

License Agreement SpringerLink Information System

between

Library X or Consortium X
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(hereafter called "Licensee")

represented by

and

Springer Science and Business Media BV
Van Godewijckstraat 30
3311 GX Dordrecht
The Netherlands

(hereafter called "Licensor")

represented by
Peter Hendriks
President Sales & Marketing

License Number _____

This License Agreement (this "Agreement") is made effective as of _____
(the "Effective Date") between the Licensee and Licensor.

In consideration of the mutual promises contained herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

PREAMBLE

Licensor offers electronic versions of copyrighted material over the Internet. This material consists of electronic journals with multimedia supplements, electronic reference works, electronic books, and books with electronic components (hereinafter called "Springer Published Content"). The material is made available on the SpringerLink Information System (hereinafter called "SpringerLink") on behalf of Springer Science and Business Media and/or its affiliated companies (hereinafter called "Springer Group"). By signing this Agreement, Licensee hereby confirms that any company affiliated to the Licensor can act as contracting party, whereby the terms of this Agreement will remain applicable.

Section 1. CONTENT OF LICENSED MATERIALS; GRANT OF LICENSE

1.1 The materials that are the subject of this Agreement are specified in **Attachment 3.1** and **Attachment 3.2** appended to this Agreement (hereinafter referred to as the "Licensed Materials"). Licensed Materials consist of the "Subscribed Materials" listed in **Attachment 3.1** and "Non-subscribed Materials" listed in **Attachment 3.2**. Subscribed Materials are fully paid. Non-subscribed Materials are

those which Licensor makes available for use through non-monetary considerations or under specially discounted conditions as described in **Attachment 1** of this Agreement. These titles do not differ in terms of availability to the Licensee, allowed uses, or restrictions, but solely in terms of the Archival Rights (as hereinafter defined) granted by Licensor and described in this Agreement.

1.2 For the purpose of this Agreement the "Authorized Users" of the Licensee are defined as faculty members (including temporary or exchange faculty for the duration of their assignment); graduate and undergraduate students and staff members. Remote access is only permitted to faculty members, graduate and undergraduate students and staff members of Licensee. No other form of remote access is permitted.

1.3 Licensor hereby grants to Licensee a non-exclusive license to use the Licensed Materials and to provide the Licensed Materials to Authorized Users via Licensee's secure network in accordance with this Agreement.

1.4 Licensee acknowledges that the Licensed Materials are protected by copyright and or database rights. All rights not specifically granted to Licensee are expressly reserved.

1.5 If the Licensee provides public access to its library collection, it may also provide access to and permit copying from the Licensed Materials by members of the public for their scholarly, research and personal use from workstations on library premises. Any form of remote access to the Licensed Materials by members of the public is not permitted.

Section 2. DESCRIPTION OF ACCESS AND PERMITTED USE

2.1 Licensor offers controlled access to the Licensed Materials through the use of domain name(s) or IP addresses of the Member Institutions listed in **Attachment 2** including their Authorized Users.

2.2 Licensor permits Authorized Users to browse, search, retrieve, display, download, print, and store individual articles or book chapters for scholarly research, educational and personal use as long as such use is consistent with international copyright laws.

2.3 Incidental and non-systematic sharing by Authorized Users with non-authorized individuals of limited amounts of Licensed Material for collaborative research and scholarly purposes, and not for re-transmission, is permitted.

2.4 Copying and storing is limited to single copies of a reasonable number of individual articles. Copying and storing of entire issues by Authorized Users is not permitted.

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2.6 Authorized Users may send single articles to research colleagues outside the Licensee institution for the purpose of non commercial scholarly communication.

2.7 Licensee and its Authorized Users may use a reasonable portion of the Licensed Materials in the preparation of course packs or other educational materials but only for use in connection with classroom instruction. The foregoing grant of rights regarding course packs will apply to the corresponding print issues of Licensed Materials pre-dating the effective date of the Licensed Materials provided under this Agreement.

2.8 Inter Library Loan (“ILL”) is not allowed

Section 3. ARCHIVAL RIGHTS

3.1 Licensor recognizes the right of the Licensee to own and possess in perpetuity their Subscribed Materials as described in this Agreement and listed in **Attachment 3.1**. Further, Licensor makes provision for the Licensee to self-archive the Non-subscribed Materials listed in **Attachment 3.2**. These rights and the methods by which they may be exercised are described below (hereinafter referred to as “Archival Rights”).

