book in a manner that is prohibited by the terms and conditions or applicable law, and (ii) Google may enable Book Annotations. Prior to Google's initial launch of the Institutional Subscription, Google will provide to the Registry a copy of the terms and conditions applicable to any Institutional Subscriptions offered by Google.

(f) Subscriber Experience. The experience and rights provided to subscribers and their users under Institutional Subscriptions will be no less favorable to them than the experience and rights offered in the Consumer Purchase, except that such experience and rights will be time-limited to the duration of the Institutional Subscription. In addition, and without limiting the foregoing, Institutional Subscriptions must permit searching the full text of Books in the Institutional Subscription Database and, in the case of Higher Education Institutions, permit users to make available the Books and Inserts in the Institutional Subscription Database to other users of the Institutional Subscription through hyperlinks, or similar or appropriate technology, as described in Section 4.1(e) (Institutional Subscription Terms and Conditions).

(g) Beta Testing. Google may provide Institutional Subscriptions to a limited number of institutions as a beta product free of charge prior to the initial launch. Unless otherwise agreed by the Registry, Google shall be authorized to offer Institutional Subscriptions in beta form to up to five (5) Fully Participating Libraries and Cooperating Libraries, up to two (2) Public Libraries, up to two (2) not-for-profit institutions within each of the Carnegie Classifications for Institutions of Higher Education within the United States and, as agreed between Google and the Registry, other libraries. At least one institution from each such category of institutions shall be included in the beta-test group. Google shall provide to the Registry all pricing-related data collected from these beta-test partners to assist in the pricing for the versions of the Institutional Subscriptions. Once the beta Institutional Subscription is launched, Google shall be able to continue to support then-existing beta customers until the earlier of (i) two (2) years from the launch of the beta product (unless a longer period of time is agreed by the Registry) or (ii) launch of the Institutional Subscription.

4.2 Consumer Purchases.

(a) Basic Features of Consumer Purchase. Consumer Purchase will enable purchasers to view, copy/paste and print pages of a Book, and may enable Book Annotations. With respect to copy/paste, the user will not be able to select, copy and paste more than four (4) pages of the content of a Display Book with a single copy/paste command. Printing will be on a page-by-page basis or a

page range basis, but the user will not be able to select a page range that is greater than twenty (20) pages with one print command for printing. Google will include a visible watermark on pages printed from the Consumer Purchase, which identifies the material as copyrighted and displays encrypted session identifying information, and which could be used to identify the authorized user that printed the material or the access point from which the material was printed. Such watermark will not obscure the content of the printed pages.

(i) Alternative License Terms. In lieu of the basic features of Consumer Purchase set forth in Section 4.2(a) (Basic Features of Consumer Purchase), a Rightsholder may direct the Registry to make its Books available at no charge pursuant to one of several standard licenses or similar contractual permissions for use authorized by the Registry under which owners of works make their works available (e.g., Creative Commons Licenses), in which case such Books may be made available without the restrictions of such Section.

(b) Pricing Options.

(i) Pricing of Consumer Purchases. A Rightsholder may select one of two pricing options for Consumer Purchases:

(1) Specified Price. In this option, the Rightsholder identifies the price (which may be as low as \$0.00) for which it wants its Book authorized for Consumer Purchase to be sold. This pricing option is referred to in this Amended Settlement Agreement as the “Specified Price.” The Specified Price may only be changed by the Rightsholder and is not subject to Article IX (Dispute Resolution).

(2) Settlement Controlled Price. In this option, the Rightsholder permits the price for which its Book authorized for Consumer Purchase is to be sold to be determined by an algorithm (the “Pricing Algorithm”) that Google will design to find the optimal ~~such~~ price for each ~~such~~ Book ~~and, accordingly, in order~~ to maximize ~~revenue for each Rightsholder~~ revenues for the Rightsholder for such Book and without regard to changes to the price of any other Book (but Google may use historical price data of other Books in designing the Pricing Algorithm). This pricing plan is referred to in this Amended Settlement

Agreement as the “Settlement Controlled Price,” and is governed by the provisions in Section 4.2(c) (Settlement Controlled Pricing).

(ii) Change of Pricing Option. At any time, the Rightsholder of a Book may switch between the Specified Price and Settlement Controlled Price upon seven (7) days’ prior notice to Google or the Registry.

(iii) Default Pricing Option. If the Rightsholder of a Book has not specifically directed that its Book be sold at a Specified Price, then Consumer Purchase of that Book will be sold at the Settlement Controlled Price.

(c) Settlement Controlled Pricing.

(i) Pricing Bins. For Books that will be sold at the Settlement Controlled Price, Google ~~and the Registry~~ will agree upon use a set of pre-defined prices ~~for Books~~ (“Pricing Bins”), and each Book will be priced at one of those prices. The initial Pricing Bins for Books will be: \$1.99, \$2.99, \$3.99, \$4.99, \$5.99, \$6.99, \$7.99, \$8.99, \$9.99, \$14.99, \$19.99 and \$29.99. Google ~~and the Registry~~ may agree to establish additional or different Pricing Bins between, below and above these prices at any time; provided, however that (a) the Unclaimed Works Fiduciary has the right to approve the use of such additional or different Pricing Bins for unclaimed Books and (b) the use of such additional or different Pricing Bins for a Registered Rightsholder’s Books is subject to thirty (30) days’ prior notice to such Rightsholder. At any time, the Rightsholder of a Book may specify a maximum and/or a minimum Pricing Bin for its Book and Google will implement such specification within seven (7) days after Google receives notice thereof. In any event, either Google or the Registry has the option to require renegotiation of the number of Pricing Bins or the prices of the Pricing Bins at the end of the three (3)-year period commencing with the Effective Date, and every four (4) years thereafter. Google or the Registry shall give the other party notice at least ninety (90) days prior to the end of the then-current three (3)- or four (4)-year period, as applicable, of its exercise of its option to renegotiate. Such ninety (90)-day period may be extended by mutual written agreement of Google and the Registry. In the event that Google and the Registry cannot agree on changes to the number of Pricing Bins or the prices for each Pricing Bin, as applicable, then the dispute shall be resolved pursuant to Article IX (Dispute Resolution). In the event of such a dispute, the then-current number of Pricing Bins and the

prices for each Pricing Bin will continue to apply unless and until the earlier of (1) Google and the Registry agreeing to such changes or (2) the Arbitrator rendering a Decision.

(ii) Pricing and Distribution of Books Into Pricing Bins.

(1) Initial Pricing Bin Distribution. The initial distribution percentages of Settlement Controlled Price Books that Google offers for Consumer Purchase in the Pricing Bins will be: 5% (\$1.99), 10% (\$2.99), 13% (\$3.99), 13% (\$4.99), 10% (\$5.99), 8% (\$6.99), 6% (\$7.99), 5% (\$8.99), 11% (\$9.99), 8% (\$14.99), 6% (\$19.99) and 5% (\$29.99).

(2) Development of Pricing Algorithm and Changes to Pricing Bin Distribution. Google will develop the Pricing Algorithm ~~and unilaterally, with no involvement of or control by the Registry or any Rightsholder; provided, however, that Google employees and contractors who may be Rightsholders are not precluded from performing their assigned duties with respect to development of the Pricing Algorithm.~~ In developing the Pricing Algorithm, Google will analyze sales data to ensure the reasonableness of the Pricing Algorithm. The Pricing Algorithm shall base the Settlement Controlled Price of a Book, on an individual Book by Book basis, upon aggregate data collected with respect to Books that are similar to such Book and will be designed to operate in a manner that simulates how an individual Book would be priced by a Rightsholder of that Book acting in a manner to optimize revenues in respect of such Book in a competitive market, that is, assuming no change in the price of any other Book. Based on the Pricing Algorithm, Google may change the price of an individual Book over time in response to sales data and in order to collect additional data to establish the optimal price for such Book. The distribution of Books sold on the basis of Settlement Controlled Prices among the Pricing Bins may change over time as the prices of individual Books are adjusted based on the Pricing Algorithm.

(3) Validation of Pricing Algorithm. The Registry has the right ~~to validate, through the use of a reasonable number of third-party experts, the reasonableness of the Pricing Algorithm and~~ to verify that the conclusions ~~the Pricing Algorithm~~ produces are statistically valid; provided that (a) Google has no obligation to disclose the Pricing Algorithm or any other Confidential Information of Google to the Registry or any third-party experts retained by the Registry, except as necessary for

the Registry's experts to validate the reasonableness of the Pricing Algorithm and to verify its conclusions, (b) Google will not be required to disclose Confidential Information of Google not originally developed for the Pricing Algorithm, (c) Google may not rely on or introduce into evidence any such non-disclosed Confidential Information in any arbitration pursuant to Article IX (Dispute Resolution) regarding the reasonableness of the Pricing Algorithm, and (d) Google bears the burden of proving that the Pricing Algorithm is reasonable. The Registry's experts' receipt of any Confidential Information of Google related to the Pricing Algorithm will be subject to strict non-disclosure agreements, provided that such experts may disclose their conclusions to the Registry and the Registry may disclose their conclusions to Rightsholders.

