

ELECTRONIC ACCESS LICENCE AGREEMENT

This Agreement is made the _____ day of _____ 20____ between The Royal Society of Chemistry located at Thomas Graham House, Science Park, Milton Road, Cambridge CB4 0WF, UK (“Publisher”) and [Customer Name] located at [Customer Address] (“Customer”).

WHEREAS

- (A) Publisher holds journal articles and databases in electronic form;
- (B) Customer wishes to license access to journal articles and/or databases; and
- (C) Publisher agrees to grant such licence.

NOW, THEREFORE, in consideration of the mutual promises set forth herein, the parties agree as follows:

1. Definitions

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

“Authorised Users” means the categories of persons associated with Customer as specified below who have been allowed access to Publisher Content by Customer, such access to be by Secure Authentication:

- (i) faculty members (including temporary or exchange faculty members for the duration of their assignment);
- (ii) enrolled post-graduate and undergraduate students;
- (iii) current staff members;
- (iv) contract personnel directly involved in educational and research activities of Customer; and
- (v) Walk-In Users, i.e. persons who do not fall into any of the categories above

“Fees”	means the fees set out in Schedule C;
“Internal”	means an access route to Publisher Content where Publisher Content is loaded on Customer’s own network;
“Journal Archive”	means the publications specified in Section C of Schedule A;
“Journals”	means the publications specified in Section A of Schedule A;
“Publisher Content”	means the content of Publisher specified in Schedule A (as amended from time to time by the parties);
“Secure Authentication”	means access to Publisher Content by Internet Protocol (“IP”) ranges or by a username and password provided by Publisher to Customer or by another means of authentication agreed between Publisher and Customer, as specified in Schedule B;
“Visually Impaired Person”	means a person who is blind; who has an impairment of visual function which cannot be improved, by the use of corrective lenses, to a level that would normally be acceptable for reading without special level or kind of light; who is unable, through physical disability, to hold or manipulate a book; or who is unable, through physical disability, to focus or move his/her eyes to the extent that would normally be acceptable for reading;
“Walk-in Users”	means a category of Authorised User as set out in point (v) of the definition of Authorised Users;
“Yearly Lease Fee”	means the yearly fee specified in Schedule C to lease the Journal Archive;

2. Licence

Subject to the terms and conditions set forth in this Agreement, Publisher hereby grants to Customer a non-exclusive and (subject to Clause 14 below) non-transferable right and licence to use Publisher Content.

- 2.1 Publisher licenses Customer to access and use Publisher Content through Publisher’s web site at Customer Sites. Customer shall access Publisher Content as specified in Schedule A:
- 2.1.1 External. If Publisher Content is accessed by an External route:
- 2.1.1.1 Neither Customer nor Authorised Users make available or distribute any part of Publisher Content on any other network.
- 2.1.1.2 Access must be by means of Secure Authentication.
- and/or
- 2.1.2 Internal. If Publisher Content is accessed by an Internal route:
- 2.1.2.1 Neither Customer nor Authorised Users may make available or distribute any part of Publisher Content on any other network.
- 2.1.2.2 Access must be by means of Secure Authentication.
- 2.1.2.3 Customer may not alter Publisher Content in any way, including without limitation additions, subtractions or adaptations.
- 2.1.2.4 Customer may adapt header files in order to provide effective linking to files of journal articles.
- 2.2 Publisher licenses Customer to provide access to Publisher Content via means of Secure Authentication to Authorised User so that these users may access and use Publisher Content in accordance with the terms of this Agreement.
- 2.3 Publisher licenses Customer to use Publisher Content for the purposes of research, teaching, or private study only, and not for Commercial Use.

2.4 Publisher licenses Customer to include printed or electronic copies of items from Publisher Content:

- (i) in anthologies (course packs) in printed or electronic form for sale (as long as the sale is not for Commercial Use) and/or distribution to Authorised Users for their use in connection with classroom instruction only; and
- (ii) in reserves (in printed or electronic form) set up by Customer for access by Authorised Users in connection with specific courses offered by Customer.

