

MASTER AGREEMENT
BETWEEN MICROSOFT CORPORATION
AND THE UNIVERSITY OF CALIFORNIA

This Master Agreement (this "Agreement") is made and entered into as of the 20th day of February 2007 (the "Effective Date"), by and between The Regents of the University of California (the "Library"), established 1868, on behalf of its California Digital Library with its principal business offices located at 415 20th Street, 4th Floor, Oakland California, 94612, and Microsoft Corporation ("Microsoft"), a Washington, U.S.A. corporation, with its principal business offices located at One Microsoft Way, Redmond, WA 98052. Each Party will be referred to as a "Party" and collectively the Parties will be referred to as the "Parties."

RECITALS

- A. Whereas the Library is a world-renowned research library with extraordinary collections of works in various media that are available for access and use.
- B. Whereas the Library has acquired, cataloged, indexed, curated and preserved its collections for educational and research purposes for present and future generations.
- C. Whereas Microsoft is a world leader in delivering Web services to consumers. Microsoft desires to offer services which will allow users to search and obtain the content of books, academic materials, periodicals, and other printed materials in digital form.
- D. Whereas Microsoft and the Library desire to work together pursuant to the terms and conditions of this Agreement to digitize printed materials in the collections of the Library so each of them will have the opportunity to fulfill their respective missions and mutual commitment to digitize and provide the broadest possible access to the world's knowledge.

AGREEMENT

In consideration of the covenants and conditions hereinafter set forth, Microsoft and the Library agree as follows:

1. Definitions

"Confidential Information" Confidential Information means terms of agreements with the Digitization Agent; and nonpublic information specific to Microsoft's product offerings including Digitization Services, product features, and product release dates; the terms of this Agreement and any amendments hereto, and any other written material marked or otherwise identified in writing as proprietary or confidential.

"Digital Copy" means the copy of the Library Content that is produced when Library Content is converted from tangible form to digital form under this Agreement. This includes an image

file, an OCR (optical character recognition) file (containing text and position information), and the metadata associated with the file as provided by Microsoft.

"Digitization Agent" means the party or parties mutually selected and agreed to by Microsoft and the Library who will be responsible for digitizing the Library Content. If the Digitization Agent is a third party contractor, the services performed by said contractor will be pursuant to an agreement between such third party or parties and Microsoft for the performance of such services.

"Digitization Plan" means a written plan for scanning and digitizing the Library Content to be prepared, agreed upon and signed by the Parties pursuant to Section 2.1, as such may be amended. Unless otherwise agreed upon by the Parties, each Digitization Plan will include, without limitation, (a) a list of the Library collections and estimated number of volumes and pages from each collection to be digitized during the time period covered by the plan; (b) a designated Digitization Agent and a description of the tasks to be performed by Microsoft or the Digitization Agent to digitize such collections and furnish the resulting Digital Copies to the Library; (c) a description of the locations where the Digitization Services will be performed and description of the procedures for fetching, handling, storing and transporting the Library Content; (e) a schedule for the performance of the Digitization Services and the Library Services; and (f) a description of the mutually agreed upon quality standards to be followed in the project, and (g) the terms of use and any associated royalties or fees for Microsoft's Digital Copies of Library-Owned Intellectual Property, if any, selected for digitization.

"Digitization Services" means the services that are required to be performed in connection with the digitization of the Library Content under this Agreement.

"Internet Search Services" means commercial services similar to those offered by Windows Live Search, currently including, for example, Google, Yahoo, and Ask. Internet Search Services shall not include site search, (i.e. online search of a single domain, such as within the offerings of a single retailer or library), or non-commercial multi-site or federated search services such as those developed by libraries and allied organizations (including, for example, InfoMine) to facilitate access to research information.

"Library Content" means the content from the Library's collection of materials in print and other formats selected for digitization by Microsoft and the Library pursuant to this Agreement.

"Library Digital Copy" means the copies of each Digital Copy that are supplied to the Library hereunder.

"Library-Owned Intellectual Property" means Library Content for which the Library owns the copyright and other intellectual property and/or proprietary rights necessary to grant Microsoft the license in Section 2.3, and which is selected for digitization under this Agreement.

"Library Services" means the services to be provided by the Library as described in the Description of the Library Services set forth on attached Exhibit A, each Digitization Plan and elsewhere in this Agreement.

"Library Website" means websites operated by or for the Library, and sites operated by or in conjunction with other not-for-profit institutions for the benefit of any or all such institutions' end users.

"Microsoft Services" means the services to be provided by Microsoft as described in the Description of Microsoft Services set forth on attached Exhibit B, each Digitization Plan and elsewhere in this Agreement.

"Non-Copyright Work" means the Digital Copies that are not Library-Owned Intellectual Property and are not copyrighted works as described in Section 2.4.

"Term" means the term of this Agreement as set forth in Section 10.1.

Additional defined terms will have the meanings provided in the applicable Sections.

2. Project Description

2.1. Digitization Plans. An example form of Digitization Plan is attached as Exhibit C. The Parties will from time to time prepare, agree upon and enter into a Digitization Plan for upcoming periods of time in a form similar to that of attached Exhibit C. Each Digitization Plan will form a part of, and is incorporated into, this Agreement by reference. The scope of work, schedule, facilities, formats, quality standards, contacts, and payment of costs included in a Digitization Plan will supersede the terms of this Agreement to the extent of any inconsistency. Each Party will use reasonable efforts to perform the tasks assigned to it in each Digitization Plan.

2.2. Review Meetings. Unless otherwise agreed by the Parties, Microsoft and the Library will meet quarterly on the phone or in person at mutually agreed locations to discuss and review the progress of the Parties' respective activities under this Agreement, including, without limitation, (a) any recommendations or proposals for changes to the Digitization Plan or Digitization Services, (b) problems encountered in the Digitization Services, and (c) methods to increase the overall value and performance of the Parties' relationship under this Agreement. In addition, the Parties will conduct a review of the Digitization Services at the end of the term of the initial Digitization Plan.

2.3. UC-Copyrighted Materials. The parties agree that Library-Owned Intellectual Property may be digitized hereunder if selected by the Library and agreed to by Microsoft. Terms for inclusion of Library-Owned Intellectual Property must be mutually agreed to by the Library and Microsoft prior to the Library including any such material in Library Content provided to the Digitization Agent.

2.4. Non-UC Copyrighted Materials. If the Parties desire to include other materials protected by copyright or any other intellectual property right in the Library Content, the Parties will agree on a format for the required permissions or licenses and work together to determine how such permissions or licenses will be obtained.

