



No. 1-2308986928 CRM 15.O.O.O 04/11

ELSEVIER SUBSCRIPTION AGREEMENT

This agreement ("Agreement") is entered into as of 12 July 2011 by and between University of Oregon, 1299 University of Oregon, Eugene, OR 97403-1299, 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. Each Authorized User may:

- access, search, browse and view the Subscribed Products;
- print, make electronic copies of and store for the exclusive use of such Authorized User individual items from the Subscribed Products;
- incorporate links to the Subscribed Products on the Subscriber's intranet and internet websites and in electronic coursepacks, reserves and course management systems and instructor websites, provided that the appearance of such links and/or statements accompanying such links shall be changed as reasonably requested by Elsevier;
- provide print or electronic copies of individual items from the Subscribed Products to other Authorized Users and to third-party colleagues for their scholarly or research use; and
- 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."

1.4 Restrictions on Use of Subscribed Products.

Except as expressly stated in this Agreement or otherwise permitted in writing by Blsevier, the Subscriber 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 Subscriber.

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.

Access to Subscribed Products.

Elsevier will make the Subscribed Products accessible to the Subscriber 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 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.

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 retained by the Subscriber only with the express written permission of Elsevier and for the purpose of usage analysis of the Subscriber.

SECTION 3. SUBSCRIBER 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 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:

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- 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 the access and/or require that the Subscriber suspend the access from where the unauthorized use occurred upon notice to the Subscriber. The Subscriber shall not be liable for unauthorized use of the Subscribed Products by any Authorized Users provided that the unauthorized use did not result from the Subscriber's own negligence or willful misconduct and that the Subscriber did not 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 in Schedule 1 (the "Fees") within thirty (30) days of date of invoice for the Fees due for first year of the term and for the Fees due for the following year of the term. Late payments shall be subject to interest charges of 1% per month on the unpaid balance. 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 2012 and continue until 31 December 2015.

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 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 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, 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, amendment 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, Elsevier Inc., 360 Park Avenue South, New York, NY 10010-1710, USA.

If to the Subscriber: University of Oregon, 1299 University of Oregon, Eugene, OR 97403-1299, USA.

7.8 Confidentiality.

The Subscriber and its employees, officers, directors and agents shall maintain as confidential and not disclose to any non-affiliated third party without Elsevier's prior written consent or except as required by law the financial terms and commercial conditions of this Agreement.

7.9 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.

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

UNIVERSITY OF OREGON

(Subscriber)

Name:

Grégory P. Shabram, Contracts Manager Purchasing and Contracting Services

ELSEVIER B.V.

(Elsevier)

Name: Martin O'Malley

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

No. 1-2308986928

ELSEVIER SUBSCRIPTION AGREEMENT Schedule 1 Subscribed Products/Access/Fees

UNIVERSITY OF OREGON

	No. 1-2308986928				
Subscribed Products - publisher	Access	2012	2013	2014	2015
ScienceDirect® online - Elsevier B.V.	sciencedirect.com	3%	4%	5%	5%
Complete Collection					
· Total Electronic Subscription		\$353,912,43	\$368,068.93	\$386,472.37	\$405,795.99
· Total Subscription Turnover		\$353,912.43	\$368,068.93	\$386,473.37	\$405,795.99
Electronic Subscription Fee (10% discounted)		\$318,521.30	\$331,262.03	\$347,825.14	\$365,216.39
Content Fee (12.5%)		\$44,239.21	\$46,008.78	\$48,309.22	\$50,724.68
Cell Press Collection Fee		\$15,409.14	\$16,025.51	\$16,826.78	\$17,668.12
Elsevier Book Series / Handbook Series (2006-)					
- Handbooks in Economics Series		\$2,450.68	\$2,548.71	\$2,676.14	\$2,809.95
Unique Title List Fee		\$24,832.00	\$25,825.28	\$27,116.54	\$28,472.37
Shared Access Fee		\$0.00	\$0.00	\$0.00	\$0.00
TOTAL FEES		\$405,452.33	\$421,670.42	\$442,753.94	\$464,891.64

Journal Collection(s)

The Subscriber's Journal Collection(s) is described in Schedule 1.1.