(4) Disputes. Disputes regarding the Pricing Algorithm or its application shall be resolved pursuant to Article IX (Dispute Resolution).

(iii) Provision of Settlement Controlled Prices to Registry. Google shall determine and provide to the Registry both the Settlement Controlled Price for all Settlement Controlled Price Books and what would be the Settlement Controlled Price for every Specified Price Book, as if the Rightsholder of such Specified Price Book had selected the Settlement Controlled Price option. Such information is the Confidential Information of Google. Subject to Section 15.4 (Disclosures Required by Law), the Registry shall not disclose the Settlement Controlled Price for any Book to any Person other than the Rightsholders of such Book and, if the price of a Book is publicly available, the Registry shall not disclose whether that price is the Settlement Controlled Price.

4.3 Preview Uses.

(a) Preview Use Permitted. Google may offer a free Preview Use to allow users to sample a Book prior to making a purchase decision, unless a Rightsholder of a Book directs Google or the Registry not to allow Preview Use of that Book.

(b) Default Settings for Preview Use. The default settings for Preview Use will be as follows:

(i) Standard Preview. Except as set forth below in this Section 4.3(b) (Default Settings for Preview Use), the default Preview Use is Standard Preview.

(1) Standard Preview. “Standard Preview” means that Google may display (in addition to the table of contents, title page, copyright page and other pages that appear prior to the table of contents, and the index) up to twenty percent (20%) of the pages of a Book to a user but no more than five (5) adjacent pages at a time (*i.e.*, when a user lands on a given page from a search or navigation, the user will be limited to viewing no more than four (4) additional adjacent pages at a time), before or after which no fewer than two (2) pages are blocked; provided that, for Fiction, Google will block the final five percent (5%) of the Book’s pages (or a minimum of the final fifteen (15) pages in the Book). In addition, “Standard Preview” for Fiction means that, at Google’s option, Google may display up to twenty percent (20%) of the pages of a Book to a user, subject to the following: (i) Google may display up to five percent (5%) of a Fiction Book, or fifteen (15) pages, whichever is less, adjacent to where a user lands on a given page from a search or navigation and (ii) Google will block the final five percent (5%) of the Book’s pages (or a minimum of the final fifteen (15) pages in the Book). As used in this Section 4.3(b)(i)(1) (Standard Preview), “Fiction” means Books associated with BISAC codes for Fiction, Juvenile Fiction, Comics & Graphic Novels, Drama, Humor, Literary Collections and Poetry, and, for any Books that do not have a BISAC code, any Books comprising works of imaginative narration. If the Registry disagrees with Google’s categorization of a Book as Fiction, the Registry may notify Google and if Google and the Registry do not agree on whether a Book is Fiction, the dispute shall be resolved pursuant to Article IX (Dispute Resolution). If Google and the Registry determine, or if an Arbitrator decides, that a Book was mistakenly categorized to be Fiction or non-Fiction, then Google promptly shall change the categorization of the Book after the determination or decision, and such change, if made, shall be the Rightsholder’s and the Registry’s sole remedy and Google’s sole obligation for such mistaken categorization.

(2) Adjustments to Percentages. Rightsholders may increase the percentages in Fixed Preview, Standard Preview and Continuous Preview.

(3) No Copy/Paste, Print or Book Annotations. Unless approved by the Registry or the Rightsholder, Google will not offer to users copy/paste, print or Book Annotation functionalities as part of Preview Uses.

(ii) No Preview. The default setting for the categories of Books listed on Attachment F (Preview Uses) under the heading “No Preview” is no Preview Use (“No Preview”).

(iii) Fixed Preview. The default setting for the categories of Books listed on Attachment F (Preview Uses) under the heading “Fixed Preview” is Fixed Preview. “Fixed Preview” means that Google may display (in addition to the table of contents, title page, copyright page and other pages that appear prior to the table of contents, and the index) up to ten percent (10%) of the pages of a Book to a user and such pages are fixed (*i.e.*, they do not vary from user to user or depend on a user’s search). Google will choose the pages displayed in Fixed Preview unless the Registry develops a mechanism to identify for Google particular pages selected by the Rightsholder, in which case the pages will be those chosen by the Rightsholder.

(iv) Determination of Categories. Google shall use BISAC codes or an equivalent classification scheme in order to determine whether a Book is in a category listed on Attachment F (Preview Uses). Google shall not be responsible for errors in its determination of whether a Book is in a particular category listed on Attachment F (Preview Uses). Upon notification by the Registry or the Rightsholder that Google has inaccurately determined whether a Book is in a category listed on Attachment F (Preview Uses), Google shall adjust the amount of the Book available through Preview Use or Fixed Preview for such Book in accordance with the correct category. Such adjustment by Google shall be Google’s sole obligation and the sole remedy for any errors in determining the category of a Book.

(c) Rightsholder Options for Preview Use. Regardless of the default setting for Preview Use of a Book set forth in Section 4.3(b) (Default Settings for Preview Use), a Rightsholder will be able to choose from the following settings for Preview Use for any Book:

(i) Fixed Preview.

(ii) Standard Preview.

(iii) Continuous Preview. “Continuous Preview” means that Google may display up to ten percent (10%) of the pages of a Book to a user without the adjacent page limitations of Standard Preview.

(d) List of Blocked Preview Use Pages. Unless the Rightsholder has authorized display of one hundred percent (100%) of the pages of a Book in Preview Use, Google will maintain a list of Book pages that cannot be viewed in any Preview Use. The list will consist of at least five percent (5%) of the pages of a Book, which blocked pages shall be selected by Google unless the Registry develops a mechanism to identify for Google particular pages selected by the Rightsholder totaling not more than five percent (5%), in which case the blocked pages will be those chosen by the Rightsholder.

(e) Google Tests.

(i) Fixed Preview Books. For Books in categories listed on Attachment F (Preview Uses) as Fixed Preview, Google may conduct tests in consultation with the Registry to determine if another Preview Use category increases sales and revenues of such Books. For purposes of such tests, Google may randomly select no more than five percent (5%) of the Books within a category in Attachment F (Preview Uses) for which only Fixed Preview is permitted and display those Books through Standard Preview, Continuous Preview or No Preview for a limited time only as necessary to gather statistically significant information as to which Preview Uses increases sales and revenues of such Book. Google shall present the results of these tests to the Registry. The Registry, in consultation with Google, shall be responsible for determining whether to modify Attachment F (Preview Uses) to move Books from Fixed Preview to Standard Preview, Continuous Preview or No Preview taking into account the data provided by such tests and other data available to the Registry that is relevant to such Preview Use determination. The Registry shall make this decision taking into account whether the data indicate that sales and revenues of a particular category of Books that are currently included in Consumer Purchase will be

increased by moving from Fixed Preview to Standard Preview, Continuous Preview or No Preview and, considering such data, acting in the best interests of the Rightsholders of that category of Books to maximize revenues for those Rightsholders

(ii) No Preview Books. For Books in categories listed on Attachment F (Preview Uses) as No Preview, Google may conduct tests in consultation with the Registry to determine which Preview Use setting increases Book sales and revenues for Books in the different Pricing Bins set forth in Section 4.2(c)(i) (Pricing Bins). For purposes of such tests, Google may randomly select no more than five percent (5%) of the Books within a category in Attachment F (Preview Uses) for which No Preview is permitted and display those Books through Fixed Preview, Standard Preview or Continuous Preview for a limited time only as necessary to gather statistically significant information as to which Preview Use increases sales and revenues of such Book. At the Registry's request, during the first ten (10) years after the Effective Date and thereafter by agreement between Google and the Registry, Google shall collect and provide to the Registry empirical data concerning the extent to which each Preview Use has an effect on Book sales and revenues (including data on the number of accesses and purchases of particular Books and categories of Books), to enable Rightsholders and the Registry to change the Preview Use settings or to modify the percentage of a Book displayed through Preview Use for Books or categories of Books. The Registry, in consultation with Google, shall be responsible for determining whether to modify Attachment F (Preview Uses) to move Books from No Preview to one of the other Preview Use settings taking into account the data provided by such tests and other data available to the Registry that is relevant to such Preview Use determination. The Registry shall make this decision taking into account whether the data indicate that sales and revenues of a particular category of Books included in Consumer Purchase will be increased by moving from No Preview to one of the other Preview Use settings and, considering such data, acting in the best interests of the Rightsholders of that category of Books to maximize revenues for those Rightsholders.