3. Library Obligations

- 3.1. General. The Library will use reasonable efforts to perform the Library Services. The Library will be responsible for costs associated with the performance of the Library Services except those that the parties mutually agree Microsoft will pay or reimburse.
- 3.2. Protection of Copyright Owners. Microsoft and the Library recognize the importance of respecting copyright and the protection of intellectual property rights in connection with their respective activities under this Agreement. Except for materials that may be agreed upon pursuant to Sections 2.3 or 2.4, the Library Content will not include materials protected by any unexpired copyright or any other intellectual property right. The Library will use reasonable efforts to select and provide materials for digitization that are not protected by copyright. If either Party becomes aware of, or receives any written or oral notice of, actual or alleged infringement of any third party copyright or other intellectual property right in connection with either Party's activities under this Agreement, it will promptly notify the other Party and the Parties will respond to any such notice in consultation with each other.
- 3.3. Library Obligations and Costs. The Library will be responsible for the following costs: (a) those related to locating and pulling the Library Content as well as re-shelving the Library Content when the Digitization Services are complete, (b) those related to Library employees and agents whose participation is contemplated by this Agreement, (c) network bandwidth and data storage required by the Library to receive all of the Library Digital Copies, (d) If possible, Library space that may be available for the Digitization Services, (e) any conservation efforts that Library elects to undertake on the selected Library Content prior to digitizing, and (f) if the digitization facility space is on the same Library campus on which the Library Content is located, transportation of the Library Content to and from the Library facility in which the Library Content is normally kept to and from the digitization facility.
- 3.4. Access to Library Content and Facilities. The Library will provide Microsoft and the Digitization Agent and their respective employees and independent contractors with access to the Library Content at such on-site or off-site locations as described in the Digitization Plan or otherwise agreed upon by the Parties. The Library hereby grants Microsoft and the Digitization Agent license to digitize and index the Library Content as described in this Agreement.

4. Microsoft Obligations

- 4.1. Digitization Services and Costs. Microsoft will use commercially reasonable efforts to digitize or have digitized the Library Content as described in each Digitization Plan and this Agreement. The parties will mutually agree on an appropriate Digitization Agent and/or other parties for the performance of the Digitization Services. The Parties will work in good faith with any mutually agreed Digitization Agent to accomplish the objectives of this Agreement. Microsoft is willing to consider proposals for the Library to perform Digitization Services, and if the parties reach mutual agreement on such an arrangement, the details will be included in a separate agreement or an amendment to this Agreement. In addition to costs mutually agreed upon by the Parties, Microsoft

shall be responsible for the following costs: (a) those related to Microsoft employees, agents and contractors whose participation is contemplated by this Agreement, (b) hardware and software required to digitize the Library Content, (c) space required to digitize the selected Library Content (to the extent not provided by the Library), (d) transportation of Library Content from the Library facility where the Library Content is normally kept to a destination facility (to the extent the destination facility is not on the same Library campus as the Library Content), and (e) the cost of any material alteration to infrastructure including networking bandwidth and electrical infrastructure, required by Microsoft to make Library facilities suitable for the Digitization Services, and to return the facilities to their previous condition (normal wear excepted) if required by Library at conclusion of the Digitization Services. In the event that any Library Content is damaged or lost, Microsoft shall at its option (i) repair or replace such book, or (ii) pay Library's repair or replacement cost for such book; in either case up to a maximum value of \$210 per book (unless Microsoft has been informed in advance that the value of a book lent to Microsoft hereunder is higher than \$210 and Microsoft accepts delivery of such book by the Library).

4.2. Quality Assurance. Microsoft will work with the Digitization Agent to develop and maintain a quality assurance program designed to help ensure that the Digital Copies achieve quality standards mutually agreed with the Library. Microsoft will arrange for appropriate implementation of the quality assurance program by the Digitization Agent, and/or by other parties as may be mutually agreed. The Parties agree that should either party identify and implement technical enhancements or improvements to basic image quality and/or OCR in the Digital Copy those quality assurance improvements or enhancements to the Digital Copy will be shared if commercially feasible at the Party's sole discretion. If the Library identifies errors in the Digital Copies, Microsoft will work with its Digitization Agent to identify the cause of the errors and will use commercially reasonable efforts to implement a correction plan.

4.3. Markings. Microsoft will include in the Digital Copy:

4.3.1. for any Non-Copyright Work:

(a) the following notice:

The copy you are viewing was digitized by Microsoft Corporation from the collection of [*Library name*], [*year*]. You may use and print this digital copy in limited quantity for your personal and educational purposes, but may not distribute or provide access to it (or modified or partial versions of it) for revenue-generating or other commercial purposes.

(b) a digital watermark including the text "Univ Calif - Digitized by Microsoft" on each page of the images to assist in identifying Digital Content created under this Agreement. Except in the versions delivered without watermarks for limited purposes as described in 4.3.3 below, the watermarks will be embedded in images (not in a hidden file) in such a way that viewing, reading printed output, copying or transformation of the file is not materially impeded.

4.3.2. for any work of Library-Owned Intellectual Property:

(a) a notice substantially similar to the following:

Copyright [year], Regents of the University of California. The copy you are viewing was digitized by Microsoft Corporation in cooperation with [Library name], [year]. You may use and print this digital copy in limited quantity for your personal and educational purposes, but may not distribute or provide access to it (or modified or partial versions of it) for revenue-generating or other commercial purposes.

(b) a digital watermark including the text "Univ Calif - Digitized by Microsoft" on each page of the images to assist in identifying Digital Content created under this Agreement. Except in the versions delivered without watermarks for limited purposes as described in 4.3.3 below, the watermarks will be embedded in images (not in a hidden file) in such a way that viewing, reading printed output, copying or transformation of the file is not materially impeded.

4.3.3. If Microsoft develops an improved watermarking technology (i.e. one that cannot be altered or removed) that it uses on its Digital Copies, Microsoft will apply that watermarking to Library's Digital Copies if desired by the Library.

4.3.4. In addition, Microsoft will deliver to the Library an un-watermarked version of the Digital Copy for each work, for use only where not accessible online (for example, as archived versions).

