

## Elsevier Journal Backfiles on ScienceDirect 1907-2002

## ELSEVIER LICENSE AGREEMENT

This license agreement ("Agreement") is entered into as of \_\_\_\_\_ 2005 by and between Johann Wolfgang Goethe-Universitaet, Universitaetsbibliothek Johann Christian Senckenberg, Bockenheimer Landstrasse 134-138, 60325 Frankfurt, Germany (the "Representative"), authorized to enter into this Agreement on behalf of itself and its participating institutions and libraries, as described in section 1.2 (the "Institutions"), and to enforce the obligations herein on the Institutions (collectively, the "Subscriber") pursuant to a consent form substantially in the form set forth on Schedule 3, and Elsevier B.V., Radarweg 29, 1043 NX Amsterdam, The Netherlands (the "Licensor").

The parties hereto agree as follows:

**SECTION 1. LICENSE.***1.1 License Grant.*

The Licensor hereby grants to the Subscriber the non-exclusive, non-transferable right and license to use the products and services identified in Schedule 1 ("Licensed Products") and provide the Licensed Products to its Authorized Users subject to the terms and conditions of this Agreement.

*1.2 Authorized Users/Institutions.*

Authorized Users for purposes of this Agreement are:

**For academic and medical Institutions (Universitaetskliniken) including polytechnics(Fachhochschulen) in Germany:**

Full-time and part-time students, faculty, full-time and temporary staff and researchers, of the Subscriber affiliated with the academic and medical Institutions permitted by the Subscriber to access the Licensed Products, including remote access, through the Subscriber's secure network and individuals, without remote access, physically using computer terminals within the library facilities at the academic and medical Institutions permitted by the Subscriber to access the Licensed Products through the Subscriber's secure network.

**For governmental and/or publicly funded research Institutions in Germany:**

Employees and independent contractors of the Subscriber affiliated with the governmental and/or publicly funded research Institutions permitted by the Subscriber to access the Licensed Products, including remote access, through the Subscriber's secure network and individuals, without remote access, physically using computer terminals within the library facilities at the government and/or publicly funded research Institutions permitted by the Subscriber to access the Licensed Products through the Subscriber's secure network.

**For the central subject libraries (Zentrale Fachbibliotheken), the national libraries(Nationalbibliotheken), the scientific regional libraries (Wissenschaftliche Regionalbibliotheken) and the scientific special libraries (Wissenschaftliche Spezialbibliotheken or Wissenschaftliche Fachbibliotheken) in Germany:**

Individuals, without remote access, physically using computer terminals are permitted by the Subscriber to access the Licensed Products through the Subscriber's secure network at the following Institutions:

- the central subject libraries such as TIB (Hannover), ZBMed (Köln) and ZBW (Kiel); or
- the national libraries such as the Deutsche Bibliothek (Frankfurt und Leipzig), Staatsbibliothek Berlin and the Bayerische Staatsbibliothek; or
- the regional libraries such as the Landesbibliothek Sachsen, Landesbibliothek Wiesbaden etc.; or
- the special scientific libraries such as the special library of UBA (Umweltbundesamt Berlin), CAESAR, Marbacher Literaturarchiv and any other as listed by the "Deutsche Bibliotheksstatistik unter Wissenschaftliche Spezialbibliotheken.

Remote access to access the Licensed Products is not permitted. Other institutions are explicitly excluded from this Agreement and shall not be permitted to have access during or after termination of this Agreement, including without limitation:

- libraries of commercial and/or commercially funded organisations
- libraries of corporations,
  - city libraries (Stadtbibliotheken)
  - hospitals other than as part of academic universities

The Representative shall promptly notify the Licensor of any material changes in the number of Institutions or Authorized Users, which changes may result in early termination unless the parties are able to agree to appropriate fee adjustments.

*1.3 Authorized Uses. The Subscriber and its Authorized Users may:*

1.3.1 access, search, browse and view the Licensed Products;

1.3.2 print and download a reasonable portion of articles, abstracts, records or parts of chapters from the Licensed Products ("Excerpts"); and

1.3.3 incorporate links to Excerpts 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 the Licensor; and

1.3.4 incorporate links to Excerpts in electronic course packs, reserves and course management systems for use in connection with courses offered by the Subscriber for academic credit which results to an academic degree. The Subscriber needs to obtain the prior written consent of the Licensor for use in connection with any non-credit courses.

The Authorized Users may:

1.3.5 transmit Excerpts to other Authorized Users and to third-party colleagues for their scholarly or research use.

