

# Bristol Archives

## Terms and Conditions of Agreement for the Deposit or Donation of Records



### 1. Definitions

1.1 **'Records'** comprises any materials, documents or other media conveying written, visual or audible information, including written and, where relevant, printed archives, maps, photographs, paintings, films, audio or video recordings, whether on paper, parchment, fabric, film, tape, disc or similar media.

1.2 **'Council'** shall mean Bristol City Council or any successor Authority that shall, by statute or otherwise, be empowered to keep and preserve records and to operate an archives service for Bristol and which currently discharges this role by Bristol Archives which is itself a department of the Bristol Culture division.

1.3 **'Bristol Archives'** shall mean the archives service operated by Bristol City Council or any successor authority, which maintains a repository or repositories for the storage and custody of its own records and any records deposited with it.

1.4 **'Deposit'** shall mean that the party named on the Agreement for Deposit/Donation and on the Certificate of Deposit/Donation as the Depositor has placed the Records listed on the schedule thereto into the custody of Bristol Archives while preserving and not affecting the legal title to the Records, such Deposit being either a Deposit for an open period or a Temporary Loan, such terms being defined at 1.11.1 and 1.11.3 below.

1.5 **'Donation'** shall mean that the party named on the Agreement for Deposit/Donation as the Donor has transferred legal title to the Records listed on the schedule thereto and on the Certificate of Deposit/Donation to the Council as an absolute and perpetual gift such the Records thereby becoming the sole property of the Council, who may take whatever action it thinks fit in respect of the Records donated.

1.6 **'Depositor/s'** shall mean the person, corporate body or voluntary association that has placed the Records in the custody of Bristol Archives, in line with 1.4 above. By signing the Agreement for Deposit/Donation, subject to clause 9 below the Depositor warrants that he/she/it has powers to act in all matters relating to the deposited Records, and will indemnify the Council against any future claims by third parties.

1.7 **'Donor/s'** shall mean the person, corporate body or voluntary association who has transferred legal title to the Records to the Council according to the terms specified in 1.5

above. By signing the Agreement for Deposit/Donation, the Donor warrants that he/she/it has powers to act in all matters relating to the donated Records, and will indemnify the Council against any future claims by third parties.

1.8 **'Agreement'** shall mean this Terms and Conditions for the Deposit or Donation of Records document, together with the signed Receipt for Deposit/Donation which pertains to the Records deposited or donated AND the Certificate of Deposit/Donation of Records SAVE THAT such Receipt for Deposit/Donation may be superseded by a subsequent Agreement for Deposit/Donation and Certificate of Deposit/Donation in respect of the said Records.

1.9 **'Receipt for Deposit/Donation'** shall mean the document so entitled issued by Bristol Archives to a Depositor or Donor at the time of the Deposit or Donation of Records.

1.10 **'Certificate of Deposit/Donation'** shall mean the document so entitled which confirms to the Depositor or Donor the receipt of the Records and confirms the basis on which Bristol Archives accepts receipt of the Records.

1.11 **'Terms of Receipt'** shall mean the basis on which the Records are accepted by Bristol Archives as is confirmed in the Certificate of Deposit/Donation and which shall be one of the following:

- 1.11 **'Deposit'** shall mean that the party named on the Receipt for Deposit/Donation as the Depositor has placed the Records listed on the schedule thereto into the custody of Bristol Archives for an undefined and open period, while preserving and not affecting the legal title to the Records.
- 1.12 **'Donation'** shall bear the meaning described at 1.5 above.
- 1.13 **'Temporary Loan'** shall mean that the party named on the Receipt for Deposit/Donation as the Depositor has placed the Records listed on the schedule thereto into the custody of Bristol Archives for a defined period of time, or a period of time to be reasonably agreed between the parties, and for a prescribed purpose, while preserving and not affecting the legal title to the Records.
- 1.14 **'Public Records'** shall mean that the Records are received in accordance with the prescription of relevant Public Records legislation, including but not limited to the Public Records Acts 1958 and 1967 (as amended).
- 1.15 **'Bequest'** shall mean that the Records listed on the schedule attached to the Agreement for Deposit/Donation and on the Certificate of Deposit/Donation are received by Bristol Archives following the operation of a Will instrument.
- 1.16 **'Diocesan'** shall mean that the Records listed on the Certificate of Deposit/Donation are received by Bristol Archives in accordance with mutually agreed terms between Bristol Archives and the Diocese of Bristol.
- 1.17 **'Purchase'** shall mean that the Records listed on the Certificate of Deposit/Donation are received by Bristol Archives following the acquisition by purchase by the Council.
- 1.18 **'Parish'** shall mean that the Records listed on the Certificate of Deposit/Donation are received by Bristol Archives in accordance with the prescription of relevant parochial records legislation, including but not limited to the Parochial Registers and Records Measure 1978 (as amended).

