

# WIKIMEDIA-CH PARTNERSHIP TERMS AND CONDITIONS

## 1 SCOPE

These terms and conditions, as may be amended from time to time in accordance with section 10.1 below, (the “**Terms**”) govern the relationship among Wikimedia CH (“**WMCH**”), a Swiss association having its seat in Zurich, and any organization or institution (the “**Partner**”; WMCH and the Partner each a “**Party**” or together the “**Parties**”) collaborating with WMCH within the frame of certain projects (the “**Projects**”).

## 2 ACCEPTANCE

2.1 The acceptance of the Terms shall not be subject to specific formal requirements. Any actions by any organization or institution in furtherance of any Project following the notification of the Terms by WMCH, will be deemed acceptance of the Terms and beginning of the partnership (the “**Partnership**”).

2.2 The Partner’s acceptance of the Terms shall be valid for any possible future Projects, in the form of an ongoing Partnership, except if the Parties expressly agree that a given Project shall be conducted on a one-off basis.

## 3 PROJECTS AND SERVICES

3.1 Projects may include workshops, such as writing ateliers, hackathons or edit-a-tons, conferences, key notes and/or presentations (“**Events**”). Further information on Projects and Events can be found under the following link: [www.wikimedia.ch/services/for-institutions/](http://www.wikimedia.ch/services/for-institutions/).

3.2 Through the Projects, WMCH seeks to help the Partner to enhance its content on the online encyclopedia Wikipedia, on Wikimedia Commons or on specific Wikimedia project pages. Therefore, WMCH may *inter alia* provide the following services to the Partner (the “**Services**”):

- i. information on the Projects;
- ii. information on open licenses, such as “Creative Commons”;

- iii. facilitation of volunteer involvement in the Projects, including liaising volunteers with senior contributors in the WMCH communities;
- iv. organization and/or co-organization with the Partner of Events; and/or
- v. provision of certain data allowing them to evaluate past Events on a quantitative and qualitative level.

3.3 The specific Services to be provided by WMCH, as well as WMCH’s and the Partner’s roles and responsibilities (e.g. provision of premises, staff and other resources, logistics, administration of Events, etc.) and the general framework/milestones of any Project, shall be agreed upon among the Parties either (i) in one or more meetings, as recorded in the meeting minutes, or (ii) in writing, including through the exchange of emails.

3.4 If any Project includes the organization by, or co-organization with, WMCH of an Event, subject to any agreement to the contrary, the Project is deemed completed after such Event took place. The Project may or may not be formally concluded by means of a debrief meeting.

3.5 In case of any contradiction between the Terms and any deviating agreement in respect of a specific Project, the Terms shall prevail, except if the Parties’ mutual intent to deviate from the Terms expressly emerges from any written document (e.g. approved meeting minutes or concordant declarations by email).

3.6 The Partner’s own terms and conditions, if any, do only apply if and to the extent expressly agreed by WMCH in writing.

## 4 PARTNER OBLIGATIONS

4.1 The Partner shall comply with the Terms and any specific agreements with respect to the Projects and/or Events.

4.2 The Partner shall undertake its best efforts in furtherance of the success of any Project and it shall follow WMCH's reasonable instructions in this respect. In particular, the Partner shall grant WMCH reasonable access to its network and resources in furtherance of the success of any Project.

4.3 The Partner shall undertake reasonable efforts to support WMCH in view of achieving its general objectives according to its bylaws, which can be found under the following link: [www.wikimedia.ch/association/bylaws/](http://www.wikimedia.ch/association/bylaws/). To do so, WMCH would welcome the Partner to become a member of WMCH, although such membership is not a mandatory requirement. Further information on becoming a member of WMCH can be found under the following link: [www.wikimedia.ch/association/become-a-member/](http://www.wikimedia.ch/association/become-a-member/).

4.4 The Partner shall not ask any subscription fees for any Events organized by, or co-organized with WMCH, without WMCH's prior written approval and subject to the reasonable conditions which WMCH may set.

4.5 If the Partner hosts an Event organized by WMCH or co-organizes an Event with WMCH, the Partner shall duly mention WMCH as the organizer respectively co-organizer of such Event towards the participants of such Event, namely on any subscription materials for such Events.

## 5 INTELLECTUAL PROPERTY

5.1 If any Projects and/or Events imply the publication of the Partner's content on Wikipedia, Wikimedia Commons or any other Wikimedia project pages, in particular within the frame of GLAM Partnerships (i.e. Partnerships with Galleries, Libraries, Archives and Museums), the Partner shall be solely and fully responsible for clearing the intellectual property rights in connection with such

content and the publication thereof.

5.2 The Partner acknowledges that it shall contribute its content, to the maximum extent possible, under free licenses. Thus, the Partner shall be solely responsible for (i) securing all the rights necessary for contributing its content to the relevant pages under a free license (e.g. CC-BY-SA 3.0 for text or GFDL for documents); (ii) duly and correctly crediting the authors of any content it so contributes; and (iii), if any exceptions to the principle of free licensing shall apply, to comply with the relevant policies, as described under: [https://en.wikipedia.org/wiki/Wikipedia:Non-free\\_content](https://en.wikipedia.org/wiki/Wikipedia:Non-free_content).

5.3 The Partner shall defend and fully hold harmless WMCH and any other organization associated with the Wikimedia movement, as well as their directors, agents, employees, from and against any claims, including reasonable attorney's fees, related to any infringement of third party intellectual property rights through the contribution of any of its content on Wikipedia, Wikimedia Commons or any other Wikimedia project pages.

