

Agreement for Intermediary Services Content
Agreement number: BO201600032

The undersigned

SURFmarket B.V., a private limited company with its registered office at Radboudkwartier 217, Utrecht, The Netherlands, duly represented in this matter by its director, and referred to hereinafter as "SURFmarket";

and

Georg Thieme Verlag KG, with its registered office at Ruedigerstr.14, Stuttgart, Germany, duly represented in this matter by its Sales Manager Institutional Sales, referred to hereinafter as "Publisher";

hereinafter jointly referred to as the "Parties";

Whereas:

- Institutions wish to acquire Rights of Use in respect of the Licensed Material provided by Publisher.
- SURFmarket provides Intermediary Services in respect of Rights of Use for Licensed Material on the one hand and Institutions for their Users on the other;
- said Intermediary Services relate to the creation of Licence Agreements between Publisher and Institutions;
- SURFmarket makes arrangements with Publishers regarding discounts, prices for said Rights of Use, provision of access, licence administration, and remittance of payments or debiting of payments for Institutions;
- SURFmarket and Publisher have concluded the present Agreement for Intermediary Services Content, whereby Parties have stipulated that Publisher is prepared, on the conditions set out in the Licence Agreement as included in Schedule C to this Agreement, to grant Institutions Rights of Use in respect of the Licensed Material and SURFmarket is prepared to perform the Services specified in this Agreement for Intermediary Services Content;
- SURFmarket offers the SURFconext service so as to make the Licensed Material available to Institutions in the manner described at <http://www.surfnet.nl/nl/Thema/coin/Pages/default.aspx>
- Parties wish to regulate their contractual relationship for a period of three (3) years;
- SURFmarket is acting on behalf of the Institutions referred to in Schedule A to this Agreement.

Declare that they have agreed as follows:

Clause 1: Definitions

- 1.1 Authentication: Determination by an Institution connected to SURFconext of the identity of End-user, whether or not including the Institution to which End-user belongs.
- 1.2 Authorisation: the provision of access to online Licensed Material by Publisher.
- 1.3 Agreement: the Agreement for Intermediary Services (Licensed Material) and its associated Schedules.
- 1.4 Contact Persons: the employees of the Institutions appointed by the Institutions who will maintain contact with SURFmarket in respect of this Agreement.
- 1.5 Distribution: the delivery to Institutions of the Licensed Material in such a way that the Licensed Material can be downloaded by the Institutions or used remotely.

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- 1.6 Documentation: the description of the Licensed Material.
- 1.7 End-user: a person appointed or employed by the Institution or otherwise authorised in the context of the Institution's operations, as well as a student, external student, course participant registered with the Institution, who is authorised by the Institution pursuant to the Licence Model concluded by the Institution to acquire Rights of Use in respect of the Licensed Material. End-user include third parties but solely within the premises of the Institution.
- 1.8 Enhanced version: a modified version of the Content which its functionality is changed or extended.
- 1.9 Institutions: the educational and research institutions and institutions equivalent to them for the purposes of the present Agreement specified, according to category, in Schedule A.
- 1.10 Intermediary Services: the services, specified in the SURFmarket Subscription, to be supplied by SURFmarket in respect of and relating to the concluding and granting of licences between the Institutions and Content providers or Publishers.
- 1.11 Licence Agreement: the agreement regarding the User Right in respect of the Licensed Material that is created between Publisher on the one hand and the Institution on the other via SURFmarket as intermediary. The Licence Agreement is included as Schedule C.
- 1.12 License Fee: the charge(s) payable for the Content as agreed by both Parties and which are specified in Schedule B.
- 1.13 Licensed Material: the visual and audio material, databases, and/or other publications deriving from Publisher, specified in Schedule B, that are recorded on and/or contained in electronic data media, or that are made available electronically or in some other electronic form and to which the Institution can acquire a User Right via SURFmarket as intermediary by means of a Licence Agreement.
- 1.14 Market Area: the geographical area where SURFmarket can provide Intermediary specified according to categories of institutions, are given in Schedule A.
- 1.15 Media: the data media on which the Licensed Material is recorded.
- 1.16 New Publications: Journals, datasets or audiovisual material which are released to the market by Publisher but which are not part of the Licensed Material.
- 1.17 Schedules: appendices to the present Agreement which, once signed by the Parties, form part of this Agreement. The Schedules set forth the conditions referred to in this Agreement.
- 1.1 SURFconext: the service from and described on the website of SURFnet that offers Publisher a set of arrangements and a technical infrastructure (otherwise than on the basis of an IP address) for identification, authentication, authorisation, and logging with a view to the provision of access to Licensed Material in the form of information or services for End-users.
- 1.18 SURFnet, the sister organization of Surf Market Institutions that connects Publishers to SURFconext.
- 1.19 User Rights: the right to use the Licensed Material granted to the Institution by Publisher pursuant to the Licence Agreement.

Clause 2: Subject of the Agreement for Intermediary Services Content

- 2.1 Publisher hereby grants SURFmarket a non-exclusive right, in accordance with the provisions of the Agreement for Intermediary Services Content, to provide Intermediary Services within the Market Area regarding the Licensed Material.



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- 2.2 Publisher make the Licensed Material available through either SURFconext or via IP ranges for Institutes not yet connected to SURFconexr. For the latter variant SURFmarket delivers the IP ranges of Institutes to Publisher.

Clause 3: Term of the Agreement for Intermediary Services Content

- 3.1 This Agreement is entered into for a period of three (3) years, commencing on 1 January 2016 and consequently ending on 31 December 2018.

Clause 4: Performance Publisher

- 4.1 Publisher will do everything necessary on its part in the given circumstances to enable SURFmarket to provide the Intermediary Services.
- 4.2 At the request of SURFmarket, Publisher will provide access to Licensed Material in such a way that the necessary Rights of Use can be exercised individually or per group by Institutions, and its Users.
- 4.3 The Licensed Material will be made available by Publisher via SURFconext. When Publisher will not be using SURFconext to make available Licensed materials SURFmarket shall provide the Institutions' IP ranges to ensure access to the Licensed Material.

