**AGREEMENT**

**BETWEEN:**

The Trustees of Indiana University (“IU”)

1320 E 10th Street

Bloomington, Indiana 47405

812-855-0953

Attn: Jon W. Dunn

### AND

OASIS Open Development Foundation, LLC, Samvera Foundation Series (“Samvera”)

400 TradeCenter, Suite 5900

Woburn, Massachusetts 01801

 781-425-5073

Attn: Heather Greer Klein

Hereinafter the Parties, IU and Samvera, agree to the following terms and conditions:

**1. Purpose and Intent**

* 1. IU Libraries has been a partner in the Samvera open-source repository community since 2012. IU uses Samvera-based open-source software as the basis for several of its digital repository services, and the Samvera partner relationship is an essential part of IU’s work in development and support of digital repositories for research and collections.
	2. IU uses the Samvera community’s Hyrax software as the primary front-end for many its repository projects, and IU developers actively contribute to the open-source Hyrax code base. IU software engineer Daniel Pierce has been an active member of the Hyrax Maintenance Working Group since 2018 and is quite familiar with the code.
	3. The governing Board of Samvera has solicited a commitment from a Samvera partner institution to provide time from an existing software engineer familiar with Hyrax to serve in the community role of Hyrax Technical Lead, to lead the technical architecture and vision for Hyrax and serve as a key resource for the Hyrax Maintenance Working Group on issues of technical design and architecture for issue fixes and code integrations, in return for funding to cover that engineer’s time spent in this role.
1. **Time Schedule; Term**

The Term of this Agreement shall be from July 1, 2022 through June 30, 2023. At the conclusion of the Term, the parties may agree to amend this Agreement to extend beyond the original Term.

1. **Services rendered**

During the agreed upon time, Daniel Pierce will spend 1/3 or 33% of his work time performing the duties of the Hyrax Technical Lead position, as agreed upon by IU and Samvera. This work will be directed by the Samvera Community Manager in consultation with IU and Samvera partners.

1. **Payment for Services and Expenses**

Samvera shall pay IU a maximum of $40,000 for the time spent by Daniel Pierce performing the duties of the Hyrax Technical Lead position during the term of this agreement. IU will submit invoices to Samvera on a monthly basis,

1. **Taxes**

IU has sole responsibility for the payment of all applicable taxes (income, payroll, unemployment, etc.) relating to IU and IU’s employees arising from payments received under this Agreement.

1. **Insurance/Injuries**
	1. IU and Samvera each have sole responsibility and liability under this Agreement for bodily injuries to their respective employees, including responsibility to provide appropriate Workers Compensation insurance. IU and Samvera hereby warrant individually that they are in compliance with any applicable workers compensation insurance law.
	2. IU and Samvera each have sole responsibility to obtain any other desired insurance coverage (liability, medical, travel, life, etc.) for their respective employees in performing this Agreement.
	3. Neither IU’s nor Samvera’s employees, workers, or subcontractors shall be deemed employees or agents of the other Party for any purpose whatsoever, nor shall they be eligible to participate in any of the other Party’s employee benefit or insurance programs.
2. **Confidentiality**
	1. Except as required by law, IU and Samvera individually agree not to discuss any performance of services under this Agreement with any third party without written consent from the other Party. Notwithstanding the foregoing, Samvera acknowledges and agrees that IU is subject to Indiana’s Access to Public Records Act (APRA), I.C. 5-14-3 et seq., and that disclosure of some or all confidential information provided pursuant to this Agreement, or the Agreement itself, may be compelled pursuant to that law. IU agrees that, upon receipt of a request for confidential information made pursuant to the APRA, it shall (a) promptly notify Samvera of the fact and content of the request, (b) consult with Samvera regarding any legitimate basis on which it might resist or narrow its response to the request, and (c) disclose only information that IU, in the opinion of its legal counsel, is legally compelled to disclose.

**8. No Assignment or Subcontracting**

Neither Party shall assign its rights or obligations under this Agreement, in whole or in part, nor enter into any subcontract to perform any portion of this Agreement, without the written consent of the other Party.

**9. Rights to Works and Inventions**

The copyright in works produced by Daniel Pierce in his capacity as Hyrax Technical Lead is held by The Trustees of Indiana University, which reserves all rights therein. However, all works produced in this capacity are licensed by IU as open-source software under the Apache License, Version 2.0 (<https://github.com/samvera/hyrax/blob/main/LICENSE>) for use in the Samvera codebase and other products as allowed under the license.

1. **Termination**

10.1 Samvera or IU may terminate this Agreement at any time upon thirty (30) days’ written notice to the other party for any reason. In the event of such a termination, IU will be paid fees and expenses incurred for services performed in accordance with this Agreement up to the date of termination.

10.2 This Agreement may be terminated immediately by either Party in the event of a breach of the provisions herein by the other Party. The non-breaching Party shall retain its rights as to any legal remedies or damages that are provided under the governing law.

10.3 This Agreement may be terminated by either Party in the event of any intervening “force majeure” (natural disaster, war, etc.) recognized under the governing law. In the event of such a termination, IU will be paid fees and expenses incurred for services performed in accordance with this Agreement up to the date of termination.

1. **Indemnification**

Samvera agrees to defend, indemnify, and hold harmless, at Samvera ’s expense, IU and any of its affiliates or subsidiaries, and all of their respective trustees, officers, agents, employees, and affiliated entities, from and against any and all claims, liabilities, loss, damages, or expenses, including attorneys’ fees, incurred by IU in connection with any third-party claim, action, demand, suit, or proceeding arising out of or related to an allegation that use of any code developed under this agreement infringes upon or violates the copyrights or other intellectual property rights of a third party.

1. **Limitation of Liability**

To the extent permitted by applicable law, and regardless of the legal basis for the claim(s), IU shall not be liable for any indirect, consequential, exemplary, punitive, special, or incidental damages, or damages for lost profits or revenues, arising under or in connection with this Agreement, even if advised of the possibility of such damages or if such possibility was reasonably foreseeable. Nothing contained herein shall operate as a limitation on the right of either party hereto to bring an action for damages against any third party, including claims for indirect, special or consequential damages, based on any acts or omissions of such third party. In no event shall IU’s liability to Samvera under this Agreement exceed the aggregate amount of fees paid to IU from Samvera during the six (6) month period immediately preceding the event giving rise to such damages.

1. **Replace**

13.1 This Agreement supersedes any and all other agreements, oral or written, between IU and Samvera with respect to the subject matter hereof, and no agreement, statement, or promise relating to the subject matter of this Agreement other than that which is contained herein shall be binding upon the Parties.

13.2 This Agreement may not be amended except by written agreement of the Parties.

IN WITNESS WHEREOF, the Parties hereto have duly executed this Agreement by their authorized representatives below:

**THE TRUSTEES OF INDIANA UNIVERSITY** **OASIS Open Development Foundation, LLC, Samvera Foundation Series**

Signature Signature

Printed Name Printed Name

Title Title

Date Date