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## NUTZUNGSBEDINGUNGEN

### NATIONAL DIGITAL BACK FILE ARCHIVE LICENCE AGREEMENT

#### **Informa Healthcare Digital Archive 1896-2008**

[...]

#### **§ 1 Definitions**

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

a. **Institutions:** higher education institutions financed either by public or private funding; national, regional and state libraries; academic specialist libraries mainly financed by public funding; research institutions mainly financed by public funding; governmental institutions; including any of such mentioned types of German institutions abroad.

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

f. [...]

g. [...]

h. **Intellectual Property Rights:** patents, 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 on the Publisher's hosting service site by 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 Provided by the Publisher's hosting service.

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.

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[...]

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- 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;

2. This Licence shall be deemed to complement and extend the rights of Licensee, the Institutions and Authorised Users under United States Copyright Law and other applicable legislation in the United States 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.

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

[...]

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- 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.

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4. 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.

5. 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.

6. 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.

7. 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.

8. 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.

[...]