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## LICENCE AGREEMENT

This Licence Agreement is made 9 of 12 2013 between: **oninklijke Brill NVK** having its registered office at Plantijnstraat 2, 2321 JC, Leiden, The Netherlands (hereinafter called "Publisher").

And

the Bayerische Staatsbibliothek (BSB)

having its principal place of business at Muenchen D 80328, Germany hereinafter called "Licensee").

**WHEREAS** the parties are desirous to contract on the basis of the terms and conditions of this Licence.

### IT IS AGREED AS FOLLOWS

[...]

#### § 1 Definitions

1. In this Licence, the following terms shall have the following meanings:

a. [...]

b. **Authorised Users:** 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. The licensed material cannot be used in MOOCS courses.

b. **Commercial Use:** the use of the Licensed Material for the purpose of monetary reward (whether by or for the Institution or an Authorised User) by means of sale, resale, loan, transfer, hire or other form of exploitation of the Licensed Material. For the avoidance of doubt, the use by the Institution or Authorised Users of the Licensed Material in the course of research funded by a commercial organisation is not deemed to constitute Commercial Use. Recovery of costs is not being deemed Commercial Use.

The use of Metadata by search engines does not constitute Commercial Use as long as that Metadata is not sold, lent, distributed or otherwise re-licensed via that search engine or the access to that Metadata on that search engine is exclusively being charged for.

c. **Educational Purposes:** The use for the purpose of education, teaching, distance learning, private study and/or research.

d. **Institutions:** higher education institutions financed either by public or private funding; national, regional and state libraries; academic specialist libraries mainly financed by public funding (excl. project funds); research institutions mainly financed by public funding (excl. project funds); governmental institutions; including any of such above mentioned types of German institutions abroad, and all to be specified in schedule 1.

e. **Intellectual Property Rights:** Patents, trademarks, trade names, design rights, copyright (including rights in computer software and moral rights), database rights, rights in know-how and other intellectual property rights, in each case whether registered or unregistered and including applications for the grant of any of the foregoing and all rights or forms of protection having equivalent or similar effect to any of the foregoing which may subsist anywhere in the world.

f. [...]

g. [...]

h. **Local Hosting:** Housing, serving and maintaining files on Licensee's Local Hosting Server in Germany or on the servers of a third party. A third party does not include a competitive commercial party such as another publisher.

i. **Metadata:** Bibliographical, structural & descriptive data of the Licensed Material as defined in Schedule 5.

j. **Publisher's Platform:** Own or third party server used by Publisher to give access to Licensed Material.

k. **Part** (of Licensed Material): Any part, component, fragment of the Licensed Material that is used, separated and/or cited in a self-contained manner.

l. **Secure Authentication:** Method to identify Authorised Users as defined in Schedule 4.

m. **Secure Network:** A network which is only accessible to Authorised Users by Secure Authentication.

n. **Source** (of Licensed Material or Parts thereof): Denomination of the origin of, author of, holder of title in the Licensed Material or Part hereof.

o. **Term:** Period of time reflecting the duration since coming into force of this Licence Agreement.

Headings contained in this Licence Agreement are for reference purposes only and shall not be deemed to be an indication of the meaning of the clause to which they relate.

3. Where the context so implies, words importing the singular number shall include the plural and vice versa and words importing the masculine shall include the feminine and vice versa.

## § 2 Licence grant

1. The Publisher hereby grants to the Licensee, subject to and in accordance with the terms of this Licence Agreement, a non-exclusive perpetual licence to access and use the Licensed Material and to allow Institutions and Authorised Users to access and use the Licensed Material hosted on the Publisher's Platform via Secure Network.]

2. The Publisher hereby grants to the Licensee, subject to and in accordance with the terms of this Licence Agreement, a non-exclusive perpetual (licence) right to host the Licensed Material on Licensee's Local Hosting Server or on the server of a third party, allow the Institutions to communicate the Licensed Material via a Secure Network to Authorised Users, to allow Authorised Users to access and use the Licensed Material via Secure Authentication.

3. The Licensee is further permitted to make such copies or re-format the Licensed Material contained in the archival copies supplied by the Publisher in any way to ensure their future preservation and accessibility in accordance with this Licence.

