

This License Agreement is agreed between

1) Service provider ("Licensor")

If Helsinki university is a subscriber:

2) The National Library of Finland, Unioninkatu 36,(P.O.Box 15), FIN-00014 UNIVERSITY OF HELSINKI, Helsinki, Finland ("the National Library") and other members of the FinELib Consortium (the National Library and other members each the "Licensee"), other members of the FinELib Consortium represented by the National Library via a power of attorney

If Helsinki university is not a subscriber:

2) the National Library of Finland ("the National Library") on behalf of members of the FinELib Consortium (each the "Licensee"), members of the FinELib Consortium represented by the National Library via a power of attorney

Whereas the Licensor holds the rights granted under this Agreement;

and whereas the Licensee desires to use the rights and the Licensor desires to grant to the Licensee the right to use the rights for the Fee

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

1. DEFINITIONS

1.1 In this Agreement, the following terms shall have the following meanings:

Authorized Users

University, polytechnic and other school: Current members of the faculty, staff, affiliated researchers, docents and contractors of the Licensee (whether on a permanent, temporary, contract or visiting basis), and individuals who are currently studying at the Licensee's institution, who are permitted to access the Secure Network regardless of the physical location of such persons and who have been issued by the Licensee with a password or other authentication.

Research institute: Current members of the staff, affiliated researchers, docents (whether on a permanent, temporary, contract or visiting basis)and contractors of the Licensee, who are permitted to access the Secure Network regardless of the physical location of such persons and who have been issued by the Licensee with a password or other authentication.

Public library: Current members of the staff (whether on a permanent, temporary, contract or visiting basis) and contractors of the Licensee and library patrons, who are permitted to access the Secure Network regardless of the physical location of such persons and who have been issued by the Licensee with a password or other authentication.

Walk-in Users

Persons who are not Authorized Users but who are permitted to access the Secure Network from computer terminals or otherwise within the library premises (or physical premises if applicable) of the Licensee. Walk-In Users may not be given means to access the Licensed Material when they are not within the physical premises of the Licensee. For the avoidance of doubt, Walk-In Users may not be given access to the Licensed Material by any wireless network provided by the Licensee unless such a network is a Secure Network.

Educational Purposes

for the purpose of education, teaching, distance learning, private study, retrieving information and/or research.

Commercial Use

Use for the purposes of monetary reward (whether by or for the Licensee or an Authorized or Walk-in-User) by means of the sale, resale, loan, transfer, hire or other form of exploitation of the Licensed Material. For the avoidance of doubt, neither recovery of direct costs or costs required by law by the Licensee from Authorized or Walk-in-Users nor use by the Licensee or by an Authorized or Walk-in-User of the Licensed Material in fee based educational programs or in the course of research funded by a commercial organization, is deemed to constitute Commercial Use.

Academic Works

Assignments, portfolios, theses and dissertations.

Fee

The annual License fees set out in Schedule 3.

Licensed Material

The subscribed electronic online database described in Schedule 2.

Intellectual Property Rights

means patents, trademarks, trade names, design rights, copyright (including rights in computer software and moral rights), database rights, rights in know-how and other intellectual property rights.

Nelli-portal

The National Electronic Library Interface (Nelli) is a national information retrieval portal which enables simultaneous searching of multiple databases. Nelli-portal has been implemented using Metalib and SFX application software.

Secure Authentication

Access to the Licensed Material by Internet Protocol ("IP") ranges or by a username and password provided by the Licensee or by other means of authentication agreed between the Licensor and the Licensee from time to time.

Secure Network

A network, which is only accessible to Authorised and Walk-in-Users by Secure Authentication.

Server

The server, either the Licensor's server or a third party server designated by the Licensor, on which the Licensed Material is mounted and may be accessed.

Term

The Term of this Agreement is 1.1.2010 - 31.12.2011.

1.2. Headings contained in this Agreement are for reference purposes only and shall not be deemed to be an indication of the meaning of the clause to which they relate.

1.3. Where the context so implies, words importing the singular number shall include the plural and vice versa and words importing the masculine shall include the feminine and vice versa.

2. AGREEMENT

2.1. License grant

The Licensor agrees to grant the Licensee as specified in Schedule 1 and as amended from time to time by the Parties, a non-exclusive and non-transferable right to access and use the Licensed Material and to allow Authorised and Walk-in Users to access and use the Licensed Material throughout the Term of this Agreement via a Secure Network for Educational purposes and the Licensee agrees to pay the Fee. The right specified in this clause is granted in all countries of the world.