Clause 5: Performance SURFmarket

- 5.1 SURFmarket will act as an intermediary in respect of the creation of Licence Agreements between Institutions and Publisher within the Market Area. In all its actions vis-à-vis Institutions (including potential Institutions), SURFmarket will at all times make clear that it is acting as an independent party. SURFmarket will not do or say anything that may create the impression that SURFmarket's authority to act on behalf of Publisher extends any further than specified in the Agreement for Intermediary Services Content.
- 5.2 SURFmarket will provide Intermediary Services in respect of the Licensed Material, types of Licence Agreements, and Licence Fees specified in Schedule B.
- 5.3 SURFmarket will not be permitted to actively recruit outside the Market Area. Within the Market Area, the Intermediary Services will be restricted to the Institutions.
- 5.4 SURFmarket will not be permitted to extend the number of categories listed in Schedule A without the prior written consent of Publisher. Publisher will not refuse its consent on unreasonable grounds.
- 5.5 SURFmarket undertakes to do or refrain from doing anything that a proper intermediary, acting reasonably and professionally, should do or refrain from doing and to promote the interests of the Parties to the best of its knowledge and ability and in all reasonable and fairness.
- 5.6 SURFmarket will not make any statements regarding the functioning or other aspects of the Licensed Material that might be misleading or that SURFmarket knows, or should know, cannot be fulfilled. SURFmarket indemnifies Publisher for any claims for damages asserted by Institutions, its Users (including potential Institutions, and its Users) on the basis of statements or actions on the part of SURFmarket.
- 5.7 SURFmarket will immediately notify Publisher of any deficiencies in the functioning of the Licensed Material and/or of any complaints made by Institutions. SURFmarket will not be authorised, without the written consent of Publisher, to offer solutions to deficiencies to Institutions or to deal with customers' complaints.



Clause 6: Creation of Licence Agreements

- 6.1 To ensure that Publisher grants Rights of Use and the Institution honours the Rights of Use that are granted, SURFmarket will provide the Institution, digitally, with a Licence Agreement to be signed by the Institution.
- 6.2 SURFmarket will ensure that the Institution accepts that concluding the Licence Agreement digitally has the same validity as a written signature.
- 6.3 SURFmarket will ensure that the signature of the Institution is set by a representative of the Institution who is authorised to sign. SURFmarket will also, if necessary, enable the Contact Person to acquire internal approval for entering into the Licence Agreement beyond the scope of his/her financial mandate, such that they can lawfully undertake, digitally, the obligations that are set forth in the Licence Agreement.
- 6.4 SURFmarket will be entitled to charge the Institution a mark-up on the fees specified in Schedule B such as to cover the cost of providing the Intermediary Services for the Institution.

Clause 7: Limitation of Liability

- 7.1 SURFmarket cannot be held liable for loss/damage sustained by Publisher that is the result of the Intermediary Services except in so far as such loss/damage is the direct result of an intentional act or omission or gross negligence on the part of SURFmarket or its employees. In the event that SURFmarket or employees for whom SURFmarket may be held liable at law has/have committed a wrongful act, SURFmarket will only be liable to provide compensation for loss/damage in so far as such was caused by an intentional act or omission or gross negligence.

Clause 8: Intellectual Property Rights

- 8.1 SURFmarket will be entitled to make use of Publisher's trademarks, trade names, and other indications of origin to identify the Licensed Material in the context of its work pursuant to the Agreement for Intermediary Services Content.
- 8.2 The intellectual property rights in respect of the Licensed Material will be vested in Publisher. Publisher indemnifies SURFmarket in respect of infringement of its intellectual property rights by third parties.
- 8.3 Parties will not register one another's trademarks, trade names, or other indications of origin (or any other marks or symbols similar to them) and will only use them in the manner indicated by Parties. This provision also applies to designs, materials, and documentation that form the basis for SURFconext, SURFnet, and its network.
- 8.4 SURFmarket will inform Publisher as soon as possible of any infringement of Publisher's trademarks or other intellectual property rights of Publisher due to the use of the Licensed Material, which comes to the attention of SURFmarket. In this connection, SURFmarket will render all reasonable co-operation to Publisher as regards rectifying such infringements.



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- 8.5 SURFmarket's right to make use of Publisher's trademarks, trade names, or other indications of origin will terminate by operation of law at the point when this Agreement for Intermediary Services Content is terminated, dissolved, for whatever reason. SURFmarket will ensure, in so far as it is reasonably able, that by terminating or dissolving the Licence Agreement, the Institution will observe the termination of the Rights of Use.
- 8.6 SURFmarket will be entitled to refer to itself in respect of the Licensed Material as an authorised intermediary of Publisher.
- 8.7 SURFmarket will ensure, insofar as it is reasonably able, that Institutions observe the obligations imposed on them by the provisions of the Licence Agreement. Should it appear that an Institution does not comply with some or all of the obligations specified in this Agreement, SURFmarket will immediately inform Publisher, after which Publisher may take measures itself. SURFmarket will render all necessary assistance in this respect.
- 8.8 Publisher will be the (intellectual) property rights respecting designs, materials and documentation that underlie SURFconext.

Clause 9: Licenced Material, Licence models and License Fees

- 9.1 SURFmarket will provide the Intermediary Services regarding allocation of Rights of Use on the basis of four (4) preferred licence models specifically tailored to the educational context. Schedule B gives a detailed specification of the Licence Model/Models that is/are applicable pursuant to the Agreement for Intermediary Services Content.
- 9.2 SURFmarket is entitled to calculate the institution a percentage mark on top of the License fee(s) mentioned in Annex B in order to reimburse the costs for the provision of Intermediary Services for the benefit of the Institution.

Clause 10: Reporting and Invoicing

- 10.1 The invoice for the Rights of Use to be granted by Publisher to the Institution pursuant to a Licence Agreement will be submitted only to SURFmarket for payment.
- 10.2 Invoices will be submitted no earlier than two months before the start of the period charged. Unless agreed otherwise, invoices will not charge for periods longer than one year.
- 10.3 SURFmarket will effectuate payment to Publisher of the amount of the invoice referred to in sub clause 1 of the present clause within 30 days of receiving the invoice. When paying an invoice, SURFmarket will not be entitled to invoke any discount, deduction, compensation, or postponement whatsoever other than as provided for in this Agreement. SURFmarket will be allowed to pay in instalments.
- 10.4 Should SURFmarket fail to effectuate payment of the amount owing to Publisher on time, Publisher will give SURFmarket written notice of default, granting SURFmarket a reasonable period in which to comply with its payment obligation. Upon that period expiring, SURFmarket will be deemed to be in default by operation of law. Publisher will be entitled to charge the then applicable rate of statutory interest on any payment that is not paid on time. Said interest will be calculated from the day on which SURFmarket legally fell into default until the day on which the amount owing is received.



