

MEMORANDUM OF AGREEMENT

REGARDING THE SHARED PRESERVATION COLLECTION AT THE UNIVERSITY OF TORONTO LIBRARIES DOWNSVIEW FACILITY

PARTIES TO THIS AGREEMENT

1. The Governing Council of the University of Toronto, represented by the University of Toronto Libraries (hereinafter referred to as the “UTL”)
2. Western University, represented by Western Libraries, and
3. McMaster University, represented by McMaster University Library, and
4. Queen’s University at Kingston, represented by Queen’s University Library, and
5. University of Ottawa, represented by University of Ottawa Library.

(hereinafter referred to as the “Parties”)

GIVEN that the Parties seek to share expertise and collaborate in the development of a sustainable long-term solution for management and preservation of the valuable print collections held in our institutions in order to meet our stewardship responsibilities and provide access to these collections for current and future generations of student and faculty researchers and learners;

AND GIVEN that the Parties feel acutely the pressure that these print collections place on library space as we strive to meet growing demands for more study and collaborative learning spaces in our libraries;

AND GIVEN that it is the desire of the Parties to reduce the costs associated with the duplication of Items in the print collections across Party institutions;

AND GIVEN that it is the intention of the UTL to expand its existing high-density storage and preservation facility consisting of two bays at Downsview (hereinafter referred to as the “Downsview facility”) and add three new storage bays housing three million print items;

AND GIVEN that a Productivity and Innovation Fund grant has been received by the UTL from the Ministry of Training, Colleges and Universities for the purchase of racking systems and mechanized vehicles for the three new storage bays at the Downsview facility;

NOW THEREFORE, it is hereby agreed by and between the Parties, subject to the terms of this Agreement, as follows:

- The Parties will strategically collaborate in the development and ongoing management of a Shared Preservation Collection at the Downsview facility supporting the library storage

needs of the Parties by accommodating a single copy of any important but low-usage print Item contributed to this collection by any of the Parties;

- The Parties will use an agreed upon Financial Model to support funding of the Shared Preservation Collection.
- The Parties will have Shared Access to all Items housed in the Shared Preservation Collection at the Downsview facility;

This Memorandum of Agreement (Agreement) between the Parties describes the general terms and conditions as well as the roles and responsibilities of the parties with respect to the operation and governance of the Shared Preservation Collection.

DEFINITIONS

For the purposes of this Agreement:

- Item:** An individual print volume, including both journal and monograph formats.
- Low-use:** All Items in the Downsview facility are low-circulating, as defined by each individual Partner.
- Preservation Copy:** An Item transferred to the Downsview facility by a Party and added to the Shared Preservation Collection including material already housed at Downsview except for rare books, archival collections, and media collections.
- Shared Preservation Copy:** A Preservation Copy that another Party has discarded a local copy of in order to rely on the copy already added to the Shared Preservation Collection.
- Shared Preservation Collection:** Combination of all Preservation Copies and Shared Preservation Copies housed in the Downsview facility.
- Preservation Copy Ownership:** Each Party retains ownership of any Preservation Copy transferred to the Downsview facility, but cedes ongoing Operational Control of these items to UTL, and Administrative Control to the Parties, subject to the terms of this Agreement.
- Shared Preservation Copy Ownership:** Ownership of a Shared Preservation Copy is shared between the Party who transferred it to the Downsview facility and any Party who has discarded a local copy in order to rely on the copy already added to the Shared Preservation Collection. Ongoing Operational Control of these items is ceded to UTL, and Administrative Control is ceded to the Parties, subject to the terms of this Agreement.
- Operational Control:** UTL will provide management of the Downsview facility operations and operational control of the Shared Preservation Collection in accordance with UTL policy and procedure.
- Administrative Control:** Management and governance of the Shared Preservation Collection will be provided by the Parties as per the terms of this Agreement.
- Shared Access:** All Parties will have continued access to all Items added to the Shared Preservation Collection.

- k. **Capital Cost:** Net cost representing the total Project Construction Cost minus the PIF funding received.
- l. **Operational Cost:** Is defined in Annex A
- m. **Transportation Cost:** Is defined in Annex A

SCOPE OF AGREEMENT

The scope of this Agreement includes:

- the management and governance of the Shared Preservation Collection at the Downsview facility.
- the terms of ownership for the Preservation Copies and Shared Preservation Copies that make up the Shared Preservation Collection at the Downsview facility.
- the financial model for supporting the Shared Preservation Collection at the Downsview facility.
- the policies and procedures for transferring materials to the Shared Preservation Collection at the Downsview facility.
- the policies and procedures for providing digital or physical delivery of Items housed in the Shared Preservation Collection at the Downsview facility to the Parties.

