

# **LICENSE AGREEMENT**

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This License Agreement (this "Agreement") is made effective as of January 1, 2013 (the "Effective Date") between S. Karger AG, Allschwilerstrasse 10, CH-4009, Basel, Switzerland ("Licensor") and The Regents of the University of California, a non-profit academic institution, with its principal offices at The California Digital Library, University of California Office of the President, 415 20<sup>th</sup> Street, 4<sup>th</sup> floor, Oakland, CA 94612, USA ("Licensee").

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#### **IV. AUTHORIZED USE OF LICENSED MATERIALS**

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Persons Affiliated with the University of California. Full and part time employees (including faculty, staff, and independent contractors) and students of Licensee and the institution of which it is a part, regardless of the physical location of such persons. For campus locations see Appendix B.

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

**Access by and Authentication of Authorized Users.** Licensee and its Authorized Users shall be granted access to the Licensed Materials pursuant to the following:

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### **Amount of Authorized Use.**

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## **V. SPECIFIC RESTRICTIONS ON USE OF LICENSED MATERIALS**

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## **VI. MUTUAL PERFORMANCE OBLIGATIONS**

User Surveys. Licensee and Licensor shall cooperate on the preparation and provision of user surveys to solicit feedback on the Licensed Materials from Authorized Users.

Confidentiality of User Data. Licensor and Licensee agree to maintain the confidentiality of Authorized Users relating to the usage of the Licensed Materials. Such data may be used solely for purposes directly related to the Licensed Materials and may only be provided to third parties in aggregate form. Raw usage data relating to the identity of specific users and/or uses, shall not be provided to any third party.

Implementation of Developing Security Protocols. Licensee and Licensor shall cooperate in the implementation of security and control protocols and procedures as they are developed during the term of this Agreement.

## **VII. LICENSOR PERFORMANCE OBLIGATIONS**

Availability of Licensed Materials. Upon the Effective Date of this Agreement, Licensor shall make the Licensed Materials available to Licensee and Authorized Users.

Documentation. Licensor will provide and maintain help files and other appropriate user documentation.

Training and Support. Licensor will offer installation support, including assisting with the implementation of any Licensor software. Licensor will provide appropriate training to Licensee staff relating to the use of the Licensed Materials and any Licensor software. Licensor will offer reasonable levels of continuing support to assist Licensee and Authorized Users in use of the Licensed Materials. Licensor will make its personnel available by email, phone or fax during regular business hours, Monday through Friday for feedback, problem-solving, or general questions.

Quality of Service. Licensor shall use reasonable efforts to ensure that the Licensor's server or servers have

sufficient capacity and rate of connectivity to provide the Licensee and its Authorized Users with a quality of service comparable to current standards in the on-line information provision industry in the Licensee's locale.

Licensor shall use reasonable efforts to provide continuous service seven (7) days a week with an average of 98% up-time per month. The 2% down-time includes periodic unavailability due to maintenance of the server(s), the installation or testing of software, and the loading of additional Licensed Materials as they become available. Scheduled down-time will be performed at a time to minimize inconvenience to Licensee and its Authorized Users.

If the Licensed Materials fail to operate in conformance with the terms of this Agreement, Licensee shall immediately notify Licensor, and Licensor shall promptly use reasonable efforts to restore access to the Licensed Materials as soon as possible. In the event that Licensor fails to repair the nonconformity in a reasonable time, Licensor shall reimburse Licensee in an amount that the nonconformity is proportional to the total Fees owed by Licensee under this Agreement.

Completeness of Content. Licensor shall use reasonable efforts to ensure that the online content is at least equivalent to print versions of the Licensed Materials, represents complete, faithful and timely replications of the print versions of such Materials, and will cooperate with Licensee to identify and correct errors or omissions.

Continued Training. Licensor will provide regular system and project updates to Licensee as they become available. Licensor will provide additional training to Licensee staff made necessary by any updates or modifications to the Licensed Materials or any Licensor software.

