

LiDAR Data Transfer and Storage Agreement

This Agreement is made on January 26, 2021 (the “Effective Date”), by and between Washington University in St. Louis, on behalf of the Washington University Libraries (“University Libraries”), and the University of Missouri, on behalf of the Missouri Spatial Data Information Service (“MSDIS”) pertaining to the storage and distribution of Light Detection and Ranging datasets (“LiDAR data”) for MSDIS.

WHEREAS University Libraries and MSDIS desire to enter into an agreement in which both entities will work together to provide LiDAR data to Missouri’s spatial data users; and

WHEREAS University Libraries and MSDIS mutually intend to enter into an Agreement for the purpose of outlining the Parties’ responsibilities relating to the storage and distribution of the LiDAR data; to set out the working arrangements that the Parties agree is necessary to make these data publicly available; and, outline the Parties’ agreed workflow in fulfilling their mutual goals;

NOW THEREFORE, in consideration of the mutual promises contained herein, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. Purpose and Scope

The purpose of this Agreement is to establish an ongoing arrangement that governs the transmittal of LiDAR data between the Parties and the storage and distribution of such data for public use by the University Libraries. As set out herein, the Parties intend to work together in the true spirit of mutual cooperation to ensure that their mutual goal of making LiDAR data available to the public is realized.

2. Responsibilities

- A. The Parties acknowledge and agree that they will divide their responsibilities regarding the LiDAR data, with each party responsible to the other, as follows:

Responsibilities of MSDIS:

- Review and catalog data from original producers
- Deliver received data to University Libraries designated staff
- Provide discoverability and accessibility to the data via the MSDIS website
- Test web links to data files once received

Responsibilities of the University Libraries:

- Copy data files to publicly-accessible storage
- Create web links to file locations
- Provide list of data files and associated links to MSDIS
- Return data to MSDIS (if hard drives are used)

- B. Other than specifically set out herein, the University Libraries shall not be responsible for ensuring the functionality of the LiDAR data or maintain its integrity.

- C. It is hereby acknowledged by the Parties that the commitments and responsibilities set out in this Agreement is sufficient consideration for the enforceability of this Agreement. No pecuniary consideration shall be due or paid between the Parties in exchange for their provision of services as set out herein.

3. Workflow Process and Services

The Parties mutually agree to work together in a coordinated fashion for the fulfillment of the services and responsibilities set forth in this Agreement. The Parties further agree and acknowledge that the standard workflow activities and services for their mutual efforts shall include:

- A. LiDAR data products first will be delivered to MSDIS from the original data producers for cataloging and review.
- B. Following cataloging and review by MSDIS, the data will be delivered to University Libraries designated staff via mail, hand delivery or electronic delivery.
- C. University Libraries staff will copy the LiDAR data received into publicly accessible storage, and create publicly-accessible web links to the files and their associated metadata elements.
- D. The University Libraries will provide those links to MSDIS so it may publish information regarding discoverability and public access via the MSDIS website.
- E. MSDIS will test the data and metadata links provided. The Parties will cooperate to resolve any issues that arise from such testing. Once verified, MSDIS will announce the data's availability through the MSDIS public communications channels.

4. General Terms of Service

- A. Communications – MSDIS acknowledges and agrees that, through an authorized stakeholder, it will maintain regular communications with the representatives of the University Libraries and respond to its inquiries when in a timely manner. University Libraries also acknowledges and agrees to communicate with MSDIS via email and/or any additional methods of communication as may be requested by MSDIS.
- B. Expansion or Reduction of Service – The Parties acknowledge that, during the course of their relationship, MSDIS may request to expand the level of services provided by University Libraries. Such request, however, will be the subject of a separately-negotiated agreement that renders this Agreement invalid. If a service expansion is desired, MSDIS will provide the University Libraries such proposal, in writing. The University Libraries will respond, in a reasonably prompt timeframe, with a projection of a new Effective Date and other projected timelines, as it deems necessary and appropriate. The Parties will engage in good faith discussions in an effort to reach an understanding on the proposed expansion and timelines. Once such understanding is reached, and the timelines

are agreeable to the Parties, they will execute an appropriate Amendment to this Agreement or, if the University Libraries deems it necessary, it will compose a new Agreement for the Parties' consideration.

- C. Transfer of Stakeholder – The Parties shall identify, in writing, the stakeholder authorized to communicate on its behalf in conjunction with the services outlined in this Agreement. Either MSDIS or University Libraries may change its designated stakeholders at any time. Notification should be given, in writing, ten (10) business days prior to such stakeholder transfer.
- D. Use of Name – Neither party shall use the other party's name, trademark, service mark, copyrighted materials, logo, or otherwise refer to the other party (including, without limitation, in any media release, public announcement, public disclosure, promotional material, marketing material, or on its website) regarding this Agreement or the subject matter herein without the other party's prior written consent for each such use or release.
- E. Washington University Terms of Use – MSDIS acknowledges and agrees that the University Libraries will provide its services under this Agreement in accordance with all Washington University policies for Information Security and technology (<https://it.wustl.edu/home/policies/>), all the University Libraries policies and all other relevant city, state, and federal laws. MSDIS further agrees and acknowledges that the University Libraries does not bear any responsibility or liability arising out of any action that is taken as required by the aforementioned Policies or legal obligations.

