

ELSEVIER SUBSCRIPTION AGREEMENT

This agreement (“Agreement”) is entered into as of 1 January 2011 by and between **University of Science**, Universiteitsweg 1, 1234 AB Amsterdam, The Netherlands (the “Subscriber”), and **Elsevier B.V.**, Radarweg 29, 1043 NX Amsterdam, The Netherlands (“Elsevier”).

The parties hereto agree as follows:

SECTION 1. SUBSCRIPTION.

1.1 *Subscribed Products.*

Elsevier hereby grants to the Subscriber the non-exclusive, non-transferable right to access and use the products and services identified in Schedule 1 (“Subscribed Products”) and provide the Subscribed Products to its Authorized Users (as defined herein) subject to the terms and conditions of this Agreement.

1.2 *Authorized Users/Sites.*

Authorized Users are the full-time and part-time students, faculty, staff, researchers, and independent contractors of the Subscriber affiliated with the Subscriber’s locations listed on Schedule 2 (the “Sites”) and individuals using computer terminals within the library facilities at the Sites permitted by the Subscriber to access the Subscribed Products.

1.3 *Authorized Uses.*

Each Authorized User may:

- access, search, browse and view the Subscribed Products;
- print, make electronic copies of and store for the exclusive use of such Authorized User individual items from the Subscribed Products;
- incorporate links to the Subscribed Products on the Subscriber’s intranet and internet websites and in electronic coursepacks, reserves and course management systems and instructor websites, provided that the appearance of such links and/or statements accompanying such links shall be changed as reasonably requested by Elsevier;
- provide print or electronic copies of individual items from the Subscribed Products to other Authorized Users and to third-party colleagues for their scholarly or research use; and
- access, search, browse, view, print, make electronic copies and store for the exclusive use of such Authorized User or, if the Authorized User is a librarian/information specialist, for the exclusive use of another Authorized User certain journal articles and book chapters from the SciVerse® ScienceDirect® online service that are not subscribed to as part of the Subscribed Products, with each twenty-four (24) hour access period for a selected article or chapter, a “Transaction.”

The Subscriber may:

- print and deliver journal articles from Subscribed Titles (as defined herein) and, if any, book chapters from the Subscribed Products to fulfill requests as part of the practice commonly known as “interlibrary loan” from non-commercial libraries located within the same country as the Subscriber.

1.4 *Restrictions on Use of Subscribed Products.*

Except as expressly stated in this Agreement or otherwise permitted in writing by Elsevier, the Subscriber and its Authorized Users may not:

- abridge, modify, translate or create any derivative work based on the Subscribed Products, except to the extent necessary to make them perceptible on a computer screen to Authorized Users;
- remove, obscure or modify in any way any copyright notices, other notices or disclaimers as they appear in the Subscribed Products;
- use any robots, spiders, crawlers or other automated downloading programs, algorithms or devices to continuously and automatically search, scrape, extract, deep link, index or disrupt the working of the Subscribed Products; or
- substantially or systematically reproduce, retain or redistribute the Subscribed Products.

Authorized Users who are independent contractors may use the Subscribed Products only for the purposes of the contracted work for the Subscriber.

1.5 *Intellectual Property Ownership.*

The Subscriber acknowledges that all right, title and interest in and to the Subscribed Products remain with Elsevier and its suppliers, except as expressly set forth in this Agreement, and that the unauthorized redistribution of the Subscribed Products could materially harm Elsevier and its suppliers.

SECTION 2. ELSEVIER PERFORMANCE OBLIGATIONS.

2.1 *Access to Subscribed Products.*

Elsevier will make the Subscribed Products accessible to the Subscriber and its Authorized Users from the internet address set forth on Schedule 1 or as may be otherwise set forth herein.

2.2 *Quality of Service.*

Elsevier shall use reasonable efforts to provide the Subscribed Products with a quality of service consistent with industry standards, specifically, to provide continuous service with an average of 98% up-time per year, with the 2% down-time including scheduled maintenance and repairs performed at a time to minimize inconvenience to the Subscriber and its Authorized Users, and to restore service as soon as possible in the event of an interruption or suspension of service.

2.3 *Withdrawal of Content.*

Elsevier reserves the right to withdraw from the Subscribed Products content that it no longer retains the right to provide or that it has reasonable grounds to believe is unlawful, harmful, false or infringing.

