

Memorandum of Understanding

Between

The Trustees of Indiana University,
on behalf of Indiana University Bloomington Libraries

And

[Partner]

For

Digitization, Digital Preservation, Storage
and Online Access of Medieval Manuscripts

MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding (“MOU”) is made by and between [Partner] (“Partner”) and The Trustees of Indiana University (“IU”), on behalf of the Indiana University Libraries (“IUL”) for the purpose of hosting and publishing online digital images and related metadata via systems housed at IU and supported by IUL.

This MOU is entered into this _____ day of _____, 2021 (“Effective Date”) by and between IU and Partner (collectively, the “Parties”) and shall remain in effect until the completion of the Project (the “Initial Term”). Unless terminated earlier by the Parties in accordance with the terms of this MOU, at the end of the Initial Term, this MOU will automatically renew for additional 2-year periods, each a (“Renewal Term”). The Initial Term and any Renewal Term(s) are collectively referred to herein as the (“Term”).

I. INTRODUCTION

[Partner Description Here]

Indiana University is a public, research university with its flagship campus located in Bloomington, Indiana. Indiana University is known for its advancement in the field of digital libraries, in the development and implementation of open-source software, and as an early adopter of repository systems for digital special collections, institutional output and other scholarly materials. IUL have developed and maintain a series of digital preservation and access repository services that facilitate storage and management of digital content, and promote ongoing curation, preservation, and access. As part of IU’s ongoing commitment to its content and content contributors, the IUL has and will continue to invest resources in maintaining and improving repository services for the foreseeable future.

II. DEFINITIONS

A. Repository Services

Repository Services are systems for the submission, management, preservation, and dissemination of digital content – objects and metadata. Repository Services provide interfaces, points of interaction between the repository and its users, for depositing content, delivering, and disseminating content to end-users, curating content, and administering the content. Repository Services instantiate workflows that encapsulate back-end processes that are unseen by most users for image processing (i.e., automatic quality control, derivative-creation), metadata mapping (i.e., metadata sharing through open protocols) and similar processes. Repository Services are the systems based on the interaction between workflows, the repository, and interfaces that support the ongoing management of digital content.

B. Digitization

Digitization is the capture of physical materials through imaging technologies (i.e., scanner) or through photography. Whenever possible, it is expected that digitization will follow standards and best practices in order to yield a robust digital archival master file from which derivatives can be created.

C. Metadata

Metadata is descriptive information that provides information about the creation, content or context of digital resources (items, collections of items, etc.). Metadata is important for data curation and preservation and for discovery of digital resources by users. Metadata also facilitates the linking or relationship between digital resources.

D. Scholarly Data Archive (“SDA”) or Equivalent

IU’s Scholarly Data Archive provides high-capacity storage for research data, and supports automated mirroring of content in IU’s Bloomington and Indianapolis data centers with two copies stored in each location (<http://kb.iu.edu/data/aiyi.html>). At any point during the Term, the data storage environment may change. The data will be stored according to basic digital preservation standards and guidelines.

E. Digital Library Repository

Digital objects, metadata and corresponding files representing the content, are managed, curated and accessed via a digital library repository. The Digital Library Repository also supports preservation actions to ensure long-term access to content.

III. PURPOSE & SCOPE

IU, along with 21 Midwestern institutions, including Partner, received a three-year grant (June 2020 – May 2023) from the Council on Library and Information Resources (“CLIR”) for *The Peripheral Manuscripts: Digitizing Medieval Manuscript Collections in the Midwest* to create a digital repository and catalog of medieval manuscripts across Midwestern collections, as part of the “Digitizing Hidden Special Collections and Archives” program (the “Project”).

In furtherance of the Project, Partner will provide all necessary physical materials, including all applicable medieval manuscript materials in their possession, (the “Physical Materials”) to IUL for digitization and digital preservation purposes as mutually agreed to by the Parties. As a result of the COVID-19 pandemic, the Parties agree that in some cases the Partner will undertake digitization responsibilities for some Physical Materials on their own. All digital objects or files created during the Project for digitization and digital preservation purposes, either by IUL or by Partner, are hereinafter referred to as the (“Digital Materials”).

IUL and/or Partner, will collaborate to provide digitization, digital preservation and online access through Repository Services developed and managed by IUL for the digitized manuscripts and associated Metadata as determined by the terms submitted as part of the CLIR Hidden Collections grant: https://github.com/midwest-manuscripts/peripheralms/blob/master/archive/CLIRHC_PeripheralMss_Round2Application-without-uploads.pdf.

