

Publishing Agreement

The following agreement has been approved by and entered into between

Prof. Komei Fukuda, Swiss Federal Institute of Technology in, Department of Mathematics, , Switzerland

(hereinafter called **Author**)
on the one part and

Springer Nature Switzerland AG, Gewerbestrasse 11, 6330 Cham, Switzerland

(hereinafter called **Publisher**)
on the other part.

When Author is more than one person, the expression "Author" as used in this agreement will apply collectively unless otherwise indicated.

§ 1 Rights Granted

1.1 Author undertakes to prepare for publication by Publisher a work provisionally entitled:

Introduction to Optimization

(hereinafter called **Work**)
comprising approximately 250 pages, including approximately 60 illustrations, whereas the Publisher intends to publish the Work under the imprint Springer.

The Work may contain or link to media, social or functional enhancements. ~~If such enhancements are included in or linked to the Work it will be specified in Clause 9. To the extent Clause 9 specifies that enhancements are included in the Work, they are an integral part of the Work and, unless otherwise explicitly set forth in Clause 9,~~ ~~all~~ The rights, licences and obligations agreed to hereunder shall not apply to such enhancements, unless otherwise explicitly set forth in this Agreement.

1.2 Author hereby grants and assigns to Publisher the exclusive, sole, permanent, world-wide, transferable, sub-licensable and unlimited right to reproduce, publish, distribute, transmit, make available or otherwise communicate to the public, ~~translate,~~ publicly perform, archive, store, lease or lend and sell the Work ~~or parts thereof~~ individually or together with other works ~~in any language, in all revisions and versions~~ (including soft cover, book club and collected editions, anthologies, advance printing, reprints or print to order, microfilm editions, audiograms and videograms), in all forms and media of expression including in electronic form (including offline and online use, push or pull technologies, use in databases and data networks (e.g. Internet) for display, print and storing on any and all stationary or portable end-user devices, e.g. text readers, audio, video or interactive devices, and for use in multimedia or interactive versions as well as for the display or transmission of the works or parts thereof in data networks or search engines, and posting the Work on social media accounts closely related to the Work, as well as using the Work for educational or training purposes, e.g. but not limited to use in massive open online courses), in whole, ~~in part or in abridged form, in each case~~

~~as now known or developed in the future~~, including the right to grant further time-limited or permanent rights. Publisher especially has the right to ~~permit others to use individual illustrations, tables or text quotations and may~~ use the Work for advertising purposes. For the purposes of use in electronic forms, Publisher may adjust the Work to the respective form of use and include links (e.g. frames or inline-links) or otherwise combine it with other works and/or remove links or combinations with other works provided in the Work, with the prior written consent of the Author. Publisher has the right to amend, change, modify or complement the Work (incl. to translate, shorten or divide the Work) only with the prior written consent of the Author. For the avoidance of doubt, all provisions of this contract apply regardless of whether the Work itself constitutes a database under applicable copyright laws or not.

- 1.3 The copyright in the Work shall be vested in the name of Publisher (with the exception of the right to amend, change, modify or complement the Work). Author has asserted his/her right(s) to be identified as the originator of this Work, including the Work in all editions and versions ~~of the Work~~ and parts thereof, published in all forms and media, to which the Author has given his prior written consent. Publisher may take, either in its own name or in that of Author, any necessary steps to protect the rights granted under this Agreement against infringement by third parties. It will have a copyright notice inserted into all editions of the Work according to the provisions of the Universal Copyright Convention (UCC).
The parties acknowledge that there may be no basis for claim of copyright in the United States to a Work prepared by an officer or employee of the United States government as part of that person's official duties. If the Work was performed under a United States government contract, but Author is not a United States government employee, Publisher grants the United States government royalty-free permission to reproduce all or part of the Work and to authorise others to do so for United States government purposes. If the Work was prepared or published by or under the direction or control of the Crown (i.e., the constitutional monarch of the Commonwealth realm) or any Crown government department, the copyright in the work shall, subject to any agreement with Author, belong to the Crown. If Author is an officer or employee of the United States government or of the Crown, reference will be made to this status on the signature page.
- 1.4 Author retains, in addition to uses permitted by law, the right to communicate the content of the Work to other research colleagues, to share the Work with them in manuscript form, to perform or present the Work or to use the content for non-commercial internal and educational purposes provided the original source of publication is cited according to current citation standards.