This Agreement does not cover archives, rare books, non-print formats, or items that a Party is unwilling to allow to circulate or to become a Shared Preservation Copy.

NATURE OF THE RELATIONSHIP

The Parties are independent institutions, coming together solely for a specific purpose, as described herein. Notwithstanding the use of the terms Partner and Partnership in this MOA or other documents, nothing in this Agreement creates, or is intended to create, an agency, partnership, joint venture, employee-employer, or franchisor-franchisee, relationship between the Parties pursuant to any legislation or common law rule(s). This MOA does not create a legal partnership between the Parties, and the Parties' joint activities described herein are not subject to the Ontario Partnerships Act or any other legislation or common law rules governing legal partnerships of any kind.

MANAGEMENT AND GOVERNANCE

Robust management and governance are essential for the success of this collaboration. Leadership and management responsibility for the Shared Preservation Collection will be provided by the Steering Committee, which is composed of the University Librarian or equivalent of each Party. A standing Coordinating Committee, consisting of each Party's Associate University Librarians for Collections or their equivalent shall provide advice and recommendations to the Steering

Committee on operational and collection management aspects of the Shared Preservation Collection and the terms of this Agreement. The Steering Committee may, as deemed necessary, establish other working groups or committees composed of representatives from each Party to facilitate the implementation of this Agreement.

RESPONSIBILITIES OF THE PARTIES

Based on protocols established in this Agreement, UTL will be responsible for:

- ownership of the Downsview facility
- management of the Downsview facility operations
- insurance of the Downsview facility and of Items housed in the Shared Preservation Collection
- operational control of the Shared Preservation Collection
- reporting to each other Party the total Capital Cost upon completion of construction for the purpose of establishing the total capital costs to be shared by the Parties
- providing annual non-audited financial reports on operating costs to each other Party
- providing annual invoices to the other Parties for their share in the financial support of the Shared Preservation Collection, which shall be paid to UTL by each Party (Annex A)
- ingesting Items into the Shared Preservation Collection
- updating the UTL catalogue with all Items transferred to the Shared Preservation Collection
- providing annual reports to each Party of Preservation Copies and Shared Preservation Copies housed in the Shared Preservation Collection

Based on protocols established in this Agreement, all Parties, including UTL, will be responsible for:

- management of the policies governing the Shared Preservation Collection
- carrying out item level validation of Items being transferred to the Shared Preservation Collection
- providing accurate holding records for Items being transferred to the Shared Preservation Collection as Preservation Copies or discarded in favour of a Shared Preservation Copy already housed in the Shared Preservation Collection

updating holdings in their catalogues to reflect Preservation Copies or Shared Preservation Copies housed in the Shared Preservation Collection (and continue to reflect these holdings in statistical reporting)

LIABILITY

UTL's liability for damage to content shall be limited to that measure of recovery actually obtained from insurers. The Parties acknowledge that such measure of recovery will be reduced by the

application of a deductible and library material obsolescence factors. Parties agree to share equitably in the disposition of any insurance proceeds at the discretion of UTL and its insurers. The Parties agree that any UTL insurance proceeds shall be used first for the restoration and/or replacement of buildings and fixtures and second for the restoration and/or replacement of items housed in the Shared Preservation Collection.

FINANCIAL MODEL

- The Shared Preservation Collection will be supported by funding from the Parties as specified in the Financial Model described in Annex A, approved and reviewed annually by the Steering Committee. Each Party commits to provide funding for the Capital Costs as detailed in Annex B, for the full twenty year term of this Agreement. All participating libraries will share the Operating Costs of ingest, ongoing storage, and service according to a model to be approved by the Steering Committee and ending on Termination of the Agreement or withdrawal from the project. Each Party shall be responsible for payment of its annual invoice provided by UTL under this agreement.

NEW MEMBERS

The Steering Committee may decide on provisions for adding new parties at a later date.

