



ELSEVIER SUBSCRIPTION AGREEMENT

This agreement (“Agreement”) is entered into as of [REDACTED] by and between **CzechELib - National Library of Technology**, Technická 2710/6, 160 80 Praha 6 - Dejvice, Czech Republic (the “Lead Institution”), for and on behalf of itself and the institutions identified on Schedule 2, pursuant to an authorizing agreement substantially in the form set forth on Schedule 3 (the “Institutions”) known collectively as Consortium (all, collectively, the “Subscriber”), and **Elsevier B.V.**, Radarweg 29, 1043 NX Amsterdam, The Netherlands (“Elsevier”). As used in this Agreement, “Consortium” refers to the Lead Institution or to such other Institution or Institutions as the Lead Institution may specify, depending on the context in which that term is used.

The parties hereto agree as follows:

SECTION 1. SUBSCRIPTION.

1.1 *Subscribed Products.*

Elsevier hereby grants to the Subscriber the non-exclusive, non-transferable right to access and use the products and services identified in Schedule 1 (“Subscribed Products”) and provide the Subscribed Products to its Authorized Users (as defined herein) subject to the terms and conditions of this Agreement.

1.2 *Authorized Users/Sites.*

Authorized Users for purposes of this Agreement are the employees, the full-time and part-time students, faculty staff, researchers and registered users (as defined in Schedule 4) of the Subscriber and individuals who are independent contractors or are employed by independent contractors of the Subscriber affiliated with the Subscriber’s locations listed on Schedule 2 (the “Sites”) who may use the Subscribed Products only for the purposes of the contracted research work for the Subscriber and individuals using computer terminals and/or having access to the Subscribed Products via controlled wi-fi network within the library facilities at the Sites permitted by the Subscriber to access the Subscribed 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 Subscribed Products;
- print, make electronic copies of and store for the exclusive use of such Authorized User individual items from the Subscribed Products;
- display or provide print or electronic copies of and post or transmit links to individual items from the Subscribed Products for the Subscriber’s internal purposes; and
- provide print or electronic copies of individual items from SciVal® for purposes of grant applications, conference proceedings, research papers, and scholarly publications and presentations by or for the benefit of the Subscriber, provided that each copy will carry appropriate acknowledgement in the following format: *SciVal*® database, Elsevier B.V., <http://www.scival.com> (downloaded on [date]).

1.4 *Restrictions on Use of Subscribed Products.*

Except as expressly stated in this Agreement or otherwise permitted in writing by Elsevier, the Subscriber and its Authorized Users may not:

- abridge, modify, translate or create any derivative work based on the Subscribed Products, except to the extent necessary to make them perceptible on a computer screen to Authorized Users;
- remove, obscure or modify in any way any copyright notices, other notices or disclaimers as they appear in the Subscribed Products;
- use any robots, spiders, crawlers or other automated downloading programs, algorithms or devices to continuously and automatically search, scrape, extract, deep link, index or disrupt the working of the Subscribed Products;
- substantially or systematically reproduce, retain, store locally, redistribute or disseminate online the Subscribed Products; or
- post “substantial parts of individual items from the Subscribed Products on social networking sites. A “substantial part” shall mean any text or image that exceeds applicable quotation rights.

1.5 *Intellectual Property Ownership.*

The Subscriber acknowledges that all right, title and interest in and to the Subscribed Products remain with Elsevier and its suppliers, except as expressly set forth in this Agreement, and that the unauthorized redistribution or dissemination online of the Subscribed Products could materially and irreparably harm Elsevier and its suppliers.

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

SECTION 2. ELSEVIER PERFORMANCE OBLIGATIONS.

2.1 *Access to Subscribed Products.*

Elsevier will make the Subscribed Products accessible to the Subscriber and its Authorized Users from the internet address set forth on Schedule 1 or as may be otherwise set forth herein, upon receipt by Elsevier of this Agreement document in the territory of The Netherlands, as duly signed in twofold by the Subscriber, which acceptance shall be evidenced and timestamped by an authorized representative of Elsevier in the Netherlands.

