



Collection Donation Agreement

This Agreement is made as of the date of the last signature below (“**Effective Date**”) between

(“**Donor**”) **The Board of Regents of the University System of Georgia by and on behalf of Georgia Institute of Technology** with principal offices at 225 North Avenue, Atlanta, Georgia, 30332 (“**Georgia Tech**”).

WHEREAS, Georgia Tech via its Library (“**Georgia Tech Library**”) catalyzes the discovery and creation of knowledge through innovative digital and physical environments, curated scholarly content, outstanding services and information expertise;

WHEREAS, the Georgia Tech Library through its archives department (“**Georgia Tech Archives and Special Collections**”) and archive employees (“**Archivists**”) collect, preserve, exhibit, and make available for research various documents, records and materials, including but not limited to, the following: institutional archives documents, manuscripts, personal papers, organizational records, visual materials, memorabilia, textile industry records, architectural records, rare books, etc. (collectively “**Georgia Tech Archives Collection**”);

WHEREAS, the primary goal of the Georgia Tech Archives and Special Collections is to document and make available the history of Georgia Tech and materials within its archives and special collections:

WHEREAS, Donor desires to donate materials and/or records Donor owns or has authorized permission to donate (collectively “**Collection**”) to Georgia Tech via the Georgia Tech Library as further described herein and according to the terms and conditions set forth herein;

WHEREAS, Georgia Tech is willing to accept the Collection into Georgia Tech Archives Collection according to the terms and conditions set forth herein; and

NOW THEREFORE, in consideration of the mutual promises, covenants, and agreements herein contained, the parties agree as follows:

1. Description of Collection. A summary of the Collection is set forth below and described in further detail in **Exhibit A**, which is attached hereto and incorporated herein:

The Collection may include records and/or materials that lawfully belong to Georgia Tech and/or were created in the course of Georgia Tech business (“**Georgia Tech Records**”), records and/or materials solely owned by and belonging to the Donor (“**Donor Materials**”) or both. The Collection specifically includes the following type of records and/or materials as indicated by the Donor below:

_____ **Georgia Tech Records only**

_____ **Donor Materials only**

_____ **Both Georgia Tech Records and Donor Materials**

Regarding Georgia Tech Records, Donor understands and expressly agrees that subject to any applicable third party intellectual property or other rights in or to materials within Georgia Tech Records, Georgia Tech owns all right, title and interest in and to all Georgia Tech Records, including, but not limited to, all copyright, trademark and other intellectual property rights subsisting in the Georgia Tech Records and that this Agreement is transferring physical custody of the Georgia Tech Records to the Georgia Tech Library for preservation and access purposes. Donor shall not acquire and shall not claim any right, title or interest in and to any Georgia Tech Records.

2. Donor Warranties and Representations. Donor warrants and represents, to the best of Donor's knowledge, that: (a) Donor is the sole lawful owner or an authorized representative of the sole lawful owner of the Collection, or if the Collection comprises only Georgia Tech Records, Donor is the lawful physical custodian of the Collection; (b) the Collection is fully free and clear of any liens, claims, judgments or other encumbrances of any kind; (c) Donor has not and will not violate any laws, ordinances, rules, regulations and/or policies pertaining to the Collection and the rights, donation, transfer, licenses and releases granted to the Collection herein, including, but not limited to, customs laws, tax laws, inheritance laws, export laws, etc.; and (d) Donor has the legal right and authority to enter into this Agreement and grant the rights, donation, transfer, licenses and releases set forth herein.

3. Transfer of Ownership of the Collection. Donor hereby transfers all title, right, interest and other ownership rights to and in the Collection to Georgia Tech via the Georgia Tech Library according to the terms and conditions set forth herein and the method described in **Exhibit B**.

4. Intellectual Property Rights in the Collection. Intellectual property rights in and to the Collection may owned by the Donor, Georgia Tech or a third party as indicated below by Donor to the best of Donor's knowledge:

_____ Donor created the Collection or otherwise owns or controls all intellectual property rights in and to the entire Collection.

