

Transfer and Use of Bibliographic Records

Terms and Conditions of Service for User Contributions to Bibliographic Records

Version 1.1 Naomi Korn and Charlotte Waelde. 17 November 2009

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These terms and conditions of service can be customised, adapted and used by libraries when receiving either bibliographic records from users or receiving content submitted by users which enhances the record. The use of these term and conditions are important to ensure that libraries have the necessary consents to use and transfer User Generated Content (UGC) and records, as well as ensuring that the content and records which are supplied do not breach any other legal issues, such as Data Protection etc.

THE AGREEMENT

The following agreement ("this Agreement") describes the terms and conditions on which [INSERT NAME OF INSTITUTION] acting on behalf of itself, the "Service Provider" offers you access and use of bibliographic data and related information "Records" and other content "Content" found on the [INSERT URL OF WEBSITE] ("the Service") and through which you contribute Content and Records to this site. This offer is conditional on your agreement to all the terms and conditions contained in this Agreement, including your compliance with policies, guidelines and terms linked by way of URLs in this Agreement ("Terms and Conditions of Service").

By using the Service or by exercising any rights provided to parts of it, you accept and agree to be bound by the Terms and Conditions of Service. [INSERT NAME OF INSTITUTION] only grants you the rights contained in this Agreement in consideration of your acceptance of the Terms and Conditions of Service.

If you do not agree to the Terms and Conditions of Service you should not use the Service and therefore decline this Agreement, in which case you are prohibited from accessing and/or using the Service. [INSERT NAME OF INSTITUTION] may amend this Agreement at any time at its sole discretion, effective upon posting the amended agreement on the Service. No variation or counteroffer of this Agreement will be accepted by [INSERT NAME OF INSTITUTION].

1. The Service

1.1 [INSERT INFORMATION ABOUT THE PROJECT]

1.2 You acknowledge that the Service provided by [INSERT NAME OF INSTITUTION] may allow people to interact online regarding Records and Content chosen by users (including yours and those provided by other users of the Service, collectively Users) of the Service, and that Users can alter the Service environment on a real time basis. As part of the nature of the Service, [INSERT NAME OF INSTITUTION] does not always or will not always be able to regulate Content and Records created and made available by Users of the Service or otherwise. As a result [INSERT NAME OF

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INSTITUTION] has limited control, if any, over the quality, morality, legality, truthfulness or accuracy of various aspects of the Service.

1.3 You acknowledge that: (a) by using the Service Users may have access to Records and Content; and (b) Records and Content which may also be provided by Users of the Service ("Other Providers").

1.4 You acknowledge that the Service Provider and Users have rights in their respective Records and Content under copyright, database rights and other applicable laws, and that, except as described in this Agreement, such rights are not transferred by use of the Service. You accept full responsibility and liability for your use of any Records and Content in violation of any such rights. You agree that your creation of Records and Content is not in any way based upon any expectation of compensation from the Service Provider. You acknowledge that this Agreement does not assign or transfer ownership, title or interest of the intellectual property rights in the Service to you.

2. Licences and Intellectual Property Rights

2.1 Subject to the terms of this Agreement, [INSERT NAME OF INSTITUTION] hereby grants to you a non-exclusive, royalty free and revocable licence to access and use the Service and use the Records and Content in the Service in accordance with the Terms and Conditions of Service for as long as you are in compliance with the Terms and Conditions of Service.

2.2 Records owned or licensed to the Service Provider as part of the Service can be used by you and any User of the Service for any purposes that are conducive to education, teaching, learning, private study and/or research for non-commercial purposes.

2.3 You and Users of the Service can create Records and Content in the Service in various forms. [INSERT NAME OF INSTITUTION] acknowledges and agrees that, subject to the Terms and Conditions of Service you and the User will retain copyright and other intellectual property rights in any Records and Content you and the User create using the Service.