3. PERMITTED USES

3.1. This Agreement shall be deemed to complement and extend the rights of the Licensee, Authorised and Walk-in-Users under the Finnish Copyright law and nothing in this Agreement shall constitute a waiver of any statutory rights held by the Licensee, Authorised and Walk-in-Users from time to time under the law or any amending legislation.

3.2. Licensee may:

- 3.2.1. Allow Authorised Users to have access to the Licensed Material from the Server via a Secure Network.
- 3.2.2. Allow Walk-in Users to have access to the Licensed Material from the Server via a Secure Network within the library premises (or physical premises if applicable) of the Licensee
- 3.2.3. Display, save electronically, print and distribute (also on the Licensee's public website) parts of the Licensed Material including trademarks, logos and screenshots for the purpose of promotion or testing or for training Authorised and Walk-in-Users.
- 3.2.4. Allow authorized Users who are staff members to use the Licensed Material as an information source for indexing and adding metadata to library catalogues and open institutional repositories, publication databases and/or bibliographies of the Licensee.
- 3.2.5. Allow the Licensed Material to be searched by Authorized and Walk-in-Users via the Nelli-portal or other portal in the Licensee's use provided that the terms of this Agreement are upheld.
- 3.2.6. Gather usage data via the Nelli-portal or other information retrieval portal in the Licensee's use.

3.3. Authorised Users and Walk-in-Users may:

- 3.3.1. Search, download, view, retrieve and display the Licensed Material
- 3.3.2. Electronically save copies of reasonable parts of the Licensed Material.
- 3.3.3. Print off copies of reasonable parts of the Licensed Material.
- 3.3.4. Distribute parts of the Licensed Material in print or electronic form to other Authorised and Walk-in-Users. This shall include the distribution of a copy for teaching purposes to each individual student Authorised User taking part in a course at the Licensee's institution.
- 3.3.5. Distribute single copies of parts of the Licensed Material in print or electronic form including email to third parties outside the Licensee for the purposes of scientific research and communication or to be used for the basis of discussion groups.

- 3.3.6. Publicly display or publicly perform parts of the Licensed Material as part of a presentation at a seminar, conference, or workshop, or other such similar activity.

3.4. Authorized users may:

- 3.4.1. Incorporate parts of the Licensed Material in printed and electronic course packs, study packs, resource lists and in any other material (including but not limited to multi-media works) to be used in the course of instruction and/or in virtual and managed environments (including but not limited to virtual learning environments, managed learning environments, virtual research environments and library environments) hosted on a Secure Network. Each item shall carry appropriate acknowledgement of the source, listing title and copyright owner. Course packs in non-electronic non-print perceptible form, such as Braille, may also be offered to Authorised Users who, in the reasonable opinion of the Licensee, are visually impaired.

4. PROHIBITED USE

The Licensee, Authorised Users or Walk-In-Users may not:

- 4.1. Permit anyone other than Authorised or Walk-In-Users to access or use the Licensed Material, save as permitted in this Agreement
- 4.2. Systematically make printed or electronic copies of multiple extracts of the Licensed Material save as permitted in this Agreement.
- 4.3. Display or distribute any part of the Licensed Material on any electronic network, including without limitation the Internet and the World Wide Web, other than a Secure Network save as permitted in this Agreement.
- 4.4. Use the whole or any part of the Licensed Material for any Commercial Use or any purpose other than Educational Use.
- 4.5. Remove or alter the authors' names or the Licensor's copyright notices or other means of identification or disclaimers as they appear in the Licensed Material.
- 4.6. Publish, distribute or make available the Licensed Material, works based on the Licensed Material or works which combine it with any other material, save as permitted in this Agreement

- 4.7. Alter, abridge, adapt or modify the Licensed Material, except to the extent necessary to make it perceptible on a computer screen, to Authorised and Walk-in Users or as otherwise permitted in this agreement. For the avoidance of doubt, no alteration of the words or their order is permitted.

