

Draft: NGDA Content Provider Agreement 3.0
Draft Only
Not For Official Use

CONTENT PROVIDER AGREEMENT

Between

**THE BOARD OF TRUSTEES OF THE LELAND STANFORD JUNIOR UNIVERSITY
And**

COMPANY/INDIVIDUAL

This Content Provider Agreement (“Agreement”) is entered on this ____ day of ____, 2006 (“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, a _____ [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 (together, the “Custodians”) 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 of 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. 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.
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 NDGA, 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 organizations to participate as Custodians in this project.

5. Distribution 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.

6. Authorized Uses. STANFORD will abide the terms of Exhibit B.

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 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 the 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. This Agreement will commence on the Effective Date and shall not expire unless either party terminates pursuant to this section.

b. Either party may terminate this Agreement, in whole or with respect to a specific Licensed Material, for any reason by giving thirty (30) days written notice to the other party.

c. STANFORD may terminate this Agreement, in whole or with respect to a specific Licensed Material, without notice upon a breach of Section 8 (“Warranties, Indemnifications and Notifications”) by Content Provider.

d. In the event of termination, STANFORD will destroy the Licensed Materials within thirty (30) days of the termination date. In addition, STANFORD will request all other Custodians to destroy any copies of the Licensed Materials.

Didn't we decide that this time frame places an unnecessary onus on the custodian(s)? Even if it is easily accomplished by Stanford's processes, the other custodian's might not have the skills or interest prioritizing it. Didn't we suggest something like "reasonable time frame"? Same question for Exhibit B. – It doesn't seem that 8b is asking too much though.

9. Applicable Law. This Agreement will be governed by the laws of the State of California, United States of America, without regard to the conflict of laws provisions thereof.

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.

STANFORD UNIVERSITY

By: _____
By: _____
Title: _____
Date: _____

By: _____
By: _____
Title: _____
Date: _____

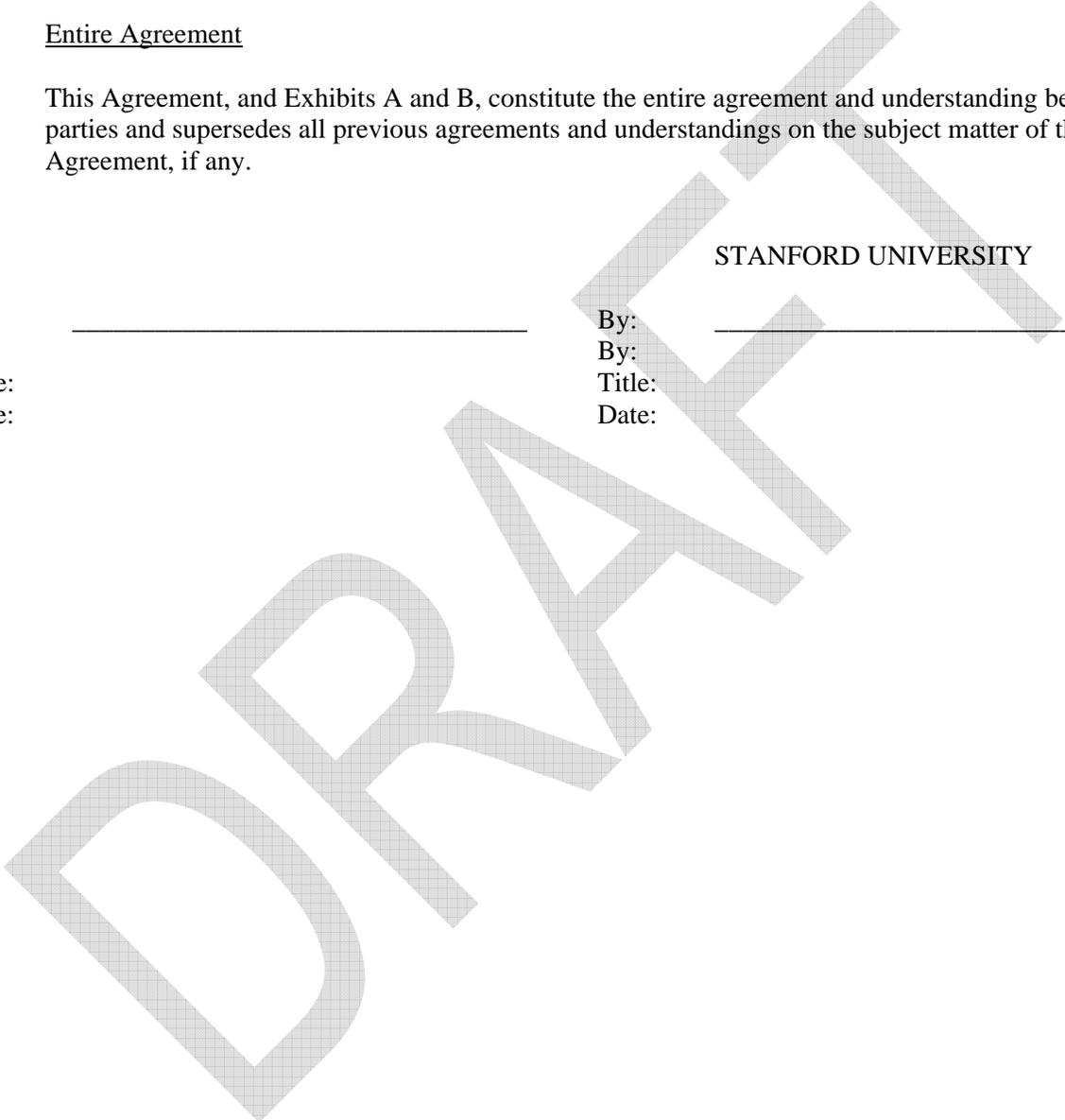


EXHIBIT A
Licensed Materials

DRAFT