

# MEMBERSHIP AGREEMENT

The MetaArchive Cooperative

2016-12-12



This document provides a membership agreement form to be used by new organizations joining the MetaArchive Cooperative. This form was last revised December 12, 2016.

## 1. Executive Summary

This MetaArchive Membership Agreement governs membership in the MetaArchive Cooperative, an international membership cooperative administered by the Educopia Institute. The Cooperative's purpose is to support, promote, and extend the MetaArchive approach to distributed digital preservation practices (<http://www.metaarchive.org/>). This approach relies upon a distributed preservation network infrastructure that is based on the LOCKSS software ([www.lockss.org](http://www.lockss.org)).

The MetaArchive Cooperative preserves content submitted by Member organizations in a decentralized, distributed preservation network comprised of subject- and genre-based archives (e.g., Southern Digital Culture, Electronic Theses and Dissertations, etc.). The Cooperative also maintains and extends its methodology and approach to distributed digital preservation through work with its Members and Strategic Affiliates.

This Agreement defines the terms and conditions of the agreement made between Members and the MetaArchive Cooperative. The Agreement provides a framework for arranging MetaArchive relationships but Members acknowledge the Agreement remains sufficiently flexible to address evolving needs of the Cooperative and Members in a changing technological and legal landscape.

## 2. Overview

### 2.1. What is the MetaArchive Cooperative?

The MetaArchive Cooperative is a service and preservation association designed for the mutual benefit of all Members. It consists of academic and other nonprofit organizations that share a common goal of preserving digital scholarly and cultural resources for future generations and who have met certain membership criteria set forth in the MetaArchive Cooperative Charter. The cornerstone and

founding purpose of the MetaArchive Cooperative is to support, promote, and extend distributed digital preservation. It accomplishes its mission by administering a distributed digital preservation network, serving as a catalyst and guide for other networks that seek to implement the distributed digital preservation methods it has developed, and educating cultural memory organizations about distributed digital preservation.

The MetaArchive Cooperative administers a geographically dispersed "dark archive" based on the LOCKSS software developed at Stanford University (<http://lockss.org>) and enhanced by indigenous technology and organizational solutions developed by the Cooperative. This MetaArchive Preservation Network is controlled and managed by the Educopia Institute, a nonprofit entity organized under the laws of Georgia and based in Atlanta.

The MetaArchive Cooperative relies upon the recognized standards and best practices of the digital preservation field (OAIS, TRAC, DRAMBORA, etc.). Nevertheless, Members of the MetaArchive Cooperative recognize and acknowledge that the development and implementation of technology and preservation activities currently occur in a rapidly changing environment that administers a growing number of potential technological and legal solutions, none of which carry extensive pedigrees or "fail-safe" histories for addressing the diverse needs of organizations in preserving present resources for future users.

## **2.2. What is this Membership Agreement?**

This MetaArchive Membership Agreement articulates and informs potential Members of the rights and responsibilities of joining the MetaArchive Cooperative and establishes the framework for ordering legal relationships among the Members such as payment of fees, sharing of resources, duration of membership, and other facets of the relationship. The Agreement binds Members, the MetaArchive Cooperative, and any successors in interest to certain conditions specified within it. It also gives some certainty to the Cooperative relationships while remaining sufficiently flexible to address evolving needs of the Cooperative and Members in a changing technological and legal landscape. In the event of conflicts between the MetaArchive Cooperative Charter and the Agreement, the Agreement ultimately controls interpretation and application of the benefits and responsibilities of Members in the Cooperative.

More importantly, the MetaArchive Membership Agreement also articulates the rights and responsibilities of all Members in order to represent those rights and responsibilities as shared goals and as an acknowledgment of Members and the Cooperative together working in support of the conditions, criteria, and mission set forth within the MetaArchive Cooperative Charter. Thus, as a fundamental condition of the MetaArchive Cooperative, MetaArchive and Members agree that flexibility and modification are equally important to a strict application of this

Agreement in ordering the respective relationships of this membership association and in manifesting the intent of the parties that cooperate within it.

### **3. Definitions for Understanding and Interpreting this Agreement**

**“Agreement”** means this MetaArchive Membership Agreement and any other documents identified herein and specifically incorporated by reference.

**“Cache”** means a dedicated server outfitted with the LOCKSS software (and any other required software as specified in the MetaArchive Technical Specifications) for the sole purposes of testing, ingesting, and preserving MetaArchive Member collections. Often also referred to as MetaArchive-LOCKSS cache for the purposes of MetaArchive Cooperative documentation.