2.4 *Usage Data Reports.*

Elsevier will make usage data reports on the Subscriber's usage activity accessible online on a monthly basis to the librarians/administrators employed by the Subscriber for internal use only. Such reports may be accessed by vendors or other third parties retained by the Subscriber only with the express written permission of Elsevier and for the purpose of usage analysis of the Subscriber.

SECTION 3. SUBSCRIBER PERFORMANCE OBLIGATIONS.

3.1 Authentication.

Access to the Subscribed Products shall be authenticated by the use of Internet Protocol (“IP”) address(es) indicated by the Subscriber on Schedule 2 and/or usernames and passwords and/or a delegated authentication mechanism, identified on Schedule 2, requiring at least two different credentials.

3.2 Protection from Unauthorized Access and Use.

The Subscriber shall use reasonable efforts to:

- limit access to and use of the Subscribed Products to Authorized Users and notify all Authorized Users of the usage restrictions set forth in this Agreement and that they must comply with such restrictions;
- issue any passwords or credentials used to access the Subscribed Products only to Authorized Users, not divulge any passwords or credentials to any third party, and notify all Authorized Users not to divulge any passwords or credentials to any third party; and
- promptly upon becoming aware of any unauthorized use of the Subscribed Products, inform Elsevier and take appropriate steps to end such activity and to prevent any recurrence.

In the event of any unauthorized use of the Subscribed Products, Elsevier may suspend the access and/or require that the Subscriber suspend the access from where the unauthorized use occurred upon notice to the Subscriber. The Subscriber shall not be liable for unauthorized use of the Subscribed Products by any Authorized Users provided that the unauthorized use did not result from the Subscriber’s own negligence or willful misconduct and that the Subscriber did not permit such unauthorized use to continue after having actual notice thereof.

SECTION 4. FEES AND PAYMENT TERMS.

The Subscriber shall pay to Elsevier the fees set forth in Schedule 1 (the “Fees”) within thirty (30) days of date of invoice. Late payments shall be subject to interest charges of 1% per month on the unpaid balance. The Fees shall be exclusive of any sales, use, value added, withholding or similar tax and the Subscriber shall be liable for any such taxes in addition to the Fees. The Subscriber shall be charged Dutch value added tax (VAT) unless the Subscriber is a foreign relevant business person and provides to Elsevier its VAT Identification Number. The Subscriber shall promptly notify Elsevier of any changes to its VAT Identification Number or VAT status. Elsevier may charge the Subscriber any VAT, fines, penalties, interest and other costs that Elsevier may incur as a result of incorrect VAT information.

SECTION 5. TERM.

5.1 Term.

The term of this Agreement shall commence on 1 January 2011 and continue until 31 December 2011.

5.2 Renewal.

This Agreement will be automatically renewed for successive one-year terms, subject to appropriate adjustments to Schedule 1, unless either party gives notice to the other by 1 August prior to the end of the then current term that it does not intend to renew.

SECTION 6. ELSEVIER WARRANTIES AND INDEMNITIES.

6.1 Warranties.

Elsevier warrants that use of the Subscribed Products in accordance with the terms and conditions herein will not infringe the intellectual property rights of any third party.

6.2 Indemnities.

Elsevier shall indemnify, defend and hold harmless the Subscriber and its Authorized Users from and against any loss, damage, costs, liability and expenses (including reasonable attorneys' fees) arising from or out of any third-party action or claim that use of the Subscribed Products in accordance with the terms and conditions herein infringes the intellectual property rights of such third party. If any such action or claim is made, the Subscriber will promptly notify and reasonably cooperate with Elsevier. This indemnity obligation shall survive the termination of this Agreement.

6.3 Disclaimer.

EXCEPT FOR THE EXPRESS WARRANTIES AND INDEMNITIES STATED HEREIN AND TO THE EXTENT PERMITTED BY APPLICABLE LAW, THE SUBSCRIBED PRODUCTS ARE PROVIDED "AS IS" AND ELSEVIER AND ITS SUPPLIERS EXPRESSLY DISCLAIM ALL WARRANTIES AND REPRESENTATIONS OF ANY KIND WITH REGARD TO THE SUBSCRIBED PRODUCTS AND ANY OTHER DATA, DOCUMENTATION OR MATERIALS PROVIDED IN CONNECTION WITH THIS AGREEMENT, INCLUDING BUT NOT LIMITED TO ANY ERRORS, INACCURACIES, OMISSIONS, OR DEFECTS CONTAINED THEREIN, AND ANY IMPLIED OR EXPRESS WARRANTY AS TO MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

6.4 Limitation of Liability.

Except for the express warranties and indemnities stated herein and to the extent permitted by applicable law, in no event shall Elsevier or its suppliers be liable for any indirect, incidental, special, consequential or punitive damages including, but not limited to, loss of data, business interruption or loss of profits, arising out of or in connection with this Agreement, or shall the liability of Elsevier and its suppliers to the Subscriber exceed a sum equal to the Fees paid by the Subscriber hereunder, even if Elsevier or any supplier has been advised of the possibility of such liability or damages.

