



ELSEVIER SUBSCRIPTION AGREEMENT

This agreement ("Agreement") is entered into as of 19 December 2013 by and between the **Regents of the University of California on behalf of the California Digital Library, 415 20th Street, 4th Floor, Oakland, CA 94612 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.

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; or
- substantially or systematically reproduce, retain or redistribute the Subscribed Products.

Authorized Users 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 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 or as may be otherwise set forth herein.

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 provide usage data reports on the Subscriber's usage activity by email on a monthly basis, or upon request, to the librarians/administrators employed by the Subscriber. Subscriber reserves the right to collect, analyze, and make results available to both internal and external constituencies of usage data compiled by Elsevier and made available to Subscriber. 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.

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 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, to be mutually agreed upon by parties.

3.2 *Protection from Unauthorized Access and Use.*

The Subscriber will 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 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.

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. The Fees are 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 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 will 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 will commence on 31 December 2013 and continue until 30 December 2018.

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 will 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 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. NO LIMITATION OF LIABILITY SET FORTH ELSEWHERE IN THIS AGREEMENT IS APPLICABLE TO THIS INDEMNIFICATION.

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, or will 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) will be deemed a breach of this Agreement.

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 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 will be valid unless in writing and signed by the parties.

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.*

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

If to the Subscriber: California Digital Library, 415 20th St., 4th Floor, Oakland, CA 94612 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 or except as required by law the financial terms and commercial conditions of this Agreement.

7.9 *Governing Law.*

This Agreement will 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.

**UNIVERSITY OF CALIFORNIA LIBRARY SYSTEM
(Subscriber)**

[Text deleted]

—
N

Title: Executive Director


[Text deleted]

**ELSI
(Else**

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Name

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

No. 1-5951158892


FEB 24 2014

ELSEVIER SUBSCRIPTION AGREEMENT
Schedule 1
Subscribed Products/Access/Fees

UNIVERSITY OF CALIFORNIA LIBRARY SYSTEM

No. 1-5951158892

Subscribed Products – publisher	Access	31/12/ 2013 - 30/12/2014	31/12/2014 - 30/12/2015	31/12/2015 - 30/12/2016	31/12/2016 - 30/12/2017	31/12/2017 - 30/12/2018
Reaxys® - Reed Elsevier Properties S.A. TOTAL FEES	reaxys.com	[Text deleted]	[Text deleted]	[Text deleted]	[Text deleted]	[Text deleted]

Reaxys Additional Terms and Conditions

Upon termination of the Subscriber’s subscription to Reaxys, the Subscriber will delete all stored copies of items from Reaxys and document the same to Elsevier’s reasonable satisfaction. Notwithstanding the foregoing, and for purposes of clarity, the Subscriber 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. For the avoidance of doubt, individual items extracted from Reaxys, may only be provided by an Authorized User to other Authorized Users, or as requisite for legitimate scholarly sharing. The Subscriber and its Authorized Users may not provide such individual items to any third party for non-educational purposes, except as may otherwise be expressly permitted in writing by Elsevier.

Subject to terms of this Agreement, Subscriber and its Authorized Users will have unlimited simultaneous access to the subscribed Products.

ELSEVIER SUBSCRIPTION AGREEMENT
Schedule 2
Sites/Authentication/Contacts

Subscriber: University of California Library System

Sites:	#Auth. Users:	Authentication:
9500 Gilman Drive .0175K, La Jolla, CA 92093 - 0175, USA	100,000	University of California IP Address Ranges List Berkeley (UCB) [Text deleted]

[Text deleted]

Davis (UCD)

[Text deleted]

Irvine (UCI)

[Text deleted]

Los Angeles (UCLA)

[Text deleted]

		<p>[Text deleted]</p> <p>Merced (UCM)</p> <p>[Text deleted]</p> <p>Riverside (UCR)</p> <p>[Text deleted]</p> <p>San Diego (UCSD)</p> <p>[Text deleted]</p>
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		[Text deleted]
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		<p>San Francisco (UCSF) [Text deleted]</p> <p>Santa Barbara (UCSB) [Text deleted]</p> <p>Santa Cruz (UCSC) [Text deleted]</p> <p>Office of the President (UCOP) [Text deleted]</p>
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Estimated total number of Authorized Users: [Text deleted]

Estimated total number of relevant Authorized Users for Reaxys: [Text deleted]

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: [Text deleted]
Title: Licensing Manager
Address (if different from Section 7.7): California Digital Library
415 20th Street, 4th Floor
Oakland, CA 94612 USA
E-mail: [Text deleted]
Phone: [Text deleted]

Billing Contact

Name: [Text deleted]
Title: CDL Acquisitions Coordinator
Name/Address (if different from Section 7.7): University of California Library System, Geisel
Library, University of California, 9500 Gilman
Drive .0175K, La Jolla, CA 92093 - 0175, USA
E-mail: [Text deleted]
Phone: [Text deleted]

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