2.2 *Quality of Service.*

Elsevier will use reasonable efforts to provide the Subscribed Products with a quality of service consistent with industry standards, specifically, to provide continuous service with an average of 98% up-time per month, with the 2% down-time including scheduled maintenance and repairs performed at a time to minimize inconvenience to the Subscriber and its Authorized Users, and to restore service as soon as possible in the event of an interruption or suspension of service. If, due to causes within its reasonable control, Elsevier is unable to provide the Subscriber with access to the service for a period exceeding twenty-four (24) consecutive hours, then Elsevier shall refund to the Subscriber the amount of the Fees calculated by dividing the number of days (or 24 hours periods) of downtime by 365 and multiplied by the amount of the Fees for the then current year. The remedy provided herein is in addition to and not

exclusive of any other rights and remedies that the Subscriber may have under this Agreement and at law or in equity.

2.3 *Withdrawal of Content.*

Elsevier reserves the right to withdraw from the Subscribed Products content that it no longer retains the right to provide or that it has reasonable grounds to believe is unlawful, harmful, false or infringing. If the withdrawal represents more than five (5%) percent of the content comprising the Subscribed Products, Elsevier shall refund to the Subscriber the amount of the Fees that is proportional to the amount of content withdrawn and the remaining unexpired portion of the period for which the Fees were paid.

2.4 *Usage Data Reports.*

Elsevier will make usage data reports on the usage activity of each Institution accessible online to such Institution on a monthly basis to the librarians/administrators employed by the Subscriber for internal use only. Such reports may be accessed by vendors or other third parties only with the express written permission of Elsevier and for the purpose of usage analysis of the Subscriber. Elsevier will make all reasonable efforts to comply with the then currently valid COUNTER Code of Practice.

2.5 *Federated Search*

Subscriber may construct a federated search interface to enable federated searching of the Subscribed Products by Subscriber and its Authorized Users. The terms and conditions of federated searching, setup of the API or similar, and data harvesting shall be governed by a separate federated search gateway agreement to be entered into between Elsevier and the Subscriber and its Institutions.

SECTION 3. SUBSCRIBER PERFORMANCE OBLIGATIONS.

3.1 *Authentication.*

Access to the Subscribed Products will be authenticated by the use of Internet Protocol (“IP”) address(es) and/or usernames and passwords and/or a delegated authentication mechanism requiring at least two different credentials, as identified on Schedule 2. Distribution of usernames, passwords, credentials or otherwise providing remote access to the Subscribed Products by Authorized Users who are Walk-in Users is not permitted.

3.2 *Protection from Unauthorized Access and Use.*

The Subscriber will use reasonable efforts to:

- limit access to and use of the Subscribed Products to Authorized Users and notify all Authorized Users of the usage restrictions set forth in this Agreement and that they must comply with such restrictions;
- issue any passwords or credentials used to access the Subscribed Products only to Authorized Users, not divulge any passwords or credentials to any third party, and notify all Authorized Users not to divulge any passwords or credentials to any third party;
- provide true, complete and accurate IP addresses, as identified on Schedule 2, (if any) for the exclusive use by the Subscriber and proactively inform Elsevier of any changes to the Subscriber IP addresses, including the addresses no longer being used exclusively by the Subscriber; and
- promptly upon becoming aware of any unauthorized use of the Subscribed Products, inform Elsevier and take appropriate steps to end such activity and to prevent any recurrence.

In the event of any unauthorized use of the Subscribed Products, Elsevier may suspend access of the IP address(es) and/or passwords from which the unauthorized use occurred upon notice to the Consortium and relevant Institution(s). The Subscriber shall not be liable for unauthorized use of the Subscribed Products by any Authorized Users provided that the Subscriber did not intentionally assist in or encourage such unauthorized use or permit such unauthorized use to continue after having actual notice thereof.

3.3 *Compliance with Sanction Laws.*

Elsevier reserves the right to deny access to the Subscribed Products to any person or entity who is prohibited from receiving such access based on any applicable sanctions or embargoes laws.

SECTION 4. FEES AND PAYMENT TERMS.

The Lead Institution will pay to Elsevier the fees set forth in Schedule 1 (the "Fees") within one hundred and fifty (150) days of date of invoice. Notwithstanding the aforementioned, the Fees due for each year of the Term shall not be payable by Lead Institution [REDACTED]. Late payments will be subject to interest charges of [REDACTED] on the unpaid balance. The Fees will be exclusive of any sales, use, value added, withholding or similar tax and the Subscriber will be liable for any such taxes in addition to the Fees. Any sum to be paid by the Lead Institution to Elsevier under this Agreement will be paid by way of transfer to Elsevier's bank account in the Netherlands.

SECTION 5. TERM.

