
Emerald Hosting License Agreement

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Licensor:

Emerald Group Publishing Limited

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and

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This is an Agreement between Emerald Group Publishing Limited (EMERALD), Universitäts-und Stadtbibliothek Köln (USB) and Informationszentrum Sozialwissenschaften (IZ). USB and IZ are acting on behalf of the National License Initiative of the Deutsche Forschungsgemeinschaft. (DFG).

Key Definitions

1. Emerald Fulltext Archive Database (EFAD) is the aggregation of scholarly and research journals and other professional literature published by EMERALD and includes all Journals that were owned and Published between 1st January 1994 and 31st December 2005 as outlined in Schedule A. No further content will be added to this database under the terms of this Agreement.

2. Metadata shall mean the SGML files containing the bibliographic data and author abstracts of all EMERALD journals in the EFAD and as detailed in Schedule C.

3. Authorized Users shall mean individual researchers with a residence in Germany, including the faculty, staff, students and walk in patrons of Eligible Institutions. For avoidance of doubt this covers educational users only as detailed in Schedule B.

4. Eligible Institutions shall mean scientific libraries in Germany and publicly funded research organizations such as Helmholtz-Gesellschaft, Max-Planck-Gesellschaft, Fraunhofer-Gesellschaft and Leibnitz-Gemeinschaft that have registered for participation in the National License Initiative of DFG. For avoidance of doubt this excludes any commercial organizations and is as detailed in Schedule B.

1. Grant of License:

1.1 EMERALD agrees to sell perpetual access to the EFAD to USB/IZ for access by Authorized Users from Eligible Institutions only, pricing of which is outlined in Schedule D.

1.2. EMERALD will provide USB/IZ with Metadata for non-commercial indexing and free searching on the Internet, including local and union catalogues and other library and information systems participating in the Initiative. EMERALD acknowledges that recovery of cost by USB is not deemed commercial use.

1.3. USB/IZ may not resell nor may it authorize Authorized Users to resell copies of any portion of the EFAD in any format.

1.4. Altering, recompiling, systematic or programmatic copying, reselling, redistributing, publishing or republishing of EFAD content or any part thereof without explicit permission in writing from EMERALD is prohibited.

2. Copyright:

2.1. USB/IZ acknowledges that, except for the rights granted herein, all rights in and to the licensed data remain with the respective copyright holder thereof.

2.2. EMERALD represents and warrants to USB/IZ that it has the right, power and authority to enter into this agreement and that all rights granted herein and the grant of such rights does not violate the rights of any third party.

2.3 Authorized Users must not make any content from the EFAD available to non-Authorized Users, either in whole or in part.

2.4 USB/IZ will advise users that altering, recompiling, systematic or programmatic copying, reselling, redistributing, publishing or republishing of EFAD without explicit permission in writing from EMERALD is prohibited.

2.5 USB/IZ has an obligation to inform EMERALD of any case of infringement of clause that is brought to its attention. EMERALD reserves the right to withdraw access to the EFAD to any offending institution until such time as a written undertaking to cease is received via USB/IZ from that institution.

2.6 In the event that USB/IZ host the EFAD, then USB/IZ will in the case of breach of clause 2.3 act on behalf of EMERALD and take the same actions against the offending institution (clause 2.4).

3. Access to the EFAD:

3.1. Electronic provision of the EFAD shall be either through authenticated linking by Authorized Users from Eligible Institutions to the EMERALD web site or by local hosting on a secure site of USB and/or the relevant special collection field library and/or a contractor of each of those institutions as agreed between EMERALD and USB/IZ.

3.2. Local hosting (without restriction of concurrent use by Authorized Users from Eligible Institutions) shall be offered as an option at no additional cost.

3.3. EFAD may be accessed by the following authentication procedures:

- IP
- Username/Password
- Shibboleth
- Comparable future developments to be agreed by the parties

4. Assignment:

4.1. Neither party may assign any of its interests under this Agreement without the prior written consent of the other party except that either party may assign its interest in this Agreement in connection with the

sale of all or substantially all of the assets, partnership interest, capital stock, or business of such party. Subject to the foregoing, this Agreement shall bind and inure to the benefit of the parties and their respective successors, heirs and permitted assigns.

5. Indemnification:

5.1 Each party agrees to defend, indemnify and hold the other party harmless from any and all loss, damage and expense, including attorney's fees, arising from any claim arising out of or related to the breach of any representation or warranty contained herein or in any Schedule.

5.2 The Agreement to indemnify shall survive any termination or expiration of this License Agreement

6. Confidentiality:

6.1. Neither party shall, without written consent of the other, or as specified below, communicate confidential information of the other designated in writing (including without limitation, future business plans and services and the identity and addresses of the Authorized Users) to any third party and shall protect such information from inadvertent disclosure to any third party in the same manner that it protects its own confidential information.

6.2 Both parties' obligations of confidentiality and nondisclosure shall not apply to disclosures to such parties counsel or other advisors or to a court, arbitration panel or other similar body, in the event such party has a bona fide dispute with the other party regarding this Agreement.

6.3. Both parties further agree that all confidential commitments hereunder shall survive any termination of expiration of the Agreement.

7. Warranties:

7.1 EMERALD gives no warranties whatsoever for the content or use of the EFAD. Under no circumstances shall EMERALD be liable to the licensee, or any Authorised User or any other person, for any consequential, incidental, punitive, special, exemplary or indirect damages, lost profits, lost revenue or other business interruption damages, by statute, in tort or under contract, under any indemnity provision or otherwise, whether or not the possibility of such damages has been disclosed to the other Party in advance, or could have been reasonably foreseen by the other Party.

8. General Provisions:

8.1 Severability. If any provision of this Agreement shall be held by a court of competent jurisdiction to be illegal, invalid, or unenforceable, the remaining provisions shall remain in full force and effect.

8.2 Waiver. Either party's failure to exercise any of its rights under this Agreement shall not constitute a waiver of any past, present, or future right or remedy.

8.3 Amendments. These terms and conditions may not be changed, amended, or modified, except by an amendment in writing, executed by authorized personnel of both EMERALD or USB/IZ.

8.4 Complete Agreement. This Agreement contains the complete and exclusive statement of the terms of the agreement between USB/IZ and EMERALD with respect to the supply of the EFAD and merges any prior or contemporaneous Agreements, commitments, proposals, representations, or communications, oral or written, with respect to the EFAD.

9. Governing Law:

9.1. Applicable Law: German Law. Jurisdiction: Germany.

IN WITNESS WHEREOF, the parties hereto have caused this agreement to be executed as of the day and year first above written.