

## STANDARD LICENSE AGREEMENT

*PUBLISHER*

AND

THE NATIONAL LIBRARY OF TECHNOLOGY

[**Note: Information that will often vary from case to case is in *italics*.**]

This License Agreement ("**Agreement**") is made between [*Publisher, Address of Publisher, Identification Number of Publisher*] ("**Licensor**")

and

The National Library of Technology, a State Contribution Organization set up by the Ministry of Education, Youth and Sports, with its principal offices at Technická 2710/6, 160 80 Praha 6 – Dejvice, ID No.: 61387142 ("**Licensee**")

(Licensor and Licensee together as the "**Parties**", and separately each as a "**Party**"),

The Licensee acts as a central purchasing body within the meaning of Act No. 134/2016 Coll., on Public Procurement, as amended, for concluding license agreements on behalf of Participating Institutions as listed in Appendix B ("**Participating Institutions**") as part of the project CzechELib. In the event the Licensee is listed in Appendix B, all and any provisions related to Participating Institutions shall be without any limitation applicable also to the Licensee.

The Licensee shall be entitled to grant the necessary authorization or sublicense to Participating Institutions.

In consideration of the mutual promises contained herein and other good and valuable considerations, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

### LEGEND:

\*\*\* absolutely – unchangeable in any way

\*\*\* obligatory – the meaning of the provision and rights and obligations must remain untouched, but it is possible to add to or clarify the provision without affecting the meaning

or the stated rights and obligations

\*\* should be – this or similarly worded provision is considered to be part of this Agreement

\* could be – changeable

## 1. Subject of the Agreement, Content of Licensed Materials; Grant of License

1.1 **Subject of the Agreement.** The subject of this Agreement is to define the conditions of cooperation and the rights and duties of the Parties while providing the Licensed Materials to the Licensee and the Participating Institutions as defined in this Agreement.

1.2 **Licensed Materials.** The materials that are the subject of this Agreement are set forth in Appendix A ("**Licensed Materials**").

1.3 **Grant of License.** The Licensor hereby grants to the Licensee a non-exclusive, non-transferable (except the following sublicenses or other corresponding authorization), system-wide perpetual right, or if perpetual is not objectively possible under applicable law then to the maximum extent permissible under applicable law (regardless whether in form of a license or a sublicense), to use the Licensed Materials pursuant to this Agreement, limited to the territory of the Czech Republic. The Licensee is entitled to grant the sublicenses or any other corresponding authorization to the Participating Institutions in order to provide the Licensed Materials to the Authorized Users (as defined in Section 4.1 of this Agreement) of the Participating Institutions in accordance with the terms of this Agreement.

1.4 **Ownership of Intellectual Property.** Nothing in this Agreement shall be construed, interpreted or understood to transfer of ownership of any copyright, trademarks, service marks or any other intellectual property from the Licensor or its suppliers to the Licensee or the Authorized Users.

## 2. Delivery & Access

2.1 The Licensor will provide the Licensed Materials to the Licensee and to the Participating Institutions in the following manner:

**Network Access.** The Licensed Materials will be stored at one or more of the Licensor's locations in digital form accessible by telecommunication links between such locations and authorized locations of the Licensee and the Participating Institutions.

### 3. Fees

- 3.1 **Fees and Payment.** The Licensee shall pay the Licensor a fee for the license concerning the Licensed Materials pursuant to the terms set forth in Appendix A based on an invoice issued by the Licensor ("**Fee**"). All Fees are due and payable by the Licensee by 15 May of the respective calendar year, unless otherwise stipulated in Appendix A.
- 3.2 **Incomplete Payment.** The Licensee may cover the invoice partially if a Participating Institution did not provide its financial contribution in time. In the event of such incomplete payment, the Licensee will notify the Licensor in writing of the intended difference no less than ten (10) days prior to the due date. In such case the Licensee is not in delay with the payment and the Licensor may suspend the IP addresses of such Participating Institution until the Fee is completely paid.
- 3.3 **Change of number of Participating Institutions listed in Appendix B.** In case any Participating Institution shall lose its status as a Participating Institution or in case any Potential Participating Institution and/or new scientific (or similar) institution shall reveal its intent to become a Participating Institution, the Licensor shall enter into negotiations with the Licensee to amend this Agreement and to correspondingly renegotiate the Fee.

### 4. Authorized Use of Licensed Materials

- 4.1 **Authorized Users.** "Authorized Users" are:
- (a) **Persons affiliated with the Participating Institutions.** Full and part-time employees (including faculty, staff, and independent contractors) of the Participating Institutions and students of the Participating Institutions, and registered users, regardless of the physical location of such persons. For authorized sites of the Participating Institutions, see Appendix B. Should the Licensee be listed in the Appendix B as the Participating Institution, all provisions concerning the Participating Institution and the Authorized Users shall apply also with respect to the Licensee.
  - (b) **Walk-ins.** Persons not affiliated with the Participating Institutions who are physically present at the Participating Institutions' site(s) ("**Walk-ins**").
- 4.2 **Access by and Authentication of Authorized Users.** Authorized Users of the Participating Institutions shall be granted access to the Licensed Materials pursuant to the following:
- (a) **IP Addresses.** Authorized Users shall be identified and authenticated by the use of Internet Protocol ("**IP**") addresses provided by the Licensee to the Licensor. The use of proxy servers by the Licensee or the Participating Institutions is authorized as long as any proxy server IP addresses provided limit remote or off-campus access to the Authorized Users. Authorized IP Addresses are listed in

Appendix C. An updated list will be sent to the Licensor on an annual or as-needed basis without the need to amend this Agreement. Alternatively, if the Licensor is utilizing its own and/or third-party system for IP range change notification (such as e.g. IP Registry), then an updated list may be sent via such system instead. The Licensor will cooperate with the Participating Institutions in the implementation of new authentication protocols and procedures (such as Shibboleth) as they are developed during the term of this Agreement. Both the Licensee and the Licensor will provide cooperation to coordinate or facilitate this process but they will not be liable for correct implementation of such authentication protocols and procedures (which remain the full responsibility of the Licensor and the respective Participating Institution).

