

## Monash University CAUL Research Platform Terms & Conditions

Monash University (ABN 12 377 614 012) (**University**) has subscribed to a digital Platform through the Council of Australian University Librarians (**CAUL**) which is managed by Pressbooks (the **Platform**) in which publications are stored and made available via the internet or other electronic means.

University staff and third parties may submit material to the University for publication on the Platform (“**Work**”), the person(s) submitting the Work (“**Depositor**”) must agree to abide by the following terms and conditions (the **Terms**) in submitting their Work. Both parties agree to fulfil their obligations under these Terms without payment of any monetary consideration and agree that the rights and obligations provided under the Terms are sufficient and good consideration for agreeing to these Terms.

### Commitment to produce the Work

1. By agreeing to these Terms the Depositor shall prepare and submit to the University a copy of the Work which is the same as or substantially similar to their proposal provided to the University (if any) by the agreed upon date with the University.
2. If the Depositor fails to provide the University with the Work by the agreed upon date and does not request an extension or provide any valid reason why the Work was not provided, then these Terms may be immediately terminated by the University and the University may disqualify the Depositor from any future Work submissions.

### University review and publication on the Platform

3. Depositors must submit the Work to University in accordance with Schedule A and ensure the Work is in accordance with the publication guidelines provided by the University. The University is not obligated to review or submit to CAUL any Work which does not meet its publication guidelines.
4. Upon submission of the Work to the University, the University will have 90 days to review the Work and consider whether it wishes to publish all or part of the Work. If the Work fails to meet any publication guidelines or requires amendment before submission to CAUL, the University will notify the Depositor and provide instructions on any necessary amendments. Upon notification by the University, the Depositor must then make any requested amendments and resubmit the Work to the University (the University will then have a further 120 days to review the Work from the date of resubmission).
5. Notwithstanding any other clause in these Terms, the University has sole and absolute discretion to provide the Work to CAUL for publication through the Platform.
6. If the University determines that the Work will not be provided to CAUL then this agreement will immediately terminate and the University may retain copies of the Work provided to it but for the sole purpose of protecting or enforcing its rights under this Agreement.
7. If the University approves the Work to be published on the Platform, the Depositor will submit the approved Work to CAUL and Pressbooks. In submitting the Work to Pressbooks the Depositor is accepting they have read and accept to be bound by the Pressbooks Platform’s Institutional Users Terms of Service (as amended from time to time) which can be found at this address: <https://oercollective.caul.edu.au/institutional-users-terms-of-service/> and a static version is included in Schedule B. To the extent that there is any inconsistency between the Institutional User Terms of Service and these Terms, the Institutional User Terms of Service will be read down to give precedence to these Terms.

8. Until the Depositor has submitted the Work to CAUL and Pressbooks in accordance with clause 7 the University will have no further obligations to ensure the Work is published on the Platform.
9. The University may revise the submission process and publication guidelines outlined in these Terms (including Schedule A) if necessary to comply with any amendments, requirements, conditions or extensions provided by CAUL.

