

## ELSEVIER LICENSE AGREEMENT

## SECTION 1. BACKGROUND.

## 1.1 Parties and Addresses.

**Subscriber:** The Regents of the University of California, a non-profit academic institution, with its principal offices located at The California Digital Library, University of California Office of the President, 415 20<sup>th</sup> Street, 4<sup>th</sup> Floor, Oakland, CA 94612, USA (the "Subscriber"), notices for which shall be sent to such address or to an address as the Subscriber may hereafter indicate in writing.

**Licensor:** Elsevier B.V., a Netherlands company, with its principal offices located at Sara Burgerhartstraat 25, 1055 KV Amsterdam, The Netherlands (the "Licensor"), notices for which shall be sent to the Regional Sales Office at 360 Park Ave South, New York, NY 10010-1710 (RSO) or to an address as the Licensor may hereafter indicate in writing.

## 1.2 Structure of Agreement.

Access to and use of the products and services licensed hereunder, as identified in Schedule 4.1 (the "Licensed Products"), are subject to the terms and conditions, including the General Terms and Conditions ("GTCs") set forth in Schedule 1.2(a) and any additional terms and conditions that may be set forth in Schedule 1.2(b), of this agreement ("Agreement").

## 1.3 Execution.

The parties have caused this Agreement to be executed as of the 30<sup>th</sup> of December, 2003.

**THE REGENTS OF THE UNIVERSITY OF CALIFORNIA**  
(Subscriber)

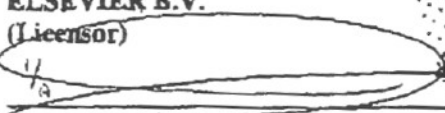
  
Name: Beverlee A. French

Title: Deputy University Librarian

Date: 30 December 2003

**ELSEVIER B.V.**

(Licensor)

  
Name: Frank Vrancken Peters

Title: Managing Director, Sales

Date: 6 January 2004

SIGN  
DATE

Contract Number: 1-MW500

  
5/Jan/03  
Version: 18 July 2005

## SECTION 2. LICENSE.

### 2.1 License.

The Licensor hereby grants to the Authorized Users (as defined below) of the Subscriber the nonexclusive, non-transferable right and license to:

- access, search, browse and view the Licensed Products;
- print and download a limited number of articles, abstracts, records or parts of chapters from the Licensed Products ( Excerpts );
- transmit Excerpts to other Authorized Users and to third-party colleagues for their scholarly or research use; and
- access, search, browse, view, print and download articles from all journals which are accessible on the ScienceDirect online service but are not subscribed to as part of the Licensed Products (each article viewed, a "Transaction").

The Licensor hereby grants to the Subscriber the non-exclusive, non-transferable right and license to:

- use articles from those journals published by Elsevier and subscribed to by the Subscriber as part of the Licensed Products as source material to fulfill requests as part of the practice commonly known as "interlibrary loan" on an article-by-article basis, *provided that* (i) the request comes from an academic or other non-commercial, non-corporate research library located in the same country as the Subscriber; (ii) the requested article is printed by the Subscriber and mailed or faxed to the requesting library; and (iii) the Subscriber refrains from advertising its interlibrary loan capability with respect to this material; and
- incorporate Excerpts into electronic "Coursepacks" for use in connection with courses offered by the Subscriber for academic credit, *provided that* such Excerpts are deleted by the Subscriber by the end of each semester or trimester in which they are used (with such deletion confirmed in writing to the Licensor upon request). Coursepack use for non-credit courses in distance education programs will require separate permission from the Licensor and payment of a separate fee

### 2.2 Authorized Users/Sites.

The following are Authorized Users for purposes of this Agreement:

Faculty members (including temporary or exchange faculty for the duration of their assignment), graduate and undergraduate students, staff members, and independent contractors acting as faculty or staff members who are (i) officially affiliated with the Subscriber at the Subscriber's locations listed on Schedule 2.2 (the Sites) and (ii) permitted by the Subscriber to access the Subscriber's secure network.

The Subscriber will review the number and location of the Sites and the number of Authorized Users at least once annually and notify the Licensor of any material changes in the number of Sites or Authorized Users.

The Licensed Products may be accessed, searched, browsed and viewed and Excerpts may be printed and downloaded by members of the general public who are permitted by the Subscriber to have physical access to the Subscriber's library facility and who access the Licensed Products only from terminals located at the Subscriber's library facility subject to the terms of this Agreement, including the usage restrictions set forth herein for Authorized Users.

### **SECTION 3. ACCESS AND USAGE.**

#### **3.1 Access to Licensed Products.**

The Licensed Products will be accessed from the World Wide Web address set forth on Schedule 4.1 or as may otherwise be set forth herein.

#### **3.2 Secure User Access.**

Secure user access to the Licensed Products shall be authorized by specified Internet Protocol (IP) address ranges indicated by the Subscriber on Schedule 2.2 and/or by usernames and passwords.

#### **3.3 Usage Data Reports**

Upon request from the Subscriber, the Licensor will provide on a periodic basis to the Subscriber for its internal use only usage data reports on the Subscriber's usage activity.

### **SECTION 4. FEES AND PAYMENT TERMS.**

#### **4.1 Fees.**

The fees for the Subscriber's access to and use of the Licensed Products are set forth in Schedule 4.1 (the "Fees").