The Subscriber may:

1.3.6 print and deliver Excerpts 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 Licensed 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 Licensed Products without the prior written permission of the Licensor, 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 Licensed Products; or

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

*1.5 Intellectual Property Ownership.*

The Subscriber acknowledges that all right, title and interest in and to the Licensed Products remain with the Licensor and its licensors, except as expressly set forth in this Agreement, and that the unauthorized distribution of the Licensed Products could materially harm the Licensor and its licensors.

## **SECTION 2. LICENSOR PERFORMANCE OBLIGATIONS.**

*2.1 Access to Licensed Products.*

The Licensor will make the Licensed 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.*

The Licensor shall use reasonable efforts to provide the Licensed 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 performed during the weekend 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.*

The Licensor reserves the right to withdraw from the Licensed Products content that it no longer retains the right to license or that it has reasonable grounds to believe is unlawful, harmful, false or infringing.

### *2.4 Usage Data Reports.*

The Licensor will provide on a monthly basis to each Institution for its internal use only usage data reports on such Institution's usage activity.

## **SECTION 3. SUBSCRIBER PERFORMANCE OBLIGATIONS.**

### *3.1 Authorized Access.*

Access to the Licensed Products shall be authenticated by the use of Internet Protocol ("IP") address(es) collected from the Institutions by the Representative and indicated by the Subscriber on Schedule 2 and/or by usernames and passwords and upon receipt of the signed consent form, as set forth on Schedule 3, to be collected by the Licensor from the Institutions.

### *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 Licensed 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 used to access the Licensed Products are issued only to Authorized Users and that neither the Subscriber nor its Authorized Users divulge any passwords to any third party; and

3.2.3 immediately upon becoming aware of any unauthorized use of the Licensed Products, inform the Licensor and take appropriate steps to ensure that such activity ceases and to prevent any recurrence. In the event of any unauthorized use of the Licensed Products, the Licensor may suspend access of the IP address(es) from which the unauthorized use occurred upon notice to the Subscriber.

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

The Representative shall pay to the Licensor the fees set forth in Schedule 1 (the "Fees") within sixty (60) 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 the third of December 2005 and continue until the 31st of December 2021. Institutions and the Representative shall be permitted to terminate this agreement during the term to the Licensor by giving at least ninety (90) days written notice. No Fees, including without limitation the Access Fees, shall be refunded in the event of termination. The consequences of termination are described in Schedule 1.1 of this Agreement. The Representative may renew this Agreement for a successive fifteen-year term, subject to payment of the Access Fees as set forth in Schedule 1 plus the consumer price index (CPI) inflation rate to be calculated as of the first of January 2006 until the date of renewal, by giving written notice to the Licensor at least ninety (90) days prior to the expiration of the then current term. This Agreement shall expire automatically after the second term unless both parties agree in writing to extend the Agreement for a subsequent term.

### *5.2 License.*

The Subscriber may access and use during the term of this Agreement the Subject Backfile Collection(s) of the Licensed Products in accordance with the provisions of this Agreement for a onetime fee for as long as the Subscriber remains a ScienceDirect online service subscriber.

## **SECTION 6. WARRANTIES AND INDEMNITIES.**

### 6.1 *Licensor's Warranty and Indemnity.*

The Licensor warrants that use of the Licensed Products in accordance with the terms and conditions herein will not infringe the intellectual property rights of any third party. The Licensor 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 Licensed Products in accordance with the terms and conditions herein infringes the intellectual property rights of such third party. The Subscriber agrees that if any such claim is made by a third party then the Subscriber will promptly notify and cooperate with the Licensor. This indemnity obligation shall survive the termination of this Agreement.

### 6.2 *Limitations on Warranties/Disclaimers.*

Except with respect to the warranties and indemnities expressly set forth in this Agreement:

6.2.1 The Licensor and its licensors shall not 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. The Licensor's liability to the Subscriber shall not, in any case, exceed a sum equal to the Fees paid by the Subscriber hereunder, even if the Subscriber has been advised of the possibility of such potential claim, loss or liability.

6.2.2 EXCEPT FOR THE EXPRESS WARRANTIES STATED HEREIN, THE LICENSED PRODUCTS ARE PROVIDED ON AN "AS IS" BASIS AND THE LICENSOR MAKES NO REPRESENTATION OR WARRANTY, AND EXPRESSLY DISCLAIMS ANY LIABILITY, TO THE EXTENT PERMITTED BY RELEVANT LAWS AND EXCEPT FOR THE EXPRESS INDEMNITIES STATED HEREIN, FOR ANY CLAIM ARISING FROM OR OUT OF THE LICENSED 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.

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

6.2.4 The warranties and indemnities by the Subscriber herein are made only to the extent allowed by law.

## **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 sublicense any of its rights or obligations under this Agreement unless it obtains the prior written consent of the Licensor, which consent shall not unreasonably be withheld.