(iii) Standard, Continuous, Fixed Preview or No Preview Books. Upon request of the Registry, for Books in any Preview Use category, Google shall make commercially reasonable efforts to conduct tests to determine if another Preview Use setting increases sales and revenues of such Books. The Registry, in consultation with Google, shall be responsible for determining whether to modify Attachment F (Preview Uses) for any category of Books by choosing from among the Preview Use

settings, taking into account the data provided by the tests conducted pursuant to this Section 4.3(e) (Google Tests) and other data available to the Registry that is relevant to such Preview Use determination. The Registry shall make this decision taking into account whether the data indicate that sales and revenues of a particular category of Books will be increased by changing the Preview Use setting and, considering such data, acting in the best interests of the Rightsholders of that category of Books to maximize revenues for those Rightsholders.

(iv) Books Excluded from Testing. In no event shall any tests under clauses (i), (ii) or (iii) above either (1) make Display Uses of Books that the Rightsholder has expressly excluded from Display Uses or that the Registry reasonably requests to be excluded or (2) change the Preview Use of Books from settings (a) expressly set by the Rightsholder or (b) expressly set by the Registry by modification of Attachment F (Preview Uses) under clause (iii) above.

(v) Registry's Ability to Adjust Preview Use Settings. In addition to amendments to Attachment F (Preview Uses) described in clauses (i), (ii) and (iii) above, the Registry may adjust the Preview Use setting for a particular Book in exceptional circumstances for good cause shown.

(f) Preview Use Pages Served on Non-Google Websites. When Google makes any Preview Use of a Book as authorized under this [Amended](#) Settlement Agreement and allows third parties to display Preview Use pages served by Google on non-Google websites, then Google agrees to include Metadata about that Book, including the title and author of the Book.

(g) Unclaimed Books. The Registry's power to act with respect to the Preview Uses under this Section 4.3 (Preview Uses) will be delegated to the Unclaimed Works Fiduciary.

4.4 Advertising Revenue Model. Revenues generated from Advertising Uses will be allocated between Google and the Rightsholders in accordance with Section 4.5(a)(ii) (Net Advertising Revenues).

4.5 Standard Revenue Splits and Discounting.

(a) Obligation to Pay Revenue Share.

(i) Net Purchase Revenues. Google shall pay to the Registry, on behalf of the Rightsholders, the Standard Revenue Split for Purchases. The “Standard Revenue Split for Purchases,” paid by Google to Rightsholders, through the Registry, is seventy percent (70%) of Net Purchase Revenues.

(ii) Net Advertising Revenues. Google shall pay to the Registry, on behalf of the Rightsholders, the Standard Revenue Split for Advertising. The “Standard Revenue Split for Advertising,” paid by Google to Rightsholders, through the Registry, is seventy percent (70%) of Net Advertising Revenues.

(iii) Agreed Revenue Splits. Notwithstanding clauses (i) and (ii) above, for any Revenue Model(s) for any Book(s) classified as Commercially Available, Google and the Rightsholder(s) of such Book(s) each has the right to request that the other negotiate a revenue split different from the Standard Revenue Split for Advertising and the Standard Revenue Split for Purchases (together, the “Standard Revenue Splits”). If Google or a Rightsholder requests that the revenue split be negotiated for any Revenue Model(s) and Google and the Rightsholder are unable to agree on a revenue split different from the Standard Revenue Splits for such Revenue Model(s), then such Standard Revenue Splits (or the then applicable previously negotiated and agreed revenue split, if any) shall apply to such Books for that Revenue Model(s); provided that Google may choose not to make such Books available through such Revenue Model(s) as permitted under Section 3.7(e) (Google’s Exclusion of Books)) and the Rightsholder may choose to exclude its Book(s) from such Revenue Model(s) pursuant to Section 3.5(b) (Right to Exclude from Display Uses and Revenue Models). If Google and such Rightsholder(s) agree to a revenue split, then beginning within sixty (60) days after the date of such agreement, any calculations in Section 4.5(b) (Discounting, Special Offers and Subsidies) and any payments in Section 4.6 (Payment Terms) shall be based on such agreed revenue split rather than the Standard Revenue Splits. Google or the Rightsholder(s) shall notify the Registry of any agreed revenue split, the date of agreement to such revenue split, and the Books to which it applies. The Registry may not disclose information about any agreed revenue split with any Rightsholder (other than

any other Rightsholder(s) of the Book(s) to which such agreed revenue split applies) unless such information is otherwise publicly available. Once a Book is classified as not Commercially Available, the Standard Revenue Splits shall apply beginning no later than sixty (60) days after such reclassification, notwithstanding any prior agreed revenue split between Google and a Rightsholder.

(b) Discounting, Special Offers and Subsidies.

(i) Temporary Discounts. Google may provide ~~temporary~~ discounts off the List Prices ~~from time to time~~ at its sole discretion. If Google elects to provide such discounts, the Standard Revenue Split for Purchases paid to the Registry for the benefit of the Rightsholders will be based on the List Prices, unless otherwise set forth in this Section 4.5(b) (Discounting, Special Offers and Subsidies) or unless otherwise agreed by Google and the Registry.

(ii) Consumer Purchases. The Registry may authorize Google to make special offers of Books available through Consumer Purchases at ~~discounts of up to forty percent (40%) off~~ reduced prices from the List ~~Price~~Prices, subject to notification of such ~~discount~~reduced price to the Registered Rightsholders of the Book, with an opportunity for any such Rightsholder (for his, her or its claimed Books) or the Unclaimed Works Fiduciary (for unclaimed Books) not to approve such ~~discount~~reduced price. If Google sells Books at such a ~~discounted~~reduced price, the Standard Revenue Split for Purchases or a revenue split agreed pursuant to Section 4.5(a)(iii) (Agreed Revenue Splits) will be based on such ~~discounted~~reduced price.

(iii) Use of Intermediaries for Institutional Subscription Sales Generally. Google may offer a discount of up to ten percent (10%) off the List Prices for Institutional Subscriptions for any Institutional Subscriptions sold through intermediaries.

(iv) Sales of Institutional Subscriptions through Institutional Consortia. Approved discounts, if any, that Google is authorized to offer to an Institutional Consortium or its members will be included as part of the Pricing Strategy. Additional discounts will require Registry approval. Unless otherwise agreed upon by the Registry, Google is only authorized to

offer discounts to Institutional Consortia if members of the Institutional Consortium purchase Institutional Subscriptions for at least seventy percent (70%) of the FTEs (*i.e.*, full-time equivalent students) of the members of the Institutional Consortium. For purposes of this Section 4.5(b)(iv) (Sales of Institutional Subscriptions through Institutional Consortia), absent agreement of the Registry, Google may not offer such discount to any Institutional Consortium (or its members) that was not a member of the International Coalition of Library Consortia as of the date on which the then-current Pricing Strategy became effective and that was formed for the primary purpose of entering into an Institutional Subscription agreement with Google. Google will notify the Registry no less than thirty (30) days prior to entering into an Institutional Subscription agreement, with an approved Institutional Consortium discount, with an Institutional Consortium (or its members) that was not a member of the International Coalition of Library Consortia as of the date on which the then-current Pricing Strategy became effective.

(v) ~~Sale of Consumer Purchases through Affiliate Programs~~ and Resellers.

(1) ~~(v) Sale of Consumer Purchases through Affiliate Programs.~~ With respect to sales of Books through Consumer Purchase through an Affiliate Program, Google may deduct from the money otherwise owed to the Registry for the benefit of the Rightsholders from such sale pursuant to Section 4.5(a)(i) (Net Purchase Revenues), up to three and three-quarters percent (3.75%) of the List Price as compensation actually paid through the Affiliate Program; provided, however, that such deduction will be made only to the extent and in an amount equal to one-half (1/2) the compensation actually paid by Google through the Affiliate Program. “Affiliate Program” means a program by which Google authorizes third parties to link their websites to Google Products and Services using specially formatted links and pays such third parties referral fees for sales of Books through Consumer Purchase to users referred to Google through such links.

(2) Resellers. To the extent that Google makes Books available through Consumer Purchases pursuant to this Amended Settlement Agreement, Google will allow resellers to sell access to such Books to their end users. Google will be responsible for hosting and serving the Digital Copies of such Books, and will be responsible for the security of such Digital Copies in accordance with Article VIII (Security

and Breach). Google will permit the reseller of a Book to retain a majority of Google's share of Net Purchase Revenues from Consumer Purchases through such reseller.

(vi) Subsidies for Fully Participating Libraries and Cooperating Libraries. Google may subsidize the purchase of Institutional Subscriptions by Fully Participating Libraries and Cooperating Libraries and the amount paid to the Registry, on behalf of Rightsholders, will be as if no such subsidy had been provided.

(vii) Rightsholders' Consumer Subscription Discount. If and at such time as a Consumer Subscription is available from Google pursuant to Section 4.7(d) (Consumer Subscription Models), individual Rightsholders may, at the Registry's discretion, be offered a discount off of the price for such Consumer Subscription, which discount is subject to the approval of Google and the Registry.

