

## ECP 2008 DILI 558001

### Europeana v1.0

# Europeana Data Provider & Aggregator Agreements

*License for use of content with partners and aggregators of content for  
Europeana  
Content Use Contract*

**Deliverable number** *D1.1 & D2.6*

**Dissemination level** *Public*

**Delivery date** *7 April 2010*

**Status** *Final*

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**eContentplus**

This project is funded under the eContentplus programme<sup>1</sup>,  
a multiannual Community programme to make digital content in Europe more accessible, usable and  
exploitable.

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<sup>1</sup> OJ L 79, 24.3.2005, p. 1.



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## Cover Letter

Dear Europeana partner,

Many thanks for all your helpful feedback on the Data Provider and Data Aggregator Agreements. Your relevant Agreement is attached for signature.

- Please fill in the first page and sign the last page.
- Please send a scanned copy of the first and the last page of the Agreement to [Martina.Schoberova@kb.nl](mailto:Martina.Schoberova@kb.nl) by **15 June 2010**

Or return by post to:

Martina Schoberova  
Europeana  
Postbus 90407  
2509 LK The Hague  
The Netherlands

In response to your feedback we have made some important changes to the Agreements. Primarily, for this version we have adopted a non-commercial use regime, both for Europeana itself and for Third Parties. We have reduced the term of the Agreement to one year and defined the obligations of Europeana more clearly, as several of you requested.

This Agreement does not cover your content; it relates just to your metadata. Europeana drives traffic directly to your site, where users can view your content in its original context, under the terms you choose.

Keeping implementation and transaction costs to a minimum for Data Providers and especially Data Aggregators is a priority. A streamlined mechanism for handling rights is necessary, and the terms of the Agreements have to be simple to implement in order to scale up to, potentially, many hundreds of providers.

The attached Agreement governs what Europeana can do with your metadata. We are also drafting a licence that will govern what Third Parties can do with the data. Europeana Foundation cannot grant more rights to Third Parties than those conferred by the attached Agreement. The licence we are drafting for Third Parties, will be similar in spirit to a Creative Commons licence, but more robust, because Creative Commons is not enforceable if data is not copyrighted. The licence will be a Europeana - Attribution - Share Alike – Non-commercial licence, and we will send you further information shortly.

If you have any further questions about your Provider Agreement please contact Martina Schoberova on [Martina.Schoberova@kb.nl](mailto:Martina.Schoberova@kb.nl) who will be happy to find any information you may need. This may be particularly useful if you have to brief other colleagues who are empowered to sign contracts for your organization.

If you wish to send any feedback regarding the content of the Agreement, please send this directly to me.

Yours sincerely,

Jill Cousins  
Executive Director Europeana Foundation (formerly EDL Foundation)



## Europeana Data Provider Agreement

### Parties

#### Europeana Foundation (formerly EDL Foundation)

Address: **Koninklijke Bibliotheek, Prins Willem-Alexanderhof 5,  
2509LK The Hague, The Netherlands**  
Phone: **+31 70 314 0952**  
Fax: **+ 31 70 314 0424**  
URL: **www.europeana.eu**

On behalf of Europeana Foundation  
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 Foundation'

And

#### **Name of organisation:**

Address:

Phone:

Fax:

Email:

URL:

On behalf of the Data Provider  
Name of authorised Person:  
Title/Role in organisation:  
Work Phone:  
Work Email:

Hereafter named: 'Data Provider'

The Parties, wishing to cooperate in order to fulfil the mission of Europeana.eu, agree to the following:



