EEXCESS Data Access Agreement

The EEXCESS Consortium (partly funded by the European Union's Seventh Framework Programme, FP7) has the objective to push high quality cultural heritage Content from the so-called 'long tail' to platforms and devices which are employed every day by Third Party users;

The EEXCESS Consortium has, for this objective, undertaken the development of tools giving access to Third Party users, the Metadata and Previews of items that are part of that heritage. This access is pushed on the basis of personal data provided and controlled by Third Party users;

The Data Access Provider has Metadata and Previews that are appropriate to give Third Party user access using EEXCESS Consortium tools;

The Data Access Provider is willing to make a part of their Metadata and Previews available under the conditions of this Agreement.

Article 1   Definitions

Content: The digital surrogate for a physical item (or born-digital item) that is part of Europe's cultural and/or scientific heritage. Usually this will be held by the Data Access Provider.

Effective Date: The date on which this Agreement begins, as described in Article 3, paragraph 1.

Intellectual Property Rights: Rights including, but not limited to copyright, granted, in the first instance, to the authors of creations of the mind.

Metadata: Structured information about: physical items; digital surrogates for physical items; born-digital items; persons; places; groups; sites; and organisations which are part of Europe's cultural and/or scientific heritage. It is used to identify, describe, manage or give access to these entities.

Preview: A small, in size or length, surrogate for *Content* in the form of image(s), text file(s), audio file(s) or moving image file(s).

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

Article 2   Agreement in operation

1. The Data Access Provider must have, or must install, a mechanism which allows the EEXCESS Consortium's tools to use their *Metadata* and *Previews*.

2. The EEXCESS Consortium shall provide software applications and technical help, if needed, to the Data Access Provider which will allow it to provide access to the Data Access Provider's *Metadata* and *Previews*.

3. The EEXCESS Consortium shall define the format and minimal set of *Metadata* that the Data Access Provider must give access to.

4. The Data Access Provider may give access to more *Metadata* than the defined minimum.

5. The EEXCESS Consortium will not store any of the provided *Metadata* or *Previews* on its systems.

6. The EEXCESS Consortium will transmit the licensing information associated to the Data Access Provider's *Metadata* and *Previews* to the *Third Parties* using its tools and systems.

7. The EEXCESS Consortium will not commercially exploit the *Metadata* and *Previews* of the Data Access Provider.

Article 3   Period

1. The Agreement enters into force from the date of signature by both parties, whereas the last signature will be the relevant effective date.

2. The Agreement shall end on the 31st December following the *Effective Date*, but will be renewed automatically, for one year, every 1st January, unless terminated by one of the parties (see **Article 5**).

Article 4   Fees

1. The Agreement is free of any fees to the Data Access Provider from the EEXCESS Consortium.

2. The Agreement is free of any fees to the EEXCESS Consortium from the Data Access Provider.

Article 5   Termination of Agreement

1. Either party may terminate this Agreement at any time without the need for justification. The termination will become effective within three calendar months after receipt of the written notice.

2. Upon termination of this agreement, the EEXCESS Consortium shall be obliged to disconnect from its software components the Data Access Provider's Metadata and Previews. Disconnection shall happen no later than three calendar months after the termination notice has been received by the EEXCESS Consortium.

Article 6   Liability

1. The Data Access Provider must make its best efforts to ensure that performance of this Agreement does not result in an unlawful act towards a *Third Party*. Such acts include e.g.:
    a. A violation of *Intellectual Property Rights* of the *Third Party*;
    b. An infringement of personality, privacy, publicity or other rights; or
    c. An infringement of public order or morality (e.g. hate speech or obscenity).

2. The Data Access Provider ensures that the provided *Metadata* and *Previews* as well as their distribution are free of *Third Party* rights. The Data Access Provider recognises that the EEXCESS Consortium is not accountable for any claims resulting from the infringement of the rights of a *Third Party*. Any claims will be the sole responsibility of the Data Access Provider. Therefore the Data Access Provider shall be obliged to indemnify the EECXESS Consortium from all claims of all rights of a *Third Party* in relation with the provided *Metadata* and *Previews* and its delivery to the EEXCESS Consortium and to replace the costs *which arise out of the claim for* the EEXCESS Consortium.

3. Without prejudice to the obligations stated in Number 2 of this paragraph, the Data Access Provider shall only be liable for damages caused by intent or gross negligence. In case of a breach of essential contractual obligations, the Data Access Provider shall only be liable for slight negligence.

    The liability provisions also apply for vicarious agents of the Data Access Provider.

4. The EEXCESS Consortium is authorised to fully or partly exclude *Metadata* and *Previews* provided immediately if they are subject to any legal processes or complaints. The Data Access Provider will be informed of the exclusion.

5. The protection of the rights of the Data Access Provider, with regard to the use its *Metadata* and *Previews* by a *Third Party* is the sole responsibility of the Data Access Provider.

Article 7   Miscellaneous

1. Alterations and amendments of this Agreement are required in writing in order to be effective. The provision of this clause can only be amended by written Agreement.

2. In the event that any provisions of this Agreement shall be deemed legally unenforceable or become legally unenforceable then this shall not affect the validity of the remaining provisions. These provisions are to be interpreted, changed or amended so that the purpose of this Agreement shall be achieved in the best possible way. The same shall apply in the event that gaps appear in the practical application of this Agreement which had not been foreseen by the parties to the Agreement.

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

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

5. All disputes arising out of or in connection with this Agreement, which cannot be solved amicably by the two parties, the parties shall agree on a conflict mediator which shall be based in Graz. The costs of the mediation are to be borne equally by both parties. The outcome of the mediation process will be binding on the parties.

By "checkmark" and sending your personal entries and data you hereby expressly and unconditionally acknowledge and agree with the provisions of the Data Access Agreement EEXCESS.