DPLA Data Exchange Agreement
March 2017

Parties:

Digital Public Library of America
Address: ℅ Boston Public Library, 700 Boylston St., Boston, MA 02116
Phone: 617-859-2116
URL: https://dp.la/
Name of authorized Person: Dan Cohen
Title/Role in organization: Executive Director
Work Email: dan@dp.la

Hereafter named: 'DPLA'

And

Name of organization: Recollection Wisconsin
Address: 1360 Regent Street #121, Madison, WI 53715
Phone: 608-616-9756
Email: emily@wils.org
URL: http://recollectionwisconsin.org
Name of authorized Person: Stef Morrill, Director, WiLS
Title/Role in organization: Recollection Wisconsin Service Hub Governing Board
Work Phone: 608-216-8319
Work Email: smorrill@wils.org

Hereafter named: 'Data Provider'

Recitals:
1. DPLA has the objective to provide access to the cultural and scientific heritage of humanity available, free of charge, to its network and the public at large and has undertaken the task of ingesting, indexing, enriching and making available descriptive metadata and previews, and when appropriate, full digital objects that are part of that heritage;
2. The Data Provider has and/or can create Metadata, Previews, and/or Full Digital Objects that align with the data collecting goals of the DPLA, and is willing to provide such data to DPLA under the terms and conditions of this agreement.

Now therefore, in consideration of the foregoing recitals and other good and valuable consideration, the parties agree as follows:

Section 1. Definitions. The capitalized terms set forth below shall have the following meanings.

CC0 1.0 Universal Public Domain Dedication: The Creative Commons Universal Public Domain Dedication as published at: http://creativecommons.org/publicdomain/zero/1.0/. The version of CC0 1.0 Universal Public Domain Dedication that is published on the Effective Date is attached to this agreement as **Appendix 1**. DPLA undertakes no obligation to update Appendix 1 following any updates to the CC0 1.0 Universal Public Domain Dedication occurring after the Effective Date.

Content: A physical or digital object, such as an image, text, object, audio recording, moving image, data set, etc., that is part of the Unites States' cultural and/or scientific heritage held by the Data Provider, its members and/or its licensees.

Content Hub: A large data aggregation managed by a single organization where metadata and data have been aggregated using well documented and well understood schema. Examples of Content Hubs include the National Archives and Records Administration and the Smithsonian Institution. Content Hubs serve as a primary source of Metadata and Previews, and Full Digital Objects, where appropriate, for DPLA.

Data Store: The repository of Metadata, Previews, and Full Digital Objects that are aggregated, stored, and managed by the DPLA.

DPLA Data Use Guidelines: The most recent version of the data usage guidelines published by DPLA from time to time and available at https://dp.la/info/wp-content/uploads/2013/04/DPLADataUseBest Practices.pdf, or such other address as is determined by DPLA during the Term of the Agreement.

Effective Date: The date on which this DPLA Data Exchange Agreement is signed by the Data Provider.

Full Digital Object: A digital object, in the form of one or more images, text files, audio files, and/or moving image files, that is significantly larger than a Preview or thumbnail and that can be viewed as part of the DPLA user interface as provided by the Data Provider via an acceptable end point, i.e., IIIF.

Intellectual Property Rights: Intellectual property rights including, but not limited to copyrights, related

rights, and database rights.

Hub Data: The Metadata, Previews, and Full Digital Objects provided by the Data Provider on behalf of all partners in their Hub to DPLA, including any Metadata, Previews, and Full Digital Objects provided to DPLA prior to the Effective Date of this agreement.

Metadata: Textual information (including URIs) provided by the Data Provider to DPLA hereunder that may serve to identify, discover, interpret, and/or manage Content.

Metadata Specifications: The most recent version of the Metadata specifications published by DPLA from time to time and available at http://dp.la/about/map or such other address as is determined by DPLA during the Term of the Agreement.

Preview: A reduced size or length audio and/or visual representation of Content, in the form of one or more images, text files, audio files, and/or moving image files, in each case, provided by the Data Provider to DPLA hereunder.

Public Domain: Content, Metadata, or other subject matter not protected by Intellectual Property Rights and/or subject to a waiver of Intellectual Property Rights.

Service Hub: A Data Provider that serves as both data aggregator and service provider (digitization assistance, metadata assistance, etc.) to organizations wishing to digitize content and contribute to the DPLA.