5.1 *Term.*

The term of this Agreement will commence on the day this Agreement is published within the Contracts Register of the Czech Republic (Registr smluv) and continue until 31 December 2019 ("Initial Term"). The Parties to this Agreement declare that they commenced to perform their obligations and Elsevier provided access to the Subscribed Products as of 1 January 2019, i.e. before the commencement of this Agreement due to the necessity of access to the Subscribed Products of 1 January 2019, to the Subscriber and Authorized Users in the full scope of the authorisation stipulated herein including all and any possible rights and authorizations such as potential archiving rights or extent of the access to the backfile content of Subscribed Products. The Fees set forth in Schedule 1 are agreed with regards to this availability of Subscribed Products. Performance of the Elsevier's obligation to make the Subscribed Products available before the commencement of this Agreement shall be considered entirely as a performance according to and in compliance with this Agreement

5.2 *Renewal.*

This Agreement may be renewed upon mutual agreement of the parties in writing for an additional one-year term, subject to appropriate adjustments to Schedule 1.

5.3 *Early Termination Due To Insufficient Budgetary Allotment From Government.*

The Lead Institution may terminate this Agreement in writing within 90 days if sufficient funds are not provided or allotted in future government-approved budgets of the Subscriber (or reasonably available or expected to become available from other sources at the time the Subscriber's payment obligation attaches) to permit the Subscriber, in the exercise of its reasonable administrative discretion, to continue this. After termination pursuant to this section 5.3 the Subscriber shall be due the prorated Fees relating to the period prior to termination.

SECTION 6. ELSEVIER WARRANTIES AND INDEMNITIES.

6.1 Warranties.

Elsevier warrants that use of the Subscribed Products in accordance with the terms and conditions herein will not infringe the intellectual property rights of any third party.

6.2 Indemnities.

Elsevier will indemnify, defend and hold harmless the Subscriber and its Authorized Users from and against any loss, damage, costs, liability and expenses (including reasonable attorneys' fees) arising from or out of any third-party action or claim that use of the Subscribed Products in accordance with the terms and conditions herein infringes the intellectual property rights of such third party. If any such action or claim is made, the Subscriber will promptly notify and reasonably cooperate with Elsevier. This indemnity obligation will survive the termination of this Agreement.

6.3 Disclaimer.

EXCEPT FOR THE EXPRESS WARRANTIES AND INDEMNITIES STATED HEREIN AND TO THE EXTENT PERMITTED BY APPLICABLE LAW, THE SUBSCRIBED PRODUCTS ARE PROVIDED "AS IS" AND ELSEVIER AND ITS SUPPLIERS EXPRESSLY DISCLAIM ALL WARRANTIES AND REPRESENTATIONS OF ANY KIND WITH REGARD TO THE SUBSCRIBED PRODUCTS AND ANY OTHER DATA, DOCUMENTATION OR MATERIALS PROVIDED IN CONNECTION WITH THIS AGREEMENT, INCLUDING BUT NOT LIMITED TO ANY ERRORS, INACCURACIES, OMISSIONS, OR DEFECTS CONTAINED THEREIN, AND ANY IMPLIED OR EXPRESS WARRANTY AS TO MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

6.4 Limitation of Liability.

Except for the express warranties and indemnities stated herein and to the extent permitted by applicable law, in no event shall Elsevier or its suppliers be liable for any indirect, incidental, special, consequential or punitive damages including, but not limited to, loss of data, business interruption or loss of profits, arising out of or in connection with this Agreement, or shall the liability of Elsevier and its suppliers to the Subscriber exceed a sum equal to the Fees paid by the Subscriber hereunder during the twelve (12) month period immediately preceding the date on which the claim arose, even if Elsevier or any supplier has been advised of the possibility of such liability or damages. This limitation of liability shall not apply in events prescribed by the law, especially if such damage is a result of a gross negligence or if the damage was caused intentionally.

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) will be deemed a breach of this Agreement.

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, written or oral, between the parties with respect to the subject matter contained herein.

7.4 *Modification.*

No modification, amendment or waiver of any provision of this Agreement will be valid unless in writing and signed by the parties, except for changes reflecting substituted titles, IP addresses, authentication mechanisms, invoicing and contact address details which may be notified by Elsevier or by Subscriber and confirmed by the other party in an exchange of email notices.