SECTION 7. GENERAL.

7.1 Force Majeure.

Neither party's delay or failure to perform any provision of this Agreement as a result of circumstances beyond its control (including, but not limited to, war, strikes, fires, floods, power failures, telecommunications or Internet failures or damage to or destruction of any network facilities or servers) shall be deemed a breach of this Agreement.

7.2 Severability.

The invalidity or unenforceability of any provision of this Agreement shall not affect any other provisions of this Agreement.

7.3 Entire Agreement.

This Agreement contains the entire understanding and agreement of the parties and merges and supersedes any and all prior and contemporaneous agreements, communications, proposals and purchase orders, written or oral, between the parties with respect to the subject matter contained herein.

7.4 Modification.

No modification, amendment or waiver of any provision of this Agreement shall be valid unless in writing and signed by the parties.

7.5 *Assignment.*

The Subscriber shall not assign, transfer or license any of its rights or obligations under this Agreement unless it obtains the prior written consent of Elsevier, which consent shall not unreasonably be withheld.

7.6 *Privacy.*

Elsevier shall not, without the prior written consent of the Subscriber, transfer any personal information of any Authorized Users to any non-affiliated third party or use it for any purpose other than as described in this Agreement and in the online privacy policy for the relevant online service.

7.7 *Notices.*

All notices given pursuant to this Agreement shall be in writing and delivered to the party to whom such notice is directed at the address specified below or the facsimile number or electronic mail address as such party shall have designated by notice hereunder.

If to Elsevier: Elsevier B.V., Radarweg 29, 1043 NX Amsterdam, The Netherlands.

If to the Subscriber: University of Science, Universiteitsweg 1, 1234 AB Amsterdam, The Netherlands.

7.8 *Confidentiality.*

The Subscriber and its employees, officers, directors and agents shall maintain as confidential and not disclose to any non-affiliated third party without Elsevier's prior written consent or except as required by law the financial terms and commercial conditions of this Agreement.

7.9 *Execution.*

This Agreement and any amendment thereto may be executed in counterparts, and signatures exchanged by facsimile or other electronic means are effective to the same extent as original signatures.

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

UNIVERSITY OF SCIENCE
(Subscriber)

Name:
Title:

ELSEVIER B.V.
(Elsevier)

Name: Martin O'Malley
Title: Managing Director, Global Sales & Customer Marketing, Science & Technology

No. 123456789

ELSEVIER SUBSCRIPTION AGREEMENT

Schedule 1

Subscribed Products/Access/Fees

UNIVERSITY OF SCIENCE

No. 123456789

Subscribed Products – publisher	Access	2011
SciVerse® ScienceDirect® online – Elsevier B.V.	sciencedirect.sciverse.com	
Complete Collection		
· <i>Total Print Subscription</i>		
· <i>Total Electronic Subscription</i>		
· <i>Total Subscription Turnover</i>		
· Content Fee ([_]%)		
· Electronic Subscription Fee ([_]% discounted)		
TOTAL FEES		

Journal Collection(s)

The Subscriber's Journal Collection(s) is described in Schedule 1.1.

Transaction Fee

Purchase of pre-paid Transactions ("PPT") is required to activate access to journals and books by Transaction. The Subscriber shall be charged ___ per Transaction. The Subscriber may purchase PPT upon mutual agreement of the parties in writing. Unused PPT shall be forfeited one (1) year after issue or upon termination of this Agreement, whichever is earlier.

ELSEVIER SUBSCRIPTION AGREEMENT
Schedule 1.1
Journal Collection(s)

Journal Collection(s):

Complete Collection: Electronic access to the full text of all articles from the Elsevier journal titles published since 1 January 2007 identified on Annex A.

Option to Substitute Subscribed Titles

The Subscriber may substitute any of the subscribed journal titles identified on Annex A (“Subscribed Titles”) with one or more journal titles of total comparable value (in current year list price) once annually upon notice to Elsevier by 1 August prior to the start of the next calendar year or at any time upon mutual agreement of the parties in writing.

