

Smlouva o zajištění elektronických informačních zdrojů

4P40383 / 541/130/2024

1. Smluvní strany

Dodavatel: **Albertina icome Praha s.r.o.**
se sídlem Štěpánská 16, 110 00, Praha 1
IČO: 49612158
DIČ: CZ49612158
bankovní spojení: UniCredit Bank Czech Republic a.s.
účet č.:
zapsán v obchodním rejstříku vedeném u Městského soudu v Praze,
oddíl C, vložka 20775
zastoupen pro účely podpisu této smlouvy. Ing. Jakubem Petříkem, na základě plné
moci

a

Odběratel: **Oblastní nemocnice Náchod a.s.**
se sídlem třída Purkyňova 446, 547 69, Náchod
IČO: 26000202
DIČ: CZ26000202 DIČ pro účely DPH: CZ699004900
bankovní spojení: Komerční banka, a.s.
účet č.: 78-8883900227/0100
zapsán v obchodním rejstříku vedeném u Krajského soudu v Hradci Králové, oddíl
B, vložka 2333
zastoupen RNDr. Bc. Janem Machem, předsedou správní rady

2. Předmět smlouvy

- 1) Předmětem smlouvy je zajištění elektronických informačních zdrojů uvedených v příloze 1 této smlouvy (dále jen „produkty“) pro odběratele. Produkty jsou poskytovány formou online přístupu k serverům poskytovatelů licence uvedených v příloze 1 této smlouvy (dále jen „poskytovatel“) na období 3 let počínaje od 1.1. 2025 (nejdříve však ode dne účinnosti smlouvy) do 31.12.2027.
- 2) Dodavatel je smluvním partnerem poskytovatelů a zároveň jejich oprávněným autorizovaným distributorem. Dodavatel je oprávněn zprostředkovat tyto licence k produktům v ČR (zprostředkovat uzavření licenčních smluv mezi poskytovatelem a odběratelem). Dodavatel prohlašuje, že není nabyvatelem těchto licencí na základě licenčních smluv mezi poskytovateli a dodavatelem.

3. Smluvní vztahy

- 1) Dodavatel se zavazuje zpřístupnit produkty odběrateli nejpozději k datu uvedenému v článku 2 této smlouvy, nejdříve však 10 pracovních dnů ode dne účinnosti smlouvy. Pro případ porušení tohoto závazku se sjednává smluvní pokuta ve výši 0,05 % z ceny plnění denně za každý den prodlení.
- 2) Dodavatel není v prodlení podle odst. 1) tohoto článku v případě, že dojde k prodlení ve zpřístupnění produktu v důsledku prodlení s podpisem písemných licenčních ujednání mezi odběratelem a poskytovatelem (pokud poskytovatel vyžaduje písemnou formu).
- 3) Uživatel podpisem této Smlouvy souhlasí s licenčními podmínkami dodavatele uvedenými v Příloze č. 2 této Smlouvy.

- 4) Dodavatel neodpovídá za to, jak aktuální a kvalitní informace jsou v zpřístupňovaných informačních zdrojích k dispozici. Dodavatel rovněž neodpovídá za případnou existenci poruch v přístupu k informačním zdrojům či jejich dočasnou nedostupnost, kterou nezavinil porušením svých povinností.
- 5) Dojde-li během trvání této smlouvy k významným změnám na straně poskytovatele (např. k zásadním změnám v charakteru nebo složení dodávaných elektronických informačních zdrojů, k ukončení poskytování klíčových z nich, k ukončení činnosti poskytovatele apod.) a dodavatel se o takovéto změně dozví, je dodavatel povinen na tuto skutečnost odběratele co nejdříve upozornit a zároveň navrhnout způsob řešení dané situace (např. náhradu jiným elektronickým informačním zdrojem podobného charakteru apod.). Nebude-li odběratel souhlasit s navrhovaným řešením, je dodavatel oprávněn vypovědět plnění smlouvy v dotčené části s výpovědní dobou 30 dní. Ostatní ustanovení smlouvy zůstávají v platnosti.
- 6) Dodavatel a odběratel se dohodli, že právo na náhradu škody jedné smluvní strany způsobené druhou smluvní stranou nikoli úmyslným porušením její povinnosti stanovené touto smlouvou se omezuje tak, že odpovědná smluvní strana je povinna nahradit škodu nejvýše v částce rovné roční ceně (ročnímu plnění) dle čl. 4 odst. 1 této smlouvy (a přílohy č. 1 této smlouvy).