IV. OBLIGATIONS OF THE PARTIES

Partner shall:

- When applicable, package and deliver Physical Materials to IU for digitization according to the terms identified in the Cooperate Care Agreement, attached hereto as Addendum 1 and incorporated herein by this reference.
- Grant IU a worldwide, unlimited, irrevocable, nonexclusive, royalty free, non-commercial license to create Digital Materials from the Physical Materials in accordance with the terms of this MOU and to use, display, and or publish the Digital Materials and related metadata for any use necessary for IUL to operate the repository services, including the Digital Library Repository, or to fulfill its obligations to the grant institution pursuant to this MOU.

- Partner represents and warrants that it has cleared reproduction and distribution rights for their Physical Materials and/or Digital Materials as part of the CLIR IP Agreement signed by all partners in December 2019 and to the extent necessary for the Project.

IUL shall:

- Digitize the manuscript materials, in accordance with the standards, best practices and protocols identified as part of the grant as referenced in Section III of this MOU
 - Provision of high-resolution digitized files to partners at the end of the grant period, and in some cases, to end-users upon request by Partner.
- Provide structured metadata to partners and to collection aggregators such as DPLA, Fragmentarium, OPenn and others as designated in the grant application or agreed upon by project partners.
- Provide hosting services for the Digital Materials produced, including the digitized manuscripts and corresponding metadata through the IUL repository service, at no cost to the Partner, including:
 - Storage of high-resolution files in SDA or equivalent
 - Creation of derivative files (i.e., for Web delivery) and corresponding metadata in IUL's Digital Library Repository
 - Delivery of content that is available to the public through the IUL repository service
 - Access twenty-four (24) hours per day, seven (7) days per week, with the exception of a maintenance window on Sundays, from 6:00 AM to 10:00 AM US Eastern Standard Time and other scheduled maintenance as announced to IUL repository service users, except on rare occasions during which IUL repository service may require emergency maintenance or suffer an unexpected outage
 - Sustainability of long-term online access to the Digital Materials created as part of the Project, including migration of content to new media formats, storage media, repository systems, and delivery systems as needed for the duration of this MOU
 - Designation of a technical contact from the IUL for Partner staff and users

V. ACCEPTABLE USE

- A. Partner represents and warrants that its use of IUL repository service shall comply with all of the following acceptable use provisions:
 - i. Partner's use of IUL repository service will not and does not violate any federal, state, or local laws or regulations, including but not limited to, export control regulation or laws and regulations pertaining to student educational records.
 - ii. Partner shall not use IUL repository service to store any content that: (a) contains defamatory, threatening, pornographic, abusive, or libelous material; (b) contains material that encourages conduct that would constitute a crime; (c) harms, threatens, harasses, abuses, or otherwise violates the rights of a third party; or (d) in any way violates or infringes upon the intellectual property rights or the privacy or publicity rights of any person or entity or that would otherwise be unlawful or give right to civil or criminal liability.
 - iii. Partner will not damage, disable, overburden, or impair the IUL repository service, including, without limitation, use of computer worms, viruses, or spyware, or any other device, software, or routine that interferes with the function or use of the IUL repository service, or is intended to damage, create undue load, detrimentally interfere with, or expropriate any system or data.

- iv. Partner will not use any automated process (such as a bot, spider, etc.) to access the IUL repository service, including, but not limited to, any attempt to probe, scan, or test the vulnerability of the IUL repository service or to breach security or authentication measures without express authorization of IUL.

- B. Violations of this Section V on behalf of or permitted by Partner shall be considered a violation by Partner itself.
- C. Partner is solely responsible for handling and resolving any notices and claims relating to Partner's information, Physical Materials, and/or Digital Materials, including any notices sent to Partner claiming that such information and/or materials violates any person's or third party's rights.
- D. In the event of a breach of any of the representations or warranties in this Section V, Partner will defend, indemnify, and hold harmless IUL, its Trustees, officers, and employees for any costs, liabilities, fines, and other expenses (including reasonable attorneys' fees) incurred by IUL with respect to such breach, including but not limited to, third party claims arising with respect to the breach.
- E. IUL does not claim any ownership, control, or responsibility for any Digital Materials or files created or provided by Partner. IUL does not verify or endorse any such materials or files.

