

Contract ID:

Agreement on the Provision and Access to Electronic Information Resources for the Period of 2019-2022

between the National Library of Technology and the Member Institution of the CzechELib concluded pursuant to Section 1724-1766 of Act No. 89/2012 Coll., the Civil Code, as amended to which the parties are

National Library of Technology,

a state contributory organization set up by the Ministry of Education, Youth and Sports with registered office at 160 80 Praha 6, Dejvice, Technická 6/2710,

Data box: syd69w9

ID No.: 61387142 Tax ID: CZ 61387142

Bank account: Czech National Bank, acct. no. 30007-8032031/0710

represented by Ing. Martin Svoboda, Director

(hereinafter referred to as the "NTK")

and

Name of the institution:

with registered office at:

Data box:

ID No.: Tax ID:

Bank account: Bank:.....

acct. no.:

represented by:

function:

(hereinafter referred to as the "Member Institution")

(collectively also referred to as the "Contracting Parties")



1. Preamble

Whereas

- NTK received the CzechELib project in order to provide the Member Institutions with access to the required electronic information resources (hereinafter referred to as the „EIR“ or „EIRs“) and also received financial subsidies for the partial payment of license fees for their accessibility in the years 2019 - 2020,
- the Member Institution has commissioned NTK by the Contract on central purchase to administrate the relevant procurement procedure whereby the NTK has to negotiate with the publisher or supplier a contract for the purchase of specified EIRs on its account and on behalf of the Member Institution and then pass the EIRs to the Member Institution against the payment; and NTK actually negotiated these contracts,
- the Member Institution, according to Article II. 9. of the above mentioned Contract on central purchase undertook to enter into a contract with the NTK, with which NTK cedes the access to the EIRs to the Member Institution,

therefore

the Contracting Parties hereby enter into this Agreement on the Provision and Access to Electronic Information Resources for the Period of 2019-2022 (hereinafter referred to as the „**Agreement**“), which regulates the operational and economic conditions of provision and access to the required electronic information resources.

2. Definitions of terms

2.1. Member Institution: The institution that, as the delegating authority, authorized NTK with the task of administrating the procurement on public contract in order to ensure the required EIRs, and by signing the Contract on central purchase became a Member Institution of the CzechELib project.

2.2. Authorized Person: The person appointed by the NTK as per paragraph 6.5. of the Agreement and the person appointed in writing by the statutory representative of the Member Institution to communicate with CzechELib on behalf of and on the account of the Member Institution on matters concerning the purchase and use of EIRs within the framework of the CzechELib project. The contact details of such person are listed in paragraph 6.6. of the Agreement.

2.3. Provider: For a group of Member Institutions (the "consortium") within the CzechELib project, it provides access to the EIRs; the terms and conditions for access to the EIRs are determined by either publisher of the EIRs or the supplier to which the publisher or publishers of EIRs have granted, for the EIRs published by them and for the purposes of the CzechELib project, the exclusive right to provide access to EIRs and to set prices and conditions. If the different roles of the supplier or publisher are necessary to be distinguished hereunder, the relevant term is used.

2.4. Methodology: "Methodology for determining the right of a Member Institution to draw support within the CzechELib project" is an integral part of the Agreement and is listed in Annex 1.

2.5. License Terms: "License Terms for access to the EIRs within the CzechELib project" are listed as an integral part of the Agreement in Annex 2 by means of a link to CzechELib website where the individual license agreements concluded with the EIR Providers (hereinafter referred to as the "**License Agreement**"), which relate to the EIRs listed in the List of EIRs. These License Agreements include particularly but not exclusively, definitions of the Authorized Users, Authorized



Use, and other terms related to the relevant EIR. Any other information communicated between the Contracting Parties shall have exclusively informative character without any effect. The only decisive and binding text is always the respective License Agreement that is in this manner always accessible to the Contracting Parties.

2.6. The Terms of Use: constitute a summary of conditions set forth in the Agreement and in the License Terms.

2.7. List of EIRs: "List of EIRs including Prices" as an integral part of the Agreement is given in Annex 3. Regarding the licensing procedure, Annex 3 will be gradually supplemented in the form of amendments to the Agreement.

