

Access-only Site License Agreement Springer Protocols

between

University of California at San Diego
[REDACTED]

(hereafter called "Licensee")

and

Springer Science+Business Media, LLC.
[REDACTED]

(hereafter called "Springer")

License ID Number [REDACTED]

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

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

Springer 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 platform indicated in attachment 3 (hereinafter called "Springer Platform") on behalf of the Springer Group of Publishers and its cooperating companies (hereinafter called "Springer Group"). By signing this Agreement, Licensee hereby confirms that any other Springer company can act as contracting party, whereby the terms of this Agreement will remain applicable. Springer will inform Licensee in writing of any change of the contracting party.

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** (hereinafter referred to as the "Licensed Materials").
- 1.2 For the purpose of this Agreement the "Authorized Users" of the Licensee are defined as all students, faculty and employees of the licensee and its affiliated departments (including authorized contractors) as described in **Attachment 2**.
- 1.3 Springer 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. All rights not specifically granted to Licensee are expressly reserved. "Nothing in this License shall in any way exclude, modify or affect any of the licensee's statutory or common law rights under the copyright laws of the United States."
- 1.5 Participating Libraries that provide public access to their library collection 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 Participating 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 Springer offers controlled access to the Licensed Materials through the use of domain name(s) or IP addresses of the Participating Libraries listed in **Attachment 2**.
- 2.2 Springer 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 the Fair Use provisions of United States and international copyright laws. Subscriber may not use routines designed to continuously and automatically search and index the service, such as web-crawling or spider programs.
- 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.
- 2.5 Authorized Users may obtain remote access to the Licensed Materials through secure access procedures established by the Licensee.
- 2.6 Authorized Users may send single articles to research colleagues outside the institution of the Participating Library for the purpose of non commercial scholarly communication.
- 2.7 Licensee and their Authorized Users may use a reasonable portion of the Licensed Materials in the preparation of course packs or other educational materials.

2.8 The electronic form of the Licensed Materials may be used as a source for Inter-Library Loan ("ILL") whereby articles can be printed and these print copies can be delivered via postal mail, fax, or fax-based service to fulfil ILL requests from an academic, research, or other non-commercial library. Requests received from for-profit companies or directly from individuals may not be honored. Fulfillment of Loansome Doc® service requests is permitted. ILL through secure electronic transmission, as demonstrated by the ARIEL and Prospero systems, is permitted. Files transmitted in this manner must carry copyright notices. Licensee and Participating Libraries agree to fulfill ILL requests in compliance with Section 108 of the United States Copyright Law (17 USC § 108, "Limitations on exclusive rights: Reproduction by libraries and archives") and clause 3 of the Guidelines for the Proviso of Subsection 108 (g)(2) prepared by the National Commission on New Technological Uses of Copyrighted Works.

Section 3. SPECIFIC RESTRICTIONS ON USE OF LICENSED MATERIALS

3.1 Neither Licensee nor their respective Authorized Users may modify, adapt, transform, translate or create any derivative work in any medium based on or including any materials in the Licensed Materials, or otherwise use any such materials in a manner that would infringe the copyright or other proprietary rights therein. No copyright notices, trademark or proprietary notices, author attributions or other notices or disclaimers included by Springer or any member of the Springer Group in the Licensed Materials may be removed, obscured or modified in any way. Licensee shall post appropriate notices and take reasonable measures to ensure that Authorized Users are informed of the applicability of copyright law and the restrictions in this Agreement with respect to the reproduction, use and transmission of the Licensed Materials. In the event of violation of the terms and conditions of this Agreement or of applicable copyright law, Springer and Licensee agree to take immediate action to suspend access to the Licensed Materials by any Authorized User violating these restrictions on use and shall consider other restrictions on access to and retrieval of the Licensed Materials, including additional limitations on printing and downloading.

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

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

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

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

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

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

3.4 Springer'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 4. OBLIGATIONS OF SPRINGER

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

4.2 Springer 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 springerprotocols.com service caused by failure of Springer's server.

