

# LICENSE AGREEMENT THIEME INSTITUTIONAL SALES

between

Thieme Publishers New York, a company  
333 Seventh Avenue, New York, NY 10001, USA  
– hereinafter referred to as the “Publisher”–

and

University of California, San Diego  
9500 Gilman Dr 0175A  
La Jolla, CA 92093-0175A  
– hereinafter referred to as the “Licensee”–

## 1. Subject of the Agreement

1.1 The Publisher, as the owner of the reproduction rights, hereby grants the Licensee a restricted, non-transferable, non-exclusive right to use the digitalised online edition of the Publisher's works and/or web-based software applications, including any new editions/updates developed by the Publisher, under the terms and conditions specified below (hereinafter called the “**Licensed Works**”)

The Licensed Works are listed in a separate **Attachment**. Any additional works will be licensed by means of a supplement or amendment to said **Attachment**, by mutual consent between the Parties; the terms of the present Agreement shall also apply to any additional works.

The rights of use granted to the Licensee with regard to authorized persons or Sites are specified in the **Attachment**.

1.2 The Publisher will usually make the licensed works available on a server so that said works can be accessed via the Internet. All persons authorized to use said works may display the licensed works by means of read-only access, and they may also locally store or print out individual articles and other items in a reasonable number for individual use. These articles may, however, not be stored in electronic or electro-magnetic form beyond this limit, and no further reproductions of these articles or the Licensed Works (not even in part) shall be permitted. In principle, the Licensee may access the Licensed Works via the Internet Protocol (hereinafter, “IP”) addresses (authentication via the IP address) to be indicated by the Licensee. However, the Licensee may also access the licensed works via passwords in individual cases.

1.3 The Licensed Works are copyright-protected in the name of the Publisher. Any further use or the transfer of the rights of use is subject to the prior written consent of the Publisher.

## 2. Provision of the Licensed Works

The Publisher will make the Licensed Works available for access on the agreed date of provision, but no earlier than within five (5) business days following receipt of the signed Agreement. The date of provision regarding the Licensed Works is indicated in the **Attachment**.

The Licensee will notify the Publisher of the necessary information (such as IP address, system administrator, relevant contact

addresses, etc.) no later than two (2) weeks prior to the date of provision of the Licensed Works.

## 3. License Fee – Adjustment – Due Date

3.1 The license fee for the Licensed Works to be paid per calendar year is stipulated in the **Attachment**. In addition, the relevant factors with regard to the license fee when this Agreement is concluded are also indicated in the **Attachment**.

In the event that the license fee – as indicated in the **Attachment** – depends on the number of Sites of the Licensee, the number of authorized persons, the total number of staff, or any other factor, the Licensee will notify the Publisher of any material change without delay. The term ‘material’ – in relation to the relevant Licensed Work – means any change in relation to the number of authorized persons or to the total number of staff with regard to the threshold value indicated in the **Attachment**, or any change in the number of Sites, or any change with regard to other factors. In this case, the Publisher will be entitled to adjust the license fee at its own reasonable discretion. It will be obliged to do so if any changes arise in favor of the Licensee. Such adjustment will be made with effect from the calendar year following the year in which the adjustment has occurred. If the Licensee fails to promptly notify the Publisher of any change that has occurred in its favour, the Licensee may only request an adjustment from the point in time when the change notice has been received.

3.2 In addition to the license fee according to section 3.1 – in connection with the attachment specified therein –, any VAT or other sales tax amount that may have accrued under the relevant statutory requirements must be paid in the respective statutory amount. This does not apply to tax exempt institutions.

3.3 The Publisher will charge the license fee for all Licensed Works on a yearly basis and in advance, i.e. on a prorata basis for the respective work - or as indicated in the **Attachment** –, in the year when the Agreement is concluded, including –if applicable– any VAT or sales tax accrued, and will be due for payment thirty (30) days after the invoice date without deduction.

3.4 The Licensee may only offset any claim against the Publisher if such claim is uncontested or has been adjudicated by means of a final (non-appealable) judgement of a court of law. If a claim is made, the Licensee must continue to pay the license fee before the claim is adjudicated.

3.5 The Publisher may adjust the license fee for the Licensed Works as indicated in the Attachment annually at its own reasonable discretion.