3.2 Licensee may make one (1) electronic copy of all the Licensed Materials, as well as one (1) copy in print, from the electronic versions of the Licensed Materials to be maintained as a backup or for archival purposes. Use of LOCKSS technology¹ for backup and archival purposes is permitted. This local archiving right is permitted for both the Subscribed Materials listed in **Attachment 3.1** and the Non-subscribed Materials listed in **Attachment 3.2**.

3.3 In the event of cancellation of selected portions of the Subscribed Materials by the Licensee, the previously subscribed content may be made available to its Authorized Users under the same terms and conditions set forth in **Section 2**. Licensor agrees to provide continuing access to previously subscribed content for as long as Licensor retains rights to do so and the Licensee remains a party to this Agreement (i.e. the Licensee retains subscribed access to some portion of the Licensed Materials under the terms of this Agreement).

3.4 In the event that this Agreement terminates because of expiration of the term and thereby discontinues paid access to Springer Published Content, Licensor shall provide continuing access to Licensee and its Authorized Users to that portion of the Subscribed Licensed Materials which was published within the subscription year(s) for two (2) additional years without further charge. Thereafter, Licensor will charge a nominal annual maintenance fee of Five Hundred Euros (€ 500) per Member Institution per annum. This sum may be adjusted upwards in future years by the same percentage as the average annual increase in Licensor’s journal prices. Alternatively, Licensor will offer an archival digital copy on a mutually agreed-upon digital storage medium for a nominal service plus handling fee. Continued access to Non-subscribed Materials will be offered for a fee to be agreed upon. Continued access for e-only consortia with no previous record of print holdings will be negotiated on a case-by-case basis. The foregoing shall be provided as long as Licensee continues to observe its obligations with respect to security and restriction on usage set forth in this Agreement and as provided under applicable law.

3.5 Licensor will not provide full text files or media for the Non-subscribed Materials listed in **Attachment 3.2**, though the Licensee may elect to pay a negotiated maintenance fee per title per year for online access to the previously accessible years of such Non-subscribed Materials from Licensor.

Section 4. SPECIFIC RESTRICTIONS ON USE OF LICENSED MATERIALS

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¹ Described at <http://lockss.stanford.edu/>

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4.2 Posting complete articles, chapters, issues, or books on personal or institutional websites is not allowed.

4.3 The Licensed Materials may not, directly or indirectly, be used for any of the following purposes:

4.3.1 Substantial or systematic reproduction whether for commercial or non-profit use or for a fee or free of charge.

4.3.2 Re-distribution, re-selling or sub-licensing in any manner including in connection with fee-for-service use except as described in **Attachment 2**.

4.3.3 Systematic supply or distribution of single or multiple copies in any form to anyone other than an Authorized User.

4.3.4 Distribution of any part of the Licensed Material on any electronic network, other than the Licensee's securing network.

4.4 Licensor's explicit written permission must be obtained in order to use all or any part of the Licensed Materials for the purpose of monetary reward (whether by Licensee or any Authorized User) by means of sale, transfer or other form of exploitation of the Licensed Materials. Bulk reproduction or distribution of electronic or print copies of Licensed Materials for sales/promotional purposes is specifically prohibited.

Section 5. OBLIGATIONS OF LICENSOR

5.1 Upon the start of the subscription term, Licensor shall make the Licensed Materials available in digital form to Licensee and Authorized Users.

5.2 Licensor shall make all reasonable efforts to ensure uninterrupted online access to and continuous availability of the Licensed Materials to Licensee in accordance with this Agreement and to restore access to the Licensed Materials as promptly as possible in the event of an interruption or suspension of the SpringerLink service, caused by failure of Licensor's server.

5.3 Licensor reserves the right to withdraw from the Licensed Materials any item or part of an item to which it no longer retains the right to publish or it has reasonable grounds to believe infringes copyright or is otherwise unlawful. Licensor shall provide written notice of such withdrawal.

5.4 Licensor offers Authorized Users support and Helpdesk via online FAQ (Frequently Asked Questions), telephone, fax and e-mail in Heidelberg, Germany and New York, New York, USA during official office hours (9:00 AM to 5:00 PM CET/EST).

Section 6. LICENSE FEE`

6.1 Licensee agrees to make payment to Licensor for use of the Licensed Material as set out in **Attachment 1**. Licensee acknowledges that the license fee, or any portion thereof, may be invoiced by another Springer company than the Licensor.

6.2 Licensee may, in its discretion, elect to include in this Agreement the electronic form of other publications of Licensor which may be available electronically which are not otherwise included in **Attachment 3** by notifying Licensor and paying the applicable license fee. This license fee will be set forth in an amendment to **Attachment 1** of this Agreement and the added Licensed Materials will be set forth in an amendment to **Attachment 3**.