#### **4.2 Payment Terms.**

The Subscriber shall pay to the Licensor the Fees within thirty (30) days of invoicing or as otherwise may be set forth on Schedule 4.1. If the Subscriber fails to pay the full amount of the Licensor's invoice on a timely basis, the Licensor may suspend the Subscriber's access to the Licensed Products until the unpaid amounts of such invoice are paid. The Fees set forth in multiple-year agreements will be invoiced annually. If the Subscriber disputes, in good faith, any amount on the Licensor's invoice, the Subscriber shall provide written notice of the dispute to the Licensor along with full supporting documentation within thirty (30) days of invoicing, and the Subscriber and the Licensor will use all reasonable efforts to resolve and settle such dispute within ten (10) business days thereafter. Once the invoice dispute is resolved and settled, the Subscriber will pay the amount due within thirty (30) days following resolution of dispute.

### **SECTION 5. TERM AND TERMINATION.**

#### **5.1 Term.**

This Agreement shall commence on 1 January 2004 and continue until 31 December 2008.

#### **5.2 Renewal.**

This Agreement will be automatically renewed for successive one-year terms, subject to appropriate adjustments to Schedule 4.1, unless either party gives notice to the other by November 1 prior to the end of the then current term that it does not intend to renew.

### *5.3 Early Termination for Change in Control.*

If a change in control of the Subscriber occurs, the Subscriber shall promptly notify the Licensor of the name and address of the person or entity who acquired such control. A change in control of the Subscriber may result in early termination unless the parties are able to agree to appropriate fee adjustments.

### *5.4 Early Termination for Unauthorized Use.*

The Licensor reserves the right to terminate this Agreement for unauthorized use of the Licensed Products. Subscriber reserves the right to terminate this Agreement for Licensor's breach of the terms of this Agreement. If either party believes that the other materially has breached any obligations under this Agreement, such party shall so notify the breaching party in writing. The breaching party shall have thirty (30) days from the receipt of the notice to cure the alleged breach and to notify the non-breaching party in writing that cure has been effected. If the breach is not cured within the thirty (30) day period, the non-breaching party shall have the right to terminate the Agreement without further notice.

**LICENSE AGREEMENT**  
**Schedule 1.2(a)**  
**General Terms and Conditions**

**RESTRICTIONS ON USAGE OF THE LICENSED PRODUCTS/ INTELLECTUAL PROPERTY RIGHTS**

- GTC1 The Licensed Products may not be used (directly or indirectly) for any of the following purposes: substantial or systematic reproduction; redistribution, reselling or sublicensing in any manner including in connection with fee for-service use; supply or distribution in any form to anyone other than Authorized Users, except as may be expressly set forth otherwise in this Agreement; substantial or systematic retention of the Licensed Products. Subscriber shall not use spider or web-crawling or other software programs, routines, robots or other mechanized devices to continuously and automatically search and index any content accessed online under this Agreement.
- GTC2 Neither Subscriber nor its Authorized Users may modify, adapt, transform, translate or create any derivative work based on the Licensed Products, or otherwise use same in a manner that would infringe the copyright or other proprietary rights therein. Copyright notices, other notices or disclaimers included in the Licensed Products may not be removed, obscured or modified in any way. With respect to permitted uses of Excerpts, Subscriber shall acknowledge the source, title, author and publisher (if not already included in Excerpts).
- GTC3 ~~Subscriber will not reverse engineer, decompile or disassemble any software included in the Licensed Products.~~ However, in the event that a court determines that Subscriber has such right under its local law, which right cannot be waived, this right shall be restricted solely to the study of matters such as interoperability and shall not be used in such a way as to affect its commercial value.
- GTC4 Subscriber acknowledges that all rights save for the limited and non-exclusive licenses or other privileges granted under this Agreement are reserved to and remain the exclusive property of the Licensor or its licensors, and nothing in this Agreement shall transfer any rights to Subscriber. Subscriber acknowledges that the Licensed Products contain valuable and proprietary data and information, and that the unauthorized distribution of such material could materially harm the business and prospects of the Licensor or its licensors.
- GTC5 The laws and regulations of the United States restrict the export and re-export of certain commodities and technical data of United States origin, including any software included in the Licensed Products. Export or re-export of such software in any form requires appropriate United States government export licenses and may require licenses from other governments.

**REPRESENTATIONS, WARRANTIES & INDEMNITIES**

- GTC6 The Licensor warrants that the software components of the Licensed Products will substantially conform to their specifications or descriptions in user manuals if used for their intended purposes and that use by Subscriber of the Licensed Products, or any search engine, software or component thereof, according to the terms and conditions herein, will not infringe the intellectual property rights of any third party. The Licensor shall indemnify Subscriber against any direct loss or damage arising out of any third-party action or claim that use by Subscriber as authorized herein of the informational content of the Licensed Products infringes the intellectual property rights of such third party. Subscriber agrees that if any such claim is made by a third party then Subscriber will promptly notify and cooperate with the Licensor, and the Licensor shall at its request be given control of such action. This indemnity against third party claims for infringement of intellectual property shall survive the termination of this Agreement. The Licensor reserves the right to withdraw from the Licensed Products content that is unlawful, harmful, false or infringing.
- GTC7 The Licensor warrants, if it is providing specific services under one or more of these Agreements, that it will use reasonably workmanlike efforts to provide such services, consistent with industry standards.

