

Nutzungsbedingungen US Intelligence on Europe

§ 1 Definitions

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

a. 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:

- Publicly or privately funded higher education and research institutions in Germany
- The German National Library, all regional and state libraries as well as main subject libraries
- Primarily publicly funded research libraries and special academic libraries
- Research institutes primarily funded by German federal or state governments, including research institutions located abroad but funded by public bodies or primarily 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 4.

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. 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.

e. Licence Fee: The fee as set out in Schedule 3. The fee shall be in line with the offer agreed between the Licensee and the Publisher.

f. Licensed Material: The material listed in Schedule 2.

g. 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.

h. Metadata: Bibliographical, structural & descriptive data of the Licensed Material as defined in Schedule 6.

i. Participating Institutions: The Institutions participating in this contract as specified in Schedule 4.

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

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.

2. 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, the Participating Institutions and their authorized users, 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 Authorised Users to access and use the Licensed Material hosted on the Publisher's Platform via Secure Network.

2. 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.

3. 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".

4. 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) right to host the Licensed Material on a Local Hosting Server or on the server of a third party (e.g. Leibniz Rechenzentrum), to allow Authorised Users to access and use the Licensed Material via Secure Authentication.

5. The Licensee and the Participating Institutions are 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.

6. 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.

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

§ 3 Permitted uses

1. The Licensee and the Participating Institutions 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 Participating Institutions. Anything thereby created or compiled may be integrated into the products and services of the Licensee and the Participating 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 in (including, but not limited to) digital course reserve collections, in virtual research environments in which authorised users 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 (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 Authorized Users with electronic copies of single Parts of the Licensed Material.

§ 4 Restrictions

1. Save as provided herein, Licensee, Participating Institutions and Authorised Users may not:>
 - a. Sell or resell the Licensed Material unless the Licensee, a Participating 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.
2. This Clause shall survive termination of this Licence Agreement for any reason.

§ 5 Responsibilities of the Publisher

The Publisher agrees to:

1. Make the Licensed Material perpetually available to the Licensee, Participating Institutions 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;
2. Make the Licensed Material available to the Licensee, Participating 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)
3. Ensure that the relevant server or servers have adequate capacity and bandwidth to support the usage 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
4. Make the Licensed Material available on request by Licensee for Local Hosting on the Licensee's Hosting Server or on the server of a third party at no additional costs;
5. Deliver the Licensed Material to Licensee as specified below
 - in case of current content provided for Local Hosting immediately after publication;
 - in case of post-cancellation archival rights six months after cancellation/publication;
 - in case of withdrawal of Licensed Material or any part of it before removal from Publisher's Platform;
 - in case of termination of this agreement immediately after termination;
 - in other cases within three months after the request has been made;
6. Deliver and make accessible the Licensed Material in a format according to the standards as defined in Schedule 6.

7. Supply the correct and complete Metadata as well as updates from time to time in machine-readable form at no additional costs. The Metadata shall be delivered as specified in Schedule 6.
8. 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 Participating Institutions to the Authorised Users provided it is either duplicated in full, or a proper ownership acknowledgement and acknowledgement of Source is included;
9. Provide the standards, services and statistics set out in Schedule 5;
10. Maintain the confidentiality of any data relating to the usage of the Licensed Materials by 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. 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 and Participating Institutions

The Licensee and Participating Institutions agree to

1. give 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;
2. Provide lists of valid IP addresses to the Publisher and update those lists on a regular basis;
3. 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;
4. Use all reasonable efforts to ensure that all Authorised Users abide by the terms of this Licence Agreement;
5. 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 Authorised User of the terms of this Licence Agreement. Upon becoming aware of any breach of the terms of this Licence Agreement, the Licensee and Participating Institutions further agree 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.

[...]

§ 10 Acknowledgement and protection of Intellectual Property Rights

1. Licensee and Participating Institutions acknowledge 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 as a result of Local Hosting, text mining or data mining of the Licensed Material shall be the property of the Licensee without violating the intellectual property rights of the Publisher.

§ 11 Representation, warranties and indemnification

1. The Publisher guarantees to the Licensee and Participating Institutions 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, Participating Institutions and Authorized Users shall have no liability and the Publisher 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 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 and Participating Institutions of any substantial change to the Licensed Material. If the change results in the Licensed Material being no longer deemed useful by the Licensee and Participating Institutions, the Licensee and Participating Institutions 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 and Participating Institutions 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 and Participating Institutions of such withdrawal. If the withdrawal results in the Licensed Material being no longer deemed useful by the Licensee and Participating Institutions, the Licensee and Participating Institutions 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, Participating 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 communication lines, telephone or other interconnect problems, unauthorised access, theft, or user errors.

7. The Licensee and Participating Institution shall notify the Publisher immediately and 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.

8. Nothing in this Licence Agreement shall make the Licensee and Participating Institutions liable for breach of the terms of this Licence Agreement by any Authorised User provided that the Licensee or Participating 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 § 11.2, neither the Licensee, a Participating Institution 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 § 11.2, 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.

[...]

§ 13 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, which 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.

§ 14 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, Participating 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 Munich, 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.

[...]

Schedule 4:

List of specified Participating Institutions and Contractually Defined Users

Participating Institutions

Bayerische Staatsbibliothek

Higher Education Institutions financed either by public or private funding

National, regional and state libraries

Research institutions mainly financed by public funding

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 Brill by the 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.