

Digital Preservation Network Deposit Agreement - 2018

This Deposit Agreement (“Agreement”), dated as of 2/2/2018 (the “Effective Date”), between the Digital Preservation Network, LLC (hereinafter, “DPN”) and California Digital Library (“Depositor”), gives Depositor permission to deposit content (“Content”) with the Digital Preservation Network, a network of academy based digital repositories and other service providers (the “Network”), for ingesting and preserving in a backed-up, dark archive, as provided by ingestion and replicating nodes (“Nodes”). DPN and Depositor sometimes are referred to hereinafter each as a “Party” and collectively as the “Parties.”

The term of this Agreement shall commence on January 1, 2018 and shall continue for twenty years (the “Term”). The amount of Content to be deposited and the fee is specified in Exhibit A. Content must be packaged in a format stipulated by DPN for purposes of transmission and preservation. Each deposit will be assigned a local Universally Unique Identifier (UUID) or Local ID tracking number with each batch of deposited Content. The Network is a non-encrypted network. As required below, Depositor must encrypt certain Content prior to depositing such Content into the Network.

Depositor represents and warrants that: (i) it has the right and power to enter into this Agreement, to deposit the Content into the Network and to perform its obligations hereunder; (ii) the Content does not contain any high risk data or information protected by privacy rights (including, but not limited to, data protected by the Family Educational Rights and Privacy Act (FERPA) or the Health Insurance Portability and Accountability Act (HIPAA)) unless such Content has been encrypted by Depositor prior to deposit with DPN; (iii) the Content does not contain any virus or other computer software routine intended to disable, damage, erase, disrupt or impair the Network; and (iv) depositing the Content does not constitute a breach of any other agreement, publishing or otherwise, including any confidentiality or security provisions of the Depositor or elsewhere around long-term, digital preservation. Both Parties agree and intend to perform this Agreement pursuant to copyright law, inclusive of fair use. The Depositor assumes full responsibility of clearing any necessary permission for third party Content included in a deposit that is not in the public domain, does not constitute a fair use under the copyright laws of the United States, or is not otherwise available for use.

During the Term, DPN will preserve the Content deposited during the first year of this Agreement. Depositor agrees that DPN and the Nodes may reproduce, re-disseminate copies, catalog, validate, re-format, transmit, incorporate metadata, and store the Content over and within the Network for the purposes of preservation, geographic dispersion, and technical dispersion within the Network. At any time during the Term, Depositor may deaccession the Content, or portions thereof, from the Network. Upon deaccession of the Content or portions thereof by the Depositor, DPN and the Nodes shall delete such Content from the Network. If at the conclusion of the Term, Depositor has neither entered into a new deposit agreement with DPN nor deaccessioned the Content from the Network, Depositor hereby authorizes DPN to store, re-disseminate, or otherwise use the Content in perpetuity and unrestrained by Depositor, and Depositor holds DPN harmless for its uses made pursuant to this authorization (such authorization and hold harmless obligation is hereinafter referred to as the “Quitclaim”).

As part of the DPN service, DPN and the Nodes will keep copies of the Content on different architectures, at geographically distributed institutions across the United States of America. DPN or the Nodes will perform fixity checks on each copy of the Content no less than once every 24 months per copy and will check the Content against a centrally held registry. Further, DPN will provide reporting about Content ingested into DPN that will include when the Content was deposited, where the Content currently resides, and when it was last checked.

DPN will not delete Content from the Network during the Term unless: (i) compelled to do so by court order or unless the Content violates any law, policy, or this Agreement; or (ii) if Depositor requests that DPN deaccession the Content. If Depositor requests that DPN deaccession or restore the Content, DPN will coordinate with the Nodes to facilitate such

request. The Nodes will provide cost estimates and timelines for restoration based upon each request and the associated costs (“Restoration Costs”). Depositor is responsible for all Restoration Costs. There is no cost to Depositor to deaccession Content. If compelled to delete Content from the Network, depending on the media type, DPN may, at its sole discretion, only delete the ability to find the Content, not the Content itself. Upon such an occurrence, the Content would become effectively invisible and practically impossible to find.

EXCEPT TO THE EXTENT REQUIRED BY APPLICABLE LAW AND EXCEPT AS EXPRESSLY SET FORTH HEREIN, IN NO EVENT WILL EITHER PARTY BE LIABLE TO THE OTHER ON ANY LEGAL THEORY FOR ANY DIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, PUNITIVE OR EXEMPLARY DAMAGES ARISING IN CONNECTION WITH THIS AGREEMENT, NOR WILL ANY TRUSTEE, OFFICER, OR PRINCIPAL OF EITHER PARTY EVER BE PERSONALLY LIABLE TO THE OTHER PARTY. THE PARTIES AGREE THAT NEITHER PARTY’S ENTIRE LIABILITY ARISING OUT OF THIS AGREEMENT SHALL EXCEED ONE THOUSAND DOLLARS (\$1,000). NOTWITHSTANDING THE FOREOING, THIS MONETARY LIMITATION ON LIABILITY SHALL NOT APPLY TO THE OBLIGATIONS SET FORTH IN THE IMMEDIATELY FOLLOWING PARAGRAPH OR TO THE QUITCLAIM. THE DPN SERVICES ARE PROVIDED “AS IS.” DPN DISCLAIMS ALL OTHER WARRANTIES, EXPRESS, IMPLIED OR STATUTORY, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

Each Party is under a good faith obligation to timely notify the other Party of any claim, action or proceeding of a third party that the Content, or portion thereof, violates the law or the rights of such third party (“Third Party Claim”). Depositor will share information and/or documentation relating to the Third Party Claim upon request from DPN and cooperate fully with DPN and its legal representatives in the investigation of any such Third Party Claim. Depositor will hold DPN harmless from all claims arising out of Depositor’s violations of this Agreement or any Third Party Claim arising from Depositor’s acts or omissions, unless DPN bears responsibility for such claims to an equal or greater extent as compared with Depositor.

This Agreement may not be assigned by Depositor, without the prior written consent of DPN. DPN may, without any prior notice to or consent of Depositor, assign or delegate, in whole or in part, its rights and duties under this Agreement to another non-profit entity, for the purpose of carrying out the intent and purpose of this Agreement. This Agreement constitutes the entire agreement between the Parties and all other prior negotiations, agreements, representations, and understandings regarding the 20 year Term of service covered by this Agreement are hereby superseded. No person, other than the Parties and the Nodes, has any rights or remedies under this Agreement. The Parties reserve the right to amend or terminate this Agreement without the consent of the Nodes. This Agreement shall be construed and enforced in accordance with the laws of the United States of America and of the State of California.

DocuSigned by:
Günter Waibel
EDD36AA5C0CE447...
Authorized Signature
California Digital Library (“Depositor”)

Günter Waibel
Print Name
Associate Vice Provost & Executive Director
Title

DocuSigned by:
Mary Molinaro
DRFD4B7E821646B...
Authorized Signature
Digital Preservation Network, LLC

Mary Molinaro
Print Name
Executive Director
Title

Exhibit A

Depositor may make deposits of up to 5 terabytes for no additional fee beyond their \$20,000 annual charter membership fee.

Additional deposits beyond 5 terabytes will be billed on a one-time basis at a fee of \$2,750.00 per TB.