

ELSEVIER LICENSE AGREEMENT

SECTION 1. BACKGROUND.

1.1 *Parties and Addresses.*

Subscriber: The Regents of the University of California, a non-profit academic institution, with its principal offices located at The California Digital Library, University of California Office of the President, 415 20th Street, 4th Floor, Oakland, CA 94612, USA (the "Subscriber"), notices for which shall be sent to such address or to an address as the Subscriber may hereafter indicate in writing.

Licensor: Elsevier B.V., a Netherlands company, with its principal offices located at Radarweg 29, 1043 NX Amsterdam, The Netherlands (the "Licensor"), notices for which shall be sent to the Regional Sales Office at 360 Park Avenue South, New York, NY 10010-1710, USA or to an address as the Licensor may hereafter indicate in writing.



1.2 *Structure of Agreement.*

Access to and use of the products and services licensed hereunder, as identified in Schedule 4.1 (the "Licensed Products"), are subject to the terms and conditions, including the General Terms and Conditions ("GTCs") set forth in Schedule 1.2(a) and any additional terms and conditions that may be set forth in Schedule 1.2(b), of this agreement ("Agreement").


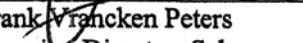
1.3 *Execution.*

The parties have caused this Agreement to be executed as of the ^{20th of December} ~~11th of November~~, 2004.

THE REGENTS OF THE UNIVERSITY OF CALIFORNIA
(Subscriber)


Name: Beverlee A. French
Title: Deputy University Librarian
Date: 

ELSEVIER B.V.
(Licensor)


Name: Frank Vrancken Peters
Title: Managing Director, Sales
Date: 

Contract Number: 1-1WMLBU

SECTION 2. LICENSE.

2.1 License.

The Licensors hereby grants to the Authorized Users (as defined below) of the Subscriber the nonexclusive, non-transferable right and license to:

- access, search, browse and view the Licensed Products;
- print and download a limited number of articles, abstracts, records or parts of chapters from the Licensed Products (Excerpts);

transmit Excerpts to other Authorized Users and to third-party colleagues for their scholarly or research use; and
- access, search, browse, view, print and download articles from all journals which are accessible on the ScienceDirect online service but are not subscribed to as part of the Licensed Products (each article viewed, a "Transaction").

The Licensors hereby grants to the Subscriber the non-exclusive, non-transferable right and license to:

- use articles from those journals published by Elsevier and subscribed to by the Subscriber as part of the Licensed Products as source material to fulfill requests as part of the practice commonly known as "interlibrary loan" on an article-by-article basis, *provided that* (i) the request comes from an academic or other non-commercial, non-corporate research library located in the same country as the Subscriber; (ii) the requested article is printed by the Subscriber and mailed or faxed to the requesting library; and (iii) the Subscriber refrains from advertising its interlibrary loan capability with respect to this material; and
- incorporate Excerpts into electronic "Coursepacks" for use in connection with courses offered by the Subscriber for academic credit, *provided that* such Excerpts are deleted by the Subscriber by the end of each semester or trimester in which they are used (with such deletion confirmed in writing to the Licensors upon request). Coursepack use for non-credit courses in distance education programs will require separate permission from the Licensors and payment of a separate fee

2.2 Authorized Users/Sites.

The following are Authorized Users for purposes of this Agreement:

Faculty members (including temporary or exchange faculty for the duration of their assignment), graduate and undergraduate students, staff members, and independent contractors acting as faculty or staff members who are (i) officially affiliated with the Subscriber at the Subscriber's locations listed on Schedule 2.2 (the Sites) and (ii) permitted by the Subscriber to access the Subscriber's secure network.

The Subscriber will review the number and location of the Sites and the number of Authorized Users at least once annually and notify the Licensors of any material changes in the number of Sites or Authorized Users.

The Licensed Products may be accessed, searched, browsed and viewed and Excerpts may be printed and downloaded by members of the general public who are permitted by the Subscriber to have physical access to the Subscriber's library facility and who access the Licensed Products only from terminals located at the Subscriber's library facility subject to the terms of this Agreement, including the usage restrictions set forth herein for Authorized Users.

SECTION 3. ACCESS AND USAGE.

