

Der nachfolgende Text erhebt keinen Anspruch auf Richtigkeit und Vollständigkeit. Dieser Text stellt keine Rechtsberatung dar. Der Text kann generell die eigene Vertragsgestaltung und –prüfung nicht ersetzen. Er muss an die aktuellen tatsächlichen und rechtlichen Anforderungen angepasst werden. Dieser Text enthält Textbausteine, die nicht in jedem Fall Anwendung finden können bzw. Kommentare, die generell gelöscht werden sollten. Der Text geht aus den Anforderungen der „Grundsätze für den Erwerb DFG-geförderter überregionaler Lizenzen“¹ hervor und ist für die Verwendung in diesem Kontext optimiert. Dieser Mustervertrag basiert auf deutschem Recht. Bei der Nachnutzung ist darauf zu achten, dass entsprechende Anpassungen vorgenommen werden.

MODEL LICENCE AGREEMENT

Stand 08.04.2016

This Licence Agreement, along with any schedules, is made ___ of ___ 20XX between:

[FULL LEGAL NAME OF LICENSOR] having its registered office at **[insert address]** (hereinafter called "Licensor").

and

[FULL LEGAL NAME OF LICENSEE], having its principal place of business at **[insert address]** (hereinafter called "Licensee").

WHEREAS **[insert brief product description]**, further specified in Schedule 2

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

[Optional, bei entsprechender Vertragshistorie: **WHEREAS** the parties have concluded previous agreements...]

IT IS AGREED AS FOLLOWS

(Preamble) The Structure of the Agreement

This Licence Agreement is concluded between Licensor and Licensee. This Licence Agreement shall be considered as the framework agreement and governs all terms and conditions for the licensing of the Licensed Material. Institutions are free to join the Agreement by signing a separate Accession Agreement [optional: (Schedule 6)]. Thereby the joining institutions acknowledge and agree to the terms and conditions of this framework agreement. Institutions are free to join the Agreement at any time during the duration of this agreement. Institutions are also free to terminate participation at the end of every year. Institutions are free not to be party to this

¹ http://www.dfg.de/formulare/12_181/12_181_de.pdf

agreement. They may enter into their own agreement with the Licensor and participate in the conditions of this Licence Agreement.

