

Appendix B: Membership Agreement – MetaArchive Cooperative

1. Executive Summary

This Agreement concerns membership in the MetaArchive Cooperative, an independent, multi-state membership association hosted by the Educopia Institute, based in Atlanta, Georgia.¹ 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 digital preservation network infrastructure that is based on the LOCKSS software (www.lockss.org).

The MetaArchive Cooperative is responsible for maintaining and extending its methodology and approach to distributed digital preservation, as well as the specific MetaArchive Preservation Network (the MetaArchive of Southern Digital Culture) that it has founded to date.

This Agreement serves to define the terms of the agreement made between members who contribute to the MetaArchive Cooperative. This Agreement provides a framework for these MetaArchive relationships while remaining 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 members who 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 Charter. The cornerstone and founding purpose of the MetaArchive Cooperative is to support, promote, and extend [distributed digital preservation](#); to serve as a catalyst and guide for other networks that seek to implement the distributed digital preservation methods it has developed; and to educate cultural memory organizations about distributed digital preservation.

The MetaArchive Cooperative currently hosts one Preservation Network, the MetaArchive of Southern Digital Culture, a geographically dispersed and currently "dark archive" built around the LOCKSS software developed at Stanford University 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.²

Members of the MetaArchive Cooperative recognize and acknowledge that the development and implementation of technology and preservation activities currently occur in a rapidly changing technological and legal environment that hosts 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 institutions in preserving present resources for future users.

2.2. What is this Membership Agreement?

This Membership Agreement articulates and informs potential members of the rights and responsibilities of joining the MetaArchive Cooperative. It establishes the framework for ordering legal relationships among the members such as payment of fees, sharing of resources, duration

¹ The Educopia Institute is incorporated under the laws of Georgia. It is currently seeking 501c3 status as a non-profit institution. It will act as a mediating and coordinating entity for leaders from academic and cultural institutions such as universities, libraries, archives, museums, and historical associations.

of membership, and other facets of the relationship and will bind members, the MetaArchive Cooperative, and any successors in interest to certain conditions. The Agreement 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.

More importantly, however, the Membership Agreement frames the rights and responsibilities of all members in order to represent those rights and responsibilities as shared goals and agreement of members and the Cooperative working in support of the conditions, criteria, and mission set forth within the MetaArchive Charter. Thus, as a fundamental condition of the MetaArchive Cooperative, MetaArchive and members acknowledge and 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 in it.

3. Definitions for Understanding and Interpreting this Agreement

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

“Content” means any of the digital materials submitted by members to the 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.

“Charter” means the MetaArchive Charter as duly amended from time to time. The Charter is the governing document that establishes membership criteria as well as content and technical standards (as of March, 2007, technical standards are documented in Appendix A: MetaArchive Technical Specifications of the Cooperative Charter), some of which are incorporated by reference into this Agreement as relevant to specific obligations in it.

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

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

“License” means all those rights necessary for the Cooperative to work with all members in preserving content through a multi-node 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 Cooperative’s Preservation Network is currently a “dark archive” that strictly limits access to the works, but some works may become more widely available relative to their evolving status under U.S. copyright laws or specific applications and lawful uses.

“Material Breach” means any event that violates the terms of this Agreement or governing 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 Charter;
- Copying and distributing content via or from the Preservation Network that infringes copyright or other activities that violate other local, state, or federal laws;
- Disrupting the 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 with the Cooperative 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 Preservation Network and any interaction with it.

Disruption of the Preservation Network by the activities on or through access points within the direct control of the member likely 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:

1. Satisfied membership criteria set forth in the MetaArchive Charter;
2. Received admission through deliberative processes and procedures identified in the Charter;
3. Paid membership fees as determined by the MetaArchive Cooperative from time to time;
4. Cured satisfactorily any material breaches of this Agreement if applicable within the allowed 90-day cure period defined more fully in the responsibilities of members section; and
5. Complied fully with technical and other standards set forth in the Charter, the Membership Agreement, or elsewhere if such standards are identified in those documents, such as the LOCKSS software standards and other supporting technical standards (as of March, 2007, these consist of Appendix A: MetaArchive Technical Specifications of the Cooperative Charter). These technical specifications from time to time will be reconsidered and revised.

Members also may include former members and potential candidates for membership in some contexts of the 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.

"Preservation Network" indicates the technical network and infrastructure of the MetaArchive Cooperative. It is comprised of preservation sites hosted in geographically dispersed locations by member institutions (at the development and preservation membership levels). It stores content submitted by members.

"Preservation Site" refers to a site that houses a preservation node. Preservation sites are hosted by development and preservation members and hold content submitted by members to the 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 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:

1. **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 Cooperative Charter document). The fee for joining as a Sustaining Member is \$5,000/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 \$1,000/year deduction and will pay \$12,000 for their three-year membership fees. Included in this fee is access to 40 GB of space for the Sustaining Member's own collections in the MetaArchive Preservation Network. More space can be purchased from the cooperative by negotiating a Service Agreement with the MetaArchive Cooperative.
2. **Preservation Members** engage in ongoing preservation activities and agree to participate in the network including maintaining a node and other responsibilities set more fully under member responsibilities (below and in the Cooperative Charter document). The fee for joining as a Preservation Member is \$1,000/year for a three-year period with annual billing opportunities. Included in this fee is access to 20 GB of space for the Preservation Member's own collections in the MetaArchive Preservation Network. More space can be purchased from the cooperative by negotiating a Service Agreement with the MetaArchive Cooperative.
3. **Contributing Members** are primarily interested in preserving certain collections and working with the Cooperative to achieve that goal without additional technical and resource obligation, as described in member responsibilities (below and in the Cooperative Charter document). The fee for joining as a Contributing Members is \$200/year for a three-year period with annual billing opportunities. Included in this fee is access to 5 GB of space for the Contributing Member's collections in the MetaArchive Preservation Network. More space can be purchased from the cooperative by negotiating a Service Agreement with the MetaArchive Cooperative.