Shared Access

During the term of this Agreement, the Subscriber shall have shared access, at no additional charge, to the journal titles to which Portland State University and Oregon State University subscribes under their respective ScienceDirect agreements. If either of these institutions, annual subscription to a title is terminated, then the Subscriber's shared access to such title through that institution shall cease.

Adjustment of Fees

After the initial year of the term, the Fees for the Subscriber's Journal Collection(s) shall be subject to an adjustment to account for any titles added to or removed from the Journal Collection(s) during the remainder of the term of this Agreement.

Transaction Fee

Purchase of pre-paid Transactions ("PPT") is required to activate access to journals and books by Transaction. The Subscriber shall be charged \$22.00 per Transaction. The Subscriber may purchase PPT upon mutual agreement of the parties in writing. Unused PPT shall be forfeited one (1) year after issue or upon termination of this Agreement, whichever is earlier.

Elsevier Book Series/Handbook Series Additional Terms and Conditions

Upon termination of all of the Subscriber's annual subscriptions on SciVerse ScienceDirect online, the Subscriber may, at its option, (1) acquire, load and technically format on a server that enables access and use by Authorized Users an electronic copy of the above book series/handbook series for cost and/or (2) continue to access such books online for an annual access fee based on the number of chapters downloaded from such books during the prior twelve (12) months at a rate of \$0.081 per download, with a minimum annual fee of \$500 (adjusted annually for inflation and cost increases), in accordance with the usage provisions of the Agreement, which provisions shall survive the termination of the Agreement. Elsevier shall make available for inspection by a duly authorized

auditor of the Subscriber, at the Subscriber's sole expense, the records concerning the calculation of the annual access fee one time per year during regular business hours upon thirty (30) days written notice to Elsevier. The electronic copy may not contain links and other features and functionality associated with the online version. If a particular book is withdrawn by Elsevier or not renewed by the Subscriber, but the Subscriber remains a SciVerse ScienceDirect online subscriber, the Subscriber may continue to access online, at no additional charge, such formerly subscribed book for the publication years paid, provided that Elsevier continues to hold the electronic rights thereto.

ELSEVIER SUBSCRIPTION AGREEMENT Schedule 1.1 Journal Collection(s)

Journal Collection(s):

Cell Press Collection: Electronic access to the full text of all articles from the Cell Press journal titles published since 1 January 1995 identified on Annex A.

Complete Collection: Electronic access to the full text of all articles from the Elsevier journal titles published since 1 January 1995 identified on Annex A.

Unique Title List: Electronic access to the full text of all articles from the journal titles published since 1 January 1995 identified on Annex A.

Option to Substitute Subscribed Titles

The Subscriber may substitute any of the subscribed journal titles identified on Annex A ("Subscribed Titles") with one or more journal titles of total comparable value (in current year list price) once annually upon notice to Elsevier by 1 August prior to the start of the next calendar year or at any time upon mutual agreement of the parties in writing. The foregoing does not apply to the Cell Press titles.

Option to Substitute or Refund Withdrawn Subscribed Titles

The Subscriber may substitute any withdrawn Subscribed Title with one or more journal titles of total comparable value (in current year list price) at any time upon notice to Elsevier. In the event that no substitute journal title is available, Elsevier shall refund to the Subscriber the amount of the Fees paid for the withdrawn Subscribed Title for the remainder of the term.

Transferred Titles

Society journal titles for which the Subscriber holds an electronic subscription through a third-party publisher whose publication rights are transferred to Elsevier and made accessible on SciVerse ScienceDirect during the term ("Transferred Titles") shall be deemed Subscribed Titles effective as of the date of transfer and for the then current publication year and the publication years previously paid unless and until the Subscriber notifies Elsevier that it no longer wishes to continue such electronic subscription on SciVerse ScienceDirect. The option to substitute Subscribed Titles does not apply to Transferred Titles.