(c) Sales and Other Taxes. In all cases, Net Purchase Revenues and Net Advertising Revenues shall not include sales or other government charges or taxes. Google shall charge any applicable sales or other government charges or taxes in addition to the List Price or any other price authorized pursuant to this Amended Settlement Agreement.

4.6 Payment Terms.

(a) Payment Terms. Google shall remit payment to the Registry under this Article IV (Economic Terms for Google's Use of Books) within (i) sixty (60) days after the end of each calendar quarter for payments made with respect to Net Advertising Revenues and Net Purchase Revenues received by Google during the first full twelve (12) months after the Effective Date, and (ii) sixty (60) days after the end of each calendar month for payments made with respect to Net Advertising Revenues and Net Purchase Revenues received by Google thereafter. Payments to the Registry shall be made either by check or (if by wire transfer) pursuant to the wire transfer instructions provided by the Registry.

(b) Exceptions. Notwithstanding the foregoing provisions of Section 4.5 (Standard Revenue Splits and Discounting) and this Section 4.6 (Payment Terms), Google shall not be required to pay the Registry for (i) any purchase of or access to Books through any fraudulent or invalid means, including the fraudulent use of credit cards or other means of payment, as determined by Google in its sole discretion, (ii) purchases that are refunded prior to Google's payment pursuant to Section 4.6(a) (Payment Terms), or (iii) purchases that are subject to a credit card charge back. Google reserves the right to grant refunds in its sole discretion. Google reserves the right to withhold payment to the Registry due to any of the foregoing, pending Google's reasonable investigation. The Registry will cooperate with Google in its investigation of any of the foregoing. Google will not seek any refunds from the Registry or Rightsholders for amounts once paid to the Registry.

(c) Fraud. Neither Google, the Registry, nor Plaintiffs shall, nor shall each authorize or encourage any third party to, directly or indirectly purchase or otherwise obtain access to Books through any automated, deceptive, fraudulent or other invalid means, the use of robots or other automated query tools and/or computer generated search requests, and/or the fraudulent use of software or credit cards.

(d) Taxes. Google and the Registry each agree to pay all applicable taxes or charges imposed on them by any government entity in connection with all matters contemplated by this [Amended Settlement Agreement](#).

(e) Audit Rights. The Registry may, upon thirty (30) days' prior notice and at its own expense, retain a nationally recognized independent and mutually-acceptable independent auditor (whose fees are not contingency based), under a duty of confidentiality to Google, to review and audit Google's relevant records to confirm the payments due under Section 4.5 (Standard Revenue Splits and Discounting). The audit shall: (a) be subject to Google's security and confidentiality requirements; (b) occur no more than once every calendar year and not during the first or last three (3) weeks of a calendar quarter; (c) transpire during Google's normal business hours; and (d) cover a period not to exceed the previous four (4) calendar years. Google will promptly pay to the

Registry the amount of any underpayment determined by the audit and the Registry will promptly pay to Google (or Google may offset) the amount of any overpayment determined by the audit. In addition, if the audit reveals an underpayment of five percent (5%) or more in the payments for any calendar quarter, then Google shall pay for the reasonable costs associated with the audit. The accounting firm may only disclose to the Registry whether or not Google is in compliance with its payment obligations under Section 4.5 (Standard Revenue Splits and Discounting) and, if Google is not in compliance, the amount of any underpayment or overpayment and supporting calculations.

4.7 ~~New~~ Additional Revenue Models. The Registry (for unclaimed Books, the Unclaimed Works Fiduciary) and Google may, ~~over time, agree to new revenue models, and discount programs (if any) for such revenue models, including~~ agree to one or more of the following additional Revenue Models:

(a) Print on Demand (“POD”) ~~—POD copies of Books.~~ This service would permit purchasers to obtain a print copy of a non-Commercially Available Book distributed by third parties. A Book’s availability through such POD program would not, in and of itself, result in the Book being classified as Commercially Available.

(b) ~~Custom Publishing — Per page pricing of Books, or portions thereof, for course materials, and other forms of custom publishing for the educational and professional markets.~~ File Download. This service would permit purchasers of Consumer Purchase for a Book to download a copy of such Book in an appropriate file format such as PDF, EPUB or other format for use on electronic book reading devices, mobile phones, portable media players and other electronic devices (“File Download”).

~~(c) — PDF Download — Downloadable PDF versions of Books.~~

(c) ~~(d) Consumer Subscription Models — An.~~ This service would permit the purchase of individual ~~version of an~~ access to the Institutional Subscription Database or to a designated subset thereof (“Consumer Subscription”).

~~(e) — Summaries, Abstracts and/or Compilations of Books.~~

~~Google may not offer any new revenue models with respect to Books without authorization from the Registry or the Rightsholder.~~

Subject to Section 4.5(a)(iii) (Agreed Revenue Splits), the revenue split for POD and File Download for a Book shall be the same as that for Consumer Purchase for such Book and the revenue split for Consumer Subscription for a Book shall be the same as that for the Institutional Subscription for such Book. The Registry will give Registered Rightsholders and the Unclaimed Works Fiduciary at least sixty (60) days' notice prior to Google offering any additional Revenue Model, and the right to exclude their Books or unclaimed Books, as the case may be, from such additional Revenue Model pursuant to Section 3.5(b) (Right to Exclude from Display Uses and Revenue Models).

4.8 Public Access Service.

(a) Public Access Service.

(i) Free Public Access Service. Google may provide the Public Access Service to each not-for-profit Higher Education Institution and Public Library that so requests at no charge (and without any payment to the Rightsholders, through the Registry or otherwise (other than as set forth in Section 4.8(a)(ii) (Printing)) as follows:

(1) in the case of not-for-profit Higher Education Institutions that do not qualify as Associate's Colleges pursuant to the Carnegie Classification of Institutions of Higher Education, one computer terminal for every ten thousand (10,000) Full-Time Equivalency (*i.e.*, full-time equivalent students) at each such institution (which computer terminal may change from time to time);

(2) in the case of not-for-profit Higher Education Institutions that qualify as Associate's Colleges pursuant to the Carnegie Classification of Institutions of Higher Education, one computer terminal for every four thousand (4,000) Full-Time Equivalency (*i.e.*, full-time equivalent students) at each such institution (which computer terminal may change from time to time); and

(3) in the case of each Public Library, ~~no more than one terminal per Library Building~~; provided, however, that the Registry may authorize one or more additional terminals in any Library Building under

such further conditions at it may establish, acting in its sole discretion and in furtherance of the interests of all Rightsholders.

(ii) Printing. Google shall design the Public Access Service to enable users at a not-for-profit Higher Education Institution to print pages from Display Books for a per-page fee, and to enable users at a Public Library to print pages from Display Books for a per-page fee to the extent that such Public Library offers per-page printing services for a fee for other products and services. The Registry shall set a reasonable fee for such printing. Google shall collect all such printing fees and shall pay them to the Registry in accordance with the Standard Revenue Split for Purchases.

(iii) Additional Public Access Service. The Registry and Google may agree that Google may make available the Public Access Service to one or more Public Libraries or not-for-profit Higher Education Institutions either for free or for an annual fee, in addition to the Public Access Service provided under Section 4.8(a)(i) (Free Public Access Service).

(b) Commercial Public Access Service. The Registry and Google may agree to make a commercial public access service available to copy shops and other entities for an annual fee per concurrent user and a fee per printed page.

4.9 Economic Terms Renegotiation. Unless otherwise agreed by the Registry and Google, the economic terms pertaining to any ~~new~~additional Revenue Models agreed pursuant to Section 4.7 (~~New~~Additional Revenue Models) may, at the option of Google or the Registry, be renegotiated at the end of the three (3)-year period commencing with the Effective Date, and every four (4) years thereafter, or as otherwise mutually agreed by Google and the Registry. Google or the Registry shall give the other party notice at least ninety (90) days prior to the end of the then-current three (3)- or four (4)-year period, as applicable, of its exercise of its option to renegotiate. Such ninety (90)-day period may be extended by mutual written agreement of Google and the Registry. If the renegotiation is not successful, then the dispute shall be resolved pursuant to Article IX (Dispute Resolution). The then-current economic terms will apply unless and until the earlier of (a) Google and the Registry agreeing to such renegotiated terms or (b) the Arbitrator rendering a Decision. Without limiting the foregoing, the term “economic terms,” as used in this Section 4.9 (Economic Terms Renegotiation), does not include the Standard Revenue Split for Advertising or the Standard Revenue Split for Purchases.