§ 1 Definitions

1. In this Licence, the following terms shall have the following meanings:
 - a. **Accession Agreement:** agreement between an individual Institution and the Licensor which is based upon this Licence Agreement between the Licensee and the Licensor. By signing the Accession Agreement the Institution joins the Licence Agreement and acknowledges and agrees to the terms and conditions of the Licence Agreement.
 - b. **Authorised Users:** individuals who are authorised by the Institution to access the Institution's information services whether on-site or off-site via Secure Authentication and who are affiliated to the Institution as a current student (including but not limited to undergraduates, postgraduates and guest students), member of staff (whether on a permanent or temporary basis including retired members of staff and any teacher who teaches Authorised Users) or contractor or registered user of the Institution. Persons who are not currently a student, member of staff, contractor or registered user of the Institution, but who are permitted to access the Institution's information services from computer terminals or otherwise within the physical premises of the Institution ("Walk-In Users") are also deemed to be Authorised Users, only for the time they are within the physical premises of the Institution.
[Optional, nur möglich bei flächendeckenden Nationallizenzen und ggfs. Allianz-Lizenzen aus denen aufgrund einer Moving Wall nach einer Embargofrist eine Nationallizenz entsteht, da auch in diesem Fall Einzelnutzer berechtigt sein können: Authorised User means as well any individual subject to the requirement of permanent residence in Germany that has completed a suitable registration procedure as long as such registration remains in effect.]
 - c. **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.
 - d. **Educational Purposes:** The use for the purpose of education, teaching, distance learning, private study and/or research.
 - 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 1.
 - f. **Intellectual Property Rights:** Patents, trademarks, trade names, design rights, copyright (including rights in computer software and moral rights), database rights, rights in knowhow 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. **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 Licensor.
 - h. **Licensed Material:** The material listed in Schedule 2, including corresponding metadata, supplementary content and digital objects.
For the avoidance of doubt, in case of Local Hosting the Licenced Material to be delivered by the Licensor means Fulltexts incl. all digital objects, supplementary content and Metadata.
 - i. **Licensor's Platform:** Own or third party server used by Licensor to give access to Licensed Material.
 - j. **Local Hosting:** Housing, serving and maintaining files on Licensee's Local Hosting Server in Germany or on the servers of a third party.
 - k. **Metadata:** Bibliographical, structural & descriptive data of the Licensed Material as defined in Schedule 5.
 - l. [nur bei Allianz-Lizenzen aus denen aufgrund einer Moving Wall nach einer Embargofrist eine Nationallizenz entsteht:
Moving Wall: The archive that successively builds up during the term of this Licence Agreement and that will become available to all authorised Institutions in Germany following a time period to be specified in Schedules 2 and 3) by way of a national licence. Institutions are free to join the Moving Wall by following a registration process managed by the Licensee or a third party. Thereby the joining institutions acknowledge and agree to the terms and conditions of this framework agreement, especially the permitted uses and restrictions.]
[Optional, nur möglich wenn bei einer Moving Wall auch Einzelnutzer berechtigt sind: Individuals according to § 1.1.b. are free to register for the Moving Wall.]
 - m. **Part (of Licensed Material):** Any part, component or fragment of the Licensed Material that is used, separated and/or cited in a self-contained manner.
 - n. **Secure Authentication:** Method to identify Authorised Users as defined in Schedule 4.
 - o. **Subscription Period:** The period nominally covered by the volumes and issues of the Licensed Material as identified in Schedule 2, regardless of the actual date of publication.
 - p. **Secure Network:** A network which is only accessible to Authorised Users by Secure Authentication.
 - q. **Source (of Licensed Material or Parts thereof):** Denomination of the origin of, author of, holder of title in the Licensed Material or Part hereof.
 - r. **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 Licensor hereby grants to the Licensee, subject to and in accordance with the terms of this Licence Agreement, a non-exclusive perpetual licence to access and use the Licensed Material and to allow Institutions and Authorised Users to access and use the Licensed Material hosted on the Licensor's Platform via Secure Network.

[alt., falls Lizenz auf bestimmte Laufzeit des Licence Agreement beschränkt sein soll: The Licensor hereby grants to the Licensee, subject to and in accordance with the terms and during the Term of this Licence Agreement, a non-exclusive licence to access and use the Licensed Material and to allow Institutions and Authorised Users to access and use the Licensed Material hosted on the Licensor's Platform via Secure Network.]

2. The Licensor hereby grants to the Licensee and the Institutions, subject to and in accordance with the terms of this Licence Agreement, a non-exclusive perpetual, worldwide (licence) right to host the Licensed Material on Licensee's Local Hosting Server or on the server of a third party; allow the Institutions to communicate the Licensed Material via a Secure Network to Authorised Users; to allow Authorised Users to access and/or use the Licensed Material via Secure Authentication.
3. The Licensee is further permitted to make copies or re-format the Licensed Material contained in the archival copies supplied by the Licensor in any way that ensures their future preservation and accessibility in accordance with this Licence. [alt., falls kein Erwerb dauerhafter Zugriffsrechte: The Licensee is further permitted to make copies or re-format the Licensed Material contained in the archival copies supplied by the Licensor in any way that ensures their accessibility in accordance with this Licence.]
4. The Licensor hereby grants to the Licensee and the Institutions, 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. The support of Search Engine Advertizing (SEA) and Search Engine Optimization (SEO) is allowed by the Licensor (e.g. xml-sitemap of websites with displays of metadata for inclusion of Search Engine Indexes; support of crawler like Googlebot) as well as the provision of the Metadata as Linked Open Data. [alt., falls Lizenz auf bestimmte Laufzeit des Licence Agreement beschränkt sein soll: The Licensor hereby grants to the Licensee and the Institutions, subject to and in accordance with the terms and during the Term of this Licence Agreement, a non-exclusive licence for the Metadata associated with the Licensed Material for use in local library catalogues, union catalogues, and/or 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. For the avoidance of doubt, the Licences granted in § 2 are available to all Institutions that are joining this Licence Agreement. [Optional, nur möglich bei flächendeckenden Nationallizenzen und Allianz-Lizenzen aus denen aufgrund einer Moving Wall nach einer Embargofrist eine Nationallizenz entsteht: and to Institutions registered for the Moving Wall.]