**“Central Staff”** are those employees of the Educopia Institute that provide administrative and technical support to the MetaArchive Cooperative Members and help to facilitate Member collaborations.

**“Charter”** means the MetaArchive Cooperative Charter as duly amended from time to time. The Charter is the governing document that establishes membership criteria.

**“Collection”** means the aggregated content to be preserved under the banner of one metadata record in the Conspectus database.

**“Content”** means any of the digital materials submitted by Members to the MetaArchive Preservation Network and satisfying the required collection, legal, and technical standards established by the Cooperative, including any copies of the materials as submitted and those subsequently migrated to meet new format or technical standards.

**“Cooperative”** means the MetaArchive Cooperative and its Members in good standing.

**“Dark Archive”** means that access to content is limited to organizational custodians.

**“License”** means all those rights necessary for the Cooperative to work with all Members in preserving content through a MetaArchive Preservation Network that will create multiple copies, distributions, and possible derivatives of a work, including public performance and display rights. That license for some works submitted by the founding Members also will extend to the Library of Congress through a pre-existing agreement to make some materials available to that entity as the sponsor of the National Digital Information Infrastructure and Preservation Program (NDIIPP) phase of the Cooperative. The MetaArchive Preservation Network is currently a “dark archive” that strictly limits access to the works.

**“LOCKSS (Lots of Copies Keep Stuff Safe)”** means the open source, peer-to-peer, decentralized digital preservation infrastructure. For more information please see: (<http://lockss.org>).

**“Material Breach”** means any event that violates the terms of this MetaArchive Membership Agreement or governing MetaArchive Cooperative Charter including but not limited to these possible conditions of breach:

- Nonpayment of fees or failure to provide one-year notice of cancellation;
- Failure to comply with technical or communication standards or governance and collaboration obligations identified in the MetaArchive Cooperative Charter;
- Copying and distributing content via or from the MetaArchive Preservation Network that infringes copyright or other activities that violate other local, state, federal, or international law;
- Disrupting the MetaArchive Preservation Network or providing a gateway for impermissible encroachments or harmful intrusions that could threaten or cause harm to the Cooperative, the Preservation Network, or Members.

Members and the Cooperative generally enjoy a 90-day opportunity to cure a material breach by working together to reach and reduce to writing a satisfactory solution to the breach. However, in some instances, Members acknowledge and agree that the Cooperative may need to immediately terminate a Member’s access to the MetaArchive Preservation Network and any interaction with it.

Disruption of the MetaArchive Preservation Network by the activities on or through access points within the direct control of a Member could lead to immediate termination at the sole discretion of the Cooperative. The Cooperative would then work with the Member to identify the causes of the breach and provide the Member with opportunity to cure it, subject to the nature and extent of the underlying intrusion or harm. Members agree to work together reasonably with the Cooperative and provide any additional information necessary to investigate the breach. The Cooperative agrees to exercise reasonable and appropriate care to protect any confidential information submitted by Members acquired in the course of an investigation or arising from its membership if that information is explicitly identified as confidential and to the extent permitted by law.

**“Member”** means any entity regardless of classification that has:

- Satisfied membership criteria set forth in the MetaArchive Cooperative Charter;
- Received admission through deliberative processes and procedures identified in the MetaArchive Cooperative Charter;
- Paid membership fees as determined by the MetaArchive Cooperative from time to time;
- Cured satisfactorily any material breaches of this MetaArchive Membership Agreement if applicable within the allowed 90-day cure period defined more fully in the responsibilities of members section; and

- Complied fully with technical and other standards set forth in the MetaArchive Cooperative Charter, the MetaArchive Membership Agreement, or elsewhere if such standards are identified in those documents, such as the LOCKSS software standards and other supporting technical standards.

Members also may include former Members and potential candidates for membership in some contexts of the MetaArchive Membership Agreement in order to bring meaning to the intent of this Agreement and to satisfy any provisions surviving the termination of this Agreement through fault or otherwise.

**“MetaArchive Preservation Network”** indicates the technical network and infrastructure of the MetaArchive Cooperative. It is comprised of preservation sites administered in geographically dispersed locations by Member organizations (at the sustaining and preservation membership levels). It stores content submitted by Members.

**“MetaArchive Technical Specifications”** means the current documented recommendations and requirements for administering a preservation cache for the MetaArchive Cooperative, including staffing and hardware.

