

# ELECTRONIC INFORMATION RESOURCE AGREEMENT

SUWECO CZ, S.R.O.

AND

THE NATIONAL LIBRARY OF TECHNOLOGY

This Agreement ("Agreement") is made between Suweco CZ, s.r.o with its principal office Kostelec u Křížků 156, Štířín ("Suweco") a supplier of the product(s) of the following publishers: American Association for Cancer Research, (AACR), with its principal office at 615 Chestnut Street, Philadelphia, PA 19106 , USA ("Publisher/s")

and The National Library of Technology, a State Contribution Organization set up by the Ministry of Education, Youth and Sports, with its principal offices at Technická 6, 160 80 Praha 6 - Dejvice ("NTK"), while the NTK shall be entitled to grant the right to access and use of the product(s) to Participating institutions listed in Appendix B.

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:

- I. **Subject of the Agreement, Content of Materials; Grant of Access and Use**
  1. Statement. Suweco hereby guarantees that it has all the authority and competence to grant the right to access and use the Materials to the NTK as defined in this Agreement.
  2. Subject of the Agreement. The subject of this Agreement is to define conditions of cooperation and rights and duties of the contracting parties while providing Materials as are defined hereunder.
  3. Materials. The materials (the " Materials") that are the subject of this Agreement are set forth in Appendix A.
  4. Grant of Right to Access and Use. Suweco hereby grants to NTK a non-exclusive, system-wide perpetual right to access and use Materials limited to the territory of Czech Republic. The NTK is entitled to grant the right to access and use to Participating Institutions. Suweco entitles NTK to access and use the Materials, and to provide the Materials to Authorized Users (which are defined in Section IV below) of the Participating Institutions (which are listed in the Appendix B) in accordance with the terms of this Agreement.
  5. Ownership of Intellectual Property. Nothing in this Agreement shall be interpreted to transfer ownership of any copyright, trademarks or service marks from Suweco or its suppliers to the NTK or Authorized Users.

## II. Delivery & Access

1. Suweco will provide the Materials to the NTK and to the Participating Institutions in the following manner:
  - 1.1. Network Access. The Materials will be stored at one or more Publisher's locations in digital form accessible by telecommunication links between such locations and authorized locations of NTK and Participating institutions.

## III. Fees

1. Fees and Payment. NTK shall pay Suweco for the Materials pursuant to the terms set forth in Appendix A.
2. Incomplete Payment. The NTK may cover the invoice partially if a Participating Institution did not provide its financial contribution in time. In the event of such incomplete payment, NTK will notify Suweco of the intended difference no less than ten (10) days prior to the due date. Suweco may suspend the IP addresses of such Participating institution until the Fee is completely paid. In such case NTK is not in delay with the payment.
3. Changes of number of Participating Institutions listed in Appendix B. In case any Participating institution shall lose its status as Participating Institution or in case any new scientific (or similar) institution shall reveal its intent to become a Participating Institution Suweco shall enter into negotiation with NTK to amend this Agreement and to renegotiate the amount of Fees.

## IV. Authorized Use of Materials

1. Authorized Users. "Authorized Users" are:
  - 1.1. Persons Affiliated with the NTK and the Participating Institutions. Full and part time employees and self-employed persons (including faculty, staff,) of NTK and Participating Institutions and students of NTK and Participating Institutions, and registered users in case of public or research libraries, regardless of the physical location of such persons. For authorized sites of the NTK and the Participating Institutions, see Appendix B.
  - 1.2. Walk-ins. Patrons not affiliated with NTK and/or the Participating Institutions who are physically present at NTK's and/or the Participating Institutions' site(s) ("walk-ins").
2. Access by and Authentication of Authorized Users. Authorized Users of the NTK and the Participating Institutions shall be granted access to the Materials pursuant to the following:
  - 2.1. IP Addresses. Authorized Users shall be identified and authenticated by the use of Internet Protocol ("IP") addresses provided by NTK to Suweco. The use of proxy servers is authorized as long as any proxy server IP addresses provided limit remote or off-campus access to Authorized Users. Authorized IP Addresses are listed in Appendix C. An updated list will be sent to Suweco on an annual or as needed basis.

NTK and Suweco shall cooperate in the implementation of new authentication protocols and procedures (such as Shibboleth) as they are developed during the term of this Agreement.

- 2.2. Suweco - Administered Authentication. Where Publisher provides alternative methods of access and authentication beyond the Participating Institution-administered methods described herein, e.g. by allowing users to establish a personal login from an on-campus IP address (thereby enabling access via username and password when logging in to a vendor website) or device authentication, which affiliates the device or application by use of a token, cookie, or vendor-managed proxy prefix, neither NTK nor any Participating institution will be responsible or liable for claims of breach or validity of such use.
3. Authorized Uses. NTK, Participating Institutions and Authorized Users may make all use of the Materials as is consistent with Czech Republic copyright law and with these licensing conditions. In addition, the Materials may be used for purposes of research, education or other non-commercial use as follows:
  - 3.1. Display. NTK, Participating Institutions and Authorized Users shall have the right to electronically display the Materials.
  - 3.2. Digital Copy. NTK, Participating Institutions and Authorized Users may download and digitally copy a reasonable portion of the Materials.
  - 3.3. Print Copy. NTK, Participating Institutions and Authorized Users may print a reasonable portion of the Materials.
  - 3.4. Recover Copying Costs. NTK and the Participating Institutions may charge a reasonable fee to cover costs of copying or printing portions of Materials for Authorized Users.
  - 3.5. Archival/Backup Copy. Suweco shall provide to NTK upon request, or NTK may create, one (1) copy of the entire set of Materials to be maintained as a backup copy. In the event that the Agreement is terminated, or the Suweco no longer offers the Materials online, NTK and Participating Institutions may use the backup copy to exercise their rights under section XII, Perpetual Rights, of this Agreement.
  - 3.6. Caching. NTK, the Participating Institutions and Authorized Users may make local digital copies of the Materials in order to ensure efficient use by Authorized Users by appropriate browser or other software. For the avoidance of doubt, the cached copy is not a derivative work.
  - 3.7. Classroom Use. NTK, the Participating Institutions and Authorized Users may distribute single copies of individual articles or items of the Materials in print or electronic form to Authorized Users. For the avoidance of doubt, classroom handouts shall include the distribution of a copy for teaching purposes to all individual Authorized Users in a class at Authorized Sites (Appendix B).
  - 3.8. Collections of Information. NTK, the Participating Institutions and Authorized Users shall be permitted to extract or use information contained in the Materials for educational, scientific, or research purposes, including extraction and manipulation

of information for the purpose of illustration, explanation, example, comment, criticism, teaching, research, or analysis.

- 3.9. Course Packs (Print and Electronic). NTK, the Participating Institutions and Authorized Users may use a reasonable portion of the Materials in the preparation of Course Packs or other educational materials.
- 3.10. Course Reserves (Print and Electronic). NTK, the Participating Institutions and Authorized Users may use a reasonable portion of the Materials for use in connection with specific courses of instruction offered by the NTK and/or the Participating Institutions.
- 3.11. Electronic Links. NTK, the Participating Institutions and Authorized Users may provide hyperlinks from the NTK's, the Participating Institutions' and Authorized Users' web page(s) or web site(s) to individual units of content within the Materials.
- 3.12. Scholarly Sharing. On an ad hoc basis, Authorized Users may transmit to a third party in hard copy or electronically, minimal, insubstantial amounts of the Materials for personal use or scholarly, educational, or scientific research or professional use in the nature of collaboration, comment, or the scholarly exchange of ideas but in no case for resale or commercial purposes or in a manner that would substitute for direct access to the Materials via services offered by Suweco.
- 3.13. Text and Data Mining. Authorized Users may use the Materials to perform and engage in text and/or data mining activities for academic research, scholarship, and other educational purposes and may utilize and share the results of text and/or data mining in their scholarly work and make the results available for use by others, so long as the purpose is not to create a product for use by third parties that would substitute for the Materials. Suweco will, upon receipt of written request, cooperate with NTK and Authorized Users as reasonably necessary in making the Materials available in a manner and form most useful to the Authorized User. Suweco shall provide to NTK, upon request, copies of the Materials for text and data mining purposes without any extra fees.
- 3.14. Interlibrary Loan. Using electronic, paper, or intermediated means, NTK and the Participating Institutions at their discretion may fulfill occasional requests from other institutions, a practice commonly called Interlibrary Loan ("ILL"). Suweco agrees that the electronic form of the Materials may be used as a source for the ILL whereby articles and/or chapters can be printed and these print copies can be delivered via postal mail, fax, or fax-based service to fulfill ILL requests from an academic, research or other non-commercial library. Requests received from for-profit companies may not be honored. ILL through secure electronic transmission, as demonstrated by the ARIEL, is permitted. Files transmitted in this manner must carry copyright notices and comply with copyright laws of Czech Republic.
- 3.15. Bibliographic Citations. NTK, the Participating Institutions and Authorized Users may use, with appropriate credit, figures, tables, and brief excerpts from the Materials in the Authorized User's own scientific, scholarly, and educational works. For the avoidance of doubt, NTK, the Participating Institutions and Authorized Users may use citation and abstract information in faculty profiling systems, in lists of publications on faculty and institutional web pages, and to create bibliographies, and store a single copy of an individual document being part of the Materials,

including within secure personal bibliographic reference/citation management systems.

4. **No Diminution of Rights.** Nothing in this Agreement, including but not limited to Authorized Uses, shall be interpreted to diminish the rights and privileges of the NTK, Participating Institutions or Authorized Users with respect to any of the Materials, including exceptions or limitations to the exclusive rights of copyright owners. In the event that any content included in the Materials is in the public domain or has been issued under a Creative Commons or other open license, Suweco shall not place access, use or other restrictions on that content beyond those found in the open license, where applicable.
5. **Amount of Authorized Use.**
  - 5.1. **Unlimited Access.** Subject to the terms of this Agreement, NTK, Participating Institutions and their Authorized Users shall have unlimited and simultaneous user access to the Materials.

## V. Specific Restrictions on Use of Materials

1. **Unauthorized Use.** NTK, the Participating Institutions, or Authorized Users shall not knowingly permit anyone other than Authorized Users to access the Materials.
2. **Modification of Materials.** NTK, the Participating Institutions, or Authorized Users shall not modify, manipulate the Materials without the prior written permission of Suweco.
3. **Removal of Copyright Notice.** NTK, the Participating Institutions and the Authorized Users may not remove, obscure or modify any copyright or other notices included in the Materials.
4. **Commercial Purposes.** NTK and the Participating Institutions may not use the Materials for commercial purposes, including but not limited to the sale of the Materials, fee-for-service use of the Materials; nor may NTK and the Participating Institutions impose special charges on Authorized Users for use of the Materials beyond reasonable printing or administrative costs. For the avoidance of doubt, research conducted by NTK, the Participating Institutions and Authorized Users that is supported by a commercial entity shall not be considered use for commercial purposes.

## VI. Mutual Performance Obligations

1. **Notification and Cure of Unauthorized Use.** In the event the NTK and/or any of the Participating Institutions has notice of an unauthorized use of the Materials and cannot promptly remedy it, the NTK or Participating institution shall promptly notify the Suweco. In the event the Publisher or Suweco has notice of unauthorized use of the Materials, the Suweco will promptly notify NTK and respective Participating Institution.
2. In the case of unauthorized use which is causing serious and immediate material harm to Publisher or Suweco, Publisher may temporarily suspend such offending individual Authorized User's access to the Materials (e.g. by blocking an individual user's IP address), provided that Suweco immediately notifies the NTK and Participating Institution of any such suspension, including the reason for the block and any supporting

details. Such temporary suspensions will be of the shortest duration possible sufficient to terminate the alleged unauthorized activity and prevent its resumption. Any unauthorized use that is considered a breach of obligations under this Agreement shall be subject to Section XI, below, including the cure period.