Notice of Terms of "Click-Through" License Terms. In the event that Licensor requires Authorized Users to agree to terms relating to the use of the Licensed Materials before permitting Authorized Users to gain access to the Licensed Materials (commonly referred to as "click-through" licenses), Licensor shall provide Licensee with notice of and an opportunity to comment on such terms prior to their implementation. In no event shall the terms of such "click-through" licenses materially differ from the provisions of this Agreement. In the event of any conflict between the terms of such "click-through" licenses and this Agreement, the terms of this Agreement shall prevail.

Usage Statistics. Licensor must provide both composite use data for the system-wide CDL and itemized data for individual campuses, on a monthly basis. Use data should be at the level of detail required for objective evaluation of both product performance and satisfaction of user needs, including title-by-title use of journals. Providers should follow the International Coalition of Library Consortia (ICOLC) "[Guidelines for Statistical Measures of Usage of Web-Based Information Resources](#)" or provide information in compliance with COUNTER or other recognized international standard.

Compliance with Americans with Disabilities Act. Licensor shall make reasonable efforts to comply with the Americans with Disabilities Act (ADA) requirements, Section 508 of the Rehabilitation Act Amendments, and provide Licensee current completed Voluntary Product Accessibility Template (VPAT).

Institutional Branding. Licensor will support and assist Licensee in the creation of institutional branding features at the campus and/or aggregate level.

Discovery of Licensed Materials. Licensor shall make the Licensed Materials available through Licensee's Discovery Service System(s) for indexing and discovery purposes. Licensor shall provide to Licensee's discovery service vendors on an ongoing basis the citation and complete descriptive metadata (including all



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Protection from Unauthorized Use. Licensee shall use reasonable efforts to protect the Licensed Materials from any use that is not permitted under this Agreement. In the event of any unauthorized use of the Licensed Materials by an Authorized User, (a) Licensor may terminate such offending Authorized User's access to the Licensed Materials, (b) Licensor may terminate the access of the Internet Protocol ("IP") address(es) from which such unauthorized use occurred, and/or (c) Licensee shall terminate such Authorized User's access to the Licensed Materials upon Licensor's request.

Maintaining Confidentiality of Access Passwords. Where access to the Licensed Materials is to be controlled by use of passwords, Licensee shall issue log-on identification numbers and passwords to each Authorized User and use reasonable efforts to ensure that Authorized Users do not divulge their numbers and passwords to any third party.

### **IX. TERM**

This Agreement shall continue in effect for three years commencing on the Effective Date.

### **X. RENEWAL**

This agreement shall be renewable at the end of the current term for a successive one year term unless either party gives written notice of its intention not to renew thirty (30) days before expiration of the current term.

## **XI. EARLY TERMINATION**

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 the License, such party shall so notify the breaching party in writing. The breaching party shall have sixty (60) 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 sixty (60) day period, the non-breaching party shall have the right to terminate the Agreement without further notice.

Upon termination of this Agreement pursuant to such events as specified above and in case Licensee is the breaching party, Licensor shall be entitled to immediately remove all of the Licensed Materials without any rebate of the Fee, in addition to any other rights and remedies to which it may be entitled, at law or in equity. Licensee shall immediately cease to distribute or make available the Licensed Materials to Authorized Users. Upon termination of this Agreement due to breach of any material term thereof by Licensor, Licensor shall forthwith repay to Licensee that portion of the Fee attributable to the unused portion of the Licensed Materials.

## **XII. PERPETUAL RIGHTS**

Upon termination of this Agreement, Licensor will make possible perpetual online archival access to Licensee to that part of the Licensed Materials which was licensed prior to the termination of this Agreement. Online archival access provided through Licensor directly shall be at no cost to the Licensee, and the publisher reserves the right to offer such Licensed Materials in an archived format. In the event that Licensor can no longer provide such archival access, Licensor may make the online format of the Licensed Materials available through third-party service providers, who may impose their own charges, for which Licensor is not accountable nor in any way involved in the negotiation process.

## **XIII. WARRANTIES**

Subject to the Limitations set forth elsewhere in this Agreement:

Licensor warrants that it has the right to license the rights granted under this Agreement to use Licensed Materials, that it has obtained any and all necessary permissions from third parties to license the Licensed Materials, and that use of the Licensed Materials by Authorized Users in accordance with the terms of this Agreement shall not infringe the copyright of any third party.