4. Cena a platební podmínky

- 1) Cena za plnění v rámci této smlouvy se stanovuje dohodou mezi odběratelem a dodavatelem ve výši dle přílohy 1 této smlouvy. V případě, že by (1) v prvním roce ke dni doručení smlouvy podepsané odběratelem dodavateli (2) v druhém a třetím roce ke dni fakturace, došlo ke změně kurzu devizy-prodej UniCredit Bank Czech Republic and Slovakia, a.s. výchozí měny oproti kurzu použitému v kalkulaci (uveden v příloze 1 této smlouvy) o více než 0,5 %, mění se smluvní cena automaticky na cenu přepočtenou kurzem aktuálním ke dni fakturace dodavatelem. Právo fakturovat vzniká dodavateli (1) v prvním roce dnem podpisu smlouvy oběma smluvními stranami (2) v druhém a třetím roce k 1. dni kalendářního měsíce předcházejícího dni obnovy předplatného. Dnem fakturace, který je zároveň dnem uskutečnění zdanitelného plnění, dochází k poskytnutí práva k využití produktů.
- 2) Odběratel uhradí cenu na základě faktury vystavené dodavatelem ve lhůtě splatnosti 30 dní ode dne doručení faktury odběrateli. Odběratel má právo vrátit fakturu k doplnění v případě, že tato nesplňuje požadavky platných právních předpisů, v tom případě se počítá splatnost až ode dne doručení opravené faktury.
- 3) Pro případ prodlení odběratele se zaplacením faktury se sjednává smluvní úrok z prodlení ve výši 0,05 % z ceny plnění denně za každý den prodlení, která je splatná do 10 dnů ode dne doručení výzvy k jejímu zaplacení.

5. Zveřejnění v registru smluv

- 1) V případě, že odběratel je povinnou stranou dle ust. § 2 odst. 1 zákona č. 340/2015 Sb., o zvláštních podmínkách účinnosti některých smluv, uveřejňování těchto smluv a o registru smluv (zákon o registru smluv), dodavatel souhlasí s uveřejněním obsahu smlouvy dle tohoto zákona. V případě výše stanovené povinnosti se odběratel zavazuje zveřejnit tuto smlouvu v registru smluv za podmínek stanovených zákonem nejpozději do 30 dnů od jejího uzavření.
- 2) V případě vzniku škody z důvodu porušení povinnosti uveřejnit smlouvu prostřednictvím registru smluv či v případě neprovedení opravy zveřejňovaných údajů včetně metadat je odběratel povinen dodavateli nahradit způsobenou škodu.

6. Závěrečná ustanovení

- 1) Smlouva se uzavírá na dobu určitou podle čl. 2 této smlouvy a je možno ji prodloužit dohodou smluvních stran.
- 2) Od smlouvy lze odstoupit v případě podstatného porušení smluvních závazků druhou stranou, a to doručením písemného odstoupení od smlouvy, v němž bude sdělena skutečnost, v níž je spatřováno podstatné porušení smlouvy. Podstatným porušením smluvního závazku ze strany odběratele je zejména prodlení se zaplacením roční ceny přesahující 20 dnů. Odstoupením od smlouvy z důvodů

na straně odběratele není dotčen nárok dodavatele na zaplacení ceny plnění za celé nadcházející roční období a smluvní pokuty. Dále lze smlouvu ukončit dohodou smluvních stran.