Customer will use its best efforts to ensure that copies of material from Publisher Content in any online or offline (for example, CD-

5. Copyright and Ownership

- 5.1 Publisher Content is copyright and is subject to all applicable copyright, database protection, and other rights of the copyright owner and Publisher. The names of the author(s) and the copyright notices may not be removed, obscured, or modified in any way. Customer shall take the same precautions to prevent theft or inadvertent illicit use of the intellectual property in Publisher Content that it takes to prevent theft of its own intellectual property. The relevant copyright notice must be displayed on all copies of information made from Publisher Content (see Clause 2.4 for the form of words to be used).
- 5.2 Customer acquires no intellectual property rights in Publisher Content and all such rights remain with the copyright owner.
- 5.3 Customer shall abide by Publisher's Terms and Conditions as set out in Schedule D (also available on Publisher's website(s)). Customer shall make all reasonable efforts to distribute these Terms and Conditions to Authorised Users to make them aware of Publisher's Terms and Conditions. Notwithstanding Clause 13, and subject only to Publisher giving Customer thirty (30) days prior notice, Publisher's Terms and Conditions are subject to change any time at the discretion of Publisher.
- 5.4 Each party shall use its best endeavours to safeguard the intellectual property and proprietary rights of the other party.

6. Access to and Availability of Publisher Content

- 6.1 Customer's access to Publisher Content shall be via Secure Authentication.
- 6.1.1 Customer's access to or the provision of access to Publisher Content shall be by IP authentication. Customer shall ensure that the IP range allows access only by Authorised Users. Customer shall only offer a proxy, or firewall, IP that will allow Authorised Users access to Publisher Content. It is the responsibility of Customer to verify that any IP address will only allow such access
- 6.1.2 Where Customer does not have the technical facilities to comply with 6.1.1, Publisher may, at its sole discretion, permit Customer to access or to provide access to Publisher Content using assigned username and password. In such cases, Customer shall be responsible for ensuring that the username and password are provided to Authorised Users only. Customer shall not pass on or put the username and password in a place where they can be accessed by anyone other than Authorised Users (for example, the username and password shall not be given to Walk-in Users or put on a website).
- 6.2 For Publisher Content accessed by Customer via an External route Publisher shall use its reasonable endeavours, subject to any reasonable periods of planned downtime or maintenance, to make this Publisher Content available to Customer 24 hours a day, 7 days a week. In the event of any unplanned downtime or unavailability of the Publisher Content for any reason, whether through the fault of Publisher or otherwise, Publisher's sole responsibility shall be to use its reasonable endeavours to restore External access to Publisher Content as soon as reasonably practicable and Publisher shall have no liability to Customer for such interruption to access.
- 6.3 For Publisher Content accessed by Customer via an Internal route Publisher shall have no responsibility whatsoever to Customer for interruption of access.
- 6.4 Publisher reserves the right to change the format of or the hosting service for Publisher Content.
- 6.5 Customer's access to Publisher Content is at all times subject to compliance with the terms of this Agreement and in particular, but without limiting the generality of the foregoing, to the timely payment of all applicable Fees.

7. Access to Publisher Content upon Expiry or Termination

- 7.1 Where, following expiry or termination of this Agreement as set out below, Customer's access to Publisher Content continues, it shall be subject to Customer abiding by those terms of this Agreement that are relevant to such access. Such terms shall continue to have effect for the duration of Customer's access, and Customer hereby acknowledges and agrees that if

Publisher reasonably believes Customer is in breach of such terms, Publisher may at any time terminate Customer's access or, if applicable, require Customer to delete Publisher Content held on its network, which Customer shall do as soon as reasonably practical after notification from Publisher and confirm to Publisher in writing when it has done so.

7.2 Journals

7.2.1 Upon expiry of this Agreement, termination under Clause 8.3 or 8.4, or termination by Customer under Clause 8.1, Publisher shall provide access to Customer to the PDF forms of the articles from the volumes of the Journals that Customer has subscribed to under this Agreement, subject always to the provisions of Clause 7.1 above. For the avoidance of doubt Customer will lose access to the HTML forms of the articles and other related functionality. Access shall be via Publisher's server or by Publisher supplying Customer with the PDFs via a means to be agreed at the time. Any costs relating to this supply shall be negotiated at the time and shall be borne by Customer. If Customer has loaded the Journals on its own network, it may continue to retain the Journals that it has subscribed to.