The Publisher will notify the Licensee of any increase in the license fee no later than four (4) months prior to the effective date of such increase so that the Licensee may (if necessary) avail itself of its right of termination, in accordance with section 5.1.

#### 4. Limitation of Liability

4.1 In the event of any malfunction with regard to the server of the Publisher, the obligation to pay the license fee will be reduced to the extent of such malfunction, until such malfunction has been eliminated. This shall not apply to malfunctions which are of minor importance in relation to the term of this Agreement, or in the case of routine maintenance work.

Furthermore, either Party may terminate this Agreement upon written notice with regard to the Licensed Works affected by such malfunction if the malfunction has not been eliminated within one month.

4.2 (a) Representations and Warranties. Each party represents and warrants (i) it has the right, power and authority to enter into this Agreement and to fully perform its obligations hereunder and grant the rights granted herein, and (ii) upon execution and delivery hereof, this Agreement shall constitute the valid and binding obligations of the party.

(b) Disclaimer of Warranty. THE PARTIES MAKE NO WARRANTIES OTHER THAN THE LIMITED WARRANTIES STATED IN THIS AGREEMENT. THE PARTIES WAIVE ALL OTHER WARRANTIES EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO (i) IMPLIED WARRANTIES OF MERCHANTABILITY, AND FITNESS FOR A PARTICULAR PURPOSE, (ii) WARRANTIES AS TO THE QUALITY OR PERFORMANCE OF THE MATERIALS, INFORMATION, GOODS, SERVICES, TECHNOLOGY AND/OR EDITORIAL CONTENT PROVIDED UNDER THIS AGREEMENT.

(c) Limitation of Liability. NEITHER PARTY HERETO SHALL BE LIABLE TO THE OTHER FOR INDIRECT, INCIDENTAL, CONSEQUENTIAL, LIQUIDATED, SPECIAL, PUNITIVE OR EXEMPLARY DAMAGES OR PENALTIES INCLUDING, BUT NOT LIMITED TO, LOSSES OF BUSINESS REVENUE OR ANTICIPATED PROFITS. THE FOREGOING LIMITATIONS OF LIABILITY WILL APPLY REGARDLESS OF THE CAUSE OF ACTION UNDER WHICH SUCH DAMAGES ARE SOUGHT, WHETHER FOR BREACH OF CONTRACT, NEGLIGENCE, STRICT LIABILITY, OR OTHER TORT, WHETHER OR NOT THE PARTIES WERE OR SHOULD HAVE BEEN AWARE OR ADVISED OF THE POSSIBILITY OF SUCH DAMAGE, AND REGARDLESS OF WHETHER ANY REMEDY FAILS OF ITS ESSENTIAL PRUPOSE.

#### 5. Term of the Agreement – Termination

5.1 This Agreement is concluded for an indefinite period and may be terminated by either Party with three (3) months' notice prior to the end of a calendar year, and, on the first occasion, with effect from the point in time indicated in the Attachment.

If, for the termination of individual Licensed Works, no separate license fee is specified in the Attachment for the terminated

works, the Publisher will be obliged to adjust the license fee at its own reasonable discretion in such a case.

5.2 Each notice of termination must be given in writing.

#### 6. Final Provisions

6.1 The Licensee will treat as confidential any commercial, technical or other information – including the terms of this Agreement – which the Licensee has become aware of during this contractual relationship, except where prohibited by law. This shall also apply to the period following the termination of the Agreement.

6.2 The Publisher is entitled to transfer the contractual relationship to a third party in the event of any disposal of the Licensed Works. The third party receiving the Licensed Works will become the exclusive contracting party of the Licensee, including all rights and obligations resulting from the contractual relationship.

6.3 Regardless of the place of its physical execution, this Agreement and all matters and issues collateral hereto shall be interpreted under and governed exclusively by the internal laws of the State of California, without reference to its conflict of laws rules.

6.4 Any amendments or supplements to this Agreement must be made in writing to be legally effective. No verbal ancillary agreements have been made.

6.5 If any of the provisions of this Agreement is held to be or becomes invalid, this will not affect the legal effectiveness of the other terms of this Agreement. The voided provision may be replaced by a provision which is as close as possible to the intended commercial purpose of the voided provision in a legally permissible manner.