1.19 **'Official'** shall mean that the Records listed on the Certificate of Deposit/Donation are received by Bristol Archives from an internal department of the Council in accordance with prevailing arrangements.

1.12 **'Service Manager'** shall mean the individual performing the official function of head of archives at the Council and any individual or individuals properly authorised to act on his or her behalf in any relevant tasks or functions.

## **2. General**

2.1 Bristol Archives, on behalf of the Council, has a duty to hold certain classes of records under specific legislation, as detailed at section 2.2 of its Acquisition Policy (copies of which are available to view online on the Bristol Archives website<sup>1</sup> and at Bristol Archives). Nothing in these Terms of Deposit shall override the detailed stipulations of that legislation.

2.2 Bristol Culture reserves the right to reject material which it does not deem suitable or desirable to accept.

2.3 In the event of Bristol Culture rejecting material in accordance with 2.2 above, Bristol Archives shall make the material available for collection by the Depositor.

2.4 The Agreement for Deposit/Donation represents the entire agreement between the parties hereto with respect to all matters referred to herein and cancels and supersedes all previous agreements SAVE THAT the Agreement for Deposit/Donation may be succeeded by a subsequent Agreement for Deposit/Donation agreed between the parties in respect of the Records.

2.5 Unless expressly otherwise stated, nothing in this Agreement for Deposit/Donation will create any rights in favour of any person under the Contracts (Rights of Third Parties) Act 1999.

2.6 The Agreement for Deposit/Donation shall be governed and construed in accordance with English Law.

## **3. Deposit**

3.1 The Depositor shall at the time of the Deposit sign a Receipt for Deposit/Donation which, together with this Terms and Conditions for the Deposit or Donation of Records and the Certificate of Deposit/Donation shall together constitute the Agreement for Deposit/Donation between the Depositor and the Council.

3.2 Bristol Archives shall make all reasonable efforts to send to the Depositor a written acknowledgement of receipt of the Records within 20 working days of their delivery which shall be accompanied by a Certificate of Deposit/Donation.

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<sup>1</sup> [www.bristolmuseums.org.uk/bristol-archives/whats-at/our-collections](http://www.bristolmuseums.org.uk/bristol-archives/whats-at/our-collections)

3.3 The Certificate of Deposit/Donation of Records shall contain confirmation to the Depositor of the Terms of Receipt.

3.4 Bristol Archives will keep a signed copy of the Certificate of Deposit/Donation on file and provide a copy to the Depositor. In cases where the Certificate of Deposit/Donation is not signed and returned, the document referred to in 3.1 shall evidence the agreement between the parties.

3.5 Bristol Culture reserves the right to reject the Records where the Certificate of Deposit/Donation is not signed and returned by the Depositor.

3.6 A register of the names and addresses of depositors is permanently maintained in electronic form by Bristol Archives. Such information shall not be released to third parties without the express permission of the Depositor, in accordance with the obligations placed on the Council by the Data Protection Acts and other relevant legislation.

3.7 Any change in the name, address or status of the Depositor shall be notified to Bristol Archives by the Depositor in a prompt and timely fashion. The Council does not accept responsibility for any consequences that may arise from a failure by the Depositor to notify Bristol Archives of such changes.

3.8 Communications relating to the deposited Records will be sent to the address held by Bristol Archives for the Depositor or any appointed agent duly notified to Bristol Archives. In the event of these being returned or unacknowledged and following a lapse of ten years thereafter without further communication from the Depositor or appointed agent any duty upon the Council to seek to communicate directly with the Depositor will be regarded as discharged and legal title to the Records will be deemed to have passed to the Council. Where a Depositor is an incorporated body or an unincorporated body that it has been wound up or dissolved, and in the event of communications being returned or unacknowledged, any duty upon the Council to seek to communicate directly with the Depositor will be regarded as discharged and legal title to the Records will be deemed to have passed to the Council.

3.9 In certain exceptional circumstances records may be received by Bristol Culture on Temporary Loan at the discretion of the Service Manager for the purposes of access for research or for copying or digitally rendering or for any other related reason.

3.10 Delivery boxes or containers shall be disposed of by Bristol Archives, as it deems appropriate, unless the Depositor explicitly requests their return at the time of deposit. If a commercial cost is incurred by the Council in the disposal of such containers the Council reserves the right to pass this cost on to the Depositor.