## VII. Suweco Performance Obligations

1. Suweco will use reasonable efforts to ensure that its performance will meet or exceed industry standards and practices. Additionally, Suweco agrees to the following performance standards.
2. Suweco is obliged to acquaint the Publisher/s with the terms of this Agreement. Suweco is obliged to ensure that all Suweco's obligations under this Agreement shall be met and that any negotiation of the Publisher/s shall not prevent to fulfil its obligation.
3. Suweco is obliged to secure and is liable for any damages with respect to the validity of the right granted by Suweco to the NTK for the duration of the Agreement. Suweco is obliged to follow the contract concluded between Suweco and the Publisher about the right to access and use the Materials. In the case of breach of such contract Suweco is responsible for all the damages to the NTK and Participating institutions caused by the suspension of the right to access and use the Materials.
4. Availability of Materials. Upon the Effective Date of this Agreement, Suweco will make the Materials available to the NTK, the Participating Institutions and Authorized Users.
5. Discovery of Materials. Suweco shall make reasonable effort to make the Materials available through NTK's and/or Participating Institutions' Discovery Service System(s) for indexing and discovery purposes. Suweco shall provide to NTK's and/or Participating Institutions' discovery service vendors on an ongoing basis the citation and complete descriptive metadata (including all subject headings, abstracts, and keywords), and full-text content necessary to facilitate optimal discovery and accessibility of the content for the benefit of NTK, Participating Institutions and Authorized Users. Discovery Service Systems are defined as user interface and search systems for discovering and displaying content from local, database and web-based sources.
6. Persistent Linking. Suweco will use reasonable effort to convince Publisher to comply with the most current version of the OpenURL standard (ANSI/NISA Z39.88), and will provide a mechanism for persistent links to content.
7. Online Terms and Conditions. In the event that Publisher requires Authorized Users to agree to additional terms relating to the use of the Materials (commonly referred to as "click-through" or "click wrap" licenses), or otherwise attempts to impose terms on Authorized Users through online terms and conditions invoked by the mere use or viewing of the Materials, such terms shall not materially differ from the provisions of this Agreement. In the event of any conflict between the click-through terms or online terms and conditions and this Agreement, the terms of this Agreement shall prevail. For the avoidance of doubt, Authorized Users are not a party to this Agreement.
8. Documentation. Suweco will provide complete and up-to-date help and operational documentation for NTK, Participating Institutions and Authorized Users in an electronic format. Such documentation may be provided by means of the Publisher's online system and/or system for administrators.

9. Support. Suweco will provide activation and installation support, including assisting NTK, Participating Institutions and Authorized Users with the implementation of any Publisher software. Suweco will offer reasonable levels of continuing support to assist NTK, Participating Institutions and Authorized Users in use of the Materials. Suweco will make its personnel available by email [obchod@suweco.cz](mailto:obchod@suweco.cz) and/or phone +420 242459201, +420 242459292 during cross section of Suweco's and NTK's and/or Participating Institutions' regular business hours, Monday through Friday, for feedback, problem-solving, or general questions and will respond in a timely manner. If there is a change of a contact for support, the Suweco is obliged to notice NTK and Participating Institutions of such change. Change is effective by the delivery of the notice to the NTK and Participating Institutions.
10. Training. Suweco, upon agreement and in reasonable quantity will provide to NTK, Participating Institutions and Authorized Users appropriate on site or online training related to the use of the Materials and any Publishers software. Suweco also will provide additional training to NTK and Participating Institutions staff if made necessary by any updates or modifications to the Materials or any such software.
11. Updates. Suweco will provide regular system and project updates to NTK and Participating Institutions as they become available. No additional fee shall be charged for updates.
12. Quality of Service. Suweco shall use reasonable efforts to ensure that the Publisher's server or servers have sufficient capacity and rate of connectivity to provide the NTK, Participating Institutions and their Authorized Users with a quality of service comparable to current standards in the on-line information provision industry in the NTK's and Participating Institutions locale. Suweco shall ensure that the Publisher shall use reasonable efforts to provide continuous service seven (7) days a week with an average of 98% up-time per month. The 2% down-time includes periodic unavailability due to server maintenance; software installation or testing; loading or making available additional Materials as they become available; and unavailability because of service or equipment failure outside the control of Suweco (including problems with public or private telecommunications services, or Internet nodes or facilities). Suweco shall ensure that Publisher may schedule brief unavailability periods provided (1) and that Publisher will use commercially reasonable effort to give at least forty-eight (48) hour notice to NTK, and (2) in ways and at times that minimize inconvenience to NTK, Participating Institutions and its Authorized Users, regardless of when notice has been given.
13. Problems with Materials. If the Materials fail to operate, display, load, or render in conformance with the terms of this Agreement, NTK or Participating Institution shall immediately notify Suweco, and Suweco shall promptly use best efforts to restore access to the Materials as soon as possible. In the event that the non-conformity materially affects the NTK's, Participating Institutions' or Authorized Users' use of the Materials, and Suweco fails to repair the nonconformity within five (5) business days, Suweco shall reimburse NTK for such problems in an amount that is proportional to the Fees annually paid by NTK under this Agreement.
14. Transfer or Acquisition of Titles. If any portion of the Materials is transferred to or acquired from another party, Suweco shall ensure that the Publisher shall use best efforts to ensure that neither NTK nor the Participating Institutions lose access to

content subject to this Agreement as a result of the transfer or acquisition. Any archival and perpetual access rights that have been granted shall be honored, whether the Publisher is acting as the transferring or acquiring party. If the Publisher is transferring any portion of the Materials to another party, Suweco shall ensure that the Publisher will guarantee use the best efforts to assign all rights and obligations to the assignee. If Publisher is acquiring works that become subject to this Agreement, Suweco shall ensure that the Publisher will use best efforts to acquire the rights to perform under this Agreement, including but not limited to perpetual access rights. Suweco agrees use best efforts to communicate with the party from which it is acquiring works to exchange such relevant payment and rights information. For journal titles, Suweco ensure that the Publisher will comply with the NISO Transfer Code of Practice.<sup>1</sup>

15. Completeness of Content. Suweco will ensure that Publisher will inform NTK and/or Participating Institutions of instances where online content differs from print versions of the Materials. Where applicable, Suweco will cooperate with NTK to identify and correct content errors or omissions, and when necessary, Suweco will ensure that the Publisher shall use reasonable efforts to ensure that the online content: (1) is at least as complete as print and other physical format versions of the Materials; and (2) represents complete, accurate, and timely replications of the corresponding content contained within the print and other physical format versions of such Materials.
16. In order to facilitate the assessment of completeness of content, Suweco will provide upon request of NTK a report of the content in the Materials at the title, issue, chapter, or item level. Suweco will disclose to NTK content known or found to be missing from the Materials, including but not limited to images, pages, issues, and chapters.
17. If online content is a digitized version of print content and differs from the print or other physical format versions of Materials so as to be substantially less useful to the NTK, the Participating Institutions or their Authorized Users, the NTK may seek to terminate this Agreement for breach pursuant to the termination provisions of this Agreement in Section XI, below.
18. Notification of Modifications of Materials. From time to time Publisher may add, change, or modify portions of the Materials, or migrate the Materials to other formats. When such changes, modifications, or migrations occur, Suweco shall give notice of any such changes to NTK as soon as is practicable, but in no event less than sixty (60) days in advance of modification. Such a notice may also be given directly by the Publisher to the NTK. If any of the changes, modifications, or migrations renders the Materials substantially less useful to the NTK, the Participating Institutions or their Authorized Users, the NTK may seek to terminate this Agreement for breach pursuant to the termination provisions of this Agreement in Section XI, below.
19. Withdrawal of Materials. Publisher reserves the right to withdraw from the Materials any item or part of an item for which it no longer retains the right to publish, or which it has reasonable grounds to believe infringes copyright or is defamatory, obscene, unlawful, or otherwise objectionable. Suweco shall give written notice of the withdrawal to the NTK as soon as is practicable, but in no event less than thirty (30) days in advance of withdrawal, specifying the item or items to be withdrawn. Such a notice may also be given directly by the Publisher to the NTK.

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<sup>1</sup><http://www.niso.org/workrooms/transfer/>



20. If any such withdrawal renders the Materials less useful to NTK, the Participating Institutions or their Authorized Users, Suweco shall reimburse NTK for the withdrawal in an amount proportional to the total Fees owed by NTK for the Materials under this Agreement. If any such withdrawal renders the Materials substantially less useful to NTK, the Participating Institutions or their Authorized Users, NTK may seek to terminate this Agreement for breach pursuant to the termination provisions in Section XI, below.
21. Itemized Holdings/Title List. Suweco will provide to the NTK, prior to the beginning of the calendar year within the current itemized holdings report that specifies the titles included in the Materials for the next subscription term. Suweco will use reasonable efforts to update itemized holdings reports as soon as is practicable when holdings information changes, and will provide this information to Discovery Service Systems in a timely manner and to NTK on request. If the Materials include content covered by the NISO Knowledge Bases And Related Tools (KBART) Recommended Practice,<sup>2</sup> Suweco will provide itemized holdings lists for the Materials in KBART-compliant format, including a column/field for dates (YYYY-MM) of additions.
22. Usage Statistics. Suweco shall use reasonable effort to convince Publisher to provide both composite system-wide use data and itemized data for NTK, Participating Institutions, individual campuses and labs, on a monthly basis. Statistics shall meet or exceed the most recent project Counting Online Usage of NeTworked Electronic Resources (COUNTER) Code of Practice Release,<sup>3</sup> including but not limited to its provisions on customer confidentiality. When a release of a new COUNTER Codes of Practice is issued, Suweco shall use reasonable effort to convince Publisher to comply with the implementation time frame specified by COUNTER to provide use statistics in the new standard format. It is more than desirable that the Standardized Usage Statistics Harvesting Initiative (SUSHI) Protocol<sup>4</sup> is available for the NTK to harvest the statistics.
23. Suweco shall not provide NTK's usage statistics in any form to any third party without the NTK's written authorization, unless the third party owns rights in the Materials. Suweco shall not provide usage statistics of any Participating Institution in any form to any third party with the exception of the NTK without the Participating Institution's written authorization, unless the third party owns rights in the Materials. In all cases, the disclosure of such data shall fully protect the anonymity of individual users and the confidentiality of their searches, and will comply with all applicable privacy laws. Suweco shall not disclose or sell to other parties usage data or information about the NTK, any Participating Institution or their Authorized Users without the NTK's and/or Participating Institution's written permission or as required by law.
24. Confidentiality of Personally Identifiable Information. Suweco agrees and is obliged to ensure that Publisher will agree that no personally identifiable information, including but not limited to log-ins recorded in system logs, IP addresses of patrons accessing the system, saved searches, any identification data, usernames and passwords, will be shared with third parties, except in response to a court order, or other legal requirement. If Suweco is compelled by law or court order to disclose personally

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<sup>2</sup><http://www.niso.org/workrooms/kbart>

<sup>3</sup>[http://www.projectcounter.org/code\\_practice.html](http://www.projectcounter.org/code_practice.html)

<sup>4</sup> <http://www.niso.org/workrooms/sushi/>

identifiable information of Authorized Users of patterns of use, Suweco shall provide the NTK with adequate prior written notice as soon as is practicable, so that NTK, Participating Institution or Authorized Users may seek protective orders or other remedies. Suweco will notify NTK and Authorized Users as soon as is practicable if Suweco's systems are breached and the confidentiality of personally identifiable information is compromised.