## **XIV. LIMITATIONS ON WARRANTIES**

Notwithstanding anything else in this Agreement:

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#### **XV. INDEMNITIES**

The Licensor shall indemnify and hold Licensee and Authorized Users harmless for any losses, claims, damages, awards, penalties, or injuries incurred, including reasonable attorney's fees, which arise from any claim by any third party of an alleged infringement of copyright or any other property right arising out of the use of the Licensed Materials by the Licensee or any Authorized User. NO LIMITATION OF LIABILITY SET FORTH ELSEWHERE IN THIS AGREEMENT IS APPLICABLE TO THIS INDEMNIFICATION.

Each party shall indemnify and hold the other harmless for any losses, claims, damages, awards, penalties, or injuries incurred, including reasonable attorney's fees, which arise from any alleged breach of such indemnifying party's representations and warranties made under this Agreement, provided that the indemnifying party is promptly notified of any such claims.

The indemnifying party shall have the right to defend such claims at its own expense. The other party shall provide assistance in investigating and defending such claims as the indemnifying party may reasonably request and have the right to participate in the defense at its own expense.

#### **XVI. ASSIGNMENT AND TRANSFER**

Neither party may assign, directly or indirectly, all or part of its rights or obligations under this Agreement without the prior written consent of the other party, which consent shall not be unreasonably withheld or delayed.

#### **XVII. GOVERNING LAW**

Any legal action brought by either party against the other shall be brought in the jurisdiction of the registered principal office of the party against whom the action is brought and the laws of that jurisdiction shall apply.

#### **XVIII. DISPUTE RESOLUTION**

In the event any dispute or controversy arising out of or relating to this 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 this Agreement which are not affected by the dispute.

#### **XIX. FORCE MAJEURE**

Neither party shall be liable in damages or have the right to terminate this Agreement for any delay or default in performing hereunder if such delay or default is caused by conditions beyond its control including, but not limited to Acts of God, Government restrictions (including the denial or cancellation of any export or other necessary license), wars, insurrections, strikes or other work stoppages, and/or any other cause beyond the reasonable control of the party whose performance is affected.



## **XX. ENTIRE AGREEMENT**

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

## **XXI. AMENDMENT**

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.

## **XXII. SEVERABILITY**

If any provision or provisions of this Agreement shall be held to be invalid, illegal, unenforceable or in conflict with the law of any jurisdiction, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

## **XXIII. WAIVER OF CONTRACTUAL RIGHT**

**WAIVER OF ANY PROVISION HEREIN SHALL NOT BE DEEMED 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.**

## **XXIV. NOTICES**

Any notices to be served on either of the Parties by the other shall be sent by prepaid recorded delivery or registered post to the address of the addressee as set out in this Agreement or to such other address as notified by either party to the other as its address for service of notices. All such notices shall be deemed to have been received within fourteen (14) days of posting.

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Allschwilerstrasse 10  
CH-4009  
Basel, Switzerland

### **If to Licensee:**

University of California Office of the President  
California Digital Library  
415 20<sup>th</sup> Street, 4<sup>th</sup> Floor  
Oakland, CA 94612  
USA  
Attn: Licensing Dept.

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## **XXVI. FUNDING CONTINGENCY (MULTI-YEAR AGREEMENTS)**

The University of California reasonably believes that funds can be obtained sufficient to pay all monies due during the term of this Agreement and hereby covenants that it will do all things lawfully within its power to obtain, maintain, and properly request and pursue funds from which payments for this transaction may be made, including making provisions for such payments to the extent necessary in each budget submitted for the purpose of obtaining funding, using its bona fide best efforts to have such portion of the budget approved and exhausting all available administrative review and appeals in the event such portion of the budget is not approved. It is the University of California's intent to make payments for the full term of this transaction. The University of California represents that the use of the materials under this transaction are essential to its proper, efficient and economic operation.

In the event no funds or insufficient funds are appropriated and budgeted and are not otherwise legally available by any means whatsoever in any fiscal period for payments due under this transaction, the University of California will immediately notify Licensor of such occurrence and this transaction shall terminate on the last day of the subscription period for which payment has been made without penalty of expense to the University of California of any kind whatsoever, except as to the portions of payments herein agreed for which funds shall have been appropriated and budgeted or otherwise available. In the event of such termination the University of California shall maintain its perpetual right to materials licensed under the subscription periods for which it has fully paid.

