SaaS subscription Agreement

This SaaS Subscription Agreement ("**Agreement**") is made as of the \_\_ day of \_\_\_\_\_\_\_\_, 2019 (the "**Agreement Effective Date**"), by and between Ex Libris (Deutschland) GmbH, a company incorporated under the laws of Germany having its main office at Tasköprüstraße 1, D-22761 Hamburg, Germany ("**Ex Libris**"), and Národní knihovna České republiky (National Library of the Czech Republic), a state contributory organization established by the Ministry of Culture of the Czech Republic with ident. No. 00023221, tax ident. No. CZ00023221 and with offices at Klementinum 190, 110 00 Praha 1 (Prague 1 ("**Customer**").

**WHEREAS,** a list of defined capitalized terms appears in Annex G hereto.

WHEREAS, Ex Libris and Customer entered into a SaaS subscription agreement dated 21 December 2018 for the Ex Libris SFX SaaS service (the “SFX SaaS Subscription Agreement”);

WHEREAS, Ex Libris has the right to grant a subscription to the SaaS Services set forth in Annex A to this Agreement, as such may be amended from time to time (in a writing signed by both parties) by the addition of additional services (collectively, the "SaaS Services");

WHEREAS, Customer wishes to subscribe to access and use the SaaS Services from Ex Libris on a Software as a Service basis ("SaaS"), and to receive services from Ex Libris, and Ex Libris wishes to provide such a subscription to Customer via SaaS and to provide services to Customer, all subject to the terms of this Agreement;

WHEREAS, Ex Libris’ quotation for the SaaS Service (the "Initial Quotation") is appended hereto as Annex Band made a part hereof, all subject to the terms of this Agreement; and

WHEREAS, Subject to Customer’s agreement, Ex Libris may subsequently attach additional quotations for additional services, setting forth prices applicable to this Agreement (the "Additional Quotations") to be appended hereto as annexes and made a part hereof upon Customer’s signature (the Initial Quotation and Additional Quotations, if any, will be collectively referred to as the "Quotations").

# **SUBSCRIPTION TO SaaS SERVICES**

## In consideration of the full payment of the annual subscription fee (the "**Subscription Fee**") for the SaaS Service, as set forth in the Quotations, and subject to all the terms and conditions hereof, Ex Libris hereby grants to Customer the right to access and use the functionality of the SaaS Service(the **“Subscription”**), as outlined in the Quotations (including, without limitation, any limitation of use to specific locations and Named Users and other use and access restrictions as set forth in the Quotation), during the corresponding subscription period, as well as (i) related materials such as Documentation (as defined below) to the extent then available, and (ii) if applicable, third party data that may be accessed via the SaaS Service("**Licensor Data**").

## As between the parties, all rights, title and interest, including without limitation, patent rights, copyrights, trade secrets, trademarks, service marks and other intellectual property rights, and any goodwill associated therewith, in and to the SaaS Service, related Documentation and all reproductions, derivatives, corrections, modifications, enhancements and improvements thereof, including anonymized statistical data derived from the operation of the SaaS Service, are and will remain at all times owned by Ex Libris. Other than the rights explicitly granted to Customer hereunder, all rights are reserved to and shall remain solely and exclusively proprietary to Ex Libris.

# **SERVICE LEVEL; SUPPORT; OTHER PROVISIONS**

## Ex Libris will make the SaaS Serviceavailable to Customer in accordance with the SaaS Service Level Agreement set forth in Annex D (the "**SLA**"). In addition, Ex Libris shall provide Customer with ongoing support services relating to the SaaS Service, as specified in the SLA (the "**Support Services**"). Ex Libris will provide access to all appropriate documentation for fixes, releases, or upgrades to the SaaS Service. For the sake of clarity, Support Services do not include on-site services.

## Provisions applicable to a specific SaaS Service may be set forth in Annex F hereto, and/or in the relevant Quotation, and form a part of this Agreement.

# **IMPLEMENTATION AND OTHER SERVICES**

## In consideration of the full payment of the Implementation Fee as set forth in the Quotation, Ex Libris shall provide the Customer the implementation services as specified in Annex E attached hereto (the **"Implementation Services"**). Additional implementation services, if requested by Customer, may be specified in the Quotation together with an additional implementation fee. The parties will mutually agree upon a suitable implementation schedule for the above specified services.

## Customer agrees to perform the tasks assigned to it in the Implementation Services. It is understood that effective communications and cooperation between Ex Libris and the Customer are essential ingredients to the success of the Implementation Plan. To such end, each Party shall designate a project coordinator who will serve as principal contact for the technical and business communications with respect to the Implementation Plan.