## Article 1 Definitions

1. Audio preview: Shorter and/or lower resolution extract of audio Content.
2. Archival finding aids: See Metadata
3. Attribution: Keeping Attribution information intact is a requirement for Third Parties and Europeana. Attribution is considered “proper Attribution” when all available Attribution information is kept intact when making available Metadata or Previews. Attribution may include multiple people or organisations, including the Data Provider and Data Aggregator. The ESE specification explains how to transmit simple and multiple Attribution information to Europeana.
4. Content: The digital objects that can be accessed through Metadata. Content is typically held on Data Provider’s/Aggregator’s sites. Content is typically defined by its individuality and cultural, intellectual or artistic expression. Content has a reference to an individual object of the real world or is born digital. Examples: Photographs, books, letters, films, paintings, television, etc. Note: In online delivery, Content excludes the peripheral packaging/platform.
5. Context Resources: Catch-all term for resources which help to provide context and enrich Europeana.eu Data like linked data, ontologies, vocabularies, thesauri, classifications, taxonomies, etc.
6. Data: Catch-all term including Metadata, Thumbnails, Audio and Moving image previews.
7. Data Aggregator: Organisation that collects, formats and manages Data from Data Providers before submitting Data to Europeana.eu.
8. Data Provider: Organisation that submits Data to Europeana.eu.
9. Derivative: Data is considered derivative (data) if it is based upon one or more pre-existing Data, such as a translation, musical arrangement, dramatisation, condensation, or any other form of transformation or adaptation.
10. Europeana Foundation: The legal entity in charge of Europeana.eu.
11. End Users: Members of the public, using Europeana.eu, covered by the « Europeana Terms of Use ».
12. Europeana.eu: The Europeana website, its Data and its machine interfaces (APIs, JSON, RDFa, Linked Data, etc). Note: The specific URL may change in later iterations of the site.
13. Europeana.eu Data: The semantically enriched and merged Data, accessible via Europeana.eu, based on Data from Data Aggregators and Providers.
14. Europeana Terms of Use: The conditions, obligations and restrictions upon which legitimate use of Europeana.eu is contingent.
15. Europeana Office: The organisation that creates Europeana.eu on behalf of Europeana Foundation.
16. Metadata: Metadata is information about Content, describing its characteristics to aid in its identification, discovery, interpretation and management. Metadata is given to Europeana and drives discovery of Content held at the Data Provider’s/Aggregator’s site. Metadata are usually facts or fact-like information, containing little individual artistic/creative expression. Examples: Bibliographic or filmographic data, temporary and spatial data, etc.  
 Note: For the specific case of archival finding aids, the archival descriptions are considered Metadata. The descriptions contain a link to a digitised archival item which is considered Content. As far as a finding aid is available as a digitised object itself, only the bibliographic information about the finding aid is considered Metadata and the digitised finding aid is considered Content. For the avoidance of doubt, any Metadata that is withheld from Europeana, does not fall under the terms of this agreement.



17. Moving image preview: Shorter and/or lower resolution extracts of moving image content. Can be as short as one frame and functionally equivalent to a thumbnail.
18. MyEuropeana: Collections of Data from within Europeana.eu, arranged and shared by End Users.
19. Preview: General term including Thumbnail, Audio and Moving Image Preview.
20. Public Domain: Metadata, Content or Previews for which copyright protection has expired or which never was subject to copyright protection because of lack of originality.
21. Thumbnail: Smaller and/or lower resolution version of still image Content.
22. Third Party: Any physical or moral person who is not party to this Agreement. For the avoidance of doubt: As the agreement only covers the Data Provider's or Aggregator's Metadata and Previews, any Data Provider or Aggregator must adhere to the Europeana Terms of Use, just like Third Parties, when using Europeana.eu Metadata or Previews;
23. URI: Uniform Resource Identifier, URLs (Uniform Resource Locators) are URIs.
24. User generated content: Catch-all term for any comment, tag or other description as well as Content, Previews or Metadata; or comments, tags and descriptions thereof that is provided by End Users to Europeana.eu
25. Documents:
  - a. « Europeana Data Provider Agreement » This document.
  - b. « Europeana Terms of Use » Legitimate use of Europeana.eu is contingent upon its acceptance.

## **Article 2 Licence of rights for Metadata from Data Provider to Europeana Foundation**

1. Metadata submitted to Europeana Foundation is used to produce Europeana.eu Data, which is accessible on Europeana.eu.
2. In order to make this possible, the Data Provider hereby grants Europeana Foundation a non-exclusive, worldwide, royalty free licence on copyright, related rights and the sui generis database right for the duration of this agreement, whereby Europeana Foundation shall have the right for non-commercial purposes only:
  - a. to publish, make available, reproduce, distribute, display, transmit, extract, re-utilize and store the Metadata and its Derivatives in all forms, formats and media whether now known or hereafter developed (including without limitation in print, digital and electronic form) throughout the world;
  - b. to translate the Metadata (or authorise others to do so) into other languages, create adaptations, summaries or extracts of the Metadata or other Derivatives based on the Metadata and exercise all of the rights set forth in (a) above in such translations, adaptations, summaries, extracts and derivative works;
3. Europeana Foundation shall grant the Data Provider the same rights as specified in subsection 2.b) above, with respect to any and all translations, adaptations, summaries, extracts and Derivatives that it creates as part of Europeana.eu, to re-use in the local environment of the Data Provider.



## **Article 3 Licence of rights for Previews from Data Provider to Europeana Foundation**

The Data Provider may submit Previews to Europeana Foundation.