25. Notice of the Use of Digital Rights Management Technology. In the event that Publisher utilizes or implements any type of digital rights management (DRM) technology to control the access to or usage of the Materials, Suweco will provide to NTK a description of the technical specifications of the DRM and how it impacts access to or usage of the Materials. In no event may such Digital Rights Management Technology be used in such a way as to limit the usage rights of a NTK or any Authorized User as specified in this Agreement or under applicable law. If the use of DRM renders the Materials substantially less useful to the NTK, the Participating Institutions or their Authorized Users, the NTK may seek to terminate this Agreement for breach pursuant to the termination provisions of this Agreement in Section XI, below.
26. Use of Digital Watermarking Technology. In the event that Publisher utilizes any type of watermarking technology for any element of the Materials, Suweco is obliged to ensure that Publisher agrees that watermarks will not reduce readability of content and will not degrade image quality. These watermarks shall not contain user-related information, including but not limited to an account number, IP address, and usernames. If digital watermarking technology is implemented, Suweco will notify NTK at least thirty (30) days in advance of implementation, and Suweco will provide the technical specifications for the technology used. If the use of the watermarking technology renders the Materials substantially less useful to the NTK, the Participating Institutions or their Authorized Users, the NTK may seek to terminate this Agreement for breach pursuant to the termination provisions of this Agreement in Section XI, below.
27. Interoperability with Prevailing Web Browsers. Suweco will use reasonable efforts to ensure that the Materials are accessible and interoperable with prevailing web browsers and internet access tools, including, at a minimum, the most recent two major versions (current version and one version prior) and all the associated releases for those versions.
28. Branding. If reasonable possible, Suweco is obliged to ensure that the Publisher will provide NTK and the Participating Institutions the option to brand the Publisher's Platform with the name of the NTK and/or Participating Institutions Sites at NTK's discretion.
29. MARC Records. When applicable to the Materials, at NTK's request, Suweco shall provide full OCLC-quality batched sets of MARC records incorporating NTK specifications at no additional cost by the date of the execution of this Agreement. Updates to existing records and new title records, matching the schedule of release and delivery of new publications, will be provided on a mutually agreed-upon schedule and in a format that renders them useful to the NTK and/or the Participating Institutions.
30. Open Access Option. Suweco undertakes to keep NTK informed of any alternative business models during the Term, including but not limited to models taking into account both journal subscriptions and Article Processing Charges for Open Access publishing in so-called hybrid journals. Should NTK agree to switch to any such alternative business model, the parties will formalize the new business model in a separate agreement signed

by both parties.

31. In the event that the Czech Republic or European Union implements an Open Access policy during the term of this Agreement, the parties will, at the request of the NTK, renegotiate the terms of this Agreement in accordance with this policy.

## VIII. NTK Performance Obligations

1. Terms Notification. NTK shall secure that Participating Institutions will use reasonable efforts to provide Authorized Users with appropriate notice of the terms and conditions under which access to the Materials is granted under this Agreement.
2. Protection from Unauthorized Use. NTK shall secure that Participating Institutions will use reasonable efforts to restrict access to the Materials to Authorized Users.
3. Maintaining Confidentiality of Access Passwords. Where access to the materials is to be controlled by use of passwords, NTK shall secure that Participating Institutions will use reasonable efforts to inform Authorized Users that they should not divulge their numbers and passwords to any third party. NTK shall secure that Participating Institutions will also use reasonable efforts to maintain the confidentiality of any institutional passwords provided by Suweco.
4. The NTK undertakes to ensure and guarantee that Participating institutions shall comply with the terms of this Agreement and shall use the Materials in accordance with the terms set out in this Agreement and shall observe their duties set out in this Agreement. The NTK undertakes to ensure that the Participating institutions shall secure following the terms by the end/Authorized Users.

## IX. Term

1. This Agreement shall come into force and effect on the date on which all Parties execute this Agreement (the "Effective Date").
2. This Agreement shall be in effect from the Effective Date through the expiration date as set out in Appendix A unless terminated earlier in accordance with the provisions in Section XI.

## X. Renewal

1. This Agreement shall be renewable at the end of the current term for a successive two (2) years term unless either party gives written notice of its intention to cancel ninety(90) days before expiration of the current term. Suweco shall provide NTK with renewal quotes of all Materials and for all Participating Institutions no less than ninety (90) days prior to the end of the current term (31.12.2020).

## XI. Early Termination

1. Early Termination for Financial Hardship. The NTK may terminate this Agreement without penalty after 31 December 2020 if sufficient content acquisitions funds are not allocated to enable the NTK and/or Participating Institutions, in the exercise of its

reasonable administrative discretion, to continue this Agreement. In the event of such financial circumstances, NTK will notify Suweco of the intent to terminate the Agreement as soon as is reasonably possible, but in any case, no less than thirty (30) days prior to next payment date, and this transaction shall terminate on the last day of the subscription period for which payment has been made without penalty of expense to the NTK of any kind whatsoever, except as to the portions of payments herein agreed for which funds shall have been appropriated and budgeted or otherwise available. In the event of such termination the NTK and Participating Institutions shall maintain its perpetual right to materials licensed under the subscription periods for which it has fully paid, subject to Section XII.

2. Termination for Breach. If either party believes that the other has materially breached any obligations under this Agreement, such party shall so notify the breaching party in writing with a detailed description of the breach. The breaching party shall have thirty (30) days from the receipt of notice to use all reasonable means to cure the alleged breach and to notify the non-breaching party in writing that cure has been effected. If the breach is not cured within the thirty (30) day period, the non-breaching party shall have the right to terminate the Agreement without further notice. Termination is effective by the date of delivery such a notice.
3. Termination of access. Once this Agreement ends, by early termination or otherwise, Suweco may terminate access to the Materials by NTK, Participating Institutions and Authorized users, subject to Section XII, below. In addition, authorized copies of Materials made by Authorized Users may be retained for educational purposes and used subject to the terms of this Agreement.
4. Refunds. In the event of early termination permitted by this Agreement, except for termination for a material breach by the NTK, NTK shall be entitled to a refund of any fees or pro-rata portion thereof paid by NTK for any remaining period of the Agreement from the date of termination.

## XII. Perpetual Rights

1. Perpetual Use. Notwithstanding anything else in the Agreement, Suweco grants to NTK and Participating Institutions a nonexclusive, royalty-free, system-wide perpetual right limited to the territory of Czech Republic to use any Materials that were subscribed to or for which a perpetual usage Fee has been paid during the term of this Agreement. Such use shall be in accordance with the provisions of this Agreement, which provisions shall survive any termination of this Agreement. The means by which NTK and/or Participating Institutions shall have access to such Materials shall be in a manner and form substantially equivalent to the means by which access is provided under this Agreement. If the Suweco's means of access is not available, the NTK and/or Participating Institutions may provide substantially equivalent access to the Materials by use of an archival copy or by engaging the services of third-party trusted archives (such as Portico) and/or participating in collaborative archiving endeavors to exercise its perpetual use rights.

*Note: This paragraph applies only to the Materials which are perpetual, so it is obligatory only for e-journals and e-books with permanent right to access and use- in contrast to factual, citation or similar databases and e-resources.*

2. Archival Copy. Suweco shall provide to NTK upon request, or NTK may create, one (1) copy of the entire set of Materials to be maintained as an archival copy. The archival copy from the Publisher shall be provided without any DRM in a mutually agreeable medium suitable to the content, and any fees for provision of copies will be on a time and materials basis only.
3. In the event the Suweco or Publisher discontinues or suspends selling or licensing the Materials, the NTK and Participating Institutions may use such archived Materials under the same terms as defined by this Agreement. If NTK has a backup copy of the Materials as defined in Section IV, the backup copy may be used as an archival copy.
4. Third Party Archiving Services. Suweco and NTK acknowledge that either party may engage the services of third-party trusted archives and/or participate in collaborative archiving endeavors to exercise NTK's rights under this section of the Agreement. Suweco agrees to cooperate with such archiving entities and/or initiatives as reasonably necessary to make the Materials available for archiving purposes. NTK and/or Participating Institutions may perpetually use a third-party trusted system or collaborative archive to access or store the Materials, so long as NTK's and Participating Institutions' use is under the same terms as this Agreement.
5. In the event the Suweco discontinues or changes the terms of its participation in a third-party archiving service, Suweco shall notify the NTK in advance, and shall in good faith seek to establish alternative arrangements for trusted archiving and perpetual access to the Materials.

### XIII. Warranties

1. Suweco warrants that it has all necessary legal and equitable rights, permissions, and clearances to provide the right to access and use the Materials to the NTK and the Participating Institutions for the purposes and terms outlined in this Agreement, and that use of the Materials by Authorized Users in accordance with the terms of this Agreement shall not infringe the copyright or other rights of any third party. Suweco warrants that is authorized to fulfil any of his obligations set out in this Agreement and that this is ensured in the contract concluded with the Publisher.
2. Accessibility Requirements. Suweco warrants that the Materials comply with Publishers country of origin laws and regulations, and conform to the accessibility requirements of Web Accessibility Initiative, Web Content Accessibility Guidelines (WCAG) 2.0 at level AA or Rules of accessible web creation<sup>5</sup> based on Czech Republic Act. 365/2000 Coll. and Act. 81/2006 Coll. Suweco agrees to promptly respond to and resolve any complaint regarding accessibility of Materials.<sup>6</sup>

### XIV. Limitations on Warranties

1. Notwithstanding anything else in this Agreement, neither party shall be liable for any indirect, special, incidental, punitive or consequential damages, including but not limited to loss of data, business interruption, or loss of profits, that arises from the use of the Materials, or the inability (means incompetence, not the possibility, availability to

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<sup>5</sup> <http://www.pravidla-pristupnosti.cz>

<sup>6</sup> <http://www.w3.org/WAI/guid-tech.html>

use materials)to use the Materials.

2. Suweco makes no representation or warranty, and expressly disclaims any liability with respect to the content of any Materials, including but not limited to errors or omissions contained therein, libel, infringement of rights of publicity, privacy, trademark rights, moral rights, or the disclosure of confidential information.
3. Except for the express warranties stated elsewhere in this Agreement, Suweco disclaims any and all other warranties, conditions, or representations (express, implied, oral or written), relating to the Materials or any part thereof, including, without limitation, any and all implied warranties of quality, performance, merchantability, or fitness for a particular purpose.

## XV. Indemnities

1. Suweco shall indemnify and hold harmless the NTK, the Participating Institutions and Authorized Users for any losses, claims, damages, awards, penalties, or injuries incurred, including reasonable attorney's fees, that arise from any third party claim that alleges copyright infringement or other intellectual property infringement arising from the use of the Materials by the NTK or any Participating Institution or any Authorized User. NO LIMITATION OF LIABILITY SET FORTH ELSEWHERE IN THIS AGREEMENT IS APPLICABLE TO THIS INDEMNIFICATION. This Section XV shall survive the termination of this Agreement.

## XVI. Assignment and Transfer

1. Neither party may assign, directly nor indirectly, all or part of its rights or obligations under this Agreement without the prior written consent of the other party, except as otherwise provided in Section VII. Neither party to this Agreement may unreasonably withhold or delay such written consent.

## XVII. Governing Law

1. This Agreement shall be interpreted and construed according to, and governed by, the laws of the Czech Republic, in particular by Act No. 89/2012 Coll., the Civil Code, as amended, excluding any such laws that might direct the application of the laws of another jurisdiction.

## XVIII. Dispute Resolution & Venue

1. In the event of any dispute or controversy arising out of or relating to this Agreement, the parties agree to exercise good faith efforts to resolve the dispute as soon as possible. In the event that the parties cannot, by exercise of their good faith efforts, resolve the dispute, they shall submit the dispute to informal mediation, as further described below in this paragraph. The parties shall continue to perform their respective obligations under this Agreement that are not affected by the dispute. The party invoking mediation shall give to the other party written notice of its decision to seek informal mediation, and the notice must include a description of the issues subject to the dispute and a proposed resolution thereof. Designated representatives of both parties shall attempt to resolve the dispute within five (5) working days after such notice. If those designated representatives cannot resolve the dispute, the parties shall

meet at a mutually agreeable location and describe the dispute and their respective proposals for resolution to responsible executives of the disputing parties, who shall act in good faith to resolve the dispute.