4.4. Insurance.

Microsoft will secure and maintain (or cause third party Digitization Contractors or other third parties performing services hereunder to secure and maintain, as applicable) the following coverages, with the following minimum limits of coverage:

- (a) Workers' compensation insurance and statutory disability insurance as required by law for all persons employed in connection with the project, including, as a minimum, employer's liability limits of \$500,000 each accident/\$500,000 each employee for bodily injury or by disease/\$500,000 policy limit, with coverage (except for disease) to be included in the underling schedule of any excess policy;
- (b) Commercial general liability insurance (which may be satisfied pursuant to a combination of primary and excess and/or umbrella coverage) with respect to injuries and death to persons and/or damage to property, written on an "occurrence" basis, with a per occurrence limit of not less than \$3,000,000;
- (c) Professional liability insurance in an amount not less than \$3,000,000 per occurrence; and

- (d) Property insurance in an amount of not less than \$250,000 per occurrence (Microsoft shall be responsible for any deductibles on this and any other insurance policy).

The above coverages shall include Library and its trustees, officers, agents and employees as additional insureds (with respect to general liability, professional liability, property, and if applicable, excess and umbrella insurance) and containing a waiver of subrogation by Microsoft's insurer with respect to Library and the above-referenced additional insureds. Microsoft may meet these insurance requirements through either (1) commercial insurance; (2) self-insurance; or (3) a combination of commercial insurance and self-insurance, at Microsoft's discretion. Upon execution of this Agreement and prior to commencing work, Microsoft shall furnish the Library with certificates of insurance and additional insured endorsements or similar documentation that is acceptable to the Library evidencing compliance with all requirements. Certificates shall further provide for thirty (30) days (10 days for non-payment of premium) advance written notice to the Library of any material modification, change, or cancellation of any of the above insurance coverages.

The coverages required under this Agreement shall not limit the liability of Microsoft.

- 4.5. Microsoft Products. To the extent and for as long as Microsoft offers an Internet Search Service for books or an Internet Search Service that includes books and other works digitized by Microsoft or its Digitization Agent, any Digital Copies of public domain Library Content will be searchable, displayable and downloadable in their entirety, free of charge to end users of that service. Microsoft will consider in good faith suggestions from the Library for improving the end users' interaction with the Library Content available through Microsoft's product or service, but will have no obligation to Library to deliver any particular level of performance in its products or services. Microsoft agrees to use reasonable efforts to notify the Library at least 90 days in advance if it anticipates that all its products and services that utilize Digital Copies will be discontinued.
- 4.6. Library Attribution. Library will provide Microsoft with a Library logo or Library pre-approved attribution line and/or a hyperlink to a URL on Library's web site and Microsoft will display those on all Microsoft-branded web pages that display Digital Copy page images. The type and prominence of attribution offered to Library will be similar to that of other libraries and similar content providers whose material is displayed in the relevant Microsoft product or service. Except as specifically provided above, nothing herein constitutes a license for Microsoft to use the Library's name, trademark, trade name, mark or logo or those of its constituent parts or branches without Library's consent. Upon request from the Library, Microsoft will cease to display Library's logo, name or other marks in connection with this Agreement within a reasonable period following Library's written request.

5. Delivery and Error Correction

- 5.1. Delivery. Microsoft or its Digitization Agent, will furnish Library Digital Copies to the Library pursuant to the applicable Digitization Plan and in any event no later than fifteen days (15) days following completion of digitization.
- 5.2. Error Correction. If the Library reasonably determines that any Library Digital Copy fails to meet the quality standards defined in the Digitization Plan and notifies Microsoft of such failure while Microsoft is still operating ongoing Digitization Services with the Library, then Microsoft will use commercially reasonable efforts to, at Microsoft's discretion: (a) correct and refurbish the Digital Copy to the Library, or (b) re-scan the material associated with the defective Library Digital Copy and furnish such Digital Copy to the Library, in either case, at Microsoft's expense. The foregoing sets forth the Library's sole and exclusive remedy for any failure of any Digital Copy to conform to the quality standards.

6. Confidentiality

- 6.1 Use of Confidential Information. For a period of five (5) years after initial disclosure, neither Party will use the other Party's Confidential Information without the other Party's written consent except in furtherance of this business relationship or as expressly permitted by this Agreement or disclose, publish, display or distribute the other Party's Confidential Information except (a) to obtain advice from legal or financial consultants who are subject to confidentiality obligations no less restrictive than those contained herein, or (b) if compelled by law, in which case the Party compelled to make the disclosure will use its best efforts to give the other Party notice of the requirement so that the disclosure can be contested. Each Party will take reasonable precautions to safeguard the other Party's Confidential Information. Such precautions will be at least as great as those the Party takes to protect its own Confidential Information of a similar nature. Each Party may disclose the other Party's Confidential Information to its employees or contractors only on a need-to-know basis; provided that such employees or contractors are subject to confidentiality obligations no less restrictive than those contained herein.
- 6.2 Exclusions. Confidential information does not include information that (a) the recipient developed independently; (b) the recipient knew before receiving it from the other Party; or (c) is or subsequently becomes generally publicly available or is received from another source, in both cases other than by a breach of an obligation of confidentiality under this Agreement; or (d) is disclosed by the disclosing party to others without a confidentiality provision, either oral or written
- 6.3 Cooperation in the Event of Disclosure. Each Party will immediately notify the other upon discovery of any unauthorized use or disclosure of the other Party's Confidential Information and will cooperate in any reasonable way to help the other regain possession of the Confidential Information and prevent further unauthorized use or disclosure.
- 6.4 Residuals. The term "residuals" means information in intangible form, which is retained

in memory by persons who have had access to the Confidential Information, including ideas, concepts, know-how or techniques contained therein. Each Party is free to use the residuals resulting from access to or work with Confidential Information of the other Party for any purpose; however, the recipient may not disclose the other Party's Confidential Information except as expressly permitted hereunder. The recipient will not have any obligation to limit or restrict the assignment of such persons or to pay royalties for any work resulting from the use of residuals. This Section 6.4 will not be interpreted or construed to grant to either Party any right or license under the other Party's proprietary rights other than any trade secret rights that may be applicable to such residuals.

- 6.5 Feedback. Either Party may provide suggestions, comments or other feedback to the other with respect to the other's products and services. Feedback is voluntary and the Party receiving feedback may use it for any purpose without obligation of any kind except that the Party receiving feedback will not disclose the source of feedback without the consent of the Party providing it. This Section 6.5 will not be interpreted or construed to grant to either Party any right or license under the other Party's proprietary rights other than any trade secret rights that may be applicable to such feedback.

