

## License Agreement

This License Agreement, along with any Schedules, is made August 15, 2018 between:

East View Information Services, Inc., represented by Dima Frangulov having its registered office at 10601 Wayzata Boulevard, Minneapolis, MN 55305-1515, USA.

(hereinafter called "Publisher")

and

1.) Freistaat Bayern, represented by Bayerische Staatsbibliothek (BSB), responsible for the Specialised Information Services for Research Osteuropa (Fachinformationsdienst Osteuropa, FID), represented by Dr. Klaus Ceynowa, having its place of business at Ludwigstraße 16, 80539 München,

and

2.) Universitäts- und Landesbibliothek Sachsen-Anhalt (ULB), responsible for the Specialized Information Service for Islamic Studies (FID Nahost), represented by ....., having its place of business at Martin-Luther-Universität Halle-Wittenberg, Universitätsplatz 10, 06108 Halle,

(hereinafter BSB und ULB together are called "Licensee" or "Licensees")

**WHEREAS** the Publisher hereby grants to the Licensee a non-exclusive license to access and use the Licensed Material, further specified in Schedule 3;

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

### IT IS AGREED AS FOLLOWS

#### **(Preamble) The Structure of the Agreement**

This License Agreement is concluded between Publisher and Licensee. This License Agreement shall be considered as the framework agreement and governs all terms and conditions for the licensing of the licensed material. It is understood that the Guidelines for the Purchase of Publications in the DFG-funded System of Specialized Information Services for Research (DFG form 12.101-12/12) are part of the basis of this agreement, see link in Schedule 1. In the event of any conflict between such terms and this Licence Agreement, the provisions of this Licence Agreement shall prevail.

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 Specialized Information Services for Research (DFG form 12.101-12/12).

The Parties hereto are independent contractors and nothing contained herein or done in pursuance of this Agreement shall constitute either Party as the agent of the other Party for any purpose or in any sense whatsoever, or constitute the Parties as partners, joint venturers or franchisor and franchisee. Each Licensee itself is party to the Agreement in relation to the Publisher. This Agreement does not create any corporate relationship between the Licensees or between a Licensee and participating Institutions.

#### **§ 1 Definitions**

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

**a. Back-file:** archival copy of Licensed Material

**b. Contractually Defined Users:** Individuals who are authorized by the Licensee to access the Licensee's information services whether on-site or off-site 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.

The Contractually Defined Users are specified in Schedule 2.

**c. Commercial Use:** The use of the Licensed Material for the purpose of monetary reward (whether by or for the Institution or a Contractually Defined 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 Contractually Defined 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.

**e. 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 2.

**f. 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.

**g. License 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.

**h. Licensed Material:** The material listed in Schedule 4, including corresponding metadata, supplementary content and digital objects. For the avoidance of doubt, in case of Local Hosting the Licensed Material to be delivered by the Licensor means full texts incl. all digital objects, supplementary content and Metadata.

**i. Local Hosting:** Housing, serving and maintaining files on Licensee's Local Hosting Server in Germany or on the servers of a third party.

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

**k. Publisher's Platform:** Bibliographical, structural & descriptive data of the Licensed Material as defined in Schedule 5.

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

**m. Open Access:** This definition is based on the "Berlin Declaration on Open Access to Knowledge in the Sciences and Humanities" which postulates two necessary criteria:

1. The author(s) and right holder(s) of such [open access] contributions grant(s) to all users a free, irrevocable, worldwide, right of access to, and a license to copy, use, distribute, transmit and display the work publicly and to make and distribute derivative works, in any digital medium for any responsible purpose, subject to proper attribution of authorship (community standards, will continue to provide the mechanism for enforcement of

proper attribution and responsible use of the published work, as they do now), as well as the right to make small numbers of printed copies for their personal use.

