



ELSEVIER SUBSCRIPTION AGREEMENT

This subscription agreement ("Agreement") is entered into as of 20 December 2011, by and between **CONSORTIUM FINELIB**, The National Library of Finland P.O. Box 26, University of Helsinki, FIN-00014, FINLAND (the "Consortium"), authorized to enter into this Agreement on behalf of itself and other members of the Consortium identified on Schedule 2, the other members of the Consortium being represented by the National Library via a power of attorney (each the "Institution") 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 Institutions 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.*

Authorized Users are the full-time and part-time students, faculty, employed staff, librarians, researchers, and independent contractors and retired faculty staff, retired librarians and retired researchers of the Institutions (onsite or remote access) listed on Schedule 2 and individuals using computer terminals within the library facilities or other publicly accessible facilities of the Institutions.

Institutions may be removed from Schedule 1 provided that written notice is given by the Consortium to Elsevier by 1 September prior to the start of the next calendar year of the term hereof. When an Institution is removed from Schedule 1 its fees as stated in Schedule 1 shall also be removed from Schedule 1. An Institution is removed from Schedule 2 if terminates all its subscriptions to its Subscribed Products.

Institutions may be added to Schedule 2 subject to an appropriate adjustment of the fees for any added Institutions to be agreed upon between the parties by means of an amendment to this Agreement.

1.3 *Authorized Uses.*

Each Authorized User may:

- access, search, browse, view and display to other Authorized Users, the Subscribed Products;
- print, photocopy, download, electronically save and store for the exclusive use of such Authorized User a reasonable amount of articles, abstracts, records, or chapters from the Subscribed Products ("Excerpts"), this exclusive use will include the use by teaching staff of such Excerpts in electronic presentations and the right to present such electronic presentations during lectures for credited courses, but will explicitly exclude the provision of copies of such presentations and/or Excerpts to Authorized Users, unless permitted under this section 1.3;

- incorporate links to the Subscribed Products and/or Excerpts on the Institutions' intranet and internet websites and incorporate both links and downloaded articles, abstracts and book chapters in electronic coursepacks, reserves and course management systems and instructor websites and printed articles, abstracts and book chapters in printed coursepacks, provided that the downloaded and printed content shall carry appropriate acknowledgement of the source, title, author and publisher and that the appearance of such links and/or statements accompanying such links shall be changed as reasonably requested by Elsevier and the Institutions obtain the prior written consent of Elsevier for use in connection with any non-credit courses; Institutions and its Authorized Users may in addition offer coursepacks in non-electronic, non-print perceptible form, such as audio or Braille, to Authorized Users who are reading impaired. A beneficiary person to such audio or Braille is a person who (a) is blind; (b) has a visual impairment or a perceptual or reading disability, such as dyslexia, which cannot be improved by the use of corrective lenses to give visual function substantially equivalent to that of a person who has no such impairment or disability and so is unable to read printed works to substantially the same degree as a person without an impairment or disability; or (c) is unable, through physical disability, to hold or manipulate a book or to focus or move the eyes to the extent that would be normally acceptable for reading.
- provide print or electronic copies (including via email) of Excerpts from the Subscribed Products to other Authorized Users and to third-party colleagues for their scholarly or research use;
- access, search, browse, view, print, make electronic copies and store for the exclusive use of such Authorized User or, if the Authorized User is a librarian/information specialist, for the exclusive use of another Authorized User certain journal articles and book chapters from the SciVerse® ScienceDirect® online service that are not subscribed to as part of the Subscribed Products, with each twenty-four (24) hour access period for a selected article or chapter, a "Transaction"; and
- use Braille displays, voice synthesizers and other devices to enable the use of the Subscribed Products.

The Institutions may:

- print and deliver (including via Ariel or similar document delivery software) journal articles and book chapters from the Subscribed Products to fulfill requests as part of the practice commonly known as "interlibrary loan" from non-commercial libraries located within the same country as the Institutions;
- provide Authorized Users with integrated access to the Subscribed Products;
- provide links to Authorized Users to access Excerpts included in the Subscribed Products;
- obtain usage data on its own use of the Subscribed Products via the Nelli Portal or other information retrieval portal subject to compliance with the data protection requirements in place; and

1.4 *Restrictions on Use of Subscribed Products.*

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

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

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

1.5 *Intellectual Property Ownership.*

The Institutions 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 Institutions and its Authorized Users from the internet address set forth on Schedule 1 or as may be otherwise set forth herein.

