

National Geospatial Digital Archive : NGDA Content Collection Node Agreement 3_19_09

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NGDA Content Collection Node Agreement

Introduction

The National Geospatial Digital Archive (NGDA) is a collecting network, seed funded by the Library of Congress, whose mission is to collect and preserve the digital, geospatial assets of the United States. The founding custodians of the NGDA are the University of California at Santa Barbara (UCSB) and Stanford University (SU). It is expected that over time other content collection nodes will join the NGDA.

This Agreement specifies the expectations and obligations for participation as a content collection node of the NGDA and describes the features of this cooperative venture. As nodes identify copyrighted or licensed content to be collected they will enter into legal agreements with depositors of that content. When nodes construct depositor agreements with their depositors they may choose to follow the form developed by the original nodes. However, regardless of the form such an agreement takes future nodes agree to be bound by the use terms of Exhibit B or use terms that are substantially similar to those in Exhibit B of the NGDA Content Provider Agreement. (Exhibit B, in its entirety, is at the end of this agreement.) Additionally, it is understood that the nodes will collect public domain materials which are free of use restrictions.

This Agreement describes the Governance Structure for the initial two members of the NGDA. The Governance Structure defines decision making processes for the NGDA. It is desired that the NGDA will grow by adding content collection nodes. The Procedure Manual will describe operational matters including, but not limited to how new nodes will be added to the group, meeting frequency and rotation, and acquisition and removal of content.

Agreement to obligations in NGDA Procedure Manual

Present members of NGDA (University of California at Santa Barbara and Stanford University) and all future members, agree to the operational guidelines as set forth in the NGDA Procedure Manual.

Responsibilities and definition of a Content Collection Node

An NGDA content collection node shall be defined by 4 main features:

- Node has a collection development policy for geospatial data;
- Node has an institutional mandate to collect;
- Node agrees to archive the geospatial data it collects;
- Node has agreed in writing to be part of the NGDA collecting network.

Governance Structure

- UCSB and SU will be equal partners in the agreement. During the life of the NGDA Cooperative Agreement; decisions will be made by UCSB and SU.
- Decisions between UCSB and SU will be made jointly except in the case where a consensus decision violates an existing university policy for a particular node. University policy will take precedence over the consensus decision.
- If agreement cannot be reached, the dispute will be mediated by the Associate University Librarians or University Librarians of UCSB and SU.
- As more nodes join, and after the initial award period has ended, decisions will be made by consensus.
- When there are at least 5 nodes, revising the governance structure to include the other nodes will be considered.
- The nodes will convene as provided in the Procedure Manual to discuss at least the following:
 - Responsibilities and operating procedures;
 - Acquisition and removal of content;
 - Adding new nodes;
 - Procedure Manual updates;
 - Any other pertinent matters.
- If there is any inconsistency between this Agreement and the Procedure Manual, this Agreement takes precedence.

Responsibility of Members

- Create a procedure manual
 - Future members will participate in updates of the procedure manual.
- Convening the nodes
 - The nodes will meet once a year to discuss relevant issues to the NGDA.
 - Nodes will take turns hosting the annual meeting, which will happen either in person or virtually.
- Financial obligations
 - Financial obligations of being a collecting node are listed in the Procedure Manual.

Indemnification of other nodes

No node will oblige another node (or nodes) to terms outside of or in addition to Exhibit B.

Each node, in its capacity as primary custodian of content, represents and warrants to the other nodes that it has a signed agreement from the depositors of copyrighted or licensed materials, which states the depositor has the right/authority to deposit the content.

Removal of content from a node

A node will contact the other nodes in the event they are unable to host NGDA content. Other nodes may agree to take the content with specifications for doing so described in the procedure manual.

In the instance of removal of copyrighted or licensed content from the NGDA, all nodes agree to abide by the terms of Exhibit B pertaining to such removal, specifically that: "For Licensed Materials* that are subject to a claim of infringement or unlawfulness, Custodian must take down such content from a website within 48 hours. All other requests to destroy or return material must be completed within 15 days from the receipt of the request." In the event there is a request to destroy the materials, the Node may keep an archival copy for as long as the dispute remains active and as long as it is not available to

the public. Custodians recognize that technological advances and/or changes in the law and best practices may change the time period for the Custodian to respond to claims of infringement or unlawfulness. Custodian will abide by current standards for response to copyright infringement matters.

