

ELSEVIER SUBSCRIPTION AGREEMENT

This agreement (“Agreement”) is entered into by Elsevier B.V. (“Elsevier”) and each DOE Site (as defined below). This Agreement as between Elsevier and each individual DOE Site constitute a separate, independent agreement of the parties thereto. This Agreement is incorporated by reference and attached to the DOE Integrated Contractor Purchasing Team Basic Ordering Agreement No. AGR-2021-21102.

The parties hereto agree as follows:

SECTION 1. DEFINITIONS.

“Authorized Users” is defined at Section 2.2 below.

“Delivery Order” will mean an order issued by Subscriber, which references this Agreement and outlines the fees for Subscriber’s subscription, to obtain access and use of the Subscribed Products.

“DOE” will mean Alliance for Sustainable Energy, LLC, on behalf of the US Department of Energy.

“DOE Site” will mean the independent operator(s) of the DOE facilities identified on Schedule 2.

“Subscribed Products” will mean the products and services identified in Schedule 1.

“Subscriber” will mean a DOE Site that has issued a Delivery Order that has been executed by Elsevier and the DOE Site.

SECTION 2. SUBSCRIPTION.**2.1 Subscribed Products.**

Elsevier hereby grants to 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.

2.2 Authorized Users/Sites.

Authorized Users are the individuals employed or otherwise engaged by Subscriber to perform research and development in furtherance of Subscriber’s business, including: employees; contractors, subcontractors, and employees thereof; consultants; students; and visiting professionals affiliated with the Subscriber’s locations listed on Schedule 2 (the “Locations”) and individuals using computer terminals within the library facilities at the Locations permitted by the Subscriber to access the Subscribed Products for purposes of personal research, education or other non-corporate use (“Walk-in Users”).

2.3 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;

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- 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;
- provide print or electronic copies of individual items from the Subscribed Products to governmental, regulatory, or judicial bodies worldwide, as part of submitting reports or applications to such bodies respecting the Subscriber's products or services in the course of the relevant Subscriber's business; and
- 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". A Transaction will be available for downloading within each twenty-four (24) hour access period.

The Subscriber may:

- access the text and data mining service online via an API at <http://dev.elsevier.com> to continuously and automatically extract and index and/or process information from the ScienceDirect Subscribed Products to which the Subscriber separately subscribes and load and integrate the results (the "TDM Output") on the Subscriber's text-mining system for access and internal use by Authorized Users for conducting scholarly research. In the event the Subscriber concurrently subscribes to Scopus and/or Scival, the Subscriber may for internal purposes also use the ScienceDirect text and datamining service granted hereunder for analysing/reporting on research performance; For the avoidance of doubt, the Subscriber and its Authorized Users shall not be permitted to create any derivative work based on the TDM Output in a way that would compete with the value or have the potential to substitute and/or replicate any other existing Elsevier products, services and/or solutions;and
- reference parts of the TDM Output for scientific sharing purposes (e.g. in journal articles and academic conference presentations), in the form of Snippets (as defined below) (with a maximum of one Snippet per full text article), a DOI link that points back to the individual full text article or book chapter, and basic bibliographic metadata referencing the article/chapter (limited to publication source title, article/chapter title, pages, and publication year) the Snippet was extracted from. "Snippets" means a few lines of query-dependent text of individual full text articles or book chapters which shall be up to a maximum length of 200 characters surrounding and excluding the text entity matched. This list of Snippets, DOIs and metadata shall include a notice in the following form:

"© Some rights reserved. This work permits non-commercial use, distribution, and reproduction in any medium, provided the original author and source are credited."

The Subscriber will be primarily liable for the compliance of all Authorized Users and the engaged third party vendor with this Agreement.

Elsevier will be entitled, at its sole discretion, costs and expense, to remotely audit the Subscriber's and any engaged third party vendor's entire TDM environment, which would include the extracted Data, the TDM Output, the hardware environment, software deployed and security controls in place and to ensure compliance with the terms and conditions of this Agreement. Elsevier must provide written notice to Subscriber and any engaged third party vendor 14 (fourteen) days in advance of any audit.

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Text and data mining service online may be accessed by, processed, or hosted by, vendors or other third parties retained by the Subscriber only with the express written permission of Elsevier and solely for the index and/or process information purposes of the Subscriber. The independent contractor and/or vendor will not ingest the dataset for any other reasons and will keep such extracted data, the Snippets, the TDM Output separate and segregated from any other data, and will have no right or ability to use the extracted data, the Snippets and the TDM Output in any other product or service offering. The Subscriber shall ensure that the independent contractor and/or vendor shall immediately delete the Data, the Snippets and the TDM Output from its servers upon termination or expiration of this Agreement or, if earlier, the agreement between Subscriber and the third party vendor.

The Subscriber will not appoint independent contractors and/or vendors which are located outside the European Union, Canada or the United States of America.