2.8. Authorized User: Authorized Users of a Member Institution are typically employees, students, and other independent contractors of a Member Institution. Any deviations must be respected according to the License Terms relating to the relevant EIR.

3. Subject matter of the Agreement

3.1. The subject matter of the Agreement is:

3.1.1. an obligation of the NTK to provide the Member Institution and its Authorized Users with the right of access to the EIRs within the agreed extent and under specified conditions,

3.1.2. an obligation of the Member Institution to pay the price in accordance with the Agreement and to observe the Terms of Use.

4. Rights and obligations of the NTK

4.1. NTK provides the Member Institution and its Authorized Users with a non-exclusive, non-transferable right of access to the EIRs listed in the List of EIRs for the duration of the Agreement in accordance with the Terms of Use.

4.2. NTK provides the Member Institution with the support for access to EIRs and mediates, without undue delay and with professional care, communication between the EIR Provider and the Member Institution in accordance with the License Terms.

4.3. NTK provides the Member Institution and its Authorized Users with operational, information and user support for the access and use of EIRs.

4.4. NTK established the website www.czechelib.cz for operational support of Member Institutions and their Authorized Users, where main CzechELib documents, License Terms and current project information are available.

4.5. NTK will establish an Electronic Resource Management System (ERMS) by March 31, 2019 to support Member Institutions. Access data will be communicated by the NTK to the Authorized Person.

4.6. NTK manages data of the Member Institution and its representatives to the extent necessary to fulfil its obligations under this Agreement and the License Agreements. NTK commits itself not to use these data for other purposes.

4.7. Any change of the License Terms will be entered into the online version by NTK and will be notified in writing without undue delay to the Member Institution. If the NTK does not comply with this obligation to adjust the License Terms and if the Member Institution violates the new license terms, NTK cannot enforce any contractual penalty or indemnity or other harm resulting from such breach.



4.8. If access to an EIR from the List of EIRs is suspended or restricted due to a breach of contractual obligations or License Terms by NTK, NTK will immediately take all necessary steps to remedy it. NTK is liable for any damages incurred by such suspension or restriction to the Member Institution or the Provider.

4.9. If access to an EIRs from the List of EIRs is suspended or limited because of a breach of contractual obligations by the Provider, NTK will immediately take all necessary steps to remedy it. The Provider is liable for any damage incurred by such suspension or restriction to the Member Institution or the NTK. Right to compensation for such damage will be claimed by the NTK on behalf of the Member Institution regarding the Provider and NTK will act with the utmost care and in the best interests of the Member Institution. In this case, the Member Institution is entitled to claim against the NTK the compensation for the paid-in co-payment to the extent that NTK is entitled to claim compensation from the Provider under the License Terms.

5. Rights and Obligations of the Member Institution

5.1. Member Institution and Authorized Users have the right to use access to EIRs from the List of EIRs according to the Terms of Use.

5.2. The Member Institution, by signing this Agreement, declares that it has acquainted itself with the Terms of Use and agrees with their wording.

5.3. The Member Institution is obliged to acquaint EIRs users with the Terms of Use, especially in the sense of who the Authorized Users are and what is the authorised use of each individual EIR. The Member Institution is obliged to ensure that only Authorized Users have access to EIRs. In particular, a Member Institution is required to maintain the confidentiality of access rights under the License Terms.

5.4. The Member Institution undertakes to observe the Terms of Use and is liable for their observation by the Authorized Users. If the Member Institution detects any violation of the Terms of Use, or if it was notified thereof, on its part or by its Authorized Users, the Member Institution will provide maximum cooperation to the NTK in identifying and remedying violations of the Terms of Use. This shall apply also when the Member Institution has not detected violation of the Terms of Use although it should have and could have detected it.

5.5. The Member Institution is not authorized to allow the use of EIRs by the third parties in any way, except as expressly stated in the Terms of Use. If the Member Institution exceeds this entitlement, it is liable for any damage incurred and this is a serious violation of this Agreement.