3.1 *Access to Licensed Products.*

The Licensed Products will be accessed from the World Wide Web address set forth on Schedule 4.1 or as may otherwise be set forth herein.

3.2 *Secure User Access.*

Secure user access to the Licensed Products shall be authorized by specified Internet Protocol (IP) address ranges indicated by the Subscriber on Schedule 2.2 and/or by usernames and passwords.

3.3 *Usage Data Reports*

Upon request from the Subscriber, the Licensor will provide on a periodic basis to the Subscriber for its internal use only usage data reports on the Subscriber's usage activity.

SECTION 4. FEES AND PAYMENT TERMS.

4.1 *Fees.*

The fees for the Subscriber's access to and use of the Licensed Products are set forth in Schedule 4.1 (the "Fees").

4.2 *Payment Terms.*

The Subscriber shall pay to the Licensor the Fees within thirty (30) days of invoicing or as otherwise may be set forth on Schedule 4.1. If the Subscriber fails to pay the full amount of the Licensor's invoice on a timely basis, the Licensor may suspend the Subscriber's access to the Licensed Products until the unpaid amounts of such invoice are paid. The Fees set forth in multiple-year agreements will be invoiced annually. If the Subscriber disputes, in good faith, any amount on the Licensor's invoice, the Subscriber shall provide written notice of the dispute to the Licensor along with full supporting documentation within thirty (30) days of invoicing, and the Subscriber and the Licensor 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 AND TERMINATION.

5.1 Term.

This Agreement shall commence on 1 January 2005 and continue until 31 December 2007.

5.2 Renewal.

This Agreement will be automatically renewed for successive one-year terms, subject to appropriate adjustments to Schedule 4.1, unless either party gives notice to the other by November 1 prior to the end of the then current term that it does not intend to renew.

5.3 Early Termination for Change in Control.

If a change in control of the Subscriber occurs, the Subscriber shall promptly notify the Licensor of the name and address of the person or entity who acquired such control. A change in control of the Subscriber may result in early termination unless the parties are able to agree to appropriate fee adjustments.

5.4 Early Termination for Unauthorized Use.

The Licensor reserves the right to terminate this Agreement for unauthorized use of the Licensed Products. Subscriber reserves the right to terminate this Agreement for Licensor's breach of the terms of this Agreement. If either party believes that the other materially has breached any obligations under this Agreement, such party shall so notify the breaching party in writing. The breaching party shall have thirty (30) days from the receipt of the notice to cure the alleged breach and to notify the non-breaching party in writing that cure has been effected. If the breach is not cured within the thirty (30) day period, the non-breaching party shall have the right to terminate the Agreement without further notice.

LICENSE AGREEMENT
Schedule 1.2(a)
General Terms and Conditions

RESTRICTIONS ON USAGE OF THE LICENSED PRODUCTS/ INTELLECTUAL PROPERTY RIGHTS

GTC1 The Licensed Products may not be used (directly or indirectly) for any of the following purposes: substantial or systematic reproduction; redistribution, reselling or sublicensing in any manner including in connection with fee for-service use; supply or distribution in any form to anyone other than Authorized Users, except as may be expressly set forth otherwise in this Agreement; substantial or systematic retention of the Licensed Products. Subscriber shall not use spider or web-crawling or other software programs, routines, robots or other mechanized devices to continuously and automatically search and index any content accessed online under this Agreement.

GTC2 Neither Subscriber nor its Authorized Users may modify, adapt, transform, translate or create any derivative work based on the Licensed Products, or otherwise use same in a manner that would infringe the copyright or other proprietary rights therein. Copyright notices, other notices or disclaimers included in the Licensed Products may not be removed, obscured or modified in any way. With respect to permitted uses of Excerpts, Subscriber shall acknowledge the source, title, author and publisher (if not already included in Excerpts).

GTC3 Subscriber will not reverse engineer, decompile or disassemble any software included in the Licensed Products. However, in the event that a court determines that Subscriber has such right under its local law, which right cannot be waived, this right shall be restricted solely to the study of matters such as interoperability and shall not be used in such a way as to affect its commercial value.