1. If no Preview is submitted, none will be accessible on Europeana.eu and none will become part of Europeana.eu Data.
2. If the Preview is submitted as URI pointing to an embeddable player or viewer, the embedded player or viewer will be made accessible on Europeana.eu and the URI will become part of Europeana.eu Data. Europeana Foundation shall have the non-exclusive right to make available the embedded Preview. The Preview itself will not be stored and will not become part of Europeana.eu Data.
3. If the Preview is submitted as a file or as a URI pointing to a file which is correctly sized for a Preview, it will be stored as is by Europeana Foundation. If the file is not correctly sized, a resized Preview will be created and the original file discarded. The Preview will be accessible on Europeana.eu and become part of Europeana.eu Data, whereby Europeana Foundation shall have the non-exclusive right to publish, make available, reproduce, distribute, display, transmit, and store the Preview and its Derivatives in all forms, formats and media whether now known or hereafter developed (including without limitation in print, digital and electronic form) throughout the world.

## **Article 4 Licence of rights for Metadata from Data Provider to Third Parties**

1. With respect to Metadata of the Data Provider, the Data Provider grants Europeana Foundation the right to allow Third Parties for non-commercial purposes only and on a non-exclusive, worldwide, royalty-free basis to:
  - a. to publish, make available, reproduce, distribute, display, transmit, extract, re-utilize and store the Metadata in all forms, formats and media whether now known or hereafter developed (including without limitation in print, digital and electronic form) throughout the world;
  - b. to translate the Metadata into other languages, to create adaptations, summaries or extracts of the Metadata or to make other Derivatives based on the Metadata and exercise all of the rights set forth in (a) above in such translations, adaptations, summaries, extracts and Derivatives, provided that such exercise of rights only takes place under the same or compatible licensing conditions as herein specified;

The rights from 1.a) and b) are communicated to Third Parties through the Europeana Terms of Use v1.0 or a future version thereof containing the same licensing elements or other similar Terms/Contracts containing the same licensing elements.

It is understood that Europeana Foundation cannot grant more rights to Third Parties than conferred in this Agreement. The scope of limitations and exceptions of copyright law or applicable sui generis database rights will not be affected by additional restrictions in the Europeana Terms of Use.

2. Europeana Foundation must require that Third Parties exercising the rights granted under paragraph 1a) or b) above include a copy of, or the Uniform Resource Identifier



(URI) for, the appropriate Europeana Terms of Use with the Metadata, or of an adaptation thereof, that they distribute, display or transmit. Third Parties may not sublicense the Metadata and must keep intact all notices that refer to the Europeana Terms of Use with the Metadata, or of an adaptation thereof, that they distribute, display or transmit.

## **Article 5 Licence of rights for Content from Data Provider to Europeana Foundation**

1. Unless otherwise agreed, the Data Provider does not submit Content to Europeana.eu, nor does Content become part of Europeana.eu Data.
2. To increase discoverability/searchability of digitised printed Content such as periodicals or monographs, made available on Data Aggregator's or Provider's site, the Data Provider may submit full texts, tables of contents, etc. to Europeana.eu. For the specific purpose of indexing textual documents, the Data Provider shall grant Europeana Foundation the same rights in the full texts, table of contents etc. as specified for Metadata in article 2.2 above, it being understood that such full text is not to be shared with Third Parties and is only used for search on Europeana.eu. Europeana may display a small snippet of the full text, table of contents, etc. providing some textual context of the search result, to make the End-User experience more useful.
3. To facilitate search and filtering of search results, Data Provider must indicate the rights information corresponding to the copyright status of the Content, as specified in the ESE specifications on the "Europeana:Rights" field.
4. This rights information will become part of Europeana.eu Data.

## **Article 6 Licence of rights for Previews from Data Provider to Third Parties**

1. The rights for Previews are directly derived from the rights information chosen by the Data Provider for the corresponding Content.
2. Please refer to ESE specification on the "Europeana:Rights" field for exact instructions.
3. If Content is marked to be « Public Domain », then the corresponding Preview is also « Public Domain ». Any Content or Preview that is in the Public Domain but distributed or made available by the Data Provider subject to any restriction of use cannot be marked « Public Domain ».
4. If Content is marked as being under a Creative Commons Licence, then Third Parties may use the corresponding Preview under the same Creative Commons licence.
5. In all other cases, where Data Providers reserve rights for the Content or indicate an « unknown » status for the Content, the Previews are considered copyrighted and Third Parties do not get any additional rights from Europeana.eu.



## **Article 7 Other rights of Data Provider**

All other rights of the Data Provider, other than copyright, related rights and sui generis database rights in the Data, shall remain unaffected, such as patent and trademarks rights.

