

# **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 current employees of the Customer and consultants engaged by the Customer at Customer Sites who, in either case, have been allowed access to Publisher Content by Customer, such access to be by Secure Authentication;   |
| "Customer Site(s)"         | means the site(s) of Customer specified in Schedule B;  |
| "Databases"                | means the publications specified in Section B of Schedule A;  |
| "External"                 | means an access route to Publisher Content where Publisher Content is posted on a file server maintained by Publisher or by a third-party host on Publisher's behalf;   |
| "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. |
| "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 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 may 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 Users so that these users may access and use Publisher Content in accordance with the terms of this Agreement. Remote access by Authorised Users to Publisher Content is allowed.
- 2.3 Publisher licenses Customer to re-engineer Publisher Content to provide suitable format(s) such that Authorised Users who are Visually Impaired Persons may have access to Publisher Content.
- 2.4 Publisher licenses Customer to use Publisher Content for regulatory purposes at Customer Sites, including but not limited to including extracts from Publisher Content in regulatory submissions to regulatory authorities and electronic storage thereof in perpetuity for later retrieval and submission, provided that such regulatory purposes do not amount to commercial redistribution for direct profit.
- 2.5 Publisher licenses Customer to make such back-up copies of Publisher Content at Customer Sites as are reasonably necessary to give effect to its rights and obligations under this Agreement.
- 2.6 If Customer wishes to make any other use of Publisher Content or to carry out any other activity related to Publisher Content that is not explicitly mentioned above in this Clause 2 or set out in Schedule D, Customer must obtain prior written permission from Publisher.

### **3. Payment**

- 3.1 Customer shall, in consideration of the rights set out in this Agreement, pay Publisher the Fees. For the avoidance of doubt, the Fees shall be exclusive of any sales, use, value added or similar taxes, and Customer shall be liable for any such taxes in addition to the Fees.
- 3.2 The Fees are subject to review on an annual basis, and Publisher shall notify Customer in writing of any change to the Fees for the subsequent year not less than sixty (60) days prior to the end of the current Term. If it is not possible to agree the Fees within thirty (30) days of notification, the Agreement shall terminate automatically at the end of the then current Term.

### **4. Term of Agreement**

The Term of this Agreement is 1 January [redacted] to 31 December [redacted]. This Agreement may be extended at the expiry date and each anniversary thereof for a further period of one (1) year by Customer

and Publisher agreeing the Publisher Content and Fee for the new Term. If the Agreement is to be extended, an Addendum including updated schedules, shall be signed by both parties.

## 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:

Acknowledgement in the form (where the copyright owner(s) to be used in the statement are specified in Schedule A by journal title and also at [www.rsc.org/journalscopyright](http://www.rsc.org/journalscopyright)):

- (i) "(original citation) – Reproduced by permission of The Royal Society of Chemistry"; or
- (ii) "(original citation) – Reproduced by permission of the PCCP Owner Societies"; or
- (iii) "(original citation) – Reproduced by permission of The Royal Society of Chemistry (RSC) on behalf of (the copyright owner) and the RSC";

must appear on such material in a position and typeface as to be clearly visible to the reader.

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 at 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, 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 under Clause 4, 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 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 the breach has been remedied to Publisher's satisfaction or the breaching activity halted:

- (i) If Customer accesses Publisher Content by External means, Publisher shall promptly reinstate access to Publisher Content.
- (ii) If Customer accesses Publisher Content by Internal means, Publisher shall promptly notify Customer that access to Publisher Content may be reinstated.

If Customer does not satisfactorily remedy or halt the breaching activity within thirty (30) days, Publisher may terminate this Agreement with immediate effect upon written notice to Customer.

Publisher may terminate this Agreement if Customer has persistently and materially breached this Agreement, irrespective of whether such breaches were later remedied, which shall be deemed to occur if Customer materially breaches this Agreement three (3) or more times during any twelve (12) month period during which the Agreement is in force.

- 8.3 Either party shall have the right to terminate this Agreement with immediate effect upon notice to the other upon the other committing an act of bankruptcy or having a receiver or liquidator appointed over its assets except for the purposes of solvent amalgamation or reconstruction.
- 8.4 Termination of this Agreement for whatever reason shall be without prejudice to the rights of the parties to claim damages for any previous breach.
- 8.5 Upon termination of this Agreement by Customer under Clause 8.1 or 8.3, Publisher shall repay to Customer the proportion of the Fees paid that represents the unexpired part of any subscription or lease fees paid by Customer for Publisher Content under this Agreement. For the avoidance of doubt, no repayment is due for purchased items, that is, the Journal Archive under the Purchase Fee arrangement.
- 8.6 Upon termination of this Agreement by Publisher under Clause 8.1 or 8.2, Publisher shall immediately remove Customer access to Publisher Content, or, if applicable, Customer shall immediately remove Publisher Content from its network and destroy it and shall confirm to Publisher in writing when it has done so.
- 8.7 Upon termination of this Agreement by Publisher under Clause 8.1 or 8.2, Publisher shall not repay to Customer any Fees paid by Customer for Publisher Content under this Agreement.
- 8.8 Termination of this Agreement (howsoever arising) shall not affect the rights of either party accrued prior to termination and any provision of this Agreement which needs to survive termination of this Agreement in order to give full effect to its meaning shall do so.