California, . . . .  
[Text deleted]

California Digital Library U.C. San Diego  
[Text deleted]

New York

[Text deleted]  
Thieme Publishers New York  
[Text deleted]

[Text deleted]  
Thieme Publishers New York

# Attachment to the License Agreement

between

Thieme Medical Publishers, Inc., a company

and

The University of California

## a) Cf. 1.1 Licensed Works

### Thieme E-Book Library (English Titles)

1. Color Atlas and Textbook of Human Anatomy, 6<sup>th</sup> Edition, Vol. 3 (W. Kahle, M. Frotscher)
2. Pocket Atlas of Human Anatomy, 5th Edition (H. Feneis, W. Dauber)
3. The Human Body (A. Faller, M. Schuenke)
4. Color Atlas of Biochemistry, 2nd Edition (J. Koolman, K. H. Roehm)
5. Color Atlas of Cytology, Histology, and Microscopic Anatomy, 4th Edition (W. Kuehnel)
6. Color Atlas of Genetics, 3rd Edition (E. Passarge)
7. Color Atlas of Immunology (G. Burmester, A. Pezzutto)
8. Medical Microbiology (F.A. Kayser, K.A. Bienz, J. Eckert, R.M. Zinkernagel)
9. Color Atlas of Neuroscience (B. Greenstein, A. Greenstein)
10. Color Atlas of Pathology (U.-N. Riede, M. Werner)
11. Color Atlas of Pathophysiology (S. Silbernagl, F. Lang)
12. Color Atlas of Pharmacology, 3rd Edition (H. Luellmann, K. Mohr, A. Ziegler, D. Bieger)
13. Color Atlas of Physiology, 5th Edition (A. Despopoulos, S. Silbernagl)
14. Pocket Atlas of Nutrition (H. Biesalski)
15. Pocket Atlas of Ophthalmology (T. Schlote, J. Rohrbach, M. Grueb, J. Mielke)
16. Fundamentals of Neurology (M. Mumenthaler/H. Mattle)
17. A Pocket Guide to the Ear (A. L. Menner)
18. Color Atlas of Ear, Nose and Throat Diagnosis, 5<sup>th</sup> Edition (T. R. Bull)
19. Pocket Atlas of Hematology, 2nd Edition (H. Theml, H. Diem, T. Haferlach)
20. Clinical Tests for the Musculoskeletal System, 2nd Edition (K. Buckup)
21. Color Atlas of Neurology (R. Rohkamm)
22. Differential Diagnosis in Neurology and Neurosurgery (S. Tsementzis)
23. Neurology, 4th Edition (M. Mumenthaler, H. Mattle)
24. Ophthalmology, 2nd Edition (G.K. Lang)
25. Pocket Atlas of Oral Diseases, 2nd Edition (G. Laskaris)
26. Ophtho Notes (R. Goodman)
27. Pocket Atlas of Echocardiography (T. Boehmeke, R. Doliva)
28. Duus' Topical Diagnosis in Neurology, 4th Edition (M. Baehr, M. Frotscher)
29. Pocket Atlas of Endodontics (R. Beer, M. A. Baumann, A. M. Kielbassa)
30. Dermatology (W. Sterry, R. Paus, W. Burgdorf)
31. Color Atlas of Ultrasound Anatomy (B. Block)
32. MRI Parameters and Positioning (T. B. Moeller, E. Reif)
33. Normal Findings in CT and MRI (T. B. Moeller)
34. Pocket Atlas of Radiographic Anatomy, 2nd Edition (T. B. Moeller, E. Reif)
35. Pocket Atlas of Sectional Anatomy, Vol.2,3rd Edition (T. B. Moeller, E. Reif)
36. Thieme Clinical Companions Ultrasound (G. Schmidt)
37. Pocket Atlas of Sectional Anatomy, Vol.1, 3rd Edition (T. B. Moeller, E. Reif)
38. Pocket Atlas of Sectional Anatomy, Vol.3, 3rd Edition (T. B. Moeller, E. Reif)
39. Getting Started in Clinical Radiology (G. W. Eastman/ C. Wald / J. Crossin)
40. Basic Otorhinolaryngology (R.Probst/G.Grevers /H.Iro)
41. Essential Radiology, 2nd Edition (R.B. Gundermann)
42. Pocket Atlas of Dental Radiology (F.Pasler/H. Visser)
43. Differential Diagnosis in Internal Medicine (W. Siegenthaler)
44. A Guide to the Primary Care of Neurological Disorders (Popp / Deshaies)
45. Neuro-Ophthalmology Illustrated (Biousse / Newman)
46. The Retina in Systemic Disease (Tabandeh / Goldberg)
47. Color Atlas of Ophthalmology (Agarwal / Jacob)
48. Ear, Nose, and Throat Diseases (Behrboom / Kaschke)
49. Color Atlas of Anatomy/Volume 1: Locomotor System, 6<sup>th</sup> Edition (Platzer)
51. Color Atlas of Anatomy/Volume 2: Internal Organs, 5<sup>th</sup> Edition (Fritsch, Kuehnel)

The library will expand to include additional titles in the FLEXIBOOK Atlases & Textbooks series.

