

**Europeana Foundation**

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[www.europeana.eu](http://www.europeana.eu)

## EUROPEANA DATA EXCHANGE AGREEMENT

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PLEASE NOTE THIS DOCUMENT IS A PREVIEW ONLY

If you wish to sign the Agreement and you agree with the articles below, please contact us via [dea@europeana.eu](mailto:dea@europeana.eu) to arrange signing

Whereas

1. Europeana has the objective to provide access to Europe's cultural and scientific heritage;
2. Europeana has, for this purpose, undertaken the task of ingesting, indexing, enriching and making available descriptive Metadata (hereafter called Metadata), Thumbnails and Digital Objects that are part of that heritage;
3. Europeana thereby intends to benefit both the holders of these Digital Objects and the public at large;
4. For this purpose Europeana maintains a database that includes Metadata and Thumbnails;
5. The Data Partner has and/or can create Metadata relating to Content that are appropriate to form part of this database;
6. The Data Partner is willing to make (a part of) these Metadata available for this database, under the conditions of this agreement;
7. 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
8. Europeana wishes to make all Metadata in its database available for reuse to all its Data Partners and the public at large.

The Parties have agreed to the following:

## Article 1 Definitions

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- CC0 1.0 Universal Public Domain Dedication: The Creative Commons Universal Public Domain Dedication as published at: <http://creativecommons.org/publicdomain/zero/1.0/>.
- Content: a physical or Digital Object that is part of Europe's cultural and/or scientific heritage, typically held by the Data Partner or by a data provider of the Data Partner.
- Digital Object: A digital representation of an object that is part of Europe's cultural and/or scientific heritage. The Digital Object can also be the original object when born digital.
- 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>.
- Europeana Network Association: The association incorporated under the same name made up of the members of the Europeana Network.
- 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.
- Thumbnail: A visual representation of Content, in the form of an image.
- 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 Thumbnails

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1. Notwithstanding the minimum requirements of paragraphs 2 and 3 of this article, it is in the discretion of the Data Partner to decide which Metadata and Thumbnails it provides to Europeana, including the right to submit only

Metadata and Thumbnails 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 Thumbnails it has or its data providers have with regard to particular Content.

2. The Data Partner shall submit Metadata in accordance with the Metadata Specifications.
3. The Data Partner 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.
5. Europeana shall collaborate with the Data Partner within thirty (30) days upon the latter's request, for the correction, update and removal of Metadata provided by the Data Partner.

### **Article 3 Use of Metadata**

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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 Partner 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 Partner prior to the Effective Date, under the terms of the CC0 1.0 Universal Public Domain Dedication and is hereby authorised by the Data Partner to do so. The Data Partner recognises 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 section 3 of the CC0 1.0 Universal Public Domain Dedication will apply, and the Metadata provided by the Data Partner is licensed non-exclusively, unconditionally, free-of-charge for all types of use and for all territories to the public.
3. In as far as the Data Partner has provided or will provide Europeana with Metadata that it has aggregated from Third Parties or that otherwise originate from Third Parties, the Data Partner shall ensure that these Third Parties have authorised the Data Partner to authorise Europeana in accordance with paragraph 2 of this article.
4. When Europeana publishes Metadata that can be (in whole or in part) attributed to the Data Partner, Europeana is obliged to give attribution to the Data Partner and to the party or parties referred to by the Data Partner through the edm:dataProvider field (or its equivalent in a later version) of the Metadata Specification.

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

## **Article 4 Use of Thumbnails**

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1. Notwithstanding paragraphs 2 and 3 of this article, Europeana is entitled to allow use of the Thumbnails by visitors of Europeana.eu and Third Parties in accordance with terms specified by the Data Partner in the edm: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 Thumbnails provided by the Data Partner, though only in combination with the Metadata that pertain to the same Content.
3. In as far as the Data Partner is the proprietor of Intellectual Property Rights to the Thumbnails it provides to Europeana, the Data Partner hereby grants Europeana a licence to use these rights in accordance with this article, without affecting any moral rights that it may have in these Thumbnails.
4. In as far as the Data Partner has provided or will provide Europeana with Thumbnails that it has aggregated from Third Parties or that otherwise originate from Third Parties, the Data Partner ensures that these Third Parties have authorised the Data Partner to enable Europeana to perform paragraphs 1 and 2 of this article.

## **Article 5 Use of Digital Objects**

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1. If the Metadata provided to Europeana contains direct links to the associated Digital Objects, Europeana will provide visitors of Europeana.eu the ability to view such Digital Objects without leaving Europeana.eu.
2. Other than in situations as described in paragraph 3 of this article, Europeana will not store copies of the Digital Objects.
3. Europeana is entitled to use Digital Objects referenced in the Metadata provided by the Data Partner in accordance with the conditions established by the rights statement contained in the Metadata associated with the Digital Objects.

## **Article 6 Liability and Notice and Take Down**

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1. The Data Partner 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:
  - i. violation of Intellectual Property Rights of a Third Party;

- ii. an infringement of personality, privacy, publicity or other rights; or
  - iii. 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 Partner 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 Partner 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 five (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 Partner of its decision and the measures undertaken.
  - 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 Partner to provide its views on the opinion within five (5) working days from the date that Europeana has forwarded the opinion to the Data Partner. Upon receipt of the views of the Data Partner, 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 Partner, to provide 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

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- 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 Partner's project ends

or if the Data Partner 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 Thumbnails provided by the Data Partner if the Data Partner requests Europeana to remove the Metadata and Thumbnails. 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.
5. This Agreement enters into force as of the date of signature of the parties.
6. The Agreement shall end on the 31 December following the Effective Date. The Agreement will be renewed automatically for a period of one year every 1 January, unless terminated by one of the parties, by written notice received by the other party ultimately on 30 September of that year.

## **Article 8 Assignment**

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1. Conditional only to the appointment of a new operator of the current Europeana Foundation activities, the Data Partner hereby provides its explicit and unconditional consent to Europeana to assign all rights and obligations under this agreement to the newly appointed operator.

## **Article 9 Miscellaneous**

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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 Partner before the Effective Date. All Metadata and Thumbnails provided to Europeana by the Data Partner 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 Partner in writing. The Data Partner shall be allowed at least two (2) months from the date of reception of the notice to accept the new agreement. If the modifications are not accepted by the Data Partner in writing within the allowed period, the modifications are presumed to have been rejected. If the proposed modifications are rejected by the Data

Partner, Europeana has the right to terminate this agreement against 31 December of any year, with a one (1) 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 through consensus, shall be referred to the management board of the Europeana Network Association for mediation. The outcome of the mediation process will be binding on the parties.