

§ 3 Permitted uses

The Licensee may:

- a. Make such local temporary copies of the Licensed Material as are necessary to ensure efficient use of the Licensed Material by Contractually Defined Users, provided that such use is subject to all the terms and conditions of this Licence Agreement;
- b. Provide Contractually Defined Users with an integrated access and index to the Licensed Material and all other similar material acquired from other sources. The Licensed Material or Parts thereof may be compiled, indexed and/or catalogued (including, without limitation, the header data and abstracts) by the Licensee. Anything thereby created or compiled may be integrated into the products and services of the Licensee. Metadata may be integrated into any other library and information system (including but not limited to search engines of commercial corporations provided that the Metadata is not sold, lent, re-licensed, or distributed in any manner that violates the terms and conditions of the licence). The Licensed Material can be integrated without restriction (including, but not limited to) in digital course reserve collections, in virtual research environments in which Licensee participate as well as in the virtual specialised libraries operated by Licensee.
- c. Supply to a user of another library (whether by post, fax or secure electronic transmission) a single copy of an electronic original of an individual document including any supplementary content published in connection to the document.
- d. Run test routines, verifying access to all licensed items. Testing conditions will be clearly defined. Usage generated by test runs will not be part of the usage statistics delivered.
- e. Allow Contractually Defined Users to:
 - Make such local temporary copies of the Licensed Material as are necessary to ensure efficient use of the Licensed Material, provided that such use is subject to all the terms and conditions of this Licence Agreement;
 - Access the Licensed Material by Secure Authentication in order to search, retrieve, display and view the Licensed Material;
 - Electronically save Parts of the Licensed Material;
 - Print out single copies of Parts of the Licensed Material;
 - Incorporate Parts of the Licensed Material in printed and electronic course packs, study packs, resource lists and in any other material (including but not limited to multi-media works) and/or in virtual and managed environments (including but not limited to virtual learning environments, managed learning environments, virtual research environments and library environments) hosted on a Secure Network. Each item shall carry appropriate acknowledgement of the source, listing title and author.
 - Incorporate Parts of the Licensed Material in printed or electronic form in assignments and portfolios, theses and in dissertations ("the Academic Works"), including reproductions of the Academic Works for personal use and library deposit. Reproductions in printed or electronic form of Academic Works may be provided to sponsors of such Academic Works. Each item shall carry appropriate acknowledgement of the source;
 - Provide single printed or electronic copies of single Parts of the Licensed Material at the request of other individual Contractually Defined Users;
 - Provide single printed or electronic copies of single Parts of the Licensed Material to third-party colleagues for their scholarly, educational, scientific or research use;
 - Display, download and print Parts of the Licensed Material for the purpose of promotion of the Licensed Material, testing of the Licensed Material, or for training other Contractually Defined Users;
 - Publicly display or publicly perform Parts of the Licensed Material as part of a presentation at a seminar, conference, workshop, or other such similar activity;

- Deposit in perpetuity the learning and teaching objects as referred to in § 3.b on servers operated by the Licensee or by a third party. The use of such material shall be limited to Contractually Defined Users
- Make such copies of training material and network such training material as may be required for the purpose of using the licensed material in accordance with this license agreement
- f. Course packs in non-electronic, non-print perceptible form, such as Braille, may also be offered to Contractually Defined Users;
- g. In case of technical breakdowns (including but not limited to downtimes of the Publisher's Platform or to incorrect administered IP ranges) provide Licensee, or Contractually Defined Users with electronic copies of single Parts of the Licensed Material.

§ 4 Restrictions

1. Save as provided herein, Licensee and the Contractually Defined Users may not:
 - a. Sell or resell the Licensed Material unless the Licensee or a Contractually Defined User has been granted prior written consent by the Publisher to do so;
 - b. Remove, obscure or modify copyright notices, text or Source acknowledgment or other means of identification or disclaimers as they appear;
 - c. Alter, adapt or modify the Licensed Material, except to the extent necessary to make it perceptible on a computer screen, or as otherwise permitted in this License Agreement. For the avoidance of doubt, no alteration of the words or their order is permitted;
 - d. Display or distribute any Part of the Licensed Material on any electronic network, including without limitation the Internet and the World Wide Web, and any other distribution medium now in existence or hereinafter created, other than by a Secure Network or unless permitted in this Licence Agreement;
 - e. Use all or any part of the Licensed Material for any Commercial Use or for any purpose other than Educational Purposes.
2. This clause shall survive termination of this Licence Agreement for any reason.

