



PUBLISH AND READ AGREEMENT

This publish and read agreement (“Agreement”) is entered into as of the first of September 2023 by and between **MPDL Services gGmbH**, Landsberger Str. 346, 80687 München, Germany (the “DEAL Operating Entity”), for the benefit of the Participating Institutions as listed in Schedule 2.2 (the “Participating Institutions”), and **Elsevier B.V.**, Radarweg 29, 1043 NX Amsterdam, The Netherlands on behalf of its affiliates (“Elsevier”).

Preamble

Recognizing the evolving landscape of scholarly publishing and the growing momentum towards open access, the DEAL Consortium, through the DEAL Operating Entity, and Elsevier are pleased to join together to formalize their shared commitment to advancing the dissemination of knowledge through this transformative open access publishing agreement.

The DEAL Consortium, instituted by the Alliance of German Science Organisations and led by the German Rectors’ Conference (HRK), is open to around 1,000 mostly publicly funded academic institutions in Germany, including universities, universities of applied sciences, research institutes, and state and regional libraries and is represented by the DEAL Operating Entity, MPDL Services gGmbH. The DEAL Operating Entity boosts the visibility of the scientific community in Germany by securing open access publishing services and access to scientific literature for researchers. It provides the infrastructure and the know-how that makes it possible for research institutions across Germany to benefit, collectively and equitably, from the cost-effectiveness of the nationwide DEAL agreements with scholarly publishers and concludes such DEAL agreements for the use and benefit of the scientific community in Germany. Comprising members of the Alliance of Science Organisations, research and research infrastructure organizations, the DEAL Operating Entity, a non-profit organisation (gGmbH), provides a crucial organisational framework to foster the transition to open access in Germany and supports institutions in redirecting their investments in scholarly publishing towards the open dissemination of research.

As a global leader in information and analytics, Elsevier helps researchers and healthcare professionals advance science and improve health outcomes for the benefit of society. It does this by facilitating insights and critical decision-making for customers across the global research and health ecosystems. Elsevier’s 2,800 scientific journals uphold the highest standards of quality and integrity. Elsevier is committed to advancing open science and supports countries and institutions around the world with their open access goals.

Recent developments in the German policy context, such as the [Joint Guidelines of the Federal Government and the Länder on Open Access](#) and the [Recommendations on the Transformation of Scientific Publishing](#) issued by the German Council of Science and Humanities, have set the stage for our commitment to promote open access publishing as the standard for scholarly communication. At the heart of this agreement is the goal of the DEAL Consortium and Elsevier to enable authors in Germany to publish their work openly and to retain copyright, in order to increase the visibility of German research in the global scientific community. From 2024, both parties aim to achieve a 100% open access publication rate for hybrid articles, and commit to working together in ways that promote this shared goal.

With this 5-year transformative agreement running until 31.12.2028, Elsevier and the DEAL Operating Entity intend to offer to all eligible institutions signing up reading access to Elsevier journals (including Cell Press and The Lancet), with perpetual access to all published articles in the years of their participations. Authors from participating institutions will be able to publish open access articles in all Elsevier Core Hybrid journals, as well as in the hybrid journals of Cell Press and The Lancet. A per-article fee charged to participating institutions through the DEAL Operating Entity will cover both reading and

open access hybrid publishing services, with a separate APC charged for Cell Press and The Lancet journals. For publications of their researchers in Fully Gold Open Access Journals (including fully gold Cell Press and The Lancet journals), the institutions shall be given discounts on the list prices.

In our journey of collaboration and innovation, we are advancing ethical data practices and mutual trust. Through constructive negotiations, the DEAL Consortium and Elsevier have taken a notable step by introducing an expansive data privacy clause to this agreement that underscores our mutual commitment to respecting the personal data of authors and users. For the first time, the agreement lays out detailed terms for the responsible collection, processing and use of personal user data, enhancing transparency and privacy and agree to hold a joint workshop to discuss further steps to strengthen data protection and data privacy.

Both DEAL and Elsevier are committed to transparency through the making available of this agreement at the following DOI: <https://doi.org/10.17617/2.3523659>, and through the provision of clear and transparent fees institutions will pay for publishing and reading.

The parties hereto agree as follows:

SECTION 1. PRODUCTS.

1.1 Products.

Elsevier hereby grants to the Participating Institutions the right to publish unlimited Eligible Articles in Eligible Journals in accordance with Schedule 3 of this Agreement, and the non-exclusive, non-transferable, post termination right to access and use the products and services identified in Schedule 1 (“Products”) and provide the 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 Participating Institutions and individuals who are independent contractors or are employed by independent contractors of the Participating Institution affiliated with the Participating Institution’s locations listed on Schedule 2.2 (the “Sites”), registered library users located in Germany in case of all German regional and state libraries, as well as German central subject libraries, and individuals using computer terminals within the library facilities at the Sites permitted by the Participating Institution to access the Products for purposes of personal research, education or other non-corporate use (“Walk-in Users”).

1.3 Authorized Uses.

Each Authorized User may:

- access, search, browse and view the Products;
- print, download, and store a reasonable portion of individual items from the Products for the exclusive use of such an Authorized User;
- incorporate links to the Products on the Institution’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 Products to other Authorized Users and to third-party colleagues for their scholarly or research use;
- store individual journal articles from the Products in the private library of a social networking site for the Authorized User’s own personal use only;
- share individual journal articles from the Products with third party colleagues individually for their scholarly or research use;
- share individual journal articles from the Products with a limited number of third-party colleagues as part of an invitation only working group on non-commercial platforms or tools, for personal, scholarly or research use;
- 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 Products, with each twenty-four (24) hour access period for a selected article or chapter, a “Transaction.”.

The Participating Institutions may:

- print and deliver journal articles from the 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 Institution, provided that such print and delivery is without commercial gain and not routinely or systematically provided (whether on one occasion or over a period of time) in such a manner or in such quantities as to substitute for a subscription by the receiving library or the end user.
- Authorized Users may, in accordance with Section 60d of the German Act on Copyright and Related Rights (Urheberrechtsgesetz – UrhG), subject to the use restrictions set out in this Section, for non-commercial, academic research purposes only:

Text and data mine the ScienceDirect Product dataset via the agreed delivery method, and load and integrate the results (the “TDM Output”) on the Institution’s internal system for access by Authorized Users; and share the TDM Output externally, subject to the following notice: “© Some rights reserved. This work permits academic research purposes only, distribution, and reproduction in any medium, provided the original author and source are credited.”

Participating Institutions shall inform the Authorized Users that upon completion of the relevant text and data mining project, all copies (including back-ups or otherwise) of the ScienceDirect Product dataset shall be immediately and permanently deleted. Participating Institution and Authorized Users may retain a copy of the TDM Output for academic research purposes subject to the terms and conditions as set out in this Agreement.

The Product dataset and any TDM Output may be accessed, processed, or hosted by third party vendors retained by the Participating Institution only with the express written permission of Elsevier and solely for the purposes as set out in this Section. The Participating Institution will ensure that the third party vendor will not ingest the ScienceDirect Product dataset for any other reasons as defined in this Agreement, will keep such ScienceDirect Product dataset secure in accordance with the terms of this Agreement, and will have no right or ability to use the ScienceDirect Product dataset in any other product or service offering. The Participating Institution shall ensure that the third-party vendor shall immediately delete the ScienceDirect Product dataset and TDM Output from its servers upon termination or expiration of this Agreement or, if earlier, the agreement between Participating Institution and the third party vendor.

The Participating Institution and its Authorized Users may not create any derivative work (including TDM Output) in a way that would compete with or have the potential to substitute and/or replicate and/or reverse engineer back to any existing Elsevier products, services and/or solutions including a substantial part thereof or otherwise commercially use or allow commercial use of the derivative work (including TDM Output).

1.4 *Restrictions on Use of Products.*

Except for open access content in the Products as identified in the individual journal article as stated in the applicable open access user (e.g. Creative Commons) license or as expressly stated in this Agreement or otherwise permitted in writing by Elsevier, the Participating Institution and its Authorized Users may not:

- abridge, modify, translate or create any derivative work and/or service (including resulting from the use of artificial intelligence tools), based on the 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 Products;

- use any robots, spiders, crawlers or other automated downloading programs, tools, or devices to search, scrape, extract, deep link, index and/or disrupt the working of the Products;
- use the Products in combination with an artificial intelligence tool (including to train an algorithm, test, process, analyse, generate output and/or develop any form of artificial intelligence tool);
- post individual items from the Products on social networking sites; or
- substantially or systematically reproduce, retain, store locally, redistribute or disseminate the Products.

Authorized Users who are individuals who are independent contractors or are employed by independent contractors may use the Products only for the purposes of the contracted research work for the Institution.

