

## ELSEVIER LICENSE AGREEMENT

This license agreement ("Agreement") is entered into as of 22 August 2005 by and between **University of Science, Research Road 4, West Highland, R123 The Netherlands** (the "Subscriber"), and **Elsevier B.V., Radarweg 29, 1043 NX Amsterdam, The Netherlands** (the "Licensor").

The parties hereto agree as follows:

### SECTION 1. LICENSE.

#### 1.1 *License Grant.*

The Licensor hereby grants to the Subscriber the non-exclusive, non-transferable right and license to use the products and services identified in Schedule 1 ("Licensed Products") and provide the Licensed Products to its Authorized Users subject to the terms and conditions of this Agreement.

#### 1.2 *Authorized Users/Sites.*

Authorized Users for purposes of this Agreement are:

Full-time and part-time students, faculty, staff, researchers, and 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

The Subscriber shall promptly notify the Licensor of any material changes in the number of Sites or Authorized Users, which changes may result in early termination unless the parties are able to agree to appropriate fee adjustments.

#### 1.3 *Authorized Uses.*

The Subscriber and its Authorized Users may:

- 1.3.1 access, search, browse and view the Licensed Products;
- 1.3.2 print and download a reasonable portion of articles, abstracts, records or parts of chapters from the Licensed Products ("Excerpts");
- 1.3.3 incorporate links to Excerpts on the Subscriber's intranet and internet websites, provided that the appearance of such links and/or statements accompanying such links shall be changed as reasonably requested by the Licensor;
- 1.3.4 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, with each twenty-four (24) hour access period for a selected article, a "Transaction."
- 1.3.5 incorporate links to Excerpts in electronic coursepacks, reserves and course management systems for use in connection with courses offered by the Subscriber for academic credit, provided that the Subscriber obtains the prior written consent of the Licensor for use in connection with any non-credit courses.

The Authorized Users may:

- 1.3.6 transmit Excerpts to other Authorized Users and to third-party colleagues for their scholarly or research use.

The Subscriber may:

- 1.3.7 print and deliver Excerpts 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.

**1.4     *Restrictions on Use of Licensed Products.***

Except as may be expressly permitted in this Agreement, the Subscriber and its Authorized Users may not:

- 1.4.1 abridge, modify, translate or create any derivative work based on the Licensed Products without the prior written permission of the Licensor, except to the extent necessary to make them perceptible on a computer screen to Authorized Users;
- 1.4.2 remove, obscure or modify in any way any copyright notices, other notices or disclaimers as they appear in the Licensed Products; or
- 1.4.3 substantially or systematically reproduce, retain or redistribute the Licensed Products.

**1.5     *Intellectual Property Ownership.***

The Subscriber acknowledges that all right, title and interest in and to the Licensed Products remain with the Licensor and its licensors, except as expressly set forth in this Agreement, and that the unauthorized distribution of the Licensed Products could materially harm the Licensor and its licensors.

**SECTION 2. LICENSOR PERFORMANCE OBLIGATIONS.**

**2.1     *Access to Licensed Products.***

The Licensor will make the Licensed Products accessible to the Subscriber and its Authorized Users from the World Wide Web address set forth on Schedule 1 or as may be otherwise set forth herein.

**2.2     *Quality of Service.***

The Licensor shall use reasonable efforts to provide the Licensed Products with a quality of service consistent with industry standards, specifically, to provide continuous service with an average of 95% up-time per month, with the 5% 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.***

The Licensor reserves the right to withdraw from the Licensed Products content that it no longer retains the right to license or that it has reasonable grounds to believe is unlawful, harmful, false or infringing. If the withdrawal represents more than fifteen (15%) percent of the content comprising the Licensed Products, the Licensor shall refund to the Subscriber the amount of the Fees that is proportional to the amount of content withdrawn and the remaining unexpired portion of the period for which the Fees were paid.

**2.4     *Usage Data Reports.***

The Licensor will provide on a monthly basis to the Subscriber for its internal use only usage data reports on the Subscriber’s usage activity.

### **SECTION 3. SUBSCRIBER PERFORMANCE OBLIGATIONS.**

#### **3.1 *Authorized Access.***

Access to the Licensed Products shall be authenticated by the use of Internet Protocol ("IP") address(es) indicated by the Subscriber on Schedule 2 and/or by usernames and passwords.

#### **3.2 *Protection From Unauthorized Access and Use.***

The Subscriber shall use reasonable efforts to:

- 3.2.1 ensure that access to and use of the Licensed Products is limited to Authorized Users and that all Authorized Users are notified of and comply with the usage restrictions set forth in this Agreement;
- 3.2.2 ensure that any passwords used to access the Licensed Products are issued only to Authorized Users and that neither the Subscriber nor its Authorized Users divulge any passwords to any third party; and
- 3.2.3 immediately upon becoming aware of any unauthorized use of the Licensed Products, inform the Licensor and take appropriate steps to ensure that such activity ceases and to prevent any recurrence.