GTC8 Subscriber warrants that it will use reasonable efforts to: (a) ensure the security and integrity of the Licensed Products; (b) ensure that access to and use of the Licensed Products is limited to Authorized Users; (c) ensure that all Authorized Users are notified of and comply with the usage restrictions set forth in this Agreement; (d) ensure that passwords are issued only to Authorized Users and that neither the Subscriber nor its Authorized Users divulge any passwords to any third party; and (e) monitor compliance and, immediately becoming aware of any unauthorized use of the Licensed Products, notify the Licensor and take corrective actions to ensure that such activity ceases and to prevent any recurrence.

Subscriber further represents and warrants that it has entered into this Agreement to obtain products or services for its own account and use and not on behalf of any other person or entity, except as may be expressly set forth otherwise in this Agreement.

Subscriber shall not be liable for breach of any of the terms of this Agreement by any Authorized User provided that Subscriber did not intentionally assist in or encourage such breach or permit such breach to continue after having actual notice thereof and provided Subscriber reasonably cooperates with the Licensor to prevent misuse.

GTC9 Other than with respect to the warranties and indemnities expressly given in this Agreement, the Licensor will not be responsible, to the maximum extent permitted by relevant laws, for any claim, loss or liability attributable to errors, inaccuracies or other defects in the Licensed Products, or any part thereof, arising from any act or omission or any negligence. Further, the Licensor makes no warranties or representations regarding any undocumented features, elements or artifacts that may be present in the Licensed Products, or use of same in connection with software or hardware supplied by third parties. The Licensor and its licensors shall not be liable for any incidental, special, consequential or exemplary damages including, but not limited to, loss of anticipated profits or benefits. Other than with respect to the indemnity expressly given in this Schedule, the Licensor's liability to Subscriber shall not, in any case, exceed a sum equal to the fees paid by Subscriber hereunder, even if the Licensor has been advised of the possibility of such potential claim, loss or liability.

**THE LICENSOR AND SUBSCRIBER EXPRESSLY EXCLUDE ANY LIABILITY FOR BREACH OF ANY IMPLIED OR EXPRESS WARRANTY AS TO MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.**

GTC10 The parties agree that the United Nations Convention on Contracts for the International Sale of Goods shall not be applicable to this Agreement or to the interpretation or enforcement thereof.

GTC11 The Licensor's warranties shall not apply if any software in the Licensed Products is combined or used with other programs, products or data; or the computer hardware or other equipment of the Subscriber used in the operation of the software is not in good operating order; or any such software is modified by anyone other than the Licensor; or the software has been improperly installed or operated or used in any way other than as contemplated in this Agreement; or the then most current release of such software is not used; or the proper network connections have not been successfully installed. Notwithstanding the generality of the disclaimers given herein, the remedies with respect to any defects in any such software which amount to reproducible errors shall be as provided in this Agreement.

#### GENERAL

GTC12 The Licensor's failure to temporarily perform any term or condition of this Agreement as a result of conditions beyond its control such as, but not limited to, war, strikes, fires, floods, governmental restrictions, power failures, damage or destruction of any network facilities or servers, or software or hardware errors, shall not be deemed a breach of this Agreement.

GTC13 In the event that anyone or more of the provisions contained herein shall, for any reason, be held to be invalid or unenforceable, such invalidity or unenforceability shall not affect any other provisions of this Agreement; in such circumstances, this Agreement shall be construed as if such objectionable material had not been included unless the deletion of same would result in material deviation from the terms of agreement contemplated by the parties.



GTC14 Subscriber shall be solely responsible to pay any and all applicable sales, use, value added or similar tax on any license fees or invoiced amounts identified or described hereunder (other than taxes on Subscriber's income) that may be imposed or incurred in connection with the Subscriber's use of or payment for access to the Licensed Products and/or the rights granted under this Agreement and regardless of when such fees or invoices are paid or transmitted. Subscriber shall indemnify and hold the Licensor harmless from any such taxes, as well as the collection or withholding thereof, including penalties and interest that the Licensor may incur due to Subscriber's failure to pay such taxes. Subscriber's obligation to pay such taxes that are incurred during the duration of this Agreement shall survive the termination of this Agreement. The foregoing obligations shall not apply if Subscriber is entitled to exemption from taxation and provides to the Licensor appropriate documentation of its tax-exempt status upon the Licensor's request.

GTC15 This Agreement, including any attachments, annexes or schedules hereto, and any documents explicitly referred to herein (e.g., user manuals and specification documents), 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. No modification, amendment or waiver of any provision of this Agreement shall be valid unless in writing and signed by the parties. Subscriber acknowledges and agrees that it may not assign or transfer any of its rights or obligations under this Agreement unless it obtains the prior written consent of the Licensor.

GTC16 The Licensor shall not, without the prior written consent of Subscriber, transfer any personal information of any Authorized User to any 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.

GTC17 Except as may be noted above, the foregoing representations and warranties shall survive only for the term of this Agreement.

**LICENSE AGREEMENT**  
**Schedule 1.2(b)**  
**Additional Terms and Conditions**

**ATC1 *Archival Print Copy.***

The Licensor will deliver to the Subscriber, at no charge, one (1) print copy of each issue of the Elsevier journal titles electronically accessed hereunder for which it paid a subscription ("Archive Print Copy"), to a single ship-to address. Titles will be adjusted by January 31 of each calendar year of the term.

**ATC2 *Caching.***

The Subscriber and Authorized Users may make transient local digital copies of the Licensed Products in order to ensure efficient use by Authorized Users by appropriate browser or other software. Such local copies will not be retained beyond the cache expiry times indicated in the HTTP headers of the Licensed Products. The Subscriber will make reasonable efforts to ensure that browsers or other software respect no-cache directives included in the headers of certain material in order to ensure correct functioning of the service.