1.5 *Intellectual Property Ownership.*

The Participating Institution acknowledges that all right, title and interest in and to the 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 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 Products as identified in the individual journal article as stated in the applicable open access user (e.g. Creative Commons) license.

SECTION 2. ELSEVIER PERFORMANCE OBLIGATIONS.

2.1 *Access to Products.*

Elsevier will make the Products accessible to the Participating Institution and its Authorized Users from the internet address set forth on Schedule 2 or as may be otherwise set forth herein, upon receipt by Elsevier of this Agreement document in the territory of The Netherlands, as duly signed by the Participating Institution by means of the Elsevier Terms of Use agreement substantially in the form set forth on Schedule 4, which acceptance will be evidenced and timestamped by an authorised representative of Elsevier in the Netherlands without undue delay.

2.2 *Quality of Service.*

Elsevier will use reasonable efforts to provide the 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 such a time to minimize inconvenience to the Participating Institution 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 Products any 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 usage activity of each Participating Institution, as well as aggregated usage reports for DEAL Operating Entity, available as described at https://www.elsevier.com/sd_usage_reports. Such reports may be accessed by vendors or other third parties retained by the Participating Institution only with the express written permission of Elsevier, and for the purpose of usage analysis of the Participating Institution. Elsevier will adhere to the specifications

of the currently effective COUNTER Code of Practice.

SECTION 3. PARTICIPATING INSTITUTION PERFORMANCE OBLIGATIONS.

3.1 Authentication.

Access to the 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 by the Participating Institution. Access to the Products by Authorized Users who are Walk-in Users is permitted provided that access is limited to fixed terminals/workstations at the Sites only. Remote access to the Products by Walk-in Users is not permitted, except for registered library users located in Germany in the case of all German regional and German state libraries, as well as German central subject libraries. The wider distribution or the making discoverable of these usernames, passwords, and other access credentials by Authorized Users is not permitted.

3.2 Protection from Unauthorized Access and Use.

The Participating Institution will:

- take appropriate measures to protect against the misuse or unauthorized access, whether by the Participating Institution or any third party, through or to (a) the Participating Institution’s credentials used to access the Products; and (b) the Products and/or information derived therefrom;
- manage identification, use, access and control of all credentials used to access the Products in an appropriately secure manner, including, but not limited to, by:
 - limiting access to and use of the Products to Authorized Users and notifying all Authorized Users of the usage restrictions set forth in this Agreement and that they must comply with these restrictions;
 - issuing any passwords or credentials used to access the 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 2.2, (if any) for the exclusive use by each Participating Institution (including, if requested by Elsevier, written confirmation by the relevant third party internet service provider) and proactively inform Elsevier of any changes to each Participating Institution’s IP addresses, including addresses no longer being used exclusively by each Participating Institution;
- immediately deactivate any credentials when no longer needed or where access presents a security risk;
- implement and maintain its own appropriate program for credentials management and ensure access to the Products via such credentials is reviewed on an appropriate basis; and
- promptly upon discovering by itself, or upon being notified by Elsevier or a third party, that there has been unauthorized use of the Products or a security issue permitting unauthorized use, the Participating Institution will take appropriate steps to end such an activity, and to prevent any recurrence, including, but not limited to, implementing required updates and configuration where needed to rectify the issue. When notified by a third party or upon discovering the unauthorized use directly, Participating Institution must promptly notify Elsevier of the unauthorized use. The Participating Institution will cooperate with Elsevier and share information, subject to any applicable confidentiality or nondisclosure obligations, concerning the unauthorized use or security issue.

In the event of any unauthorized use of the Products, Elsevier may suspend the access and/or require that the Participating Institution suspend the access from where the unauthorized use occurred upon notice to the Participating Institution. The Participating Institution will not be liable for unauthorized use of the Products by any Authorized Users provided that the unauthorized use did not result from the Participating Institution's own negligence or willful misconduct and that the Participating Institution did not permit such unauthorized use to continue after having received actual notice thereof. The Participating Institution will be responsible for the adherence to the terms and conditions of this Agreement by a third-party provider with whom the Participating Institution engages, in particular, if such a third-party provider supplies and manages IP addresses.

3.3 *Security Requirements.*

The Participating Institution agrees that it will have in place documented policies and procedures, which will be reviewed by the Participating Institution periodically, and if appropriate, tested and updated, 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 Participating Institution will promptly notify Elsevier if it determines that there has been a failure of such safeguards if such failure results in a compromise of the confidentiality or security of any Elsevier Content provided hereunder and cooperate with Elsevier's reasonable requests surrounding such failure, including taking appropriate steps to end such activity and to prevent any recurrence. For the purpose of this Section 3.3, "Elsevier Content" means any material or information which Elsevier provides or makes available to the Participating Institution in connection with the Products and performance of this Agreement.

SECTION 4. FEES AND PAYMENT TERMS.

The DEAL Operating Entity will pay to Elsevier the fees set forth in Schedule 1 (the "Fees") within thirty-one (31) days of date of invoice. Late payments will be subject to interest charges of 1% per month on the unpaid balance. In addition to other remedies provided in this Agreement, Elsevier reserves the right to suspend access to the Products upon thirty (30) days' prior written notice, and without incurring liability if the full amount of any Elsevier invoice hereunder has not been paid within the agreed payment deadline. Elsevier and the DEAL Operating Entity 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 DEAL Operating Entity will be liable for any such taxes in addition to the Fees. Any sum to be paid by the DEAL Operating Entity to Elsevier under this Agreement will be paid by way of transfer to Elsevier's bank account in the Netherlands. The currency of account and the currency of payment for any sum to be paid by the DEAL Operating Entity to Elsevier or vice versa 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 DEAL Operating Entity 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 DEAL Operating Entity will be charged local value added tax (VAT), based on the DEAL Operating Entity's place of establishment, unless the DEAL Operating Entity is a foreign relevant business person and provides to Elsevier its VAT Identification Number. If the DEAL Operating Entity pays VAT under the reverse charge mechanism, Elsevier will provide DEAL Operating Entity with all the necessary information for that purpose, including, if necessary, the quota of Fees for different parts of its services incurring taxed with different VAT rates. Each party will promptly notify the other party of any changes to its VAT Identification Number or VAT status. Each party may charge the other party any VAT, fines, penalties, interest, and other costs that the other party may incur as a result of incorrect VAT information.

SECTION 5. TERM.

5.1 Term.

The term of this Agreement will commence on September 1 2023 and continue through and including 31 December 2028 (“Initial Term”).

5.2 Renewal.

After the Initial Term both parties shall have the option to renew the Term for a successive period subject to negotiations (“Renewal Term”). The Initial Term and Renewal Term are collectively the “Term”.

5.3 Early Termination.

The DEAL Operating Entity may give upon ninety (90) days’ notice to Elsevier on behalf of any Participating Institution to terminate the Participating Institution’s Elsevier Terms of Use Agreement and with that, their participation in this Agreement, to be effective for the subsequent calendar year if, in an exercise of reasonable discretion of the Participating Institution, the Participating Institution is not able to continue their participation in this Agreement due to external circumstances outside their control impacting their financial situation. Such external circumstances include, but are not limited to, if sufficient funds are not provided, allocated, or allotted in future government-approved budgets of the Participating Institution or reasonably available or expected to become available from other sources.

5.4 Temporary suspension of access

The DEAL Operating Entity reserves the right to withdraw the Elsevier Terms of Use Agreement of any Participating Institution, thereby suspending the access granted by Elsevier to the Participating Institution under Section 2.1, in case of a continuing and material violation of the participation (e.g. non-payment of an invoice after reminder) contract between the DEAL Operating Entity and the Participating Institution by the Participating Institution.

SECTION 6. ELSEVIER WARRANTIES AND INDEMNITIES.

6.1 Warranties.

Elsevier warrants that use of the 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 DEAL Operating Entity, the Participating Institutions and their 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 Products in accordance with the terms and conditions herein infringes upon the intellectual property rights of such third party. If any such action or claim is made, the Participating Institution 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 PRODUCTS ARE PROVIDED “AS IS” AND ELSEVIER AND ITS SUPPLIERS EXPRESSLY DISCLAIM ALL WARRANTIES AND REPRESENTATIONS OF ANY KIND WITH REGARD TO THE 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 the DEAL Operating Entity, the Participating Institutions, 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, nor will the liability of either party exceed a sum equal to the Fees paid hereunder during the then current calendar year period, even if Elsevier or any supplier has been advised of the possibility of such liability or damages, except for damages that cannot be excluded by contract under German 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, power failures, telecommunications or Internet failures, or damage to or destruction of any network facilities or servers) that prevents it from fulfilling its obligations under this Agreement (any such circumstances being "Force Majeure") 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. Notwithstanding the foregoing, a party's financial inability to perform its obligations will in no event constitute a Force Majeure.

