



## MASTER AGREEMENT

The **parties** to this Master Agreement are:

Cengage Learning (EMEA) Ltd, a Cengage Learning Company with its principal offices at Cheriton House, North Way, Andover, Hampshire, United Kingdom, SP10 5BE, (Registered Company No: 903535) ("**Gale Cengage Learning**"), and Charles University, with its principal offices at Charles University, Central Library, Ovocný trh 560/5, Praha 1, 116 36 Czech Republic ("Client").

The **date** of this Master Agreement is: 30<sup>th</sup> June 2022.

This Master Agreement incorporates the Sections (as checked below):

- Section 1: General Terms and Conditions
- Section 2: Subscription Terms
- Section 3: Archive Product Terms
- Section 4: Hosting Terms
- Section 5: Restrictions on Use

For the purposes of this Master Agreement, the Client is classified as an:

- Academic Institution
- School
- Corporate
- Public Library
- Special Library

In consideration of the mutual promises set out in this Agreement, as well as other good and valuable consideration, Gale Cengage Learning and Client agree to its terms:

Signed for and on behalf of the Client by:

Radka Římanová  
Print Name:

Signed for and on behalf of Cengage Learning (EMEA) Ltd

Print Name: David Rae

# SECTION 1: GENERAL TERMS AND CONDITIONS

## 1. Definitions

In this Section 1, the following terms shall have the following meanings:

**“Archive Product”** means an archive database as described in the Archive Product Schedule.

**“Archive Product Schedule”** means the schedule annexed to Section 3.

**“Authorized Users”** are the authorised users of a Service or Archive Product, as specified in this Agreement.

**“Client”** is as specified on the first page of this Agreement.

**“Hosting Service”** means a service through which the Client obtains access to the Archive Product as specified in the Hosting Service Schedule.

**“Hosting Service Schedule”** means the Schedule annexed to Section 4.

**“Restrictions on Use”** means the restrictions on the Client’s use of the Archive Product and Subscription Service as specified in Section 5.

**“Service”** means the Hosting Service or the Subscription Service, or either of them, as the context requires.

**“Scope of Use Schedule”** means the Schedule annexed to Section 5 setting out the scope of the Client’s permitted use of the Subscription Service or Archive Product.

**“Sources”** means third parties whose materials are available through the Subscription Service or the Archive Product.

**“Subscription Service”** is the on-line service(s) to which the Client subscribes as specified in the Subscription Schedule.

**“Subscription Service Schedule”** means the Schedule annexed to Section 2.

**“Gale Cengage Learning”** is as specified on the first page of this Agreement.

## 2. Term and termination.

2.1 This Agreement begins on the date upon which it has been signed by both parties and will continue unless or until terminated in accordance with its terms.

2.2 If one party has committed a material breach of the Agreement ("defaulting party") and the breach is not remediable or the defaulting party has not remedied the breach within thirty (30) days of receiving notice of it from the other party ("innocent party"), then without prejudice to any other remedy, the innocent party may on written notice to the defaulting party terminate the Agreement with immediate effect. Client acknowledges that failure to pay the fees for a Service or Archive Product in accordance with the terms of this Agreement will be a material breach of this Agreement.

2.3 If either party becomes insolvent or unable to pay its debts when due, the other may terminate this Agreement by notice to the first party with immediate effect. If Gale Cengage Learning gives or has the right to give notice under this Clause 2.3, Gale Cengage Learning may suspend all Services provided under this Agreement without prejudice to any further right or remedy Gale Cengage Learning may have.

2.4 Clauses 2.4, 2.5, 3 and 4 of this Section 1 will survive termination of the Agreement.

2.5 Termination of the Agreement or cancellation of a Service or Archive Product will not affect any rights accrued or obligations arising on or before the date of cancellation or termination.

### **3. Disclaimers and limitations of liability.**

3.1 Except as provided for in this Agreement, Gale Cengage Learning accepts no liability in contract, negligence or otherwise for (i) any error or omission in a Service or Archive Product; (ii) for the consequences of reliance by the Client or Authorised Users on a Service or Archive Product nor (iii) for any interruption to a Service.