2. If the dispute is not resolved within thirty (30) calendar days of the meeting among the parties' executives, either party may pursue a legal action in court. The exclusive jurisdiction and venue for any and all actions arising out of or brought under the Agreement is in a state court of competent jurisdiction, situated in Prague, Czech Republic. During such court action, the parties shall continue to perform their respective obligations under this Agreement that are not affected by the dispute.

## **XIX. Force Majeure**

1. Neither party shall be liable in damages or have the right to terminate this Agreement for any delay or default in performing hereunder if such delay or default is caused by conditions beyond its control including, but not limited to Acts of Nature, Government restrictions (including the denial or cancellation of any export or other necessary license), wars, insurrections, labor strikes or other work stoppages, and/or any other cause beyond the reasonable control of the party whose performance is affected. Upon the occurrence of an event of force majeure, the party affected shall promptly notify the other in writing setting forth the details of the occurrence, its expected duration and how that party's performance may be affected. The affected party shall resume the performance of its obligations as soon as practicable after the force majeure event ceases.

## **XX. Entire Agreement**

1. This Agreement constitutes the entire agreement of the parties and supersedes all prior communications, understandings, and agreements relating to the subject matter hereof, whether oral or written. For the avoidance of doubt, online terms and conditions as defined in Section VII shall not modify the terms of this Agreement.

## **XXI. Applicable provisions of the Agreement**

1. The Articles set out in this Agreement are applicable as a whole to the all Materials listed in the Appendix B, unless the Appendix D (Cards of the Materials) set out otherwise. In the Appendix D the exceptions to the conditions of this Agreement in relation to the respective Materials (Card of the Material) are stated. The provisions of Appendix D of this Agreement are prior to the provisions of this Agreement. If the Appendix D stated otherwise, the wording of Appendix D prevails.

## **XXII. Amendment**

1. No modification or claimed waiver of any provision of this Agreement shall be valid except by written amendment signed by authorized representatives of Suweco and NTK.

## **XXIII. Severability**

1. If any provision or provisions of this Agreement shall be held to be invalid, illegal, unenforceable or in conflict with the law, the validity, legality, and enforceability of the remaining provisions shall not in any way be affected or impaired thereby. The

contracting parties shall replace the invalid, illegal or unenforceable provision by a new provision, the wording of which shall correspond to the intent embodied by the original provision and this Agreement as a whole.

#### XXIV. Waiver of Contractual Right

1. Waiver of any provision herein shall not be deemed a waiver of any other provision herein, nor shall waiver of any breach of this Agreement be construed as a continuing waiver of other breaches of the same or other provisions of this Agreement.

#### XXV. Notices

1. All notifications, invitations, information, legal acts and other communications (“Notices”) made in the matters of and under this Agreement must be made in writing, the written form being retained if Notices are delivered by e-mail or fax..
2. Notices regarding the extent and manner of performance under this Agreement, damages, penalties, debts, contacts and this Agreement as such (for example the notification about breach, termination) must be delivered in person, by registered post or courier service. Notices delivered personally or by courier service shall be deemed received at the time of receipt or refusal of their receipt. Notices served by registered mail will be deemed delivered on the fifth (5th) business day following their proven posting.
3. Either party may from time to time change its Notice Address by written notice to the other party. Such change is effective from a delivery of such notice.

##### **If to Suweco:**

Licensing contact:  
Suweco CZ, s.r.o.  
Address: Sestupna 153/11  
Praha 6  
Czech Republic  
Postal Code 162 00  
Email: obchod@suweco.cz

##### **If to NTK:**

Licensing contact:  
Head of Licensing Unit  
CzechELib  
National Library of Technology  
Technická 6,  
160 80 Praha 6 - Dejvice  
Czech Republic  
Email: licensing@czechelib.cz



## XXVI. Audit rights

1. Suweco is obliged to stand still any control of a respective authority and to cooperate with any auditing/controlling body authorized to carry out audit in compliance with the rules and regulations of Czech Republic and mandatory rules of EU/EC regarding to the financial control especially regarding to the grants as well as to cooperate with persons authorized to execute the audit/control by such auditing bodies. Suweco shall not be entitled to any remuneration, compensation nor any other benefit for providing cooperation as described above.
2. Disallowance of the audit/control or a failure to provide cooperation as described in Article 1 shall be deemed as a serious breach of this Agreement.
3. Suweco is obliged to fully compensate any damages that should arise as a result of the conduct described in Article 2. Obligations described in Article 1 are imposed upon Suweco regardless the termination of this Agreement.

## XXVII. Execution

1. This Agreement is compiled in three counterparts in the English language, each of which has the power of an original. Suweco shall receive one counterpart and NTK shall receive two counterparts.
2. The parties agree that electronically signed versions of this originally executed Agreement are acceptable in lieu of printed signed copies and are to be given full force and effect under law.

**IN WITNESS WHEREOF**, the parties have executed this Agreement by their respective, duly authorized representatives as of the date first above written.

**SUWECO:**

BY: \_\_\_\_\_

Signature of Authorized Signatory of Suweco

DATE: \_\_\_\_\_

Nina Suskevicova

Director

E-mail: suskevicova@suweco.cz

**NTK:**

BY: \_\_\_\_\_

Signature of Authorized Signatory of NTK

DATE: \_\_\_\_\_

Ing. Martin Svoboda

Director of CzechELib

National Library of Technology

Technická 6

160 80 Praha 6 - Dejvice

Czech Republic

## Appendix A: Business Terms

### Materials:

- Name: **Publisher** American Association for Cancer Research
- Product Name: AACR Journals - 8 titles published by the American Association for Cancer Research
- Number of the ejournals: 8

Cancer Discovery  
Cancer Epidemiology, Prevention & Biomarkers  
Cancer Immunology Research  
Cancer Prevention Research  
Cancer Research  
Clinical Cancer Research  
Molecular Cancer Research  
Molecular Cancer Therapeutics

- Dates covered: 2018 onwards

- Materials Description:

The AACR is the authoritative source of information about advances in the causes, diagnosis, treatment and prevention of cancer. By accelerating the growth and spread of new knowledge about cancer, the AACR is on the front lines of the quest for prevention and cure.

The AACR was founded in 1907 by a group of 11 physicians and scientists interested in research, "to further the investigation and spread the knowledge of cancer." Today, the AACR accelerates progress toward the prevention and cure of cancer by promoting research, education, communication, and collaboration.

- **Agreement Term:** Effective date until 31st of December 2020 + optionally 1<sup>st</sup> of January 2021 until 31<sup>st</sup> of December 2022
- **Access Conditions:** Unlimited simultaneous user system wide access or perpetual access where applicable
- **Authentication:** IP authentication (See Appendix C for IP addresses)

### Fees and Negotiated Discounts:

Total Fee for 2018 - 2022 years, 101 400 USD excl.VAT

- Fee 2018 year: 18 720 USD, excl.VAT
- Fee 2019 year: 19 472 USD, excl.VAT
- Fee 2020 year: 20 248 USD, excl.VAT
- Fee 2021 year: 21 060 USD, excl.VAT
- Fee 2022 year: 21 900 USD, excl.VAT

## Price Caps: 4%

### Payment Terms:

1. The price for the Materials shall be paid on the Suweco's bank account as specified on the Suweco's invoices.
2. The price for the Materials shall be paid annually for each commenced calendar year of the duration of the Agreement in the amount set forth therein. The parties expressly state that the price for the year 2018 shall be paid in the whole amount, regardless of the beginning of the Agreements' effectiveness.
3. All the prices under this Agreement are set forth as final, unchangeable and maximum allowable.
4. The value added tax shall be added to all the prices under this Agreement in the value prescribed by the law.
5. The price for each commenced calendar year of the duration of the Agreement shall be paid in two part payments with the following maturity:
  - Max 50% on 15 March of the given year for which the Materials are paid with the exception of the first year of the Agreement, where it is 10 business days following after the Effective date (maturity of the first part payment);
  - Max 50% on 30 April of the given year for which the Materials are paid with the exception of the first year of the Agreement, where it is 35 business days after the Effective date (maturity of the second part payment);
  - The above mentioned maturities are applicable only if the invoice (all the invoices) is delivered to the NTK up to 15 days before the stated maturity of the first part payment, i.e. until the end of February of the given year with the exception of the first year of the Agreement, where it is up to 10 days before the stated maturity of the first part payment;
  - If the invoice is delivered later, at latest by the 15 days prior to the due date of the second part payment, i.e. in the term beginning from 1 March to 15 April of the given year, the due date of the first part payment shall be within 15 days from the date of the provable invoice delivery. The maturity of the second part payment remains unaffected;
  - If the invoice is delivered later, the due date of both part payments shall be within 15 days of the provable invoice delivery date with the exception of the first year of the Agreement, where it shall be within 10 days of the provable invoice delivery date.
6. The invoice shall be issued in the currency specified in the Agreement. In the event that there are multiple currencies specified in the Agreement for each Materials, Suweco shall issue at least the number of invoices corresponding to the number of currencies. The foreign currency on the invoice(s) shall also be converted into Czech crowns according to the Czech National Bank exchange rate ([www.cnb.cz](http://www.cnb.cz)) on the date of the taxable transaction.
7. Invoice - the tax document shall contain all the requisites of the tax document. The invoice shall contain all the requisites set forth in the Act No. 89/2012 Coll., The Civil Code, as amended and Act No. 235/2004 Coll., VAT Act, as amended. The invoice shall be delivered to the NTK either originally or electronically to the e-mail address [faktury@techlib.cz](mailto:faktury@techlib.cz). The invoice shall include summary of all the Materials pursuant to the Agreement. The invoice shall also be labeled „IPS CzechElib, reg. no. CZ.02.1.01/0.0/0.0/16\_040/0003542”.
8. If the invoice does not contain the requisites set forth in this Agreement or these are incorrect or incomplete, the NTK is entitled to return such invoice to Suweco for completion/correction. In such case, the term of payment shall be interrupted and the

- new term of payment shall run from the provable invoice delivery date to the NTK and pursuant to the rules set forth above. The procedure under the previous sentence may also be repeated. Denial of monetary performance and the related return of an invoice in accordance with this paragraph do not constitute a default in the payment by the NTK.
9. Fulfillment of any financial obligation associated with performance under this Agreement shall be understood as the moment of debiting the full amount from the bank account of the other party.
  10. Suweco is not entitled to require any advance payments under this Agreement.
  11. Suweco declares that is a VAT payer and that is not an unreliable VAT payer within the meaning of the Section 106a of the VAT Act. In the event that the tax administrator starts a procedure that Suweco is an unreliable VAT payer, Suweco undertakes to notify such fact to the NTK in writing without undue delay.
  12. Suweco further declares that he fulfills all the conditions set forth in the Section 109 of the VAT Act, i.e. that he has not breached any obligation under the VAT Act which could lead to the liability of the NTK for the unpaid tax under the Section 109 of the VAT Act. Suweco undertakes that if there is a threat or even a breach of any Suweco's obligation that could lead to the liability of Suweco for an unpaid tax, he shall notify such fact in writing to the NTK without undue delay.
  13. Any payments made under this Agreement in favor of Suweco shall be made to the Suweco's bank account, which is registered with the tax authority within the meaning of the Section 109 of the VAT Act, which Suweco confirms. In the event that Suweco becomes an unreliable VAT payer under the preceding paragraphs or there is a threat that Suweco becoming an unreliable VAT payer under the preceding paragraphs, or the Suweco's account shall not be registered with the tax administrator, Suweco expressly agrees that the VAT from the price under this Agreement shall be paid directly to the tax administrator's account in accordance with the binding legislation.
  14. Suweco takes on the risk of a change in circumstances under the Section 1765 (1) of the Act No. 89/2012 Coll., The Civil Code, as amended.

