# Service Level Agreement
# Cloud and/or Project Storage

This Service Level Agreement (this "Agreement"), dated September 1, 2012 (the "Agreement Effective Date"), is between the San Diego Supercomputer Center ("Service Provider," "SDSC") and the California Digital Library ("Customer"). The San Diego Supercomputer Center is an Organized Research Unit within the University of California, San Diego. Service Provider and Customer may be referred to in this Agreement individually as a "Party" and together as the "Parties." Exhibit A, containing the pricing for this Agreement, is attached hereto and incorporated by reference herein.

In consideration of the mutual covenants set forth herein, the Parties agree as follows:

## 1. Term

The term of this Agreement will be from September 1, 2012 through August 31, 2017. This Agreement may be terminated by Customer or Service Provider according to early termination of service terms as provided in section 5 of this Agreement. Upon the end date of this Agreement SDSC will no longer offer condo-based Storage services. Customer will be afforded the opportunity to transition to SDSC Cloud Storage at that time.

## 2. Scope of Work

SDSC will provide Customer with the license to use SDSC Storage Services.

## 3. Collection Description, Definitions, and Accessibility

3.1 The data to be stored will include:
- Metadata
- Two copies of the data will be stored on separate physical systems within SDSC's La Jolla data center.

3.2 Definitions:

3.2.1 *"Averaged Storage Usage"* refers to how SDSC measures Customer's monthly usage of SDSC's Cloud Storage for billing purposes. SDSC will calculate the billing under the Average Storage Usage approach on a monthly basis. By signing this Agreement, Customer consents to the Average Storage Usage methodology for calculating monthly billing. The scripts and methodology for billing calculations will be made available for review at the request of the Customer.

3.2.2 *"Condo"* storage refers to an arrangement wherein Customer provides funds to purchase a designated amount of storage space which is incorporated into SDSC's Cloud and then operated for Customer by SDSC in consideration of an annual fee.

3.2.3 "*Customer*" means the party contracting with SDSC for Storage Services provided by SDSC under this Agreement.

3.2.4 "*Data*" means all information and data, including all text, software, business information, image files and any other content, whether in oral or written (including electronic) form, created by or in any way originating with Customer or End User(s), or otherwise provided on behalf of Customer or End User(s), through use of or in connection with the Services, and any information that is the output of any computer processing, or other electronic manipulation, in the course of using or configuring the Services.

3.2.5 "*End User*" means the individual(s) authorized by Customer to access and use the Services provided by SDSC under this Agreement.

3.2.6 ***"HIPAA"*** refers to the Health Insurance Portability and Accountability Act of 1996.

3.2.7 ***"On Demand"*** storage refers to the arrangement wherein Customer pays a monthly fee for an ad hoc amount of storage capacity as part of any Cloud Services.  The On Demand storage capacity allocated to Customer may be scaled up or down based on Customer and/or End User actual usage.

3.2.8 ***"PHI"*** and ***"PII"*** refer to Personal Health Information and Personally Identifiable Information, respectively, and shall include the meaning given to such term under HIPAA and the HIPAA Regulations.

3.2.9 ***"Services"*** means the services to be rendered under this Agreement as set forth in Section 2 herein.

**3.3 Accessibility:** SDSC will provide support as defined in Section 6 directly to Customer.  SDSC is responsible for the security of the hardware operating system platforms, storage media and software. Customer is responsible for the security features of its own applications and data outside of SDSC.  SDSC and Customer together will determine effective methods to accommodate Customer's business needs while conforming to UC, UCOP, and SDSC and security policies and procedures.

## 4. Costs and Storage Allocations

**4.1** COST: See pricing detail attached as Exhibit A.

    4.1.1 For On-Demand Customers only: SDSC will submit an invoice or charge provided recharge account for Averaged Storage Usage on a monthly basis. For example: If Customer uploads an initial 500GB of storage on January 1, then adds 250GB more on January 16th, Customer will be billed for the average usage of 629GB for that month. This scenario is for illustration purposes only and does not reflect minimum billing quantities. SDSC will calculate and recharge customer on a monthly basis for the previous month's Averaged Storage Usage to the nearest GB. *SDSC reserves the right to review and adjust rates and will give customer Sixty days' notice in advance of adjusting any storage rates by sending to the email address that you have specified.*

    4.1.2 For Condo Customers only: Additional costs will apply if Customer exceeds allocated condo space. Customer will be billed for the overage at the On-Demand per TB price as listed on SDSC's Cloud Storage website. Customer will not be afforded the opportunity to obtain additional Condo space as this Service is going to be discontinued.

