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TU Research Data Terms of Use

Terms of Use for the institutional repository TU Research Data

22 March 2021

This is the tentative version of Terms of Use. It may be subject to changes until officially endorsed by the rectorate.

PREAMBLE

The following terms and conditions govern all use of the TU Research Data service by you and any third parties who use your account. Use of the service is offered subject to acceptance of and compliance with all of the terms and conditions contained herein (the TU Research Data Terms of Use) and all other applicable operating rules, policies¹ and procedures of the service. By clicking “I accept” and/or by your use of the service, you agree and accept all the terms in this Terms of Use document.

1 GENERAL SERVICE DESCRIPTION

TU Research Data is an institutional repository of TU Wien that enables storing, sharing and publishing of digital objects, in particular research data for all active members of TU Wien including students at TU Wien. Other users must be approved by active members of TU Wien with a valid employment contract.

The service provider (TU Wien) makes capacity available at no charge. Furthermore, the services of the service provider are carried out with no warranty, especially in regards to availability and duration.

The uploaded content may be seen and used by TU Research Data users within the limits of the rights specified by the rights holder, and the access option selected by the configuring user. Content stored in TU Research Data can be found by search engines such as Google especially due to their metadata.

1.1 DEFINITIONS

- **Account:** a user-controlled means of access to TU Research Data that is protected by a user-created login username and password (TU single-sign-on) or via ORCID account related to active members of TU Wien, with which users can obtain access to TU Research Data. For accessing content, login is not required.
- **Active member of TU Wien:** Persons with a relation to TU Wien in terms of employment, research or academic affairs, such as persons with a valid employment contract with TU Wien and students at TU Wien.
- **Creator:** the person(s) from whom the data originated; the person(s) who conducted the research that led to the creation of the dataset. This person can but need not be the same as the depositor.

¹ In particular the TU Research Data Policy and the TU Research Data Privacy Policy.

- Content: deposited research data², i.e. any information, data, text, software, scripts, graphics, etc. found on TU Research Data service.
- Depositor: the user who uploads content with metadata on TU Research Data. The depositor provides the uploaded item with a usage license specified by the licensor. This person can but need not be the same as the creator.
- Digital object: a data structure whose principal components are digital material, or data, plus metadata and a unique identifier for this material.
- External account: Users other than active members of TU Wien can get access to the service only by invitation of an active member of TU Wien with a valid employment contract. All approvals and permissions required (eg to upload content) must then be given to the respective user.
- License: the license agreement between the licensor and licensee governing the limits and restrictions (or lack thereof) of how content can be used.
- Licensee: a person who has official permission to make, do or own something.
- Licensor: a person who gives another person official permission to make, do, or own something.
- Metadata: is descriptive or contextual information associated with content to assist in their identification, location and retrieval by users, while facilitating content and access management. Metadata usually take the form of a structured set of elements.
- Service provider: TU Wien Karlsplatz 13, 1040 Wien, Austria, <https://tuwien.ac.at>.
- Upload: any uploaded, submitted, disclosed, distributed, or otherwise posted content by a depositor, including but not limited to new datasets, metadata information, license agreements, descriptive information, and other contributions either originating from the user or originating from a third-party creator and / or other rightsholder, if any who gave permission to the user to disseminate on TU Research Data service.

² Definition according to Policy for Research Data Management at the TU Wien: "Research data refer to all information (regardless of form or presentation) needed to support or validate the development, results, observations or findings of research work, including contextual information. Research data include all materials created in the course of academic work, e.g. through digitisation, records, source research, experiments, measurements, surveys and interviews. This includes software and code. Research data can be classified as - raw or primary data: information recorded as notes, images, video footage, paper surveys, computer files etc., - processed data: analyses, descriptions and conclusions in the form of reports or papers, and - published data: information distributed to others than those involved in data acquisition and administration."

- Use of TU Research Data service: any access to, use of, or other action involving the TU Research Data service's functions, services, resources, and repository of datasets, including but not limited to any uploading, posting, submitting, storing, searching for, downloading, distributing, facilitating distributions, and otherwise utilizing any content found on the TU Research Data or granting permissions to do so.
- User: refers to any person who uses the TU Research Data service, including, but not limited to creator and depositor.

2 SERVICE DESCRIPTION FROM A LEGAL POINT OF VIEW

- **Access** to TU Research Data, and all content, is provided on an "as-is" basis. Users shall respect applicable license conditions and existing rights. Use of content from TU Research Data does not transfer any rights in the content.
- **Responsibility:**
 - Creators and / or other rights holders, if any are responsible for the content being uploaded to TU Research Data subject to their consent of the upload and subject to third party rights and or obligations, if any and shall indemnify and hold TU Wien free and harmless in this respect. Creators and / or other rights holders, if any shall ensure that the content is suitable for open dissemination, and that it complies with these terms and applicable laws, including, but not limited to, privacy, data protection and copy right and intellectual property rights, confidentiality or non-disclosure agreements. In addition, where data that was originally sensitive personal data is being uploaded for open dissemination through TU Research Data, creators and or other rights holders, if any shall ensure that such data is either anonymised to an appropriate degree or fully consent cleared.
 - Depositors who are not creators must make sure that they have the permission to upload content and guarantee that they only provide items with usage licenses specified by the licensors. Depositors who are not creators shall hold TU Wien free and harmless in this respect.
 - Users are responsible for their use of content, and shall indemnify and hold TU Wien free and harmless in connection with their use of the service.

- **Ownership:** By uploading or downloading content, no change of ownership is implied and no rights whatsoever are transferred. All uploaded or downloaded content remains the property of the owner prior to upload or download.
- **Limitation of liability:** In no event shall TU Wien be liable with respect to the service or any content or user submissions (i) for any direct damages, or (ii) for any lost profits or damages of any kind whatsoever.
- **Indemnification:** You will indemnify and hold the service provider harmless from and against any and all loss, cost, expense, liability, or damage, including, without limitation, all reasonable attorneys' fees and court costs, arising from i) your use or misuse of the service; (ii) your access to TU Research Data; (iii) your violation of the Terms of Use; or (iv) infringement by you, or any third party using your account, of any intellectual property or other right of any person or entity, including but not limited to infringements upon any and all representations made by you in these Terms of Use. Such losses, costs, expenses, damages, or liabilities shall include, without limitation, all actual, general, special, and consequential damages.
- With respect to employees of TU Wien, provisions of labour law and employment agreements remain unaffected and prevail in case of conflicts with the TU Research Data Policy or the TU Research Data Terms of Use
- **The service provider** reserves the right, without notice, at its sole discretion and without liability, (i) to alter, delete or block access to content that it deems to be inappropriate or insufficiently protected, and (ii) to restrict or remove user access where it considers that use of TU Research Data interferes with its operations or violates these Terms of Use or applicable laws.
- **These Terms of Use** are subject to change by the service provider at any time and without notice by posting the updated Terms of Use on the website of the service provider.
- **Applicable law and dispute resolution:** These Terms of Use are governed by and interpreted in accordance with the laws of Austria (excluding the conflict of laws rules thereof). All disputes under these Terms of Use are subject to the exclusive jurisdiction of the competent courts of Vienna.