_____ Donor created a portion of the Collection or otherwise owns or controls intellectual property rights in and to a portion of the Collection as indicated by the Donor in **Exhibit A**.

_____ Donor does not own or control any intellectual property rights in and to the Collection, in whole or in part.

_____ Georgia Tech created the Collection or otherwise owns or controls all intellectual property in and to the entire Collection.

_____ Georgia Tech created a portion of the Collection or otherwise owns or controls intellectual property rights in and to a portion of the Collection as indicated by the Donor in **Exhibit A**.

To the extent Donor owns or controls intellectual property rights in and to the Collection, in whole or in part, Donor transfers intellectual property rights in and to the Collection as follows:

_____ Donor hereby assigns and transfers to Georgia Tech and/or Georgia Tech Research

Corporation (“GTRC”) all title, right, and interest in and to the entire Collection or to the portion of the Collection that Donor owns or controls, including, but not limited to: (a) the right to reproduce, adapt, distribute, perform, display, communicate and translate the Collection; (b) moral rights, publicity and privacy rights pertaining to a person’s image or likeness depicted in the Collection; (c) rights protecting against unfair competition pertaining to the Collection; (d) rights protecting against the extraction, dissemination, use and reuse of data in the Collection; and (e) database rights and other similar, equivalent or corresponding rights throughout the world based on applicable law or treaty, and any national implementations thereof, subject to the restrictions (if any) set forth below:

Restrictions: _____

_____ Donor hereby grants to Georgia Tech and/or GTRC an irrevocable, worldwide, perpetual, royalty-free, sublicensable, license to use, display, publish, post, reproduce, make derivative works and allow others to use, display, publish, post, reproduce and make derivative works of the Collection, in whole or in part, individually or in conjunction with other information or images, printed or electronic materials, in any media or format now or hereafter known, including, but not limited to, access via the World Wide Web, for any educational, scholarly, research or noncommercial use or purpose, and to use Donor’s name in connection therewith if Georgia Tech and/or GTRC so chooses. Donor also hereby grants Georgia Tech and/or GTRC the right and permission to edit the media format used for Collection to the extent necessary to use, display, publish, post, reproduce or make derivative works of the Collection, in whole or in part, in any media or format, now or hereafter known, including but not limited to, access via the World Wide Web.

Donor hereby waives any right to inspect or approve Georgia Tech or GTRC’s use or any third party use of the Collection or any finished version incorporating the same.

As indicated by the Donor below, the license granted by Donor herein to Georgia Tech and/or GTRC is:

_____ Exclusive (i.e., no other individual or entity other than Georgia Tech and/or GTRC can exercise the intellectual property rights granted herein)

_____ Non-exclusive (i.e., others, including the Donor, Georgia Tech and/or GTRC may exercise the same intellectual property rights granted herein)

_____ Donor grants Georgia Tech and/or GTRC and all other persons or entities an irrevocable, worldwide, royalty-free, non-sublicensable, non-exclusive, noncommercial license to exercise copyright and similar rights to the Collection according to the terms and conditions set forth in [Creative Commons Attribution – Noncommercial 4.0 International Public License](#).

_____ Donor overtly, fully, permanently, irrevocably and unconditionally waives, abandons and surrenders all of Donor’s copyright and similar rights in and to the Collection and dedicates the Collection to the public domain according to the terms and conditions set forth in [Creative Commons Universal CC0 1.0 – Public Domain Dedication License](#).

_____ Donor grants specific, limited intellectual property rights in and to the Collection as set forth below:

_____ Donor will retain all intellectual property rights in and to the Collection and provide Georgia Tech with the sufficient information for third parties to obtain permission from the Donor to use the Collection as set forth in **Exhibit C**. For each permission granted for use of the Collection, Donor will send Georgia Tech written notification of such permission, which shall include pertinent details and any restrictions regarding such use.