    4.1.3 Purchase of Condo equipment: SDSC will purchase Micro Condo storage equipment to accommodate the amount of storage Customer has requested, as written in Exhibit A. Customer will pay SDSC the equivalent amount of this equipment purchase as a fee for the right to utilize the equipment for the entire term of this Agreement. Should either Party invoke Early Termination of this Agreement pursuant to terms in Section 5; Termination pursuant to Customer and/or End User Violations as provided in Section 7; or any other Termination outlined elsewhere in this Agreement, Customer will no longer have access to the storage equipment and SDSC will be free to repurpose it without constituting a breach of this Agreement.

    4.1.4 SDSC reserves the right to review and adjust rates on an annual basis and will give customer Sixty (60) days' notice in advance of adjusting any storage rates.

**4.2 Invoicing and Payment**
- If purchasing Condo storage: SDSC will submit an invoice for the entire amount as set forth in Exhibit A including any hardware and/or labor to Customer prior to Agreement execution.  The invoice will reference this Agreement and provide a breakdown of the storage costs by storage type and be consistent with Customer's requested storage allocations. At contract initiation, customer will pay all hardware pass-

through costs, service fees, if any, and the first year of maintenance fees. The invoice will be due and payable upon the date this Agreement is fully executed. *Note: Maintenance and Support fees may be adjusted annually by SDSC with Sixty (60) days' notice of a change.*

- If purchasing On-Demand storage using Averaged Storage Usage: Upon sign-up, Customer must provide a valid accounting string which will be automatically recharged on the first of the month for the prior month's Averaged Storage Usage. **Users are responsible for notifying SDSC in advance if the accounting string must be changed.** *NOTE: if the numbers provided are no longer active they will result in a bounced charge and your account(s) will enter unpaid status.*
- *Each container is initially associated with a single user account; additional accounts may be added by paying a small annual service charge per additional user. If this charge is applicable to Customer, it will appear in Exhibit A.*

### 4.3 Failure to pay storage fees when due
Failure to pay fees when due upon contract initiation, renewal date, or monthly billing cycle will result in the following actions:

- If SDSC is unable to collect payment when due, Customer's account will enter unpaid status. SDSC will attempt to contact Customer using the Customer notification email address(es) on file. If Customer's accounting string is inactive SDSC reserves the right to go to current fund manager of the accounting string you are using to request a replacement accounting string. SDSC will copy Customer on the correspondence.
- If SDSC has not received payment or other billing arrangements have not been made by the due date, the following actions will be taken:
  - After 30 Days of unpaid status: Customer's account will become read only. Customer will not be able to add any new content to the account, or any group account to which Customer has access. Customer may only download Customer's data for 30 days.
  - After 60 Days unpaid status: Customer's account will be locked and Customer will be unable to log into the system via any mechanisms. Read and write privileges are removed.
  - After 90 Days unpaid status: Customer's account will be removed and all data stored will be deleted. *Customers are responsible for keeping a backup of their data outside of the SDSC storage systems*. **Customer agrees that any account that has been unpaid for 90 days is subject to immediate termination and/or loss of data and SDSC will not be held liable for any data that has been deleted under this provision.**

## 5. Early Termination of Service
**5.1**    Customer may opt for early termination of Micro Condo service by providing written notice to all SDSC contacts listed in Section 14 of this Agreement Sixty (60) days before the annual renewal is due. In doing so, Customer releases SDSC of responsibility for the data on the date the renewal is due.  Service will continue to the date renewal is due. Customer will have until renewal due date to retrieve any files form SDSC storage unless previous arrangements have been previously agreed to by both parties.

**5.2**    Customer may opt for early termination of On-Demand storage service by providing notice Ten (10) Business days in advance of desired termination date. Service will continue through the requested termination date, at which time SDSC will be released from responsibility for the data. Customer will have until that date to retrieve any files from SDSC storage unless both parties have agreed to previous arrangements. Upon the termination date all data will be deleted from SDSC storage and will no longer be available to the Customer. SDSC may reallocate any and all storage space as needed; the storage space may no longer be available to Customer following the Termination Date.