#### **Add-on Products and Negotiated Discounts:**

American Association for Cancer Research

**Deeply Discounted Print (DDP) Titles:** Print subscriptions shall be optionally available to Participating Institution's at the following rates:

- Subscribed Titles: -
- Unsubscribed Titles:-

**APC Discounts:** NTK's and Participating Institution's authors shall be eligible for the following discounts on open access Article Processing Charges (APC) during the term of the Agreement:

- Eligibility: APC discounts shall be available in cases where a NTK's and Participating Institution's author is the lead or corresponding author.
- Process:
- Discounts:
- Reporting: Suweco will report both OA authorship data, APC payments and discounts annually to NTK.

## Appendix B: Participating Institutions & Fees

This Appendix contains business secrets pursuant to the provisions of Section 504 of Act No. 89/2012 Coll., the Civil Code, not disclosed in the register of contracts in accordance with provisions of Section 3, Paragraph 1 of Act No. 340/2015 Coll.

Institute of Biotechnology CAS, v. v. i.  
Masaryk Memorial Cancer Institute  
Charles University  
Institute of Organic Chemistry and Biochemistry of the CAS

### Individual prices in USD without VAT

Institution	2018	2019	2020	2021	2022
Institute of Biotechnology CAS, v.v.i.					
Masaryk Memorial Cancer Institute					
Charles University					
Institute of Organic Chemistry and Biochemistry of the CAS					

## Appendix C: IP Addresses

Institution	IP range
Institute of Biotechnology CAS, v. v. i.	147.231.236.8 147.231.236.9 147.231.236.7 147.231.236.10
Masaryk Memorial Cancer Institute	195.113.164.0/25 (= 195.113.164.0-195.113.164.127)
Charles University	78.128.160.0 - 78.128. 209.127 78.128.214.66 - 78.128.214.67 193.84.55.0 - 193.84.63.255 195.113.0.0 - 195.113.66.255 195.113.89.0 - 195.113.93.255 195.113.114.0 - 195.113.117.255 195.113.130.0 - 195.113.131.255 195.113.149.132 - 195.113.149.135 195.113.149.176 - 195.113.149.183 195.113.187.248 - 195.113.187.251 195.113.189.0 - 195.113.189.255 195.113.223.0 - 195.113.223.255 195.113.229.0 - 195.113.229.255 195.113.236.0 - 195.113.236.255 195.113.245.0 - 195.113.245.255
Institute of Organic Chemistry and Biochemistry of the CAS	147.231.18.232-147.231.18.239 147.231.120.0-147.231.123.255 147.231.128.0-147.231.129.255

## Appendix D: Cards of the Materials

Name of the Material: AACR

Publisher of the Material: AACR

Exceptions to the content of the Agreement:

A) The contracting parties explicitly exclude the application of the following provisions of the Agreement with the regard to the AACR Products

Art. II.1.1 Network Access - excluded

Art. VII.15. Completeness of Content - excluded

Art. VII.16. - excluded

Art. VII.17. - excluded

Art. VII.18. Notification of Modifications of Materials - excluded

Art. VII.25. Notice of the Use of Digital Rights Management Technology - excluded

Art. VII.26. Use of Digital Watermarking Technology - excluded

Art. VII.29. MARC Records- excluded

Art. VIII.3. Maintaining Confidentiality of Access Passwords - excluded

B) New or amended provisions applicable between the parties with the regard to the AACR:

Art I. 1.1

Statement. Suweco hereby guarantees that it has all the authority and competence to grant the right to access and use the Materials to the NTK as defined in this Agreement.

is replaced by the text:

Statement. Suweco hereby guarantees that it has all the authority and competence to grant the right to access and use the Materials to the NTK and Participation Institutions as defined in this Agreement. NTK shall be responsible for compliance with all terms and conditions of this Agreement by all Participating Institutions and by all Authorized Users (as shall be further defined herein this Agreement) and guarantees that it has right to do so. NTK represents and warrants that it has the right to enter into this Agreement on behalf of each and every one of the Participating Institutions. NTK on its behalf and on behalf of each and every one of the Participating Institutions agree that Suweco is to sign necessary license agreement with the Publisher.

Art I.4.

Grant of Right to Access and Use. Suweco hereby grants to NTK a non-exclusive, system-wide perpetual right to access and use Materials limited to the territory of Czech Republic. The NTK is entitled to grant the right to access and use to Participating Institutions. Suweco entitles NTK to access and use the Materials, and to provide the Materials to Authorized Users (which are defined in Section IV below) of the Participating Institutions (which are listed in the Appendix B) in accordance with the terms of this Agreement.

is replaced by the text:

Grant of Right to Access and Use. Suweco hereby grants to NTK a non-exclusive, non transferable to the third parties, system-wide permission to access and use Materials limited to the territory of Czech Republic. The NTK is entitled to grant the permission to access and use to Participating Institutions. Suweco entitles NTK to access and use the Materials, and to provide the Materials to Authorized Users (which are defined in Section IV below) of the Participating Institutions (which are listed in the Appendix B) in accordance with the terms of this Agreement

Art II. NTK is withdrawn from whole text.

Art II. 1.1

Network Access. The Materials will be stored at one or more Publisher´s locations in digital form accessible by telecommunication links between such locations and authorized locations of NTK and Participating institutions.

is replaced by the text:

Network Access. The Materials will be stored at one or more Publisher´s or third`s parties locations in digital form accessible by telecommunication links between such locations and authorized locations of NTK and Participating institutions.

Art III.2.

Incomplete Payment. The NTK may cover the invoice partially if a Participating Institution did not provide its financial contribution in time. In the event of such incomplete payment, NTK will notify Suweco of the intended difference no less than ten (10) days prior to the due date. Suweco may suspend the IP addresses of such Participating institution until the Fee is completely paid. In such case NTK is not in delay with the payment.

is replaced by the text:

Incomplete Payment. The NTK may cover the invoice partially if a Participating Institution did not provide its financial contribution in time. In the event of such incomplete payment, NTK will notify Suweco of the intended difference no less than ten (10) days prior to the due date. Suweco may suspend the IP addresses of such Participating institution until the Fee is completely paid.

Art III.3.

Changes of number of Participating Institutions listed in Appendix B. In case any Participating institution shall lose its status as Participating Institution or in case any new scientific (or similar) institution shall reveal its intent to become a Participating Institution Suweco shall enter



into negotiation with NTK to amend this Agreement and to renegotiate the amount of Fees.

is replaced by the text:

Changes of number of Participating Institutions listed in Appendix B. In case any Participating institution shall lose its status as Participating Institution or in case any new scientific (or similar) institution shall reveal its intent to become a Participating Institution, Suweco shall enter into negotiation, at the end of the subscription year, with NTK to amend this Agreement and to renegotiate the amount of Fees.

Art. IV.1.1 -3.15.

**Authorized Users.** "Authorized Users" are:

Persons Affiliated with the NTK and the Participating Institutions. Full and part time employees and self-employed persons (including faculty, staff,) of NTK and Participating Institutions and students of NTK and Participating Institutions, and registered users in case of public or research libraries, regardless of the physical location of such persons. For authorized sites of the NTK and the Participating Institutions, see Appendix B.

Walk-ins. Patrons not affiliated with NTK and/or the Participating Institutions who are physically present at NTK's and/or the Participating Institutions' site(s) ("walk-ins").

**Access by and Authentication of Authorized Users.** Authorized Users of the NTK and the Participating Institutions shall be granted access to the Materials pursuant to the following:

IP Addresses. Authorized Users shall be identified and authenticated by the use of Internet Protocol ("IP") addresses provided by NTK to Suweco. The use of proxy servers is authorized as long as any proxy server IP addresses provided limit remote or off-campus access to Authorized Users. Authorized IP Addresses are listed in Appendix C. An updated list will be sent to Suweco on an annual or as needed basis. NTK and Suweco shall cooperate in the implementation of new authentication protocols and procedures (such as Shibboleth) as they are developed during the term of this Agreement.

Suweco-Administered Authentication. Where Publisher provides alternative methods of access and authentication beyond the Participating Institution-administered methods described herein, e.g. by allowing users to establish a personal login from an on-campus IP address (thereby enabling access via username and password when logging in to a vendor website) or device authentication, which affiliates the device or application by use of a token, cookie, or vendor-managed proxy prefix, NTK nor any Participating institution will not be responsible nor liable for claims of breach or validity of such use.

**Authorized Uses.** NTK, Participating Institutions and Authorized Users may make all use of the Materials as is consistent with Czech Republic copyright law and with these licensing conditions. In addition, the Materials may be used for purposes of research, education or other non-commercial use as follows:

Display. NTK, Participating Institutions and Authorized Users shall have the right to electronically display the Materials.

Digital Copy. NTK, Participating Institutions and Authorized Users may download and digitally copy a reasonable portion of the Materials.

Print Copy. NTK, Participating Institutions and Authorized Users may print a reasonable portion of the Materials.

Recover Copying Costs. NTK and the Participating Institutions may charge a reasonable fee to cover costs of copying or printing portions of Materials for Authorized Users.

Archival/Backup Copy. Suweco shall provide to NTK upon request, or NTK may create, one (1) copy of the entire set of Materials to be maintained as a backup copy. In the event that the Agreement is terminated, or the Suweco no longer offers the Materials online, NTK and Participating Institutions may use the backup copy to exercise their rights under section XII, Perpetual Rights, of this Agreement.

Caching. NTK, the Participating Institutions and Authorized Users may make local digital copies of the Materials in order to ensure efficient use by Authorized Users by appropriate browser or other software. For the avoidance of doubt, the cached copy is not a derivative work.

Classroom Use. NTK, the Participating Institutions and Authorized Users may distribute single copies of individual articles or items of the Materials in print or electronic form to Authorized Users. For the avoidance of doubt, classroom handouts shall include the distribution of a copy for teaching purposes to all individual Authorized Users in a class at Authorized Sites (Appendix B).

Collections of Information. NTK, the Participating Institutions and Authorized Users shall be permitted to extract or use information contained in the Materials for educational, scientific, or research purposes, including extraction and manipulation of information for the purpose of illustration, explanation, example, comment, criticism, teaching, research, or analysis.

Course Packs (Print and Electronic). NTK, the Participating Institutions and Authorized Users may use a reasonable portion of the Materials in the preparation of Course Packs or other educational materials.

Course Reserves (Print and Electronic). NTK, the Participating Institutions and Authorized Users may use a reasonable portion of the Materials for use in connection with specific courses of instruction offered by the NTK and/or the Participating Institutions.

Electronic Links. NTK, the Participating Institutions and Authorized Users may provide hyperlinks from the NTK's, the Participating Institutions' and Authorized Users' web page(s) or web site(s) to individual units of content within the Materials.

Scholarly Sharing. On an ad hoc basis, Authorized Users may transmit to a third party in hard copy or electronically, minimal, insubstantial amounts of the Materials for personal use or scholarly, educational, or scientific research or professional use in the nature of collaboration, comment, or the scholarly exchange of ideas but in no case for resale or commercial purposes or in a manner that would substitute for direct access to the Materials via services offered by Suweco.

Text and Data Mining. Authorized Users may use the Materials to perform and engage in text and/or data mining activities for academic research, scholarship, and other educational purposes and may utilize and share the results of text and/or data mining in their scholarly work and make the results available for use by others, so long as the purpose is not to create a

product for use by third parties that would substitute for the Materials. Suweco will, upon receipt of written request, cooperate with NTK and Authorized Users as reasonably necessary in making the Materials available in a manner and form most useful to the Authorized User. Suweco shall provide to NTK, upon request, copies of the Materials for text and data mining purposes without any extra fees.