7.5 *Assignment.*

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

7.6 *Privacy.*

Elsevier shall not, without the prior written consent of the Subscriber, transfer any personal information received by Elsevier from the Subscriber under this Agreement to any non-affiliated third party, except (i) to applicable service providers to the extent necessary to perform their functions for Elsevier in support of this Agreement; (ii) where reasonably necessary to address security, safety, fraud or other legal issues; and (iii) if the Subscribed Products are acquired by another company, or use it for any purpose other than as described in this Agreement.

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. E-mail: A.Cseplesz@elsevier.com

If to the Consortium: CzechELib - National Library of Technology, Technická 2710/6, 160 80 Praha 6 - Dejvice, Czech Republic. E-mail: licensing@czechelib.cz.

7.8 *Confidentiality.*

The Subscriber and its employees, officers, directors and agents will maintain as confidential and not disclose to any non-affiliated third party without Elsevier's prior written consent the financial terms and commercial conditions of this Agreement. Elsevier may only disclose such information (i) to applicable service providers to the extent necessary to perform their functions in support of this Agreement and (ii) where reasonably necessary to address security, safety, fraud or other legal issues.

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 *Contracting Authority.*

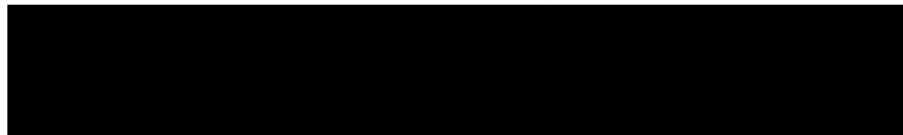
Each Institution has authorized the Lead Institution to enter into this Agreement on its behalf and to enforce this Agreement against it pursuant to an authorizing agreement substantially in the form set forth on Schedule 3.

7.11 *Governing Law*

This Agreement shall be interpreted and construed according to, and governed by, the laws of the Czech Republic, in particular by the 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.

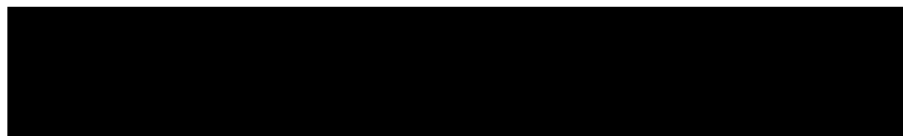
IN WITNESS WHEREOF, the parties have executed this Agreement by their respective, duly authorized representatives as of the date first above written.

CzechELib - National Library of Technology



Name: Martin Svoboda
Title: Director

ELSEVIER B.V.



Name: Gino Ussi
Title: Executive Vice President Research Solution Sales

No.



ELSEVIER SUBSCRIPTION AGREEMENT
Schedule 1
Subscribed Products/Access/Fees

No.

Subscribed Products – publisher		Access	2019 EUR
SciVal@– Elsevier B.V.		scival.com	
ECR-497421	University of Ostrava		
ECR-246444	Palacký University Olomouc		
ECR-246451	VŠB - Technical University of Ostrava		
TOTAL FEES			€ 86,228.00



ELSEVIER SUBSCRIPTION AGREEMENT
Schedule 2
Sites/Authentication/Contacts

Subscriber: CzechELib Consortium

#	SIS ID	Account	Address	Contact	Email	IP ranges
1	497421	University of Ostrava	Dvořákova 138/7, Ostrava, 701 03, Czech Republic			78.128.(128-146).(0-255) 195.113.(102-112).(0-127) 195.113.(209-209).(36-39) 195.113.(209-209).(56-63)
2	246444	Palacký University Olomouc	Křížkovského 511/8, Olomouc, 771 47, Czech Republic			158.194.(0-255).(0-255)
3	246451	VŠB - Technical University of Ostrava	17. listopadu 15/2172, Ostrava – Poruba, 708 33, Czech Republic			158.196.(0-255).(0-255)

Estimated total number of Authorized Users for SciVal:

For the avoidance of doubt, other institutions and organizations that reside or do business at the above locations (including without limitation companies that are owned wholly or in part by, or affiliated with, the Subscriber) are not Sites, unless expressly stated above.

Delegated Authentication Mechanism: Shibboleth

Institutions may be added to or removed from Schedule 2 provided that written notice is given by the lead Institution to Elsevier by 1 August prior to the start of the next calendar year of the term hereof and subject to an appropriate recalculation of the fees for any added or removed Institutions. The Subscriber acknowledges and agrees that in the event that an Institution no longer participates in this Agreement, such Institution will be removed from the Schedules and its Journal titles shall no longer be accessed by the Subscriber.