**“Preservation Site”** refers to a site that houses a MetaArchive-LOCKSS cache. Preservation sites are administered by Members and hold content submitted by Members to the MetaArchive Preservation Network.

**“We” and “Our” and “Us”** means the MetaArchive Cooperative and Educopia Institute as its legal representative but would not extend to individual officers and directors of the MetaArchive Cooperative or Educopia Institute for liability purposes.

**“You” and “Your” and “My”** means the entity seeking membership in the MetaArchive Cooperative and those entities who achieve membership, including more specifically for agreement and signature purposes, a representative of that entity who holds signature and agency authority to create agreements binding that entity.

## **4. Membership Types and Fees**

### **4.1. Overview of Membership**

The MetaArchive Cooperative offers membership opportunities in three distinct tiers relative to the goals and preservation needs of Members.

- **Sustaining Membership**

Sustaining Members are integral to the research, development, and deployment work of the MetaArchive Cooperative and agree to contribute

staff and resources to the effort and to participate as addressed more fully under Member responsibilities (below and in the MetaArchive Cooperative Charter document). The fee for joining as a Sustaining Member is \$5,500/year for a three-year period with annual billing opportunities. Sustaining Members that pay in full for their three-year period during their first six months of membership will earn a 10% deduction and will pay \$14,850 for their three-year membership fees. Space is purchased from the Cooperative on an annual basis, and the 2017-2018 rate is \$.59/GB/year, which covers hard storage costs and administrative overhead involved in ingesting and preserving content.

- **Preservation Membership**

Preservation Members engage in ongoing preservation activities and agree to participate in the network including maintaining a MetaArchive-LOCKSS cache, or paying an annual technology fee that supports technical infrastructure hosting and maintenance at other member institutions, and other responsibilities set more fully under Member responsibilities (below and in the MetaArchive Cooperative Charter document). The fee for joining as a Preservation Member is \$3,000/year for a three-year period with annual billing opportunities. Space is purchased from the Cooperative on an annual basis, and the 2017-2018 rate is \$.59/GB/year, which covers hard storage costs and administrative overhead involved in ingesting and preserving content.

- **Collaborative Membership**

A Collaborative Member is a group of institutions that run a shared, centralized repository and contribute this shared content to the MetaArchive Preservation Network (please see eligibility requirements as outlined in the MetaArchive Cooperative Charter). Collaborative Members engage in ongoing preservation activities and agree to participate in the MetaArchive network including maintaining a MetaArchive-LOCKSS cache and other responsibilities set more fully under Member responsibilities (below and in the MetaArchive Cooperative Charter document). The fee for joining as a Collaborative Member is \$2,500/year for the collaborative, plus a small fee per year for each participating institution.<sup>1</sup> Membership is for a three-year period with annual billing opportunities. Space is purchased from the Cooperative on an annual basis, and the 2017-2018 rate is \$.59/GB/year, which covers hard storage costs and the administrative overhead involved in ingesting and preserving content.

Collaborative Members occupy a unique role in the MetaArchive Cooperative and therefore further agree that Collaborative Members will assume sole and singular legal and other responsibility for the included content and related

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<sup>1</sup> Rates are negotiated with the Program Director and are based on the size of the collaborative, and will not exceed \$100/institution/year.

actions of users whether Collaborative Member has or has not secured individual agreements or contractual relationship with contributors to the Collaborative. Collaborative Members also acknowledge and agree that the Collaborative Member will set in place appropriate administrative and policy arrangements in order to assess the copyright, intellectual property, and/or other legal implications of contributor's activities relating to the Collaborative arrangement.

Fiscal payments will be accepted between January 1 and December 31 of each year in order to allow each Member to schedule such payments consistent with its own fiscal schedule. At the time an organization joins, it must alert the MetaArchive of the date upon which the Member intends to submit payment to the Cooperative (see the Signatures Page).

Some rights and responsibilities vary across tiers consistent with the expectations and benefits available to each tier and the fees administered for joining that tier. We reserve the right to be flexible with regards to each membership category rights and responsibilities.

All Members, regardless of their classification, share some rights and responsibilities in common, including agreeing to membership terms of no less than a three-year duration with a one-year notice to cancel membership. This time frame provides some predictability for the Cooperative as it continues to grow and will help improve services to all Members by lessening administrative burdens and thus potentially lessening membership fees. The Cooperative will address failures to provide appropriate notice according to the MetaArchive Cooperative Charter and rules governing continued access to materials and breach set forth elsewhere in this MetaArchive Membership Agreement.