- (b) Licensor-Administered Authentication. Where the Licensor provides alternative methods of access and authentication beyond the Licensee-administered methods described herein, e.g. by allowing users to establish a personal login from an on-campus IP address (thereby enabling access via username and password when logging in to a website of the Licensor) or device authentication, which affiliates the device or application by use of a token, cookie, or vendor-managed proxy prefix, neither the Licensee nor any Participating Institution will be responsible or liable for claims of breach or validity of such use. Neither the Licensee nor any of the Participating Institutions shall be responsible or liable for the processing of personally identifiable information (personal data) by the Licensor in this matter as this remains its full liability.
- (c) Personally Identifiable Information (Personal Data) of Authorized Users. Both the Licensee and the Licensor together and individually acknowledge and agree that the Licensee neither transfers nor provides any personally identifiable information (personal data) of the Authorized Users to the Licensor. Access to the Licensed Materials is primarily granted via IP Addresses pursuant to Section 4.2(a) **Chyba! Nenalezen zdroj odkazů.** of this Agreement which prevent any identification of the Authorized User. In case of the Licensor-Administered Authentication pursuant to Section 4.2(b) **Chyba! Nenalezen zdroj odkazů.** of this Agreement, the Licensor is required to ensure lawful processing of any personally identifiable information (personal data). This does not preclude the Licensee to hand over the contact details of the Participating Institutions' contact persons or other personal data where the Licensee has a valid legal basis therefor.

4.3 Authorized Uses. The Participating Institutions and the Authorized Users may make all use of the Licensed Materials as is consistent with the applicable law and with this Agreement, including but not limited to the following licensing conditions ("**Authorized Uses**"). In addition, the Licensed Materials may be used for purposes of research, education or other non-commercial use as particularly follows:

- (a) Display. The Participating Institutions and the Authorized Users shall have the right to electronically display the Licensed Materials.
- (b) Digital Copy. The Participating Institutions and Authorized Users may download and digitally copy a reasonable portion of the Licensed Materials.

- (c) Print Copy. The Participating Institutions and the Authorized Users may print a reasonable portion of the Licensed Materials.
- (d) Recover Copying Costs. The Participating Institutions may impose a reasonable fee on the Authorized Users to cover costs of copying or printing portions of the Licensed Materials by or for the Authorized Users.
- (e) Archival/Backup Copy. The Licensor shall provide to the Licensee upon request, or the Licensee may independently create, one (1) copy of the entire set of the Licensed Materials to be maintained as a backup copy. In the event that this Agreement is terminated, or the Licensor no longer offers the Licensed Materials online, the Licensee and Participating Institutions may use the backup copy to exercise their rights under Section 12 (*Perpetual Rights*) of this Agreement.
- (f) Caching. The Participating Institutions and the Authorized Users are authorized in the course of an automatic process of an internet browser or any other software to make temporary local digital copies of the Licensed Materials in order to ensure proper operation and use of such internet browser or for proper functioning of such software. For the avoidance of doubt, the cached copy is not a derivative work.
- (g) Classroom Use. The Participating Institutions and the Authorized Users may distribute single copies of individual articles or items of the Licensed Materials in print or electronic form to the Authorized Users. For the avoidance of doubt, classroom handouts shall include the distribution of a copy for teaching purposes to all individual Authorized Users in a class at Authorized Sites (Appendix B).
- (h) Collections of Information. The Participating Institutions and the Authorized Users shall be permitted to extract or use information contained in the Licensed Materials for educational, scientific, or research purposes, including extraction and manipulation of information for the purpose of illustration, explanation, example, comment, criticism, teaching, research, or analysis.
- (i) Course Packs (Print and Electronic). The Participating Institutions and the Authorized Users may use a reasonable portion of the Licensed Materials in the preparation of a packet of the materials used in the classroom ("**Course Packs**") or other educational materials.
- (j) Course Reserves (Print and Electronic). The Participating Institutions and the Authorized Users may use a reasonable portion of the Licensed Materials in connection with specific courses of instruction offered by the Participating Institutions.
- (k) Electronic Links. The Participating Institutions and the Authorized Users may provide hyperlinks from the Participating Institutions' and the Authorized Users' web page(s) or website(s) to individual units of content within the Licensed Materials.

- (l) Scholarly Sharing. On an ad hoc basis, the Authorized Users may transmit to a third party, in hard copy or electronically, minimal, insubstantial amounts or a portion of the Licensed Materials for personal use or scholarly, educational, or scientific research or professional use in the nature of collaboration, comment, or scholarly exchange of ideas but in no case for resale or commercial purposes or in a manner that would substitute for direct access to the Licensed Materials via services offered by the Licensor.
- (m) Text and Data Mining. The Authorized Users may use the Licensed Materials to perform and engage in text and/or data mining activities for academic research, scholarship, and other educational purposes and may utilize and share the results of text and/or data mining in their scholarly work and make the results available for use by others, so long as the purpose is not to create a product for use by third parties that would substitute for the Licensed Materials. The Licensor will, upon receipt of a written request, cooperate with the Licensee and the Authorized Users as will be reasonably necessary for making the Licensed Materials available in a manner and form most useful to the Authorized User. The Licensor shall provide the Licensee, upon request, with copies of the Licensed Materials for text and data mining purposes without any extra fees.
- (n) Interlibrary Loan. Using electronic, paper, or intermediated means, the Participating Institutions may at their discretion fulfill occasional requests from other institutions, a practice commonly called Interlibrary Loan ("ILL"). The Licensor agrees that the electronic form of the Licensed Materials may be used as a source for the ILL whereby articles and/or chapters can be printed and these print copies can be delivered via postal mail, fax, or fax-based service to fulfill ILL requests from an academic, research or other non-commercial library. Requests received from for-profit companies will not be honored. An ILL through secure electronic transmission, as demonstrated by the ARIEL, is permitted. Files transmitted in this manner must carry copyright notices and comply with the applicable law.
- (o) Bibliographic Citations. The Participating Institutions and the Authorized Users may use, with appropriate credit given, figures, tables, and brief excerpts from the Licensed Materials in the Participating Institutions' and the Authorized Users' own scientific, scholarly, and educational works. For the avoidance of doubt, the Participating Institutions and the Authorized Users may use citation and abstract information in faculty profiling systems, in lists of publications on faculty and institutional web pages, and to create bibliographies, and store a single copy of an individual document being part of the Licensed Materials, including within secure personal bibliographic reference/citation management systems.

4.4 No Diminution of Rights. Nothing in this Agreement, including but not limited to the Authorized Uses, shall be interpreted to diminish the rights and privileges of the Licensee, the Participating Institutions or the Authorized Users with respect to any of the Licensed Materials, including exceptions or limitations regarding the exclusive rights of copyright owners. In the event that any content included in the Licensed



Materials is in the public domain or has been issued under a Creative Commons or other open license, the Licensor shall not place access, use or other restrictions on that content beyond those found in the open license, where applicable.

**4.5 The Rights of the Author to Use Own Work.** Notwithstanding any terms or conditions to the contrary in any author agreement between authors and the Licensor, authors who are Authorized Users ("**Authors**") whose accepted manuscript version (after peer review and including revisions from the peer review process but before copy-editing and final publication) of any work is accepted for publication by the Licensor ("**Content**") during the term of this Agreement shall retain the non-exclusive, irrevocable, worldwide, royalty-free right to use their Content for scholarly and educational purposes (as defined in Section 4.7(a) of this Agreement), including self-archiving or depositing the Content in institutional, subject-based, national or other open repositories or archives (as defined in Section 4.7(b) of this Agreement) (including the author's own web pages or departmental servers) and to comply with all grant or institutional requirements associated with the Content. The Licensee, the Participating Institutions and the Licensor shall cooperate in the implementation of procedures for the Licensor to deposit the Content into the Participating Institutions' institutional repository, or to make the Content available for the Licensee and/or the Participating Institutions to harvest, as they are developed during the term of this Agreement.

