



## ELSEVIER SUBSCRIPTION AGREEMENT

This agreement ("Agreement") is entered into as of 8 January 2008 by and between **The Regents of the University of California o/b/o The California Digital Library**, University of California Office of the President, 415 20th Street, 4th Floor, Oakland, CA 94612-2901, USA (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.*

The Subscriber and its Authorized Users may:

- 1.3.1 access, search, browse and view the Subscribed Products;
- 1.3.2 print and download a reasonable portion of the Subscribed Products;
- 1.3.3 incorporate links to the Subscribed Products on the Subscriber's intranet and internet websites, provided that the appearance of such links and/or statements accompanying such links shall be changed as reasonably requested by Elsevier; and
- 1.3.4 incorporate links to the Subscribed Products in electronic coursepacks, reserves and course management systems for use in connection with courses offered by the Subscriber for academic credit.

The Authorized Users may:

- 1.3.5 transmit single journal articles and book chapters from the Subscribed Products to other Authorized Users and to third-party colleagues for their scholarly or research use.

#### 1.4 *Restrictions on Use of Subscribed Products.*

Except as may be expressly permitted in this Agreement, the Subscriber and its Authorized Users may not:

- 1.4.1 abridge, modify, translate or create any derivative work based on the Subscribed Products without the prior written permission of Elsevier, except to the extent necessary to make them perceptible on a computer screen to Authorized Users;

1.4.2 remove, obscure or modify in any way any copyright notices, other notices or disclaimers as they appear in the Subscribed Products; or

1.4.3 substantially or systematically reproduce, retain or redistribute the Subscribed Products.

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 World Wide Web 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 96.5% up-time per year, with the 3.5% 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. If the withdrawal represents more than ten (10%) percent of the content comprising the Subscribed Products, Elsevier shall refund to the Subscriber the amount of the Fees that is proportional to the amount of content withdrawn and the remaining unexpired portion of the period for which the Fees were paid.

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 only with the express written permission of Elsevier and for the purpose of usage analysis of the Subscriber. Elsevier will make all reasonable efforts to comply with the then currently valid COUNTER Code of Practice.

**SECTION 3. SUBSCRIBER PERFORMANCE OBLIGATIONS.**

3.1 *Authorized Access.*

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:

- 3.2.1 ensure that access to and use of the Subscribed Products is limited to Authorized Users and that all Authorized Users are notified of and comply with the usage restrictions set forth in this Agreement;

- 3.2.2 ensure that any passwords or credentials used to access the Subscribed Products are issued only to Authorized Users and that neither the Subscriber nor its Authorized Users divulge any passwords or credentials to any third party; and
- 3.2.3 immediately upon becoming aware of any unauthorized use of the Subscribed Products, inform Elsevier and take appropriate steps to ensure that such activity ceases 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 and shall promptly restore any suspended access once the unauthorized use has ceased and the Subscriber has taken corrective actions to ensure that such unauthorized use does not recur. The Subscriber shall not be liable for unauthorized use of the Subscribed Products by any Authorized Users provided that the Subscriber did not intentionally assist in or encourage such unauthorized use or 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 on Schedule 1 (the "Fees") within thirty (30) days of date of invoice. 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.

#### **SECTION 5. TERM.**

##### *5.1 Term.*

The term of this Agreement shall commence on 1 January 2008 and continue until 31 December 2010.

##### *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 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, ELSEVIER AND ITS SUPPLIERS PROVIDE THE SUBSCRIBED PRODUCTS "AS IS" AND MAKE NO REPRESENTATION OR WARRANTY AND EXPRESSLY DISCLAIM ANY LIABILITY FOR ANY CLAIM ARISING

FROM OR OUT OF THE SUBSCRIBED PRODUCTS, 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, governmental restrictions, 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 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. c/o Regional Sales Office, 360 Park Avenue South, New York, NY 10010-1710, USA.

