



## ELSEVIER SUBSCRIPTION AGREEMENT

This agreement ("Agreement") is entered into as of 20 December 2017 between **National Library of Technology**, Technická 6, Dejvice, 160 80 Prague, Czech Republic (the "Consortium"), for and on behalf of itself and its members identified on Schedule 2 (the "Institutions") (all, collectively, 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 (i) the Subscriber (ii) their employees, faculty staff and researchers and individuals who are independent contractors of the Subscriber or are employed by independent contractors of the Subscriber, including those individuals affiliated with the Subscriber's locations listed in Schedule 2 (such Subscriber's locations hereinafter referred to as the "Sites"), (iii) users registered by the Subscriber, and (iv) individuals using computer terminals within the library facilities at the Subscriber Site permitted by the Subscriber to access the Subscribed Products for purposes of personal research, education or other non-corporate use. For the purpose of this Agreement the Authorized User (excluding Authorized Users defined in section (iv) above) is entitled to access and use the Subscribed Products from distant terminals outside the facilities of the Subscriber. Access to registered users as mentioned in (iii) shall be subject to a registration agreement that includes the additional terms and conditions set forth in Schedule 3.

#### 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
- 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;
- provide print or electronic copies of individual items from the Subscribed Products to other Authorized Users and to third-party colleagues for their scholarly or research use;
- access, search, browse, view, print, make electronic copies and store for the exclusive use of such Authorized User or, if the Authorized User is a librarian/information specialist, for the exclusive use of another Authorized User certain journal articles and book chapters from the ScienceDirect® online service that are not subscribed to as part of the Subscribed Products, with each twenty-four (24) hour access period for a selected article or chapter, a "Transaction".

The Subscriber may:

- print and deliver book chapters from the Subscribed Products to fulfill requests as part of the practice commonly known as “interlibrary loan” from non-commercial libraries located within the same country as the Subscriber and the requested book chapter is supplied by secure electronic transmission, using Ariel or its equivalent, whereby the electronic file is deleted immediately after printing.

#### 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.

#### 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 Consortium's usage activity available as described at <https://www.elsevier.com/sd usage reports>. Elsevier will make all reasonable efforts to comply with the then currently valid COUNTER Code of Practice. Elsevier recognizes that the National Library of Technology is the Lead Institution and as such is entitled access to Usage Data of each Institution while maintaining any applicable privacy or data protection legislation or regulations or contractual obligations. Elsevier will use reasonable effort to enable the Institutions to harvest the statistics using the Standardized Usage Statistics Harvesting Initiative (SUSHI) Protocol.

### **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. Distribution of usernames, passwords, credentials or otherwise providing remote access to the Subscribed Products by Authorized Users who are Walk-in Users is not permitted.

#### 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;
- provide true, complete and accurate IP addresses, as identified on Schedule 2, (if any) for the exclusive use by the Consortium and relevant Institution(s) (including, if requested by Elsevier, written confirmation by the relevant third party internet service provider) and proactively inform Elsevier of any changes to the Consortium and relevant Institution's IP addresses, including the addresses no longer being used exclusively by the Subscriber; 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 Consortium and relevant Institution(s) suspend the access from where the unauthorized use occurred upon notice to the Consortium and relevant Institution(s). The Consortium and relevant Institution(s) 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 Consortium and relevant Institution(s)' own negligence or willful misconduct and that the Consortium and relevant Institution(s) did not permit such unauthorized use to continue after having actual notice thereof. The Consortium and relevant Institution(s) will be responsible for the adherence to the terms and conditions of this Agreement by a third party provider the Consortium and relevant Institution(s) engages, in particular, if such third party provider supplies and manages IP addresses.

#### 3.3 *Compliance with Sanction Laws.*

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 sanctions or embargoes laws.

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

The Subscriber will be invoiced by and will pay the fees set forth in Schedule 1 (the "Fees") to Elsevier's