**5.3**    After the termination date, all data will be deleted from SDSC storage and will no longer be available and all storage will be released to SDSC for reuse at its discretion.

**5.4  Customer agrees upon signing this Agreement to release SDSC of all liability for data after termination date.**

## 6. Technical Support

Please refer to user FAQs on our website, located at https://cloud.sdsc.edu/hp/help.php for up-to-date Technical Support information.

### 6.1 Communication Regarding Unscheduled Systems Downtime

- Real-time monitoring is provided by SDSC monitoring systems. Detected downtime of applicable components will generate an immediate email to SDSC storage personnel.
- Upon an alert, administrators will make commercially feasible efforts to diagnose/resolve the issue.
- SDSC technical team will provide first-level post-incident information/analysis to Customer by sending an email to Customer's email account on file or as otherwise updated via subsequent email to support@sdsc.edu.
  - During regular business hours, SDSC staff will make reasonable effort to send this message within 2 hours. Although SDSC researchers and affiliates often work after hours and on weekends, we have defined "Regular Business Hours" as **Monday through Friday from 08:00 AM to 17:00 PM, Pacific**. For outages lasting longer than 6 hours, further updates will be provided as they become available.
  - Outside of regular business hours, SDSC staff will make a reasonable effort to send this message within 6 hours.
- Within one business day after event resolution, SDSC will provide a written post-incident summary (high-level, 1 page, 1-3 paragraphs) to Customer, including:
  - What went wrong?
  - Solution
  - Recommended preventive measures for future reference and other lessons learned.

### 6.2 Communication Regarding Planned Maintenance

- SDSC Storage Personnel will make reasonable efforts to notify Customer two weeks prior to any planned system outage.
- Reasonable efforts will be made to perform planned system outages outside of regular business hours as defined above.

### 6.3 Systems Technical Support Procedures

- Low & Medium Priority Issues– Example: slowness, bug or permissions issues
  - Customer will submit support inquiries via email to support@sdsc.edu. This will open a ticket within our helpdesk system and will be sent to the requestor.
  - Automated receipt with ticket number acknowledged within 1 hour.
  - SDSC technical team follow-up by close of following business day.
- High and Critical Priority Issues– Example: outage or data inaccessible
  - Customer will call SDSC Operations: (858) 534-5090. Operations staff is available at this number or on pager 24/7.
  - SDSC Operations staff will take pertinent information (including incident details and response phone number), create a support ticket, and provide the tracking number to Customer, email support, and telephone on-call member of SDSC technical team supporting the project.
  - SDSC technical team will follow-up by phone as soon as possible.

## 7. User Responsibilities

Users of SDSC Storage resources shall ensure that all of the below conditions are met. Violation of any one of these terms will result in immediate suspension and/or termination of your account and will not constitute a breach under this Agreement.

**7.1** Customer must notify SDSC of any changes to the primary technical or business customer via email sent to support@sdsc.edu.

**7.2 Use and Distribution of Data Stored at SDSC:** *Customer and End Users represent and warrant that (1) you or your licensors own all right, title, and interest in and to all content; (2) you have all rights in your content necessary to grant the rights contemplated by this Agreement; and (3) no Data violates applicable law, regulation, or infringes or misappropriates the rights of any third party or otherwise violates a material term of this Agreement.* It is illegal to distribute data or software without the approval of the owner, and such distribution is therefore considered a violation of this Agreement. Violations of this Agreement may result in immediate termination of Services without constituting a breach under the Agreement.

**7.3 Data Security:** End Users are responsible for the security of their Data and are required to protect his or her password(s). Passwords must never be shared. If Customer believes any passwords have been compromised, whether they belong to Customer or End User, Customer should ensure such passwords are changed immediately and inform SDSC staff about the compromise as soon as possible. Both Customer and SDSC agree to notify each respective party of any breach or disclosure of the Data stored within SDSC Storage within five (5) business days of discovery. SDSC agrees to follow industry standard security practices including but not limited to regular patching of operating systems and software maintained by SDSC, centralized audit log capture and review, personnel background checks, enforcement of separation of duties, and enforcement of the principle of "least privilege." Customer is responsible for identifying any additional regulations or laws associated with the type of Data stored within the SDSC Storage and complying therewith. Such additional requirements must be documented by Customer and incorporated into this Agreement via signed amendment prior to data storage.