§ 2 Delivery and Acceptance of the Work

- 2.1 Author shall deliver the Work to Publisher on or before July 1, 2019 (hereinafter called **Delivery Date**) electronically in ~~Microsoft Word format or in such form as may be agreed in writing with Publisher~~ tex/latex format. The Work shall be in a form acceptable to the Publisher (acting reasonably) and in line with the instructions contained in the guidelines and Author shall provide at the same time, or earlier if the Publisher reasonably requests, any editorial, publicity or other form required by the Publisher. Publisher is entitled to have the Work peer-reviewed by external reviewers of its choice.
If Author fails to deliver the Work by the Delivery Date, or within any grace period given by Publisher, acting reasonably, then Publisher shall be entitled to:
- (a) commission an appropriate and competent person (who, in the case of joint Authors, may be a person comprising the Author) to complete the Work and any fees payable to the competent person shall be deducted by Publisher, acting reasonably, from any sums due to Author under this Agreement; or
 - (b) terminate this Agreement by immediate written notice to Author, in which case all advance payments paid to Author under or in connection with this Agreement shall be repaid to Publisher within 28 days of said notice, and where all rights granted by Author to Publisher under this Agreement shall revert to Author.
 - (c) If Author, or where Author consists of two or more persons, any of the persons comprising the Author, dies or becomes incapacitated or otherwise incapable of performing Author's obligations under this Agreement,

Publisher shall be entitled to be given copies of all notes, manuscripts or other materials relating to the Work. Publisher may either terminate this Agreement with immediate effect (by written notice to Author or Author's estate, in which case the copyrights are reverted to the Author or Author's estate) or elect to continue to publish the Work.

- 2.2 Publisher is entitled to carry out editorial changes on the manuscript within the usual limits. This is intended especially to enhance the uniform overall organisation and form of the Work. Any **significant** changes in content require the written approval of the Author. Publisher is entitled to prepare and use summaries within the intended use of the Work and for the purposes of sales, distribution and advertising.
- 2.3 Author agrees, at the request of Publisher, to execute all documents and do all things reasonably required by Publisher in order to confirm to Publisher all rights intended to be granted under this Agreement. Author warrants that the Work is original except for such excerpts from copyrighted works (including illustrations, tables, animations and text quotations) as may be included with the permission of the copyright holder thereof, in which case(s) Author is required to obtain written permission to the extent necessary and to indicate the precise sources of the excerpts in the manuscript. Author is also requested to store the signed permission forms and to make them available to Publisher if required.
- Author warrants that Author is entitled to grant the rights in accordance with Clause 1 "Rights Granted", that Author has not assigned such rights to third parties, that the Work has not heretofore been published in whole or in part, that the Work contains no libellous or defamatory statements and does not infringe on any copyright, trademark, patent, statutory right or proprietary right of others, including rights obtained through licences; and that Author will indemnify Publisher against any costs, expenses or damages for which Publisher may become liable as a result of any claim which, if true, would constitute a breach by Author of any of Author's representations or warranties in this Agreement. Author agrees to amend the Work to remove any potential obscenity, defamation, libel, malicious falsehood or otherwise unlawful part(s) identified at any time. Any such removal or alteration shall not affect the warranty and indemnity given by Author in this Agreement.

§ 3 Publication of the Work

- 3.1 Publisher will undertake the publication and distribution of the Work in print and electronic form at its own expense and risk within a reasonable time after it has given notice of its acceptance of the Work to Author in writing. The final determination of the electronic formats and the number of copies produced is at the discretion of Publisher. Publisher will, at its sole discretion, set or alter the list-price, allow for deviations from the list-price (if permitted under applicable jurisdiction) and promote the Work as it considers most appropriate to optimise sales, including a good and suitable presentation for all distribution channels. All right, title and interest in the typography, design and/or look-and-feel of the Work shall remain the property of and is reserved to Publisher. Illustrations and any other material or immaterial property prepared at the expense of Publisher remain, as between the parties, the exclusive property of Publisher.
- Nothing in this Agreement shall constitute an undertaking on the part of Publisher to publish the Work unless and until: (i) Publisher has given notice of acceptance in writing of the final manuscript of the entire Work, and (ii) any issues in relation to the Work (including all necessary consents and permissions) raised by the Publisher have been resolved to the Publisher's satisfaction.
- In consideration of the above, if Publisher decides to not publish the Work, Author shall in no event be entitled to any compensation or remedy in respect of any expense or loss incurred. In such case, all rights granted by Author to Publisher under this Agreement shall revert to Author.
- 3.2 Publisher is entitled, depending on the market and the demand, to publish and distribute the Work in instalments (including but not limited to individual chapters) or to order. Any division of the Work (including to individual chapters) requires the prior written consent of the Author. In case the Work is stored in physical

stock Publisher is also entitled to pulp the print run or any portion thereof without previously notifying Author. Publisher is required to continue promoting the Work and to retain a sufficient number of copies unless the Work is available in electronic form or on the basis of a print-to-order offer.

