TERMS AND CONDITIONS
FOR THE ICSD API SERVICE OF FIZ KARLSRUHE – LEIBNIZ-INSTITUT FÜR INFORMATIONSINFRASTRUKTUR GMBH

September 2019

1. Service of FIZ Karlsruhe

FIZ Karlsruhe provides an ICSD Application Programming Interface Service ("ICSD API Service") for its customers (hereinafter "Customer/s"). FIZ Karlsruhe grants Customers the right to use the ICSD API Service to develop and test software applications (hereinafter "Applications") and to integrate the API into the Application subject to Copyright and Use Restrictions (see Section 2) as well as to other Terms and Conditions for the use of the ICSD API Service.

The ICSD API Service supports the search, display, download and analysis of ICSD content provided by FIZ Karlsruhe. Upon receipt of the Customer's order, an agreement between FIZ Karlsruhe and the Customer takes effect, and FIZ Karlsruhe will activate access to the ICSD API Service.

2. Copyright and Use Restrictions

(1) The ICSD API Service, including the user documentation and the database, is protected by copyright, ancillary copyright and other rights. All rights are held by FIZ Karlsruhe and/or the respective database producer. The Customer must ensure that the copyright notice, trademarks, trade names, markings or notices affixed to, or contained in, the licensed data are not removed or altered and are included in any extraction.

(2) All data downloaded are for internal (the customer's own) use by the Customer. External use may be allowed in relation to a defined project with named users subject to a bespoke additional agreement between the Parties. The Customer must make their best efforts to prevent a theft or inadvertent illicit dissemination of the data. The Customer must also ensure that their Application works together with the provided ICSD API Service in a secure manner. In case of an incident the Customer must promptly inform FIZ Karlsruhe and cooperate in the defence of tortious acts or to remedy any security deficiencies.

(3) Original data displayed or downloaded may be stored by the Customer for the duration of and as stated in this agreement (in case of a free trial for the duration of the trial period only). The Customer shall be entitled to download and temporarily store search results on their own media. Any commercial use of the data, whether in printed or electronic form, is prohibited. ICSD data must not be used by the Customer or any third party to calculate powder pattern collections for material identification or quantitation, or to make derivative databases for the aforementioned purposes.

(4) Free Trial: In case of a free trial, the Customer may use the ICSD API Service solely for testing and evaluation purposes, subject to the terms of this agreement (except Section 4, Section 6(1)). The Customer's right to use the ICSD API Service will automatically terminate at the end of the trial period (see Section 6(2)).

3. Confidentiality and Data Protection

(1) Maintaining the confidentiality of the Customer's password(s) and access authorizations is the Customer's responsibility. The Customer must

comply with all applicable data protection laws and regulations.

(2) FIZ Karlsruhe will make appropriate efforts to ensure that information provided by the Customer to it, and the contents of the Customer's online searches, will be treated in strict confidence. However, security of data transmission and data linkage between FIZ Karlsruhe and the Customer via a network are exclusively the Customer's responsibility.

(3) The Customer's personal data are exclusively used for the purposes of performing this agreement: for billing the ICSD API Service used by the Customer, for Customer liaison and support as well as telephone advice on how to use the ICSD API Service and for improving the product. Subject to the Customer's approval personal data are also used for sending product information. Within the scope of its contractual obligations, FIZ Karlsruhe shall be entitled to store and process the Customer's personal data in electronic form. Additional information can be found at:
https://icsd.products.fiz-karlsruhe.de/en/ueber-uns/datenschutzerklaerung.

4. Invoicing and Payment

(1) FIZ Karlsruhe will invoice the license fee for using the ICSD API Service to the Customer upon communication of the access authorization.

(2) Initial prices are valid at the time the initial order was placed. VAT will be charged in addition.

(3) If the license is prolonged for another period (see Section 6(1)), the prices as stated in the price list at the time of the beginning of the new license period shall apply.

(4) The amount billed is payable without deduction within 30 (thirty) days from the date of the invoice. Default in payment arises when the Customer fails

to pay the due amount prior to the end of this period.

(5) If the amount due has not been fully paid within 60 (sixty) days from the date of the invoice, FIZ Karlsruhe shall be entitled to block the Customer's online access.

(6) In the event that the Customer is in default of payment, FIZ Karlsruhe shall be entitled to charge interest for the default at the statutory rate of 9 (nine) % above the prime rate.

5. Warranty and Liability

(1) FIZ Karlsruhe provides the ICSD API Service, including the downloadable content, on an "as is" basis without warranties of any kind, either express or implied, including but not limited to completeness, accuracy and timeliness and any other warranties of merchantability or fitness for a particular purpose. The ICSD API Service may contain links to third party websites, for which FIZ Karlsruhe cannot be held responsible.

(2) FIZ Karlsruhe will only be liable for damage caused by wilful intent or gross negligence attributable to FIZ Karlsruhe, its legal representatives or persons employed in performing its obligations, except for damages resulting from breach of essential obligations of the contract. In such cases, FIZ Karlsruhe's liability is limited to damages caused as a typical and foreseeable consequence of the breach of contract. Liability for damages to life, body and health as well as liability according to the Product Liability Act remain unaffected. FIZ Karlsruhe will not assume any warranty or liability for damages caused by force majeure.

(3) FIZ Karlsruhe is not liable for damage incurred by the Customer as a consequence of improper use, or loss, of the Customer's access authorization. In this regard, FIZ Karlsruhe warns, in

particular, of the risks involved in transmitting such information via the Internet as the currently available security technologies or procedures cannot guarantee absolute security.

(4) The information contained in the help texts concerning content and functionality is to illustrate examples of use. The text is not to be viewed as providing a legally binding assurance of certain characteristics of the ICSD API Service.

6. Duration and Termination of Agreement

(1) The License Agreement for using the ICSD API Service is concluded for the period of the ICSD license agreement between the Parties. The duration of this Agreement shall not, however, exceed a one-year period, as stated in the Customer's order. The License Agreement will be prolonged automatically for another one-year period unless terminated by either party, by written notice to the other party, not later than sixty (60) days prior to the end of the agreement period.

(2) The free trial period is one month if not otherwise agreed in writing.

(3) Moreover, FIZ Karlsruhe shall be entitled to terminate the agreement forthwith without notice if the Customer commits a material breach of this agreement, in particular, if the Customer fails to pay outstanding invoices, despite a reminder.

(4) When termination becomes effective, the Customer's access authorization(s) will be blocked.

(5) After termination of the agreement, the Customer shall continue to observe the copyright terms pursuant to Section 2. All downloaded data are to be deleted. The Customer must send a notification to FIZ Karlsruhe when data is deleted.

7. Changes to the Terms and Conditions

(1) FIZ Karlsruhe reserves the right to make changes to these Terms and Conditions. The Customer shall be informed about such changes.

(2) If the Customer fails to object to these changes within 14 (fourteen) days or continues to use the ICSD API Service, this shall be deemed acceptance of the changed conditions.

8. Final Provisions

(1) The place of performance is the headquarters of FIZ Karlsruhe, both for the Customer and for FIZ Karlsruhe.

(2) Any Customer's terms and conditions are not applicable.

(3) In case of disputes arising from this agreement, actions shall be brought before the court of jurisdiction at Karlsruhe if the Customer is a merchant, a legal person under public law, or a federal special fund under public law. This agreement shall in all cases be governed by German law. The applicability of the United Nations Convention on Contracts for the International Sale of Goods Law (UNCITRAL) is excluded.