

# Hybrid Archives Licence Model

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Document type: Project Report  
Author: Gareth Knight  
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## Contents

Hybrid Archive Licence Model.....	3
Repository Rights and undertakings .....	3
Depositor Rights and undertakings .....	3
Frequency of updates .....	4
Change to the deposit agreement.....	4
Hybrid Archive Licensing Framework: Clauses for inclusion .....	5
Draft Licence for the Hybrid Archive .....	15

## Hybrid Archive Licence Model

The Arts and Humanities Data Service (AHDS) is funded to provide preservation services to the higher education community. In order to catalogue and obtain permission to archive a resource, and to make sure the resource is disseminated with the proper documentation, the AHDS requires depositors to complete one of six licences, tailored to each AHDS centre or a generic licence for deposit with the Executive. These licences take into account the requirements for long-term preservation and access, and are used as the starting point for a revised licence that takes account of the differences in the two deposit models.

Current repository deposit licences are divided between those that only request permission to store and those that establish the need to store and migrate or otherwise preserve a resource. The AHDS can be classified under the latter category – data is migrated as and when necessary. In order to identify the nature of agreement, the Hybrid Archive licence model must outline the rights and undertakings of the depositor (the partner institution) and the AHDS.

This work package outlines a draft licence for the Hybrid Archive model, derived from the AHDS licence, that outlines differences in the Hybrid Archive model. Specifically, it accounts for changes to the repository and depositor rights and undertakings, frequency of update, and possible modifications to the deposit agreement at a later date. It will comply with the existing licensing structure implemented by the AHDS and will accompany existing 'Data and documentation transfer form'<sup>1</sup> and 'Catalogue' form<sup>2</sup>

### Repository Rights and undertakings

The AHDS licence establishes the need to store and migrate or otherwise re-arrange the data collection to ensure future preservation (migration or emulation) and ensure accessibility (establish the right to validate, enhance and incorporate metadata or documentation integral to or related to the Data Collection). The derivative licence requests further information relevant to the Hybrid Archive project, with regards to the frequency of deposit, duration and possible options for terminating the agreement. The licence also identifies activities to be performed in the eventuality that the depositor is not the primary distributor or fails to deliver the collection. In these circumstances, the AHDS should continue distribution in the original and/or migrated format, as necessary (4.1).

### Depositor Rights and undertakings

Depositor rights and undertakings in the Hybrid Archive model remain broadly similar to the current AHDS deposit licence. The licence is non-exclusive and no rights are transferred. It covers the Deposit of materials principally for preservation, and allows the owner/creator to be identified whenever and wherever it is publicised or distributed. In the undertakings, the depositor warrants they are legally able to deposit the collection and assure the AHDS the data collection does not:

- Contravene any laws, including but not limited to the law relating to defamation, or obscenity.
- Violate or infringe any copyright, trademark, patent or other rights whatsoever of any person.
- Breach any exclusive recording rights

For collections that contain copyrights for which the depositor does not have copyright, a waiver or licence allowing the AHDS to hold and (in the event of the Depositor's failure to deliver) disseminate the Data Collection must be provided.

<sup>1</sup> AHDS Data and Documentation Transfer Form, 2003. <http://ahds.ac.uk/depositing/transfer.htm>

<sup>2</sup> AHDS Catalogue Form, 2003, <http://ahds.ac.uk/depositing/catalogue-form.htm>

## Frequency of updates

A key point of the Hybrid Archive model is the emphasis upon the sequential deposit of new or revised data and metadata. To ensure both parties are aware of their responsibilities, the HA licence must establish the frequency of deposit. Data may be relocated to the AHDS on a frequent or infrequent basis, every day, week, month, six months or year. Infrequent updates (every year, six months, or month) to a resource may be transported on removable media (i.e. floppy disk, CD-ROM). Frequently updated resources (weekly, daily) must be transported through network transfer, by OAI-PMH and/or some other method, according to the data type – metadata or data – to be updated.

To maintain consistency and avoid unnecessary problems at a later date, the licence stipulates the partner institution provide updates in the same format agreed for the original deposit (clause 7.4). In circumstances where this is not practical (i.e. the partner institution has undertaken a major redesign that would be impossible to map to the initial deposit), clause 8.3 allows the AHDS to reject the deposit on the basis on non-compliance and renegotiate the licence (8.1), which may include a request for additional information, as necessary.

