

## License Agreement for the usage of De Gruyter eBooks

between

**Walter de Gruyter Inc.**

**121 High Street, Third Floor**

**Boston, MA 02210**

- hereinafter referred to as "De Gruyter" -

and

**LYRASIS**

**1438 West Peachtree St. NW, Suite 200**

**Atlanta, GA 30309**

- hereinafter referred to as "LYRASIS" -

### **Preamble**

De Gruyter offers eBooks on a purchase basis. This license agreement regulates the rights and duties from De Gruyter as well as LYRASIS and its Participating Institutions for the eBooks..

LYRASIS is responsible for informing all of its Participating Libraries of the terms and conditions governing access to the each Library's purchased ebooks from De Gruyter. All reasonable efforts should be made to ensure that Authorized Users at each Participating Library's institution are aware of, and abide by, the terms and conditions that apply to all of that institution's selected products.

LYRASIS is responsible only for fulfilment of its individual responsibilities under this Agreement. Neither LYRASIS nor any other Participating Institution shall be liable for any breach or default of another participating Institution.

In light of the foregoing, the parties agree to the following:

#### **1. Key definitions:**

##### **Authorized Users:**

Authorized Users include current members of the faculty and other staff of the Participating Institution (whether on a permanent, temporary, contract or visiting basis) and individuals who are currently studying at the Participating Institution, who are permitted to access the Secure Network from within the library premises or from such other places where Authorized Users work or study (including but not limited to Authorized Users' offices and homes, halls of residence, and student

dormitories). Access also is available for otherwise unaffiliated users who are physically located at the Participating Institution's site.

**Participating institutions:** Any LYRASIS Members and Other Libraries who obtain De Gruyter products through LYRASIS. Participating Institutions agree to abide by the terms of this Agreement. Other Libraries are members of consortia that have created relationships with LYRASIS to administer and process electronic resource licenses on behalf of their library members.

**eBook purchase:** With payment of a one-time purchase price a Participating Institution acquires a license for an unlimited period of time to the eBook(s). De Gruyter grants to the Participating Institution a nonexclusive, royalty-free, perpetual license to use any licensed content that is accessible during the term of this Agreement and under the provisions of this Agreement.

## **2. Subject Matter of the Agreement**

- 2.1 This agreement regulates the purchase of eBooks from De Gruyter as negotiated for Participating Institutions by LYRASIS.
- 2.2 De Gruyter grants the Participating Institutions the non-exclusive, non-transferable right to access eBooks in accordance with this Agreement and to enable access and allow the use for the Authorized Users who are authorized by the Participating Institutions.
- 2.3 De Gruyter enables access for the Participating Institutions to the eBooks on a platform from De Gruyter.
- 2.4 Access is provided to the Participating Institutions for an unlimited number of concurrent users.
- 2.5 The terms of this license reflect the entirety of the agreement unless otherwise amended and agreed in writing.

## **3. Payment**

- 3.1 The rights of use and access are granted on condition that payments due are met. All fees for the Participating Institutions are due and payable by LYRASIS sixty (60) days after De Gruyter issues an accurate invoice referencing the LYRASIS purchase order (PO) number. In the event of non-payment by a Participating Institution, LYRASIS will use customary efforts to collect past due amounts and will keep De Gruyter informed of such collection activities. De Gruyter understands and accepts that LYRASIS has the sole authority to perform collection activities with Participating Institutions under this Agreement. De Gruyter will continue to accept and fulfil orders from Participating Institutions who are not in arrears while LYRASIS pursues past due payment.

## **4. Rights of use, Access rights**

- 4.1 The contracting parties agree that the eBooks are copyright-protected in De Gruyter's favour. This applies both to the platform and to the copyright-protected works contained therein and to any other protectable elements. For this, use and access are only allowed to the extent expressly permitted by this General License Agreement.