Clause 11: Delivery of Licensed Material

- 11.1 SURFmarket or Publisher will make Licensed Material available to an Institution subject to the conditions set forth in Schedule C after the Institution has signed the Licence Agreement.
- 11.2 Upon the Institution having signed the Licence Agreement or having stated unconditionally that it agrees to the provisions of the said Licence Agreement, Publisher will provide the Institution with access to the Licensed Material in accordance with the provisions set forth in Schedule D.
- 11.3 Publisher reserves the right to withdraw at any time from the Licensed Material any item or part of an item for which it no longer retains the right to publish and for which the Publisher has been unable to secure the provisions as set out in Schedule D, or any item or part of an item for which the Publisher has reasonable grounds to believe it infringes copyright or is defamatory, obscene, unlawful or otherwise objectionable. The Publisher will give written notice to the Institution of such withdrawal. If the withdrawn material represents more than five per cent (5%) of the Licensed Material the Publisher will make a pro rata refund of part of the Licence Fee to the Institution, taking into account the amount of material withdrawn and the remaining term of this Agreement for Intermediary Services Content.
- 11.4 SURFmarket shall have complimentary access to the Licensed Material for the purpose of providing information to the Institutions.

Clause 12: Guarantee

- 12.1 Publisher guarantees that, during the term of this Agreement and any renewed term, the Licensed Material (a) shall have the properties specified in the Documentation and (b) and shall not contain any security elements other than those specified in the Documentation.
- 12.2 Publisher guarantees that, during the term of this Agreement, it will keep track of user experience regarding the Licensed Material and will, if necessary, provide changes or additions to the Licensed Material by means of New Publications.

Clause 13: Long term preservation and continuous access

- 13.1 Long term preservation:
Publisher will archive the Licensed Material in at least one of the established e-journal archiving initiatives at the option of SURFmarket.
- 13.2 Continuous access in case of 'trigger events':
Publisher guarantees continuous access to and use of the Licensed Material which was published and paid for during the term of this and possible preceding Agreements for Intermediary Services between the Publisher and the Institution through one of the established e-journal archiving initiatives if one or more of the following events ('trigger events') occur:
- a catastrophic and sustained failure of the Publisher's delivery platform or
 - the Publisher stops operations, or
 - the Publisher ceases to publish a title, or
 - the Publisher no longer offers back issues.



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13.3 Continuous access in case of termination of the Agreement for Intermediary Services Content:

In the case of termination of the Agreement for Intermediary Services Content, except when such termination is due to a breach of the Agreement for Intermediary Services Content by SURFmarket, Publisher will provide (at the option of SURFmarket) the Institutions and its Users with continuous access to and use of the Licensed Material which was published and paid for during the term of this and possible preceding Agreements for Intermediary Services between the Publisher and SURFmarket, without charge, either by one or more of the following options:

- 13.3.1 continued online access to archival copies of the same Licensed Material on the Publishers' server;
- 13.3.2 granting access to one of the aforementioned accepted e-journal archiving solutions;
- 13.3.3 supplying archival copies of the same Licensed Material to a archiving facility shared by more Institutions;
- 13.3.4 supplying archival copies of the same Licensed Material to an Institution to be uploaded to the protected network of the Institution.

13.4 Continuous access in case of transfer of a journal title:

In the case when a journal title moves between publishers and access to the journal title is no longer supported by Publisher, Publisher guarantees continuous access to and use of the Licensed Material which was published and paid for during the term of this and possible preceding Agreements for Intermediary Services between the Publisher and SURFmarket by legally binding the receiving Publisher of the journal title not to remove content that was previously deposited in accordance with the archiving arrangements even if the receiving publisher will not be continuing to deposit content in the archive. Publisher will legally bind the receiving Publisher to continue the existing archiving arrangements for the journal title after the effective date of transfer of the journal title. Publisher will adjust the Licence Fee for the value of the corresponding part of the Licensed Material for remaining term of the Licence Agreement.

Clause 14: Premature termination orf dissolution

14.1 Premature termination of this Agreement for Intermediary Services Content by either Party will be possible – with immediate effect, without judicial intervention, and without any obligation to pay damages – in the following circumstances:

- 14.1.1 the other Party acts contrary to the arrangements set forth in this Agreement for Intermediary Services Content, including but not restricted to no longer being able to give access to the Licensed Material through Publisher losing the right to allocate Rights of Use;
- 14.1.2 submission of an application for a suspension of payments by either Party;
- 14.1.3 insolvency of either Party.

14.2 Obligations which by their nature are intended to continue after the termination or dissolution of this Intermediary Agreement for Content will continue after such dissolution.

Clause 15: Termination of the Service

- 15.1 Publisher will cooperate proactively with a responsible transfer and/or responsible termination of the Service.
- 15.2 Publisher will enable the Institutions, for a reasonable period of at least two (2) months, to transfer Institution Data to a different provider at the rates and on the conditions of this Agreement for Intermediary Services Content.
- 15.3 After a period agreed between Parties, Publisher will delete the Institution Data and will return all confidential information to the Institution or delete it. After the transfer or deletion of the Institution Data, Parties will adopt a delivery protocol that specifies, but not exclusively, the Institution Data that has been transferred or deleted.

Clause 16: Indivisibility of Agreement for Intermediary Services Content

- 16.1 Should one or more provisions of this Agreement for Intermediary Services Content become invalid or inapplicable, the validity of the other individual provisions and the overall validity of this Agreement for Intermediary Services Content will be unaffected.

