

# SUBSCRIPTION AGREEMENT

## 1. Parties and addresses:

Subscriber: Regents of the University of California, a university, with its principal offices at the California Digital Library, University of California Office of the President, [Deleted] ("Subscriber"), for whom notices should be sent to such address or to such address as Subscriber may hereafter indicate in writing; and

CRC Press, LLC., a Florida corporation with principal place of business at [Deleted] ("CRC"), for whom notices may be sent to such address or to such address as CRC may hereafter indicate in writing.

## 2. Products:

- X- CRC Press ENGnetBASE
- X- CRC Press CHEMnetBASE
- X- CRC Press ENVIRONetBASE
- X- CRC Press MATHnetBASE
- X- CRC Press FOODnetBASE
- X- CRC Press FORENSICnetBASE
- X- CRC Press STATSnetBASE
- X- CRC Press InfoSECURITY netBASE
- X- CRC Press AUERBACH Publications (Enterprise Computing and Networking)
- X- CRC Press Agency for Toxic Substances and Disease Registry (ATSDR)- U.S. Public Health Service's Toxicological Profiles
- X- CRC Journals
- X- CRC Press Food Chemical News (FCN)
- X- CRC Press NEUROSCIENCEnetBASE

The products are delivered or accessed as described in the attached Product Descriptions Attachment.

## 3. License

3.1 *License grant.* CRC hereby grants to Subscriber and its Authorized Users (as defined below) the following rights with respect to the products identified above (the "Licensed Products"):

- Search, view and browse the Licensed Products; and
- \* Print and download from the Licensed Products excerpts of reasonable quantity, provided that use of such excerpts does not amount to or result in commercial distribution and is limited to Authorized Users

and to Subscriber the right to:

\* Incorporate excerpts from the Licensed Products for use in classrooms and electronic reserves to the extent permitted by the classroom use provisions of the copyright law, and in print and electronic "Coursepacks," prepared or compiled by Authorized Users for educational purposes in connection with specific courses offered for academic credit at the Site(s), provided that ( \_ each such excerpt carries appropriate acknowledgement of the source, volume and issue number and the title, author, and publisher; (11) proprietary notices for such excerpts are not deleted or modified and (ill) all such excerpts, if electronic, are deleted by Subscriber at the conclusion of each course for which they are created, and in any event no later than at the end of each semester or trimester in which they are used (with such deletion confirmed in writing to the Licensor upon request). Subscriber may use excerpts from the Licensed Products for electronic Coursepacks for distance education programs with the written permission from the Licensor and a fee, the amount of which will depend on the amount of tuition charged for the courses. Provide links to the Licensed Products' content from its OP AC and also from citations to UC holdings statements.

\* A non-exclusive, non-transferable, perpetual license subject to the terms described in the General Terms & Conditions Attachment.

\* Fulfill requests as part of the practice commonly known as "interlibrary loan" between academic libraries for noncommercial educational purposes, in compliance with Section 108 provisions of the Copyright Law.

3.2 *Authorized Users.* The parties recognize the following as Authorized Users for purposes of this Agreement:

For academic institutions:

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;

For companies and governmental institutions:

Scientific, research and support staff routinely employed by Subscriber; and independent contractors acting as scientific or support staff;

provided that Authorized Users have been advised of the existence of this Agreement and the provisions hereof.

If Subscriber provides access to its collections to all or selected members of the public who walk into the library facility, it may provide access to and permit copying for scholarly, research, educational and personal use (but not for resale) from the Service (subject to the general terms of this Agreement) to those members of the public who come into the library and use workstations located at the library facility. Remote access is permitted only for Authorized Users.

#### 4. Acceptance and agreement:

This order, including the attachments such as the Product Descriptions, Sites, Fees & Payment, and General Terms and Conditions (the "Agreement") is accepted and agreed among the parties and executed as of this 26<sup>th</sup> day of August, 2003.

UNIVERSITY OF CALIFORNIA

[Deleted]

CRC PRESS LLC

[Deleted]

ELSEVIER ENGINEERING INFORMATION INC. (EI)

[Deleted]

## PRODUCT DESCRIPTIONS ATTACHMENT

Product or Service: CRC ENGnetBASE

Publisher: CRC Press

Description: CRC ENGnetBase provides on-line access to its material via more than 50 handbooks. Additional titles will be offered by CRC as they are released.

