असम ASSAM

E 226053

AGREEMENT

THIS AGREEMENT is entered into on this 29th day of March, 2019 (Two thousand and nineteen).
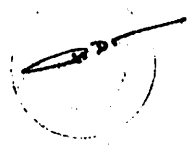
BETWEEN

Krishna Kanata Handiqui State Open University, situated at Guwahati, District Kamrup (Metro), Assam, India, herein after referred to as "Content Partner" (which expression unless repugnant to the context shall mean and include its successors in interest, administrator, nominees and assigns) of the One Part;

AND

National Digital Library of India (NDLI), represented by Indian Institute of Technology Kharagpur, an academic institution under Ministry of Human Resource Development, Government of India, located at Kharagpur - 721302, West Bengal, District Paschim Midnapur herein after referred to as "NDLI" (which expression unless repugnant to the context shall mean and include its successors in interest, administrator, nominees and assigns) of the other Part.
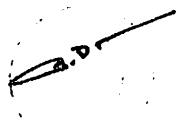
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The above referred "Content Partner" and "NDLI" is collectively referred to herein after as "Parties" and individually as "Party".

WHERE AS:

1. Indian Institute of Technology Kharagpur (IIT Kharagpur) has been entrusted with the responsibility to host, coordinate and set-up National Digital Library of India (NDLI)towards building a national asset. The objective of the project is to integrate existing digitized and digital contents across educational and cultural institutions/bodies under said NDLI to provide a single-window access to different users hereinafter referred to as "NDLI Users" for the purposes of this agreement. NDLI will fetch metadata of the contents and store and index these metadata in NDLI servers so that all the e-contents can be searched and accessed in full-text by said NDLI users through a single window.

2. NDLI is a digital library which works on World Wide Web and said NDLI users may be any user as NDLI desires to authorize access for the purposes of this agreement.

3. NDLI as a digital library uses metadata of contents to search, identify and render contents of the library to its user.

4. NDLI sources either only metadata of the contents from its Content Partners or metadata as well as full-text contents from its Content Partner. A Content Partner hosts the metadata and contents in its Institutional Digital Repository (IDR) or Website.

5. NDLI fetches metadata from Content Partner either by harvesting metadata from its IDR or extracting metadata from its website by crawling through computer programs or the data is sent to NDLI by the Content Partner periodically in batch-mode.

6. NDLI needs to normalize the metadata fetched from various Content Partners into a uniform pattern to ensure proper functioning of NDLI as an integrated platform with single-window search facility.

7. NDLI maps and curates the fetched metadata as per the pattern adopted in NDLI.

8. The curated metadata are stored and indexed in NDLI repository.

9. The single-window search facility works with these indexed metadata.

10. NDLI users search for contents using the single-window search facility and upon clicking the search results are able to view and download the full-text contents (of the Content Partner and those contents for which full-text access is permitted by the Content Partner in its IDR or Website).

11. If NDLI fetches only metadata (not the full-text contents)from its Content Partner then NDLI users view or download full-text contents (if full-text access is permitted by the Content Partner in its IDR or Website) by clicking a link in the search results provided by NDLI whereby the full-text content gets rendered from IDR or website of the Content Partner.

12. If NDLI fetches metadata as well as full-text contents from its Content Partners, then NDLI users view or download full-text contents from NDLI servers.

13. To build such a platform, NDLI needs to regularly enrich its repository of contents by integrating contents from an ever increasing number of Content Partners as well as periodically including in its repository the incremental contents from already integrated Content Partners.

14. NDLI provides the service to its said NDLI users free of cost and NDLI users undertake under notice thereof to use the contents solely for non-commercial purpose, normally for personal education or knowledge enriching purpose. NDLI users to further undertake to be solely responsible for any unauthorized acts which is thus not authorized by NDLI and/or its aforementioned purposes.

The parties recognize that creation of an integration platform like NDLI will benefit the personal knowledge enrichment limited to the above stated NDLI purpose for which access is authorized to said NDLI users. Content Partner also appreciates that integration of its contents with NDLI will facilitate wider dissemination of its contents for personal knowledge enrichment limited to the above stated NDLI purpose for which access is authorized to its said NDLI users and

enhance visibility of its institute. Both the parties therefore have agreed to collaborate and have agreed to proceed as follows.