The following Appendices form an inseparable part of this Agreement for Intermediary Services Content:

- Schedule A: Categories of Institutions
- Schedule B: Description Licensed Material, with prices and licence models
- Schedule C: Licence Agreement with appendices;
- Schedule D: Access and availability Licensed material;

In the event of any conflict between the provisions of this Agreement for Intermediary Services Content itself and those of the Appendices, the provisions will prevail in the following order of priority:

- Agreement for Intermediary Services Content
- Schedule A: Categories of Institutions;
- Schedule B: Description of Licensed Material, with prices and licence models;
- Schedule C: Licence Agreement with appendices;
- Schedule D: Access and availability Licensed Material;

Clause 17: General

- 17.1 Any general terms and conditions of delivery and/or payment and any other general or particular terms and conditions applied by Publisher will not apply and are hereby expressly rejected.
- 17.2 All notifications made by Parties to one another pursuant to this Agreement for Intermediary Services Content will be made in writing or by e-mail. Oral statements, undertakings, or arrangements will have no legal effect unless confirmed in writing or by e mail.
- 17.3 Each Party will appoint an employee authorised to represent the Party in the context of this Agreement for Intermediary Services Content.
- 17.4 If Parties agree on new conditions and provisions, these will be considered to replace the conditions and provisions of the present Agreement for Intermediary Services Content and the new conditions and provisions will constitute as the Agreement for Intermediary Services Content.




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- 17.5 Any dispute arising between Parties in respect of this Agreement for Intermediary Services Content will be submitted to the competent court in Germany, for adjudication.
- 17.6 Parties may agree that, in deviation from what is provided in the previous sub clause, a dispute will be made subject to arbitration in accordance with the conditions of the Netherlands Arbitration Institute [Nederlands Arbitrage Instituut] or according to an arbitration agreement (to be drawn up); or that a mutual solution to the dispute be sought by means of mediation in accordance with the rules of the Netherlands Mediation Institute (NMI) (Rotterdam, The Netherlands); or that a binding opinion be requested in respect of the dispute.
- 17.7 In the event of a dispute as referred to in Clause 14.1 of this Agreement, either Party will notify the other Party in writing that such dispute has arisen, giving a concise summary of what the former Party considers to be the subject of said dispute.

Thus agreed and signed in duplicate

in: Utrecht

on: 23.6.2016




SURFmarket

in: Stuttgart

on: 02.06.2016



Georg Thieme Verlag KG



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- Schedule A List of Institutions
- Schedule B Description of Content, License Models and License Fees
- Schedule C Model License Agreement
- Schedule D Access and availability Licensed Material.
- Schedule E SURFconext



Categories of Institutions

Market Area Kingdom of the Netherlands:

- Universities
- Universities of Applied Science ('hogescholen')
- Designated and various educational institutions
- Large technological institutes
- Research institutes
- Institutions affiliated to higher educationLibraries
- Museums

Market Area Kingdom of Belgium:

- Universities
- Universities of Applied Science ('hogescholen')

For an up-to-date list, please go to the SURFmarket website (www.SURFmarket.nl).



Licensed Material, Types of Licence, and Licence Fees

A. Access Fees

(amounts exclusive of VAT)

Institution	Cross Access fee 2016	TAC fee 2016 ⁸⁾
Uni Leiden	€ 12,239	€ 2,692
Uni Groningen	€ 14,241	€ 2,692
Uni Amsterdam	€ 10,644	
TU Eindhoven	€ 5,730	
Uni Maastricht	€ 3,000	
TOTAL	€ 45,854	€ 5,384

Explanation of types of Licence Agreement and Licence Fees

In return for paying an annual Licence Fee, the Institution will be granted the Usage Right for the Licensed Material.

- Campus Licence: for the whole institution, as defined in Clause 1.8;

Conditions

1. Thieme Online Journals comprises access to all available journals / databases at <http://www.thieme.com> and <http://www.thieme.de> including their backfiles. For a detailed list of all titles/products available at the start of the agreement see Schedule C-b. Backfiles are generally included from 2000 onwards, except for Synlett and Synthesis (no back files included) and titles that started after 2000;
2. The Licence Fee for new Institutions will be based on the holdings for Licensed Material of the Institution in the year preceeding the year of the Institution joining and is a provisional amount awaiting reconciliation of the individual libraries subscriptions. The definite list of subscriptions will be agreed with the individual institution and the total amount may be adjusted accordingly;
3. The total amount of payments made by an Institution for subscriptions to the Licensed Material, either directly to Publisher or through agents will be deducted from the total Licence Fee. For this purpose, Publisher will supply SURFmarket with a full list of amounts paid per Institution;
4. The licence year for this agreement is set to start on January 1st and expires December 31st;
5. The Licence Fees for 2017 and 2018 will increase by a percentage reflecting the average inflation rate in The Netherlands at 1 october preceeding the renewal year and will be agreed upon at the time between Publisher and SURFmarket. If the average percentage is less than zero the price increase will be set at 0%. If the average is more than 5%, the increase will be set at 5%;
6. Prices are in Euro, exclusive of VAT;
7. Other SURFmarket members can join the Licence Agreement at a fee to be determined by Publisher;



8. Available only with a license to the cross-access package.

B. Open Access Publishing for UKB members

Discount on the Article Processing Charge for articles in the journals according to Schedule C-b *)	25%
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*) Option available only in 2016 to participating Institutions



Model Licence Agreement

The undersigned:

<Name of Institution>, with its registered office at <institution address>, <institution place of registration>, duly represented in this matter by <person with authority to represent the Institution>, referred to hereinafter as "the Institution";

and

Georg Thieme Verlag KG, with its registered office at Ruedigerstr.14, Stuttgart, Germany, duly represented in this matter by its Sales Manager Institutional Sales, referred to hereinafter as "Publisher";

hereinafter jointly referred to as the "Parties";

Whereas:

- Publisher has concluded an agreement regarding the Licensed Material with SURFmarket by (referred to hereinafter as "SURFmarket") on May 2016 with a view to SURFmarket providing the Licence Agreement, access to the Licensed Material, invoicing and collection in respect of Licence Fee for the registered Rights of Use, all with respect to educational and research institutions and equivalent institutions (referred to hereinafter as "Agreement for Intermediary Services Content");
- Publisher is prepared to grant the Institution a non-exclusive and non-transferable User Right in respect of the Licensed Material for its Users for the period when the present Agreement is valid, under the terms and conditions and provisions set forth below. The said User Right also covers the Media associated with the Licensed Material;
- Publisher and the Institution are aware that the Licensed Material to be made available to the Institution shall remain the property of Publisher or the relevant third party if Publisher is not the owner and that the Media to the Licensed Material shall only be provided to the Institution with the intellectual property rights accruing to Publisher in respect of the Licensed Material and the said Media and Documentation being retained;
- in making the above mentioned Licensed Material available to Users, the Institution shall ensure that the said Users do not infringe the intellectual property rights in respect of the said items.

