

TERMS OF AGREEMENT

“Global Press Archive CRL Charter Alliance”

Pursuant to the Agreement (“Agreement”) signed **29 January 2019** (the “Effective Date”) between the Center for Research Libraries (“CRL”) and East View Information Services, Inc. (“EVIS”), the parties agreed to the following Terms of Agreement¹ on behalf of CRL Member Institutions and Participating Non-Member Institutions (“Participants”) as listed in Schedule 1.

1. GRANT OF LICENSE

1.1. Nature of Materials. The materials that are the subject of the Agreement are set forth in Schedule 2 (the “Licensed Materials”).

1.2. Grant of License. EVIS grants to Participants non-exclusive and non-transferable access to and use of the Licensed Materials, and the right to provide the Licensed Materials to Authorized Users (which are defined in Section 3, below) in accordance with the Agreement’s terms and conditions.

1.3 Ownership of Intellectual Property. Nothing in the Agreement shall be interpreted to transfer ownership of any copyright, trademarks or service marks from EVIS or its suppliers to Participants or Authorized Users.

2. FEES

2.1 Fees and Payment. CRL shall pay EVIS for the Licensed Materials pursuant to the terms set forth in Schedule 3, which is attached hereto.

3. AUTHORIZED USERS AND USES

3.1 Authorized Users. EVIS and CRL define “Authorized Users” as the following:

Persons Affiliated with Participant. Full and part time students and employees (including faculty, staff, affiliated researchers and independent contractors) and other valid ID holders of Participant and its member institutions, regardless of the physical location of such persons.

¹ The Terms of Agreement are adapted from the LIBLICENSE Model License Agreement (Revised November 2014), available at <http://liblicense.crl.edu/licensing-information/model-license/> (Accessed 29 January, 2019).

Walk-ins. Patrons, not affiliated with Licensee, who are physically present at Licensee's site(s) ("walk-ins").

3.2 Authorized Uses. Licensee and Authorized Users may make all use of the Licensed Materials as is consistent with the United States Copyright Act of 1976, as amended (17 U.S.C. §101, et seq.) including all limitations on and exceptions to the exclusive rights as provided therein.

Participant and Authorized Users may access or use the Licensed Materials for the following purposes:

a. *Usage Rights.* Participant and Authorized Users may electronically display, download, digitally copy, and print a reasonable portion of the Licensed Materials. Participant may charge a reasonable fee to recover costs of copying or printing portions of Licensed Materials for Authorized Users.

b. *Interlibrary Loan.* Participant may fulfill requests from other libraries, a practice commonly called Interlibrary Loan. Participant agrees to fulfill such requests in accordance with Sections 107 and 108 of the U.S. Copyright Act or equivalent legislation in Participant's country of origin. Requests may be fulfilled using electronic, paper, or intermediated means.

c. *Course Reserves.* Participant and Authorized Users may use the Licensed Materials for print and electronic reserve readings in connection with specific courses of instruction offered by Participant.

d. *Coursepacks.* Participant and Authorized Users may use a reasonable portion of the Licensed Materials in the preparation of coursepacks or other educational materials.

e. *Electronic Links.* Participant and Authorized Users may provide hyperlinks from Participant's and Authorized Users' web page(s), web site(s), and course management systems to individual units of content within the Licensed Materials.

f. *Education, Teaching and Research.* Participant and Authorized Users may extract and use excerpts from the Licensed Materials for academic research, scholarship, and other educational purposes, including extraction and manipulation for the purpose of illustration, explanation, example, comment, criticism, teaching, research, and analysis.

g. *Scholarly Sharing.* Authorized Users may transmit to a third party colleague, in paper or electronically, reasonable amounts of the Licensed Materials for personal, scholarly, educational, scientific, or research uses, but in no case for resale.

h. *Scholarly Citation.* Authorized Users may use, with appropriate credit, figures, tables, and brief excerpts from the Licensed Materials in the Authorized User's own scientific, scholarly, and educational Works.

