

FCLA -- LIBRARY AGREEMENT FOR USE OF THE FCLA DIGITAL ARCHIVE (FDA)

1. Parties

This Agreement, entered into on 22 September 2005 between the University of Florida Board of Trustees for the benefit of the Florida Center for Library Automation (hereafter, FCLA), and the Florida Atlantic University Board of Trustees (hereafter, University) for the benefit of the Florida Atlantic Libraries (hereafter, Library), governs the terms and conditions of use by Library of the FCLA Digital Archive (hereafter, FDA).

2. Term and modification

This Agreement is in effect from 22 September 2005 until terminated. The Agreement may be terminated without cause by FCLA or Library with 60 days prior written notice.

Should either party fail to comply with the terms and conditions of this Agreement, except when the default is a violation of intellectual property law as described in Section 5, the other party may notify the non-complying party in writing of the nature of the default. The non-complying party shall have thirty (30) days to cure the default. In the event that the default is not cured, the non-defaulting party may immediately terminate this Agreement by written notice. The failure of either party to exercise this right shall not be construed as a waiver of such right in the event of further non-compliance.

The Agreement will be reviewed by Library and FCLA no less frequently than annually. It can be modified at any time by written request of FCLA or Library, with the written consent of the other party. Modifications of the terms of Materials to be deposited will be implemented by the FDA within 10 working days of the date of the modified Agreement.

3. Authorized individuals

The primary contact person at Library for billing and other administrative issues, the primary contact for technical issues, and all individuals authorized to request reports and the deposit, dissemination, and/or withdrawal of materials, are listed in Appendix A to this Agreement. Library can modify Appendix A at any time by providing FCLA with a dated replacement of Appendix A in writing.

The primary contact persons at the FDA are listed on the FDA website. FCLA can modify the website at any time.

4. Materials to be deposited

An itemized description of all classes of materials to be deposited in the FDA, how they will be obtained by the FDA, and the level of preservation desired are listed in Appendix

A to this Agreement. Library can modify Appendix A at any time by providing FCLA with a signed and dated replacement Appendix A in writing. Modifications will be implemented by FCLA within 10 working days.

5. Rights in deposited materials

Library retains all ownership and management rights in deposited materials. Library warrants that Library is responsible for compliance with all applicable copyright laws and other laws applicable to deposited materials, and that Library has the authority to grant to FCLA non-exclusive rights to copy, display and create derivative versions of deposited files. If FCLA receives notification in writing that material deposited by Library is held in the FCLA Digital Archive in violation of applicable law, FCLA will withdraw the material and provide a copy to Library. In the event the dispute is resolved in favor of Library, FCLA will re-ingest the material at no charge to Library. To the extent permitted by law, University agrees to indemnify, defend, and hold harmless the University of Florida Board of Trustees and FCLA, against all claims and expenses, including legal expenses and reasonable attorneys fees, arising out of the death of or injury to any person or persons or out of any damage to property and against any other claim, proceeding, demand, expense and liability of any kind whatsoever arising from any right or obligation of University or Library hereunder. Notwithstanding the above provision, the University of Florida Board of Trustees at all times reserves the right to retain counsel of its own to defend its interests.

6. Services provided

FCLA will make a best-faith effort to provide services as described in the *FCLA DIGITAL ARCHIVE POLICY GUIDE*. The *POLICY GUIDE* may be modified over time by FCLA as circumstances warrant. Library will be notified immediately when the *POLICY GUIDE* is changed.

7. Right to utilize the archive

Subject to these terms, FCLA grants Library a non-exclusive, nontransferable and nonassignable right to make use of the documented services of the FDA solely for non-commercial purposes. Requests for reports and for deposit, dissemination and/or withdrawal or materials will be restricted to authorized individuals only as listed as “Authorized individuals” in Appendix A. FDA services will be made available to Library as specified in FCLA’s then-current published documentation and service specifications. Library understands that documentation and service specifications may change over time.

Library may submit materials for deposit on behalf of other parties and may pass through to the other party(ies) any charges billed by FCLA for services related to these materials.

8. Restrictions on use

Library shall use the FDA solely as authorized herein. Neither Library nor any authorized individuals acquire ownership rights to the FDA. Library shall not use the FDA in any manner which circumvents security measures implemented by the FDA or which interferes with the functioning of any web site or computer system.

Library understands that the FDA is maintained for the benefit of the public university system of the State of Florida as a whole, with the goal of enhancing the long-term accessibility of digital information. Accordingly, Library agrees to make only good faith use of FDA services in accordance with documentation and this Agreement that demonstrates respect for the rights of other users. Accordingly, Library shall take no action or make any omission which wastes, diminishes or causes harm to the shared resources that make up the FDA.

9. Extent of liability

In the event of failure to provide any service to the satisfaction of Library, or damage to deposited files, FCLA sole and maximum liability is limited to refunding the total of fees paid to FCLA by Library for maintaining the files in the FDA from the time of their deposit.

10. Billing

FCLA warrants that it will not bill for use of the FDA until January 1, 2006. Thereafter FCLA may institute cost-recovery billing for the use of the FDA at any time with written notice of no less than 180 days. No charges will be incurred by Library for FDA services provided up to the time that billing is implemented; if Library wishes to withdraw any of its materials from the FDA before billing is instituted it may do so at no charge. Billing rates will be posted on the FDA website. Library agrees to satisfy Library's financial obligations within the terms and conditions of payment established by FCLA, or to withdraw its contributions from the FDA.

11. Independent contractor

It is understood and agreed that nothing contained herein is intended or should be construed as in any way creating or establishing the relationship of co-partners between the parties hereto, or in any way making University or Library the agent or representative of FCLA for any purposes in any manner whatsoever. University and Library are, and shall remain, independent contractors with respect to all services performed under this Agreement.

