NUTZUNGSBEDINGUNGEN NATIONAL DIGITAL BACK FILE ARCHIVE LICENCE AGREEMENT

Mary Ann Liebert Ltd. -Nationallizenz aus März 2009

[...]

§ 1 Definitions

1. In this Licence, the following terms shall have the following meanings:

a. Institutions: higher and further education and research institution in Germany, including any types of such German institution abroad, and all to be specified in scheduled 1.

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.

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 the sale, resale, loan, transfer, hire or other form of exploitation of the licensed material or clearly defined material parts of it can be clearly allocated to a particular subject area, the DFG special collection field library for the relevant subject area. For the avoidance of doubt, neither recovery of direct cost by the Institution from Authorised Users, nor use by the Institution or Authorised Users of the licensed material in the course of research funded by a commercial organisation is deemed to constitute Commercial Use.

The use of metadata by commercial search machines does not constitute commercial use as long as that metadata is not sold, lent, distributed or otherwise re-licensed via that search machine or the access to that metadata on that search machine is exclusively being charged for.

d. Delivery Date: means the date of delivery of the licensed material which shall be 30th of September 2009 or such later date that the Licensee shall request the licensed material to be delivered on.

e. Educational Purposes: the use for the purpose of education, teaching, distance learning, private study and/or research.

f. [...]

g. [...]

h. Intellectual Property Rightspatents, trademarks, trade names, design rights, copyright (including rights in computer software and moral rights), database rights, rights in know-how 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.

i. [...]

j. Metadata: Bibliographic data and abstracts from the licensed material.

k. Secure Authentication: access to the licensed material by Shibboleth compliant technology, Internet Protocol ("IP") ranges or by a username and password provided by the Institution or by another means of comparable future developments of authentication agreed between the Publisher and the Institution.

l. Repository: an online locus for collecting, preserving, and disseminating the learning and teaching material of the Licensee and the Institutions.

m. Secure Network: a network which is only accessible to Authorised Users by Secure Authentication.

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 Publisher 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 Authorised Users to access and use the licensed material hosted on the Publisher's server via Secure Network.

2. The Publisher hereby grants to the Licensee, subject to and in accordance with the terms of this Licence Agreement, a non-exclusive perpetual licence to host the licensed materials on Licensee's Local Hosting Server or on the server of a third party, allow the Institutions to communicate the licensed material via Secure Network to Authorised Users, to allow Authorised Users to access and use the licensed material via Secure Authentication.

3. The Publisher hereby grants to the Licensee, subject to and in accordance with the terms of this Licence Agreement, a non-exclusive perpetual 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 machines of the Institutions and third parties.

4. [...]

§ 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 integrated access and an integrated article author, article title and keyword index to the licensed material and all other similar material licensed from other publishers;

c. 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 copyright owner. Course packs in non-electronic

non-print perceptible form, such as Braille, may also be offered to Authorised Users;

- 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, listing title and copyright owner;

- Supply to an authorised user of another library (whether by post, fax or secure electronic transmission, using Ariel or its equivalent, whereby the electronic file is deleted immediately after printing) a single paper copy of an electronic original of an individual document;

- Provide single printed or electronic copies of single articles at the request of other individual Authorised Users;

- 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, or workshop, or other such similar activity;

- Make such copies of training material and network such training material as may be required for the purpose of using the licensed material in accordance with this Licence Agreement;

- Deposit in perpetuity the learning and teaching objects as referred to in Clause 3.1.a bullet point 4 in Repositories operated by the Institution. The access and use of such learning and teaching objects shall be governed by the terms and conditions of the applicable repository;

- Save and/or deposit in perpetuity the licensed material in Repositories operated by the Institution and/or by an Authorised User. The use of such Repositories shall be limited to Authorised Users and funding bodies;

- Save and/or deposit in perpetuity parts of the licensed material of which they are the authors on any network including networks open to the public and to communicate to the public such parts via any electronic network, including without limitation the Internet and the World Wide Web, and any other distribution medium now in existence or hereinafter created.

2. This Licence shall be deemed to complement and extend the rights of Licensee, the Institutions and Authorised Users under the German Copyright Law and other applicable legislation in Germany and nothing in this Licence Agreement shall constitute a waiver of any statutory rights held by the Institutions and Authorised Users from time to time under these Legislations or any amending legislation.

§ 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 Publisher to do so;

b. Remove, obscure or modify copyright notices, text 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 in this Licence Agreement;

e. Use all or any part of the licensed material for any Commercial Use or for any purpose other than Educational Purposes.