§ 4 Approval for Publishing

- 4.1 Author shall proofread the page proofs, check the illustrations as well as any media, social or functional enhancements, and give approval for publishing, if and when requested by Publisher. Author's approval for publishing is deemed to have been given if Author does not respond within a suitable period of time after receiving the proofs.
- 4.2 Proofs are sent to enable Author to check that the manuscript has been properly set in type and to allow Author to correct any typesetter's or illustrator's errors. No alterations or corrections may be made by Author other than for the purpose of correcting typographical errors without the Publisher's prior written consent. In case Author makes major changes that lead to additional costs for Publisher, and if such costs exceed 10% of the total cost of typesetting (or reproduction in the case of illustrations) they will be borne by Author.

§ 5 Complimentary Copies, Author's Discount for Books and Electronic Access

- 5.1 Author or, if "Author" comprises several individual authors, each of the co-authors who is party to this agreement is entitled to receive 15 printed copies free of charge and may obtain additional copies for personal use at a discount of 40% off the list-price if ordered directly from Publisher.
- 5.2 Furthermore, Author is entitled to purchase for Author's personal use (directly from Publisher) other books published by Publisher at a discount of 40% off the list-price for as long as there is a contractual arrangement between Author and Publisher and subject to applicable book price regulation.
Resale of such copies or of free copies is not permitted.
- 5.3 Publisher shall provide electronic access to the electronic final published version of the Work on Publisher's Internet portal, currently known as springer.com and/or palgrave.com, to Author, provided Author has included his/her email address in the manuscript of the Work. Furthermore, Author has the right to download and disseminate single contributions from the electronic final published version of the Work for his/her private and professional non-commercial research and classroom use (e.g. sharing the contribution by mail or in hard copy form with research colleagues for their professional non-commercial research and classroom use, or to use it for presentations or handouts for students). Author is also entitled to use single contributions for the further development of his/her scientific career (e.g. by copying and attaching contributions to an electronic or hard copy job or grant application).
When Author is more than one person each of the co-authors may share single contributions of the Work with other scientists or research colleagues as described above. In each case, Publisher grants the rights to Author under this clause provided that Author has obtained the prior consent of any co-author(s) of the respective contribution.

§ 6 Royalty

- 6.1 For each distributed and paid copy of the Work published by Publisher in print or electronically as an individual book or individual part thereof, as previously agreed to by the Author, Publisher shall pay to Author a royalty of 13.0% based on the Net Proceeds (the net amount Publisher actually received after deduction of all discounts, commissions and any applicable taxes such as VAT and/or withholding tax).

Distribution includes but is not limited to sales, lending, leasing and/or renting of the Work or parts thereof, as previously agreed to by the Author ("Distribution"). For the avoidance of doubt for the purpose of the royalty payment "distributed and paid copy of the Work" includes any individual Distribution to direct end-customers, to institutional customers (e.g. digital and non-digital libraries) and through distribution partners.