4.3 Springer 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. Springer shall provide written notice of such withdrawal. If the withdrawal represents more than ten (10%) percent of the total Licensed Materials, the Licensor shall refund that part of the fee that is in proportion to the amount of materials withdrawn and the remaining unexpired part of the term.

4.4 Springer offers Authorized Users support and Helpdesk in New Jersey for Access Controls/Content/Support:

SpringerLink Helpdesk

Tel:

Fax:

E-mail:

Section 5. LICENSE FEE

Licensee(s) to make payment to Springer for use of the Licensed Material as set out in Attachment 3. Licensee acknowledges that the license fee, or any portion thereof, may be invoiced by another Springer company than the contract party.

Section 6. SECURITY AND REPORTING

6.1 Licensee recognises that maintaining the integrity of the Licensed Materials delivered by Springer, 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 Springer may terminate this Agreement in its sole discretion if violations of these security principles or Springer's intellectual property rights occur.

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

6.3 Springer 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 Participating Library and the Licensee. In the event of any unauthorized use of the Licensed Materials 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 terminate such Authorized User's access to the Licensed Materials upon Springer's request. Springer shall take none of the steps described in this paragraph without providing reasonable notice to the Licensee.

6.4 Collection and analysis of data on usage of the Licensed Materials will assist both Springer and Licensee to understand the impact of this Agreement, the infrastructure provided by Springer, and possible improvements in the program. Such usage data will be compiled by Springer on a monthly basis and shared with the Licensee and Participating Libraries, 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).¹

Section 7. TERM AND TERMINATION

7.1 The initial term of this Agreement commences with the period of access identified in **Attachment 1** and expires with the completion of the last period of access identified in **Attachment 1**. This Agreement may be extended for additional term(s) upon mutual agreement of Springer and Licensee by amendment of **Attachment 1** to reflect the new period of access and applicable license fees.

7.2 Should an ownership model emerge in 2009, Springer will apply any and all payments made towards an existing 2009 Protocols license to a new Protocols ownership model license, at the licensee's request.

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

7.3 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 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.

7.4 Online access to the Licensed Materials by shall be terminated upon recognition of a breach to this Agreement.

Section 8. MUTUAL PERFORMANCE OBLIGATIONS

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

Section 9. REPRESENTATIONS, WARRANTIES AND INDEMNITIES

9.1 Springer warrants that it will use commercially reasonable efforts in its production of tapes or optical media for delivery of the Licensed Materials to the Licensee and that, to the best of its knowledge, use by Licensee of the Licensed Materials 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.

9.2 Licensee warrants that it will use reasonable efforts to ensure the integrity of the Licensed Materials and the security of the Springerprotocols.com network especially as regards access by parties other than Authorized Users. Licensee represents that it is authorized to act on behalf of the Participating Libraries.

9.3 Notwithstanding the foregoing, however, Springer 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 SPRINGER BE LIABLE FOR ANY DIRECT OR INDIRECT, INCIDENTAL, SPECIAL CONSEQUENTIAL OR PUNITIVE DAMAGES ARISING OUT OF USE OF THE LICENSED MATERIALS, save that Springer will replace any defective media delivered by it to Licensee or other Participating Libraries under this Agreement.

Licensee and the other Participating Libraries shall not be liable to Springer 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 10. SPRINGER'S TRADEMARKS

10.1 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 Springer 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 the Authorize.

10.2 Springer shall have the right to review and approve of all use on SpringerLink and SpringerProtocols of the publication titles, trademarks, logos, colophons, proprietary legends or legal notices provided by Springer in connection with the applicable publications or Licensed Materials, in order to ensure compliance with Section 10.1 above and Springer's quality standards.

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

Section 11. GENERAL

11.1 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 Springer. Springer may assign this Agreement.

11.2 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.

11.3 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.