In the event of any unauthorized use of the Licensed Products, the Licensor may suspend access of the IP address(es) from which the unauthorized use occurred upon notice to the Subscriber.

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

The Subscriber shall pay to the Licensor the fees set forth on Schedule 1 (the "Fees") within thirty (30) days of the date of invoice. The Fees shall be exclusive of any sales, use, value added, withholding or similar tax and the Subscriber shall be liable for any such taxes in addition to the Fees.

### **SECTION 5. TERM.**

#### **5.1 *Term.***

The term of this Agreement shall commence on 1 January 2006 and continue until 31 December 2006.

#### **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 by 1 August prior to the end of the then current term that it does not intend to renew.

### **SECTION 6. WARRANTIES AND INDEMNITIES.**

#### **6.1 *Licensor's Warranty and Indemnity.***

The Licensor warrants that use of the Licensed Products in accordance with the terms and conditions herein will not infringe the intellectual property rights of any third party. The Licensor shall 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 Licensed Products in accordance with the terms and conditions herein infringes the intellectual property rights of such third party. The Subscriber agrees that if any such claim is made by a third party then the Subscriber will promptly notify and cooperate with the Licensor. This indemnity obligation shall survive the termination of this Agreement.

## 6.2 *Limitations on Warranties/Disclaimers.*

Except with respect to the warranties and indemnities expressly set forth in this Agreement:

6.2.1 The Licensor and its licensors shall not 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. The Licensor's liability to the Subscriber shall not, in any case, exceed a sum equal to the Fees paid by the Subscriber hereunder, even if the Subscriber has been advised of the possibility of such potential claim, loss or liability.

6.2.2 EXCEPT FOR THE EXPRESS WARRANTIES STATED HEREIN, THE LICENSED PRODUCTS ARE PROVIDED ON AN "AS IS" BASIS, AND THE LICENSOR MAKES NO REPRESENTATION OR WARRANTY, AND EXPRESSLY DISCLAIMS ANY LIABILITY, TO THE MAXIMUM EXTENT PERMITTED BY RELEVANT LAWS AND EXCEPT FOR THE EXPRESS INDEMNITIES STATED HEREIN, FOR ANY CLAIM ARISING FROM OR OUT OF THE LICENSED PRODUCTS, 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.

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

6.2.4 The warranties and indemnities by the Subscriber herein are made only to the extent allowed by law.

## 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, governmental restrictions, power failures, telecommunications or Internet failures or damage to or destruction of any network facilities or servers) shall be deemed a breach of this Agreement.

### 7.2 *Severability.*

The invalidity or unenforceability of any provision of this Agreement shall 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 or waiver of any provision of this Agreement shall be valid unless in writing and signed by the parties.

### 7.5 *Assignment.*

The Subscriber shall not assign, transfer or sublicense any of its rights or obligations under this Agreement unless it obtains the prior written consent of the Licensor, which consent shall not unreasonably be withheld.

7.6 *Privacy.*

The Licensor shall 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 shall be in writing and delivered to the party to whom such notice is directed at the address specified below or the facsimile number or electronic mail address as such party shall have designated by notice hereunder.

If to the Licensor: Elsevier B.V. c/o Regional Sales Office, Radarweg 29, 1043 NX Amsterdam, The Netherlands.

If to the Subscriber: University of Science, Research Road 4, West Highland, R123 The Netherlands.

**IN WITNESS WHEREOF**, the parties have executed this Agreement by their respective, duly authorized representatives as of the date first above written.

**University of Science**  
**(Subscriber)**

\_\_\_\_\_  
Name:  
Title:

**ELSEVIER B.V.**  
**(Licensor)**

\_\_\_\_\_  
Name: Frank Vrancken Peeters  
Title: Managing Director, Sales

# **ELSEVIER LICENSE AGREEMENT**

## **Schedule 1**

### **Licensed Products/Access/Fees**

**University of Science**

<b>Licensed Products – publisher</b>	<b>Access</b>	<b>2006</b>
<b>ScienceDirect® online – Elsevier B.V.</b>	sciencedirect.com	
<b>TOTAL FEES</b>		

#### **Adjustment of Fees**

After the initial year of the term, the Fees for the Subscriber's ScienceDirect Journal Collection(s) shall be subject to an adjustment to account for any titles added to or removed from the Journal Collection(s) during the remainder of the term of this Agreement.

#### **Journal Collection(s)**

The Subscriber's ScienceDirect Journal Collection(s) is described in Schedule 1.1.

#### **Transaction Fee**

The Subscriber shall be charged a fee of \$\_\_ per Transaction (as defined in Section 1.2) from Elsevier journals. The Subscriber may purchase pre-paid Transactions upon mutual agreement of the parties in writing. Unused pre-paid Transactions shall be forfeited upon termination of the Agreement.