The Subscriber will exercise the same degree of care and apply the same level of security control with respect to the use of the text and data mining service online and the activities under this Agreement as with the Subscriber's own product and services.

As an additional restriction in this usage grant, the Subscriber and its Authorized Users may not:

- use any robots, spiders or other automated downloading programs, algorithms or devices to search, screen-scrape, extract, or index any Elsevier web site or web application, other than the text and data mining service online via an API; nor
- utilize the TDM Output in a way that would compete with the value of the final peer review journal article or the Subscribed Products, or have the potential to compete with, to substitute and/or replicate any other existing Elsevier products, services and/or solutions or to enhance the products or services and/or solutions of the engaged vendor.

2.4 *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 contractors or subcontractors of the Subscriber, or employees of contractors or subcontractors of the Subscriber may use the Subscribed Products only for the purposes of the research work for which they were contracted by the Subscriber.

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The Subscriber may:

- deliver journal articles from Subscribed Titles (as defined herein) and, if any, book chapters from the ScienceDirect Subscribed Products to fulfill requests as part of the practice commonly known as “interlibrary loan” from non-commercial libraries located within the United States, provided that the Subscriber’s staff reviews the requests and fulfills the requests in compliance with Section 108 of the U.S. Copyright Law (17 U.S.C. § 108) and the Guidelines for the Proviso of Subsection 108(g)(2) (Final Report of the National Commission on New Technological Uses of Copyrighted Works, 1978)

2.5 *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.

Notwithstanding anything to the contrary contained in this Agreement, more extensive usage terms might be permitted for open access content in the Subscribed Products as identified in the individual journal article as stated in the applicable user (e.g. CC) license.

2.6 *Gold Open Access Pilot.*

As a pilot to evaluate the Open Access initiatives across the Subscriber’s research landscape in conjunction with author workflows progress and joint communications with Elsevier, the Subscriber will participate in the Gold Open Access Pilot as further described in Schedule 3.

SECTION 3. ELSEVIER PERFORMANCE OBLIGATIONS.

3.1 *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, as duly signed by the Subscriber, which acceptance will be evidenced and timestamped by an authorized representative of Elsevier in the Netherlands.

3.2 *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.

3.3 *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.

3.4 *Usage Data Reports.*

Elsevier will make usage data reports on the usage activity of the Subscriber accessible online on a monthly basis to the librarians/administrators employed by the Subscriber and to the DOE for internal use or disclosure as required by law, regulation or DOE Order. Such reports may be accessed by vendors or other third parties retained by the Subscriber only upon notification to Elsevier by the Subscriber and only for the purpose of usage analysis of the Subscriber. Elsevier shall not provide the Subscriber’s usage data (except in aggregated, collective or anonymized form) to any third party without the Subscriber’s written authorization, unless the third party owns rights in the Subscribed Products or as required by law. In all cases, disclosure of such data by Elsevier shall fully protect the anonymity of individual users and the confidentiality of their searches, and will comply with all applicable privacy laws. Elsevier shall not disclose or sell to other parties usage data or information about the Subscriber or its Authorized Users (except in aggregated, collective or anonymized form) without the Subscriber’s express written

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permission, unless required by law.

SECTION 4. SUBSCRIBER PERFORMANCE OBLIGATIONS.

4.1 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.

4.2 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 notifying 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 appropriate policies and procedures to seek to ensure that all use of the Subscribed Products is for its legitimate business purposes and in compliance with all terms and conditions herein;
- implement and maintain its own appropriate program for credentials management and will use commercially reasonable efforts to follow the policies and procedures for account maintenance as may be communicated to the Subscriber by Elsevier from time to time in writing;
- on an appropriate basis, review access to the Subscribed Products by its passwords or credentials used to access the Subscribed Products to ensure that such access was in compliance with all terms and conditions herein; 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.

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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 relevant Subscriber. 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 gross negligence or willful misconduct and that the Subscriber did not permit such unauthorized use to continue after having actual notice thereof.

4.3 *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.

4.4 *Security Requirements.*

The Subscriber agrees that the Subscriber will have in place documented policies and procedures, which will be reviewed by the Subscriber 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 breach of such safeguards if such breach results in a compromise of any information provided hereunder and cooperate with Elsevier's reasonable requests surrounding such breach including taking appropriate steps to end such activity and to prevent any recurrence.

SECTION 5. DOE SITE ORDERS AND PRICING

Each DOE Site may issue a Delivery Order for the Subscribed Products during the term of this Agreement at the applicable price indicated in Schedule 1 or such lower price as agreed to by both parties, solely provided that each and every DOE Site identified in Schedule 1 issues a Delivery Order for the Subscribed Products at the applicable price indicated in Schedule 1, or such lower price as agreed to by both parties; notwithstanding anything to the contrary stated herein, in the Basic Ordering Agreement to which this Agreement is attached and incorporated by reference or elsewhere, the prices identified in Schedule 1 are only fixed to the extent that each and every DOE Site identified in Schedule 1 places an order for the Subscribed Products identified in Schedule 1 annually. A Delivery Order will be effective only when signed by both Elsevier and the DOE Site. Upon execution of a Delivery Order, the DOE Site becomes a Subscriber and will be bound by the terms of this Agreement. For clarity, each Subscriber will be independently and solely liable for any breach of this Agreement by said Subscriber.