GTC4 Subscriber acknowledges that all rights save for the limited and non-exclusive licenses or other privileges granted under this Agreement are reserved to and remain the exclusive property of the Licensor or its licensors, and nothing in this Agreement shall transfer any rights to Subscriber. Subscriber acknowledges that the Licensed Products contain valuable and proprietary data and information, and that the unauthorized distribution of such material could materially harm the business and prospects of the Licensor or its licensors.

GTC5 The laws and regulations of the United States restrict the export and re-export of certain commodities and technical data of United States origin, including any software included in the Licensed Products. Export or re-export of such software in any form requires appropriate United States government export licenses and may require licenses from other governments.

REPRESENTATIONS, WARRANTIES & INDEMNITIES

GTC6 The Licensor warrants that the software components of the Licensed Products will substantially conform to their specifications or descriptions in user manuals if used for their intended purposes and that use by Subscriber of the Licensed Products, or any search engine, software or component thereof, according to the terms and conditions herein, will not infringe the intellectual property rights of any third party. The Licensor shall indemnify Subscriber against any direct loss or damage arising out of any third-party action or claim that use by Subscriber as authorized herein of the informational content of the Licensed Products infringes the intellectual property rights of such third party. Subscriber agrees that if any such claim is made by a third party then Subscriber will promptly notify and cooperate with the Licensor, and the Licensor shall at its request be given control of such action. This indemnity against third party claims for infringement of intellectual property shall survive the termination of this Agreement. The Licensor reserves the right to withdraw from the Licensed Products content that is unlawful, harmful, false or infringing.

GTC7 The Licensor warrants, if it is providing specific services under one or more of these Agreements, that it will use reasonably workmanlike efforts to provide such services, consistent with industry standards.

GTC8 Subscriber warrants that it will use reasonable efforts to: (a) ensure the security and integrity of the Licensed Products; (b) ensure that access to and use of the Licensed Products is limited to Authorized Users; (c) ensure that all Authorized Users are notified of and comply with the usage restrictions set forth in this Agreement; (d) ensure that passwords are issued only to Authorized Users and that neither the Subscriber nor its Authorized Users divulge any passwords to any third party; and (e) monitor compliance and, immediately becoming aware of any unauthorized use of the Licensed Products, notify the Licensor and take corrective actions to ensure that such activity ceases and to prevent any recurrence.

Subscriber further represents and warrants that it has entered into this Agreement to obtain products or services for its own account and use and not on behalf of any other person or entity, except as may be expressly set forth otherwise in this Agreement.

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

GTC9 Other than with respect to the warranties and indemnities expressly given in this Agreement, the Licensor will not be responsible, to the maximum extent permitted by relevant laws, for any claim, loss or liability attributable to errors, inaccuracies or other defects in the Licensed Products, or any part thereof, arising from any act or omission or any negligence. Further, the Licensor makes no warranties or representations regarding any undocumented features, elements or artifacts that may be present in the Licensed Products, or use of same in connection with software or hardware supplied by third parties. The Licensor and its licensors shall not be liable for any incidental, special, consequential or exemplary damages including, but not limited to, loss of anticipated profits or benefits. Other than with respect to the indemnity expressly given in this Schedule, the Licensor's liability to Subscriber shall not, in any case, exceed a sum equal to the fees paid by Subscriber hereunder, even if the Licensor has been advised of the possibility of such potential claim, loss or liability.

THE LICENSOR AND SUBSCRIBER EXPRESSLY EXCLUDE ANY LIABILITY FOR BREACH OF ANY IMPLIED OR EXPRESS WARRANTY AS TO MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

GTC10 The parties agree that the United Nations Convention on Contracts for the International Sale of Goods shall not be applicable to this Agreement or to the interpretation or enforcement thereof.

GTC11 The Licensor's warranties shall not apply if any software in the Licensed Products is combined or used with other programs, products or data; or the computer hardware or other equipment of the Subscriber used in the operation of the software is not in good operating order; or any such software is modified by anyone other than the Licensor; or the software has been improperly installed or operated or used in any way other than as contemplated in this Agreement; or the then most current release of such software is not used; or the proper network connections have not been successfully installed. Notwithstanding the generality of the disclaimers given herein, the remedies with respect to any defects in any such software which amount to reproducible errors shall be as provided in this Agreement.