This Clause shall survive termination of this Licence Agreement for any reason.

§ 5 Responsibilities of the publisher

The Publisher agrees to:

a. Make the licensed material available to the Licensee's Local Hosting Server or on the server of a third party, the Institutions and Authorised Users and supply the Metadata and tables of content for storing on the Licensee's server in machine-readable form at the Delivery Date;

b. Supply without charge archival copies via ftp protocol and/or physical form of the licensed material at the Delivery Date;>

c. Use all reasonable endeavours to 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;

d. Use all reasonable endeavours to 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;

e. Provide electronic product documentation to the Licensee free of charge. The Publisher 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 is included;

Use all best efforts to provide and catalogue correct records and to provide the Licensee with updated catalogue records from time to time.

§ 6 Responsibilities of the Licensee

1. The Licensee agrees 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. Provide lists of valid IP addresses to the Publisher and update those lists on a regular basis, the frequency of which will be agreed by the parties from time to time;

c. 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;

d. Use all reasonable efforts to ensure that all Institutions and Authorised Users are made aware of and undertake to abide by the terms of this Licence Agreement;

e. Use all reasonable efforts to monitor compliance with the terms of this Licence Agreement and notify the Publisher and provide full particulars 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);

- Or 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 further agrees promptly to fully investigate and initiate disciplinary procedures in accordance with the Institution's standard practice and use all reasonable effort to ensure that such activity ceases and to prevent any recurrence.

2. The Licensee undertakes to the Publisher that the computer system through which the licensed material will be used is configured, and procedures are in place, to prohibit access to the licensed material by any person other than an Authorised User, that it shall inform the Authorised Users about the conditions of use of the licensed material, and that during the term of this Licence Agreement, the Licensee will make best efforts to bar non-permitted access and to convey appropriate use information to its Authorised Users.

§ 7 Licence Fee

[...]

§ 8 Term and termination

1. This Licence Agreement shall commence on upon the date of signature the Effective Date and will remain in full force and effect in perpetuity.

2. In the event that ownership of a part or parts of the licensed material is sold by the Publisher or otherwise transferred to another publisher, the Publisher will supply such material free of charge to the Institution. In addition, the Publisher will use all reasonable efforts to retain a non-exclusive copy of the volumes published and make them available free of charge through the Publisher's server.

3. In the event that the Publishers 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 Publisher's server or via a third party server and by supplying such material free of charge to the Institution.

4. The archival copies supplied by Publisher will contain all textual content of the licensed material but may not contain all links and other features and functionality associated with the online version available via the Publisher's server. Access and use of such copies will not attract a fee charged by the Publisher.

§ 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 Publisher or duly licensed to the Publisher 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 Publisher hereby acknowledges that any database rights created by the Licensee or the Institutions as a result of local mounting of the licensed material as referred to in Clause 8.7 shall be the property of the Licensee or the Institution.

§ 10 Representation, warranties and indemnification

1. The Publisher warrants to the Licensee that the licensed material and all Intellectual Property Rights therein are owned by or licensed to the Publisher 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. The Publisher agrees that the Licensee shall have no liability and the Publisher will indemnify, defend and hold the Licensee harmless against any and all damages, liabilities, claims, causes of action, legal fees and costs incurred by the Licensee 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 Users 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 provides the Publisher with prompt notice of any such claim or threat of claim;

- The Licensee co-operates fully with the Publisher in the defence or settlement of such claim; and

- The Publisher has sole and complete control over the defence or settlement of such claim.

2. While the Publisher has no reason to believe that there are any inaccuracies or defects in the information contained in the licensed material, the Publisher 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 Publisher 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.

3. In no circumstances will the Publisher be liable to the Licensee for any loss resulting from a cause over which the Publisher 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.

4. The Licensee agrees to notify the Publisher immediately, provide full particulars in the event that it becomes 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 Publisher in such claims. It is expressly agreed that upon such notification, or if the Publisher becomes aware of such a claim from other sources, the Publisher may remove such work(s) from the licensed material. Failure to report knowledge of any actual or threatened claim by any third party shall be deemed a material breach of this Licence Agreement.

5. Nothing in this Licence Agreement shall make the Licensee or an Institution 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.

6. Save as provided for in Clause 10.1, neither the Licensee nor the Publisher will 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.

7. No party limits its liability for

- Death or personal injury to the extent it results from its negligence, or of its employees or agents in the course of their engagement; and

- Its own fraud or that of its employees or agents in the course of their engagement.

§ 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, and 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.

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