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 or Participating Institution terms, written or oral, between the parties with respect to the subject matter contained herein. In the event of any conflict, inconsistency, ambiguity or difference between the terms and conditions in this Agreement those in the Agreement will take precedence.

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 IP addresses, authentication mechanisms, invoicing and contact address details which may be confirmed by Elsevier in an email notice sent to the DEAL Operating Entity.

7.5 Assignment.

Neither the DEAL Operating Entity nor the Participating Institution will assign, transfer or license any of its rights or obligations under this Agreement to third parties unless it obtains the prior written consent of Elsevier, which consent will not unreasonably be withheld. For the avoidance of doubt, allocations of workflow responsibilities between the DEAL Operating Entity and the Participating Institutions are not considered assignments, transfers or licenses of rights, or obligations and are in the sole discretion of the DEAL Operating Entity and the Participating Institution however the DEAL Operating Entity and the Participating Institution involved shall remain responsible for the obligations under the Agreement.

7.6 Data Protection.

7.6.1 To the extent that a Participating Institution and its Authorized Users provide personal data to Elsevier during account registration or otherwise, the parties acknowledge and agree that such information will be processed by Elsevier in accordance with the Elsevier privacy policy applicable to the Products at <https://www.elsevier.com/legal/privacy-policy> and the Elsevier Data Processing Addendum at <https://www.elsevier.com/legal/data-processing-terms> ("DPA") as applicable. Terms used but not defined in this clause 7.6 shall have the meanings ascribed to them in the DPA.

- 7.6.2 The parties have assessed their respective personal data processing activities under this Agreement and have determined that they each carry out their respective processing as an independent controller. If a competent supervisory authority or court decides that any personal data processing activity under this Agreement involves the parties processing personal data as joint controllers under Art. 26 GDPR, the parties agree to negotiate in good faith a joint controller addendum to allocate their respective data protection responsibilities and Elsevier shall defend, indemnify and hold harmless DEAL Operating Entity and each Participating Institution for any violation or alleged violation of Art. 26 GDPR.
- 7.6.3 Elsevier will not generate, track, record, store, share, transfer, and/or sell personal data of Authorized Users without the consent of the respective Authorized User (which must not be included in a general opt-in), unless the processing is necessary for (i) the performance of this Agreement or other contract according to Art. 6 Par. 1(b) GDPR, (ii) compliance with a legal obligation to which Elsevier is subject according to Art. 6 Par. 1(c) GDPR; or (iii) a legitimate interest according to Art. 6 Par. 1 (f) GDPR. This restriction on personal data processing by Elsevier includes but is not limited to the collection, analysis, profiling and aggregation of personal data, such as through utilization of cookies, device fingerprinting technology, or similar technologies that track user behavior that are outside the services under the Agreement and the rights and obligations of the Parties under the Agreement.
- 7.6.4 The Parties agree that personal data shall only be processed in a Member State of the European Union (EU). Any relocation to a third country shall only be allowed if the specific conditions of Art. 44 et. seq. GDPR are met.
- 7.6.5 Elsevier shall implement the following measures:
- a. Elsevier shall refrain from storing any full IP addresses for a time period longer than necessary for the purpose of the processing. Elsevier will utilize encryption technology as appropriate.
 - b. Elsevier shall implement a cookie management platform on the website of the Products to enable Authorized Users to view the nature and duration of cookies and manage their choices with respect to cookies that are not strictly necessary to provide, manage, operate and secure the website of the Products or otherwise for the performance of this Agreement.
 - c. Elsevier shall refrain from using technologies allowing the recovery of cookies or similar technologies deleted by the users in their browsers.
- 7.6.6 The parties agree to hold a joint workshop during the first twelve (12) months of the term of the Agreement to discuss further steps to strengthen data protection and data privacy. In the workshop, the parties will, regarding IP address geolocation, assess whether and how to delete or overwrite the final two octets of any IP addresses collected from Authorized Users using the Products that are not the IP addresses of any Participating Institutions. The parties shall undertake good faith efforts to contribute by means of an outcome-focused design process.

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 DEAL Operating Entity: MPDL Services gGmbH, Landsberger Str. 346, 80687 München, Germany.

7.8 *Compliance with Laws.*

Each party will comply with all applicable laws and regulations relating to its duties and obligations under this Agreement. Elsevier reserves the right to deny access to the Products to any person or entity who is prohibited from receiving such access based on any applicable export control and trade sanctions laws or embargo programs.

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.

7.10 *Governing Law and Venue.*

This Agreement will be governed by and construed in accordance with the laws of the Federal Republic of Germany, without regard to conflict of law principles, without reference to the stipulations of the CISG (United Nations Convention on Contracts for the International Sale of Goods) and the parties irrevocably consent to the exclusive jurisdiction of the courts of Munich with respect to any action or suit arising out of or pertaining to this Agreement.

7.11 *Contracting Authority.*

DEAL Operating Entity is entering into this Agreement on its own behalf, and is not authorized by any Participating Institution to legally represent such Participating Institution other than by means of an Elsevier Terms of Use Agreement substantially in the form set forth on Schedule 4 signed by the Participating Institution and delivered to Elsevier by DEAL Operating Entity.

7.12 *Publicity.*

Both parties shall jointly agree upon a press release in which this Agreement shall be publicly announced.

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

**MPDL Services gGmbH
(DEAL Operating Entity)**

Christian Agi
Christian Agi (Sep 1, 2023 11:35 GMT+2)

Name: Christian Agi
Title: Managing Director

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

Judy Verses
Judy Verses (Sep 1, 2023 11:55 GMT+2)

Name: Judy Verses
Title: President Global Academic and Government

No. 1-22634570604, 1-22616750102

PUBLISH AND READ AGREEMENT
Schedule 1
Products/Access/Fees

No. 1-22634570604, 1-22616750102

Products – publisher	Access
ScienceDirect® online – Elsevier B.V.	sciencedirect.com

Backfile collection

With the coming into effect of this Agreement, DEAL Operating Entity agrees to purchase the perpetual rights to the backfile collection as described in Schedule 1.1 (“Backfile Collection”) for the benefit of all Eligible Institutions as defined in Schedule 2.1 for a one-time fee of 10.000.000,00 € (“Backfile Fee”), as set forth in the proposal enclosed as Schedule 1.3. The DEAL Operating Entity is liable for payment under this Agreement forty-five (45) days after receipt of funding from DFG and no later than 15 June 2024. In the event that the necessary budget is not made available by DFG each party may terminate this service, at no cost, prior to 15 June 2024.

Participation Fraction

Parties hereby agree that for the Agreement to come into effect, a minimum participation rate of Eligible Institutions is required. The Participation Fraction (“PF”) is calculated based on the publication fraction of Eligible Institutions as listed in Schedule 2.1, and the following formula:

$$\frac{\text{Number of all corresponding author publications in 2022 of participating institutions}}{\text{Number of all corresponding author publications in 2022 of all eligible institutions}}$$

The minimum participation fraction by the Participating Institutions shall be 70% for publications in Core Hybrid Journals, and 90% for publication in Cell Press and The Lancet Journals, based on the Eligible Institutions’ shares in participation fractions set out in Schedule 2.1.

In the event that the minimum PF on the 15 January 2024 does not reach 70% for Core Hybrid publications, or 90% for Cell Press and The Lancet publishing Participating Institutions, Parties will discuss further steps.

Core Hybrid PAR Fees:

The Publish and Read (PAR) fee will be calculated based on the participation fraction.

The PAR Fee starting point at 0% participation, or when PF = 0 will be €3150. The PAR Fee starting point will increase by 3% per annum, providing a price increase cap to Participating Institutions.

The PAR fee will decrease in accordance with the relevant increase in the participation fraction, and will be fixed on 15 January 2024 for the remainder of the Term based upon the PF of the Participating Institutions per the same date, as set out in the table below as follows:

Year	70% ≤ PF < 90%	90% ≤ PF
2024	2,550 €	2,500 €
2025	2,627 €	2,575 €
2026	2,705 €	2,652 €
2027	2,786 €	2,732 €
2028	2,870 €	2,814 €

The PAR fee shall apply to all articles published in Core Hybrid journals regardless of whether the Submitting Corresponding Author chooses the accepted journal article to be published under an Open Access license or as a subscription journal article.

Both parties intend to reach a 100% Open Access publication rates of Core Hybrid and Cell Press and The Lancet journal articles under this Agreement and commit to establish and continuously refine and improve workflows in ways that advance this common aim.

Cell Press and Lancet APCs:

Publishing in Cell Press and The Lancet hybrid journals will incur a CPTL APC of €6450 for each journal article published during the term of the agreement which will be subject to a 4% price increase per year.