11.4 Venue for all disputes arising out of and in connection with the performance of this Agreement shall be San Diego County, State of California. 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 State of California, United States of America, without regard to that state's principles of conflict of law. Any action with respect to this Agreement may only be brought and maintained in the federal or state courts in San Diego County, State of California, United States of America. The parties consent to the jurisdiction of any such court. EACH PARTY WAIVES ANY RIGHT IT MAY HAVE TO A JURY TRIAL, OBJECTION TO VENUE OR INCONVENIENT FORUM.

11.5 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.

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

11.7 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.

11.8 All amounts payable by Licensee 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.

11.9 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 Springer:

Syed Hasan, President STM Sales Americas
Springer Science + Business Media, LLC

If to Licensee:


Christine Peters
Electronic Resource Specialist
University of California at San Diego

11.10 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 Participating Libraries
- Attachment 3: 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: University of California San Diego
on behalf of itself and the other Participating Libraries

Signature: 
Name (Printed): TONY HARVELL
Title: HEAD, ACQUISITION DEPT., LIBRARY
Date: 2/2/09

Springer: Springer Science+Business Media, LLC.

Licensor (Springer Science+Business Media, LLC.):

By: Syed Hasan
Title: President, STM Sales Americas
Signature: 
Date: 2/25/09

ATTACHMENTS to License ID Number 5766.01

ATTACHMENT 1: Pricing Terms and Conditions

A.1.1 Licensing Fee

A.1.1.1 The license fee for each period of access payable to Springer for Licensed Materials listed in Attachment 3 is as follows:

Licensed Materials	2009
Subject Collections	
All 15 Subjects (complete)	\$ [REDACTED]
Total	\$ [REDACTED]

A.1.2 Payment of Fees

A.1.2.1 Payment of fees described in Attachment 1. Payment will be remitted directly to Springer within 30 days of the Licensee's or Participating Library's receipt of invoice from Springer. In the event all, or any portion, of the sum invoiced is not paid when due, Springer has the right to terminate this Agreement without notice. Springer reserves the right to charge interest on any outstanding fees due under this Agreement at prevailing interest rates. In the event that the Licensee or Participating Library chooses to pay their fees through an intermediary, the Licensee and/or Participating Library will receive access when the Springer invoice to the intermediary is paid.

A.1.2.2 Springer will provide invoicing in US dollar currency. Licensee will remit payment in US dollars.

A.1.3 Term

The term of this agreement shall be for a period of access, beginning January 1, 2009 and ending on December 31, 2009.

ATTACHMENT 2: Description of the Participating Libraries

Name of Subscriber: University of California San Diego

Primary Address: [REDACTED]

Primary/ Billing Contact: Christine Peters

Acq. Dept., Geisel Library
University of California San Diego

Tel: [REDACTED]

Fax: [REDACTED]

Email: [REDACTED]

ATTACHMENT 3: List of Licensed Material - Access-Only

Access to the complete Springer Protocols Collection consists of a continuously growing list of titles. A full listing with pertinent details is available for download through the springerprotocols.com website or by using the following URL: <http://springerprotocols.com/cdp/view/downloadContents>

**First Amendment to License Agreement
Springer Protocols**

This Amendment is entered as of the 13th day of May, 2009 by and between:

University of California at San Diego
[REDACTED]

USA

("Licensee"),

and

Springer Science+Business Media, LLC.
[REDACTED]

USA

("Licensor"),

License ID: [REDACTED]

WHEREAS, the University of California at San Diego, entered into an Agreement with Springer Science+Business Media, LLC, dated January 1, 2009 (the "Agreement") pursuant to which Licensor makes available to University of California at San Diego (Licensee) in electronic form certain scientific, medical and/or technical content, which may be amended from time to time; therefore

This Agreement hereby incorporates the Licensee's former Agreement dated January 1, 2009 made by and between Licensee and Springer Science+Business Media, LLC.

NOW, THEREFORE, in consideration of the mutual promises expressed herein, and other valuable consideration the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

- The term of this Amendment shall be for three (3) subscription year, beginning January 1, 2010 and concluding December 31, 2012.
- Onetime Protocols Archives Purchase listed in Section 1.