Third Party: Any natural person or legal entity that is not party to the Agreement

URI: Uniform Resource Identifier. URLs (Uniform Resource Locators) are URIs.

Section 2. Provision of Hub Data
1. During the Term, the Data Provider agrees to submit Hub Data in accordance with the Metadata Specifications, including but not limited to all required Metadata fields specified by the current version of the DPLA Metadata Application Profile (DPLA MAP). The Data Provider shall determine what Hub Data it provides to DPLA. For the avoidance of doubt, the parties agree that any Hub Data provided to DPLA prior to the Effective Data is and shall be subject to the terms of this Agreement.
2. The Data Provider shall use best efforts to provide DPLA with correct Hub Data for the Content, including the identification of Content that is Public Domain. The Data Provider agrees to assign standardized rights statements from RightsStatements.org to all Hub Data by the end of the calendar year 2019.
3. The Data Provider agrees that it has not and shall not provide DPLA any material or data that is subject to Intellectual Property Rights of Third Parties unless such Third Parties have authorized the Data Provider in writing to waive such Intellectual Property Rights and include such data in the Hub Data that will be provided to DPLA pursuant to all terms set forth herein.
4. The Data Provider hereby grants to DPLA a worldwide, non-exclusive, fully paid, royalty free, sub-licensable (through one or more channels) irrevocable license under the Intellectual Property

Rights in the Hub Data to use and publish such Hub Data in accordance with the Agreement.

5. Within 30 days of the Data Provider's request, DPLA shall collaborate with the Data Provider regarding the correction, update, and removal of Hub Data, including with respect to any Hub Data that is or may become the subject of a Violation (defined below).

6. If the Data Provider is approved by DPLA as a Service Hub, it will provide a minimum of 50,000 metadata records, along with associated Previews, and when appropriate, Full Digital Objects, to DPLA during the Term.

7. If the Data Provider is approved by DPLA as a Content Hub, it will provide a minimum of 150,000 metadata records, along with associated Previews, and when appropriate, Full Digital Objects, to DPLA during the Term.

Section 3. Use of Metadata

1. Subject to the terms of this Section 3, DPLA shall include the Metadata in the Data Store held by DPLA and shall publish these Metadata as a part of this Data Store.

2. The Data Provider hereby provides the Metadata to DPLA and the public subject to the terms of the CC0 1.0 Universal Public Domain Dedication. DPLA shall publish all Metadata under the terms of the CC0 1.0 Universal Public Domain Dedication. The Data Provider hereby waives – to the greatest extent permitted by, but not in contravention of, applicable law – all Intellectual Property Rights in the Metadata.

3. When making available Metadata to the public, DPLA will (i) provide a link to the DPLA Data Use Guidelines and the CC0 1.0 Universal Public Domain Dedication, (ii) give attribution to the Data Provider and to any Third Parties designated by the Data Provider (in each case, to the extent that it is possible to do so), and (iii) identify any translation or transcription based on Hub Data as a translation or transcription.

Section 4. Use of Previews

1. Notwithstanding paragraphs 2 and 3 of this section, DPLA may allow use of the Previews by visitors of the user interface at https://dp.la/ and via the Application Programming Interface (API) as allowed under the Fair Use of Section 107 of United States copyright law (title 17, U.S. Code).

2. DPLA may store in the Data Store and publish on https://dp.la/ all Previews provided by the Data Provider, though only in combination with the Metadata that pertains to the same Content.

3. DPLA may publish the URIs pointing to the Previews together with other Metadata.

Section 5. Use of Full Digital Objects

1. Once rights labels from RightsStatements.org are applied to Data Provider's Metadata, the Data Provider grants DPLA permission to reuse Full Digital Objects that fall into the rights categories under No Copyright (http://rightsstatements.org/page/1.0/?language=en#rights-statements-for-objects-that-are-not-in-copyright), No Known Copyright, or are licensed under a Creative Commons license, as identified by URIs in the metadata record.

2. DPLA intends to use full images from Data Providers that provide International Image Interoperability Framework (IIIF) endpoints. If the Data Provider has a IIIF endpoint, it hereby agrees to share that information with DPLA for full integration of all content available via IIIF.

Section 7. Liability and Notice and Take Down

1. The Data Provider shall ensure that the provision of the Hub Data by the Data Provider and the performance by DPLA hereunder does not constitute an unlawful act towards a Third Party (a "**Violation**"), including but not limited to:
   a. a violation of Intellectual Property Rights of a Third Party;
   b. an infringement of personality, privacy, publicity, or other rights; or
   c. an infringement of public order or morality (hate speech, obscenity, etc.).