Year	CPTL APC
2024	6,450 €
2025	6,708 €
2026	6,976 €
2027	7,255 €
2028	7,546 €

For the avoidance of doubt, the Core Hybrid PAR fee shall apply to all journal articles published in Cell Press and The Lancet hybrid journals that are not published under an Open Access license.

Fully gold journal APCs:

An APC discount of 20% will be applied for articles published in Core fully gold open access journals. Articles published in fully gold Cell Press and The Lancet journals will receive an APC discount of 15%.

In the event Elsevier sets a standard global list price APC discount in a fully gold open access journal which exceeds the -20% APC discount as set out in this Agreement, such higher standard global list price discount shall also apply to the relevant fully gold open access journals (including, for the avoidance of doubt, fully gold Cell Press and The Lancet journals) covered under this Agreement.

Payment Terms

In accordance with Schedule 3, Elsevier will invoice the PAR Fee(s), Article Publishing Charges (“APC”), and the Cell Press and The Lancet APCs (CPTL APCs) for journal articles that have been published online and validated by Participating Institutions to the DEAL Operating Entity, as follows:

On a monthly basis Elsevier will send the DEAL Operating Entity a monthly report of all journal articles published under the terms of the Agreement and which have been validated by the DEAL Operating Entity’s or Participating Institutions’ administrators and the amount to be invoiced based on the published and validated articles. DEAL Operating Entity will have fourteen (14) days to check the monthly report. Invoicing is based on a report validated by both parties and the DEAL Operating Entity will have a further thirty-one (31) days to settle the invoice.

The foregoing shall not limit Elsevier's rights to invoice journal articles at a later date (but not later than twelve (12) months after the online publication date of the relevant journal article), for example where an article may have been missed from the Agreement reporting. Invoices issued prior to and including September of each calendar year must be settled before 31 December of that calendar year.

PUBLISH AND READ AGREEMENT
Schedule 1.1
Journal Collection

Journal Collection(s):

Freedom Collection Journals: Electronic reading access to the full text of all articles from the Freedom Collection journal titles published between 1995 and 2022 as identified in Annex A to Schedule 1.1.

Core Hybrid Journals: Electronic reading access to the Core Hybrid journals for the year 2023 and the duration of the Agreement as defined in Annex A to Schedule 1.1.

Cell Press and The Lancet Journals: Electronic reading access to the Cell Press Journals and The Lancet journals published after 1995 and for the duration of the Agreement as defined in Annex A to Schedule 1.1.

Backfile Collection: Perpetual access to all journals published by Elsevier, including Cell Press and The Lancet, covering the period pre-2003-2022 (excluding content previously covered under the DFG backfile collections).

Transferred Titles

Society journal titles whose publication rights are transferred to Elsevier and made accessible on ScienceDirect during the Term (“Transferred Titles”) will be deemed to be included as part of the Core Hybrid, Cell Press or The Lancet Titles Collection, effective as of the date of transfer. If the society determines not to include the journal title in the Core Hybrid, Cell Press or The Lancet Titles Collection such Transferred Title shall not be part of this Agreement.

Post Termination Access to Core Hybrid, Cell Press and The Lancet Titles

Upon termination of all of a Participating Institution’s participation in this Agreement, the Participating Institution may, at its option, (1) acquire, load and technically format on a server that enables access and use by its Authorized Users an electronic copy and/or (2) continue to access such Core Hybrid, Cell Press and The Lancet Titles online for the electronic reading access years as set out in the Journal Collection of Schedule 1.1 of this Agreement 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 EUR 0.063 per download, with a minimum annual fee of EUR 400 (adjusted annually for inflation and cost increases in Germany¹) for the Participating Institution’s access to the platform, and/or (3) access such Core Hybrid, Cell Press and The Lancet Titles online through the Portico® electronic archiving service provided by Portico (in which case the Customer will execute a separate license agreement with Portico whose terms and conditions will also govern the Customer’s use of such Core Hybrid, Cell Press and The Lancet Titles and take precedence in the event of any conflict or inconsistency with this Agreement), in accordance with the usage provisions of this Agreement, which provisions will survive the termination of the Agreement. Elsevier will make available for inspection by a duly authorized auditor of the Participating Institution, at the Participating Institution’s sole expense, the records concerning the calculation of the annual access fee once per year during regular business hours upon thirty (30) days written notice to Elsevier. If a particular

¹ Inflation shall be measured according to the consumer price index (Verbraucherpreisindex) of the Federal Statistical Office (Statistisches Bundesamt – Destatis)

Reading Title is withdrawn by Elsevier, but the Participating Institution remains a ScienceDirect online Customer, the Participating Institution may continue to access online at no additional charge, such formerly Reading Title for the publication years paid, provided that Elsevier continues to hold the electronic rights thereto.

Notwithstanding the above, post termination access rights will be provided for Participating Institutions for the calendar years when they were actively participating in the Agreement. For the avoidance of doubt, post termination access rights for the year 2023 will only be provided to any Participating Institution who joins the Agreement on or before 15th January 2024.

CLOCKSS

Elsevier is working with the LOCKSS organization to archive its journals published since 2008 on the CLOCKSS service. For more information, see Elsevier's [Independent Digital Archives statement](#).

KBART

If the content includes material covered by the [NISO Knowledge Bases And Related Tools \(KBART\) Recommended Practice](#), Elsevier will provide to the DEAL Operating Entity itemized holdings lists for the content in KBART-compliant format, including a column/field for dates (YYYY-MM) of additions on an annual basis.

Deep Discounted Price (DDP) for print subscriptions

Participating Institutions may place annual subscription orders for a selection of Elsevier individual print journals at a price reduced from the list price ("Deep Discounted Price" or "DDP") by 1st August prior to the start of the next calendar year from Elsevier or its affiliate directly or via a single authorized service agent, which will be selected by the Participating Institution. Participating Institutions are only entitled to a discount of 50% off the print journal list price in the event such DDP right was granted in and used by the Participating Institution's previous Elsevier online subscription agreement during the years 2013-2023.

Elsevier or its affiliate will fulfil such orders in accordance with its customary standard practices. The Participating Institution will notify Elsevier of its service agent's contact information upon placing such print subscription orders. The Participating Institution may change its service agent no more than once annually by giving Elsevier notice by 1 August prior to the start of the next calendar year. The Participating Institution will not place orders for such DDP subscriptions on behalf of any other person or entity or with the intent to resell, rent, license, lease, or otherwise transfer them to another person or entity.

Annex A to Schedule 1.1 Reading Titles

Freedom Collection Journals: Electronic reading access to the full text of all articles from the Freedom Collection journal titles published between 1995 and 2022 as identified on <https://keeper.mpdl.mpg.de/f/7e57105c4bdf452c93fa/?dl=1> (Sheet *included-fc*)

Core Hybrid Journals: Electronic reading access to the Core Hybrid journals for the year 2023 and the duration of the Agreement as defined on <https://keeper.mpdl.mpg.de/f/7e57105c4bdf452c93fa/?dl=1> (Sheet *included-ch-cptl* - Bucket *Core Hybrid*)

Cell Press and The Lancet Journals: Electronic reading access to the Cell Press Journals and The Lancet journals titles published after 1995 and the duration of the Agreement as defined on <https://keeper.mpdl.mpg.de/f/7e57105c4bdf452c93fa/?dl=1> (Sheet *included-ch-cptl* - Bucket *CP/TL Hybrid*)

PUBLISH AND READ AGREEMENT
Schedule 1.2
Dark Archive

1. Definitions

Dark Archive: The aggregation of the Products provided by Elsevier to the Dark Archive Responsible Entity for archival purposes and access by the DEAL Operating Entity and its Authorized Users solely in the event of a Trigger Event on the terms and conditions provided herein.

Dark Archive Content: The contents of the Dark Archive, consisting of all articles of back issues covered by this Agreement as well all the articles of running issues of the Products during the term of this Agreement. For the purposes of Dark Archive Content, an article consists of all information as published by Elsevier, including the article metadata, article PDF, supplementary materials, and, if applicable, XML representations with embedded or linked image data.

Dark Archive Responsible Entity: A mutually agreed upon entity that has sufficient infrastructure, capabilities and reputation such as the Max Planck Gesellschaft zur Förderung der Wissenschaften e.V. or the Technische Informationsbibliothek. Prior to receiving the Dark Archive, the Dark Archive Responsible Entity must agree to the terms and conditions regarding the Dark Archive provided herein.

Trigger Event: (a) If Elsevier makes a general assignment for the benefit of creditors, or files a voluntary petition in bankruptcy or for reorganization or rearrangement under the bankruptcy laws, or if a petition in bankruptcy is filed against it and is not dismissed within 60 days after the filing, or if a receiver or trustee is appointed for the property or assets of Elsevier or an equivalent or similar event or proceeding occurs in any jurisdiction, or ceases its scholarly publication operations; or (b) a total loss of access to the Products for at least 30 days caused by a failure of Elsevier's systems .