The MetaArchive Cooperative offers other services to all membership levels on a consulting basis, including consulting and training. Such services may be engaged by negotiating a separate Service Agreement with the MetaArchive Cooperative.

**Joint MetaArchive/NDLTD Membership Discounts:** Organizations that simultaneously join the MetaArchive Cooperative and the Networked Digital Library of Theses and Dissertations (NDLTD) are eligible for discounted membership fees. In the case of the MetaArchive Cooperative, membership fees are discounted by 5%. Organizations interested in joint membership discounts should contact both the MetaArchive Cooperative and the NDLTD to confirm their eligibility before completing this form.

#### **4.2. Your Rights as Members**

**Each Member** working with the Cooperative receives:

- Distributed archiving of contributed digital collections across multiple, geographically distributed preservation sites;
- Retrieval of the Member's content in case of a catastrophic loss;
- Assistance with the installation and maintenance of MetaArchive-LOCKSS software, documentation of processes and technical standards, and technical support;
- Reports about the Member's submitted content and about the overall Preservation Network;
- Service opportunities within MetaArchive Committees (Content, Preservation, Outreach, Technical);
- Attendance and participation at Cooperative conferences and workshops at discounted rates;
- Opportunities to collaborate with and/or learn from experienced digital preservation administrators, librarians, technologists, and others who work with the Cooperative;
- In the case of catastrophic circumstances, the ability to request technical and financial assistance with the restoration of a preservation site's caches, software, and collections by the MetaArchive Cooperative. These requests will be reviewed and, at the discretion of the Steering Committee, either approved or denied;
- Access to the technical knowledge and expertise of Cooperative Members and technical support to establish and maintain preservation sites in compliance with the MetaArchive Technical Specifications; and
- Additional preservation services that can be purchased at a contract rate (e.g., consulting and training around preservation issues).

**Sustaining Members** also receive:

- The ability to influence the development of the MetaArchive Cooperative and the development of distributed digital preservation practices more generally; and
- Voting representation on the Steering Committee (see 3.2.2 of the MetaArchive Cooperative Charter for more detail).

**Collaborative Members** also receive:

- The ability to offset the cost of preservation by capitalizing on their existing, collaboratively hosted repository infrastructures.



### **4.3. Your Responsibilities as Members**

**All Members** working with the Cooperative agree to:

- Maintain membership in good standing by fully complying with this MetaArchive Membership Agreement and the definition of herein and by acknowledging and agreeing to processes, procedures, and standards of governance found in the MetaArchive Cooperative Charter and with technical requirements identified in the Charter or other technical documents identified in Cooperative publications or notices;
- Create and maintain a MetaArchive-LOCKSS cache that complies with all requirements in the current and subsequent versions of the Private LOCKSS Network software and make this cache available for testing new software and other Cooperative developments as needed, or pay an annual technology fee that supports technical infrastructure hosting and maintenance at other member institutions;
- Design and implement system features ensuring compliance with Cooperative security requirements and content validation, including but not limited to integrity checking as well as metadata analysis and tracking;
- Install and maintain any other software that may be required for participation in the Cooperative;
- Participate actively in the MetaArchive Preservation Network by ingesting and monitoring content at the Cooperative's request;
- Reproduce and distribute content submitted by other Members only to the extent necessary to conform to the requirements and conditions set forth within this MetaArchive Membership Agreement;
- Support at your own expense any and all costs incurred by participating in the Cooperative, including but not limited to paying membership fees, travel to required meetings, and other costs of participating in the Cooperative;
- Implement and deploy appropriate standards, processes, procedures, and safeguards for resolving copyright and other legal requirements that might arise in contributing and/or hosting content in order to comply with local, state, federal, and international law, including the use of exceptions set forth within U.S. copyright law such as, but not limited, to good faith, reasonable applications of fair use in Section 107, relevant library reproduction and distribution in Section 108, and elsewhere in the statutes or amendments and/or permissions through "deeds of gift" or other instruments, documents, permissions, or clearance arrangements. Other potential governing laws for Members may require the application of principles such as, but not limited to, country of national origin governing the inclusion of materials and relevant