3.2 Except as set out in this Agreement, all warranties, terms and conditions, express or implied by statute, common law or otherwise, are excluded.

3.3 Neither Gale Cengage Learning nor the Client will be liable in contract or negligence or otherwise for (i) loss of profits, business, reputation or anticipated savings, whether such losses are direct or indirect; or (ii) any indirect losses including but not limited to the indirect losses described in Clause 3.3(i) above, however such direct or indirect losses may arise and even if Gale Cengage Learning or the Client or an affiliated company of either of them (as applicable) has been advised of the possibility of such direct or indirect losses.

3.4 The aggregate amount of the liability of Gale Cengage Learning and Gale Cengage Learning's affiliated companies which may arise out of or in connection with the Agreement, whether in contract or negligence or otherwise, will (i) for a Archive Product be limited to the Fees paid for that Archive Product and (ii) for a Service, in respect of all incidents or series of incidents occurring in any one calendar year, be limited to an amount equal to the fees payable by Client in the calendar year in respect of the Service under which that liability has arisen.

3.5 Gale Cengage Learning indemnifies the Client against any reasonable legal fees, disbursements and costs of investigation and litigation and any costs of settlement, judgment, interests and penalties which arise as a direct result of a third party claim that the use of a Service or Archive Product by the Client or its Authorised Users in accordance with the Agreement infringes the intellectual property rights of that third party. This indemnity shall be subject to the Client (i) promptly notifying Gale Cengage Learning of any matter which gives rise to the indemnity ('Claim'); (ii) not, without Gale Cengage Learning's written consent, doing or omitting to do anything, or making any admission, which materially prejudices Gale Cengage Learning's defense of the Claim; (iii) taking all reasonable steps to mitigate its loss; and (iv) granting Gale Cengage Learning the conduct of all negotiations and litigation arising from the Claim and giving Gale Cengage Learning (at Gale Cengage Learning's request and expense) all reasonable assistance requested by the indemnifying party in connection with it. This indemnity shall not apply to any Claim to the extent that the Claim arises from the modification by the Client or the Client's Authorised Users of any part of the content comprising the Service or the Archive Product, notwithstanding that such modification is permitted under the terms of this Agreement.

3.6 The provisions in this Agreement limiting liability do not apply to (i) death or personal injury resulting from negligence, (ii) breach of obligations arising from Section 12 of the Sale of Goods Act 1979 or (iii) fraud or deceit in relation to which no restriction or constraint applies to Gale Cengage Learning or the Client.

### **4. Intellectual Property**

4.1 The Client acknowledges that Gale Cengage Learning and its Sources own all content comprising the Services and Archive Products.

4.2 The Client shall use all reasonable efforts to restrict and control unauthorised access to a Service or Archive Product. The Client agrees to notify Gale Cengage Learning if it becomes aware of any of the following: (a) any loss or theft of the Client's password(s) used in relation to a Service or Archive Product (if any); (b) any unauthorised use of such passwords; or (c) any breach by an Authorised User of the terms of this Agreement. Upon becoming aware of any breach of the terms of this Agreement by an Authorised User, the Client agrees to work with Gale Cengage Learning to correct such practices.

4.3 The Client agrees not to sell, exchange, barter or transfer, rent, lease, loan, resell for profit, distribute or in any other manner commercially exploit any data or documentation comprising a Service or Archive Product except as expressly permitted in this Agreement.

## 5. General

5.1 Entire Agreement. This Agreement shall constitute the entire Agreement between the parties and supercedes all prior Agreements and understandings oral or written relating to the subject matter hereof. The parties acknowledge that in entering into this Agreement they have not relied on any representations made by either of them that are not expressed in this Agreement. Alterations to this Agreement, as amended from time to time are only valid if they are recorded in writing and signed by both parties.

5.2 Assignment. This Agreement may not be assigned by either party to any other person or organization, nor may either party sub-contract any of its obligations, without the prior written consent of the other party; provided however, Gale Cengage Learning may assign all or any of its rights and assign or sub-contract all or any of its obligations under this Agreement to any company which is, from time to time, an affiliated company of Gale Cengage Learning, without consent of the Client. The rights and obligations of this Agreement shall bind and benefit any successors or assigns of the parties. Any attempted assignment in violation of this section is null and void.