## Change to the deposit agreement

The purpose of a repository is to provide access to deposited material for a suitable period of time. Interviews conducted with e-print repository staff in the SHERPA consortium suggest a need to establish clear guidelines on the exact period of retention (indefinitely or a specific timescale) and the terms for termination of licence (clause 11.8).

The Hybrid Archive model differs significantly from existing AHDS licences in the implications for distribution. Collections currently deposited with the AHDS are deposited for an indefinite period and are unlikely to change state. In many circumstances, collections that contain copyright material are deposited for preservation only and are unlikely to change at a later date. The Hybrid Archive licence introduces the option that the collection state may change – collections deposited for preservation only may change at a particular point in time. A collection distributed under the HA model may be classified in two states:

1. **Preservation** - The partner institution is responsible for delivery of the data collection and the AHDS hold a preservation only copy for an indefinite period.
- 2.
3. **Delivery and Preservation** – If the collection becomes, for whatever reason, unavailable or inaccessible to any authorised user to whom it should normally be available, for any period in excess of one month and no contact can be made to indicate otherwise (see definitions and interpretations), it will be deemed a “failure to deliver” and the AHDS will take responsibility for collection delivery.

In addition, there is the possibility the AHDS or depositor will terminate (11.8) the agreement and, in these circumstances, the collection will be removed from the AHDS repository. A period of six months notice must be given (11.8.2), or 30 days if a breach of agreement has taken place and no remedial action is possible (11.8.1). A particular concern among SHERPA repositories is the definition of ‘indefinite’. Clause 3.1 of the HA licence indicates the agreement is valid for the duration of copyright for the Data collection (75+). However, either party may terminate the arrangement in the event they are no longer able to preserve the collection. For example, in the event they lost funding.

## Hybrid Archive Licensing Framework: Clauses for inclusion

No.	Delivery / Preservation	Category / General Heading	Description	Possible Wording	Notes/Queries	
1.0	D&P	Title of Collection	Title		a) Data Collection may include sub-collections whose separate requirements can be detailed in variant clauses	
3.0	D&P	Frequency of Deposit (Select as appropriate)	<b>Frequency</b>	<b>Data</b>	<b>Metadata</b>	
			Once only			
			Infrequent (Annual)			
			Infrequent (6-monthly)			
			Frequent (Monthly)			
			Frequent (Weekly)			
			Frequent (Daily)			
4.0	D&P	Purpose of Deposit	<ul style="list-style-type: none"> <li>• Access to collection - Universal</li> <li>• Access to collection – Education only</li> <li>• Access to collection – Commercial*</li> <li>• Access to collection – On application</li> <li>• Access to metadata only</li> </ul>			

			<ul style="list-style-type: none"> <li>• Preservation</li> </ul>		
5.0	D	Conditions of use: derivatives			
6.0	D&P	Commencement & duration of license agreement	<ul style="list-style-type: none"> <li>• Indefinite</li> <li>• Fixed period</li> </ul>	This Agreement shall take effect on execution hereof and shall continue for the duration of copyright in the Data Collection unless either party terminates this agreement	
7.0	D&P	Definitions			
7.1	D&P		<ul style="list-style-type: none"> <li>• Agreement</li> </ul>	This document, including all of its terms and conditions and the Data and Documentation Transfer Form providing a schedule of the Data Collection	
7.2	D		<ul style="list-style-type: none"> <li>• Authorised user</li> </ul>	Individual registered by the Arts and Humanities Data Service to use the Data Collection or a member of an institution registered by the Arts and Humanities Data Service to use the Data Collection under a site licence or re-distribution agreement	
7.3	D&P		<ul style="list-style-type: none"> <li>• Collection</li> </ul>	Material to be provided by the Depositor under the title in the Data and Documentation Transfer Form providing a schedule to this Agreement. The term "dataset" may be used in some AHDS documentation to mean Data Collection.	
7.4	D		<ul style="list-style-type: none"> <li>• Commercial purposes</li> </ul>	Use of the Data Collection for any reason direct or indirect which generates a profit	
7.5	D		<ul style="list-style-type: none"> <li>• Educational purposes</li> </ul>	Use of the Data Collection for education, private study or research provided that such use does not generate a profit through dealings in, or other exploitation of, the Data Collection	
7.6	D&P		<ul style="list-style-type: none"> <li>• Catalogue</li> </ul>	To record descriptive and other information relating to the Data Collection in a consistent	