2. Content and Delivery

Subject to the terms of this Agreement, Elsevier undertakes to provide the Dark Archive Responsible Entity with a Dark Archive of the Products for access by the DEAL Operating Entity, Participating Institutions and their Authorized Users in case of a Trigger Event.

Elsevier will deliver the full text of the Dark Archive Content.

In case not otherwise specified between Elsevier and the Dark Archive Responsible Entity, Elsevier will deliver the Dark Archive Content through a FTP server (for the contents of Products licensed during the Term of this Agreement), or on a physical storage medium (for contents of the Backfiles) and in the then current document type definition version used at Elsevier. Elsevier will create a FTP account for Dark Archive Responsible Entity. Regular uploads of new data are copied to Elsevier's FTP site for Dark Archive Responsible Entity to download. Elsevier will notify Dark Archive Responsible Entity via e-mail about new data deliveries.

Elsevier will render to the Dark Archive Responsible Entity technical assistance supporting the delivery of the Dark Archive Content. For the avoidance of doubt, Elsevier is not obliged under this Agreement to render technical assistance and/or training in relation to the on-going operation of the Dark Archive on Dark Archive Responsible Entity's servers.

In order to adequately equip the Dark Archive Responsible Entity with all relevant information required to fulfil its obligations under the Agreement, Elsevier will convey to the Dark Archive Responsible Entity the following minimum information in timely manner and agreed format:

Elsevier will deliver online XML of the Dark Archive Content structured as followed:

```
[JOU=xxxxx]
|--[VOL=xxxxx]
|--[ISU=xxx]
|--[ART=xxxx]
|--xxx_xxxx_Article_xxx.xml (Metadata)
|--[BodyRef]
|--[PDF]
|--xxx_xxxx_Article_xxxx.pdf
|--[xml]
|--article.xml (full text)
|--[images]
|--file.png (all images, formulas etc. linked from xml/html)
|--[supplements]
|--xxxxx (all supplementary materials linked from online article)
```

Elsevier will deliver the inventory lists for the Dark Archive Content. These inventory lists shall be listed as followed:

1. Journal_issue_inventory_sheet1
 - a. Journal Group Code (e.g. 10113)
 - b. Journal Title (e.g. Regional Environmental Change)
 - c. Print ISSN (e.g. 1436-3798)
 - d. Online ISSN (e.g. 1436-378X)
 - e. Year first issue online (e.g. 1999)
 - f. Num first volume online (e.g. 1)
 - g. Date last issue online (e.g. 2022)
 - h. Num last volume online (e.g. 22)
 - i. Num last issue online (e.g. 4)
 - j. Number of Issues (e.g. 111)
 - k. Number of Articles (e.g. 670)
 - l. Number of PDF (e.g. 670)
 - m. Number without PDF (e.g. 0)
 - n. Number of full text XML (e.g. 0)
 - o. Number of PDFs with text attached (e.g. 0)
 - p. Open Access count (e.g. 670)
2. Journal_issue_inventory_Sheet2
 - a. Issue DOI or volume DOI (e.g.10.1007/s10113-021)
 - b. Title (e.g. Regional Environmental Change)
 - c. Volume (e.g. 21)
 - d. Issue (e.g. 2)
 - e. Year (e.g. 2021)
 - f. # Articles (e.g. 12)
 - g. Filename (e.g. JOU10113_VOL202121_ISU2.zip)

The Dark Archive Responsible Entity will inform Elsevier about missing or defective files without undue delay. In the case of defective files, Elsevier will recreate and/ or deliver those defective files to the Dark Archive Responsible Entity.

The Dark Archive Responsible Entity and Elsevier appoint contact persons for those and other technical issues.

3. Grant of License: Hosting the Dark Archive

Elsevier hereby grants to the Dark Archive Responsible Entity for the term of this Agreement the worldwide limited, revocable, non-exclusive, non-assignable and non-transferable right to access, download and use the Products solely for the express purpose of establishing and maintaining the Dark Archive and solely subject to a Trigger Event. This right to use shall include any technical modification to the Products required to establish and/or maintain the Dark Archive in accordance with this Agreement.

4. Grant of License: Providing access to the Dark Archive

If there is a Trigger Event, Elsevier grants the DEAL Operating Entity and their Authorized Users in perpetuity the non-exclusive, non-transferable right to access the Products in the Dark Archive via the Dark Archive Responsible Entity's Secure Network or a third party Secure Network commissioned by the Dark Archive Responsible Entity (subject to the approval of such third party by Elsevier and provided that the Dark Archive Responsible Entity remains responsible for performance), subject to the terms of this Agreement. In the event of a Trigger Event under section (b) of the definition that lasts 30 days or more, the Dark Archive Responsible Entity will provide aggregated usage statistics for the period of access to Elsevier.

Elsevier will provide Dark Archive Responsible Entity annually with information about the Authorized Users' IP addresses, or any other possibility Elsevier uses for identifying Authorized Users.

Such use of and access to the Dark Archive must be deactivated as soon as technically possible if the Trigger Event has ended and Elsevier has notified the Dark Archive Responsible Entity accordingly that access to ScienceDirect online has been restored.

Except as provided herein, the Dark Archive must be kept completely unavailable to the DEAL Operating Entity, the Participating Institutions, their Authorized Users and all others, other than for purposes of long-term preservation and routine checking of data and system integrity.

5. Security

Dark Archive Responsible Entity will (i) use reasonable measures to protect the security of the Dark Archive in its possession or control, and (ii) at Elsevier's request, permit Elsevier to review Dark Archive Responsible Entity's network vulnerability assessments, security audit report, security plan, maintenance and security patch process, and maintenance and patching records.

The Dark Archive Responsible Entity agrees that the Dark Archive Responsible Entity will have in place documented policies and procedures, which will be reviewed by the Dark Archive Responsible Entity periodically, and if appropriate, tested and updated, 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 Dark Archive Responsible Entity will cooperate with Elsevier's reasonable requests surrounding such failure, including taking appropriate steps to end such activity and to prevent any recurrence.

The Dark Archive Responsible Entity will immediately notify Elsevier of any breach or suspected breach of security (including without limitation any unauthorized use, disclosure or acquisition of or access to the Dark Archive) pursuant to this Agreement (each a "security breach") of which the Dark

Archive Responsible Entity becomes aware. In the event of an actual or suspected security breach, or in the event of repeated or routine infringement of intellectual property rights in the Dark Archive as a result of storing the Dark Archive, Elsevier may, by notice, effective immediately, suspend the right to store the Dark Archive until all security problems have been resolved to Elsevier's reasonable satisfaction.

To comply with the General Data Protection Regulation, Dark Archive Responsible Entity and Elsevier will agree on a Data Processing Addendum.

PUBLISH AND READ AGREEMENT

Schedule 1.3

Elsevier Journal Backfiles proposal 2023

Elsevier and Germany have a long history of collaboration. This includes thousands of authors publishing in Elsevier journals and thousands of researchers accessing, reading, and citing the global research output published by Elsevier.

DEAL and Elsevier are on a strong and productive path to concluding one of the largest Transformative Agreements in the world. As part of our discussions Elsevier responded to DEAL's request for a straightforward offer that will grant all DFG eligible institutions with perpetual access to archive content for all journals published by Elsevier, including Cell Press and The Lancet, covering the period pre-2003-2022.

The aim of this proposal is to complete/close any gaps in access and archive across all disciplines. Through this proposal German researchers will universally benefit from complete access to a compelling portfolio of high-quality content, regardless of which German institution they are based at. The proposed purchase price is €10M (ten million Euros excl. VAT).

History

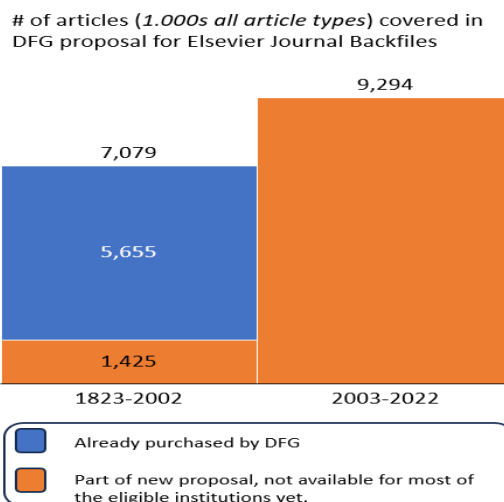
In the years 2006-2010 Elsevier and University of Frankfurt (on behalf of DFG) successfully concluded five agreements, granting access and archival rights across Germany to:

- A dedicated set of approximately 1,200 Journals
- For the year ranges up to 2002 and in most cases back to first volume first issue of these journals
- Covering ~5.6 Mio articles

Backfile proposal and benefits

This new proposal follows the guidelines of the DFG related to the Infrastructures for Scholarly Publishing Program and is intended to build on existing agreements to increase the scope of coverage and broaden access. Through this proposal we will extend access and archival rights to *all* journals published by Elsevier, from pre-2003 to 2022, excluding what has already purchased by DFG or is under another agreement with an institution.