3.11 Records which were initially received by Bristol Archives on Deposit or Temporary Loan may be donated at a later date or arrangements can be made for the future bequest by the Depositor to the Council at any time in which case a revised Certificate of Deposit/Donation shall be issued in respect of the Records and shall supersede any earlier Certificate of Deposit/Donation in respect of the Records.

## **4. Donation**

4.1 Deposited records can be donated or made the subject of a bequest to the Council at any time in accordance with 3.11 above [full details of how to make advance arrangements for a bequest will be provided by Bristol Archives on request].

4.2 The Donor shall at the time of donation sign a Receipt for Deposit/Donation which, together with this Terms and Conditions for the Deposit or Donation of Records and the Certificate of Deposit/Donation shall together constitute the Agreement between the Donor and the Council.

4.3 Terms 3.2 to 3.8 shall apply to the Donor as to the Depositor.

## **5. Preservation**

5.1 Records deposited by individuals and organisations on the premises of Bristol Archives will be stored in conditions identical to the records of the Council itself, which shall be approximate as nearly as possible to *PD 5454 Storage and exhibition of archival documents*.

5.2 The Council will take reasonable measures to preserve the deposited Records from damage, loss or theft whilst in storage, public use, conservation or on exhibition but shall not otherwise be liable beyond this to the Depositor or Donor for any damage or indirect or consequential loss of any nature, other than by negligence.

5.3 Records stored on Bristol Archives premises shall be insured by the Council to the extent of the value of the materials on which the information is recorded in accordance with 5.4 below.

5.4 The liability of the Council in respect of damages to the Records from whatever cause (including any negligence of the Council) is limited to the value of the materials on which the information is recorded [the Council regards unique records as being irreplaceable].

## **6. Conservation**

6.1 Bristol Culture will be entitled in its absolute discretion to take any of the following actions in respect of the deposited Records:

- 6.1.1 Subject to the provision of the Copyright Acts for the time being in force, to photograph, digitise, microfilm or otherwise copy them as a conservation measure; the ownership of all such copies, negative and positive, to be vested in the Council.
- 6.1.2 To number them with a finding reference for their identification and safe keeping.
- 6.1.3 To carry out such work in regard to the conservation and/or restoration of the documents as may from time to time be considered desirable and practicable by the Service Manager in consultation with professional conservation staff.

6.1.4 To withhold public access to them if in a fragile condition until all practicable and necessary conservation work on them has been completed.

## **7. Cataloguing**

7.1 Bristol Archives shall determine the suitability for cataloguing of the Records in line with the prevailing Cataloguing Strategy and they will be entered into the prevailing Cataloguing Programme according to that assessment and catalogued in accordance with prevailing practice and available resources.

7.2 Bristol Archives shall provide to the Depositor or Donor and any other such person as the Service Manager considers appropriate a copy of the catalogue upon request.

7.3 The Council shall own all such finding aids together with any associated copyright in such aids.

7.4 Bristol Archives shall make reasonable efforts to ensure that the catalogue is available to the general public both in the search room and via the Internet on its online catalogue.

7.5 Bristol Archives reserves the right to request that the Depositor or Donor provides a listing of the content of the Records or a reasonable contribution towards the costs of cataloguing.

## **8. Access**

8.1 Subject to any restrictions agreed under section 8.3 below and to any statutory or common law provisions, the deposited Records will be made available free of charge to any persons requesting access to them for purposes of educational, recreational, official or legal research in the public search rooms operated by Bristol Archives during their advertised opening hours and in accordance with any applicable Council regulations.

8.2 Depositors and Donors who wish to access the Records deposited or donated by themselves shall access any records the subject of Deposit or Donation in accordance with 8.1 above.

8.3 Notwithstanding the right reserved to Bristol Culture to reject any material including material which requires stringent or unusual conditions in accordance with 2.2 and 2.3 above the Service Manager may by specific agreement with a depositor or donor agree to take records on Deposit or Donation which are subject to reasonable restrictions being placed on public access.

8.4 Bristol Culture shall reserve the right to not comply with any request to permanently close any records on Deposit and shall reserve the right to subsequently reject those records in accordance with 2.2 and 2.3 above.

## 9. Copyright and moral rights

9.1 Bristol Culture acquires and maintains records in a context of cultural preservation, protection, and the propagation of public awareness of and access to such records and it is in this context that all copyrights, moral rights and intellectual property rights are to be considered, accepted and appraised.