5.3 Force Majeure Neither party's delay or failure to perform any provision of this Agreement, as result of circumstances beyond its control (including, without limitation, war, strikes, flood, governmental restrictions, power, telecommunications or Internet failures, or damage to or destruction of any network facilities) shall be deemed to be, or to give rise to, a breach of this Agreement.

5.4 Notice. Any notice or other communication required or permitted in this Agreement shall be in writing and shall be deemed to have been duly given on the day of service if served personally or three (3) days after mailing if mailed by First Class mail, registered or certified, postage prepaid, or two days after mailing if mailed by commercial overnight courier to the address for that party as specified on the first page of this Agreement, unless such address is changed by notice in compliance with this Clause 5.4.

5.5 Severability. If any provision of this Agreement is invalid, illegal, or unenforceable under any applicable statute or rule of law, the provision shall be deemed omitted to the extent that it is invalid, illegal, or unenforceable. In such a case, the remainder of the Agreement shall be construed in a manner as to give greatest effect to the original intention of the parties to the Agreement.

5.6 Waiver. The waiver of failure of either party to exercise in any respect any right provided in this Agreement in any instance shall not be deemed to be a waiver of such right in the future or a waiver of any other right under this Agreement.

5.7 Headings. The headings appearing at the beginning of the several sections contained in this Agreement have been inserted for identification and reference purposes only and shall not be used in the construction and interpretation of this Agreement.

5.8 Relationship of the Parties. The relationship of the parties hereto shall be that of independent contractors. Nothing herein shall be construed to create any partnership, joint venture, or similar relationship or to subject the parties to any implied duties or obligations respecting the conduct of their affairs, which are not expressly stated herein. Neither party shall have any right or authority to assume or create any obligation or responsibility, either express or implied, on behalf of or in the name of the other party, or to bind the other party in any matter or thing whatsoever.

5.9 Governing Laws. This Agreement shall be governed by the laws of England and Wales and the parties submit to the exclusive jurisdiction of the courts of England and Wales.

5.10 Third Party Rights. Affiliated companies of Gale Cengage Learning and the Sources may enforce the terms of this Agreement subject to and in accordance with the terms of the Agreement and the provisions of the Contract (Rights of Third Parties) Act 1999, as amended and substituted from time to time, otherwise a person who is not a party to this Agreement has no right to enforce any term of this Agreement.

## SECTION 4: HOSTING SERVICE TERMS

### 1. Definitions

In this Section 4, the following terms shall have the following meanings:

“**Hosting Service**” is as specified in the Hosting Service Schedule.

“**Hosting Service Fee**” means the fees payable by Client for provision of the Hosting Service, as specified in the Hosting Service Schedule and amended from time to time in accordance with Clause 5.1 of this Section 4.

“**Hosting Service Period**” means, unless otherwise specified in the Hosting Service Schedule, a period of one year beginning on the Hosting Service Start Date and, where the Hosting Service Period is renewed in accordance with this Agreement, each subsequent one year period.

“**Hosting Service Start Date**” shall mean the date specified as such in the Hosting Service Schedule (or, if later, the date upon which Gale Cengage Learning first provides access to the Hosting Service to the Client).

### 2. Provision and scope of use of the Hosting Service

2.1 Gale Cengage Learning will provide the Hosting Service to the Client throughout the Hosting Service Period.

2.2 It will be Client’s responsibility to ensure that only Authorised Users of the Archive Products access those Archive Products through the Hosting Service.

### 3. Warranties, disclaimers and limitations of liability.

3.1 Gale Cengage Learning shall use commercially reasonable efforts to provide continuous availability of the Hosting Service, subject to periodic unavailability due to maintenance of the server(s), the installation or testing of software, the loading of data and downtime related to the failure of communications networks, equipment or services outside the control of Gale Cengage Learning. Scheduled downtime will be performed at a time to minimize inconvenience to customers worldwide.

3.2 Gale Cengage Learning will not be liable in any way for any failure in, interruption to or degradation of the Hosting Service caused directly or indirectly by Client’s equipment or communications networks. This Clause 3.2 survives termination of this Agreement.