5. LICENSOR'S UNDERTAKINGS

The Licensor shall:

- 5.1. Provide access to the Licensed Material via the World Wide Web by means of the use of IP address authentication.
- 5.2. Make the Licensed Material available to the Licensee from the Server at the start of the Agreement Term. The Licensor will notify the Licensee at least sixty (60) days in advance of any anticipated specification change applicable to the Licensed Material. If the changes render the Licensed Material less useful in a material respect to the Licensee, the Licensee may within thirty days of such notice treat such changes as a material breach of this Agreement.
- 5.3. Provide sufficient Server capacity and bandwidth to support the usage of the Licensee and its Authorised and Walk-in-Users at a level commensurate with the standards of availability for information services of similar scope operating via the World Wide Web, as such standards evolve from time to time over the term of this Agreement.
- 5.4. Use its best endeavours to make the Licensed Materials available to the Licensee and to Authorised and Walk-in Users at all times and on a twenty-four hour basis, save for routine maintenance, and to restore access to the Licensed Material as soon as possible in the event of an interruption or suspension of the service. If the online access is continuously interrupted for a period of 1 (1) week or more due to failure on the Licensor's side, the Licensor shall refund to the Licensee that part of the Fee that is in proportion to the time that the Licensed Material has not been available due to interruptions in the online access.
- 5.5. Provide statistics by month and organisation regarding the online usage of the Licensed Material to the National Library acting on behalf of the Licensee. Provide statistics by month and Statistics will be provided on at least a quarterly basis.

In addition the Licensor will provide additional usage statistics directly to the Licensee via the Licensor's or third party's website through the use of passwords issued by the Licensor.

The Licensor confirms that usage statistics will adhere to the specifications of the COUNTER Code of Practice. All usage data shall be compiled in a manner consistent with applicable privacy

and data protection laws, and the anonymity of individual users and the confidentiality of their searches shall be fully protected.

- 5.6. Provide training sessions for the Licensee regarding the use of the Licensed Material without charge in three locations during first year of the Term. The three training sessions will take place during one trip to Finland. The locations will be specified by the National Library acting on behalf the Licensee. The National Library acting on behalf of the Licensee will be responsible for organizing these training sessions and Licensor agrees to pay expenses reasonably and properly incurred in doing so. All expenses accrued to the Licensor in performing this duty will be covered by the Licensor.
- 5.7. Use its best endeavors to ensure that the Licensed Material will be compatible with standard search interfaces (e.g. Z39.50, SRU/SRW) for the term of the Agreement.
- 5.8. Provide upon request the National Library acting on behalf of the Licensee with the necessary data to allow the Licensed Materials to be searched by Licensee's Authorized and Walk-in-Users via the Nelli-portal.
- 5.9. Enable the Licensee to collect organisation specific search statistics regarding the use of Nelli-portal.
- 5.10. Provide customer support services to the Licensee, Authorised and Walk-in Users via e-mail or phone, including answering e-mail inquiries relating to the use, functionality and content of the Licensed Material within 24 hrs of request.
- 5.11. Reserve the right at any time to withdraw from the Licensed Material any item or part of an item for which the Licensor no longer retains the right to publish and for which the Licensor has been unable to secure the provisions as set out in clause 10.5. or which it has reasonable grounds to believe infringes copyright or is defamatory, obscene or unlawful. The Licensor shall give written notice to the National Library acting on behalf of the Licensee of such withdrawal 90 days prior to the withdrawal. If the withdrawn material represents more than five percent (5%) of the Licensed Material the Licensor shall make a pro rata refund of part of the Fee, taking into account the amount of material withdrawn and the remaining unexpired portion of the Term. If the withdrawal results in the Licensed Material being less useful to the Licensee, it may within thirty days of such notice treat such changes as a material breach of this Agreement.

6. LICENSEE'S UNDERTAKINGS

6.1. The Licensee shall

- 6.1.1. Provide through the National Library acting on its behalf a list of valid IP addresses to the Licensor and update those lists on a regular basis.
 - 6.1.2. Use reasonable endeavours to notify Authorised and Walk-in-Users of the user terms and conditions of this Agreement.
 - 6.1.3. Use reasonable endeavours to ensure that only Authorised and Walk-in-Users are permitted access to the Licensed Materials.
 - 6.1.4. Immediately upon becoming aware of any unauthorised use or other breach, inform the Licensor and take all reasonable and appropriate steps, including disciplinary action, both to ensure that such activity ceases and to prevent any recurrence.
- 6.2. Nothing in this Agreement shall make the Licensee liable for breach of the terms of the Agreement by any Authorised or Walk-in-User provided that the Licensee did not cause, knowingly assist or condone the continuation of such breach after becoming aware of an actual breach having occurred.

