

License Agreement

Stalin Digital Archive

East View Information Services, Inc.

Preamble

This License Agreement ("Agreement") is effective March 1, 2017 between East View Information Services, Inc., headquartered at 10601 Wayzata Blvd., Minnetonka, MN 55305 USA ("East View" or "Agent") and Freistaat Bayern, represented by the Bayerische Staatsbibliothek, represented by the Director General Dr. Klaus Ceynowa, as provider of the Specialised Information Service ("Fachinformationsdienst - FID") "Ost-, Ostmittel- und Südosteuropa", having its place of business at Ludwigstraße 16, 80539 München, Deutschland (hereinafter called "Licensee").

Whereas Yale University on behalf of Yale University Press ("Licensor") is the licensor and owner of the Stalin Digital Archive Platform ("SDA;" the "Licensed Content"), and Agent is authorized to license SDA on behalf of Licensor as agreed between Licensor and Agent. Whereas the Licensee desires to enable Participating Institutions and Authorised Users to access the Licensed Material and the Publisher desires to grant access to the Licensed Material for the agreed Fee, subject to the terms and conditions of this Agreement, In consideration of the mutual promises set forth herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

Structure of the Agreement

This Agreement is concluded between Publisher and Licensee. It is understood that the Guidelines for the Purchase of Publications in the DFG-funded System of Specialised Information Services for Research (DFG form 12.101 - 12/12) as added in Schedule 1 provide the general framework for this project. Deviations from the actual guidelines may exist and, in the case of conflict or revisions, this License Agreement will prevail and will be the governing document.

In case of subsequent amendments to this Agreement it is understood that each will be comprised and in line with the current version of the Guidelines for the Purchase of Publications in the DFG-funded System of Specialised Information Services for Research (DFG form 12.101 - 12/12) but may deviate from them in certain specifics. In such cases, the amendments will supersede the Guidelines.

Definitions

In this License, the following terms shall have the following meanings:

Authorised Users (or Contractually Defined User Group): individuals who are authorised by the Licensee or the Participating Institutions to access an Institution's information services whether on-site or off-site via Secure Authentication and non-institutional users authorized by the Licensee for access to the Licensed Material via Secure Authentication. Users are generally researchers or individuals with access privileges at the following types of institutions:

- a) Publicly or privately funded higher education and research institutions in Germany
- b) The German National Library, all regional and state libraries as well as main subject libraries
- c) Primarily publicly funded research libraries and special academic libraries
- d) Research institutes primarily funded by German federal or state governments, including research institutions located abroad but funded by public bodies or primarily publicly funded bodies in Germany, such as the German Historical Institutes

Non institutional access of individuals shall be permitted via individual authentication subject to a requirement of residence in Germany. Authorized users are specified in Schedule 3.

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.

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

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.

Licence Fee: The fee as set out in Schedule 2. The fee shall be in line with the offer agreed between the Licensee and the Publisher.

Licensed Material (or "Licenced Content"): The material listed in Schedule 2.

Metadata: Bibliographical, structural & descriptive data of the Licensed Material as defined in Schedule 4.

Participating Institutions: The Institutions participating in this contract as specified in Schedule 3.

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

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

Secure Authentication: Authentication via IP ranges, Username/Password, Shibboleth and comparable future developments to be agreed by the parties.

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

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

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

Licensed Content Grant

Licensed Content. The licensed materials included in SDA consist of:

1. a database of approximately 28,000 unpublished documents digitized by the Russian State Archive of Social and Political History ("RGASPI") in Moscow, Russia, and
2. digitized transcriptions of Licensor's Annals of Communism series and other material produced by Licensor specifically for SDA.

Other materials may be added later to SDA; the use of such materials unless otherwise provided shall be subject to the terms and conditions of this Agreement.

Grant. Agent grants to Licensee and Participating Institutions the non-exclusive and non-transferable right to give Authorized Users access to the Licensed Content on SDA for the purpose of research, teaching and private study, subject to the terms and conditions of this License and the terms and conditions as set forth.

Ownership. Licensee acknowledges that notwithstanding the license granted herein the ownership of SDA remains with Licensor and ownership of SDA remains, as applicable, with RGASPI and/or Licensor. Any trademarks or service marks of or relating to the Licensor remain with the Licensor and any trademarks or service marks of or relating to East View remain with East View. Licensee shall not have any right, title or interest in SDA, the Licensed Content, or any materials therein except as expressly set forth in this Agreement.

The Licensee and the Participating Institutions may commission third parties (e.g. library network systems and other technical infrastructure facilities of German libraries or commercial operators) with the operation of the technical equipment for Secure Authentication and for the use of the product by the Authorized Users.