DEFINITION:

a) Crawling: It is a process in which a computer program hits the website of an institution and extracts information related to structure in which the contents are hosted in the website and descriptors (metadata) of the contents of the website.

b) Harvesting: It is a process through which metadata of a digital repository can be extracted from the repository (if the facility is activated in the repository) through internet.

c) Institutional Digital Repository (IDR): The digital repository of an institution where the institution stores its digital contents for ease of dissemination.

d) Metadata: It is a set of data, for example, Title, Author, Date of Publication, Subject, etc. that describes a content. A digital library or repository stores contents with metadata to facilitate searching of the contents.

e) World Wide Web: It is an information space where documents and other web resources are identified by Uniform Resource Locators (URLs), interlinked by hypertext links, and can be accessed via internet.
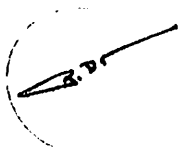
AGREEMENT:

A. The Parties have agreed that the digital contents of the Content Partner, hosted in its IDR or Website will be integrated with the NDLI portal on a perpetual basis.

B. NDLI shall not make any payment to the Content Partner or its authors/creators for viewing/downloading its contents by NDLI users or for any effort spent by Content Partner or its authors/creators for the integration purpose.

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C. Content Partner permits NDLI to fetch metadata of its digital contents and map and curate the fetched metadata as required for proper integration with NDLI, store the curated metadata in NDLI servers and use the stored metadata for searching, locating and accessing full-text contents, if permitted in the repository of the Content Partner, by said NDLI users.

D. If access of full-text contents is not permitted in the IDR or website of the Content Partner, the Content Partner shall configure its IDR or website to obtain the same for NDLI user purposes only by providing either a "Request for a copy" facility through which NDLI user can request for a copy of the full-text content to the Content Partner or NDLI user can register in the repository of the Content Partner as a user to view the full-text content.

E. In the interest of maintaining the service level for NDLI users, such as, response time, uninterrupted availability of the resources, full-text search to improve searching, if it is necessary to store the full-text contents of the Content Partner in NDLI servers, NDLI will obtain a separate permission from Content Partner in this respect.

F. Content Partner shall ensure that it holds copyright/no-objection for content availability under NDLI for the above purposes of NDLI and said NDLI Users from all its authors/contributors of all the hosted/made available by linking or otherwise contents including contents that which are covered under any form of intellectual property right including and not limited to any copyright , trademark, trade secret,patent,design,trade dress which subsists or may subsist which is hosted in its repository and/ or, as the case may be, have express permission/non-exclusive license to host/make available by linking or otherwise the content to NDLI and for its said purposes to post, display, distribute, prepare excerpt and to do such other use of the content to fulfill the objectives/purposes of this agreement.

G. Content Partner shall not host/make available contents which could be held unlawful or objectionable or against public order and morality or violate any person's right of property or privacy or publicity while allowing any content to NDLI for the purposes of this agreement.

H. Content partner shall ensure that the content does not include malicious code, which includes, without limitation, viruses, Trojan horses, worms, or any other computer programming routines that may damage, interfere with, surreptitiously intercept, or expropriate any system, program, data, or personal information or confidential data or security of the whole or any part of the system or database.

I. Content Partner to ensure compliant of the rules, regulation, policy of NDLI for content provision as may be subject to and/or applicable from time to time.

J. Parties understand and acknowledge that the content provided by the Content Partner are to be provided free of cost to the NDLI user and the purpose of this Agreement is entirely non- commercial and educational purposes only and NDLI user to undertake to be under notice of the same during access and that would be free of any obligations and/or rights against NDLI.

K. If anytime it is brought to the notice of NDLI that Content Partner has hosted /allowed access to contents under NDLI without proper authorization to do so, it shall have the sole discretion of promptly removing that content from its repository until the Content Partner establishes under written consent its authorization to host/make available such content to NDLI to the satisfaction of NDLI. In case of any copyright issue and /or any other form of intellectual property right issues including and not limited to any copyright, trademark, trade secret, patent, design, trade dress which subsists or may subsist arising out of any content hosted in its repository, Content Partner shall be solely liable to handle any litigation, if any arising out of copyright/Intellectual Property right violation and indemnify the NDLI from any claims on liabilities /damages against NDLI for such hosting/content availability in NDLI for the purposes of this agreement.

L. Content Partner permits to display in/through NDLI webpage/portal, Logos of institutions or contents, or any other objects hosted in its IDR or website that may be trademarked or copyrighted or protected by any form of intellectual property rights as part of NDLI portal search results. This shall not be construed as a violation of trademark or copyright or intellectual property rights by NDLI in any manner whatsoever.

M. Content Partner shall ensure that only contents having valuable learning content for personal education or knowledge enriching purpose to the users, are hosted in its repository and excludes short term informational contents such as an administrative circular or departmental/group or advertisements or promotions or solicitation or event related contents, such as farewell photograph or recreational contents are not hosted in its repository and NDLI shall have the rights to, if so required, to monitor and select valuable learning contents under NDLI purposes at its sole discretion. Content Partner is also responsible for the authenticity/accuracy of contents hosted in its repository.