### **Grant of rights to the University, CAUL and Pressbooks**

10. The Depositor agrees to the University, CAUL and/or Pressbooks (the **Publishers**), doing or authorising the doing of the following acts or making or authorising the making of the following omissions (whether occurring before or after this consent is given) anywhere in the world:
  - a. communicating, publishing or displaying the Work without attributing ownership of the Work to the Depositor;
  - b. having the Work bear the name of the Publishers or bear the name of any other person associated with the development of the Work; and
  - c. subject to clause 11, modifying, altering, adapting, distorting or otherwise changing any of the Work as it sees fit in its absolute discretion, including by adapting or translating the Work into other dimensions, format or media; and
  - d. removing the Work from the Platform if any issues with the Work are brought to the Publisher's attention.
11. In circumstances where the University is modifying, altering, adapting, distorting or otherwise changing the substance or content of the Work which would necessitate a version note (for the avoidance of doubt, a version note is not required for administrative changes, or minor changes in respect of spelling, grammar, fixing of broken links etc.) then Monash agrees to undertake its best endeavours to consult the Depositor and take their reasonable requests into account in making any such modification, alteration, adaption or change.
12. Subject to clause 13, the Depositor waives, to the extent permitted by law, any and all moral rights (being the right to be attributed as the author of the Work, the right to not have the authorship of the Work falsely attributed and the rights of integrity if authorship in the Work as described in the *Copyright Act 1968* (Cth)) to which the Depositor may be entitled anywhere in the world in relation to the use of the Work by the Publishers.
13. The University agrees to use its best endeavours to ensure the Depositor is identified as the creator of the Work in a way that is reasonable in the circumstances.
14. The Depositor grants to the University an irrevocable, cost-free, worldwide, non-exclusive and perpetual right to store, use, reproduce, adapt, publish, distribute and communicate to the public (including a right to sublicense the Work on a non-exclusive basis using a Creative Commons Attribution Non-Commercial 4.0 International (CC BY-NC 4.0) license on such terms as the University sees fit for the purposes outlined in this license) the Work and the information submitted by the Depositor relating to the Work (**Metadata**) for the purposes of:
  - a. providing the Work/Metadata to CAUL and Pressbooks to allow the University to comply with its obligations under these Terms;
  - b. copyediting the Work/Metadata with its standards of punctuation, spelling, capitalisation, presentation and usage;
  - c. making the Work/Metadata (as may be modified for the technical operation or organisation of the Platform) available for access in or through the Platform;
  - d. modifying the Work/Metadata as required for the technical operation or organisation of the Platform; and
  - e. making and keeping copies of the Work/Metadata for security, back-up, archives and preservation.

## Representations and warranties of Depositor

15. The Depositor provides permission to the Publishers to use the Depositors' name, relevant biographical information in the Work/Metadata and on the Platform in connection with the marketing of the Work.
16. Where third-party copyright content has been used in the Work, these portions may be exempt from the Creative Commons licence referred to in clause 14, but the Depositor agrees to clearly mark which content is third-party content and warrants that they have permission to publish the content in the Work with no access restrictions (e.g. content cannot be password protected or access otherwise restricted).
17. The University acknowledges that some Depositors will receive funding from CAUL to prepare and submit their Work. However, the University's responsibility for this funding is limited to the rights and obligations outlined in any agreement signed between the Depositor, CAUL and the University.
18. To the extent that there are any inconsistencies between these Terms and any written agreement or memorandum of understanding entered into between the Depositor and CAUL, the terms and conditions of the CAUL agreement or memorandum of understanding will prevail.
19. The Depositor warrants not to dispose of, assign, license or use the Work in any manner which would impact upon or prevent the Publishers from enjoying the full benefit of the license in clause 14.
20. The Depositor represents and warrants for the duration of these Terms, as follows:
  - a. to the best of their knowledge at the time the Work is provided, all statements in the Works asserted as facts, such facts are true or based on reasonable research for accuracy;
  - b. the Depositor is the owner/s of the intellectual property rights, including but not limited to the copyright, in the Work or has the authority of the owner/s of the intellectual property rights in the Work to provide the Work to the Publishers and deposit the Work in the Platform;
  - c. the Depositor has the right to grant the rights contained in these Terms;
  - d. the storage, use, reproduction, adaptation, publication, distribution or communication of the Work or Metadata by the Publishers in accordance with these Terms, will not:
    - i. infringe the copyright, moral rights or other intellectual property rights of any person;
  - e. breach any laws relating to privacy or infringe the privacy, confidentiality or other rights of any person;
  - f. be contrary to or in breach of any laws, including, but not limited to, those relating to defamation, obscenity, contempt and blasphemy; and/or
  - g. cause the Depositor or the copyright owner/s of the Work to be in breach of any agreement (including any publishing agreement).
21. If the Work or Metadata contains material for which the Depositor does not own the copyright or any other intellectual property rights, the Depositor has:
  - a. obtained all necessary permissions from the intellectual property rights owner/s to include the material in the Work and/or Metadata to enable the Work and/or Metadata to be dealt with as authorised by these Terms; and
  - b. clearly identified and acknowledged all third-party owned intellectual property rights materials within the content of the Work or the Metadata.
22. If the Work is based upon work that has been sponsored or funded by an agency or organisation other than the University, all rights of review or other obligations required of the creators or authors of the Work under the contract or agreement with that agency or

organisation, have been fulfilled.

