

**CURATESCAPE SOFTWARE LICENSE AGREEMENT
BETWEEN
CLEVELAND STATE UNIVERSITY
AND
Client
Address**

THIS AGREEMENT is entered into as of this _____th day of _____, 20____ ("Effective Date") by and between **CLEVELAND STATE UNIVERSITY ("CSU")**, a state-supported institution and instrumentality of the State of Ohio, with a principal address at 2121 Euclid Ave., Cleveland, Ohio, 44115 ("**Licensor**") and **Client, City, ST Zip** ("**Licensee**").

WHEREAS, Licensee wishes to license the Curatescape software program (the "Licensed Program") for the purpose of implementing **App Name** and CSU desires to license this software to licensee.

NOW THEREFORE, the parties hereto agree as follows:

1. GRANT OF LICENSE

Subject to the terms and conditions of the Agreement, CSU grants to Licensee a non-exclusive, non-transferable, limited license to install, run, use, operate, and perform (collectively "use") the Licensed Program for the purpose of implementing **App Name**. Licensee may not, however, transfer or sublicense the Licensed Program to any third party, in whole or in part, in any form, whether modified or unmodified.

Object Code. The license granted herein applies only to the object code version of the Licensed Program. Licensee shall have no rights whatsoever with respect to the source code for the Licensed Program.

Ownership. All right, title and interest in and to the Licensed Program, including without limitation, copyrights and trade secrets, are, and shall at all times remain, the exclusive property of CSU. Licensee shall have no right therein except the expressly limited license rights granted herein.

Licensee may publish and/or write content that will be published and/or hosted by CSU, or its

agents, through the Licensed Program on behalf of Licensee and Licensee shall own any copyright to such content. Licensee shall have the sole responsibility for obtaining proper copyright and other permissions pertaining to **App Name**, including historical content and materials.

Omeka is a freely available open-source software. All use of the Omeka software not relating to the program coding of **App Name**, an instance of Curatescape, remains consistent with the standard Omeka license agreement.

Non-transferable. Licensee may not sell, license, sublicense, rent, or distribute any Licensed Program or make it available for use on a “time sharing” basis.

Reservation of Rights. Licensee acknowledges that all rights with respect to the Licensed Program, whether now or hereafter existing, which are not expressly granted to Licensee are reserved to CSU. Licensee shall not modify or create any derivate, compilation, or collective work involved the Licensed Program. Licensee shall take appropriate action by instruction, agreement, or otherwise with any persons permitted access to the Licensed Program so as to enable Licensee to satisfy all its obligations under the Terms and Conditions.

2. TERM

The license granted hereunder shall continue for a period of two (2) consecutive years from the Effective Date of this Agreement (“Initial Term”) unless and until terminated pursuant to Article 4 hereof and subject to Licensee's proper performance of its obligations hereunder. At the end of the Initial Term, the license will automatically renew for successive one (1) year periods (“Renewal Term”) unless Licensee provides CSU thirty (30) days advance written notice prior to the commencement of the Renewal Term.

3. TERMINATION

CSU may terminate this Agreement if Licensee is in default of any of the terms and conditions of this Agreement and fails to correct such default within thirty (30) days after written notice thereof from CSU.

4. LICENSE FEE

Licensee shall pay, upon delivery of the Licensed Program, a license fee of seven hundred and fifty () U.S. dollars per year or one thousand and five hundred () U.S. dollars for the entire two year term of this Agreement. The license fee is payable annually or in full at the end of the two year term. License fees do not include any shipping, duties, bank fees, sales, use, excise or similar taxes due. If Licensor is required to pay any such amounts, Licensee shall reimburse Licensor in full.

5. SOFTWARE MAINTENANCE

Licensee shall pay, upon delivery of the Licensed Program, a software maintenance fee of seven hundred and fifty () U.S. dollars per year or one thousand and five hundred () U.S. dollars for the entire two year term of this Agreement. The software maintenance fee is payable annually or in full at the beginning of the two year term. The fee includes maintenance of the core software, and its compatibility with other software and various operating systems with which it interacts.

6. TECHNICAL SUPPORT

Licensor will provide to Licensee the following technical support with respect to the Software:

- (i) If during the first year of this Agreement, Licensee notifies Licensor of a substantial program error respecting the Licensed Program, or Licensor has reason to believe that error exists in the Licensed Program and so notifies Licensee, Licensor shall at its expense verify and attempt to correct such error within thirty (30) working days after the date of notification. If Licensee is not satisfied with the correction, then Licensee may terminate this Agreement, but without refund of any amount paid to Licensor or release of any amounts due Licensor at the time of termination.
- (ii) In the case that Licensee has technical questions in the use of the Licensed Program during the first year of this Agreement, Licensee may submit those questions to Licensor. Licensor

shall provide consulting to answer such questions without charge to Licensee up to a maximum of ten (10) hours for each Licensed Program per year.

- (iii) If Licensee desires to continue the technical support beyond ten (10) hours as specified in this section, Licensee shall pay to Licensor the hourly technical support fee(s) set forth in Exhibit A.

