

HATHITRUST PARTNERING INSTITUTION AGREEMENT

This document is an agreement for participation in HathiTrust between the Regents of the University of Michigan ("Michigan") and Johns Hopkins University, (hereafter the "Partnering Institution" or "Johns Hopkins University"). The University of Michigan and Johns Hopkins University seek to have Johns Hopkins University join a shared digital repository, hereafter referred to as HathiTrust, to support the long-term curation of HathiTrust's digital library assets.

1. **Background:** HathiTrust is a digital repository shared by Partnering research institutions. Its first focus is on books and journals digitized from the collections of those institutions. HathiTrust is funded in large part by Michigan and Indiana University, with significant support by the Partnering Institutions and library consortia. The initial phase of HathiTrust is a five-year effort, begun in January 2008. HathiTrust will undertake a formal review of the governance and sustainability in 2011.

2. **The University of Michigan:** Michigan provides the fiscal and legal resources of Michigan to support the operation of HathiTrust. Although the HathiTrust Executive Committee and the Strategic Advisory Board guide the operation of HathiTrust, all decisions made in support of and by HathiTrust must be in accord with legal, fiscal, and other standards and regulations of Michigan.

3. **Governance:** HathiTrust governance is composed of an Executive Committee and a Strategic Advisory Board. The daily activities of HathiTrust are managed by the Executive Director of HathiTrust, who is appointed by the Executive Committee. The two bodies of governance are defined as follows:

- The Executive Committee manages HathiTrust's budget and finances and is responsible for final decision-making across all aspect of the partnership. It is composed of senior officers from the founding HathiTrust institutions, who will serve through the duration of the first five-year period (i.e., through 2012). The Executive Committee actively seeks input from Partnering Institutions via the Strategic Advisory Board.
- The Strategic Advisory Board advises the Executive Committee in areas of policy, repository development, and strategic planning. It is composed of senior professional staff from the member libraries, including four members from CIC institutions and three from the University of California. The SAB reaches out widely to members of the partnership to assemble and charge working groups that address a variety of short- and long-term issues. The current membership is chartered through 2012.

As part of the formal repository review in 2011, HathiTrust will convene a Constitutional Convention of current partners. This Convention will decide future directions of HathiTrust and is the mechanism by which new partners will have a voice in determining the governance model for HathiTrust beginning in 2013. All partners who are members of HathiTrust by October 31, 2010 will participate in this Convention and have a role in shaping the next phase of the partnership.

4. Fees: HathiTrust is operated on a total cost and cost-recovery basis (subsidy + fees). The HathiTrust Executive Committee reserves the right to adjust the annual fee for participation depending on actual costs. HathiTrust will adjust annual fees in consultation with the HathiTrust Executive Committee and will provide adjusted cost information to the Partnering Institutions in a timely way. HathiTrust commits to controlling costs, and costs will not be increased without a minimum of nine months notice. Current fees specific to Johns Hopkins University's participation are appended to this agreement in Schedule A. Johns Hopkins University agrees to pay the fees set forth in Schedule A hereto or as they may be adjusted from time to time.

5. Services: HathiTrust commits to provide a minimum set of resources and services outlined below. With the Partnering Institutions, HathiTrust will also explore creating and funding additional services. A list of HathiTrust's short- and long-term functional objectives can be found at <http://www.hathitrust.org/objectives>. Minimum services include:

- Long-term preservation of deposited materials, including bit-level preservation and migration (HathiTrust preservation practices and strategies are documented at <http://www.hathitrust.org/preservation>).
- Management of rights information associated with the deposited materials.
- Provision of data to aid institutions in loading bibliographic records for content held in HathiTrust.
- Ingest services for content digitized by Google and the Internet Archive (HathiTrust currently accepts only page image files and associated OCR files and metadata).
- Large-scale search capabilities over bibliographic records for content held in HathiTrust.
- Full-text search capabilities for major portions of HathiTrust content, including public domain texts.
- Expanded access to public domain volumes (full-volume download from HathiTrust)
- Full-text access to HathiTrust volumes for certified users who have print disabilities
- Section 108 (17 USC §108) replacement, preservation, and distribution uses of digital materials