5. Preservation and Access to the Collection. Donor acknowledges and agrees that pursuant to this Agreement and the rights, transfer, licenses and/or releases granted herein, the Georgia Tech Library has sole discretion to select the location of the Collection, to conduct retention, cataloging, preservation and disposition of the Collection, and to provide access to the Collection, in whole or in part, through any means or medium, now or hereafter known, in accordance with applicable regulations, rules, policies, guidelines, standards and practices of Georgia Tech and the Board of Regents of the University System of Georgia (“Board of Regents”).

Georgia Tech Library, within its sole discretion, may preserve and provide access to the Collection according to accepted professional standards and its mission and vision using various means and methods, including, but not limited to, preservation, exhibition, digitization for preservation and access purposes or making works in the Collection available and full-text searchable, via the World Wide Web, digital or any other publicly accessible medium, now or hereafter known, for any educational, scholarly, research or noncommercial use or purpose.

Donor acknowledges and agrees that the method and/or means by which Georgia Tech Library preserves or provides access to the Collection is within the sole discretion of the Georgia Tech Library. Notwithstanding anything herein or otherwise, Donor agrees that Georgia Tech is under no obligation to preserve or provide access to the Collection and Donor hereby waives any right to inspect or approve preservation of or access to the Collection by Georgia Tech.

6. Time-Limited Access Restrictions and Sensitive Materials. In accordance with its mission as

a public educational institution, Georgia Tech’s overarching goal is provide broad access to the Collection and as such, Georgia Tech will not accept access restrictions to the Collection for indefinite or perpetual time periods. Georgia Tech may, however, within its sole discretion, accept the Collection with time-limited access restrictions and/or if it contains sensitive materials.

Prior to the donation or license hereunder, Donor shall inform Georgia Tech if the Collection contains any sensitive or private information, such as social security numbers, medical records, birthdates, etc. Georgia Tech will then determine if it wishes to accept the Collection. Should Georgia Tech decide to accept the Collection, Georgia Tech may request Donor’s assistance with redaction, embargo or restriction of such sensitive or private information. Georgia Tech will comply with all applicable privacy laws pertaining to the Collection, including the Family Educational Rights and Privacy Act of 1974 (“FERPA”), Health Insurance Portability and Accountability Act of 1996 (“HIPAA”), etc. Other than its obligation to comply with applicable privacy laws, Georgia Tech is under no obligation to determine whether materials in the Collection may require redaction, embargo or restriction. Any restrictions will be applied fairly and equally to all persons accessing the Collection.

Donor shall list in as much detail as possible any materials in the Collection that may contain sensitive and/or private information and/or that requires time-limited access in **Exhibit D**, which is attached hereto and incorporated herein. Donor shall also indicate in **Exhibit D** all restrictions on such materials in the Collection, including access restrictions, during any time-limited restriction period and when the restriction period ends.

Donor shall indicate below whether the Collection contains any sensitive and/or private information and/or materials that requires time-limited access:

- _____ The Collection does not contain any sensitive or private information and restricted access to the Collection **is not** required.
- _____ Some materials contained in the Collection contain sensitive or private information and access to such materials should be restricted as set forth in **Exhibit D**.
- _____ Some materials contained in the Collection requires time-limited restriction as set forth in **Exhibit D**.
- _____ The entire Collection contains sensitive or private information and access to the Collection should be restricted as set forth in **Exhibit D**.

7. Open Records Act. Notwithstanding anything herein or otherwise, Georgia Tech is subject to the Georgia Open Records Act and Donor agrees that nothing herein or otherwise shall prevent Georgia Tech from fulfilling its obligations under the Georgia Open Records Act.