As a result, all German researchers will now have access to an **additional 10.7 million+** articles:



The benefits of such an agreement to German researchers and to German science include:

- **Breadth and depth of coverage:** German researchers will have access to around 16 million articles across *all* research disciplines (5.7M already purchased and 10.7M+ now being added).
- **Ease of access:** Access will be provided via the ScienceDirect platform, which leads the way in accessibility, discoverability, and researcher productivity.
- **Quality:** Elsevier has a longstanding reputation for publishing the highest quality research; based on field-weighted citation, Elsevier quality is 40% higher than the market average. Due to our focus on quality over quantity, Elsevier publishes 18% of the world's research, but accounts for 28% of the citations, demonstrating the value access to our content provides to German researchers.
- **R&D:** The five leading nations in terms of research output, namely China, the United States, India, Germany, and Japan, play a crucial role as primary drivers of research and innovation on a global scale. Notably, researchers from these countries have extensively referenced not only the most recently published content, but also pre-1995 articles within the past six years (2017-2022). This observation highlights the correlation between access to all research regardless of age in laying the foundation for the development of new technologies.
- **Utility:** We anticipate expanded access to increase usage by around 75% for articles published in the last ten years, better supporting researchers to do their work.

Usage analysis – turnaways for content covered by this proposal

The table below provides turnaways data for German institutions. It shows the number of turnaways to articles published pre-1995 to 2022 over the last 5 years of usage.

Sum of TURNAWAYS		Years of usage					
Publication years	2018	2019	2020	2021	2022	Grand Total	
Pre-1995	510 327	433 227	365 745	344 292	316 975	1 970 566	
1995	40 779	38 051	33 242	32 860	31 691	176 623	
1996	47 449	43 608	37 744	38 386	37 444	204 631	
1997	30 031	29 664	27 516	27 112	25 133	139 456	
1998	31 472	31 491	28 049	28 867	26 097	145 976	
1999	34 058	34 850	31 214	31 973	31 212	163 307	
2000	31 504	32 692	29 839	31 504	29 186	154 725	
2001	31 803	33 814	31 440	31 791	29 366	158 214	
2002	30 796	34 826	32 545	33 165	30 440	161 772	
2003	98 262	134 776	121 175	117 557	104 534	576 304	
2004	112 860	151 030	138 291	138 475	130 267	670 923	
2005	116 852	155 809	140 986	140 555	133 195	687 397	
2006	133 406	173 939	158 385	159 498	149 818	775 046	
2007	146 583	188 546	170 324	170 952	163 209	839 614	
2008	156 368	197 591	179 826	181 581	173 982	889 348	
2009	159 253	198 578	177 510	178 824	170 426	884 591	
2010	174 898	221 499	202 554	199 310	185 918	984 179	
2011	184 449	228 806	212 390	208 447	194 333	1 028 425	
2012	190 869	241 558	227 618	229 780	211 090	1 100 915	
2013	208 710	266 244	250 044	256 935	240 567	1 222 500	
2014	258 360	305 313	283 964	289 727	271 897	1 409 261	
2015	314 808	400 608	346 735	354 984	335 757	1 752 892	
2016	362 743	465 451	399 896	396 292	370 511	1 994 893	
2017	659 689	737 351	630 103	626 708	545 296	3 199 147	
2018	1 518 526	1 737 481	1 159 791	1 170 905	1 027 899	6 614 602	
2019	206 698	2 501 634	1 666 859	1 431 472	1 243 393	7 050 056	
2020	8 110	238 574	2 219 430	2 055 288	1 474 611	5 996 013	
2021	593	6 265	241 314	2 683 881	1 956 423	4 888 476	
2022	93	941	6 361	244 581	2 453 732	2 705 708	
Grand Total	5 800 349	9 264 217	9 550 890	11 835 702	12 094 402	48 545 560	

In total, there have been **48 million turnaways** to this content in the last 5 years. The volume of turnaways indicates the importance of this content to German researchers. All of these articles will now be accessible as part of this backfile proposal. Similarly, access to content published in years prior to 1995 was denied for 1.97 Mio articles requested only in the last 5 years. This content is now covered by the DFG Journal Backfile proposal.

Additional parameters

- 1) The backfile purchase includes all journals published or included in labels/imprints owned by Elsevier from pre-2003 up to and Including 2022.
- 2) The new backfile purchase does not overlap with the previous backfile purchase by UB Frankfurt and is complementary to already purchased content by DFG, by adding an additional 10.7M articles to the existing 5.7M already purchased.
- 3) In line with the DFG Guidelines for the Purchase of DFG-Funded Electronic Archives (Backfiles), extended access and archival rights will be granted to the existing 500+ registered institutions.

Authorized institutions include:

- a) publicly or privately funded higher education and research institutions in Germany
 - b) the German National Library, all regional and state libraries as well as main subject libraries,
 - c) research libraries and specialized academic libraries with primarily public funding,
 - d) research institutes primarily funded by the federal or state governments, including research institutions located abroad but funded by public bodies or primarily publicly funded bodies in Germany, such as the German Historical Institute.
- 4) “Eligible institutions” include all participating institutions according to the Elsevier MPDL Services/DEAL Transformative agreement and all other institutions eligible for the Nationallizenzen as defined under <https://www.nationallizenzen.de/ueber-nationallizenzen/nationallizenzen#3.4> - meaning institutions that register for access via the portal “Nationallizenzen” (<https://www.nationallizenzen.de/>) can benefit from the backfile purchase independent of whether they have signed up to the participation agreement with MPDL Services.
 - 5) For the access and archival rights acquired in this proposal, the same usage and reuse rights shall apply as within the existing DFG agreement, in line with the DFG guidelines.

We look forward to continuing to support German research now and in the future.

Your sincerely,

Gemma Hersh, on behalf of the Elsevier Negotiation Team

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PUBLISH AND READ AGREEMENT
Schedule 2
Eligible Institutions and Participating Institutions

“Eligible Institution” means a) an institution of any of the following types:

- (1) publicly or privately funded higher education and research institutions located in Germany;
- (2) the German National Library, all German regional and state libraries, as well as German central subject libraries;
- (3) research libraries and specialized academic libraries with primarily public funding located in Germany;
- (4) research institutes primarily funded by the federal or state governments, including academic institutions located abroad but funded by public bodies or primarily publicly funded bodies located in Germany, such as the institutes of the Max Weber Stiftung or the Goethe Institutes;
- (5) other institutions as agreed by the Parties; including the Max Planck Florida Institute for Neuroscience, Max Planck Institute Luxembourg for International, European and Regulatory Procedural Law, European Molecular Biology Laboratory, and the DEAL Operating Entity itself

and which b) the DEAL Operating Entity and Elsevier have agreed in writing to include in the list of “Eligible Institutions” in Schedule 2.1. The Parties may amend the list of “Eligible Institutions” from time to time, if a new institution fulfils the requirements set forth in a) above.

Eligible Institutions get the option of benefitting from the services provided by Elsevier under this Agreement by joining as a Participating Institution as described below. For the avoidance of doubt, being listed as an Eligible Institution does not confer any rights under this agreement on the Eligible Institutions, nor does Elsevier have any obligation to provide services under this Agreement to an Eligible Institution.

For the avoidance of doubt: Clinics and hospitals are regarded as Eligible Institutions only if they are dedicated research hospitals affiliated with an university or scientific research institution.

Participating Institutions

Eligible Institutions may be added as Participating Institutions to Schedule 2.2 during the Term, provided that an Eligible Institution has provided a signed Elsevier Terms of Use Agreement to the DEAL Operating Entity, a thirty (30) day written notice is given by the DEAL Operating Entity and subject to (i) the identification of the Site and authentication methods, (ii) the submittal of the Eligible Institutions signed Elsevier Terms of Use Agreement to Elsevier and (iii) the execution of an amendment to this Agreement.

The Parties agree that Elsevier’s obligations under this Agreement with respect to the Publishing Services for Submitting Corresponding Authors of such a new Participating Institution shall commence within fourteen (14) days from the amendment of the list of Participating Institutions (“Amendment Effective Date”), and that only articles accepted for publication in Eligible Journals on or after the Amendment Effective Date shall be subject to this Agreement.