ARTICLE V — OTHER SETTLEMENT BENEFITS

5.1 Cash Payment to Class Members Whose Books and Inserts Have Been Digitized.

(a) Cash Payments. For every Principal Work, Entire Insert or Partial Insert that Google Digitized ~~prior to the Opt-Out Deadline~~on or before May 5, 2009 without the Rightsholder’s authorization and that is the subject of a validated claim pursuant to Article XIII (Settlement Administration Program), Google will make a Cash Payment to the Settlement Fund of at least sixty United States dollars (U.S. \$60) per Principal Work, fifteen United States dollars (U.S. \$15) per Entire Insert, and five United States dollars (U.S. \$5) per Partial Insert (each, a “Cash Payment”). Such Cash Payments shall be distributed to the Rightsholders in accordance with the Plan of Allocation and the Author-Publisher Procedures. Only one Cash Payment will be made per Principal Work, Entire Insert or Partial Insert regardless of the number of times that Google has Digitized such Principal Work or Insert and regardless of the number of Books in which such Principal Work or Insert appears. If a Cash Payment is made for a Book, then no Cash Payment will be made for any portions of such Book that are used as Inserts. If a soft cover Book Digitized by Google and a hard cover Book Digitized by Google contain the same Principal Work, if the two (2) Books do not contain additional or different Protected Expression, only one Cash Payment for the Principal Work will be made even if the soft cover Book and

hard cover Book have different ISBNs. A Rightsholder may claim either a Cash Payment for a Principal Work or a Cash Payment for any Expression from such Principal Work that is an Entire Insert or Partial Insert in any other Book, but not both.

(b) Funding of Cash Payments. To fund the Cash Payments, Google shall pay a minimum of forty-five million United States dollars (U.S. \$45 million) into the Settlement Fund. If the total Cash Payments to be made in accordance with Section 5.1(a) (Cash Payments) exceed such amount, then Google shall pay to the Settlement Fund, in addition to such amount, the amount necessary to make all Cash Payments.

(c) Distribution of Overage. If the amount distributed from the Settlement Fund to Rightsholders under Section 5.1(a) (Cash Payments) is less than forty-five million United States dollars (U.S. \$45 million), then the remaining funds shall be reallocated in accordance with the Plan of Allocation.

5.2 Payment For Registry, Notice and Claims Administration. In addition to the Cash Payments provided for in Section 5.1 (Cash Payment to Class Members Whose Books and Inserts Have Been Digitized), Google has paid or shall pay into the Settlement Fund thirty-four million five hundred thousand United States dollars (U.S. \$34.5 million), as set forth in Section 5.3 (Timing of Payments under Sections 5.1 and 5.2). Plaintiffs will use all such funds for Administrative Costs.

5.3 Timing of Payments under Sections 5.1 and 5.2.

(a) Initial Settlement Deposit. ~~No later than ten (10) Business Days after the Settlement Agreement Date, Google shall deposit the amount of~~ Google deposited twelve million United States dollars (U.S. \$12 million) (the “Initial Settlement Deposit”) on November 10, 2008 into an interest bearing escrow account by wire transfer to the Depository Bank. The Initial Settlement Deposit, and any additional funds from the Final Settlement Deposit that Google may deposit pursuant to agreement of Google and Class Counsel, shall be held in escrow in the Settlement Fund and administered by the Settlement Administrator, Class Counsel and the Depository Bank, pursuant to an escrow agreement approved by Class Counsel and Google and subject to Section 5.3(f) (Investment). Pursuant to

the terms of the escrow agreement, upon the Effective Date, any and all rights of Google to the Initial Settlement Deposit, any such additional funds, and any interest or income earned thereon shall cease to exist. Consequently, the terms of the escrow agreement will provide that, as of the Effective Date, the entire balance of the Initial Settlement Deposit and any such additional funds shall be in the sole control of Class Counsel, subject to Section 5.3(d) (Limitation of Use).

(b) Final Settlement Deposit. No later than ten (10) Business Days after the Effective Date, Google shall deposit the amount of sixty-seven million five hundred thousand United States dollars (U.S. \$67.5 million) (the “Final Settlement Deposit”), less any funds in addition to the Initial Settlement Deposit that may have been paid pursuant to Section 5.3(a) (Initial Settlement Deposit), in the Settlement Fund by wire transfer to the Depository Bank. The Final Settlement Deposit consists of the balance of the amount owed under Sections 5.1 (Cash Payment to Class Members Whose Books and Inserts Have Been Digitized) and 5.2 (Payment for Registry, Notice and Claims Administration).

(c) Supplemental Deposit. In the event Google is required to make additional Cash Payments pursuant to the second sentence of Section 5.1(b) (Funding of Cash Payments), Google shall deposit in the Settlement Fund an amount sufficient to fund the additional Cash Payments (“Supplemental Deposit”) by wire transfer to the Depository Bank, within ten (10) Business Days after the later of (i) the date on which the Registry issues to the Plaintiffs and Google its final report regarding Cash Payments pursuant to Section ~~13.5~~13.6 (Final Report Regarding Cash Payments) or (ii) the Effective Date.

(d) Limitation of Use. Except as otherwise provided in this Amended Settlement Agreement, no disbursement or other use of any portion of the Settlement Fund shall be made without approval of the Court.

(e) Designation. The Settlement Fund is intended as, and shall be, a separate escrow fund of moneys held at Depository Bank and shall qualify as a “qualified settlement fund” within the

meaning of Treasury Regulation Section 1.468B-1. Class Counsel or its designee shall be the “administrator” of the Settlement Fund within the meaning of Treasury Regulation Section 1.468B-2(k)(3). Class Counsel or its designee shall apply, or shall cause application to be made, to the Internal Revenue Service for an employer identification number on behalf of the Settlement Fund and shall further cause to be prepared on behalf of the Settlement Fund any and all required tax returns. Class Counsel or its designee shall file such tax returns with all appropriate tax authorities and shall cause any taxes shown due on such returns or otherwise and payable by the Settlement Fund to be paid to the United States Treasury or other taxing authority on behalf of the Settlement Fund from the funds on deposit in the Settlement Fund. Class Counsel or its designee shall do or cause to be done any and all other acts as may be reasonably required to cause the Settlement Fund to qualify and remain qualified as a “qualified settlement fund” as described above.

(f) Investment. Until such time after the Effective Date as the Settlement Fund is distributed to Rightsholders consistent with the terms of this [Amended](#) Settlement Agreement and as otherwise ordered by the Court, the Settlement Fund shall be invested and reinvested by Class Counsel in United States Treasury Bills, Notes or other obligations of the United States or its instrumentalities of no more than six (6) months’ duration, except that such portions of the Settlement Fund as may reasonably be needed to pay current Administrative Costs, including expenses associated with providing notice of the Settlement to the [Amended](#) Settlement Class, or payment of taxes arising with respect to income earned by the Settlement Fund (including the reasonable expenses of a tax attorney or consultant and mailing and distribution costs and expenses related to filing tax returns), may be held in the form of cash or money market instruments. All interest and gains earned on the Settlement Fund or any portion thereof shall become and remain a part thereof. No party shall be responsible for any losses, principal or otherwise, of the Settlement Fund.

(g) Payment of Administrative Costs. Prior to the Effective Date, disbursements may be made from the Initial Settlement Deposit, [or any additional funds that may have been paid pursuant to Section 5.3\(a\) \(Initial Settlement Deposit\)](#), for reasonable expenses actually incurred in paying Administrative Costs, in a total amount not to exceed twelve million United States dollars (U.S. \$12

million), or such other amount as Google and Class Counsel may agree, without further order of the Court, and the amounts for Administrative Costs incurred (including accrued-but-not-yet-paid expenses) shall not be refundable to Google in the event this Amended Settlement Agreement is disapproved, voided, or otherwise fails to become final. No other payments, disbursement, or transfers of any kind from the Settlement Fund, including Class Counsel's attorneys' fees and costs of litigation, shall be made prior to the Effective Date without leave of Court for good cause shown. Google shall have no responsibility for the administration, operation, investment or distribution of the Settlement Fund. Plaintiffs shall use commercially reasonable efforts to minimize expenditures from the Settlement Fund.

(h) Google Rights and Obligations. Google shall not have any responsibility to make any filings relating to the Settlement Fund, and Google shall have no responsibility to pay taxes, including interest and penalties due thereon, on interest earned by the Settlement Fund. In the event the Settlement is not approved by the Court or is otherwise terminated, the Settlement Fund (less any Administrative Costs incurred) shall be promptly returned to Google, and in such event Google shall be responsible for payment of all taxes on interest earned on the Settlement Fund after the date of such return.