- 3) Veškeré změny a doplňky této smlouvy musí být učiněny písemnou formou a podepsány oprávněnými zástupci obou smluvních stran. Pro účely doručování právních jednání smluvních stran činěných na základě této smlouvy (výpověď, odstoupení, návrh dodatku či dohody) nebo doručování výzev apod. se uplatní ustanovení § 573 občanského zákoníku. Smluvní strany si dohodly následující pravidla doručování zásilek obsahujících právní jednání nebo výzvu: zásilky jsou zasílány doporučeně, prostřednictvím držitele poštovní licence, na adresu smluvní strany uvedenou v této smlouvě, nebo jinou později oznámenou adresu.
- 4) Tato smlouva je uzavřena podle § 1746 odst. 2 občanského zákoníku a ve věcech neupravených touto smlouvou se práva a povinnosti smluvních stran řídí v celém rozsahu příslušnými ustanoveními občanského zákoníku, pokud není v této smlouvě sjednáno odchylně jinak. Smluvní strany si v souladu s § 630 odst. 1 občanského zákoníku ujednaly odchylně od § 629 odst. 1 občanského zákoníku pro práva vyplývající z této smlouvy nebo jejího porušení delší promlčecí lhůtu počítanou ode dne, kdy právo mohlo být uplatněno poprvé, a to promlčecí lhůtu v trvání pěti let, tím však není vyloučeno ustanovení § 639 občanského zákoníku.
- 5) Tato smlouva nabývá platnosti dnem jejího podpisu oběma smluvními stranami. Účinnosti nabývá dnem uveřejnění smlouvy prostřednictvím registru smluv. Smlouva je vyhotovena ve 2 vyhotoveních, která mají všechna platnost originálu nebo ve formě elektronicky podepsaného dokumentu. Každý z účastníků smlouvy obdrží jedno vyhotovení.

Přílohy:

Příloha č. 1: Produkty, poskytovatelé a ceny

Příloha č. 2: Licenční podmínky dodavatele

Příloha č. 3: Plná moc – Jakub Petřík

V Praze dne 06.12.2024

V Náchodě dne 16.12.2024

Za dodavatele:

Za odběratele:

.....
Ing. Jakub Petřík

pověřený zástupce Albertina icome Praha s.r.o.
na základě plné moci ze dne 27. 6. 2019

.....
RNDr. Bc. Jan Mach

předseda správní rady

Příloha 1 – produkty, poskytovatelé a ceny

obsahující obchodní tajemství dle ust. § 504 zákona č. 89/2012 Sb., občanský zákoník, nezveřejňovaná v registru smluv v souladu s ust. §3 odst. 1 zákona č. 340/2015 Sb.

Produkt/Služba	Poskytovatel	Počet souč. už.	Předplatné	Cena v pův. měně	Cena bez DPH	Cena vč. DPH
Použitá sazba DPH	%					

Kalkulováno kurzem devizy-prodej UniCredit Bank Czech Republic and Slovakia, a.s.: 20. 11. 2024;,- USD = Kč

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Customer acknowledges that the Licensed Materials and all related technical information, documents and materials are subject to export controls under the U.S. Export Administration Regulations. Customer will (a) comply strictly with all legal requirements established under these controls, (b) cooperate fully with Reseller or WKCDI in any official or unofficial audit or inspection that relates to these controls, and (c) not export, re-export, divert or transfer, directly or indirectly, any such item or direct Licensed Materials thereof to Cuba, Iran, North Korea, Syria, Sudan, or any additional country that is embargoed by Executive Order or economic sanctions program, unless Customer has obtained prior written authorization of Reseller, WKCDI, the U.S. Commerce Department and the Office of Foreign Assets Control, U.S. Department of the Treasury. Upon notice to Customer, Reseller may modify this list to conform to changes in the foregoing regulations.

10. U.S. GOVERNMENT LIMITED RIGHTS NOTICE

Any access to the Licensed Materials provided under contract to the U.S. Government is provided with limited rights. The Licensed Materials consist of data, as defined in 48 CFR 27.401 or 48 CFR 27.404-2(a), as applicable, and restricted computer software as defined in 48 CFR 27.401. The Licensed Materials may be reproduced and used by the U.S. Government, provided that they will not be used for or in connection with manufacturing and will not be disclosed outside of the U.S. Government or to any U.S. Government contractor, without the prior express written permission of Reseller.

11. PRIVACY / HIPAA

Neither Reseller nor WKCDI collects any individually identifiable health information from Customer.

WKCDI reserves the right to track and collect for its internal purposes personal information about Authorized Users of the Licensed Materials, including without limitation: the URL that the user has come from (whether this URL is on its Website or not), the URL the user goes to next (whether this URL is on its Website or not), the Internet browser that is being used, the type of operating system used, the Authorized User's location, and the Authorized User's IP address. An Authorized User's IP address may be used for system administration purposes and to track a user's session, in order to give WKCDI an understanding as to which parts of its database Authorized Users are visiting. Reseller may use such information for purposes including but not limited to improving the content of its database, marketing, advertising, reports to Customer, or research. WKCDI may send information and notices of new services to registered Authorized Users.

