

NGDA Content Provider Agreement

CONTENT PROVIDER AGREEMENT Between THE BOARD OF TRUSTEES OF THE LELAND STANFORD JUNIOR UNIVERISTY

And

COMPANY/INDIVIDUAL

This Content Provider Agreement ("Agreement") is entered on this ____ day of _____, 2007 ("Effective Date") into by and between THE BOARD OF TRUSTEES OF THE LELAND STANFORD JUNIOR UNIVERSITY, a non-profit trust having corporate powers under California law (Stanford), and, COMPANY/INDIVIDUAL, _____ [*state of incorporation*] Corporation, having a principal place of business at _____ [*street address*], (Content Provider).

WHEREAS, STANFORD is a non-profit organization dedicated, in part, to engaging in high quality research activities for the advancement of knowledge and benefit of the public;

WHEREAS, the U.S. Library of Congress has developed the National Digital Information Infrastructure and Preservation Program ("NDIIPP") to develop processes and establish a network of depositories for the storage, preservation and use of born-digital materials and information;

WHEREAS, STANFORD, together with the University of California at Santa Barbara are participants of the NDIIPP program and are collaborating on a research project entitled the National Geospatial Digital Archive ("NGDA") and funded by the U.S. Library of Congress with the following goals: (a) create a new national federated network committed to archiving geospatial images and data; (b) investigate the proper and optimal roles of such a federated archive, with consideration of distant (dark) backup and migration; (c) directly serve content to users; and engage in active or passive quality/integrity monitoring, application of metadata, comprehensive searching, dissemination of metadata, etc.; (d) collect and archive segments of at-risk digital geospatial data and images; (e) develop best practices for the presentation of archived digital geospatial data; and, (f) develop a series of policy agreements governing retention, rights management, obligations of partners, interoperability of systems, exchange of digital objects, etc.;

WHEREAS, recognizing the value of the NGDA and its goals, Content Provider, who is the copyright holder, or has the full authority and right to deposit the materials subject to this license, desires that such materials be included in the NGDA.

NOW THEREFORE, in consideration of the premises and mutual covenants herein contained, the parties agree as follows:

1. Agreement Terms

Content Provider. The individual or entity providing Licensed Materials.

Custodian or Additional Custodian. A research institution that is part of the federated group of archives capable of accepting Licensed Materials from Content Providers into the National Geospatial Digital Archive.

Licensed Materials. The materials that are the subject of, and licensed under, this Agreement shall consist of the materials described in Attachment A ("Licensed Materials"), which is hereby incorporated in full by reference.

NDIIPP. NDIIPP denotes the National Digital Information Infrastructure and Preservation Program ("NDIIPP"), a program of the Library of Congress to develop processes and establish a network of repositories for the storage, preservation and use of born-digital materials and information.

NGDA. NGDA denotes the National Geospatial Digital Archive, a research project funded by the Library of Congress.

Primary Custodian. The Custodian that accepted particular Licensed Materials from a Content Provider under a written agreement.

Repository. A digital archive of an individual Custodian that stores Licensed Materials for the NGDA.

STANFORD. STANFORD denotes The Board of Trustees of the Leland Stanford Junior University, Stanford University Libraries.

2. Grant of License.

a. Content Provider hereby grants to Custodians a paid-up, non-exclusive, world-wide, transferable license to reproduce, prepare derivative works of, distribute, perform publicly, display publicly, digitally transmit and otherwise use the Licensed Materials at no cost in any media now known or hereinafter created in accordance with the terms of the Agreement. This license extends to any intellectual property or proprietary rights covering the Licensed Material, including trademark and patents.

b. The parties acknowledge and agree that this Agreement only provides the rights granted in Section 2a and no others. This grant does not transfer title to the Licensed Materials or any copyright, trademark, patent or other intellectual or proprietary right.

3. Delivery and Preservation of Licensed Materials. Content Provider will provide one copy of the Licensed Materials to STANFORD to be placed in the NDGA. The contents of the NGDA, including the Licensed Materials, will be stored in and accessed through

the repositories of at least one of the Custodians. Content Provider acknowledges and agrees that each Custodian may refuse to place the Licensed Materials in its Repository or may decide to remove Licensed Materials from its repository for any reason. If STANFORD removes Licensed Materials from its repository it will provide written notice of that fact to Content Provider.

4. Additional Custodians. Content Provider acknowledges that, under the terms of the NDIIPP, STANFORD may, but is not required to, invite other trusted organizations to participate as Custodians in this project.

5. Distribution and Use of Licensed Materials to Custodians. STANFORD has the right, but not the obligation, to provide a copy of the Licensed Materials to any Custodian as long as such additional Custodians agree to be bound by the use terms of Exhibit B or use terms that are substantially similar to those in Exhibit B. STANFORD as the Primary Custodian has right to request the return of or destruction of Licensed Materials it provides to other Custodians for any reason. 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.