Fiscal payments will be accepted between July 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 institution joins, it must alert the MetaArchive of the date upon which the Member intends to submit payment to the Cooperative.

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's 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 thereafter. 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 Charter and rules governing continued access to materials and breach set forth elsewhere in this Agreement.

The MetaArchive Cooperative offers other services to all membership levels on a consulting basis. These include the production of LOCKSS manifest pages and plug-ins for set fees. Such services may be engaged by negotiating a separate Service Agreement with the MetaArchive Cooperative.

4.2. Your Rights as Members

Each Member working with the Cooperative receives:

- Retrieval of your content in case of a catastrophic loss at your institution;
- Use of a web-based tool – the Metadata Conspectus – under an appropriate open source license that will enable members to record information about submitted collections;
- Distributed archiving of your digital collections across multiple preservation nodes;
- Reports and statistical information about your submitted content and statistical reports about the overall Preservation Network;

- Service opportunities within Cooperative Working Groups (please see the Cooperative Charter for more detail);
- Attendance and participation at Cooperative conferences and workshops at a discounted rate; and
- Collaboration opportunities with experienced digital preservation administrators, librarians, technologists, and others who are members of the Cooperative;

Sustaining and Preservation Members also receive:

- Assistance with the installation and maintenance of LOCKSS software for private networks and any other improvements and ancillary software developed by the Cooperative, documentation of processes and technical standards, and technical support to an extent defined in the Charter of by the Cooperative from time to time;
- In the case of catastrophic circumstances, technical and financial assistance with the restoration of a node's servers, software, and collections by the MetaArchive Cooperative; and
- Access to the technical knowledge and expertise of founding members, provided that founding members maintain their Cooperative membership, and technical support to establish and maintain preservation nodes in compliance with technical standards (as of March, 2007, these are detailed in Appendix A: MetaArchive Technical Specifications of the Cooperative Charter) available to members.

Sustaining Members also receive:

- Opportunities to influence development of the MetaArchive Cooperative and the development of distributed digital preservation practices more generally; and
- Representation on the Steering Committee (for the original six participating Members and each Sustaining Member that joins the Cooperative after March 2007, up to a total of 15 Steering Committee members).³

4.3. Your Responsibilities as Members

All members working with the Cooperative agree to:

- Maintain membership in good standing by fully complying with this Agreement and the definition of herein and by acknowledging and agreeing to processes, procedures, and standards of governance found in the Charter and with technical requirements identified in the Charter or other technical documents identified in Cooperative publications or notices and incorporated by reference into this Agreement (as of March, 2007, these consist of Appendix A: MetaArchive Technical Specifications of the Cooperative Charter);
- Support at your own expense any and all costs incurred by participating in the Cooperative, including but not limited to paying membership fees, digitizing collections, travel to required meetings, and other costs of participating in the Cooperative;
- Implement appropriate standards for addressing copyright and other issues related to contributed content in order to comply with local, state, and federal laws including the use of exemptions set forth within U.S. copyright law at Section 107, 108, and elsewhere and permissions through "deed of gifts" or other clearances;
- 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 requirements of a multi-node preservation strategy;

³ Once we reach Membership of more than 15 Steering Committee Members, this portion of the Charter and Membership Agreement will be reconsidered.

- 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; and
- 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.

Sustaining and Preservation Members further agree to:

- Create and maintain a Preservation Site;
- Make their node available for testing new software and other MetaArchive developments as needed;
- Participate actively in the Preservation Network by contributing and ingesting content from the Cooperative;
- Join and maintain membership in good standing with the LOCKSS Alliance;
- Employ an implementation of LOCKSS software that complies with all requirements in the current and subsequent versions of the private-network LOCKSS software;
- 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 (as of March, 2007, this is detailed in Appendix A: MetaArchive Technical Specifications of the Cooperative Charter);
- Install and maintain any other software that may be required for participation in the Cooperative (as of March, 2007, this is detailed in Appendix A: MetaArchive Technical Specifications of the Cooperative Charter); 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; and
- Engage in the technical development and testing of the computer systems that enable the Preservation Network.

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, states, or federal laws, interfere with the Preservation Network, or for which the Cooperative receives a valid 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 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 Preservation Network. The need to deploy new hardware or technology or to perform maintenance or repairs to particular nodes 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 Agreement or associated membership issues.

Signed by Authorized Representative of Member: _____

Print Name and Indicate Title: _____

Date: _____

Membership Type: _____

Institutional billing date: _____ *

Signed by Authorized Representative of Cooperative: _____

Print Name and Indicate Title: _____

Date: _____

*Invoices for fees will be mailed two months in advance of the billing date indicated above. To remain in good standing, a Member must submit payment to the Cooperative by this billing date.