WKCDI reserves the right to release current or past user information, whether or not the information identifies a particular person, internally within WKCDI or to third parties for limited purposes in the event WKCDI believes that the Licensed Materials are being used in violation of this Agreement or to commit unlawful acts, and/or if WKCDI is required to disclose information to comply with applicable laws or regulations, or with a court or administrative order.

Except as stated in the above paragraph, WKCDI will not share with unaffiliated third parties information specific to Authorized Users or share information regarding specific IP addresses. WKCDI is, however, free to disclose aggregate non-personal user information to third parties.

12. GOVERNING LAW

This Agreement will be governed in all respects by the laws of the Commonwealth of Massachusetts, without regard to any conflicts of law principles, decisional law, or statutory provision which would require or permit the application of another jurisdiction's substantive law. The parties consent and agree that all cases, claims, and controversies based upon this Agreement shall be adjudicated only in a Massachusetts state or federal court located in Suffolk County, Massachusetts. Each party consents to the jurisdiction of such courts over any such case, claim, or controversy, to such courts being the proper venue therefore, and to the jurisdiction of such courts over each of the parties. Each party waives, to the fullest extent permitted by law, (a) any objection which it may now or later have to the laying of venue of any action or proceeding arising out of or relating to this Agreement brought in any state or federal court located in Suffolk County, Massachusetts; and (b) any claim that any action or proceeding brought in any such court has been brought in an inconvenient forum. **THE PARTIES WAIVE TRIAL BY JURY IN CONNECTION WITH ANY CLAIM, ACTION OR SUIT ASSERTED, BROUGHT OR ARISING UNDER THIS AGREEMENT.**

13. ACCESS TO BOOKS AND RECORDS

To address the requirements of Section 952 of Public Law 96-499 (42 US Code 1395 (x) V (I)), Reseller agrees that it will, until the expiration of four years after the furnishing of the services provided pursuant to this agreement, upon the written request of an appropriate federal official as defined by the statute, make available to the Secretary of Health and Human Services or the Comptroller General or to any of their duly authorized representatives, this Agreement, and those books, documents and records of Reseller pertaining only to this Agreement as are necessary to verify the nature and extent of the services provided under this agreement and the charges levied, and payments made, for the services set forth in this Agreement. Reseller will not carry out any services through a subcontract with another organization and the duties under this Agreement may not be assigned or delegated.

14. AUDIT

Customer agrees that Reseller may audit Customer's use of the Licensed Materials for compliance with these terms at any time, upon reasonable notice. In the event that such audit reveals any use of the Licensed Materials by Customer other than in full compliance with the terms of the Agreement, Customer shall reimburse Reseller for all reasonable expenses related to such audit in addition to any other liabilities Customer may incur as a result of such non-compliance.

15. THIRD PARTY RIGHTS

Customer acknowledges that the provisions of this Agreement are intended to inure to the benefit of Wolters Kluwer Clinical Effectiveness ("WKCDI"). If Customer breaches any of these provisions, Reseller and/or WKCDI will be entitled to enforce this Agreement directly against Customer, whether in Reseller's or WKCDI's name. Customer further acknowledges that Reseller executes this Agreement as principal on its own behalf and, exclusively to accept or otherwise perfect WKCDI's rights against Customer, as agent on behalf of WKCDI. In addition to any rights that Reseller may have to suspend or terminate access to the Licensed Materials if the Customer fails to pay any invoice by the due date, or if WKCDI suspects that Customer is engaging activities that violate the law or the terms of this Agreement (the right to suspend or terminate such Customer's access to the Licensed Materials may be with, or without, advanced notice to either Customer or Reseller). Reseller shall have the right, without violating any confidentiality provision or any other provision of this Agreement, to disclose this Agreement to WKCDI or its affiliates.

SOLUTION SPECIFIC PASS THROUGH TERMS

THE FOLLOWING SOLUTION SPECIFIC PASS THROUGH TERMS WILL APPLY AS SET FORTH BELOW.