				and standardised manner to aid resource discovery and preservation	
7.7	D&P		<ul style="list-style-type: none"> <li>Enhance</li> </ul>	To add value to the Data Collection by undertaking activities which improve discovery and understanding of, access to and preservation of that Data Collection	
7.8	D&P		<ul style="list-style-type: none"> <li>Validate</li> </ul>	To confirm or authenticate the format, structure, content, functionality and size of the Data Collection	
7.9	D&P		<ul style="list-style-type: none"> <li>Document</li> </ul>	To record information relating directly to the Data Collection	
7.10	P		<ul style="list-style-type: none"> <li>Store</li> </ul>	To place in a safe location	
7.11	P		<ul style="list-style-type: none"> <li>Translate</li> </ul>	See Migration	
7.12	P		<ul style="list-style-type: none"> <li>Migration</li> </ul>	To move the Data Collection or parts thereof from one platform or software type or version to another	
7.13	P		<ul style="list-style-type: none"> <li>Emulation</li> </ul>	To imitate the original platform on which the Data Collection was created in order to access the Data Collection or parts thereof using more recent technology	
7.14	P		<ul style="list-style-type: none"> <li>Copy</li> </ul>	To duplicate	
7.15	D&P		<ul style="list-style-type: none"> <li>Re-arrange</li> </ul>	To alter the order or structure of the Data Collection	
7.16	D		<ul style="list-style-type: none"> <li>Deliver</li> </ul>	To make available to authorised users the Data Collection via appropriate formats including, but not limited to http, ftp and CD ROM	
7.17	D		<ul style="list-style-type: none"> <li>Failure to deliver</li> </ul>	If the collection becomes, for whatever reason, unavailable or inaccessible to any authorised user to whom it should normally be available, for any period in excess of one month, this shall be deemed "failure to deliver" on the part of the party responsible for delivery or distribution of the collection	
8.0	D&P	AHDS			

		Activities covered by license framework			
8.1	P		<ul style="list-style-type: none"> <li>Storage, copying, translation, migration, emulation or re-arrangement of Data Collection to ensure future preservation &amp; accessibility</li> </ul>		
8.2	D&P		<ul style="list-style-type: none"> <li>Promotion and advertisement of the Data Collection in any publicity for the [host institution] or the AHDS</li> </ul>		
8.3	D&P		<ul style="list-style-type: none"> <li>Incorporation into public access catalogues of metadata or documentation integral to or related to the Data Collection</li> </ul>		
8.4	D&P		<ul style="list-style-type: none"> <li>Cataloguing, enhancement, validation &amp; documentation of Data Collection</li> </ul>		
8.5	D		<ul style="list-style-type: none"> <li>Distribution of Data Collection in a variety of formats*</li> </ul>		*Where depositor is not primary distributor of the Data Collection or fails to deliver to a level agreed with the AHDS
9.0	D&P	Depositors rights			
9.1	D		Non-exclusive publication	The Depositor is free to use or publish the Data Collection elsewhere.	
9.2	D&P		Identification as Owner/Creator : Attribution	The Depositor retains Ownership of the Data Collection and the right to be credited as its Owner* and/or Creator* wherever and whenever it is publicised/distributed	*Select as appropriate
10.0	D&P	Depositors undertakings			