GENERAL

GTC12 The Licensor's failure to temporarily perform any term or condition of this Agreement as a result of conditions beyond its control such as, but not limited to, war, strikes, fires, floods, governmental restrictions, power failures, damage or destruction of any network facilities or servers, or software or hardware errors, shall not be deemed a breach of this Agreement.

GTC13 In the event that anyone or more of the provisions contained herein shall, for any reason, be held to be invalid or unenforceable, such invalidity or unenforceability shall not affect any other provisions of this Agreement; in such circumstances, this Agreement shall be construed as if such objectionable material had not been included unless the deletion of same would result in material deviation from the terms of agreement contemplated by the parties.

GTC14 Subscriber shall be solely responsible to pay any and all applicable sales, use, value added or similar tax on any license fees or invoiced amounts identified or described hereunder (other than taxes on Subscriber's income) that may be imposed or incurred in connection with the Subscriber's use of or payment for access to the Licensed Products and/or the rights granted under this Agreement and regardless of when such fees or invoices are paid or transmitted. Subscriber shall indemnify and hold the Licensor harmless from any such taxes, as well as the collection or withholding thereof, including penalties and interest that the Licensor may incur due to Subscriber's failure to pay such taxes. Subscriber's obligation to pay such taxes that are incurred during the duration of this Agreement shall survive the termination of this Agreement. The foregoing obligations shall not apply if Subscriber is entitled to exemption from taxation and provides to the Licensor appropriate documentation of its tax-exempt status upon the Licensor's request.

GTC15 This Agreement, including any attachments, annexes or schedules hereto, and any documents explicitly referred to herein (e.g., user manuals and specification documents), 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. No modification, amendment or waiver of any provision of this Agreement shall be valid unless in writing and signed by the parties. Subscriber acknowledges and agrees that it may not assign or transfer any of its rights or obligations under this Agreement unless it obtains the prior written consent of the Licensor.

GTC16 The Licensor shall not, without the prior written consent of Subscriber, transfer any personal information of any Authorized User to any 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.

GTC17 Except as may be noted above, the foregoing representations and warranties shall survive only for the term of this Agreement.

LICENSE AGREEMENT
Schedule 1.2(b)
Additional Terms and Conditions

ACT1 Caching.

The Subscriber and Authorized Users may make transient local digital copies of the Licensed Products in order to ensure efficient use by Authorized Users by appropriate browser or other software. Such local copies will not be retained beyond the cache expiry times indicated in the HTTP headers of the Licensed Products. The Subscriber will make reasonable efforts to ensure that browsers or other software respect no-cache directives included in the headers of certain material in order to ensure correct functioning of the service.

ATC2 Compliance with Americans with Disabilities Act.

The Licensor shall make reasonable efforts to comply with the Americans with Disabilities Act.

ATC3 Funding Contingency.

Subscriber reasonably believes that funds can be obtained sufficient to pay all monies due during the term of this Agreement and hereby covenants that it will do all things lawfully within its power to obtain, maintain, and properly request and pursue funds from which payments for this Agreement may be made, including making provisions for such payments to the extent necessary in each budget submitted for the purpose of obtaining funding, using its bona fide best efforts to have such portion of the budget approved and exhausting all available administrative review and appeals in the event such portion of the budget is not approved. It is the Subscriber's intent to make payments for the full term of this Agreement.

In the event no funds or insufficient funds are appropriated and budgeted and are not otherwise available in any fiscal period for payments due under this Agreement, the Subscriber will immediately notify Licensor of such occurrence and this Agreement shall terminate on the last day of the subscription period for which payment has been made without penalty of expense to the Subscriber of any kind whatsoever, except as to the portions of payments herein agreed for which funds shall have been appropriated and budgeted or otherwise available. In the event of such termination, Subscriber shall maintain its post termination right to materials licensed under the subscription periods for which it has fully paid.

ATC4 Electronic Links.

The Licensor will provide information to the Subscriber upon request to assist the Subscriber in creating electronic links directly from a citation in its library catalogs and licensed resources to the target content in the Licensed Products or related materials in other locations at the journal and article levels.

ATC5 Governing Law.