§ 5 Responsibilities of the Publisher

The Publisher agrees to:

- a. Make the Licensed Material perpetually available to the Licensee and Contractually Defined Users from the commencement of this License Agreement and after termination of this agreement at no additional cost on the Publisher's Platform by Secure Authentication as defined in Schedule 3;
- b. Make the Licensed Material available to the Licensee and the Contractually Defined Users at all times and on a twenty-four hour basis (24/7/365), save for routine maintenance, and to restore access to the Licensed Material as soon as possible in the event of an interruption or suspension of the service (the access interruption shall not exceed 1% in total of a calendar year) as defined in Schedule 3;
- c. Ensure that the relevant server or servers have adequate capacity and bandwidth to support the usage of the Licensee and Contractually Defined Users at a level commensurate with the standards of availability for information services of similar scope operating via the World Wide Web, as such standards evolve from time to time over the term of this Licence Agreement, as defined in Schedule 2;
- d. Make the Licensed Material (incl. full text, all digital objects, Metadata) available on request by Licensee for Local Hosting on Licensee's Hosting Server or on the server of a third party in case of withdrawal of Licensed Material or any part of it before removal from Publishers Platform.
- e. Supply the correct and complete Metadata as well as updates at the same time when the Licensed Material is made available in machine-readable form (UTF-8). For the avoidance of doubt, Metadata to be provided is a database-level MARC record.

f. Provide electronic product documentation to the Licensee free of charge. The Publisher will allow copies of all documentation to be made and distributed by the Licensee and Contractually Defined Users provided it is either duplicated in full, or a proper ownership acknowledgement and acknowledgement of Source is included;

g. Maintain the confidentiality of any data relating to the usage of the Licensed Materials by the Licensee and the Contractually Defined Users. Such data may be used solely for purposes directly related to the Licensed Materials and may only be provided to third parties in aggregate form without reference to the Contractually Defined Users. Raw usage data, including but not limited to information relating to the identity of specific users and/or uses, shall not be provided to any third party.

§ 6 Responsibilities of the Licensee

The Licensee agrees to:

a. Issue passwords or other access information only to Contractually Defined Users or a IT-service provider, who offers Secure Authentication methods and use all reasonable efforts to ensure that Authorised Users and the IT-service provider do not divulge their passwords or other access information to any third party.

b. Use all reasonable efforts, including without limitation by use of Secure Authentication, to ensure that only Licensee and Contractually Defined Users are permitted access to the Licensed Material;

c. The Licensee agrees to:

Use all reasonable efforts to monitor compliance with the terms of this Licence Agreement and notify the Publisher and provide particulars - to the extent that this is not prohibited by existing data protection rules - on becoming aware of any of the following:

- Any unauthorized access to or use of the Licensed Material or unauthorized use of any password(s).

- Any breach of the terms of this Licence Agreement by a Contractually Defined User. Upon becoming aware of any breach of the terms of this License Agreement, the Licensee further agrees to promptly and fully investigate and initiate disciplinary procedures in accordance with the Licensee's or Institution's standard practice and to use all reasonable efforts to ensure that such activity ceases and to prevent any recurrence.

§ 9 Acknowledgement and protection of Intellectual Property Rights

1. Licensee acknowledges that all Intellectual Property Rights in the Licensed Material are the property of the Publisher or duly licensed to the Publisher and that this License Agreement does not assign or transfer to the Licensee any right, title or interest therein except for the right to access and use the Licensed Material in accordance with the terms and conditions of this License Agreement.

2. For the avoidance of doubt, the Publisher hereby acknowledges that any research results received by the Licensee or Contractually Defined User or the institution in the course of using text mining and data mining of the Licensed material shall be the property of the Licensee or the Contractually Defined User or an institution.