10.1	D&P		Indemnity	The Depositor shall indemnify the [host institution] and its appointed agents against any breach of the warranties provided. This indemnity shall survive the termination of this Agreement for any reason	
10.2	D&P		Statement of Compliance with Depositors' Notes	The Depositor has read the Depositors' Guide and agrees that the Data Collection is being deposited in line with required formats and procedures outlined therein	
10.3	D&P		Ownership of copyright/IPR	a) That the Depositor is the owner of copyright and associated intellectual property rights in the Data Collection <b>OR</b>	
10.4	D		Authority to hold/disseminate from copyright/IPR holders	b) That the Depositor is authorised by the owner(s) of copyright/intellectual property rights to hold & disseminate copies of the Data Collection <b>AND</b>	
10.5	D&P		Authority to grant licence	That the Depositor is authorised by the owner(s) of copyright /intellectual property rights to grant to the AHDS the right to undertake all activities covered by this licence	
10.6	D&P		Ownership of performance rights	a) That the Depositor is the owner of performance rights in all or part of the Data Collection <b>OR</b>	This and some clauses following relate specifically to Performing Arts materials. Feedback/suggestions on similar specifics relating to other types of material would be very helpful.
10.7	D&P		Authority to hold/disseminate from performance rights holders	b) That the Depositor has either obtained a written waiver of those rights, or permission in writing from parties holding such rights, permitting the AHDS to hold and disseminate copies of the Data Collection, and that a copy of	

				this has been deposited along with the Collection <b>OR</b>	
10.8	D&P		Authority to hold/disseminate from licensing body	c) That an agreement has been reached with the relevant licensing and collecting body or bodies, that the AHDS may hold & disseminate copies of the Data Collection, and that a copy of this agreement has been deposited along with the Data Collection	
10.9	D&P		No breach of recording right	That the Data Collection was not created in breach of any exclusive recording right	
10.10	D&P		Authority to hold/disseminate from recording rights holders	That a waiver or licence allowing AHDS to hold and disseminate the Collection has been obtained from persons (other than the Depositor) with exclusive rights in the recording of a performance from which the Collection emanated, and deposited along with the Data Collection	
10.11	D&P		No impediment to agreement	That no legal or other impediment to Depositor's undertaking this Agreement exists	
10.12	D&P		Notify change of copyright	To notify the AHDS of any change in Copyright ownership	
10.13	D&P		Notify of data protection issues	To notify the AHDS of any confidentiality, privacy or data protection issues pertaining to the Data Collection	
10.14	D&P		Updates to Data Collection at agreed intervals	To provide regular updates where the Data Collection is dynamic, at intervals agreed with the AHDS: options being: <ul style="list-style-type: none"> <li>• Annual</li> <li>• 6-monthly</li> <li>• Monthly</li> <li>• Weekly</li> <li>• Real-time</li> </ul>	
10.15	D&P		Updates to Metadata at agreed intervals	To provide regular updates to Metadata at intervals agreed with the AHDS: options being: <ul style="list-style-type: none"> <li>• Annual</li> </ul>	

				<ul style="list-style-type: none"> <li>• 6-monthly</li> <li>• Monthly</li> <li>• Weekly</li> <li>• Real-time</li> </ul>	
10.16	D&P		Updates in agreed formats	To provide updates in the same format agreed for the original Deposit	E.g. a move from Access 97 to Access 2000. Any variations on this to be negotiated with the AHDS
11.0	D&P	AHDS rights			
11.1	D&P		Renegotiation of licence	The AHDS retains the right to renegotiate the licensing arrangements in the event of the Data Collection being embargoed or an expiry date being integral to current licensing arrangements	
11.2	D&P		Termination of Agreement	The AHDS reserves the right to terminate this Agreement within as outlined in 14.8	
11.3	D&P		Rejection of Data Collection	The AHDS reserves the right to reject the Deposit of any Data Collection which does not comply with arrangements laid out in the Depositor Guide	
11.4	D&P		Delivery in event of failure to deliver at delivery point agreed within licence	The AHDS reserves the right to assume responsibility for delivery in the event that the established delivery platform, mechanism or institution, for whatever reason, fails to do so for a period exceeding one month	
11.5	P		Right to charge when digital resource is deposited for preservation only	The AHDS reserves the right to charge the Depositor	
12.0	D&P	AHDS undertakings			
12.1	D&P		Prevention of unauthorised access/use	To take reasonable measures to prevent unauthorised access to, duplication of or distribution of the Data Collection whilst in AHDS possession or under AHDS control	
12.2	D		Access facilitation	To permit authorised users access to Data	