**ATC3 *Compliance with Americans with Disabilities Act.***

The Licensor shall make reasonable efforts to comply with the Americans with Disabilities Act.

**ATC4 *Funding Contingency.***

Subscriber 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 Agreement 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 Subscriber's intent to make payments for the full term of this Agreement.

In the event no funds or insufficient funds are appropriated and budgeted and are not otherwise available in any fiscal period for payments due under this Agreement, the Subscriber will immediately notify Licensor of such occurrence and this Agreement shall terminate on the last day of the subscription period for which payment has been made without penalty of expense to the Subscriber 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 such termination, Subscriber shall maintain its post termination right to materials licensed under the subscription periods for which it has fully paid.

**ATC5 *Electronic Links.***

The Licensor will provide information to the Subscriber upon request to assist the Subscriber in creating electronic links directly from a citation in its library catalogs and licensed resources to the target content in the Licensed Products or related materials in other locations at the journal and article levels.

**ATC6 *Governing Law.***

This Agreement will be governed by and construed in accordance with the laws of the state of California.

**ATC7 *Uptime Warranty.***

The Licensor warrants that it will use reasonable efforts to provide continuous service seven (7) days a week with an average of 98% up-time per month, with the 2% down-time including scheduled maintenance and repair, performed at a time to minimize inconvenience to customers worldwide. If, due to causes within its reasonable control, the Licensor is unable to provide the Subscriber with access to the service for a period exceeding twenty-four (24) consecutive hours, then the Licensor shall extend the term of the Agreement for corresponding period at no additional cost to the Subscriber.



*ATC8 Perpetual License*

Notwithstanding anything else in this Agreement, Licensor hereby grants to Subscriber a nonexclusive, royalty-free, worldwide perpetual license to use the Licensed Products, listed in Annex B to Schedule 5, which after this Agreement terminates are still made available through the ScienceDirect online service for the years for which the Subscriber paid for an electronic subscription, in accordance with the provisions of this Agreement, which provisions shall survive any termination of this Agreement.

*ATC9 Indemnification.*

NO LIMITATION OF LIABILITY SET FORTH IN THIS AGREEMENT IS APPLICABLE TO THE INDEMNITY GIVEN BY THE LICENSOR TO THE SUBSCRIBER IN GTC6 OF SCHEDULE 1.2(A).

**LICENSE AGREEMENT**  
**Schedule 2.2**  
**Sites/IP Addresses**

**Name of Subscriber:** Regents of the University of California

**Primary Location:**

California Digital Library, Office of the President

**All Other Location(s):**

(add additional sheets if necessary):

University of California - Berkeley

University of California - Davis

University of California - Irvine

University of California - Los Angeles

University of California - Merced

University of California OP - California Digital Library

University of California - Riverside

University of California - San Diego

University of California - San Francisco

University of California - Santa Barbara

University of California - Santa Cruz

**Primary Contact Name:** Beverlee A. French

Title: Deputy University Librarian

Address (if different from Principal Address): E-mail: [beverlee.french@ucop.edu](mailto:beverlee.french@ucop.edu)

Phone: 510.987.0425

Fax: 510.287.3825

**Billing Contact Name:** Terry Vrable

Title: Acquisitions Analyst

Address (if different from Principal Address): E-mail: [tvrable@ucsd.edu](mailto:tvrable@ucsd.edu)

Phone: 858.534.1415

Fax: 858.534.1256

**Technical Contact Name:** Margery Tibbetts

Title: Senior Development Programmer

Address (if different from Principal Address): E-mail: [Margery.tibbetts@ucop.edu](mailto:Margery.tibbetts@ucop.edu)

Phone: 510.987.0581

Fax: 510.987.0425

The Subscriber will promptly notify the Licensor of any changes to any of the information above

IP ADDRESSES OF SUBSCRIBER  
UNIVERSITY OF CALIFORNIA

UC Berkeley

128.32.0.\* - 128.32.4.\*  
128.32.159.0 - 128.32.159.17  
128.32.159.19 - 128.32.159.255  
128.32.160.\* - 128.32.200.\*  
128.32.201.\*  
128.32.202.\* - 128.32.220.\*  
128.32.222.\* - 128.32.255.\*  
128.32.44.0 - 128.32.44.65  
128.32.44.70 - 128.32.44.255  
128.32.45.\* - 128.32.158.\*  
128.32.5.0 - 128.32.5.138  
128.32.5.145 - 128.32.5.255  
128.32.6.\* - 128.32.43.\*  
131.243.52.\*  
136.152.\*.\*  
169.228.93.193 - 169.228.93.195  
169.228.93.197  
169.228.93.199  
169.228.93.213 - 169.228.93.215  
169.228.93.218  
169.228.93.220  
169.228.93.222 - 169.228.93.230  
169.229.\*.\*  
192.101.42.\*  
199.133.139.\*  
202.3.226.52  
209.77.137.43 - 209.77.137.47  
64.93.46.210 - 64.93.46.222

UC Davis

128.120.\*.\*  
152.79.\*.\*  
169.228.125.225 - 169.228.125.236  
169.228.128.\* - 169.228.175.\*  
169.228.75.241 - 169.228.75.252  
169.228.79.177 - 169.228.79.188  
169.228.79.193 - 169.228.79.204  
169.228.85.193 - 169.228.85.252  
169.237.\*.\*  
216.101.142.\*