Access to Formerly Subscribed Titles

Upon termination of all of the Subscriber's annual subscriptions on SciVerse ScienceDirect online, the Subscriber may, at its option, (1) acquire, load and technically format on a server that enables access and use by Authorized Users an electronic copy of all or part of its Subscribed Titles for the publication years paid for cost and/or (2) continue to access such Subscribed Titles online for an annual access fee based on the number of full-text articles downloaded from such titles during the prior twelve (12) months at a rate of \$0.081 per download (adjusted annually for inflation and cost increases), in accordance with the usage provisions of this Agreement, which provisions shall survive the termination of the Agreement. Elsevier shall make available for inspection by a duly authorized auditor of the Subscriber, at the Subscriber's sole expense, the records concerning the calculation of the annual access fee one time per year during regular business hours upon thirty (30) days written notice to Elsevier. The electronic copy may not contain links and other features and functionality associated with the online version. If a particular Subscribed Title is withdrawn by Elsevier or not renewed by the Subscriber, but the Subscriber remains a SciVerse ScienceDirect online subscriber, the Subscriber may continue to access online, at no additional charge, such formerly Subscribed Title for the publication years paid, provided that Elsevier continues to hold the electronic rights thereto.

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 Blsevier print publications at a price reduced from the list price ("Deep Discounted Price" or "DDP"), by 1 August prior to the start of the next calendar year from the Publisher directly and from only one (1) authorized subscription agent, which shall be selected by the Subscriber, and the Publisher will fulfill such orders in accordance with its customary practices. The Subscriber shall notify Blsevier of its subscription agent's contact information upon placing such orders. The Subscriber may change its subscription agent no more than once annually by giving Elsevier notice by 1 August 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.

ELSEVIER SUBSCRIPTION AGREEMENT Schedule 2 Sites/Authentication/Contacts

Subscriber: University of Oregon

Sites:	# Reley. Auth. Users:	Authentication:
1299 University of Oregon, Eugene, OR 97403, USA	*	128.223.*.

Estimated total number of Authorized Users:

Estimated total number of relevant Authorized Users:

The Subscriber shall promptly notify Elsevier of any material changes in the number of relevant 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 add, withdraw or substitute authentication mechanisms upon mutual agreement of the parties in writing.

Primary Contact

Name:

David Fowler

Title:

Head, Licensing, Grants Admin., and Collection

Analysis

Name/Address (if different from Section 7.7):

University of Oregon, 1299 University of Oregon,

Eugene, OR 97403-1299 USA

E-mail: Phone:

dofowler@uoregon.edu

Fax:

541-346-1839

Billing Contact

Name: Title:

Rosella Thomas Layton Renewals Unit Supervisor

Name/Address (if different from Section 7.7):

University of Oregon, 1299 University of Oregon,

Eugene, OR 97403-1299 USA

E-mail:

rthomas@uoregon.edu

Phone:

541-346-1842

Fax:

Accounts Payable Contact

Name:

Title:

Name/Address (if different from Section 7.7):

B-mail:

Phone:

The Subscriber shall promptly notify Elsevier of any changes to any of the contact information above.

ADDENDUM

The State of Oregon acting by and through the State Board of Higher Education on behalf of the University of Oregon ("University") and Elsevier B. V. ("Contractor"); for good and valuable consideration, the receipt and sufficiency of which is acknowledged, agree as follows:

- 1. This Addendum supplements and modifies the Elsevier Subscription Agreement between the parties and any exhibits or attachments to the Elsevier Subscription Agreement executed on the same date as this Addendum (collectively the "License," "Agreement" or "Contract.")
- 2. University and Contractor are each "Party" and collectively "Parties".
- 3. In the event of any conflicts between the terms and conditions of Elsevier Subscription Agreement its attachments or exhibits and this Addendum, the provision that allow University to exercise greater rights and access will prevail unless the conflict involves a conflict of Oregon law or regulation. In such case, terms and conditions of this Addendum will control.
- 4. <u>Click-through/Shrinkwrap Terms</u>. The Parties agree that in the event any "Click-through" or "Shrinkwrap" terms and conditions are required to be agreed to in order to access deliverables under this License, the terms and conditions of this Addendum and License will control over any such terms and conditions.
- 5. <u>Renewal/Term/Payment</u>: Notwithstanding anything to the contrary in the License, the License will have a term of four years from January 1, 2012 until December 31, 2015.

License fees for each renewal term may increase by no more than 7% over the license fees of the immediately preceding term. Notwithstanding anything to the contrary, University may terminate this agreement within thirty (30) days of University's receipt of notice of increase in license fees for the next renewal term. Notification to Contractor of termination must be made in writing, or by email or fax. In the absence of any such objection by University, Contractor's new payment terms shall apply.

Total remuneration under the License will not exceed \$2,000,000.00.

- 6. <u>Late Charges/Interest Payments</u>. All interest charges applicable under the License are subject to the terms and limitations of ORS 293.462.
- 7. <u>Tax Compliance Certification.</u> Contractor hereby affirms, under penalty of perjury, as provided in ORS 305.385(6), that to the best of Contractor's knowledge, Contractor is not in violation of any of the tax laws described in ORS 305.380(4).
- 8. <u>Confidential Information</u>. Contractor hereby acknowledges that any information including, without limitation, any confidential information that Contractor discloses to University under the License may be disclosed subject to the Oregon Public Records Laws.
- 9. <u>Post-Termination Materials Access</u>. In the event of expiration or earlier termination of the License for any reason, Contractor will make all Materials which were available to the University during the term of the License available to University after such expiration or termination through means mutually agreeable to the parties.

- 10. Family Educational Rights and Privacy Act. Contractor agrees to protect the confidentiality of student information and to comply with the Family Educational Rights and Privacy Act of 1974 (FERPA) and its implementing regulations, specifically 20 U.S.C. 1232G, 34 C.F.R. § 99.33, ORS 351.070 and OAR 571-020, with respect to any redisclosure of personally identifiable information from education records obtained from the University.
- 11. Non-Appropriation. Contractor understands and agrees that University's performance of its obligations under the License after the last day of the current blennium is contingent upon University receiving from the Oregon Legislative Assembly (including but not limited to its Emergency Board) appropriations, limitations, or other expenditure authority sufficient to allow University, in the exercise of its reasonable administrative discretion, to perform its obligations under the License.
- 12. Counterparts. The License may be executed in counterparts, and via facsimile or electronically transmitted signature (i.e. emailed scanned true and correct copy of the signed License), each of which will be considered an original and all of which together will constitute one and the same agreement. At the request of a party, the other party will confirm facsimile or electronically transmitted signature page by delivering an original signature page to the requesting party.
- 13. Entire Agreement. This Contract, together with the exhibits attached, constitutes the entire agreement between the Parties with respect to the services and all other subject matter of Contract and merges all prior and contemporaneous or previous communications, contracts and agreements whether written or oral with respect to such subject matter. It will not be modified except by a signed writing dated subsequent to the date of this Contract and signed on behalf of Contractor and University by their respective duly authorized representatives. No waiver consent, modification, or change of any term of this Contract will bind either Party unless the same is in writing and signed by both Parties and all necessary state approvals have been obtained. Such express waiver, consent, modification, or change, if made, will be effective only in the specific instance and the specific purpose set forth in such signed writing.

	*,
STATE OF OREGON ACTING BY AND THROUGH THE STATE BOARD OF	ELSEVIER B. V.
HIGHER EDUCATION ON BEHALF OF	
THE UNIVERSITY OF OREGON	
SIGNATURE: / Leyen A. Sholow	SIGNATURE: A
NAME: Gregory P. Shabram, Contracts Manager	NAME: M.O'MALEY
Purchasing and Contracting Services TITLE:	TITLE: M. D. S+T SAZES
DATE: 8/19/11	DATE: 19/08/11

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