## **Article 8 Moral rights**

This Agreement does not affect any moral rights of the Data Provider or any other party that may persist in or to the Data. More specifically, the Data Provider and the appropriate party assert their right to be identified as the author and the right to object to derogatory treatment.

## **Article 9 Obligations of the Data Provider**

1. The Data Provider agrees to abide to the timeframe, the “ESE specifications“ and other indications of Europeana Office.
2. The Data Provider warrants that the use of Metadata as well as the creation and use of Thumbnails and Audio and Moving Image Previews, based on Content from the Data Provider’s website, do not constitute:
  - (a) A violation of the intellectual property rights of Third Parties;
  - (b) An infringement of personality, privacy, publicity or other rights (slandering, private life, etc.);
  - (c) An infringement of public order or morality (hate speech, obscenity, etc.).
3. The Data is deemed accepted whenever Europeana Office is of the opinion that the Data meets the specific or usual quality requirements and conditions.
4. The Data Provider must make best efforts to ensure the correctness of rights information, including machine readable rights information and mark-up.
5. Data Providers must make best efforts to identify Content which is in the Public Domain.

## **Article 10 Liability Disclaimer**

1. Except to the extent required by applicable law, in no event will the Europeana Foundation be liable on any legal theory for any special, incidental, consequential, punitive or exemplary damages arising out of this agreement or the use of the Data, even if the Europeana Foundation has been advised of the possibility of such damages.
2. In particular, the Europeana Foundation will not be liable for the following:
  - (a) Accuracy, completeness, etc. of Data or Europeana.eu Data;
  - (b) Mistakes, omissions, interruptions or suppression of Data representations within Europeana.eu Data or the search results on Europeana.eu;
  - (c) Any infringement of privacy, publicity or other rights;
  - (d) Any use by Third Parties that goes beyond the rights expressed in this agreement;
  - (e) Re-use by Third Parties of material in obscene material, hate speech, etc.



3. The Data Provider holds Europeana Foundation free and harmless of any action, recourse or claims made by any third party due to the non-observance by the Data Provider of its declarations and guarantees written in the above article.

## **Article 11 Obligations of Europeana Foundation**

1. Europeana Foundation must give proper Attribution on Europeana.eu of the Data Provider and/or Aggregator submitting the Metadata and/or the Previews.
2. Europeana Foundation must require that Third Parties exercising the rights granted under Article 4 paragraph 1 above, ensure proper Attribution by keeping all Attribution information intact, when distributing, displaying or making available Metadata, or an adaptation thereof. Where no Attribution information is provided by either Data Provider or Data Aggregator, the default Attribution should be given to the appropriate Europeana.eu URI, to ensure that at a minimal level, the Content and corresponding Metadata on the Data Provider's site can always be found.
3. Europeana Foundation shall collaborate with the Data Provider, upon the latter's request, for the correction, update and removal of the Data provided by the Data Provider. Moreover, any feedback or additional content provided by Third Parties shall be reported back to the Data Provider.
4. Europeana Foundation agrees to collaborate with the Data Provider in taking, upon the latter's request, all reasonable steps and appropriate measures to stop or prevent any infringement by a third party of the rights of the Data Provider on the Metadata and Previews.
5. In case the agreement is not renewed pursuant to article 12, or is terminated pursuant to article 14 below, it shall be the responsibility of Europeana Foundation to remove the Data from Europeana.eu within a reasonable timeframe from the date of termination of the agreement.
6. Europeana Foundation holds the Data Provider free and harmless of any action, recourse or claims made by any third party due to the non-observance of Europeana Foundation's obligations under this agreement.

## **Article 12 Duration of the Contract**

The agreement shall end on the 31<sup>st</sup> December following the date of signature by both parties. The agreement will be renewed automatically for a period of one year every 1<sup>st</sup> January, unless terminated by one of the parties. Written notice is required at least three months before the end of a calendar year.

## **Article 13 Modification of Agreement**

This agreement may be supplemented, amended, or modified only by the mutual agreement of the parties. No supplement, amendment, or modification of this agreement shall be binding unless it is in writing and signed by the parties. Any modification proposed by Europeana Foundation must be notified to the Data Provider who then has two months from the date of reception of the notice to accept or reject the new agreement. If the modifications are not



accepted in writing within this period by the Data Provider, the modifications are presumed rejected.

## **Article 14 Termination**

1. The rights granted by the Data Provider to the Europeana Foundation end when this agreement is terminated or no longer renewed.
2. Either party may terminate this Agreement at any time on the material breach or repeated other breaches by the other of any obligation on its part under this Agreement by serving a written notice on the other 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.
3. 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.
4. Termination of this agreement does not affect any prior valid agreement made by Europeana Foundation with Third Parties.
5. Termination of this agreement puts an end to any action, recourse or claim that the parties may have entertained against each other pursuant to this agreement.