§ 10 Representation, warranties and indemnification

1. The Publisher guarantees to the Licensee that the Licensed Material and all Intellectual Property Rights therein are owned by or licensed to the Publisher and that the Licensed Material used as contemplated in this License Agreement does not infringe any Intellectual Property Rights of any natural or legal person.

2. The Publisher agrees that the Licensee and Contractually Defined Users shall have no liability and the Publisher will indemnify, defend and hold the Licensee and Contractually Defined Users harmless against any and all damages, liabilities, claims, causes of action, legal fees and costs incurred by the Licensee in defending against any third party claim of Intellectual Property Rights infringements or threats of claims thereof with respect of the Licensee's, the Institution's or Contractually Defined Users use of the Licensed Material, provided that:

- The use of the Licensed Material has been in full compliance with the terms and conditions of this Licence Agreement;

- The Licensee - respectively the Institution concerned - provides the Publisher with prompt notice of any such claim or threat of claim;

- The Licensee - respectively the Institution concerned - co-operates fully with the Publisher in the defence or settlement of such claim; and

- The Publisher has sole and complete control over the defence or settlement of such claim.

3. The Publisher reserves the right at any time to withdraw from the Licensed Material any item or Part of an item which it has reasonable grounds to believe infringes copyright or is defamatory, obscene, unlawful, or otherwise objectionable. The Publisher shall give written notice to the Licensee of such withdrawal. If the withdrawal results in the Licensed Material being no longer deemed useful by the Licensee, the Licensee may within sixty days of such notice treat such changes as a material breach of this License by the Publisher. Licensee may alternatively claim an appropriate, proportionate reduction of License Fee with regard to the remaining Licensed Material.

4. While the Publisher has no reason to believe that there are any inaccuracies or defects in the information contained in the Licensed Material, the Publisher makes no representation and gives no warranty, express or implied, with regard to the information contained in, or any Part of, the Licensed Material including (without limitation) the fitness of such information or Part for any purposes whatsoever and the Publisher accepts no liability for loss suffered or incurred by the Licensee or Contractually Defined Users as a result of their reliance on the Licensed Material.

5. In no circumstances will the Publisher be liable to the Licensee for any loss resulting from a cause over which the Publisher does not have direct control, including but not limited to failure of electronic or mechanical equipment or communication lines, telephone or other interconnect problems, unauthorized access, theft, or operator errors.

6. The Licensee shall notify the Publisher immediately, provide full particulars in the event that they become aware of any actual or threatened claims by any third party in connection with any works contained in the Licensed Material and do all things reasonably required to assist the Publisher in such claims. Upon such notification, or if the Publisher becomes aware of such a claim from other sources, the Publisher may remove such work(s) from the Licensed Material as long as this claim persists. Failure to report knowledge of any actual or threatened claim by any third party shall be deemed a breach of this License Agreement.

7. Nothing in this License Agreement shall make the Licensee liable for breach of the terms of this License Agreement by any Contractually Defined User provided that the Licensee did not cause, knowingly assist or condone the continuation of such breach after becoming aware of an actual breach having occurred.

8. Save as provided for in § 10.2 and §10.9 sentence 1, neither the Licensee nor the Publisher shall be liable to the other in contract for slight or ordinary negligence for

- Any special, indirect, incidental, punitive or consequential damages or

- Loss of direct or indirect profits, business, contracts, revenue or anticipated savings or for any increased costs or expenses.

9. Save as provided for in § 10.2, the liability for damage from injury to life, body or health as well as the liability for damage caused intentionally or by gross negligence is unlimited. Apart from this neither party shall be liable to the other for slight or ordinary negligence, except in the event of negligence which leads to a breach of a contractual obligation, whose fulfillment is indispensable for the proper execution of the contract and on whose observance the contracting party may regularly rely (essential obligation). In case of slight or ordinary negligence which gives rise to a breach of a contractual obligation, however, the liability of all parties for breaching an essential obligation is limited to the damage which may be typically expected during the execution of this agreement.