Option to Substitute or Refund Withdrawn Subscribed Titles

The Subscriber may substitute any withdrawn Subscribed Title with one or more journal titles of total comparable value (in current year list price) at any time upon notice to Elsevier. In the event that no substitute journal title is available, Elsevier shall refund to the Subscriber the amount of the Fees paid for the withdrawn Subscribed Title for the remainder of the term.

Transferred Titles

Society journal titles for which the Subscriber holds an electronic subscription through a third-party publisher whose publication rights are transferred to Elsevier and made accessible on SciVerse ScienceDirect during the term (“Transferred Titles”) shall be deemed Subscribed Titles effective as of the date of transfer and for the then current publication year and the publication years previously paid unless and until the Subscriber notifies Elsevier that it no longer wishes to continue such electronic subscription on SciVerse ScienceDirect. The option to substitute Subscribed Titles does not apply to Transferred Titles.

Access to Formerly Subscribed Titles

Upon termination of all of the Subscriber’s annual subscriptions on SciVerse ScienceDirect online, the Subscriber may, at its option, (1) acquire, load and technically format on a server that enables access and use by Authorized Users an electronic copy of all or part of its Subscribed Titles for the publication years paid for cost and/or (2) continue to access such Subscribed Titles online for an annual access fee based on the number of full-text articles downloaded from such titles during the prior twelve (12) months at a rate of €0.063 per download, with a minimum annual fee of €400 (adjusted annually for inflation and cost increases), in accordance with the usage provisions of this Agreement, which provisions shall survive the termination of the Agreement. Elsevier shall make available for inspection by a duly authorized auditor of the Subscriber, at the Subscriber's sole expense, the records concerning the calculation of the annual access fee one time per year during regular business hours upon thirty (30) days written notice to Elsevier. The electronic copy may not contain links and other features and functionality associated with the online version. If a particular Subscribed Title is withdrawn by Elsevier or not renewed by the Subscriber, but the Subscriber remains a SciVerse ScienceDirect online subscriber, the Subscriber may continue to access online, at no additional charge, such formerly Subscribed Title for the publication years paid, provided that Elsevier continues to hold the electronic rights thereto.

Print Subscriptions and Expenditure Commitment

The Subscriber has provided to Elsevier a complete list of Subscribed Titles from its Complete Collection in print, including multiple subscriptions, the value of which, set forth above, shall be separately invoiced to and paid by the Subscriber in full no later than 31 March of each calendar year of the term of the Agreement. If the Subscriber fails to make full payment on a timely basis, the Subscriber shall pay to Elsevier the value (in current year list price) of the unpaid print subscriptions. The Subscriber may substitute an electronic-only subscription for an existing print subscription during

the term of the Agreement by giving Elsevier notice by 1 August prior to the start of the next calendar year of the Agreement, which substitution will not be considered a breach of the Subscriber's foregoing print expenditure commitment. An "e-only" discount of ten (10%) percent off the value of the then current year list price of the Subscriber's subscriptions that are accessed electronically only will be applied to the annual subscription renewal of the next calendar year and continue for each calendar year thereafter remaining in the term of this Agreement.

SAMPLE

**Annex A to Schedule 1.1
Subscribed Titles**

UNIVERSITY OF SCIENCE

Product ID	ISSN	Subscribed Title (available online and in print)
00000	0000-0000	

Product ID	ISSN	Subscribed Title (online only)
00000	0000-0000	

SAMPLE

ELSEVIER SUBSCRIPTION AGREEMENT
Schedule 2
Sites/Authentication/Contacts

Subscriber: University of Science

Sites:	# Auth. Users:	Authentication:
Universiteitsweg 1, 1234 AB Amsterdam, The Netherlands	20,000	*.*.*.*

Estimated total number of Authorized Users: 20,000

The Subscriber shall promptly notify Elsevier of any material changes in the number of Authorized Users, which changes may result in Elsevier terminating the Agreement at the end of the year for which the Fees were paid unless the parties are able to agree to appropriate fee adjustments for any subsequent years of the term, and may add, withdraw or substitute authentication mechanisms upon mutual agreement of the parties in writing.

Primary Contact

Name:
 Title:
 Name/Address (if different from Section 7.7):
 E-mail:
 Phone:
 Fax:

Billing Contact

Name:
 Title:
 Name/Address (if different from Section 7.7):
 E-mail:
 Phone:
 Fax:

Accounts Payable Contact

Name:
 Title:
 Name/Address (if different from Section 7.7):
 E-mail:
 Phone:
 Fax:

The Subscriber shall promptly notify Elsevier of any changes to any of the contact information above.