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- Vertragsauszug Karger E-Books Collection -

This Agreement is made by and between

S. KARGER AG, Allschwilerstrasse 10, CH-4009 Basel, Switzerland

(hereinafter referred to as "the Publisher")

and

Bayerische Staatsbibliothek, Ludwigstrasse 16, DE-80539 München

(hereinafter referred to as "the National Consortium")

hereinafter collectively referred to as "the Parties"

**WHEREAS** the Publisher holds the rights granted under this Agreement

**AND WHEREAS** the National Consortium desires to enable the **Members** of the National Consortium to use the rights and the Publisher desires to grant to the National Consortium the licence to use the rights for the **Fee**, subject to the terms and conditions of this Agreement.

**IT IS AGREED AS FOLLOWS:**

**1. DEFINITIONS**

For the purpose of this Agreement, and solely for that purpose, the terms set forth hereinafter shall be defined as follows:

**1.1 "Authorized Users"** shall mean current faculty staff of **Members** and other individuals who are currently studying at a **Member's** institution whether on a permanent, temporary, contract or visiting basis. More specifically defined: **Authorized Users** are students including guest students, visiting lecturers, staff, contractors, walk-in-users from higher education institutions and staff, contractors, registered users and walk-in-users from academic libraries and from research and governmental institutions. **Authorized Users** are permitted to use a **Member's** library or information service and access the **Secure Network** from within the **Library Premises** or from such other places where **Authorized Users** work or study including but not limited to **Authorized Users'** offices and homes, halls of residence and student dormitories, over and above that remote access is permitted. Authorized User's identity is authenticated at the time of login and periodically thereafter, consistent with current best practice, and whose conduct is subject to regulation by the **Member**;

**1.2 "Commercial Use"** shall mean use for the purposes of monetary reward by means of sale, resale, loan, transfer, hire or other form of exploitation of the **Licensed Materials**. For the avoidance of doubt, neither recovery of direct costs by the National Consortium, by any **Member** or **Authorized Users**, nor use by the National Consortium, by a **Member** or **Authorized Users** of the **Licensed Materials** in the course of research funded by a commercial organisation, is deemed to be **Commercial Use**.

**1.3 "Course Packs"** shall mean a collection or compilation of materials e.g. eBook chapters assembled by **Members** or **Authorized Users** for use by students in a class for the purposes of instruction

**1.4 "Electronic Reserve"** shall mean electronic copies of materials e.g. eBook chapters made and stored on the **Secure Network** by the National Consortium or by a **Member** for use by students in connection with specific courses of instruction offered by a **Member** to its students.

[...]

**1.6 "Library Premises"** shall mean the physical premises of the library or libraries operated by the **Members** or by the National Consortium, [...].

**1.7 "Licensed Materials"** shall mean the electronic material as set out in Schedule 1.

**1.8 "Member"** shall mean an institution eligible for participation in national licenses as defined in "Lizenzvertrag Karger eBooks Collection 1997 - 2009" which has agreed by virtue of its membership to be bound by the terms and conditions of this Agreement as a party to it jointly with the National Consortium.

**1.9 "Secure Network"** shall mean a network, whether a standalone network or a virtual network within the Internet, which is only accessible to **Authorized Users** approved by a **Member** whose identity is authenticated at the time of log-in and periodically thereafter consistent with current best practice, and whose conduct is subject to regulation by the **Member**.

**1.10 "Server"** shall mean either the National Consortium's server or a third party server designated by the National Consortium, on which the **Licensed Materials** are mounted and may be accessed.

[...]

### 3. PERMITTED USES

3.1 The National Consortium and **Members**, subject to clause 6 below, may:

- a) make such temporary local electronic copies by means of caching or mirrored storage of all or part of the **Licensed Materials** as are necessary solely to ensure efficient use by **Members** and by **Authorized Users**;
- b) allow **Authorized Users** to have access to the **Licensed Materials** from the **Server** via the **Secure Network**;
- c) provide **Authorized Users** with access and an author, article title, abstract and keyword index to the **Licensed Materials**;
- d) provide single printed or electronic copies of single eBook chapters at the request of individual **Authorized Users** for their own personal, scholarly, educational, scientific research or internal business use;
- e) display, download or print the **Licensed Materials** for the purpose of internal marketing or testing or for training **Authorized Users** or groups of Authorized Users.

3.2 **Authorized Users** may, subject to clause 6 below:

- a) search, view, retrieve and display the **Licensed Materials** for their own personal, scholarly, educational, scientific research or internal business use;
- b) electronically save individual eBook chapters or items of the **Licensed Materials** for their own personal, scholarly, educational, scientific research or internal business use;
- c) print a copy of parts of the **Licensed Materials** for their own personal, scholarly, educational, scientific research or internal business use;
- d) distribute a copy of individual eBook chapters or items of the **Licensed Materials** in print or electronic form to other Authorized Users. For the avoidance of doubt, this sub-clause shall include the distribution of a copy for teaching purposes to individual **Authorized Users** in a class at the **Member's** institutions.

### 4. SUPPLY OF COPIES TO OTHER LIBRARIES

4.1 **Members** may, subject to clause 6 below, supply through Interlibrary Loan to another library within the same country as the Member a single copy of an individual document being part of the **Licensed Materials** by post, fax or secure electronic transmission using Ariel or its equivalent, whereby the electronic file is deleted immediately after printing, for the purpose of research or private study and not for **Commercial Use**.