## **Article 15 Miscellaneous**

### **1. Severability**

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. Mandatory national law**

Nothing in this agreement shall be deemed to require the Data Provider to breach any mandatory statutory law under which the Data Provider is operating.

### **3. Language**

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

### **4. Applicable law**

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



## 5. Settlement of disputes

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

The place of mediation shall be The Hague if not otherwise agreed by the conflicting parties.

Nothing in this agreement shall limit the Data Provider's right to seek injunctive relief in any applicable competent court of law. The commencement of mediation will not prevent the concerned Data Provider from commencing or continuing court proceedings.

## Article 16 Final clause

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

Signed by both parties:

Date:

Data Provider:

Date: 6 April 2010

Europeana Foundation:

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# Europeana Data Aggregator Agreement

## Parties

### Europeana Foundation (formerly EDL Foundation)

Address: **Koninklijke Bibliotheek, Prins Willem-Alexanderhof 5,  
2509LK The Hague, The Netherlands**  
Phone: **+31 70 314 0952**  
Fax: **+31 70 314 0424**  
URL: **www.europeana.eu**

On behalf of Europeana Foundation  
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 Foundation'

And

### Name of organisation:

Address:

Phone:

Fax:

Email:

URL:

On behalf of the Data Aggregator  
Name of authorised Person:  
Title/Role in organisation:  
Work Phone:  
Work Email:

Hereafter named: 'Data Aggregator'

Whereas Data Aggregator obtains the Data from one or more Data Providers pursuant to the terms of an optional separate agreement between Data Aggregator and each Data Provider;  
Whereas such Data is meant to be made available via the Europeana.eu website;  
Whereas Data Aggregator is an intermediary between Data Provider and Europeana Foundation;

The Parties, wishing to cooperate in order to fulfil the mission of Europeana.eu, agree to the following:



## Article 1 Definitions

1. Audio preview: Shorter and/or lower resolution extract of audio Content.
2. Archival finding aids: See Metadata
3. Attribution: Keeping Attribution information intact is a requirement for Third Parties and Europeana. Attribution is considered “proper Attribution” when all available Attribution information is kept intact when making available Metadata or Previews. Attribution may include multiple people or organisations, including the Data Provider and Data Aggregator. The ESE specification explains how to transmit simple and multiple Attribution information to Europeana.
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5. Context Resources: Catch-all term for resources which help to provide context and enrich Europeana.eu Data like linked data, ontologies, vocabularies, thesauri, classifications, taxonomies, etc.
6. Data: Catch-all term including Metadata, Thumbnails, Audio and Moving Image previews.
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8. Data Provider: Organisation that submits Data to Europeana.eu.
9. Derivative: Data is considered derivative (data) if it is based upon one or more pre-existing Data, such as a translation, musical arrangement, dramatisation, condensation, or any other form of transformation or adaptation.
10. Europeana Foundation: The legal entity in charge of Europeana.eu.
11. End Users: Members of the public, using Europeana.eu, covered by the « Europeana Terms of Use ».
12. Europeana.eu: The Europeana website, its Data and its machine interfaces (APIs, JSON, RDFa, Linked Data, etc). Note: The specific URL may change in later iterations of the site.
13. Europeana.eu Data: The semantically enriched and merged Data, accessible via Europeana.eu, based on Data from Data Aggregators and Providers.
14. Europeana Terms of Use: The conditions, obligations and restrictions upon which legitimate use of Europeana.eu is contingent.
15. Europeana Office: The organisation that creates Europeana.eu on behalf of Europeana Foundation.
16. Metadata: Metadata is information about Content, describing its characteristics to aid in its identification, discovery, interpretation and management. Metadata is given to Europeana and drives discovery of Content held at the Data Provider’s/Aggregator’s site. Metadata are usually facts or fact-like information, containing little individual artistic/creative expression. Examples: Bibliographic or filmographic data, temporary and spatial data, etc.  
 Note: For the specific case of archival finding aids, the archival descriptions are considered Metadata. The descriptions contain a link to a digitised archival item which is considered Content. As far as a finding aid is available as a digitised object itself, only the bibliographic information about the finding aid is considered Metadata and the digitised finding aid is considered Content. For the avoidance of doubt, any Metadata that is withheld from Europeana, does not fall under the terms of this agreement.