To receive access to volumes for certified users who have print disabilities and for uses described above in accordance with 17 USC §108, Partnering Institutions must:

- Assert that the Partnering Institution's uses of these volumes are lawful and in compliance, where applicable, with parameters established by Google or other external contracting party of which HathiTrust makes the Partnering Institution aware
- Assume liability for any unlawful or, where applicable, non-compliant uses

HathiTrust supports Shibboleth as a means by which authentication and authorization to HathiTrust services can take place. Access services for certified users who have print disabilities and the 17 USC §108 uses described above of digital content will be facilitated by an exchange of attributes in Shibboleth, or other mechanism determined by HathiTrust to be appropriate. HathiTrust is not responsible for costs associated with mechanisms Partnering Institutions put in place to ensure proper authorization, authentication, and access to HathiTrust volumes for these services.

6. Rights Management: HathiTrust strives, where reasonable, to provide as much access as is lawful and practical to materials stored in the repository. For public domain materials and for materials where a rights holder has granted sufficient permissions, HathiTrust strives to provide a level of access that makes it possible for any user in the world to read these works online. For other materials, HathiTrust will, where possible, provide search capabilities so that these works can serve as a lawful index to the printed text. To facilitate only lawful access to digitized content, the Repository employs a rights management mechanism that sets default rights based on publication place and date found in the bibliographic record provided by Partnering Institutions who are contributing content, and stores other rights information as a result of specific overrides. This additional overriding information is typically the result of copyright determination work, but may also include the results of collaboration with rights holders.

7. Scope of Uses: Michigan agrees that HathiTrust shall enable Johns Hopkins University to use HathiTrust materials in accordance with HathiTrust services, the law and, if applicable, the parameters established by Google or other external contracting party. Johns Hopkins University agrees that use of materials made available to Johns Hopkins University via HathiTrust shall not infringe the rights of any third parties and shall be in accord with this Agreement and HathiTrust policies and procedures.

8. System Security: Michigan has deployed security mechanisms for system-level and user access to the content of HathiTrust, and has reviewed those mechanisms with security experts and with Google. Michigan will maintain and upgrade these mechanisms, as necessary. In the case of breaches made possible by activities at or under the control of Johns Hopkins University (e.g., an open proxy server), Johns Hopkins University assumes liability for these breaches. Michigan assumes no liability for these breaches and reserves the right to suspend access to services at Johns Hopkins University, until breaches are resolved based on the sole judgment of Michigan. This decision-making authority is essential to protect the integrity of HathiTrust for all.

9. Communication Mechanisms: HathiTrust will provide monthly updates to Johns Hopkins University. Updates are posted to a project website. These updates include, at a minimum, the following:

- Status on development activities.
- Status on volumes added.
- Planned outages.

- System availability in the previous month.

10. Governing Law, Construction, and Venue. This Agreement shall be governed by and construed under the laws of the State of Michigan. Any claims, demands, or actions asserted against The Regents of the University of Michigan shall be brought in the Michigan Court of Claims. Any claims, demands, or actions asserted against Johns Hopkins University shall be brought in the state or federal courts located within the state of Maryland.

11. Term of Agreement. The Term of this Agreement shall last until the end of December, 2012. Thereafter the Term shall automatically renew for one-year periods, unless either party notifies the other, in writing, up to 30 days prior to the renewal Term. Either party may terminate this agreement 30 days after notifying the other party of a material breach of the agreement in the event that the party so notified fails to cure that breach within the aforesaid 30 day period.

