

SPRINGER E-BOOK AGREEMENT

between

Regents of the University of California
California Digital Library
415 20th Street, 4th Floor
Oakland, California, 94612 USA

(hereafter called "Licensee")

and

Springer Science+Business Media, LLC
233 Spring Street
New York, New York 10013-1578
USA

(hereafter called "Springer")

License ID No. 5699

This agreement (this "Agreement") is made effective as of February 1, 2009, (the "Effective Date") between Licensee and Springer.

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

PREAMBLE

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DEFINITIONS

In addition to the other definitions in this Agreement, the capitalized terms used in this Agreement shall have the following meanings:

"Agreement" shall mean this Agreement.

"Archive" or "Archival Rights" shall mean access to the full text of the Springer Content. Archival Rights vary depending on the continuity of the relationship between the parties and the length of time following termination of this Agreement.

"Authorized Users" shall mean 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, and patrons not affiliated with Licensee who are physically present at Licensee's site(s) ("walk-ins").

"Effective Date" shall have the meaning given in the first sentence of this Agreement.

"Remote Users" shall mean *bona fide* faculty members, graduate and undergraduate students and staff members of the institution(s) with which Licensee is affiliated who are granted access to Springer Content as provided in Section 1.1(e).

"Springer Content" shall mean the materials specified in Attachment 3 of this Agreement.

"SpringerLink" shall have the meaning given in the Preamble.

"Term" is defined in Section 5.1.

"Walk-in Users" shall mean general public or business invitees of Licensee who are granted access to the Springer Content as provided in Section 1.1(f).

SECTION 1. DESCRIPTION OF THE ACCESS

1.1 During the Term, Licensee (including Authorized Users) is granted a non-exclusive, worldwide, non-transferable perpetual right as specified below to access Springer Content through SpringerLink in accordance with and subject to the terms of this Agreement:

- (a) This Agreement covers only the Springer Content identified in Attachment 3.
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Springer 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, the loading of additional content as they become available, and downtime related to the failure of equipment or services outside the control of Springer, including but not limited to public or private telecommunications services or internet nodes or facilities. Scheduled downtime will be performed during hours that minimize inconvenience to Licensee and its Authorized Users.

If Springer Content fails to operate in conformance with the terms of this Agreement, Licensee shall immediately notify Springer, and Springer shall promptly use reasonable efforts to restore access to the Content as soon as possible. In the event that Springer fails to repair the nonconformity in a reasonable time, Springer shall extend the term of the existing license at no cost for an amount of time equal to that of the nonconformity.

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- 2.4 Springer will offer Authorized User support and helpdesk access via online FAQ (Frequently Asked Questions), telephone, fax and e-mail in New York during official office hours (9:00 am to 5:00 pm EST).

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

SECTION 3. LICENSE FEE

- 3.1** Licensee agrees to pay the license fee as specified in Attachment 1. Licensee acknowledges that the license fee, or any portion thereof, may be invoiced by another Springer company than the contracting party.
- 3.2** Licensee may, in its discretion, elect to include in this Agreement the electronic form of other publications of Springer which may be available electronically which are not otherwise included in Attachment 3 by notifying Springer and paying the applicable fee. Such fee will be set forth in an amendment to Attachment 1 to this Agreement and Attachment 3 will be amended to include the additional publications.

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- 4.1 Licensee recognizes that maintaining the integrity of the Springer Content delivered by Springer, including the restrictions on reproduction, use and transmission as provided herein, and ensuring that use of the Springer Content is limited to Authorized Users, are important obligations, and that Springer may terminate this Agreement in its sole discretion if violations of those security principles or Springer's intellectual property rights occur. Springer reserves the right to monitor access to and use of the Springer Content to detect misuse of the Licensed Materials and for the purpose of informing the Licensee. In the event of any confirmed unauthorized use of the Springer Content by an Authorized User, (a) Springer may terminate the access of the Internet Protocol ("IP") address(es) from which such unauthorized use occurred, and/or (b) Licensee shall take appropriate action to terminate such Authorized User's access to the Licensed Materials or otherwise remedy such unauthorized use upon Springer's request. Springer shall take none of the steps described in this paragraph without providing reasonable notice to the Licensee.
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SECTION 5. TERM AND TERMINATION

- 5.1 The Term of this Agreement shall commence on the Effective Date and shall expire at the end of the last copyright year specified on Attachment 1. This Agreement may be extended for additional term(s) upon mutual agreement of Springer and Licensee by amendment of this Agreement to reflect the new term and applicable license fee.
- 5.2 This Agreement may be terminated by Springer at any time with respect to any Springer Content due to cessation of publication or otherwise, effective as of the end of the applicable Springer Content subscription year, by written notice by Springer to Licensee, specifying the Springer Content so affected. As used in this Section 5.2, written notice shall include email.
- 5.3 In the event this Agreement terminates because of expiration of the term of this Agreement or termination as set forth in Section 5.2, Springer will have the obligations set forth in Section 1.5.