## If the Customer uses non-Ex Libris programs (**"Third Party Programs"**) that interoperate with the SaaS Service, the Customer acknowledges that Ex Libris may allow the providers of such Third Party Programs to access Customer Data as required for the interoperation and support of such Third Party Programs. Ex Libris shall not be responsible for any disclosure, modification or deletion of Customer Data resulting from any such access by Third Party Program providers. For the sake of clarity, this provision does not refer to programs used or provided by Ex Libris as part of the SaaS Services.

## If Customer wishes to order additional training or other professional services, Ex Libris shall provide a quotation in accordance with its standard daily rates plus travel and subsistence expenses.

# **CHARGES AND PAYMENTS**

**XXX**

# **DOCUMENTATION**

Ex Libris shall make available in electronic format at no cost to Customer, all standard materials published by Ex Libris for use by subscribers to the SaaS Service, including manuals and other relevant materials and documentation, as updated from time to time **(“Documentation”**). Customer may print or copy Documentation as needed, provided all copyright notices are included and, with respect to any such materials not made publicly available by Ex Libris, distribution of said copies complies with the confidentiality provisions of this Agreement.

# **PROTECTION FROM THIRD PARTY IP INFRINGEMENT**

## Ex Libris will defend Customer to the extent any claim, suit, action or proceeding (each, a **"Claim"**) brought by any third party against Customer alleges that the SaaS Service infringes or misappropriates any copyright, trade secret or trademark, and shall pay any amounts awarded by a court pursuant to such Claim or amounts paid to settle the Claim. Ex Libris' obligation pursuant to this paragraph shall not extend to any Claim based on any alleged infringement arising from any use of the SaaS Service other than as permitted by this Agreement.

## The obligations set forth in the immediately preceding paragraph shall be subject to the Customer (i) giving Ex Libris prompt notice of such Claim; (ii) giving Ex Libris the sole authority to defend or settle such Claim; and (iii) providing full cooperation in such defense or settlement at Ex Libris' expense and not taking any action that prejudices Ex Libris' defense or settlement of such Claim.

## If the SaaS Service becomes the subject of a Claim, or in Ex Libris’ opinion is likely to become the subject of a Claim, then Ex Libris may, at its expense and option, either: (a) replace or modify the SaaS Service to make it non-infringing, while maintaining equivalent functionality; (b) procure for Customer the right to continue using the SaaS Service pursuant to this Agreement; or (c) terminate this Agreement and refund to Customer, on a pro-rata basis, the amount of any Subscription Fee that Ex Libris has received from Customer for the period between the effective date of termination of the Agreement and the expiration of the subscription period for which the Subscription Fee has been paid.

# **LIMITATION OF LIABILITY**

**XXX**

# **CUSTOMER’S UNDERTAKINGS**

**XXX**

# **CUSTOMER DATA**

**XXX**

# **TERM AND TERMINATION**

**XXX**

# **FORCE MAJEURE**

# Ex Libris shall not be responsible for any failures of its obligations under this Agreement to the extent that such failure is due to causes beyond Ex Libris’ control including, but not limited to, acts of God, war, terrorism, riots, civil unrest, acts of any government or agency thereof, fire, explosions, epidemics, quarantine restrictions, delivery services, telecommunication providers, interruption or failure of the Internet, strikes, labor difficulties, lockouts, embargoes, or severe weather conditions.

# **STATEMENT OF CONFIDENTIALITY; USE OF NAME IN PUBLICITY**

## Except to the extent required by law and insofar as is reasonably necessary in order to review and evaluate the information contained herein, the contents of this Agreement are proprietary and confidential to Ex Libris and may not be copied, disclosed, or used, in whole or in part, without its express written permission.

## Ex Libris may use Customer’s name on its website and in its promotional materials as a customer of the SaaS Service, but will not imply that the parties are affiliated.

# **GENERAL**

## This Agreement is to be governed by and interpreted in accordance with the laws of Germany, without giving effect to principles of conflicts of laws. All disputes arising out of this Agreement shall be subject to the sole and exclusive jurisdiction of the competent courts located in Hamburg, provided that Ex Libris may seek injunctive relief in any court of competent jurisdiction. The United Nations Convention for the International Sale of Goods shall not apply to this Agreement.

## All notices hereunder shall be deemed effective when delivered to the address set forth above or to a designated fax number, as follows: (i) if hand-delivered, upon delivery, (ii) if sent by recognized national or international courier, on the business day of delivery, (iii) if sent by registered post, within five (5) business days of sending; (iv) if sent by email, on the business day of sending (or if sent on a non-business day on the next business day), provided that the recipient has acknowledged receipt.

