The Archaeology Data Service / Heritage Science Data Service Metadata Deposit Agreement

1. Introduction

1.1 The Depositor wishes to deposit Metadata with the Archaeology Data Service or the Heritage Science Data Service of the University of York, hereafter referred to as the Recipient, for the purposes of making Metadata records publicly accessible via the Recipient's services.

1.2 Subject to the terms of this Agreement, the Recipient may make the Metadata publicly accessible however, the Recipient is under no obligation to the Depositor to preserve or make the Metadata accessible in a specific way or to warrant that the data will remain accessible or uninterrupted.

1.3 This Agreement between the Depositor and the Recipient provides the legal permissions and warranties needed to allow the Recipient to make accessible in a variety of formats and media, the Metadata.

1.4 This Agreement is a non-exclusive licence, which ensures that copyright in the Metadata 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 in accordance with the type of Access Licence selected at Annex A.

2. Definitions and Interpretation

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

'Access Licence': the licence which the Depositor has indicated the Metadata to be disseminated under, which prescribes the terms and conditions of access to and re-use of the Metadata as detailed at Annex A.

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

'Depositor': The party depositing material/Metadata with the Archaeology Data Service or the Heritage Science Data Service of the University of York.

'Data Protection Legislation': all applicable data protection and privacy legislation in force from time to time in the UK including the UK GDPR (as defined below); the Data Protection Act 2018 (DPA 2018) (and regulations made thereunder) and the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426) as amended and all other legislation and regulatory requirements in force from time to time which apply to a party relating to the use of Personal Data (as defined by the Data Protection Legislation). UK GDPR: has the meaning given to it in section 3(10) (as supplemented by section 205(4)) of the Data Protection Act 2018.

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

'Recipient' : The Archaeology Data Service or the Heritage Science Data Service of the University of York who receive the material/Metadata from the Depositor.

3. Agreement

The Depositor grants a non-exclusive, royalty-free, worldwide licence in the Metadata to the Recipient for the duration of this Agreement dissemination as the Recipient deems appropriate in accordance with the terms of this Agreement. Such rights shall include, but not be limited to, the right to:

3.1

3.1.1 distribute copies of the Metadata in a variety of media formats including distribution to parties providing aggregating/harvesting services which collect and index data from numerous sources,

3.1.2 promote and advertise the Metadata in any form of publicity for the Recipient,

3.1.3 catalogue, enhance, validate and document the Metadata,

3.1.4 electronically store, translate, copy, or re-arrange the Metadata.

3.2 The Depositor grants the Recipient a non-exclusive, royalty-free, worldwide licence, with the right to grant sublicences, to the Metadata, for the duration of this Agreement for dissemination and for such use as the Recipient deems appropriate.

4. Depositor's Rights and Undertaking

4.1 The Depositor is free to use or publish the Metadata elsewhere.

4.2 The Depositor does not warrant or guarantee the Metadata in terms of the comprehensiveness, accuracy, reliability, or otherwise of its contents or to offer any commitment to continue to preserve the Metadata.

4.3 The Depositor hereby warrants and undertakes as follows:

4.3.1 the Depositor is the owner of the copyright and associated intellectual property rights in the whole of the Metadata or is duly authorised by the owner, or owners, of these rights and is capable of granting under this agreement, a licence to hold and disseminate copies of the Metadata,

4.3.2 that the Metadata is not and shall be in no way a violation or infringement of any copyright, trademark, patent, or other rights whatsoever of any person,

4.3.3 that the Metadata does not and will not contravene any laws, including but not limited to the law relating to defamation, or obscenity,

4.3.4 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,

4.3.5 to notify the Recipient of any change of copyright

ownership affecting the Metadata,

4.3.6 to notify the Recipient of any confidentiality, privacy or data protection issues pertaining to the Metadata. The Depositor is responsible for ensuring that all fair processing notices have been given (and/or, as applicable, consents obtained) for data within the Metadata in compliance with the Data Protection Legislation.

4.4 The Depositor undertakes that he/she/they are authorised to sign this Agreement on behalf of his/her/their organisation, if applicable.

5. The Recipient's Rights and Responsibilities

5.1 The Recipient shall:

5.1.1 use all reasonable efforts which the Recipient deems appropriate to protect and curate the Metadata.

5.1.2 ensure all staff with access to personal data and special category data are subject to a duty of confidence.

5.1.3 take reasonable measures to prevent unauthorised access to, duplication of, or distribution of, the Metadata whilst it is in the Recipient's possession or under its control.

5.1.4 assist the Depositor in allowing an individual to exercise his/her rights under the Data Protection Legislation.

5.1.5 permit users to access and use the Metadata, or any part of it.

