

Digital Commons Advanced Administrator Toolkit Services Agreement

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This Digital Commons Advanced Administrator Toolkit Services Agreement (the “Agreement”) governs your use of our Digital Commons Advanced Administrator Toolkit (the “Toolkit”).

Bepress offers these services at its discretion and to those Users it deems to be eligible. By using the Toolkit or by indicating your agreement in a click-through form, an email or by any other means, you and we (the "Parties") agree to the terms of this Agreement.

The words "you" or "your" in this Agreement, whether capitalized or lowercase, mean the User who is accepting this Agreement. All references to "us," "we," or "our," whether capitalized or lowercase, mean Internet-Journals, Inc., a California corporation doing business as "bepress." Other definitions are found in Appendix A, or within the text below.

1. You agree to be trained by bepress in how to use the Toolkit.
2. Use of Services
 - a. During the term of this Agreement, you have a non-transferable, nonexclusive license to use and access the Toolkit.
 - b. You will not share your login with others, nor allow others to use your bepress account.
 - c. You will be responsible to comply with this Agreement and not use the Services in ways that violate the personal, privacy, intellectual property, or other rights of third parties.

3. Consulting Services

As part of this Agreement, we will provide you with consulting services, which includes both technical assistance with software and general advice to aid you in setting up sites, operating the software or otherwise using the Services.

You will be responsible for uploading any documents and metadata using our web forms or batch facilities.

4. Property Rights

We own all rights to the software used to provide the Services. You acknowledge and agree that the copyright, patent, trade secret, trademark and all other intellectual property rights of whatever nature made available to you by us shall remain our property, and nothing in this Agreement should be construed as transferring any portion of those rights to you or any third party. You will not reverse engineer our products or use them to create competing products.

5. Term and Termination

- a. The Agreement will continue in effect until your institution stops subscribing to Digital Commons, unless the Agreement is terminated earlier by you or us.
 - a. You or we may terminate the Agreement at any time.
 - b. For you to terminate the Agreement you must stop using the Toolkit and provide us notice of termination
 - c. For us to terminate the Agreement, we will provide you with notice of termination and terminate your access to the Toolkit.

6. Fees

There are no fees associated with this Agreement unless fees are specified in an ordering document.

7. No Warranty

WE PROVIDE ANY SERVICES ON AN "AS IS" BASIS. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, WE EXPRESSLY DISCLAIM ANY AND ALL REPRESENTATIONS AND WARRANTIES, EITHER EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE WITH RESPECT THERETO, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

8. Indemnification

- a. **Indemnification by Us.** We will defend You against any claim, demand, suit or proceeding made or brought against You by a third party alleging that the use of the Services in accordance with this Agreement infringes or misappropriates such third party's intellectual property rights (a "**Claim against You**"), and will indemnify You from any damages, attorney fees and costs finally awarded against You as a result of, or for amounts paid by You under a court-approved settlement of, a Claim against You, provided You (a) promptly give Us written notice of the Claim against You, (b) give Us sole control of the defense and settlement of the Claim against You, and (c) give Us all reasonable assistance, at Our expense. If We receive information about an infringement or misappropriation claim related to a Service, We may in Our discretion and at no cost to You (i) modify the Service so that it no longer infringes or misappropriates, (ii) obtain a license so that You can continue to use that Service in accordance with this Agreement, or (iii) terminate Your subscriptions for that Service upon 30 days' written notice and refund You any prepaid fees covering the remainder of the term of the terminated

subscriptions. The above defense and indemnification obligations do not apply to the extent a Claim against You arises from Content or Your breach of this Agreement.

- b. This Section 8 states the indemnifying party's sole liability to, and the indemnified party's exclusive remedy against, the other party for any type of claim described in this Section 8.

9. Limitation of Liability

NEITHER PARTY'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT WILL AT ANY TIME EXCEED THE FEES HEREUNDER FOR THE 12 MONTHS PRECEDING THAT TIME. THE ABOVE LIMITATION WILL APPLY WHETHER AN ACTION IS IN CONTRACT, TORT, OR OTHERWISE AND REGARDLESS OF THE THEORY OF LIABILITY. THE ABOVE LIMITATION APPLIES TO ANY INDEMNITIES OR WARRANTIES.

10. Scope of License

You cannot use the Toolkit outside the scope of your institution's Digital Commons license. You cannot use the Toolkit to compete with other bepress products. A current list of such products is provided in Appendix B. The Toolkit cannot be used to create structures for other institutions or organizations outside of your Digital Commons license, nor can it be used to create a collection for an individual person. We reserve the right to take down materials or structures that violate this Agreement. To avoid this, we encourage you to ask bepress whether a contemplated usage is within the scope of this Agreement.