Eligible Institutions with a current agreement with Elsevier shall be given the option to transfer and upgrade to this Agreement without delay.

A Participating Institution may be removed from Schedule 2.2 provided that ninety (90) day written notice according to Sec. 5.3 of the Agreement is given by the DEAL Operating Entity to Elsevier to be effective at the end of the then calendar year. An amendment to the Agreement is to be entered between the DEAL

Operating Entity and Elsevier to document the removal of the Participating Institution(s) from Schedule 2.

Signup process in 2023:

Participating Institutions will get reading access immediately from the Amendment Effective Date. Such Participating Institutions have the choice of activating publishing retroactively to 1st September 2023, or start publishing from the Amendment Effective Date. Immediate reading access will be granted and publishing services will begin according to the choice of the Participating Institution irrespective of whether the minimum participation fraction (as described in Schedule 1) is reached at the Amendment Effective Date. Invoicing for articles accepted after the Amendment Effective Date or the 1st September 2023 (according to the choice of the Participating Institution), up to and including 31 December, will occur on 15 January 2024. For Eligible Articles accepted in 2023, the 2024 Core Hybrid PAR Fees and CPTL APCs, and the APC list price in effect at the point of submission with the relevant discount (as described in Schedule 3) will apply. Participating Institutions joining with an Amendment Effective Date of 15 January 2024 or earlier will receive post termination access rights for the year 2023.

Signup process in or after 2024:

Participating Institutions that join at any time during any calendar year of the Agreement, will have the option to retroactively change the license of Eligible Articles from their Submitting Corresponding Authors published under the subscription model that have been accepted for publication between 1 January of such calendar year and the Amendment Effective Date to open access. In such cases, the PAR fee or CPTL APC of the relevant calendar year shall apply including for any article where the author chooses to continue publishing under the subscription model.

PUBLISH AND READ AGREEMENT
Schedule 2.1
List of Eligible Institutions

The list of Eligible Institutions as defined in Schedule 2 above and agreed upon by Elsevier and DEAL Operating Entity can be found at: <https://keeper.mpdl.mpg.de/fbfaaea5ea184b01a00f/?dl=1>

PUBLISH AND READ AGREEMENT

Schedule 2.2

List of Participating Institutions, Sites/Authentication/Contacts

The Participating Institutions benefitting from this Agreement are the following:

<https://keeper.mpdl.mpg.de/f/2db626bcbb8b4546a945/?dl=1>

The DEAL Operating Entity will promptly notify Elsevier of any changes to any of the contact information of Participating Institutions.

PUBLISH AND READ AGREEMENT
Schedule 3
Open Access Terms

1. Background

- 1.1. Corresponding Authors affiliated to a Participating Institution and who are students enrolled at or accredited to an Participating Institution or who are teaching, research or other staff employed by or otherwise accredited to the Participating Institution and who submits the journal article manuscript for publication shall be referred to as “Submitting Corresponding Author”. For the purposes of eligibility, the Submitting Corresponding Author is the single author who manages the publication process for an article from submission to post acceptance, corresponds with Elsevier on the same.

2. Open Access

- 2.1. During the Term, Submitting Corresponding Authors are granted the right, subject to the terms of this Schedule 3, to publish open access articles in the Elsevier owned and Elsevier published:

- (a) Core Hybrid journals as set out in Annex A of this Schedule 3
- (b) Cell Press and The Lancet journals as set out in Annex B of this Schedule 3
- (c) Core Gold Open Access journals as set out in Annex C of this Schedule 3
- (d) Cell Press and The Lancet Gold Open Access journals as set out in Annex D of this Schedule 3

(together the “Eligible Journals”).

Journal inclusions may be subject to small changes, including, but not limited to, changes resulting from the addition of new journal titles, journal transfers and/or changes of business model or ownership.

- 2.2. If accepted for publication in an Eligible Journal, Submitting Corresponding Authors may publish an unlimited number of open access articles during the Term, under the below terms:

- a) Core Hybrid journals – the applicable PAR fee for the year of the acceptance date as set out in Schedule 1 of this Agreement will be applied upon publication of the journal article.
- b) Cell Press and The Lancet Hybrid journals – the applicable CPTL APC for the year of the acceptance date as set out in Schedule 1 of this Agreement will be applied upon publication of the journal article.
- c) Core Gold Open Access journals – articles will be charged at the APC list price in effect at the point of submission with a 20% discount applied upon publication of the journal article.
- d) Cell Press and The Lancet Gold Open Access journals – articles will be charged at the APC list price in effect at the point of submission with a 15% discount applied upon the publication of the journal article.

For the avoidance of doubt, the applicable PAR fee for Core Hybrid journals for the year of the acceptance date will be applied to both open access and subscription articles in these journals and to subscription articles published in Cell Press and The Lancet journals.

3. Workflow

- 3.1. The Elsevier publishing workflow will use the acceptance date to determine the eligibility of an article under this Agreement. In order to benefit from the commercial arrangements mentioned in this Schedule 3, articles submitted by the Submitting Corresponding Author must be accepted by the relevant Eligible Journal during the Term.
- 3.2. In Elsevier's journal workflow, the Submitting Corresponding Author must specify the Participating Institution that they are affiliated (as defined above) to and the relevant research funding source(s). Based on this data, Elsevier will provide the Submitting Corresponding Author with the relevant publishing options. In case of multiple affiliations, the affiliation where the actual work was done should take precedence.
- 3.3. Authors will be presented with the option to publish their article open access or under the subscription model. The open access option with a CC BY license will be presented first and be set as the default option.
- 3.4. In the event a Submitting Corresponding Author has chosen the open access option, the journal article, if accepted for publication in an Eligible Journal, shall within 24-48 hours automatically be published under a CC BY, or CC BY-NC-ND, license as determined by the Submitting Corresponding Author, subject to the conditions and process set forth herein with the authors of such article retaining their copyright (other than for certain society journals). The CC BY license will be set as the default option.
- 3.5. If a Submitting Corresponding Author chooses a license other than CC BY, Elsevier will facilitate upon request of the Submitting Corresponding Author the possibility to change the license to CC BY. A Submitting Corresponding Author that has published a journal article under a subscription model in an Eligible Journal such Submitting Corresponding Author may notify Elsevier by 31 January of the following year via email that they wish to retroactively convert the journal article, so that it is published open access.
- 3.6. Article types included in the agreement include: Full Length Articles; Review Articles; Case Reports; Data in Brief; Microarticle; Original Software Publication; Protocol; Replication Study; Short Communication; Short Survey; Video Article.
- 3.7. The Elsevier Open Access Platform ("EOA Platform") requires the Verifying Institution (which can also be the DEAL Operating Entity) to make reasonable efforts to accurately validate that the relevant Submitting Corresponding Author is affiliated with the Participating Institution and will provide the Verifying Institution with the available relevant details including Submitting Corresponding Author name and e-mail address, Submitting Corresponding Author affiliation, DOI, link to the article (if available), article title, article type, journal title, ISSN, journal business model, research funding, CC license/publishing model chosen by author, acceptance date of the article, and the APC, PAR fee or the CPTL APC charged as part of the agreement. The Participating Institution will receive a notification via email to validate a Submitting Corresponding Author's eligibility on the EOA Platform.

- 3.8. The DEAL Operating Entity and the Verifying Institutions will have access to the EOA Platform in order to validate a Submitting Corresponding Author's eligibility within fifteen (15) business days after Elsevier sends an eligibility validation notification to the Verifying Institution via the EOA Platform ("Validation Date").