Product or Service: CRC CHEMnetBASE

Publisher: CRC Press

Description: CRC CHEMnetBASE is an electronic database comprising *Combined Chemical Dictionary*, *The Handbook of Chemistry & Physics*, *Polymers - A Property Database*, and *Properties of Organic Compounds*.

Product or Service: CRC ENVIRONetBASE

Publisher: CRC Press

Description: CRC ENVIRONetBASE is an electronic base comprised of environmental resources.

Product or Service: CRC MATHnetBASE

Publisher: CRC Press

Description: CRC MATHnetBASE is an electronic database comprised of mathematics resources. Formulas, techniques, derivations and background material needed in all areas of applied mathematics are located in this database.

Product or Service: CRC STATsnetBASE

Publisher: CRC Press

Description: CRC STATnetBASE is an electronic database comprised of statistics resources that cover a wide range of disciplines, from the environmental and social sciences to medicine, biology, and operations research.

Product or Service: CRC FOODnetBASE

Publisher: CRC Press

Description: CRC FOODnetBASE is an electronic database comprised of resources that provide authoritative information about every aspect of the food industry, including food safety, regulations, and quality assurance to packaging, biotechnology, and product development.

Product or Service: NEUROSCIENCEnetBASE

Publisher: CRC Press LLC

Description: NEUROSCIENCEnetBASE is a comprehensive online library of premier neuroscience references offering easy access to groundbreaking references, classic works, and illustrative atlases. It provides access to over 28 publications.

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Product or Service: CRC FORENSICnetBASE

Publisher: CRC Press

Description: CRC FORENSICnetBASE is an electronic database that provides a complete collection of essential forensic science, law enforcement, and criminal justice references for lawyers, investigators, and students. The database also includes photos and micrographs of human hair, stab wounds, gunshot residue, blood stains, and more.

Product or Service: CRC InfoSECURITY netBASE

Publisher: CRC Press

Description: CRC InfoSECURITYnetBASE is an electronic database that provides access to over 30 information security publications from the premier publisher for IT professionals.

Product or Service: CRC AUERBACH Publications

Publisher: CRC Press

Description: CRC AUERBACH Publications are handbooks, journals, and newsletters that provide practical, proven information on computing and networking.

Product or Service: CRC ATSDR (Agency for Toxic Substances and Disease Registry)

Publisher: CRC Press

Description: CRC ATSDR (Agency for Toxic Substances and Disease Registry) is an electronic database that provides toxicological and epidemiological information, including the toxicological effects of over 150 hazardous substances, chemicals, and compounds.

Product or Service: CRC FCN (Food Chemical News)

Publisher: CRC Press

Description: CRC Food Chemical News is the most authoritative source of information on food regulation. Information is accessible through customized news services and daily reports of breaking news and developments.

Product or Service: CRC Journals

Publisher: CRC Press

Description: CRC Journals provide immediate access to new methods and applications in life sciences, environmental sciences, and engineering. Information is available via high quality PDF files and searchable archives.

**SITES ATTACHMENT**  
(add extra attachments for multiple sites)

Name of Subscriber Institution / Company: - Regents of the University of California

Location Name(s): \_California Digital Library,  
\_University of California Office of the President

(If different from the Institution/Company name)

Primary Contact Name[Deleted]

Job Title: [Deleted]

FAX: [Deleted]

Phone: [Deleted]

E-Mail: [Deleted]

Address: [Deleted]

Please be as accurate and specific as possible with your IF ranges. Please do not use Netmask ranges.

IF Address(es) or IF Range for this location:

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\* Subscriber expects The University of California, Merced site will be opened in or about 2004, at which time Subscriber shall promptly notify Licensor of such opening and negotiate an adjustment to the Fees, as relevant.

## **CONTACT INFORMATION**

Technical Contact Name: [Deleted]

Email: - CDLSupport-L@ucop.edu

Billing Contact Name: [Deleted]

## FEES & PAYMENT ATTACHMENT

In consideration of the license granted and the obligations required of the Subscriber hereunder, Subscriber agrees to pay the fees noted below. This agreement is non-cancelable.

Length of Contract: 11\_ Years.  
Service Start Date: 12/15/2001  
Service End Date: 12/14/2012

For multiple year contracts, an invoice for each year of the contract will be sent 30 days prior to the end of the current subscription term. Payment will be due 30 days after the start of the current term.