TERMINATION OF, OR ADJUSTMENTS TO, THIS AGREEMENT

A Party considering withdrawal from the project before the end of this Agreement shall provide written notice to the Steering Committee no less than twelve (12) months prior to the date they wish to withdraw. Shared Preservation Copies in the Shared Preservation Collection cannot be removed by a withdrawing Party without the consent of all other Parties. If a Party that withdraws from the project wishes to have continued access to items deposited to the Shared Preservation Collection during its term of participation, access will be granted subject to fees (including but not limited to, for example, ongoing Capital Cost or Operating Cost payments) and terms that are set by the Steering Committee.

The Shared Preservation Collection collaboration, and this Agreement, can be terminated at any time if all of the Parties agree mutually to its termination. Should this Agreement be terminated prior to the expiry of its stated Term, all Parties will fulfill the outstanding financial obligations for the Capital Cost payments for the remainder of the full twenty year term and will continue to have access to the Shared Preservation Collection. The Coordinating Committee shall, within 24 months following the signing of this Agreement, draft a proposed process for termination for review by the Steering Committee.

The Steering Committee is responsible for this Agreement. Any member of the Steering Committee may request a review of this Agreement.

APPLICABLE RULES

Ongoing management of the Downsview facility shall be governed in accordance to the University of Toronto policies and procedures, which may be changed from time to time.

Ongoing management of the Shared Preservation Collection shall be governed in accordance with policies agreed upon by the Steering Committee. Proposed changes to policies or procedures which would affect the Downsview Shared Preservation Collection shall be discussed by the Coordinating Committee prior to implementation and recommendations forwarded to the Steering Committee for approval.

FORCE MAJEURE

None of the Parties shall be in default hereunder by reason of delays in the performance of or failure to perform any of its obligations hereunder, if such delay or failure is caused by strikes, acts of God or public enemies, riots, incendiaries, interference by civil and military authorities, compliance with governmental laws, rules and regulations, or any failure beyond the reasonable control of that Party, and without fault or negligence.

GENERAL

This Agreement shall be governed by the laws of the Province of Ontario.

This Agreement shall not be assignable by any Parties without the prior written consent of all the other Parties.

The failure of any Parties to enforce any provision of this Agreement or to require performance by any other Parties of any provision hereof shall not be construed to be a waiver of this Agreement or any part hereof or the right of any Parties thereafter to enforce each and every provision in accordance with the terms of this Agreement.

This Agreement may only be amended or varied by the mutual written agreement of all Parties.

This Agreement constitutes the entire understanding between the Parties in relation to the matter herein described and supersedes all previous written or oral communication, understandings and agreements between the Parties unless specifically stated herein.

DISPUTE RESOLUTION

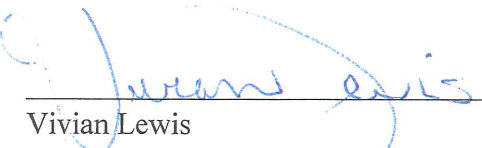
In the event of any dispute arising out of the interpretation of this Agreement, such dispute shall be submitted to arbitration in accordance with the provisions of the Arbitrations Act, R.S.O. 1990, Chap.A.24, and any amendments thereto.

TERM OF THIS AGREEMENT

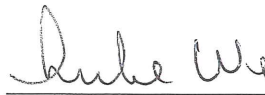
The effective date of this Agreement is the date it is signed by all five Parties and will remain in full force and effect for 20 years thereafter (Term) , subject to the provisions set out in the Termination article of this Agreement.

IN WITNESS WHEREOF, the undersigned, being duly authorized thereto, have signed the present Memorandum of Understanding in five sets of originals.


Larry Alford
Chief Librarian
University of Toronto



Vivian Lewis
University Librarian
McMaster University


Catherine Steeves
Vice-Provost & Chief Librarian
Western University


Leslie Weir
University Librarian
University of Ottawa


David Wilkinson
Provost and Vice President Academic
McMaster University


Janice Deakin
Provost and Vice President Academic
Western University


Martha Whitehead
Vice-Provost and University Librarian
Queens University

ANNEX A

There are three components to the Project Costs: Capital costs, Operating costs and Transportation costs.

Definitions:

1. Capital costs: Total construction costs for the three new bays at the UTL Downsview facility, net of the PIF grant received to fund the purchase of racking and mechanized vehicle (See Annex B).

The Capital cost per volume will be paid over 20 annual payments .