8. Records Retention and Surplus Policy Compliance. Notwithstanding anything herein or otherwise, upon transfer of physical custody and ownership of the Collection or materials within the Collection to Georgia Tech, Donor understands and acknowledges that the Collection becomes property of the State of Georgia and subject to applicable records retention and surplus policies. Donor further understands and acknowledges that Georgia Tech shall retain and/or dispose of the Collection once Georgia Tech, within its sole discretion, ceases use of the Collection in accordance with such records retention and surplus policies.

9. Access Credentials and Permissions. If the Collection contains digital materials that are protected by password(s), login, encryption or other access credentials, Donor grants Georgia Tech permission to use such password(s), login or other access credentials or keys as set forth in **Exhibit E**, which is attached hereto and incorporated herein.

If the Collection contains digital materials that require password(s), login or other access credentials or keys to access such materials and Donor cannot or declines to provide such access credentials to Georgia Tech, Donor shall indicate below whether Georgia Tech can access the materials via other means:

_____ Donor declines to provide the access credentials or keys required to access the digital materials contained in the Collection. However, Donor expressly grants Georgia Tech permission to decrypt password(s) or use encryption systems, as applicable, to access the digital materials contained in the Collection.

_____ Donor declines to provide the access credentials or keys required to access the digital materials contained in the Collection.

10. Disk Imaging. In accordance with archival best practices, the Georgia Tech Library may use digital forensic imaging* in connection with preserving and providing access to the Collection. Donor acknowledges that such digital forensic imaging may reveal information that was once deleted or overwritten and Donor expressly grants Georgia Tech permission to use digital forensic imaging to preserve and provide access to the Collection.

In addition, Donor grants additional permissions to Georgia Tech as set forth below as to Donor's preferences regarding access to data recovered via digital forensic imaging:

Digital forensic imaging may recover deleted data, such as deleted computer files. Does Georgia Tech have your permission to provide access to such deleted data recovered via digital forensic imaging?

_____ Yes

_____ Yes, with the following conditions:

_____ No

Digital forensic imaging may recover log files, system files and other files that document use of computers or systems. Does Georgia Tech have your permission to provide access to such files if recovered?

_____ Yes

_____ Yes, with the following conditions:

_____ No

* *Digital forensic imaging involves a sector-by sector copying of data that replicates the structure and content of the data.*

11. Indemnification. Except if due to the sole negligence or willful misconduct of Georgia Tech, Donor hereby waives, releases, relinquishes, discharges and agrees to indemnify, protect and save harmless, Georgia Tech, the Georgia Tech Foundation ("GTF"), the Board of Regents of the University System of Georgia ("Board of Regents"), the State of Georgia and its departments, agencies and instrumentalities, including the State Tort Claims Trust Fund, the State Insurance and Hazard Reserve Fund, and other self-insured funds (hereinafter collectively referred to as the "Fund"), and all of their respective individual members, officers, employees, directors and agents (hereinafter collectively referred to as the "Indemnitees") of and from any and all claims, demands, liabilities, losses, costs or expenses for any loss including but not limited to bodily injury, death, personal injury, property damage, expenses, and reasonable attorneys' fees, caused by, growing out of, or otherwise occurring in connection with this Agreement, due to any act or

omission (whether intentional or negligent) on the part of the Donor, its agents, employees, independent contractors, or others working at the direction of the Donor or on Donor's behalf, pertaining, but not limited to, Donor's donation, transfer or license hereunder of the Collection and any rights subsisting therein, and including, but not limited to, Donor's prior physical custody of the Collection; any of Donor's activities with respect to the Collection; any breach of this Agreement or the warranties and representations set forth herein by the Donor; any infringement or violation of any right or claim, including, but not limited to, copyright, intellectual property rights and claims, invasion of privacy claims, misappropriation of likeness claims, etc.; or the application or violation of any pertinent Federal, State or local law, rule or regulation, including, but not limited to, intellectual property and privacy laws.