UC Irvine

128.195.\*.\*  
128.200.\*.\*  
160.87.\*.\*

UC Los Angeles

128.97.\*.\*  
131.179.\*.\*  
149.142.\*.\*  
164.67.\*.\*  
169.232.\*.\*

UC Merced

UC Riverside

138.23.\*.\*  
192.31.146.\*

UC San Francisco

128.218.\*.\*  
169.228.78.122  
169.228.78.124  
169.228.78.65 - 169.228.78.67  
169.228.78.79 - 169.228.78.82  
169.228.78.90 - 169.228.78.120  
169.230.\*.\*  
198.175.158.\*  
63.193.204.\*  
63.193.205.\*  
64.54.\*.\*

UC Santa Barbara

128.111.\*.\*

UC Santa Cruz

128.114.\*.\*  
169.233.\*.\*

UC San Diego

128.54.\*.\*  
132.239.\*.\*  
    exclude 132.239.50.12  
132.249.\*.\*  
137.110.\*.\*  
    exclude 137.110.250.\* - 137.110.255.\*  
153.105.100.\*  
153.105.80.\*  
192.12.207.\*  
192.135.237.\*  
192.135.238.\*  
192.31.21.\*  
198.17.46.\*  
198.17.47.\*  
198.202.64.\*

198.202.71.\* - 198.202.127.\*  
199.105.1.\*  
199.105.11.\*  
199.105.15.\*  
199.105.16.\*  
199.105.18.\*  
199.105.3.\* - 199.105.7.\*  
199.105.35.\*  
199.105.37.\*  
199.105.38.\*  
199.105.39.\*  
199.105.9.\*  
207.243.197.\*  
65.172.72.\* - 65.172.73.\*

UC OP - California Digital Library

128.48.\*.\*  
169.228.122.192 - 169.228.122.222  
169.228.122.225 - 169.228.122.254  
169.228.72.\*  
169.228.73.0 - 169.228.73.60  
169.228.73.128 - 169.228.73.191  
169.228.78.121  
169.228.78.123  
169.228.78.125 - 169.228.78.128  
169.228.78.64  
169.228.78.68 - 169.228.78.78  
169.228.78.83 - 169.228.78.89  
169.228.79.0 - 169.228.79.128  
169.228.90.224 - 169.228.90.254  
169.228.95.240 - 169.228.95.254  
169.236.\*.\*  
170.215.49.233  
192.12.83.\* - 192.12.87.\*  
192.35.209.\* - 192.35.210.\*  
192.35.211.\* - 192.35.215.\*  
192.35.216.\* - 192.35.228.\*  
206.171.176.114 - 206.171.176.126  
206.72.92.4  
207.105.203.134  
207.212.132.158  
208.229.102.209  
209.155.207.11  
209.78.86.1 - 209.78.86.254  
209.234.216.177  
216.230.177.98 - 216.230.177.127  
216.230.182.129 - 216.230.182.158  
216.6.232.16  
63.167.48.242  
63.193.255.102  
63.195.128.41 - 63.195.128.46  
63.195.31.58  
63.197.107.130  
63.197.92.\* - 63.197.93.\*  
63.198.16.82  
63.204.150.130 - 63.204.150.191  
63.205.170.121 - 63.205.170.126  
63.205.170.122  
63.77.0.74 - 63.77.0.75

64.139.0.45  
64.170.0.126  
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66.12.115.254  
66.12.35.54  
66.121.156.144 - 66.121.156.159  
66.122.173.30  
66.122.173.78  
66.123.204.246  
66.125.107.162  
66.14.212.132  
66.14.231.248  
66.166.237.56  
66.47.228.44  
67.113.222.102  
67.113.46.34 - 67.113.46.62  
67.114.180.194  
67.117.233.194 - 67.117.233.254  
67.118.22.250  
67.118.220.106  
67.119.222.34  
67.121.46.130 - 67.121.46.190  
67.122.9.110



# ELSEVIER LICENSE AGREEMENT

## Schedule 4.1

### Access/Fees

	2004	2005	2006	2007	2008
Base Amount	\$ 7,300,000	\$7,446,000	\$7,669,380	\$7,976,155	\$8,374,963
Price Cap	0%	2%	3%	4%	5%
Content fees	Waived	Waived	Waived	Waived	Waived
Cross Access	Yes	Yes	Yes	Yes	Yes
DDP at 25% of list	Yes	Yes	Yes	Yes	Yes
Merced Campus Gratis Access	Yes	Yes	Yes	Yes	Yes
Backfiles (Vol. 1-, No. 1- ) "available" and "coming soon" (incl. Lancet, Cell & Medical) as announced 12.19.03	\$2,300,000				
Print Archive (Gratis)	Yes	Yes	Yes	Yes	Yes
LIBOR	Yes	Yes	Yes	Yes	Yes

Continuation of E-Choice rate of 85%

Inclusion of the titles available on ScienceDirect as of 12/31/03 that are subscribed to by one or more of the present nine UC campuses during the period 1999-2003 and Lawrence Livermore and Lawrence Berkeley national labs during the period 2001-2003, as listed in Annex B.

Access to all subscribed titles available to all campuses, including UC Merced. Subscribed titles will be adjusted each January.

Full text access to subscribed titles from 1995 forward and 1993 forward for former Academic Press titles.

Cell Press titles including *Cell*, *Cancer Cell*, *Developmental Cell*, *Immunity*, *Molecular Cell*, *Neuron* are included in the base of \$7,300,000.