### LICENSE FEES

PRODUCT	Year 1
Digital	[Deleted]
Content	
License Fee	
Annual	[Deleted]
Online	
Access Fee	

Renewal date for access fees. The renewal date for the annual access fee will be December 15. Subscriber will pay access fees for a period of 10 years, with the last payment due in December 2011. The Parties agree to review and agree upon the amount of the annual fee prior to November 14 of each year for the subsequent subscription period. The Parties agree to the principle that the annual increase will not exceed [Deleted] and that in no case will the price paid in a subsequent year be less than the fee paid in the current year.

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.

Changes in control of Subscriber may result in early termination unless the parties are able to agree to appropriate fee adjustments.

The parties acknowledge that Elsevier Engineering Information Inc. (Ei), in Ei's role as CRE's exclusive sales agent, has negotiated this License Agreement on behalf of the Parties and agree that Ei will be solely responsible for the billing and collection of fees pertaining to this Agreement for the life of this Agreement.

All notices pertaining to the execution of the terms of this Agreement should be sent to Senior Vice President of Sales and Marketing, Elsevier Engineering Information Inc. (Ei), [Deleted]

Future Updates: The purchase price includes all content added to the NetBASE products described in this Agreement for the next 10 (ten) years. It further includes all instances of changes or updates to the content provided for the times purchased. ...

In the event Subscriber decides to continue accessing Licensed Products on CRC's NETBASE platforms after termination of this Agreement, the Parties will enter into good faith negotiations to determine license fees for subsequent subscription terms.

## GENERAL TERMS AND CONDITIONS

### ATTACHMENT

#### REPRESENTATIONS, WARRANTIES AND INDEMNITIES.

*CRC warranties.* CRC warrants that the Licensed Products will substantially conform to CRC's product descriptions, specifications or descriptions in user manuals, if used for its intended purposes and that use by Subscriber of the licensed products according to the terms and conditions herein will not infringe the rights of third parties. CRC agrees to indemnify Subscriber in the event such a claim of infringement is made. NO LIMITATION OF LIABILITY SET FORTH ELSEWHERE IN THIS AGREEMENT IS APPLICABLE TO THIS INDEMNIFICATION.

*Subscriber warranties.* Subscriber warrants that it will use reasonable efforts to ensure the security and integrity of the Licensed Products, especially as regards access by parties other than Authorized Users, and will use reasonable efforts to ensure compliance by its Authorized Users with the terms and conditions set forth in this Agreement. Subscriber further represents and warrants that it has entered into this Agreement to obtain products or services for its own Authorized Uses and not on behalf of any other person or entity.

*Disclaimers.* Other than with respect to the warranties given in this section 1.3 (disclaimers), neither CRC nor its licensors will be responsible 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 (to the maximum extent permitted by relevant laws) any negligence. Further, CRC 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. In any event neither CRC nor its licensors shall be liable for any incidental, special, consequential or exemplary damages including, but not limited to, loss of anticipated profits or benefits. CRC's liability to Subscriber shall not, in any case, exceed a sum equal to the fees identified on the Fees and Payments Attachment that have been paid by Subscriber hereunder, even if CRC has been advised of the possibility of such potential claim, loss or liability.

*Completeness of Content.* Where applicable, Licensor shall use reasonable efforts to ensure that the online content is equivalent to print versions of the Licensed Product, represents complete, faithful and timely replications of the print versions, and that Licensor will cooperate with Subscriber to identify and correct errors or Omissions.

*Performance.* Licensor shall use reasonable efforts to provide continuous service 7 days a week with an average of 95% up-time per month. The 5% down-time includes scheduled maintenance and repair. Scheduled down-time will be performed at a time to minimize inconvenience to customers.

*ADA Compliance* Licensor shall make reasonable efforts to comply with Americans with Disabilities Act

#### **CRC EXPRESSLY EXCLUDES ANY LIABILITY FOR BREACH OF ANY IMPLIED OR EXPRESS WARRANTY AS TO MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.**

*Survival of warranties.* The foregoing representations and warranties shall survive for the term of this Agreement (unless otherwise noted).

## 2. USAGE RESTRICTIONS

*Usage Restrictions.* Except as expressly permitted in this Agreement, none of the Licensed Products may be used (directly or indirectly) for any of the following purposes:

- \* substantial or systematic reproduction;
- \* re-distribution, re-selling or sub-licensing in any manner including in connection with fee-for-service use;
- \* systematic supply or distribution in any form to anyone other than an Authorized User;
- \* systematic or substantial retention of the Licensed Products other than as described in Section 3.6



*Alteration; Notices.* 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.

*Reverse engineering / decompilation.* 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 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 the commercial value of the licensed products.

*Intellectual property rights.* 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 CRC 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 CRC or its licensors.