¹ Described at <http://www.projectcounter.org/index.html>

SECTION 6. EARLY TERMINATION

- 6.1 In the event that either party believes that the other materially has breached any obligations under this Agreement, or if Springer believes that Licensee has exceeded the scope of this Agreement, such party shall so notify the breaching party. 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 this Agreement without further notice.
- 6.2 Upon termination of this Agreement by Springer for cause, the obligations of Springer under Section 1 shall be terminated and Springer shall have no further obligations to Licensee.

SECTION 7. MUTUAL PERFORMANCE OBLIGATIONS

- 7.1 Licensee shall use its reasonable efforts to safeguard the intellectual property, confidential information and proprietary rights of Springer.
- 7.2 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 4.3), usage statistics or any other information about the other party's business to any third party (other than content suppliers in the case of usage data) without the prior written consent of the other, or as required by law. Notwithstanding the foregoing, Licensee may share usage data with third parties for research or similar purposes, at Licensee's sole discretion. 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 8. REPRESENTATIONS, WARRANTIES AND INDEMNITIES

- 8.1 Springer warrants that it will use commercially reasonable efforts in its production of media for delivery of the Springer Content to the Licensee and that, to the best of its knowledge, use by Licensee of the Springer Content pursuant to the terms and conditions of this Agreement will not infringe the rights of third parties. Springer agrees to indemnify Licensee for all costs and expenses arising out of a breach of these warranties. The foregoing indemnity shall be Licensee's sole and exclusive remedy for any breach of the warranties set forth in this Section 8.1.
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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.

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- 10.2** Springer'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.
- 10.3** 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.
- 10.4** This Agreement shall be interpreted and construed according to, and governed by, the laws of California, excluding any such laws that might direct the application of the laws of another jurisdiction. The federal or state courts located in California shall have jurisdiction to hear any dispute under this Agreement.
- 10.5** Springer shall make reasonable efforts to comply with the Americans with Disabilities Act (ADA).
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Email: [Text deleted]

If to Licensee:

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Oakland, California, 94612, USA
Attn: Licensing Dept.
Email: [Text deleted]

- 10.13** 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

Attachment 3: Description of the Springer Content

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

Licensee: Regents of the University of California on behalf of California Digital Library

Signature: _____ [Text deleted] _____

Name (Printed): _____

Title: Executive, Director, California Digital Library

Date: 5/4/09

Springer: Springer Science+Business Media, LLC

By: [Text]

Title: Pres [Text deleted]

Signature: _____

Date: 4/28/09

ATTACHMENT 1: Pricing Terms and Conditions**A.1.1. Fees**

A.1.1.1. The fee for the Springer Content payable to Springer listed in Attachment 3 is

Collections Purchased	2005-2009 Purchase Price
Springer E-Book Complete English Language Subject Collections: Springer Content bearing the copyright year 2005-2009	[Text deleted]
TOTAL	[T

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ATTACHMENT 2: Description of the Licensee

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Address: 415 20th Street, 4th Floor, Oakland, California, 94612, USA

Email: [\[Text deleted\]](#)

Phone:

Fax:

Primary Contact: [\[Text](#)

Title: Director, Collections

Address: 415 20th Street, 4th Floor, Oakland, California, 94612, USA

Email: [\[Text deleted\]](#)

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Address: Geisel Lib., Univ. of California, 9500 Gilman #0175A, La Jolla, CA 92093-0175

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University of California, Santa Cruz, CA 95064

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ATTACHMENT 3: Description of the Springer Content**A.3.1. Expected eBook Package Titles**

The expected electronic (online) editions of Springer eBook Package and the content therein, listed below:

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Mathematics Collection	350
Medicine Collection	295
Physics & Astronomy Collection	250
Professional Computing and Web Design	160
Entire Collection of Springer Ebooks	3,370

Final title lists will be amended to Attachment 3 as the copyright year publication program is completed.

A.3.2. EBook Package Definitions

A full eBook Package consists of electronic versions of all print books available in the thirteen online libraries maintained by Springer on SpringerLink. A partial eBook Package consists of one or more of the thirteen online libraries maintained by Licensee on SpringerLink. Online libraries are identified by the thirteen main subject areas published in a particular copyright year.

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Avedition
BIOS Scientific Publishers
Bladon Medical Publishing
Cornell AAP Publications
Edizioni della Normale
GWVVieweg
Horizon Press
Intercept
Key College Publishing
Key Curriculum Press
Lars Müller
Lavoisier
Nexus
Princeton Architectural Press
Pyramyd
Royal Society of Chemistry
Spektrum Akademischer Verlag
Urban & Vogel
Current Medicine Group
American Association of Pharmaceutical Scientists
Hyphen Press