

# **RSC ELECTRONIC ACCESS LICENCE AGREEMENT – SPR PURCHASE**

## **COMPANY AGREEMENT**

This Agreement is between The Royal Society of Chemistry ("Publisher") and the commercial organisation which has purchased an individual volume in one of the Publisher's Specialist Periodical Reports series ("Customer").

### **WHEREAS**

- (A) Publisher holds book chapters in electronic form;
- (B) Customer has purchased an individual volume in one of the Publisher's Specialist Periodical Reports series and wishes to license access the electronic book chapters 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 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" means a commercial organisation at Customer Address.
- "Customer Address" means a single customer address from which RSC Printed Content at the appropriate price is purchased.
- "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 SPR held in electronic form by Publisher.
- "RSC Printed Content" means SPR in printed form published in 1998 or later.
- "Secure Authentication" means access to SPR 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.
- "SPR" means the individual volume of the Specialist Periodical Reports series purchased by the Customer.
- "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;

### **2. Licence**

Subject to the terms and conditions set forth in this Agreement, Publisher hereby grants to Customer the non-exclusive and (subject to Clause 15 below) non-transferable right and licence to use SPR.

- 2.1 Publisher licenses Customer to access and use SPR through Publisher's website at Customer Site.
  - 2.1.1 Neither Customer nor Authorised Users may make available or distribute any part of SPR on any other network.

2.1.2 Access must be by means of Secure Authentication.

- 2.2 Publisher licenses Customer to provide access to SPR via means of Secure Authentication to Authorised Users so that these users may access and use SPR in accordance with the terms of this Agreement.
- 2.3 Publisher licenses Customer to re-engineer SPR at Customer Site to provide suitable format(s) such that Authorised Users who are Visually Impaired Persons may have access to SPR.
- 2.4 Publisher licenses Customer to use Subscription for regulatory purposes at Customer Sites, 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 make such back-up copies of SPR at Customer Site as are reasonably necessary to give effect to its rights and obligations under this Agreement.
- 2.5 If Customer wishes to make any other use of SPR or to carry out any other activity related to SPR that is not explicitly mentioned above in this Clause 2 or set out in Clause 5, Customer must obtain prior written permission from Publisher.

### **3. Payment**

Customer receives free access to RSC Electronic Content as a result of purchasing RSC Printed Content.

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

This Agreement shall remain in force for an indefinite period unless terminated under Clause 9.

### **5. Copyright and Ownership**

- 5.1 SPR 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 SPR 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 SPR.

Acknowledgement of the form:

“(original citation) – Reproduced by permission of The Royal Society of Chemistry”

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

- 5.2 Customer acquires no intellectual property rights in SPR and all such rights remain with the copyright owner.
- 5.3 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 all reasonable efforts to distribute these Terms and Conditions to Authorised Users to make them aware of Publisher’s Terms and Conditions. Notwithstanding Clause 14, 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. Authorised Uses**

- 6.1 Authorised Users of SPR are permitted to:
- 6.1.1 search, retrieve, display, and view information from SPR;
- 6.1.2 copy (including printing and downloading) from SPR and retain it as long as required for use by the Customer. Authorised Users may copy (including printing and downloading) information from SPR and retain it as long as required for their own personal non-

commercial use;

- 6.1.3 store information from SPR electronically, provided the use is consistent with the other terms and conditions described in this Agreement; and
  - 6.1.4 include information from SPR (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. Details of the RSC's procedures for processing permission requests can be found on the RSC's website at [www.rsc.org/permissions](http://www.rsc.org/permissions). The material must carry the relevant credit, as specified in Clause 5.1.
- 6.2 If Authorised Users wish to gain permission from Publisher to carry out any other activity not explicitly mentioned above, they must obtain prior permission from Publisher. Details of the RSC's procedures for processing permission requests can be found on the RSC's website at [www.rsc.org/permissions](http://www.rsc.org/permissions).
- 6.3 **Prohibited Use.** Customer and Authorised Users of RSC Electronic Content shall not use any automated program, including without limitation web crawlers, to access RSC Electronic Content. Such activities may have a detrimental effect on RSC Electronic Content or access thereto, and they are strictly forbidden.

## 7. Access to and Availability of SPR

- 7.1 Customer's access to SPR shall be via Secure Authentication.
- 7.1.1 Customer's access to or the provision of access to SPR 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 SPR. It is the responsibility of Customer to verify that any IP address will only allow such access
  - 7.1.2 Where Customer does not have the technical facilities to comply with 7.1.1, Publisher may, at its sole discretion, permit Customer to access or to provide access to SPR 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).
- 7.2 Publisher shall use its reasonable endeavours, subject to any reasonable periods of planned downtime or maintenance, to make SPR available to Customer 24 hours a day, 7 days a week. In the event of any unplanned downtime or unavailability of the SPR for any reason, whether through the fault of Publisher or otherwise, Publisher's sole responsibility shall be to use its reasonable endeavours to restore access to SPR as soon as reasonably practicable and Publisher shall have no liability to Customer for such interruption to access.
- 7.3 Publisher reserves the right to change the format of or the hosting service for SPR.
- 7.4 Customer's access to SPR is at all times subject to compliance with the terms of this Agreement.