7. WARRANTY DISCLAIMER

CSU LICENSES, AND LICENSEE ACCEPTS, THE LICENSED PROGRAMS "AS IS". CSU PROVIDES NO WARRANTIES AS TO THE FUNCTION OR USE OF THE LICENSED PROGRAM, WHETHER EXPRESS, IMPLIED, OR STATUTORY, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR PARTICULAR PURPOSE. THE ENTIRE RISK AS TO THE QUALITY AND PERFORMANCE OF THE LICENSED PROGRAM IS WITH LICENSEE. LICENSOR DOES NOT WARRANT THAT THE FUNCTIONS CONTAINED IN THE LICENSED PROGRAM WILL MEET LICENSEE'S REQUIREMENTS OR THAT THE OPERATION OF THE LICENSED PROGRAM WILL BE UNINTERRUPTED OR ERROR FREE.

8. LIMITATION OF LIABILITY

Neither party to this Agreement shall have any liability arising out of its performance or failure to perform its obligations hereunder except for direct losses, costs, expenses, or liabilities arising from or relating to each party's negligent acts or omissions, and shall no liability for special, indirect, incidental or consequential losses, costs, expenses and liabilities.

9. CONFIDENTIALITY

Licensee acknowledges that the Licensed Program contain trade secrets and other valuable and confidential information of CSU. Licensee shall not act, or fail to act, in any way or manner to intentionally or negligently harm CSU or CSU's rights in its intellectual property in

the Licensed Program. The Licensed Program, together with any information learned in connection therewith that should reasonably be considered confidential under the circumstances, are “Confidential Information”. Licensee shall only disclose Confidential Information on a need-to-know basis to Licensee’s employees. Licensee may not disclose any Confidential Information to a third party and shall use all reasonable care to keep the Confidential Information confidential and consistent with the grant of rights to Licensee under this Agreement.

Exceptions. The confidential obligation shall not apply to any information or materials which: (i) was in Licensee’s possession before being received from Licensor, (ii) are or become publicly available through no fault of Licensee; (iii) are independently developed without reliance on Confidential Information; (iv) are received from a third party with no duty of confidentiality.

10. NOTICES

Any notice or other communication required or permitted under this Agreement shall be in writing, delivered in person or by certified mail or overnight delivery by a nationally recognized delivery service, and will be deemed given as of the date it is received by the receiving Party, Notice under the Agreement shall be delivered as follows:

If to [Client]
Name
Institution
Address

If to CSU:
Director
Center for Public History + Digital Humanities
Cleveland State University
Rhodes Tower 1910
1860 East 22nd Street
Cleveland, Ohio 44114

With a copy to:

Technology Transfer Office
Cleveland State University
2121 Euclid Ave., Rm 214
Cleveland, Ohio 44115

11. SUCCESSORS

This Agreement will be binding upon and will inure to the benefit of the parties hereto and their respective representatives, successors and assigns except as otherwise provided herein.

12. SEVERABILITY

In the event any provision of this Agreement is determined to be invalid or unenforceable, the remainder of this Agreement shall remain in force as if such provision were not a part.

13. GOVERNING LAW/FORUM

This Agreement shall be governed and interpreted by the laws of the State of Ohio without regard to its conflicts of laws provisions. Any action or proceeding brought relating to this Agreement shall be brought within the competent courts of Ohio. Both parties hereby consent to such personal and exclusive jurisdiction.

14. NON-ASSIGNMENT

This Agreement and the licenses granted by it may not be assigned, sublicensed, or otherwise transferred by Licensee without the prior written consent of CSU.

15. EXPORT CONTROL LAWS

Licensee understands that CSU is subject to regulation by agencies of the U.S. Government, including the U.S. Departments of Commerce and State, which prohibit export or diversion of certain technical products to certain countries. Licensee warrants that it will comply in all respect with the export and re-export restrictions set forth in the export license for the Licensed Program and all other applicable export regulations. Licensee agrees to indemnify and hold CSU harmless from any and all loss, damages, liability or expenses incurred by CSU as a result of Licensee's failure to comply with any export regulations or restrictions.

16. ENTIRE AGREEMENT

This Agreement sets forth the entire understanding between the parties with respect to the subject matter hereof, and merges and supersedes all prior agreements, discussions and understandings, express or implied, concerning such matters. This Agreement shall take precedence over any additional or conflicting terms which may be contained in Licensee's purchase order or CSU's order acknowledgment forms.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed as of the Effective Date.

CLEVELAND STATE UNIVERSITY

COMPANY

By: _____

By: _____

Name: J. Mark Souther

Name: _____

Title: Director, CPHDH

Title: _____

Date: _____

Date: _____

EXHIBIT A
(Fees and Cost Schedule)

Annual Fees

Software License (yearly): \$750
Software Maintenance (yearly): \$750
Total (yearly): \$1,500

Two-year total: \$3000

Technical Support Fees

Beyond 10 hours per year: \$250/hour

SAMPLE