The Lead Institution shall promptly notify Elsevier of any material changes in the number of Sites or Authorized Users, which changes may result in early termination unless the parties are able to agree to appropriate fee adjustments for any subsequent years of the term, and may substitute IP address(es) upon mutual agreement of the parties in writing.

Primary Contact

Name: Jiří Jiráč
Title: Head of Licensing Unit
Name/Address (if different from Section 7.7):
E-mail: licensing@czechelib.cz
Phone: +420 220 44 4393

Billing Contact

Name: Ivana Žilová
Title: Accountant
Name/Address (if different from Section 7.7):
E-mail: ivana.zilova@techlib.cz
Phone: +420 232 002 588

The Lead Institution will promptly notify Elsevier of any changes to any of the contact information above.

**ELSEVIER SUBSCRIPTION AGREEMENT
Schedule 3**

Standard Power of Attorney Form

POWER OF ATTORNEY AND PROXY

The undersigned, _____, the authorized representative of [Name of Institution], an academic institution, with its principal offices located at [street address, city, state, postal/zip code, country] (the "Institution"), hereby constitutes and appoints [Name, Title, Name of Consortium], with its principal offices located at [street address, city, state, postal/zip code, country] (the "Attorney"), as the true and lawful attorney-in-fact and proxy of the Institution, with full power and authority in the name and stead of the Institution to exercise all rights and privileges of the Institution in its capacity as an Attorney of the Institution to sign, in its sole discretion, the Elsevier Subscription Agreement ("Agreement") annexed hereto and any amendments thereto and to receive and process all invoices and make payments of all fees due as specified in the Agreement on behalf of the Institution.

The Institution acknowledges and agrees to be bound by the terms and conditions of the Agreement, including but not limited to the restrictions on access to and use of the services as set forth in the Agreement. The Institution will be responsible for and make payment solely of the fees specific to that institution [stated in schedule 1 of this Agreement], due for access to and use of the services as specified in the Agreement [to the extent that the Attorney fails to make any such payment on behalf of that particular institution]. In no case shall the institution be responsible to payments of any fees specific to Attorney or fees specific to any other institution.

IN WITNESS WHEREOF, this POWER OF ATTORNEY AND PROXY has been executed by the Institution this ___ day of _____, 2019.

Name:

Title:

ELSEVIER SUBSCRIPTION AGREEMENT

Schedule 4

Registered Users

The Subscriber may grant remote access to registered users (“Registered Users”) from the Czech Republic only, who may access the Subscribed Products for non-commercial purposes via the separate IP address indicated by Subscriber on Schedule 2 and/or delegated authentication mechanism, identified on Schedule 2, requiring at least two different credential. Each Registered User shall sign a Registered User agreement. The Registered User agreement shall include the below texts. The Subscriber shall make available Registered Users’ records directly relating to this Agreement. Such records shall be open one time per year during business hours, on giving 30 days’ notice to the Subscriber for inspection by Elsevier at the premises of Subscriber.

Registered User Agreement:

The Registered User may for non-commercial purposes only: 1) access, search, browse and view the products; 2) print and download a reasonable portion of the products;

Except as may be expressly permitted in this Agreement, the Registered User may not: 1) abridge, modify, translate or create any derivative work based on the products, except to the extent necessary to make them perceptible on a computer screen; 2) remove, obscure or modify in any way any copyright notices, other notices or disclaimers as they appear in the products; or 3) substantially or systematically reproduce, retain or redistribute the products.

The Registered User acknowledges that all right, title and interest in and to the products remain with the publisher and its suppliers, except as expressly set forth in this Agreement, and that the unauthorized redistribution of the products could materially harm the publisher and its suppliers.

The Registered User confirms that the use will be for non-commercial purposes and that he/she is not employed by a corporation for which the products will be used.

EXCEPT FOR THE EXPRESS WARRANTIES AND INDEMNITIES STATED HEREIN AND TO THE EXTENT PERMITTED BY APPLICABLE LAW, THE PUBLISHER PROVIDE THE PRODUCTS “AS IS” AND MAKE NO REPRESENTATION OR WARRANTY AND EXPRESSLY DISCLAIM ANY LIABILITY FOR ANY CLAIM ARISING FROM OR OUT OF THE PRODUCTS, INCLUDING BUT NOT LIMITED TO ANY ERRORS, INACCURACIES, OMISSIONS, OR DEFECTS CONTAINED THEREIN, AND ANY IMPLIED OR EXPRESS WARRANTY AS TO MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.