Interlibrary Loan. Using electronic, paper, or intermediated means, NTK and the Participating Institutions at their discretion may fulfill occasional requests from other institutions, a practice commonly called Interlibrary Loan ("ILL"). Suweco agrees that the electronic form of the Materials may be used as a source for the ILL whereby articles and/or chapters can be printed and these print copies can be delivered via postal mail, fax, or fax-based service to fulfill ILL requests from an academic, research or other non-commercial library. Requests received from for-profit companies may not be honored. ILL through secure electronic transmission, as demonstrated by the ARIEL, is permitted. Files transmitted in this manner must carry copyright notices and comply with copyright laws of Czech Republic.

Bibliographic Citations. NTK, the Participating Institutions and Authorized Users may use, with appropriate credit, figures, tables, and brief excerpts from the Materials in the Authorized User's own scientific, scholarly, and educational works. For the avoidance of doubt, NTK, the Participating Institutions and Authorized Users may use citation and abstract information in faculty profiling systems, in lists of publications on faculty and institutional web pages, and to create bibliographies, and store a single copy of an individual document being part of the Materials, including within secure personal bibliographic reference/citation management systems.

is replaced by the text:

**Materials:** One or more scholarly journals in electronic form that are owned and copyrighted by the Publisher, including ancillary materials owned by the Publisher and produced specifically to complement, supplement and support the Materials and that are distributed on the World Wide Web through HighWire Press at the order of the Publisher. The specific Materials covered by this Agreement are listed in Appendix A.

**Authorized Users:** Full-time and part-time employees, students, registered users, affiliated persons and staff of the Participating Institutions who have been given authorized access to the Secure Network of Participating Institutions, regardless of the physical location of such persons.

**Authorized Sites:** Only those sites listed in the Appendix B to this Agreement and that can be identified by the Internet Protocol (IP) addresses provided to the Publisher at the time of execution of this agreement.

**Commercial Use:** Use for the purposes of monetary reward (whether by or for the Participating Institutions or an Authorized User) by means of sales, resale, loan, transfer, hire or other form of exploitation of the materials.

**Course Packs:** A collection or compilation of printed materials assembled by members of staff of the Participating Institutions for use by students in a class for the purposes of instruction. The collections or compilation will be discarded at the completion of the semester of the course, whichever occurs first.

**Electronic Reserve:** Electronic copies of materials (journal articles) made and stored on the Secure Network by the Participating Institutions for use by students in connection with specific courses of instruction offered by Participating Institutions to its students.

**Secure Network:** A network that is only accessible site wide to Authorized Users approved by each Participating Institution and whose identities are authenticated at the time of login and whose conduct is subject to review and regulation by the Participating Institution. Such secure networks may include remote access and / or proxy servers maintained and controlled by the Participating Institutions.

**Copyright:** The Materials are owned by the Publisher and are protected by U.S. federal copyright and trademark laws and applicable international authorities. Each Participating Institution acknowledges that its use of or access to the Materials does not confer on it any ownership rights or other proprietary interest therein.

**Authorized Uses.** Participating Institutions, and Authorized Users may make all use of the Materials as is consistent with Czech Republic copyright law and with this licensing conditions.

The Participating Institutions may make the Materials available to Authorized Users only through a Secure Network.

Participating Institutions may provide single printed or electronic copies of single articles at the request of individual Authorized Users.

The Materials may be used for purposes of research, education, or other non-Commercial Use, including the following:

**Display:** The Participating Institutions and Authorized Users have the right to electronically display, the Materials with appropriate acknowledgment of the source, in connection with teaching, conference presentations, and lectures.

**Digitally Copy:** Authorized Users may download and digitally copy portions of the Materials for personal use only, except that downloading of entire issues of any of the Publisher journals is not permitted.

**Print Copy:** Authorized Users may print portions of the Materials for personal use only, except that printing of entire issues of any of the Publisher journals is not permitted.

**Course Packs and Electronic Reserve:** Each Participating Institution may incorporate parts of the Materials in printed Course Packs and Electronic Reserve collections for the use by Authorized Users in the course of instruction at the Participating Institution's institution, but not for Commercial Use. Each item shall carry appropriate acknowledgement of the source, listing title and author and the publisher. Copies of such items shall be deleted by Participating Institution when they are no longer used for such purpose.

**Scholarly Sharing:** Authorized Users may transmit to a third-party colleague in hard copy or electronically, minimal, insubstantial amounts of the Materials for personal use or scholarly, educational, or scientific research or professional use but in no case for Commercial Use. Systematic copying of any portion of the Materials is not permitted.

**Text and Data Mining:** Publisher allows the Authorized Users to download, extract and index

information from the Publisher's Content to which the Participating Institutions has access under this Agreement. Where required, mount, load and integrate the results on a server used for the Participating Institutions text mining system and evaluate and interpret the text and data mining output for access and use by Authorized Users and not for commercial use. The Participating Institutions shall ensure compliance with Publisher's usage policies, including security and technical access requirement.

Interlibrary Loan: The Participating Institutions may fulfill requests from other institutions for interlibrary loan in compliance with Copyright Regulations specific to their country. The Participating Institutions may fulfill occasional requests from another Library, within the same country, and from a non-Commercial library, for Interlibrary Loans by use of secure document delivery transmission software which allows the article to be deleted as soon as printed. The Participating Institutions may print articles from the Materials for an Interlibrary Loan and forward those as hard copies.

Authorized Users may transmit to a third-party colleague in hard copy or electronically, minimal, insubstantial amounts of the Materials for personal use or scholarly, educational, or scientific research or professional use but in no case for Commercial Use. In addition, Authorized Users have the right to use, with appropriate credit, figures, tables and brief excerpts from the Materials in the Authorized User's own scientific, scholarly and educational works.

Art.IV.5. the added text:

Notwithstanding anything to the contrary, for clarity, NTK and Participating Institutions are responsible and liable for the reasonable enforcement of compliance of Authorized Users to the terms and conditions of this Agreement.

Art.V.2.

Modification of Materials. NTK, the Participating Institutions, or Authorized Users shall not modify, manipulate the Materials without the prior written permission of Suweco.

is replaced by the text:

Modification of Materials. NTK, the Participating Institutions, or Authorized Users shall not modify, translate the Materials without the prior written permission of Suweco.

Art.V.3.- 4.

Removal of Copyright Notice. NTK, the Participating Institutions and the Authorized Users may not remove, obscure or modify any copyright or other notices included in the Materials.

Commercial Purposes. NTK and the Participating Institutions may not use the Materials for commercial purposes, including but not limited to the sale of the Materials, fee-for-service use of the Materials; nor may NTK and the Participating Institutions impose special charges on Authorized Users for use of the Materials beyond reasonable printing or administrative costs. For the avoidance of doubt, research conducted by NTK, the Participating Institutions and Authorized Users that is supported by a commercial entity shall not be considered use for commercial purposes.

is replaced by the text:

The Participating Institutions may not download, mount or create a derivative work of the Materials on any system or network, including, without limitation the internet and the World Wide Web.

The Participating Institutions may not systematically make print or electronic copies of multiple extracts or make multiple copies of any part of the Materials for any purpose other than as expressly permitted by this Agreement.

The Participating Institutions may not publish, distribute or make available the Materials, works based on the Material or works which combine them with any other material, other than as permitted in this Agreement.

The Participating Institutions shall not modify, remove, or obscure any copyright notices or other notices included in the Materials.

The Participating Institutions may not alter, abridge, adapt or modify the Materials, except to the extent necessary to make them perceptible on a computer screen to Authorized users. For the avoidance of doubt, no alteration of the words or their order is permitted.

The Participating Institutions may not use the Materials for Commercial Use purposes, including but not limited to sale of the Materials or bulk reproduction or distribution of the Materials in any form.

The NTK and Participating Institutions are prohibited from making agreements for access to the Materials with individuals, organizations, vendors, affiliates or partners which are not departments of Participating Institutions. NTK affirms that all IP addresses are specifically controlled by Participating Institutions for workstations/computers under its administrative control and for the use of Authorized Users. NTK is responsible for maintaining the list of IP addresses of all Participating Institutions.

Art.VI.1.-2.

Notification and Cure of Unauthorized Use. In the event the NTK and/or any of the Participating Institutions has notice of an unauthorized use of the Materials and cannot promptly remedy it, the NTK or Participating institution shall promptly notify the Suweco. In the event the Publisher or Suweco has notice of unauthorized use of the Materials, the Suweco will promptly notify NTK and respective Participating Institution.

In the case of unauthorized use which is causing serious and immediate material harm to Publisher or Suweco, Publisher may temporarily suspend such offending individual Authorized User's access to the Materials (e.g. by blocking an individual user's IP address), provided that Suweco immediately notifies the NTK and Participating Institution of any such suspension, including the reason for the block and any supporting details. Such temporary suspensions will be of the shortest duration possible sufficient to terminate the alleged unauthorized activity and prevent its resumption. Any unauthorized use that is considered a breach of obligations under this Agreement shall be subject to Section XI, below, including the cure period.

is replaced by the text:

Notification and Cure of Unauthorized Use. If either party is in material violation of any term in the Agreement, the other party will send written or electronic notice of the breach. If the breach is not remedied to the non-violating party's reasonable satisfaction within 7 working

days, and if the parties do not agree to extend the remedy period, then the non-violating party may terminate this Agreement effective immediately upon written or electronic notice. Repeated or ongoing episodes of unauthorized use under Article V. above, will be deemed a material breach of this Agreement by the NTK and Participating Institutions. In the event that this Agreement is terminated due to a material breach by the NTK and Participating Institutions no refund of access fees will be made. In the event that this Agreement is terminated due to a material breach by the NTK and Participating Institutions and the fee payment wouldn't be done yet, NTK is obliged to pay for the period the Materials were used by Participating Institutions.

In the case of unauthorized use which is causing serious and immediate material harm to the Suweco, Suweco may temporarily suspend such offending individual Authorized User's access to the Materials (e.g. by blocking an individual user's IP address), provided that Suweco immediately notifies the NTK and Participating Institution of any such suspension, including the reason for the block and any supporting details. Such temporary suspensions will be of the shortest duration possible sufficient to terminate the alleged unauthorized activity and prevent its resumption.

#### Art.VII.5.

Discovery of Materials. Suweco shall make reasonable effort to make the Materials available through NTK's and/or Participating Institutions' Discovery Service System(s) for indexing and discovery purposes. Suweco shall provide to NTK's and/or Participating Institutions' discovery service vendors on an ongoing basis the citation and complete descriptive metadata (including all subject headings, abstracts, and keywords), and full-text content necessary to facilitate optimal discovery and accessibility of the content for the benefit of NTK, Participating Institutions and Authorized Users. Discovery Service Systems are defined as user interface and search systems for discovering and displaying content from local, database and web-based sources.

is replaced by the text:

Discovery of Materials. Suweco shall make reasonable effort that Publisher, in its sole discretion, makes the Materials available through third-party Discovery Service System(s) for indexing and discovery purposes. Suweco secures that Publisher agrees to provide to NTK a list of Publisher's discovery service vendors from time to time for the benefit of NTK, Participating Institutions and Authorized Users. Discovery Service Systems are defined as user interface and search systems for discovering and displaying content from local, database and web based sources.

#### Art VII.6.

Persistent Linking. Suweco will use reasonable effort to convince Publisher to comply with the most current version of the OpenURL standard (ANSI/NISA Z39.88), and will provide a mechanism for persistent links to content.

Is replaced by the text:

Persistent Linking. Publisher's current platform vendor, HighWire, shall comply with the most current version of the OpenURL standard (ANSI/NISA Z39.88), and will provide a mechanism for persistent links to content.

Art. VII.8., 10., NTK is withdrawn from the text.

Art. VII.12.

