Lizenzvertrag

zwischen

Johann Wolfgang Goethe-Universität Universitätsbibliothek Johann Christian Senckenberg Bockenheimer Landstrasse 134-138 60325 Frankfurt a.M.

und

Ovid Technologies GmbH Georgenstr. 23 D-10117 Berlin

über

Nationallizenz Deutschland für "Zooloical Record Archive 1864 - 2006"

Online License Agreement

This Agreement is by and between Wolters Kluwer Health Medical Research Ltd a United Kingdom company having offices at 250 Waterloo Rd., London SE1 8RD, UK (hereinafter referred to as "Ovid"), and Universitätsbibliothek Johann Christian Senckenberg, Frankfurt a.M., Germany, the organization that orders and will pay the fee for access to one or more Products (hereinafter referred to as "Subscriber").

WHEREAS Ovid Technologies Inc, a Delaware corporation (Ovid Inc), is the producer and owner of certain application software (the "Software") enabling the search and retrieval of data from certain databases, full text journals and books, which are licensed or assigned to Ovid Inc or its affiliates under separate agreements between Ovid Inc and certain information providers (the "Content"; collectively with the Software, hereinafter referred to as the "Products") and Ovid Inc has granted to Ovid and Licensed Distributor the right to market and distribute the Products.

This license agreement provides for use by Subscriber and its Authorized Users of the Products, as defined below, through Ovid Inc.’s remote database access service for a fixed fee payable to Ovid or a 'Licensed Distributor', subject to the terms and conditions set forth in this agreement (the "Agreement")

1. DEFINITIONS.

Authorized Site(s) means a Subscriber site composed of (i) single or multiple institutions, (ii) single or multiple geographic locations or (iii) a combination of the aforementioned for which Subscriber requests designation by Ovid as sites authorized to access the Products.

1.1. Authorized Users mean their students, faculty and staff if Subscriber is an academic institution; and patrons of Subscriber, if Subscriber is a public library offering access to the Products. For purposes of this Agreement, any institutions, associations or organizations related or affiliated with Subscriber will not be deemed "Authorized Users" without Ovidls express consent.

1.2. Permitted Use means use of the Product(s) by Authorized Users only for internal or personal research or training therein. Authorized Users may (i) view the content and data contained therein on terminals, (ii) print data obtained from searches and make limited copies of such printed search results and (iii)
download data obtained from searches. The Permitted Use expressly precludes (i) copying, duplication, redistribution, retransmission, publication, transfer or commercial or other exploitation of the Product(s), in whole or in part, where such acts are contrary to the Permitted Use; (ii) preparation of derivative works or incorporation of the Products, in whole or in part, in any other work or system; (iii) reverse engineering, decompiling or modification of the Products, in whole or in part; and (iv) uploading, downloading, copying or redistributing the content in their entirety or lengthy sequence

2. USE OF THE PRODUCTS.

2.1 Ovid hereby grants to Subscriber the non-transferable, nonexclusive limited right to gain computerized access using the Software to the Product(s), subject to the terms and conditions of this Agreement. Authorized Users will use the Product(s) only in accordance with the Permitted Use.

2.2. Ovid will issue Subscriber one or more identification password(s), such number to be determined at Ovid's discretion, to gain access to the Products during Ovid's scheduled hours of service or will grant access through IP-checking. Where applicable, Subscriber agrees that the identification password(s) is valid only in the country in which it is issued and may be restricted from accessing certain data on the Products. Ovid reserves the right, at its sole discretion, to alter or change Subscriber's identification password(s) as circumstances may warrant.

3. PROPRIETARY RIGHTS AND USE RESTRICTIONS FOR THE PRODUCT(S).

3.1 The Software is produced and owned by Ovid; the content is licensed to Ovid under separate agreements between Ovid and certain information providers (the Information Providers) and are proprietary to such Information Providers. No provision of this Agreement conveys any ownership interest in or to the Products, in whole or in part. Title, as well as applicable copyrights, patents, trademarks, trade secrets or other intellectual property rights in and to the materials in the Products are, and remain the property of Ovid, Information Providers or individual copyright claimants, as applicable. The content of the database is licensed on perpetuity to the subscriber at the defined one off payment. No future payments of data fees, platform fees, etc. will be asked from the subscriber. The subscriber is entitled to host the database locally if requested

3.2 No rights to use the Product(s) are conveyed to the Authorized Users except as permitted by this Agreement and, if applicable, pursuant to the User guidelines produced by the Information Providers, as made available by Ovid, from time to time, in electronic or print form.