2.4 Notwithstanding the foregoing, you understand and agree that by submitting your Records and Content to any area of the Service, you grant (and represent and warrant that you have the right to grant) to the Service Provider a non-exclusive, royalty free, perpetual licence: (a) to use, reproduce and communicate your Records and Content for all purposes connected with the Service; (b) a right for the Service Provider to sub-licence such use to third party users of the Service as long as the Records and Content are used by such third party user within the Service; and (c) to use and reproduce, and to authorise third parties to use and reproduce, any of your Records and Content in any or all media for marketing and/or promotional purposes in connection with the Service.

2.5 You agree that by submitting your Content to any area of the Service you automatically grant to third party users of the Service who want to use your Content or parts of it outside the Service a non-exclusive, non-commercial, world-wide, royalty free, perpetual licence to create derivative works from your Content.

2.6 You agree that by submitting your Records to any area of the Service you automatically grant to third party users of the Service who want to use your Records or parts of them outside the Service a non-exclusive, non-commercial, world-wide, royalty free, perpetual licence to create derivative works from your Records.

2.7 You understand and agree that by submitting your Content and Records to any area of the Service you automatically grant (or you warrant that the owner of such Records has expressly granted) to the Service Provider and to all other users of the Service a non-exclusive, non-commercial, worldwide, royalty-free, perpetual licence to create derivative works from your Content and Records under any and all intellectual property rights you may have or obtain with respect to your Records and Content, to use your Records and Content for all purposes within the Service.

2.8 You agree to use all best efforts to ensure that your Records and Content do not infringe any intellectual property rights of a third party.

2.9 You agree that, even though you may retain aspects of copyright or other intellectual property rights with respect of the Content and Records you create while using the Service, you do not own the account you use to access the Service, nor do you own any data [INSERT NAME OF INSTITUTION] stores on [INSERT NAME OF INSTITUTION] servers submitted by others. Your intellectual property rights do not confer ownership of others' data stored by or on behalf of [INSERT NAME OF INSTITUTION].

3. Community Guidelines and Policies

3.1 You agree to read and comply with the Community Guidelines and Policies as posted on [INSERT LINKS TO ANY RELEVANT GUIDELINES WHICH MIGHT BE AVAILABLE ONLINE]

3.2 In addition to abiding at all times by the Community Guidelines and Policies, You agree that you shall not: (a) take any action to upload, post, e-mail or otherwise transmit Records and Content that infringe or violate any third party rights; (b) impersonate any person or entity without their consent, including but not limited to a Service Provider employee, or falsely state or otherwise misrepresent your affiliation with a person or an entity; (c) upload, post, e-mail or otherwise transmit Records and Content that violate any United Kingdom law or regulation; (d) upload, post, e-mail or otherwise transmit Records and Content determined by any Service Provider in its reasonable opinion to be libellous. You agree that the Service Provider may take whatever steps it deems necessary to abridge or delete material on the Service in its sole discretion, without notice to you.

4. Releases, Disclaimers of Warranties, Limitation of Liability and Indemnification

4.1 As a condition of access to the Service, you release the Service Provider from claims, demands, damages of every kind and nature, known and unknown, suspected or unsuspected, disclosed or undisclosed, arising out of or in any way connected with any dispute you have or claim to have with one or more users of the Service. You further understand and agree that the Service Provider will have the right but not the obligation to resolve disputes between users relating to the Service.

4.2 Any Records, Content, or other data residing on [INSERT NAME OF INSTITUTION]'s servers or the Service may be deleted, altered, moved or transferred at any time for any reason at the Service Provider's sole discretion without notice and without liability to you or any third party.

4.3 The Service Provider provides the Service and Records and Content strictly on an "as is" basis and use of the Service and/or Records and Content is at your own risk. The Service Provider hereby expressly disclaims all warranties or conditions of any kind to the extent permitted by law, including without limitation any merchantability or fitness for a particular purpose. To the extent permitted by law, the Service Provider accepts no liability for loss suffered or incurred by the User or any third party as a result of their reliance on the Service and/or Records and Content.