Declare that they have agreed as follows:

Clause 1: Definitions

- 1.1 Agreement: the present Licence Agreement and its associated Appendices;
- 1.2 Schedule/Appendices: the most recent version (according to the version number and date) of an Schedule/appendices to the Agreement for Intermediary Services Content which, after being initialled by Parties, forms/form part of the Agreement for Intermediary Services Content (and replaces/replace another Schedule or Appendices that may have been agreed on previously);
- 1.3 Authentication: Determination by an Institution connected to SURFconext of the identity of User, whether or not including the Institution to which User belongs;
- 1.4 Authorisation: the provision of access to online Licensed Material by Publisher;

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- 1.5 Course Pack: a multi-source collection or compilation of information (e.g. book chapters, journal articles, abstracts, multi-media materials) assembled by members of staff of the Institution for use by students for the purpose of training, education and instruction, either in printed, electronic or non-print perceptible (audio or Braille) form;
- 1.6 End-user: a person appointed or employed or formerly employed and retired by the Institution or otherwise authorised in the context of the Institution's operations, as well as a student, external student, course participant registered with the Institution, who is authorised by the Institution pursuant to the Licence Model concluded by the Institution to acquire Rights of Use in respect of the Licensed Material. End-user include third parties solely within the premises of the Institutions;
- 1.7 Intermediary Services: the services to be supplied by SURFmarket on the basis of the present Agreement for Intermediary Services Content, in respect of and relating to the granting and concluding of Rights of Use between Institutions by SURFmarket and Publisher;
- 1.8 Institution Data: data – including, but not exclusively, e-mail – delivered, generated, sent, or made visible via Services by or to the Institution or User. Institution Data includes personal data as defined in the (Dutch) Data Protection Act (Wet bescherming persoonsgegevens) of Users, and is delivered, generated, sent, or made visible via the Services by or to the Institution or User.;
- 1.9 Licence Contact Person: the employee designated by an Institution who maintains contact with SURFmarket on behalf of the Institution regarding the Licence Agreement;
- 1.10 Licence Fee: the charge(s) payable for the Licensed Material as agreed by Parties and which are specified in Schedule C-a;
- 1.11 Licensed Material: the material specified in Schedule C-a of which the Institution can acquire Rights of Use via SURFmarket as intermediary by means of a Licence Agreement;
- 1.12 New Publication: a follow-up version of the Licensed Material provided by Publisher to the Institution;
- 1.13 Rights of Use: the rights granted to an Institution by Publisher to use Licensed Material for a specified period and for an explicitly specified target group (Users or the Institution itself);
- 1.14 Rightholder: the holder of the intellectual property rights in respect of the Licensed Material that can set conditions, on an exclusive basis, for the use, duplication and distribution of Licensed Material with one or more specific brands (including trade names), or the party designated by such holder for a particular region or target group of customers that has the exclusive right to allocate the Distribution function requested by SURFmarket to SURFmarket.
- 1.15 Service: the specifications and conditions under which Publisher makes available and will maintain Licensed Material;
- 1.16 SURFconext: a collaboration infrastructure that connects a number of basic building blocks for online collaboration on the basis of open standards as described at <http://www.surfnet.nl/en/Thema/SURFfederatie/over/Pages/Deelnemen.aspx>;
- 1.17 SURFnet: the sister organisation of SURFmarket that connects Institutions to SURFconext.
- 1.18 User: End-user and Guest User;
- 1.19 Virtual Learning/Research Environment: a system designed to support teaching and learning in an educational and research setting.



Clause 2: Subject of the Agreement

- 2.1 Users at the Institution shall acquire the Rights of Use regarding the Licensed Material in accordance with the provisions of the Agreement if the use made of the Licensed Material takes place manifestly in the interest of the educational activities and/or research carried out by the Institution. Use of the Licensed Material shall be permitted solely for non-commercial purposes. Use of the Licensed Material is not subject to any restrictions regarding the number of (simultaneous) Users;
- 2.2 In the context of use of the Licensed Material, the Institution shall be entitled to use an introductory screen displaying its own logo or the logo of its library when giving access to the Licensed Material;
- 2.3 Unless specified otherwise by the Institution, the Agreement shall take effect on the date it is signed. Before the Agreement takes effect, the text of the Agreement will be made available to the Institution in such a way the Agreement can be stored by the Institution on a durable medium;
- 2.4 Without prejudice to the provisions set out in Clause 10 the Agreement shall terminate on 31 December 2015 or on the date of termination of the Agreement for Intermediary Services Content referred to in the preamble to the Agreement;
- 2.5 The Publisher hereby grants to the Institution, subject to and in accordance with the terms of the Agreement, a non-exclusive licence for the metadata associated with the Licensed Material for use in local library catalogues, union catalogues, and such other library and information systems including but not limited to search machines of the Institution and third parties. The use of metadata by commercial search machines does not constitute commercial use as long as that metadata is not sold, lent, distributed or otherwise re-licensed via that search machine or the access to that metadata on that search machine is exclusively being charged for.

Clause 3: Creation of the Agreement

- 3.1 To ensure that Publisher and the Institution honour the Rights of Use that are to be granted in respect of the Licensed Material, the Institution shall sign the Agreement;
- 3.2 The signature or digital signature of the Institution shall be authentic and shall be set by a representative of the Institution who is authorised to sign.

Clause 4: Intellectual Property Rights

- 4.1 The intellectual property rights in respect of the Licensed Material and Documentation shall be vested in Publisher.

Clause 5: Licensed Material, Types of Licence, and Licence Fees

- 5.1 On signing this Agreement, the Institution shall indicate which of the Licensed Material, types of Licence Agreement, and Licence Fees specified in Schedule C-a it will use;
- 5.2 The date for establishing the number of students at each Institution shall be based on the most recently available official external figures provided by the Institution to SURFmarket (in the form of annual accounts approved by the auditors or auditor's statement).