#### Transaction Access:

The Subscriber may establish an institutional account for the purpose of paying for Transactions (as defined in Section 2.1) by the Subscriber's selected staff. The account may be password protected, and for use only by such selected staff. The Subscriber's other Authorized Users may purchase Transactions by individual account using their own American Express, MasterCard or Visa credit card. The fee is \$22 per Transaction from Elsevier journals. A higher or lower fee may be charged for Transactions from third-party journals. Both accounts may be set up simultaneously.

All Subject Backfiles (Vol. 1-, No. 1- ) including *The Lancet*, *Cell Press* and *Medical* as listed in Annex B, for \$2,300,000, with payment due 30 days from receipt of invoice. Future backfiles which are included are Medical (medicine and dentistry, nursing and health professions, veterinary science and medicine) and Cell Press. Other new, future backfiles can be added at the 65% discount. Should backfiles purchased not be completed within 18 months of date of payment, Elsevier will refund the CDL the purchase price in

proportion to the completion of the files. Elsevier will make reasonable efforts to correct omissions of content or to rescan items of poor quality that are identified by Subscriber. *Licensors will maintain and circulate an inventory of titles as they are added to Backfile. A listing is also available at [www.info.sciencedirect.com](http://www.info.sciencedirect.com), where it is updated regularly. Bet*

Licensors agree to pay Subscriber interest for early payments made by Subscriber during the year until the 15<sup>th</sup> of December, the date when the print subscription payments are due. Interest will accrue and be calculated as of the 1<sup>st</sup> of the month following the date payment is received. The applicable interest rate will be set as of the 1<sup>st</sup> of February and shall be based upon the 1-month London InterBank Offering Rate (LIBOR), minus 0.50 percent to cover expenses made by Elsevier, and shall be based upon information as made available at 11 A.M. UCT (London time) on the second-to-last business day of the applicable month by the British Bankers Association. The calculated interest rate shall remain the same applicable interest rate until the 15<sup>th</sup> of December of the then current year and the total interest amount shall be due to Subscriber on the same date. To verify the interest rate:

<http://globalarchive.ft.com/globalarchive/article.html?id=010222009959&q>.

If Licensors fail to make any portion of the Licensed Products available following execution of this Agreement, Licensors shall promptly use reasonable efforts to provide access to the Licensed Products as soon as possible. In the event that Licensors fail to repair the nonconformity, Licensors shall credit the Subscriber in an amount proportional to the fees paid by Subscriber under this Agreement for said portion of Licensed Products for the period in which the Licensed products ~~were~~ *were* not available. The accounting will be done on an annual basis.

Terms and conditions for annual maintenance fee and annual access fee, if any, to access archival copies of Licensed Products online, per Schedule 5 of this License Agreement, will be negotiated at a later date. Subscriber's payment of Elsevier invoices, less any outstanding credits due to Subscriber, will follow execution of this Agreement.

Licensed Products will be accessed from the Worldwide Web address [www.sciencedirect.com](http://www.sciencedirect.com) or as otherwise directed by Licensors' technical staff.

## ELSEVIER LICENSE AGREEMENT

### Schedule 5

#### Journal Collection

##### Journal Collection:

**Complete Collection:** Electronic access from the current year of the term of the Agreement back to January 1, 1995 of full text of all articles from the Elsevier journal titles subscribed to, except electronic access back to January 1, 1993 of full text of all articles from the journal titles that were accessed electronically from the IDEAL® platform prior to the term of this Agreement, as identified on Annex B.

**Cell Press Online:** Electronic access to the full text of articles from the Cell Press journal titles identified on Annex B.

**Subject Backfile Collection:** Electronic access to the full text of articles from a selection of journal titles in a particular discipline and in specified backfile years prior to January 1995, as identified on Annex B, for a one-time fee.

##### ScienceDirect® online Archival Access Policy:

The archival access policy, as described in Annex A-1, applies only to the Elsevier journal titles subscribed to (in print or electronically) in the Subscriber's Journal Collection. The archival access policy applies solely to the Subscriber for Authorized user and for the Sites identified on Schedule 2.2. Subject to the limitations described in Paragraph 9 of the archival access policy for acquiring electronic archival copies, the Subscriber may, in the alternative and at its option, access archival copies of all Licensed Products online for an annual maintenance fee plus an annual access fee based on the Subscriber's prior twelve (12) months' usage of such Licensed Products. Terms for annual maintenance fee and annual access fee, including limitations on fee increases for succeeding years, are identified on Schedule 4.1. Upon request, the Subscriber may acquire electronic copies of all or part of a Licensed Product provided that Subscriber defrays the costs of preparing the data set sought. The Subscriber shall promptly notify the Licensor of any material change in the number of Authorized Users or Sites and any change in control of the Subscriber, which change may result in an appropriate adjustment to the annual maintenance fee and/or annual access fee, as may be applicable. The foregoing shall survive the termination of this Agreement.

##### Cell Press Online Archival Access Policy:

The archival access policy for Cell Press Online journals is set forth on Annex A-3. The archival access policy applies solely to the Subscriber for the Authorized user and for the Sites identified on Schedule 2.2. The foregoing shall survive the termination of this Agreement.

##### Print Holdings:

The Subscriber will obtain from all knowledgeable sources (including subscription agents and Authorized Users) and will provide to the Licensor complete historical information concerning the Elsevier print journal subscription holdings of the Subscriber relevant for purposes of this Agreement and provide any updates or corrections to such information.