**7.4 Sensitive Information:** SDSC prohibits the transfer or storage of sensitive or regulated Data under this Agreement, including but not limited to, PHI, PII, student records, individual financial information or any other information subject to privacy and information security laws and regulations. **Customer/End User is responsible for encrypting any Data** *prior* **to transfer into SDSC's storage environment and for using appropriate encryption protocols.** *Government classified data or data subject to EAR/ITAR regulations must not be transferred to or stored on any SDSC systems. Violations of this clause will be subject to immediate termination of the Services without constituting a breach under the Agreement.*

**7.5 Privacy:** SDSC will use Data only for the purpose of fulfilling its duties under this Agreement, and will not share such Data with or disclose it to any third party without the prior written consent of Customer or as otherwise required by law or government regulation. By way of illustration and not of limitation, SDSC will not use such Data for SDSC's own benefit and, in particular, will not engage in "data mining" of Data, whether through automated or human means, except as specifically and expressly required by law, regulation or as authorized in writing by Customer.

**7.6 Backups of Critical Customer Data:** *Customer and End Users are responsible for keeping a backup of their data outside of the SDSC Storage systems. File systems and archival storage systems are very reliable; however, data can be lost or damaged due to media failures, hardware failures, user actions, sys admin actions pursuant to client instruction and/or mistakes, network failure, power failure, and acts of nature included but not limited to earthquakes, fires, floods, or other natural disasters.*

*Note that there are inherent risks in storing and transferring data. To minimize errors or problems with Data before it resides in SDSC's Cloud Storage, SDSC highly encourages Customer and End Users to take precautionary measures with their Data. Potential problems to address include but are not limited to instances such as bad hard drives and improper data storage, handling, and maintenance on the part of Customer and/or End User. Customer and/or End Users are responsible for running data integrity checks during transfer of data to/from SDSC's Cloud Storage systems to verify that stored/retrieved files are intact; Customer can check files against the MD5 checksums held in the system.*

**7.7** Customer, End Users, and SDSC agree to follow and observe all policies and procedures as defined by Federal, State, and University regulations.

**8. Excusable Delay.** In the event of a delay or downtime caused by inclement weather, fire, flood, strike or other labor dispute, acts of God, acts of Governmental officials or agencies, or any other cause beyond the control of SDSC, performance is excused hereunder for the periods of time attributable to such a delay, which may extend beyond the time lost due to one or more of the causes mentioned above. The Customer's duty to pay for past or continuing costs is not suspended hereunder.

**9. Entire Agreement.** This Agreement sets forth the entire agreement of the parties with respect to the subject matter herein and supersedes any prior agreements, oral and written, and all other communications between the parties with respect to such subject matter.

**10. Modification of Agreement.** Modification of this Agreement shall be discussed and mutually agreed upon in writing by SDSC and the Customer. Notification of potential changes will be made to the Customer email address on file more than two (2) weeks prior to any Agreement change taking effect.

**11. Non-Exclusivity.** The Parties acknowledge and agree that each Party reserves the right to supply or obtain any services or products to or from any other client or source during and after the term of this Agreement.

**12. Limitation of Liability.** EXCEPT SDSC WILL NOT BE LIABLE TO CUSTOMER FOR ANY DIRECT, INDIRECT, SPECIAL, INCIDENTAL, EXEMPLARY OR CONSEQUENTIAL DAMAGES, OR COSTS (INCLUDING, BUT NOT LIMITED TO, ANY COMPENSATION, REIMBURSEMENT, DAMAGES OR COSTS FOR BUSINESS INTERRUPTION; LOSS OF PROFITS, REVENUES, OR BUSINESS GOODWILL; THE INABILITY TO USE THE SERVICES OR DATA FOR ANY REASON; THE UNAUTHORIZED ACCESS TO, ALTERATION OF, OR THE DELETION, DESTRUCTION, DISCLOSURE, CORRUPTION, DAMAGE, LOSS OR FAILURE TO STORE ANY DATA; OR ANY UNANTICIPATED OR UNSCHEDULED DOWNTIME OF ALL OR A PORTION OF THE SERVICES FOR ANY REASON WHATSOEVER), EVEN IF SDSC HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES AND REGARDLESS OF THE LEGAL THEORY UNDER WHICH DAMAGES ARE SOUGHT. **SDSC DISCLAIMS ALL WARRANTIES EXPRESS AND IMPLIED, INCLUDING WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. IN NO EVENT SHALL SDSC'S TOTAL LIABILITY UNDER THIS AGREEMENT EXCEED THE AMOUNT PAID BY CUSTOMER FOR THE SERVICES.**