4. The Publisher hereby grants to the Licensee and the Institutions, subject to and in accordance with the terms of this Licence Agreement, a non-exclusive perpetual licence for the Metadata associated with the Licensed Material for use in local library catalogues, union catalogues, and such other library and information systems including but not limited to search engines of the Institutions and third parties]. The support of Search Engine Advertizing (SEA) and Search Engine Optimization (SEO) is allowed by the Publisher (e.g. xml-sitemap of websites with displays of metadata for inclusion of Search Engine Indexes; support of crawler like Googlebot) as well as the provision of the Metadata as Linked Open Data.

5. Access shall be granted without restriction to concurrent use.

## § 3 Permitted uses

1. The Licensee and the Institutions which participate in this license agreement may:

a. Make such local temporary copies of the Licensed Material as are necessary to ensure efficient use of the Licensed Material by Authorised Users, provided that such use is subject to all the terms and conditions of this

## Licence Agreement;

b. Provide Authorised Users with an integrated access and index to the Licensed Material and all other similar material licensed from other publishers. The Licensed Material or Parts thereof may be compiled, indexed and catalogued (including, without limitation, the header data and abstracts) by the Licensee and the Institutions. Anything thereby created or compiled may be integrated into the products and services of the Institutions. 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) digital course reserve collections, in virtual research environments in which authorised institutions participate as well as in the virtual specialised libraries operated by authorised institutions. The Licensed Material may be used to perform and engage in textmining/data mining activities, including but not limited to full text indexing. Notwithstanding the above-mentioned rights the use of Licensed Material shall be limited to Authorised Users.

c. Supply to a user of another library within Germany (whether by post, fax or secure electronic transmission, whereby the electronic file is deleted immediately after printing) a single paper copy of an electronic original of an individual 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 Authorised Users to:

- 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. Course packs in non-electronic non-print perceptible form, such as Braille, may also be offered to Authorised Users;
- 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 Authorised Users;
- Provide single printed or electronic copies of single Parts of the Licensed Material to third-party colleagues for their scholarly or research use within the context of collaborative research;
- 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 Authorised Users;
- Publicly display or publicly perform Parts of the Licensed Material as part of a presentation at a seminar, conference, or workshop, or other such similar activity;
- 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 Licence Agreement;
- Deposit in perpetuity the learning and teaching objects as referred to in § 3.1.b on servers operated by the Institution. The use of such material shall be limited to Authorised Users.

f. In case of technical breakdowns (including but not limited to downtimes of the Publisher's Platform or to incorrect administered IP ranges) provide Institutions or Authorized Users with electronic copies of single Parts of the Licensed Material of the Licensed Material.

#### **§ 4 Restrictions**

1. Save as provided herein, Licensee, the Institutions and Authorised Users may not:

a. Sell or resell the Licensed Material unless the Licensee, an Institution or an Authorised 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 Licence 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**

1. The Publisher agrees to:

a. Make the Licensed Material perpetually available to the Licensee and Authorised Users from the commencement of this Licence Agreement and after termination of this agreement at no additional cost on the Publisher's Platform by Secure Authentication as defined in Schedule 4;

b. Make the Licensed Material available to the Licensee, the Institutions and Authorised Users at all times and on a twenty-four hour basis, 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 4;

c. Ensure that the relevant server or servers have adequate capacity and bandwidth to support the usage of the Institutions 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 4;

[...]

2.

a. 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 to the Institutions and Authorised Users provided it is either duplicated in full, or a proper ownership acknowledgement and acknowledgement of Source is included;

b. Provide the standards, services and statistics set out in Schedule 4.

c. Maintain the confidentiality of any data relating to the usage of the Licensed Materials by the Institutions and its Authorised 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 Authorised Users or Institutions. 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**

1. The Licensee agrees to:

a. Issue passwords or other access information only to Authorised Users and use all reasonable efforts to ensure that Authorised Users do not divulge their passwords or other access information to any third party;

b. Provide lists of valid IP addresses to the Publisher and update those lists on a regular basis;

c. Use all reasonable efforts, including without limitation by use of Secure Authentication, to ensure that only Authorised Users are permitted access to the Licensed Material;

d. Use all reasonable efforts to ensure that all Institutions and Authorised Users abide by the terms of this Licence Agreement;

e. 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 unauthorised access to or use of the Licensed Material or unauthorised use of any of the Institution's password(s);

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

**§ 7 Licence Fee**

1. [...]