9.2 Where the Depositor or Donor is the owner of the copyright in any of the Records to be the subject of Deposit or Donation they shall at the time of the Deposit or Donation elect to retain for themselves or assign to the Council copyright in those Records in accordance with 9.3 below AND such election shall be recorded on the Certificate of Deposit/Donation.

9.3 The Depositor or Donor shall notify at the time of the Deposit or Donation to the Council one of the following options in relation to the transfer or otherwise of any copyright attaching to any of the Records:

9.3.1 Where the Depositor or Donor owns the copyright in the Records prior to Deposit or Donation to:

9.3.1.1 Assign copyright in the Records to the Council such copyright being comprehensive and including the right to copy, make reproductions, perform, rent or lend, adapt the work or communicate the work to the public

9.3.1.2 Retain the benefit of copyright (but not the ownership of the copyright) in the Records by assigning copyright to the Council in accordance with 9.3.1.1 above AND the Council granting for the remainder of the life of the Depositor or Donor sole licence (subject to the exceptions described in 9.5 below) to the Depositor or Donor AND the Council shall account to the Depositor or Donor for the remainder of the life of the Depositor or Donor for any monies arising from the ownership of the copyright in such Records

9.3.1.3 Retain ownership of copyright in the Records AND grant a non-exclusive licence to the Council to copy, make reproductions, perform, rent or lend, adapt the work or communicate the work to the public subject to the Council accounting to the Depositor or Donor for any monies accruing to the Council from such use and the requirement for the consent of the Depositor or Donor, such consent not to be unreasonably refused subject to the terms of 9.5 below.

9.3.1.4 For the avoidance of doubt "account to" in 9.3.1.2 and 9.3.1.3 shall mean that the Council shall pay over all monies arising in respect of the copyright in line with the Council's policy on charging and copyright fees.

9.3.1.5 References to the life of the Depositor or Donor shall where the Depositor or Donor is an incorporated body or unincorporated body mean the continuance of that body until the point that it is wound up or dissolved.

9.4 Where the Depositor or Donor is not the copyright owner in relation to the copyright attaching to the Records at the time of the Deposit or Donation of those Records and does not know the identity of the copyright owner or owners of those Records at that time then the

Depositor or Donor shall upon being informed of the identity of the copyright owner or owners immediately notify Bristol Archives of that owner or owners.

9.5 In accordance with the provision of the Copyright Acts for the time being in force, copies of the Records may, at the discretion of the Service Manager, be supplied to any person or body, on payment of an appropriate charge, for use only in private study. Where copyright has not been assigned to the Council and subject to 9.3.1.3 above, no further reproduction of such copies shall be allowed without the consent of the Service Manager and the copyright owner(s), such consent being reasonably sought by the Council.

9.6 The Service Manager may at his/her discretion grant consent to the publication of material contained in any of the Records that are open for study, either in whole or in part, in facsimile or in transcript, on behalf of the Depositor or Donor, such consent being subject to the condition that due acknowledgement be made to the Depositor or Donor and/or Bristol Culture by the person responsible for such publication, such acknowledgement to be in a form and on such conditions as are reasonably required and notified by the Depositor or Donor and/or Bristol Culture. SAVE THAT the Service Manager and the Depositor or Donor may agree between themselves that the Depositor may reserve the right to consent to public requests, provided that this is recorded in writing at the time of the Deposit or Donation and provided that the Depositor or Donor consents to permit his/her contact details to be supplied to any person requesting such consent.

9.7 Bristol Culture shall notify intending publishers of any of the Records of their responsibility to comply with copyright legislation for the time being in force.

9.8 Bristol Culture may, at its discretion and without further permission from the Depositors or Donor, use reproductions of or extracts from the Records in its own publications or those of its partners, subject to the same conditions as specified in 9.5 and 9.6 above.

9.9 The Council and its partners may, at its discretion and without further permission from the Depositor or Donor display the Records in temporary exhibitions at Council premises or at other locations, in original, digital or copy form, subject to the same conditions described in this Agreement for Deposit/Donation.

9.10 The Council may at its discretion provide additional services to any person or body in respect of the Records, including the provision of certified copies, transcripts or translations, specialist photography etc, and levy an appropriate fee for such services.

9.11 The Council will not be liable for any breaches of copyright of the Records, except insofar as such breaches relate to the acts of its designated officers.

9.12 The Council shall use reasonable endeavours to ensure that Moral Rights in respect of the authors of the Records are acknowledged in any publication or use of those Records in accordance with this Agreement for Deposit/Donation.