For purposes of the terms set forth in this Exhibit 1-B, Reseller shall include a provision in the Customer License Agreement that states the term Licensed Materials shall refer only to the specific Solution(s) set forth in the applicable terms and those terms shall be expressly identified as so limited (this will not limit the scope of the term elsewhere). If the term Authorized User is defined in any reference to any Solution specific terms, then Reseller shall include a provision in the Customer License Agreement that states the term Authorized User shall refer only to users of the specific Solution(s) set forth in the applicable terms and those terms shall be expressly identified as so limited (this will not limit the scope of the term elsewhere).

Subscription and License Terms (the “Terms”) set out the terms and conditions on which Reseller will supply Customer (“Customer” or “Customer’s”) with a subscription to UpToDate® online (“UpToDate”) as set forth below. Capitalized terms may be defined in this letter or in the attached Terms; together, the letter and the Terms are defined as the “Agreement.”

1. TERM

The Term of Customer’s subscription will commence on 1.1.2025 and end on 31.12.2027. Customer shall have Access to the Licensed Materials during the Term.

2. DEFINITIONS

“Access”: Viewing, searching or displaying any page of the Licensed Materials, whether such pages are viewed by means of connection to a network or from storage in any storage medium.

“Licensed Materials”: UpToDate® online database, software and user documentation.

3. PERMITTED USES (NOT APPLICABLE TO UPTODATE SUBSCRIBER MANAGER - NON CARE PROVIDER (NO CME))

Customer’s Authorized Users shall Access the Licensed Materials solely for internal the purpose of (i) research or other scholarly activities or (ii) providing diagnostic treatment or other medical services to patients, subject to the terms and conditions of this Agreement. Customer shall ensure that the Licensed Materials are Accessed only by Authorized Users affiliated with Customer for a purpose related to Customer’s business.

In order to Access the Licensed Materials, Authorized Users must agree to the UpToDate End User License Agreement (EULA). In the event of a conflict or discrepancy between the EULA and this Subscription and License Agreement, it is agreed that this Subscription and License Agreement shall take precedence.

Copying, printing, distributing to third parties, or preparing derivative works of the Licensed Materials or any part thereof is strictly prohibited unless specifically authorized herein or in writing from Reseller. Similarly, the Licensed Materials may not be included in other software or databases, reverse engineered, or modified. No part of the Licensed Materials may be hyperlinked, indexed, or otherwise utilized by automated software means, including: search engines, robots, spiders, crawlers, data mining tools, or any other software that aggregates access to, or the content of, the Licensed Materials. No part of the Licensed Materials may be copied for resale, nor may it be posted or otherwise made available on Intranets, so-called federated sites, knowledge bases, searchable databases, public bulletin boards, web sites, Internet domains, or online chat rooms. The Licensed Materials may not be combined with other content in knowledge banks or through similar technologies. However, Customer’s Authorized Users may occasionally print out individual articles for personal clinical, educational or research use and/or email individual articles to a colleague, provided that the articles printed and emailed by an individual Authorized User contain in aggregate only insubstantial portions of the Licensed Materials and include a source reference to Reseller and its copyright notice. Under no circumstances may Authorized Users print or email large numbers of articles from the Licensed Materials. All rights to use the Licensed Materials are expressly stated herein, and Reseller reserves all other rights. There is no implied right to use the Licensed Materials.

4. MARKETING SUPPORT

Reseller will assist Customer in maximizing usage of the Licensed Materials during the subscription period by providing informational materials for Customer's distribution to Authorized Users, subject to the terms and conditions of this Agreement. Customer grants the right to Reseller and UpToDate, Inc. to include Customer's name in UpToDate, Inc.'s list of subscribers.

5. SYSTEMS PERFORMANCE

During the term of the subscription, UpToDate online content will be updated by UpToDate, Inc. During this time, UpToDate online may be down for up to 2 hours, and users Accessing the Licensed Materials at this time will see a notice that UpToDate online is being updated. Reseller may, in its sole discretion, provide more frequent updates and enhancements, if applicable, as and when they are released. Nothing in this Agreement obligates Reseller to furnish more frequent updates or to create enhancements.

For online access from a desktop (or laptop) computer, UpToDate online is validated for use with the current versions of the following browsers and the technical specifications UpToDate supports. For a current list of those technical specifications please see: <http://www.uptodate.com/help/manual/sysreq>.