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18. MyEuropeana: Collections of Data from within Europeana.eu, arranged and shared by End Users.
19. Preview: General term including Thumbnail, Audio and Moving Image Preview.
20. Public Domain: Metadata, Content or Previews for which copyright protection has expired or which never was subject to copyright protection because of lack of originality.
21. Thumbnail: Smaller and/or lower resolution version of still image content.
22. Third Party: Any physical or moral person who is not party to this Agreement. For the avoidance of doubt: As the agreement only covers the Data Provider's or Aggregator's Metadata and Previews, any Data Provider or Aggregator must adhere to the Europeana Terms of Use, just like Third Parties, when using Europeana.eu Metadata or Previews;
23. URI: Uniform Resource Identifier, URLs (Uniform Resource Locators) are URIs.
24. User generated content: Catch-all term for any comment, tag or other description as well as Content, Previews or Metadata; or comments, tags and descriptions thereof that is provided by End Users to Europeana.eu
25. Documents:
  - a. « Europeana Data Aggregator agreement » This document.
  - b. « Europeana Terms of Use » Legitimate use of Europeana.eu is contingent upon its acceptance.

## **Article 2 Licence of rights for Metadata from Data Aggregator to Europeana Foundation**

1. Metadata submitted to Europeana Foundation is used to produce Europeana.eu Data, which is accessible on Europeana.eu.
2. In order to make this possible, the Data Aggregator hereby grants Europeana Foundation a non-exclusive, worldwide, royalty free licence on copyright, related rights and the sui generis database right for the duration of this agreement, whereby Europeana Foundation shall have the right for non-commercial purposes only:
  - a. to publish, make available, reproduce, distribute, display, transmit, extract, re-utilize and store the Metadata and its Derivatives in all forms, formats and media whether now known or hereafter developed (including without limitation in print, digital and electronic form) throughout the world;
  - b. to translate the Metadata (or authorise others to do so) into other languages, create adaptations, summaries or extracts of the Metadata or other Derivatives based on the Metadata and exercise all of the rights set forth in (a) above in such translations, adaptations, summaries, extracts and derivative works;
3. Data Aggregator understands that the rights on the Metadata conferred by the Data Provider pursuant to the Data Provider/Aggregator agreement are meant to enable Data Aggregator to fulfil its role as intermediary between Data Provider and Europeana Foundation and that such rights shall only be exercised by Data Aggregator within the framework of this Agreement.
4. Europeana Foundation shall grant the Data Aggregator the same rights as specified in subsection 2.b) above, with respect to any and all translations, adaptations, summaries, extracts and Derivatives that it creates as part of Europeana.eu, to re-use in the local environment of the Data Aggregator.



## **Article 3 Licence of rights for Previews from Data Aggregator to Europeana Foundation**

The Data Aggregator may submit Previews to Europeana Foundation.

1. If no Preview is submitted, none will be accessible on Europeana.eu and none will become part of Europeana.eu Data.
2. If the Preview is submitted as URI pointing to an embeddable player or viewer, the embedded player or viewer will be made accessible on Europeana.eu and the URI will become part of Europeana.eu Data. Europeana Foundation shall have the non-exclusive right to make available the embedded Preview. The Preview itself will not be stored and will not become part of Europeana.eu Data.
3. If the Preview is submitted as a file or as a URI pointing to a file which is correctly sized for a Preview, it will be stored as is by Europeana Foundation. If the file is not correctly sized, a resized Preview will be created and the original file discarded. The Preview will be accessible on Europeana.eu and become part of Europeana.eu Data, whereby Europeana Foundation shall have the non-exclusive right to publish, make available, reproduce, distribute, display, transmit, and store the Preview and its Derivatives in all forms, formats and media whether now known or hereafter developed (including without limitation in print, digital and electronic form) throughout the world.
4. Data Aggregator understands that the rights on the Previews conferred by the Data Provider pursuant to the Data Provider/Aggregator agreement are meant to enable Data Aggregator to fulfil its role as intermediary between Data Provider and Europeana Foundation and that such rights shall only be exercised by Data Aggregator within the framework of this Agreement.

## **Article 4 Licence of rights for Metadata from Data Aggregator to third parties**

1. With respect to Metadata of the Data Aggregator, the Data Aggregator grants Europeana Foundation the right, to allow third parties for non-commercial purposes only and on a non-exclusive, worldwide, royalty-free basis to:
  - a. to publish, make available, reproduce, distribute, display, transmit, extract, re-utilize and store the Metadata in all forms, formats and media whether now known or hereafter developed (including without limitation in print, digital and electronic form) throughout the world;
  - b. to translate the Metadata into other languages, to create adaptations, summaries or extracts of the Metadata or to make other Derivatives based on the Metadata and exercise all of the rights set forth in (a) above in such translations, adaptations, summaries, extracts and Derivatives, provided that such exercise of rights only takes place under the same or compatible licensing conditions as herein specified;

The rights from 1.a) and b) are communicated to Third Parties through the Europeana Terms of Use v1.0 or a future version thereof containing the same licensing elements or other similar Terms/Contracts containing the same licensing elements.