Section 7. SECURITY AND REPORTING

7.1 Licensee recognises that maintaining the integrity of the Licensed Materials delivered by Licensor, including the restrictions on reproduction, use and transmission as provided herein, and ensuring that use of the Licensed Materials is limited to Authorized Users, are important obligations, and that Licensor may terminate this Agreement in its sole discretion if violations of these security principles or Licensor's intellectual property rights occur.

7.2 Licensee shall make reasonable efforts to provide Authorized Users with notice of any applicable intellectual property or other rights applicable to the Licensed Materials. Licensee shall make reasonable efforts to prevent the infringement of any intellectual property or other rights of Licensor in the Licensed Materials. Licensee shall promptly notify Licensor of any infringement that comes to its attention, and take appropriate steps to prevent its recurrence.

7.3 Licensor reserves the right to monitor access to and use of the Licensed Materials to detect misuse of the Licensed Materials and for the purpose of informing the Licensee. In the event of any unauthorized use of the Licensed Materials by an Authorized User, (a) Licensor may terminate the access of the Internet Protocol ("IP") address(es) from which such unauthorized use occurred, and/or (b) Licensee shall terminate such Authorized User's access to the Licensed Materials upon Licensor's request. Licensor shall take none of the steps described in this paragraph without providing reasonable notice to the Licensee.

7.4 Collection and analysis of data on usage of the Licensed Materials will assist both Licensor and Licensee to understand the impact of this Agreement, the infrastructure provided by Licensor, and possible improvements in the program. Such usage data will be compiled by Licensor on a monthly basis and shared with the Licensee, consistent with applicable privacy laws and written confidentiality requirements of the parties. The data will be made available on the Internet through a site accessible by username and password. The usage data to be shared will be COUNTER compliant level one (1).²

Section 8. TERM AND TERMINATION

8.1 The initial term of this Agreement commences with the subscription year identified in **Attachment 1** and expires with the completion of the last subscription year identified in **Attachment 1**. This Agreement may be extended for additional

² Described at <http://www.projectcounter.org/index.html>

term(s) upon mutual agreement of Licensor and Licensee by amendment of **Attachment 1** to reflect the new subscription years and applicable license fees.

8.2 In the event that either party believes that the other materially has breached any obligations under this Agreement, or if Licensor believes that Licensee has exceeded the scope of this Agreement, such party shall so notify the breaching party in writing. The breaching party shall have thirty (30) days from the receipt of notice to cure the alleged breach and to notify the non-breaching party in writing that cure has been effected. If the breach is not cured within the thirty- (30)-day period, the non-breaching party shall have the right to terminate this Agreement without further notice.

8.3 Upon termination of this Agreement for cause, online access to the Licensed Materials by Licensee and Authorized Users shall be terminated. Licensor shall provide continuing access to Licensee and its Authorized Users to that portion of the Licensed Material to which the Licensee was lawfully entitled until the breach occurred. Access will be provided either from Licensor's server, or through a third party, or by supplying electronic files to the Licensee, provided the Licensee continues to observe its obligations with respect to security and restriction on usage.

Section 9. MUTUAL PERFORMANCE OBLIGATIONS

9.1 Licensee shall use its best efforts to safeguard the intellectual property, confidential information and proprietary rights of Licensor.

9.2 Neither party shall disclose the terms and conditions or the subject matter of this Agreement (including without limitation, the content of the attachments, fees, and any usage data compiled and supplied under Section 7.4, usage statistics or any other information about the other party's business to any third party) without the prior written consent of the other. This provision shall survive the termination of this Agreement, and any information obtained or received which comes within these restrictions shall remain confidential, PROVIDED always that this obligation shall not apply to any information which at the time of disclosure is in the public domain or is made available at any time by an independent third party which has not obtained it directly or indirectly in breach of any confidentiality agreement with the party whose information was so disclosed.

Section 10. REPRESENTATIONS, WARRANTIES AND INDEMNITIES

10.1 Licensee warrants that it will use reasonable efforts to ensure the integrity of the Licensed Materials and the security of the SpringerLink network especially as regards access by parties other than Authorized Users.