- 4.2 Access rights only apply to IP addresses registered with De Gruyter. Furthermore access rights can be obtained for additional authentication processes (e.g. Shibboleth) agreed upon by De Gruyter with the Participating Institutions.
- 4.3 Authorized Users are allowed to use ebooks for the purposes of research, education, or other non-commercial use. The Participating Institutions and Authorized Users may make all use of the content as is consistent with the exceptions and limitation of the US Copyright Act, including 17 USC §107, §108, §110, §121, and the Copyright Act of Canada. Nothing in this Agreement shall be interpreted to limit in any way whatsoever Participating Institutions' or Authorized Users' rights under the exceptions and limitations of the US Copyright Act and the Copyright Act of Canada to use the licensed content.
- 4.4 The Participating Institutions may generate temporary local copies of the eBooks which are produced for a limited time as an integral and substantive part of a technological process (caching), the sole purpose of which is to allow Authorized Users use in accordance with the contractual conditions and which do not possess any independent economic value.
- 4.5 The Participating Institutions and the Authorized Users may use appropriate parts of the licensed eBooks to produce printed teaching materials for use by the Authorized Users within the Participating Institutions' Authorized Sites; these materials are not permitted to be used for re-sale or any other commercial purpose.
- 4.6 Participating Institutions and Authorized Users may use the licensed ebooks in the preparation of Course Reserves (print and electronic) or other educational materials for use in connection with specific courses of instruction offered by the Participating Institution in support of teaching, learning, and research efforts.
- 4.7 Authorized Users may electronically display, download, and print one copy of each ebook chapter for personal use and archive contents on their own personal devices. Printing is to be consistent with the exceptions and limitations of the U.S. Copyright Act, including 17 §107, §108, §110, §121, and the Copyright Act of Canada.
- 4.8 Authorized Users may transmit to a third party colleague in hard copy or electronically portions of the licensed content for personal use or scholarly, educational, scientific research, or professional use, but in no case for re-sale. In addition, Authorized Users have the right to use, with appropriate credit, figures, tables, and excerpts from the licensed content in the Authorized User's own scientific, scholarly, and educational works.
- 4.9 Participating Institutions and their Authorized Users may, subject to prior notification and approval by De Gruyter, using reasonable practices, engage in text processing, which is any kind of analysis of natural language text. De Gruyter will make appropriate arrangements prior to the start of this activity to account for usage data and ensure continued access for the user. This may include but not be limited to a process by which information may be derived from text by identifying patterns and trends within natural language through text categorization, statistical pattern recognition, concept or sentiment extraction, and the association of natural language with indexing terms. Technology will not be used to hinder any rights granted under this section.
- 4.10 Participating Institutions may fulfill requests from other institutions, a practice commonly called Interlibrary Loan. Participating Institutions agree to fulfill such requests in compliance with Section 108 of the United States Copyright Law (17 USC §108, "Limitations on exclusive rights: Reproduction by libraries and archives"), as well as the Copyright Act of Canada. Interlibrary loan is not restricted to other libraries within the same country.

- 4.11 Use for the purposes of monetary reward (whether by or for the Participating Institution or an Authorized User) by means of sale, resale, loan, transfer, hire, or other form of exploitation of the Licensed Materials is not an authorized use. Neither recovery of direct costs by the Participating Institution from Authorized Users, nor use by the Participating Institution or by an Authorized User of the licensed materials in the course of research funded by a commercial organization, is deemed to be Commercial Use.
- 4.12 The Participating Institutions and the Authorized Users are not allowed to make parts of the licensed eBooks available in other networks outside the Participating Institution's secure network, for example in the internet or the World Wide Web.
- 4.13 The Participating Institutions and the Authorized Users are not permitted to deploy robots, spiders, crawlers or other automated download programs to download eBooks continuously and automatically (e.g. systematic download, deployment of retrieval software).
- 4.14 The Participating Institutions and the Authorized Users may not process, operate on or in any other way alter the licensed eBooks unless this is necessary for the content to be used in accordance with this General License Agreement.
- 4.15 The contents are generally only made available via the respective platform from De Gruyter. Participating Institutions have the option of making other hosting arrangements, including local hosting, vendor hosting, or trusted third-party hosting. PDFs or other acceptable formats of the licensed eBooks will be provided to Participating Institutions on request. Any content made available on the Participating Institution's platform is subject to the conditions for use and access stated in this Agreement via the online platform from De Gruyter.
- 4.16 De Gruyter reserves the right to withdraw individual products or parts of the eBooks if De Gruyter no longer owns the requisite rights or if there is reasonable cause to suspect that individual products or parts of the licensed databases, eJournal contents and eBooks offend the rights of third parties or are illegal in any other way – for example are defamatory or obscene. If any modifications render the content less useful to the Participating Institutions or their Authorized Users, LYRASIS and the Participating Institutions may treat such modifications as a material breach subject to the early termination provisions of this Agreement.
- 4.17 Authors' names, copyright notices, references to registered marks (esp. brands and company names), logos, other references serving identification or relevant for copyright purposes, together with liability exclusions, legal reservations etc. may not be removed, altered or suppressed.
- 4.18 De Gruyter will not conduct business operations with third-party publishers in ways that prevent these publishers from allowing their authors to retain the non-exclusive, irrevocable, royalty-free right to use their content for scholarly and educational purposes, including self-archiving or depositing the content in institutional, subject-based, national, or other open repositories or archives (including the author's own web pages or departmental servers), and to comply with all grant or institutional requirements associated with the content.
- 4.19 De Gruyter will provide Participating Institutions with one (1) copy in a mutually-acceptable format (or grant permission to make one copy) of any licensed content that is sold to another publisher/provider or discontinued for any reason, to fulfil a Participating Institution's rights to the content for an unlimited period of time of this Agreement.
- 4.20 Participating Institutions are authorized to make such further copies in perpetuity as they may deem