## **ELSEVIER LICENSE AGREEMENT**

### **Schedule 1.1**

#### **Journal Collection(s)**

##### **Journal Collection(s):**

**Complete Collection:** Electronic access to the full text of all articles from the Elsevier journal titles published since 1 January 2002 identified on Annex A.

##### **Option to Substitute Subscribed Titles**

The Subscriber may substitute any subscribed journal title identified on Annex A ("Subscribed Title") with one or more journal titles of total comparable value (in current year list price) once annually upon notice to the Licensor by 1 August prior to the start of the next calendar year or at any time upon mutual agreement of the parties in writing.

##### **Option to Substitute or Refund Withdrawn Subscribed Titles**

The Subscriber may substitute any withdrawn Subscribed Title with one or more journal titles of total comparable value (in current year list price) at any time upon notice to the Licensor. In the event that no substitute journal title is available, the Licensor shall refund to the Subscriber the amount of the Fees paid for the withdrawn Subscribed Title for the remainder of the term.

##### **Access to Formerly Subscribed Titles:**

Upon termination of the Subscriber's license to ScienceDirect online, the Subscriber may, at its option, (1) acquire, load and technically format on a server that enables access and use by Authorized Users through the Subscriber's internal secure network an electronic copy of all or part of its Subscribed Titles for the publication years paid (i.e., not for titles or years that are added to the Subscriber's entitlement solely through the Subject Collection(s), as identified on Annex B, provided that the Subscriber defrays the costs of preparing the data set sought, and/or (2) continue to access a such Subscribed Titles online for an annual access fee based on the number of full-text articles downloaded from such titles during the prior twelve (12) months at a rate of \_\_\_ per download (adjusted annually for inflation and cost increases), in accordance with the usage provisions of the Agreement, which provisions shall survive the termination of the Agreement. Due to systems limitations, if the Subscriber subscribes to ScienceDirect Web Editions, the Subscriber will not be able to have continued online access to the backfiles of such titles (i.e. titles published prior to the last twelve (12) months). The electronic copy may not contain links and other features and functionality associated with the online version. If a particular Subscribed Title is withdrawn by the Licensor or not renewed by the Subscriber, but the Subscriber remains a ScienceDirect online subscriber, the Subscriber may continue to access online, at no additional charge, such formerly Subscribed Title, provided that the Licensor continues to hold the electronic rights to the Subscribed Title.

##### **Print Subscriptions and Expenditure Commitment**

The Subscriber has provided to the Licensor a complete list of Elsevier Subscribed Titles in print, including multiple subscriptions, the value of which, set forth above, shall be paid by the Subscriber in full no later than 31 March of each calendar year of the term of the Agreement. If the Subscriber fails to make full payment on a timely basis, the Subscriber shall be charged an additional fee equal to the value (in current year list price) of the unpaid print subscriptions. The Subscriber may substitute an electronic-only subscription for an existing print subscription during the term of the Agreement by giving the Licensor notice by 1 August prior to the start of the next calendar year of the Agreement, which substitution will not be considered a breach of the Subscriber's foregoing print expenditure commitment. An "e-only" discount of ten (10%) percent off the value of the then current year list price of the Subscriber's subscriptions that are accessed electronically only will be applied to the annual subscription renewal of the next calendar year and continue for each calendar year thereafter remaining in the term of this Agreement.



**Annex A to Schedule 1.1**  
**Subscribed Titles**

**University of Science**

Journal Number	ISSN	Subscribed Title (available online and in print)	Qty
00442	0146-6453	ANNALS OF THE ICRP	2
05192	0927-6505	ASTROPARTICLE PHYSICS	1
05299	1383-7621	JOURNAL OF SYSTEMS ARCHITECTURE	1
00357	0042-207X	VACUUM	1

SAMPLE



## ELSEVIER LICENSE AGREEMENT

### Schedule 2

#### Sites/IP Addresses

**Subscriber:** University of Science

<b>Sites:</b>	<b># Auth. Users:</b>	<b>IP Address(es)</b>
Research Road 4, West Highland, R123 The Netherlands	15,000	*.*.*.*

Estimated total number of Authorized Users at all Sites: 15,000

#### Primary Contact

Name:  
Title:  
Address (if different from Section 7.7):  
E-mail:  
Phone:  
Fax:

#### Billing Contact

Name:  
Title:  
Address (if different from Section 7.7):  
E-mail:  
Phone:  
Fax:

#### Accounts Payable Contact

Name:  
Title:  
Address (if different from Section 7.7):  
E-mail:  
Phone:  
Fax:

The Subscriber will promptly notify the Licensor of any changes to any of the contact information above and may substitute IP address(es) upon mutual agreement of the parties in writing.