**§ 8 Term and termination**

1. This Licence Agreement shall commence on the date of signature and will remain in full force and effect in perpetuity.

2. The Licensee may terminate this Agreement by giving notice to the Publisher two months prior to the first anniversary date of this Agreement. The same applies for terminations for subsequent years.

3. Any Institution may terminate its participation by giving notice to the Publisher two months prior to the first anniversary date of this Agreement. The same applies for terminations for subsequent years.

4. Any party may terminate this Agreement at any time on the material breach or repeated other breaches by the other of any obligation on its part under this Agreement if, after serving a written notice on the other identifying the nature of the breach, the defaulting party does not remedy the breach within a period of thirty (30) days after the receipt of the written notice.

5. Upon material breach or repeated other breaches of an Institution or its Authorized Users, the Publisher shall cease to authorise online access to the Licensed Material only by the Institution responsible for the breach and the Authorised Users affiliated to it.

[...]

6.

**§ 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 Licence 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 Licence Agreement.

2. For the avoidance of doubt, the Publisher hereby acknowledges that any database rights created by the Licensee or the Institutions as a result of Local Hosting, text mining or data mining of the Licensed Material shall be the property of the Licensee, or the 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 Licence Agreement does not infringe any Intellectual Property Rights of any natural or legal person.

2. The Publisher agrees that the Licensee shall have no liability and the Publisher will indemnify, defend and hold the Licensee 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 Authorised 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 provides the Publisher with prompt notice of any such claim or threat of claim;
- The Licensee 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 to update the content, presentation, user facilities and to make changes in any software used to make the Licensed Material available at its sole discretion. The Publisher shall give written notice to the Licensee of any substantial change to the Licensed Material. If the change 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. Should the Publisher sell the Licensed Material to another publisher, the Licensee shall have the right to provide local hosting for the Licensed Material.

4. 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. Licensee may alternatively claim an appropriate, proportionate reduction of License Fee with regard to the remaining Licensed Material.

5. 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, an Institution or Authorised Users as a result of their reliance on the Licensed Material.

6. 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, unauthorised access, theft, or operator errors.

7. The Licensee and Institutions 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 Licence Agreement.

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

9. Save as provided for in § 10.2, neither the Licensee or the Institutions nor the Publisher shall be liable to the other in contract or negligence or otherwise 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.

10. Save as provided for in § 10.2, the following shall apply: For damage caused intentionally or by gross negligence the liability is unlimited. The same applies for damages to life, body and health. Apart from this neither party shall be liable to the other for slight negligence, except in the event of 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 negligence, 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 Licence 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 Licence Agreement.

2. If either party to this Licence Agreement is prevented or delayed in the performance of any of its obligations under this Licence 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.

### **§ 12 Assignment**

Save as permitted for under this Licence Agreement, neither this Licence 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 Licence Agreement and agrees to be bound to all the terms of this Licence Agreement.

### **§ 13 Governing law and dispute resolution**

1. This Licence Agreement shall be interpreted and construed according to and governed by the laws of the Federal Republic of Germany. This Licence Agreement shall be deemed to specify the rights of Publisher, Licensee, the Institutions and Authorised Users under the German Copyright Law and other applicable legislation in Germany. Exclusive place of jurisdiction for all disputes arising out of or in connection with this Licence Agreement shall be the principal place of business of Licensee in Germany.

2. The parties agree to use best efforts to resolve disputes in an informal manner, by decision of the Managing Director of the Publisher and the current Director of the Licensee.

3. All disputes arising out of or in connection with this Licence Agreement shall be finally settled under the Rules of Arbitration of the Netherlands Arbitration Institute in The Hague, the Netherlands. The Court of Arbitration shall consist of one Arbitrator. The chairman must be a lawyer admitted to the bar of Germany having command on the language of Arbitration. Place of Arbitration shall be The Hague, the Netherlands. Language of the arbitration shall be English. The Court of Arbitration shall apply German law as provided in § 13.1 of this License Agreement. Regarding the procedure, especially with respect to taking evidence, the Court

of Arbitration shall apply German civil procedure law.