i. *Bibliographic Citations*. For the avoidance of doubt, Participant and Authorized Users may use citation and abstract information in faculty profiling systems, in lists of publications on faculty and institutional web pages, and to create bibliographies.

j. *Caching*. Participant and Authorized Users may make such local digital copies of the Licensed Materials as are necessary to ensure efficient use by Authorized Users' appropriate browsers or other software. For the avoidance of doubt, the cached copy is not a derivative work.

k. *Text and Data Mining*. CRL will have the unrestricted right to employ the digital files of the deliverables for Non-Consumptive Use (meaning the performance of mass computational analysis of the Licensed Materials using computer-aided methodologies that do not require the reading or of the intellectual content of the material by a human user). Authorized Users may use the Licensed Materials to perform and engage in text and/or data mining activities for academic research, scholarship, and other educational purposes, utilize and share the results of text and/or data mining in their scholarly work, and make the results available for use by others, so long as the purpose is not to create a product for use by third parties that would substitute for the Licensed Materials. CRL will cooperate with Participant and Authorized Users as reasonably necessary in making the Licensed Materials available for such use. Such services may involve additional consideration or fees for preparing and delivering such copies on a time and materials basis.

3.3 No Diminution of Rights. Nothing in the Agreement, including but not limited to Section 3.2, shall be interpreted to diminish the rights and privileges of Participant or Authorized Users with respect to any of the Licensed Materials, including exceptions or limitations to the exclusive rights of copyright owners, such as fair use, under Section 107 of the U.S. Copyright Act or equivalent legislation in Participant's country of origin. In the event that any content included in the Licensed Materials is in the public domain or has been issued under a Creative Commons or other open license, EVIS shall not place access, use or other restrictions on that content beyond those found in the open license, where applicable.

4. DELIVERY AND ACCESS

4.1 Delivery. EVIS will provide or otherwise make available the Licensed Materials to Participant through telecommunications, network, or web-based connections between one or more of EVIS's physical, online, or virtual locations, and one or more of Participant's authorized physical, online, or virtual locations. EVIS will use reasonable efforts to ensure that the Licensed Materials are accessible and inter-operable with prevailing web browsers and internet access tools, including, at a minimum, the most recent two major versions (current version and one version prior) and all the associated releases for those versions.

4.2 Access and Authentication. EVIS will provide Participant and its Authorized Users with access to the Licensed Materials via IP address authentication. EVIS will use reasonable efforts to provide authentication methods that conform to current industry standards, and will cooperate with Participants in the implementation of new authentication protocols and procedures as they are developed during the term of the Agreement.

EVIS shall provide to CRL a complete set of all digital files of Licensed Materials to be maintained as a backup copy. CRL may present the digital files of Licensed Materials to Participant on its own platform, provided that access is maintained in accordance with the terms of the Agreement.

4.3 Restrictions. EVIS and Participants agree to the following use and access restrictions on the Licensed Materials.

a. *Unauthorized Use.* Except as specifically provided elsewhere in the Agreement, Participants shall not knowingly or intentionally permit anyone other than Authorized Users to use the Licensed Materials.

b. *Modification of Licensed Materials.* Participants shall not modify or create a derivative work of the Licensed Materials without EVIS's express, prior, and written permission, unless the Licensed Materials have been made available under an open license that allows modification and creation of derivative works, are in the public domain, or as provided for elsewhere in the Agreement.

c. *Removal of Copyright or Trademark Notice.* Participants may not remove, obscure or modify any valid copyright or trademark notices included in the Licensed Materials.

d. *Commercial Purposes.* Other than as specifically permitted in the Agreement, Participants may not use the Licensed Materials for commercial purposes. This restriction expressly prohibits Participants from selling Licensed Materials. For the avoidance of doubt, research conducted by Participants and Authorized Users that is supported by a commercial entity shall not be considered use for commercial purposes.

