

RSC ELECTRONIC ACCESS LICENCE AGREEMENT – SINGLE SITE

This Agreement is between The Royal Society of Chemistry ("Publisher") and the commercial organisation which subscribes to or has purchased RSC information at the appropriate institutional price ("Customer").

WHEREAS

- (A) Publisher holds journal articles, book chapters, and databases in electronic form;
- (B) Customer wishes to license access to journal articles, book chapters, and/or databases at a single site; 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 and consultants engaged by Customer at Customer Site. Such users are allowed access to Subscription by Customer, such access to be by Secure Authentication.
- "Customer" means a commercial organisation consisting of Customer Site. Customer may also be an Authorised User.
- "Customer Address" means a single customer address from which subscriptions to or purchases of RSC Printed Content or RSC Electronic Content at the appropriate institutional price are made.
- "Customer Site" means Customer Address plus all Customer's locations within that same city within a five (5) mile [eight (8) km] radius of Customer Address.
- "RSC Electronic Content" means Publisher periodicals, books and databases held in electronic form by Publisher.
- "RSC Printed Content" means Publisher periodicals and books in printed form.
- "Secure Authentication" means access to Subscription 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.
- "Subscription" means (i) the electronic version of RSC Printed Content subscribed to or purchased by Customer at the appropriate institutional price; and/or (ii) RSC Electronic Content subscribed to or purchased by Customer at the appropriate institutional price.
- "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 be normally acceptable for reading.

2. Licence

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

- 2.1 Publisher licenses Customer to access and use Subscription through Publisher's website at Customer Site.
- 2.1.1 Access must be by means of Secure Authentication.
- 2.1.2 Neither Customer nor Authorised Users may mount or distribute any part of Subscription on any other network subject to Clause 2.3 below.
- 2.2 Publisher licenses Customer to provide access to Subscription via means of Secure Authentication to Authorised Users so that these users may access and use Subscription. Remote access by Authorised Users to Subscription is allowed.
- 2.3 Publisher licenses Customer to use Publisher Content for regulatory purposes at Customer Site, including but not limited to including extracts from Subscription 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.
- 2.4 Publisher licenses Customer to re-engineer Subscription to provide suitable format(s) such that Authorised Users who are Visually Impaired Persons may have access to Subscription.
- 2.5 Publisher licenses Customer to make such back-up copies of Subscription at Customer Site as are reasonably necessary.
- 2.6 If Customer wishes to have a licence from Publisher to carry out any other activity not explicitly mentioned above in this Clause 2, Customer must obtain prior written permission from Publisher.

3. Payment

Access to Subscription will only be granted when payment for Subscription has been received by Publisher, either from Customer or Customer's agent.

4. Copyright and Ownership

- 4.1 Subscription 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 and Authorised Users shall take the same precautions to prevent theft or inadvertent illicit use of the intellectual property in Subscription 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 Subscription:

Acknowledgement of the form (where the copyright owner(s) to be used in the statement are available at 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 on behalf of the copyright owner";

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

- 4.2 Customer acquires no intellectual property rights in Subscription and all such rights remain with the copyright owner.
- 4.3 Customer shall abide by Publisher's Terms and Conditions as set out in Clause 5 (also available on Publisher's website(s)). Customer shall make reasonable efforts to distribute these Terms and Conditions to Authorised Users to make these users aware of Publisher's Terms and Conditions. These Terms and Conditions are subject to change at the discretion of Publisher with proper Notice to Customer as specified in Clauses 13 and 15.
- 4.4 Each party shall use its best endeavours to safeguard the intellectual property and proprietary rights of the other party.

5. Authorised Uses

- 5.1 Authorised Users of Subscription are permitted to:
- 5.1.1 search, retrieve, display, and view information from Subscription;
 - 5.1.2 copy (including printing and downloading) information from Subscription and retain it as long as required for Customer use. Authorised Users may copy (including printing and downloading) information from Subscription and retain it as long as they wish for their own personal use;
 - 5.1.3 store information from Subscription electronically, provided the use is consistent with the other terms and conditions described in this Agreement;
 - 5.1.4 include information from Subscription (for example, a figure, diagram or chart) in a presentation or in a published work provided permission has been sought and obtained from Publisher in advance, except as permitted in accordance with fair use/fair dealing principles. A permission request form (www.rsc.org/permissions) for this purpose is available from Publisher's website(s). The material must carry the relevant credit, as specified in Clause 4.1.
 - 5.1.5 include information from Subscription in a regulatory submission; and
 - 5.1.6 distribute or otherwise make available information from Subscription to other Authorised Users.
- 5.2 If Authorised Users wish to gain permission from Publisher to carry out any other activity not explicitly mentioned above, they must obtain prior written, or email (contact contracts-copyright@rsc.org), permission from Publisher.
- 5.3 **Prohibited Use.** Customer and Authorised Users of RSC Electronic Content shall not use any software including without limitation webcrawlers to access RSC Electronic Content. Such activities may have a detrimental effect on RSC Electronic Content or access thereto, and they are strictly forbidden.