§ 11 Force majeure

1. Either party's failure to perform any term or condition of this License Agreement as result of circumstances beyond the control of the relevant party (including without limitation, war, strikes, flood, governmental

restrictions, and power, telecommunications or Internet failures or damages to or destruction of any network facilities ["Force Majeure"] shall not be deemed to be, or to give rise to, a breach of this License Agreement.

2. If either party to this License Agreement is prevented or delayed in the performance of any of its obligations under this License Agreement by Force Majeure and if such party gives written notice thereof to the other party specifying the matters constituting Force Majeure together with such evidence as it reasonably can give and specifying the period for which it is estimated that such prevention or delay will continue, then the party in question shall be excused from the performance or the punctual performance as the case may be as from the date of such notice for so long as such cause of prevention or delay shall continue. The Licensee, however, in the event of non-performance has the right, after fruitlessly setting a reasonable deadline of at least 30 days, to terminate the contract and to demand a refund of the license fee from the Publisher.

§ 12 Assignment

Save as permitted for under this License Agreement, neither this License Agreement nor any of the rights and obligations under it may be assigned by either party without obtaining the prior written consent of the other party, such consent shall not unreasonably be withheld or delayed. In any permitted assignment, the assignor shall procure and ensure that the assignee shall assume all rights and obligations of the assignor under this License Agreement and agrees to be bound to all the terms of this License Agreement. Assignor and Assignee will be liable to the other party as a joint and several debtor.

§ 13 Governing law and dispute resolution

This License Agreement shall be interpreted and construed according to and governed by the laws of the Federal Republic of Germany (excluding the Convention on Contracts for the International Sale of Goods). This License Agreement specifies the rights of Publisher, Licensees and Contractually Defined Users under the German Copyright Law and other applicable legislation in Germany. For the interpretation and the translation of the License Agreement into German the meaning of legal terms used in US-law and/or British law and/or common law is not relevant; only the German legal understanding ("Rechtsverständnis") is decisive insofar. Place of performance and exclusive place of jurisdiction for all disputes arising out of or in connection with this License Agreement is Munich, Germany.

§ 14 Notices

All notices given pursuant to the License Agreement shall be in writing and may be delivered by hand or by overnight carrier, or shall be deemed received on the date and at the time that the delivery receipt is issued or signed if sent by registered mail ("Einschreiben") or certified mail, return receipt requested ("Einschreiben mit Rückschein"). If any notice is sent by facsimile, confirmation copies must be sent as specified above; if the confirmation copy is delivered without delay the notice shall be deemed received on the date of the transfer of the facsimile. Either party may from time to time change its Notice Address by written notice to the other party

List of Contractually Defined Users:

Schedule 4:

List of Contractually Defined Users

Participating Institutions:

Bayerische Staatsbibliothek

Higher Education Institutions financed either by public or private funding

National, regional and state libraries

Academic specialist libraries mainly financed by public funding

Research institutions mainly financed by public funding

Governmental institutions

Diocesan libraries and regional church libraries in Germany

Including any of the above-mentioned types of German institutions abroad

A list of participating members - which can be widened if required - will be provided to Licensor by Bayerische Staatsbibliothek before activation of access to the licensed materials. BSB will provide details as follows:

Licensing institution name and address

Licensing institution contact email address

Licensing institution IP Ranges

Authorised Users of Participating Institutions:

Individuals who are authorised by the Institution to access the Institution's information services whether on-site or off-site via Secure Authentication and who are affiliated to the Institution as a current student (including but not limited to undergraduates, postgraduates and guest students), member of staff (whether on a permanent or temporary basis including retired members of staff and any teacher who teaches Authorised Users) or contractor or registered user of the Institution. Persons who are not currently a student, member of staff, contractor or registered user of the Institution, but who are permitted to access the Institution's information services from computer terminals or otherwise within the physical premises of the Institution ("Walk-In Users") are also deemed to be Authorised Users, only for the time they are within the physical premises of the Institution.

Non institutional Access:

Individuals who are authorized by the Licensee for access to the Licensed Material via Secure Authentication are deemed to be Authorised Users. Non institutional access of individuals shall be permitted via individual authentication subject to a requirement of residence in Germany.