necessary for purposes of archival preservation, refreshing, or migration, including migration to other formats, so long as the purpose of such copying is solely for continued use and/or archival retention of the data and does not violate or extend the use rights contained in this Agreement.

4.21 Publisher acknowledges that a Participating Library may engage the services of a third-party trusted archives service, including Portico (<http://www.portico.org>), and/or participate in collaborative archiving endeavors to fulfill the requirements of this provision. Publisher agrees to cooperate with such archiving entities and/or initiatives as reasonably necessary to make the content available for archiving purposes. Participating Libraries may perpetually use Portico to archive and restore the content, so long as a Participating Library's use is otherwise consistent with this agreement. Publisher further acknowledges and agrees that, in using the third-party archival system, the content may be made available to other system participants who indicate a right to the content.

4.22 Upon termination of this Agreement or upon request, De Gruyter agrees to provide to Participating Libraries in a mutually acceptable format a machine-readable copy of the licensed content for the Participating Institution's use. Except in the case of termination for cause, De Gruyter shall provide the Participating Institutions with continual access to the licensed content in a manner and form substantially equivalent to the means by which access is provided under this Agreement.

## **5. Availability, Maintenance, Technical Requirements, Security Measures**

5.1 De Gruyter shall use reasonable efforts to provide continuous service seven (7) days a week with an average of 98% up-time per month. The 2% down-time includes periodic unavailability due to maintenance of the server(s), the installation or testing of software, the loading of additional licensed materials as they become available, and downtime related to the failure of equipment or services outside the control of De Gruyter, including but not limited to public or private telecommunications services or internet nodes or facilities. De Gruyter shall use reasonable efforts to ensure that its servers have sufficient capacity and rate of connectivity to provide Participating Institutions and their Authorized Users with a quality of service comparable to current standards in the scholarly information provision industry in the US and Canada.

5.2 Scheduled downtime will be performed at a time to minimize inconvenience to Participating Institutions and their Authorized Users. De Gruyter shall notify Participating Institutions in a timely manner of all instances of system unavailability that occur outside the De Gruyter's normal maintenance window and use reasonable effort to provide advance notice of hardware or software changes that may affect system performance.

5.3 The Participating Institutions bear sole responsibility for their connection to the internet and the maintenance of such connection and for the requisite hardware and software for communicating with the servers from De Gruyter together with any additional telecommunication equipment. On request, De Gruyter will provide the Participating Institutions with details of the minimum standards required or desirable. Participating Institutions must provide adequate state-of-the-art protection from viruses and unauthorised access for their deployed systems.

5.4 If there are grounds to suspect that third parties have made unauthorised use of provided content, the Participating Institution is obliged to report this to De Gruyter without delay. Provided no blame is attached to De Gruyter, De Gruyter is not liable for any damage caused to the Participating Institution by misuse or loss of their access data (especially IP address or username/password).