#### **§ 14 Notices**

All notices required to be given under this Licence Agreement shall be given in writing and sent to the relevant addressee at its address set out below, or to such other address as may be notified by either party to the other from time to time under this Licence Agreement, and all such notices shall be deemed to have been received seven (7) days after the date of posting in the case of recorded delivery or three (3) days after the date of despatch in the case of courier:

If to the Licensee:

Dr. Hildegard Schaeffler

Leitung Abteilung Bestandsaufbau und Erschließung 2:

Periodika; Lizenzen; Elektronisches Publizieren / Head of Serials, Licensing, Electronic Publishing

D-80328 Muenchen

If to the Publisher:

Dominique de Roo>

Sales Manager Benelux, Germany and Eastern Europe

BRILL

Plantinstraat 2

2321 JC Leiden

The Netherlands

#### **§ 15 General**

1. This Licence Agreement and its Schedules constitute the entire agreement between the parties relating to the Licensed Material and supersede all prior communications, understandings and agreements (whether written or oral) relating to its subject matter and may not be amended or modified except by agreement of both parties in writing.

2. The Schedules shall have the same force and effect as if expressly set in the body of this Licence Agreement and any reference to this Licence Agreement shall include the Schedules.

3. The invalidity or unenforceability of any provision of this Licence Agreement shall not affect the continuation in force of the remainder of this Licence Agreement.

4. The rights of the parties arising under this Licence Agreement shall not be waived except in writing. Any waiver of any of a party's rights under this Licence Agreement or of any breach of this Licence Agreement by the other party shall not be construed as a waiver of any other rights or of any other or further breach. Failure by either party to exercise or enforce any rights conferred upon it by this Licence Agreement shall not be deemed to be a waiver of any such rights or operate so as to bar the exercise or enforcement thereof at any subsequent time or times.

#### **SCHEDULE 4: Standards, Services and Statistics**



1. Usage statistics COUNTER usage statistics will be provided on the new Primary Sources platform , as of summer 2013. Until that time, statistics for individual PSO resources in the Alliance Initiative offer are available on a consolidated basis only. Usage statistics for World Christian Database and World Religion Database shows log-ins per month per account, and these two resources are hosted on the Breuer platform.
2. Secure Authentication methods shall include Internet Protocol (IP) ranges as well as authentication with username and password or other methods that are to be agreed upon in writing between the Publisher, the Licensee and the Institutions. The use of proxy servers is permitted as long as any proxy server IP addresses provided limit remote or off-campus access to Authorised Users. Shibboleth access is not currently available for the World Religion Database and the World Christian Database.
3. Customer support services to Licensee, Institutions and Authorised Users must be provided via e-mail (brillonline@brill.com), including responding to e-mail inquiries relating to the use, functionality and content of the Licensed Material within 48 working hours of request. The publisher will use all reasonable endeavours to make the Licensed Material available to the Licensee, the Institutions and Authorised Users at all times and on a twenty-four hour basis, 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). Note that Brill is unable to guarantee the response times of Breuer, the host of World Religion and World Christian Database, but we will use our best efforts to respond within 48 hours of a customer query being received.
4. Documentation: The Publishers shall provide electronic product documentation to the Licensee and the Institutions free of charge. The Publisher will allow copies of all documentation to be made and distributed by the Licensee and the Institutions to Authorised Users provided it is either duplicated in full, or a proper ownership acknowledgement is included. Help files are available on the platforms and on the Brill website.
5. Persistent URLs: The licensed products are generally accessible via open, standardised and persistent URLs, e.g. DOI or URN.
6. User Interface: The Publisher shall use all best efforts to comply with the Web Accessibility Initiative (WAI) Guidelines of the World Wide Web Consortium (W3C).
7. Notifications: All substantial changes on the interfaces, including, but not limited to user interfaces, inbound linking syntax or delivery formats shall be communicated two months in advance. If possible and applicable, Licensee and Institutions should have access to a preview of the new interface.