6. Authorized Uses. STANFORD will abide by the terms of Exhibit B. Stanford is permitted to make non-material changes to the terms of Exhibit B. Stanford is permitted to make material changes to the terms of Exhibit B from time to time in consultation with the other Nodes and with notice to Content Providers. STANFORD will give Content Provider an opportunity to withdraw Licensed Materials if the terms of Exhibit B change substantially, and STANFORD will require this same right to be granted to Content Providers by any Additional Custodian holding Content Provider's Licensed Materials.

7. Warranties, Indemnifications and Notifications by Content Provider.

a. Content Provider warrants that it has the right to license the rights granted under this Agreement to use Licensed Materials, that it has obtained any and all necessary permissions from third parties to license the Licensed Materials, and that use of the Licensed Materials by Authorized Users in accordance with the terms of this Agreement and Exhibit B does not infringe the copyright of any third party, or violate any other law, including but not limited to trademark, patent, privacy, or breach any other agreement or license. The Content Provider shall indemnify and hold STANFORD and Additional Custodians and Authorized Users harmless for any losses, claims, damages, awards, penalties, or injuries incurred, including reasonable attorney's fees, which arise from any claim by any third party of an alleged infringement of copyright or any claim implicating the warranty arising out of the use of the Licensed Materials by STANFORD, the Additional Custodians or any Authorized User in accordance with the terms of this Agreement. This indemnity shall survive the termination of this Agreement.

b. Content Provider will notify STANFORD of any change in copyright status of the materials.

c. Content Provider will notify STANFORD of any privacy or data protection issues.

8. Term and Termination.

- a. Unless terminated, this Agreement will commence on the Effective Date and will continue through the copyright term or until other proprietary right to the licensed material expires.
- b. In the event that future changes to Exhibit B are unacceptable to Content Provider this agreement may be terminated and Content Provider may request that materials be removed from Stanford's NGDA repository.
- c. STANFORD may terminate this Agreement, in whole or in part with respect to a specific Licensed Material, without notice upon a breach of Section 7 ("Warranties, Indemnifications and Notifications") by Content Provider. If terminated under this subsection, STANFORD will destroy the Licensed Materials and STANFORD will request all other Custodians to destroy any copies of the Licensed Materials.

9. 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 Santa Clara County California.

10. 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:

STANFORD:

Content Provider:

11. 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.

12. No Warranty. STANFORD does not warrant the preservation of the Licensed Materials or the working of its or any other repository.

13. Assignment. Neither party will assign its rights or duties under this Agreement to another without the prior express written consent of the other party; provided, however, that Sponsor 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.

14. Amendments. No agreements, modifications, or waivers to this Agreement will be valid unless in writing and signed by the Authorized Representatives of the parties.

15. Miscellaneous.

a. Not a Partnership or Joint Venture. It is understood and agreed by the parties that STANFORD 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.

b. 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.

c. 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.

16. Entire Agreement. This Agreement, and Exhibits A and B, constitute the entire agreement and understanding between the parties and supersedes all previous agreements and understandings on the subject matter of this Agreement, if any.

CONTENT PROVIDER

STANFORD UNIVERSITY

By:

By:

By:

By:

Title:

Title:

Date:

Date:

EXHIBIT A

EXHIBIT B

1. Authorized Users of Licensed Materials. The following persons and entities shall be considered authorized users of the Licensed Materials:

a. 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.

b. Walk-ins. Patrons not affiliated with Custodians of the NGDA who are physically present at Custodian's site(s).

c. 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.

d. 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.

2. 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 United States or international law to use the Licensed Materials.

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

a. 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.

b. Digitally Copy. Custodians of the NGDA and Authorized Users may download and digitally copy a reasonable portion of the Licensed Materials.

c. Print Copy. Custodians of the NGDA and Authorized Users may print a reasonable portion of the Licensed Materials.

d. 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.

e. 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.

f. 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.

g. 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.

h. 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.

i. 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.

j. 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.

k. Interlibrary Loan. 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.

3. Management of Licensed Material by Custodians.

a. The Primary Custodian has right to request the return of or destruction of Licensed Materials it provides to other Custodians for any reason. 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. 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.

b. Inclusion of Licensed Materials within NDGA, or any individual Custodian repository, may be discontinued at any time at the discretion of the Custodian.

c. Custodians will use reasonable practices and standards for the long-term preservation of the materials.

d. 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.

e. 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.

f. 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.

g. Custodians will make reasonable efforts to notify Authorized Users of terms of use, including all restrictions on use.

h. Custodians will credit the copyright holder according to common custom for the media provided.

i. Custodians other than STANFORD that place Licensed Materials in their repositories will provide notice to Content Provider identifying the repository(ies) in which they are being archived.