

**\*\*DRAFT\*\* DPLA Data Exchange Agreement [Legal Version]. v3.0**  
10/09/2012

**Parties:**

**Digital Public Library of America**

Address: TBD

Phone: TBD

URL: [www.dp.la](http://www.dp.la)

Name of authorized Person: TBD

Title/Role in organization: Executive Director

Work Phone: TBD

Work Email: TBD

**Hereafter named: 'DPLA'**

And

**Name of organization:**

Address:

Phone:

Email:

URL:

Name of authorized Person:

Title/Role in organization:

Work Phone:

Work Email:

**Hereafter named: 'Data Provider'**

## whereas

1. DPLA has the objective to provide access to the cultural and scientific heritage of humanity available, free of charge, to all
2. DPLA's primary focus is on making available materials from the United States;
3. DPLA, 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,
4. DPLA thereby intends to benefit both the holders of these objects and the public at large;
5. At this time, DPLA has no intention to include any data in its data store other than such metadata and previews;
6. the Data Provider has and/or can create metadata and previews that are appropriate to form part of this data store;
7. the Data Provider is willing to make (a part of) these metadata and previews available for this data store, under the conditions of this agreement;
8. 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 DPLA is called, for purposes of this agreement, metadata; and
9. DPLA wishes to make all metadata in its data store available for reuse to all its Data Providers and the public at large.

## the Parties have agreed to the following:

### Section 1. Glossary

**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 **Appendix 1**.

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

**Content Hub:** a large data aggregation managed by a single or set of host organizations where metadata and data have been aggregated using well documented and well understood schema. Examples of Content Hubs include HathiTrust, the Smithsonian Institution, the Biodiversity Heritage Library, and other very large data providers. Content Hubs will serve as a primary source of Metadata and Previews for DPLA, through harvesting or some other data provision mechanism.

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

**Intellectual Property Rights:** Intellectual property rights including, but not limited to copyrights, related 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 DPLA and available at <http://dp.la/.../> 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.

**Service Hub:** a Data Provider that serves as both Data Aggregator and service provider (digitization assistance, metadata assistance, etc.) to organizations wishing to digitize content and contribute to the DPLA. Initially, formal Services Hubs will be limited to those participating in the DPLA Hubs Pilot Project.

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

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

**Work:** a "distinct intellectual or artistic creation" as defined through the *Functional Requirements for Bibliographic Records: Final Report* by the International Federation of Library Associations and Institutions.

## **Section 2. Provision of Metadata and Previews**

1. Notwithstanding the minimum requirements outlined with DPLA Requirements documents, it is in the discretion of the Data Provider to decide which Metadata and Previews it provides to DPLA, 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 *DPLA Metadata Specifications*.
3. The Data Provider must make best efforts to provide DPLA 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. DPLA 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, DPLA must consult the DPLA Hubs.
5. DPLA 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.

## **Section 3. Use of Metadata**

1. Under the condition that the requirements of paragraphs 2 and 3 of Section 2 are met, DPLA shall include the Metadata provided by the Data Provider in the data store held by DPLA and shall publish these Metadata as a part of this data store.
2. DPLA shall publish all Metadata, including the Metadata provided by the Data Provider prior to the Effective Date of this agreement, 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 DPLA. 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 Section 1 above.

3. In as far as the Data Provider has provided or will provide DPLA 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 DPLA in accordance with paragraph 2 of this section.
4. When making available Metadata or any parts thereof under the terms of the CC0 1.0 Universal Public Domain Dedication, DPLA will provide a link to the DPLA Data Use Guidelines with the CC0 1.0 Universal Public Domain Dedication.
5. When DPLA publishes Metadata that can be (in whole or in part) attributed to the Data Provider, DPLA is obliged to give attribution to the Data Provider and to the party or parties referred to by the Data Provider through the DPLA:dataProvider field (or its equivalent in a later version) of the DPLA Metadata Specification.
6. In the event that DPLA publishes a translation or transcription based on Metadata provided by the Data Provider, DPLA shall identify the translation or transcription as such.