5.3 If Publisher brings New Publications onto the market, Parties shall consult with one another regarding whether the said New Publications are to be included in the Licensed Material pursuant to the Agreement.

Clause 6: Invoicing

6.1 The Institution shall pay the fee for the Rights of Use, which is granted to it pursuant to Clause 2.1 to SURFmarket, receiving an invoice for that fee from the said party.

Clause 7: Support

- 7.1 Publisher shall provide the Institution with support to enable Users to make optimum use of the Licensed Material;
- 7.2 The actual nature of the said support shall be in accordance with Schedule C-c attached to this Agreement.

Clause 8: Rights of Use

8.1 Publishers grants the Institution and its Users the following Rights of Use:

- searching, loading, calling up on screen, consulting the Licensed Material and/or causing the Licensed Material to function;
- copying of parts of the Licensed Material to the User's hard disk and printing parts of the Licensed Material;
- transferring parts of the Licensed Material to a text file and integrating this wholly or partly into electronic databases belonging to the User, or merging it with such electronic databases;
- inclusion, without being required to make any further fair payment, of parts of the Licensed Material in electronic or paper publications created as information to assist in educational activities;
- the inclusion of links to the Licensed Material;
- the use of parts of the Licensed Material in printed and/or electronic form in the context of inter-library loans;
- inclusion and making available of those parts of the Licensed Material that were produced by employees working for the Institution in the institutional repository of the Institution and on the personal web pages of the employee concerned;
- downloading and printing out parts of the Licensed Materials free of charge in Course Packs by members of staff in connection with courses for academic credit and distribute these to the students of the Institution;
- incorporating links to the Licensed Materials as well parts of the Licensed Materials in Course Packs in connection with courses for academic credit free of charge by members of staff to be distributed or made available to the students of the Institution via Virtual Learning Environments or within an e-mail communication;
- offering Course Packs in audio or Braille to students who are in the reasonable opinion of the Institution visually impaired by the Institution;
- The parts of the Licensed Materials used in Course Packs shall carry appropriate acknowledgement of the source, title, author and publisher.



Clause 9: Responsibilities

- 9.1 Where possible and where authorised to do so, the Institution shall ensure that Users observe the obligations that have been made known to them in accordance with the provisions of Clause 2.1. Should it appear that a User does not comply with some or all of the obligations, the Institution, upon first being requested to do so by Publisher, shall take the measures that can reasonably be expected of it so as – as far as possible – to cause the said non-compliance or partial non-compliance to cease immediately;
- 9.2 Should Publisher consider it necessary, the Institution – with due regard to the restrictions imposed by legislation and/or regulations – shall render all assistance to Publisher to enable Publisher to act independently against the user as referred to in Clause 9.1;
- 9.3 Should it appear during the term of the Agreement that a further agreement is necessary between the Institution and Publisher in order to prevent infringement of Publisher's property rights in respect of the Licensed Material, the Institution shall cooperate in drawing up and signing such agreement. Publisher shall only draw up such an agreement in consultation with the Institution.

Clause 10: Notice of Default

- 10.1 Should the Institution, as evidenced by a statement in this regard by SURFmarket, fail to comply in good time with the payment obligation pursuant to Clause 6.1 of the Agreement, the Institution shall be deemed to be in breach by operation of law;
- 10.2 A breach such as referred to in Clause 9.1 or a situation in which the Institution fails to comply with, fails to comply with completely, or fails to comply properly with any other obligation arising from this Agreement, or acts contrary to such obligation, shall entitle Publisher – after Publisher has notified the Institution in writing of the breach, setting a reasonable term for compliance with the relevant obligation – to consider the Agreement to have been dissolved, without any further warning being required;

Clause 11: Privacy

- 11.1 Institutions are responsible for the processing of data within the intention of the Data Protection Act. Publisher processes Institution Data and in doing so is required to process Institutions Data in a proper and careful manner. Amongst other things, Publisher is required to process the Institution Data in accordance with the provisions of the Data Protection Act;
- 11.2 Publisher will only process the Institution Data at the behest of and in accordance with the instructions of SURFmarket or the Institution, which will include the provisions of this Agreement for Intermediary Services Content. Publisher may not use the Institution Data for its own purposes;
- 11.3 Unless statutory provisions provide otherwise, Publisher is not entitled, at any time, to utilise some or all of the Institution Data that is made available to the Publisher than for performance of this Agreement for Intermediary Services Content, or to cause it to be so utilised;
- 11.4 Publisher will not allow access third parties to the Institution Data without the consent of SURFmarket or the Institution.

- 11.5 Publisher will process the Institution Data only within the European Union or in a country with an appropriate level of protection.
- 11.6 Publisher will cooperate fully with the Institution to (i) enable parties concerned within the intention of the Data Protection Act to inspect their personal data; (ii) to enable such parties to have personal data deleted or corrected; and/or (iii) to demonstrate to such parties that personal data has been deleted or corrected if it is incorrect or, if the Institution disputes the position adopted by the party concerned, to record that the party concerned considers his/her personal data to be incorrect.

Clause 12: Security

- 12.1 The Licensed material will be provided from Publisher's own location. Publisher is obliged to properly equip said location (or cause it to be equipped) for the provision of the Licensed Material on the basis of the Agreement for Intermediary Services Content and/or the Agreement.
- 12.2 Publisher will take appropriate technical and organisational security measures in order to protect the Institution Data from being lost and from any type of unlawful processing. Taking account of the state of technology and the cost of implementing them, these measures will provide an appropriate level of security in view of the risks associated with such processing and the nature of the data being protected.
- 12.3 Publisher will immediately notify SURFmarket and the Institution regarding any security-related incidents and their potential impact on the processing of Institution Data.
- 12.4 Publisher will only engage subcontractors with which it has concluded a written agreement comprising secrecy and security obligations in accordance with the obligations of the Agreement for Intermediary Services Content.
- 12.5 If an authority requests Publisher to provide Institution Data, Publisher will notify SURFmarket and the Institution to that effect and will enable SURFmarket and/or the Institution to assert its rights. Publisher will limit access to the extent possible.

Clause 13: Termination or Dissolution

- 13.1 The Institution may terminate the Agreement if sufficient funds are not provided or allotted in future government-approved budgets of the Institution (or reasonably available or expected to become available from other sources at the time the Institution's payment obligation attaches) to permit the Institution, in the exercise of its reasonable administrative discretion, to continue the Agreement.

