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² <http://www.niso.org/workrooms/kbart>

³ http://www.projectcounter.org/code_practice.html

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Third Party Archiving Services. Licensor and Licensee acknowledge that either party may engage the services of third-party trusted archives and/or participate in collaborative archiving endeavors to exercise Licensee's rights under this section of the Agreement. Licensor agrees to cooperate with such archiving entities and/or initiatives as reasonably necessary to make the Licensed Materials available for archiving purposes. Licensee and/or Participating Institutions may perpetually use a third-party trusted system or collaborative archive to access or store the Licensed Materials, so long as Licensee's and Participating Institutions' use is under the same terms as this Agreement.

In the event the Licensor discontinues or changes the terms of its participation in a third-party archiving service, the Licensor shall notify the Licensee in advance, and shall in good faith seek to establish alternative arrangements for trusted archiving and perpetual access to the Licensed Materials.

XIII. Warranties

Licensor warrants that it has all necessary legal and equitable rights, permissions, and clearances to license the Licensed Materials to the Licensee and the Participating Institutions for the purposes and terms outlined in this Agreement, and that use of the Licensed Materials by Authorized Users in accordance with the terms of this Agreement shall not infringe the copyright or other rights of any third party.

Licensor warrants that the physical object or medium which contains the Licensed Materials will be free from defects for a period of ninety (90) days from delivery.
Accessibility Requirements. Licensor warrants that the Licensed Materials comply with Licensor's country of origin laws and regulations, and conform to the accessibility requirements of [Web Accessibility Initiative, Web Content Accessibility Guidelines \(WCAG\) 2.0 at level AA](#) or Rules of accessible web creation⁵ based on Czech Republic

⁵ <http://www.pravidla-pristupnosti.cz>



Act. 365/2000 Coll. and Act. 81/2006 Coll. Licensor agrees to promptly respond to and resolve any complaint regarding accessibility of Licensed Materials.⁶

XIV. Limitations on Warranties

Notwithstanding anything else in this Agreement, neither party shall be liable for any indirect, special, incidental, punitive or consequential damages, including but not limited to loss of data, business interruption, or loss of profits, that arises from the use of the Licensed Materials, or the inability to use the Licensed Materials.

Licensor makes no representation or warranty, and expressly disclaims any liability with respect to the content of any Licensed Materials, including but not limited to errors or omissions contained therein, libel, infringement of rights of publicity, privacy, trademark rights, moral rights, or the disclosure of confidential information.

Except for the express warranties stated elsewhere in this Agreement, Licensor disclaims any and all other warranties, conditions, or representations (express, implied, oral or written), relating to the Licensed Materials or any part thereof, including, without limitation, any and all implied warranties of quality, performance, merchantability, or fitness for a particular purpose.

XV. Indemnities

The Licensor shall indemnify and hold harmless the Licensee, the Participating Institutions and Authorized Users for any losses, claims, damages, awards, penalties, or injuries incurred, including reasonable attorney's fees, that arise from any third party claim that alleges copyright infringement or other intellectual property infringement arising from the use of the Licensed Materials by the Licensee or any Participating Institution or any Authorized User. NO LIMITATION OF LIABILITY SET FORTH ELSEWHERE IN THIS AGREEMENT IS APPLICABLE TO THIS INDEMNIFICATION. This Section XV shall survive the termination of this Agreement.

XVI. Assignment and Transfer

Neither party may assign, directly or indirectly, all or part of its rights or obligations under this Agreement without the prior written consent of the other party, except as otherwise provided in Section VII. Neither party to this Agreement may unreasonably withhold or delay such written consent.

⁶ <http://www.w3.org/WAI/guid-tech.html>

XVII. Governing Law

This Agreement shall be interpreted and construed according to, and governed by, the laws of the Czech Republic, in particular by Act No. 89/2012 Coll., the Civil Code, as amended, excluding any such laws that might direct the application of the laws of another jurisdiction.

XVIII. Dispute Resolution & Venue

In the event of any dispute or controversy arising out of or relating to this Agreement, the parties agree to exercise good faith efforts to resolve the dispute as soon as possible. In the event that the parties cannot, by exercise of their good faith efforts, resolve the dispute, they shall submit the dispute to informal mediation, as further described below in this paragraph. The parties shall continue to perform their respective obligations under this Agreement that are not affected by the dispute. The party invoking mediation shall give to the other party written notice of its decision to seek informal mediation, and the notice must include a description of the issues subject to the dispute and a proposed resolution thereof. Designated representatives of both parties shall attempt to resolve the dispute within five (5) working days after such notice. If those designated representatives cannot resolve the dispute, the parties shall meet at a mutually agreeable location and describe the dispute and their respective proposals for resolution to responsible executives of the disputing parties, who shall act in good faith to resolve the dispute.

If the dispute is not resolved within thirty (30) calendar days of the meeting among the parties' executives, either party may pursue a legal action in court. The exclusive jurisdiction and venue for any and all actions arising out of or brought under the Agreement is in a state court of competent jurisdiction, situated in Prague, Czech Republic. During such court action, the parties shall continue to perform their respective obligations under this Agreement that are not affected by the dispute.

