



FIFTH AMENDMENT TO ELSEVIER SUBSCRIPTION AGREEMENT

WHEREAS, Elsevier B.V., a limited liability company with its principal offices at Radarweg 29, 1043 NX Amsterdam, The Netherlands ("Elsevier") and The Regents of the University of California, a nonprofit academic institution, with its principal offices at The California Digital Library, University of California Office of the President, 1111 Franklin Street, Oakland, CA 94607, USA ("UC") have previously entered into an agreement dated 27 May 2022 (the "Agreement") and wish to amend the Agreement as set forth in this amendment ("Amendment").

NOW, THEREFORE, in consideration of the mutual promises and covenants set forth below, and for such other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree to amend the Agreement as of 31 March 2025 as set forth below.

1. Section I INTENT

The following paragraph is added to the end of this section:

"The Parties desire to enter into a new publishing and reading services agreement at the conclusion of this Agreement that will thereafter operate on a calendar year basis. Consequently the Parties, by way of this Amendment, agree to extend and continue, in good faith, with this current Agreement for an additional nine (9) consecutive calendar months period through December 31, 2025 (this nine (9) month period is the ("Extension Period")).

2. Section II DEFINITIONS

The defined term "Agreement Term" is deleted and replaced with the following:

"Agreement Term: 1st April 2021 through to and including 31st December 2025."

3. Section IV.3. Specific Restrictions on Use of Subscription Content

Subsections IV.3.b through IV.f are deleted and replaced with the following:

"Section IV.3.b Modification of Content; Removal of Copyright Notice; Commercial Purpose; Automated Downloading; Reproduction and AI

Except as expressly stated in this Agreement or otherwise permitted in writing by Elsevier, or as permitted by any Creative Commons licenses or public domain dedications applied to the Content, the UC and its Authorized Users may not:

- a. abridge, modify, translate, or create any derivative work and/or service for the public or third parties (including resulting from the use of artificial intelligence tools), based on the Content, except to the extent necessary to make them perceptible on a device to Authorized Users or in accordance with accessibility laws;
- b. remove, obscure, or modify in any way any copyright notices, other notices or disclaimers as they appear in the Content;
- c. use any robots, spiders, crawlers or other automated downloading programs, tools, or devices to search, scrape, extract, deep link, or index the Content except to the extent reasonably necessary for text and data mining as set out below; in the event any such tools or processes are used for text and data mining, they may not disrupt the functionality of the Content;

- d. use the Content in combination with a third-party generative artificial intelligence tool (including to train an algorithm, test, process, analyze, generate output and/or develop any form of artificial intelligence tool) except where such third-party generative artificial intelligence tool: (i) is used locally in a self-hosted environment or closed hosted environment solely for use by UC or Authorized Users; (ii) is not trained or fine-tuned using the Content or any part thereof, unless pursuant to a license entered into by UC that imposes commercially reasonable security measures, limits use to UC or Authorized Users only, and precludes public release or exchange of the trained artificial intelligence tool or its data with a third party; and (iii) does not share the Subscribed Product or any part thereof with a third party.

Subject to the above, uses of artificial intelligence tools developed by UC and Authorized Users, or third party non-generative artificial intelligence tools, are permitted provided they: are not used to create a competing or commercial product or service for use by third parties; do not disrupt the functionality of the Content; and do not reproduce or redistribute the Content or any part thereof to a third party. Further, any such artificial intelligence tools shall be used with reasonable information security standards to undertake, mount, load, or integrate the Content on UC's or Authorized Users' servers or equipment;

- e. post individual items from the Content on social networking sites; or
- f. substantially or systematically reproduce, retain or store locally (except as needed for uses authorized herein and only for the period of time reasonably needed for such uses), redistribute or disseminate the Content. UC shall use reasonable efforts to inform Authorized Users that, upon termination of the Agreement, the UC and its Authorized Users shall delete all stored copies of items from the Content. Notwithstanding the foregoing, and for purposes of clarity, the UC and the Authorized Users will not be required to delete incidental copies of individual items that would be impractical or impossible to remove (i.e. as may have been embedded in spreadsheets, reports and similar printed or electronic documents), provided that such individual items will continue to be subject to the usage provisions of the Agreement, which provisions will survive the termination of the Agreement.