N. Content Partner shall ensure continuous (such as during night time or holidays or vacations) availability of its repository for access by NDLI users. In case NDLI observes that the repository of the Content Partner is not available for more than 72 hours, NDLI may temporarily delink the repository from NDLI portal and its re-linking would be solely at the discretion of NDLI and subject to fulfilling of desired NDLI requirements for desired purposes of this agreement.

O. When result of a search by a NDLI user identifies a content of the Content Partner, NDLI shall usually display the name of the Content Partner as a snippet.

P. To ensure that the contents added by the Content Partner in its repository from time to time are made available to NDLI users, NDLI will periodically fetch metadata of incremental contents and integrate the same in NDLI. The Content Partner shall also keep NDLI informed from time to time of any such incremental contents for integration for the purposes of this agreement.

Q. NDLI will provide necessary technical support to the best of its available facilities at any given time to the Content Partner, as and when requested by the Content Partner, to ensure proper and stable functioning of the repository of the Content Partner. NDLI will provide such support in remote mode, through collaboration tools working through internet, e-mail and phone call.

R. NDLI portal shall notify as a caution notice to all NDLI users that whatever content the NDLI user accesses, views and/or downloads through NDLI shall be used solely for

personal educational purposes, shall not be mass distributed (through a website or copies) or otherwise subject to any unlawful use including any commercial purpose and /or in any manner subject to any use beyond the aforesaid purposes of NDLI authorization and thus amounting to any violation of copyright issue and /or any other form of intellectual property right issues including and not limited to any copyright , trademark, trade secret, patent, design, trade dress which subsists or may subsist arising out of any content hosted in its repository,.

S. NDLI for the purposes of this agreement and its objectives to integrate all the existing digitized and digital contents across educational and cultural institutions/bodies as may be desired by NDLI for the above purposes to provide a single-window access to NDLI users will be solely responsible for its creation and developments or consolidation from time to time which would involve creative intellectual efforts including of NDLI conceptualization/contributions/directions/commissioned efforts leading to various intellectual property rights including and not limited to any copyright, trademark, trade secret, patent, design, trade dress which would associate with the NDLI portal/website, including involving software, text, graphics, and logos, and on which the ownership rights shall solely and exclusively vest with NDLI, excluding the contents provided by and/or linked to NDLI by the Content Partner sources for the agreed purposes of this agreement for NDLI users hereinafter referred to as "NDLI portal/website IPR". The Content Partner including its source content providers hereby authorizes such NDLI claims and sole and exclusive rights on said NDLI portal/website IPR and undertakes to cooperate with NDLI for ensuring both statutory and/or common law rights of said NDLI claims and sole and exclusive rights on said NDLI portal/website IPR.

T. NDLI shall, upon coming to know of any unfair use or misuse or any such use which is in violation of any laws of India of the contents hosted and/or made available by Content Partner in the NDLI portal, shall be authorized to initiate steps to restrict/stop such unauthorized use and the Content Partner agrees to always cooperate with NDLI to prevent any such unauthorized use and/ or misuse of the contents including any intellectual property rights vesting upon NDLI.

U. NDLI shall be having the liberty to remove / not to host /allow access to any of the content provided by the Content Partner. Both NDLI and the Content Partner will have

the right to terminate this Agreement by a 30 days' written notice to the other party.

V. Force Majeure Clause:

i. Each party shall be excused from performance and shall not be liable for any delay caused or non-performance or breach of any clause(s) of this Agreement by the occurrence of any contingency beyond the reasonable control either of the excused party or its affiliates, their officers, directors, employees, agents and subcontractors. These contingencies include, but are not limited to, war, sabotage, insurrection, riot or other act of civil disobedience, labor disturbance or shortage, act of public enemy, failure or delay in communication services/transportation, act of any government affecting the terms hereof, accident, fire, explosion, flood, severe weather or other act of God.

ii. Each party shall, without delay, inform the other party of the occurrence event of Force Majeure, its expected duration and cessation.

iii. In the event of any Force Majeure occurring, either the Content Partner or NDLI may, by notice to the other, extend the period during which any obligation affected by the Force Majeure shall be satisfied and during such period of extension, exert all reasonable efforts to remove the Force Majeure occurrence.

W. Notice:

a. Any notice or communication with reference to this agreement, unless otherwise specified herein, shall be deemed to be validly sent if dispatched by courier / registered post with acknowledgement due to the other party at the following address:

i. Registrar, Krishna Kanta Handiqui State Open University, Patgaon, Rani Gate, Guwahati- 781017, Kamrup (Metro), Assam

ii. NDLI: Dean (Sponsored Research and Industrial Consultancy), Indian Institute of Technology, Kharagpur -721302, West Bengal

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b. Either party may by a similar written notice to the other party change its address as aforesaid.