2.2 *Quality of Service.*

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

If, due to causes within its reasonable control, Elsevier is unable to provide the Institutions with access to the service for a period exceeding twenty-four (24) consecutive hours, then Elsevier shall extend the term of the Agreement for corresponding period at no additional cost to the Institutions.

If Elsevier is unable to provide the Institutions with access to the service for a period exceeding five (5) consecutive days, then Elsevier shall refund to the Institutions the amount of the Fees calculated by dividing the number of days of downtime by 365 and multiplied by the amount of the Fees for the then current year.

The remedy provided herein is in addition to and not exclusive of any other rights and remedies that the Institutions may have under this Agreement and at law or in equity.

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 Institutions 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. Each Institution will be entitled to subscribe to Elsevier's quarterly e-mail service to receive a quarterly report including all changes to the Subscribed Products during the previous quarter.

2.4 Usage Data Reports.

Elsevier will make usage data reports on the usage activity of each Institution accessible online on a monthly basis to each Institution and the Consortium for internal use only, provided however that the Institutions may share such information with other Institutions on an aggregated, non personal manner and to the extent required under Finnish law. Such reports may be accessed by vendors or other third parties retained by the Institution only for the purpose of usage analysis of the Institution. Elsevier will make commercially reasonable efforts to comply with the then currently valid COUNTER Code of Practice.

2.5 Open URL

Elsevier will make reasonable efforts to have the Subscribed Products comply with Open URL.

2.6 Customer Support

Elsevier will provide customer support services to Institutions and Authorized Users via e-mail or phone, including answering e-mail inquiries relating to the use, functionality and content of the Subscribed Products.

2.7 Technical Data

Elsevier will provide the Consortium with the necessary technical data to ensure that the Subscribed Products can be accessed via the Nelli Portal or another information retrieval portal under the terms and conditions of the Agreement.

2.8 Transfer Code of Conduct

Elsevier will make commercially reasonable efforts to comply with the TRANSFER Code of Practice, Version 2.0, published by the UK Serials Group (UKSG).

SECTION 3. INSTITUTIONS PERFORMANCE OBLIGATIONS.

3.1 Authentication.

Access to the Subscribed Products shall be authenticated by the use of Internet Protocol ("IP") address(es) indicated by the Institutions on Schedule 2 and/or usernames and passwords and/or a delegated authentication mechanism, identified on Schedule 2, requiring at least two different credentials. Institutions may, subject to the terms and conditions of this Agreement, use the "Nelli Portal", which portal is based on MetaLib and SFX application software or another information retrieval portal in their use.

3.2 Protection from Unauthorized Access and Use.

The Institutions shall use reasonable efforts to:

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

In the event of any unauthorized use of the Subscribed Products, Elsevier may suspend access of the IP address(es), passwords and/or delegated authentication mechanism from which the unauthorized use occurred upon notice to the Institutions and any suspended access shall be promptly restored once the unauthorized use has ceased and the Institution has taken corrective actions to ensure that such unauthorized use does not recur. The Institution shall not be liable for breach of any term of this Agreement by any Authorized Users provided that the Institution did not intentionally assist in or encourage such breach or permit such breach to continue after having actual notice thereof.

SECTION 4. FEES AND PAYMENT TERMS.

SECTION 5. TERM.

5.1 *Term.*

The term of this Agreement shall commence on 1 January 2012 and shall automatically terminate on 31 December 2016.

5.2 *Termination for insolvency or bankruptcy*

In addition to the automatic termination at the end of the Term as set out in section 5.1, either party may terminate this Agreement upon written notice in the event the other is insolvent, files a petition in bankruptcy, or makes an assignment for the benefit of creditors. For avoidance of doubt the termination as set out in this section 5.2. will only affect the Institution in question. Upon termination of (or part of) this Agreement, Elsevier shall refund the proportion of the Fee that represents the paid, but unexpired part of, the Term.