§ 3 Permitted uses

1. The Licensee and the 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 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 and the Institutions. Anything thereby created or compiled may be integrated into the products and

services of the Institutions. Metadata may be integrated into any other library and information system (including but not limited to search engines of commercial corporations provided that the Metadata is not sold, lent, re-licensed, or distributed in any manner that violates the terms and conditions of the licence). The Licensed Material can be integrated without restriction (including, but not limited to) in digital course reserve collections, in virtual research environments in which authorised institutions participate as well as in the virtual specialised libraries operated by authorised institutions.

- c. The Licensed Material may be used for text and data mining to enhance services, to encourage scholarship, teaching and learning and to conduct research by the Licensee and Authorised 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. The Licensor will cooperate with Licensee and Authorised Users as reasonably necessary in making the Licensed Material available in a manner and form most useful to the Licensee and Authorised Users. Attribution must be made to the Licensor 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 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.
 - 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, 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 Authorised 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 Institution or Licensee. The use of such material shall be limited to Authorised Users.
- g. Course packs in non-electronic, non-print perceptible form, such as Braille, may also be offered to Authorised Users;
- h. In case of technical breakdowns (including but not limited to downtimes of the Licensor's Platform or to incorrect administered IP ranges) provide Institutions or Authorised Users with electronic copies of single Parts of the Licensed Material.
2. Authors from Institutions are granted permission free of charge to store their articles which are part of the Licensed Material in the form published by the Licensor (e.g. PDF) without time embargo in an institutional or discipline-specific repository of their choice and to make them available in Open Access. The same permission is granted to Institutions to which the respective authors are affiliated. The Licensor agrees to provide free advice and technical support to authorised Institutions regarding the identification and delivery of relevant article data and full texts, including digital objects for integration into the relevant repository at no additional costs.

For the avoidance of doubt, it is the intent of the Licensee and the Licensor that Authors are third party beneficiaries of this provision. Nothing in § 3.2. shall eliminate or limit any other rights that any Author or Institution may have to deposit, host or make available the work published by Licensor.

This provision shall survive termination of this Agreement for any reason.

§ 4 Restrictions

1. Save as provided herein, Licensee, the Institutions and Authorised Users may not:
 - a. Sell or resell the Licensed Material unless the Licensee, an Institution or an Authorised User has been granted prior written consent by the Licensor 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 under 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 Licensor

1. The Licensor agrees to:
 - a. Make the Licensed Material perpetually available to the Licensee, Institutions and Authorised Users from the commencement of this Licence Agreement and after termination of this agreement at no additional cost on the Licensor's Platform by Secure Authentication as defined in Schedule 4;
 - b. Make the Licensed Material available to the Licensee, the Institutions and Authorised Users at all times and on a twenty-four hour basis, save for routine maintenance, and to restore access to the Licensed Material as soon as possible in the event of an interruption or suspension of the service (the access interruption shall not exceed 1% in total of a calendar year), as defined in Schedule 4;
 - c. Ensure that the relevant server or servers have adequate capacity and bandwidth to support the usage of the Institutions at a level commensurate with the standards of availability for information services of similar scope operating via the World Wide Web, as such standards evolve from time to time over the term of this Licence Agreement, as defined in Schedule 4;
 - d. Make the Licensed Material (incl. fulltext, all digital objects, metadata) available on request by Licensee or any Institution for Local Hosting on the Licensee's Hosting Server, the Institutions Hosting Server or on the server of a third party at no additional costs;
 - 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 no later than six months after cancellation/publication;
 - in case of withdrawal of Licensed Material or any part of it before removal from Licensor'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 5.
 - g. Supply the correct and complete Metadata and 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.
 - h. Provide electronic product documentation to the Licensee free of charge. The Licensor will allow copies of all documentation to be made and distributed by the Licensee to the Institutions and Authorised Users provided it is either duplicated in full, or a proper ownership acknowledgement and acknowledgement of Source is included;
 - i. Provide the standards, services and statistics set out in Schedule 4.
 - j. Maintain the confidentiality of any data relating to the usage of the Licensed Materials by the Licensee, Institutions and its Authorised Users. Such data may be used solely for purposes directly related to the Licensed Materials and may only be provided to third parties in aggregate form without reference to Authorised Users or Institutions. Raw usage data, including but not limited to information relating to the identity of specific users and/or uses, shall not be provided to any third party.