X. Government Regulation:

    a. Each party hereto, including their personnel, employees, associates shall be solely responsible for complying with the statutes, laws, regulations, subordinate legislation, administrative orders and instructions issued by relevant Government Authorities, regarding, but not limited to, environment, industrial relations and taxation, during the performance of this Agreement.

    b. Without limiting the generality of the foregoing, each party shall be responsible for compliance with the applicable tax, social securities and similar regulations applicable to its activities hereunder, at its own cost and expenses.

Y. Amendments and Modifications:

This agreement shall not be modified, amended, altered or waived orally but only through a document in writing signed by the authorized representative of the parties.

NDLI shall not be held responsible for any / all actions involving infringements of copyright /intellectual property rights, if any, brought against the Content Partner by any third party including sources through which the Content Partner may have allowed hosting/access to NDLI/NDLI users and consequences thereof and nothing shall be recoverable from NDLI or lead to any injunctive effects on the acts/activities of NDLI for the purposes of this agreement.

Every provision of this agreement is severable and if clause(s) is found to be invalid or unenforceable, then such clause(s) will be deemed amended and interpreted, in a way that renders it enforceable and where such interpretation and amendment is not possible, then such clause(s) will be deemed to be removed from this Agreement and the rest of this Agreement will remain in full force and effect.

Content Partner shall indemnify, defend and hold harmless NDLI, its affiliates and their officers, directors, employees, agents and subcontractors against all claims, demands,

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suits, liabilities, costs, expenses (including legal fees), damages and losses suffered or incurred by the said persons arising out of or in connection with:

a) Content Partner's breach or negligent performance or non-performance of this agreement or any of the clause(s); or

b) Any actual or alleged infringement of a third party's intellectual property rights arising out of causes/ reasons attributable to the Content Partner.

This Agreement does not designate either party as the agent, employee, legal representative of the other party for any purpose whatsoever.
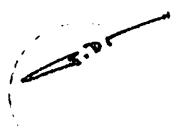
Z. Ownership Transfer of the Second Party

NDLI is currently a project of MHRD being executed by IIT Kharagpur. This Agreement shall be in force only till IIT Kharagpur represents NDLI and is under the responsibility to host and coordinate National Digital Library of India (NDLI), or till NDLI terminates this agreement by serving a written notice to the Content Partner and IIT Kharagpur. In the event of MHRD deciding to transfer the ownership of NDLI to another party, the same will be communicated to the First Party at least thirty (30) days prior to such transfer. In such an eventuality, this Agreement shall remain valid with the corresponding change in name and address of the organization and representative of the Second Party, unless otherwise intimated in writing by either party or mutually agreed by both the parties.

In case of dispute or difference between the parties the same will be sorted out amicably mutually so as to have such difference resolved at the earliest. In the event that an amicable settlement cannot be reached, any dispute arising out of or relating to this Agreement shall be settled by a sole arbitrator appointed by mutual agreement. The place of arbitration shall be Indian Institute of Technology, Kharagpur and in case of failure to settle the matter through arbitration the provisions of Arbitration and Conciliation Act, 1996 will be applicable and subject to jurisdiction of The High Court of Kolkata at the request of either party.

This Agreement shall be guided by relevant applicable laws of India.

IN WITNESS THEREOF the Content Partner and NDLI hereto cause this Agreement to be executed by their duly Authorized representative on the day, month and year written above.

SIGNED FOR AND ON

Name: Prof. Anupjyoti Choudhury

Designation: Registrar, KKHSOU

WITNESSES

1) Signature

   Name: Dr. Gautam Kumar Sarma
   Assistant Librarian
   Address: KKHSOU, Patgaon, Rani Gate
   Guwahati - 781017, Assam

2) Signature

   Name: Dr. Kanta Chakravarty
   Assistant Registrar
   Address: KKHSOU, Rani Gate
   Guwahati

SIGNED FOR AND ON

Name: प्रो. पल्लव दासगुप्ता
       Prof. Pailab Dasgupta
       संकायाध्यक्ष / Dean
       अनुदानित शोध एवं औधोगिक सलाहकारिता
Designation: Dean, SRIC, IIT KGP
       भा.प्रो.सं. खड़गपुर- ७२१३०२ / I.I.T. Kharagpur-721302

(Authorized Signatory)

3) Signature

   JIBAN GOPAL BHATTACHARYYA
   Name: Chief Logistic Officer
            Project : NDLI (DNA)
            CENTRAL LIBRARY
            Indian Institute of Technology Kharagpur
   Address:

4) Signature

   Name: Dr Dn Nanda

   Address: NDLI

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