7. Ownership and Use of the Digital Copy

- 7.1 Ownership of Digital Copy of Non-Copyright Work. Neither the Library nor Microsoft will obtain ownership of any copyright or other intellectual property right associated with the underlying works of authorship digitized under this Agreement, except to the extent that the Library owns or controls such rights independently of this Agreement. Library retains all ownership and any and all intellectual property and proprietary rights in any data provided and created by the Library (such as Library's bibliographic and catalog records) and underlying the metadata associated with the Digital Copy. To the extent there are any intellectual property rights embodied in the Digital Copies (but not the underlying works of authorship or Library provided and created bibliographic and other metadata), (a) Library will, subject to the limitations and restrictions set forth in Section 7.2, own the intellectual property rights to the Library Digital Copies, and (b) Microsoft will own the intellectual property rights to Microsoft's Digital Copies. Neither party shall have any duty of accounting to the other party with respect to its interest in the Microsoft Digital Copies or Library Digital Copies. Without limiting the scope of the Parties' ownership rights under this Section 7.1, Microsoft may use, reproduce, modify, publish, display, transmit, broadcast, assign, lease, rent, sell and otherwise exploit the Digital Copies that are not Library-Owned Intellectual Property in any manner it sees fit.
- 7.2 Ownership of Digital Copy of Library-Owned Intellectual Property. Library retains all rights, titles and interest, including copyrights, patents, trademarks and other intellectual property and proprietary rights, in the original material and digital copies of all Library-owned Intellectual Property digitized under this Agreement. Microsoft shall use reasonable efforts to ensure that copyrights and other proprietary rights are recorded in the metadata of the digital copies of the work and are made available to end-users, including the attribution specified in Paragraph 4.6. Microsoft and/or the Digitization Agent shall not remove or obscure any copyright notice, copyright

protection or any other proprietary protection and attribution notices in the original work.

- 7.3 Restrictions on Digital Copies of Non-Copyrighted Work. The Library may use its Digital Copies of Non-Copyrighted Work in any manner with the following restrictions: Library may use, copy, transmit, distribute, perform, display, and create derivative works of the Library Digital Copies to enable users of the Library and end users of the Library's Website(s) to access and use the Library Digital Copies and Library's derivative works for personal, research or educational purposes, including, but not limited to, searching, viewing, printing and downloading by Library and its end users. Except as allowed under Section 7.7, the Library will use reasonable efforts not to (a) transfer a copy of the Library Digital Copy or a derivative work thereof to any third party except as provided for in the preceding sentence or in connection with maintaining back-up copies for the Library for archival or conservation purposes; (b) authorize or knowingly enable any third party (except a third party that manages or operates a Library Website under contract with the Library) to download or host the Digital Copies in bulk; (c) authorize or knowingly enable any third party to access or copy the Digital Copies via automated crawlers, robots, spiders or similar data gathering, mining or extraction methods; or (d) authorize or knowingly enable any third party to use the Digital Copies for revenue-generating purposes. These restrictions will be included in the terms of use on the Library Website .
- 7.4 Restrictions on Digital Copies of Library-Owned Intellectual Property. The Library will determine in its sole discretion any and all uses of the Library's Digital Copies of Library-Owned Intellectual Property selected for digitization under this Agreement. The terms of use and any associated royalties or fees for Microsoft's Digital Copies of Library-Owned Intellectual Property will be included in the relevant Digitization Plan and incorporated herein.
- 7.5 If either party is informed or becomes aware that a Digital Copy infringes or violates the copyright or other intellectual property right of any third party, it will promptly (i) inform the other party, and (ii) remove such Digital Copy from, or suspend access to the Digital Copy on, its web sites until the matter is resolved to each Party's reasonable satisfaction.
- 7.6 Protection Against Unauthorized Use. Each Party will implement customary technological measures to restrict automated access to the Digital Copies hosted by it and otherwise use reasonable efforts to prevent any unauthorized use of the Digital Copies by or through it. The Parties will not alter or remove proprietary notices, logos, or digital watermarks from Digital Copies on which they appear unless agreed to by the Parties, and will include them in any copies or derivative works thereof delivered to or accessed by patrons electronically. The Library will promptly notify Microsoft of any unauthorized use of the Library Digital Copies that are not of Library-Owned Intellectual Property that comes to its attention. Microsoft will promptly notify Library of any unauthorized use of the Microsoft Digital Copies of Library-Owned Intellectual Property that comes to its attention. In the event of any such unauthorized use by the Parties' employees, agents, contractors, end users or

representatives, the Parties will use reasonable efforts to terminate such unauthorized use. The Parties are not required to undertake, but will immediately notify each other of any legal proceeding initiated by the Parties in connection with such unauthorized use. The Parties may, at their option and expense, participate in any such proceeding, and, in such event, the Parties will provide each other such authority, information and assistance related to such proceeding as the Parties may reasonably request to protect each respective Party's interest.

7.7 Library Licensing of Digital Copies of Non-Copyrighted Work.

7.7.1 Non-Commercial. Notwithstanding the terms of Section 7.3, Library shall have the right to license the Library Digital Copies of Non-Copyrighted Works and/or derivative works thereof to non-commercial institutions (such as universities, libraries and archives) for non-commercial purposes, by entering into an agreement containing substantially the terms shown on Exhibit D. The essential requirements for such license are that it:

- (i) Pass along the restrictions contained in Section 7.3 Restrictions on Digital Copies of Non-Copyrighted Work, with the exception that such license shall not allow further licensing pursuant to this Section 7.7;
- (ii) Include the requirements contained in Section 7.5 (regarding notices of infringement) and 7.6 Protection Against Unauthorized Use with a requirement to notify Microsoft in addition to the Library;
- (iii) Include Microsoft as a third party beneficiary with rights to enforce the license restrictions.

This right to license includes the right to distribute and transfer copies of the Library Digital Copies of Non-Copyrighted Works to such institutions under the terms described above. Library shall provide Microsoft with a copy of such agreement not later than the date on which it transfers any Digital Copies in bulk.

7.7.2 Commercial. Notwithstanding the terms of Section 7.3, the rights granted to the Library are expanded so that the Library has the right to license Library Digital Copies and derivative works thereof of Non-Copyrighted Works (including without restriction any supplemental material) to commercial entities for Library's revenue generating purposes, with the following restrictions:

- (i) Library may not license to entities that offer commercial services similar to those offered by Windows Live Search (or similar or successor-named services offered by Microsoft), currently including, for example, Google, Yahoo, and Ask, and
- (ii) Library will enter into agreements with each such commercial entity, that include terms substantially similar to those shown on Exhibit E. The essential requirements for such license are that it:
 - a) Specifically define the commercial uses allowed;

- b) Include a prohibition on distributing, renting, or in any way transferring the Digital Copies to a competitive entity described in 7.7.2(i);
- c) Prohibit any third party (except a third party that manages or operates a website on behalf of and under contract with the commercial entity) from downloading or hosting the Digital Copies in bulk;
- d) Prohibit allowing any third party to access or copy the Digital Copies via automated crawlers, robots, spiders or similar data gathering, mining or extraction methods;
- e) Include the requirements contained in Section 7.5 (regarding notices of infringement) and 7.6 Protection Against Unauthorized Use with a requirement to notify Microsoft in addition to the Library; and
- f) Include Microsoft as a third party beneficiary with rights to enforce the license restrictions.