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

LICENSEE:

BY: [REDACTED]

DATE: 10/27/15

Print Name: [REDACTED]

Title: DIRECTOR SALES & DISTRIBUTION

Address: ALLSCHWILERSTR. 10 KAPO BAZEL, SWITZERLAND

Telephone No.: [REDACTED]

E-mail: [REDACTED]

LICENSEE:

BY: [REDACTED]

DATE: 11/1/15

Signature of Authorized Signatory of Licensee

Print Name: [REDACTED]

Title: Interim Executive Director

Address: 415 20<sup>th</sup> Street, 4<sup>th</sup> Floor, Oakland, CA 94612, USA

Telephone No.: [REDACTED]

E-mail: [REDACTED]

# Appendix A

## Business Terms

### Term of Contract: 2013 - 2015

Included: Journals with archive, ebooks with archive

	2013	2014	2015	3-Year Total
Journals license fee				
Annual increases				
Journals Archive (CDL issues campus refunds to UCSD and UCSF)				
All Ebooks, 1997 - 2015 (Series and non-Series)				
<b>Total</b>				

### Notes on Journal Terms

CDL payment is a 5% annual increase in Years 2 and 3.

### Notes on Journal Archive Terms

The Archive (1893-1998) covers 64 journals and about 187,000 articles. Number of pages would be 6-10 pages per article.

CDL payment to Karger:

Prior campus purchases:

Total Karger revenue:

### Notes on Ebook Purchase Terms

CDL payment to Karger:

Perpetual access

All ebooks, 1997-2015 (series and non-series)

MARC records available at Karger website

Historic duplicate factor for Karger ebooks is 1.37

Pricing is based on [redacted] title (1997-2012) and [redacted] title (2013-2015)

602 titles for 1997-2012

Minimum title count 120 for 2013-2015 (approx. 40 titles per year)

### Value of historic ebook collections:

Non-series eBooks 1997-2012: 73 titles, retail \$12,790

Series eBooks 2013: min. 40 titles, retail \$10,000

Series eBooks 2012: 41 titles, retail \$9,337

Series eBooks 2011: 39 titles, retail \$10,212

Series eBooks 2011-2013: min. 120 titles, retail \$30,000

Series eBooks 1997-2010: 456 titles, retail \$116,000

### Not included titles:

Food Science and Technology Research: available only in print

Developments In Biologicals : available only in print

Theilheimer's Synthetic Methods of Organic Chemistry: not included

## Appendix B

### Campuses of the University of California

University of California, Berkeley (including Lawrence Berkeley Lab)

University of California, Davis

University of California, Irvine

University of California, Los Angeles

University of California, Merced

University of California, Riverside

University of California, San Diego

University of California, San Francisco

University of California, Santa Barbara

University of California, Santa Cruz

University of California Office of the President



### IP Addresses by Campus

Range Start

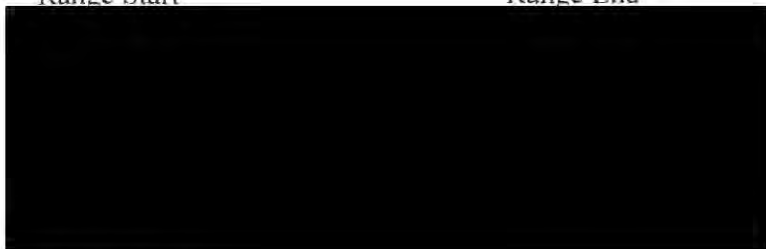
Range End

100

**Davis (UCD)**

Range Start

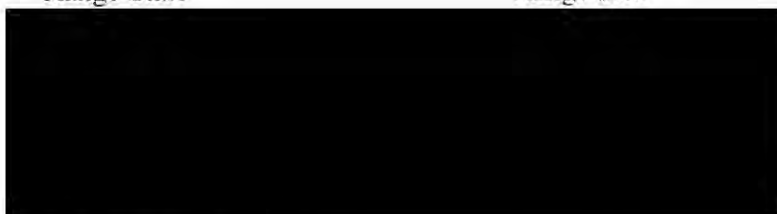
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**Irvine (UCI)**