It is understood that Europeana Foundation cannot grant more rights to Third Parties than conferred in this Agreement. The scope of limitations and exceptions of copyright law or applicable sui generis database rights will not be affected by additional restrictions in the Europeana Terms of Use.

2. Europeana Foundation must require that Third Parties exercising the rights granted under paragraph 1a) or b) above include a copy of, or the Uniform Resource Identifier (URI) for, the appropriate Europeana Terms of Use with the Metadata, or of an adaptation thereof, that they distribute, display or transmit. Third Parties may not sublicense the Metadata and must keep intact all notices that refer to the Europeana Terms of Use with the Metadata, or of an adaptation thereof, that they distribute, display or transmit.
3. The Data Aggregator must keep intact all attribution information provided by the Data Provider.

## **Article 5 Licence of rights for Content from Data Aggregator to Europeana Foundation**

1. Unless otherwise agreed, the Data Aggregator does not submit Content to Europeana.eu, nor does Content become part of Europeana.eu Data.
2. To increase discoverability/searchability of digitised printed Content such as periodicals or monographs, made available on Data Aggregator's or Provider's site, the Data Aggregator may submit full texts, tables of contents, etc. to Europeana.eu. For the specific purpose of indexing textual documents, the Data Aggregator shall grant Europeana Foundation the same rights in the full texts, table of contents etc. as specified for Metadata in article 2.2 above, it being understood that such full text is not to be shared with Third Parties and is only used for search on Europeana.eu. Europeana may display a small snippet of the full text, table of contents, etc. providing some textual context of the search result, to make the End-User experience more useful.
3. To facilitate search and filtering of search results, the Data Aggregator must indicate the rights information corresponding to the copyright status of the Content, as specified in the ESE specifications on the "Europeana:Rights" field.
4. This rights information will become part of Europeana.eu Data.

## **Article 6 Licence of rights for Previews from Data Aggregator to Third Parties**

1. The rights for Previews are directly derived from the rights information chosen by the Data Aggregator for the corresponding Content.
2. Please refer to ESE specification on the "Europeana:Rights" field for exact instructions.
3. If Content is marked to be « Public Domain », then the corresponding Preview is also « Public Domain ». Any Content or Preview that is in the Public Domain but distributed or made available by the Data Aggregator subject to any restriction of use cannot be marked « Public Domain ».



4. If Content is marked as being under a Creative Commons Licence, then Third Parties may use the corresponding Preview under the same Creative Commons licence.
5. In all other cases, where Data Aggregators and/or Providers reserve rights for the Content or indicate an « unknown » status for the Content, the Previews are considered copyrighted and Third Parties do not get any additional rights from Europeana.eu.

## **Article 7 Other rights of Data Aggregator**

All other rights of the Data Aggregator and Data Provider, other than copyright, related rights and sui generis database rights in the Data, shall remain unaffected, such as patent and trademarks rights.

## **Article 8 Moral rights**

This agreement does not affect any moral rights of the Data Aggregator or Data Provider or any other party that may persist in or to the Data. More specifically, the Data Aggregator or Data Provider and the appropriate party assert their right to be identified as the author and the right to object to derogatory treatment.

## **Article 9 Obligations of the Data Aggregator**

1. The Data Aggregator agrees to abide to the timeframe, the “ESE specifications“ and other indications of Europeana Office.
2. The Data Aggregator warrants that the use of Metadata as well as the creation and use of Thumbnails and Audio and Moving Image Previews, based on Content from the Data Aggregator or Data Provider’s website, do not constitute:
  - (a) A violation of the intellectual property rights of Third Parties;
  - (b) An infringement of personality, privacy, publicity or other rights (slandering, private life, etc.);
  - (c) An infringement of public order or morality (hate speech, obscenity, etc.).
3. The Data is deemed accepted whenever Europeana Office is of the opinion that the Data meets the specific or usual quality requirements and conditions.
4. The Data Aggregator must make best efforts the correctness of rights information, including machine readable rights information and mark-up.
5. Data Aggregators must make best efforts to identify Content which is in the Public Domain.

## **Article 10 Liability Disclaimer**

1. Except to the extent required by applicable law, in no event will the Europeana Foundation be liable on any legal theory for any special, incidental, consequential, punitive or exemplary damages arising out of this agreement or the use of the Data, even



if the Europeana Foundation has been advised of the possibility of such damages.

