

[This version is for institutions that have signed a separate data processing agreement covering any personal information included in the data sent to us.]

Museum Data Service Data Deposit Agreement

PARTIES:

- (1) **The Public Catalogue Foundation**, a charitable company incorporated in England and Wales with company number 04573564, whose registered address is Salisbury House, Station Road, Cambridge, England, CB1 2LA, and whose trading name is Art UK (the 'Recipient'); and

(2) Organisation name	(the 'Depositor')
Type of company and jurisdiction of registration	
Company number (if any)	
Registered address	
Trading name (if any)	

(each a 'Party' and together the 'Parties').

WHEREAS:

- (A) The Depositor has agreed to provide, and license the use of any copyright and other intellectual property rights in, the Data Collection and Metadata to the Recipient on the terms and conditions set out in this Agreement.
- (B) The Parties acknowledge that the provision of the Data Collection and Metadata by the Depositor to the Recipient is for the ultimate benefit of a joint venture between The Public Catalogue Foundation t/a Art UK ('Art UK'), Collections Trust and the University of Leicester known as the Museum Data Service (or such name as the Charity Commission may agree) ('MDS'). As at the Effective Date, MDS has not yet been established and the Parties acknowledge and agree that the rights, obligations and liabilities of the Recipient under this Agreement shall be transferred by way of novation to MDS once it has been established.
- (C) The Depositor and the Recipient are parties to a separate data processing agreement dated _____ (the 'Data Processing Agreement'), which governs the processing by the Depositor and/or the Recipient of any Personal Data contained within the Data Collection and Metadata shared pursuant to this Agreement.

IT IS AGREED:

1. Definitions and interpretation

1.1 In this Agreement the following words have the following meanings:

'Access Permissions': means the level of access which the Depositor has indicated at Annex A applies to each field included in the Data Collection.

'Administrator': means the named individual(s) authorised by the Depositor to have administration permissions in the Depositor's MDS Account; details of the initial Administrator at the Effective Date are set at Annex C.

'Agreement': means this document including all of its terms and conditions.

'Art UK': has the meaning given to it in Recital (B).

'Data Collection': means the data to be provided by the Depositor as described at Annex A, which, for the avoidance of doubt, shall not include any Media Files.

'Data Processing Agreement': has the meaning given to it in Recital (C).

'Effective Date': means the date of this Agreement.

'MDS': has the meaning given to it in Recital (B).

'MDS Account': means part of the MDS system configured such that only people authorised by the Depositor can log in.

'Media Files': means images, audio or video in any file format.

'Metadata': means data about data, including but not limited to creator, subject, location, date, description, size, and any other data relating to the Data Collection that MDS in its reasonable opinion considers to be Metadata.

'Personal Data': has the meaning given to it in UK Data Protection Law.

'Term': has the meaning given to it in Section 9.

'UK Data Protection Law': means the Data Protection Act 2018 and "The UK GDPR" which is defined in section 3(10) of the Data Protection Act 2018 and supplemented by section 205(4).

'Use Licence': means the licence which the Depositor has indicated applies to the Data Collection, which prescribes the terms and conditions of use of the Data Collection as specified at Annex B.

1.2 In this Agreement, unless the context requires otherwise:

- 1.2.1. references to a person include any individual, firm, body corporate (wherever incorporated), government, state or agency of a state or any joint venture, association, partnership, works council or employee representative body (in any case, whether or not it has separate legal personality);
- 1.2.2. references to a paragraph or Section are to those of this Agreement;
- 1.2.3. headings do not affect its interpretation;
- 1.2.4. the singular shall include the plural and vice versa, and references to one gender include all genders;
- 1.2.5. references to any English law legal term or concept shall, in respect of any jurisdiction other than England and Wales, be construed as references to the term or concept that most nearly corresponds to it in that jurisdiction; and
- 1.2.6. any phrase introduced by the terms *including*, *include*, *in particular* or any similar expression shall be construed as merely illustrative and shall not limit the sense of the words preceding those terms; and
- 1.2.7. references to 'applicable law', 'law' or 'laws' shall mean (i) any statute, regulation, by-law, or subordinate legislation; (ii) the common law and the law of equity; (iii) any binding court order, judgment or decree; or (iv) any industry code, policy or standard enforceable by law.