4. Payment and Invoicing

- 4.1. The DEAL Operating Entity is responsible for the payment of PAR fees, CPTL APCs and Fully Gold APCs for Eligible Articles published by Submitting Corresponding Authors in Eligible Journals in accordance with Schedule 1.
- 4.2. In the event that the DEAL Operating Entity or Participating Institution does not validate the eligibility of the Submitting Corresponding Author by the Validation Date, the relevant Submitting Corresponding Author must pay an APC for the article to be published open access and Elsevier will send the Submitting Corresponding Author an invoice for the APC list price as at the submission date of the relevant article.
- 4.3. If the Submitting Corresponding Author chooses to pay the APC pursuant to clause 4.2 of this Schedule, Elsevier will send the invoice to the address provided by the Submitting Corresponding Author.
- 4.4. Submitting Corresponding Authors will be invoiced for any articles published in journals that are not included under this Agreement at the then current APCs as set out at <https://www.elsevier.com/books-and-journals/journal-pricing/apc-pricelist>.
- 4.5. If an Eligible Article is published open access outside of the Agreement due to workflow inefficiencies or other errors, and an APC was unduly incurred by the Submitting Corresponding Author, once identified the APC will be refunded by Elsevier to the Submitting Corresponding Author or payer and the then current PAR fee, or CPTL APC will apply for hybrid articles and for fully gold articles the relevant discount on the APC list price at submission will apply

5. Reporting

- 5.1. The DEAL Operating Entity will have access to monthly reports that include a breakout of all articles (open access and subscription based) published by Submitting Corresponding Authors in the Elsevier journals governed by this Agreement. Minimum metadata requirements are: Submitting Corresponding Author name, Submitting Corresponding Author affiliation, corresponding e-mail, funding grant IDs (if provided), date of submission, date of acceptance, journal title, ISSN, article title, article type, PAR fee, CPTL APC, or APC and discount (if any), open access Y/N, DOI, and CC license, verification date and verifying institution.
- 5.2. Elsevier will provide annually an updated list of journals that are eligible for open access publishing as part of this Agreement. Elsevier ensures that the DEAL Operating entity will be provided with all information required to verify the payment amounts on the basis of the monthly reports provided according to clause 5.1.
- 5.3. Elsevier and the DEAL Operating Entity will continue discussions of the feasibility of including a funding note in the version of record of Eligible Articles and in the article metadata.
- 5.4. **Limits on Additional Publication Charges.** Submitting Corresponding Authors shall not be required to pay additional fees in association with publishing Eligible Articles beyond the PAR fee, APC fee or CPTL APC fees established under this Agreement, except in the case of

submission fees or fees for specific, optional value-added services that are supplementary to publishing. All such additional fees, if ordered and/or confirmed by the Submitting Corresponding Author, will be charged separately based on the invoice information provided by the Submitting Corresponding author and shall not be charged to or the responsibility of the DEAL Operating Entity under this Agreement. Notwithstanding the foregoing, the parties acknowledge that as of the Effective Date, a limited number of society-owned journals impose mandatory page and/or editorial charges on authors in addition to APCs. Elsevier agrees to work with its society partners to strive for the elimination of such charges and will make reasonable efforts to avoid the imposition of additional mandatory charges for any other journals over the course of this Agreement.

6. Editorial Independence

- 6.1 All parties acknowledge that while the DEAL Operating Entity has financial obligations toward Elsevier, neither the DEAL Operating Entity nor the Participating Institution is in any way involved with the editorial process.
- 6.2 Nothing herein contained shall oblige Elsevier to publish any article submitted to Elsevier by an Eligible Author. The DEAL Operating Entity and the Participating Institution acknowledge that the selection of material to be published on Elsevier platform is entirely at the discretion of Elsevier. The DEAL Operating Entity, the Participating Institution and Elsevier waive any claim in the event that Elsevier refuses or declines to publish any material (or part thereof) submitted by an Eligible Author.

7. General

- 7.1 Parties agree to work together in good faith and will collaborate where possible in the development of, for example, improved author identification and verification workflows and other efficiency processes mutually agreed between the parties.
- 7.2 Elsevier will make the final published versions of Eligible Articles (pdf full text and xml metadata), which have been published under an Open Access License under this Agreement available in institutional repositories via an automatic feed through a central hub (i.e. Deep Green), in regular intervals, with details to be mutually agreed between the Parties

Annex A to Schedule 3
Core Hybrid Eligible Journals

This list sets out the eligible Core Hybrid journals. This list may from time to time be subject to non-material changes, including but not limited to, changes resulting from the addition of new journal titles, journal transfers and changes of business model or ownership.

The list can be found at: <https://keeper.mpd.l.mpg.de/f/7e57105c4bdf452c93fa/?dl=1> (Sheet *included-ch-cptl* - Bucket *Core Hybrid*)

Annex B to Schedule 3
Cell Press and The Lancet Eligible Journals

This list sets out the eligible Cell Press hybrid and The Lancet subscription journals. This list may from time to time be subject to non-material changes, including but not limited to, changes resulting from the addition of new journal titles, journal transfers and changes of business model or ownership.

The list can be found at: <https://keeper.mpg.de/f/7e57105c4bdf452c93fa/?dl=1> (Sheet *included-ch-cptl* - Bucket *CP/TL Hybrid*)

Annex C to Schedule 3
Core Gold Eligible Journals

This list sets out the eligible Core Gold journals. This list may from time to time be subject to non-material changes, including but not limited to, changes resulting from the addition of new journal titles, journal transfers and changes of business model or ownership.

The list can be found at: <https://keeper.mpdl.mpg.de/f/7e57105c4bdf452c93fa/?dl=1> (Sheet *included-ch-cptl* - Bucket *Core Gold*)

Annex D to Schedule 3
Cell Press and The Lancet Gold Eligible Journals

This list sets out the eligible Cell Press gold and The Lancet gold journals. This list may from time to time be subject to non-material changes, including but not limited to, changes resulting from the addition of new journal titles, journal transfers and changes of business model or ownership.

The list can be found at: <https://keeper.mpdl.mpg.de/f/7e57105c4bdf452c93fa/?dl=1> (Sheet *included-ch-cptl* - Buckets *Cell Press Gold, The Lancet Gold*)

Schedule 4
Terms of Use Agreement Form

Elsevier B.V., Radarweg 29, 1043 NX Amsterdam, The Netherlands on behalf of its affiliates (“Elsevier”) and **MPDL Services gGmbH**, Landsberger Str. 346, 80687 München, Germany (“DEAL Operating Entity”) have entered into a Publish and Read Agreement (“Main Agreement”) dated September, 1st 2023.

The Main Agreement can be accessed via <https://doi.org/10.17617/2.3523659>.

The definitions of the Main Agreement shall apply to this agreement (the “Elsevier Terms of Use Agreement”) in addition to any further definitions herein.

Name of Eligible Institution: _____

Address of Eligible Institution: _____

(the “Eligible Institution”)

and its affiliated Institutions as set out in the attached "Liste der verbundenen Einrichtungen" (if applicable) (“Affiliated Institutions”), desire to participate in the Main Agreement as set forth in the Main Agreement, especially in *Section 1 - Products* and *Appendix 3 – Open Access Terms* of the Agreement, in order to become an Participating Institution under the terms of the Main Agreement.

Therefore, the undersigned Eligible Institution, for itself and in the name of its Affiliated Institutions, agrees, declares and acknowledges to Elsevier the following:

1. The undersigned Eligible Institution for itself and on behalf of each of its Affiliated Institutions constitutes and appoints the DEAL Operating Entity as the true and lawful attorney-in-fact and proxy of the Eligible Institution, with a limited power and authority in the name and stead of the Eligible Institution to exercise all rights and privileges of the Eligible Institution in its capacity as an attorney of the Eligible Institution necessary for the performance of the Main Agreement and to sign, in its sole discretion, the Main Agreement annexed hereto and any amendments thereto on behalf of the Eligible Institution.
2. The undersigned Eligible Institution for itself and on behalf of each of its Affiliated Institutions fulfills the requirements of an Eligible Institution as set out in the Agreement, especially in Schedule 2 of the Main Agreement.
3. The undersigned Eligible Institution has read and hereby agrees to be bound by the terms and conditions of the Main Agreement, including but not limited to the restrictions on access to, the use of the services, and security requirements as set forth in the Main Agreement, insofar as it pertains to the Eligible Institution and its Authorized Users, especially *Section 1 - Products* and *Appendix 3 – Open Access Terms*.
4. The undersigned Eligible Institution acknowledges that any invoice outstanding under previous agreements between the Eligible Institution and/or its Affiliated Institutions and Elsevier remain valid, and that Elsevier reserves the right to refuse to accept this Elsevier Terms of Use Agreement and to include the Eligible Institution and its Affiliated Institutions as an Participating Institution under the Agreement until such invoice has been settled.
5. The undersigned Eligible Institution agrees that it will be responsible for and make the payment of the fees due for access to and use of the services with respect to the Eligible Institution and its Authorized Users as specified in the Main Agreement to the extent that the DEAL Operating Entity fails to make any such payment for access to and the use of services by the Eligible Institution. However, the Eligible Institution shall not be obligated to make payments for such fees to Elsevier if and to the extent a payment for the access to and use of the services for which

the fees are due have been made to DEAL Operating Entity already.

6. The undersigned Eligible Institution agrees to provide all information required under the Agreement with respect to itself and its Affiliated Institutions (if applicable).

The undersigned Eligible Institution represents and warrants that (a) it has the requisite authority to agree to the provisions set forth in this Elsevier Terms of Use Agreement and (b) if acting on behalf of one or more Affiliated Institutions (i) it is fully and unconditionally authorized so to act and to bind such Affiliated Institution(s) to the provisions set forth Agreement, and (ii) it has provided a copy of the Agreement to Affiliated Institution(s).

AGREED AND ACCEPTED

Authorized Signature for Eligible Institution

Name

Title

Date