This indemnification extends to the successors and assigns of the Donor, and this indemnification survives the termination of this Agreement. Further, this indemnification shall survive the dissolution, or to the extent allowed by law, the bankruptcy of the Donor. If and to the extent such damage or loss is covered by the Fund established and maintained by the State of Georgia Department of Administrative Services (DOAS), the Donor agrees to reimburse the Fund for such monies paid out by the Fund.

This indemnification applies whether the activities involve third parties or employees, independent contractors or agents of the Donor of the Indemnities where the Indemnities are partially responsible for the situation giving rise to the claim. This indemnification shall also inure to the benefit of the heirs, legal representatives, licensees, and assigns of Georgia Tech, GTF and the Board of Regents.

To the full extent permitted by the Georgia Constitution, Laws of the State of Georgia and/or terms of the Funds, the Donor and its insurers waive any right of subrogation against the Indemnities, the Fund and insurers participating there under, to the full extent of this indemnification.

Notwithstanding anything herein, Donor understands and acknowledges that Georgia Tech's acceptance of this and any other waivers and releases of liability and indemnification by Donor hereunder shall not constitute a waiver, in whole or in part, of sovereign immunity by Georgia Tech, GTF, the Board of Regents, its members, officers, agents, and employees.

12. Notices and Points of Contact. All notices, requests, and other communications required or either party elects to deliver hereunder will be in writing and will be delivered personally, by facsimile, by electronic mail or other electronic means (provided such electronic delivery is confirmed), by a recognized overnight courier service, or by United States mail via first-class, certified or registered with postage prepaid and, when possible, return receipt requested, to the other party at its address set forth below or to another address as designated by notice provided pursuant to this section and shall be deemed delivered upon receipt or ten (10) days after sent to the last address provided, whichever comes first:

If to Georgia Tech: **ATTN: Department Head
Archives and Special Collections
Georgia Tech Library
Georgia Institute of Technology**
266 4th Street, N.W.
Atlanta, GA 30332-0900
Telephone: 404-894-4536
Fax: 404-894-3888
Email: archives@library.gatech.edu
Website: www.library.gatech.edu/archives

If to Donor: Name of Contact Person: _____
Title: _____
Name of Organization: _____
Address: _____

Telephone: _____
Fax: _____
Email: _____

13. Independent Parties. The parties are independent contractors and neither party shall be deemed as employed by the other party. Neither party hereunder has the authority to bind the other to any third party, contractual agreement, commitment, warranty nor otherwise to act in any way as a representative of the other party. Each party shall be responsible for its own acts and/or omissions and the results thereof.

14. Waiver and Severability. No failure or delay in exercising any right or remedy hereunder by either party shall constitute a waiver of any right or remedy, or future exercise hereof. If any provision of this Agreement is held invalid or unenforceable, such provision shall be deemed deleted from this Agreement and the validity and enforceability of such remaining provisions shall not be affected thereby.

15. Counterparts. This Agreement may be executed in any number of counterparts (and by different authorized representatives of the parties hereto on different counterparts), each of which shall constitute an original and all of which when taken together shall constitute a single and the same executed Agreement. Delivery (electronically or otherwise) of an executed counterpart of a signature page of this Agreement shall constitute delivery of a manually executed counterpart of this Agreement and shall have the same force and effect as a document bearing original signatures.

16. Entire Agreement. This Agreement sets forth the entire agreement between the parties and supersedes all prior communications or arrangements, written or oral, regarding the subject matter set forth herein. This Agreement may not be changed, altered, modified, or amended without the written agreement of both parties. All matters not expressly authorized by this Agreement shall be reserved to the discretion of Georgia Tech.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their duly authorized representatives.