*Licensed Materials. The materials that are the subject of, and licensed under, this Agreement shall consist of the materials described in an NGDA Content Provider Agreement between a content provider and a node.

Discontinuance of a node

Any node may choose to terminate their participation in the NGDA by giving notice as specified in the procedure manual.

Member nodes reserve the option of removing a node from the NGDA for the following reasons:

- Violating the terms of Exhibit B;
- Violating the terms of the Content Provider Agreement;
- Violating terms of the Node Agreement.

Applicable Law

This Agreement will be governed by the laws of the State of California, United States of America, without regard to conflict of laws provisions. Venue for any action arising out of this agreement will be a court of competent jurisdiction in California.

Notice

Whenever any notice is to be given hereunder, it will be in writing and sent to the Authorized Representative for the receiving party indicated below, at following address, by certified mail or overnight courier:

UCSB:

Content Provider:

OR

STANFORD:

Content Provider:

Use of Names

Neither party will use the name, trade name, trademark or other designation of the other party in connection with any products, promotion, or advertising, without the prior written permission of the other

party. However, nothing in this Article is intended to restrict either party from disclosing the existence of and nature of this agreement (including the name of the other party) or from including the existence of and nature of this agreement in the routine reporting of its activities. Nothing here is intended to limit the publication of the members of the NGDA.

Assignment

Neither party will assign its rights or duties under this Agreement to another without the prior express written consent of each other party; provided, however, that a party may assign this Agreement to a successor in ownership of all or substantially all its business assets in the field to which this Agreement relates if such successor will expressly assume in writing the obligation to perform in accordance with the terms and conditions of this Agreement. Any other purported assignment will be void.

Amendments

Except for the Procedure Manual which is incorporated into this document by reference no agreements, modifications, or waivers to this Agreement will be valid unless in writing and signed by the authorized representatives of the parties.

Miscellaneous

1. Not a Partnership or Joint Venture. It is understood and agreed by the parties that each node is performing this contract as an independent contractor. The parties, by this Agreement, do not intend to create a partnership, principal/agent, master/servant, or joint venture relationship and nothing in this Agreement will be construed as creating such a relationship between the parties.
2. Severability. If any term or provision of this Agreement is held to be invalid or illegal, such term or provision will not affect the validity or enforceability of the remaining terms and provisions of this Agreement.
3. No Waiver. The wavier by either party of a breach or default of any provision of this Agreement does not constitute a waiver of any succeeding breach, nor does any delay or omission on the part of either party to exercise any right that it has under this Agreement operate as a waiver of such right, unless the terms of this Agreement sets forth a specific time limit for the exercise thereof.

Exhibit B

Authorized Users of Licensed Materials.

The following persons and entities shall be considered authorized users of the Licensed Materials:

1. Persons affiliated with the Custodians of NGDA. Full and part time students and employees (including faculty, staff, affiliated researchers and independent contractors) of any Custodians of the NGDA, regardless of the physical location of such persons.
2. Walk-ins. Patrons not affiliated with Custodians of the NGDA who are physically present at Custodian's site(s).
3. Library of Congress. Custodians of the NGDA may, upon request of the Library of Congress, deliver copies thereto. In such event, the copy of the collected content will become the physical property of the United States Government for the collections of the Library of Congress and will be subject to

the laws and regulations governing the Library's collections. The collected content, which is a part of the Library's collection, may be made accessible to the Library's patrons on the Library's premises for preservation as part of the Library's regular preservation program. As with the other items in the Library's collections, the Library's ownership of these materials extends to the physical copy only; the Library will make no claim of ownership of any of the intellectual property rights in the collected content.

4. Future access to general public who agree to the terms of this License. Although the current scope of the NGDA is to create a preservation environment, one future goal of the NGDA is to provide access to the content to the general public who agree to abide by the terms of this License. In such event, Content Provider agrees to allow future access to members of the general public who agree to the terms of this License.