Quality of Service. Suweco shall use reasonable efforts to ensure that the Publisher's server or servers have sufficient capacity and rate of connectivity to provide the NTK, Participating Institutions and their Authorized Users with a quality of service comparable to current standards in the on-line information provision industry in the NTK's and Participating Institutions locale. Suweco shall ensure that the Publisher shall use reasonable efforts to provide continuous service seven (7) days a week with an average of 98% up-time per month. The 2% down-time includes periodic unavailability due to server maintenance; software installation or testing; loading or making available additional Materials as they become available; and unavailability because of service or equipment failure outside the control of Suweco (including problems with public or private telecommunications services, or Internet nodes or facilities). Suweco shall ensure that Publisher may schedule brief unavailability periods provided (1) and that Publisher will use commercially reasonable effort to give at least forty-eight (48) hour notice to NTK, and (2) in ways and at times that minimize inconvenience to NTK, Participating Institutions and its Authorized Users, regardless of when notice has been given.

is replaced by the text:

Quality of Service. Suweco shall use reasonable efforts to ensure that the Publisher's server or servers have sufficient capacity and rate of connectivity to provide the Participating Institutions and their Authorized Users access to the Materials. Suweco shall use reasonable efforts to ensure that the Publisher shall use reasonable efforts to provide continuous service seven (7) days a week with an average goal of 98% up-time per month. Notwithstanding, service interruption due to suspicious or suspect user downloading shall not be included in the 2% downtime calculation. Suweco shall ensure that Publisher may schedule brief unavailability periods, but will do so only where (1) it has given at least forty-eight (48) hour notice to Suweco, and (2) in ways and at times that minimize inconvenience to Participating Institutions and its Authorized Users, regardless of when notice has been given.

Art. VII.13.

Problems with Materials. If the Materials fail to operate, display, load, or render in conformance with the terms of this Agreement, NTK or Participating Institution shall immediately notify Suweco, and Suweco shall promptly use best efforts to restore access to the Materials as soon as possible. In the event that the non-conformity materially affects the NTK's, Participating Institutions' or Authorized Users' use of the Materials, and Suweco fails to repair the nonconformity within five (5) business days, Suweco shall reimburse NTK for such problems in an amount that is proportional to the Fees annually paid by NTK under this Agreement.

is replaced by the text:

Problems with Materials. If the Materials fail to operate, display, load, or render in conformance with the terms of this Agreement, NTK or Participating Institution shall immediately notify Suweco, and Suweco shall promptly use best efforts to restore access to the Materials as soon as possible. Where the Materials shall not be available to the Participating Institutions for more than thirty (30) consecutive days, Suweco shall refund to the NTK a proportion of the Fee prorated to the period of such unavailability within the Subscription Period to which the Fee relates

Art. VII.14.

Transfer or Acquisition of Titles. If any portion of the Materials is transferred to or acquired



from another party, Suweco shall ensure that the Publisher shall use best efforts to ensure that neither NTK nor the Participating Institutions lose access to content subject to this Agreement as a result of the transfer or acquisition. Any archival and perpetual access rights that have been granted shall be honored, whether the Publisher is acting as the transferring or acquiring party. If the Publisher is transferring any portion of the Materials to another party, Suweco shall ensure that the Publisher will guarantee use the best efforts to assign all rights and obligations to the assignee. If Publisher is acquiring works that become subject to this Agreement, Suweco shall ensure that the Publisher will use best efforts to acquire the rights to perform under this Agreement, including but not limited to perpetual access rights. Suweco agrees to use best efforts to communicate with the party from which it is acquiring works to exchange such relevant payment and rights information. For journal titles, Suweco ensure that the Publisher will comply with the NISO Transfer Code of Practice.<sup>1</sup>

is replaced by the text:

Transfer or Acquisition of Titles. If any portion of the Materials is transferred to or acquired from another party, Suweco shall ensure the Publisher shall use best efforts that the Participating Institutions do not lose access to content subject to this Agreement as a result of the transfer or acquisition. Any archival and perpetual access rights that have been granted shall be honored, whether the Publisher/s is acting as the transferring or acquiring party. If Publisher/s are transferring any portion of the Materials to another party, Suweco shall use reasonable efforts to ensure Publisher/s guarantee to assign all rights and obligations to the assignee. If Publisher/s are acquiring works that become subject to this Agreement, Suweco will use reasonable efforts to ensure Publisher/s acquire the rights to perform under this Agreement, including but not limited to perpetual access rights. For journal titles, Suweco will make reasonable efforts to ensure that the Publisher will comply with the NISO Transfer Code of Practice.<sup>2</sup>

Art.VII.19.

Withdrawal of Materials. Publisher reserves the right to withdraw from the Materials any item or part of an item for which it no longer retains the right to publish, or which it has reasonable grounds to believe infringes copyright or is defamatory, obscene, unlawful, or otherwise objectionable. Suweco shall give written notice of the withdrawal to the NTK as soon as is practicable, but in no event less than thirty (30) days in advance of withdrawal, specifying the item or items to be withdrawn. Such a notice may also be given directly by the Publisher to the NTK.

is replaced by the text:

Withdrawal of Materials. Publisher reserves the right to withdraw from the Materials any item or part of an item for which it no longer retains the right to publish, or which it has reasonable grounds to believe infringes copyright or is defamatory, obscene, unlawful, or otherwise objectionable. Suweco shall give written notice of the withdrawal to the NTK without necessary delay, specifying the item or items to be withdrawn

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<sup>1</sup><http://www.niso.org/workrooms/transfer/>

Art.VII.21.

If any such withdrawal renders the Materials less useful to NTK, the Participating Institutions or their Authorized Users, Suweco shall reimburse NTK for the withdrawal in an amount proportional to the total Fees owed by NTK for the Materials under this Agreement. If any such withdrawal renders the Materials substantially less useful to NTK, the Participating Institutions or their Authorized Users, NTK may seek to terminate this Agreement for breach pursuant to the termination provisions in Section XI, below.

is replaced by the text

If any such withdrawal renders the Materials less useful to NTK, the Participating Institutions or their Authorized Users, and the withdrawal represents more than ten per cent (10%) of the journal the Suweco shall refund to the NTK or Participating Institutions that part of the Fee that is in proportion to the amount of material withdrawn and the remaining un-expired portion of the Subscription Period.

Art.VII.21.

Itemized Holdings/Title List. Suweco will provide to the NTK, prior to the beginning of the calendar year within the current itemized holdings report that specifies the titles included in the Materials for the next subscription term. Suweco will use reasonable efforts to update itemized holdings reports as soon as is practicable when holdings information changes, and will provide this information to Discovery Service Systems in a timely manner and to NTK on request. If the Materials include content covered by the NISO Knowledge Bases And Related Tools (KBART) Recommended Practice,<sup>3</sup>Suweco will provide itemized holdings lists for the Materials in KBART-compliant format, including a column/field for dates (YYYY-MM) of additions.

is replaced by the text:

Itemized Holdings/Title List. Suweco will provide to the NTK, prior to the beginning of the calendar year within the current itemized holdings report that specifies the titles included in the Materials for the next subscription term, Appendix C. Suweco will use reasonable efforts to update itemized holdings reports as soon as is practicable when holdings information changes, and will use reasonable efforts to provide this information to the NTK and to the Participating Institutions. If the Materials include content covered by the NISO Knowledge Bases And Related Tools (KBART) Recommended Practice,<sup>4</sup>Suweco will provide itemized holdings lists for the Materials in KBART-compliant format, including a column/field for dates (YYYY-MM) of additions.

Art. VII.23. - 24.

Suweco shall not provide NTK's usage statistics in any form to any third party without the NTK's written authorization, unless the third party owns rights in the Materials. Suweco shall not provide usage statistics of any Participating Institution in any form to any third party with the exception of the NTK without the Participating Institution's written authorization, unless the third party owns rights in the Materials. In all cases, the disclosure of such data shall fully

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<sup>3</sup><http://www.niso.org/workrooms/kbart>

<sup>4</sup><http://www.niso.org/workrooms/kbart>

protect the anonymity of individual users and the confidentiality of their searches, and will comply with all applicable privacy laws. Suweco shall not disclose or sell to other parties usage data or information about the NTK, any Participating Institution or their Authorized Users without the NTK's and/or Participating Institution's written permission or as required by law.

Confidentiality of Personally Identifiable Information. Suweco agrees and is obliged to ensure that Publisher will agree that no personally identifiable information, including but not limited to log-ins recorded in system logs, IP addresses of patrons accessing the system, saved searches, any identification data, usernames and passwords, will be shared with third parties, except in response to a court order, or other legal requirement. If Suweco is compelled by law or court order to disclose personally identifiable information of Authorized Users or patterns of use, Suweco shall provide the NTK with adequate prior written notice as soon as is practicable, so that NTK, Participating Institution or Authorized Users may seek protective orders or other remedies. Suweco will notify NTK and Authorized Users as soon as is practicable if Suweco's systems are breached and the confidentiality of personally identifiable information is compromised.

is replaced by the text:

Suweco and Publisher shall not provide Participating Institutions's usage statistics in any form to any third party without the Participating Institutions's written authorization, unless the third party owns rights in the Materials. Suweco and Publisher shall not provide usage statistics of any Participating Institutions in any form to any third party with the exception of the NTK without the Participating Institutions's written authorization, unless the third party owns rights in the Materials.

Suweco will ensure that as Publisher's vendor it will maintain, and will require all its third-party data processors including Publisher, to maintain, appropriate physical, technical and organizational measures to protect Client Personal Data against accidental, unauthorized or unlawful destruction, loss, alteration, disclosure or access. Suweco will require that Publisher will utilize any kind of login information required from Participating institutions's users exclusively for authentication purposes and that Publisher will not use any Personal data for other purposes neither provide them to any other entity. . Upon termination of this Agreement Suweco will require that Publisher proceeds to delete all login or other user authentication information and Client Personal Data.

Suweco will notify NTK and Authorized Users as soon as is practicable if the Publisher's systems are breached and the confidentiality of personally identifiable information is compromised.

Art. VII.30.

Open Access Option. Suweco undertakes to keep NTK informed of any alternative business models during the Term, including but not limited to models taking into account both journal subscriptions and Article Processing Charges for Open Access publishing in so-called hybrid journals. Should NTK agree to switch to any such alternative business model, the parties will formalize the new business model in a separate agreement signed by both parties.

is replaced by the text:

Open Access Option. Suweco will use the best effort to keep NTK informed of any alternative business models during the Term, including but not limited to models taking into account both journal subscriptions and Article Processing Charges for Open Access publishing in so-called hybrid journals. If NTK, Suweco and Publisher agree to switch to any such alternative business

model, the parties will formalize the new business model in a separate agreement signed by both parties.

Art. VII.31.

In the event that the Czech Republic or European Union implements an Open Access policy during the term of this Agreement, the parties will, at the request of the NTK, renegotiate the terms of this Agreement in accordance with this policy.

is replaced by the text:

In the event that the Czech Republic or European Union implements an Open Access policy during the term of this Agreement, the parties may, at the request of the NTK, renegotiate the terms of this Agreement as maybe appropriate.

Art. VIII.1.

Terms Notification. NTK shall secure that Participating Institutions will use reasonable efforts to provide Authorized Users with appropriate notice of the terms and conditions under which access to the Materials is granted under this Agreement.

is replaced by the text:

Terms Notification. NTK shall secure that Participating Institutions are obliged to provide Authorized Users with appropriate notice of the terms and conditions under which access to the Materials is granted under this Agreement.

Art. VIII.2.

Protection from Unauthorized Use. NTK shall secure that Participating Institutions will use reasonable efforts to restrict access to the Materials to Authorized Users.

is replaced by the text:

Protection from Unauthorized Use. NTK shall secure that Participating Institutions will use reasonable efforts and shall be responsible to restrict access to the Materials to Authorized Users as provided for herein this Agreement. NTK shall secure that Participating Institutions agree to notify Authorized Users and Walk-ins of the relevant conditions for accessing Materials. NTK shall secure that Participating Institutions further agree to notify Suweco of any infringements of copyrights or unauthorized use or violations of this Agreement of which they become aware. NTK shall secure that Participating Institutions will cooperate with the Suweco and Publisher in investigating any unauthorized uses and in taking reasonable steps to prevent a reoccurrence.