5.6. The Member Institution is entitled and obliged to communicate with the Providers only under the conditions specified in the License Terms. Contracting Parties agree and take into account that the NTK is authorized to provide the contact details regarding the responsible person of the Member Institution to the Provider for the direct and operational communication of the Provider and the Member Institution, in particular regarding compliance with the Terms of Use and the use of the relevant EIR. For this purpose, the Member Institution shall provide NTK with the relevant information of the responsible person, as agreed in the relevant License Agreement. The Member Institution has the right to change the responsible person by notifying NTK without the need to formally amend this Agreement. The change shall take effect on the day following the date of notification.

The Member Institution shall inform the responsible person on the processing of his / her personal data carried out by NTK and the Provider. The Member Institution shall immediately notify NTK on the direct communication with the Provider regarding the License Terms and Terms of Use including on the content of this communication.



5.7. If access to the EIRs from the List of EIRs is suspended or restricted due to a breach of the Terms of Use caused by the Member Institution or its Authorized User, the Member Institution shall immediately take all necessary steps to remedy it and shall not be entitled to claim any compensation for the paid-in co-payment.

5.8. The Member Institution undertakes to compensate NTK for any damage and penalties (contractual fines, interest, other claimed costs) that will be claimed by the Provider against the NTK due to the violation of the Terms of Use caused by the Member Institution or its Authorized Users. The Member Institution shall simultaneously provide all maximal cooperation to prevent all and any damage or sanction or in order to minimize any potential damage or sanction.

5.9. If access to any EIR from the List of EIRs is suspended or restricted for any other reason than that specified in paragraph 4.8., 4.9., or 5.7., the Member Institution shall have the right to claim reimbursement of paid-in co-payment against NTK only in cases and to the same extent as NTK is entitled to require such reimbursement pursuant to the License Terms against the Provider.

5.10. The Member Institution is obliged to notify NTK without undue delay of any changes to the data about the institution, its statutory representative and the Authorized Person, in particular the change of IP addresses from which the Member Institution accesses individual EIRs under the License Terms.

5.11. The Member Institution undertakes to cooperate with NTK on the impact assessment of the CzechELib project. In this sense, the Member Institution undertakes to provide NTK, on-demand, with effective cooperation in the preparation of project implementation reports, annual reports and other qualitative and quantitative assessments.

6. Rights and Obligations of the Contracting Parties

6.1. The Contracting Parties acknowledge that the rights to the EIRs are protected by the applicable laws of the state of the registered seat of the EIRs publisher and international agreements on copyright and related rights.

6.2. Contracting Party that has breached the Terms of Use:

6.2.1. is obliged to take immediate action to remedy and remove the consequences of such breach, and to provide maximal necessary cooperation to redress or rectify violation of the Terms of Use.

6.2.2. shall be held liable for any damage caused. Inclusion of the compensation for damage to the invoiced amount for EIRs is not allowed.

6.3. The Member Institution is obliged to promptly inform NTK of any facts, changes and circumstances that have or might have a significant effect on the performance of the Agreement on its part. The NTK will immediately discuss such information at the level of the project expert council and its conclusions will be submitted to the project steering committee for decision. Based on the decision of the steering committee, NTK will take steps to ensure that this decision is implemented without undue delay.

6.4. In all matters relating to the provision, use and access to the EIRs, with the exception of the signing of the Agreement and its amendments, the Authorized Persons of the Contracting Parties shall act. The Contracting Parties have the right to change the Authorized Person by notifying the other Party without any addendum to this Agreement, the change shall become effective on the day following the date of notification of the change. If the Authorized Person is absent for a long time, the Contracting Party shall be obliged to appoint its representative so that the other Contracting Party becomes aware of the contact details of that representative at the latest at the first attempt to communicate with the Authorized Person before or at the time of his / her absence.



6.5. Authorized Person for NTK

Ing. Jiří Jirát, Ph.D.