3.3 Some materials in the Product(s) are from copyrighted publications of the respective copyright claimants. Authorized Users are referred to the publication data appearing in the bibliographic citations, as well as copyright notices appearing in the original publication. Authorized Users are advised that consultation with legal counsel regarding copyright laws prior to the use of certain material contained in the Product(s) may be appropriate.

4. SUBSCRIBER’S OBLIGATIONS. Subscriber agrees to the following:

4.1 to be responsible for installation, costs and maintenance of a communications link and equipment;

4.2 to be responsible for communication costs incurred by any Authorized User connecting to the Product with a valid password;

4.3 to be responsible for the confidentiality and security of the identification password(s) issued to Subscriber by Ovid. Subscriber will not be responsible for charges against any identification password(s) that are lost or stolen; provided Ovid has received prompt notice to such effect;

4.4 to use its best efforts to ensure that Authorized Users comply with the terms and conditions of this Agreement and any and all User guidelines or restrictions provided by Ovid, from time to time; and

4.5 to designate in writing a staff member to be "System Administrator" (project manager) for the purpose of resolving implementation questions, such Person to be available to Ovid on a routine and expedited basis when necessary.
5. LIMITED WARRANTIES AND LIMITED LIABILITIES.

5.1 Ovid represents and warrants that it has the complete right and authority to enter into this Agreement and to deliver the Products "AS IS"

5.2 Ovid will use its best efforts to provide the Product(s) in accordance with the Documentation existing at the date of initial access.

5.3 As a consequence of factors affecting the transmission of the Products which are beyond Ovid’s control, Ovid will not guarantee performance of the Products through the Internet or other transmission modes. In the event that Subscriber requires greater surety of access, Ovid may arrange for Subscriber to have dedicated circuit access to the Products through a leading telecommunications carrier for an additional charge to be determined.

5.4 OVID AND INFORMATION PROVIDERS EXPRESSLY DISCLAIM AND EXCLUDE ALL WARRANTIES (INCLUDING WITHOUT LIMITATION, MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, AND REPRESENTATIONS, WHETHER EXPRESS OR IMPLIED, IN RELATION TO THE PRODUCTS, THE CONTENT CONTAINED THEREIN AND THEIR PROVISION UNDER THIS AGREEMENT. ALTHOUGH DUE CARE IS USED IN PREPARING THE PRODUCTS, OVID AND INFORMATION PROVIDERS MAKE NO WARRANTIES THAT ACCESS TO THE PRODUCT(S) WILL BE UNINTERRUPTED OR THAT THE PRODUCTS WILL MEET SUBSCRIBER’S REQUIREMENTS, OR THAT THE CONTENT IS ACCURATE OR COMPLETE OR THAT THE RESULTS OBTAINED BY ANY AUTHORIZED USERS WILL BE ERROR FREE. NO OVID EMPLOYEE OR AGENT IS AUTHORIZED TO MAKE ANY STATEMENT THAT ADDS TO OR AMENDS THE WARRANTIES OR LIMITATIONS CONTAINED IN THIS AGREEMENT.

5.5 EXCEPT AS PROVIDED UNDER THE INDEMNITY OF SECTION 7.0 OF THIS AGREEMENT, NEITHER OVID NOR INFORMATION PROVIDERS WILL BE LIABLE TO SUBSCRIBER, AUTHORIZED USERS OR ANY THIRD PARTY FOR LOSS OF PROFITS, LOSS OF USE OR FOR ANY INDIRECT, SPECIAL OR CONSEQUENTIAL DAMAGES WHETHER BASED UPON A CLAIM OR ACTION OF CONTRACT, WARRANTY, NEGLIGENCE, STRICT LIABILITY OR OTHER TORT, EVEN IF THEY ARE AWARE OF THE POSSIBILITY THEREOF. SUBSCRIBER AGREES THAT THE ENTIRE LIABILITY OF OVID AND INFORMATION PROVIDERS, AND THE EXCLUSIVE REMEDY OF THE SUBSCRIBER OR ANY THIRD PARTY, WILL IN NO EVENT EXCEED AN AMOUNT EQUAL TO THE FEE PAID FOR THE USE OF THE PRODUCTS.

5.6 Neither Ovid nor its employees and agents will be liable for assistance provided to Authorized Users in performing research using the Products and any such assistance received from Ovid employees or agents will be solely at Authorized Users’ risk.

5.7 Authorized Users, including physicians, health care workers and other professional persons using the Products MAY NOT rely on the information contained in the Products. Alternatively, they must rely on their clinical discretion, judgment and expertise in diagnosis and treatment.