5.4 Plan of Allocation. The Plan of Allocation sets forth the plan of allocating payments Google makes to or for the benefit of Registered Rightsholders under Sections 4.1 (Institutional Subscriptions), 4.2 (Consumer Purchases), 4.4 (Advertising Revenue Model), 4.7 (~~New~~Additional Revenue Models), 4.8 (Public Access Service) and 5.1 (Cash Payment to Class Members Whose Books and Inserts Have Been Digitized). The Registry shall make payments to Registered Rightsholders from amounts received by it pursuant to Article IV (Economic Terms for Google's Use of Books), or shall cause payments to be made from the Settlement Fund as provided in the Plan of Allocation and the Registry shall be responsible for correcting or causing to be corrected any errors in making such payments.

5.5 Attorneys' Fees. Counsel for the Author Sub-Class shall apply to the Court for an award of attorneys' fees and reimbursement of expenses in a total amount not to exceed thirty million United States dollars (U.S. \$30 million). Google has agreed to pay those amounts over and above the other consideration to the Amended Settlement Class, and agrees not to undermine in any way, or encourage anyone else to undermine in any way, the petition for attorneys' fees filed by Counsel for the Author Sub-Class so

long as such petition seeks fees and reimbursement of expenses in the amount of thirty million United States dollars (U.S. \$30 million). In no event will Google be obligated to pay any attorneys' fees and expenses for Counsel for the Author Sub-Class in excess of thirty million United States dollars (U.S. \$30 million). Attorneys' fees and expenses consistent with this Section 5.5 (Attorneys' Fees) that are granted by the Court shall be paid by the Depository Bank within ten (10) Business Days after the Effective Date by wire transfer to counsel for the Author Sub-Class.

ARTICLE VI — ESTABLISHMENT AND CHARTER OF REGISTRY

6.1 Functions. Before the Effective Date, Plaintiffs will establish a registry that:

(a) is authorized to act on behalf of Rightsholders as set forth in this Amended Settlement Agreement,

(b) will own and maintain a rights information database for Books and Inserts and their authors and publishers,

(c) will ~~attempt, from its inception, use commercially reasonable efforts~~ to locate Rightsholders ~~with respect to~~ Books and Inserts,

(d) will, on behalf of Rightsholders, receive payments from Google under this Amended Settlement Agreement and distribute those payments to Registered Rightsholders in accordance with this Amended Settlement Agreement, the Plan of Allocation and the Author-Publisher Procedures,

(e) will assist in the resolution of disputes between Rightsholders,

(f) will, upon request, monitor Google's display and pricing of Books for Rightsholders located outside of the United States to ensure that they conform to the requirements of this Amended Settlement Agreement and to such Rightsholders' instructions, and use commercially reasonable efforts to provide a means for such Rightsholders themselves to monitor and verify their claimed Books, and

(g) ~~(f)~~ will have such other responsibilities (i) as are set forth in this Amended Settlement Agreement and (ii) as the Charter may permit or as the Board of Directors of the Registry may determine are consistent with the Registry's functions and are not inconsistent with this Amended Settlement Agreement.

6.2 Charter.

(a) Not-For-Profit Entity. The Registry will be organized and operated as a not-for-profit entity, and all funds received by the Registry under this Amended Settlement Agreement will be for the exclusive direct or indirect benefit of the Rightsholders, subject to the restrictions herein.

(b) Organizational Structure.

(i) General. The Registry will be organized on a basis that allows the Registry, among other things, to (i) represent the interests of Rightsholders in connection with this Amended Settlement Agreement, (ii) respond in a timely manner to requests by Google, Fully Participating Libraries and Cooperating Libraries, and (iii) to the extent permitted by law, license Rightsholders' U.S. copyrights to third parties (in the case of unclaimed Books and Inserts, the Unclaimed Works Fiduciary may license to third parties the Copyright Interests of Rightsholders of unclaimed Books and Inserts to the extent permitted by law).

(ii) Board of Directors. The Registry will have equal representation of the Author Sub-Class and the Publisher Sub-Class on its Board of Directors, with each act of the Board requiring a majority of the directors, with such majority including at least one director who is a representative of the Author Sub-Class and one director who is a representative of the Publisher Sub-Class. The Board of Directors will have at least one representative of the Author Sub-Class from each of the following countries: the United States, Canada, the United Kingdom and Australia; and at least one representative of the Publisher Sub-Class from each of the following countries: the United States, Canada, the United Kingdom and Australia.

(iii) Unclaimed Works Fiduciary. The Charter will provide that the Registry’s power to act with respect to the exploitation of unclaimed Books and Inserts under the Amended Settlement will be delegated to an independent fiduciary (the “Unclaimed Works Fiduciary”) as set forth in Sections 3.2(e)(i) (Change Requests by Rightsholders), 3.10 (Specific Prohibitions), 4.2(c)(i) (Pricing Bins), 4.3 (Preview Uses), 4.5(b)(ii) (Consumer Purchases), 4.7 (Additional Revenue Models), 6.2 (Charter), and 6.3 (Unclaimed Funds and Public Domain Funds) of the Amended Settlement Agreement and Sections 3.2 and 3.3 (Procedures for Changing Classification of a Book) of the Author-Publisher Procedures, and otherwise as the Board of Directors of the Registry deems appropriate. The Unclaimed Works Fiduciary will be a person or entity that is not a published book author or book publisher (or an officer, director or employee of a book publisher). The Unclaimed Works Fiduciary (and any successor) will be chosen by a supermajority vote of the Board of Directors of the Registry and will be subject to Court approval.

(iv) Unclaimed Funds and Public Domain Funds. The Charter will also direct the Registry to follow the guidelines in this Amended Settlement Agreement regarding Unclaimed Funds and Public Domain Funds described in Section 6.3 (Unclaimed Funds and Public Domain Funds). The Registry will use funds from the Settlement, as well as Unclaimed Funds as described in Section 6.3 (Unclaimed Funds and Public Domain Funds), to attempt to locate Rightsholders of unclaimed Books and Inserts.

(v) ~~(b) Organizational Structure.~~ ~~The Registry will be organized on a basis that allows the Registry, among other things, to (i) represent the interests of Rightsholders in connection with this Settlement Agreement, (ii) respond in a timely manner to requests by Google, Fully Participating Libraries and Cooperating Libraries, and (iii) to the extent permitted by law, license Rightsholders’ U.S. copyrights to third parties. The Registry will have equal representation of the Author Sub-Class and the Publisher Sub-Class on its Board of Directors, with each act of the Board requiring a majority of the directors, with such majority including at least one director who is a representative of the Author Sub-Class and one director who is a representative of the Publisher Sub-Class. The Charter will also direct the Registry to follow the guidelines in this Settlement Agreement regarding Unclaimed Funds and Public Domain Funds described in Section 6.3 (Unclaimed Funds and Public Domain Funds) Limitations.~~ In addition, the Charter will prohibit the Registry from coordinating Rightsholders for purposes of representing them as a sub-group regarding any matter under this

Amended Settlement Agreement, or working with any sub-group of Rightsholders to exclude their Books from Display Uses or Non-Display Uses, or to advocate that any sub-group of Rightsholders decrease its participation in the Settlement in any manner. Notwithstanding the foregoing, nothing herein shall limit or restrict the Registry from being able to represent the interests of all Author Sub-Class members as a sub-group or all Publisher Sub-Class members as a sub-group.

(c) Registry Commitments. The Plaintiffs shall cause the Registry (i) to ratify this Amended Settlement Agreement at the first meeting of its Board of Directors; (ii) to adopt a resolution by which the Registry shall become a signatory to this Amended Settlement Agreement; (iii) to adopt a Certificate of Incorporation and bylaws that implement the requirements of Sections 6.1 (Functions), 6.2 (Charter) and 6.3 (Unclaimed Funds and Public Domain Funds); and (iv) to not take any act inconsistent with its obligations under this Amended Settlement Agreement. Google will have the right to approve such Certificate of Incorporation and bylaws for conformance with the foregoing commitments prior to their filing or adoption (as the case may be), such approval not to be unreasonably withheld or delayed.

6.3 Unclaimed Funds and Public Domain Funds.

(a) Unclaimed Funds.

(i) Unclaimed Funds for Unclaimed Books.

(1) Subject to clauses (2) and (3) below, any revenues paid to the Registry and due to Rightsholders of Books that are unclaimed by such Rightsholders under this Amended Settlement Agreement (“Unclaimed Funds”) will be held by the Registry for the benefit of the Rightsholder(s) of such Books until such Rightsholders register and claim such Books.

(2) Beginning with the sixth year after the Effective Date, and every year thereafter, subject to the approval of the Unclaimed Works Fiduciary, the Registry may use up to twenty-five percent (25%) of Unclaimed Funds earned in any one year that have remained unclaimed

for least five (5) years (such percentage to be allocated across all unclaimed Books in proportion to the Unclaimed Funds that they earned) for the purpose of attempting to locate the Rightsholders of unclaimed Books. The Board of Directors of the Registry, in consultation with the Unclaimed Works Fiduciary, will determine how to use such Unclaimed Funds to attempt to locate the Rightsholders of unclaimed Books, including the use, as appropriate, of national and international licensing and collecting societies, reproduction rights organizations, and associations of authors and publishers.