6. Access to and Availability of Subscription

- 6.1 Publisher will provide access to Subscription through its website. Customer's access to Subscription will be authorised either via specified Internet Protocol ("IP") ranges agreed with Publisher or by a username and password provided by Publisher.
- 6.1.1 If Customer chooses to access or to provide access to Subscription by IP check, it shall ensure that the IP range supplied to Publisher allows access only to Authorised Users. Customer shall only offer a proxy, or firewall, IP that will allow Authorised Users access to Subscription. It is the responsibility of Customer to verify that any IP address provided to Publisher will only allow such access.
 - 6.1.2 If Customer chooses to access or to provide access to Subscription using a Publisher-assigned username and password, it shall provide the username and password to Authorised Users only. Customer and/or Authorised Users 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 put on a website).
- 6.2 Customer shall make best endeavours to ensure that storage, display, access and security measures conform to the terms and conditions in this Agreement.
- 6.3 Publisher shall, subject to any reasonable periods of planned downtime or maintenance, make Subscription available to Customer 24 hours a day, 7 days a week.
- 6.4 Publisher reserves the right to change the format of or the hosting service for Subscription.

7. Term - Access to Subscription upon Expiry or Termination

7.1 Journals

7.1.1 Upon expiry of this Agreement, termination under Clause 8.3 or 8.4, or termination by Customer under Clause 8.1, Publisher shall provide continuing access to Customer to the PDF forms of the articles from the volumes of the Journals that Customer has subscribed to under this Agreement. For the avoidance of doubt Customer would lose access to the HTML forms of the articles and other related functionality. Customer shall continue to have the rights granted in this Agreement with respect to Journals, provided Customer abides by Publisher's Terms and Conditions in force at the time. 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.

7.1.2 Upon termination of the Agreement by Publisher under Clause 8.1 or 8.2, Publisher shall immediately remove Customer access to the Journals.

7.2 Databases

Upon expiry of this Agreement or termination under Clause 8 for whatsoever reason, Customer shall lose access to the Databases.

7.3 Specialist Periodical Reports

7.3.1 Upon expiry of this Agreement, termination under Clause 8.3 or 8.4, or termination by Customer under Clause 8.1, Publisher shall provide continuing access to Customer to the PDF forms of the chapters from the volumes of the Specialist Periodical Reports that Customer has purchased. For the avoidance of doubt Customer would lose access to the HTML forms of the chapters and other associated functionality, where available. Customer shall continue to have the rights granted in this Agreement with respect to the Specialist Periodical Reports, provided Customer abides by Publisher's Terms and Conditions in force at the time. 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.

7.3.2 Upon termination of this Agreement by Publisher under Clause 8.1 or 8.2, Publisher shall immediately remove Customer access to the Specialist Periodical Reports.

7.4 The Dictionary of Substances and their Effects

7.4.1 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 continuing access to Customer to The Dictionary of Substances and their Effects for as long as Publisher continues to make it available electronically. Customer shall continue to have the rights granted in this Agreement with respect to The Dictionary of Substances and their Effects, provided Customer abides by Publisher's Terms and Conditions in force at the time. If Publisher decides to discontinue the electronic version of The Dictionary of Substances and their Effects, Publisher shall give Customer three (3) months' notice in writing of its intention to do so.

7.4.2 Upon termination of the Agreement by Publisher under Clause 8.1 or 8.2, Publisher shall immediately remove Customer access to The Dictionary of Substances and their Effects.

7.5 Journal Archive – Lease Fee Arrangement

Upon expiry of this Agreement or termination for whatsoever reason under Clause 8, 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 of a material breach of the rights granted to Customer under this Agreement that Publisher reasonably believes shall cause immediate and severe economic injury, Publisher shall notify Customer immediately in writing. Publisher shall have the right to temporarily suspend Customer's access to Subscription. Customer shall have the right to remedy the breach within thirty (30) days of receipt of written notice from Publisher. Once the breach has been remedied or the breaching activity halted Publisher shall immediately reinstate access to Subscription. If Customer does not satisfactorily remedy the breaching activity within thirty (30) days, Publisher may terminate this Agreement upon written notice to Customer.

Publisher may terminate this Agreement with immediate effect if Customer has persistently and materially breached this Agreement, 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 summarily 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 amalgamation or reconstruction.

8.4 Either party may terminate this Agreement if the parties are unable to agree upon any change in Fees for the subsequent calendar year as notified by Publisher to Customer.

8.5 Termination of this Agreement for whatsoever reason shall be without prejudice to the right of the parties to claim damages for any previous breach. Waiver of any previous breach by either party shall not prevent subsequent enforcement of this Agreement by either party.

8.6 Upon expiry of this Agreement, termination under Clause 8.3, or termination by Customer under Clause 8.1, Customer shall continue to have the rights granted in this Agreement with respect to Subscription, provided Customer abides by Publisher's Terms and Conditions in force at the time. This clause is not applicable to the Databases or to the Journal Archive leased under the Lease Fee arrangement.