Range Start

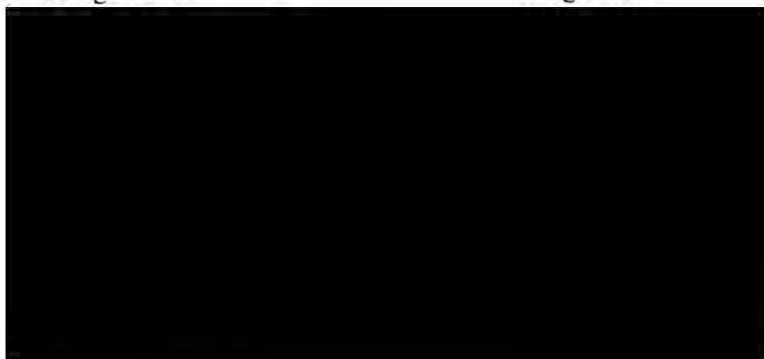
Range End



**Los Angeles (UCLA)**

Range Start

Range End



**Merced (UCM)**

Range Start

Range End



**Office of the President (UCOP)**

Range Start

Range End

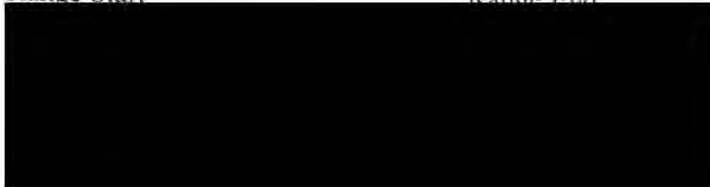




**Riverside (UCR)**

Range Start

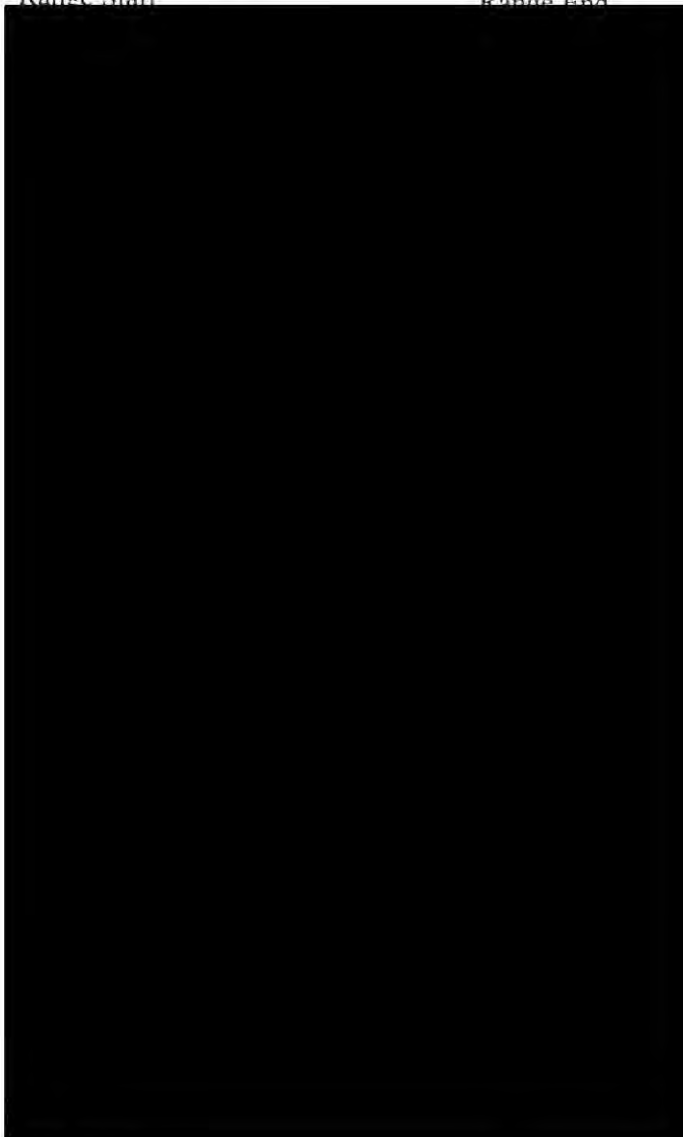
Range End



**San Diego (UCSD)**

Range Start

Range End



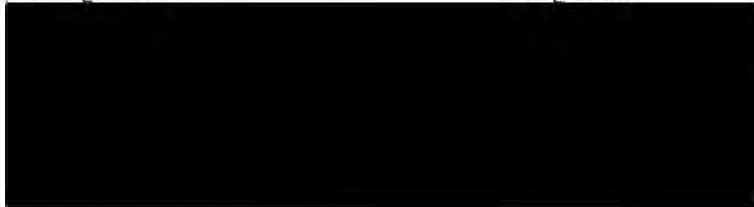




**San Francisco (UCSF)**

Range Start

Range End



**Santa Barbara (UCSB)**

Range Start

Range End



**Santa Cruz (UCSC)**

Range Start

Range End



Appendix D.  
Journal Archive Title List as of 10/13/2015

## Journal Archive Collection

Comprises all Karger-digitized Karger journals issued from 1997 back to each title's first year of publication.

Structured in 5 subject packages. The collection consists of 64 titles.

[www.karger.com/archivecollection](http://www.karger.com/archivecollection)

No.	Title	Start Year	Package No.	Col No.	Collection Name
1	Cells Tissues Organs	1945	Package 2	1	Biosciences
2	Cellular Physiology and Biochemistry	1991	Package 2	2	Biosciences
3	Cytogenetic and Genome Research	1962	Package 2	3	Biosciences
4	European Surgical Research	1969	Package 2	4	Biosciences
5	Folia Primatologica	1963	Package 2	5	Biosciences
6	Human Heredity	1950	Package 2	6	Biosciences
7	Intervirolgy	1973	Package 2	7	Biosciences
8	Journal of Vascular Research	1964	Package 2	8	Biosciences
9	Medical Principles and Practice	1989	Package 2	9	Biosciences