(3) (i) ~~Unclaimed Funds Non-Subscription Revenue Models. Any revenues paid to the Registry and due to Rightsholders of Books under Sections 4.2 (Consumer Purchases), 4.4 (Advertising Revenue Model), 4.8(a)(ii) (Printing), and, if agreed, 4.7(a)–(c) (Print on Demand, Custom Publishing and PDF Download, respectively), but that are unclaimed by such Rightsholders within five (5) years of the last date of the reporting period in which the Books earned such revenues (“Unclaimed Funds—Non-Subscription”), will be distributed by the Registry in accordance with the Plan of Allocation as soon as practicable following the end of such five (5)-year period as follows: (1) first, to defray reasonable and necessary operational expenses of the Registry that are related to its performance, on behalf of the Rightsholders, of the functions described in Section 6.1 (Functions) and, as determined by the Board of Directors of the Registry in the exercise of its fiduciary duties, maintain reserves for such expenses on a proportional revenue basis with respect to revenue from licensees of the Registry other than Google, (2) then, any remaining Unclaimed Funds will be paid on a proportional basis to the Registered Rightsholders until all such Rightsholders of a Book have received, in the aggregate, together with all amounts paid to such Rightsholders under Section 4.5(a) (Obligation to Pay Revenue Share), seventy percent (70%) of the Gross Revenues received by Google for such Book, and (3) then, for any Unclaimed Funds remaining thereafter, to not-for-profit entities described in Section 510(c)(3) of the Internal Revenue Code chosen by the Registry~~ Beginning ten (10) years after the Effective Date, any Unclaimed Funds shall be allocated proportionally to the United States, Canada, the United Kingdom and Australia, based, respectively, on the number of Books registered with the United States Copyright Office (for the United States) and the number of Books published in Canada, the United Kingdom and Australia. Subject to the approval of the Unclaimed Works Fiduciary as to the timing of such motions, the Registry may file a motion or motions with the Court recommending how Unclaimed Funds held at least ten (10) years should be distributed to literacy-based charities

in each such country that directly or indirectly benefit the Rightsholders and the reading public, after consultation with Google and, acting through the Designated Representative, the Fully Participating Libraries and the Cooperating Libraries. The ~~Registry shall choose not for profit entities described in Section 501(c)(3) of the Internal Revenue Code that directly or indirectly benefit the Rightsholders and the reading public, and will include~~ charities will be entities that advance literacy, freedom of expression, and/or education, and are (a) described in Section 501(c)(3) of the Internal Revenue Code (for Unclaimed Funds from Books registered with the United States Copyright Office), (b) organizations qualifying as “Charitable Organizations,” as defined in Section 149.1 of the Income Tax Act of Canada (for Books published in Canada), (c) any body recognized as a charity under the Charities Act 2006, Charities and Trustee Investment (Scotland) Act 2005 or Charities Act (Northern Ireland) 2008 or any legislation replacing or amending such acts (for Books published in the United Kingdom), or (d) charities that are exempt from income tax in Australia (for Books published in Australia) and, for avoidance of doubt, will not include the Authors Guild, the Association of American Publishers or other trade organizations. “Gross Revenues” means all of the revenues received by Google from the Revenue Models identified in this Section 6.3(a) (Unclaimed Funds), and only such Revenue Models Such motion or motions will be made with notice to and an opportunity to be heard by the attorneys general of all states in the United States, all Rightsholders whom the Registry will have been able to locate as of that time, and all Fully Participating Libraries and Cooperating Libraries. This Section 6.3(a)(i) (Unclaimed Funds for Unclaimed Books) is subject to Section 17.23 (Court’s Continuing Jurisdiction).

(ii) Unclaimed/Abandoned Funds-Subscription Revenue Models for Claimed Books. Any revenues ~~paid to the Registry and due to Rightsholders of Books under Section 4.1 (Institutional Subscriptions) and, if agreed, Section 4.7(d) (Consumer Subscription Models), but that are unclaimed by such Rightsholders within (5) years of the last date of the reporting period in which the Books earned such revenues (“Unclaimed Funds Subscription”)~~, will be distributed by the Registry as soon as practicable due to Registered Rightsholders of claimed Books will be held by the Registry for the benefit of such Rightsholders until paid to such Rightsholders in accordance with this Amended Settlement Agreement; provided that, any such revenues that are abandoned in accordance with applicable law will be distributed to the appropriate governmental authority in accordance with the Plan of Allocation following the end of such five (5)-year period. applicable law.

(b) Public Domain Funds. Funds that may be mistakenly paid by Google to the Registry for books that are in the public domain under the Copyright Act in the United States (“Public Domain Funds”) will be distributed according to the guidelines set forth in this Section 6.3(b) (Public Domain Funds). If Google pays the Registry Public Domain Funds derived from Institutional Subscriptions or Consumer Subscriptions, then those funds will be distributed on a proportional revenue basis among Registered Rightsholders whose Books are included within each subscription. If Google pays the Registry Public Domain Funds from Consumer Purchases, Advertising Uses, per-page printing fees pursuant to Section 4.8(a)(ii) (Printing), or additional Revenue Models set forth in Sections 4.7(a)—(e) (~~Print on Demand, Custom Publishing and PDF Download, respectively~~) (Additional Revenue Models) (if Google and the Registry agree to implement such Revenue Models) and such funds have not yet been paid to a Registered Rightsholder, then the Registry will return those Public Domain Funds to Google for distribution, at Google’s option, to a not-for-profit entity or to any consumer that may have purchased access to a book that is in the public domain under the Copyright Act in the United States. Google will have no right to reclaim Public Domain Funds for a book that is in the public domain under the Copyright Act in the United States from a Person who claimed he, she or it is a Rightsholder of such book once the Registry pays such funds to such Person.

(c) Records and Reporting. The Registry shall keep accurate records of its disbursement of Unclaimed Funds and Public Domain Funds. The Registry shall prepare annual written reports of the same and shall submit such reports to Google within forty-five (45) days after the end of each calendar year.

(d) Audit Rights. Google may, upon thirty (30) days’ prior notice and at its own expense, retain a nationally recognized independent and mutually-acceptable independent auditor (whose fees are not contingency based), under a duty of confidentiality to the Registry, to review and audit the Registry’s relevant records to confirm the payments made under Section 6.3(a) (Unclaimed Funds) and Section 6.3(b) (Public Domain Funds). The audit shall: (i) be subject to the Registry’s security and confidentiality requirements; (ii) occur no more than once every calendar year and not during the first or last three (3) weeks of a calendar quarter; (iii) transpire during the Registry’s normal business hours; and (iv) cover a period not to

exceed the previous four (4) calendar years. The Registry will promptly correct any payment errors. In addition, if the audit reveals an underpayment of five percent (5%) or more in the payments for any calendar quarter, then the Registry shall pay for the reasonable costs associated with the audit. The accounting firm may only disclose to Google whether or not the Registry is in compliance with its payment obligations under Section 6.3(a) (Unclaimed Funds) and Section 6.3(b) (Public Domain Funds) and, if the Registry is not in compliance, the amount of any underpayment and supporting calculations.

6.4 Funding and Technical Assistance. Google shall:

(a) fund the set-up and operations of the Registry according to the terms set forth in Section 5.2 (Payment For Registry, Notice and Claims Administration); and

(b) provide reasonable technical assistance with respect to the design, development and maintenance of the Registry.

6.5 Google's Rights to Registry Data.

(a) Data for Google. The Registry will provide Google with access to such Registry data, including all updates, as are reasonably necessary for Google to perform its obligations under this Amended Settlement Agreement.

(b) Data for Fully Participating Libraries. The Registry will provide Google with access to such Registry data, including all updates, as are reasonably necessary for Fully Participating Libraries to perform their obligations under their respective Library-Registry (Fully Participating) Agreements. Google may provide to the Fully Participating Libraries such Registry data, including all updates, as are reasonably necessary for Fully Participating Libraries to perform their obligations under their respective Library-Registry (Fully Participating) Agreements.

(c) Survival. Google's rights to have access to data about a Book or Insert will survive the expiration of the term of the

U.S. copyright in such Book or Insert and, to the extent that Google requires access to data after the expiration of the terms of all U.S. copyrights in all Books and Inserts, the Registry, if still operational at such time, shall provide such access.

6.6 Exchange of Data between Google and the Registry.

(a) Data Provided by Google. Google shall provide the following to the Registry:

(i) Digital Copies to Libraries. The name of any library to which it has provided Digital Copies of Books Digitized in the United States and, upon request of the Registry, the library at which a particular Book has been Digitized.