7.2.2 Upon termination of the Agreement by Publisher under Clause 8.1 or 8.2, Publisher shall immediately remove Customer access to the Journals, or, if applicable, Customer shall immediately remove the Journals from its network and destroy them and shall confirm to Publisher in writing when it has done so.

7.3 Databases

Upon expiry of this Agreement or termination for whatsoever reason, Customer shall lose access to the Databases. If applicable, Customer shall immediately remove the Databases from its network and destroy them and shall confirm to Publisher in writing when it has done so.

7.4 Journal Archive – Lease Fee Arrangement

Upon expiry of this Agreement or termination for whatsoever reason, Publisher shall immediately remove Customer access to the Journal Archive.

8. Termination

8.1 If either party shall fail to observe or perform any one or more of its obligations hereunder, either party may request the other by notice in writing, specifying the default, to remedy the default (if remediable) within thirty (30) days of notice, and if such remedy has not been completed within the said thirty (30) day period, or if no remedy is possible, the non-breaching party may terminate this Agreement forthwith.

8.2 If Publisher becomes aware that Customer is in material breach of this Agreement and reasonably believes such breach is likely to cause serious financial, operational or reputational loss to Publisher, Publisher may:

- (i) If Customer accesses Publisher Content by External means, temporarily suspend Customer's access to Publisher Content to the Customer Site that is responsible for the breach and notify Customer in writing as soon as reasonably practical; or
- (ii) If Customer accesses Publisher Content by Internal means, demand that Customer temporarily suspend access to Publisher Content, until further notice from Publisher, and Customer shall comply as soon as reasonably practical.

Customer shall have thirty (30) days from receipt of written notice from Publisher in which to remedy the breach. Once y

- 9.7 If Publisher becomes aware of any item or part of an item in Publisher Content 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, it shall use reasonable efforts to make the item or part of an item acceptable to remain in Publisher Content. If this is not reasonably practicable, Publisher reserves the right at any time to withdraw from Publisher Content any such item or part of an item. Publisher shall give written notice to Customer of such withdrawal as soon as reasonably practicable, and if Publisher Content is used by an Internal route, Customer shall delete all such material from its implementation of Publisher Content and destroy it and shall confirm to Publisher in writing when it has done so.
- 9.8 Nothing in this Agreement shall make Customer liable for breach of the terms of this Agreement by any Authorised User provided that Customer did not cause, knowingly assist or condone the continuation of such breach after becoming aware of an actual breach having occurred.

10. Entire Agreement

- 10.1 This Agreement, including the attached Schedules, embodies and sets forth the entire agreement and understanding of the parties and supersedes all prior oral or written agreements, understandings or arrangements relating to the subject matter of this Agreement. Neither party shall be entitled to rely on any agreement, understanding or arrangement which is not expressly set forth in this Agreement.
- 10.2 No failure to delay on the part of either party hereto to exercise any right or remedy under this Agreement shall be construed or operated as a waiver thereof nor shall any single or partial exercise of any right or remedy as the case may be. The rights and remedies provided in this Agreement are cumulative and are not exclusive of any rights or remedies provided by law.

11. Severability

In the event that any one or more of the provisions contained herein shall, for any reason, be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision of this Agreement, but this Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.

12. Binding Agreement

This Agreement shall be binding upon and inure to the benefit of both parties hereto and their respective successors and permitted assignees.

13. Alteration of Agreement

Subject to Clause 5.3, this Agreement, including the schedules, may be amended only in writing signed by duly authorised representatives of the parties.

14. Assignment

- 14.1 Customer may not assign or transfer its rights or obligations under this Agreement without the prior written consent of Publisher, such agreement not to be unreasonably withheld.
- 14.2 If rights in all or any part of Publisher Content are assigned to another publisher, Publisher shall use its best endeavours to ensure that Customer may continue to have access to the Publisher Content which is the subject of this Agreement.

15. Notices

Every notice to be given under this Agreement shall be in writing and either sent by pre-paid first class or registered letter, delivered by hand or sent by facsimile or, in the case of the Customer, sent by email (to ejournals@rsc.org). Notice sent by post shall be deemed to have been given three (3) working days after the date of posting. Notices delivered by hand, facsimile or email shall be deemed to have been given on the day they are delivered, unless delivery occurs outside the normal working hours of the recipient, in which case delivery shall be treated as having occurred on the next working day.