### 4. Payment

4.1 Client will pay to Gale Cengage Learning the Hosting Service Fee and any applicable sales, use, excise, or similar taxes payable on the Hosting Service Fee. Unless otherwise specified in The Hosting Service Schedule, the Hosting Service Fee is due within thirty (30) days after invoice date.

4.2 Gale Cengage Learning may invoice the Client for the Hosting Service Fee for the first Hosting Service Period immediately upon the Client’s execution of this Agreement and subsequently in accordance with Clause 5.1 below.

**5. Renewal and cancellation of the Hosting Service**

5.1 At any time before the end of an Hosting Service Period or a renewed Hosting Service Period, Gale Cengage Learning may send an invoice to the Client for a subsequent Hosting Service Period.

(i) If the Client pays that invoice in full before the end of the then current Hosting Service Period, the Hosting Service Period will be renewed for another year, beginning on the first day after the end of the then current Hosting Service Period.

(ii) If the Client pays that invoice in full after the end of that current Hosting Service Period and Gale Cengage Learning continues to provide the Hosting Service for the period from the end of that current Hosting Service Period to the date of payment ("Interim Period"), the Hosting Service Period will be deemed to be renewed for another year, beginning on the first day after the end of that current Hosting Service Period and the terms of this Master Agreement will apply throughout the renewed Hosting Service Period, including the Interim Period.

The Hosting Service Fee for the renewed Hosting Service Period will be as specified in such invoice.

5.2 Unless renewed in accordance with Clause 5.1 of this Section 4, Gale Cengage Learning will cease to provide the Hosting Service at the end of the then current Hosting Service Period.

**HOSTING SERVICE SCHEDULE****HOSTING SERVICE**

Description of Hosting Service	Gale eBooks
Hosting Service Start Date	30 <sup>th</sup> June 2022
Hosting Service Period	12 months from the Hosting Service Start Date specified above.
Hosting Service Fee	\$442.45  Hosting Service Fee is subject to an annual increase of not more than 5%



## SECTION 5 RESTRICTIONS ON USE

For the purposes of applying the Definitions and the Scope of Use below and determining whether any additional restrictions apply, the Client's classification is as specified on the first page of this Agreement.

### DEFINITIONS

In this Section 5, the following terms shall have the following meanings:

#### General:

**"Approved Library Loan Scheme"** is a library loan scheme that has been approved in writing by Gale Cengage Learning. Gale Cengage Learning has approved the following Library Loan Schemes: the UK Inter Library Loan Scheme (for Academic Institutions).

**"Authorized Site"** for each Archive Product and Service means the site or sites that is/are specified in the Scope of Use Schedule.

**"Authorized Users"** for each Archive Product and Service is/are as specified in the Scope of Use Schedule.

**"Concurrent Users"** are Authorized Users simultaneously accessing the Service or Archive Product.

**"Distribute"** means copy, make available through access to materials stored on a server or otherwise distribute, electronically (including but not limited to distribution through fax or email) or in hard-copy and **"Distribution"** shall be interpreted accordingly.

**"Participating Member"** means any higher education institute, library or other entity that is, at the applicable time, a member of an Approved Library Loan Scheme.

**"Secure Remote Access"** means remote access through a network (whether a stand-alone network or a virtual network within the Internet), which is only accessible to Authorized Users approved by the Client whose identity is authenticated at the time of login and periodically thereafter consistent with best practice and whose conduct is subject to regulation by the Client.

#### Academic Institution:

**"Library Users"** means any person who is not a member of the Student and Faculty and who holds a current, valid library card (walk in users) from the Client.

**"Students and Faculty"** means all currently enrolled full or part-time students of the Client; currently employed faculty (whether on a permanent, temporary, contract or visiting basis), teaching staff, administrators and staff in the Client

#### School:

**"Staff"** means all teaching and administrative staff currently employed by the Client.

**"Students"** means all currently enrolled students of the Client attending lessons full time at the Authorized Site.

#### Corporate:

**"Employees"** means individuals who are, at the time of accessing the Service or Archive Product either employed by the Client or engaged by the Client as consultants to work exclusively on behalf of the Client at the Authorized Site.