- k. In the event that the Licensor offers an open access option to its authors, the Licensor will report to the Licensee annually the number of works published under the open access option by all authors. [Optional: Licensor will enter into good faith discussions with Licensee concerning mechanisms by which the open access publication fees received by Licensor can offset the fees paid by Licensee, with the goal of reducing such fees in proportion to the revenue received through such open access publication fees.]

§ 6 Responsibilities of the Licensee and the Institution

1. The Licensee agrees to:
 - a. Provide lists of valid IP addresses to the Licensor and update those lists on a regular basis;
 - b. Use reasonable efforts to provide Institutions und Authorised Users with appropriate notice of the terms and conditions under which access to the Licensed Material is granted under this Licence Agreement,
2. The Institutions agree to:
 - a. Issue passwords or other access information only to Authorised Users and use all reasonable efforts to ensure that Authorised Users do not divulge their passwords or other access information to any third party.
 - b. 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;
3. The Licensee and the Institutions agree to:

Use all reasonable efforts to monitor compliance with the terms of this Licence Agreement and notify the Licensor 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);
 - Any breach by an Institution or an Authorised User of the terms of this Licence Agreement. Upon becoming aware of any breach of the terms of this Licence Agreement, the Licensee or the Institution further agree 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 Licensor will invoice Licensee and/or Institutions for the Licence Fee payable at the addresses specified in Schedule 3.
2. The licence model and the terms of payments to the Licensor are set out in Schedule 3 hereto.

§ 8 Term and termination

1. This Licence Agreement shall commence on the date of signature and will remain in full force and effect in perpetuity. [alt., falls Lizenz auf bestimmte Laufzeit des Licence

Agreement beschränkt sein soll:: This Licence Agreement shall commence on the date of signature and continue until [insert date].]

2. The Licensee may terminate this Agreement by giving notice to the Licensor two months prior to the first anniversary date of this Agreement. The same applies to terminations in subsequent years.
3. Any Institution may terminate its participation by giving notice directly and via the Licensee to the Licensor two months prior to the first anniversary date of this Agreement. The same applies to terminations in subsequent years.
4. Any party may terminate this Agreement at any time, if a material breach or repeated other breaches of any obligations by the other party under this Agreement were not remedied within a period of thirty (30) days after the receipt of a written notice identifying the nature of the breach.
5. Upon material breach or repeated other breaches of an Institution or its Authorised Users, the Licensor shall cease to authorise online access to the Licensed Material only by the Institution responsible for the breach and the Authorised Users affiliated to it.
6. [für Lizenzen mit Archivrechten nach Beendigung des Licence Agreement] After termination of this Agreement the Licensor shall provide (at the option of the Licensee) the Licensee, the Institutions and its Authorised 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 § 4 of this Agreement. In case of termination of this Agreement by the Licensor 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 Licensor, the Licensor will reimburse the Licensee a pro rata proportion of the then remaining Licence 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 Licensor or duly licensed to the Licensor 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 Licensor hereby acknowledges that any database rights created by the Licensee or the Institutions as a result of Local Hosting, text mining or data mining of the Licensed Material shall be the property of the Licensee, or the Institution.