Authorized Users who are individuals who are independent contractors or are employed by independent contractors may use the Content only for the purposes of the contracted research work for the UC.

Consistent with Section IV.4.2, UC shall take appropriate reasonable efforts to ensure the Content is used in accordance with this Agreement against misuse or unauthorized access. The UC will not be liable for misuse or unauthorized access use of the Content by any Authorized Users provided that the misuse or unauthorized access did not result from the UC's own gross negligence or willful misconduct and that the UC did not permit such misuse or unauthorized access to continue after having actual notice thereof.

In the event a court in the United States determines that Fair Use (as defined in US Code Title 17 Section 107) of artificial intelligence tools, encompasses broader uses than the limitations set forth herein, the Parties agree to negotiate in good faith a revision of this Section IV.3.b.

4. **A1.b. Multi-Payer Article Base**

The following paragraph shall be added to the end of this Section.

For Extension Period the Multi-Payer Article Base shall be the first 3,446 Eligible Articles accepted

for publication, and these Eligible Articles shall be counted toward the Multi-Payer Article Base regardless of the business model choice of the author (i.e., whether published on an Open Access or subscription basis). A reconciliation of the specific Eligible Articles accepted for publication and counted as part of the Multi-Payer Article Base during the Extension Period of the Agreement Term will take place in February 2026 to allow sufficient time for all Eligible Articles to be captured and counted as part of the Extension Period, subject to an agreed-upon process. The reconciliation of the Extension Period will correspond with the final True-Up of the Agreement.”

5. **A1.c. Publishing Value at Discount**

The following paragraph shall be added to the end of this section:

“The Publishing Value at Discount shall be calculated for all relevant Eligible Articles in Publishing-Eligible Journals within the Multi-Payer Article Base for the nine-month Extension Period of the Agreement Term in the same manner as for each full year of the Agreement.”

6. **A1.d. Multi-Payer Article Base Maximum and Value Gap**

The following paragraph shall be added to the end of this section:

“For the Extension Period the Multi-Payer Maximum shall be [REDACTED] and this UC prepayment will function in accordance with the terms of A1.d, A1.j and the entire Agreement. If, at the end of the Extension Period the Publishing Value at Discount within the Multi-Payer Article Base is lower than the Multi-Payer Maximum, then UC will only be liable for a fee equivalent to the Publishing Value at Discount, and any excess amount already paid by UC will be credited to UC as part of the Agreement reconciliation process defined in Section A1.j.

The Parties agree that the Publishing Value at Discount within the Multi-Payer Article Base has not been higher than the Multi-Payer Maximum for any one year or collectively during the 4 years of the Agreement and both Parties agree that for the Extension Period the Multi-Payer Maximum is expected to exceed the Publishing Value at Discount. Therefore, those sections of the Agreement that address dispensation of funds when the Publishing Value at Discount exceed the Multi-Payer Maximum will not be updated for the Extension Period. In the event that the Publishing Value at Discount exceed the Multi-Payer Maximum for the Extension Period, then the Parties agree to act in good faith negotiations to agree to a reasonable redress based on the metrics shown and purpose of the Agreement terms of the prior four (4) years.”

7. **A1.f. Minimum Payments for Cell Press and The Lancet (CP/TL) Journals**

The following paragraph shall be added to the end of this section:

“For the Extension Period, the minimum payment shall be [REDACTED] for the Established (pre-2021) Cell Press Hybrid Journals. For the CP/TL Other Journals, the minimum payment shall be [REDACTED]. Eligible Articles in the CP/TL Other Journals are not counted toward the Publishing Value at Discount. Eligible Articles in these journals within the Multi-Payer Article Base for which the Corresponding Author has chosen the Open Access option will be charged against the Credits Fund at

their then-current discounted APC rate for the Extension Period; these charges will be aggregated during the Extension Period and will be paid from the Credits Fund at the end the Extension Period. If the total discounted APC value of said articles is less than the minimum payment threshold, a make-up payment will be charged against the Credits Fund to reach the minimum payment. Should there be insufficient funds to cover the discounted APCs for these articles or the minimum payment from the Credits Fund, any outstanding minimum payment balance shall be recouped from UC as part of the End of Agreement True-Up reconciliation.”