1.3 The Annexes comprise annexes to this Agreement and form part of this Agreement.

1.4 If there is any inconsistency between any definition set out in an Annex and a definition set out in any section or any other Annex, then, for the purposes of construing that section or Annex, the definition set out in that section or Annex shall prevail.

2. Grant of licence

2.1 In consideration of the mutual obligations and covenants in this Agreement, the Depositor hereby grants to the Recipient:

- 2.1.1. a non-exclusive, worldwide, royalty free, fully paid up sub-licensable and transferable licence for the Term to use, distribute, preserve, promote, advertise, analyse, enhance, validate, document, store, translate, copy, re-arrange, enhance and disseminate the Data Collection (including any copyright and other intellectual property rights in the Data Collection except as set out in Section 2.2) in such a manner that is consistent with the Access Permissions and Use Licence indicated in Annex B (as may be updated from time to time in accordance with the terms of this Agreement); and
- 2.1.2. a non-exclusive, worldwide, royalty free, fully paid up, sub-licensable and transferable licence for the Term to use, distribute, preserve, promote, advertise, analyse, enhance, validate, document, store, translate, copy, re-arrange, enhance and disseminate the Metadata relating to the Data Collection (including

any copyright and other intellectual property rights in that Metadata except as set out in Section 2.2) in such a manner as the Recipient deems appropriate from time to time.

- 2.2 The licensing of copyright and other intellectual property rights for the use of any Media Files referred to in any Metadata within the Data Collection is expressly outside the scope of this Agreement.

3. Depositor's rights and undertakings

- 3.1 The Depositor is free to use or publish the Data Collection and Metadata elsewhere and nothing in this Agreement has limit the Depositor's rights in and to the Data Collection and Metadata.
- 3.2 The Depositor does not warrant or guarantee the Data Collection and Metadata in terms of the comprehensiveness, accuracy, reliability, or otherwise of its contents.
- 3.3 The Depositor hereby warrants and undertakes (as applicable) to the Recipient the following:
- 3.3.1. the Depositor is either the owner of the Data Collection and Metadata (including any copyright and other intellectual property rights in that Data Collection and Metadata) or has valid licences from the owners of the Data Collection and Metadata (including any copyright and other intellectual property rights in that Data Collection and Metadata), and, in each case, is capable of granting, or duly authorised to grant, the licences and rights set out in this Agreement to the Recipient;
 - 3.3.2. that the Data Collection and Metadata are not and shall be in no way a violation or infringement of any rights whatsoever of any person;
 - 3.3.3. that the Recipient's use of the Data Collection and Metadata in accordance with the terms of this Agreement does not and will not contravene any applicable law, including but not limited to the law relating to defamation or obscenity;
 - 3.3.4. that the Depositor is not under any obligation, limitation or restriction created by applicable law, contract or otherwise which would in any manner or to any extent prevent or restrict entering into and fully performing this Agreement;
 - 3.3.5. to promptly notify the Recipient of any change of copyright ownership or ownership of any rights affecting the Data Collection and the Recipient's use of the Data Collection and Metadata in accordance with the terms of this Agreement;
 - 3.3.6. to notify the Recipient of any confidentiality, privacy or data protection issues pertaining to the Data Collection and Metadata as noted at Annex A;
 - 3.3.7. to comply with any applicable law when exercising its rights and performing its obligations under this Agreement; and
 - 3.3.8. that the Depositor has the full authority, power and capacity to enter into and carry out its obligations under this Agreement.