## Neither party hereto may assign its rights and obligations under this Agreement except with the prior written consent of the other, provided that Ex Libris may assign its rights and obligations to an affiliate or to a company which succeeds to its business hereunder.

## The development, release, and timing of any new features or functionality of the SaaS Service remains at Ex Libris’ sole discretion. The Customer acknowledges that it has not relied on the delivery of any future feature or functionality in executing this Agreement.

## The parties acknowledge that they are independent contractors and no other relationship, including partnership, joint venture, employment, franchise, or principal/agent is intended by this Agreement. Neither party shall have the right to bind or obligate the other.

## All headings herein are for ease of reference only and shall not be used to interpret this Agreement.

## The annexes attached hereto are incorporated in, and made a part of, the Agreement by this reference. All capitalized but undefined terms in an annex to this Agreement shall have the meaning set forth herein.

## This Agreement and its annexes constitute the entire agreement between the parties pertaining to the subject matter hereof, and supersede any and all prior written or oral agreements with respect to such subject matter.

## If any provision of this Agreement shall be held by a court of competent jurisdiction to be contrary to law or unenforceable, the remaining provisions of this Agreement shall remain in full force and effect and this Agreement shall be construed without such provision.

## This Agreement may only be amended by a writing signed by both Parties.

## The waiver of a breach of any term hereof shall in no way be construed as a waiver of any other term or waiver of such breach on other occasions.

## Anypurchase order entered into between the parties shall be deemed to incorporate the terms of this Agreement. If a purchase order contains terms that purport to modify or supplement the terms of this Agreement then those purchase order terms shall have no force or effect, unless expressly agreed to in writing by both parties. In the case of an inconsistency or contradiction between this Agreement and any purchase order, this Agreement shall prevail.

##  Facsimile signatures shall be sufficient for purposes of executing this Agreement. This Agreement may be executed in counterparts.

## This Agreement may be translated into other languages besides English. Translated versions of this Agreement, however, are for convenience only. Thus, no translation of this Agreement into any language other than English shall be considered in the interpretation thereof and in the event that any translation of this Agreement is in conflict with, or adds to, the English language version, the English version shall govern.

**ACCEPTED, AGREED AND SIGNED ON AND AS OF THE DATE FIRST ABOVE WRITTEN:**

|  |  |  |
| --- | --- | --- |
| **Národní knihovna České republiky** |  | **Ex Libris (Deutschland) GmbH** |
| By: |  | By: |
| Name: |  | Name: |
| Title: |  | Title: |
| Date: |  | Date: |

|  |
| --- |
| Data Protection Officer/Contact for data protection enquiries |
| CUSTOMERName/Role: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_Email: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ | Ex LibrisEllen Amsel, DPOdpo@exlibrisgroup.com |

List of Annexes

**ANNEX A** **Ex Libris SaaS Service(s)**

**ANNEX B** **Initial Quotation and Additional Quotations**

**ANNEX C Payment Terms**

**ANNEX D SaaS Service Level Agreement**

**ANNEX E Implementation Services**

**ANNEX F SaaS Service-Specific Provisions**

**ANNEX G Definitions**

**ANNEX H Data Processing Addendum**

**ANNEX A**

**Ex Libris SaaS Service(s)**

MARCit!

Note: The MARCit! SaaS Service is an add-on to the SFX SaaS service.

Annex B

**The Initial Quotation and Additional Quotations**

**MARCit!**

1. Fees
2. Annual Fees
	1. The initial annual MARCit! Subscription Fee: € 3.960,00

1. Initial Fees
	1. Standard One-time Implementation Fee: not applicable
2. Access and Use Restrictions:

Usage of the SaaS Service is limited to:

1. The following campuses only: Národní knihovna České republiky and is not for the use of any other campus, college, university, library or entity of any kind. Any use of the SaaS Service by any other entity is strictly prohibited and is considered a material breach of this Agreement. For the sake of clarity, Customer’s authorized users associated with such listed campuses may access the SaaS Services from outside of Customer’s jurisdiction, but Customer shall ensure that it is entitled to transfer Customer Data and Personal Information from and to any such Customer user location and shall be responsible for compliance with privacy laws applicable to such transfers.