**13. Disclaimers.** **THE SERVICES ARE PROVIDED "AS IS," CUSTOMER ACKNOWLEDGES THE RISKS INHERENT IN INTERNET CONNECTIVITY THAT COULD RESULT IN THE LOSS OF DATA, PRIVACY, AND CONFIDENTIAL INFORMATION. SDSC MAKES NO REPRESENTATIONS OR WARRANTIES OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE REGARDING SERVICES OR DATA, INCLUDING ANY WARRANTY THAT SERVICES OR DATA WILL BE UNINTERRUPTED, ERROR-FREE OR FREE OF HARMFUL COMPONENTS, OR THAT ANY DATA WILL BE SECURE OR NOT OTHERWISE LOST OR DAMAGED. EXCEPT TO THE EXTENT PROHIBITED BY LAW, SDSC DISCLAIMS ALL WARRANTIES, INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY, SATISFACTORY QUALITY, NON-INFRINGEMENT, QUIET ENJOYMENT, FITNESS FOR A PARTICULAR PURPOSE, AND ANY WARRANTIES ARISING OUT OF ANY COURSE OF DEALING OR USAGE OF TRADE.**

**14. Contacts**
   **The primary contact(s) for all communication to SDSC are:**
   **SDSC Support**:
   Email: support@sdsc.edu

   **SDSC Director of Information Technology Services**
   Ron Joyce
   Associate Director, IT Infrastructure
   Telephone: 858-534-8078
   Email: rjoyce@sdsc.edu

   **SDSC Business Support Contact:**

Kelly Hudson
SDSC Business Office
Telephone: 858-822-5447
Email: k1hudson@ucsd.edu

**SDSC Mailing Address:**
San Diego Supercomputer Center, University of California, San Diego
9500 Gilman Drive, MC 0505, La Jolla, California 92093-0505

**<u>The primary contact(s) for all communication to Customer are:</u>**

*NOTE: It is the customer's responsibility to notify SDSC of any changes to the primary technical or business customer through email sent to support@sdsc.edu*

**Primary California Digital Library Technical Contact**:
Kurt Ewoldsen, Kurt.Ewoldsen@ucop.edu, 510-987-0174

**California Digital Library Business Support Contact:**
Beaumont Yung, Beaumont.Yung@ucop.edu, 510-987-0557

**Customer Mailing Address:**
California Digital Library
University of California
Office of the President
415 20th Street, 4th Floor
Oakland, CA 94612-2901

San Diego Supercomputer Center                          California Digital Library

By: _____                    By: _____

Name: _____               Name: _____

Title: _____                  Title: _____

Date: _____                  Date: _____

## EXHIBIT A
### Service Level Agreement Cost

| California Digital Library's Data Description |
|---|
| 85TB of Dual-Copy Cloud Condo Storage (10 bricks at 8.5TB each for a total of 85TB; one full node). |

| | |
|---|---|
| **Initial Quantity of Storage (TBs):** | 85 |

| | | |
|---|---|---|
| **Number of Nodes needed (85TB per Node)** | 2 | *2 needed for dual-copy |

| | | | |
|---|---|---|---|
| **Cost per JBOD** | $ 8,300.00 | *2 needed for | |
| **Cost per Headnode** | $ 16,860.00 | dual-copy | **Total equipment cost**   $ 67,440.00 |

| | | | |
|---|---|---|---|
| **Maintenance Cost per Brick:** | $1,260.00 | **Total Mainenance for Year 1:** | $12,600.00 |

| | |
|---|---|
| **TOTAL AMOUNT DUE UPON CONTRACT INITIATION:** | $80,040.00 |

*Note: This cost estimate is based on the initial quantity of storage listed above. If Customer exceeds the initial quantity of Storage in any given month, Customer will be invoiced for the overage based on the on-demand rate currently in use at the time of the overage. This rate can be found on the SDSC Cloud website, cloud.sdsc.edu*