SECTION 6. FEES AND PAYMENT TERMS.

Upon execution of a Delivery Order, Elsevier shall, within thirty (30) days, issue an invoice to Subscriber for fees associated with the Delivery Order. After Subscriber has received the invoice, Subscriber shall pay to Elsevier the respective fees set forth in Schedule 1 (the "Fees") within sixty (60) days of receipt of the invoice. The Fees will be exclusive of any sales, use, value added, withholding or similar tax and Subscriber will be liable for any such taxes in addition to the Fees unless Subscriber is entitled to exemption from taxation and provides to Elsevier appropriate documentation of its tax-exempt status upon Elsevier's request.

SECTION 7. TERM.

7.1 *Term.*

The term of this Agreement will commence on 01 January 2021 and continue until 31 December 2021. The term of each Delivery Order will commence on execution of the Delivery Order and continue for twelve (12) months thereafter or as otherwise expressly set forth in the applicable Delivery Order. The terms and conditions of this Agreement will continue to govern any outstanding Delivery Order despite termination of this Agreement.

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7.3 *Option to Renew.*

Subscriber may renew this Agreement for successive one-year terms, by giving written notice to Elsevier at least thirty (30) days prior to the expiration of the then current term. The total duration of this Agreement, including the exercise of any options under this clause, will not exceed five (5) years.

7.4 *Open Access Option.*

At any time during the term of this Agreement Elsevier shall be available to discuss, without obligations, new business models, including new open access models, upon the request of Subscriber. Should both parties agree to adopt any alternative business model, the parties will formalize the new business model in a separate agreement signed by both parties.

SECTION 8. ELSEVIER WARRANTIES AND INDEMNITIES.

8.1 *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.

8.2 *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.

8.3 *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.

8.4 *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 two (2) times 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 9. GENERAL.

9.1 *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, pandemics, telecommunications or Internet failures or damage to or destruction of any network facilities or servers) 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.

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9.2 *Severability.*

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

9.3 *Entire Agreement.*

This Agreement and DOE Integrated Contractor Purchasing Team Basic Ordering Agreement No. AGR-2021-21102 to which this Agreement is attached and incorporated by reference, 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.

9.4 *Modification.*

No modification, amendment or waiver of any provision of this Agreement will be valid unless in writing and signed by the parties.

9.5 *Assignment.*

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, except that this Agreement may be transferred or assigned to a successor contractor of the facility of which the Subscriber is Management and Operating Contractor, should the Prime Contract between Subscriber and DOE terminate during the term of this Agreement, provided that the successor contractor agrees to be bound by the terms and conditions hereof.

9.6 *Privacy.*

Elsevier will not, without the prior written consent of the Subscriber, share, sell, transfer or otherwise transmit personal information of any Authorized Users to any third party, including but not limited to log-ins recorded in system logs, IP addresses of Sites or Authorized Users accessing the Subscribed Products, saved searches, usernames or passwords, or use it for any purpose other than as described in this Agreement. The following are excepted (i) applicable service providers contracted by Elsevier to perform functions in support of this Agreement; (ii) where reasonably necessary to address security, fraud or other legal issues; and (iii) if the Subscribed Products are acquired by another company. If Elsevier is compelled by law or court order to disclose personally identifiable information of Authorized Users or patterns of use, Elsevier shall, if practicable, provide the Subscriber with adequate prior written notice as soon as practicable, so that the Subscriber or Authorized Users may seek protective orders or other remedies. Elsevier will notify the Subscriber as soon as practicable if Elsevier's systems are, or are suspected to be, breached and confidentiality of personally identifiable information may be compromised.

9.7 *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 Subscriber: The Subscriber's Primary Contact as identified on Schedule 2.

9.8 *Confidentiality.*

The Subscriber, and its employees, officers, directors and agents will maintain as confidential and not disclose to any non-affiliated third party, other than another Subscriber listed in the attached Schedule 1, and the DOE for audit and inspection purposes, without Elsevier's prior written consent or except as required by law, including the Freedom of Information Act (FOIA), 5 U.S.C. § 552, the financial terms 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

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necessary to address security, safety, fraud or other legal issues.

9.9 *Execution.*

This Agreement will be considered fully executed by each and every DOE Site upon signature of the DOE Integrated Contractor Purchasing Team Basic Ordering Agreement No. AGR-2021-21102, to which this Agreement is attached and incorporated by reference.