4. Recipient's rights and responsibilities

4.1 The Recipient shall:

- 4.1.1. use all reasonable efforts that the Recipient deems appropriate to protect and curate the Data Collection and Metadata;
 - 4.1.2. take reasonable measures to prevent unauthorised access to, duplication of, or distribution of, the Data Collection and Metadata whilst it is in the Recipient's possession or under its control;
 - 4.1.3. comply with any applicable law when exercising its rights and performing its obligations under this Agreement;
 - 4.1.4. permit users to access and use the Data Collection and Metadata, or any part of it, in accordance with the Access Permissions set out at Annex A and (if applicable) the Use Licence specified at Annex B;
 - 4.1.5. inform users of the type of Use Licence assigned by the Depositor as specified at Annex B;
 - 4.1.6. irrevocably waive all and any first publication rights that the Recipient might acquire in the course of disseminating the Data Collection and Metadata; and
 - 4.1.7. not be under any obligation to take legal action on behalf of the Depositor or other rights holders in the event of breach of the Use Licence or any other right in the Data Collection and Metadata, or any third party claim for copyright or other intellectual property rights infringement.
- 4.2 The Recipient warrants to the Depositor that it has the full authority, power and capacity to enter into and carry out its obligations under this Agreement.
- 4.3 The Recipient reserves the right to restrict (at its sole discretion) temporarily or permanently access to data within the Data Collection and Metadata flagged as offensive or otherwise problematic by users and will inform the Depositor of any such concerns raised from time to time.
- 4.4 The copyright in and to any additional Metadata added by the Recipient to the Data Collection, and any agreements, user guides, documentation and other materials that are prepared by the Recipient to assist users of the service shall belong to the Recipient and any other Parties that the Recipient may choose to enter into an agreement with to produce such materials.

5. MDS Account

- 5.1 The Depositor shall confirm at Annex C details of the initial Administrator authorised to access the Depositor's MDS Account.
- 5.2 The Recipient shall provide the Administrator with initial log-in details for the Depositor's MDS Account.

- 5.3 The Administrator may add and delete other users authorised to access the Depositor's MDS Account and shall be responsible for managing the Access Permissions granted to any such users.
- 5.4 The Administrator may transfer Administrator status to another user, or the Depositor may ask the Recipient in writing to transfer Administrator status from one person to another on its behalf.
- 5.5 The Administrator shall ensure that details of any other users authorised to access the Depositor's MDS Account remain current including, but not limited to, deleting users no longer associated with the Depositor's organisation.
- 5.6 The Depositor acknowledges that the Recipient:
 - 5.6.1. does not guarantee that the Depositor's MDS Account will be available for the Administrator and its authorised users to access at all times and, in particular, assumes no responsibility for any inaccessibility of the MDS Account caused by disruptions of IT systems; and
 - 5.6.2. reserves the right to terminate, in its sole discretion, the Administrator's and its authorised users' access to the Depositor's MDS Account.

6. Confidentiality

- 6.1 Each Party undertakes that it shall not at any time disclose to any person any confidential information that it receives from or on behalf of the other Party that has been identified as confidential (including the Access Permissions set out at Annex A), except as strictly required:
 - 6.1.1. to its employees, officers, representatives, contractors, subcontractors, affiliates or advisers who are under confidentiality obligations with the Party at least equivalent to this Section 6 and that need to know such information for the purposes of exercising the Party's rights or carrying out its obligations under or in connection with this Agreement; and
 - 6.1.2. by applicable law, a court of competent jurisdiction or any governmental or regulatory authority.

No Party shall use any other Party's confidential information for any purpose other than to exercise its rights and perform its obligations under or in connection with this Agreement and the provisions of this Section 6 shall survive termination of this Agreement.

7. Change management

- 7.1 Either Party may, from time to time, propose changes to the terms of this Agreement which may include:
 - 7.1.1. changes, or updates, to the scope of, or information contained within, the Data Collection and Metadata, including any information set out in Annex A;
 - 7.1.2. changes to the scope and applicability of the Use Licence to the Data Collection (in whole or in part) set out in Annex B; or

7.1.3. the transfer Administrator status to a different user pursuant to Section 5.4.

7.2 The Party proposing any such change shall notify the other Party in writing in accordance with Section 8 and the Parties shall discuss and agree any changes to the terms of this Agreement. The Depositor's representatives on the signature page of this Agreement and the Recipient's representatives on the signature page of this Agreement (or in each case, an alternate appointed by the relevant Party) each shall be authorised to approve any such change.

7.3 The Parties shall document any agreed change in writing and that change shall be deemed to form part of this Agreement.

8. Notices

8.1 Any communications or notices relating to this Agreement shall be given via email, using the email addresses given under the signature of:

8.1.1. in the case of communications or notices to the Depositor, the Depositor's representatives on the signature page of this Agreement, or via the Administrator, instead of by post to the Depositor's registered address; and

8.1.2. in the case of communications to the Recipient, the Recipient representatives on the signature page of this Agreement, or via support@museumdata.uk, instead of by post to the Recipient registered address.