8. **A1.g. Minimum Volume Threshold**

The following paragraph shall be added to the end of this section:

The terms of Section A.1.g shall not apply to the Extension Period of the Agreement. However, in the event that the number of Eligible Articles drops unexpectedly for the Extension Period, the Parties agree to act in good faith negotiations to agree to a reasonable redress during the True-Up reconciliation that is based on the metrics shown and purpose of the Agreement terms of the prior four (4) years.

9. **A1.h. Article Growth Fee**

The following paragraph shall be added to the end of this section:

The terms of Section A.1.h shall not apply to the Extension Period of the Agreement. However, In the unlikely event that the number of Eligible Articles greatly exceeds the Multi-Payer Article Base for the Extension Period, the Parties agree to act in good faith negotiations to agree to a reasonable redress during the True-Up reconciliation that is based on the metrics shown and purpose of the Agreement terms of the prior four (4) years.

10. **A1.j. End of Agreement True-Up**

This section of the Agreement shall be deleted in its entirety and replaced with the following:

“Upon termination of this Agreement, a ‘true up’ will determine the final financial settlement between the Parties of any funds remaining in the Credits Fund after paying for the final year’s OA publishing in CP/TL Other Journals (see Section A1.f) (“End of Agreement True-Up”). Any outstanding balances in the Credits Fund will be shared between Elsevier (40%) and UC (60%).

The Parties agree to forgo renegotiations of terms for sections of the Agreement that are not applicable for the Extension Period, including terms for Section A1.g. and Section A1.h. If during the End of Agreement True-Up dispensation process it is reasonably determined that either Party was unduly and significantly financially disadvantaged based on the spirit and intent of the original Agreement because of the term changes for the Extension Period, the Parties agree to act in good faith to agree to a reasonable redress.”

11. **A2.c. Clinics Subscriptions**

The following paragraph shall be added to the end of this section:



“For the Extension Period, subscriptions for Authorized Sites (including Lawrence Berkeley National Laboratory) with full perpetual rights to the 27 Clinics journals shall be available for a fee of [REDACTED]. Such subscriptions will begin April 1, 2025 and end December 31, 2025.”

11. **A2.g. Perpetual Rights**

The following paragraph shall be added to the end of this section:

“Authorized Sites perpetual rights (including Lawrence Berkeley National Laboratory) to all 2018 Subscribed Journals can be optionally purchased during the Extension Period for the prorated amount of the Perpetual Rights fee during the first four years of the Agreement, or [REDACTED]. Titles from the Freedom Collection may be swapped for titles of equal or similar value, priced as 10% of the then-current subscription price multiplied by 3x for Extension period. UC may also purchase perpetual rights for individual journals and subsets of journals during the Extension Period, and Elsevier will provide a customer quote based on such request.”

12. **A2.j. Entitlement Year.**

This section of the Agreement shall be deleted and replaced with the following:

“All reading entitlements, subscriptions, and perpetual rights under the Agreement shall operate on an April-March year for the first four years of the Agreement. For the Extension Period, entitlements, subscriptions and perpetual rights shall be for a nine-month period from April 1, 2025 to December 31, 2025 unless otherwise stated.”

13. **A3. COVID Relief Reduction**

The following sentence shall be added in its entirety to the end of this section:

“During the Extension Period no additional Covid Relief Reduction will be provided, but an additional relief of [REDACTED] shall be provided to extend the same Agreement terms for the nine-month period.”


Except as specifically amended hereby, all of the existing terms and conditions of the Agreement are hereby ratified. Capitalized terms used herein that are not otherwise defined shall have the meanings ascribed to them in the Agreement. To the extent any terms or conditions of the Agreement conflict with or are inconsistent with this Amendment, the terms of this Amendment shall prevail.



IN WITNESS WHEREOF, the parties have executed this Amendment by their respective, duly authorized representatives as of 31 March 2025.

**THE REGENTS OF THE UNIVERSITY OF CALIFORNIA ON BEHALF OF CALIFORNIA
DIGITAL LIBRARY
(UC)**



Name:  3/27/2025
Title: Director of Shared Collections, CDL

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



Name:  29-Mar-2025
Title: Vice President, Account Support & Tender Management