(ii) Digitized Books. On at least a quarterly basis, an update to the list of Books, Public Domain Books with a copyright date after 1922 and Government Works that Google has Digitized under this [Amended](#) Settlement Agreement along with Metadata with respect to such Books to the extent that Google is permitted to do so under then-existing contracts with Metadata providers. Google, Plaintiffs, and the Registry will cooperate to obtain such Metadata providers' permission for Google to provide Plaintiffs and the Registry with such lists; provided that the Registry shall be responsible for payment of any additional license fees to such providers to the extent required. In communicating between them, Google and the Registry will use a unique identifier for each Book, Public Domain Book with a copyright date after 1922 or Government Work. The update for a Book, Public Domain Book with a copyright date after 1922 or Government Work will be available within a reasonable period after Digitization and completion of processing of such Book, Public Domain Book with a copyright date after 1922 or Government Work by Google. The data provided shall include information for each Book regarding the Display Uses, if any, that are being made of the Book and identification of any Books that Google is not offering for sale, including any Books that Google excludes from Display Uses for non-editorial reasons (in addition to Google's obligation under Section 3.7(e) (Google's Exclusion of Books)). The Registry will use this information for internal purposes only, provided that an individual record of a Book, Public Domain Book with a copyright date after 1922 or Government Work may be disclosed by the Registry to any Rightsholder of that Book or an Insert in that Book, Public Domain

Book with a copyright date after 1922 or Government Work. The Registry may need permission from Metadata providers to obtain such Metadata, and will be responsible for payment of any additional license fees to the extent required by such providers.

(iii) Books Sold. Along with the payments required under Section 4.6 (Payment Terms) for the applicable period, a list of the Books sold, the number of Books sold, and, for each such sale, the sale price.

(iv) Library Scans. Upon request by the Registry and if a Fully Participating Library or a Cooperating Library invokes its rights pursuant to Section 7.2(e)(ii) (Third-Party Required Library Services Provider), reasonable information regarding Google's provision of Required Library Services, to determine compliance with Section 7.2(e)(i) (Obligation).

(v) Usage Data. Data sufficient to enable the Registry to calculate Subscription Usage Fees and Book Usage Fees, as defined in the Plan of Allocation.

(vi) Registration/Claims Process Data. All data provided to Google by members of the Amended Settlement Class or their agents in connection with the registration, claims, and opt out processes. Such data shall be subject to a Registry privacy policy.

(vii) Additional Information. Additional data, including updates, as reasonably necessary for the Registry to perform its obligations under this Amended Settlement Agreement.

(b) No Google Licenses. Except with respect to (i) the limited right to use Digital Copies of Library Scans and of Books other than Library Works provided by Google pursuant to Section 3.7(c) (Additional Contemplated Rightsholder Services Provider), Section 7.2(e)(ii) (Third-Party Required Library Services Provider) and Section 7.2(g)(ii)(2) (Alternative Accommodated Service Provider) and (ii) the limited right to use information provided by Google pursuant to Section 6.6(a) (Data Provided by Google), no licenses are granted by Google to the Rightsholders, the Registry,

Plaintiffs or any other Person pursuant to this [Amended](#) Settlement Agreement, by implication, estoppel or otherwise.

(c) Data Provided by the Registry. The Registry shall provide the following to Google:

(i) Books Claimed. A list of all Books and Inserts for which a Registered Rightsholder has registered with the Registry, instructions with respect to the Removal of Books and the exclusion or inclusion of Books and Inserts pursuant to Article III (Google Book Search – Rights, Benefits and Obligations) and to the Specified Price pursuant to Section 4.2(b)(i)(1) (Specified Price), and any other directions for Books and Inserts provided for in this [Amended](#) Settlement Agreement.

(ii) Metadata Corrections. Any corrections to the Metadata, and any other corrections or modifications to information the Registry previously provided to Google regarding a Book or Insert.

(iii) Registered Rightsholders. The identity of any Registered Rightsholder for a given Book or Insert; provided, however, that if the Book or the Insert was published under a pseudonym, then the Registry will only disclose that pseudonym to Google and, provided further, that if a Rightsholder requests that his, her or its identity not be disclosed to Google, then the Registry will only disclose an alias. The Registry will neither encourage Rightsholders to request, nor discourage Rightsholders from requesting, such non-disclosure. The Registry will also provide a means for Google to match contact information and other identifying information for a Rightsholder against the Registry's information pertaining to that Rightsholder. Such mechanism need not reveal the Rightsholder's contact information to Google. Rightsholder information provided by the Registry is subject to the terms of Section 15.3 (Confidentiality of Rightsholder Information).

(d) Claimed Books to be Public. The Registry will make publicly available whether or not a Book has been registered with the Registry and, for Books that have been registered, the identity of the Registered Rightsholder, unless the Registered Rightsholder requests that such information not be made public for reasonable privacy concerns, as determined by the Registry.

(e) Copyright Status. The Registry and Google will provide each other with information that each obtains bearing on the copyright status of works that are or may be Books or Inserts.

(f) No Personally Identifiable Information. In no event will Google provide personally identifiable information about end users to the Registry other than as required by law or valid legal process.

6.7 Authorization of Registry. Where this Amended Settlement Agreement confers on the Registry rights and obligations with respect to Books and Inserts, including with respect to the Registry's relationship with each of Google, the Fully Participating Libraries, the Cooperating Libraries and the Public Domain Libraries, Plaintiffs and all Rightsholders, as of the Effective Date, shall be deemed to have authorized the Registry to exercise such rights and perform such obligations on behalf of the Rightsholders with respect to their respective Books and Inserts, including to enter into Library-Registry Agreements. In no event, however, may the Registry direct Google to change the classification of a Book, include or exclude a Book or Insert in or from any Display Use, or take any other action, that is contrary to such Book or Insert Rightsholder's express direction with respect to such Book or Insert, as made pursuant to and in conformance with this Amended Settlement Agreement.

ARTICLE VII — FULLY PARTICIPATING LIBRARY AND COOPERATING LIBRARY RIGHTS AND OBLIGATIONS

7.1 Becoming a Fully Participating Library or a Cooperating Library. Google shall notify the Registry when it has identified a library that wishes to become a Fully Participating Library or a Cooperating Library. The Registry shall have approval rights as to whether a library may become a Fully Participating Library or a Cooperating Library; provided, however, that in all cases the Registry may only withhold its approval for a library to become a Fully Participating Library or a Cooperating Library due to (a) reasonable concerns as to whether the library can comply with the obligations imposed on a Fully Participating Library or a Cooperating Library by this Amended Settlement Agreement or the applicable Library-Registry Agreement or (b) the library expressing its intent not to comply with the obligations imposed on a Fully Participating Library or a Cooperating Library by this Amended Settlement Agreement or the applicable Library-Registry Agreement. The libraries identified on Attachment G (Approved Libraries) are approved to become Fully Participating Libraries and Cooperating Libraries upon execution of an applicable Library-Registry Agreement.

7.2 Fully Participating Library Uses.

(a) Making of Library Digital Copies.

(i) Fully Participating Library Collections. Google may provide each Fully Participating Library with (and each Fully Participating Library may receive and retain) a Library Digital Copy. Google may construct a Digital Copy of a Book from one or more physical books into a composite version of the Book, which may include alternative page images from different copies of the Book that Google obtains from sources other than the Fully Participating Library. Google may provide to a Fully Participating Library, as technology improves, a technologically updated Library Digital Copy of Books in that Fully Participating Library's Collection.

(ii) Books Not Digitized From the Fully Participating Library's Collection. Google may provide a Fully Participating Library with Digital Copies of Books in the Fully Participating Library's Collection that Google did not Digitize from the Fully Participating Library's Collection; provided, however, that a Fully Participating Library may receive an LDC of all of the Books in its Collection only if, for a ~~Collection~~ Fully Participating Library with holdings of nine hundred thousand (900,000) ~~Books~~ volumes (i.e., books and not Periodicals or bound volumes of Periodicals) or more, Google Digitizes more than three hundred thousand (300,000) ~~Books~~ volumes from that Fully Participating Library's ~~Collection~~ holdings, or, for a ~~Collection~~ Fully Participating Library with holdings of fewer than nine hundred thousand (900,000) ~~Books~~ volumes, Google Digitizes more than thirty percent (30%) of the ~~Books~~ volumes from that Fully Participating Library's ~~Collection~~ holdings. Google will not provide a Fully Participating Library with a Digital Copy of any Book that is not held by that Fully Participating Library.

(iii) Institutional Consortia. For any Institutional Consortium that (1) exists as of the Amended Settlement Agreement Date, and (2) with which Google has a Digitization Agreement, Google may provide each Fully Participating Library that is a member of that Institutional Consortium with Digital Copies of Books in that Fully Participating Library's Collection that Google did not Digitize from that Fully Participating Library's Collection, provided, however, that a Fully Participating Library may receive an LDC of all of the Books in its Collection only if at least ten thousand (10,000)