5.3 *Change in Control.*

If a change in control of an Institution occurs, or an Institution merges or acquires an institution not set forth on Schedule 2., the Institution shall promptly notify Elsevier of such change. Any material changes in the number of Authorized Users arising from above mentioned change may result in early termination regarding the Institution in question unless the parties are able to agree to appropriate fee adjustments. Entering into any other kind of affiliation, or cooperation or partnership with another organization, does not give the Institution the right to grant access to the Subscribed Products to any such affiliation, cooperation or partnership organization, unless such right is granted in writing by Elsevier by means of an amendment to this Agreement.

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 Institutions 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 Institutions will promptly notify and reasonably cooperate with Elsevier. This indemnity obligation shall survive the termination of this Agreement.

6.3 *Disclaimer.*

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

6.4 *Limitation of Liability.*

Except for the express warranties and indemnities stated herein, gross negligence, wilful misconduct, fraud and to the extent permitted by applicable law, in no event shall Elsevier or its suppliers nor the Institutions 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 Institutions exceed a sum equal to the Fees paid by the Institutions hereunder, even if Elsevier or any supplier has been advised of the possibility of such liability or damages.

For the avoidance of doubt, each Institution shall only be liable for its own actions and/or defaults.

SECTION 7. GENERAL.

7.1 *Force Majeure.*

Neither party's delay or failure to perform any provision of this Agreement as a result of circumstances beyond its control (including, but not limited to, war, strikes, fires, floods, power failures, telecommunications or Internet failures or damage to or destruction of any network facilities or servers) shall be deemed a breach of this Agreement. Should the period of force majeure exceed ninety (90) days, the party not being in a situation of force majeure may terminate this Agreement, and such termination shall not constitute a breach herein.

7.2 *Severability.*

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

7.3 *Entire Agreement.*

This Agreement contains the entire understanding and agreement of the parties and merges and supersedes any and all prior and contemporaneous agreements, communications, proposals and

purchase orders, written or oral, between the parties with respect to the subject matter contained herein.

7.4 Modification.

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

7.5 Assignment.

The Institutions 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 Institutions, 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 .

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

If to the Consortium and/or the Institutions : Consortium FinELib, The National Library of Finland, FinELib P.O. Box 26, FIN-00014, University of Helsinki, FINLAND

7.8 Execution.

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

7.9 Power of Attorney.

The Consortium represents and warrants that the Institutions acknowledge and agree to be bound by the terms and conditions of this Agreement, including but not limited to the restrictions on access and use of the services as set forth in the Agreement. The Institutions shall be responsible for and make payment of its Fees as specified in Schedule 1 due for access to and use of the services as specified in the Agreement to the extent that the Consortium fails to make any such payment. The Consortium will make available a copy of this Agreement to each Institutions set out on Schedule 2..

7.10 Training.

Subject to the terms and conditions as set out in this Agreement, Institutions will be entitled to promote and provide training on the Subscribed Products (including Elsevier trademarks, screenshots and logos) to Authorized Users. Librarians, as defined in the authorized user definition in section 1.2 above, will be allowed to electronically save and post for training purposes on Institutions' internet and intranet websites a reasonable number of screenshots, including Elsevier trademarks and logos.

Elsevier will provide training sessions for Institutions regarding the use of the Subscribed Products without charge in three locations during the Term. The three training sessions will take place during one trip to Finland. The locations will be determined by the Consortium in consultation with Elsevier. The Consortium will be responsible for organizing these training sessions in consultation with Elsevier and Elsevier agrees to pay reasonable and properly incurred expenses. All expenses accrued to Elsevier in performing this duty will be covered by Elsevier.

7.11 *Governing Law and Consent to Jurisdiction.*

This Agreement will be governed by and construed in accordance with the laws of Finland without regard to conflict of law principles. Parties further consent that if a party files a claim against the other party, the claim will be filed at the forum chosen by the other party. Elsevier chooses the competent courts of Amsterdam as its chosen forum and Institutions chooses the competent courts of Helsinki as its chosen forum.

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

THE NATIONAL LIBRARY OF FINLAND, UNIVERSITY OF HELSINKI

(Consortium)



Name: Kai Ekholm

Title: Director

ELSEVIER B.V.

(Elsevier)



Name: Martin O'Malley

Title: Managing Director, Global Sales & Customer Marketing, Science & Technology

No.