				Collection for agreed purposes in circumstances where, for whatever reason, responsibility for delivery of the Data Collection has transferred from the Depositor to the AHDS	
12.3	P		Preservation	To preserve as far as possible by whatever means appropriate the Data Collection on the understanding that it has been deposited in an appropriate preservation-standard format as stipulated in the Depositors' Guide	
12.4	D&P		Copyright statement	a) To draw attention to the following notice:  <i>All material supplied via the Arts and Humanities Data Service is protected by copyright and other intellectual property rights, and duplication or sale of all or part of any of the datasets is not permitted, except that material may be duplicated by you for your research use or educational purposes in electronic or print form. Permission for any other use must be obtained from the relevant copyright holder. Electronic or print copies may not be offered, whether for sale or otherwise to anyone who is not an authorised user.</i>	
12.5	D&P		Breaches of rights	The AHDS is under no obligation to take legal action on behalf of Depositor or other rights holders in event of any breach of any rights in the Data Collection	
12.6	D		Delivery formats	The AHDS is under no obligation to deliver the Collection in same formats as noted in the Data and Documentation Transfer Form	
12.7	D&P		Liability	The AHDS bears no liability, expressed or implicit for the Data Collection, or loss or damage to it	
12.8	D&P		Supplementary data	Copyright in any additional data created by AHDS to augment the Data Collection resides	

				with its creators and [host institution]	
12.9	D		Monitoring of delivery	To monitor delivery of the Data Collection and undertake responsibility for this in the event that the established mechanism for delivery fails (period to be established – one month?)	
13.0	D	Royalties		No royalties shall be paid for use of the Data Collection for educational purposes, archiving or publicity	
14.0	D&P	General			
14.1	D&P	Communications		All notice under this Agreement shall be in writing and shall be sent to the address of the recipient set out in this Agreement or to such other address as the recipient may have notified from time to time. Any notice may be delivered personally or by first class post or by fax or by e-mail and shall be deemed to have been served if by hand when delivered, if by first class post 48 hours after posting, if by fax when confirmation of transmission is received and if by e-mail, when confirmation of receipt is received from the system of the recipient. If no reply is received to a notice under this agreement the consent of the recipient will be deemed to have been given after 30 days have elapsed from the issue of that notice	
14.2	D&P	Successors		This agreement is binding on and will benefit the successors and assigns of the parties	
14.3	D&P	Entire Agreement		This Agreement constitutes the entire agreement between the parties. No variation will be effective unless in writing signed by or on behalf of both parties	
14.4	D&P	Invalidity		If any part of this Agreement is held unlawful or unenforceable that part shall be struck out and the remainder of this Agreement shall remain in effect	

14.5	D&P	Joint Venture		This Agreement does not create any partnership or joint venture between the parties	
14.6	D&P	Waiver		No delay, neglect, or forbearance by either party in enforcing its rights under this Agreement shall be a waiver of or prejudice of those rights	
14.7	D&P	Proper Law		This Agreement is governed by the laws of England	
14.8	D&P	Termination			
14.8.1	D&P			In addition to any remedy, the [host institution] on the one hand and the Depositor on the other may terminate this Agreement 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	
14.8.2	D&P			Where there is no breach, either party may terminate this Agreement upon six months notice. However where there is no breach and this Agreement is terminated by the Depositor during the term of this Agreement, the AHDS shall be entitled to charge the Depositor for costs incurred in archiving, cataloguing, or other investment of resources in the Collection prior to its withdrawal	
14.9	D&P	Disclaimer		The Depositor and the [host institution] shall be under no liability for any loss or for any failure to perform any obligation hereunder due to causes beyond their 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.	

# Draft Licence for the Hybrid Archive

## 1. Introduction

- 1.1 The Arts and Humanities Data Service (AHDS) is funded by the Joint Information Systems Committee (JISC) and the Arts and Humanities Research Board (AHRB) to provide an archiving and contingency distribution\* (see 1.3) service for Arts and Humanities materials.
- 1.2 The Depositor wishes to deposit material for archiving and contingency distribution by AHDS [Service Provider] of the [Host institution] for users engaged in educational activities, including private study and research.
- 1.3 This agreement between the Depositor and the [Host institution] acting on behalf of AHDS [Service Provider] provides the legal permissions and warranties needed to allow AHDS [Service Provider] and the AHDS to preserve, and make accessible under certain circumstances ("contingency distribution"), the deposited materials for educational purposes.
- 1.4 This is a non-exclusive licence, which ensures that copyright in the original data is not transferred by this agreement and provides other safeguards for the Depositor such as requesting acknowledgement in any publications arising from future research using the data. It covers the Deposit of materials principally for preservation, and in any instance where delivery does devolve to the AHDS, it permits use of the Data Collection only for non-commercial purposes, teaching, research and private study. Cataloguing information and documentation can be publicly available but access to the Data Collection will only be available to Authorised Users who have agreed to abide by licence conditions unless the Depositor has stated that the Data Collection can be available to any user.