8.2 A communication shall be effective upon receipt and shall be deemed to have been received at the time of transmission of the email. Where delivery occurs outside Working Hours, notice shall be deemed to have been received at the start of Working Hours on the next following Business Day.

8.3 Each Party shall notify the other Party in writing of a change to its details referred to in this Section 8 from time to time.

9. Term

This Agreement shall come into effect on the Effective Date and shall continue thereafter unless and until either Party terminates this Agreement under Section 10 ('Termination').

10. Termination and consequences of termination

10.1 Either Party may terminate this Agreement at any time during the Term:

10.1.1. immediately without further obligation in the event of any breach of this Agreement which cannot be remedied or is not remedied within thirty (30) days of the Party in breach being requested to do so by the other Party; and

10.1.2. where there is no breach, either Party may terminate this Agreement upon six (6) months' notice.

10.2 In the event of such a termination, the Recipient may, at its discretion, keep such copies of the Data Collection as the Use Licence entitles any user to copy. The Recipient will return and/or delete any part of the Data Collection not covered by such a Use Licence including, but not limited to, Personal Data covered by the Data Processing Agreement.

11. Limitation of liability

11.1 To the fullest extent permitted by law, the Recipient shall incur no liability, either expressed or implicit, any costs, expenses, loss or damage (whether direct, indirect or consequential, and whether economic or other) arising from or relating to the Recipient's exercise of the rights and licences granted to it under this Agreement.

11.2 The limitations in Section 11.1 shall not apply to:

- 11.2.1. liability for death or personal injury caused by the relevant Party's negligence;
- 11.2.2. liability for fraud or fraudulent misrepresentation; and
- 11.2.3. any other liability that cannot be excluded by law.

12. Further assurances

Each Party shall do anything that is required by law or may be reasonably necessary to implement and give effect to this Agreement.

13. Successors and assigns

13.1 This Agreement is binding on and will benefit the successors and assigns of the Parties.

13.2 Subject to Section 13.3, either Party may assign or transfer any of its rights and obligations under this Agreement and shall give promptly notice of the same in writing to the other Party.

13.3 If a Party assigns or transfer any of its rights or obligations under this Agreement then:

- 13.3.1. the other Party shall have no greater liability under this Agreement than it would otherwise have had; and
- 13.3.2. the other Party shall, on request from that Party, execute any agreement or other instrument (including any supplement or amendment to this Agreement) that may be required to give effect to or perfect the assignment or transfer.

14. Force majeure

The Depositor and the Recipient shall be under no liability for any loss or for any failure to perform any obligation hereunder due to causes beyond their reasonable control, including but not limited to industrial disputes of whatever nature, Acts of God, hostilities, force majeure or any circumstances which they could not reasonably foresee and provide against.

15. Conflict with other agreements

15.1 If the Recipient and the Depositor are parties to any other agreement, including any image reproduction agreements, that relates (in part or whole) to any subject matter covered by this Agreement, the terms of, and scope of, that other agreement shall prevail over this Agreement.

15.2 Subject to Section 15.1, if there is any conflict between the terms of this Agreement and any other agreement, the terms of this Agreement shall prevail (as between the Parties to this Agreement) to the extent of the inconsistency unless:

- 15.2.1. the other agreement expressly states that it overrides this Agreement in the relevant respect; and
- 15.2.2. the Parties: (i) are also parties to that other agreement; or (ii) expressly agree in writing that the other agreement overrides this Agreement in that respect.

16. Whole agreement

This Agreement sets out the whole agreement between the Parties in respect of the subject matter of this Agreement and supersedes any previous draft, agreement, arrangement or understanding, whether in writing or not, relating to its subject matter.

17. No reliance on representations

Each Party acknowledges and agrees that it is not relying upon, nor shall have any claim or remedy arising under or in connection with, any statement, representation, warranty, promise or assurance made or given by any other Party or any other person, whether or not in writing, at any time prior to the execution of this Agreement which is not expressly set out in this Agreement. Nothing in this Section 17 shall exclude any liability for (or remedy in respect of) fraud or fraudulent misrepresentation.

18. Variation

18.1 Except as otherwise set out in this Agreement, no variation will be effective unless in writing signed by or on behalf of both Parties.