- 6.2 In the event of Bulk Sales, Author's exclusive royalty for the respective Bulk Sale will be 13.0% of the related Net Proceeds, with "Bulk Sale" being defined as the production and/or distribution of a special edition of the Work or sales of multiple copies of the Work to the same end-customer at a special price regardless of whether it be performed by Publisher or by third parties, regardless of whether in print or electronic format and further regardless of whether in a layout identical to the normal edition or not.
- 6.3 For the right to sell the Work electronically as part of an e-book package, Publisher shall pay to Author a remuneration of EUR 600 payable upon publication. This amount will be paid in addition to the royalties as described in §§6.1 and 6.2 above.
- 6.4 If Publisher grants licenses to use the Work or derivative works thereof or parts of either in products published by other publishers (e.g. a license to translate the work and to distribute the translation, or a license to distribute parts of the Work in a third party book), Author's sole payment for the respective license and any related use will be a share of Publisher's Net Proceeds according to industry standards of 50%. For the avoidance of doubt, the creation of any derivative works, or division of the Work in parts, requires the prior written approval of the Author.
- 6.5 Following the death of the Author after publication of the Work all sums payable to the Author under the terms of this Agreement at the time of the Author's death shall be paid to the Author's estate.
- 6.56 Free copies that are provided by Publisher for the purposes of review, promotion, sample or otherwise free of charge, as well as validly returned copies or copies that are for any other reason not sellable, are not subject to royalty payments.
- ~~6.6 In the event that the Work contains or links (e.g. through frames or in-line links) to media, social or functional enhancements, the aforesaid royalties, remuneration, complimentary copies and/or access rights shall also cover the use of such material.~~
- 6.7 If "Author" comprises several individual authors, the aforesaid remuneration will be paid as a total to the joint group of authors. Each co-author will receive an equal share of any payment.
- 6.8 Royalties will be calculated annually in March for the preceding calendar year. Publisher will distribute an annual statement accordingly with payment following in April. In the event that the amount due is below the costs that issuing of the same would cause, the payment shall be issued with the next year's payment.
- 6.9 If there is a legal requirement for Publisher to withhold any taxes, the taxes will be deducted from the payments to Author. Authors are responsible for the taxation of their payments. Publisher is entitled to report related information (including personal and financial data) to the respective authorities.
- 6.10 Any publisher's proceeds from rights managed by national copyright organizations (collecting societies including but not limited to societies such as Copyright Clearance Center) are the sole property of Publisher. Any such author's proceeds are the sole property of Author, and if applicable, registration and taxation of such proceeds is Author's sole responsibility.

§ 7 Competing Works

Author agrees not to contribute or to release with another publisher any publication that contains expression or subject matter substantially similar to the Work and which may compete with the Work. Any publication of substantial parts of the Work requires the prior written consent of Publisher, such consent not to be unreasonably withheld. Notwithstanding the aforementioned, the Author is entitled to publish his existing notes (textbook) on the Work for non-commercial purposes, including electronic publication via the Internet for educational purposes.

§ 8 New Editions

~~8.1 The publication of subsequent editions shall be undertaken only after reaching agreement with the Author over the extent of revisions, the deadlines and terms of delivery of the manuscript, and any other applicable modifications of the present Publishing Agreement. If Author is unable or unwilling to deliver a subsequent edition, Publisher is entitled to continue to publish the Work without updates or amendments with respect to the existing edition. Publisher has the sole right to determine the publication of any subsequent edition, such determination to be made only after consultation with the Author. In the event of subsequent editions, they shall be published by Publisher. Once notified by Publisher that a new edition is deemed necessary, Author agrees to deliver an updated manuscript according to the terms of Clause 2 "Delivery and Acceptance of the Work", together with the material for any new illustrations within 9 months of such notification. Substantial changes in the nature or size of the Work require the approval of Publisher. Upon publication of such new edition, Author shall receive a consideration equivalent to Clause 6 "Royalty". The terms of this Agreement shall apply to any new edition that is published under this New Edition clause.~~

~~8.2 If Author, for whatever reason, is unwilling, unable or fails to submit an updated manuscript that meets the terms of this Agreement within the above stated period, then Publisher is entitled to revise, update and publish the content of the original edition or to designate one or more individuals (which, where Author comprises two or more persons, may be one or more of the persons comprising the Author) to prepare this and all future editions. In this case, Author does not participate in preparing any subsequent editions. Publisher is entitled to continue to use the name of Author on any new editions of the Work. Notwithstanding clause 8.2 (first sentence), Author or Author's beneficiaries shall receive 50% of the financial consideration stipulated in Clause 6 "Royalty" (if any) but shall have no right or claim from any further subsequent editions of the Work.~~

§ 9 Miscellaneous

~~9.1 Notwithstanding the above as detailed in §8 New Editions, the following applies:
If one of the persons constituting the collective Author defined in the preamble is, for whatever reason, unwilling or unable to participate in an updated manuscript for a new edition, the remaining persons of the collective Author may designate an additional, replacement member of the collective Author, or they may agree within the collective and inform Publisher that they are empowered, without the person unable or unwilling to participate, to materialize the rights and obligations of the Publishing Agreement. The Work constitutes an indivisible entity and no part of it may be deleted from future editions except by instruction thereto from the (collective) Author. The publication of subsequent editions shall be undertaken only after reaching agreement with the Author over the extent of revisions, the deadlines and terms of delivery of the manuscript, and any other applicable modifications of the present Publishing Agreement. If Author is unable or unwilling to deliver a subsequent edition, Publisher is entitled to continue to publish the Work without updates or amendments with respect to the existing edition.~~