VI. NO PARTNERSHIP

The Parties enter this MOU as independent contractors, and nothing in this MOU shall be deemed to constitute a partnership, agency, employment relationship, or joint venture between the Parties. Neither Party shall do or permit any act to be done whereby it may be represented as agent or partner of the other.

VII. DISCLAIMER OF WARRANTIES

IU is providing the IUL repository service "as is," "with all faults," and "as available." To the maximum extent permitted by law, IU makes no, and specifically disclaims all, representations or warranties of any kind, whether express or implied, statutory or otherwise, including, without limitation, any warranty that IUL repository service will be uninterrupted, error free or free of harmful components, or any implied warranty of merchantability, satisfactory quality, fitness for a particular purpose, course of dealing, usage of trade, non-infringement, or quiet enjoyment.

VIII. LIMITATION OF LIABILITY

To the fullest extent permitted by law, in no event will IU, its affiliates, trustees, officers, employees, agents, suppliers, or licensors be liable to Partner for any direct, indirect, incidental, special, punitive, cover, liquidated, exemplary, or consequential damages (including, without limitation, damages for lost profits, revenue, goodwill, use, or content), however caused and under any theory of liability, including without limitation, contract, tort, warranty, negligence, or otherwise, even if IU has been advised as to the possibility of such damages.

IX. APPLICABLE LAW/FORUM

This MOU shall be governed by and construed under the internal laws of the State of Indiana, without regard to choice of law rules. The parties agree that any litigation regarding this MOU or the interpretation thereof shall be brought in a court of competent jurisdiction in the State of Indiana.

X. SUSPENSION OF SERVICE; TERMINATION

- A. IU reserves the right to suspend Partner's access to the IUL repository service in the following non-exhaustive circumstances: (a) as required by law, regulation, or court order; (b) as IUL determines in its sole discretion is necessary to protect the files contributed by Partner from unauthorized access or damage; (c) IUL determines that Partner's use of the IUL repository service is illegal, infringes upon the intellectual property rights of a third party, or otherwise violates the restrictions, representations, or warranties in Section V; or (d) IUL determines that Partner's use of the IUL repository service may subject IUL to civil or criminal liability. IU will attempt in good faith to provide Partner with advance notice of any such suspension of access to the extent permitted by law.
- B. Each Party shall have the right to terminate this MOU by giving six (6) months' advance written notice to the other Party at any time. If the MOU is terminated by either Party, the Parties shall negotiate in good faith to resolve any outstanding prior obligation, project or activity already in progress.
- C. Upon termination of this MOU, Partner's rights to use the IUL repository service will immediately cease. Both Parties agree to use commercially reasonable efforts to cooperate with one another regarding the transfer, disposition, or return of the files contributed by Partner as desired.

XI. MISCELLANEOUS

- A. Neither party may assign this MOU or any portion thereof without the express written consent of the other.
- B. The failure of either party to enforce a breach of this MOU will not constitute a waiver of any future breach, whether similar or dissimilar in nature.
- C. If the performance of any part of this MOU is prevented or delayed by reasons of an act of God, act of war, terrorism, fire, governmental action, or any other cause beyond the performing party's control, then that party will be excused from performance for the length of the prevention or delay.
- D. This MOU, including any attachments, represents the entire understanding of the Parties regarding the subject matter hereof and supersedes any prior communications or negotiations. This MOU may not be modified or amended except by express written consent of both Parties.

Signatures:

Diane Dallis-Comentale
Ruth Lilly Dean of University Libraries
Indiana University Libraries

[Partner]

Donald S. Lukes
University Treasurer
Indiana University

Addendum #1

Cooperative Care Agreement

Cooperate Care Agreement between The Trustees of Indiana University (“IU”) on behalf of the Indiana University Libraries (“IUL”) and [Partner] (“Partner”).

IU along with 21 Midwestern institutions, including Partner, received a three-year grant (June 2020 – May 2023) from the Council on Library and Information Resources (CLIR) for *The Peripheral Manuscripts Project: Digitizing Medieval Manuscript Collections in the Midwest* to create a digital repository and catalog of medieval manuscripts across Midwestern collections, as part of the “Digitizing Hidden Special Collections and Archives” program (the “Project”).

In furtherance of the Project, Partner will provide all agreed upon physical materials, including all applicable medieval manuscript materials in its possession, (the “Physical Materials”) to IUL for digitization and digital preservation purposes in accordance with the terms of the Parties’ MOU as well as this Cooperative Care Agreement. As a result of the COVID-19 pandemic, the Parties agree that in some cases the Partner will undertake the digitization and digital preservation responsibilities for some Physical Materials on its own. All digital objects or files created during the Project for digitization and digital preservation purposes, either by IUL or by Partner, are hereinafter referred to as the (“Digital Materials”).