10	Pathobiology	1938	Package 2	10	Biosciences
11	Pharmacology	1959	Package 2	11	Biosciences
12	American Journal of Nephrology	1981	Package 3	1	Internal Medicine I
13	Annals of Nutrition and Metabolism	1959	Package 3	2	Internal Medicine I
14	Blood Purification	1983	Package 3	3	Internal Medicine I
15	Cardiology	1937	Package 3	4	Internal Medicine I
16	Chirurgische Gastroenterologie	1992	Package 3	5	Internal Medicine I
17	Digestion	1896	Package 3	6	Internal Medicine I
18	Digestive Diseases	1983	Package 3	7	Internal Medicine I
19	Digestive Surgery	1984	Package 3	8	Internal Medicine I
20	Hormone Research	1970	Package 3	9	Internal Medicine I
21	Kidney and Blood Pressure Research	1978	Package 3	10	Internal Medicine I
22	Nephron	1964	Package 3	11	Internal Medicine I
23	Respiration	1944	Package 3	12	Internal Medicine I
24	Acta Haematologica	1948	Package 4	1	Internal Medicine II
25	Chemotherapy	1960	Package 4	2	Internal Medicine II
26	Dermatology	1893	Package 4	3	Internal Medicine II
27	Forschende Komplementärmedizin / Research in Complementary Medicine	1994	Package 4	4	Internal Medicine II
28	Gerontology	1957	Package 4	5	Internal Medicine II
29	International Archives of Allergy and Immunology	1950	Package 4	6	Internal Medicine II
30	Neonatology	1959	Package 4	7	Internal Medicine II
31	Oncology	1948	Package 4	8	Internal Medicine II
32	Onkologie	1978	Package 4	9	Internal Medicine II
33	Pathophysiology of Haemostasis and Thrombosis	1972	Package 4	10	Internal Medicine II

