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¹ <http://www.niso.org/workrooms/transfer/>



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

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

⁴ <http://www.niso.org/workrooms/sushi/>



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IX. Term



1. This Agreement shall come into force and effect on the date on which all Parties execute this Agreement (the “Effective Date”).
2. This Agreement shall be in effect from the Effective Date through the expiration date as set out in Appendix A unless terminated earlier in accordance with the provisions in Section XI.

X. Renewal

1. This Agreement shall be renewable at the end of the current term for a successive two (2) years term unless either party gives written notice of its intention to cancel ninety (90) days before expiration of the current term. Licensor shall provide Licensee with renewal quotes of all Licensed Materials and for all Participating Institutions no less than ninety (90) days prior to the end of the current term (31.12.2020). Effective for 2019, all fees payable by Licensee may be annually multiplied by (1+HICP released by Eurostat) to establish the following year Fees. In the event of a price increase, Licensee shall have no less than ninety (90) days from the date of notification of the price increase to notify Licensor of Licensee’s intent to cancel or renegotiate.

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4. Refunds. In the event of early termination permitted by this Agreement, except for termination for a material breach by the Licensee, Licensee shall be entitled to a refund of any fees or pro-rata portion thereof paid by Licensee for any remaining period of the Agreement from the date of termination.

XII. Perpetual Rights

1. Perpetual License. Notwithstanding anything else in the Agreement, Licensor grants to Licensee and Participating Institutions a nonexclusive, royalty-free, system-wide perpetual license limited to the territory of Czech Republic to use any Licensed Materials that were subscribed to or for which a perpetual license fee has been paid during the term of this Agreement. Such use shall be in accordance with the provisions of this Agreement, which provisions shall survive any termination of this Agreement. The means by which Licensee and/or Participating Institutions shall have access to such Licensed Materials shall be in a manner and form substantially equivalent to the means by which access is provided under this Agreement. If the Licensor's means of access is not available, the Licensee and/or Participating Institutions may provide substantially equivalent access to the Licensed Materials by use of an archival copy or by engaging the services of third-party trusted archives (such as Portico) and/or participating in collaborative archiving endeavors to exercise its perpetual use rights.

Note: This paragraph applies only to the Licensed Materials which are perpetual, so it is obligatory only for e-journals and e-books with permanent license - in contrast to factual, citation or similar databases and e-resources.

2. Archival Copy. Licensor shall provide to Licensee upon request, or Licensee may create, one (1) copy of the entire set of Licensed Materials to be maintained as an archival copy. The archival copy from the Publisher shall be provided without any DRM in a mutually agreeable medium suitable to the content, and any fees for provision of copies will be on a time and materials basis only.
3. In the event the Licensor discontinues or suspends selling or licensing the Licensed Materials, the Licensee and Participating Institutions may use such archived Licensed Materials under the same terms as defined by this Agreement.



If Licensee has a backup copy of the Licensed Materials as defined in Section IV, the backup copy may be used as an archival copy.

4. 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.
5. 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

1. 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 is authorized to fulfil any of his obligations set out in this Agreement and that this is ensured in the contract concluded with the Publisher.
2. Accessibility Requirements. Licensor warrants that the Licensed Materials comply with Publishers 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 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

1. 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

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

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



arises from the use of the Licensed Materials, or the inability (means incompetence, not the possibility, availability to use Licensed materials) to use the Licensed Materials.

2. 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.
3. 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

1. 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

1. Neither party may assign, directly nor 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.

XVII. Governing Law

1. 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

1. 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.
2. 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 Nature, 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

1. 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. Applicable provisions of the Agreement

1. The Articles set out in this Agreement are applicable as a whole to the all Licensed Materials listed in the Appendix B, unless the Appendix D (Cards of the Licensed Materials) set out otherwise. In the Appendix D the exceptions to the conditions of this Agreement in relation to the respective Licensed Materials (Card of the Licensed Material) are stated. The provisions of Appendix D of this Agreement are prior to the provisions of this Agreement. If the Appendix D stated otherwise, the wording of Appendix D prevails.

XXII. Amendment

1. 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.

XXIII. Severability

1. 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.

XXIV. Waiver of Contractual Right

1. 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.

XXV. Notices

1. 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.

2. If to Licensor:

Supplier
Address of Supplier
City of Supplier
State of Supplier
Country of Supplier
Postal Code of Supplier

3. If to Licensee:

3.1. Licensing contact:

Head of Licensing Unit
CzechELib
National Library of Technology
Technická 6, 160 80 Praha 6 - Dejvice
Czech Republic
Phone:
Email:

3.2. Invoicing contact:

3.3. Technical contact:

XXVI. Audit rights

1. Licensor is obliged to stand still any control of a respective authority and to cooperate with any auditing/controlling body authorized to carry out audit in compliance with the rules and regulations of Czech republic and mandatory rules of EU/EC regarding to the financial control especially regarding to the grants as well as to cooperate with persons authorized to execute the audit/control by such auditing bodies. Licensor shall not be entitled to any remuneration, compensation nor any other benefit for providing cooperation as described above.



2. Disallowance of the audit/control or a failure to provide cooperation as described in Article 1 shall be deemed as a serious breach of this Agreement.
3. Licensor is obliged to fully compensate any damages that should arise as a result of the conduct described in Article 2. Obligations described in Article 1 are imposed upon the Licensor regardless the termination of this Agreement.