The IUL and Partner have agreed to collaborate to provide digitization, digital preservation and access services through repository services developed and managed by IUL for the Digital Materials and associated metadata created during the Project. Partner will provide the Physical Materials to IUL for digitization, as well as preliminary metadata. Both parties will follow activities outlined as part of the CLIR Hidden Collections grant (https://github.com/midwest-manuscripts/peripheralms/blob/master/archive/CLIRHC_PeripheralMss_Round2Application-without-uploads.pdf) noting that timelines will be impacted by the COVID-19 pandemic.

Conditions of Custody

Outlined here are conditions that pertain to the Physical Materials while in transit between IUL and Partner and upon arrival and while held at IUL for digitization.

Partner shall:

- Complete an inventory and appraisal of materials necessary for digitization
 - As part of Indiana University Bloomington’s Fine Arts Insurance coverage (see Exhibit #1), an appraised value for each item to be delivered to IUL for digitization is required. Appraised value should be a reasonable, good-faith estimate based on the professional knowledge of the collection managers.
- Work closely with project team to provide any available metadata as part of the initial inventory process
- Photograph and document the condition of the manuscripts before properly packaging for delivery to IUL
- Properly package materials for delivery to IUL for digitization and document special handling or condition issues as part of the package to be shared with IUL ahead of delivery

- Provide reusable packaging materials or extra packaging materials as needed. Packaging supplies are covered by the grant with additional coverage depending on available funding.
- Deliver the necessary Physical Materials to IUL for digitization (delivery expenses are covered by the grant)
- Agree for IUL to hold the Physical Materials for no longer than six months from date of arrival for verification and digitization based on agreed upon timelines; length of time the materials are held at IUL may need to be extended due to unforeseen circumstances.
 - Partner shall give reasonable notice in writing if they desire to have any Physical Materials back from IUL prior to the agreed upon date
- Inform IUL once verification of returned Physical Materials is complete, including concerns or issues that may have arisen as a result of digitization
- Agree that in the event of loss or damage, recovery, if any, *while the materials are covered by the Partner's insurance*, the Partner will be subject to the loss of the insurance deductible in accordance with their insurance policy

IUL shall:

- Verify the receipt of any Physical Materials against the inventory including photographing and documenting the condition of the materials upon arrival
- Inform Partner once verification of materials is complete, including concerns or issues that may arise from condition assessment, and before digitization commences
- Cover loss or damage of materials while materials are in transit to and from IUL per Indiana University Fine Arts Insurance for Museum Collection and Temporary Loans (see “wall to wall” clause)
- Agree that in the event of loss or damage, recovery, if any, while the materials are covered by the Indiana University's insurance, IUL will be subject to the loss of the insurance deductible in accordance with Indiana University Fine Art Policy

Conditions of Care

Outlined here are conditions that pertain to preparing the Physical Materials for digitization and while the materials are held by IUL for digitization.

Partner shall:

- Prepare the Physical Materials for digitization before packaging and delivery to IUL including unframing, unglazing, removing mounts or bases, restoration (if any)

IUL shall:

- Designate only professional, full time digitization staff as the handlers of the Physical Materials for digitization
- Treat the materials with optimal care while on IUL premises by keeping the materials in a clean, safe, locked location, away from any food/drink, or direct sunlight exposure, with standard commercial interior lighting and temperature controls
- Maintain the same condition of the Physical Materials in which they are received
- Digitize the Physical Materials as they are upon receipt; IUL will not unframe, unmount, unbound or otherwise manipulate the materials or manuscripts in ways that could alter their condition
- Handle the Physical Materials as minimally as possible, combining image capture and technical metadata entry
- Track other employees present at the time of unpackaging, digitization and re-packaging Physical Materials for utmost precaution

- Send Partner a certificate of insurance along with its clauses for exemptions no later than two weeks prior to delivery of the Physical Materials

Template

Exhibit # 1

Fine Arts Insurance

Museum Collection and Temporary Loans

The insurance companies signatory hereto
(hereinafter called the Company)
each only for itself and not one for another
by this joint policy of insurance
do insure

The Trustees of Indiana University

(hereinafter referred to as the Insured)

For the percentage underwritten for each and every loss covered hereunder as
set forth under their respective names.

Senior Vice President : Jeff Minett



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