7. UNDERTAKINGS BY BOTH PARTIES

The Licensee acknowledges that the intellectual property rights in the Licensed Material are the sole and exclusive property of the Licensor or are duly licensed to the Licensor and that this Agreement does not assign or transfer to the Licensee any right, title or interest therein except for the right to use the Licensed Material in accordance with the terms and conditions of this Agreement.

8. WARRANTIES AND REPRESENTATIONS

- 8.1. THE LICENSOR WARRANTS AND REPRESENTS TO THE LICENSEE THAT THE LICENSED MATERIAL AND ALL INTELLECTUAL PROPERTY RIGHTS THEREIN ARE OWNED BY OR LICENSED TO THE LICENSOR AND THAT THE LICENSED MATERIAL USED AS CONTEMPLATED IN THIS AGREEMENT DOES NOT INFRINGE ANY INTELLECTUAL PROPERTY RIGHTS OF ANY NATURAL OR LEGAL PERSON.
- 8.2. THE LICENSOR SHALL INDEMNIFY AND HOLD THE LICENSEE HARMLESS FROM AND AGAINST ANY LOSS, DAMAGE, COST, LIABILITY OR EXPENSE INCLUDING LEGAL AND PROFESSIONAL FEES ARISING OUT OF ANY LEGAL ACTION TAKEN AGAINST THE LICENSEE CLAIMING ACTUAL OR ALLEGED INFRINGEMENT OF SUCH RIGHTS. THIS INDEMNITY SHALL SURVIVE THE TERMINATION OF THIS AGREEMENT FOR ANY REASON. THIS INDEMNITY SHALL NOT APPLY IF THE LICENSEE HAS AMENDED THE LICENSED MATERIAL

IN ANY WAY NOT PERMITTED BY THIS AGREEMENT, AND SUCH AMENDMENT HAS CAUSED THE LOSS, DAMAGE, COST, LIABILITY OR EXPENSE

- 8.3. THE NATIONAL LIBRARY WARRANTS THAT IT IS AUTHORISED TO ENTER INTO THIS AGREEMENT ON BEHALF OF EACH LICENSEE AND THAT EACH LICENSEE WILL BE BOUND BY THE TERMS OF THIS AGREEMENT.

9. LIMITATION OF LIABILITY

SAVE AS PROVIDED IN CLAUSE 8.2. NEITHER PARTY WILL BE LIABLE TO THE OTHER IN CONTRACT OR NEGLIGENCE OR OTHERWISE FOR (I) ANY SPECIAL, INDIRECT, INCIDENTAL, PUNITIVE OR CONSEQUENTIAL DAMAGES (II) LOSS OF DIRECT OR INDIRECT PROFITS, BUSINESS, CONTRACTS, REVENUE OR ANTICIPATED SAVINGS OR FOR ANY INCREASED COSTS OR EXPENSES.

FOR THE AVOIDANCE OF DOUBT EACH LICENSEE WILL ONLY BE LIABLE FOR ITS OWN ACTIONS AND/OR DEFAULTS. TERMINATION OF THE AGREEMENT AND ALL ITS CONSEQUENCES WILL ONLY AFFECT THE APPLICABLE LICENSEE.

10. TERMINATION

- 10.1. In addition to automatic termination at the end of the Term unless renewed this Agreement terminates if either party gives written notice to the other in the following circumstances:
- 10.1.1. Either party commits a material or persistent breach of any term of this Agreement and fails to remedy the breach (if capable of remedy) within thirty days of notification in writing by the other party.
 - 10.1.2. Either party becomes insolvent or becomes subject to receivership, liquidation or similar external administration.
 - 10.1.3. A change in control of a Licensee occurs, a Licensee merges with or acquires an organization, breaks up or if changes relevant to this Agreement occur in the Licensee's permission to organize higher level education or other legislation regarding the Licensee and relevant to this Agreement. When the Agreement is terminated the respective Licensee's share of the Fee will be deducted from the total Fee.
- 10.2. For avoidance of doubt the termination as contemplated in clause 10.1. and all its consequences will only affect the applicable Licensee.
- 10.3. On termination of this Agreement the Licensor shall refund the proportion of the Fee that represents the paid but un-expired part of the Term.

10.4. On termination all rights and obligations of the parties automatically terminate except for those specified in section 8.

11. GENERAL

11.1. ENTIRE AGREEMENT

This Agreement constitutes the entire agreement of the parties and supersedes all prior communications, understandings and agreements relating to the subject matter of this Agreement, whether oral or written.