23. The Publishers shall not be obligated to publish any Work that, in their (or any one of them) determination, breaches any of the representations and warranties herein and they (or any one of them) may remove the Work from the Platform due to a breach of a representation of warranty.

### **Liability**

24. The University shall not be responsible for any mistakes, omissions or legal infringements in the Work or the Metadata.
25. Depositor shall indemnify and hold harmless the University and its licensees, affiliates, successors and assigns, from all costs, expenses (including attorney's fees and expenses), losses, liabilities, damages, and settlements arising out of or in connection with any claim or suit based on allegations that, if true, would constitute a breach of any one or more of the above representations and warranties or from University's efforts to resolve or avoid such claim. If Depositor obtains knowledge of a claim, Depositor shall promptly provide notice thereof to the University. The University may elect to assume and control the defence and settlement of any such claim (provided, however, that the University is required to obtain the Depositor's consent to any settlement involving monetary obligations of the Depositor).
26. The Depositor shall cooperate fully with the defence or prosecution of any claim or suit between the Publishers and any third party involving the Work. The representations, warranties and indemnification contained in this and any other section of these Terms shall survive any termination of these Terms.

### **Termination and removal of Work**

27. The Publishers may at any time immediately and without notice, terminate these Terms or suspend access to the Work, upon the occurrence of any of the following events:
- a. if a claim is made that the Work contains or describes research that has been falsified or produced as a result of fraudulent or deceptive actions by any person;
  - b. if a claim is made that the Work or Metadata infringes the legal rights of any third party; or
  - c. if a claim is made that the Work or Metadata contains offensive, defamatory, confidential or culturally sensitive information.
28. If these Terms are terminated, the Publishers:
- a. may retain the Metadata and allow access to it;
  - b. retain a copy or copies of the Work for archival purposes.

### **Relationship**

29. Nothing in these Terms shall cause the Depositor to be deemed an employee, partner, agent of, or joint venturer with the Publishers for any purpose. The Depositor is and will remain, as far as its relationship with the Publishers is concerned, an independent contractor.

### **End-Users**

30. The Publishers shall not be responsible for how any End-User deals with the Work and is under no obligation to take any action on behalf of the Depositor and/or the copyright owner/s if an End-User deals with the Work in a way that is not authorised or that infringes any person's rights or for any other reason.

**No derogation of other rights**

- 31. For the avoidance of doubt, these Terms do not exclude, limit or modify any rights available to the University or End-Users under relevant copyright laws, including, but not limited to, fair dealing and educational use rights.

**Governing Law**

- 32. This Licence is governed by the laws of the State of Victoria, Australia.

**Entire Agreement**

- 33. This Agreement contains the entire understanding between the Parties concerning the subject matter of this Agreement and supersedes, terminates, and replaces all prior agreements between the Parties.

**Name:** \_\_\_\_\_

**Date:** \_\_\_\_\_

**Signature:** \_\_\_\_\_

## Schedule A – Publication Guidelines

Authors publishing an OER with Monash Library agree to:

1. Submit a schedule containing: author and contributor details, chapter completion dates, and estimated total word length.
2. In accordance with the terms above, publish your open textbook on the Pressbooks platform under a Creative Commons Attribution-Noncommercial 4.0 International (CC-BY-NC 4.0) license allowing others to retain, reuse, revise, remix, and redistribute the open textbook. (Other Creative Commons licenses may be used in some cases.)
3. Seek copyright advice to ensure all content included in the open textbook can be released under a CC-BY-NC license (or other CC-BY license).
4. Ensure each author listed contributes to at least one chapter of the textbook.
5. Be accountable for the quality and accuracy of textbook content.
6. Undergo peer review and copy-editing process with support from Library staff.
7. Include Monash's branding on your book cover.
8. Adhere to accessibility standards and guidelines provided by the CAUL OER Collective.
9. Agree to abide by relevant Monash policies and procedures, as amended from time to time, including but not limited to authorship, copyright, privacy, etc
10. Complete the publication within a twelve-month period.
11. Allow CAUL and the Monash Library to use usage data for your open textbook to assist with the evaluation of the Open Educational Resources Collective Pilot Project.

# INSTITUTIONAL USERS TERMS OF SERVICE

## 1. PRESSBOOKS PLATFORM

1.1 Provision of the Platform. CAUL shall make its Central Pressbooks EDU hosted platform (the "Platform") for the online editing and formatting of books and other structured documents in multiple formats ("Projects") available to the Institution and its "Institutional Users" who are staff, faculty and administrators of Institution.

## 2. INSTITUTIONAL USER OBLIGATIONS, LICENCES AND REPRESENTATION

2.1 Institutional User Responsibility. Institutional User shall be responsible for any damages resulting from any negligent use or misuse of the Platform by Institutional User or any Authorized User, including but not limited to: (i) security breaches or other technological damage to the Platform such as viruses, trojan horses, worms or other malicious software introduced to the Platform as a result of negligence; or (ii) any violation of any applicable law (including but not limited to intellectual property laws) while using the Platform.

**2.2 Institutional User Data Licenses.** Institutional User hereby grants Pressbooks a royalty-free, worldwide, non-exclusive, non-transferable and non-sublicensable license to use, process and transmit any non-public data or information (in whatever form) provided by Institutional User to Pressbooks (the "**Institutional UserData**") for the purposes of the provision of the Platform to Institutional User and any Authorized Users. Institutional User grants Pressbooks a royalty-free, worldwide, non-exclusive, non-transferable and non-sublicensable license to use anonymized, non-personally identifiable Institutional User Data as well as analytics and behavioural data related to Institutional User and any Authorized Users for Pressbooks' internal business purposes, limited to the monitoring of features used by the Institutional User and Authorized Users to address any functionality issues as they arise, with the goal to enhance the experience and improve upon the features available to all Platform users.

**2.3 Institutional User Representation.** To the best of its knowledge, Institutional User Data and other material used in the creation of Projects does not violate any rights (including Intellectual Property Rights) of any third party. In case of violation of this sub-section by Institutional User or any Authorized Users, Institutional User shall indemnify Pressbooks as per section 5 of these Terms of Service.

### 3. INTELLECTUAL PROPERTY

**3.1 Definitions.** For the purposes of these Terms of Service, "**Computer Code**" includes but is not limited to source code in any programming language, object code, frameworks, CSS, PHP, JavaScript or similar files, templates, modules, or any similar files, and related documentation. "**Intellectual Property Rights**" shall include any and all patents, copyrights, trademarks, trade names and other proprietary rights, whether registered or not, and in effect worldwide.

**3.2 Pressbooks Property.** Pressbooks (or its licensors) retains any and all rights in and to: (i) the Platform and its constituent components, including any enhancements, upgrades or other modifications to the Platform or any constituent component thereof, including its constituent Computer Code, subject to the license described further in this paragraph; (ii) all Pressbooks trademarks (including, without limitation, the "Pressbooks" trademark and logo); and (iii) all Intellectual Property Rights related to any of the foregoing. Institutional User acknowledges and agrees that it will acquire no ownership rights or licences to any Pressbooks



intellectual property unless otherwise expressly provided in these Terms of Service. The parties acknowledge that the Platform is distributed under the GNU General Public License v3 (the "**GNU License**"), and that Institutional User acquires any and all rights to the Platform as outlined in the GNU License. Notwithstanding the foregoing, certain add-ons to the Platform (and their constituent Computer Code) are not distributed under the GNU License and remain Pressbooks property and subject to the limitations outlined in these Terms of Service.