§ 10 Representation, warranties and indemnification

1. The Licensor guarantees to the Licensee that the Licensed Material and all Intellectual Property Rights therein are owned by or licensed to the Licensor 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 Licensor agrees that the Licensee, Institution or Authorised User shall have no liability and the Licensor will indemnify, defend and hold the Licensee, Institution or Authorised User harmless against any and all damages, liabilities, claims, causes of action, legal fees and costs incurred by the Licensee, Institution or Authorised User in

defending against any third party claim of Intellectual Property Rights infringements or threats of claims thereof with respect of the Licensee's, the Institution's or Authorised User's 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, Institution or Authorised User provides the Licensor with prompt notice of any such claim or threat of claim;
 - The Licensee, Institution or Authorised User co-operates fully with the Licensor in the defence or settlement of such claim; and
 - The Licensor has sole and complete control over the defence or settlement of such claim.
3. [Nur für Lizenzen ohne Archivrechte] The Licensor reserves the right to change the content (including removal of an entire journal on ceasing to have the right to publish), presentation, user facilities or availability of Parts of the Licensed Material and to make changes in any software used to make the Licensed Material available at its sole discretion. The Licensor shall give written notice to the Licensee and Institution of any substantial change to the Licensed Material. If the change results in the Licensed Material being no longer deemed useful by the Licensee, the Licensee may within sixty days of such notice treat such changes as a material breach of this Licence. Licensee may alternatively claim an appropriate, proportionate reduction of Licence Fee with regard to the remaining Licensed Material.
 4. The Licensor 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 Licensor shall give written notice to the Licensee and Institution 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 Licence. Licensee may alternatively claim an appropriate, proportionate reduction of Licence Fee with regard to the remaining Licensed Material.
 5. While the Licensor has no reason to believe that there are any inaccuracies or defects in the information contained in the Licensed Material, the Licensor 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 Licensor accepts no liability for loss suffered or incurred by the Licensee, an Institution or Authorised Users as a result of their reliance on the Licensed Material.
 6. In no circumstances will the Licensor be liable to the Licensee for any loss resulting from a cause over which the Licensor does not have direct control, including but not limited to failure of electronic or mechanical equipment or communication lines, telephone or other interconnect problems, unauthorised access, theft, or operator errors.
 7. The Licensee and Institutions shall notify the Licensor 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 Licensor in such claims. Upon such notification, or if the Licensor becomes aware of such a claim from other sources, the Licensor may remove such work(s) from the Licensed Material as long as this claim persists. Failure to report knowledge of any actual or threatened claim by any third party shall be deemed a breach of this Licence Agreement.
 8. Nothing in this Licence Agreement shall make the Licensee or the Institutions liable for breach of the terms of this Licence Agreement by any Authorised User provided that the

Licensee or the Institution did not cause, knowingly assist or condone the continuation of such breach after becoming aware of an actual breach having occurred.

9. Save as provided for in § 10.2, neither the Licensee or the Institutions nor the Licensor shall be liable to the other in contract or negligence or otherwise for
 - Any special, indirect, incidental, punitive or consequential damages or
 - Loss of direct or indirect profits, business, contracts, revenue or anticipated savings or for any increased costs or expenses.
10. Save as provided for in § 10.2 the 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 Licence Agreement as result of circumstances beyond the control of the relevant party (including without limitation, war, strikes, flood, governmental restrictions, or power, telecommunications or Internet failures or damages to or destruction of any network facilities ["Force Majeure"]) shall not be deemed to be, or to give rise to, a breach of this Licence Agreement.
2. If either party to this Licence Agreement is prevented or delayed in the performance of any of its obligations under this Licence Agreement by Force Majeure and if such party gives written notice thereof to the other party specifying the matters constituting Force Majeure together with such evidence as it reasonably can give and specifying the period for which it is estimated that such prevention or delay will continue, then the party in question shall be excused from the performance or the punctual performance as the case may be as from the date of such notice for so long as such cause of prevention or delay shall continue.

§ 12 Assignment

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

§ 13 Governing law and dispute resolution

1. This Licence Agreement shall be interpreted and construed according to and governed by the laws of the Federal Republic of Germany. This Licence Agreement shall be deemed to specify the rights of Licensor, Licensee, the Institutions and Authorised Users under the German Copyright Law and other applicable legislation in Germany. [Nur einfügen, wenn

keine Schiedsgerichtsklausel § 13 Nr. 3 vereinbart wurde: Exclusive place of jurisdiction for all disputes arising out of or in connection with this Licence Agreement shall be the principal place of business of Licensee in Germany].