**Substitution of journal titles:**

Elsevier will notify CDL of titles lost/gained for the following year by November 15 of the previous year. The Subscriber may substitute a subscribed journal title with a journal title of comparable value (in current year list price) no more than once annually by giving the Licensors notice by January 31 (i.e., the Annex list will be adjusted in January of each year). The Licensors reserves the right at any time to withdraw from the Licensed Products any journal title or content that it no longer retains the right to license. Elsevier acknowledges its obligation to make reasonable efforts to retain a non-exclusive copy of volumes published (back to 1995 and 1993 for former Academic titles) and make them available through the ScienceDirect online service per Annex A-1 to Schedule 5 of the License Agreement. In the event that a subscribed journal title is no longer included in the ScienceDirect online service, upon request to the Licensors, the Subscriber shall receive a full refund in the amount of the Fee that such title was to be licensed for the remainder of the term, specifically: (a) For journal titles identified herein upon execution of this Agreement or journal titles to which the Subscriber subscribed in print and added to this Agreement after execution, the amount shall be calculated at a rate of eighty-five (85%) percent of the 2003 capped price adjusted for capped annual increases multiplied by the number of Subscriber's total Elsevier print journal subscriptions; (b) For journal titles added to the ScienceDirect online service during the term of the Agreement and added to this Agreement after execution, the amount shall be calculated at a rate of eighty-five (85%) percent of current year list price adjusted for capped annual increases multiplied by 3.9. Subscriber shall be entitled to the backfile (back to 1995 and 1993 for former Academic titles) for any subscribed titles added through the substitution process. Notwithstanding the foregoing or anything to the contrary contained in the GTCs, within ninety (90) days of execution of this Agreement and by March 31 after the start of each calendar year of the term thereafter, the Subscriber may substitute subscribed journal titles identified on Annex B upon mutual agreement of the parties in writing. Archival print (one copy) of substituted titles will be included at no additional cost.

**Addition of subscribed journal titles:**

Upon mutual agreement of the parties in writing, by January 31 of each calendar year of the term, the Subscriber may add Elsevier journal titles to which it subscribes in print to Subscriber's Complete Collection for a Fee at a rate of eighty-five (85%) percent of current year list price multiplied by the number of Subscriber's total Elsevier print journal subscriptions. If subscribed print titles (i.e., libraries will have paid 100% of print list price) become electronic during the year: Upon written request of the Subscriber, Licensors agrees to provide access at no additional cost to newly available online content, from the time of request until December 31 of the same year. Access to such titles will go back to 1995 or 1993 for former Academic Press titles, if available.

**Addition of new ScienceDirect online journal titles:**

Upon mutual agreement of the parties in writing, by January 31 of each calendar year of the term, the Subscriber may add Elsevier journal titles to which it does not subscribe in print and which are added to the ScienceDirect online service during the term of the Agreement for a Fee at a rate of eighty-five (85%) percent of current year list price multiplied by 3.9. Archival print (one copy) of new online titles will be included at no additional cost.

**Refund for journal titles no longer on ScienceDirect:**

In the event that a subscribed journal title is no longer included in the ScienceDirect online service, upon request to the Licensors, the Subscriber shall receive a full refund in the amount of the Fee that such title was to be licensed for the remainder of the term, specifically: (a) For journal titles identified herein upon execution of this Agreement or journal titles to which the Subscriber subscribed in print and added to this Agreement after execution, the amount shall be calculated at a rate of eighty-five (85%) percent of the 2003 capped price adjusted for capped annual increases multiplied by the number of Subscriber's total Elsevier print journal subscriptions; (b) For journal titles added to the ScienceDirect online service during the term of the Agreement and added to this Agreement after execution, the amount shall be calculated at a rate of eighty-five (85%) percent of current year list price adjusted for capped annual increases multiplied by 3.9.

**Deep Discounted Price for print subscriptions:**

Provided that the Fees have been paid, the Subscriber shall have the option to place orders for annual subscriptions to a selection of Elsevier print publications at a price equal to 25% of the institutional list price ("Deep Discounted Price" or "DDP"), by October 1 prior to the start of the next calendar year from the Publisher directly and from up to three authorized subscription agents, which shall be selected by the Subscriber, and the Publisher will fulfill such orders in accordance with its customary practices. The Subscriber shall notify the Licensor of its subscription agents' contact information upon placing such orders. The Subscriber may change its subscription agents no more than once annually by giving the Licensor notice by October 1 prior to the start of the next calendar year. The Subscriber will not place orders for such DDP subscriptions on behalf of any other person or entity or with the intent to resell, rent, license, lease or otherwise transfer them to another person or entity. Subscriber will notify Licensor by August 1 of its intent to continue to purchase print at a DDP. Licensor will formally notify these agents within fifteen (15) days of notification from Subscriber of its intent to purchase print at DDP pricing. Licensor will advise agents in writing of Subscriber's DDP status and provide written proof to Subscriber that notification has occurred. Licensor will provide an accurate list of titles subject to DDP along with their respective DDP price to subscription agents by December 1 prior to the subscription year.



## Annex A-1 to Schedule 5

### ScienceDirect Online Archival Access Policy

NOTE: The Licensor represents and warrants to the Subscriber that the Licensor and certain of its affiliated companies (collectively, Elsevier) have agreed mutually that the Licensor will provide the archival access described below.