2. DPLA reserves the right to take down any Hub Data that DPLA believes, in its sole discretion, does or may cause a Violation. In the event that the Data Provider or a Third Party notifies DPLA of a Violation, DPLA shall thereafter determine whether to remove the Hub Data that is the subject of the alleged Violation. DPLA shall inform the Data Provider of all Third Party Violation notifications. The Data Provider hereby agrees to cooperate with DPLA in any and all attempts to resolve any Violations.

3. The Data Provider will indemnify and hold harmless and will defend DPLA against all claims and expenses, including reasonable attorneys' fees, arising from any Third Party claim relating to the provision of Hub Data in violation of the Agreement or any other agreement by which the Data Provider is bound, if DPLA: (a) has used such Hub Data in full compliance with the Agreement; (b) promptly notifies the Data Provider of the claim; (c) allows the Data Provider to have sole control of the defense and settlement of such claim (though DPLA may participate in its own defense at its own expense); and (d) provides the Data Provider with the authority, information and assistance that the Data Provider deems reasonably necessary for the defense and settlement of the claim. DPLA shall not consent to any judgment or decree or do any other act in compromise of any such claim without first obtaining the Data Provider's written consent, which consent shall not be unreasonably withheld, conditioned, or delayed.

Section 8. Term & Termination

1. This Agreement enters into force as of the date of signature of the parties.
2. The Agreement shall end on the 30th June following the Effective Date. The Agreement will be renewed automatically for a period of one year every 1st July, unless terminated by one of the parties, by written notice received by the other party by May 31 of that year. Written renewal and/or reauthorization is not required.
3. Either party may terminate this agreement at any time on the material breach or repeated other breaches by the other party of any obligation on its part under this agreement, by serving a written notice on the other party identifying the nature of the breach. The termination will become effective thirty (30) days after receipt of the written notice, unless during the relevant period of thirty (30) days the defaulting party remedies the breach.
4. This agreement may be terminated by either party on written notice if the other party becomes insolvent or bankrupt, if the Data Provider's project ends or if the Data Provider withdraws or ceases operations. The termination will become effective thirty (30) days after receipt of the written notice.
5. Upon termination of this agreement, DPLA shall only be obliged to remove Hub Data provided by the Data Provider if the Data Provider requests DPLA to remove the Hub Data. Removal shall happen no later than 30 days after such a request has been received by DPLA.

6. Termination of this agreement does not affect any prior valid agreement made by either party with Third Parties.

Section 9. Miscellaneous
1. If any term of this agreement is held by a court of competent jurisdiction to be invalid or unenforceable, then this agreement, including all of the remaining terms, will remain in full force and effect as if such invalid or unenforceable term had never been included.
2. This agreement replaces all data provider and/or data aggregator agreements concluded by DPLA and the Data Provider before the Effective Date and all Hub Data provided to DPLA by the Data Provider under the conditions of such other agreement are, as of the Effective Date, considered to be provided under the conditions of the present agreement.
3. This agreement may be supplemented, amended, or modified only by the mutual agreement of the parties. Any modification proposed by DPLA must be notified to the Data Provider in writing. The Data provider shall be allowed at least two months from the date of reception of the notice to accept the new agreement. If the modifications are not accepted by the Data Provider in writing within the allowed period, the modifications are presumed to have been rejected. If the proposed modifications are rejected by the Data Provider, DPLA has the right to terminate this agreement on June 30 of any year, with a one month notice.
4. This agreement shall be construed in accordance with and governed by the laws of The United States.
5. All disputes arising out of or in connection with this agreement, which cannot be solved amicably, shall be referred to the mediation group appointed by the DPLA Board of Directors for mediation. The outcome of the mediation process will be binding on the parties.

IN WITNESS WHEREOF, the parties hereto have caused this Data Exchange Agreement to be executed by their duly authorized representatives as of the date set forth below.

