

**Attachment B-3  
to Amended Settlement Agreement**

**FORM OF LIBRARY-REGISTRY (PUBLIC DOMAIN) AGREEMENT**

This LIBRARY-REGISTRY (PUBLIC DOMAIN) AGREEMENT (with all of the exhibits hereto, the "Library Agreement") is entered into by and between Class Counsel (in anticipation of the formation of the Books Rights Registry), on behalf of all Rightsholders (the "Registry"), and \_\_\_\_\_, with its principal offices at \_\_\_\_\_ ("Library"), as of \_\_\_\_\_ and is effective on the later of such date or the Effective Date of the Amended Settlement Agreement (the "Library Agreement Effective Date"). The Registry and Library are sometimes referred to hereinafter individually as a "Party" and collectively as the "Parties."

**RECITALS**

WHEREAS, pursuant to the Amended Settlement Agreement between Google and Plaintiffs dated as of November 13, 2009, the Registry has been established as a clearinghouse for the administration of the rights of Rightsholders under the Amended Settlement Agreement; and

WHEREAS, all of the Rightsholders, through the Settlement embodied in the Amended Settlement Agreement, are deemed to have authorized the Registry to enter into this Library Agreement on their behalf; and

WHEREAS, Library desires to become a Public Domain Library under the Amended Settlement Agreement.

NOW, THEREFORE, in consideration of the covenants and agreements set forth in this Library Agreement, Registry and Library hereby agree as follows:

1. Definitions. Capitalized terms have the meanings ascribed to them in Exhibit A (Amended Settlement Agreement Definitions).
2. Amended Settlement Agreement Terms.
  - (a) Public Domain Books Only. Library has a Digitization Agreement with Google pursuant to which Library provides material to Google for Digitization. Library agrees that it will not provide materials to Google for Digitization when it knows that those materials are Books.
  - (b) Obligation to Delete. As of the Library Agreement Effective Date, Library

**Attachment B-3  
to Amended Settlement Agreement**

hereby certifies that it has deleted or permanently rendered unusable any Digital Copies of Books provided by Google to Library prior to the Library Agreement Effective Date. If, after the Library Agreement Effective Date, Library discovers any such Digital Copies of Books or Google provides any Digital Copies of Books to Library, Library will delete or permanently render such Digital Copies unusable promptly upon discovery or receipt.

3. Term And Termination.

(a) Effective Date. This Library Agreement, if not terminated pursuant to any provision hereof, shall become effective on the Library Agreement Effective Date.

(b) Term. This Library Agreement shall continue in full force and effect until the last to expire of the U.S. copyright in each Book and Insert, unless otherwise terminated at an earlier date pursuant to Section 3(c) (Termination if Amended Settlement Agreement Not Final) or Section 3(d) (Termination by Library).

(c) Termination if Amended Settlement Agreement Not Final. In the event that the Registry and Library agree that the Effective Date will never occur, this Library Agreement shall be null and void.

(d) Termination by Library. Library may terminate this Library Agreement at any time for any reason or for no reason, upon thirty (30) days' notice to the Registry.

4. Representations, Disclaimer And Limitation Of Liability.

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

(b) Disclaimer. The warranties explicitly set forth above are the only warranties provided herein and are in lieu of all other warranties by the Parties, express or implied, with respect to the subject matter of this Library Agreement.

(c) Limitation of Liability. In no event will Library or the Registry be liable for lost profits or any form of indirect, special, incidental, consequential or punitive damages of any character from any claims arising out of this Library Agreement, whether based on breach of contract, tort (including negligence), or otherwise, and whether or not such Party has been advised of the possibility of such damage.

**Attachment B-3  
to Amended Settlement Agreement**

5. Releases.

(a) Use of Digital Copies by Library. Pursuant to Section 10.2(a) (Release of Google Releasees, Fully Participating Library Releasees, Cooperating Library Releasees, Public Domain Releasees and Other Library Releasees) of the Amended Settlement Agreement, as of the Effective Date, Library is released by Rightsholder Releasors from the Public Domain Library Released Claims. Such section is set forth in Exhibit B (Public Domain Library Releases).

(b) Library Releases of Rightsholders. Without further action by anyone, as of the Effective Date, Library, for good and sufficient consideration, the receipt and adequacy of which are hereby acknowledged, shall be deemed to have fully, finally and forever released, relinquished, settled, and discharged, each Rightsholder Releasor and Class Counsel, from any and all Claims that directly or indirectly relate to, are based upon or arise out of, the commencement, prosecution or settlement of the Action, or the negotiation or execution of this Library Agreement.

6. Third-Party Beneficiary. Library acknowledges and agrees that each Rightsholder is a third-party beneficiary of this Library Agreement, entitled to enforce it in accordance with Section 8.3 (Breaches – General Principles) of the Amended Settlement Agreement as if such Rightsholder were a party hereto.