2. A complete version of the work and all supplemental materials, including a copy of the permission as stated above, in an appropriate standard electronic format is deposited (and thus published) in at least one online repository using suitable technical standards (such as the Open Archive definitions) that is supported and maintained by an academic institution, scholarly society, government agency, or other well established organization that seeks to enable open access, unrestricted distribution, interoperability, and long-term archiving (s. § 2.3)

**n. Secure Authentication:** Method to identify Contractually Defined Users as defined in Schedule 4.

**o. Secure Network:** A network which is only accessible to Contractually Defined Users by Secure Authentication.

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

**q. Subscription Period:** The period nominally covered by the volumes and issues of the Licensed Material as identified in Schedule 4, regardless of the actual date of publication.

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

2. Headings contained in this License Agreement are for reference purposes only and shall not be deemed to be 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 License 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 Contractually Defined 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 License Agreement, a non-exclusive perpetual worldwide (license) right to host the Licensed Material on Licensee's Local Hosting Server or on the server of a third party, and allows the Contractually Defined Users (Schedule 2) and the Licensee 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 that ensures their future preservation, long-term storage and accessibility in accordance with this Licence, or to commission third parties to perform such measures.

4. The Publisher hereby grants to the Licensee, subject to and in accordance with the terms of this Licence Agreement, a non-exclusive perpetual, worldwide 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.

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

6. Multi-year licenses include an option for early termination for the Licensee.

## § 3 Permitted uses

The Licensee may:

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

- b. Provide Contractually Defined Users with an integrated access and index to the Licensed Material and all other similar material acquired from other sources. The Licensed Material or Parts thereof may be compiled, indexed and/or catalogued (including, without limitation, the header data and abstracts) by the Licensee. Anything thereby created or compiled may be integrated into the products and services of the Licensee. Metadata may be integrated into any other library and information system (including but not limited to search engines of commercial corporations provided that the Metadata is not sold, lent, re-licensed, or distributed in any manner that violates the terms and conditions of the licence). The Licensed Material can be integrated without restriction (including, but not limited to) in digital course reserve collections, in virtual research environments in which Licensee participate as well as in the virtual specialised libraries operated by Licensee.
- c. Use the Licensed Material to set up value-added services, such as text and data mining to enhance services, to encourage scholarship, teaching and learning and to conduct research by the Licensee according to the following principles, as long as the purpose is not to create a product for use by third parties that would substitute the Licensed Material: Raw data may be extracted from the Licensed Material. Text and data mining may be performed on the unchanged Licensed Material or on extracted data (including but not limited to reproducing, storing, adapting, assembling large collections or extracting substantial portions of data and analysing them). The raw data is research data and may be stored, published and distributed in any medium or form under any licence in order to ensure reproducibility and sustainability, as long as the Licensed Material cannot be reconstructed in its original, human readable form. The Publisher will cooperate with Licensee as reasonably necessary in making the Licensed Material available in a manner and form most useful to the Licensee and Contractually Defined Users. Attribution must be made to the Publisher in an appropriate manner and form.
- d. Supply to a user of another library (whether by post, fax or secure electronic transmission) a single copy of an electronic original of an individual document including any supplementary content published in connection to the document.
- e. 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.
- f. Allow Contractually Defined Users to:
- Make such local temporary copies of the Licensed Material as are necessary to ensure efficient use of the Licensed Material, provided that such use is subject to all the terms and conditions of this Licence Agreement;
  - Access the Licensed Material by Secure Authentication in order to search, retrieve, display and view the Licensed Material;
  - Electronically save Parts of the Licensed Material;
  - Print out single copies of Parts of the Licensed Material;
  - Incorporate Parts of the Licensed Material in printed and electronic course packs, study packs, resource lists and in any other material (including but not limited to multi-media works) and/or in virtual and managed environments (including but not limited to virtual learning environments, managed learning environments, virtual research environments and library environments) hosted on a Secure Network. Each item shall carry appropriate acknowledgement of the source, listing title and author.
  - Incorporate Parts of the Licensed Material in printed or electronic form in assignments and portfolios, theses and in dissertations ("the Academic Works"), including reproductions of the Academic Works for personal use and library deposit. Reproductions in printed or electronic form of Academic Works may be provided to sponsors of such Academic Works. Each item shall carry appropriate acknowledgement of the source;
  - Provide single printed or electronic copies of single Parts of the Licensed Material at the request of other individual Contractually Defined Users;
  - Provide single printed or electronic copies of single Parts of the Licensed Material to third-party colleagues for their scholarly, educational, scientific or research use;
  - Display, download and print Parts of the Licensed Material for the purpose of promotion of the Licensed Material, testing of the Licensed Material, or for training other Contractually Defined Users;

