

ELSEVIER SUBSCRIPTION AGREEMENT

This agreement ("Agreement") is entered into as of __ October 2010 by and between **The Regents of the University of California on behalf of The California Digital Library**, University of California Office of the President, 415 20th Street, 4th Floor, Oakland, CA 94612, USA (the "Subscriber"), and **Elsevier Information Systems GmbH**, Theodor-Heuss-Allee 108, 60486 Frankfurt, Germany ("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 on 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; and
- 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.

1.4 *Restrictions on Use of Subscribed Products.*

Except as expressly permitted in writing by Elsevier, 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; 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.

2.1 *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.

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.*

Elsevier will provide usage data reports on the Subscriber's usage activity by email 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. Elsevier shall maintain as confidential and not disclose to any non-affiliated third party without the Subscriber's prior written consent or as required by law any search or other usage data except in aggregated, collective or anonymized form.

2.5 *Accessibility.*

Elsevier will make commercially reasonable efforts to comply with the Web Content Accessibility Guidelines 1.0 published by the Web Accessibility Initiative of the World Wide Web Consortium (W3C).

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:

- 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 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 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. 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 unless the Subscriber is entitled to exemption from taxation and provides to Elsevier appropriate documentation of its tax-exempt status upon Elsevier's request. If the Subscriber disputes, in good faith, any amount on Elsevier's invoice, the Subscriber shall provide written notice of the dispute to Elsevier along with full supporting documentation within ten (10) business days of invoicing, and the Subscriber and Elsevier will use all reasonable efforts to resolve and settle such dispute within ten (10) business days thereafter. Once the invoice dispute is resolved and settled, the Subscriber will pay the amount due within thirty (30) days following resolution of dispute.

SECTION 5. TERM.

5.1 Term.

The term of this Agreement shall commence on 31 December 2010 and continue until 30 December 2013.

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 no later than ninety (90) days prior to the end of the then current term that it does not intend to renew.

5.3 Early Termination Due To Insufficient Budgetary Allotment From Government.

The Subscriber may terminate this Agreement upon thirty (30) days notice given by the Subscriber to Elsevier if sufficient funds are not provided, allocated 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. Notwithstanding the foregoing, if access to the Subscribed Products was provided but not yet paid for prior to termination, Elsevier shall be entitled to receive a pro rata portion of the Fees attributable to the period of time that access was provided.

5.4 Early Termination for Breach.

This Agreement may be terminated (i) if the Subscriber defaults in making payment of the Fees, having failed, after thirty (30) days' notice, to remedy such default; or (ii) if either party commits a material breach of any term of this Agreement and fails to remedy the breach within sixty (60) days written notice by the other party.

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, 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, 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 above or the facsimile number or electronic mail address as such party shall have designated by notice hereunder.

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 *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.

7.10 *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.

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

Text deleted

Name:

Title: *Executive Director*

**ELSEVIER INFORMATION SYSTEMS GMBH
(Elsevier)**

Text deleted

Name:

Title: Financial Controller Europe

Name:

Title: Manager, Contract Management & Licensing

Contract No. L-2010/12/03

ELSEVIER SUBSCRIPTION AGREEMENT
Schedule 1
Subscribed Products/Access/Fees

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

Subscribed Products– publisher	Access	31 Dec 2010 – 30 Dec 3011	31 Dec 2011 – 30 Dec 3012	31 Dec 2012 – 30 Dec 3013
Reaxys® - Elsevier Properties S.A.	reaxys.com	Text deleted	Text deleted	Text deleted
TOTAL FEES				

Reaxys Additional Terms and Conditions

Upon termination of the Subscriber's subscription to Reaxys, the Subscriber shall delete all stored copies of items from Reaxys and document the same to Elsevier's reasonable satisfaction.

Prior Agreement Terminated

License Agreement No. US-2003/12/50, signed 23 December 2003, and its corresponding License Certificate US-2003/12/50-01, previously entered into between the Subscriber and Elsevier's predecessor-in-interest, MDL Information Systems GmbH, are hereby terminated and superseded in their entirety by this Agreement. The parties further agree to waive any notice periods that may be in effect for such termination.

ELSEVIER SUBSCRIPTION AGREEMENT
Schedule 2
Sites/Authentication/Contacts

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

Sites:	# Auth. Users:	Authentication:
University of California, Berkeley	100,000	See Annex A
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		

Estimated total number of Authorized Users: 100,000

The Subscriber shall promptly notify Elsevier of any material changes in the number of Authorized Users, which changes may result in Elsevier terminating the Agreement 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: Text deleted Text deleted

Title: Licensing manager

Name/Address (if different from Section 7.7):

CDL, 41520th St 4th floor, Oakland, CA 94612 US

E-mail: Text deleted

Phone:

Fax: 510. 987.0243

Billing Contact

Name: Text deleted Text deleted

Title: CDL Acquisitions specialist

Name/Address (if different from Section 7.7): Geisel Library, UC San Diego, 9500 Gilman Drive #0175, La Jolla, CA 92093-0175, USA

E-mail: Text deleted

Phone:

Fax: 858.534.1256

Shipping Contact

Name: Text deleted Text deleted

Title: CDL Acquisitions specialist

Name/Address (if different from Section 7.7): Geisel Library, UC San Diego, 9500 Gilman Drive #0175, La Jolla, CA 92093-0175, USA

E-mail: Text deleted

Phone:

Fax: 858.534.1256

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

ELSEVIER SUBSCRIPTION AGREEMENT
Annex A to Schedule 2
IP Addresses

Berkeley (UCB)

Text deleted

Los Angeles (UCLA)

Text deleted

Merced (UCM)

Text deleted

Riverside (UCR)

Text deleted

Davis (UCD)

Text deleted

San Diego (UCSD)

Text deleted

Irvine (UCI)

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San Francisco (UCSF)

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Santa Barbara (UCSB)

Text deleted

Santa Cruz (UCSC)

Text deleted

Office of the President (UCOP)

Text deleted