11. Entire Agreement

Both Parties agree that the making, execution, and delivery of this Agreement has not been induced by any promises, representations, warranties or agreements other than those herein expressed. This Agreement embodies the entire understanding of the Parties and supersedes any previous agreements or understandings, written or verbal, in effect between such Parties relating to the subject matter thereof. It is expressly agreed that, except as may be specified herein, the terms of this Agreement may be amended or modified only by a written instrument that is signed by duly authorized officers of both Parties (an "Amendment"), and that with respect to any order of our services, the terms of this Agreement shall supercede any conflicting terms in any purchase order, Order Form, procurement internet portal, or other similar document that is not signed by duly authorized officers of both Parties.

12. Assignment

Neither party may assign any of its rights or obligations under this Agreement, without the other party's prior written consent (which is not to be unreasonably withheld); except that, this Agreement (including Order Forms) may be assigned by either party, without the other party's consent, in connection with a merger of the assigning party, a sale of all or substantially all of the assigning party's assets (or in our case, the sale of all or substantially all of the assets specific to our Digital Commons business), or a corporate reorganization of the assigning party (each a "Qualified Transaction"). This Agreement will bind the Parties and their respective successors and permitted assigns. If a Qualified Transaction by you increases the number of potential Users, we reserve the right to change the price of the

Services effective at the time the Qualified Transaction closes in accord with the increase in potential Users.

13. Severability

If any provision of this Agreement is held by a court of competent jurisdiction to be contrary to law, the provision will be deemed null and void, and the remaining provisions of this Agreement will remain in effect.

Appendix A: Definitions

"**Agreement**" means this Bepress Services Agreement.

"**Content**" means the files and associated metadata that you publish on websites created with the Services.

"**Fee(s)**" means the fee set forth above or in an ordering document.

"**Order Form**" means an ordering document specifying the Services to be provided hereunder that is entered into between you and us, including any addenda and supplements thereto.

"**Services**" means the Toolkit.

"**Term**" means the period during which this Agreement is in force.

"Toolkit" means our Advanced Editor Toolkit

"**User**" means you.

Appendix B: Description of bepress services

Please refer to your Order Form(s) for a list of the services that you are purchasing. The services described below are only included in the Services that we provide to you under this Agreement if you have ordered them on an Order Form or added them to your order as provided in this Agreement.

Bepress Digital Commons is a suite of tools and services that enables institutions to manage, display, and publish scholarship to the web in a beautiful, highly visible showcase. The hosted platform enables you to focus on success rather than technology. The embedded publishing system allows you to engage your scholars in unique ways. Digital Commons is optimized for today's major search engines, raising your institution's profile. Finally, bepress's superb consulting services and outreach groups work with you to ensure a successful showcase repository.

As the leading hosted institutional repository (IR) software platform, Digital Commons offers the features of a traditional IR as well as professional-grade publishing software and management tools to promote and disseminate research to your institution as well as the world. With Digital Commons, you can collect, preserve, and make visible all of your institution's intellectual output, including post-prints, working papers, journal articles, dissertations, master's theses, conference proceedings, presentations, creative works, and a wide variety of other content types. Digital Commons defines everything that a modern repository should be, with the expertise, individual support, and leading technology to enable libraries to build successful, sustainable repositories that benefit the entire campus. A list of institutions using Digital Commons is available at http://digitalcommons.bepress.com/subscriber_gallery/all.html.

SelectedWorks is a research announcement tool that allows scholars and researchers to maximize the readership and impact of their work. With SelectedWorks, scholars can create their own search engine optimized webpage in minutes, build a network of colleagues who follow their work, track readership of their work, and submit papers for inclusion in the institutional repository. SelectedWorks is an optional add-on to the Digital Commons suite, and pages can be incorporated into the repository to provide visitors with rich display and browsing. It is a valuable tool for feeding and growing Digital Commons repositories because it provides incentive for faculty participation. More information about SelectedWorks can be found at: <http://digitalcommons.bepress.com/repository-software/faculty/>

Digital Commons Kickstart is a personalized 2-day campus onsite with members of the bepress team, designed to get your repository initiative off to a successful start. Outreach team members will work with you to design a full schedule of trainings, workshops, and presentations that cover everything from scholarly communication issues and repository outreach to technical training and publishing tools. Throughout, our goal is to get your staff up to speed with Digital Commons and build investment from your campus stakeholders.

Digital Commons Publishing Services are designed for journals and libraries ready to take the next step in scholarly publishing. Participating journals benefit from professional publishing infrastructure and services previously reserved for large publishers such as adding journals to major indexes and databases, registering DOIs, and preserving articles in CLOCKSS and Portico.

Digital Commons Advanced Administrator Toolkit is available to eligible experienced Digital Commons administrators. This toolkit allows them to create on their own new collections using a selection of Digital Commons structures.