### 5. COURSE PACKS AND ELECTRONIC RESERVE

5.1 **Members** may, subject to clause 6 below, incorporate parts of the **Licensed Materials** in printed **Course Packs** and **Electronic Reserve** collections for the use of **Authorized Users** in the course of instruction at a **Member's** institution, but not for **Commercial Use**. Each such item shall carry appropriate acknowledgement of the source, listing title and author of the extract, title and author of the work, and the publisher. Copies of such items shall be deleted by the Member when they are no longer used for such purpose. **Course Packs** in

non-electronic non-print perceptible form, such as audio or Braille, may also be offered to **Authorized Users** who, in the reasonable opinion of the Member, are visually impaired.

## 6. PROHIBITED USES

6.1 Neither the National Consortium nor any Member nor **Authorized Users** may:

- a) remove or alter the authors' names or the Publisher's copyright notices or other means of identification or disclaimers as they appear in the **Licensed Materials**;
- b) alter, abridge, adapt or modify the **Licensed Materials**, except to the extent necessary to make them perceptible on a computer screen or as otherwise permitted in this Agreement, to Authorized Users. For the avoidance of doubt, no alteration of the words or their order is permitted;
- c) systematically make print or electronic copies of multiple extracts of the **Licensed Materials** for any purpose;
- d) mount or distribute any part of the **Licensed Materials** on any electronic network, including without limitation the Internet and the World Wide Web, other than the **Secure Network**;
- e) provide or make available, by electronic means, to any third party who is not an Authorized User a retained electronic copy of any part of the **Licensed Materials**;
- f) notwithstanding the provisions in Article 5 above, integrate the **Licensed Materials** with any other material or otherwise create derivative works in any form and/or medium.

6.2 The Publisher's explicit written permission must be obtained in order to:

- a) use all or any part of the **Licensed Materials** for any **Commercial Use**;
- b) distribute the whole or any part of the **Licensed Materials** to anyone other than Authorized Users;
- c) publish, distribute or make available the **Licensed Materials**, works based on the **Licensed Materials** or works which combine them with any other material, other than as permitted in this Agreement.

[...]

## 8. NATIONAL CONSORTIUM'S UNDERTAKINGS

8.1 The National Consortium and each **Member** shall make reasonable efforts to:

- a) ensure that only **Authorized Users** are permitted access to the **Licensed Materials**;
- b) ensure that all **Authorized Users** are appropriately notified of the importance of respecting the intellectual property rights in the **Licensed Materials** and of the sanctions which each **Member** imposes for failing to do so;
- c) notify **Authorized Users** of the intellectual property rights in the **Licensed Materials** and take steps to protect the **Licensed Materials** from unauthorized use or other breach of the Agreement.
- d) issue passwords or other access information only to **Authorized Users** and ensure that **Authorized Users** do not divulge their passwords or other access information to any third party;
- e) provide the Publisher, reasonably promptly after signing this Agreement, with information sufficient to enable the Publisher to provide access to the **Licensed Materials** in accordance with its obligation under clause 7.1 b). Should the National Consortium make any significant change to such information, it will notify the Publisher not less than fourteen (14) days before the change takes effect;
- f) keep full and up-to-date records of all **Authorized Users** and their access details and provide the Publisher with details of such additions, deletions or other alterations to such records as are necessary to enable the Publisher to provide **Authorized Users** with access to the **Licensed Materials** as contemplated by this

Agreement.

8.2 Nothing in this Agreement shall make the National Consortium or any **Members** liable for breach of the terms of this Agreement by any Authorised User provided that the National Consortium or the **Member** did not cause, knowingly assist or condone the continuation of such breach after becoming aware of an actual breach having occurred.

## 9. MUTUAL UNDERTAKINGS

9.1 The Parties shall:

a) safeguard the intellectual property, confidential information and proprietary rights of the other party;

[...]

## 10. TERM AND TERMINATION

[...]

10.3 If a **Member** of the National Consortium commits a material or persistent breach of any term of this Agreement, the **Member** shall be excluded from the National Consortium and the Agreement shall thereby be terminated for this **Member**. This shall not affect the continuation of the Agreement for the remaining **Members**.

[...]

## 11. WARRANTY AND LIABILITY

[...]

11.3 Neither party shall be liable in any way for failure or delay in performing its obligations under this Agreement if the failure or delay is due to causes outside the reasonable control of the party in default.

11.4 Neither party shall be liable to the other for any special, incidental or consequential damages including, without limitation, lost profits and loss of goodwill arising from any breach of this Agreement, even if advised of the possibility of such damages.

[...]

§ 1 Autorisierte Nutzer, vgl. auch Definition Members unter Punkt 1.8 des Academic Consortium Site License Agreements

Folgende Kunden erhalten die Zugangsberechtigung zur eBooks Collection:

- Höhere Bildungseinrichtungen, privat, kirchlich oder öffentlich-rechtlich finanziert
- National-, Landes- und Staatsbibliotheken, sowie andere öffentlich-rechtlich oder kirchlich finanzierte wissenschaftliche Bibliotheken
- Öffentlich-rechtlich finanzierte Forschungseinrichtungen
- Regierungseinrichtungen auf Bund- und Länderebene der Bundesrepublik Deutschland
- Deutsche öffentlich-rechtlich finanzierte Höhere Bildungseinrichtungen und Forschungseinrichtungen im Ausland
- Darüber hinaus auch Einzelpersonen mit User ID und Passwort, die sich bei der Bayerischen Staatsbibliothek bzw. einer von ihr beauftragten dienstleistenden Einrichtung (=National Konsortium) gemäss den geltenden Bestimmungen registrieren lassen.

[...]

## § 6 Institutional Repository

Gem. Punkt 13 der Checkliste/Schedule 2 ist die kostenlose Platzierung eines Artikels unter folgenden Bedingungen zulässig, vgl. auch die allgemeinen Richtlinien auf Sherpa Romeo:  
<http://www.sherpa.ac.uk/romeo.php?colour=green>:

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