*Content/ Service Integrity.* Subscriber recognizes that the following are important Subscriber obligations: (a) maintaining the integrity of the Licensed Products; and (b) ensuring that access to, and use of, the Licensed Products is limited to Authorized Users. CRC accordingly reserves the right to terminate this Agreement if routine violations of these security principles or intellectual property rights are substantiated. CRC will allow a 30 day cure period for the Subscriber to investigate and resolve any alleged breach in use of Product. Subscriber understands that Licensor may temporarily suspend an offending IP address while cure is effected. Subscriber will take reasonable measures to detect misuse of the Licensed Products, notify CRC of such misuse, and take corrective actions, or take such action upon request from CRE.

### **3. GENERAL**

*Force Majeure.* CRC'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.

*Severability.* 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.

*Taxes.* Subscriber shall be solely responsible for any sales, use, VAT or other taxes on any license fees or invoiced amounts identified or described hereunder, whether or not such taxes are indicated on any relevant invoices. Subscriber agrees to pay, and to indemnify and hold CRC harmless from, any sales, use, business, occupation, value added, excise or similar tax, as well as the collection or withholding thereof, including penalties and interest that CRC may incur to any state, national or other governmental entity in respect of this Agreement. Subscriber's obligation to pay such taxes that are incurred during the duration of this Agreement shall survive the termination of this Agreement.

*Entire Agreement; Modification; Assignment.* This Agreement, and any annexes or schedules hereto and thereto, and documents explicitly referred to herein or therein (e.g. user manuals and specification documents), contain the entire understanding of the parties with respect to the subject matter contained herein and supersede all terms and conditions in any quotations, purchase orders, acknowledgements or other documents exchanged by the parties. There are no promises, covenants or undertakings other than those expressly set forth therein. This Agreement cannot be modified except by a writing signed by the relevant parties. Subscriber acknowledges and agrees that it may not transfer any rights to any party unless it first obtains the written consent of CRE. Subscriber acknowledges and agrees that upon approval of such assignment and in the event Subscriber transfers substantially all of its assets and business the fees under this Agreement may need to be adjusted appropriately.

*Applicable Law.* This Agreement shall be interpreted and construed according to, and governed by, the laws of California, excluding any such laws that might direct the application of the laws of another jurisdiction. The federal or state courts located California shall have jurisdiction to hear any dispute under this Agreement

*Perpetual License.* The Perpetual License granted in Paragraph 3, License, of this Agreement shall survive the termination of the License Agreement for the Product contents that were available to the Subscriber during the term of the license. Should this contract be terminated by either party, Licensor will supply to Subscriber a copy of all licensed materials for which Subscriber has paid, in a mutually agreeable electronic medium. Subscriber will cover the cost of preparation of archival copy, media, if any, and any applicable shipping. In this event, no subsequent annual access fees will be assessed for the Subscriber to provide that content to its Authorized Users. Use of Licensed Products by Subscriber and its Authorized Users in this instance will be governed by the license terms of this Agreement. Should Licensee decide to continue accessing the Licensed Products from Licensor's then current access platform after this Agreement expires, the Parties will in good faith negotiate a new Agreement for a subsequent term. CRC reserves the unlimited right during the term of this Agreement and beyond, to use, market, license or sell and use for any purpose, in any form, and anywhere in the world, any of the Licensed Products, in full and/or in part, referred to in this Agreement. No terms or conditions of this Agreement may be interpreted as limiting the rights of CRC to promote, market, and provide online or offline services, or any product in any other medium, from the Licensed Products.

*Archiving:* Upon request, Subscriber may receive from Licensor one copy of the Licensed Products or a component of the Licensed Products in a mutually agreeable electronic medium to be maintained as a backup or archival copy, during the term of this Agreement, or as required to exercise the Subscriber's rights under Section 3.6 Perpetual License. Subscriber will cover the cost of preparation of archival copy, media, if any, and any applicable shipping.

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

*Usage Statistics.* CRC will provide usage statistics to UC at the campus/lab level on a monthly basis for the individual CRCnet BASE products.

*Cancellation of Other Formats.* Licensor will place no restrictions or penalties on canceling subscriptions for print or other formats for the titles included in this agreement.

*MARC Records.* Licensor will make best efforts to provide to Licensee MARC records for content at no additional charge. Licensor may load MARC records either locally in campus online catalogs or centrally in the :MEL VYL catalog or CDL Directory. For products not yet online, Licensor will make MARC records available when new titles are added to the web site.