europeana
foundation

www.europeana.eu

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Europeana Data Exchange Agreement

Parties:

Europeana Foundation (formerly EDL Foundation)

Address:	Koninklijke Bibliotheek, Prins Willem-Alexanderhof 5,
	2509LK The Hague, The Netherlands
Phone:	+31 70 314 0952
URL:	www.europeana.eu
Name of authorised Person:	Jill Cousins
Title/Role in organisation:	Executive Director
Work Phone:	+31 70 314 0952
Work Email:	jill.cousins@kb.nl

Hereafter named: 'Europeana'

And

Name of organisation:

Address:

Phone:

Email:

URL:

Name of authorised Person:

Title/Role in organisation:

Work Phone:

Work Email:

Hereafter named: 'Data Provider'

whereas

a. Europeana has the objective to provide access to Europe's cultural and scientific heritage;

b. Europeana has, for this purpose, undertaken the task of ingesting, indexing, enriching and making available descriptive metadata and previews on objects that are part of that heritage,

c. Europeana thereby intends to benefit both the holders of these objects and the public at large;

d. Europeana has no intention to include any data in its database other than such metadata and previews;

e. the Data Provider has and/or can create metadata and previews that are appropriate to form part of this database;

f. the Data Provider is willing to make (a part of) these metadata and previews available for this database, under the conditions of this agreement;

g. in some domains (such as museums) it can be difficult to differentiate clearly between content and metadata, and as a result whatever data is given to Europeana is called, for purposes of this agreement, metadata; and

h. Europeana wishes to make all metadata in its database available for reuse to all its Data Providers and the public at large.

the Parties have agreed to the following:

Article 1 Definitions

CC0 1.0 Universal Public Domain Dedication: The Creative Commons Universal Public Domain Dedication as published at: http://creativecommons.org/publicdomain/zero/1.0/. The version of CC0 1.0 Universal Public Domain Dedication that is published on the Effective Date is attached to this agreement as **Annex 1**.

Content: a physical or digital object that is part of Europe's cultural and/or scientific heritage, typically held by the Data Provider or by a data provider of the Data Provider.

Europeana Network: The Network of Europeana's Content Providers and Aggregators (former CCPA), as established in accordance with article 12 of Europeana's articles of association.

Effective Date: The date on which this agreement commences, in accordance with article 5, paragraph 1.

Europeana.eu: The Europeana website, its data and its machine interfaces, all without necessarily being disclosed under URL europeana.eu.

Europeana Data Use Guidelines: Non-binding guidelines for users of data published by Europeana, on the Effective Date made available at http://www.europeana.eu/portal/data-usage-guide.html.

Intellectual Property Rights: Intellectual property rights including, but not limited to copyrights, related (or neighbouring) rights and database rights.

Metadata: textual information (including hyperlinks) that may serve to identify, discover, interpret and/or manage Content.

Metadata Specifications: The most recent version of the Metadata specifications published by Europeana and available at http://europeana.eu/schemas/ on the Effective Date

Preview: A reduced size or length audio and/or visual representation of Content, in the form of one or more images, text files, audio files and/or moving image files.

Public Domain: Content, Metadata or other subject matter not protected by Intellectual Property Rights and/or subject to a waiver of Intellectual Property Rights.

Third Party: Any natural or legal person who is not party to this Agreement

URI: Uniform Resource Identifier, URLs (Uniform Resource Locators) are URIs.

Article 2 Provision of Metadata and Previews

1. Notwithstanding the minimum requirements of paragraphs 2 and 3 of this article, it is in the discretion of the Data Provider to decide which Metadata and Previews it provides to Europeana, including the right to submit only Metadata and Previews with regard to a part of the Content held by it or its data providers and the right to submit only a part of the Metadata and Previews it has or its data providers have with regard to particular Content.

2. The Data Provider shall submit Metadata and Previews in accordance with the Metadata Specifications.

3. The Data Provider must make best efforts to provide Europeana with correct Metadata on the Intellectual Property Rights to the Content, including the identification of Content that is Public Domain as being Public Domain.