### 7.6 Privacy.

The Licensor 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 the Licensor: Elsevier B.V. c/o Regional Sales Office, Radarweg 29, 1043 NX Amsterdam, The Netherlands.

If to the Representative: Johann Wolfgang Goethe-Universitaet, Universitaetsbibliothek Johann Christian Senckenberg, Bockenheimer Landstrasse 134-138, 60325 Frankfurt, Germany.

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

**Johann Wolfgang Goethe-Universitaet, Universitaetsbibliothek Johann Christian Senckenberg  
(Representative)**

Name: Berndt Dugall,  
Title: Bibliotheksdirektor

**ELSEVIER B.V.  
(Licensor)**

Name: Frank Vrancken Peeters  
Title: Managing Director, Sales

**Contract No:** \_\_\_\_\_

## ELSEVIER LICENSE AGREEMENT Schedule 1.1 Collection(s)

### Collection(s):

Subject Backfile Collection(s): Electronic access to the full text of articles from a selection of journal titles in a particular subject or discipline, as identified on Schedule 1, for the backfile years prior to 1 January 1995.

At any time during the term of this Agreement, the Representative may, at its option, acquire, load and technically format on a server that enables access and use in perpetuity by Authorized Users through the Representative's internal secure network an electronic copy of all or part of the Subject Backfile Collection(s) paid at no additional costs, in accordance with the usage provisions of the Agreement, which provisions shall apply during the term of the agreement and shall survive the termination of the Agreement. The Representative shall be permitted to distribute such an electronic copy of the Subject Backfile Collection(s) to individual Institutions to acquire, load and technically format on a server that enables access and use in perpetuity by Authorized Users through the Institution's internal secure network, in accordance with the usage provisions of the Agreement, which provisions shall survive the termination of the Agreement. The electronic copy may not contain links and other features and functionality associated with the online version.

The **CITations D'ELsevier database** ("CITADEL"): bibliographic records of articles (metadata) from all Elsevier journal titles, currently included in the ScienceDirect® online service.

Licensor shall deliver, via FTP format, to the Representative which may load and technically format on a server that enables access and use by Authorized Users through the Representative's internal secure network an

electronic copy of the most recently updated bibliographic records extracted from CITADEL ("CITADEL Records") at no additional costs, in accordance with the usage provisions of the Agreement, which provisions shall survive the termination of the Agreement. The Representative shall fully support data loading and updates, display and functionality of the CITADEL Records on its computer system for the purposes authorized under this Agreement. Licensor shall provide during the initial term of the Agreement to the Representative regular updates of the CITADEL Records, but not less than once per year, via FTP format. The Licensor may make changes in the machine-readable format in which the CITADEL Records will be made available to the Representative upon thirty (30) days notice to the Representative. The Representative shall be permitted to distribute such an electronic copy of the CITADEL Records to Institutions to acquire, load and technically format on a server that enables access and use in perpetuity by Authorized Users through the Institution's internal secure network, in accordance with the usage provisions of the Agreement, which provisions shall survive the termination of the Agreement. The CITADEL Records may only be used for linking purposes and integration in the Online Public Access Catalogue (OPAC) and related union catalogues, other use of the CITADEL Records is not permitted. The Licensor may deliver to the Subscriber content other than the licensed CITADEL Records identified herein such as abstracts, in which event the Subscriber will not use or distribute such unlicensed content.

## **Second AMENDMENT TO ELSEVIER LICENSE AGREEMENT**

**WHEREAS**, the parties hereto have previously entered into an agreement dated 3 December 2005 (the "Prior Agreement") and wish to amend the Prior Agreement as set forth in this amendment ("Amendment").

**NOW, THEREFORE**, in consideration of the mutual promises and covenants set forth below, and for such other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree to amend the Prior Agreement as of the execution date below as set forth below:

Except as specifically amended hereby, all of the existing terms and conditions of the Prior Agreement are hereby ratified. Capitalized terms used herein that are not otherwise defined shall have the meanings ascribed to them in the Prior Agreement. To the extent any terms or conditions of the Prior Agreement conflict with or are inconsistent with this Amendment, the terms of this Amendment shall prevail.

**IN WITNESS WHEREOF**, the parties have executed this Amendment by their respective, duly authorized representatives as of 15 December 2006.

**JOHANN WOLFGANG GOETHE-UNIVERSITAET, UNIVERSITAETSBIBLIOTHEK JOHANN CHRISTIAN SENCKENBERG (Representative)**

### **New Backfile Collections as identified on Annex D:**

Earth and Planetary Sciences Backfile Collection I: Electronic access to the full text of articles from a selection of journal titles in a particular subject or discipline for the backfile years until 1994.

Earth and Planetary Sciences Backfile Collection II Electronic access to the M1 text of articles from a selection of journal titles in a particular subject or discipline for the backfile years 1995 until 2002.