18.2 If this Agreement is varied:

- 18.2.1. the variation shall not constitute a general waiver of any provisions of this Agreement;
- 18.2.2. the variation shall not affect any rights, obligations or liabilities under this Agreement that have already accrued up to the date of variation; and
- 18.2.3. the rights and obligations of the Parties under this Agreement shall remain in force, except as, and only to the extent that, they are varied.

19. Severability

19.1 Each of the provisions of this Agreement is severable.

19.2 If, and to the extent that, any provision of this Agreement:

- 19.2.1. is held to be, or becomes, invalid or unenforceable under the applicable law or any jurisdiction; but
- 19.2.2. would be valid, binding and enforceable if some part of the provision were deleted or amended,

then the provision shall apply with the minimum modifications necessary to make it valid, binding and enforceable and neither the validity or enforceability of the remaining provisions of this Agreement, nor the validity or enforceability of that provision under the law of any other jurisdiction, shall be in any way affected or impaired.

20. Legal relationship

This Agreement does not create any partnership or joint venture between the Parties nor make either Party the agent of the other Party for any purpose.

21. Third party rights

Except as expressly set out in this Agreement, a person who is not a Party to this Agreement shall have no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any of its terms.

22. Waiver

22.1 No delay, neglect or forbearance by either Party in enforcing its rights under this Agreement or provided by law shall be a waiver of or prejudice of those rights. The single or partial exercise of any right under this Agreement or provided by Law shall not preclude any further exercise of it.

22.2 No waiver of any breach of any provision of this Agreement shall constitute a waiver of any other breach of the same or any other provision, and no waiver shall be effective unless made in writing and signed by an authorised representative of the waiving Party.

23. Counterparts

This Agreement may be executed in any number of counterparts, and by each Party on separate counterparts. Each counterpart is an original, but all counterparts shall together constitute one and the same instrument.

24. Governing law and jurisdiction

This Agreement and any non-contractual obligations arising out of, or in connection with, it shall be governed by, and interpreted in accordance with, the laws of England and Wales. Each Party irrevocably submits to the exclusive jurisdiction of the English courts in relation to any dispute that may arise concerning this Agreement, which shall be decided by the High Court.

IN WITNESS of which this Agreement has been executed by or on behalf of each Party.

SIGNATURES

Authorised to sign for and on behalf of
THE PUBLIC CATALOGUE FOUNDATION

Signature	
Print name	
Occupation	
Email	
Date	

Authorised to sign for and on behalf of

Signature	
Print name	
Occupation	
Email	
Date	

Annex A – Fields included in the Data Collection

[A table list of fields included in the Data Collection with Access Permission levels specified for any that are non-public. This will be generated during the onboarding process and inserted here.]

SAMPLE

Annex B – Use Licence

Note to the Depositor: Please indicate the Use Licence which the Data Collection should be disseminated under. This should reflect the licensing policy approved by your organisation’s governing body. The Recipient does not require any particular licence. The Creative Commons licences listed below are among those frequently used to share cultural heritage data, but your organisation may prefer other options.

Creative Commons (tick one or leave blank and go to ‘Other licence’ below)

CC0 1.0	Public domain (you waive any copyright)	
CC BY 4.0	Attribution (users must give appropriate credit)	
CC BY-NC 4.0	Attribution, non-commercial (no commercial use)	

Other licence (please include a URL if the licence terms are published online)

Re-use of the Data Collection by the Recipient on the Art UK platform. Tick the box if the Depositor wishes to allow this.

Art UK Re-Use	<p>The Depositor hereby authorises the Recipient to re-use any data fields in the Data Collection and/or Metadata on the Recipient’s Art UK platform for its own purposes in accordance with this Agreement and subject to the Access Permissions listed at Annex A.</p> <p>In accordance with Section 2.2, the Parties acknowledge that, to the extent Media Files are referred to in the Data Collection, the Recipient shall import those Media Files into the Art UK platform outside of the scope of this Agreement and under the terms of an image reproduction agreement already in place, or which shall promptly be put in place, between the Recipient and the Depositor.</p> <p>The Depositor acknowledges and agrees that, in accordance with Section 15.1, the two authorisations in this Annex B shall not in any way limit the Recipient’s rights under any other agreement with the Depositor.</p>	
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Annex C – Administrator

At the Effective Date, the Depositor authorises the individual named below to act as initial Administrator.

Administrator

Name	
Role in organisation	
Email	