4. Europeana shall ensure that future versions of the Metadata Specifications are compatible with the Metadata Specifications in place on the Effective Date. Before mandating changes to Metadata Specifications, Europeana must consult the Europeana Network.

5. Europeana shall collaborate with the Data Provider within thirty (30) days upon the latter's request, for the correction, update and removal of Metadata provided by the Data Provider.

Article 3 Use of Metadata

1. Under the condition that the requirements of paragraphs 2 and 3 of article 2 are met, Europeana shall include the Metadata provided by the Data Provider in the database held by Europeana and shall publish these Metadata as a part of this database.

2. Europeana shall publish all Metadata, including the Metadata provided by the Data Provider prior to the Effective Date, under the terms of the CC0 1.0 Universal Public Domain Dedication and is hereby authorized by the Data Provider to do so. The Data Provider recognizes that it hereby waives – to the greatest extent permitted by, but not in contravention of, applicable law – all Intellectual Property Rights in the Metadata it has provided and will provide to Europeana. If – according to the applicable law – such waivers are not legally binding in particular territories the "Public License Fallback" in sec. 3 of the CC0 1.0 Universal Public Domain Dedication will apply, and the Metadata provided by the Data Provider is licensed non-exclusively, unconditionally, free-of-charge for all types of use and for all territories to the public. For details about the waiver/public license see the Text of the CC0 1.0 Universal Public Domain Dedication under the URL mentioned in Article 1 above.

3. In as far as the Data Provider has provided or will provide Europeana with Metadata that it has aggregated from Third Parties or that otherwise originate from Third Parties, the Data Provider shall ensure that these Third Parties have authorized the Data Provider to authorize Europeana in accordance with paragraph 2 of this article.

4. When making available Metadata or any parts thereof under the terms of the CC0 1.0 Universal Public Domain Dedication, Europeana will provide a link to the Europeana Data Use Guidelines with the CC0 1.0 Universal Public Domain Dedication.

5. When Europeana publishes Metadata that can be (in whole or in part) attributed to the Data Provider, Europeana is obliged to give attribution to the Data Provider and to the party or parties referred to by the Data Provider through the europeana:dataProvider field (or its equivalent in a later version) of the Metadata Specification.

6. In the event that Europeana publishes a translation or transcription based on Metadata provided by the Data Provider, Europeana shall identify the translation or transcription as such.

Article 4 Use of Previews

1. Notwithstanding paragraphs 2 and 3 of this article, Europeana is entitled to allow use of the Previews by visitors of Europeana.eu and Third Parties in accordance with terms specified by the Data Provider in the europeana:rights field (or its equivalent in a later version) of the Metadata Specifications.

2. Europeana is entitled to store and publish on Europeana.eu all Previews provided by the Data Provider, though only in combination with the Metadata that pertain to the same Content.

3. Europeana is entitled to publish the URLs pointing to the Previews together with other Metadata, unless the Data Provider indicates to Europeana in writing that it does not allow Europeana to do so. In the latter case, Europeana will only use the Previews in accordance with paragraph 2 of this article.

4. In as far as the Data Provider is the proprietor of Intellectual Property Rights to the Previews it provides to Europeana, the Data Provider hereby grants Europeana a license to use these rights in accordance with this article, without affecting any moral rights that it may have in these Previews.

5. In as far as the Data Provider has provided or will provide Europeana with Previews that it has aggregated from Third Parties or that otherwise originate from Third Parties, the Data Provider ensures that these Third Parties have authorized the Data Provider to enable Europeana to perform paragraphs 1 and 2 of this article.

Article 5 Term

1. This Agreement enters into force as of the date of signature of the parties.

2. The Agreement shall end on the 31st December following the Effective Date. The Agreement will be renewed automatically for a period of one year every 1st January, unless terminated by one of the parties, by written notice received by the other party ultimately on 30 September of that year.

Article 6 Liability and Notice and take Down

1. The Data Provider must make best efforts to ensure that performance by Europeana of articles 3 and 4 does not constitute an unlawful act towards a Third Party, including but not limited to:

    a. a violation of Intellectual Property Rights of a Third Party;

    b. an infringement of personality, privacy, publicity or other rights; or

    c. an infringement of public order or morality (hate speech, obscenity, etc.).