First payment will begin on year of ingestion and will include a catch-up payment if necessary.

Shared Preservation Collection includes all items in the UTL Downsview facility, that Capital costs for any item in the facility is calculated based on the construction cost of the three new bays and does not consider the higher per item Capital cost of the items in the first two bays. It doesn't matter where the items are shelved. It's about a shared print preservation collective. We have built a costing model at the item level and used the cost of the new construction which was required to house any materials all Parties might send as the basis for the Capital cost portion of the per item cost.

2. Operating costs: Any direct costs for operating the facility for a fiscal year. Categories of expenses are presented in Annex B;
3. Transportation costs as determined by the Service Committee, which will change from time to time.
4. Fiscal year will be from May 1st to April 30th.

Parties will only pay for actual usage in a given year and the costs will be calculated and paid annually. (see example in Annex C).

Parties will only pay for actual usage when materials begin to ship to the Downsview Facility and no matter when it has been shipped during the fiscal year.

UTL will provide, every year before the billing process, to each Parties an inventory report of their ownership of the Shared Preservation Collections.

UTL will provide unaudited financial statements (Annex B) to the Parties on an annual basis within three months after the end of the fiscal year.

ANNEX B
UTLD - HIGH DENSITY STORAGE (DOWNSVIEW 5)
COST ESTIMATES
Revised June 6, 2016

	Amount
<u>(A) CAPITAL COSTS</u>	
Total Project Cost for 3 new bays (not including land value)	\$10,128,000
Estimated Construction Surplus	-\$965,000
PIF Funding received (for racking)	-\$2,291,000
Net Total capital cost for 3 bays, not including land value	\$6,872,000
Volume (# of books planned)	3,000,000
Capital Cost per volume	\$ 2.29
Amortized on 20 years	\$ 0.115
<u>(B) OPERATING COSTS (annual)</u>	
Direct Costs (Note 1)	
Salaries - Casual (incl benefits)	\$27,000
Salaries - 3 FTEs (incl benefits)	\$247,000
Equipment	\$2,000
Telephone	\$2,000
Operating costs	\$224,700
Supplies (tray and barcode)	\$14,740
Other	\$2,000
Photocopier Printers	\$1,000
Total	\$520,440
Volumes (capacity of the 3 new bays)	3,000,000
Operating Costs per volume	\$0.170
<u>(C) TRANSPORTATION</u>	
Courrier Cost / item	\$ -
Transportation Costs per item transfered	\$ -

Notes:

1. Base year = 2014/15. Subject to increases in 2015-16 and future years. This is for existing 2 bays and the volume processed = 220,000.
2. Supplies (tray and barcode) - based on 2015 actual
3. Base on UofT - Actual will depend on COU courier arrangement.
4. 4 FTE less 1 FTE to reflect 1 FTE assigned to maintain UTL's existing 2 million volume in pod 1 & 2 (\$311,000 less \$64,000 = \$247,000)
5. Operating costs include-utilities, insurance, cleaning, building fabric repairs, building operations (M&E), deferred maintenance, shared services (fire, secure/police, grounds, etc.) 2675 GSM for the new addition. Operating costs of \$84/GSM = \$224,700