**4.6** For the avoidance of doubt, it is the intent of the Parties that the Participating Institutions' Authors are third party beneficiaries of the provision in Section 4.5 of this Agreement. Nothing in this section shall eliminate or limit any other rights the Licensee or any Author may have to deposit, host or make available the Content published by the Licensor.

**4.7 Definitions:**

- (a) **Scholarly and educational purposes:** Purposes encompassing teaching, research, and institutional needs, including but not limited to the right to:
- (i) use, reproduce, distribute, perform, and display the Content in connection with teaching, conference presentations, and lectures;
  - (ii) make full use of the Content in future research and publications;
  - (iii) republish, update or revise the Content in whole or in part for later publication;
  - (iv) meet requirements and conditions of research grants or publishing subventions provided by government agencies or non-profit foundations, and;
  - (v) grant to the Author's employing institution some or all of the foregoing rights, as well as permission to use the Content in connection with administrative activities such as accreditation, mandated reports to state governments, and similar purposes.

In all cases, the Author and/or the Author's employing institution will be expected to provide proper citation to the published version.

- (b) **Repositories or archives**: Open-access digital repository services, such as those provided by the Author's employing institution, an academic consortium, a discipline-based entity, or a governmental funding agency.

#### 4.8 **Scope of Authorized Use and Access to Licensed Materials.**

- (a) **Unlimited Access**. Subject to the terms of this Agreement, the Participating Institutions and the Authorized Users shall have unlimited and simultaneous user access to the Licensed Materials.

### 5. Specific Restrictions on Use of Licensed Materials

- 5.1 **Unauthorized Use**. The Participating Institutions or the Authorized Users shall not knowingly permit anyone other than the Authorized Users to access the Licensed Materials.
- 5.2 **Modification of Licensed Materials**. The Participating Institutions or the Authorized Users shall not modify or manipulate the Licensed Materials without the prior written permission of the Licensor.
- 5.3 **Removal of Copyright Notice**. The Participating Institutions or the Authorized Users shall not remove, obscure or modify any copyright or other notices included in the Licensed Materials.
- 5.4 **Commercial Purposes**. The Participating Institutions or the Authorized Users may not use the Licensed Materials for commercial purposes, including but not limited to the sale of the Licensed Materials, fee-for-service use of the Licensed Materials; nor may the Licensee and the Participating Institutions impose special charges on the Authorized Users for use of the Licensed Materials beyond reasonable printing or administrative costs. For the avoidance of doubt, research conducted by the Participating Institutions and Authorized Users that is supported by a commercial entity shall not be considered use for commercial purposes.

### 6. Mutual Performance Obligations

- 6.1 **Notification and Cure of Unauthorized Use**. In the event the Licensee and/or any of the Participating Institutions becomes aware of an unauthorized use of the Licensed Materials and cannot promptly remedy it, the Licensee or the Participating Institution shall without undue delay notify the Licensor. In the event the Licensor becomes aware of unauthorized use of the Licensed Materials, the Licensor shall without undue delay notify the Licensee and the respective Participating Institution in writing.
- 6.2 In the case of unauthorized use which is causing serious and immediate material harm to the Licensor, the Licensor may temporarily suspend such offending individual Authorized User's access to the Licensed Materials (e.g. by blocking an



individual user's IP address), provided that the Licensor immediately notifies the Licensee and the respective Participating Institution of any such suspension, including the reason for the suspension and any supporting details. Such temporary suspensions will be only of the shortest possible duration and the maximally limited extent necessary to terminate the unauthorized use and prevent its resumption. In the event that such suspension lasts longer than the shortest period necessary to prevent such unauthorized use, the Licensor is obliged to reimburse the Licensee the respective pro rata part of the Fee (calculated with respect to the actual number of excessively suspended Authorized Users) for the period of duration of such excessive suspension. Any excessive suspension of access to the Licensed Materials can serve as a Licensee's reason for termination of this Agreement pursuant to Section 11 of this Agreement.

## 7. Licensor Performance Obligations

7.1 The Licensor will use reasonable efforts to ensure that its performance will meet or exceed industry standards and practices. Additionally, the Licensor agrees to the following performance standards set out in this Section 7.

7.2 **Availability of the Licensed Materials.** Upon the Effective Date (as specified in Section 9.1 of this Agreement), the Licensor will make the Licensed Materials available to the Participating Institutions and the Authorized Users.

Should the Effective Date of this Agreement occur after 1 January 2023, the Licensor will make, or has already made, the Licensed Materials available to the Licensee, the Participating Institutions and Authorized Users in the full scope of the license stipulated herein already as of 1 January 2023 due to the necessity of access to the Licensed Material as of 1 January 2023, to the Participating Institutions and Authorized Users in the full scope of the authorization stipulated herein including all and any possible rights and authorizations such as potential archiving rights, extent of the access to the backfile content of Licensed Materials or Open Access publishing under this Agreement. Performance of the Licensor's obligation to ensure that the Licensed Materials become available before this Agreement takes effect shall be considered entirely as a performance according to and in compliance with this Agreement.

7.3 **Discovery of the Licensed Materials.** The Licensor will make reasonable efforts to make the Licensed Materials available through the Licensee's and/or the Participating Institutions' user interface and search systems for discovering and displaying content from local, database and web-based sources ("**Discovery Service System**") for indexing and discovery purposes. The Licensor shall provide to the Licensee's and/or the Participating Institutions' discovery service vendors on an ongoing basis the citation and complete descriptive metadata (including all subject headings, abstracts, and keywords) and full-text content necessary to facilitate optimal discovery and accessibility of the content for the benefit of the Participating Institutions and the Authorized Users.

