

ELSEVIER SUBSCRIPTION AGREEMENT

This agreement (“Agreement”) is entered into as of 5 November 2010 by and between **Council of Prairie and Pacific University Libraries**, 2005 Sooke Road, Victoria, BC V9B 5Y2, Canada (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, 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 permitted by the Subscriber to access the Subscribed Products.

- access, search, browse and view the Subscribed Products;
- print, make electronic copies of and store for the exclusive use of such Authorized User individual items from the Subscribed Products;
- incorporate links to the Subscribed Products on the Subscriber’s intranet and internet websites and in electronic coursepacks, reserves and course management systems, provided that the appearance of such links and/or statements accompanying such links shall 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; and
- access, search, browse, view, print, make electronic copies and store for the exclusive use of such 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.

1.4 *Restrictions on Use of Subscribed Products.*

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

Authorized Users who are independent contractors may use the Subscribed Products only for the purposes of the contracted 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 shall 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 Subscriber's usage activity accessible online on a monthly basis to the librarians/administrators employed by the Subscriber for internal use only. 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.

SECTION 3. SUBSCRIBER PERFORMANCE OBLIGATIONS.

3.1 *Authentication.*

Access to the Subscribed Products shall be authenticated by the use of Internet Protocol ("IP") address(es) indicated by the Subscriber on Schedule 2 and/or usernames and passwords and/or a delegated authentication mechanism, identified on Schedule 2, requiring at least two different credentials.

3.2 *Protection from Unauthorized Access and Use.*

The Subscriber shall use reasonable efforts to:

- ensure that access to and use of the Subscribed 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;

- ensure that any passwords or credentials used to access the Subscribed Products are issued only to Authorized Users and that neither the Subscriber nor its Authorized Users divulge any passwords or credentials to any third party; and
- immediately upon becoming aware of any unauthorized use of the Subscribed Products, inform Elsevier and take appropriate steps to ensure that such activity ceases 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. The Subscriber shall not be liable for unauthorized use of the Subscribed Products by any Authorized Users provided that the Subscriber did not intentionally assist in or encourage such unauthorized use or permit such unauthorized use to continue after having actual notice thereof.

SECTION 4. FEES AND PAYMENT TERMS.

The Subscriber shall pay to Elsevier the fees set forth in Schedule 1 (the “Fees”) no later than thirty (30) days for the Fees due for the following year of the term. Late payments shall be subject to interest charges of 1% per month on the unpaid balance. 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 2011 and continue until 31 December 2012.

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. 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 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 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 cooperate with Elsevier. This indemnity obligation shall 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, ELSEVIER AND ITS SUPPLIERS PROVIDE THE SUBSCRIBED PRODUCTS “AS IS” AND MAKE NO REPRESENTATION OR

WARRANTY AND EXPRESSLY DISCLAIM ANY LIABILITY FOR ANY CLAIM ARISING FROM OR OUT OF THE SUBSCRIBED 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.

6.4 *Limitation of Liability.*

Except for the express warranties and indemnities stated herein and to the extent permitted by applicable law, in no event shall 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 shall 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, 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, amendment 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 license any of its rights or obligations under this Agreement unless it obtains the prior written consent of Elsevier, which consent shall not unreasonably be withheld.

7.6 *Privacy.*

Elsevier 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 Elsevier: Elsevier B.V. c/o Regional Sales Office, 360 Park Avenue South, New York, NY 10010-1710, USA.

If to the Subscriber: University of Winnipeg, 515 Portage Av, Winnipeg, MB R3B 2E9, Canada.

7.8 Confidentiality.

The Subscriber and its employees, officers, directors and agents shall maintain as confidential and not disclose to any non-affiliated third party without Elsevier's prior written consent or as required by law the financial terms and commercial conditions of this Agreement.

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.