- exceptions and conditions governing the hosting of materials and resulting specifically from the geographical location of the preservation node;
- Represent and warrant that to the best of their knowledge the Member is not contributing content to the Preservation Network that would infringe the rights of others and that the Member holds sufficient rights to License the Cooperative and Members sufficient rights to use the content consistent with the terms of this MetaArchive Membership Agreement;
  - Hold the Cooperative and other Members harmless in the event of infringement, claims of infringement, loss of data, interoperability, and any other technical standards and governance claims by waiving any rights of recovery for any costs or damages associated with your relationships and Agreement with the Cooperative;
  - Indemnify the Cooperative to the extent permitted by law for any losses and costs incurred by the Cooperative and Members such as but not limited to legal fees, costs, and damage awards arising from infringement or other claims directly related to your activities in working with the Cooperative and Members;
  - Cure any material breaches of the contract within a 90-day period unless the Cooperative agrees in writing to an extension of the cure period; and
  - Provide technical and administrative contact information as necessary to enable communication with other Cooperative participants as needed or upon request by the Cooperative.

**Sustaining Members** further agree to:

- Develop and test hardware and software, network connectivity, and transmission standards;
- Engage in the technical development and testing of the computer systems that enable the MetaArchive Preservation Network; and
- Re-purpose decommissioned caches for the MetaArchive test network at the end of the equipment's three-year life cycle.

#### **4.4. What if your Membership Ends?**

The Cooperative is not responsible for preserving your content or making it available to you beyond your membership period.

## **5. Our Rights and Responsibilities as a Cooperative**

The Cooperative reserves the right to remove any content that the Cooperative reasonably believes would infringe copyright or violate other local, state, federal,

or international law, interfere with the MetaArchive Preservation Network, or for which the Cooperative receives a reasonable notice of potential infringement. You waive any claims against the Cooperative arising from deletions of content or other losses related to preservation of your content and any rights to physical custody of or access to any copies of content available to the Cooperative. You also acknowledge and agree that you hold full responsibility for protecting your content through alternate means beyond those copies deposited in the MetaArchive Preservation Network or resulting from your work with the Cooperative. The MetaArchive Preservation Network is not a replacement for reasonably “backing up” your content and practicing reasonable “backup” practices.

Members acknowledge that the MetaArchive, like other technology-based efforts, is not a “fail-safe” method and cannot guarantee the preservation and migration of materials. The Cooperative is one developing and important approach to digital stewardship and long-term preservation needs of the cultural and academic communities, but like other digital preservation initiatives, the Cooperative is still testing and refining strategies, techniques, and tools for resolving long-term preservation issues. The Cooperative and Members agree to exercise reasonable care and professionalism in pursuing preservation and those larger goals but make no representations or warranties otherwise regarding services and activities of the Cooperative and the Members.

The Cooperative also will make good faith efforts to maintain Member access to their own materials in a reasonable and reliable manner, but events and circumstances beyond the control of the Cooperative might cause short-term or longer-term disruptions to the MetaArchive Preservation Network. The need to deploy new hardware or technology or to perform maintenance or repairs to particular caches or the larger network from time to time also may cause disruptions. You generally will receive reasonable notice of any routine and scheduled technical occurrences through email or other means requested by you for “technical notice” in your application for membership in the Cooperative. The Cooperative also will direct any “legal notice” to you at the address and to the person identified in your application materials as appropriate for receiving “legal notice.” You are responsible for providing correct contact information to ensure that those individuals with authority to address technical or legal questions can have an opportunity to reply meaningfully to any concerns with this MetaArchive Membership Agreement or associated membership issues.

**SIGNATURES PAGE**

This page should be completed by an individual with organizational signature authority for the organization joining the MetaArchive Cooperative. Signature indicates agreement to the terms and conditions of the document entitled “MetaArchive Membership Agreement” of which this is the last page. This document was last revised on December 12, 2016.

Upon completion of this form, an invoice will be sent separately to your organization.

Please print clearly or type information in the spaces provided below, and return this signature page via email to Sam Meister ([sam@educopia.org](mailto:sam@educopia.org)) or Katherine Skinner ([katherine@educopia.org](mailto:katherine@educopia.org)) or by mail (Educopia Institute, 1230 Peachtree Street, Suite 1900, Atlanta, GA 30309). Thank you for joining the MetaArchive Cooperative, and welcome!

**Member Information:**

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Organization	Billing Address
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Authorized Representative’s Signature	Date
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Representative’s Name (print)	Title
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Membership Type	Primary institutional liaison’s name/email
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Membership Fee	Effective Date
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Signed by Authorized Representative of Cooperative: \_\_\_\_\_

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Name	Title	Date
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