If to the Subscriber: The Regents of the University of California o/b/o The California Digital Library, University of California Office of the President, 415 20th Street, 4th Floor, Oakland, CA 94612-2901, USA

7.8 *Compliance with Americans with Disabilities Act.*

Elsevier shall make reasonable efforts to comply with the Americans with Disabilities Act (ADA).

7.9 *Confidentiality of Usage Data.*

Elsevier shall maintain as confidential and not disclose to any non-affiliated third party without the Subscriber's prior written consent any data relating to the usage of the Subscribed Products by the Subscriber and its Authorized Users except in aggregated, collective or anonymized form.

7.10 *Early Termination Due To Insufficient Budgetary Allotment From Government.*

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

7.11 *Governing Law.*

This Agreement shall be construed according to and governed by the laws of the State of California, USA, excluding any such laws that might direct the application of the laws of another jurisdiction.

7.12 *Execution.*

This Agreement may be executed in counterparts, and signatures exchanged by facsimile or other electronic means are effective for all purposes hereunder 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.

**THE REGENTS OF THE UNIVERSITY OF CALIFORNIA o/b/o  
THE CALIFORNIA DIGITAL LIBRARY  
(Subscriber)**

\_\_\_\_\_  
Name: \_\_\_\_\_  
Title: Director, USU SVCS.  
7/13/08

KH  
2/15/08

**ELSEVIER B.V.  
(Elsevier)**

\_\_\_\_\_  
Name: \_\_\_\_\_  
Title: Managing Director, Academic & Government

Contract No. 1-8IQ6N0

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**ELSEVIER SUBSCRIPTION AGREEMENT**  
**Schedule 1**  
**Subscribed Products/Access/Fees**

**THE REGENTS OF THE UNIVERSITY OF CALIFORNIA**  
**o/b/o THE CALIFORNIA DIGITAL LIBRARY**

Contract No. 1-8IQ6N0

<b>Subscribed Products – publisher</b>	<b>Access</b>	<b>2008</b>	<b>2009</b>	<b>2010</b>
<b>Compendex@ – Elsevier Inc.</b>	<b>engineeringvillage.com</b>			
<b>TOTAL FEES</b>				

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**ELSEVIER SUBSCRIPTION AGREEMENT**  
**Schedule 2**  
**Sites/IP Addresses/Contacts**

**Subscriber:** The Regents of the University of California o/b/o The California Digital Library

<b>Sites:</b>	<b># Auth. Users:</b>	<b>IP Address(es)</b>
University of California - Berkeley	235,000	See list below
University of California - Davis		
University of California - Irvine		
University of California - Los Angeles		
University of California - Merced		
University of California - Riverside		
University of California - San Diego		
University of California - San Francisco		
University of California - Santa Barbara		
University of California - Santa Cruz		
University of California Office of the President – California Digital Library		

Estimated total number of Authorized Users at all Sites: 235,000

Estimated total number of Relevant Users at all Sites: 25,850

The Subscriber shall promptly notify Elsevier of any material changes in the number of Authorized Users, which changes may result in termination 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 substitute IP address(es) upon mutual agreement of the parties in writing.

**Primary Contact**

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

**Billing Contact**

Name:  
Title: CDL Acquisitions Coordinator  
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.

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**ELSEVIER SUBSCRIPTION AGREEMENT  
Schedule 2 (continued)  
IP Addresses**

**UC Berkeley**  
[Text deleted]

**UC Los Angeles**  
[Text deleted]

**UC Merced**  
**UC Riverside**  
[Text deleted]

**UC San Francisco**  
[Text deleted]

**UC Davis**  
[Text deleted]

**UC Santa Barbara**  
[Text deleted]

**UC Santa Cruz**  
[Text deleted]

**UC San Diego**  
[Text deleted]

**UC Irvine**  
[Text deleted]



[Text deleted]

[Text deleted]

UC OP - California Digital Library

[Text deleted]