**ANNEX C**

**Payment Terms**

**MARCit!**

1. Annual Subscription Fee:The initial Subscription Fee is for the one-year period commencing on 01.04.2019 (the **“Subscription Effective Date”**), and each subsequent Subscription Fee is for the one-year period commencing on each anniversary thereof. The Subscription Fee is due on the Subscription Effective Date and on each anniversary thereof.
2. Increase in Scope of Subscription:In the event the scope of the Subscription is extended beyond the Access and Use Restrictions initially set forth on the Quotation, the annual Subscription Fee shall be increased proportionally from the time said extension is granted by Ex Libris, without regard to the annual cap on increases set forth in Section 4.1.
3. Implementation Fee: 100% of the Implementation Fee is due on the Subscription Effective Date.
4. Other Services**:** Other special services, if any, ordered by the Customer, are payable against Ex Libris’ corresponding monthly invoices.
5. Note:All Ex Libris invoices are payable within thirty (30) days of the date of invoice. Payment of the fees specified in the Quotation shall be made without deduction or withholding of any amount, tax or government charge. Late payments shall bear interest at the rate of 1.5% per month or the highest lawful rate, whichever is lower.
6. Travel and Expenses: Reasonable travel, lodging and meal expenses incurred by Ex Libris in the performance of services are not included in prices quoted.

**ANNEX D**

**XXX**

**ANNEX E**

**Implementation Services**

Not applicable

**Annex F**

**SaaS Service-Specific Provisions**

Not applicable.

**Annex G**

**Definitions**

Unless otherwise stated, references below to Sections, “Whereas” clauses and Annexes refer to such parts of this Agreement.

**“Additional Quotation”** means, as set forth in the “Whereas” clauses, a Quotation which may be added to Annex B by written agreement of the parties after the Agreement Effective Date.

**“Additional Use Period”** means, as set forth in Section 4.1.B, the period of time following the Go Live Date of the SaaS Service during which Customer is permitted to continue using the Current Software.

**“Affiliate”** means, with respect to an entity, another entity that controls, is controlled by, or is under common control with, the first entity.

**“Agreement”** means this SaaS Subscription Agreement, including its Annexes.

**“Agreement Effective Date”** means the date set forth in the first paragraph of this Agreement, which is the date this Agreement goes into effect.

**“Bibliographic Titles”** means, the total number of descriptive metadata records managed within Alma, including both physical and e-book titles as well as locally managed authority records. This number excludes e-journal titles and digital metadata record counts.

**“Community Zone”** means the part of the Alma SaaS Service as further described in Annex F, where Ex Libris and the customers of the SaaS Service, have the option to load metadata, electronic resource and collection definitions (also known as the Knowledge Base) and authority records to be used by all participating customers, to streamline resource management processes, including ordering, cataloging, discovery, and related functions such as context sensitive linking services for end users, authority control and analytics.

**“Current Agreement(s)”** means those previously entered software license or subscription agreement(s) described in the “Whereas” clauses.

**“Current Software”** means, as set forth in the “Whereas” clauses, the software listed on Annex A under the caption “Current Software”.

**“Customer”** means, as set forth in the first paragraph of this Agreement, the subscribing party that has entered into this Agreement with Ex Libris.

**“Customer Data”** means, as set forth in Section ‎9.1, any business information, personal information or other data which is provided by Customer to Ex Libris in connection with the SaaS Service, including, without limitation, information which Customer stores, or provides to Ex Libris for storing, in the SaaS Service.

“**Digital Metadata Records**” means the number of descriptive metadata records (currently MARC, Dublin Core) managed within Alma for digital collections, regardless of where the objects (files) are stored (which may be either in another local digital repository or in the Alma cloud storage).

“**Digital Object Files**” means the digital objects/files stored in the Alma cloud storage. Alma makes use of Amazon S3 cloud storage as further described in the SLA.

**“Documentation”** means, as set forth in Section ‎5, materials published by Ex Libris for use by subscribers to the SaaS Service, including manuals and other materials.

**“Ex Libris”** means the Ex Libris entity named in the first paragraph of this Agreement.

“**Ex Libris Identity Service**” means an optional service made available to customers of Alma, Primo/Summon (when bundled with Alma) and/or Leganto SaaS Services for the sole purpose of authenticating users logging into the SaaS Services. The Ex Libris Identity Service is intended only to authenticate Customer’s authorized users who cannot be authenticated by Customer’s institutional authentication service. Customer shall be subject to the guidelines set forth in the Ex Libris Identity Service Documentation, including with respect to compliance with uniform password policies (such as length and complexity) as set by Ex Libris from time to time.

**“FTE’s”** consisting of the following categories of individuals:

1. then-currently enrolled students;
2. then-current faculty (i.e., professors, lecturers and instructors); and
3. then-current other personnel (e.g., library staff, university administrators etc.)

