



Bepress Services Agreement

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This Bepress Services Agreement (the “Agreement”) governs your acquisition and use of our Services.

The words "you" or "your" in this Agreement, whether capitalized or lowercase, mean the company or other legal entity for which you are accepting this Agreement as well as your Users. All references to "us," "we," "our," or “Elsevier” whether capitalized or lowercase, mean Elsevier B.V., a Netherlands limited liability company with its principal location at Radarweg 29, 1043 NX Amsterdam, The Netherlands. Other definitions are found in Appendix A, or within the text below.

By executing an Order Form that references this Agreement or by paying an invoice we issue to you that references this Agreement, you and we (the "Parties") agree to the terms of this Agreement.

1. Use of Services

- a. During the term of this Agreement, whether the Initial Term, or any Renewal Term, you have a non-transferable, nonexclusive license to use and access any online Services or other Services that you have ordered on any applicable Order Form.
- b. Your Responsibilities. You will be responsible for your User's compliance with this Agreement, and not use the Services in ways that violate the personal, privacy, intellectual property, or other rights of third parties.
- c. Any person affiliated with you is eligible to be a User of the Services under this Agreement. Digital Commons and Expert Gallery Suite Services, if ordered by you on any applicable Order Form, allow you to upload, store, showcase, and disseminate files that are your intellectual property created by your organization.

2. Additional Services

You may request additional Services under this Agreement from us at any time. The fee for such additional Services will be the prorated portion of the applicable pricing for any additional Services for the remaining Term of the Agreement. Such additional Services will be governed by the terms and conditions of this Agreement unless otherwise agreed in a written document signed by duly authorized officers of both 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. In so doing, we will provide unlimited customization and unlimited redesigns within our standard supported templates. When we do designs or redesigns of a homepage, journal, event, or other designable structure, we reserve the right to charge a fee in the rare instance that you request more than 3 iterations for any given design or redesign. No fees will be charged without your prior written approval.

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

4. Property Rights

- a. We do not claim any intellectual property rights to the Content. We will send you all your Content upon termination of the Agreement. If you would like to receive Content during this Agreement, you may request to participate in our program to do so.
- b. Internet search engines, Elsevier, or our contractors, may facilitate access to the Content by indexing, abstracting, or otherwise digitally pointing to the Content. An example of this might be inclusion in the Digital Commons Network (<http://network.bepress.com>).
- c. 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, Renewal, and Termination

- a. The Initial Term of this Agreement is specified in your initial Order Form.
- b. We will send you all your Content upon any termination of the Agreement.
- c. **Renewal Terms.** Any renewals shall be by mutual agreement only. For expediency, the Agreement can be renewed for one or more Renewal Terms by us issuing an invoice to you specifying the price and subscription time period for the Renewal Term and by you deciding at your sole discretion to pay said invoice; that procedure shall renew this Agreement for a Renewal Term on the same terms and conditions (except for price and subscription time period) as this Agreement. You will have at least 30 days to consider whether to renew after receiving any renewal invoice. The terms and conditions (except for price and subscription time period) of any Renewal Term can only be changed by a written agreement signed by duly authorized officers of both Parties.
- d. **Early Termination.** Either party may terminate this Agreement upon a 30-day written notice to the other party of a material breach if such breach remains uncured at the expiration of such 30-day period.
- e. **Refund upon Early Termination.** If this Agreement is terminated by you in accordance with Paragraph 5d (Early Termination), we will refund to you on a pro-rata basis any prepaid Fees associated with the remainder of the term of this Agreement, whether said remainder be part of the Initial Term or a Renewal Term.

6. Fees

Fees for the Initial Term specified in the Order Form(s) are due 30 days after you receive an invoice from us. Fees associated with Renewal Term(s), if any, are due by the start of the Renewal Term. You are responsible for applicable taxes for the Services, if any, and prices on Order Forms are exclusive of any applicable taxes.

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. **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. In the event of any conflict or inconsistency among the following documents, the order of precedence shall

be: (1) an Amendment, (2) an Order Form signed by duly authorized officers of both Parties (3) this Agreement, (4) an Order Form that is not signed but that is agreed to in writing.

11. 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.

12. 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

"**Affiliate**" means any entity that directly or indirectly controls, is controlled by, or is under common control with the subject entity. "Control," for purposes of this definition, means direct or indirect ownership or control of more than 50% of the voting interests of the subject entity.

"**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 any fee or charge set forth in an Order Form.

"**Initial Term**" means the term specified in an Order Form initiating Services under this Agreement.

"**Order Form**" means an ordering document specifying the Services to be provided hereunder that is entered into between you and us or any of Our Affiliates, including any addenda and supplements thereto; Order Form may also mean an invoice that we generate specifying services that we will provide to you.

"**Renewal Term**" means the term for any renewal of the Agreement made by the process described herein or as otherwise agreed in writing.

"**Services**" means the products and services that you order on an Order Form from us, or that are otherwise ordered according to the terms of this Agreement, as described in Appendix B.

"**Term**" means the current term, whether it is the Initial Term or the Renewal Term.

"**User**" means any individual who is authorized by you to use the Service as an author, editor, administrator, or in another capacity. Users may include, but are not limited to, your employees, faculty, students, and if you are a membership organization, members.

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 provides scalable solutions that increase the impact of an institution's research, people and expertise. Digital Commons and the Expert Gallery Suite complement each other to offer integrated publishing and analytics for the entire campus and its researchers. Both products include full hosting, cloud storage, and dedicated support.

Unlike typical repositories and research information systems, bepress platforms are designed to be highly visible and easily browsed. Industry-leading search-engine optimization increases visibility for the institution's scholarship and researchers. Impact dashboards, readership maps, and detailed reports ensure that stakeholders can easily see and share their departments' and schools' world-wide impact.

Digital Commons is a research showcase, a publishing platform, and an institutional repository that serves the needs of the entire campus. Institutions use Digital Commons to enhance their reputations by leveraging their full breadth of scholarship. It is the only repository that integrates solutions for all content, from peer-reviewed, custom-designed journals to large datasets and streaming video and audio.

Digital Commons is designed to highlight an institution's intellectual assets and connect them back to the institutional brand. Custom branding and live readership maps increase recognition of the institution and its research impact. Stakeholders see this heightened visibility through detailed analytics that show which institutions, regions, and commercial organizations are reading the institution's work. Dashboards make it easy to share this information across departments, centers, and institutes.

The Expert Gallery Suite showcases and promotes the people who make the institution unique. Stakeholders from various groups can create unlimited, customized galleries of faculty and researchers to facilitate external funding and media opportunities that otherwise get missed. These galleries also let prospective students explore faculty they are interested in working with. Full integration with Digital Commons means that the Expert Gallery Suite increases the value of Digital Commons.

Offices, centers, and departments can seamlessly add searchable galleries to any campus site, including Digital Commons. Each curated profile goes far beyond a digital CV by representing everything a faculty member produces, including datasets, teaching materials, and streaming course lectures.

Media contacts and internal staff can find faculty by research interest, discipline, organization, and availability for student mentorship and collaboration. They can also view and report on global readership, including the funders, industry partners, and institutions that are accessing faculty work.

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.