4.4 To the extent permitted by law, in no circumstances will the Service Provider be liable to you or the User liable to the Service Provider for any loss resulting from a cause over which the Service Provider or you (as the case may be) do not have direct control, including but not limited to failure of electronic or mechanical equipment or communication lines, telephone or other interconnect problems.

4.5 In no event shall the Service Provider be liable to you or to any third party for any special, incidental, consequential, punitive or exemplary damages, including without limitation any damages for loss of profits arising (whether in contract, tort or otherwise) out or in connection with the Service and or Records and/or Content. In addition, in no event will the Service Provider's cumulative liability to you for direct damages of any kind or nature exceed the any amount of the subscription to the Service.

4.6 You agree to defend, indemnify and hold harmless the Service Provider and third party users of the Service and Records and Content from all damages, liabilities, claims and expenses, including without limitation reasonable legal fees and costs, arising from any breach of this Agreement by you, or from your use of the Service. You agree to defend, indemnify and hold harmless the Service Provider from all damages, liabilities, claims and expenses, including without limitation reasonable legal fees and costs, arising from any claims by third parties that your activity or Records and Content in the Service infringes upon or violates any of their intellectual property, proprietary or other rights.

5. Privacy

5.1 You acknowledge and agree that the Service Provider, in its sole discretion, may track, record, observe or follow any and all of your interactions within the Service. The Service Provider may share general, demographic or aggregated information with third parties about its user base and Service usage, but that information will not be included or be linked to any personal information without consent. The Service Provider agrees that when exercising these rights, it shall abide by the Data Protection Act, 1998 at all times.

6. Governing Law and Dispute Resolution

6.1 This Agreement and the relationship between you and the Service Provider shall be governed by and construed in accordance with English law. You and the Service Provider agree that any dispute arising out of or in connection with this Agreement will be subject to and within the jurisdiction of the English courts.

6.2 You and the Service Provider agree to use best efforts to resolve disputes in an informal manner. Where you and any Service Provider agree that a dispute arising out of or in connection with this Agreement would best be resolved by the decision of an expert, you and such Service Provider will agree upon the nature of the expert required and together appoint a suitable expert by agreement.

6.3 Any person to whom a reference is made under Clause 6.2 shall act as expert and not as an arbitrator and his/her decision (which shall be given by him/her in writing and shall state the reasons for his/her decision) shall be final and binding on the parties except in the case of manifest error or fraud.

6.4 You and the relevant Service Provider(s) shall provide the expert with such information and documentation as he may reasonably require for the purposes of his decision.

6.5 The costs of the expert shall be borne by you and the relevant Service Provider in such proportions as the expert may determine to be fair and reasonable in all circumstances or, if no determination is made by the expert, by you and the relevant Service Provider in equal proportions.

7. General Provisions

7.1 This Agreement constitute the entire understanding and agreement between you and the Service Provider with respect to the subject matter hereof.

7.2 The invalidity or unenforceability of any provision of this Agreement shall not affect the continuation in force of the remainder of this Agreement.

7.3 The rights granted to you or the Service Provider arising under this Agreement shall not be waived except in writing. Any waiver of any of you or the Service Provider's rights under this Agreement or of any breach of this Agreement by you or by the Service Provider shall not be construed as a waiver of any other rights or of any other or further breach. Failure by you or the Service Provider to exercise or enforce any rights conferred upon it by this Agreement shall not be deemed to be a waiver of any such rights or operate so as to bar the exercise or enforcement thereof at any subsequent time or times.

7.4 The section headings contained in this Agreement are for convenience purposes only and shall not affect the interpretation of this Agreement.

7.5 Where the context so implies, words importing the singular number shall include the plural and vice versa and words importing the masculine shall include the feminine and vice versa.

7.6 All or any of the Service Provider's rights and obligations under this Agreement may be assigned to a subsequent owner or operator of the Service in a merger, acquisition or sale of all or substantially all of the Service Provider's assets.