Clause 14: Scope of Agreement

- 14.1 The provisions and conditions contained in the Agreement and the associated Appendices shall specify the entire agreement between the Parties and shall set aside all previous agreements, whether oral or written, made between the Parties.
- 14.2 Amendments to the Agreement and/or to the Appendices associated with the Agreement and/or additions thereto shall only become legally effective and binding for the Parties when they have been agreed between the Parties in the form of a schedule to be attached to the Agreement, either in writing or electronically.

Clause 15: Supplementary Provisions

- 15.1 The Agreement and the associated Appendices and any supplements thereto shall be governed by Dutch law.
- 15.2 Any dispute regarding the creation, interpretation, or implementation of the Agreement, whether legal or factual, shall be submitted for adjudication exclusively to the court in Utrecht, The Netherlands that is competent according to the normal rules of competency.
- 15.3 The Parties may agree that, in deviation from what is provided in Clause 15.2, a dispute within the intention of Clause 15.2 shall be settled by means of arbitration pursuant to an arbitration agreement (to be drawn up) or that a binding opinion shall be requested in respect of the dispute.
- 15.4 A dispute shall be deemed to exist if one of the Parties notifies the other Party to that effect by registered mail.

Thus agreed, drawn up in duplicate, and signed

in _____

on _____

<Name of Institution>

Georg Thieme Verlag KG

Schedules

- C-a. Licensed Material, Types of Licence, and Licence Fees
- C-b. Documentation
- C-c. Support



Licensed Material, Types of Licence, and Licence Fees

A. Access Fees

(amounts exclusive of VAT)

Institution	Cross Access fee 2016	TAC fee 2016 ⁸⁾
Uni Leiden	€ 12,239	€ 2,692
Uni Groningen	€ 14,241	€ 2,692
Uni Amsterdam	€ 10,644	
TU Eindhoven	€ 5,730	
Uni Maastricht	€ 3,000	
TOTAL	€ 45,854	€ 5,384

Explanation of types of Licence Agreement and Licence Fees

In return for paying an annual Licence Fee, the Institution will be granted the Usage Right for the Licensed Material.

- Campus Licence: for the whole institution, as defined in Clause 1.8;

Conditions

1. Thieme Online Journals comprises access to all available journals / databases at <http://www.thieme.com> and <http://www.thieme.de> including their backfiles. For a detailed list of all titles/products available at the start of the agreement see Schedule C-b. Backfiles are generally included from 2000 onwards, except for Synlett and Synthesis (no back files included) and titles that started after 2000;
2. The Licence Fee for new Institutions will be based on the holdings for Licensed Material of the Institution in the year preceeding the year of the Institution joining and is a provisional amount awaiting reconciliation of the individual libraries subscriptions. The definite list of subscriptions will be agreed with the individual institution and the total amount may be adjusted accordingly;
3. The total amount of payments made by an Institution for subscriptions to the Licensed Material, either directly to Publisher or through agents will be deducted from the total Licence Fee. For this purpose, Publisher will supply SURFmarket with a full list of amounts paid per Institution;
4. The licence year for this agreement is set to start on January 1st and expires December 31st;
5. The Licence Fees for 2017 and 2018 will increase by a percentage reflecting the average inflation rate in The Netherlands at 1 october preceeding the renewal year and will be agreed upon at the time between Publisher and SURFmarket. If the average percentage is less than zero the price increase will be set at 0%. If the average is more than 5%, the increase will be set at 5%;
6. Prices are in Euro, exclusive of VAT;

**Agreement for Intermediary Services Content
Schedule C-a
Agreement number: BO201600032**

7. Other SURFmarket members can join the Licence Agreement at a fee to be determined by Publisher;
8. Available only with a license to the cross-access package.

C. Open Access Publishing for UKB members

Discount on the Article Processing Charge for articles in the journals according to Schedule C-b	25%
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Documentation

List of Cross Access Journals

Ains•Anästhesiologie•Intensivmedizin•Notfallmedizin•Schmerztherapie
AHZ Allgemeine Homöopathische Zeitung
American Journal of Perinatology
DMW - Deutsche Medizinische Wochenschrift
Endoscopy
European Journal of Pediatric Surgery
Facial Plastic Surgery
Handchirurgie•Mikrochirurgie•Plastische Chirurgie
Homoeopathic Links
Hormone and Metabolic Research
International Journal of Sports Medicine
Journal of Reconstructive Microsurgery
Klinische Monatsblätter für Augenheilkunde
Klinische Neurophysiologie
Journal of Neurological Surgery (merged with min, Central European Neurosurgery and Skull Base)
Neuropediatrics
Pharmacopsychiatry
Planta Medica
PPmP - Psychotherapie•Psychosomatik• Medizinische Psychologie
RöFo - Fortschritte auf dem Gebiet der Röntgenstrahlen und der bildgebenden Verfahren - Advancements in X-Ray and Imaging Techniques
Seminars in Interventional Radiology
Seminars in Liver Disease
Seminars in Neurology
Seminars in Respiratory and Critical Care Medicine
Seminars in Thrombosis and Hemostasis
Sprache•Stimme•Gehör

Synlett
Synthesis
ZKH Zeitschrift für Klassische Homöopathie
Zeitschrift für Orthopädie und Unfallchirurgie
Zeitschrift für Phytotherapie
Zentralblatt für Chirurgie

List of TAC journals

Clinics in Colon and Rectal Surgery
Craniofacial Trauma and Reconstruction
Global Spine Journal (merged with Evidence-Based Spine Surgery)
Experimental and Clinical Endocrinology & Diabetes
International Journal of Angiology
Journal of Knee Surgery
Journal of Neurological Surgery (merger of Min, Skull Base and Central European Neurosurgery)
Journal of Wrist Surgery
Klinische Pädiatrie - Clinical Pediatrics
Seminars in Hearing
Seminars in Musculoskeletal Radiology
Seminars in Plastic Surgery
Seminars in Reproductive Medicine
Seminars in Speech and Language
Synfacts
The Thoracic and Cardiovascular Surgeon
TumorDiagnostik & Therapie - Tumor Diagnostics & Therapy
Ultraschall in der Medizin - European Journal of Ultrasound
Zeitschrift für Gastroenterologie - Journal for Gastroenterology
Zeitschrift für Geburtshilfe und Neonatologie - Journal for Obstetrics and Neonatology



Support

Publisher shall provide Institutions with support to enable the Users specified in this Agreement to make optimum use of the Licensed Material.