11.2. ALTERATIONS

Alterations to this Agreement and to the Schedules to this Agreement (which may be altered separately from the body of this Agreement without affecting the validity of the Agreement as a whole) are only valid if they are recorded in writing and signed by both parties.

11.3. ASSIGNMENT

This Agreement may not be assigned by either party to any other person or organisation, nor may either party sub-contract any of its obligations, without the prior written consent of the other party, which consent shall not unreasonably be withheld. In any permitted assignment, the assignor shall procure and ensure that the assignee shall assume all rights and obligations of the assignor under this Agreement and agrees to be bound to all the terms of this Agreement

11.4. NOTICES

All notices required to be given under this Agreement shall be given in writing and sent by electronic mail, fax or first class registered or recorded delivery to the relevant addressee at its address set out below, or to such other address as may be notified by either party to the other from time to time under this Agreement, and all such notices shall be deemed to have been received (a) twenty-four (24) hours after successful transmission in the case of electronic mail or fax; (b) fourteen (14) days after the date of posting in the case of first class registered or recorded delivery:

Notices to the Licensee shall be sent to the following address:

National Library of Finland
FinELib
P.O.Box 26 (Teollisuuskatu 23-25)
00014 University of Helsinki, Helsinki, Finland
finelib@helsinki.fi

Notices to the Licensor shall be sent to the following address:

FILL IN CONTACT INFORMATION

11.5. 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, floods, 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.

11.6. SEVERABILITY

The invalidity or unenforceability of any provision of this Agreement shall not affect the continuation in force of the remainder of this Agreement.

11.7. WAIVER

The failure of either party to require performance by the other party of any provision of this Agreement will not affect its full right to require such performance at any subsequent time; nor will the waiver by either party of a breach of any provision of this Agreement be taken or held to be a waiver of the provision itself.

11.8. GOVERNING LAW

This Agreement shall be governed by and construed in accordance with Finnish law, excluding its choice of law rules.

11.9. DISPUTE RESOLUTION

In the event any dispute, controversy or claim arises between the parties under or in connection with this Agreement, the parties agree to first exercise their best efforts to resolve the dispute as soon as possible via negotiations.

If these negotiations are unsuccessful any dispute, controversy or claim arising between the parties under or in connection with this Agreement shall be settled in arbitration in accordance with the Rules of Arbitration Committee of the Finnish Central Chamber of Commerce pursuant to the regulations in force. The arbitration shall take place in Helsinki, Finland, in the English language.

OR

If these negotiations are unsuccessful any dispute, controversy or claim arising between the parties under or in connection with this Agreement will be subject to and within the jurisdiction of the courts of Finland.

11.10. SCHEDULES

This Agreement includes the following Schedules (which can be amended from time to time), which are incorporated as if fully set forth herein:

Schedule 1: The Licensees: members of the FinELib-consortium

Schedule 2: The Licensed Material

Schedule 3: The License Fees

Schedule1:

The Licensee: members of the FinELib-consortium

Listing

Licensee 1:

Name of the organisation

Name and contact information of contact person

IP-ranges of the organisation

Licensee 2:

Name of the organisation

Name and contact information of contact person

IP-ranges of the organisation

Etc.

The National Portal NELLI:

Access for the following server IP's of NELLI-portal in order for the Consortium members to be able to search the Licensed Material via NELLI-portal (these IPs will not access content):

1. 193.166.0.210
2. 193.166.0.211

Contact person (technical) Ere Maijala (Mr.)
Helsinki University Library, National Library of Finland
Address: P.O.Box 26 (Teollisuuskatu 23-25)
FIN-00014 University of Helsinki
FINLAND
Email: ere.maijala(@)helsinki.fi
Tel. +358 9 191 44260
IP addresses:

Schedule 2: The Licensed Material

Name of the service

Description of the Licensed Material

Schedule 3: The License Fees

The Licensee shall, in consideration for the rights granted under this Agreement, pay the Fees as set out below. The Fee are exclusive of VAT.

Listing of Fees per organisation

Payment will be made annually within sixty (60) days of receipt of invoice. The tasks of receipt, payment and other handling of invoices are undertaken by the National Library on behalf of the Licensee.

Invoicing information:

The National Library of Finland
FinELib
P.O.Box 26 (Teollisuuskatu 23-25)
FIN-00014 Helsinki University

Electronic invoices: finelib@helsinki.fi