9.13 Notwithstanding the above, the Council reserves the right to agree to vary terms and conditions on Copyright and Moral Rights provided that these terms and conditions are recorded and agreed between the parties and that the Council reserves the absolute right to refuse to vary such terms and conditions.



## **10. Data protection**

10.1 Records containing Personal Data as defined by the Data Protection Act 1998 may be closed to the public for 100 years or until the Data Subject (as described by that Act) is deceased, whichever is longer.

10.2 An absolute right of access to the Records shall only be provided to the Data Subject, or a person acting on their behalf, who shall have an absolute right of access to this information.

10.3 Where none of the data protection principles described by the Data Protection Act 1998 and relevant regulations and guidance would be breached by a disclosure a person other than the subject may have a right of access subject to the agreement of the Service Manager.

10.4 The Service Manager reserves absolutely the right to refuse consent to the access described in 10.3 above.

10.5 Depositors of records held on Deposit by Bristol Archives shall be required to continue to act as Data Controller under the terms of the Data Protection Act 1998 and to comply with that Act's requirements, unless they are exempt under the provisions made in the Act AND the Data Controller warrants to the Council that it has complied and shall continue to comply with the provisions of the Data Protection Act 1998 AND the Data Controller further warrants to the Council that it shall keep the Council fully indemnified in respect of all actions, liabilities, claims, proceedings, costs, expenses and damages arising from any failure by the Depositor or Donor to comply with the Data Protection Act 1998 in respect of the material being stored with it.

10.6 Where Bristol Archives has received records by Donation the Council shall be the Data Controller of the personal data contained within the Records at the point of Donation and will determine the purpose/manner in which the personal data is to be processed and shall be responsible for complying with the requirements of the Data Protection Act 1998.

10.7 The Council is a public body and shall be subject to the provisions of the Freedom of Information Act 2000 in accordance with which the public have a right of access to the public records elements (as defined in that Act) therein of any of the Records held by Bristol Archives except where such access would contravene the Data Protection Act or be otherwise exempt under any of its clauses.

10.8 Where requests are submitted to Bristol Archives in relation to the public records elements of the Records Bristol Archives shall make such elements available as a matter of priority HOWEVER Bristol Archives shall not answer such requests on behalf of that department unless prior arrangement has been agreed.

## **11. Withdrawal**

11.1 Depositors may exercise their right to reclaim all or any part of the Records held on Deposit at any time, on a permanent basis, subject to giving six calendar months notice in writing to Bristol Archives.

11.2 The Service Manager may, at his/her absolute discretion, reduce the period of notice under 11.1 above under special circumstances.

11.3 During the period of notice described at 11.2 above Bristol Archives shall be entitled to copy the Records by such methods as it deems appropriate and to retain the copy as the property of the Council after the removal of the original records AND the Council shall be entitled to continue to make such copies accessible to the public, subject to the conditions and limitations set out in the terms in 8 and 9 above.

11.4 In accordance with Section 4.4.6 of Bristol Archive's Acquisition Policy, it is agreed between the parties that where the period of Deposit is unspecified, the Records shall remain in the custody of the Bristol Archives for a period sufficient to justify the expenditure made by the Council on cataloguing and conservation such period being in normal circumstances a minimum of 25 years.\*

11.5 Where the Depositor withdraws the Records within the minimum period of 25 years the Council reserves the right to claim reimbursement for the cost of any storage, cataloguing, labour and conservation from which the collection has benefited during its period of Deposit.\*

11.6 The Council shall have the first option to purchase on any of the Records withdrawn for the purposes of sale.

11.7 The Depositor may temporarily withdraw all or any part of the Records as a temporary withdrawal for a period of up to one calendar month for the purpose of exhibition or private research after giving one month of written notice to Bristol Archives AND during the period of the withdrawal and subsequent return the Council shall accept no responsibility for the safe custody and treatment of the Records.

11.8 The Depositor or any other person requiring withdrawal of the Records held on Deposit whether temporarily or permanently shall prove to the satisfaction of Bristol Archives their entitlement to receive the Records and shall complete appropriate registration documentation.

\* Where ongoing storage of the Deposit is chargeable this clause does not apply.

## **12. Applicable law**

12.1 This Agreement is governed by and construed in accordance with English Law, and the English courts shall have the sole jurisdiction in any dispute about it. Any litigation relating to the Agreement shall be initiated in the Bristol District Registry or County Court.

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**To comment on this policy or for further information, please contact the City Archivist:**

Bristol Archives  
B Bond Warehouse  
Smeaton Road  
Bristol BS1 6XN

Tel 0117 922 4224  
Email [archives@bristol.gov.uk](mailto:archives@bristol.gov.uk)