7. Dispute Resolution. Library hereby agrees that all disputes arising under this Library Agreement shall be subject to Exhibit C (Dispute Resolution). Except as provided in Exhibit C (Dispute Resolution), any claims, disputes or actions arising under or to enforce this Library Agreement shall be commenced and maintained only in the U.S. District Court for the Southern District of New York and all actions regarding the interpretation, implementation and enforcement of this Library Agreement shall be brought exclusively in such Court, with the Registry and Library submitting to the personal jurisdiction thereof, unless venue in the state in which Library is located is required by the law of such state.

8. Miscellaneous Provisions.

(a) Notices. Unless provided for to the contrary in this Library Agreement, any and all notices or other communications or deliveries required or permitted to be made under this Library Agreement shall be in writing and sent to the Parties at their addresses identified above (or as otherwise provided by notice given pursuant to this Section 8(a) (Notices)). Notice shall be deemed received (i) upon receipt when delivered personally, (ii) upon written verification of receipt from overnight courier, (iii) upon verification of receipt of registered or certified mail or (iv) upon verification of receipt via facsimile or electronic mail, provided that such notice is also sent simultaneously via first class mail. Contact information shall be updated in writing as necessary to

**Attachment B-3  
to Amended Settlement Agreement**

ensure that each Party has current information regarding all such contacts.

(b) Governing Law. This Library Agreement shall be governed by and construed in accordance with the law of the State of \_\_\_\_\_, without reference to principles of conflicts of laws. [Governing law to be specified in each Library-Registry Agreement. Governing law will be New York or the state in which Library is located if required by the law of such state.]

(c) Entire Agreement. This Library Agreement, including exhibits, sets forth the entire agreement between the Registry and Library with respect to its subject matter.

(d) Amendment. This Library Agreement may be amended by a written agreement signed by both Parties, only if such amendment does not impair the rights of Rightsholders under this Library Agreement.

(e) Assignment. Neither Party may assign any of its rights or delegate any of its duties under this Library Agreement without the prior written consent of the other Party, which shall not unreasonably be withheld or delayed. Notwithstanding the foregoing, Class Counsel shall assign this Library Agreement to the Book Rights Registry promptly after its formation. Any attempted assignment, delegation or transfer in derogation hereof shall be null and void. This Library Agreement shall be binding upon the successors and permitted assigns of both Parties, including, in the case of the assignment by Class Counsel, the Book Rights Registry.

(f) Severability. If any provision of this Library Agreement shall be adjudged by any court of competent jurisdiction to be unenforceable or invalid, that provision shall be limited or eliminated to the minimum extent necessary so that this Library Agreement shall otherwise remain in full force and effect and remain enforceable between the Parties.

(g) No Waiver. The failure of either Party to act in the event of a breach of this Library Agreement by the other shall not be deemed a waiver of such breach or a waiver of future breaches.

(h) Interpretation. The interpretive provisions of Section 17.32 (Interpretation) of the Amended Settlement Agreement apply to this Library Agreement.

(i) Compliance with Law. Notwithstanding any other provision of this Library Agreement, nothing in this Library Agreement requires Library or the Registry to take any action that would violate any applicable law and neither of them shall be held to have breached this Library Agreement by omitting to take any action that, if taken, would violate any applicable law.

**Attachment B-3  
to Amended Settlement Agreement**

(j) Counterparts. This Library Agreement may be signed in counterparts, each of which shall constitute a duplicate original. Execution by facsimile shall be fully and legally binding on a Party.

AWAITING  
COURT  
APPROVAL

**Attachment B-3  
to Amended Settlement Agreement**

IN WITNESS WHEREOF, this Agreement has been executed by the undersigned duly authorized representative of each Party.

Library:

By:

Print Name:

Title:

Date:

**CLASS COUNSEL:**

**DEBEVOISE & PLIMPTON LLP**  
(for the Publisher Sub-Class)

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

Name: Jeffrey P. Cunard  
Bruce P. Keller

DEBEVOISE & PLIMPTON LLP  
919 Third Avenue  
New York, NY 10022  
(212) 909-6000 (phone)  
(212) 909-6836 (fax)  
jpcunard@debevoise.com  
bpkeller@debevoise.com

**BONI & ZACK LLC**  
(for the Author Sub-Class)

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

Name: Michael J. Boni  
Joanne Zack

BONI & ZACK LLC  
15 St. Asaphs Road  
Bala Cynwyd, PA 19004  
(610) 822-0200 (phone)  
(610) 822-0206 (fax)  
mboni@bonizack.com  
jzack@bonizack.com

**Attachment B-3  
to Amended Settlement Agreement**

**Exhibits**

**[The Exhibits of each Library-Registry (Public Domain) Agreement will attach, or incorporate by reference, the following sections from the Amended Settlement Agreement.]**

Exhibit A: Amended Settlement Agreement Definitions [Relevant definitions from the Amended Settlement Agreement used in this Library Agreement]

Exhibit B: Public Domain Library Releases [Public Domain Library releases from Section 10.2 (Releases) and the related definitions from 10.1 (Definitions)]

Exhibit C: Dispute Resolution [Article IX (Dispute Resolution)]