Head of Licensing Administrative Unit

postal address: 160 80 Praha 6, Dejvice, Technická 6/2710

e-mail: licensing@czechelib.cz

phone: 232 002 535

6.6. Authorized person for a Member Institution

name and surname:

function:

Postal address:

e-mail:

phone:

6.7. Once one of the Contracting Party to the Agreement finds that the access to the EIRs listed in the List of EIRs has been suspended or limited, it shall notify the other Contracting Party without undue delay.

6.8. No Contracting Party is entitled to assign claims arising under the Agreement or in connection with the Agreement nor to assign this Agreement as a whole, transfer the obligations under the Agreement to a third party or make any legal action that would result in the transfer or transition of rights or obligations arising out of the Agreement without the prior written consent of the other Contracting Party.

7. Pricing and payment terms

7.1. The fee under the License Agreement is paid to the Providers by NTK once a year, in the year of granting the access. Fee consists of two parts:

7.1.1. the co-payment of a Member Institution,

7.1.2. of the support from the subsidy provided by the CzechELib project from the OP VVV program, respectively from the state budget after year 2020, if the Member Institution is entitled to such support.

7.2. Entitlement to the support from the CzechELib project is governed by the Methodology. If a Member Institution is not entitled to the support, it pays full fee for the access to the EIRs. Entitlement to the support of the Member Institution, if is not a statutory research organization or a state organization unit, shall be provable by verifying the record in the List of Research Organizations maintained by the Ministry of Education, Youth and Sports, such verification shall be conducted no later than the date of sending the invoice from NTK for EIRs in the given calendar year.

7.3. If a Member Institution becomes eligible for support after the date mentioned in paragraph 7.2, its co-payment will be decreased only from the following year.

7.4. If the Member Institution ceases to be entitled to the support during the duration of the Agreement, the Member Institution is obliged to notify this fact without undue delay to the NTK.



NTK will ensure settlement in accordance with the rules of the OP VVV and in accordance with the rules of drawing the funds from the state budget.

7.5. The Member Institution entitled to the support shall pay NTK its co-payment of the fee that represents the price of providing access to EIRs under this Agreement in the amount of:

7.5.1. 30% of the EIRs price listed for an individual institution in the License Terms, as regards citation databases and analytical tools for R&D assessment (Web of Science, Scopus, InCites, SciVal),

7.5.2. 50% of the EIRs price listed for an individual institution under the License Terms as regards other EIRs,

7.5.3. 100% of the price of Web of Science Backfile (SCIE Backyear; SSCI Backyear; ACHCI Backyear; CPCI Backyear; CPCI-SSH Backyear) and Web of Science Citation Connection Backfile.

7.6. The above-mentioned amount of co-payment is valid for the period 2019 – 2020 and applies under assumption that the exchange rate of the Czech crown against foreign currencies on January 2, 2019 and concurrently the amount of VAT at the time of the effectiveness of the License Agreements with the EIRs Providers will not increase by more than 10%. If a combination of the exchange rate and the VAT amount increases by more than 10%, the Member Institution acknowledges and explicitly agrees that the support from the CzechELib project may not cover the anticipated support under paragraph 7.5 and that in such case the Member Institution will reimburse from its own funds an increased co-payment fee even vis-à-vis lower percentage of support. In the case of years 2021-2022, the amount of participation (co-payment) may be adjusted as a consequence of the new determination of financial support from the state budget, see paragraph 8.3.

7.7. NTK reserves the right to unilaterally increase the financial support of EIRs (to reduce the co-payment of Member Institutions) stated in paragraph 7.5.

7.8. The Member Institution undertakes to pay its co-payment for the access to the requested EIRs in the amount according to paragraph 7.5 of the prices listed in the List of EIRs against the prepayment invoice issued by NTK. The invoice will be issued to the Member Institution after the payment of the prepayment invoice. The invoice will have all requisites of an accounting and tax document. The invoice shall always be issued in Czech crowns. Exchange rate for foreign currencies will be determined at the time of invoicing with respect to exchange rate risks.