## 2. Definitions and Interpretation

- 2.1 In this Agreement, the following words have the following meanings:

**Agreement** = this document, including all of its terms and conditions and the Data and Documentation Transfer Form providing a schedule of the Data Collection.

**Authorised user** = Individual registered by the Arts and Humanities Data Service to use the Data Collection or a member of an institution registered by the Arts and Humanities Data Service to use the Data Collection under a site licence or re-distribution agreement.

**Collection** = Material to be provided by the Depositor under the title in the Data and Documentation Transfer Form providing a schedule to this Agreement. The term "dataset" may be used in some AHDS documentation to mean Data Collection.

**Commercial purposes** = Use of the Data Collection for any reason direct or indirect which generates a profit.

**Contingency Distribution** = Circumstances where failure on the part of the Depositor to deliver the Data Collection (see "**Failure to Deliver**", below) results in delivery being undertaken by the AHDS.

**Educational purposes** = Use of the Data Collection for education, private study or research provided that such use does not generate a profit through dealings in, or other exploitation of, the Data Collection.

**Catalogue** = to record descriptive and other information relating to the Data Collection in a consistent and standardised manner to aid resource discovery and preservation.

**Enhance** = To add value to the Data Collection by undertaking activities which improve discovery and understanding of, access to and preservation of that Data Collection.

**Validate** = to confirm or authenticate the format, structure, content, functionality and size of the Data Collection.

**Document** = to record information relating directly to the Data Collection.

**Store** = to place in a safe location.

**Translate** = See Migrate

**Migrate** = to move the Data Collection or parts thereof from one platform or software type or version to another.

**Emulate** = To imitate the original platform on which the Data Collection was created in order to access the Data Collection or parts thereof using more recent technology.

**Copy** = to duplicate

**Re-arrange** = to alter the order or structure of the Data Collection.

**Deliver** = To make available to authorised users the Data Collection via appropriate formats including, but not limited to http, ftp and removable media.

**Failure to deliver** = If the collection becomes, for whatever reason, unavailable or inaccessible to any authorised user to whom it should normally be available, for any period in excess of one month, this will be deemed "failure to deliver" on the part of the party responsible for delivery or distribution of the collection.

### 3. Commencement and Duration of Licence Agreement

3.1 This Agreement shall take effect on execution hereof and shall continue for the duration of copyright in the Data Collection unless either party terminates this agreement.

**OR** This Agreement shall take effect on execution hereof and shall be subject to review at interval of [enter period]

### 4. Purpose of Deposit

4.1 The Depositor undertakes to deliver the Data Collection and grants a non-exclusive licence for [Host institution] to hold on behalf of AHDS [Service Provider] for the duration of this Agreement for the purposes of long-term preservation. In the event of a failure to deliver which exceeds a period of one month, the purpose of deposit will be extended to include delivery by the AHDS by whatever means it deems most appropriate.

The rights conferred by the terms of this Agreement include (but are not limited to) the right to:

- Store, copy, translate, migrate, emulate or re-arrange the Data Collection to ensure future preservation & accessibility
- Promote and advertise the Data Collection in any publicity for the [host institution] or the AHDS
- Incorporate metadata or documentation integral to or related to the Data Collection into public access catalogues
- Catalogue, enhance, validate & document the Data Collection

- Distribute the Data Collection in a variety of formats\*\*

\*\*Where depositor is not primary distributor of the Data Collection or fails to deliver to a level agreed with the AHDS

OR

The Depositor wishes the Data Collection to be freely available to any user and for any purpose. To this end, the Depositor waives all copyrights in the Data Collection for their full duration in all jurisdictions/assigns all copyrights in the Data Collection for their full duration in all jurisdictions to [host institution].