12. Notices. Any notice to either party must be in writing, signed by the party giving it, and served to the addresses indicated on the Signature page (or to such other addressee as may be later designated by written notice) by personal delivery, recognized overnight courier service, or by the United States mail, first-class, certified or registered, postage prepaid, return receipt requested. All such notices shall be effective when received, but no later than three (3) days after mailing. All notices to Johns Hopkins University shall be sent to the attention of:

13. Execution. This Agreement may be executed in duplicate, each of which when executed and delivered shall be an original. The parties acknowledge and agree that this Agreement has been mutually discussed, negotiated, and drafted by the parties.

14. Indemnity. The University of Michigan shall defend, indemnify, and hold harmless Johns Hopkins University, its Trustees, officers, employees, and agents from and against any costs, losses, damages, liabilities, expenses, demands, and judgments, including court costs and attorney fees, which may arise out of the University of Michigan's acts or omissions under this Agreement or which arise from the breach by the University of Michigan of its representations hereunder. Johns Hopkins University shall defend, indemnify, and hold harmless the University of Michigan, its Regents, officers, employees, agents, and students from and against any costs, losses, damages, liabilities, expenses, demands, and judgments, including court costs and attorney fees, which may arise out of the Johns Hopkins University's acts or omissions under this Agreement or which may arise from the breach by Johns Hopkins University of its representations hereunder.

In acknowledgement of the terms and conditions set out above and in return for fair and aggregate compensation the receipt of which is acknowledged by all signatories. This Agreement is executed as of _____.

**REGENTS OF THE UNIVERSITY
OF MICHIGAN:**

By: Philip Hanlon

Printed Name: PHILIP HANLON

Title: Provost

Date of Signature: 11/15/10

Address (for notices): John Wilkin

Univ. Library

818 Hatcher South

Ann Arbor, MI 48109-1205

JOHNS HOPKINS UNIVERSITY:

By: Paul N. Beyer

Printed Name: Paul N. Beyer

Title: Director of Purchasing

Date of Signature: 11/8/10

Address (for notices): _____

1101 E. 33rd St., Suite B001

Baltimore, MD 21218

Schedule A

1. Fees for the Partnering Institution are based on the following elements:

- The total number of public domain volumes in HathiTrust (PD) – this category includes volumes where rights holders have given HathiTrust free use of the content
- The overlap of the Partnering Institution's print holdings with HathiTrust in copyright digital holdings (IC)
- The number of Partnering Institutions (N)
- The estimated number of Partnering Institutions that hold a given in copyright volume in HathiTrust (H)
- The average annual cost to provide basic support for a digital volume in HathiTrust (C)
- A flexible multiplier value used to generate surplus (X)

Fees are calculated according to the following formulas:

For Public Domain Volumes:

$$\text{Cost} = (\text{PD} * \text{X} * \text{C}) / \text{N}$$

For In Copyright Volumes

$$\text{Cost} = (\text{IC} * \text{X} * \text{C}) / \text{H}$$

2. The total number of public domain and in copyright volumes in HathiTrust, the amount of the Partnering Institution's print holdings, the number of HathiTrust Partnering Institutions, and the estimated number of Partnering Institutions that hold a given in copyright volume are defined as of the end of the prior calendar year. Fees will be billed in January of each year (e.g., for 2011 they will be billed in January 2011, etc.), and prorated for partial years.

3. Based on the following values:

- 758,947 public domain volumes in HathiTrust as of December 31, 2009
- An estimated 897,607 volume overlap of Johns Hopkins University's in copyright print holdings with HathiTrust (the volume overlap is calculated based on an estimated 30% overlap of ARL collections with HathiTrust, and an estimated 80% of the works that overlap being in copyright)
- 26 Partnering Institutions as of December 31, 2009
- An estimated 15 Partnering Institutions holding a given in copyright volume in HathiTrust
- An average annual cost of \$0.216 per GB for providing basic support for a HathiTrust digital volume
- A multiplier of 1.5

Johns Hopkins University shall pay \$28,895.96 for 2010 (with cost proration). Fees in subsequent years will be determined on the basis of the cost elements above.