sales agent identified as the Billing Contact on Schedule 2 (the "Agent") in accordance with terms agreed upon between the Subscriber and the Agent. If the Subscriber fails to pay the full amount of the Agent's invoice on a timely basis, Elsevier may suspend the Subscriber's access to the Subscribed Products until the unpaid amounts of such invoice are paid. 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. The currency of account and the currency of payment for any sum to be paid by the Subscriber to Elsevier's sales agent under this Agreement will be EUR (meaning the lawful currency of the European part of the Netherlands at the effective date of this Agreement), notwithstanding any changes in Euro zone membership that might occur after the effective date of this Agreement, except in the event that (a) the Netherlands cease to be a member of the Euro zone of the European Union or (b) all participating members of the Euro zone cease to do so and the Euro ceases to exist, in which event the sum will become payable in the currency that will be officially adopted as the legal currency in the Netherlands. The Subscriber waives any right it may have at any time in any jurisdiction to pay any sum under this Agreement in a currency unit other than that in which it is expressed to be payable under this clause. The Subscriber will be charged local value added tax (VAT), based on the Subscriber's place of establishment, unless the Subscriber is a foreign relevant business person and provides to Elsevier its VAT Identification Number. The Subscriber will promptly notify Elsevier of any changes to its VAT Identification Number or VAT status. Elsevier may charge the Subscriber any VAT, fines, penalties, interest and other costs that Elsevier may incur as a result of incorrect VAT information.

## **SECTION 5. TERM.**

### *5.1 Term.*

The term of this Agreement will commence on 20 December 2017 and continue in perpetuity in accordance with the provisions of this Agreement.

## **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, or 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 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. The parties agree that the departure of one or more members of the Euro zone will not, in and of itself, be a "circumstance beyond its control" and will not have the effect of discharging or excusing performance of (any obligation under) 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 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.*

Elsevier will not, without the prior written consent of the Subscriber, transfer any personal information received by Elsevier from the Subscriber under this Agreement to any non-affiliated third party, except (i) to applicable service providers to the extent necessary to perform their functions for Elsevier in support of this Agreement; (ii) where reasonably necessary to address security, safety, fraud or other legal issues; and (iii) if the Subscribed Products are acquired by another company, or use it for any purpose other than as described in this Agreement.

### *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., Radarweg 29, 1043 NX Amsterdam, The Netherlands.

If to the Consortium: National Library of Technology, Technicka 6, Dejvice, 160 80 Prague, Czech Republic.



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, and share the Subscriber's IP address ranges and holdings information (ISSN/ISBN, access start and end date) with internet search engine providers for the sole purpose of displaying to Authorized Users in their internet search results links to full-text articles and books available in the Subscribed Products.

7.8 *Power of Attorney.*

The Consortium represents and warrants that the Institutions acknowledge and agree to be bound by the terms and conditions of the Agreement, including but not limited to the restrictions on access to and use of the services as set forth in the Agreement. The Consortium will inform each individual Institution specified in Schedule 2 of the terms and conditions of access.

7.9 *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.

**National Technical Library (Consortium)**

Name: Martin Svoboda

Title: Director

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

 Name: Gino Ussi

Title: Executive Vice President Research Solution Sales

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

**CONSORTIUM**

No. 1-14951654565

Subscribed Products - publisher	Access	2017 EUR
ScienceDirect® online - Elsevier B.V.	<a href="http://sciencedirect.com">sciencedirect.com</a>	
Elsevier eBooks Collections		
<b>TOTAL FEES</b>		

**Transaction Fee**

The Subscriber may purchase pre-paid Transactions (“PPT”) upon mutual agreement of the parties in writing. Unused PPT will be forfeited one (1) year after issue or upon termination of this Agreement, whichever is earlier.

**Elsevier eBooks Collections - Evidence-Based Selection Model**

The term of the subscription to the above Elsevier eBooks Collections will continue for a period of one (1) year. Upon expiration of the subscription, the Subscriber may access and use in perpetuity, in accordance with the usage provisions of the Agreement, a selection of titles from such Elsevier eBooks Collections (“Selected Titles”), the total value (in current list price) of which will not exceed 2.5% above the total amount of the one-year Evidence-Based Selection Fee. The Subscriber will give notice of its selection to Elsevier no later than thirty (30) days prior to the expiration of the subscription. In the event the Subscriber does not give notice of its selection to Elsevier within such time frame, Elsevier may (but is not required to) make the selection on the Subscriber’s behalf based on the Subscriber’s usage of such eBooks Collections during the term of the subscription. The perpetual access granted hereunder for the Selected Titles will be subject to payment of an annual access fee based on the number of chapters downloaded from the Selected Titles during the prior twelve (12) months at a rate of €0.063 per download, (adjusted annually for inflation) for the Subscriber’s access to the platform. Elsevier will make available for inspection by a duly authorized auditor of the Subscriber, at the Subscriber’s sole expense, the records concerning the calculation of such annual access fee one time per year during regular business hours upon thirty (30) days written notice to Elsevier. Consortium may, at its option, acquire, load and technically format on a Consortium server that enables access and use by Authorized Users an electronic copy of the Selected Titles for no additional cost in accordance with the usage provisions of the Agreement. The copy may not contain links and other features and functionality associated with the online version.