7.9. The prepayment invoice and invoice will be sent to the Member Institutions electronically to the Authorized Person and at the same time in writing to the address mentioned in paragraph 6.6. of the Agreement, depending on the completion of licensing negotiation. The prepayment invoice due date will be either April 15 of the respective year or 30 days from the issuance of the prepayment invoice date, whichever is later. Exchange rate differences between the payment of invoices by Member Institutions in CZK and the currency of NTK payments to Providers for EIRs will be settled after invoices have been paid to the EIRs Providers, according to the Czech national bank exchange rate on the date of the payments to the Providers of EIRs. The final billing will be made, and any outstanding balance or overpayment will be settled by Member Institution by September 30 of the respective year; the annex of the bill will, among other things, state a CZK exchange rate on the date of payment of the NTK invoices to EIRs Providers.

7.10. The Member Institution acknowledges and expressly agrees that if is in delay with the payment, its access to the relevant EIRs may be restricted or suspended until the payment to the EIRs Provider is made.



7.11. The Member Institution acknowledges and expressly agrees that if delay with its payment results in NTK's obligation to pay the EIR Provider any contractual penalty or interest set out in the License Terms or any default payment interest arising directly from the law, such contractual penalty or interest shall be charged out to the Member Institution. In addition to the right to compensation of a contractual penalty, NTK also has the right to compensation for the damage in the full amount.

8. Duration of the Agreement

8.1. The Agreement is concluded for a period up to December 31, 2022. Termination of the Agreement shall not affect the claims of the Contracting Parties arising for the duration of the Agreement, such as the right to compensation for damage or the payment of a contractual penalty.

8.2. The purpose of the CzechELib project is to provide Member Institutions with access to the EIRs throughout the duration of the Agreement under the payment terms and conditions set forth in Article 7 of the Agreement. This intention will be influenced by two circumstances beyond the direct control of NTK during the duration of the Agreement:

8.2.1. In the framework of the EU Competitiveness Council Conclusions of May 27, 2016, during the duration of the Agreement, individual EIRs should switch concerning e-journals and, in part, e-books from the subscription model to the open access model. The recommendation of the Czech Republic should be formulated by National Strategies for Open Access to Scientific Information for the years 2017-2020 for which the envisaged implementation plan has not yet been approved. NTK will negotiate, when necessary, new conditions that may be different than agreed upon in contracts with Providers of this type of resources, but NTK will seek, in cooperation with the expert council and the project steering committee of the project, a solution acceptable to the Member Institutions.

8.2.2. NTK has funds to support the purchase of EIRs from the CzechELib project only until 2020 inclusive. Therefore, it cannot conclude License Agreements with the Providers permanently providing the same conditions for five years without the possibility to adjust the conditions according to the amount of support from the state budget for years 2021 and 2022 after three years with the approval of the Member Institutions and the project Steering Committee. The Government Council for R&D is continuously informed and the medium-term budget proposal claims an amount to cover project needs after the exhaustion of the support from the CzechELib project.

8.3. NTK will make every effort to ensure that support from the state budget for year 2021 and 2022 (and beyond) is confirmed to the date of December 31 of the previous year at the latest so that the Agreement can continue smoothly under the current conditions. If it is not clear on May 31 of the previous year that support from the state budget for year 2021 and 2022 will be available for the CzechELib project, the NTK is obliged to start negotiations with Member Institutions and the Providers on the modification of the terms of the Agreement and of the License Agreements.

8.4. The Member Institution acknowledges that the duration of this Agreement, or the duration of access to each EIRs, depends on the duration of the License Agreement. In the event of the termination or cancellation of the License Agreement, the access of Member Institutions to the relevant EIRs shall also be terminated and NTK will not be in default with respect to the Member Institution. The Member Institution hereby acknowledges and agrees that in the event of premature termination or cancellation of the License Agreement, and thus access to EIRs, it will have the right to a refund of the proportion of the fee paid for access to the EIRs only if NTK is entitled under the License Agreement to a proportionate refund of the fee paid.