Art. XI.1.

Early Termination for Financial Hardship. The NTK may terminate this Agreement without penalty after 31 December 2020 if sufficient content acquisitions funds are not allocated to enable the NTK and/or Participating Institutions, in the exercise of its reasonable administrative discretion, to continue this Agreement. In the event of such financial circumstances, NTK will notify Suweco of the intent to terminate the Agreement as soon as is reasonably possible, but in any case, no less than thirty (30) days prior to next payment date, and this transaction shall terminate on the last day of the subscription period for which payment has been made without

penalty of expense to the NTK of any kind whatsoever, except as to the portions of payments herein agreed for which funds shall have been appropriated and budgeted or otherwise available. In the event of such termination the NTK and Participating Institutions shall maintain its perpetual right to materials licensed under the subscription periods for which it has fully paid, subject to Section XII.

is replaced by the text:

Early Termination for Financial Hardship. The NTK may terminate this Agreement without penalty after 31 December 2020 if sufficient content acquisitions funds are not allocated to enable the NTK and/or Participating Institutions, in the exercise of its reasonable administrative discretion, to continue this Agreement. In the event of such financial circumstances, NTK will notify Suweco of the intent to terminate the Agreement as soon as is reasonably possible, but in any case, no less than sixty (60) days prior to the first day of the next subscription period for which payment has not been made, and this transaction shall terminate on the last day of the subscription period for which payment has been made without penalty of expense to the NTK of any kind whatsoever, except as to the portions of payments herein agreed for which funds shall have been appropriated and budgeted or otherwise available. In the event of such termination the NTK and Participating Institutions shall maintain its perpetual right to select 'perpetual access' Materials if available under the subscription periods for which it has fully paid if applicable, subject to Section XII.

Art. XI.2.

Termination for Breach. If either party believes that the other has materially breached any obligations under this Agreement, such party shall so notify the breaching party in writing with a detailed description of the breach. The breaching party shall have thirty (30) days from the receipt of notice to use all reasonable means to cure the alleged breach and to notify the non-breaching party in writing that cure has been effected. If the breach is not cured within the thirty (30) day period, the non-breaching party shall have the right to terminate the Agreement without further notice. Termination is effective by the date of delivery such a notice.

is replaced by the text:

Termination for Breach. If either party believes that the other has materially breached any obligations under this Agreement, such party shall so notify the breaching party in writing with a detailed description of the breach. The breaching party shall have sixty (60) days from the receipt of notice to use all reasonable means to cure the alleged breach and to notify the non-breaching party in writing that cure has been effected. If the breach is not cured within the thirty (30) day period, the non-breaching party shall have the right to terminate the Agreement without further notice. Termination is effective by the date of delivery such a notice.

Art. XI.4.

Refunds. In the event of early termination permitted by this Agreement, except for termination for a material breach by the NTK, NTK shall be entitled to a refund of any fees or pro-rata portion thereof paid by NTK for any remaining period of the Agreement from the date of termination.

is replaced by the text:

Refunds. In the event of early termination for a material breach by the Suweco, NTK shall be entitled to a refund of any fees or pro-rata portion thereof paid by NTK for any remaining period

of the Agreement from the date of termination.

Art. XII.1.- 5.

Perpetual Use. Notwithstanding anything else in the Agreement, Suweco grants to NTK and Participating Institutions a nonexclusive, royalty-free, system-wide perpetual right limited to the territory of Czech Republic to use any Materials that were subscribed to or for which a perpetual usage Fee has been paid during the term of this Agreement. Such use shall be in accordance with the provisions of this Agreement, which provisions shall survive any termination of this Agreement. The means by which NTK and/or Participating Institutions shall have access to such Materials shall be in a manner and form substantially equivalent to the means by which access is provided under this Agreement. If the Suweco's means of access is not available, the NTK and/or Participating Institutions may provide substantially equivalent access to the Materials by use of an archival copy or by engaging the services of third-party trusted archives (such as Portico) and/or participating in collaborative archiving endeavors to exercise its perpetual use rights.

Archival Copy. Suweco shall provide to NTK upon request, or NTK may create, one (1) copy of the entire set of Materials to be maintained as an archival copy. The archival copy from the Publisher shall be provided without any DRM in a mutually agreeable medium suitable to the content, and any fees for provision of copies will be on a time and materials basis only.

In the event the Suweco or Publisher discontinues or suspends selling or licensing the Materials, the NTK and Participating Institutions may use such archived Materials under the same terms as defined by this Agreement. If NTK has a backup copy of the Materials as defined in Section IV, the backup copy may be used as an archival copy.

Third Party Archiving Services. Suweco and NTK acknowledge that either party may engage the services of third-party trusted archives and/or participate in collaborative archiving endeavors to exercise NTK's rights under this section of the Agreement. Suweco agrees to cooperate with such archiving entities and/or initiatives as reasonably necessary to make the Materials available for archiving purposes. NTK and/or Participating Institutions may perpetually use a third-party trusted system or collaborative archive to access or store the Materials, so long as NTK's and Participating Institutions' use is under the same terms as this Agreement.

In the event the Suweco discontinues or changes the terms of its participation in a third-party archiving service, Suweco shall notify the NTK in advance, and shall in good faith seek to establish alternative arrangements for trusted archiving and perpetual access to the Materials.

is replaced by the text:

Perpetual Use. Publisher currently provides open, free electronic access to back issues of Material, starting 12 months after publication of a Material issues. Should the Participating Member cancel or fail to renew the Agreement, the Participating Member will continue to have access to those Material journals from the purchased Publisher Material journals published during the agreement period in question. Publisher makes the commitment to enable their Institutional members to have perpetual access to the Material journal content subscribed to.

The American Association for Cancer Research (Publisher), is committed to the preservation of its Materials and is a participating member of LOCKSS. This ensures that the Materials will be preserved and permanently accessible for future generations to use and reference.

Art XIII.2.

Accessibility Requirements. Suweco warrants that the Materials comply with Publishers country of origin laws and regulations, and conform to the accessibility requirements of Web Accessibility Initiative, Web Content Accessibility Guidelines (WCAG) 2.0 at level AA or Rules of accessible web creation<sup>5</sup> based on Czech Republic Act. 365/2000 Coll. and Act. 81/2006 Coll. Suweco agrees to promptly respond to and resolve any complaint regarding accessibility of Materials.<sup>6</sup>

is replaced by the text:

Accessibility Requirements. Suweco warrants that the Materials comply with Publisher 's country of origin laws and regulations, and conform to the accessibility requirements of Web Accessibility Initiative, Web Content Accessibility Guidelines (WCAG) 2.0.

Art. XIV.1.

Notwithstanding anything else in this Agreement, neither party shall be liable for any indirect, special, incidental, punitive or consequential damages, including but not limited to loss of data, business interruption, or loss of profits, that arises from the use of the Materials, or the inability (means incompetence, not the possibility, availability to use materials) to use the Materials.

is replaced by the text:

Notwithstanding anything else in this Agreement, neither party shall be liable for any indirect, special, incidental, punitive or consequential damages, including but not limited to loss of data, business interruption, or loss of profits, that arises from the use of the Materials, or the inability to use the Materials.

Art. XIV.2. the added text:

Suweco does not warrant Materials accuracy or completeness, or their merchantability or fitness for a particular purpose.

Suweco makes no warranties respecting any harm that may be caused by the transmission of a computer virus, worm, time bomb, logic bomb or other such computer program. Suweco further expressly disclaims any warranty or representation to Authorized Users, or to any third party.

Art. XV. The text is added:

THE NTK AND PARTICIPATING MEMBERS AGREE TO INDEMNIFY, DEFEND AND HOLD THE PUBLISHER AND SUWECO HARMLESS FROM AND AGAINST ANY LOSS, DAMAGE, COSTS, LIABILITY AND EXPENSES (INCLUDING REASONABLE LEGAL AND PROFESSIONAL FEES) ARISING OUT OF ANY CLAIM OR LEGAL ACTION TAKEN AGAINST THE PUBLISHER RELATED TO OR IN ANY WAY CONNECTED WITH ANY USE OF THE MATERIALS BY THE NTK OR PARTICIPATING MEMBERS OR AUTHORIZED USERS OR ANY FAILURE BY NTK AND PARTICIPATING MEMBERS TO PERFORM ITS

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<sup>5</sup> <http://www.pravidla-pristupnosti.cz>

<sup>6</sup> <http://www.w3.org/WAI/guid-tech.html>

OBLIGATIONS IN RELATION TO THIS AGREEMENT, PROVIDED THAT NOTHING IN THIS AGREEMENT SHALL MAKE THE NTK AND PARTICIPATING MEMBERS LIABLE FOR BREACH OF THE TERMS OF THE AGREEMENT BY ANY AUTHORIZED USER PROVIDED THAT THE NTK AND PARTICIPATING MEMBERS DID NOT CAUSE, KNOWINGLY ASSIST OR CONDONE THE CONTINUATION OF SUCH BREACH TO CONTINUE AFTER BECOMING AWARE OF AN ACTUAL BREACH HAVING OCCURRED.

Publisher and Suweco shall indemnify and hold harmless the NTK and participating members for any losses, claims, damages, awards, penalties, or injuries incurred, including reasonable attorney's fees, that arise from any third party claim that alleges copyright infringement or other intellectual property infringement arising from the use of the Materials by the NTK and participating members or any Authorized User. NO LIMITATION OF LIABILITY SET FORTH ELSEWHERE IN THIS AGREEMENT IS APPLICABLE TO THIS INDEMNIFICATION. This Section XV shall survive the termination of this Agreement.

NTK shall ensure that each Participating Institutions assumes sole responsibility for all use of the Materials and (NTK or Participating Institution) agrees to indemnify and hold the Publisher harmless from any claim, liability, or loss arising from their unauthorized use.

#### Art. XVII.1.

This Agreement shall be interpreted and construed according to, and governed by, the laws of the Czech Republic, in particular by Act No. 89/2012 Coll., the Civil Code, as amended, excluding any such laws that might direct the application of the laws of another jurisdiction.

is replaced by the text:

The validity, construction and performance of the articles I.1. - 3., III., VII.1.- 4., VII.9. - 10., IX.,X.,XI.1., XI.4., XVIII.XX.,XXI.,XXII.,XXIII.,XXIV.,XXV.,XXVI., XXVII., Appendix A, B,C of the Agreement shall be governed by and construed in accordance with the Czech law all other provisions of the Agreement shall be governed by and construed in accordance with the by law of the country of Publisher origin without reference to its conflicts of laws principles.

#### Art.XX.

This Agreement constitutes the entire agreement of the parties and supersedes all prior communications, understandings, and agreements relating to the subject matter hereof, whether oral or written. For the avoidance of doubt, online terms and conditions as defined in Section VII shall not modify the terms of this Agreement.

is replaced by the text:

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

#### Art.XXIII.

If any provision or provisions of this Agreement shall be held to be invalid, illegal, unenforceable or in conflict with the law, the validity, legality, and enforceability of the remaining provisions shall not in any way be affected or impaired thereby. The contracting parties shall replace the invalid, illegal or unenforceable provision by a new provision, the wording of which shall correspond to the intent embodied by the original provision and this Agreement as a whole.



is replaced by the text:

If any provision or provisions of this Agreement shall be held to be invalid, illegal, unenforceable or in conflict with the law, the validity, legality, and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

Appendix A: Business Terms the following text is excluded:

**APC Discounts:** NTK's and Participating Institution's authors shall be eligible for the following discounts on open access Article Processing Charges (APC) during the term of the Agreement:

- Eligibility: APC discounts shall be available in cases where a NTK's and Participating Institution's author is the lead or corresponding author.
- Process:
- Discounts:
- Reporting: Suweco will report both OA authorship data, APC payments and discounts annually to NTK.