

Agreement concerning the use of electronic data, or data gained from digitising printed documents originating from publications

The following agreement is contracted between

the DIPF | Leibniz Institute for Research and Information in Education, Rostocker Straße 6, 60323 Frankfurt am Main,

legally represented by Executive Director Professor Dr. Kai Maaz

as follows

– DIPF –

and the

XY data provider

legally represented by its executive director,

as follows – XY –

Preamble

Following a public remit, the DIPF intends to provide open access to an electronic store of scholarly educational literature that is as comprehensive as possible and to enable information science research on the basis of educational literature. This task will be fulfilled by providing the German Education Index “FIS Bildung”, a search instrument, and the full text database pedocs: the XY data provider is familiar with both of these instruments regarding their scope and function. The DIPF coequally considers the interests of users and the interests of the holders of legal rights (authors, editors, publishers). Subject to a cooperation agreement, the DIPF moreover acts as a scholarly partner of the German National Library as regards the acquisition, administration and monitoring of long-term archiving for relevant electronic objects.

The XY data provider supports the DIPF in pursuing its objective by providing electronic data or printed publications that are digitised by the DIPF itself, or on behalf of the DIPF, and is confident that these data will be used pursuant to legal rights and the terms agreed here.

§ 1 Subject of this agreement

Subject to this agreement are the publications selected by the XY data provider; see the respective written correspondence and e-mails exchanged between XY data provider and DIPF. Pursuant to this agreement, publications refer to collected editions, monographs and journals. These publications will be delivered to the DIPF as printed documents, or in form of electronic data provided in PDF format, either completely or in terms of selected contributions from collected editions, unless expressly agreed otherwise. As far as selected contributions are provided by the data provider, the title and index of contents of the collected editions will be added as a prefix to an individual contribution. For documentation purposes, all of the

publications will receive a unified flyleaf. This flyleaf lists crucial bibliographic data as well as a reference to the XY data provider including the XY data provider trademark.

§ 2 Data use, digitalisation of printed documents

(1) The DIPF will use the data and printed documents provided by the XY data provider for the exclusive purpose of peDOCS. The XY data supplier permits DIPF to use the submitted data respectively the objects digitised by DIPF or its contractors for information scientific research that is based on full texts and for text and data mining purposes, and also allows transfer of the data to third parties in this regard. The XY data provider permits the DIPF to deliver the data, or the digitised copies produced by the DIPF itself or its subcontractors, to the German National Library for the purpose of long term storage. This may result in converting the data to a different format, and changing their layout. In any case, the contents of the electronic data delivered by the XY data provider will remain consistent. The obligation to deliver, which the XY data provider has to fulfil regarding the German National Library, remains unaffected.

2) In the case of digitising printed documents, either by the DIPF itself or its subcontractors, using scanning and OCR software, the XY data provider is informed that the DIPF cannot guarantee that the texts recognised by the OCR software are faultless, as results also depend on the quality of the printed master document. The original appearance remains intact in terms of an image file. The DIPF is committed to use scanning and OCR software that corresponds to state of the art technology.

(3) The DIPF will appropriately inform the users of its database as about intellectual property rights, and insist upon their observance.

(4) Each month, DIPF will deliver to XY data provider a statistical analysis concerning downloads of the relevant publications.

(5) The DIPF is in no way committed to integrating the documents into peDOCS.

§ 3 Data delivery and transfer

The XY delivers electronic data of the agreed publications, and if possible their electronic metadata, to the DIPF. In the given case, the XY data provider delivers the data in a format that has been previously agreed. As a rule, transfer of the publication data and the metadata will be carried out online, subject to the current state of technology, and with a minimum effort for both parties. The parties will come to an agreement as to technology applied in due course.

§ 4 Financing expenses

Each of the parties are responsible for financing the expenses and preparing the data respectively as well as their integration in the databases. A compensation of expenses is not intended.

§ 5 Rights

The DIPF does not acquire any rights to the publications or data beyond the rights of use outlined in the preamble and in § 2.

§ 6 Limitations of data use

The XY data provider can demand the DIPF to block data from individual publications immediately if the respective author claims her or his right pursuant to § 42 UrhG (right to recall a publication for reasons of a change in opinion or violation of his/her own rights, the rights of third parties), or if the rights held by the XY data provider are otherwise restricted or waived.

§ 7 Termination of data delivery and notice of agreement

- (1) Both of the parties can give notice of this agreement without reason, subject to three months' notification and by the end of the month. Use of the data delivered up to that date, and pertinent obligations of the DIPF, remain unaffected.
- (2) Given important reasons, both parties can terminate this agreement without previous notice, in particular in case of violations concerning the terms outlined in § 2, reserving the right to claim compensation.

§ 8 Other conditions

- (1) In case of a conflict resulting from this agreement, or relating to this agreement, both of the parties commit themselves to conducting a process of mediation, to be carried out by the office for settling commercial disputes at the chamber of trade and industry, prior to filing a claim at an official court of justice. This condition applies irrespective of the legal status of the DIPF.
- (2) There are no oral further agreements to this contract. Supplementary agreements or alterations will only become effective in written form, and must be signed by both parties. This formal requirement can only be waived in written form.
- (3) Should a term outlined in this contract be ineffective or lose effectiveness at a later point in time, the remainder of the contract will not be affected. In such a case, the contracting partners will seek replacement of the ineffective term by a legally effective one with very similar meaning. Any gaps in the contract shall be subject to interpretation, relating to terms honest contracting partners would have sought if they had been aware of a need to find an agreement covering the respective terms.
- (4) The law of the Federal Republic of Germany is applicable with the exception of conflict rules outlined in international private law regulations and the UN Convention on Contracts for the International Sale of Goods.
- (5) This agreement is delivered in two copies. Each of the parties concerned has received one signed copy.

Frankfurt am Main, den _____

XY, den _____

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DIPF

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XY data provider