5.8 Any cause of action whether brought by Ovid, Authorized Users or any third party concerning the Products must be commenced within one (1) year after such cause of action has accrued.

6. INDEMNIFICATION.

6.1 Excluding any claims arising out of or related to the violation by Ovid or Information Providers of any third party copyrights, patents, trademarks or trade secrets; provided, however, that Information Providers have indemnified Ovid from and against any and all such claims, Subscriber agrees to indemnify Ovid from and defend, at its own expense (including reasonable attorney’s fees) against any and all claims of third parties (including without limitation, copyright infringement) arising out of or related to Authorized Users’ use of the Products or any materials provided hereunder, regardless of whether such claims were foreseeable by Ovid; provided that Ovid promptly notify Subscriber of the claim and provides all information and cooperation necessary to negotiate and defend the claim. At its discretion, Ovid may participate in the defense, settlement or negotiation of any claims.
6.2 Ovid agrees to indemnify Subscriber, its directors and officers, from and against any and all liability, damages, loss or expense arising from any claim, action or proceeding based upon or arising out of any actual or alleged infringement upon, violation or misappropriation by Ovid of any third party proprietary rights, including copyright, patent, trademark and trade secret, in consequence of the authorized use or possession of the Software or Documentation supplied by Ovid under this Agreement.

7. PAYMENT.

Payment will be due upon the execution of this Agreement, pursuant to Subscriber's purchase order attached hereto. The invoices are due sixty (60) days after the billing date. In the event that Subscriber fails to make prompt payment, Ovid reserves the right to deny access to the Products until such time as Subscriber's account is made current. Subscriber will be responsible for the payment of all taxes, or other related fees incurred in connection with this Agreement. If Subscriber shall fail to make any required payment within ten (10) days from the date the Same become due and payable, such unpaid amounts shall bear interest from the due date thereof to the date of payment at the highest rate permitted by applicable law, whichever is less.

8. TERMINATION.

If Ovid or any one of the Authorized Users is in breach of the terms and conditions of this Agreement, the breaching party will have ten (10) business days in which to cure the breach. If the breaching party has not cured the breach, the nonbreaching party may terminate this Agreement, in addition to pursuing all other legal remedies. The provisions of this Agreement which protect the proprietary rights of Ovid and Information Providers will continue in force after termination. Any termination, whether or not for breach, will not affect any right, obligation or liability of a party arising prior to termination of the Agreement. In case of misuse the related IP address is excluded from further access to the product.

9. ENTIRE AGREEMENT.

This Agreement, use restrictions and other notices concerning the Product(s) as provided, from time to time by Ovid, will constitute the entire agreement of the Parties. It is expressly agreed that any terms of a purchase order or similar instrument issued by Subscriber with respect to this Agreement will not affect the terms and conditions of this Agreement. This Agreement may not be modified or amended except by written consent of the Parties or in accordance with the provisions set forth in Subsection 2.3 of this Agreement.

10. NOTICES.

All notices, consents or other communications referred to herein will be in writing and will be conveyed to the other party by First Class Mail or electronically at the appropriate addresses indicated. Service of such notice, consent or other communication hereunder will be effective on the fifth day after the day of mailing or the Same day as the day of transmission.

11. SEVERABILITY.

If a term or condition of this Agreement is found by a court or administrative agency to be unenforceable, the remaining terms and conditions will remain in full force and effect.

Anlage 2 Zusätzliche Regelungen für die Nationallizenz

1. Eligible 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 the above mentioned types of German institutions abroad
2. Authorized users I

---Higher Education Institutions: Students including guest students, Faculty including visiting lecturers, Staff and contractors, Walk-In-Users. Remote Access included.


3. Authorized Users II

Non-institutional access of individuals is permitted via individual usernames and passwords subject to a requirement of permanent residence in Germany.

4. Access to the data is activated within 2 weeks after receipt of the IP Ranges via Ovid.

5. Access to the data via Z39.50 or similar interfaces is possible for integration in portals, search engines, etc.

6. The licence excludes any restrictions of concurrent use.

7. All fees for perpetual access (including any maintenance fees) are included in the prices quoted.

8. Local hosting (in order to give access to eligible institutions and authorized users) of the licensed material is offered as an option at no additional costs on the Server of the licensee or on a platform of the licensee's choice.

9. The following authentication procedures are accepted by licensor:

---IP

---Username/Password

---Shibboleth

---Comparable future developments to be agreed by the parties