34	Skin Pharmacology and Physiology	1988	Package 4	11	Internal Medicine II
35	Transfusion Medicine and Hemotherapy	1973	Package 4	12	Internal Medicine II
36	Tumor Biology	1987	Package 4	13	Internal Medicine II
37	Brain, Behavior and Evolution	1968	Package 1	1	Neurology, Neurobiology, Neurosurgery
38	Cerebrovascular Diseases	1991	Package 1	2	Neurology, Neurobiology, Neurosurgery
39	Dementia and Geriatric Cognitive Disorders	1990	Package 1	3	Neurology, Neurobiology, Neurosurgery
40	Developmental Neuroscience	1978	Package 1	4	Neurology, Neurobiology, Neurosurgery
41	European Neurology	1897	Package 1	5	Neurology, Neurobiology, Neurosurgery
42	Neuroendocrinology	1965	Package 1	6	Neurology, Neurobiology, Neurosurgery
43	Neuroepidemiology	1982	Package 1	7	Neurology, Neurobiology, Neurosurgery
44	Neuroimmunomodulation	1994	Package 1	8	Neurology, Neurobiology, Neurosurgery
45	Neuropsychobiology	1975	Package 1	9	Neurology, Neurobiology, Neurosurgery
46	Neurosignals	1992	Package 1	10	Neurology, Neurobiology, Neurosurgery
47	Pediatric Neurosurgery	1975	Package 1	11	Neurology, Neurobiology, Neurosurgery
48	Stereotactic and Functional Neurosurgery	1938	Package 1	12	Neurology, Neurobiology, Neurosurgery
49	Audiology and Neurotology	1996	Package 5	1	ORL, Ophthalmology, Dental Medicine, Obstetrics, Gynecology and Psychology, Psychiatry
50	Caries Research	1967	Package 5	2	ORL, Ophthalmology, Dental Medicine, Obstetrics, Gynecology and Psychology, Psychiatry
51	European Addiction Research	1995	Package 5	3	ORL, Ophthalmology, Dental Medicine, Obstetrics, Gynecology and Psychology, Psychiatry
52	Fetal Diagnosis and Therapy	1986	Package 5	4	ORL, Ophthalmology, Dental Medicine, Obstetrics, Gynecology and Psychology, Psychiatry
53	Folia Phoniatica et Logopaedica	1949	Package 5	5	ORL, Ophthalmology, Dental Medicine, Obstetrics, Gynecology and Psychology, Psychiatry
54	Gynäkologisch-geburtshilfliche Rundschau	1964	Package 5	6	ORL, Ophthalmology, Dental Medicine, Obstetrics, Gynecology and Psychology,



					Psychiatry
55	Gynecologic and Obstetric Investigation	1895	Package 5	7	ORL, Ophthalmology, Dental Medicine, Obstetrics, Gynecology and Psychology, Psychiatry
56	Human Development	1958	Package 5	8	ORL, Ophthalmology, Dental Medicine, Obstetrics, Gynecology and Psychology, Psychiatry
57	Ophthalmic Research	1970	Package 5	9	ORL, Ophthalmology, Dental Medicine, Obstetrics, Gynecology and Psychology, Psychiatry
58	Ophthalmologica	1899	Package 5	10	ORL, Ophthalmology, Dental Medicine, Obstetrics, Gynecology and Psychology, Psychiatry
59	ORL	1938	Package 5	11	ORL, Ophthalmology, Dental Medicine, Obstetrics, Gynecology and Psychology, Psychiatry
60	Phonetica	1957	Package 5	12	ORL, Ophthalmology, Dental Medicine, Obstetrics, Gynecology and Psychology, Psychiatry
61	Psychopathology	1897	Package 5	13	ORL, Ophthalmology, Dental Medicine, Obstetrics, Gynecology and Psychology, Psychiatry
62	Psychotherapy and Psychosomatics	1953	Package 5	14	ORL, Ophthalmology, Dental Medicine, Obstetrics, Gynecology and Psychology, Psychiatry
63	Urologia Internationalis	1955	Package 5	15	ORL, Ophthalmology, Dental Medicine, Obstetrics, Gynecology and Psychology, Psychiatry
64	Verhaltenstherapie	1991	Package 5	16	ORL, Ophthalmology, Dental Medicine, Obstetrics, Gynecology and Psychology, Psychiatry