- Publicly display or publicly perform Parts of the Licensed Material as part of a presentation at a seminar, conference, workshop, or other such similar activity;
  - Deposit in perpetuity the learning and teaching objects as referred to in § 3.1.b on servers operated by the Licensee or by a third party. The use of such material shall be limited to Contractually Defined Users
  - Use the Licensed Material to set up value-added services, such as text and data mining to enhance services, to encourage scholarship, teaching and learning and to conduct research by Contractually Defined Users according to the following principles, as long as the purpose is not to create a product for use by third parties that would substitute the Licensed Material: Raw data may be extracted from the Licensed Material. Text and data mining may be performed on the unchanged Licensed Material or on extracted data (including but not limited to reproducing, storing, adapting, assembling large collections or extracting substantial portions of data and analysing them). The raw data is research data and may be stored, published and distributed in any medium or form under any licence in order to ensure reproducibility and sustainability, as long as the Licensed Material cannot be reconstructed in its original, human readable form.
- g. Course packs in non-electronic, non-print perceptible form, such as Braille, may also be offered to Contractually Defined Users;
- h. In case of technical breakdowns (including but not limited to downtimes of the Publisher's Platform or to incorrect administered IP ranges) provide Contractually Defined Users with electronic copies of single Parts of the Licensed Material.
- i. Fulfill requests from other libraries for Licensed Material, a practice commonly called Interlibrary Loan. The Licensee agrees to fulfill such requests in accordance with German copyright law (Act on Copyright and Related Rights, Urheberrechtsgesetz - UrhG, as amended by the Act of September 01, 2017), in particular § 60e UrhG.

#### **§ 4 Restrictions**

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

#### **§ 5 Responsibilities of the Publisher**

The Publisher agrees to:

- a. Make the Licensed Material perpetually available to the Licensee and Contractually Defined Users from the commencement of this License Agreement and after termination of this agreement at no additional cost on the Publisher's Platform by Secure Authentication as defined in Schedule 4;
- b. Make the Licensed Material available to the Licensee and the Contractually Defined Users at all times and on a twenty-four hour basis (24/7/365), save for routine maintenance, and to restore access to the Licensed Material

as soon as possible in the event of an interruption or suspension of the service (the access interruption shall not exceed 1% in total of a calendar year) as defined in Schedule 4;

c. Ensure that the relevant server or servers have adequate capacity and bandwidth to support the usage of the Contractually Defined Users at a level commensurate with the standards of availability for information services of similar scope operating via the World Wide Web, as such standards evolve from time to time over the term of this Licence Agreement, as defined in Schedule 4;

d. Make the Licensed Material (incl. full-text, all digital objects, Metadata) available on request by Licensee for Local Hosting on the Licensee's Hosting Server or on the server of a third party. Further details are outlined in Schedule 3

e. 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;

f. Deliver and make accessible the Licensed Material in a format according to the standards as defined in Schedule 4;

g. The breakdown of the Licensed Material into logical units (e.g. assignment of data records to products or of articles to journals titles) must be reflected by the data delivered;

h. Supply the correct and complete Metadata as well as updates at the same time when the Licensed Material is made available in machine-readable form (preferably UTF-8), both at no additional costs. The Metadata shall be delivered as specified in Schedule 5.

i. 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 Contractually Defined Users provided it is either duplicated in full, or a proper ownership acknowledgement and acknowledgement of Source is included;

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

## **§ 6 Responsibilities of the Licensee**

The Licensee agrees to:

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

b. Use reasonable efforts to provide Institutions und Contractually Defined Users with appropriate notice of the terms and conditions under which access to the Licensed Material is granted under this Licence Agreement,

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

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

e. The Licensee agrees to:

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

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

### **§ 7 Licence Fee**

1. The Publisher will invoice Licensees for the Licence Fee payable at the addresses specified above.
2. The license model and the terms of payments to the Publisher are set out in Schedule 3 hereto.
3. The Publisher will invoice each Licensee directly for the Licence Fee as set out in Schedule 3. Each Licensee is liable only for its share of the Licence Fee as set out in Schedule 3. There shall be no joint liability.

### **§ 8 Term and Termination**

1. This License 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. In addition Licensee has the option for extraordinary termination as specified in Schedule 3 hereto.
3. 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.
4. Upon material breach or repeated other breaches by Contractually Defined Users, the Publisher shall cease to authorize online access to the Licensed Material only by the Contractually Defined User responsible for the breach.
5. In case of breach by a single Licensee Publisher may only terminate the Agreement or suspend access vis-à-vis the respective Licensee committing the breach. For the other Licensee the agreement remains intact and access is unaffected.
6. After termination of this Agreement the Publisher shall provide (at the option of the Licensee) the Licensee and the Contractually Defined Users with access to and use of the Licensed Material. For the avoidance of doubt access and use of archival copies shall be subject to the terms and conditions as set out in § 3 and § 5 of this Agreement. In case of termination of this Agreement by the Publisher due to a material breach access to and use of the Licensed Material shall only be on Licensee's Local Hosting server according to § 2.2.
7. On termination of this Agreement by the Licensee due to a material breach or repeated other breaches by the Publisher, the Publisher will reimburse the Licensee a pro rata proportion of the then remaining License Fee for the unexpired part of the Subscription Period.

### **§ 9 Acknowledgement and protection of Intellectual Property Rights**

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

2. For the avoidance of doubt, the Publisher hereby acknowledges that any 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.

### **§ 10 Representation, warranties and indemnification**

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

2. The Publisher agrees that the Licensee 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 or Contractually Defined Users use of the Licensed Material, provided that:

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

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

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

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

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

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

8. Save as provided for in § 11.2, neither the Licensee 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.

9. Save as provided for in § 11.2, the liability for damage from injury to life, body or health as well as the liability for damage caused intentionally or by gross negligence is unlimited. Apart from this neither party shall be liable to the other for slight or ordinary negligence, except in the event of negligence which leads to a breach of a contractual obligation, whose fulfillment is indispensable for the proper execution of the contract and on whose observance the contracting party may regularly rely (essential obligation). In case of slight or ordinary negligence which gives rise to a breach of a contractual obligation, however, the liability of all parties for breaching an essential obligation is limited to the damage which may be typically expected during the execution of this agreement.

### **§ 11 Force majeure**

1. Either party's failure to perform any term or condition of this License Agreement as result of circumstances beyond the control of the relevant party (including without limitation, war, flood, governmental restrictions, and power, telecommunications or Internet failures or damages to or destruction of any network facilities ["Force Majeure"]) shall not be deemed to be, or to give rise to, a breach of this License Agreement.

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

### **§ 12 Assignment**

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

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

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

### **§ 14 Notices**

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

### **§ 15 General**

1. This License 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. For the avoidance of doubt, in the event that any content included in the Licensed Material is in the public domain or has been issued under an open licence (e.g. Creative Commons), the Licensor shall not place access, use or other restrictions on that content beyond those found in the open licence, where applicable. Nothing in this License is intended to reduce, limit, or restrict any uses free from copyright or rights arising from limitations or exceptions that are provided for in connection with the copyright protection under German copyright law or other applicable laws.
3. In the event that the Publisher requires Contractually Defined Users to agree to additional terms relating to the use of the Licensed Material ("click-through" licences) or otherwise attempts to impose terms on Contractually Defined Users through online terms and conditions invoked by the mere use or viewing of the Licensed Material, such terms shall not materially differ from the provisions of this Licence Agreement. In the event of any conflict between such terms and this Licence Agreement, the provisions of this Licence Agreement shall prevail. For the avoidance of doubt, Contractually Defined Users are not a party to this Licence Agreement.
4. The Schedules shall have the same force and effect as if expressly set in the body of this License Agreement and any reference to this Licence Agreement shall include the Schedules. In case of discrepancies between any of the Schedules and this License Agreement the latter shall always take precedence.
5. The invalidity or unenforceability of any provision of this License Agreement shall not affect the continuation in force of the remainder of this License Agreement.
6. The rights of the parties arising under this License Agreement shall not be waived except in writing. Any waiver of any of a party's rights under this License Agreement or of any breach of this License 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 License 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.
7. All indemnification obligations and perpetual licence rights shall survive the expiration or termination of this Licence Agreement.

IN WITNESS the hands of the above parties on the date first above written:

Signed on:

For and on behalf of:

By:

Signed on:

For and on behalf of:

By:

Signed on:

For and on behalf of:

By:

**Annex:**

Schedule 1: Guidelines for the Purchase of Publications in the DFG-funded System of Specialised Information Services for Research (DFG form 12.101-12/12)

Schedule 2: List of specified Contractually Defined Users (including possible variations on specified products)

Schedule 3: List of Licensed Material (including titles and license conditions)

Schedule 4: Standards, Services and Statistics, Method to identify Contractually Defined Users (Secure Authentication)

Schedule 5: Bibliographical, structural & descriptive data of the Licensed Material (List of Metadata)

**Schedule 1:**

Guidelines for the Purchase of Publications in the DFG-funded System of Specialised Information Services for Research (DFG form 12.101-12/12), see under: [http://www.dfg.de/formulare/12\\_101/](http://www.dfg.de/formulare/12_101/).

**Schedule 2:**

List of specified Contractually Defined Users

**1. Participating Institutions**

Bayerische Staatsbibliothek

Universitäts- und Landesbibliothek Sachsen-Anhalt (ULB)

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 will be widened if required by Licensee - 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.

### **Schedule 3: List of Licensed Material**

#### **Schedule 4:**

Standards, Services and Statistics, Method to identify Contractually Defined Users (Secure Authentication)

1. Usage statistics shall be provided compliant with the most recent release of the COUNTER Code of Practice. The Publisher shall support automatic enquiry of usage statistics through standard interfaces. The statistic reports indicate the use of the back files separately from the use of current volumes if applicable and must be supplied not later than three weeks after the end of each quarter. In case IP addresses are being activated for individual authorized Institutions or Shibboleth is used for access control the statistics are to be provided in separate lists containing the use of the individual titles by each authorized Institution. Usage statistics for the use by individual subjects shall not include any personal data. In case of national licenses the usage statistics shall include the identifier of the Institutions supplied by licensee (WIB-number).

2. Secure Authentication methods shall include Shibboleth, 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 and the Licensee. The use of proxy servers is permitted as long as any proxy server IP addresses provided limit remote or off-campus access to Contractually Defined Users. Exchange of IP data: Publisher should implement automatic synchronisation mechanisms for IP data provided by the Licensee if applicable.

3. Customer support services to Licensee, Institutions and Contractually Defined Users must be provided via e-mail or phone, including answering e-mail inquiries relating to the use, functionality and content of the Licensed Material within 24 hrs of request. In case of outage access shall be reinstated within 48 hrs of request. Any subsequent day of outage shall result in a proportionate refund of the Licence Fee. Publisher informs Licensee of expected outages via e-mail or RSS feeds. Auto Alerts: The Publisher shall provide the Contractually Defined Users with current awareness services, e.g. RSS feeds, alerting e-mails.

4. In case of A&I databases: Outbound Linking: Publisher enables outbound OpenURL links for all records. These links include all relevant bibliographic Metadata, a source identifier and the character encoding in use. In case of fulltext material: Outbound Linking for References: Publisher enables outbound OpenURL links for all references. These links include all relevant bibliographic Metadata, a source identifier and the character encoding in use.

5. Transfer of Titles: The Publisher shall comply with the Code of Practice of Project Transfer relating to the transfer of titles between publishers. In addition, the Publisher shall use best efforts to ensure that the Licensees do not lose access to the Licensed Material subject to this Licence Agreement. The Publisher will use all efforts to retain a non-exclusive copy of the volumes published and make them available free of charge through the Publisher's Platform. Alternatively the transferring Licensor shall use best efforts to assign all rights and obligations of this Licence Agreement to the receiving Licensor and ensure that any archival and perpetual access rights that have been granted shall be honored, especially that the receiving Licensor will provide access to the Licensee to the volumes published until the date of the transfer of the respective title. At the latest 6 months after the first announcement of the transfer, Publisher shall give a written notice to the Licensee about the outcome of negotiations with the receiving Licensor regarding the rights of the Licensee and the before

mentioned alternatives of providing access to the transferred title(s). In the event that the Publisher ceases to publish a Part or Parts of the Licensed Material, a digital archive will be maintained of such Licensed Material and will be made available free of charge through the Licensor's Platform or via a third party server and by supplying such material free of charge to the Institution.

If the Publisher acquires works that become subject to this Licence Agreement, he will use best efforts to acquire rights to perform under this Licence Agreement, including but not limited to perpetual access rights.

6. User Interface: The Publisher shall comply with the level A of the Web Accessibility Initiative (WAI) Guidelines of the World Wide Web Consortium (W3C) and use all best efforts to comply with the level AA of the WAI Guidelines of 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 should have access to a preview of the new interface.

8. In case of A& databases: Search API: The Publisher shall offer a standardised interface to enable metasearch, e.g. Z39.50 or SRU/SRW. Details shall be subject to a special agreement between the Publisher and the Licensee.

#### **Schedule 5:**

Schedule 5:

The Licensed Material shall be delivered to the Licensee by using open, standardized formats and accompanied by documentation

- For Metadata this shall be: MARC21 or ONIX, (for eBooks in particular)

- For full texts this may be: PDF and/or HTML/XML

Metadata should be delivered in machine-readable form (preferably UTF-8) and as comprehensive as possible; this includes but is not limited to: ISBN and ISSN; DOI, author, date of publication, Licensor, place of publication; if available also tables of contents, prefaces, abstracts, flap texts. Each dataset must contain a unique and unalterable identification number. Methods for the delivery of metadata include FTP (File Transfer Protocol), OAI-PMH (Open Archives Initiative Protocol for Metadata Harvesting) and B2B (Business to Business). Delivery shall be through an interface mutually agreed upon.

The Licensed Material shall be delivered in its entirety and shall be identical with the licensed product. The organization of the product into logical units (e.g. assignment of data records to products, of articles to journal titles) must be reflected by the data delivered.

The data delivery is accompanied by a documentation of the formats, character sets and MIME types used.

Delivery shall be on a mutually agreed medium.

Data elements and the metadata set adhere to the requirements specified in the paper "Anforderungen der deutschsprachigen Verbundsysteme und der Deutschen Nationalbibliothek an Metadatenlieferungen zu E-Books und E-Book-Paketen 2013" by the Consortium of Library Networks.

<http://d-nb.info/104233336X/34> (urn:nbn:de:101-2013092601)

Provision of follow-ups, updates and deletions are handled as specified in the paper "Anforderungen der deutschsprachigen Verbundsysteme und der Deutschen Nationalbibliothek an Metadatenlieferungen zu E-Books und E-Book-Paketen 2013" by the Consortium of Library Networks.

<http://d-nb.info/104233336X/34> (urn:nbn:de:101-2013092601)

Follow-up deliveries of newly added titles and editions are provided by activation via the usual channels. If the Licensor makes changes or corrections to the metadata, the data sets will be provided again in the form of separate update deliveries. If the data corrections cannot be supplied separately but only together with new

titles, the individual data sets must be clearly identified as "new" or "corrected". Corrected sets are delivered with the same ID number. If the Licensor deletes titles or editions from its e-book portfolio (e.g. because the author has withdrawn the publication rights), the relevant metadata records shall be provided again in the form of separate deletion deliveries. If the deletions cannot be supplied separately but only together with new or corrected titles, the individual data sets must be clearly identified as "new", "corrected" or "deleted".