#### **Use of Previews**

1. Notwithstanding paragraphs 2 and 3 of this section, DPLA is entitled to allow use of the Previews by visitors of <http://dp.la>, the DPLA data store via other access points, and Third Parties in accordance with terms specified by the Data Provider in the dpla:rights field (or its equivalent in a later version) of the DPLA Metadata Specifications or those qualifying under Fair Use of Section 107 of the copyright law (title 17, U.S. Code).
2. DPLA is entitled to store and publish on dp.la all Previews provided by the Data Provider, though only in combination with the Metadata that pertain to the same Content.
3. DPLA is entitled to publish the URIs pointing to the Previews together with other Metadata, unless the Data Provider indicates to DPLA in writing that it does not allow DPLA to do so. In the latter case, DPLA will only use the Previews in accordance with paragraph 2 of this section.
4. In as far as the Data Provider is the proprietor of Intellectual Property Rights to the Previews it provides to DPLA, the Data Provider hereby grants DPLA a license to use these rights in accordance with this agreement.
5. In as far as the Data Provider has provided or will provide DPLA 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 DPLA to perform paragraphs 1 and 2 of this section or that they may be provided under Fair Use of Section 107 of the copyright law (title 17, U.S.Code).

#### **Terms**

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 by November 30 of that year.

## **Liability and Notice and Take Down**

1. The Data Provider must make best efforts to ensure that performance by DPLA of sections 3 and 4 does not constitute an unlawful act towards a Third Party, including but not limited to:
  - i. a 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 DPLA of sections 3 and 4 constitutes an unlawful act towards a Third Party, DPLA 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, DPLA shall use the notice and take down procedure of paragraph 3 of this section.
3. In the event that a Data Provider or a Third Party notifies DPLA that it is of the opinion that performance by DPLA of sections 3 and 4 constitutes an unlawful act towards any party, DPLA shall within 5 working days decide whether it considers the notice (i) void of grounds, (ii) readily awardable or (iii) subject to debate, and DPLA shall perform the following:
  - i. In the event that DPLA considers the notice void of grounds, it shall inform the notifying party and the Data Provider accordingly.
  - ii. In the event that DPLA considers the notice readily awardable, it shall work with the Data Provider to take all required measures to end the unlawful state. DPLA shall inform both the notifying party of its decision.
  - iii. In the event that DPLA 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 DPLA has forwarded the opinion to the Data Provider. Upon receipt of the views of the Data Provider, DPLA shall decide within five (5) working days whether measures are required to end an unlawful state. DPLA 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.

## **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, DPLA shall only be obliged to remove Metadata and Previews provided by the Data Provider if the Data Provider request DPLA to remove the Metadata and Previews. Removal shall happen no later than 30 days after such a

request has been received by DPLA.

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

**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 DPLA and the Data Provider before the Effective Date and all Metadata and Previews provided to DPLA 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 DPLA 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, DPLA has the right to terminate this agreement against 31 December of any year, with a one month notice.
4. This agreement shall be construed in accordance with and governed by the laws of The United States.
5. All disputes arising out of or in connection with this agreement, which cannot be solved amicably, shall be referred to the mediation group appointed by the DPLA Board of Directors for mediation. The outcome of the mediation process will be binding on the parties.

Signed by both parties:

Date:	Date:
Data Provider:	DPLA:

## Appendix 1:



<http://creativecommons.org/publicdomain/zero/1.0/legalcode>

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For these and/or other purposes and motivations, and without any expectation of additional consideration or compensation, the person associating CC0 with a Work (the "Affirmer"), to the extent that he or she is an owner of Copyright and Related Rights in the Work, voluntarily elects to apply CC0 to the Work and publicly distribute the Work under its terms, with knowledge of his or her Copyright and Related Rights in the Work and the meaning and intended legal effect of CC0 on those rights.

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5. rights protecting the extraction, dissemination, use and reuse of data in a Work;
6. database rights (such as those arising under Directive 96/9/EC of the European Parliament and of the Council of 11 March 1996 on the legal protection of databases, and under any national implementation thereof, including any amended or successor version of such directive); and
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