- 7.4 **Persistent Linking.** The Licensor will make reasonable efforts to comply with the most current version of the OpenURL standard (ANSI/NISA Z39.88 or any that replaces it during the term of this Agreement) and will provide a mechanism for persistent links to content.
- 7.5 **Online Terms and Conditions.** In the event that the Licensor requires the Authorized Users to agree to additional terms relating to the use of the Licensed Materials (commonly referred to as "**click-through**" or "**clickwrap**" licenses), or otherwise attempts to impose terms on the Authorized Users through online terms and conditions invoked by the mere use or viewing of the Licensed Materials, such additional terms shall only apply to the Authorized Users who agreed to the respective additional terms. Such additional terms shall not materially differ from the provisions of this Agreement and violation of these additional terms by the Authorized Users will not be considered as breach of this Agreement but merely and exclusively as breach of these additional terms. In the event of any conflict between the additional terms and this Agreement, the terms of this Agreement shall prevail. The Licensor alone shall be liable and responsible for any personal data processing that occurs with respect to these additional online terms and conditions as the Licensor itself determines the scope and purpose of such personal data processing. For the avoidance of doubt, the Authorized Users are not a party to this Agreement.
- 7.6 **Documentation.** The Licensor will provide complete and up-to-date help and operational documentation to the Licensee, the Participating Institutions and the Authorized Users in an electronic format. Such documentation may be provided by means of the Licensor's online system and/or system for administrators.
- 7.7 **Support.** The Licensor will provide activation and installation support, including assisting the Licensee, Participating Institutions and Authorized Users with the implementation of any Licensor software. The Licensor will offer reasonable levels of continuing support to assist the Licensee, Participating Institutions and Authorized Users in the use of the Licensed Materials. The Licensor will make its personnel available by email ..... and/or phone ..... during cross section of the Licensor's and the Licensee's and/or the Participating Institutions' regular business hours, Monday through Friday, for feedback, problem-solving, or general questions, and they will respond in a timely manner. If there is a change in a contact for support, the Licensor is obliged to notify the Licensee and the Participating Institutions of such change. The change is effective by the delivery of the notice to the Licensee and the Participating Institutions.
- 7.8 **Training.** The Licensor will, upon agreement and in a reasonable quantity, provide to the Licensee, the Participating Institutions and the Authorized Users appropriate on-site or online training regarding the use of the Licensed Materials and any Licensor software. The Licensor will also provide additional training to the Licensee and the Participating Institutions staff if made necessary by any updates or modifications to the Licensed Materials or any of the Licensor's software.

- 7.9 **Updates.** The Licensor will provide and implement regular system and project updates to the Licensee and the Participating Institutions as they become available. No additional fee shall be charged for updates.
- 7.10 **Quality of Service.** The Licensor shall use reasonable efforts to ensure that the Licensor's server or servers have sufficient capacity and rate of connectivity to provide the Licensee, Participating Institutions and their Authorized Users with all the services pursuant to this Agreement at a level exceeding or at least comparable to current standards in the online information provision industry in the Licensee's and the Participating Institutions' locale. The Licensor shall use reasonable efforts to provide continuous service seven (7) days a week with an average of 98% up-time per month. The 2% down-time can include periodic unavailability due to server maintenance; software installation or testing; loading or making available additional Licensed Materials as they become available; and unavailability because of service or equipment failure outside the control of the Licensor (including problems with public or private telecommunication services, or Internet nodes or facilities). The Licensor may schedule brief unavailability periods, but will do so only where (a) it has given at least forty-eight (48) hours' prior notice to the Licensee, and (b) in a way and at times that minimize inconvenience to the Licensee, the Participating Institutions and its Authorized Users, regardless of when notice has been given.
- 7.11 **Problems with Licensed Materials.** If the Licensed Materials fail to operate, display, load, or render in conformance with the terms of this Agreement, the Licensee or the Participating Institution shall immediately notify the Licensor in writing, and the Licensor shall promptly use best efforts to restore access to the Licensed Materials as soon as possible. In the event that the non-conformity materially affects the Participating Institutions' or the Authorized Users' use of the Licensed Materials, and the Licensor fails to remedy the non-conformity within five (5) business days, the Licensor shall reimburse the Licensee for such problems in an amount that is proportional to the Fee.
- 7.12 **Transfer or Acquisition of Titles.** If any portion of the Licensed Materials is transferred to or acquired from another party, the Licensor shall use best efforts to ensure that the Participating Institutions will not lose access to the Licensed Materials or any rights under this Agreement as a result of the transfer or acquisition. Any archival and perpetual access rights that have been granted shall be retained, whether the Licensor is acting as the transferring or acquiring party. If the Licensor is transferring any portion of the Licensed Materials to another party, the Licensor will assign all rights and obligations under this Agreement to the assignee. If the Licensor is acquiring content that will become subject to this Agreement, the Licensor will use best efforts to acquire the rights necessary for its performance under this Agreement, including but not limited to perpetual access rights. The Licensor shall provide the relevant party with all the relevant payment and rights information. For journal titles, the Licensor will comply with the NISO Transfer Code of Practice.<sup>1</sup>

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

- 7.13 Completeness of Content.** The Licensor will inform the Licensee and/or Participating Institutions of instances where the online content differs from print versions of the Licensed Materials. Where applicable, the Licensor will cooperate with the Licensee and the Participating Institutions to identify and correct content errors or omissions, and when necessary, the Licensor shall use reasonable efforts to ensure that the online content: (1) is at least as complete as the print and other physical format versions of the Licensed Materials; and (2) represents complete, accurate, and timely replications of the corresponding content contained within the print and other physical format versions of such Licensed Materials.
- 7.14** In order to facilitate the assessment of completeness of content, the Licensor will provide upon the Licensee's request a report of the content in the Licensed Materials at the title, issue, chapter, or item level. The Licensor will disclose to the Licensee content known or found to be missing from the Licensed Materials, including but not limited to images, pages, issues, and chapters.
- 7.15** If the online content is a digitized version of the print content and differs from the print or other physical format versions of the Licensed Materials so as to be substantially less useful to the Licensee, the Participating Institutions or their Authorized Users, the Licensee may seek to terminate this Agreement for breach pursuant to Section 11 of this Agreement.
- 7.16 Notification of Modifications of Licensed Materials.** From time to time, the Licensor may add, change, or modify portions of the Licensed Materials, or migrate the Licensed Materials to other formats. When such changes, modifications, or migrations occur, the Licensor shall give prior written notice of any such changes to the Licensee and the Participating Institutions as soon as is practicable, but in no event less than sixty (60) days in advance of such event. If any of the changes, modifications, or migrations render the Licensed Materials substantially less useful to the Participating Institutions or their Authorized Users, the Licensee may seek to terminate this Agreement for breach pursuant to Section 11 of this Agreement.
- 7.17 Withdrawal of Licensed Materials.** The Licensor reserves the right to withdraw from the Licensed Materials any item or part of an item for which it no longer retains the right to publish, or which it has reasonable grounds to believe infringes copyright or is defamatory, obscene, unlawful, or otherwise objectionable. The Licensor shall give prior written notice of the withdrawal to the Licensee and the Participating Institutions as soon as is practicable, but in no event less than thirty (30) days in advance of such withdrawal, specifying the item or items to be withdrawn.
- 7.18** If any such withdrawal renders the Licensed Materials less useful to the Licensee, the Participating Institutions or the Authorized Users, the Licensor shall reimburse the Licensee for the withdrawal in an amount proportional to the Fee. If any such withdrawal renders the Licensed Materials substantially less useful to the Participating Institutions or their Authorized Users, the Licensee may seek to terminate this Agreement for breach pursuant to Section 11 of this Agreement.