Library shall provide Microsoft with a copy of such agreement for commercial distribution not later than the date on which it transfers any Digital Copies in bulk.

7.7.3 Neither Party shall have any right to make any representation, warranty or promise on behalf of the other Party.

7.8 Digital Copy Improvements. During the term of this Agreement, Microsoft agrees to share any error corrections or quality improvements (e.g. rescanning) it may make to images, text, or metadata originally associated with the Digital Copies, at no cost to the Library. Microsoft may at its discretion if commercially feasible provide improvements resulting from its use of additional or new technology, or additional metadata received from other sources. Any such improvements shall be treated as a part of the original Digital Copy and shall be subject to the same terms.

7.9 Cessation of Microsoft Interest. In the event that Microsoft or its successor or assign:

- (i) ceases to exist without having transferred ownership of the Digital Copies to another entity (which may happen, without limitation, through merger, sale or disposition by any other means, in the normal course of business or otherwise),
- (ii) determines in its sole discretion that it has no further need to restrict use of the Digital Copies and so notifies the Library in writing,
- (iii) has ceased to offer or develop products or services that utilize or are intended to utilize the Digital Copies,

then ninety (90) days after Library has provided Microsoft (at its last known address) notice that the foregoing conditions have been fulfilled, and provided that Microsoft has not disputed such notice in writing during such ninety (90) day period, all limitations in this Agreement on Library's use of Library Digital Copies will terminate. Notwithstanding the foregoing, The Library and Microsoft agree to review the need for continued limitations on Library's use of Library Digital Copies five (5) years following the Effective Date and at successive five year intervals thereafter.

7.10 License to Library-Supplied Metadata. Library grants Microsoft a non-exclusive, worldwide, perpetual, transferable, fully paid-up right and license (which includes the right to sublicense the foregoing rights to third parties, including the right to sublicense to further third parties) to use the data provided by the Library in connection with the Non-Copyright Work ("Library-Supplied Metadata"), including the following licenses to (a) modify, index and store the Library-Supplied Metadata (to the extent necessary or desirable to allow access, integration and display in products and services); (b) supplement and combine the Library-Supplied Metadata or portions thereof with other material as desirable for development of or use in products and services; (c) publicly display, transmit, reproduce and distribute copies (or portions thereof) of the Library-Supplied Metadata. This license does not include a right to commercially sublicense the Library-Supplied Metadata except as part of a Microsoft product or service, in association with the full Digital Copy of the Non-Copyright Work.

8. Warranties and Limitations of Liabilities and Damages

8.1. Library Warranties. The Library represents and warrants to Microsoft as follows:

8.1.1. Necessary Rights. The Library has all necessary power and authority to enter into, execute, perform and deliver this Agreement and to consummate the transactions contemplated by this Agreement in accordance with the provisions hereof. This Agreement, when executed by the Parties, constitutes a legal and valid obligation binding upon the Library and enforceable in accordance with its terms. The execution of this Agreement by the Library and performance of the Library's obligations hereunder will not conflict with or result in a breach or violation of any of the terms or provisions of, or constitute a default under, any agreement the Library may have with any third party, or violate any applicable laws or regulations.

8.1.2. Ownership. The Library owns each copy of the Library Content. Except to the extent permitted pursuant to Sections 2.3 or 2.4, the Library Content is not protected by any copyright. To the best of Library's knowledge, the digitization and use of the Library Content as contemplated under this Agreement does not and will not infringe, misappropriate or violate copyright of any third party.

8.1.3. Professional Manner. The Parties will perform their respective Services in a professional and timely manner.

8.2. Microsoft's Warranties. Microsoft represents and warrants to the Library as follows:

8.2.1. Necessary Rights. Microsoft has all necessary corporate power and authority to enter into, execute, perform and deliver this Agreement and to consummate the transactions contemplated by this Agreement in accordance with the provisions hereof. This Agreement, when executed by the Parties, constitutes a legal and valid obligation binding upon Microsoft and enforceable in accordance with its terms. The execution of this Agreement by Microsoft and performance of Microsoft's obligations hereunder will not conflict with or result in a breach or violation of any of the terms or provisions of, or constitute a default under, any agreement Microsoft

may have with any third party, or violate any applicable laws or regulations. Microsoft will secure any necessary rights and permissions with respect to any non-Library material included in the Library Digital Copies, and the technology, means and manner by which Microsoft and its Digitization Agent digitize the Library Content will not violate or infringe any third party proprietary or intellectual property rights.

8.2.2. Reasonable Care. Microsoft will use reasonable care in its handling of the Library Content in the performance of the Digitization Services.

8.3. Disclaimer of Warranties. EXCEPT AS EXPLICITLY PROVIDED ABOVE NEITHER PARTY MAKES ANY OTHER WARRANTIES OR REPRESENTATIONS, WHETHER EXPRESS OR IMPLIED, ARISING BY LAW OR OTHERWISE, WITH RESPECT TO THIS AGREEMENT OR THE SERVICES OR ITEMS FURNISHED HEREUNDER, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR USE, ANY STATUTORY OR IMPLIED NON-INFRINGEMENT, OR ANY IMPLIED WARRANTY ARISING FROM COURSE OF PERFORMANCE, COURSE OF DEALING, OR USAGE OF TRADE.

8.4. Disclaimer of Consequential Damages. EXCEPT WITH RESPECT TO A CLAIM INDEMNIFIED UNDER SECTION 9 ("INDEMNIFICATION") OR CLAIMS ARISING FROM A BREACH OF SECTION 6 ("CONFIDENTIALITY") OR SECTION 7 ("OWNERSHIP AND USE OF THE DIGITAL COPY"), NEITHER PARTY WILL BE LIABLE HEREUNDER FOR ANY INDIRECT, CONSEQUENTIAL, SPECIAL, OR INCIDENTAL DAMAGES (INCLUDING DAMAGES FOR LOST PROFITS, LOST OPPORTUNITIES, LOST REVENUE OR LOSS OR CORRUPTION OF DATA) OR ANY PUNITIVE OR EXEMPLARY DAMAGES, EVEN IF SUCH PARTY HAS BEEN MADE AWARE OF THE POSSIBILITY OF SUCH DAMAGES.