12. Force Majeure

No default, delay, or failure to perform on the part of FCLA or University shall be considered a default, delay or failure to perform otherwise chargeable hereunder, if such default, delay or failure to perform is due to causes beyond either party's reasonable control including, but not limited to: strikes, lockouts, or inactions of governmental

authorities, epidemics, war, embargoes, fire, earthquake, acts of God, or default of common carrier. In the event of such default, delay or failure to perform, any date or times by which either party is otherwise scheduled to perform shall be extended automatically for a period of time equal in duration to the time lost by reason of the excused default, delay or failure to perform.

13. Severability

In the event any provision of this Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, or by an administrative hearing officer in accordance with Chapter 120, Florida Statutes, such holding shall not invalidate or render unenforceable any other provision hereof. However, where a breach of the Agreement goes to the whole of the Agreement, the Agreement is unenforceable.

14. Assignment

University shall not assign (by operation of law, change of control or otherwise) any part of this Agreement without the prior written consent of FCLA.

15. Governing Law and Venue

This Agreement and any disputes hereunder, shall be construed in accordance with the laws of the State of Florida and enforced in the courts of the State of Florida. FCLA and University hereby agree that venue shall be in Alachua County, Florida.

16. Captions

The captions are inserted only as a matter of convenience and for reference, and in no way define, limit, or describe the scope of this Agreement, or the intent or content of any provisions contained herein.

17. Entire Agreement

This Agreement constitutes the entire agreement between the parties, and no addition, modification or amendment hereto shall be effective unless in writing and executed by the parties hereto.

Please sign, date and forward appropriate University specific signature page, along with this section and Appendix A via fax to Priscilla Caplan, care of FCLA, at 352-392- 9185.

Appendix A:

CONTACT INFORMATION SECTION:

Date of last revision: 10/6/05

1. The primary contact person at Library for policy and administrative issues, including any and all changes made to this Appendix :

NAME: Rita Pellen
TITLE: Associate Director
PHONE: (561) 297-3781
ADDRESS: S.E. Wimberly Library, Florida Atlantic University, 777 Glades Rd,
Boca Raton, Florida
EMAIL ADDRESS: pellen@fau.edu

2. The primary contact person at Library for technical issues:

NAME: Salwa Ismail Patel
TITLE: Digital Library Manager
PHONE: (561) 297-0139
ADDRESS: _____
EMAIL _____
ADDRESS: spatel37@fau.edu

****Both primary contacts will have default authorization to deposit files, request reports, request disseminations and withdraw materials. ****

3. All individuals authorized to request reports and the deposit, dissemination, and/or withdrawal of materials, other than those listed above:

NAME: Janice Donahue
TITLE: Assistant Director for Technical Services
PHONE: (561) 297-2767
ADDRESS: _____
EMAIL _____
ADDRESS: donahue@fau.edu

The person listed above is authorized to: (Please check only those that apply)

☒ Deposit materials
☒ Request reports
☒ Request dissemination
☒ Withdraw materials

NAME: Elaine K. Kelly
TITLE: Assistant Director for Systems
PHONE: (561) 297-3773
ADDRESS: _____
EMAIL _____
ADDRESS: ekkelly@fau.edu

The person listed above is authorized to: (Please check only those that apply)

- ☒ Deposit materials
- ☒ Request reports
- ☒ Request dissemination
- ☒ Withdraw materials

NAME: _____
TITLE: _____
PHONE: _____
ADDRESS: _____
EMAIL ADDRESS: _____

The person listed above is authorized to: (Please check only those that apply)

- ☐ Deposit materials
- ☐ Request reports
- ☐ Request dissemination
- ☐ Withdraw materials

4. The email address to which Ingest Reports, Ingest Errors, and other automatically generated reports should be sent:

EMAIL ADDRESS:
darchive@fau.edu

TECHNICAL INFORMATION SECTION:

Date of last revision: 04/21/08

Please see documentation following this table for completion instructions or contact your FCLA Digital Archive representative.

When filling out the table, please note that:

- A preservation level of BIT will be assigned to all formats that are sent to the FDA for ingest that are not specified in the table below.
- Materials submitted with an unspecified primary project code will be returned to the depositor unchanged and unarchived.
- A list of supported file formats can be found at <http://www.fcla.edu/digitalArchive/pdfs/recFormats.pdf>

PRESERVATION LEVEL TABLE

	Project Name	Project Code	Preservation Level		
			FULL	BIT	NONE
1	Florida Heritage Collection	FHP	TIFF, XML		all other formats
2	Yiddish Children's Books	YCB	TIFF, XML		all other formats
3	Maps	MAP	TIFF, XML		all other formats
4	FAU Electronic Theses-Student theses & dissertations 1967-2006	ETD	PDF		all other formats
5	FAU Electronic Theses-Student theses & dissertations 2007-Current	CTD	PDF		all other formats
6	FAU Electronic Theses-Faculty theses & dissertations	ETDF	PDF		all other formats
8	Boca Raton Historical Society	BRHS	WAV, PDF		all other formats
9	Office of Institutional Effectiveness	IEA	PDF/A, PDF		all other formats
10	Office of Technology Transfer	OTT	PDF		all other formats
11	College of Business	BUS	PDF		all other formats
12	College of Nursing	NUR	PDF, PPT		all other formats
13	College of Arts & Letters	CAL	MOV, MP3, WAV, PDF		all other formats
14	FAU Libraries	FALB	PDF, JP2, TIFF		all other formats
15	Honors College (N)	HON	MOV, PPT, PDF		all other formats
18	Dept. of History Oral History collection	OHC	WAV, MP3, PDF, XML		all other formats
19	Judaica Sound Archives	JSA	WAV, PDF, JP2,		all other formats