Medicine and Dentistry Backfile Collection I: Electronic access to the M1 text of articles from a selection of journal titles in a particular subject or discipline for the backfile years until 1994.

Medicine and Dentistry Backfile Collection II Electronic access to the M1 text of articles from a selection of journal titles in a particular subject or discipline for the backfile years 1995 until 2002.

Pharmacology, Toxicology and Pharmaceutics I: Electronic access to the full text of articles from a selection of journal titles in a particular subject or discipline for the backfile years until 1994.

Pharmacology, Toxicology and Pharmaceutics : Electronic access to the full text of articles from a selection of journal titles in a particular subject or discipline for the backfile years 1995 until 2002

Veterinary Medicine and Veterinary Science Backfile Collection I: Electronic access to the full text of articles from a selection of journal titles in a particular subject or discipline for the backfile years until 1994.

Veterinary Medicine and Veterinary Science Backfile Collection II Electronic access to the full text of articles from a selection of journal titles in a particular subject or discipline for the backfile years 1995 until 2002.

## **Second AMENDMENT TO ELSEVIER LICENSE AGREEMENT**

### **Annex A to Schedule 1 Authorized Users**

#### **Johann Wolfgang Goethe-Universitaet, Universitaetsbibliothek Johann Christian Senckenberg**

Authorized Users for purposes of this Agreement are:

Higher education institutions financed either by public or private funding, medical Institutions (Universitaetskliniken) and Polytechnics (Fachhochschulen) in Germany:

Full-time and part-time students, guest students, faculty, full-time and temporary staff and researchers of the Subscriber affiliated with the academic and medical Institutions permitted by the Subscriber to access the Licensed Products, including remote access, through the Subscriber's secure network and individuals, without remote access, physically using computer terminals within the library facilities at the academic and medical Institutions permitted by the Subscriber to access the Licensed Products through the Subscriber's secure network.

German Governmental and/or German publicly funded research Institutions Employees and independent contractors of the Subscriber affiliated with the governmental and/or publicly funded research Institutions permitted by the Subscriber to access the Licensed Products, including remote access, through the Subscriber's secure network and individuals, without remote access, physically using computer terminals within the library facilities at the government and for publicly funded research Institutions permitted by the Subscriber to access the Licensed Products through the Subscriber's secure network within Germany and at the authorized sites abroad.

Academic libraries mainly financed by public funding. These are:

Central Subject Libraries (Zentrale Fachbibliotheken),

The National and State Libraries (Nationalbibliotheken),

The Scientific Regional Libraries (Wissenschaftliche Regionalbibliotheken)

And the Scientific Special Libraries (Wissenschaftliche Spezialbibliotheken or Wissenschaftliche Fachbibliotheken) in Germany Individuals, without remote access, physically using computer terminals are permitted by the Subscriber to access the Licensed Products through the Subscriber's secure network.

Other institutions are explicitly excluded from this Agreement and shall not be permitted to have access during or after termination of this Agreement, including without limitation:

- libraries of commercial and/or commercially funded organizations
- libraries of corporations,
- hospitals other than as part of academic universities

The CITations D'ELsevier database ("CITADEL"): bibliographic records of articles metadata) from all Elsevier journal titles, currently included in the ScienceDirect®, online service. Licensor shall deliver, via FTP format, to the Representative which may load and technically format on a server that enables access and use by Authorized Users through the Representative's internal secure network an electronic copy of the most recently updated bibliographic records extracted from CITADEL ("CITADEL Records") at no additional costs, in accordance with the wage provisions of the Agreement, which provisions shall survive the termination of the Agreement. The Representative shall fully support data loading and updates, display and functionality of the CITADEL Records on its computer system for the purposes authorized under this Agreement. Licensor shall provide during the initial term of the Agreement to the Representative regular updates of the CITADEL Records, but not less than once per year, via FTP format. The Licensor may make changes in the machine-readable format in which the CITADEL Records will be made available to the Representative upon thirty (30)days notice to the Representative. The Representative shall be permitted to distribute such an electronic copy of the CITADEL Records to Institutions to acquire, load and technically format on a Server that enables access and use in perpetuity by Authorized Users through the Institution's internal secure network, in accordance with the wage provisions of the Agreement, which provisions shall survive the termination of the Agreement. The CITADEL Records may only be used for linking purposes and integration in the Online Public Access Catalogue (OPAC), related union catalogues and other library and information systems within Germany of which commercial use within or outside of Germany is prohibited. Other use of the CITADEL Records is not permitted. The Licensor may deliver to the Subscriber content other than the licensed CITADEL Records identified herein such as abstracts, in which, event the Subscriber will not use or distribute such unlicensed content.