UpToDate online is hosted by a Tier 1 service provider so the site will be operational at least 99.5% of the time. However, technical failures, routine maintenance, and transient Internet conditions may render the site temporarily unavailable.

Neither Reseller nor WKCDI shall be liable, or considered in default, under this Agreement for delays or failures of performance caused by circumstances beyond the party's reasonable control, provided each party immediately provides notice to the other and does everything reasonably possible to resume its performance.

TERMS APPLICABLE TO UPTODATE SUBSCRIBER SELF REGISTRATION - OPTIONAL (SSR-O)

1. UPTODATE SUBSCRIPTION

This UpToDate Anywhere Subscription allows Customer's Authorized Users to Access UpToDate as follows:

- While physically located at the Designated Site(s) via the IP Address(es) or Security agent(s) listed below.
- Via Customer's password authenticated system(s) as identified to Reseller, which will in turn pass Reseller a unique identifier.
- Authorized Users have the option to establish a username and password with Reseller Once established, a username and password allows the Authorized User to Access UpToDate from any Internet-enabled device including desktop computers, laptops, and mobile devices such as the iPhone and Android devices, regardless of Authorized User's location, subject to Registration and Re-verification.
- UpToDate MobileComplete™ enables Customer's Authorized Users to download UpToDate clinical content locally to their mobile device. With this local version, clinicians can search the complete database of evidence-based recommendations with or without an Internet connection.

2. ADDITIONAL DEFINITIONS

"Authorized Users": Physician staff, faculty, residents, nurses, librarians and other staff and medical professionals who are employed by Customer's organization or who provide medical services to patients at Customer's organization's facilities, any student affiliated with Customer's organization, and, to the extent that Customer's organization includes a publicly accessible physical library, individuals otherwise entitled to use Customer's library facilities, subject to "Authorized Access" below.

"Registration": The process by which an Authorized User creates a username and password via the IP address(es) or Reseller provided Security Agent(s).

"Re-verification": The process by which Authorized Users verify their registration credentials. Authorized Users are required to log-in, using their username and password, at least once every 90 days via the IP address(es) or Reseller provided Security Agent(s). If in any 90-day period such log-in does not occur, the Authorized User's ability to Access Licensed Materials from outside the Designated Site(s) will be suspended. In the event of suspension, Authorized Users may automatically Re-verify by logging-in, using their username and password, via the IP address(es) or Reseller provided Security Agent(s) any time thereafter during the Term to resume Access via username and password.

3. AUTHORIZED ACCESS

Customer acknowledges that the Licensed Materials are for the use of the Authorized Users. Access by Authorized Users is permitted so long as Access occurs (i) in the confines of a Designated Site or (ii) via Customer's password authenticated system(s) as identified to Reseller, which will in turn pass Reseller a unique identifier, or (iii) from any location, provided such access occurs by means of the Authorized User entering his/her username and password. Use of the Licensed Materials by non-Authorized Users is expressly forbidden. Users of public libraries at the Designated Sites are only Authorized Users while physically present at the library.

4. USER ACCESS RESTRICTIONS

Customer may not allow or facilitate any Access to the Licensed Materials by any persons who are not Authorized Users. Access by persons who are not Authorized Users is prohibited no matter how such Access is obtained, including without limitation by use of modem, VPN, proxy server, LAN or web-based technology. Customer shall notify Reseller promptly if Customer becomes aware of any Access to the Licensed Materials by users within Customer's organization who are not Authorized Users. Customer and Customer's registered Authorized Users may not transfer or share Access, usernames, or passwords with anyone. Customer shall not attempt to defeat or circumvent any system designed to protect Access to UpToDate.

Customer's Registered Authorized Users cannot share or transfer usernames and passwords. Any sharing or transferring of usernames and passwords is a violation of this Agreement. Access to the Licensed Materials by non-Authorized Users is expressly forbidden.

In addition to its rights set forth in "Term and Termination" but excluding "Re-verification" (if applicable) above, Reseller reserves the right in its sole discretion to limit or suspend Customer's Authorized Users' Access to the Licensed Materials, by electronic self-help or other means and without notice, if Reseller believes in good faith that any Authorized User has committed a breach of security or violated the terms of this Agreement.