8.5. Limitation of Liability. EXCEPT WITH RESPECT TO A CLAIM INDEMNIFIED UNDER SECTION 9 ("INDEMNIFICATION") OR CLAIMS ARISING FROM A BREACH OF SECTION 6 ("CONFIDENTIALITY") OR SECTION 7 ("OWNERSHIP AND USE OF THE DIGITAL COPY"), A PARTY'S TOTAL LIABILITY (WHETHER BASED ON CONTRACT, WARRANTY, TORT (INCLUDING NEGLIGENCE WHETHER ACTIVE, PASSIVE OR IMPUTED) OR ANY OTHER THEORY) ARISING UNDER OR WITH REGARD TO THIS AGREEMENT OR THE SERVICES OR ITEMS FURNISHED HEREUNDER WILL IN NO EVENT EXCEED ONE MILLION DOLLARS (US\$1,000,000).

9. Indemnification

9.1. Scope. Each Party (the "Indemnifying Party") will defend, indemnify and hold harmless the other Party and its officers, directors, employees, agents, contractors and permitted successors and assigns (the "Indemnified Party") from and against all claims, losses, liabilities, damages, fines, penalties and expenses (including, without limitation, reasonable fees of attorneys of the Indemnified Party's choosing) incurred or suffered

by the Indemnified Party as a result of a third party claim (a) that, taking the claimant's allegations to be true, would result in a breach of the Indemnifying Party's warranties and representations set forth in Section 8 of this Agreement, and (b) arising out of or related to damage to tangible property or bodily injury (including death) arising from the negligent, grossly negligent or intentional acts or omissions of a Party, but only to the extent of and in proportion to the damages attributable to said acts or omissions. The limitations of liability set forth elsewhere in this Agreement are not applicable to the indemnification obligations under this Section 9.

9.2. Procedure. If any action or claim is brought against the Indemnified Party for which indemnity may be sought from the Indemnifying Party, the Indemnified Party will promptly notify the Indemnifying Party in writing. The Indemnified Party will cooperate with the Indemnifying Party at the Indemnifying Party's expense in all reasonable respects in connection with the defense and settlement of any such claim. The Indemnifying Party will control the defense and settlement thereof, including, without limitation, the employment of counsel reasonably satisfactory to the Indemnified Party, and payment of all expenses incurred in the defense and settlement of the claim. The Indemnified Party will have the right to employ separate counsel and participate in the defense at the Indemnifying Party's sole expense. Neither Party will settle or compromise any claim or action without first obtaining the other Party's written permission, if such settlement or compromise would involve any (a) admission of guilt (b) public statement, or (c) any obligation of the other Party.

10. Term and Termination

10.1. Term. The term of this Agreement will commence as of the Effective Date and will continue until the first anniversary thereof unless sooner terminated as provided below (the "Term"). Upon expiration of the initial one-year term, the Term will automatically renew for successive one (1) year periods, unless either Party gives the other Party written notice of its intent not to renew at least sixty (60) days before the expiration of the then-current Term.

10.2. Termination for Convenience. Microsoft and the Library will each have the right to terminate the Term or any Digitization Plan at any time, with or without cause upon sixty (60) days' written notice.

10.3. Material Default. If either Party materially fails to perform or comply with this Agreement or any provision thereof, and fails to remedy such default within thirty (30) days after the receipt of notice to that effect, then the other Party will have the right, at its sole option, to terminate the Term upon written notice. Without limiting what may constitute a material default under this Agreement, a breach of Section 7.3 (Restrictions) or Section 6 ("Confidentiality") will be deemed a material default of this Agreement.

10.4. Return of Confidential Information. Upon termination of the Term for any reason, each Party will return to the other Party any Confidential Information of the other Party in its control or possession, and Microsoft will promptly return any Library Content in its possession or control. Upon termination of a Digitization Plan, the Parties will return

such Confidential Information, and Microsoft will return such Library Content, as relates solely to the Digitization Plan).

10.5. Effect of Termination; Survival. In the event of termination or expiration of the Term or Digitization Plan for any reason, the following will apply: (a) the Parties will cooperate to effect an orderly, efficient, effective and expeditious termination of the Parties' respective activities; (b) if providing facilities for the services pursuant to Section 3.4, Library will cooperate with Microsoft and the Digitization Agent to allow reasonable time and access for removal of equipment and property from the facility; (c) neither Party will have any further obligation to perform any services; (d) any and all rights, remedies and obligations arising out of any breach of or default under this Agreement before the end of the Term will survive; and (e) the Parties' respective rights and obligations under Sections 6, 7, 8, 9, 10.5, 11, 12 and 13 will survive.

10.6. Dispute Resolution. The Parties will attempt to resolve any dispute arising under or in connection with this Agreement in good faith.

11. Notices. Any notice or other communication required or permitted to be given hereunder will be given in writing and will be sent by any of the following means: (a) delivery in person; (b) an internationally recognized and available express courier (such as Federal Express or United Parcel Service), charges prepaid; or (c) mailed by certified mail, return receipt requested, properly addressed and stamped with the required postage. Any notice given in accordance with this Section 11 will be deemed effective upon receipt as evidenced by the postal return receipt, or the courier confirmation of delivery. A Party may from time to time change such address or individual by giving the other Party notice of such change in accordance with this Section 11.

If to Microsoft: Microsoft Corporation
One Microsoft Way
Redmond, WA 98052-6399
Fax: 425-936-7329
Attention: Jay Giroto, Group Program Manager of
Windows Live Search

With a copy to: Microsoft Corporation
One Microsoft Way
Redmond, WA 98052-6399
Fax: 425-936-7329
Attention: Law and Corporate Affairs for Windows Live
Search

If to Library: California Digital Library
415 20th Street, 4th Floor
Oakland, CA 94612-2901
Attn: Cate Hutton, Director of Business Services

12. Miscellaneous

12.1. Independent Contractors. The Parties hereto are independent contractors, and nothing in this Agreement is intended to or will create any form of partnership, joint venture,

agency, franchise, sales representative or employment relationship. Neither Party is authorized to, and will not attempt to, create or assume any obligation or liability, express or implied, in the name or otherwise on behalf of the other Party. Without limiting the foregoing, neither Party will enter into any contract, agreement or other commitment, make any warranty or guarantee, or incur any obligation or liability in the name or otherwise on behalf of the other Party.