- 5.5 In the event of any unauthorized use of the licensed contents by an Authorized User, the Participating Institution shall provide reasonable cooperation to De Gruyter in the investigation of any unauthorized use of the licensed content of which it is made aware if requested to do so by De Gruyter, and shall use reasonable efforts to remedy such unauthorized use and prevent its recurrence
- 5.6 To establish whether illicit use or misuse has occurred, De Gruyter is entitled to monitor access to the licensed eBooks and use of the platform.
- 5.7 De Gruyter may terminate such Authorized User's access to the licensed contents after first providing 60 days notice to the Participating Institution and cooperating with the Participating Institution to avoid recurrence of any unauthorized use. In the case of unauthorized use which in De Gruyter's judgment is causing serious material harm, De Gruyter may temporarily suspend an individual Authorized User's access to the licensed content (e.g., by blocking an individual user's IP address), provided that De Gruyter immediately notifies the Participating Institution of any such suspension, including the reason for the block and any supporting details. Such temporary suspensions will be of the shortest duration possible sufficient to terminate the alleged unauthorized activity and prevent its resumption. The privacy and confidentiality of Authorized Users will be protected.
- 5.8 A breach by LYRASIS or a Participating Institution shall be actionable only as a breach of contract, not as copyright infringement

## **6. Disruption of Service, Guarantee**

- 6.1 Disruptions to the availability of the service do not entitle the LYRASIS or Participating Institutions to terminate the agreement or claim compensation for damage or expense caused thereby if the disruptions are of a short temporary nature. If disruptions in service for a Participating Institution cannot be resolved within two (2) hours of a problem report, De Gruyter will respond in writing within 4 hours of the report describing measures that are being taken to restore access and the expected duration of the problem. Only if the disruptions exceed a tolerable extent to a considerable degree LYRASIS and the Participating Institutions are entitled to give extraordinary notice to terminate the agreement under Art. 10.1. In this case, Art. 7 applies for possible claims for compensation for damage or the reimbursement of expenses; all further rights are excluded.
- 6.2 LYRASIS and Participating Institutions are obliged to report any substantive or legal defects to De Gruyter in writing without delay, to give an exact description of any such defect and to provide all information and documentation required to remedy the defect. In the event of such defects, LYRASIS and Participating Institutions must first grant De Gruyter an appropriate time-period for fulfilling their obligations. LYRASIS and Participating Institutions are not entitled to require that unsubstantial substantive or legal defects be remedied.

## **7. Liability and Indemnification**

- 7.1 De Gruyter is only liable for compensation – regardless of the legal reason, especially as a result of failure to fulfil its obligations, of actions not permitted, of delay -
- (a) to the full extent in cases of intent and gross negligence on the part of De Gruyter, its representatives or agents;

(b) for typical and foreseeable damage in cases of simple negligence, if an essential obligation (known as a cardinal obligation) has been breached;

(c) to the full extent in the case of breach of guarantee.

De Gruyter bears no other liability. Cardinal obligations are all obligations the breach of which endangers performance of the purpose of the agreement, together with all obligations the fulfilment of which allows the contract to be performed and on the fulfilment of which LYRASIS and the Participating Institutions can regularly depend. The provisions above do not involve a shift in the burden of proof to LYRASIS or the Participating Institutions' disadvantage.

7.2 De Gruyter's liability for personal damage (injury to life, body, health) and its liability under the (German) Product Liability Law remain unaffected.

7.3 To the extent that De Gruyter's liability is excluded or limited, this also applies for the personal liability of De Gruyter's organs, representatives or agents.

7.4 De Gruyter will exercise the normal care and diligence customary for its field of activity to compile, process and present the contents made available via the respective platform in line with the current state of knowledge. Despite due care being exercised in collecting, processing, checking and correcting contents, errors cannot be excluded. As far as is compatible with product liability legislation, in particular with the (German) Product Liability Law, De Gruyter therefore assumes no guarantee or liability for the substantive accuracy or completeness of the contents and for damage incurred by the LYRASIS or the Authorized Users as a direct or indirect result of using the contents (in whole or in part) – except in the case of intent.

7.5 De Gruyter is not responsible for technical problems (e.g. line disruptions, power cuts and other problems in the internet and telecommunications infrastructures) or for other circumstances (e.g. war, strike, floods, restrictions imposed by the state) beyond De Gruyter's control.