8.7 Upon termination of this Agreement by Publisher under Clause 8.1 or 8.2, Publisher shall immediately remove Customer access to Subscription.

8.8 Upon termination of this Agreement by Customer under Clause 8.1 or termination by Customer under Clause 8.3, Publisher shall forthwith repay to Customer the proportion of the Fees paid that represents the unexpired part of any subscription or lease fees paid by Customer for Subscription under this Agreement. For the avoidance of doubt, no repayment is due for purchased items, that is, chapters from Specialist Periodical Reports or for free items, that is, The Dictionary of Substances and their Effects.

8.9 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 Subscription under this Agreement.

8.10 Publisher reserves the right to terminate this Agreement for any reason following sixty (60) days' written notice to Customer. In this case Publisher will give Customer a refund only on the RSC Electronic Content that it subscribes to at the appropriate institutional price on a pro rata basis. Under these circumstances refunds are not applicable to subscriptions to RSC Printed Content.

8.11 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. The provisions which shall survive the termination of this Agreement are Clauses 4, 5.1.4, 6, 7, 9, 17.

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 Subscription 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 the information contained in Subscription is accurate and error-free, but Publisher accepts no liability for omissions or errors therein or their consequences. Publisher shall not be liable for any consequential, direct or indirect loss or damage of any nature whatsoever alleged to be caused by errors or omissions in Subscription provided that nothing in this Agreement shall prevent Publisher being liable for death or personal injury caused by its negligence or that of its employees, servants or agents.
- 9.4 If access is suspended or interrupted or a fault or defect occurs, due to the fault of Publisher, which prevents access to Subscription, Publisher's liability shall be limited to restoring access to Subscription as soon as reasonably practicable and Publisher shall have no other liability to Customer for such cessation of access.
- 9.5 Publisher uses reasonable endeavours to ensure that Subscription is fault-free and uncorrupted but Publisher accepts no liability for faults or corruption of Subscription or their consequences, including but not limited to any defects caused by the transmission and processing of Subscription by Customer. Publisher shall not be liable for any consequential direct or indirect loss or damage of any nature whatsoever alleged to be caused by faults, corruption of Subscription or transmission and processing of Subscription by Customer provided that nothing in this Agreement shall prevent Publisher being liable for death or personal injury caused by its negligence or that of employees servants or agents or otherwise insofar as any liability cannot be lawfully limited or excluded.
- 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 claiming actual or alleged infringements of Subscription intellectual property rights. This indemnity shall survive the termination of this Agreement for any reason. This indemnity shall not apply if Customer has amended Subscription in any way not permitted by this Agreement provided such amendment is the cause of the infringement.
- 9.7 If Publisher discovers any item or part of an item in Subscription 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 Subscription. If this is not possible, Publisher reserves the right at any time to withdraw from Subscription any such item or part of an item. In this case Publisher shall give written notice to Customer of such withdrawal as soon as reasonably practicable.
- 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, together with the associated information relating to Subscription and Secure Authentication, 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

This Agreement, including the associated information relating to Subscription and Secure Authentication, may be amended only in writing signed by duly authorised representatives of the parties. Either party requiring an amendment shall give the other party thirty (30) days' notice of any change to the Agreement. Continued use of Subscription by Customer after notification of such changes shall be deemed to be acceptance of the changes by Customer.

14. Assignment

Neither Customer nor Publisher may assign or transfer its rights or obligations under this Agreement without the prior written consent of the other, such agreement not to be unreasonably withheld. If rights in all or any part of Subscription are assigned to another publisher, Publisher shall use its best endeavours to ensure that the terms and conditions of this Agreement are maintained.

15. Notices

Any notice or request under this Agreement shall be sufficiently given or made by posting the same in a registered letter addressed to a party at the address as one party may specify by notice to the other. Every such notice or request shall be deemed to have been given or made on the day on which the same would in the ordinary course of post be received by the addressee. Alternatively, notice by email may be given, if to Publisher to ejournals@rsc.org.

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 Clause 5, and shall not disclose same (except to the extent of any disclosure required by law).
- 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 Subscription. This access information may be used by Publisher and its agents for customer support purposes only. Publisher shall use its best endeavours to keep confidential from third parties this access information and these usage statistics. In the case that Publisher assigns its rights in this Agreement to a third party, Publisher shall notify Customer as soon as reasonably practicable. Customer may at its discretion require Publisher either to keep such usage statistics confidential or to destroy them. Publisher shall comply with the requirements of the data protection legislation currently in force.

18. 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. In case of any difference arising between the parties hereto relating to this Agreement, or any matter arising therefrom or incidental thereto, the same shall be submitted to a mediation procedure in accordance with the Centre for Dispute Resolution (CEDR) Model Mediation Procedure.

19. Headings

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

20. Miscellaneous

- 20.1 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.
- 20.2 Usage Statistics. Publisher will provide Customer with COUNTER-compliant usage statistics relating to Subscription. Such usage information shall be compiled in a manner consistent with any applicable privacy and data protection laws, and the anonymity of individual users and the confidentiality of their searches shall be fully protected.