## 5. Frequency of Deposit

5.1 The initial deposit constitutes the deposit in its entirety and will not be updated

OR

The Depositor undertakes, following the initial deposit, to update the deposit at intervals of no less than once every: year/six months/month/week/day (delete as appropriate)

OR

The Resource will be updated in real time via an established OAI protocol.

## 6. Depositors' Rights

6.1 The Depositor is free to use or publish the Data Collection elsewhere.

6.2 The Depositor retains Ownership of the Data Collection and the right to be credited as its Owner and/or Creator wherever and whenever it is publicised/distributed

## 7. Depositors' Undertakings

The Depositor hereby warrants and undertakes as follows:

### 7.1 Impediments

That the Depositor is not under any obligation or disability created by law, contract or otherwise which would in any manner or to any extent prevent or restrict him from entering into and fully performing this Agreement.

### 7.2 Indemnity

The Depositor shall indemnify [host institution] and its appointed agents against any breach of the warranties provided. This indemnity shall survive the termination of this Agreement for any reason.

### 7.3 Intellectual property rights

The Depositor hereby warrants and undertakes as follows:

7.3.1 That the Data Collection does not and will not contravene any laws, including but not limited to the law relating to defamation, or obscenity.

7.3.2 That the Data Collection is not and shall be in no way a violation or infringement of any copyright, trademark, patent or other rights whatsoever of any person.

7.3.3 That the Depositor asserts/waives [delete as necessary] the following rights as applicable:

7.3.3.1 The moral right of paternity (the right to be identified as the author or director of the work), and

7.3.3.2 The moral right to object to derogatory treatment of a copyright work.

7.3.4 That the Depositor is the owner of copyright and associated intellectual property rights in the Data Collection **OR**

That the Depositor is authorised by the owner(s) of copyright/intellectual property rights to hold & disseminate copies of the Data Collection **AND**

That the Depositor is authorised by the owner(s) of copyright /intellectual property rights to grant to the AHDS the right to undertake all activities covered by this licence.

7.3.5 That there are no performance rights in the Data Collection as a whole, or in any part of it **OR**

That the Depositor is the owner of performance rights in all or part of the Data Collection and asserts/waives those rights [delete as necessary] **OR**

That the Depositor has either obtained a written waiver of those rights, or permission in writing from parties holding such rights, permitting the AHDS to hold and (in the event of the Depositor's failure to deliver) disseminate copies of the Data Collection, and that a copy of this has been deposited along with the Collection **OR**

That an agreement has been reached with the relevant licensing and collecting body or bodies, that the AHDS may hold & (in the event of the Depositor's failure to deliver) disseminate copies of the Data Collection, and that a copy of this agreement has been deposited along with the Data Collection.

7.3.6 That the Data Collection was not created in breach of any exclusive recording right **OR**

That the Depositor is the owner of recording rights in all or part of the Data Collection and asserts/waives those rights [delete as necessary] **OR**

7.3.7 That a waiver or licence allowing the AHDS to hold and (in the event of the Depositor's failure to deliver) disseminate the Data Collection has been obtained from persons (other than the Depositor) with exclusive rights in the recording of a performance from which the Collection emanated, and deposited along with the Data Collection.

7.3.8 To notify the AHDS of any change in Copyright ownership affecting the Data Collection.

7.3.9 To notify the AHDS of any confidentiality, privacy or data protection issues pertaining to the Data Collection.

#### 7.4 Updates

The Depositor hereby warrants and undertakes as follows:

7.4.1 To provide annual/six-monthly/monthly/weekly real-time (delete as appropriate) updates where the Data Collection is dynamic and subject to change.

7.4.2 To provide updates in the same format agreed for the original Deposit.

7.4.3 To provide annual/six-monthly/monthly/weekly real-time (delete as appropriate) Metadata updates.

## 8. AHDS Rights

8.1 The AHDS retains the right to renegotiate the licensing arrangements in the event of the Data Collection being embargoed or an expiry date being integral to current licensing arrangements.

8.2 The AHDS reserves the right to terminate this Agreement within as outlined in 11.8.

8.3 The AHDS reserves the right to reject the Deposit of any Data Collection on the basis of non-compliance with any of the stipulations laid out in this Agreement or with arrangements laid out in the Depositor Guide.