The support provided by Publisher shall consist of:

- a helpdesk accessible during office hours;
- an annual course dealing with use of the Licensed Material for the contact persons appointed by the Institutions;
- an annual course dealing with use of the Licensed Material for groups of Users;
- instructional material;
- promotional material.

Access and availability Licensed Material

- Publisher guarantees that the Licensed Material will be available for consultation 24 hours a day, seven (7) days a week. As far as possible, maintenance of the Service will take place outside office hours. If announced in good time, availability may be restricted for periodic maintenance for a predetermined period of no longer than 24 hours. Should it be expected, in exceptional cases, that that period will be exceeded, consultation will take place with SURFmarket at least five (5) working days beforehand regarding the reason for this and the necessary duration of the period during which there will be no access.
- Publisher may temporarily suspend access to the Licensed Material without announcing this in advance if repair work is necessary as a result of an emergency that has occurred. Publisher will immediately inform SURFmarket of this event, giving the reasons. If the said repair work takes longer than one (1) working day, SURFmarket will be entitled to monetary reimbursement of a proportionate amount of the total Licence Fee.
- The Publisher reserves the right at any time to withdraw from the Licensed Material any item or part of an item for which it no longer retains the right to publish and for which the Publisher has been unable to secure the provisions as set out in Clauses 9.1 and 9.2, or any item or part of an item for which the Publisher has reasonable grounds to believe it infringes copyright or is defamatory, obscene, unlawful or otherwise objectionable. The Publisher will give written notice to the Institution of such withdrawal. If the withdrawn material represents more than five per cent (5%) of the Licensed Material the Publisher will make a pro rata refund of part of the Fee to the Institution, taking into account the amount of material withdrawn and the remaining term of the Agreement.
- Publisher undertakes to provide the SURFmarket and the Institutions with statistics on utilisation, free of charge, according to the standards of Project Counter (<http://www.projectcounter.org>).
- The Publisher agrees to use all best efforts to comply with the Open URL Standard (http://www.niso.org/apps/group_public/download.php/6640/The%20OpenURL%20Framework%20for%20Context-Sensitive%20Services.pdf).
- The Publisher agrees to inform SURFmarket and the Institutions once a year of the dark archives that the Publisher uses for the deposit of its content in the event of a force majeure or if the publisher ceases to exist.
- The Publisher agrees to comply with the ONIX standard for machine readable licences (http://www.editeur.org/onix_licensing.html).
- Publisher will be responsible and accountable for the quality of access and availability of the Licensed Material.
- Publisher shall ensure the presence of an effective search engine, suitable for use by a broad public, which is able to produce a complete search and selection result for each search. Publisher accepts no responsibility for the completeness of the result.
- Publisher will use all best efforts to make the content available for reading on mobile devices, according to the standards of W3C (<http://www.w3.org/2011/02/mobile-web-app-state.html>).
- Publisher shall be permitted to alter the structure of the Licensed Material and the search engine. If it intends making such alteration, Publisher shall inform SURFmarket at least ten (10)

**Agreement for Intermediary Services Content
Schedule D
Agreement number: BO201600032**

working days beforehand. Such alteration or alterations must not have a negative influence on the user interface or the search results.

- Publisher shall provide an annual list of changes made to the Licensed Material. The said list of changes shall be explicitly included in any annual evaluation of the Licensed Material by the Institutions.
- Unless separately agreed, Publisher shall not be permitted to include third-party advertising in the Licensed Material or in the context of providing the Licensed Material. Publisher shall be permitted to display a "banner" on parts of the Licensed Material specifying the publications from which specific portions are taken. Publisher shall be permitted to create a link to the websites of the providers of the said publications on condition that those websites do not contain frame killers.



Addendum

to the Agreement for Intermediary Services between SURFmarket and Georg Thieme Verlag KG

The Agreement for Intermediary Services between SURFmarket B.V. and Georg Thieme Verlag KG. dated 1st of January 2016 and ending on 31st December 2018 with number BO201600032, is hereby amended, as follows:

Clause 3: Term of the Agreement for Intermediary Services Content

3.1 This Agreement is entered into for a period of four (4) years, commencing on 1st January 2016 and consequently ending on 31st December 2019.

Changed Schedule

B. Licensed Material, Types of Licence, and Licence Fees

All other terms and conditions of the Agreement for Intermediary Services remain in full force and effect.

Thus agreed and signed

in _____

on _____

Director SURFmarket

in _____ Stuttgart _____

on _____ 28.01.2019 _____



Georg Thieme Verlag KG

Georg Thieme Verlag KG
Rüdigerstraße 14 - 70469 Stuttgart
Postfach 30 11 20 - 70451 Stuttgart



Georg Thieme Verlag KG

Schedule B: Licensed Material, Types of Licence, and Licence Fees

Product	Institution	Invoice start	Invoice end	Total 2019
Thieme Online Journals (TAC journals)	Universiteit Leiden	1-1-2019	12/31/2019	€ 2.804,00
Thieme Online Journals (UKB Cross Access list)	Universiteit Leiden	1-1-2019	12/31/2019	€ 12.747,00
Thieme Online Journals (TAC journals)	Rijksuniversiteit Groningen	1-1-2019	12/31/2019	€ 2.804,00
Thieme Online Journals (UKB Cross Access list)	Rijksuniversiteit Groningen	1-1-2019	12/31/2019	€ 14.832,00
Thieme Online Journals (UKB Cross Access list)	Universiteit van Amsterdam	1-1-2019	12/31/2019	€ 11.086,00
Thieme Online Journals (UKB Cross Access list)	Technische Universiteit Eindhoven	1-1-2019	12/31/2019	€ 5.968,00
Thieme Online Journals (UKB Cross Access list)	Universiteit Maastricht	1-1-2019	12/31/2019	€ 3.124,00

Conditions

1. The licence year for this addendum is set to start on January 1st and expires December 31st;
2. The fees are set with a price increase of 2% compared to 2018;
3. Prices are in euros, exclusive of VAT.