#### Public Library:

**"Public Library Member"** means an individual, in their personal capacity, to whom a public library at the Library Sites has issued a unique ID (e.g. in the form of a library card) and who has borrowing rights at those public libraries.

**"Public Library Staff"** means all library and administrative staff currently employed by the Client.

**"Public Library Walk-in User"** means an individual, in their personal capacity, who is not a Public Library Member but accesses the library services at the Authorized Site.

**Special Library:**

“**Special Library Member**” means an individual, in their personal capacity, to whom the Special Library has issued a unique ID (e.g. in the form of a library card) and who has borrowing rights at the Special Library.

“**Special Library Staff**” means all library and administrative staff currently employed by the Client.

“**Special Library Walk-in User**” means an individual, in their personal capacity, who is not a Special Library Member but accesses the library services at the Authorized Site.

**ADDITIONAL PERMISSIONS AND RESTRICTIONS ON USE:**

In addition to the permissions and restrictions on use set out in the Scope of Use Schedule, the following additional permission and restrictions on use apply to Clients and their Authorized Users.

**SUBSCRIPTION SERVICE**

**No commercial exploitation of Subscription Service Materials**

**Applies to:** All Clients

Clients and Authorized Users may not commercially exploit materials available from the Subscription Service.

**Restriction on Distribution of Subscription Service Materials**

**Applies to:** All Clients

Except as expressly stated in this Section 5 (including the limited redistribution permission described below), Clients and Authorized Users may not Distribute all or any materials from the Subscription Service to any other person, even if that person is an Authorized User. For the avoidance of doubt, Clients and Authorized Users may not make multiple copies of materials from the Service to provide to other persons within the Client’s organization (whether in a hard-copy or electronic format or through access to materials stored on a server) even if all intended recipients are Authorized Users and there is no restriction on Concurrent Users.

**Permission for limited redistribution of extracts from the Subscription Service Materials**

**Applies to:** All Clients

Authorized Users may Distribute insubstantial extracts from the Subscription Service provided that:

- (a) the Distribution is only for educational or research purposes and is not for commercial purposes;
- (b) the Distribution is incidental to some other purpose. For example, inclusion of an illustrative extract in an article for an academic publication, a textbook or an examination paper;
- (c) each extract is immediately followed in clear and legible text by reference to the Subscription Service; and
- (d) no more than three extracts from the Subscription Service may be Distributed in a single work, where a work includes but is not limited to, an article, a textbook or an examination paper.

**Permissible Inter-Library Loans of materials from the Subscription Service**

**Applies to:** All Clients

The Client may supply to an authorized user of a Participating Member (“Recipient”), in hard copy format or electronically, a single article or item from the Subscription Service for the purposes only of that Recipient’s research or private study, provided that (i) the copy is used by the Recipient only in hard copy format, (ii) the Recipient doesn’t, in hard copy or electronic format, distribute or otherwise make the copy available to any other person, (iii) the Recipient makes no commercial use of the copy and (iv) the



Recipient, the Authorized User and the Client comply at all times with the rules of the Approved Library Loan Scheme from time to time in force.

**Use of materials from the Subscription Service for educational purposes only.**

**Applies to:** Academic Institutions and Schools

Each Authorized User may download, display, view and print off single copies of excerpts of materials contained in the Subscription Service for the internal educational purposes of the Client and for the Authorized User's personal non-commercial use.

Members of Faculty or Staff may include in their teaching materials (whether in hard-copy or as part of a Virtual Learning Environment or Managed Learning Environment) links to materials available from the Subscription Service. Authorized Users may use these links to identify and access the relevant materials. The restrictions set out in the two paragraphs above will otherwise apply to those Authorized User's use of those materials.

**Use of materials from the Subscription Service for internal business purposes only.**

**Applies to:** Corporates

Each Authorized User may download, display, view and print off single copies of excerpts of materials contained in the Subscription Service for the internal business purposes of the Client. Authorized Users may not make multiple copies of excerpts of such materials

**Use of materials from the Subscription Service for personal research purposes only.**

**Applies to:** Public Libraries and Special Libraries

Each Authorized User may download, display, view and print off single copies of excerpts of materials contained in the Subscription Service for his/her personal research purposes.