## **9. Warranties and Liabilities**

- 9.1 Publisher hereby warrants to Customer that it has full power to enter into and perform this Agreement and that so far as it is aware Publisher Content does not violate or infringe any existing copyright, licence or third-party rights.
- 9.2 Customer hereby warrants to Publisher that it has full power to enter into and perform this Agreement.
- 9.3 Publisher shall use reasonable endeavours to ensure that Publisher Content is accurate, error-free and uncorrupted, but Publisher accepts no liability whatsoever for any loss, claim or damage of any nature, whether direct, indirect, consequential or special (including without limitation, legal fees) suffered or incurred by Customer and alleged to be caused by:
  - (i) omissions or errors in the Publisher Content or their consequences; or
  - (ii) faults in or corruption of Publisher Content or their consequences, including but not limited to any defects caused by or during the transmission of Publisher Content across the Internet or by the processing of Publisher Content by Customer.
- 9.4 Nothing in this Agreement shall limit or exclude the liability of either party to the other for death or personal injury caused by its negligence or that of its employees, servants or agents.

- 9.5 Subject to Clauses 9.4 and 9.6, in the event that Customer makes a claim against Publisher for whatever reason, Publisher's liability (if any) shall not exceed the price paid or to be paid by the Customer for the Publisher Content. Under no circumstances shall Publisher be liable for any consequential, indirect or special losses howsoever arising or for any loss of profits, revenue, interest, goodwill, business and/or savings (whether direct or indirect).
- 9.6 Publisher shall indemnify and hold Customer harmless from and against any direct loss, damage, cost, liability or expense (including reasonable legal and professional fees) arising out of any legal action taken against Customer by a third party claiming Publisher Content is an actual or alleged infringement of their intellectual property rights. This indemnity is subject to (a) the Customer promptly notifying the Publisher of any claim or action, (b) the Publisher having sole control of such claim or action, and (c) the Customer not making any admission of liability or agreeing to settle or compromise the claim or action. This indemnity shall survive the termination of this Agreement for any reason. This indemnity shall not apply if Customer has amended Publisher Content in any way to the extent that such amendment is the cause of the infringement.
- 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.

## **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 reasonable 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](mailto: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](http://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.

### 19.3 Discounted Subscription Rates

If Customer requires printed volumes of Publisher Content in Schedule A (where such Publisher Content is available in printed versions), these may be purchased via an agent or direct from Publisher at a price of 25% of Publisher's full non-member rate.]

## 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]

For and on behalf of  
The Royal Society of Chemistry

Signed: .....

Signed: .....

Name: .....

Name: Stephen Hawthorne

Title: .....

Title: Sales Director

Date: .....

Date: .....

SAMPLE

# SCHEDULE A

## Publisher Content

TO BE AGREED.

SAMPLE

## 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*

SAMPLE

## SCHEDULE C

### Payment

**TO BE AGREED.**

SAMPLE

# SCHEDULE D

## Terms and Conditions Use of Information from The Royal Society of Chemistry ("RSC")

### Commercial Subscribers (full-rate subscriptions)

#### Definitions

Authorised Users:	means current employees and consultants engaged at specified sites by an organisation which is a Customer of the RSC.
Customer	means the organisation which has a contractual relationship with the RSC to access certain RSC Information.
RSC Information	means information provided by the RSC that a Customer and their Authorised Users have a contractual entitlement to access.
Secure Authentication:	means access to RSC Information by Internet Protocol ("IP") ranges or by a username and password provided by the RSC to the organisation or by another means of authentication agreed between the RSC and the Customer.

#### Prohibited Uses

Authorised Users of RSC Information shall not use any automated program including without limitation webcrawlers to access RSC Information. Such activities may have a detrimental effect on RSC Information or access thereto and are strictly forbidden.

#### Permitted Uses

Authorised Users may access RSC Information via Secure Authentication only.

Authorised Users are permitted to:

1. search, retrieve, display, and view RSC Information;
2. copy (including printing and downloading) RSC Information and retain it as long as required for use by the Customer. Authorised Users may copy (including printing and downloading) RSC Information and retain it as long as required for their own personal non-commercial use;
3. store RSC Information electronically, provided the use is consistent with the other terms and conditions described here;
4. include RSC Information (for example, a figure, diagram or chart) in a presentation or in a published work provided always that permission has been sought and obtained from the RSC in advance, except as permitted in accordance with fair use/fair dealing principles. A permission request form ([www.rsc.org/permissions](http://www.rsc.org/permissions)) for this purpose is available from the RSC's website(s). The material must carry the relevant credit as specified below in a position and typeface as to be clearly visible. (Please refer to [www.rsc.org/journalscopyright](http://www.rsc.org/journalscopyright) for the list of copyright owners of RSC journals):
  - (i) "(original citation) – Reproduced by permission of The Royal Society of Chemistry"; or
  - (ii) "(original citation) – Reproduced by permission of the PCCP Owner Societies"; or
  - (iii) "(original citation) – Reproduced by permission of The Royal Society of Chemistry (RSC) on behalf of the copyright owner and the RSC";
5. include RSC Information in a regulatory submission; and
6. distribute or otherwise make available RSC Information to Authorised Users.

If Authorised Users wish to gain permission from the RSC to carry out any other activity not explicitly mentioned above, they must obtain prior written, or email ([contracts-copyright@rsc.org](mailto:contracts-copyright@rsc.org)), permission from the RSC. A permission request form is available at [www.rsc.org/permissions](http://www.rsc.org/permissions).

#### Copyright

The RSC and any other applicable copyright owner(s) retains all applicable intellectual property rights, including but not limited to, copyright and database rights, and these Terms and Conditions do not have the effect of transferring any such rights to any Authorised User. Copyright notices must not be removed, obscured, or modified in any way. Authorised Users must take all reasonable precautions to prevent theft or inadvertent illicit use of the intellectual property in RSC Information. The relevant copyright notice must be displayed on all copies made from RSC Information.