## 8. Access to SPR upon Termination

- 8.1 Where, following termination of this Agreement as set out below, Customer's access to SPR 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.
- 8.2 Upon termination under Clause 9.3 or 9.4, or termination by Customer under Clause 9.1, Publisher shall provide continuing access to SPR. Customer shall continue to have the rights granted in this Agreement with respect to SPR, provided Customer abides by Publisher's Terms and Conditions in force at the time.
- 8.2.1 Upon termination of this Agreement by Publisher under Clause 9.1 or 9.2, Publisher shall immediately remove Customer access to SPR, or if applicable, Customer shall immediately

remove SPR from its network and destroy it and shall confirm to Publisher in writing when it has done so.

## 9. Termination

- 9.1 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.
- 9.2 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 temporarily suspend Customer's access to SPR to the Customer Site that is responsible for the breach and notify Customer in writing 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, Publisher shall promptly reinstate access to SPR.
- 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.
- 9.3 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.
- 9.4 Termination of this Agreement for whatsoever reason shall be without prejudice to the right of the parties to claim damages for any previous breach.
- 9.5 Upon termination of this Agreement by Publisher under Clause 9.1 or 9.2, Publisher shall immediately remove Customer access to SPR.
- 9.6 Publisher reserves the right to terminate this Agreement for any reason following sixty (60) days' written notice to Customer. In this case Publisher will not give Customer a refund to either the RSC Electronic Content or RSC Printed Content.
- 9.7 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.

## 10. Warranties and Liabilities

- 10.1 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 SPR does not violate or infringe any existing copyright, licence or third-party rights.
- 10.2 Customer hereby warrants to Publisher that it has full power to enter into and perform this Agreement.
- 10.3 Publisher shall use reasonable endeavours to ensure that SPR is accurate, error-free and uncorrupted, but Publisher accepts no liability whatsoever for any loss, claim or damage or 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 SPR or their consequences; or
  - (ii) faults in or corruption of SPR or their consequences, including but not limited to any defects caused by or during the transmission of SPR across the Internet or by the processing of SPR by Customer.
- 10.4 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.

- 10.5 Subject to Clauses 10.4 and 10.6, 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 SPR. 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).
- 10.6 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 SPR is in 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 SPR in any way to the extent that such amendment is the cause of the infringement.
- 10.7 If Publisher becomes aware of any item or part of an item in SPR 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 SPR. If this is not reasonably practicable, Publisher reserves the right at any time to withdraw from SPR any such item or part of an item. Publisher shall give written notice to Customer of such withdrawal as soon as reasonably practicable.
- 10.8 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.

## **11. Entire Agreement**

- 11.1 This Agreement, together with the associated information relating to SPR 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.
- 11.2 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.

## **12. 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.

## **13. Binding Agreement**

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

## **14. Alteration of Agreement**

This Agreement, including the associated information relating to SPR 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 SPR by Customer after notification of such changes shall be deemed to be acceptance of the changes by Customer.

## **15. Assignment**

- 15.1 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.

15.2 If rights in all or any part of SPR are assigned to another publisher, Publisher shall use its best endeavours to ensure that Customer may continue to have access to the SPR which is the subject of this Agreement.

## 16. 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 [inl\\_licences@rsc.org](mailto:inl_licences@rsc.org)). Notice sent by post shall be deemed to have been given ten (10) 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.

## 17. 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.

## 18. Confidentiality

18.1 Both parties shall keep the terms of this Agreement strictly confidential, with the exception of Clause 6, 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.

18.2 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 SPR. 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.

## 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 access to COUNTER-compliant usage statistics relating to RSC Electronic Content. 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.

20.3 Google Scholar. Publisher works with Google to enhance searching of its content via Google Scholar. Customer acknowledges that to facilitate this service Publisher will provide Google with details of Customer's Publisher Content and IP addresses via a protected page accessible only by Google. No usage information will be included in the transmission. Customer may opt out of this service via Publisher's Librarians' Portal at [www.rsc.org/librarians](http://www.rsc.org/librarians).

## 21. 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.

## 22. Applicable Law

22.1 Unless Clause 22.2 is applicable 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.

22.2 If Customer is a US State entity this Agreement shall be governed by and construed in accordance with the laws of the particular US State irrespective of the place of its physical execution and the parties hereto hereby submit to the exclusive jurisdiction of the courts of the US State in respect of any contractual and non-contractual disputes arising out of or in connection with this Agreement.