5. Confidentiality

- A. The Parties may wish, from time to time, in connection with work contemplated under this Agreement, to disclose non-public information to each other including, but not limited to, internal business decisions or policies, proprietary data or methods, financial data, business documentation, or other information that is confidential or proprietary to the disclosing party ("Confidential Information"). Each party acknowledges that any such Confidential Information disclosed to it is of considerable commercial value and that the disclosing party would likely be economically or otherwise disadvantaged or harmed by the use or disclosure thereof. Each party, therefore, agrees to keep in strict confidence all such Confidential Information that may, from time to time, be disclosed to it and agrees not to use such information except as expressly permitted, or to disclose such information to any third party for any purpose without the prior written consent of the other.
- B. This obligation of confidentiality shall survive the conclusion or termination of this Agreement. The Parties agree that upon termination of this Agreement, without regard to the reason for such termination, the Parties shall endeavor to return to one another all materials, including Confidential Information, that are the property of the other party. Confidential Information subject to this paragraph does not

include information that (i) is or later becomes available to the public through no breach of this Agreement by the recipient; (ii) is obtained by the recipient from a third party who had the legal right to disclose the information to the recipient; (iii) is already in the possession of the recipient on the date this Agreement becomes effective; (iv) is independently developed by recipient; or (v) is required to be disclosed by law, government regulation, or court order.

6. Ownership and Indemnification

- A. MSDIS hereby acknowledges that all LiDAR data is owned or controlled by it and/or that it has the full authority to transmit the LiDAR data and grant the rights set out in this Agreement. MSDIS further represents and acknowledges that none of the LiDAR data transmitted infringes or violates any copyright or other right of any other person or entity.
- B. The University Libraries agrees and acknowledges that it shall not acquire any rights, title, or interest whatsoever to the LiDAR data, except as may be necessary to implement the terms of this Agreement. Thus, to the extent necessary, this Agreement shall be construed as MSDIS granting to the University Libraries a limited, non-exclusive, royalty-free license to access and use the LiDAR data solely for the purpose of performing the services set out herein.
- C. MSDIS shall indemnify, defend, and hold harmless the University Libraries (and each of its directors, officers, employees, and agents) against any claims arising out of the intellectual property rights of the LiDAR data. Accordingly, MSDIS shall defend, at its own expense, any action brought against the University Libraries to the extent it is based on a claim that any LiDAR data within the scope of this Agreement infringes any intellectual property rights, or any other proprietary right of a third party. MSDIS will pay any costs, damages and attorney fees finally awarded against University Libraries in such action which are attributable to such claim, provided the MSDIS is promptly notified in writing of such claim and is given information, reasonable assistance, and permitted to participate in the decision to defend and/or settle such claim.

7. Term and Termination

This Agreement will commence on the Effective Date and continue for ten (10) years, if not terminated sooner by the provisions set out herein.

- A. Either party may terminate this Agreement upon written notice of at least thirty (30) calendar days.
- B. Either party may terminate this Agreement upon breach by the other party of any of the material terms of this Agreement, provided the breaching party fails to cure such breach within thirty (30) days following receipt of written notice from the non-breaching party of such breach.

- C. If this Agreement is terminated, regardless of method of or reason for termination, then all of the provisions of the Agreement terminate, except for those provisions which, of necessity, survive.

8. Governing Law

This Agreement shall be construed and governed by the laws of the State of Missouri without regard to the conflict of laws principles thereof, and venue shall rest exclusively in the state (St. Louis County) or federal (Eastern District of Missouri) courts of Missouri in any action to enforce the terms of this Agreement.

9. Miscellaneous

- A. This Agreement replaces all previous discussions and agreements relating to the subject matters hereof and constitutes the entire agreement between MSDIS and University Libraries with respect to the subject matters of this Agreement. The Parties specifically agree and acknowledge that they intend for this Agreement to supersede and replace all language on the MSDIS website relating to their relationship (<https://www.msdis.missouri.edu/data/lidar/index.html>, last accessed December 11, 2020).
- B. The parties acknowledge and agree that this Agreement and the drafting thereof were a joint effort on the part of both parties, and that neither party will be deemed to have drafted this Agreement or any portion thereof.
- C. Neither party may assign or transfer the responsibilities or agreement made herein without the prior written consent of the non-assigning party, which approval shall not be unreasonably withheld.
- D. This Agreement cannot be modified or assigned except by mutual written agreement of the parties. Any amendment to this Agreement must be made in writing and signed by authorized representatives of both Parties.
- E. The waiver by either party of any breach by the other party of any obligation under this Agreement, or the failure of such party to exercise any of its rights with respect to such breach, shall not be or be deemed to be a waiver of any subsequent breach.
- F. If any one or more of the provisions of this Agreement shall be invalid, illegal or unenforceable in any respect under any applicable statute, rule of law or public policy then such provision shall be considered inoperative to the extent of such invalidity, illegality, or unenforceability and the remainder of this Agreement shall continue in full force and effect. The Parties agree to replace any such invalid, illegal or unenforceable provision with a new provision that has the most nearly similar permissible economic effect.
- G. In no way does this agreement restrict the involved Parties from participating in similar agreements with other public or private agencies, organizations, and individuals.

H. This Agreement will be effective upon the signature of both Parties.

10. Signatories

IN WITNESS WHEREOF, the parties have executed this Agreement as of the respective dates shown below:

WASHINGTON UNIVERSITY LIBRARIES	MISSOURI SPATIAL DATA INFORMATION SERVICE
Denise Stephens, Vice Provost and University Librarian	Dr. Soren Larsen, Professor and Geography Department Chair, MSDIS Program Director
Washington University Libraries Campus Box 1061 1 Brookings Drive Saint Louis, Missouri 63130	Department of Geography College of Arts and Science University of Missouri – Columbia Columbia, Missouri 65211
Tel.: (314) 935-5400	Tel.: 573-882-9613
Email: dstephens@wustl.edu	Email: larsens@missouri.edu



Washington University Libraries
Denise Stephens
Vice Provost and University Librarian



Missouri Spatial Data Information Service
Professor Soren Larsen
MSDIS Program Director
Department of Geography
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