#### Basic Policy

1. A digital archive of the journals that Elsevier owns and that the Licensor makes available electronically on the ScienceDirect online service (Elsevier Journals) will be maintained. The archival files are intended to be maintained in perpetuity, with their format converted as appropriate if the technology used for storage or access changes. The current format standards are SGML and PDF and most files are being retained in both formats.
2. The Licensor understands that the permanent availability of these archival files is of critical concern to its subscribers. Therefore, it makes the commitment that, in the unlikely event that it cannot assume the responsibility for maintaining the archive, it will arrange to transfer the archive to one or more depositories mutually acceptable to Elsevier and an independent board of library advisors.
3. The Licensor is authorized to electronically distribute many journals owned by third parties (such as scientific societies). To the extent the Licensor has the right to do so, these journals will be made available as Licensed Products; and to the extent the electronic versions of such journals are in appropriate technical format, the Licensor will maintain them in its digital archives in the same manner in which it maintains the Elsevier Journals. Should Elsevier cease to be the publisher for such a journal or cease to have electronic rights, Elsevier has agreed that it will use reasonable efforts to ensure that either the volumes published by it remain available through the ScienceDirect online service or that the owner makes them available.
4. If ownership of an Elsevier Journal is sold or otherwise transferred to another publisher, the Licensor will use reasonable efforts to retain a non-exclusive copy of the volumes published and make them available through the ScienceDirect online service to existing subscribers.
5. If the Elsevier Journal ceases to be published, the digital archive will be maintained and be made available through the ScienceDirect online service.
6. In the event that a journal must be removed from the ScienceDirect online service of journals due to the reasons noted in paragraphs 3 and 4 above, Subscribers will be offered the option to receive electronic copies of such journal, consistent with the procedure described in paragraph 9 below. There may be a limited number of exceptions to this policy, should Licensor or its licensor be unable to obtain the necessary electronic rights to do so from the journal's owner, or because of technical incompatibility, but every effort will be made to have 100% compliance.

#### Access Terms

7. A Subscriber pays an annual (calendar year) fee for access and usage privileges (as described herein) to the Licensed Products, including the right to continued access for as long as the Subscriber remains a current ScienceDirect online service subscriber.
8. If Subscriber does not renew its electronic subscription to a particular journal title in the Licensed Products, but nonetheless remains a ScienceDirect online service subscriber, Subscriber's access to the lapsed title is limited to the Publication Year for which Subscriber paid a fee for an electronic subscription.
9. If Subscriber's Agreement with Licensor expires, is not renewed or is terminated by Subscriber or by Licensor (except for violation of Subscriber's obligations under the Agreement), Subscriber may, at its option, acquire electronic archival copies of all or part of the Licensed Products that are still made available through the ScienceDirect online service for the Publication Year for which Subscriber paid for an electronic subscription (including backfile rights), provided that Subscriber defrays the costs of preparing the data set sought, subject to the limitations noted above for journals owned by third parties. In such circumstances, terms and conditions will continue to be as set forth in this Agreement. The electronic archival copies will contain all textual content of the relevant Licensed Products but may not contain all links and other features and functionality associated with the online version available to current ScienceDirect online service subscribers.



### Annex A-3 to Schedule 5 Cell Press Online Archival Access Policy

NOTE: The archival access policy described below is included for reference only and applies only to the journals owned, published and made available electronically by Cell Press, an imprint of Elsevier Inc. ("Cell Press Journals"). The Licensor represents and warrants to the Subscriber that the Licensor and Elsevier Inc. have agreed mutually that the Licensor will provide the archival access described below

1. A digital archive of the Cell Press Journals will be maintained. The archival files are intended to be maintained in perpetuity, with their format converted as appropriate if the technology used for storage or access changes. The current format standards are SGML and PDF and most files are being retained in both formats.
2. The Licensor understands that the permanent availability of these archival files is of critical concern to its Cell Press Online subscribers. Therefore, it makes the commitment that, in the unlikely event that neither it nor Elsevier Inc. can assume the responsibility for maintaining the archive, it will arrange to transfer the archive to one or more depositories mutually acceptable to Elsevier Inc. and an independent board of library advisors.
3. Elsevier Inc. cannot guarantee electronic availability of Cell Press Journals that it no longer owns or publishes. Should Elsevier Inc. sell or otherwise transfer ownership or cease to publish or have electronic rights to any Cell Press Journal, Elsevier Inc. will use reasonable efforts to retain a non-exclusive electronic copy of the issues that it published and ensure that such issues remain available electronically to existing subscribers or that the new owner makes them available electronically on the same access terms via a new host.
4. If the Subscriber's Agreement with the Licensor expires, is not renewed or is terminated by the Subscriber or by the Licensor (except for violation of the Subscriber's obligations under the Agreement), or Elsevier Inc. no longer makes a Cell Press Journal available electronically, the Subscriber may, at its option, acquire electronic archival copies of all or part of the Cell Press Journals that are still made available electronically for which the Subscriber paid for an electronic subscription, provided that the Subscriber defrays the costs of preparing the data set sought. In such circumstances, terms and conditions will continue to be as set forth in the Agreement. The electronic archival copies will contain all textual content of the relevant Cell Press Journals but may not contain all links and other features associated with the online version available to current Cell Press Online service subscribers. There may be exceptions to this policy, should Elsevier Inc. be unable to obtain the necessary electronic rights or because of technical incompatibility, but Elsevier Inc. will use reasonable efforts to comply fully with this policy.