

## **Terms of Service**

### **eScholarship, a service of California Digital Library**

**California Digital Library (CDL)** is part of the University of California (UC), a public university governed by the Regents of the University of California. CDL exists to support the UC community's pursuit of scholarship and to extend UC's public service mission. It is subject to policies promulgated by the UC Office of the President as well as policies specific to CDL, including the CDL Privacy Policy. [A list of relevant policies, which may be updated from time to time, can be found on the CDL website.](#)

CDL provides services to users inside and outside the UC community in support of the research life cycle. One of these services is **eScholarship**, UC's open access repository and publishing platform. By using eScholarship, the Department, Academic Unit, or Journal (**User**) hereby agrees to the terms and conditions below.

#### **1. eScholarship Services**

**1.1. Service availability and support.** CDL will make reasonable efforts to provide continuous service. CDL tracks downtime and will report past downtime on the CDL website on an annual basis. User recognizes that eScholarship Services may occasionally be suspended or interrupted due to the installation or testing of software, server maintenance, and downtime related to the failure of equipment or services outside the control of CDL. Scheduled downtime is performed at a time to minimize inconvenience to Users, and CDL will provide advance notice to Users of scheduled downtime. CDL provides Users with instructional materials and help-desk support for the use of eScholarship.

**1.2. Preservation of User content.** CDL aims to provide the highest level of preservation for User's content, as defined by commonly-accepted community standards and best practices, that is consistent with the form, structure, and packaging of the managed digital content, the degree to which that content is accompanied by authoritative and comprehensive metadata, the availability of appropriate tools, and organizational priorities. Note that this implies a continuum of preservation outcomes dependent on the nature of the content submitted by User and the nature of the CDL Service, although at a minimum, CDL is committed to providing bit-level preservation of all content. CDL can provide consultation and guidance on ways to acquire or create digital content in a manner that is most amenable to the highest level of future preservation service.

**1.3. Notification of fees.** eScholarship does not currently charge fees for any of its services. If in the future CDL determines that fees will be required for any aspect of eScholarship Services, CDL will attempt to provide at least six months notice before fees are due for new content or a new eScholarship Service. If a User wishes to stop using an eScholarship Service because it is changing from a free service to one that charges fees, the User can notify CDL and work with CDL for the return of deposited content as described in Section 4.2.

## **2. User responsibilities**

**2.1. Maintenance of communication.** User will respond to CDL e-mail and phone calls, and CDL will respond to User e-mail and phone calls, within a reasonable time. User will notify CDL promptly when there are changes to User's contact information, or to other information about User – including staffing, organizational structure, or technical infrastructure – that is necessary for CDL to continue providing eScholarship Services to User and its end users effectively.

**2.2. Rights of third parties.** User agrees that its use of eScholarship Services will not: cause infringement of any copyrights or trademarks, violate any proprietary rights or libel laws, or invade the privacy of any person or third party. As part of this responsibility, User will obtain permissions from authors whose work they deposit in eScholarship. eScholarship has a sample agreement form that User can adapt for this purpose.

**2.3. Other responsibilities.** User agrees to abide by eScholarship policies. Information about eScholarship Policies is available at <https://escholarship.org/policies> and <https://help.escholarship.org/>.

## **3. What CDL can do with User's content**

**3.1. Actions necessary for preservation and access.** User gives CDL permission to undertake any copying or distribution of User content that is appropriate to enable CDL to undertake its obligation to preserve User content as described in Section 1.2 above, and to publish, reproduce, publicly display, publicly perform and distribute content designated for public display; this includes but is not limited to format migration.

**3.2. No commercial use.** CDL does not sell User content, sell access to User content, or otherwise use User content in profit-generating activity without express permission from User.

**3.3. Public access.** In certain circumstances such as withdrawn articles or articles that are still in the submission review process, eScholarship preserves User content in with restricted access (accessible only to User and to others designated by User but not to the public). In such circumstances, CDL respects User's instructions regarding who may access User content in eScholarship Services.