8.5. NTK is entitled to withdraw from the Agreement or part thereof in relation to a particular Provider or EIR if:

8.5.1. The Member Institution or its Authorized User violates the Agreement, the License Terms or the Member institution will be in default with the payment of its portion of the fee for the EIRs to NTK in the amount specified in this Agreement for a minimum of 30 days; or

8.5.2. it will be established that the Provider is not the owner of the copyright rights (considering the specifics of the law governing the License Agreement) as stated in the License Agreement by the Provider; or

8.5.3. NTK will not be entitled to grant access to the EIRs or will cease to exercise this right or when the EIR ceases to exist or is modified or transferred in contrast with the respective License Agreement as well as in an event of a law amendment that would not be compatible with the respective License Agreement and no agreement could be reached with the Provider regarding rectification of this incompatibility.

8.6. Should the NTK withdraw from the Agreement or withdraw only partially in relation to a particular EIR as a result of breach of contractual obligations by the Member Institution, the Member Institution shall not be entitled to refund of any part of the fee for the EIRs access for the calendar year in which the withdrawal occurred.

9. Final Provisions

9.1. The Agreement and the relationships arising out of this Agreement are governed by the laws of the Czech Republic, in particular the relevant provisions of Act No. 89/2012 Coll., the Civil Code, as amended, and the relevant provisions of Act No. 121/2000 Coll., copyright Act, as amended.

9.2. The Member Institution acknowledges that within the scope of the Agreement, NTK as the centralized contracting authority for procurement of specified EIRs is required to ensure and not compromise the fulfilment of the conditions of the relevant grant program as well as to follow the binding decisions, opinions and guidelines of the Ministry of Education, Youth and Sports.

9.3. If any obligation arising from the Agreement as a whole or part thereof is, or becomes, invalid, unenforceable, implied, or void at any time, such invalidity, unenforceability, implicitity or voidity shall not affect the validity and enforceability of any other obligations under the Agreement and the Contracting Parties undertake to replace this invalid, unenforceable, implied, or void obligation or part of it with such a new, valid and enforceable obligation, the subject of which will, as far as possible, correspond to the subject matter of the original obligation and the intent of the Contracting Parties. The Contracting Parties undertake to eliminate such discrepancy in the shortest possible time.

9.4. The Contracting Parties are obliged to cooperate to the extent that they can properly and timely implement their rights and fulfil the obligations under the Agreement and that they do not breach or violate the contracts with the EIR Providers.

9.5. Any disputes between the Contracting Parties arising out of or in connection with the Agreement will, as far as possible, be settled amicably. If the amicable solution is not reached, the disputes will be resolved at the local and substantively competent court in the Czech Republic.

9.6. All documents under this Agreement will be delivered to the address under paragraphs 6.4, 6.5. and 6.6. of the Agreement. Regarding technical matters, especially matters of access to EIRs, the delivery between Authorized Persons can be conducted via e-mail with mutual confirmation. Any other document the delivery of which the Agreement envisages shall be deemed to have been delivered if it has been delivered to the Contracting Party to the address of the Authorized Person.



The refusal of the Contracting Parties to take over the document will have the same consequences as delivering the document on the day of the refusal.

9.7. Amendments or additions to the Agreement, except for the License Terms and for other cases specified in this Agreement, must be made in writing, in ascending order numbers, and agreed by both Contracting Parties and, upon signature by both parties to the Agreement, become an integral part of the Agreement.

9.8. The Agreement shall enter into force on the date of signature by both Contracting Parties. The Agreement comes into effect on the date of its publication in the Register of Contracts under the conditions stipulated by Act No. 340/2015 Coll., On the Register of Contracts, as amended. The Agreement will be published in the Register of Contracts by NTK.

9.9. The Contracting Parties declare that they have read and understood the Agreement before signature, and that they sign it in accordance with their true and free will, not in distress or under unfavourable conditions.

9.10. If the Agreement is signed in printed form, it is drawn up in four counterparts, of which each Contracting Party receives two copies. If the Agreement is signed in electronic form, it is drawn up in a single copy signed electronically by both Contracting Parties. The physically signed Agreement will be sent by post to the registered office of the Member Institution and of the NTK, the electronically signed Agreement in the data box of the Member Institutions / NTK.

In Prague

on

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Ing. Martin Svoboda

Director of the

National Library of Technology

In

on

.....

name and surname:

function:.....

name of the institution.....