DIGITAL PUBLIC LIBRARY OF AMERICA:

By: _Michele Kimpton_

Name: _Michele Kimpton_

Title: _Executive Director_

Date: _9/19/17_

DATA PROVIDER:

By: _[signature]_

Name: _Stefanie L Morrill_

Title: _Director_

Date: _9/18/2017_

Name of Data Provider:
Recollection Wisconsin

Address:
1360 Regent St. #121
Madison, WI 53715

Telephone: **608-616-9756**

Email: **emily@wils.org**

Appendix 1:

Statement of Purpose

The laws of most jurisdictions throughout the world automatically confer exclusive Copyright and Related Rights (defined below) upon the creator and subsequent owner(s) (each and all, an "owner") of an original work of authorship and/or a database (each, a "Work").

Certain owners wish to permanently relinquish those rights to a Work for the purpose of contributing to a commons of creative, cultural and scientific works ("Commons") that the public can reliably and without fear of later claims of infringement build upon, modify, incorporate in other works, reuse and redistribute as freely as possible in any form whatsoever and for any purposes, including without limitation commercial purposes. These owners may contribute to the Commons to promote the ideal of a free culture and the further production of creative, cultural and scientific works, or to gain reputation or greater distribution for their Work in part through the use and efforts of others.

For these and/or other purposes and motivations, and without any expectation of additional consideration or compensation, the person associating CC0 with a Work (the "Affirmer"), to the extent that he or she is an owner of Copyright and Related Rights in the Work, voluntarily elects to apply CC0 to the Work and publicly distribute the Work under its terms, with knowledge of his or her Copyright and Related Rights in the Work and the meaning and intended legal effect of CC0 on those rights.

1. Copyright and Related Rights. A Work made available under CC0 may be protected by copyright and related or neighboring rights ("Copyright and Related Rights"). Copyright and Related Rights include, but are not limited to, the following:
   1. the right to reproduce, adapt, distribute, perform, display, communicate, and translate a Work;
   2. moral rights retained by the original author(s) and/or performer(s);
   3. publicity and privacy rights pertaining to a person's image or likeness depicted in a Work;
   4. rights protecting against unfair competition in regards to a Work, subject to the limitations in paragraph 4(a), below;
   5. rights protecting the extraction, dissemination, use and reuse of data in a Work;
   6. database rights (such as those arising under Directive 96/9/EC of the European Parliament and of the Council of 11 March 1996 on the legal protection of databases, and under any national

implementation thereof, including any amended or successor version of such directive); and

7. other similar, equivalent or corresponding rights throughout the world based on applicable law or treaty, and any national implementations thereof.

2. Waiver. To the greatest extent permitted by, but not in contravention of, applicable law, Affirmer hereby overtly, fully, permanently, irrevocably and unconditionally waives, abandons, and surrenders all of Affirmer's Copyright and Related Rights and associated claims and causes of action, whether now known or unknown (including existing as well as future claims and causes of action), in the Work (i) in all territories worldwide, (ii) for the maximum duration provided by applicable law or treaty (including future time extensions), (iii) in any current or future medium and for any number of copies, and (iv) for any purpose whatsoever, including without limitation commercial, advertising or promotional purposes (the "Waiver"). Affirmer makes the Waiver for the benefit of each member of the public at large and to the detriment of Affirmer's heirs and successors, fully intending that such Waiver shall not be subject to revocation, rescission, cancellation, termination, or any other legal or equitable action to disrupt the quiet enjoyment of the Work by the public as contemplated by Affirmer's express Statement of Purpose.

3. Public License Fallback. Should any part of the Waiver for any reason be judged legally invalid or ineffective under applicable law, then the Waiver shall be preserved to the maximum extent permitted taking into account Affirmer's express Statement of Purpose. In addition, to the extent the Waiver is so judged Affirmer hereby grants to each affected person a royalty-free, non transferable, non sublicensable, non exclusive, irrevocable and unconditional license to exercise Affirmer's Copyright and Related Rights in the Work (i) in all territories worldwide, (ii) for the maximum duration provided by applicable law or treaty (including future time extensions), (iii) in any current or future medium and for any number of copies, and (iv) for any purpose whatsoever, including without limitation commercial, advertising or promotional purposes (the "License"). The License shall be deemed effective as of the date CC0 was applied by Affirmer to the Work. Should any part of the License for any reason be judged legally invalid or ineffective under applicable law, such partial invalidity or ineffectiveness shall not invalidate the remainder of the License, and in such case Affirmer hereby affirms that he or she will not (i) exercise any of his or her remaining Copyright and Related Rights in the Work or (ii) assert any associated claims and causes of action with respect to the Work, in either case contrary to Affirmer's express Statement of Purpose.

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