2. The parties agree to use best efforts to resolve disputes in an informal manner, by decision of the Managing Director of the Licensor and the current Director of the Licensee.
3. All disputes arising out of or in connection with this Licence Agreement shall be finally settled under the Rules of Arbitration of the Court of Arbitration in [please specify]. The Court of Arbitration shall consist of three Arbitrators. The chairman must be a lawyer admitted to the bar of Germany having command of the language of Arbitration. Place of Arbitration shall be the principal place of business of the Licensee in Germany. Language of the arbitration shall be English. The Court of Arbitration shall apply German law as provided in § 13.1 of this Licence Agreement. Regarding the procedure, especially with respect to taking evidence, the Court of Arbitration shall apply German civil procedure law.

§ 14 Notices

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

If to the Licensee:

[insert Name and Address of Licensee]

If to the Licensor:

[insert Name and Address of Licensor].

§ 15 General

1. This Licence Agreement and its Schedules constitute the entire agreement between the parties relating to the Licensed Material and supersede all prior communications, understandings and agreements (whether written or oral) relating to its subject matter and may not be amended or modified except by agreement of both parties in writing.
2. 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.
3. In the event that Licensor requires Authorised Users to agree to additional terms relating to the use of the Licensed Material ("click-through" licences) or otherwise attempts to impose terms on Authorised 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, Authorised 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 Licence Agreement and any reference to this Licence Agreement shall include the Schedules.
5. The invalidity or unenforceability of any provision of this Licence Agreement shall not affect the continuation in force of the remainder of this Licence Agreement.
6. The rights of the parties arising under this Licence Agreement shall not be waived except in writing. Any waiver of any of a party's rights under this Licence Agreement or of any breach of this Licence Agreement by the other party shall not be construed as a waiver of any other rights or of any other or further breach. Failure by either party to exercise or enforce any rights conferred upon it by this Licence Agreement shall not be deemed to be a waiver of any such rights or operate so as to bar the exercise or enforcement thereof at any subsequent time or times.
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.....

Signed on.....

for and on behalf of

for and on behalf of

[insert Name of Licensor]

[insert Name of Licensee]

By

By

SCHEDULE 1: Institutions

This list will be delivered by Licensee and may be updated from time to time to reflect mergers between institutions, changes in the legal name of an institution and to include new institutions.

[List of Institutions]

SCHEDULE 2: Licensed Material

The Licensed Material consists of the following titles:

Journal title	ISSN	Fulltext available back to

Machine-readable title list

In addition, the Licensed Material is specified by a machine-readable title list (if applicable), provided by Licensor to Licensee at the time of signature of this Licence Agreement and updated regularly, but at least once a year.

The title list shall include separate entries for all previous titles, with their own set of identifiers and coverage dates corresponding to the period the titles were used.

The Licensor shall cooperate with providers of link resolvers and ERM systems, and share the machine-readable title lists with every update. The KBART Recommended Practice should be taken into account, see <http://www.uksg.org/kbart>.

The list includes all available entitlements (e.g. journals, books, monographic series) in a structured and machine-readable format (e.g. tab-delimited/CSV or XML encoded as UTF-8), including

	Column Name	Format	Description	E-Books	Current Journals	Journal Backfiles
1.	publication_title	string	publication title	X	X	X
2.	title_id	string	Licensor specific token for this publication			
3.	print_identifier	string with hyphen	identifier of print version (i.e., ISSN, ISBN, etc.)			
4.	online_identifier		identifier of electronic version (i.e., eISSN, eISBN, etc.)			
5.	start_issue	integer, no double issues nor double	first issue of licensed period		X	X
6.	start_volume		first volume of licensed period		X	X
7.	start_year		first year of licensed period	X	X	X