To facilitate usage statistics, the Publisher has to provide data broken down by month and where possible in the current standard of the "COUNTER Code of Practise".

The Publisher hereby grants to the Licensee and the Participating 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 crawlers like Googlebot) as well as the provision of the Metadata as Linked Open Data.

Access is granted without restriction to concurrent use. There are no limits on the number of Authorized Users from a Participating Institution that may use the Licensed Content at any one time.

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Delivery/Access of SDA to Licensee

Agent shall ensure access to the Licensed Content and to the search capabilities of SDA by Licensee, Participating Institutions and Authorized Users, as set forth herein. Access to Authorized Users shall be made through the Internet domain of the Licensee or Participating Institutions. Licensee and Participating Institutions are responsible for undertaking reasonable measures to prevent access by unauthorized persons to its IP addresses. Users not at an authorized domain address will not have access to the Licensed Content.

Use of the Licensed Content on SDA

Authorized Users may browse, download, and save material included in SDA; print a single copy of individual items included in SDA for private use or research; use a reasonable portion of SDA (consistent with fair use) in connection with specific courses of instruction offered by the Licensee, including use for electronic reserves; and use a reasonable portion of SDA (consistent with fair use) in the preparation of course packs or other educational materials. SDA is protected by copyright and may not be recompiled, manipulated, used to prepare derivative works, published in another format, or systematically redistributed, including, but not limited to, forwarding email messages to other individuals or institutions, in whole or in part, without written permission from Licensor. Notwithstanding the foregoing, nothing in this Agreement shall be construed to limit the right of any Licensee, Participating Institution or its Authorized Users to transmit a third party, in hard copy or electronically, limited amounts of the Licensed Content solely for personal use or scholarly, educational, or scientific research or other non-commercial use, consistent with the Licensee's or Authorized User's rights under the U.S. Copyright Act of 1976, as amended. Such rights include but are not limited to a) the doctrine of fair use under Section 107 of the Copyright Act and, b) the rights granted by Section 108 of the Copyright Act or their equivalents in other partner countries. East View and/or the Licensor shall have the right, at its expense, to bring any action on account of such infringements or unauthorized uses.

Warranties and Disclaimers

(a) East View warrants that it has the right to license the rights granted under this Agreement to use SDA and Licensor warrants that use of SDA by Authorized Users in accordance with the terms of this Agreement shall not infringe the copyright of any third party. East View agrees that the Licensee, Participating Institutions and Authorized Users shall have no liability and East View will indemnify, defend and hold the Licensee, Participating Institutions and Authorized Users harmless against any and all damages, liabilities, claims, causes of action, legal fees and costs incurred by the Licensee, Participating Institutions and Authorized Users in

defending against any third party claim of Intellectual Property Rights infringements or threats of claims thereof with respect of the Licensee's, Participating Institution's or Authorised Users use of the Licensed Content, provided that:

- a) The use of the Licensed Material has been in compliance with the terms and conditions of this Agreement;
- b) The Licensee provides East View with prompt notice of any such claim or threat of claim;
- c) The Licensee co-operates fully with East View in the defence or settlement of such claim; and
- d) East View has control over the defence or settlement of such claim.

Agent shall use reasonable efforts to ensure continuous availability of SDA through the Internet. In the event of a planned interruption, East View shall notify Licensee and Participating Institutions a minimum of 2 days in advance. It is understood that availability will be subject to periodic interruption due to maintenance of the server(s), installation or testing of software, the loading of new information files, and downtime related to equipment or services outside the control of East View, including public and private telecommunications services and Internet nodes or facilities. East View shall use reasonable efforts to ensure that access to the Licensed Materials is restored as soon as possible in the event of an interruption or suspension of the service.

Licensee and Participating Institutions should be assigned a designated publisher service representative who will respond to any inquiries. If the service inquiry involves the significant loss of access to SDA or portions thereof, a prorated reimbursement to the Licensee will be made.

Neither Agent nor Licensor warrant that SDA will be usefully accessible in every hardware/software environment. Neither Licensor nor Agent warrant the accuracy or completeness of any information contained in SDA, or its merchantability or fitness for a particular purpose. Except for infringement, Licensor and Agent will have no liability to any person for any loss or damage arising out of use of or in ability to use SDA IN NO EVENT WILL AGENT, LICENSOR OR LICENSEE BE LIABLE FOR ANY FORM OF INDIRECT, SPECIAL, INCIDENTAL, PUNITIVE OR CONSEQUENTIAL DAMAGES (INCLUDING BUT NOT LIMITED TO LOST PROFITS, LOSS OF GOODWILL AND/OR BUSINESS REPUTATION, AND ADDITIONAL LABOR COSTS) OF ANY CHARACTER OR KIND, WHETHER BASED ON BREACH OF CONTRACT, TORT, OR ANY OTHER KIND OF CLAIM ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT, REGARDLESS OF WHETHER THEY HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

Perpetual Access and Exigency

Subject to the terms and conditions of this Agreement, Licensee is herein granted a nonexclusive, royalty-free, perpetual license to use SDA. In the unlikely event that the Licensor is unable to provide access to SDA in accordance with the terms of this License, or should an unforeseen event disrupt Licensee's Internet access to the Licensed Content for over more than thirty (30) days, Agent agrees to provide the Licensee with one contingent set of the Licensed Materials on CD/DVD-ROM discs to mitigate the Licensee's inability to access the Licensed Materials Content over the Internet through no fault of the Licensee.