**3.3 Institutional User Property in Projects.** To the extent that the use of the Platform by Institutional User results in any intellectual property whatsoever **in** any Project, such Projects and their associated Intellectual Property Rights shall be owned by the Institutional User as applicable.

## 4. LIMITATION OF LIABILITY

To the maximum extent permitted by law, in no event will Pressbooks, its shareholders, officers, directors, employees or agents: be liable for any indirect, incidental, extraordinary, consequential, special, punitive or exemplary damages (including, without limitation, loss of revenue or profits, lost or damaged data, loss of use, business interruption or any other pecuniary loss), arising out of or relating to these Terms of Service or caused by the Platform even if Pressbooks has been advised of the possibility of such damages. This limitation of liability will apply regardless of the form of action, whether in contract, warranty, tort, delict, quasi-delict, negligence, strict liability or under any other legal theory. To the extent permitted by law, the total liability of Pressbooks for claims by Institutional User or any other person arising under these Terms of Service shall be limited to the fees paid by Institutional User to Pressbooks during an annual Term.

## 5. INDEMNIFICATION

Each party ("**Indemnitor**") shall defend the other party ("**Indemnitee**") against any claim, demand, suit or proceeding made or brought against Indemnitee, any of its Affiliates, or any of their respective shareholders, officers, directors, employees, or agents (collectively "**Indemnified Parties**") by a third party alleging that: (a) Indemnitor's (or any Authorized User's, in the case of Institutional User) use of the Platform is in breach of these Terms of Service, infringes or misappropriates the

Intellectual Property Rights or other rights of a third party (including but not limited to Projects infringing such rights in the case of Institutional User) or violates applicable law; (b) the violation of any law, regulation, or other legal mandate, by Indemnitor; (c) the breach by Indemnitor, its officers, directors, employees, or agents of any covenant, condition, warranty, or representation contained in these Terms of Service; or (d) the gross negligence or willful misconduct of Indemnitor, its officers, directors, employees, or agents (a "**Claim**"). Indemnitor shall indemnify and hold harmless the Indemnified Parties for any loss, claim, damages, cost, expenses, and other liability (including reasonable lawyers' and expert's fees and expenses) that any Indemnified Party incurs a result of or in connection with a Claim; provided that Indemnitee: (i) promptly gives Indemnitor written notice of the Claim; (ii) gives Indemnitor sole control of the defense and settlement of the Claim (provided that Indemnitor may not settle any Claim unless the settlement unconditionally releases Indemnitee of all liability); and (iii) provide to Indemnitor all reasonable assistance, at Indemnitor's expense.

## **6. GENERAL PROVISIONS**

**6.1 Governing Law; Jurisdiction.** These Terms of Service shall be governed by and construed in accordance with the laws of the Province of Quebec, Canada and the Federal laws of Canada applicable therein in force at the time without regard to conflict of law provisions. Any legal action or proceeding regarding these Terms of Service shall be brought exclusively in the courts located in the Judicial District of Montreal, Canada.

**6.2 Force Majeure.** No party will be liable for any failure or delay in the performance of its obligations under these Terms of Service for any cause beyond its reasonable control including, without limitation, acts of God, fire or other disaster, catastrophe or unusual internet delays, outages, or congestion, denial of service attacks, and other "hacker" activity.

**6.3 Severability.** If any of the provisions contained in these Terms of Service are found by a court of competent jurisdiction to be invalid, illegal or unenforceable in any respect, the validity, legality or enforceability of the remaining provisions contained herein shall not be in any way affected or impaired hereby.

**6.4 Execution.** These Terms of Service may be executed in counterparts (including by electronic transmission). Any such counterparts will constitute an original and will be taken together to constitute one and the same instrument. Electronic acceptance of these Terms of Service shall be as valid as an agreement of the Terms of Service.

**6.5 Language.** The parties acknowledge having expressly required that these Terms of Service is to be drawn up in the English language.