**ARCHIVE PRODUCT**

**No commercial exploitation of Archive Materials**

**Applies to:** All Clients

Clients and Authorized Users may not commercially exploit all or any of the materials that comprise the Archive Product ("**Archive Materials**").

**Use of Archive Materials for educational and research purposes only.**

**Applies to:** Academic Institutions, Schools, Public Libraries and Special Libraries

The Client may and may permit its Authorized Users to copy, store, use, and modify the Archive Materials provided that:

1. each Authorized User copies, stores, uses and modifies the Archive Materials only for the internal educational or research purposes of the Client or his or her own personal educational or research purposes.
2. neither the Client nor its Authorized Users commercially exploits the Archive Materials in any way.
3. except as expressly provided for in this Section 5 (including the limited distribution rights set out below) neither the Client nor its Authorized Users Distributes the Archive Materials to any person that is not an Authorized User of the Client.
4. the Client does not transfer, assign or sublicense the licenses granted in this Agreement; transfer the software component of the Archive Product to diskette, hard disk or magnetic tape; nor knowingly permit the Archive Product to be used by any device, equipment, hardware or system, which would permit copying of the entire Archive Product.

**Use of materials from the Archive Product for internal business purposes only.**

**Applies to:** Corporates

The Client may and may permit its Authorized Users to copy, store, use, and modify all or any part of the materials which comprise the Archive Product (“**Archive Materials**”) provided that:

1. each Authorized User copies, stores, uses and modifies the Archive Materials only for the internal business purposes of the Client.
2. neither the Client nor its Authorized Users commercially exploits the Archive Materials in any way.
3. neither the Client nor its Authorized Users Distributes the Archive Materials to any individual who is not an Authorized User of the Client.
4. the Client does not transfer, assign or sublicense the licenses granted in this Agreement; transfer the software component of the Archive Product to diskette, hard disk or magnetic tape; nor knowingly permit the Archive Product to be used by any device, equipment, hardware or system, which would permit copying of the entire Archive Product.

**Permission for Inter-Library Loans of Archive Materials**

**Applies to:** All Clients

The Client may supply to an authorized user of a Participating Member (“Recipient”), in hard copy format or electronically, a single article or item from the Archive Materials for the purposes only of that Recipient’s research or private study, provided that (i) the copy is used by the Recipient only in hard copy format, (ii) the Recipient doesn’t, in hard copy or electronic format, distribute or otherwise make the copy available to any other person, (iii) the Recipient makes no commercial use of the copy and (iv) the Recipient and the Client comply at all times with the rules of the Approved Library Scheme from time to time in force.

**Permission for limited redistribution of extracts from the Archive Materials**

**Applies to:** All Clients

Authorized Users may Distribute insubstantial extracts from the Archive Materials provided that:

- (a) the Distribution is only for educational or research purposes and is not for commercial purposes;
- (b) the Distribution is incidental to some other purpose. For example, inclusion of an illustrative extract in an article for an academic publication, a textbook or an examination paper;
- (c) each extract is immediately followed in clear and legible text by reference to the Archive Product; and
- (d) no more than three extracts from the Archive Product may be Distributed in a single work, where a work includes but is not limited to, an article, a textbook or an examination paper.

## SCOPE OF USE SCHEDULE

<b>HOSTING SERVICE: Gale eBooks</b>	
Authorized Users:	The Authorized Users are all Students and Faculty and Library Users.
Authorized Site(s)	The Authorized Site(s) is/are:  Charles University, Central Library, Ovocný trh 560/5, Praha 1, 116 36 Czech Republic
Restrictions on the number of Concurrent Users	There are no restrictions on the number of Concurrent Users.
Restriction to Authorized Site(s).	Except as specified in the box below, Authorized Users may access the Service only at the Authorized Site(s).
Access through a Secure Remote Access.	The following classes of Authorized Users may access the Service through a Secure Remote Access: Students and Faculty.  The number of Concurrent Users who can access the Service through Secure Remote Access is unlimited. Concurrent access to the Subscription Service must be restricted via an authentication system approved by Gale Cengage Learning.