XIX. Force Majeure

1. Neither party shall be liable in damages or have the right to terminate this Agreement for any delay or default in performing hereunder if such delay or default is caused by conditions beyond its control including, but not limited to Acts of God, Government restrictions (including the denial or cancellation of any export or other necessary license), wars, insurrections, labor strikes or other work stoppages, and/or any other cause beyond the reasonable control of the party whose performance is affected. Upon the occurrence of an event of force majeure, the party affected shall promptly notify the other in writing setting forth the details of the occurrence, its expected duration and how that party's performance may be affected. The affected party shall resume the performance of its obligations as soon as practicable after the



force majeure event ceases.

XX. Entire Agreement

This Agreement constitutes the entire agreement of the parties and supersedes all prior communications, understandings, and agreements relating to the subject matter hereof, whether oral or written. For the avoidance of doubt, online terms and conditions as defined in Section VII shall not modify the terms of this Agreement.

XXI. Amendment

No modification or claimed waiver of any provision of this Agreement shall be valid except by written amendment signed by authorized representatives of Licensor and Licensee.

XXII. Severability

If any provision or provisions of this Agreement shall be held to be invalid, illegal, unenforceable or in conflict with the law, the validity, legality, and enforceability of the remaining provisions shall not in any way be affected or impaired thereby. The contracting parties shall replace the invalid, illegal or unenforceable provision by a new provision, the wording of which shall correspond to the intent embodied by the original provision and this Agreement as a whole.

XXIII. Waiver of Contractual Right

Waiver of any provision herein shall not be deemed a waiver of any other provision herein, nor shall waiver of any breach of this Agreement be construed as a continuing waiver of other breaches of the same or other provisions of this Agreement.

XXIV. Notices

All notices given pursuant to this Agreement shall be in writing and may be hand delivered, or shall be deemed received within five (5) business days after mailing if sent by registered or certified mail, return receipt requested. If any notice is sent by facsimile or electronic mail, confirmation copies must be sent by mail or by hand delivery to the specified address. Either party may from time to time change its Notice



Address by written notice to the other party.

If to Licensor:

Publisher

Address of Publisher

City of Publisher

State of Publisher

Country of Publisher

Postal Code of Publisher

If to Licensee:

Licensing contact:

Head of Licensing Unit

CzechELib

National Library of Technology

Technická 6, 160 80 Praha 6 - Dejvice

Czech Republic

Phone:

Email:

Invoicing contact:

Technical contact:

XXV. Execution

This Agreement is compiled in three counterparts in the English language, each of which has the power of an original. Licensor shall receive one counterpart and Licensee shall receive two counterparts.

The parties agree that electronically signed versions of this originally executed Agreement are acceptable in lieu of printed signed copies and are to be given full force and effect under law.



EUROPEAN UNION
European Structural and Investment Funds
Operational Programme Research,
Development and Education



MINISTRY OF EDUCATION,
YOUTH AND SPORTS

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

LICENSOR:

BY: _____ DATE: _____
Signature of Authorized Signatory of Publisher

Print Name:
Title:
Address:
Telephone No.:
E-mail:

LICENSEE:

BY: _____ DATE: _____
Signature of Authorized Signatory of
Licensee

Director of CzechELib
National Library of Technology
Technická 6
160 80 Praha 6 - Dejvice
Czech Republic



Appendix A: Business Terms

Licensed Materials:

- Name
- Number of titles, if applicable
- Dates covered, if applicable
- Description

Agreement Term: 1 January 2018 - 31 December 2020 + optional 1 January 2021 - 31 December 2022

Access Conditions: Unlimited simultaneous user systemwide perpetual access

Authentication: IP authentication (See Appendix C for IP addresses)

Fees and Negotiated Discounts:

- Total Fee
- License Fee / year
- Ongoing Fees, e.g. access fee, if any; indicate any waived fees
- One-time Fees; indicated any waived fees

Price Caps: See Section X.

Payment Terms: The Licensee will pay a single invoice for the annual subscription fee.

Add-on Products and Negotiated Discounts:

Deeply Discounted Print (DDP) Titles: Print subscriptions shall be optionally available to Participating Institution's at the following rates:

- Subscribed Titles:
- Unsubscribed Titles:

APC Discounts: Licensee's and Participating Institution's authors shall be eligible for the following discounts on open access Article Processing Charges (APC) during the term of the Agreement:

- Eligibility: APC discounts shall be available in cases where a Licensee's and Participating Institution's author is the lead or corresponding author.
- Process:
- Discounts:
- Reporting: Licensor will report both OA authorship data, APC payments and discounts annually to Licensee.



Appendix B: Participating Institutions

Charles University
National Library



EUROPEAN UNION
European Structural and Investment Funds
Operational Programme Research,
Development and Education



MINISTRY OF EDUCATION,
YOUTH AND SPORTS



Appendix C: IP Addresses



EUROPEAN UNION
European Structural and Investment Funds
Operational Programme Research,
Development and Education