## 6 IMAGE RIGHTS AND PUBLIC RELATIONS

6.1 Either Party agrees that the other Party may publicly refer to their collaboration, whereas they shall present the Partnership in a way that positively reflects on each other's image and they shall refrain from any acts and/or statements which might in any way negatively reflect there upon.

6.2 Either Party further agrees that the other Party may proactively inform the general public and/or specific third parties about the Partnership and/or any Projects and/or Events. For this purpose only, either Party may use the other Party's name, trademarks, service marks and other indication relating to the other Party's image

(the “**Image Rights**”). Such information may occur through targeted PR campaigns and/or the Parties’ respective websites, social media channels, mailing lists and, in the case of WMCH, through other websites, social media channels and mailing lists related to the Wikimedia movement, such as Wikipedia, Wikimedia Commons or other Wikimedia project pages, provided that the content of such information shall previously be approved by WMCH in writing.

6.3 The Partner shall not allow any third Parties who are in some way contractually or otherwise related to it (e.g. its partner organizations, contractors, agents, employees, students, customers, etc.) use the Image Rights of WMCH and/or any other organizations associated with the Wikimedia movement (the “**Wikimedia Image Rights**”). The Partner shall take all reasonable measures to prevent any such abuse of the Wikimedia Image Rights.

6.4 If the Partner becomes aware of any abuse of the Wikimedia Image Rights by any third parties, it shall inform WMCH with no delay.

6.5 If any abuse of the Wikimedia Image Rights occurs in the context of any Project or any Event or, more generally, the Partnership, and if WMCH and/or any affected Wikimedia organization, decide to take any measures against the abusing third party, including legal action, the Partner shall provide them with its reasonable assistance to this effect. Furthermore, if the abusing third party is in some way contractually or otherwise related to the Partner, it shall provide such assistance at its own cost and expense.

## 7 NO WARRANTY

7.1 WMCH provides the Services as well as any information within the frame of any Project on an AS IS basis and without warranty of any kind, including, but not limited to, any

implied warranties of merchantability and fitness for a particular purpose or of accuracy and completeness of any information provided in the course of the Services.

7.2 In particular, if WMCH provides any information on open licenses, this shall not be deemed as a recommendation to publish any content under such licenses and shall not replace specific legal advice with respect to a possible use by the Partner of such licenses.

7.3 Furthermore, the Partner acknowledges that WMCH has no direct influence on the content created as a result of any Project and/or any Event and contributed to any Wikimedia project page. Such content may thus be subsequently modified or, if the rights to publish such content cannot be sufficiently evidenced by the Partner (cf. section 5.2(iii)), removed by the community.

## 8 LIMITED LIABILITY

8.1 To the maximum extent permitted under applicable law, WMCH excludes its liability in connection with the Services, as well as any Projects and/or Events within the frame of the Partnership, including for the acts and omissions of its agents and employees.

8.2 In no event, WMCH shall be liable for any indirect, consequential or punitive damages, or lost profits suffered by the Partner in connection with the Services, any Project or any Event or, more generally, with the Partnership.

8.3 Furthermore, for the avoidance of doubt, WMCH shall not be held liable for the acts and omissions of any participants of any Events and/or any other contributors to Wikipedia, Wikimedia Commons or other Wikimedia project pages and, in particular, the content they create or other content they publish or statements they make.

## 9 TERM AND TERMINATION

- 9.1 The Terms shall be valid as of their acceptance by the Partner and for an undetermined period of time, subject to termination of the Partnership.
- 9.2 Subject to section 9.3, either Party may terminate the Partnership for convenience and with immediate effect, by written notice (which may also be given by email) to the other.
- 9.3 Notwithstanding section 9.2, in the course of an ongoing Project, termination shall only be permitted in case of material breach by the non-terminating Party of its obligations under the Terms and/or the specific agreements with respect to such Project. Termination in accordance with section 10.1 below, as well as further grounds for termination agreed among WMCH and the Partner for specific Projects, and termination for just cause remain expressly reserved.
- 9.4 Upon termination of the Partnership, for any reason whatsoever, sections 5, 6, 7, 8 and 10.2 – 10.6 shall survive. Furthermore, for the avoidance of doubt, if the Partner is also a member of WMCH, the membership shall not be affected by the termination of the Partnership.

## 10 MISCELLANEOUS

- 10.1 WMCH may, in its sole discretion, amend the Terms at any time. If WMCH amends the Terms during the Partnership, it will notify such amendments to the Partner via email or in any other appropriate form. In this case, the Partner's sole and exclusive remedy shall be to terminate the Partnership as a whole or any Project affected by such amendment, with immediate effect, and with no compensation or indemnity of any nature being due on the part of WMCH.
- 10.2 The Partnership shall not be construed as a society within the meaning of article 530 *et seqq.* of the Swiss Code of obligations (*einfache Gesellschaft / société simple*) and

the Parties shall remain independent contractors.

- 10.3 If any provision of the Terms is held to be invalid or unenforceable, this shall not affect any other provisions or the Terms as a whole. The invalid or unenforceable provision shall be struck, to the extent it is invalid or unenforceable, and be replaced by a valid and enforceable provision as close as possible to the provision being replaced.
- 10.4 WMCH's failure to enforce any provision of the terms shall not be considered as a waiver with respect to any other provisions or to enforce such provisions in the future.
- 10.5 The Terms and all matters arising out of or relating thereto shall be governed by the substantive laws of Switzerland, without regards to any conflicts of laws principles.
- 10.6 Any controversy, claim or dispute arising out of or relating to the Terms and/or any Partnership and/or Project thereunder shall be submitted exclusively to the competent Courts of Zurich, Switzerland.