10.2 Notwithstanding the foregoing, however, Licensor will not be responsible for any claim, loss or liability attributable to errors, inaccuracies or other defects in the Licensed Materials or any part thereof arising from any act or omission or (to the maximum extent permitted by relevant laws) any negligence and BOTH PARTIES EXPRESSLY EXCLUDE ANY LIABILITY FOR BREACH OF ANY IMPLIED OR EXPRESS WARRANTY AS TO TITLE, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, NOR SHALL LICENSOR BE LIABLE FOR ANY DIRECT OR INDIRECT, INCIDENTAL, SPECIAL CONSEQUENTIAL OR PUNITIVE DAMAGES ARISING OUT OF USE OF THE LICENSED MATERIALS. Licensee shall not be liable to Licensor for breach of the terms of this Agreement by any Authorized User so long as Licensee did not intentionally or through gross negligence assist in or encourage such breach or permit such breach to continue after having actual notice thereof.

Section 11. LICENSOR'S TRADEMARKS

11.1 During the term of this Agreement, the titles of any publications licensed hereunder, along with any trademarks, logos and colophons owned by or licensed to Licensor or affiliated societies, which appear on the Licensed Materials shall be posted as provided therein and may not be deleted or modified by Licensee or its Authorized Users.

11.2 Licensor shall have the right to review and approve of all use on SpringerLink of the publication titles, trademarks, logos, colophons, proprietary legends or legal notices provided by Licensor in connection with the applicable publications or Licensed Materials, in order to ensure compliance with Section 11.1 above and Licensor's quality standards.

11.3 All rights with respect to the publication titles, trademarks, logos, society names and colophons are expressly and exclusively reserved.

Section 12. GENERAL

12.1 Licensee may not assign or transfer, directly or indirectly, all or part of the rights or obligations under this Agreement without prior written consent from Licensor. Licensor may assign this Agreement.

12.2 Licensor's failure to perform any term or condition of this Agreement as a result of conditions beyond its control such as, but not limited to, war, strikes, fires, floods, governmental restrictions, power failures, or damage or destruction of any network facilities or servers, shall not be deemed a breach of this Agreement.

12.3 In the event that any one or more of the provisions contained herein shall, for any reason, be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provisions of this Agreement, but this Agreement shall be construed as if such invalid, illegal or unenforceable provisions have never been contained herein, unless the deletion of such provision or provisions would result in such a material change so as to cause completion of the transactions contemplated herein to be unreasonable.

12.4 Venue for all disputes arising out of and in connection with the performance of this Agreement shall be in Amsterdam, The Netherlands. Regardless of the place of its physical execution, this Agreement is made under, and shall be governed by and construed according to, the laws of The Netherlands.

12.5 This Agreement constitutes the entire agreement of the parties and supersedes all prior communications, understandings and agreements relating to the subject matter hereof, whether written or oral.

12.6 No modification or claimed waiver of any provision of this Agreement shall be valid except by written amendment signed by authorized representatives of Licensor and Licensee.

12.7 Waiver of any provision herein shall not be deemed to be a waiver of any other provision herein, nor shall waiver of any breach of this Agreement be construed as a continuing waiver of other breaches of the same or other provisions of this Agreement.

12.8 A. All amounts payable by Licensee hereunder shall be exclusive of any sales, use, withholding, value added or similar taxes, government fees or levies or other assessments, which shall be the sole responsibility of the Licensee.

12.8 B. (For EU based licensees only) In order to receive invoices without VAT, Licensee has the obligation to provide Licensor with its EU VAT identification number and certificate of registration as taxpayer, which proves that licensee qualifies as an entrepreneur for VAT purposes in its EU country of residence.

12.9 All notices given pursuant to this Agreement shall be in writing and may be hand delivered, or shall be deemed received within five (5) business days after mailing if sent by registered or certified mail, return receipt requested. If any notice is sent by facsimile, confirmation copies must be sent by mail or hand delivery to the specified address. Either party may from time to time change its notice address by written notice to the other party.

If to Licensor:

Springer Science and Business Media B.V.
P.O. Box 17
3300 AZ Dordrecht
The Netherlands
ATTN: Library Sales Department

If to Licensee:

ATTN: _____

12.10 This Agreement includes the following Attachments, which are incorporated as if fully set forth herein:

- Attachment 1: Pricing Terms and Conditions
- Attachment 2: Description of the Licensee Site(s)
- Attachment 3.1: List of the Licensed Materials - Subscribed
- Attachment 3.2: List of the Licensed Materials - Non-subscribed

IN WITNESS WHEREOF, the parties have executed this Agreement by their respective, duly authorized representatives as of the date first written below.

Licensee: _____

Signature: _____

Name (Printed): _____

Title: _____

Date: _____

Licensor:

Signature: _____

Name: Peter Hendriks

Title: President Marketing & Sales

Date:

Signature: _____

Name: Peter Coebergh

Title: Vice President Library Sales

Date: