



## ELSEVIER SUBSCRIPTION AGREEMENT

This agreement (“Agreement”) is entered into as of 27 April 2023 by and between **University of California San Diego**, 9500 Gilman Dr, San Diego, CA 92093, 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 and researchers of the Subscriber and individuals who are independent contractors or are employed by 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 for purposes of personal research, education or other non-corporate use (“Walk-in Users”).

#### 1.3 *Authorized Uses.*

Each Authorized User may:

- access, search, browse and view the Subscribed Products;
- print, download and store a reasonable portion of individual items from the Subscribed Products for the exclusive use of such Authorized User; and
- 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 will be changed as reasonably requested by Elsevier.

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

Except as expressly stated in this Agreement or otherwise 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;
- 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;
- substantially or systematically reproduce, retain, store locally, redistribute or disseminate online the Subscribed Products; or

- post individual items from the Subscribed Products on social networking sites.

Authorized Users who are individuals who are independent contractors or are employed by independent contractors may use the Subscribed Products only for the purposes of the contracted research 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 or dissemination online of the Subscribed Products could materially and irreparably 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 or as may be otherwise set forth herein, upon receipt by Elsevier of this Agreement document in the territory of The Netherlands, as duly signed by the Subscriber, which acceptance will be evidenced and timestamped by an authorized representative of Elsevier in the Netherlands. Subject to the terms of this Agreement, the Subscriber and its Authorized Users shall have unlimited simultaneous access to the Subscribed Products.

#### 2.2 *Quality of Service.*

Elsevier will 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 available as described at [https://www.elsevier.com/sd\\_usage\\_reports](https://www.elsevier.com/sd_usage_reports). 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 will be authenticated by the use of Internet Protocol ("IP") address(es) and/or usernames and passwords and/or a delegated authentication mechanism requiring at least two different credentials, as identified on Schedule 2. Access to the Subscribed Products by Authorized Users who are Walk-in Users is permitted provided that access is limited to fixed terminals/workstations at the Sites only. Remote access to the Subscribed Products by Walk-in Users is not permitted. The distribution of usernames/passwords and other access credentials to such Authorized Users or otherwise made discoverable by those Authorized Users is not permitted.

### 3.2 *Protection from Unauthorized Access and Use.*

The Subscriber will:

- take appropriate measures to protect against the misuse or unauthorized access, whether by the Subscriber or any third party, through or to (a) the Subscriber's credentials used to access the Subscribed Products; and (b) the Subscribed Products and/or information derived therefrom;
- manage identification, use, access and control of all credentials used to access the Subscribed Products in an appropriately secure manner, including, but not limited to, by:
  - limiting access to and use of the Subscribed Products to Authorized Users and make reasonable efforts to notify all Authorized Users of the usage restrictions set forth in this Agreement and that they must comply with such restrictions;
  - issuing any passwords or credentials used to access the Subscribed Products only to Authorized Users, not divulging any passwords or credentials to any third party, and notifying all Authorized Users not to divulge any passwords or credentials to any third party; and
  - providing true, complete and accurate IP addresses, as identified on Schedule 2, (if any) for the exclusive use by the Subscriber (including, if requested by Elsevier, written confirmation by the relevant third-party internet service provider) and proactively informing Elsevier of any changes to the Subscriber IP addresses, including the addresses no longer being used exclusively by the Subscriber.
- without undue delay deactivate any credentials when no longer needed or where access presents a security risk;
- implement and maintain its own appropriate program for credentials management and ensure access to the Subscribed Products via such credentials is reviewed on an appropriate basis; and
- promptly upon discovering itself, or being notified by Elsevier or a third party, that there has been unauthorized use of the Subscribed Products or a security issue permitting unauthorized use, Subscriber will take appropriate steps to end such activity and to prevent any recurrence, including, but not limited to, implementing required updates and configuration where needed to rectify the issue. When notified by a third party or upon discovering the unauthorized use directly, Subscriber must promptly notify Elsevier of the unauthorized use. Subscriber will cooperate with Elsevier and share information, subject to any applicable confidentiality or nondisclosure obligations, concerning the unauthorized use or security issue.

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. In the event that Elsevier detects unauthorized use, Elsevier will promptly notify the Subscriber by email and telephone and request its cooperation to resolve and avoid recurrence of the unauthorized use and will 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 will 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. The Subscriber will be responsible for the adherence to the terms and conditions of this Agreement by a third-party provider the Subscriber engages, in particular, if such third-party provider supplies and manages IP addresses.

### 3.3 *Security Requirements.*

The Subscriber agrees that the Subscriber will have in place documented policies and procedures, which will be reviewed by the Subscriber periodically, and if appropriate, tested and updated, covering the administrative, physical and technical safeguards in place and relevant to the access, use, loss, alteration, disclosure, storage, destruction and control of information. The Subscriber will promptly notify Elsevier if it determines that there has been a failure of such safeguards if such failure results in a compromise of the confidentiality or security of any Elsevier Content provided hereunder and cooperate with Elsevier's reasonable requests surrounding such failure, including taking appropriate steps to end such activity and to prevent any recurrence. For the purpose of this Section 3.3, "Elsevier Content" means any material or information which Elsevier provides or makes available to the Subscriber in connection with the Subscribed Products and performance of this Agreement.

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

The Subscriber will 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, thereafter, no later than thirty (30) days of date of invoice for the Fees due for the following year of the Term. Late payments will be subject to interest charges of 1% per month on the unpaid balance. In addition to other remedies provided in this Agreement, Elsevier reserves the right to suspend access to the Subscribed Products upon thirty (30) days' prior written notice and without incurring liability if 1) the full amount of any Elsevier invoice hereunder has not been paid within the agreed payment deadline or 2) any invoice is outstanding under previous subscription agreements between parties for the Subscribed Products. The suspension of the Subscriber's access for non-payment or on any other grounds provided herein is without prejudice to the Subscriber's obligation to pay its outstanding and future invoice amounts in full. Elsevier and the Subscriber acknowledge that the Fees payable under this Agreement are not in the nature of royalties and consequently no withholding tax should be applied to the Fees. The Fees will be exclusive of any sales, use, value added, withholding or similar tax and the Subscriber will be liable for any such taxes in addition to the Fees.

## **SECTION 5. DURATION.**

### 5.1 *Term.*

The term of this Agreement will commence on 01 June 2023 and continue through and including 31 May 2028 ("Initial Term").

### 5.2 *Renewal.*

After the Initial Term, this Agreement will be automatically renewed for successive one-year terms (each a "Renewal Term"), and the Fees will be increased by the then current standard Elsevier price increase, unless either party gives notice to the other no later than sixty (60) days prior to the end of the then current term that it does not intend to renew. The Initial Term and each Renewal Term are collectively the "Term".

## **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 will 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 will 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 will 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, nor will the liability of Elsevier and its suppliers to the Subscriber exceed a sum equal to the Fees paid by the Subscriber hereunder during the twelve (12) month period immediately preceding the date on which the claim arose, 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 (other than payment obligations) 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) that prevents it from fulfilling its obligations under this Agreement (any such circumstances being “Force Majeure”) will be deemed a breach of this Agreement. Notwithstanding the foregoing, a party’s financial inability to perform its obligations will in no event constitute a Force Majeure.

### 7.2 *Severability.*

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

### 7.3 *Entire Agreement.*

This Agreement contains the entire understanding and agreement of the parties and replaces 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 will be valid unless in writing and signed by the parties, except for changes reflecting substituted titles, IP addresses, authentication mechanisms, invoicing and contact address details which may be confirmed by Elsevier in an email notice sent to the Subscriber.

### 7.5 *Assignment.*

The Subscriber will 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 will not unreasonably be withheld.

### 7.6 *Privacy.*

To the extent that Authorized Users provide any personal data to Elsevier during account registration or otherwise, the Subscriber acknowledges that such information will be collected, used and disclosed by Elsevier in accordance with the Elsevier privacy policy applicable to the Subscribed Products.

7.7 *Notices.*

All notices given pursuant to this Agreement will be in writing and delivered to the party to whom such notice is directed at the address specified below or the electronic mail address as such party will have designated by notice hereunder.

If to Elsevier: Elsevier B.V. c/o Regional Sales Office, Elsevier Inc., 230 Park Avenue, Suite 800, New York, NY 10169, USA.

If to the Subscriber: University of California San Diego, CARS Electronic Resources, 9500 Gilman Dr, 1075A, La Jolla, CA 92093-0175, USA.

7.8 *Confidentiality.*

The Subscriber and its employees, officers, directors and agents will maintain as confidential and not disclose to any non-affiliated third party without Elsevier's prior written consent the financial terms and commercial conditions of this Agreement. Elsevier may only disclose such information (i) to applicable service providers to the extent necessary to perform their functions in support of this Agreement and (ii) where reasonably necessary to address security, safety, fraud or other legal issues.

7.9 *Compliance with Laws.*

Each party will comply with all applicable laws and regulations relating to its duties and obligations under this Agreement. Elsevier reserves the right to deny access to the Subscribed Products to any person or entity who is prohibited from receiving such access based on any applicable export control and trade sanctions laws or embargo programs.

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.

**UNIVERSITY OF CALIFORNIA SAN DIEGO**  
**(Subscriber)**

[Text deleted]

Name: [Text deleted] \_\_\_\_\_

Title: Associate University Librarian Scholarly Resources and Services

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

[Text deleted]

\_\_\_\_\_  
Name: [Text deleted]

Title: SVP Global Sales Effectiveness and Services

No. 1-22305448662

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

**UNIVERSITY OF CALIFORNIA SAN DIEGO**

No. 1-22305448662

<b>Subscribed Products – publisher</b>	<b>Access</b>	<b>01 Jun 2023 – 31 May 2024</b>	<b>01 Jun 2024 – 31 May 2025</b>	<b>01 Jun 2025 – 31 May 2026</b>	<b>01 Jun 2026 – 31 May 2027</b>	<b>01 Jun 2027 – 31 May 2028</b>
<b>Embase – Elsevier Limited</b>	embase.com	<b>[Text deleted]</b>				
<b>TOTAL FEES</b>						

**ELSEVIER SUBSCRIPTION AGREEMENT**  
**Schedule 2**  
**Sites/Authentication/Contacts**

**Subscriber:** University of California San Diego

<b>Sites:</b>	<b>#Relev. Auth. Users:</b>	<b>Authentication:</b>
9500 Gilman Dr, San Diego, CA 92093, USA	1,447	<a href="#">[Text deleted]</a>

Estimated total number of Authorized Users for: 1,447

Estimated total number of relevant Authorized Users for Embase: 1,447

For the avoidance of doubt, other institutions and organizations that reside or do business at the above locations (including without limitation companies that are owned wholly or in part by, or affiliated with, the Subscriber) are not Sites, unless expressly stated above.



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

**Primary Contact**

Name:

Title:

Name/Address (if different from Section 7.7):

[Text deleted]

E-mail:

Phone:

**Billing Contact**

Name:

Title:

Name/Address (if different from Section 7.7):

[Text deleted]

E-mail:

Phone:

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