16. Force Majeure

Neither party shall be responsible for any failure or delay in the performance of its obligations under this Agreement because of circumstances beyond its reasonable control.

17. Confidentiality

- 17.1 Both parties shall keep the terms of this Agreement strictly confidential, with the exception of Schedule D (as required in Clause 5.3), and shall not disclose same except to the extent any disclosure is required by law, or court or administrative or regulatory body of competent jurisdiction.
- 17.2 Publisher retains server logs which contain detailed Customer and Authorised User access information including without limitation date and time of access, details of the Secure Authentication employed and specific file name and type downloaded from Publisher Content. This access information may be used by Publisher and its agents only for Publisher’s internal purposes including management information reporting, monitoring and enforcement of Customer’s access, and Customer support purposes. Publisher shall use its best endeavours to keep confidential from third parties this access information and these usage statistics. Publisher and Customer shall each comply with the requirements of any data protection legislation currently in force and applicable to them.

18. Headings

The headings in this Agreement are for convenience only and shall not affect its interpretation.

19. Miscellaneous

- 19.1 Rights of Third Parties. The parties hereby confirm that no provision of this Agreement shall or shall purport to confer on any third party any right to enforce any term of the Agreement for the purposes of the Contracts (Rights of Third Parties) Act 1999.
- 19.2 Usage Statistics. Publisher will provide Customer with access to usage statistics compliant with the latest release of the Project COUNTER Code of Practice (www.projectcounter.org). These statistics will cover all Publisher Content listed in Schedule A, Sections A and C and Analytical Abstracts from Schedule A, Section B.

20. Dispute Resolution

Any difference arising between the parties shall initially be submitted to a mediation procedure in accordance with the Centre for Effective Dispute Resolution (CEDR) Model Mediation Procedure. Should the mediation be unsuccessful, neither party is precluded from instigating legal proceedings under Clause 21.

21. Applicable Law

This Agreement shall be governed by and construed in accordance with the laws of England irrespective of the place of its physical execution and the parties hereto hereby submit to the exclusive jurisdiction of the English courts in respect of any contractual and non-contractual disputes arising out of or in connection with this Agreement.

In WITNESS WHEREOF the parties have duly executed this Agreement on the date and year as written

For and on behalf of
[CUSTOMER]
 Signed: **XXXXXXXXXXXXXXXXXXXXXXXXXXXX**
 Name:
 Title:
 Date:

For and on behalf of
 The Royal Society of Chemistry
 Signed:
 Name: Stephen Hawthorne
 Title: Sales Director
 Date:

SCHEDULE A

Publisher Content

Section A

The electronic versions of the following journals:

JOURNALS LISTED HERE

Section B

The electronic versions of the following databases:

DATABASES LISTED HERE

Section C

The electronic version of the following:

CONTENTS OF JOURNAL ARCHIVE LEASE LISTED HERE IF APPROPRIATE

* RSC	The Royal Society of Chemistry
ACS GD	American Chemical Society, Division of Geochemistry
CNRS	Centre National de la Recherche Scientifique
ESP/EPA	European Society for Photobiology, European Photochemistry Association
Owner Societies	Deutsche Bunsen-Gesellschaft für Physikalische Chemie, Institute of Chemistry of Ireland, Israel Chemical Society, Kemisk Forening, Koninklijke Nederlandse Chemische Vereniging, New Zealand Institute of Chemistry, Norsk Kjemisk Selskap, Polskie Towarzystwo Chemiczne, Real Sociedad Española de Química, Royal Australian Chemical Institute, The Royal Society of Chemistry, Società Chimica Italiana, Suomen Kemian Seura - Kemisk Sällskapet i Finland, Svenska Kemistsamfundet, the Swiss Chemical Society, and Turkish Kimya Derneği

SCHEDULE B

Customer Site(s) and Secure Authentication Protocol

Customer Site(s)

For a single site:

"Customer Site" means Customer's physical address plus all Customer's locations within that same city or within a five (5) mile [eight (8) km] radius of Customer's address.

For multisite:

List of Sites

Secure Authentication Protocol

External:

Secure Authentication by IP addresses

List IP addresses

SCHEDULE C

Payment

TO BE AGREED.

(iii)