~~9.2 In addition to §2 "Delivery and Acceptance of the Work", Author agrees to deliver all final LaTeX2e source files of the complete manuscript, including the index, all figures and the 100% corresponding pdf file.~~

§ 10 General Provisions

10.1 If any difference shall arise between Author and Publisher concerning the meaning of this Agreement or the rights and liabilities of the parties, the parties shall engage in good faith discussions to attempt to seek a

mutually satisfactory resolution of the dispute. This agreement shall be governed by, and shall be construed in accordance with, the laws of Switzerland. The courts of Zug, Switzerland shall have the exclusive jurisdiction.

- 10.2 Either party shall be entitled to terminate this Agreement forthwith by notice in writing to the other party if the other party commits a material breach of the terms of the Agreement which cannot be remedied or, if such breach can be remedied, fails to remedy such breach within 28 days of being given written notice to do so. In case of a material breach of the terms of this Agreement by the Publisher, all rights granted by Author to Publisher under this Agreement shall revert to Author.
- 10.3 If Publisher, acting reasonably, decides that the Work is not suitable for publication in the intended market place, or that there is no substantial market for the Work, or the economic circumstances of publication have substantially changed (in each case other than due to the Work not being of a suitable quality to justify publication) then Publisher may at any time terminate this Agreement by giving one month's notice to Author in writing. In the event of such termination: (a) Author shall be entitled to retain all amounts received in respect of the Work previously paid to Author by Publisher at the date of termination, and (b) all rights granted by Author to Publisher under this Agreement shall revert to Author. Author will not in any event be entitled to any further payments due after the date of termination in respect to the Work.
- 10.4 Termination of this Agreement, howsoever caused, shall not affect:
- (a) any subsisting rights of any third party under any licence or sub-licence validly granted by Publisher prior to termination and Publisher shall be entitled to retain its share of any sum payable by any third party under any such licence or sub-licence;
 - (b) the rights of Author to any payments due in respect of exploitation of the Work by Publisher or a third party pursuant to any licence granted by Publisher prior to the date of termination;
 - (c) any claim which either party may have against the other for damages or otherwise in respect of any rights or liabilities arising prior to the date of termination; or
 - (d) any option granted by Author to Publisher in respect of future works.
- 10.5 On termination of this Agreement in accordance with its terms, all rights and obligations of Publisher and Author under this Agreement will cease immediately, except that any terms of this Agreement that expressly or by implication survive termination of this Agreement shall remain in full force and effect. On termination of this Agreement by Publisher for any reason, Publisher shall not be liable for any payment in respect of any part of the Work not delivered at the date of termination. On termination of this Agreement Publisher may continue to sell any copies of the Work which are in its power, possession or control as at the date of expiry or termination of this Agreement for a period of 6 months on a non-exclusive basis subject to the payment of royalties due hereunder.
- 10.6 This agreement and the documents referred to within constitute the entire agreement between the parties with respect to the subject matter hereof and supersede any previous agreements, warranties, representations, undertakings or understandings. It may be modified or amended only in writing. For purposes of this agreement, "in writing" requires either a written and signed document or an electronic confirmation with DocuSign or similar e-commerce solution.
- 10.7 The failure by either party to enforce any one or more of the terms of this Agreement at any time or for any period shall not constitute a waiver of such term or of that party's right to enforce any and all terms of the Agreement subsequently.

10.8 Author will not, without the prior written consent of Publisher, disclose the terms of this Agreement to any third party, except to Author's respective professional advisors or as required by a court, regulatory body or other authority of competent jurisdiction.

10.9 Nothing contained in this Agreement shall constitute or shall be construed as constituting a partnership, joint venture or contract of employment between Publisher and Author. Each author is jointly and severally liable for Author's obligations. Neither party may assign this agreement to third parties but Publisher may assign this agreement or the rights received hereunder to its affiliated companies. For avoidance of doubt, following the death of the Author, all sums payable to the Author under the terms of this Agreement shall be paid to the Author's estate according to Clause 6.5 of this Agreement.

To signify their agreement to the terms outlined herein, all parties have signed and exchanged this contract.

The Author(s)

Springer Nature Switzerland AG, Cham

Prof. Komei Fukuda

Thomas Hempfling
Editorial Director / Asset Manager

Date _____

Date _____

Alfred Hofmann
Vice President

Date _____

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