- 7.19 **Itemized Holdings/Title List.** Prior to the beginning of every calendar year, the Licensor will provide the Licensee with the current itemized holdings report that will specify the titles included in the Licensed Materials for the next Subscription Period (as specified in Section 9.3 of this Agreement). The Licensor will use reasonable efforts to update itemized holdings reports as soon as is practicable when the holdings information changes, and will provide this information to the Discovery Service System in a timely manner and to the Licensee on request. If the Licensed Materials include content covered by the NISO Knowledge Bases And Related Tools (KBART) Recommended Practice,<sup>2</sup> the Licensor will provide itemized holdings lists for the Licensed Materials in a KBART-compliant format, including a column/field for dates (YYYY-MM) of additions.
- 7.20 **Usage Statistics.** The Licensor will provide access to both composite system-wide use data and itemized data for the Licensee, the Participating Institutions, individual campuses and labs, on a monthly basis. The statistics shall meet or exceed the most recent project Counting Online Usage of NeTworked Electronic Resources ("COUNTER") Code of Practice Release,<sup>3</sup> including but not limited to its provisions on customer confidentiality. When a release of a new COUNTER Code of Practice is issued, the Licensor shall comply with the implementation time frame specified by COUNTER to provide usage statistics in the new standard format. It is more than desirable that the Standardized Usage Statistics Harvesting Initiative (SUSHI) Protocol<sup>4</sup> is available for the Licensee to harvest the statistics.
- 7.21 The Licensor shall not provide the Licensee's usage statistics in any form to any third party without the Licensee's prior written consent, unless the third party owns rights in the Licensed Materials; in such case the Licensor shall ensure that the usage statistics will not be provided to any other third party. The Licensor shall not provide usage statistics of any Participating Institution in any form to any third party (with the exception of the Licensee) without the Participating Institution's prior written consent, unless the third party owns rights in the Licensed Materials. In all cases, the disclosure of such data shall fully protect the anonymity of individual users and the confidentiality of their searches, and will comply with all applicable privacy legislation. The Licensor shall not disclose or sell to any third party usage data or information about the Licensee, any Participating Institution or the Authorized Users without the Licensee's and/or the relevant Participating Institution's prior written consent or unless specifically required by law.
- 7.22 **Confidentiality of Personally Identifiable Information (Personal Data).** The Licensor agrees that no personally identifiable information (personal data), including but not limited to log-ins recorded in system logs, IP addresses of patrons accessing the system, saved searches, any identification data, usernames and passwords, will be shared with third parties, except in cases required or allowed by the applicable law, particularly by the Data Protection Law (as specified in Section 16.1 of this

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

<sup>3</sup> [http://www.projectcounter.org/code\\_practice.html](http://www.projectcounter.org/code_practice.html)

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



Agreement). If the Licensor is compelled by law or court order to disclose personally identifiable information (personal data) of the Authorized Users or patterns of use, the Licensor shall provide the Licensee with adequate prior written notice as soon as is practicable, so that the Licensee, the Participating Institution or the Authorized Users may seek protective orders or other remedies. The Licensor will notify the Licensee and Authorized Users as soon as is practicable if the Licensor's systems are breached and the confidentiality of personally identifiable information (personal data) is compromised.

**7.23 Notice of the Use of Digital Rights Management Technology.** In the event that the Licensor utilizes or implements any type of digital rights management ("DRM") technology to control the access to or usage of the Licensed Materials, the Licensor will provide the Licensee with a description of the technical specifications of the DRM and how it impacts access to or usage of the Licensed Materials. In no event may such DRM technology be used in a way that would limit the usage rights of the Participating Institution or any Authorized User as specified in this Agreement or under applicable law. If the use of DRM renders the Licensed Materials substantially less useful to the Participating Institutions or their Authorized Users, the Licensee may seek to terminate this Agreement for breach pursuant to Section 11 of this Agreement.

**7.24 Use of Digital Watermarking Technology.** In the event that the Licensor utilizes any type of watermarking technology for any element of the Licensed Materials, the watermarks may not reduce the readability of the content or degrade image quality. Such watermarks shall not contain user-related information, including but not limited to an account number, IP address, and usernames. If digital watermarking technology is implemented, the Licensor will notify the Licensee at least thirty (30) days in advance of such implementation, and provide the technical specifications for the watermarking technology used. If the use of the watermarking technology renders the Licensed Materials substantially less useful to the Licensee, the Participating Institutions or their Authorized Users, the Licensee may seek to terminate this Agreement for breach pursuant to Section 11 of this Agreement.

**7.25 Interoperability with Prevailing Web Browsers.** The Licensor will use reasonable efforts to ensure that the Licensed Materials are accessible and interoperable with prevailing web browsers and internet access tools, including, at a minimum, the most recent two major versions (current version and one version prior) and all the associated releases for those versions.

**7.26 Branding.** If commercially possible, the Licensor will allow the Licensee and the Participating Institutions to brand the Licensor's platform with the name of the Licensee and/or the Participating Institutions' Sites at the Licensee's or the Participating Institutions' own discretion.

**7.27 MARC Records.** When applicable to the Licensed Materials, at the Licensee's request, the Licensor shall provide full OCLC-quality batched sets of MARC records incorporating Licensee specifications at no additional cost by the date of the execution of this Agreement. Updates to existing records and new title records,



matching the schedule of release and delivery of new publications, will be provided on a mutually agreed-upon schedule and in a format that renders them useful to the Licensee and/or the Participating Institutions. Such records may be provided by means of the Licensor's online service.

7.28 **Open Access Option.** The Licensor undertakes to keep the Licensee informed of any alternative business models during the term of this Agreement, including but not limited to business models taking into account both journal subscriptions and Article Processing Charges for Open Access publishing in so-called hybrid journals. Should the Licensee agree to switch to any such alternative business model, the Parties will formalize the new business model by concluding a separate contract or a respective addendum to this Agreement.

7.29 The Licensor recognizes and acknowledges that a new Directive on Copyright in the Digital Single Market<sup>5</sup> has been adopted by the European Union which implements direct statutory authorizations of research organizations to open access and to employ data mining techniques to materials to which they have lawful access. The Directive provides that these rights may not be contractually excluded. The Member States of the European Union will implement this Directive into their national legal orders. The Licensor therefore agrees, once the rules in this Directive become effective, to renegotiate this Agreement to the necessary extent (if necessary). This shall also apply in case of any other obligatory statutory changes.

## 8. Licensee Performance Obligations

8.1 **License Terms Notification.** The Licensee shall ensure that the Participating Institutions will use reasonable efforts to provide the Authorized Users with appropriate notice of the terms and conditions under which access to the Licensed Materials is granted under this Agreement.