- 12.2. Public Relations. The Parties will cooperate and coordinate with respect to public announcements and publicity concerning this Agreement and the relationship of the Parties. Neither Party will issue any press release or any other publicity concerning this Agreement without the other Party's prior written consent, which consent will not be unreasonably withheld or delayed. Each Party must review and approve the content of any press release or other publicity concerning this Agreement in advance of release. A Party's failure to notify the other Party of approval or disapproval of any press release or other publicity will be deemed a disapproval of such press release or other publicity.
- 12.3. Nonexclusive Agreement. This is a non-exclusive agreement and either Party may enter into similar agreements with other Parties.
- 12.4. Assignment. The Library will not assign or delegate any of its rights, duties or obligations under this Agreement (by actual assignment or by operation of law) without the prior written consent of Microsoft, which consent shall not be unreasonably withheld. Microsoft will not assign or delegate any of its duties or obligations under Section 2 Project Description, Section 4 Microsoft Obligations, Exhibit B, or any Digitization Plan without the prior written consent of Library. Subject to the foregoing restrictions, this Agreement will inure to and be binding all on successors and assigns of the Parties. Any assignment or delegation in violation of this Section 12.4 will be null and void.
- 12.5. Schedules. The following attached Exhibits, as amended from time to time, are incorporated into this Agreement:
- Exhibit A – Description of the Library Services
 - Exhibit B – Description of Microsoft Services
 - Exhibit C – Example Form Digitization Plan
 - Exhibit D – Minimum Contract Terms for Commercial Use
 - Exhibit E – Minimum Contract Terms for Non-Commercial Third Party Use
- 12.6. Governing Law and Attorneys' Fees. This Agreement will be construed and governed by the laws of the State of California, USA, without reference to its conflict of laws principles to the contrary. The parties agree to jurisdiction and venue in the federal courts sitting in the Northern District of California, unless no federal subject matter jurisdiction exists, in which case the Parties agree to the exclusive jurisdiction and venue in the Superior Court of Alameda County, California. In any action or arbitration to enforce any right or remedy under this Agreement, or to interpret any provision of this Agreement, the prevailing Party will be entitled to recover its reasonable attorneys' fees, costs and other expenses.

12.7. Construction and No Waiver. If a court of competent jurisdiction finds any provision of this Agreement to be unenforceable, illegal or invalid, then the remainder of this Agreement will continue in full force and effect and this Agreement will be deemed amended to strike such offending provision in such a manner as to give effect to the offending provision to the maximum extent possible. No failure by either Party to exercise a right under this Agreement or under law will operate as a waiver thereof. No waiver of any breach of this Agreement will constitute a waiver of any other breach. No waiver will be effective unless in writing and signed by the waiving Party.

12.8. Entire Agreement and Amendments. This Agreement contains the entire agreement between the Parties concerning its subject matter, and supersedes all prior understandings, representations, discussions and agreements of any nature regarding the subject matter. Section headings are for convenience only. This Agreement does not constitute an offer by Microsoft and it will not be effective until signed by both Parties. This Agreement may be executed in counterparts, each of which when so executed will be deemed to be an original, and all of which taken together will constitute one and the same Agreement. Except as may be specifically allowed hereunder, this Agreement may not be modified or amended except by a written amendment to this Agreement signed by authorized representatives of both Parties.

IN WITNESS WHEREOF, the Parties have entered into this Master Agreement as of the Effective Date.

MICROSOFT CORPORATION




By (Sign)
JAY GIROTO

Name (Print)
GROUP PROGRAM MANAGER

Title
3/12/07

Date

REGENTS OF THE UNIVERSITY OF CALIFORNIA

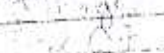


By (Sign)
DANIEL GREENSTEIN

Name (Print)
ASSOCIATE VICE PRESIDENT

Title
3/15/07

Date

Reviewed by
Microsoft Legal


Date

EXHIBIT A

Description of the Library Services

In addition to the Services described in the Digitization Plan, the Library will perform the following Services:

1. Unless otherwise specifically agreed, the Library will use good faith reasonable efforts to select works not covered under copyright or works for which Library owns the copyright for Library Content to be digitized.
2. Collaborate with Microsoft in the selection of collections and materials to be digitized.
3. Fetch and re-shelve books and materials from the library archives and collections that match the selections.
4. Collaborate with Microsoft and the Digitizing Agent to ensure a sufficient quantity of agreed material is identified in advance, and made available in steady increments, to efficiently utilize Digitizing Agent's services.
5. Work effectively with the Digitizing Agent.
6. Collaborate with Microsoft to provide adequate space and facilities for digitization equipment and staff, if agreed in the Digitization Plan.
7. If the facility is provided by the Library, transport the Library Content to and from the Library facility in which the Library Content is normally kept to and from the digitization facility.

The Library will provide a list of the Library Content that is selected for digitization under a given digitization plan (including the title, copyright and/or publication dates, if available) at the time the materials are provided to the Digitizing Agent.

EXHIBIT B

Description of the Microsoft Services

In addition to the Services described in the Digitization Plan, Microsoft will perform the following Services:

1. Collaborate with Library in the selection of collections and materials to be digitized.
2. Collaborate with the Library in the selection of the Digitization Agent
3. Collaborate with Library and the Digitizing Agent to ensure a sufficient quantity of agreed material is identified in advance, and made available in steady increments, to efficiently utilize Digitizing Agent's services.
4. Work effectively with the Library and Digitizing Agent.
5. Collaborate with the Library and Digitizing Agent to develop quality assurance standards
6. Assist Library with determining infrastructure to ensure adequate space and facilities for digitization equipment, networking bandwidth and electrical infrastructure to support Digitization Agent in accordance with the Digitization Plans. Microsoft will be responsible for cost of material alteration to infrastructure to ensure adequate space and facilities for digitization equipment, networking bandwidth and electrical infrastructure to support Digitization Agent in accordance with the Digitization Plan
7. If the agreed digitization facilities are not Library-provided, provide funding for transportation of Library Content from the archive or other Library location to and from the location where Library Content will be digitized.

Any Microsoft-provided facilities and/or funding for facilities or transportation beyond that described in Section 4.1 of the Agreement, will be as agreed in the Digitization Plan.

EXHIBIT C

Example Form Digitization Plan

This Digitization Plan covers the plan for digitization of the Library Content during the period _____, pursuant to the Master Agreement made and entered into as of ___ day of _____, by and between Microsoft and _____.

1. Scope of Work

The Parties will work together pursuant to the terms and conditions of this Agreement to digitize approximately _____ books, pages or items, of the Library Content. The Parties may mutually agree to change the number of pages digitized during the period.