ANNEX C
 DOWNSVIEW PROJECT
 FINANCIAL MODEL
 EXAMPLE WITH SHARED OWNERSHIP IN YEAR 3 - 5
 Revised June 6, 2016

VOLUMES for one University		Year 1	Year 2	Year 3	Year 4	Year 5
At beginning of year		-	10,000	30,000	70,000	150,000
Plus:						
Transferred to Downsview + Discarded from the University's Collection		10,000	20,000	40,000	80,000	
At ending of year - cumulative (See note 1)		10,000	30,000	70,000	150,000	150,000
COSTS		A	B	C	D	E
Capital (see note 1 and 2)	F	G	H	I	J	K
Ownership - Unique (see note 3)	\$ 0.1150	100% \$ 1,150	100% \$ 3,450	90% \$ 7,245	95% \$ 16,445	95% \$ 16,445
Ownership - Shared with 2 (see note 4 and 7)	\$ 0.0575	0% \$ -	0% \$ -	10% \$ 403	5% \$ 403	5% \$ 403
Ownership - Shared with 3	\$ 0.0383	0% \$ -	0% \$ -	0% \$ -	0% \$ -	0% \$ -
Ownership - Shared with 4	\$ 0.0288	0% \$ -	0% \$ -	0% \$ -	0% \$ -	0% \$ -
Ownership - Shared with 5	\$ 0.0230	0% \$ -	0% \$ -	0% \$ -	0% \$ -	0% \$ -
Capital Cost Formulas		100% \$ 1,150	100% \$ 3,450	100% \$ 7,648	100% \$ 16,848	100% \$ 16,848
Prior Year(s) Adjustment for Volumes Transferred (see note 5)	L	LaF	LsP	LaF	LsP	LaF
Volumes transferred in Year 1	0	\$ -	\$ -	\$ -	\$ -	\$ -
Volumes transferred in Year 2	20,000	\$ -	\$ 2,300	\$ -	\$ -	\$ -
Volumes transferred in Year 3	40,000	\$ -	\$ -	\$ 9,200	\$ -	\$ -
Volumes transferred in Year 4	80,000	\$ -	\$ -	\$ -	\$ 27,600	\$ -
Volumes transferred in Year 5	0	\$ -	\$ -	\$ -	\$ -	\$ -
Prior Year Adjustment Formulas		\$ -	\$ 2,300	\$ 9,200	\$ 27,600	\$ -
Operating	M	AM	BM	CM	DM	EM
Operation Cost Formulas - Unique (see note 6)	\$0.1700	100% \$ 1,700	100% \$ 5,100	90% \$ 10,710	95% \$ 24,309	95% \$ 24,309
Operation Cost Formulas - Shared with 2 partners	\$0.0850	0% \$ -	0% \$ -	10% \$ 595	5% \$ 595	5% \$ 595
Operation Cost Formulas - Shared with 3 partners	\$0.0567	0% \$ -	0% \$ -	0% \$ -	0% \$ -	0% \$ -
Operation Cost Formulas - Shared with 4 partners	\$0.0425	0% \$ -	0% \$ -	0% \$ -	0% \$ -	0% \$ -
Operation Cost Formulas - Shared with 5 partners	\$0.0340	0% \$ -	0% \$ -	0% \$ -	0% \$ -	0% \$ -
Transportation (assumed using existing courier arrangement at no additional cost and based on transferred items by year only)	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Operating Cost Formulas		100% \$ 1,700	100% \$ 5,100	100% \$ 11,305	100% \$ 24,905	100% \$ 24,905
Estimated Total Cost		\$ 2,850	\$ 10,850	\$ 28,153	\$ 69,352	\$ 41,752

Notes:

- This model has been simplified for discussion purposes; only shows shared ownership with 1 partner and further details can be discussed later. Assume first, second, third and fourth year volumes transferred to UTLD as 10,000; 20,000; 40,000; 80,000; and 0- for the fifth year - respectively, to simplify illustration. Fifth year is showing 0- additions to Downsview to illustrate the effect of no catch up for capital cost. It is assumed that these volumes are the 1st copy of a specific title transferred to Downsview.
- G, H, I, J and K represent estimated % of type of ownership for one University sharing with one other institution at the end of a fiscal year, assuming shared ownership for this model.
- F (capital cost per volume) = Annex B: per volume cost is \$2.29 amortized over 20 annual payments of \$0.115 per volume.
- Shared % represents the same 7,000 volumes (10% x 70,000) shared starting in year 3 up to year 5, to simplify illustration.
- Number of books transferred to UTLD in years after year 1 will have to pay catch up payments for the number of years since year 1. Since the capital cost per volume is \$2.29, only volumes in the first year will will attract 20 payments of \$0.115 (\$0.115x20=\$2.29). Volumes transferred to UTLD in subsequent years will have less than 20 payments, therefore, it is necessary to have "catch up" payments for the years of payments (\$0.115 per volume) that have been missed since year 1. The model assumes the University that sends the 1st physical copy (as per Note 1) to Downsview is responsible for applicable catch up payments. No catch up payments are levied on institutions that subsequently decide to share the same item. For example, year 3 shows 40,000 volumes transferred to Downsview by the University and is fully charged a catch up payment of \$9,200 (40,000x\$0.115 per volume x 2 years missed) for year 1 and year 2, whether or not any of these 1st copies are deemed to be shared in year 3.
- M = Annex B
- Amounts have been rounded to emphasize numbers and simplify model.