Examples of circumstances beyond the control of East View or the Licensee that can warrant physical delivery of the Licensed Materials include, but are not limited to natural disasters, war, embargoes, political strife, civil insurrections, environmental disasters, or acts of terrorism.

In such a case, East View will provide the Licensed Content to the Licensee in an alternative format at no additional cost other than shipping/handling charges prevailing at time of shipment.

Licensee is not entitled to receive residual CD/DVD-ROM discs in cases involving termination by East View for cause or breach of terms contained in the License Agreement.

Licensee or its designated agent shall be permitted to:

- a) mount the archival copy of SDA supplied by the Licensor;

b) communicate, make available and provide access to such archival copy via a secure network to participating institutions and Authorized users in accordance with the terms of this License; and

c) make copies or reformat the Licensed Content contained in the archival copy to ensure their future preservation and accessibility in accordance with this License.

The parties to this Agreement concur that a persistent outage of 60 or more days in duration due to a force majeure event or the Licensor's demise or exit from business that precludes the Licensee's future ability to receive continued access shall permit Licensee to engage in (a) through (c) above. Notwithstanding the foregoing, a Licensee whose Internet access to SDA is terminated for cause or breach of contract is ineligible to receive or use copies of SDA.

Termination

As to the Licensee, this Agreement is effective upon payment of invoice directly to East View and shall continue thereafter unless terminated for one of the following reasons: Licensee defaults in making payments due, if Licensor commits a willful or persistent breach of any term of this Agreement and fails to remedy such breach as provided below, or if Licensee or any Participating Institution commits a willful and persistent breach of the copyright or intellectual property rights with respect to the Licensed Content or in respect of the usage rights/prohibited uses and fails to remedy such breach as provided below.

In the event that either party believes that the other materially has breached any obligations under this Agreement, or if East View believes that the Licensee or Participating Institution has exceeded the scope of the Agreement, such party shall so notify the breaching party or Participating Institution in writing. The breaching party or Participating Institution shall have thirty (30) days from the receipt of notice to cure the alleged breach and to notify the non-breaching party in writing that cure has been effected. If a material breach is not cured within the thirty (30) day period, the non-breaching party shall have the right to terminate the Agreement without further notice.

East View acknowledges that the Licensee comprises many Participating Institutions and that in the event that one of these Participating Institutions fails to comply with the obligations or breaches the License Agreement, East View will terminate access to the Licensed Content of the breaching Participating Institution only.

Upon termination of this Agreement for cause online access to the Licensed Content by the breaching Participating Institution shall be terminated. In the event of early termination by Licensee for cause permitted by this Agreement, Licensee shall be entitled to a refund of any fees or pro-rata portion thereof paid by Licensee for any remaining period of the Agreement from the date of termination.

General

This Agreement shall be governed by and construed in accordance with the laws of the Federal Republic of Germany. This Agreement shall be deemed to specify the rights of Licensor, Agent, Licensee and Contractually Defined Users under the German Copyright Law and other applicable legislation in Germany. The exclusive place of jurisdiction for all disputes arising out of or in connection with this License Agreement shall be Munich, Germany.

The invalidity of any provision of this License Agreement as determined by a court of competent jurisdiction shall in no way invalidate any other provision hereof.

This Agreement constitutes the entire agreement and supersedes all prior communications, understandings, and agreements, and any "click-through" screens or agreements, until such time as modifications or amendments to the Agreement are mutually agreed to in writing and signed by the Authorized representatives of both parties.

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Schedule 3: List of Participating Institutions and Contractually Defined Users

1. Participating Institutions

Bayerische Staatsbibliothek

German Higher Education Institutions financed either by public or private funding

German national, regional and state libraries

German academic specialist libraries mainly financed by public funding

German research institutions mainly financed by public funding

German governmental institutions

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 East View by Licensee before activation of access to the licensed materials. Licensee will provide details as follows:

Licensing institution name and address

Licensing institution contact email address

Licensing institution IP Ranges

2. Authorised Users of Participating Institutions

Individuals who are authorized 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.

3. 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.

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