

**CURATESCAPE SOFTWARE LICENSE AGREEMENT  
BETWEEN  
CLEVELAND STATE UNIVERSITY RESEARCH CORPORATION  
AND  
[LICENSEE]**

**THIS AGREEMENT** is entered into as of this [ ] day of [Month], [Year] (“Effective Date”) by and between **CLEVELAND STATE UNIVERSITY RESEARCH CORPORATION** (“**CSURC**”), a non-profit corporation exempt under IRS Code Section 501(c)3 , with a principal address at 2121 Euclid Ave., Cleveland, Ohio, 44115 (“**Licensor**”) and [Licensee Name], [City, State or Country, Zip/Postal Code] (“**Licensee**”), (collectively the “**Parties**”).

WHEREAS, Licensee wishes to license the Curatescape software program (the “Licensed Program”) for the purpose of implementing [App Name] and Licensor desires to license this software to Licensee.

WHEREAS, the Parties have entered into a Letter Agreement dated [Month, Day, Year] that provides for services provided by Licensor to Licensee and terms of payment for said services.

NOW THEREFORE, the parties hereto agree as follows:

**1. GRANT OF LICENSE**

**1.1** Subject to the terms and conditions of the Agreement, Licensor 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 maintaining [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.

**1.2 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.

**1.3 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 Licensor. 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 Licensor, 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have the sole responsibility for obtaining proper copyright and other permissions pertaining to [App Name], including historical content and materials.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.

**1.4 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.

**1.5 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 Licensor. Licensee shall not modify or create any derivative, compilation, or collective work involving 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 and RENEWAL**

This Licensing Agreement shall be in effect for two years from the Effective Date, and shall automatically renew for successive one year terms, unless terminated by either party in writing no less than thirty days prior to the then expiration of the present term. In the event of a renewal, Licensee shall be obligated to pay Licensor the fee pursuant to Sections 4 and 5 herein for each annual renewal term thereafter.

## **3. TERMINATION**

Licensor may terminate this Agreement for any reason upon sixty (60) days advance notice to Licensee. Upon Licensor's termination of this Agreement, Licensor will reimburse Licensee fees paid pursuant to this Agreement on a prorated basis as of the termination date. Licensor 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 Licensor.

#### **4. LICENSE FEE**

Licensee shall pay, upon delivery of the Licensed Program, a license fee of two hundred (\$200.00) U.S. dollars for the two year term of this Agreement and one hundred (\$100.00) U.S. dollars each following one year term of this Agreement. The license fee is payable in full at the start of each one year term at set forth in Exhibit A. 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 two thousand eight hundred (\$2800.00) U.S. dollars for the two year term of this Agreement and one thousand four hundred (\$1400.00) U.S. dollars each following one year term of this Agreement. The software maintenance fee is payable in full at the start of each one year term as set forth in Exhibit A. 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**

LICENSOR LICENSES, AND LICENSEE ACCEPTS, THE LICENSED PROGRAMS "AS IS". CSURC 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 have no liability for special, indirect, incidental or consequential losses, costs, expenses and liabilities.

## **9. CONFIDENTIALITY**

Licensee acknowledges that the Licensed Program contains trade secrets and other valuable and confidential information of Licensor. Licensee shall not act, or fail to act, in any way or manner to intentionally or negligently harm Licensor or Licensor'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 Licensee:

[Project Director or Signatory Authority]

[Position, if applicable]

[Organization, if applicable]

[Street Address or P.O. Box]

[City, State or Country, Zip/Postal Code]

If to Licensor:

Jack N. Kraszewski, Esq.

Executive Director

Cleveland State University Research Corp.

Cleveland State University

2121 Euclid Ave., PH 214

Cleveland, Ohio 44115

[j.kraszewski@csuohio.edu](mailto:j.kraszewski@csuohio.edu)

With a copy to:

Technology Transfer Office

Cleveland State University

2121 Euclid Ave., PH 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 Licensor.

**15. EXPORT CONTROL LAWS**

Licensee understands that Licensor 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.

**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 Licensor's order acknowledgment forms.

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

**CSURC**

**Licensee**

By: \_\_\_\_\_

By: \_\_\_\_\_

Name: Jerzy Sawicki, Ph.D.

Name: \_\_\_\_\_

Title: President, CSURC

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

**EXHIBIT A**  
(Fees and Cost Schedule)

Setup Fee

Software Deployment: US\$7,000

Annual Fees

Software License (yearly): US\$100

Software Maintenance (yearly): US\$1,400

Total Fees due on the start of each one year term: US\$1,500

Technical Support Fees

Beyond 10 hours per year: US\$250/hour

SAMPLE