2. In particular, the Europeana Foundation will not be liable for the following:
  - (a) Accuracy, completeness, etc. of Data or Europeana.eu Data;
  - (b) Mistakes, omissions, interruptions or suppression of Data representations within Europeana.eu Data or the search results on Europeana.eu;
  - (c) Any infringement of privacy, publicity or other rights;
  - (d) Any use by Third Parties that goes beyond the rights expressed in this agreement;
  - (e) Re-use by Third Parties of material in obscene material, hate speech, etc.
3. The Data Aggregator holds Europeana Foundation free and harmless of any action, recourse or claims made by any third party due to the non-observance by the Data Aggregator of its declarations and guarantees written in the above article.

## **Article 11 Obligations of Europeana Foundation**

1. Europeana Foundation must give proper Attribution on Europeana.eu of the Data Provider and/or Aggregator submitting the Metadata and/or the Previews.
2. Europeana Foundation must require that Third Parties exercising the rights granted under Article 4 paragraph 1 above, ensure proper Attribution by keeping all Attribution information intact, when distributing, displaying or making available Metadata, or an adaptation thereof. Where no Attribution information is provided by either Data Provider or Data Aggregator, the default Attribution should be given to the appropriate Europeana.eu URI, to ensure that at a minimal level, the Content and corresponding Metadata on the Data Provider's or Aggregator's site can always be found.
3. Europeana Foundation shall collaborate with the Data Aggregator, upon the latter's request, for the correction, update and removal of the Data provided by the Data Aggregator. Moreover, any feedback or additional content provided by Third Parties shall be reported back to the Data Aggregator.
4. Europeana Foundation agrees to collaborate with the Data Aggregator in taking, upon the latter's request, all reasonable steps and appropriate measures to stop or prevent any infringement by a third party of the rights of the Data Aggregator on the Metadata and Previews.
5. In case the agreement is not renewed pursuant to article 12, or is terminated pursuant to article 14 below, it shall be the responsibility of Europeana Foundation to remove the Data from Europeana.eu within a reasonable timeframe from the date of termination of the agreement.
6. Europeana Foundation holds the Data Aggregator free and harmless of any action, recourse or claims made by any third party due to the non-observance of Europeana Foundation's obligations under this agreement.

## **Article 12 Duration of the agreement**

The agreement shall end on the 31<sup>st</sup> December following the date of signature by both parties. The agreement will be renewed automatically for a period of one year every 1<sup>st</sup>



January, unless terminated by one of the parties. Written notice to terminate this agreement is required at least three months before the end of a calendar year.

## **Article 13 Modification of Agreement**

This agreement may be supplemented, amended, or modified only by the mutual agreement of the parties. No supplement, amendment, or modification of this agreement shall be binding unless it is in writing and signed by the parties. Any modification proposed by Europeana Foundation must be notified to the Data Aggregator who then has two months from the date of reception of the notice to accept or reject the new agreement. If the modifications are not accepted in writing within this period by the Data Aggregator, the modifications are presumed rejected.

## **Article 14 Termination**

1. The rights granted by the Data Aggregator to the Europeana Foundation end when this agreement is terminated or no longer renewed.
2. Either party may terminate this agreement at any time on the material breach or repeated other breaches by the other of any obligation on its part under this agreement by serving a written notice on the other 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.
3. This agreement may be terminated by either party on written notice if the other party becomes insolvent or bankrupt, if the Data Aggregator's project ends or if the Data Aggregator withdraws or ceases operations. The termination will become effective thirty (30) days after receipt of the written notice.
4. Termination of this agreement does not affect any prior valid agreement made by Europeana Foundation with third parties.
5. Termination of this agreement puts an end to any action, recourse or claim that the parties may have entertained against each other pursuant to this agreement.

## **Article 15 Miscellaneous**

### **1. Severability**

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. Mandatory national law**

Nothing in this agreement shall be deemed to require the Data Aggregator to breach any mandatory statutory law under which the Data Aggregator is operating.



### **3. Language**

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

### **4. Applicable law**

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

### **5. Settlement of disputes**

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

The place of mediation shall be The Hague if not otherwise agreed by the conflicting parties.

Nothing in this agreement shall limit the Data Aggregator's right to seek injunctive relief in any applicable competent court of law. The commencement of mediation will not prevent the concerned Data Aggregator from commencing or continuing court proceedings.

## **Article 16 Final clause**

This agreement enters into force as of the date of signature of the parties.

Signed by both parties:

Date:

Data Aggregator:

Date: **6 April 2010**

Europeana Foundation:

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