7.6 De Gruyter warrants to LYRASIS and the Participating Institutions that the licensed content used according to the terms of this Agreement do not infringe the copyright or any other proprietary or intellectual property rights of any person. De Gruyter shall indemnify and hold LYRASIS and Participating Institutions harmless from and against any loss, damage, costs, liability and expenses (including reasonable legal and professional fees) arising out of any legal action taken against LYRASIS or Participating Institutions claiming actual or alleged infringement of such rights. This indemnity shall survive the termination of this Agreement for any reason, and shall not apply if LYRASIS or the Participating Institutions have amended the licensed content in any way not permitted by this License.

## **8. Assignment / Transfer**

8.1 LYRASIS and the Participating Institutions are not entitled to assign or transfer to third parties any rights or claims arising from this general licence agreement without the prior, expressly written consent of De Gruyter.

8.2 De Gruyter is not entitled to assign or transfer to third parties any and all claims or rights arising from this general license agreement without prior written consent of LYRASIS, such agreement not to be unreasonably withheld.

## **9. Relationship between the Parties**

9.1 This Agreement does not create any partnership, joint venture, and/or any similar relationship between the parties.

9.2 Furthermore, this Agreement does not create any kind of agency relationship between the parties and/or any authorizations/powers of attorney in favour of the respective other party.

## **10. Miscellaneous Provisions**

10.1 In the event De Gruyter, LYRASIS, or a Participating Institution commits a breach of the Agreement, the breaching party will be informed in writing and given 60 days to mend the breach. If the breach is not cured, the non-breaching party may terminate the Agreement on written notice, and, in the case of a Participating Institution as the non-breaching party, with a pro-rated discount appropriate to the amount of access and/or content that was not available.

10.2 De Gruyter processes data from LYRASIS and the Participating Institutions electronically. For this, legal data protection regulations will be observed.

10.3 Collection and analysis of data on the usage of the licensed content will assist De Gruyter, LYRASIS, and the Participating Institutions in understanding the impact of the licensed content. De Gruyter shall provide use data on a timely and regular basis in conformance with the Codes of Practice for Project COUNTER located at: [http://www.projectcounter.org/code\\_practice.html](http://www.projectcounter.org/code_practice.html). Participating Institutions have the right and opportunity to gather use and management data independently at local sites. Such usage data shall be compiled in a manner consistent with applicable privacy and data protection laws, and the anonymity of individual users and the confidentiality of their searches shall be fully protected.

10.4 The use of the licensed eBooks can involve the placing of cookies to check that access is authorised and to ensure smooth running of the service. If settings in the browser software used by the Participating Institutions or Authorized Users do not permit the use of cookies, registration and use of the service may not be possible or may be subjected to severe restrictions. In such cases, De Gruyter gives no guarantee.

10.5 The licensed eBooks contain links to third-party websites. De Gruyter cannot constantly check these sites or influence their contents. De Gruyter does not assume responsibility for these sites or for their technical quality or the quality of their contents.

10.6 De Gruyter shall comply with the Americans with Disabilities Act (ADA) guidelines for textual content by supporting assistive software or devices such as large print interfaces and alternate keyboard or pointer interfaces in a manner consistent with the Web Content Accessibility Guidelines published by the World Wide Web Consortium's Web Accessibility Initiative, which may be found at <http://www.w3.org/WAI/GL/#Publications>.

10.7 Neither party shall be liable in damages or have the right to terminate this Agreement for any delay or default in performing hereunder if such delay or default is caused by conditions beyond its control including, but not limited to Acts of God, Government restrictions (including the denial or cancellation of any export or other necessary license), wars, insurrections and/or any other cause beyond the reasonable control of the party whose performance is affected.

## **11. Concluding Conditions**

11.1 Modifications and supplementations to this contract must be made in writing. The same applies to the



contracting away of this written-form clause.

11.2 Should individual provisions of these conditions or of the licence agreement be or become null or void or if there is an omission in the agreement, the validity of the remaining provisions remains unaffected

Boston, DATE 10/31/12



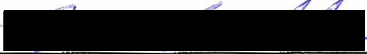
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