**“Go Live Date”** means the date on which the Customer first uses the SaaS Service for commercial or production purposes, or makes the SaaS Service generally available to Customer’s users, or uses the SaaS Service in any way beyond testing.

**“Implementation Services”** means, with respect to the relevant SaaS Service, the implementation services set forth on Annex E to this Agreement, as set forth in Section ‎3.1.

**“Initial Quotation”** means, as set forth in the “Whereas” clauses, the Quotation(s) attached to this Agreement as Annex B as of the Agreement Effective Date.

**“Initial Term”** means, with respect to a Subscription, the period of time beginning on the Subscription Effective Date and ending upon the expiration of the number of years set forth in Section ‎10.1 (unless earlier terminated).

**“Leganto Implementation Kick-Off Date”** means thedate of the initial Kick-off meeting of the Implementation Services with respect to Leganto described in Annex E.

**“Licensor Data”** means, as set forth in Section ‎1.1, third-party data that may be accessed via the SaaS Service.

**“Named Users”** means, Customer’s users that have been entitled by the Customer with unique login credentials to the SaaS Service. Named Users may include Customer’s employees, library student assistants, temporary staff, consultants, or contractors.

**“Open License”** means a license which allows a copyright owner to permanently relinquish copyrights to data of a bibliographic nature for the purpose of contributing to a commons of creative, cultural and scientific works that the public can reliably, and without liability for later claims of infringement, build upon, modify, incorporate in other data, reuse and redistribute freely in any form and for any purpose, including, without limitation, commercial purposes. Open Data Commons Public Domain Dedication and License (PDDL) and Creative Commons (CC) license are two of several public copyright licenses that are considered Open Licenses.

**“Personal Information”** means, as set forth in Section ‎9.4, personal information of Customer’s permitted users, such as its staff and patrons, and other third parties.

“**Primo Documents**" means, any full text or metadata records which are harvested (from Alma or other library sources such as institutional digital repositories) and made discoverable via Primo. The average record size of all Primo Documents must be under 5kb.

**“Quotations”** means, as set forth in the “Whereas” clauses, collectively the Initial Quotation and any Additional Quotations.

**“Renewal Term”** means, with respect to a Subscription, each of an indefinite number of successive, automatically renewing one-year terms, as set forth in Section ‎10.1.

**“SaaS”** means Software as a Service.

**“SaaS Service”** means, as set forth in the “Whereas” clauses, the SaaS Service(s) listed on Annex A under the caption “SaaS Service(s)”.

**“SaaS Service Contract Date”** means, with respect to a SaaS Service, the date as of which that SaaS Service became a part of this Agreement. Accordingly, the SaaS Service Contract Date of a SaaS Service that was included on the Initial Quotation set forth on Annex B would be the Agreement Effective Date. However, the SaaS Service Contract Date of a SaaS Service that was included on an Additional Quotation subsequently prepared by Ex Libris, signed by the Customer and added to Annex B would be the date of the Customer’s signature on such Additional Quotation (or the date of any other amendment to this Agreement by which the SaaS Service was added).

**“SLA”** means, as set forth in Section ‎2.1, the Service Level Agreement set forth on Annex D.

**“Subscription”** means, as set forth in Section ‎1.1, the right to access and use the functionality of the SaaS Services.

**“Subscription Effective Date”** means, with respect to a Subscription, the beginning date of that Subscription, as set forth on Annex C.

**“Subscription Fee”** means, with respect to the relevant SaaS Service, the Subscription Fee set forth on the relevant Quotation, as set forth in Section ‎1.1.

**“Support Services”** means, as set forth in Section ‎2.1, the maintenance and support services relating to the SaaS Service specified in the SLA.

**“Term”** means, with respect to a Subscription, the Initial Term and any Renewal Terms, as set forth in Section 10.1.

**“Termination Assistance Period”** means, as set forth in Section ‎10.4, the 30-day period immediately following the expiration or termination of a Subscription, during which Ex Libris will, upon Customer’s request, make the Customer Data available to Customer for download.

**“Third Party Programs”** means, as set forth in Section ‎3.3, non-Ex Libris programs that interoperate with the SaaS Services.

“**Unique e-Journal Titles**” means, the total number of e-journal titles obtained by counting e-journals once even if they are available from multiple sources. This includes all e-journal titles managed in Alma and is not dependent on the manner they are accessed or acquired (e.g. subscriptions from content providers, open access collections, databases, etc.).

**Annex H**

**Data Processing Addendum - GDPR**

GDPR Data Processing Addendum executed by the parties as Annex H to the SFX SaaS Subscription Agreement is hereby incorporated by this reference.