Authorized Uses of Licensed Materials.

Authorized Users may make use of the Licensed Materials in any manner consistent with the United States and international law including, but not limited to, any fair use exceptions set forth in copyright law. Nothing in this Agreement is intended to limit in any way whatsoever the NGDA or any Authorized User's rights.

The Licensed Materials may be used any research, education or other non-commercial purpose including, but not limited to:

1. Multiple Archival/Backup Copies. Multiple ephemeral copies of the entire set of Licensed Materials may be maintained as a backup or archival copy. Custodians of the NGDA have the right to electronically store, translate, copy, or re-arrange the data in order to preserve it.
2. Digitally Copy. Custodians of the NGDA and Authorized Users may download and digitally copy a reasonable portion of the Licensed Materials.
3. Print Copy. Custodians of the NGDA and Authorized Users may print a reasonable portion of the Licensed Materials.
4. Recover Copying Costs. Custodians of the NGDA may charge a fee to cover costs of copying or printing portions of Licensed Materials for Authorized Users.
5. Course Packs. Custodians of the NGDA and Authorized Users may use a reasonable portion of the Licensed Materials in the preparation of Course Packs or other educational materials.
6. Electronic Reserve. Custodians of the NGDA and Authorized Users may use a reasonable portion of the Licensed Materials for use in connection with specific courses of instruction offered by Licensee and/or its parent institution.
7. Databases. If the Licensed Materials are a database, compilation, or collection of information, Custodians of the NGDA and Authorized Users shall be permitted to extract or use information contained in the database for educational, scientific, or research purposes, including extraction and manipulation of information for the purpose of illustration, explanation, example, comment, criticism, teaching, research, or analysis.
8. Caching. Custodians of the NGDA and Authorized Users may make such local digital copies of the Licensed Materials as are necessary to ensure efficient use by Authorized Users by appropriate browser or other software.
9. Indices & Catalog. Custodians of the NGDA may use the Licensed Materials in connection with the preparation of or access to integrated indices to the Licensed Materials, including author, article, abstract and keyword indices. In addition, Custodians of the NGDA have the right to incorporate metadata into a publicly accessible catalog.
10. Scholarly Sharing. Authorized Users may transmit to a third party colleague in hard copy or electronically, minimal, insubstantial amounts of the Licensed Materials for personal use or scholarly, educational, or scientific research or professional use but in no case for re-sale. In addition, Authorized Users have the right to use, with appropriate credit, figures, tables and brief excerpts from the Licensed Materials in the Authorized User's own scientific, scholarly and

educational works.

11. Custodians of the NGDA may fulfill requests from other institutions, a practice commonly called Interlibrary Loan. Licensee agrees to fulfill such requests in compliance with Section 108 of the United States Copyright Law (17 USC 108, "Limitations on exclusive rights: Reproduction by libraries and archives") and clause 3 of the Guidelines for the Proviso of Subsection 108(g)(2) prepared by the National Commission on New Technological Uses of Copyrighted Works.

Management of Licensed Material by Custodians.

1. Inclusion of Licensed Materials within NDGA, or any individual Custodian repository, may be discontinued at any time at the discretion of the Custodian.
2. Custodians will use reasonable practices and standards for the long-term preservation of the materials.
3. Custodians will take the same measures to prevent unauthorized access to the Licensed Materials as it does for its own materials of a similar nature.
4. Any Custodian storing Licensed Materials in its repositories will notify Content Providers of a security breach within a reasonable period of time from when it becomes aware of such breach.
5. Custodians will reasonably permit Authorized Users access to the content, although Custodians are not in breach of this Agreement for downtime related to periodic maintenance and unanticipated hosting difficulties, provided that downtime does not exceed 100 hours a month.
6. Custodians will make reasonable efforts to notify Authorized Users of terms of use, including all restrictions on use.
7. Custodians will credit the copyright holder according to common custom for the media provided.
8. Custodians other than the NGDA node that place Licensed Materials in their repositories will provide notice to Content Provider identifying the repository(ies) in which they are being archived.