**3.4. Use of metadata.** CDL may make unlimited use of factual information describing publicly available content that User provides to CDL, provided that CDL retains the part of the description indicating that User is the source or owner of the content. CDL makes reasonable efforts to comply with the [UC Libraries Metadata Sharing Policy](#) and the [CDL Privacy Policy](#) when sharing this information. Content that User has instructed CDL to treat as sensitive or private will not be shared outside CDL, but CDL may make factual information describing that content available to the extent that such information can be shared without disclosing information User has instructed CDL not to disclose.

**3.5. User selection of CDL Services.** CDL will not sign User up for additional CDL Services without User's direction. User will select which CDL Services to use, and opt in to those CDL Services by notifying CDL, providing required information, and paying relevant fees.

**3.6. Response to legal demands.** CDL responds to properly vetted records requests as described in the [CDL Privacy Policy](#), to takedown requests that comply with the Digital Millennium Copyright Act (DMCA) as described in [CDL's DMCA information](#), and to other requests as required by state and federal law and UC policy. CDL will notify User if User content is affected by or is the subject of such a demand.

#### **4. This agreement**

**4.1. Modification.** CDL may modify these terms from time to time. CDL will notify User at least 60 days before any modifications become effective.

**4.2. Term and termination.** This agreement will remain effective until terminated by User or CDL. Either CDL or User may terminate User's use of eScholarship, and agreement to these terms, with 60 days notice. User content deposited with eScholarship for long term preservation without recurring fees is subject to CDL's responsibilities described in section 4.3. In all cases, CDL will accommodate User requests to return a copy of User content deposited with eScholarship to User within a reasonable time. An export fee may be charged for providing such copies to User, in order to cover CDL's reasonable costs in providing the export. CDL is not obligated to continue preserving User content once a copy has been returned to User as a result of the termination of this agreement.

**4.3. Disposition of certain content in the event of termination or change in service terms.** eScholarship is designed to provide long term or permanent preservation of deposited content without recurring fees. If conditions arise in which CDL decides to discontinue these Services, or begins charging for them as described in Section 1.3 leading to a decision by User to stop using them, CDL will attempt to contact User to arrange the return of User content or the transfer of User content to a new service provider within a reasonable time. If CDL is unable to contact User after 60 days or User does not wish to have the content transferred, CDL will consider User's content abandoned. CDL will follow available commonly-accepted community standards and best practices to determine whether and how to find an alternative service to support abandoned User content.

#### **5. Miscellaneous**

**5.1. Warranty disclaimer.** CDL makes no representations or warranties with respect to any of its services or products, and disclaims any liability arising out of User's use of eScholarship Services.

**5.2. Limitations of Liability.** Neither party shall be liable for any indirect, special, incidental, punitive or consequential damages arising out of User's use of eScholarship Services pursuant

to this Agreement. Liability for direct damages is limited to the dollar amount of the fee paid for the service.

**5.3. Indemnification.** User shall indemnify, defend, and hold harmless CDL, its officers, employees, and agents from and against any liability and damages, including any reasonable attorney's fees, that arise from the exercise of this Agreement. No limitation of liability set forth elsewhere in this agreement applies to this indemnification; further, this indemnification shall survive the termination of this agreement.

**I have the authority to enter into this agreement on behalf of the unit or organization I represent, and I agree to these terms.**

**Agreed and Executed on Behalf of Academic Unit or Organization:**

Name of Unit/Organization: \_\_\_\_\_

Organization's Authorized Representative (e.g., chair of department, director of ORU):

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Signature: \_\_\_\_\_

Date: \_\_\_\_\_

Email: \_\_\_\_\_

Phone: \_\_\_\_\_

**Agreed and Executed on Behalf of California Digital Library, governed by the Regents of the University of California**

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Signature: \_\_\_\_\_

Date: \_\_\_\_\_

California Digital Library