5.1.6 inform users of the type of Access Licence assigned by the Depositor.

5.1.7 not be under any obligation to take or defend legal action on behalf of the Depositor or other rights holders in the event of breach of intellectual property rights, the Access Licence, or any other right in the Metadata.

5.1.8 not be under any obligation to reproduce, transmit, broadcast, or display the Metadata in the same formats or resolutions as those in which the Metadata was deposited.

5.1.9 In relation to personal data and/ or special category data as defined in the Data Protection Legislation:

5.1.9.1 the Recipient will only engage a sub-processor for the purpose of supporting the Recipient in fulfilling its obligations and responsibilities under this Agreement, this will be subject to the Recipient and the sub-processor entering into an appropriate data processing agreement;

5.1.9.2 the Recipient will delete such data if requested in writing by the Depositor.

5.2 the Recipient does not warrant that the Metadata will be preserved and while every care will be taken the Recipient shall incur no liability, either expressed or implicit, for the Metadata or for the loss of or damage to any of the Metadata. The Depositor may request the opportunity to audit or inspect our security arrangements at their own

cost.

5.3 The copyright in any additional data added by the Recipient to the Metadata, and any search software, user guides and documentation that are prepared by the Recipient to assist users in using the Metadata shall belong to University of York on behalf of the Recipient and any other parties that the Recipient may choose to enter into an agreement with to produce such materials.

6. Royalties

6.1 No royalties shall be paid for the use of the Metadata.

7. Limitation of liability

7.1 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.

7.2 The limitations in Section 7.1 shall not apply to:

7.2.1 liability for death or personal injury caused by the relevant Party's negligence;

7.2.2 liability for fraud or fraudulent misrepresentation; and

7.2.3 any other liability that cannot be excluded by law.

8. General

8.1 Communications

All notice under this Agreement shall be in writing and shall be sent to the address of the Depositor set out in this

Agreement or to such other address as the Depositor may have notified the Recipient to. Any notice may be delivered personally or by first class post or by e-mail and shall be deemed to have been served as by hand when delivered, if by first class post 48 hours after posting if by e-mail, at the time the recipient's incoming mail server records receipt of the email, unless such deemed receipt would occur outside normal business hours in which case deemed receipt will occur at 9am on the next business day.If no reply is received to a notice under this Agreement the consent of the recipient will be deemed to have been given after thirty (30) days have elapsed from the issue of that notice.

8.2 Successors

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

8.3 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.

8.4 Severability

If any provision of this Agreement is found by any court or other authority to be invalid, illegal, or unenforceable, the remaining provisions of this Agreement will continue in full force and effect.

8.5 Joint Venture

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

8.6 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. 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.

8.7 Governing Law, dispute resolution and jurisdiction

This Agreement (and all non-contractual liability arising from it) is governed by, and is to be construed in accordance with, the laws of England and Wales.

The Parties shall use good faith efforts to resolve any dispute, claim or proceeding arising out of or relating to this Agreement. In the event that any disputes cannot be resolved at this level then the senior executives of the relevant Parties who have authority to settle the same shall use good faith efforts to resolve the same. If the matter is not resolved through negotiation, the English Courts will have exclusive jurisdiction to deal with any dispute which has arisen or may arise out of, or in connection with, this Agreement.

8.8 Term of the Agreement

This Agreement shall take effect on execution hereof and shall continue for the duration of copyright protection in the Metadata unless either party terminates this agreement under clause 8.9.

8.9 Termination

8.9.1 In addition to any remedy, the Recipient 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.

8.9.2 Where there is no breach, the Recipient may terminate this Agreement upon six (6) months' notice. In the event of such a termination, the Recipient shall be entitled to keep such copies of the material as it requires.

8.10 Disclaimer

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 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.

8.11 Counterparts

This Agreement may be executed in any number of counterparts, each of which shall be an original, but all of which together shall constitute one instrument.

8.12 No Reliance on Representations

Each Party acknowledges that in entering into this Agreement on the terms set out in this Agreement it is not relying upon any 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, provided that this shall not exclude any liability which either Party would otherwise have to the other in respect of any statements made fraudulently.

Title of Metadata: [insert]

Depositor

Signed:

Date:

Full Name:

Position:

On behalf of (if applicable):

Address:

Post Code:

Email:

Telephone:

On behalf of the University of York

Signed:

Date:

Full Name:

Position:

ANNEX A: Access Licence

Please indicate the Access Licence which the data deposited should be disseminated under:

Creative Commons Zero Public Domain Dedication (CC0) ☐

Open Government Licence v3.0 or version applicable at time of deposit ☐

Other (please state) .....