COUNCIL OF PRAIRIE AND PACIFIC UNIVERSITY LIBRARIES
(Subscriber)

Name:
Title:

ELSEVIER B.V.
(Elsevier)

Name: Martin O'Malley
Title: Managing Director, Global Sales & Customer Marketing, Science & Technology

ELSEVIER SUBSCRIPTION AGREEMENT
Schedule 1
Subscribed Products/Access/Fees

COUNCIL OF PRAIRIE AND PACIFIC UNIVERSITY LIBRARIES

UNIVERSITY OF BRITISH COLUMBIA

Contract No. 1-1876782358

Subscribed Products – publisher	Access	2011	2012
Sciverse@ScienceDirect@ online – Elsevier B.V	sciencedirect.sciverse.com		
Elsevier Reference Works			
- International Encyclopedia of the Social & Behavioral Sciences			
TOTAL FEES			

UNIVERSITY OF CALGARY

Contract No. 1-1876713408

Subscribed Products – publisher	Access	2011	2012
Sciverse@ScienceDirect@ online – Elsevier B.V	sciencedirect.sciverse.com		
Elsevier Reference Works			
- International Encyclopedia of the Social & Behavioral Sciences			
TOTAL FEES			

UNIVERSITY OF WINNIPEG

Contract No. 1-1876216160

Subscribed Products – publisher	Access	2011	2012
Sciverse@ScienceDirect@ online – Elsevier B.V	sciencedirect.sciverse.com		
Elsevier Reference Works			
- International Encyclopedia of the Social & Behavioral Sciences			
TOTAL FEES			

Transaction Fee

The Subscriber shall be charged a fee of \$22.00 per Transaction (as defined in Section 1.3) from Elsevier journals and books. 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 all of the Subscriber’s annual subscriptions on ScienceDirect online.

Elsevier Reference Works Additional Terms and Conditions

Upon termination of the subscription for the above reference work(s), the Subscriber may, at its option, acquire a copy of such reference work(s) (1) in print, if available, at an eighty (80%) percent discount off the then current list price and/or (2) in electronic format for cost, provided that the Subscriber paid in full the Fees for such reference work(s) for a minimum of three (3) years prior to termination. The copy may not contain links and other features and functionality associated with the online version. The Subscriber may load and technically format the electronic copy on a server that

enables access and use by Authorized Users in accordance with the usage provisions of the Agreement, which provisions shall survive the termination of the Agreement.

ELSEVIER SUBSCRIPTION AGREEMENT
Schedule 2
Sites/Authentication/Contacts

Subscriber: Council of Prairie and Pacific University Libraries

Sites:	# Auth. Users:	Authentication:
University of British Columbia		128.189.(64-255).(0-255) 134.87.(58-58).(0-255) 137.82.(0-255).(0-255) 142.90.(0-255).(0-255) 142.103.(0-255).(0-255) 142.231.(64-95).(0-255) 142.231.(110-110).(225-230) 192.139.(193-193).(0-255) 198.162.(32-63).(0-255) 206.87.(0-63).(0-255) 206.87.(96-159).(0-255) 206.87.(192-223).(0-255) 207.23.(94-95).(0-255)
University of Calgary		86.36.(48-48).(162-190) 136.159.(0-234).(0-255) 136.159.(235-235).(0-165) 136.159.(235-235).(167-173) 136.159.(235-235).(175-255) 136.159.(236-255).(0-255) 139.48.(0-19).(0-255) 139.48.(24-251).(0-255) 139.48.(253-253).(0-255) 198.161.(2-2).(0-240) 198.161.(2-2).(242-255) 198.161.(243-243).(193-195) 198.161.(243-243).(196-198)
University of Winnipeg		142.132.(0-255).(0-255)

Estimated total number of Authorized Users at all Sites: 100,000

The Subscriber shall promptly notify Elsevier of any material changes in the number of Authorized Users, which changes may result in termination 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 substitute IP address(es) upon mutual agreement of the parties in writing.

Primary Contact

Name: Sandy Slade
Title: Executive Director
Name/Address (if different from Section 7.7):
E-mail: coppul@royalroads.ca
Phone: 250-391-2554
Fax: 250-391-2556

Billing Contact

Name: Sandy Slade
Title: Executive Director
Name/Address (if different from Section 7.7):
E-mail: coppul@royalroads.ca
Phone: 250-391-2554
Fax: 250-391-2556

Accounts Payable Contact

Name:

Title:

Name/Address (if different from Section 7.7):

E-mail:

Phone:

Fax:

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