8.	end_issue	volumes*	last issue of licensed period (or blank, if coverage is to present)			X
9.	end_volume		last volume of licensed period (or blank, if coverage is to present)			X
10.	end_year		last year of licensed period (or blank, if coverage is to present)			X
11.	moving_wall	+/-<n>V +/-<n>M +/-<n>I **	moving wall of licensed period			
12.	title_url	string	<u>title-level URL</u>	X	X	X
13.	Licensor_name	string	Licensor			
14.	place	string	place of Licensor			
15.	first_author	string	<u>first author (for monographs)</u>			
16.	ZDB-id	string	ZDB-ID if known			
17.	remarks	string	remarks by Licensor			

* avoid double issues, double volumes or double years, e.g. if start_issue was 1 / 2 or 1-2 preferably output start_issue:1

** meaning only/excluding the most recent <n> (M)onths, (Y)ears

SCHEDULE 3: Licence Model/ Licence Fee

1. Licence Model: [Beschreibung des Lizenzmodells, ggf. unter Beachtung der Allianz-Grundsätze]

Moving Wall:

Authorised Institutions are free to join the Moving Wall by following a registration process. Thereby the joining Institution acknowledges and agrees to the terms and conditions of this framework agreement, especially the permitted uses and restrictions. The Licensed Material contained in the Moving Wall can then be viewed within their own IP range and is available for their local indexes and archives. Included in the licence fee is free access to these archives on the vendor's servers for all authorised institutions, generally with no time limit.

2. Licensee shall cause the Licensor to be paid the total Licence Fee of _____ (in words: _____) as payment for the Licensed Material and the Metadata and the rights granted in this Agreement.

The total amount is due and payable within 60 days from the date of the receipt of the invoice.

Publisher shall pay any direct taxes for the grant of rights according to this License Agreement, insofar as the Publisher is liable to pay the tax according to the law of the tax-raising state. The Licensee may deduct from the gross price any withholding taxes (in particular withholding tax pursuant to § 50a Income Tax Act "Quellensteuer") and pay them to the tax authorities unless a valid certificate of exemption is provided by the Publisher.

3. [insert Name and Address of Licensee]

SCHEDULE 4: Standards, Services and Statistics

1. Usage statistics shall be provided compliant with the most recent release of the COUNTER Code of Practice organised by month, whereby the statistics are to separately list the use of the individual titles by each authorised Institution and for non-university research organisations, for the individual institutes or subunits and for individual subjects according to § 1.1.b if applicable. Usage statistics for the use by individual subjects shall not include any personal data. The Licensor shall support automatic enquiry of usage statistics through standard interfaces (e.g. SUSHI). The statistic reports indicate the use of the backfiles separately from the use of current volumes if applicable and must be supplied not later than three weeks after the end of each quarter. 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 Licensor, the Licensee and the Institutions. The use of proxy servers is permitted as long as any proxy server IP addresses provided limit remote or off-campus access to Authorised Users.
3. Customer support services to Licensee, Institutions and Authorised 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. Licensor informs Licensee and Institutions of expected outages via e-mail or RSS feeds.
4. Documentation: The Licensor shall provide electronic product documentation to the Licensee and the Institutions free of charge. The Licensor will allow copies of all documentation to be made and distributed by the Licensee and the Institutions to Authorised Users provided it is either duplicated in full, or a proper ownership acknowledgement and acknowledgement of Source is included.
5. In case of A&I databases: Outbound Linking: Licensor enables outbound OpenURL links for all records. These links include all relevant bibliographic Metadata, a source identifier and the character encoding in use.
6. Inbound Linking Syntax: The Licensor shall provide the Licensee and the Institutions with the algorithm or syntax for constructing links to all relevant levels of aggregation, in particular an article-level link from an article's Metadata within the Licensed Material. The inbound linking shall be documented, and these documents shall be shared with the link resolver vendors and other relevant service providers.
7. Persistent URIs: The licensed products are generally accessible via open, standardised and persistent URIs, e.g. DOI or URN.
8. Transfer of Titles: The Licensor shall comply with the Code of Practice of Project Transfer relating to the transfer of titles between publishers. In addition, the Licensor shall use best efforts to ensure that the Licensee and the Institutions do not lose access to the Licensed Material subject to this Licence Agreement. The Licensor will use all reasonable efforts to retain a non-exclusive copy of the volumes published and make them available free of charge through the Licensor'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 and the Institutions 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,

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

9. User Interface: The Licensor 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.
10. Notifications: All substantial changes on the interfaces, including, but not limited to user interfaces, inbound linking syntax or delivery formats shall be communicated two months in advance. If possible and applicable, Licensee and Institutions should have access to a preview of the new interface.
11. In case of A&I databases: Search API: The Licensor 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 Licensor and the individual Institutions.