5. PERFORMANCE OBLIGATIONS

5.1 EVIS Performance Obligations. EVIS will use reasonable efforts to ensure that its performance will meet or exceed industry standards and practices. Additionally, EVIS agrees to the following performance standards.

a. *Availability of Licensed Materials.* EVIS will make the Licensed Materials available to Participants and Authorized Users within an agreed upon timeline of production and release, detailed in Schedule 2 of the Agreement.

b. *Discovery of Licensed Materials.* EVIS grants the use of deliverables agreed upon in the Agreement to make the Licensed Materials available through Participants' Discovery Service System(s) for indexing and discovery purposes. EVIS shall provide to CRL metadata to distribute to Participants's discovery service vendors on an ongoing basis the citation and complete descriptive metadata (including all subject headings, abstracts, and keywords), and full-text content necessary to facilitate optimal discovery and accessibility of the content for the benefit of Participants and Authorized Users. Discovery Service Systems are defined as user interface and search systems for discovering and displaying content from local, database and web-based sources.

c. *Persistent Linking.* EVIS will comply with the most current version of the OpenURL standard ([ANSI/NISO Z39.88](#)),² and will provide a mechanism for persistent links to content.

d. *Online Terms and Conditions.* In the event that EVIS requires Authorized Users to agree to additional terms relating to the use of the Licensed Materials (commonly referred to as "click-through" or "clickwrap" licenses), or otherwise attempts to impose terms on Authorized Users through online terms and conditions invoked by the mere use or viewing of the Licensed Materials, such terms shall not materially differ from the provisions of the Agreement. In the event of any conflict between the click-through terms or online terms and conditions and the Agreement, the terms of the Agreement shall prevail. For the avoidance of doubt, Authorized Users are not a party to the Agreement.

e. *Disabilities Compliance.* EVIS shall comply with the Americans with Disabilities Act (ADA), by supporting assistive software or devices such as large print interfaces, text-to-speech output, voice-activated input, refreshable braille displays, and alternate keyboard or pointer interfaces, in a manner consistent with the [Web Accessibility Initiative Web Content Accessibility Guidelines](#).³ EVIS shall provide to Participants a current completed [Voluntary Product Accessibility Template](#) (VPAT)⁴ to demonstrate compliance with the federal Section 508 standards. If the product does not comply, Participants has the right to adapt the Licensed Materials in order to comply with federal and state law.

f. *Documentation.* EVIS will provide full, complete, and up-to-date help and operational documentation for Participants and Authorized Users in an electronic format. Additionally, EVIS will make this documentation available in a manner that does not require Authorized Users to log in, use, or otherwise access the Licensed Materials.

² http://www.niso.org/apps/group_public/project/details.php?project_id=82

³ <http://www.w3.org/WAI/guid-tech.html>

⁴ <http://go.usa.gov/UjFA>

g. *Support.* EVIS will provide activation and installation support, including assisting Participants and Authorized Users with the implementation of any EVIS software. EVIS will offer reasonable levels of continuing support to assist Participants and Authorized Users in use of the Licensed Materials. EVIS will make its personnel available by email and/or phone during EVIS's regular business hours, Monday–Friday, for feedback, problem-solving, or general questions and will respond in a timely manner.

h. *Updates.* EVIS will provide regular system and project updates to Participants as they become available.

i. *Quality of Service.* EVIS shall use reasonable efforts to provide continuous availability of the Licensed Materials through the Internet. In the event of a planned interruption, EVIS notify participating institutions a minimum of 2 days in advance. It is understood that availability will be subject to periodic interruption due to maintenance of the server(s), installation or testing of software, the loading of new information files, and downtime related to equipment or services outside the control of EVIS, including public and private telecommunications services and Internet nodes or facilities. EVIS shall use reasonable efforts to restore access to the Licensed Materials as soon as possible in the event of an interruption or suspension of the service.

j. *Withdrawal of Licensed Materials.* EVIS reserves the right to withdraw from the Licensed Materials any item or part of an item for which it no longer retains the right to publish, or which it has reasonable grounds to believe infringes copyright or is defamatory, obscene, unlawful or otherwise objectionable. EVIS shall give written notice of the withdrawal to Participants as soon as is practicable, but in no event less than thirty (30) days in advance of withdrawal, specifying the item or items to be withdrawn.