2. In the event that performance by Europeana of articles 3 and 4 constitutes an unlawful act towards a Third Party, Europeana shall assist the Data Provider in limiting the negative consequences of such unlawful act, however without accepting any liability. In the performance of this obligation, Europeana shall use the notice and take down procedure of paragraph 3 of this article.

3. In the event that a Data Provider or a Third Party notifies Europeana that it is of the opinion that performance by Europeana of articles 3 and 4 constitutes an unlawful act towards any party, Europeana shall within 5 working days decide whether it considers the notice (i) void of grounds, (ii) readily awardable or (iii) subject to debate, and Europeana shall perform the following:

   (i) In the event that Europeana considers the notice void of grounds, it shall inform the notifying party accordingly.

   (ii) In the event that Europeana considers the notice readily awardable, it shall take all required measures to end the unlawful state. Europeana shall inform both the notifying party and the Data Provider of its decision.

   (iii) In the event that Europeana considers the notice subject to debate, it shall inform the notifying party of this decision and allow the Data Provider to provide its views on the opinion within five (5) working days from the date that Europeana has forwarded the opinion to the Data provider. Upon receipt of the views of the Data Provider, Europeana shall decide within five (5) working days whether measures are required to end an unlawful state. Europeana may decide to request the notifying party and, subsequently, the Data Provider for further views.

4. Both parties shall hold the other party free and harmless of any action, recourse or claims made by any Third Party due to the non-observance of its obligations under this agreement.

Article 7 Termination

1. Either party may terminate this agreement at any time on the material breach or repeated other breaches by the other party of any obligation on its part under this agreement, by serving a written notice on the other party identifying the nature of the breach. The termination will become effective thirty (30) days after receipt of the written notice, unless during the relevant period of thirty (30) days the defaulting party remedies the breach.

2. This agreement may be terminated by either party on written notice if the other party becomes insolvent or bankrupt, if the Data Provider's project ends or if the Data Provider withdraws or ceases operations. The termination will become effective thirty (30) days after receipt of the written notice.

3. Upon termination of this agreement, Europeana shall only be obliged to remove Metadata and Previews provided by the Data Provider if the Data Provider request Europeana to remove the Metadata and Previews. Removal shall happen no later than 30 days after such a request has been received by Europeana.

4. Termination of this agreement does not affect any prior valid agreement made by either party with Third Parties.

Article 8 Miscellaneous

1. If any term of this agreement is held by a court of competent jurisdiction to be invalid or unenforceable, then this agreement, including all of the remaining terms, will remain in full force and effect as if such invalid or unenforceable term had never been included.

2. This agreement replaces all data provider and/or data aggregator agreements concluded by Europeana and the Data Provider before the Effective Date and all Metadata and Previews provided to Europeana by the Data Provider under the conditions of such other agreement are, as of the Effective Date, considered to be provided under the conditions of the present agreement.

3. This agreement may be supplemented, amended or modified only by the mutual agreement of the parties. Any modification proposed by Europeana must be notified to the Data Provider in writing. The Data provider shall be allowed at least two months from the date of reception of the notice to accept the new agreement. If the modifications are not accepted by the Data Provider in writing within the

allowed period, the modifications are presumed to have been rejected. If the proposed modifications are rejected by the Data Provider, Europeana has the right to terminate this agreement against 31 December of any year, with a one month notice.

4. This agreement is drawn up in English, which language shall govern all documents, notices, meetings, arbitral proceedings and processes relative thereto.

5. This agreement shall be construed in accordance with and governed by the laws of The Netherlands.

6. All disputes arising out of or in connection with this agreement, which cannot be solved amicably, shall be referred to the mediation group of the Europeana Network for mediation. The outcome of the mediation process will be binding on the parties.

Signed by both parties:

Date:	Date: 22.09.2011
Data Provider:	Europeana:

ANNEX 1

Creative Commons Legal Code

CC0 1.0 Universal - http://creativecommons.org/publicdomain/zero/1.0/

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