8.5 The AHDS reserves the right to assume responsibility for delivery in the event that the established delivery platform, mechanism or institution, for whatever reason, fails to do so for a period exceeding one month.

8.6 The AHDS reserves the right to charge the Depositor.  
[see Draft 2 of Depositor Guide for origin of this]

## 9. AHDS undertakings

9.1 The AHDS undertakes to take reasonable measures to prevent unauthorised access to, duplication of or distribution of the Data Collection whilst in AHDS possession or under AHDS control.

9.2 The AHDS undertakes to permit authorised users access to Data Collection for agreed purposes in circumstances where the Depositor has failed to deliver the data collection in the terms described elsewhere in this Agreement, and responsibility for delivery of the Data Collection has transferred from the Depositor to the AHDS.

9.3 The AHDS undertakes preserve as far as possible by whatever means appropriate the Data Collection on the understanding that it has been deposited in an appropriate preservation-standard format.

9.4 The AHDS undertakes to draw attention to the following notice:

*All material supplied via the Arts and Humanities Data Service is protected by copyright and other intellectual property rights, and duplication or sale of all or part of any of the datasets is not permitted, except that material may be duplicated by you for your research use or educational purposes in electronic or print form. Permission for any other use must be obtained from the relevant copyright holder. Electronic or print copies may not be offered, whether for sale or otherwise to anyone who is not an authorised user.*

9.5 The AHDS is under no obligation to take legal action on behalf of Depositor or other rights holders in event of any breach of any rights in the Data Collection.

9.6 The AHDS is under no obligation to deliver the Collection in same formats or resolutions as noted in the Data and Documentation Transfer Form.

9.7 While every care will be taken to preserve the physical integrity of the Data Collection, the [host institution] shall incur no liability, expressed or implicit for the Data Collection, or loss or damage to it.

9.8 The copyright in any additional data created by the AHDS to augment the Data Collection, and any search software, user guides and documentation that are prepared by the AHDS to assist authorised users in using the Data Collection shall belong to the [host institution] on behalf of the AHDS [service provider] and any other parties that AHDS Performing Arts may choose to enter into an agreement with to produce such materials.

9.9 To monitor delivery of the Data Collection and undertake responsibility for this in the event that the established mechanism for delivery fails .

## 10. Royalties

10.1 No royalties shall be paid for use of the Data Collection for educational purposes, archiving or publicity.

## 11. General

### 11.1 Communications

All notice under this Agreement shall be in writing and shall be sent to the address of the recipient set out in this Agreement or to such other address as the recipient may have notified from time to time. Any notice may be delivered personally or by first class post or by fax or by e-mail and shall be deemed to have been served if by hand when delivered, if by first class post 48 hours after posting, if by fax when confirmation of transmission is received and if by e-mail, when confirmation of receipt is received from the system of the recipient. If no reply is received to a notice under this agreement the consent of the recipient will be deemed to have been given after 30 days have elapsed from the issue of that.

### 11.2 Successors

This agreement is binding on and will benefit the successors and assigns of the parties.

### 11.3 Entire agreement

This Agreement constitutes the entire agreement between the parties. No variation will be effective unless in writing signed by or on behalf of both parties.

### 11.4 Invalidity

If any part of this Agreement is held unlawful or unenforceable that part shall be struck out and the remainder of this Agreement shall remain in effect.

### 11.5 Joint venture

This Agreement does not create any partnership or joint venture between the parties.

### 11.6 Waiver

No delay, neglect, or forbearance by either party in enforcing its rights under this Agreement shall be a waiver of or prejudice of those rights.

### 11.7 Proper law

This Agreement is governed by the laws of England/Scotland. (delete as appropriate)

### 11.8 Termination

11.8.1 In addition to any remedy, the [host institution] on the one hand and the Depositor on the other may terminate this Agreement 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.

11.8.2 Where there is no breach, either party may terminate this Agreement upon six months notice. However where there is no breach and this Agreement is terminated by the Depositor during the term of this Agreement, the AHDS shall be entitled to charge the Depositor for costs incurred in archiving, cataloguing, or other investment of resources in the Collection prior to its withdrawal.

### 11.9 Disclaimer

The Depositor and the [host institution] shall be under no liability for any loss or for any failure to perform any obligation hereunder due to causes beyond their 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.