This Agreement will be governed by and construed in accordance with the laws of the state of California.

ATC6 Uptime Warranty.

The Licensor warrants that it will use reasonable efforts to provide continuous service seven (7) days a week with an average of 98% up-time per month, with the 2% down-time including scheduled maintenance and repair, performed at a time to minimize inconvenience to customers worldwide. If, due to causes within its reasonable control, the Licensor is unable to provide the Subscriber with access to the service for a period exceeding twenty-four (24) consecutive hours, then the Licensor shall extend the term of the Agreement for corresponding period at no additional cost to the Subscriber.

ATC7 Indemnification.

NO LIMITATION OF LIABILITY SET FORTH IN THIS AGREEMENT IS APPLICABLE TO THE INDEMNITY GIVEN BY THE LICENSOR TO THE SUBSCRIBER IN GTC6 OF SCHEDULE 1.2(A).

LICENSE AGREEMENT
Schedule 2.2
Sites/IP Addresses

Name of Subscriber: Regents of the University of California

Primary Location:

California Digital Library, Office of the President

All Other Location(s):

(add additional sheets if necessary):

University of California - Berkeley

University of California - Davis

University of California - Irvine

University of California - Los Angeles

University of California - Merced

University of California OP - California Digital Library

University of California - Riverside

University of California - San Diego

University of California - San Francisco

University of California - Santa Barbara

University of California - Santa Cruz

Primary Contact Name: [REDACTED]

Title: [REDACTED]

Address (if different from Principal Address): E-mail: [REDACTED]

Phone: [REDACTED]

Fax: [REDACTED]

Billing Contact Name: [REDACTED]

Title: [REDACTED]

Address (if different from Principal Address): E-mail: [REDACTED]

Phone: [REDACTED]

Fax: [REDACTED]

Technical Contact Name: [REDACTED]

Title: Senior Development Programmer

Address (if different from Principal Address): E-mail: [REDACTED]

Phone: [REDACTED]

Fax: [REDACTED]

The Subscriber will promptly notify the Licensor of any changes to any of the information above

**IP ADDRESSES OF SUBSCRIBER
UNIVERSITY OF CALIFORNIA**

[deleted]

ELSEVIER LICENSE AGREEMENT**Schedule 4.1****Licensed Products/Access/Fees****THE REGENTS OF THE UNIVERSITY OF CALIFORNIA**

| Licensed Products – publisher | Access | 2005 | 2006 | 2007 |
|---|------------|------------|------------|------------|
| Compendex® – Elsevier Engineering Information Inc. | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] |
| Engineering Index Backfiles – Elsevier Engineering Information Inc. | [REDACTED] | [REDACTED] | | |
| Total Fees | | [REDACTED] | [REDACTED] | [REDACTED] |

Engineering Index Backfiles Additional Terms and Conditions

or upon request
The Subscriber pays a one-time fee for access to the Engineering Index Backfiles for as long as the Subscriber remains a current Engineering Village 2 online service subscriber. If the Subscriber's subscription to Engineering Village 2 expires or terminates (except for violation of the Subscriber's obligations under the Agreement), the Subscriber may, at its option, obtain either (1) an electronic copy of the Engineering Index Backfiles, provided that the Subscriber defrays the costs of preparing the data set sought, or (2) continued online access to the Engineering Index Backfiles for an annual access fee. In either case, terms and conditions of use will continue to be as set forth in this Agreement. The electronic copy will contain all textual content of the Engineering Index Backfiles but may not contain all links and other features and functionality associated with the online version. The Subscriber shall promptly notify the Licensor of any material change in the number of Authorized Users or Sites and any change in control of the Subscriber, which change may result in an appropriate adjustment to the annual maintenance fee and/or annual access fee, as may be applicable. The foregoing shall survive the termination of this Agreement.

If Licensor fails to make any portion of the Licensed Products available following execution of this Agreement, Licensor shall promptly use reasonable efforts to provide access to the Licensed Products as soon as possible. In the event that Licensor fails to repair the nonconformity, Licensor shall credit the Subscriber in an amount proportional to the fees paid by Subscriber under this Agreement for said portion of Licensed Products for the period in which the Licensed products were not available. The accounting will be done on an annual basis.