2. Schedule

3. Facilities. The work will be performed at:

4. Digital Copy Formats

Each page of material will be provided as follows:

- (i) digitized images in grayscale or color in the corresponding color mode, and black and white text pages in B&W color mode, in a format mutually agreed for the Work, in two file sizes: (1) at least 2MB/image, and (2) a smaller file size (approx 200K); and
- (ii) Optical Character Recognition (OCR) text in PDF, Text with word positions, XML or MS Word.
- (iii) metadata associated with file as provided by Microsoft to include metadata captured by the Digitization Vendor as part of scanning process including: metadata captured at the time of scanning, manifest metadata, bibliographic (MARC or MARCXML retrievable from UC or RLG catalog) and operational metadata

5. Quality Standards [in addition to those included in Master Agreement]

The work will conform to the following standards (add detail as appropriate) for:

- 1) Material handling
- 2) Maximum value (repair or replacement cost) per book,
- 3) Time between pick up and return of material to the library
- 4) Digital image quality
- 5) Metadata requirements
- 6) Error correction standards

EXHIBIT D
Minimum Contract Terms for Non-Commercial Third Party Use

The following license rights are permitted by Microsoft Corporation to non-profit academic institutions (such as universities and libraries) to further Microsoft's goals of promoting digital inclusion and a knowledge economy, and building productive partnerships with the academic community.

License and Restrictions. The Library hereby grants the Licensee a non-exclusive worldwide royalty-free right and license to use, copy, transmit, perform and display, and create derivative works of the Digital Copies for the sole purpose of enabling users of the Licensee and end users of the Licensee's website to access and use the Digital Copies for personal or educational purposes, including limited quantities of printing and downloading by Library and its end users, not for further redistribution, and subject to the further limitations and requirements set forth in this Agreement. The Licensee will not directly or indirectly: (a) distribute, publish, rent, sell or otherwise transfer any Digital Copy or derivative work thereof to any third party in tangible form or recorded on physical media, except as provided above with respect to Licensee services and end users or in connection with maintaining back-up copies for the Licensee for archival or conservation purposes; (b) authorize or knowingly enable any third party (except a third party that manages or operates a Library web site under contract with the Library) to download or host the Digital Copies in bulk; (c) authorize or knowingly enable any third party to access or copy the Digital Copies via automated crawlers, robots, spiders or similar data gathering, mining or extraction methods; or (d) authorize or knowingly enable any third party to use the Digital Copies for revenue-generating purposes. Permitted Licensee web sites shall include non-commercial sites operated in conjunction with other not-for-profit institutions, for the benefit of any or all such institutions' end users, and otherwise in compliance with the restrictions in this Agreement. Nothing herein shall be construed to prevent the Licensee from charging its end users for print services, downloading or access provided by the Licensee in compliance with the above, or for supplemental material that the Licensee may offer in connection or combination with the Digital Copies. These restrictions must be included in the terms of use for the Licensee website and other services in a form conformant with the terms of this Agreement and reasonably acceptable to Microsoft and the Library.

Security. Licensee will implement technological measures to restrict automated access to the Digital Copies hosted by it and otherwise use reasonable best faith efforts to prevent any unauthorized use of the Digital Copies by or through it. Licensee will not remove proprietary notices, logos, or digital watermarks from the Digital Copy, and will include them in any copies or derivative works thereof. Licensee will promptly notify Library and Microsoft Corporation ("Microsoft") of any unauthorized use of the Digital Copies that comes to Licensee's attention. Licensee will immediately notify Library and Microsoft of any legal proceeding initiated by Licensee in connection with such unauthorized use. Library and/or Microsoft may, at their option and expense, participate in any such proceeding, and, in such event, Licensee will provide such authority, information and assistance related to such proceeding as Microsoft and/or Library may reasonably request to protect their interests.

Third Party Beneficiary. Licensee acknowledges that Microsoft has certain interests in the Digital Copy files. Licensee agrees that Microsoft Corporation is a third party beneficiary of this Agreement, and has the right to enforce the terms hereof as though Licensee had entered into this Agreement directly with Microsoft.

ALL INFORMATION, SERVICES, AND DIGITAL COPIES PROVIDED IN CONNECTION WITH THE PERFORMANCE OF THIS AGREEMENT ARE PROVIDED "AS IS" AND WITHOUT ANY WARRANTY OR CONDITION OF ANY KIND, EXPRESS, IMPLIED OR STATUTORY, AND EACH PARTY EXPRESSLY DISCLAIMS ANY AND ALL WARRANTIES INCLUDING ANY WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, ACCURACY, TITLE, OR NON-INFRINGEMENT.

EXHIBIT E
Minimum Contract Terms for Commercial Third Party Use

[Company] is granted a non-exclusive, worldwide right and license to use, copy, transmit, perform and display the Digital Copies, solely as necessary to provide *[choose appropriate option(s)]*

- a) Print-on-demand services;
- b) Online-only access to portions of Digital Copies up to and including complete books;

subject to the following further limitations and requirements. [Company] will not directly or indirectly: (a) distribute, publish, rent, sell or otherwise transfer any Digital Copy or derivative work thereof to any entity that offers Internet-based search services; (b) authorize or knowingly enable any third party to download or host the Digital Copies in bulk; (c) authorize or knowingly enable any third party to access or copy the Digital Copies via automated crawlers, robots, spiders or similar data gathering, mining or extraction methods. These restrictions must be included in the terms of use for any [Company] website and other services that provide access to the Digital Copy, in a form conformant with the terms of this Agreement and reasonably acceptable to Library.

[Company] will implement technological measures to restrict automated access to the Digital Copies hosted by it and otherwise use reasonable best faith efforts to prevent any unauthorized use of the Digital Copies by or through it. [Company] will not remove proprietary notices, logos, or digital watermarks from the Digital Copy, and will include them in any copies or derivative works thereof. [Company] will promptly notify Library and Microsoft Corporation ("Microsoft") of any unauthorized use of the Digital Copies that comes to [Company's] attention. [Company] will immediately notify Library and Microsoft of any legal proceeding initiated by [Company] in connection with such unauthorized use. Library and/or Microsoft may, at their option and expense, participate in any such proceeding, and, in such event, [Company] will provide such authority, information and assistance related to such proceeding as Microsoft and/or Library may reasonably request to protect their interests.

[Company] acknowledges that Microsoft has certain interests in the Digital Copy files. [Company] agrees that Microsoft Corporation is a third party beneficiary of this Agreement, and has the right to enforce the terms hereof as though [Company] had entered into this Agreement directly with Microsoft.