PAYMENT OF FEES AND TERMS:

Any changes in Fees for the Subscriber's access to and use of the Additional Products are set forth in Attachment 1-A.

The Subscriber shall pay to the Licensor the additional Fees within thirty (30) days of invoicing or as otherwise may be set forth on Attachment 1-A.

Section 1. ARCHIVAL RIGHTS

1.1 In the absence of uncured material breach by Licensee, Licensor recognizes the right of the Licensee to own and possess in perpetuity the Licensed Materials as described in this Agreement and listed in Attachment 3 according to the self-archiving provisions set out below (hereinafter referred to as "Archival Rights").

1.2 Licensee may retain 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.

1.3 After the end of the Term of this Agreement, the Licensee shall have ongoing access to the Licensed Materials as provided below:

1.4 For a period commencing as of the end of the Term and continuing until the second anniversary thereof, Licensee shall be given continuing access to the Licensed Material for one additional year without further charge.

1.5 Thereafter, Licensee shall be given continuing access to the Licensed Material if Licensee either

1.5(a) purchases or licenses any other online products or services from Springer and makes payment for such other online products either directly or through the California Digital Library, in which case Archival Rights access to Licensed Content shall be granted without charge for as long as Licensee continues to make payment for such other online products or services; or

1.5(b) in the event that Licensee does not purchase or license any other online products or services from Springer, Licensee will be given the option to either pay for Archive hosting and access Springer Content through SpringerLink for an annual service fee of [REDACTED] US (\$) [REDACTED] (or as such amount may be reasonably increased by Springer from time to time) or Springer will provide to Licensee the Springer Content in an electronic medium as is currently in use as of the end of the Term (i.e., such as DVD or the then-current equivalent).

Attachment 1.A Licensing Fees

The Fees identified in the table below are in addition to the Fees identified in the prior agreement.

Licensed Materials All with perpetual access	2010	2011	2012	Archival Purchase
All 15 Subjects (complete)	\$ [REDACTED]			
All 15 Subjects (complete)		\$ [REDACTED]		
All 15 Subjects (complete)			\$ [REDACTED]	
Archival Purchase for All 15 Subjects				\$ [REDACTED]
Total	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]

The term of this agreement shall be for Three (3) subscription year, beginning January 1, 2010 and ending on December 31, 2012. The term of this agreement included Archival rights beginning with 1980.

Attachment 2.A Participating Members

ATTACHMENT 2: Description of the Participating Libraries

Name of Subscriber: University of California San Diego

Primary Address: [REDACTED]

Primary/ Billing Contact: [REDACTED]
Acq. Dept., Geisel Library
University of California San Diego
[REDACTED]

Tel: [REDACTED]
Fax: [REDACTED]
Email: [REDACTED]

ATTACHMENT 3: List of Licensed Material -

The complete Springer Protocols Collection consists of a continuously growing list of titles. A full listing with pertinent details is available for download through the springerprotocols.com website or by using the following URL:
<http://springerprotocols.com/cdp/view/downloadContents>

Licensed Materials	Year
Subject Collections	
Biochemistry	1980-2012
Bioinformatics	1980-2012
Biotechnology	1980-2012
Cancer Research	1980-2012
Cell Biology	1980-2012
Genetics / Genomics	1980-2012
Imaging / Radiology	1980-2012
Immunology	1980-2012
Infectious Diseases	1980-2012
Microbiology	1980-2012
Molecular Medicine	1980-2012
Neuroscience	1980-2012
Pharmacology / Toxicology	1980-2012
Plant Science	1980-2012
Protein Science	1980-2012

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

Licensee: University of California San Diego

Signature:  _____

Name (Printed): Tony A. Harvell

Title: Head of Acquisitions

Date: 6/2/09

Licensor: Springer Science+Business Media, LLC

Executive Signature:  _____

Name: Syed Hasan

Title: President, Sales

Date: 6/16/09