If any such withdrawal renders the Licensed Materials less useful to Participants or its Authorized Users, EVIS shall replace the withdrawn Licensed Material with content of similar value agreed to with CRL.

k. *Usage Statistics.* EVIS shall make available to Participants monthly usage statistics for the Licensed Materials consistent with usage statistics provided for other EVIS Global Press Archive products. Usage statistics will only be provided for CRL-Wide collections with no usage statistics required for Open Access collections.

EVIS shall not provide Participants's usage statistics in any form to any third party without Participant's written authorization, unless the third party owns rights in the Licensed Materials. In all cases, the disclosure of such data shall fully protect the anonymity of individual users and the confidentiality of their searches, and will comply with all applicable privacy laws. EVIS shall not disclose or sell to other parties usage data or information about Participants or its Authorized Users without Participant's express written permission or as required by law.

5.2 Participant Performance Obligations. Participant agrees to the following performance standards.

a. *License Terms Notice.* Participant will use reasonable efforts to provide Authorized Users with appropriate notice of the terms and conditions under which access to the Licensed Materials is granted under the Agreement.

b. *Protection from Unauthorized Use.* Participant will use reasonable efforts to restrict access to the Licensed Materials to Authorized Users.

c. *Maintaining Confidentiality of Access Passwords.* Where access to the Licensed Materials is to be controlled by use of passwords, Participant will use reasonable efforts to inform Authorized Users that they should not divulge their numbers and passwords to any third party. Participant will also use reasonable efforts to maintain the confidentiality of any institutional passwords provided by EVIS.

5.3. Mutual Performance Obligations. In addition to their respective, specific performance obligations, EVIS and Participants agree to be bound by the following performance standards.

a. *Notification of Unauthorized Use.* In the event Participant has notice of an unauthorized use of the Licensed Materials and cannot promptly remedy it, Participant shall immediately notify EVIS.

In the event EVIS has notice of unauthorized use of the Licensed Materials, EVIS will immediately notify Participant, and Participant will cooperate with EVIS to address the unauthorized use and avoid a recurrence.

Any unauthorized use that is considered a breach of obligations under the Agreement shall be subject to Section 6.2, below, including the cure period.

6. TERM, RENEWAL AND TERMINATION

6.1 Agreement Term. The Agreement shall be in effect from the Effective Date until January 31, 2022 unless one of the parties communicates in writing to the other the desire to terminate the agreement.

6.2 Termination for Breach. The Agreement may be terminated forthwith by either party if the other party shall breach any term or covenant of the Agreement, and such breach remains uncured for 90 days after written notice thereof from the non-breaching party detailing such breach by the breaching party.

6.3 Rights and Obligations upon Termination or Expiration. In the event of termination for any reason, EVIS return the balance of unspent funds allocated for future collections that will not be delivered. EVIS shall be released of any remaining unfulfilled obligations under the Agreement. CRL will be given the option to continue

accessing Licensed Material delivered under the Agreement via the GPA Platform contingent upon payment of maintenance fees to EVIS. In any event CRL shall perpetually have the right to access the delivered content via its own servers.

7. DISPUTE RESOLUTION

7.1 Dispute Resolution. In the event of any dispute or controversy arising out of or relating to the Agreement, the parties agree to exercise their best efforts to resolve the dispute as soon as possible. The parties shall, without delay, continue to perform their respective obligations under the Agreement that are not affected by the dispute.

8. WARRANTIES AND INDEMNIFICATION

8.1 Warranties. EVIS warrants it has all necessary legal and equitable rights, permissions, and clearances to license the Licensed Materials to Participants for the purposes outlined in the Agreement, and that use of the Licensed Materials by Authorized Users in accordance with the terms of the Agreement shall not infringe the copyright or other rights of any third party.

8.3 Indemnities. EVIS shall indemnify and hold harmless CRL, Participants and any Authorized Users from and against any and all losses, liabilities, lawsuits, claims, actions, expenses, costs, judgments or other damages of any nature (including reasonable attorney's fees), arising out of or incidental to any alleged breach of EVIS's representations and warranties made under the Agreement. This indemnity shall survive the termination of the Agreement.