Additional Recommendations

1. In case of fulltext material: Outbound Linking for References: Licensor enables outbound OpenURL links for all references. These links include all relevant bibliographic Metadata, a source identifier and the character encoding in use.
2. Auto Alerts: The Licensor shall provide the Authorised Users with current awareness services, e.g. RSS feeds, alerting e-mails.
3. Exchange of IP data: Licensor should implement automatic synchronisation mechanisms for IP data provided by the Licensee or the Institutions.

SCHEDULE 5: Standards for Data Delivery

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”.

SCHEDULE 6: Agreement on Accession

Der nachfolgende (optionale) Text stellt ein Muster für eine Beitrittserklärung bei konsortialen Vertragsabschlüssen dar.

Agreement on Accession to the Licence Agreement of [date]

between [Licensee] and [Licensor]

The following agreement is entered into between

[Member/participating Institution]

–hereinafter called “Member”

and

[Licensor]

- hereinafter called [“...”]

Preamble

Agreement upon for the procurement of access to the [Product], hereinafter referred to as the Licence Agreement, has been reached by way of a licence agreement of [date] between [Licensee] and the [Licensor].

The Licence Agreement makes provision for German scientific institutions on the basis of this Licence agreement to conclude individual accession agreements with [Licensor]. These are listed in an appendix to the licence agreement.

§ 1 Basis of the agreement

1. The Member and the [Licensor] hereby enter into an agreement based upon the licence agreement dated [date] between [Licensee] and the [Licensor].
2. All of the clauses contained in the Licence Agreement shall apply without restriction.

§ 2 Member-specific Information

Name, address and contact person of the Member:

IP-Range:

Full-time-equivalents/relevant full-time-equivalents of the Member:

Licensing Period:

The Member opts in for the following option/package:

- _____
- _____
- _____
- _____

Type of institution/applicable band of the Licence Model/applicable discount [Einstufung gemäß Lizenzvertrag] for the Licensing Period:

The licence fee for the above mentioned option(s)/package(s) is

for [year]: _____ (in words: _____)

[optional, sofern eine Einrichtung vorab für mehrere Jahre zahlen möchte:

for [years]: _____ (in words: _____)

The Member acknowledges that a termination for subsequent Licensing Periods according to § 8.2 of the Licence Agreement is not possible in case of a prepayment for upcoming years.]

The applicable band and price for subsequent years will be announced by the Licensee during any renewal process.

The licence fee will be invoiced by [the Licensee/the Licensor] and is payable within 30 days from the date of the receipt of the invoice.

[If applicable] The differing invoice address of the institution is:

§ 2 Miscellaneous

- 1.This agreement will become legally binding upon signature by both contracting parties.
- 2.This agreement fully replicates the terms agreed between the parties in respect of the services to be provided under the agreement with the inclusion of the Licence Agreement of [date]. There are no verbal agreements collateral to this contract. Alterations and amendments to the agreement must be made in writing and shall be effective only if signed with legally binding effect by both parties.
- 3.Insofar as any declaration must be made “in writing” or requires the “written form” pursuant to this agreement, said declaration must be signed by the hand and in the name of the originator and communicated in the original or by fax to the other party. The written form cannot be replaced by the electronic form.

§ 3 Severability clause

Should any terms of this agreement be or become invalid this shall not affect the validity either of the agreement itself or of the remaining terms thereof. A provision which is invalid shall be replaced by such provision to give effect to the intention of the parties as is (if) reasonably possible.

.....

Place, date

.....

Place, date

.....

[Member]

.....

[Licensor]