8.2 **Protection from Unauthorized Use.** The Licensee shall ensure that the Participating Institutions will use reasonable efforts to restrict access to the Licensed Materials to the Authorized Users in the case of their unauthorized use of the Licensed Materials.

8.3 **Maintaining Confidentiality of Access Passwords.** Where access to the Licensed Materials is to be controlled by the use of passwords, the Licensee shall ensure that the Participating Institutions will use reasonable efforts to inform the Authorized Users that they should not divulge their numbers and passwords to any third party. The Licensee shall ensure that the Participating Institutions will also use reasonable efforts to maintain the confidentiality of any institutional passwords provided by the Licensor.

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<sup>5</sup> Directive of the European Parliament and of the Council on copyright in the Digital Single Market No. (EU) 2019/790.

8.4 The Licensee shall use all reasonable efforts to ensure that the Participating Institutions will comply with the terms of this Agreement and will use the Licensed Materials in accordance with the license terms set out in this Agreement and will observe proper fulfilment of the requirements set out in this Agreement. The Licensee shall use all reasonable efforts to ensure that the Participating Institutions will ensure that the Authorized Users only use the Licensed Materials in accordance with the license terms set out in this Agreement.

## 9. Term

9.1 This Agreement shall become valid on the date of its execution by both of the Parties. This Agreement shall take effect on the date of its publication in the Czech Register of Contracts ("**Effective Date**").

9.2 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 Section 11 of this Agreement.

9.3 By a Subscription Period shall be for the purpose of this Agreement understood a calendar year (1 January – 31 December), unless specified differently in Appendix A.

## 10. Renewal

Intentionally left blank

## 11. Early Termination

11.1 **Early Termination for Financial Hardship.** The Licensee may terminate this Agreement, even partially with respect to particular Participating Institution or Participating Institutions, without penalty as of 31 December 2023 and subsequently every potential 31 December of the following Subscription Period if (i) sufficient content acquisitions funds are not allocated, or (ii) content acquisition funds are withdrawn or reduced, or (iii) the relevant Participating Institution does not have sufficient funds to participate, to enable the Licensee and/or Participating Institutions, in the exercise of its reasonable administrative discretion, to continue this Agreement. In the event of such financial circumstances, the Licensee will notify the Licensor of the intent to terminate this Agreement or partially terminate this Agreement at least thirty (30) days before the end of the respective Subscription Period. This Agreement shall terminate in the selected extent on the last day of the respective Subscription Period without penalty of expense to the Licensee of any kind whatsoever, except as to the portions of payments herein agreed for which funds shall have been appropriated and budgeted or otherwise available. In the event of such termination of this Agreement, the Licensee and Participating Institutions shall maintain their perpetual right to the Licensed Materials under fully paid Subscription Periods, subject to Section 12 of this Agreement.

- 11.2 **Termination for a Material Breach.** Each Party shall notify the breaching Party of a material breach of this Agreement in writing with a detailed description of the breach. The breaching Party shall have sixty (60) days from the receipt of such notice to use all reasonable means to cure this alleged material breach and to notify the non-breaching Party in writing that a cure has been effected. If the material breach is not cured within the sixty (60)-day period, the non-breaching Party shall have the right to terminate this Agreement with a written notice, however, if such material breach would concern or relate merely a certain Participating Institution or Participating Institutions, the Licensor has the right to terminate this Agreement only partially with respect to this or these Participating Institutions . Termination of this Agreement is effective immediately by the date of delivery of such a notice. The obligation of the Parties to also remedy any other breach shall not be affected by this provision.
- 11.3 **Termination of Access.** Upon termination of this Agreement, the Licensor may terminate access to the Licensed Materials by the Licensee, the Participating Institutions and the Authorized Users (in case of a partial termination of this Agreement only with respect to the particular Participating Institution and their Authorized Users), subject to Section 12 of this Agreement. In addition, authorized copies of the Licensed Materials made by the Authorized Users may be retained for educational purposes and used subject to the terms of this Agreement even after the termination of this Agreement.
- 11.4 **Refunds.** In the event of early termination pursuant to this Agreement, except for termination for a material breach by the Licensee pursuant to Section 11.2 of this Agreement, the Licensee shall be entitled to a refund of any Fee or pro-rata portion thereof paid by the Licensee for any remaining period of this Agreement calculated from the date of termination.

## 12. Perpetual Rights

- 12.1 **Perpetual License.** Notwithstanding anything else in this Agreement, the Licensor grants to the Licensee and the Participating Institutions a non-exclusive, royalty-free, system-wide perpetual license, or if perpetual is not objectively possible under the applicable law then to the maximum extent permissible under applicable law, limited to the territory of the 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, all of which shall survive any termination of this Agreement. The means by which the Licensee and/or the 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 such perpetual 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.*

- 12.2 **Archival Copy.** The Licensor shall provide to the Licensee upon request, or the 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 Licensor 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.
- 12.3 In the event the Licensor discontinues or suspends selling or licensing the Licensed Materials, the Licensee, Participating Institutions and Authorized Users may use such archived Licensed Materials under the same terms as defined by this Agreement. If the Licensee has a backup copy of the Licensed Materials as defined in Section 4.3(e) of this Agreement, the backup copy may be used as an archival copy.
- 12.4 **Third-Party Archiving Services.** The Licensor and the Licensee acknowledge that either Party may engage the services of third-party trusted archives and/or participate in collaborative archiving endeavors to exercise the Licensee's rights under this section of this Agreement. The Licensor agrees to cooperate with such archiving entities and/or initiatives as reasonably necessary to make the Licensed Materials available for archiving purposes. The 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 the Licensee's and Participating Institutions' use is compliant with the terms of this Agreement.
- 12.5 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.

## 13. Warranties

- 13.1 The Licensor represents and warrants that it has all necessary legal and equitable rights, permissions, and clearances to license the Licensed Materials to the Licensee that could further authorize the Participating Institutions and their Authorized Users to use the Licensed Materials for the purposes and terms set out in this Agreement, and that the use of the Licensed Materials in accordance with the terms of this Agreement shall not infringe the copyright or other rights of any third party.
- 13.2 The Licensor represents and 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.
- 13.3 **Accessibility Requirements.** The Licensor represents and warrants that the Licensed Materials comply with the Licensor's country of origin laws and regulations,

and conform to the international accessibility requirements of Web Accessibility Initiative, Web Content Accessibility Guidelines (WCAG) 2.0 at level AA<sup>6</sup>. The Licensor shall also promptly respond to and resolve any complaint regarding accessibility of the Licensed Materials.