DONOR:

**THE BOARD OF REGENTS OF THE
UNIVERSITY SYSTEM OF GEORGIA BY AND
ON BEHALF OF GEORGIA INSTITUTE OF
TECHNOLOGY (GEORGIA TECH):**

Signature: _____

Signature: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

EXHIBIT A

DESCRIPTION OF COLLECTION MATERIALS

<u>Description of Materials</u>	<u>Donor Owns the Materials as Indicated by Check Below</u>

EXHIBIT B

TRANSFER OF COLLECTION METHOD

The Collection will be transferred via the following method(s) (please select all that apply):

- _____ Archivist will capture or collect the Collection with Donor’s assistance onsite on the Georgia Tech campus or at another location agreed upon by Donor and Archivist.

- _____ Archivist will capture or collect the Collection from Donor’s computer via remote desktop applications or similar software.

- _____ Donor will transmit the Collection to Archivist via an external storage medium or media (e.g., flash drive, external hard drive, optical media, etc.), supplied by the Donor. The external storage medium or media will be donated as part of the Collection.

- _____ Donor will transmit the Collection to Archivist via an external storage medium or media (e.g., flash drive, external hard drive, optical media, etc.), supplied by either the Donor or Archivist. If the external storage medium or media is supplied by the Donor, it will be temporarily loaned to the Georgia Tech Archives and Special Collections during the time period of Collection data capture.

- _____ Donor will transmit the entire computer or other hardware device containing internal storage to Archivist. The computer or device will be donated as part of the Collection.

- _____ Donor will transmit the entire computer or other hardware device containing internal storage to Archivist. The computer or device will be temporarily loaned to the Georgia Tech Archives and Special Collections during the time period of Collection data capture.

- _____ Donor will transmit the Collection to Archivist via a network transfer (e.g., Donor’s web server, SFTP transfer to Georgia Tech Library server, Dropbox, Google Drive, direct digital repository submission, etc.).

- _____ Other method or means of Collection transfer as described below by Donor:

Additional Details of the Method of Collection Transfer (selected above)

	<u>Method Transfer Details</u>
Planned Date(s) of Collection Transfer	
Location of Collection Transfer	
Devices Used for Transfer	
Additional Transfer Method Details	

EXHIBIT C

DONOR PERMISSION

Since Donor has elected to retain all intellectual property rights in and to the Collection, should Georgia Tech receive any requests to use the Collection, in whole or part, Donor request that Georgia Tech contact the Donor via the preferred method(s) of communications set forth below and forward such requests for permission to the Donor accordingly for handling:

_____ Home Telephone: _____

_____ Mobile Telephone: _____

_____ Email Address: _____

EXHIBIT D

**COLLECTION MATERIALS THAT MAY CONTAIN
SENSITIVE INFORMATION
AND REQUIRE ACCESS RESTRICTION
(Additional sheets attached as necessary)**

<u>Title/Description of Collection Materials</u>	<u>Type of Sensitive Information</u>	<u>Duration of Access Restriction & End Date of Restriction</u>	<u>Reason for Access Restriction</u>	<u>Individuals Permitted to Access Materials During Embargo or Restriction Period</u>
<i>Be as specific as possible, e.g., Mary's Diary, John Doe's architectural course work, specific file, folder or document title, etc.</i>	<i>Sensitive information examples: Social security numbers, medical records, student records, documents protected by attorney-client privilege, research data involving or related to human subjects, classified materials or information, etc.</i>	<i>Include the duration the Collection materials are to be embargoed or restricted from access and the end date of the restriction or embargo; please use this date format: (YYYY-MM-DD)</i>	<i>Be specific, e.g., FERPA, HIPAA, etc.</i>	<i>These individuals may include, e.g., None, Donor, heir(s) of Donor, Donor department, etc.</i>

EXHIBIT E

CREDENTIALS AND PERMISSIONS
(Additional sheets attached as necessary)

<u>Title/Description of Collection Materials to be Accessed via Password(s), Login or Other Access Credentials or Keys</u> <i>(Be as specific as possible, e.g., social media account name, document, file or folder title, etc.)</i>	<u>Access Credentials or Keys</u> <i>(e.g., Username(s), password(s) login, and/or access key, etc.)</i>