According to the Thieme E-Book Library (English Titles) brochure.

## b) Cf. 1.1 Sites and IP-addresses of the licensee:

### Site Addresses:

University of California – Berkeley  
110 Sproul Hall  
Berkeley, CA 94720-5800

University of California – Davis  
One Shields Ave  
Davis, CA 95616

University of California – Irvine  
Pereira Drive West of East Peltason Drive  
Irvine, CA 92697-5700

University of California – Los Angeles  
Intersection of Le Conte Ave and Westwood Blvd  
Los Angeles, CA 90024

University of California – San Diego  
9500 Gilman Drive  
La Jolla, CA 92093

University of California – San Francisco  
530 Parnassus Avenue  
San Francisco, CA 94143-0840

**IP Addresses:**

University of California – Berkeley  
[Text deleted]

University of California – San Diego  
[Text deleted]

University of California – San Francisco  
[Text deleted]

A Site is defined as a single campus community as listed above defined by Internet Protocol (“IP”) addresses administered centrally by the campus and provided to Thieme.

The signatory confirms that access to the Licensed Works is strictly limited to the Sites and IP addresses as specified in this Attachment.

**c) Cf. 1.1 Authorized Users:**

Authorized Users are defined as permanent or temporary employees, including students, who work within the premises of the sites given above.

Making available the Licensed Works to the Authorized Users outside the locations of the Licensee (e. g., remote access via virtual private network) shall be permitted.

Subscribers’ libraries which provide public access may provide access to and permit copying from the online form of the Publications by members of the public for their scholarly, research, education and personal use by means of workstations located at the library facility.

University of California – Davis  
[Text deleted]

University of California – Irvine  
[Text deleted]

University of California – Los Angeles  
[Text deleted]

**d) Cf. 1.2 Authorized Uses**

Subscriber and Authorized Users may make all use of the Licensed Materials as is consistent with United States and international copyright laws.

**e) Cf. 2 Date of Provision**

01 January 2011

**f) Cf. 3.1 Annual License Fee**

Sections 3.1 and 3.5 are superceded as follows:

This is a three year deal. There is a [T] price cap for 2012 and 2013.

A License Addendum signed by both parties is needed if the Licensee intends to include Sites that are not part of this agreement or if there are significant changes in the number of Authorized Users.

Institution	2011 List Rate	2011 License Fee	2012 License Fee	2013 License Fee
UC - Berkeley	\$ 3,750.00	\$ [Text deleted]		
UC - Davis	\$ 6,350.00	\$		
UC - Irvine	\$ 6,350.00	\$		
UC - Los Angeles	\$ 10,950.00	\$		
UC - San Diego	\$ 6,350.00	\$		
UC - San Francisco	\$ 8,750.00	\$		
<b>Total</b>	<b>\$ 42,500.00</b>	<b>\$</b>		

**g) Cf. 4.2 Warranties**

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.

**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.

**h) Cf. 5.1 Termination of the License Agreement**

on the first occasion effective 31 December 2013.

**i) Additional Agreement**

University of California – San Francisco will have the option to opt out of years 2 and 3 by providing notice by November 1, 2011.

The use and practice of course-reserves, course-packs and scholarly sharing is permitted.

**Funding Contingency**

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 any conflict between the terms of the Frame Contract and this Attachment, the terms of this Attachment shall prevail.

California,

[Text deleted]

\_\_\_\_\_  
.....  
University of California, San Diego

[Text deleted]  
Head Acquisitions Department, UCSD Libraries

New York,

\_\_\_\_\_  
[Text deleted] Account Manager  
Thieme Medical Publishers, Inc.

\_\_\_\_\_  
[Text deleted] President  
Thieme Medical Publishers, Inc.