## 14. Limitations on Warranties

- 14.1 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 arises from the use of the Licensed Materials, or the incompetence of the Authorized Users to properly use the Licensed Materials.
- 14.2 The Licensor makes no representation or warranty, and expressly disclaims any liability with respect to the content of any of the 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.
- 14.3 Except for the express warranties stated elsewhere in this Agreement, the 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.

## 15. Indemnities

- 15.1 The Licensor shall indemnify and hold harmless the Licensee, the Participating Institutions and Authorized Users from and against any and all liabilities, losses, claims, damages, awards, penalties, or injuries incurred, including reasonable attorney's fees, that arise from actual or alleged infringement of any third-party intellectual property rights regarding 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 shall survive the termination of this Agreement.

## 16. Data Protection

- 16.1 For the purpose of this Agreement, **Data Protection Law** shall mean the General Data Protection Regulation (EU) 2016/679 (the "Regulation") and the European Privacy and Electronic Communications Directive (Directive 2002/58/EC), as amended or replaced from time to time, and the terms "personal data", "processing",

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

“processor”, “controller”, “personal data breach”, “data subject” and “supervisory authority” shall all have the meanings ascribed to them under the applicable Data Protection Law.

- 16.2 Without any prejudice to Section 4.2(c) of this Agreement, if any personal data is processed under this Agreement by either Party, the Parties agree that each Party shall act as a data controller for the purposes of Data Protection Law, unless such arrangement would be contrary to the Data Protection Law. Each Party shall (i) only process personal data in compliance with, and shall not cause itself or the other Party to be in breach of Data Protection Law and (ii) act reasonably in providing such information and assistance as the other Party may reasonably request to enable it to comply with its obligations under Data Protection Law.
- 16.3 Each Party will notify the other Party without undue delay if it becomes aware of a personal data breach relating to the processing of personal data in connection with this Agreement and shall act reasonably in co-operating with the other Party in respect of any communications or notifications to be issued to any data subjects and/or supervisory authorities in respect of the personal data breach.
- 16.4 If either Party receives any communication from any supervisory authority relating to the processing or personal data in connection with this Agreement, it shall (i) provide the other Party with reasonable details of such communication, and (ii) act reasonably in co-operating with the other Party in respect of any response to the same.

## 17. Assignment and Transfer

- 17.1 Neither Party may assign, transfer or novate, directly or indirectly, any or all of its rights or obligations under this Agreement without the prior written consent of the other Party, except as otherwise stipulated herein. Neither Party may unreasonably withhold or delay such written consent.

## 18. Governing Law

- 18.1 This Agreement and all matters arising from or in connection hereto 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.

## 19. Dispute Resolution & Venue

- 19.1 In the event of any dispute or controversy arising out of or relating to this Agreement, the Parties agree to exercise good faith to resolve the dispute amicably and as soon as possible. In the event that the Parties fail to settle the dispute amicably within thirty (30) days, 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 unless such performance would be objectively hindered due to the existing dispute. The Party invoking mediation shall inform the other Party with a written notice of its decision to seek informal mediation, and the notice must include a description of the 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 starting from the day after the delivery of such notice to the other Party. If the designated representatives cannot resolve the dispute, the Parties shall meet at a mutually agreed location and discuss the dispute and their respective proposals for resolution while being represented by their responsible executives, who shall act in good faith to resolve the dispute.

19.2 If the dispute is not resolved within thirty (30) days of the meeting among the Parties' executives, either Party may pursue legal action in court. The exclusive jurisdiction and venue for any and all actions arising out of or brought under this 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 unless such performance would be objectively hindered due to the existing dispute.

## 20. Force Majeure

20.1 Neither Party shall be liable for any damage or have the right to terminate this Agreement for any delay or default in performing its duties 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, acts of terrorism, 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 such event of force majeure, the Party affected shall promptly notify the other Party in writing setting forth the details of the occurrence of the force majeure event, its expected duration and how that Party's performance may be affected. The affected Party shall resume the performance of its duties as soon as practicable after the force majeure event ceases.

## 21. Entire Agreement

21.1 This Agreement constitutes the entire agreement of the Parties and supersedes any and all prior communications, understandings, and agreements relating to the subject matter hereof, whether oral or written. For the avoidance of doubt, additional terms and conditions as defined in Section 7.5 of this Agreement shall not modify the terms of this Agreement.

## 22. Amendment

22.1 No modification or claimed waiver of any provision of this Agreement shall be valid except by written amendment signed by authorized representatives of the Parties.

22.2 The Licensee, in compliance with Section 100(1) of Act no. 134/2016 Sb. on public procurement, as amended, reserves the right to change the commitment under this Agreement, which entails a change in the number of licenses, i.e. an increase in the number of licenses, for the purpose of accommodating additional Potential Participating Institutions as the authorizing contracting authorities with whom the Licensee has entered into a central procurement agreement and a list of which is attached as Appendix B. This reservation will be effected, as the case may be, by means of an amendment to this Agreement based on the interest of Potential Participating Institutions mentioned in the preceding sentence to receive performance under this Agreement. The Parties may include the price for the licenses for these Potential Participating Institutions in the Appendix B.

## 23. Severability

23.1 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 Parties shall replace the invalid, illegal or unenforceable provision with a new provision to achieve the same or, if not possible, the closest possible effect to that of the original invalid, illegal or unenforceable provision and this Agreement as a whole.

## 24. Waiver of Contractual Right

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

## 25. Notices

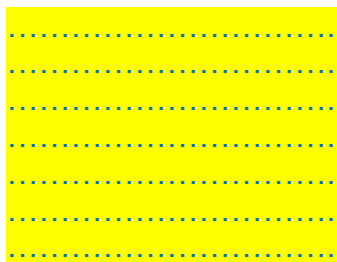
25.1 All notifications, invitations, information, legal acts and other communications ("**Notices**") made in the matters of and under this Agreement must be made in writing, the written form being retained if Notices are delivered by e-mail.

25.2 Notices regarding the damages, penalties, debts, contacts and this Agreement as such (for example, the notification about breach or termination) must be delivered in person, by registered post or courier service. Notices delivered personally or by courier service shall be deemed received at the time of receipt or refusal of their receipt. Notices served by registered mail will be presumed delivered on the third (3<sup>rd</sup>) business day following their proven posting if the delivery address is in the Czech Republic, and on the fifteenth (15<sup>th</sup>) day if the delivery address is outside the Czech Republic.

25.3 Either Party may from time to time change its delivery address by written Notice to the other Party. Such change is effective from the delivery of such Notice.

25.4 If to the Licensor:

- Publisher:
- Address of Licensor:
- City of Licensor:
- State of Licensor:
- Country of Licensor:
- Postal Code of Licensor:
- E-mail:



25.5 If to the Licensee:

- Licensing contact:
- Address of Licensee: Head of Licensing Unit  
CzechELib  
National Library of Technology  
Technická 2710/6, 160 80 Praha 6 – Dejvice  
Czech Republic
- E-mail: licensing@czechelib.cz

## 26. Execution

26.1 This Agreement itself shall be signed by the authorized signatory of the Licensor and the Licensee.

26.2 This Agreement is executed in electronic version and each Party receives one electronic counterpart.

26.3 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 the law and each Party declares that the electronic execution is valid and effective in the jurisdiction the Party executes this Agreement.