XXVII. Execution

1. 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.
2. 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.

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 Supplier

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

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Appendix A: Business Terms

Licensed Materials:

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

Agreement Term: Effective date - 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:

1. The price for the Licensed Materials shall be paid on the Licensor's bank account.
2. The price for the Licensed Materials shall be paid annually for each commenced calendar year of the duration of the Agreement in the amount set forth therein. The parties expressly state that the price for the year 2018 shall be paid in the whole amount, regardless of the beginning of the Agreements' effectiveness.
3. All the prices under this Agreement are set forth as final, unchangeable and maximum allowable.
4. The value added tax shall be added to all the prices under this Agreement in the value prescribed by the law.
5. The price for each commenced calendar year of the duration of the Agreement shall be paid in two part payments with the following maturity:
 - Max 50% on 15 March of the given year for which the Licensed Materials are paid (maturity of the first part payment);
 - Max 50% on 30 April of the given year for which the Licensed Materials are paid (maturity of the second part payment);
 - The abovementioned maturities are applicable only if the invoice (all the invoices) is delivered to the Licensee up to 15 days before the stated maturity of the first part payment, i.e. until the end of February of the given year;
 - If the invoice is delivered later, at least by the 15 days prior to the due date of the second part payment, i.e. in the term beginning from 1 March



- to 15 April of the given year, the due date of the first part payment shall be within 15 days from the date of the provable invoice delivery. The maturity of the second part payment remains unaffected;
- If the invoice is delivered later, the due date of both part payments shall be within 15 days of the provable invoice delivery date.
6. The invoice shall be issued in the currency specified in the Agreement. In the event that there are multiple currencies specified in the Agreement for each Licensed Materials, the Licensor shall issue at least the number of invoices corresponding to the number of currencies. The foreign currency on the invoice(s) shall also be converted into Czech crowns according to the Czech National Bank exchange rate (www.cnb.cz) on the date of the taxable transaction.
 7. Invoice - the tax document shall contain all the requisites of the tax document. The invoice shall contain all the requisites set forth in the Act No. 89/2012 Coll., The Civil Code, as amended and Act No. 235/2004 Coll., VAT Act, as amended. The invoice shall be delivered to the Licensee either originally or electronically to the e-mail address fakturny@techlib.cz. The invoice shall include summary of all the Licensed Materials pursuant to the Agreement. The invoice shall also be labeled „IPS CzechELib, reg. č. CZ.02.1.01/0.0/0.0/16_040/0003542”.
 8. If the invoice does not contain the requisites set forth in this Agreement or these are incorrect or incomplete, the Licensee is entitled to return such invoice to the Licensor for completion/correction. In such case, the term of payment shall be interrupted and the new term of payment shall run from the provable invoice delivery date to the Licensee and pursuant to the rules set forth above. The procedure under the previous sentence may also be repeated. Denial of monetary performance and the related return of an invoice in accordance with this paragraph do not constitute a default in the payment by the Licensee.
 9. Fulfillment of any financial obligation associated with performance under this Agreement shall be understood as the moment of debiting the full amount from the bank account of the other party.
 10. The Licensor is not entitled to require any advance payments under this Agreement.
 11. The Licensor declares that is a VAT payer and that is not an unreliable VAT payer within the meaning of the Section 106a of the VAT Act. In the event that the tax administrator starts a procedure that the Licensor is an unreliable VAT payer, the Licensor undertakes to notify such fact to the Licensee in writing without undue delay.
 12. The Licensor further declares that he fulfills all the conditions set forth in the Section 109 of the VAT Act, i.e. that he has not breached any obligation under the VAT Act which could lead to the liability of the Licensee for the unpaid tax under the Section 109 of the VAT Act. The Licensor undertakes that if there is a threat or even a breach of any Licensor's obligation that could lead to the liability of the Licensor for an unpaid tax, he shall notify such fact in writing to the Licensee without undue delay.
 13. Any payments made under this Agreement in favor of the Licensor shall be made to the Licensor's bank account, which is registered with the tax authority within the meaning of the Section 109 of the VAT Act, which the Licensor confirms. In the event that the Licensor becomes an unreliable VAT payer under the preceding paragraphs or there is a threat that the Licensor becoming an unreliable VAT



payer under the preceding paragraphs, or the Licensor's account shall not be registered with the tax administrator, the Licensor expressly agrees that the VAT from the price under this Agreement shall be paid directly to the tax administrator's account in accordance with the binding legislation.

14. The Licensor takes on the risk of a change in circumstances under the Section 1765 (1) of the Act No. 89/2012 Coll., The Civil Code, as amended.

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

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-
-
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Appendix C: IP Addresses

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Appendix D: Cards of the Licensed Materials

1.

Name of the Licensed Material:

Publisher of the Licensed Material:

Exceptions to the content of the Agreement:

A) The contracting parties explicitly exclude the application of the following provisions of the Agreement with the regard to the **Name of Licensed Material**

B) New provisions applicable between the parties with the regard to the **Name of Licensed Material**

2.

Name of the Licensed Material:

Publisher of the Licensed Material:

Exceptions to the content of the Agreement:

A) The contracting parties explicitly exclude the application of the following provisions of the Agreement with the regard to the **Name of Licensed Material**

B) New provisions applicable between the parties with the regard to the **Name of Licensed Material**

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