SCHEDULE 1: Participating Institutions

A schedule dated **29 January 2019** to the Agreement entered into on **29 January 2019** between **CRL** and **East View Information Services**.

Access to GPA CRL Charter Alliance collections planned for release under the Agreement will be extended to all CRL Member Institutions and those non-CRL institutions investing in the GPA CRL Charter Alliance under the terms of the Agreement ("Participants").

CRL Member Institutions

A list of current CRL Member Institutions is maintained at

<https://www.crl.edu/membership/members>.

CRL will send EVIS IP-ranges of any new CRL Member Institutions to authenticate user access.

In the event a CRL Member Institution discontinues membership in CRL, access to CRL-Wide collections via EVIS shall be discontinued, with the exception of institutions that contributed financially to support the digitization of GPA CRL Charter Alliance collections ("Supporting Institutions"). A list of Supporting Institutions is maintained on CRL's Offer page for the GPA CRL Charter Alliance.

In the event a Supporting Institution discontinues membership in CRL, that institution shall be treated as a Participating Non-Member Institution (below).

Participating Non-Member Institutions

Non-Member institutions that contribute financially to support the digitization of GPA CRL Charter Alliance collections shall receive access to CRL-Wide collections via the GPA Platform hosted by EVIS. CRL will notify EVIS of any new Participating Non-Member Institutions at the time of commitment from those institutions. CRL will send EVIS IP-ranges for those institutions at time of payment to authenticate user access.

In the event of termination of the Agreement for any reason, EVIS retains the right to charge Participating Non-Member Institutions an annual maintenance fee per CRL-Wide collection, subject to annual increases of no more than 3% per year.

Schedule 2: LICENSED MATERIALS

A schedule dated **29 January 2019** to the Agreement entered into on **29 January 2019** between **CRL** and **East View Information Services**.

During the performance period of the Agreement, EVIS will create and deliver to CRL nine collections of Digitized Newspapers content (totaling approximately 4,500,000 pages of Digitized Newspaper content) in exchange for scheduled amounts of financial support from CRL. The collections delivered to CRL under the GPA CRL Charter Alliance will be a mix of Open Access Collections and Licensed (CRL-Wide) Collections.

Open Access Collections: GPA CRL Charter Alliance collections planned for release under the Agreement for which access will not be restricted, and anyone may freely access.

- In Year 1, EVIS will deliver two 'Open Access' products totaling 1MM pp. of e-content.
- In Year 2, EVIS will deliver another two 'Open Access' products totaling 1MM pp. of e-content.
- In Year 3, EVIS will deliver another two 'Open Access' products totaling 1MM pp. of e-content.

CRL-Wide Collections: GPA CRL Charter Alliance collections planned for release under the Agreement for which access will be extended to all CRL member institutions and those non-CRL institutions investing in the GPA CRL Charter Alliance under the terms of the Agreement

- In Year 2, East View will deliver one CRL-wide digital newspaper collection totaling 500,000 pp. of e-content.
- In Year 2, East View will deliver another one CRL-wide digital newspaper collection totaling 1MM pp. of e-content.

Additional Considerations: For the duration of the Agreement, current CRL member institutions will also receive discount terms for purchase of other GPA collections or services that EVIS produces or represents outside of the Charter Alliance collections, including digital conversion and hosting services offered by EVIS under the GPA program with a discount of no less than 25% and no more than 35% from list price. GPA collections outside of the Charter Alliance collections are not considered part of the Agreement.

SCHEDULE 3: FEES AND PAYMENT

A schedule dated **29 January 2019** to the Agreement entered into on **29 January 2019** between **CRL** and **East View Information Services**.

TOTAL FEE: \$4,250,000

TERM COVERED BY PAYMENT: February 1, 2019 – January 31, 2022

PAYMENT SCHEDULE:

Year 1 (2019-2020): \$ 750,000, payable March 2019

Year 2 (2020-2021): \$1,500,000, payable March 2020

Year 3 (2021-2022): \$2,000,000, payable March 2021