**IN WITNESS WHEREOF**, the Parties have executed this Agreement by their respective, duly authorized representatives.

**LICENSOR:**

BY: \_\_\_\_\_ DATE: \_\_\_\_\_  
Signature of Authorized Signatory of Licensor

Print Name:

Title:

E-mail:

**LICENSEE:**

BY: \_\_\_\_\_ DATE: \_\_\_\_\_  
Signature of Authorized Signatory of Licensee

Ing. Martin Svoboda  
Director of  
National Library of Technology  
Technická 2710/6  
160 80 Praha 6 – Dejvice  
Czech Republic

# Appendix A: Business Terms

## Licensed Materials:

- Name [REDACTED]
- Number of titles, if applicable [REDACTED]
- Dates covered, if applicable [REDACTED]
- Description [REDACTED]

**Agreement Term:** Effective Date – 31 December [2025]/[2027]

*Note: Depending whether 3- or 5-year contract*

**Access Conditions:** Unlimited simultaneous user system-wide perpetual access

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

## Fees and Negotiated Discounts:

Total Fee 2023-[2025]/[2027]: [REDACTED]

*Note: Depending whether 3- or 5-year contract*

- License Fee / year:  
2023: .....  
2024: .....  
2025: .....  
2026: [REDACTED]  
2027: [REDACTED]
- Ongoing Fees, e.g. access fee, if any; indicate any waived fees
- One-time Fees; indicated any waived fees

## Payment Terms:

1. The Fee shall be paid to the Licensor's bank account no.:  
[REDACTED] IBAN/SWIFT: [REDACTED] Any change of the bank account shall be notified to the Licensee without undue delay. The notice shall be signed by the authorized representative and will become effective upon its delivery to the Licensee.
2. The Fee for the Licensed Materials shall be paid annually for each commenced calendar year of the duration of this Agreement in the amount set forth therein. The Parties expressly state that the Fee for the year 2023 shall be paid in the whole amount, regardless of the beginning of this Agreements' effectiveness.

3. All the prices (Fee) under this Agreement are set forth as final, unchangeable and the maximum allowable and cover and include all activities relating to the performance under this Agreement. The Licensor may not charge any additional costs or expenses to the Licensee.
4. The Fee for each commenced calendar year of the duration of this Agreement shall be paid in two (2) partial payments within one invoice issued at the earliest at the beginning of the calendar year to which the fees relate with the following maturity:
  - Max 50% on 15 March of the given year for which the Licensed Materials are paid (maturity of the first partial payment);
  - Max 50% on 15 May of the given year for which the Licensed Materials are paid (maturity of the second partial payment);
  - The above-mentioned maturities are applicable only if the invoice (all the invoices) is delivered to the Licensee no later than fifteen (15) days before the stated maturity of the first partial payment, i.e. by the end of February of the given year;
  - If the invoice is delivered later, at the latest within fifteen (15) days prior to the due date of the second partial payment, i.e. in the term beginning from 1 March to 30 April of the given year, the due date of the first partial payment shall be within fifteen (15) days from the date of the provable invoice delivery. The maturity of the second partial payment remains unaffected;
  - If the invoice is delivered later, the due date of both partial payments shall be within fifteen (15) days of the provable invoice delivery date.
5. The invoice shall be issued in the currency specified in this Agreement. In the event that there are multiple currencies specified in this Agreement for each Licensed Material, the Licensor shall issue at least the number of invoices corresponding to the number of currencies.
6. Invoice - the tax document shall contain all the requisites of a tax document. The invoice shall contain all the requisites set forth by the applicable legislation, especially Act No. 235/2004 Coll., VAT Act, as amended ("**VAT Act**"). The invoice shall be delivered to the Licensee either originally or electronically to the e-mail address [licensing@czechelib.cz](mailto:licensing@czechelib.cz). The invoice shall include a summary of all the Licensed Materials pursuant to this Agreement. The Licensor shall bear any and all costs connected with a change of the exchange rate, including but not limited to any costs which might arise due the invoice containing incorrect or incomplete information.
7. In the event the invoice is issued by an EU-based Licensor or its EU-based subsidiary, the invoice shall also contain information that the reverse charge rules are maintained and followed. This duty does not apply to the Licensors based outside the EU.
8. If the invoice does not contain the requisites set forth in this Agreement or by the applicable legislation 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 corrected invoice delivery date to the Licensee and pursuant to the rules set forth above. The procedure under the previous sentence may also be repeated. The Licensor shall correct the invoice in each case within 15 days as of written notification by the Licensee on incorrect or incomplete invoice. 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 duty associated with performance under this Agreement shall be understood as the moment of debiting the full amount from the bank account of the Party.
10. The Licensor is not entitled to require any advance payments under this Agreement.
11. Each Party shall bear its own costs in connection with this Agreement. The bank fees for the bank transfer are shared between the Parties.

The provisions of section 12. – 14. of Payment Terms below apply to Licensor based in the Czech Republic.

12. The Licensor declares that it 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.
13. The Licensor further declares that it fulfills all the conditions set forth in the Section 109 of the VAT Act, i.e. that it 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, it shall notify such fact in writing to the Licensee without undue delay.
14. 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 will become an unreliable VAT payer under the preceding paragraphs, or the Licensor's account shall not be registered with the tax administrator, or in the event that the Licensee is aware of the facts decisive for the legal liability of the Licensee for the payment of VAT within the meaning of Section 109 of the VAT Act, the Licensor expressly agrees that the VAT from the Fee under this Agreement shall be paid directly to the tax administrator's account in accordance with the applicable legislation.

The Licensor takes on the risk of a change in circumstances under Section 1765 (1) of 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 Institutions 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 this 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, Potential Participating Institutions and Fees

Information concerning the fees of the individual Participating Institutions and Potential Participating Institutions contained in this Appendix B is considered business secret pursuant to the provisions of Section 504 of Act No. 89/2012 Coll., the Civil Code, as amended, and are not to be disclosed in the Register of Contracts in accordance with the provisions of Section 3, Paragraph 1 and Paragraph 2 letter b) of Act No. 340/2015 Coll.

The Parties acknowledge that the Licensee is obliged by law to subsequently disclose in the Register of Contracts the individual agreements on provision of access to the Licensed Materials concluded between the Licensee and each Participating Institution.

PARTICIPATING INSTITUTIONS

POTENTIAL PARTICIPATING INSTITUTIONS

Appendix C: IP Addresses of Participating Institutions

Appendix D: Title List