

Attachment C to BOA No. BEV-9-92089-00
Electronic Access License Agreement

ELECTRONIC ACCESS LICENCE AGREEMENT

This Electronic Access License Agreement (“Agreement”) is subject to Basic Ordering Agreement No. BEV-9-92089-00 (the “BOA”) and is made the 1st day of January 2019 between The Royal Society of Chemistry a company incorporated in England by Royal Charter (Registered No. RC000524) and a Registered Charity No. 207890 whose registered office is located at Burlington House, Piccadilly London W1J 0BA, United Kingdom (“Publisher”) and [Customer] located at [Address] (“Customer”).

WHEREAS

- (A) Publisher holds journal articles, databases, and eBooks 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 (including faculty, staff, and independent contractors) of the Customer and students of the Customer who, in either case, have been allowed access to Publisher Content by Customer, regardless of the physical location of such persons, such access shall be unlimited and shall be by Secure Authentication 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 and Walk-In Users, i.e. persons who are permitted by the Customer to access Publisher Content whilst they are on Customer’s physical premises. Such access must at all times be by Secure Authentication on computer terminals within the Customer’s physical premises. Walk-In Users may not be given means to access Publisher Content outside the Customer’s physical premises or by any wireless network unless the network is a secure network provided by the Customer.
- “Commercial Use” means use which is for direct monetary reward or commercial advantage, whether by or for Customer or Authorised User, by means of the sale, resale, loan, transfer, hire or other form of exploitation of Publisher Content. For the avoidance of doubt:
- (i) charging of Authorised Users by Customer for use of Publisher Content is not deemed to constitute Commercial Use;
 - (ii) use of Publisher Content by Customer or Authorised Users in the course of academic research funded by a commercial organisation is not deemed to constitute Commercial Use; and
 - (iii) use of Publisher Content by Customer or Authorised Users in the course of contract research carried out for a commercial organisation to which the research results will be provided is deemed to constitute Commercial Use;
- “Databases” means the databases specified in Section B of Attachment A to the BOA;
- “EBooks” means content specified in Section E of Attachment 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 and prices (including any applicable discounts) set out in Attachment B to the BOA;

“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 Attachment A;
“Journal Backfiles”	means content of the Journals that was published between 2008–2017;
“Journals”	means the publications specified in Section A of Attachment A;
“Publisher Content”	means the content of Publisher specified in Attachment A and to which access has been purchased by Customer (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 A attached hereto;
“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 a non-exclusive, worldwide, perpetual (as specified in Clause 7), and (subject to Clause 14 below) non-transferable licence to use Publisher Content and to provide the Publisher Content to Authorised Users in accordance with this Agreement.

- 2.1 Publisher licenses Customer to access and use Publisher Content through Publisher’s web. Customer shall access Publisher Content as specified in Attachment 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 except as explicitly allowed herein.
- 2.1.1.2 Access must be by means of Secure Authentication.
- 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.
- Where Publisher provides alternative methods of access and authentication beyond the Customer-administered methods described herein, e.g. by allowing users to establish a personal login from an on-campus IP address (thereby enabling access via username and password when logging in to a vendor website) or device authentication, which affiliates the device or application by use of a token, cookie, or vendor-managed proxy prefix, Customer will not be responsible nor liable for claims of breach or validity of such use.
- 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 re-engineer Publisher Content to provide suitable format(s) such that Authorised Users who are Visually Impaired Persons may have access to Publisher Content.
- 2.5 Publisher licenses Customer to use Publisher Content for regulatory purposes, 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.

- 2.6 Publisher licenses Customer to make such back-up copies of Publisher Content as are reasonably necessary to give effect to its rights and obligations under this Agreement. In the event that the Agreement is terminated, or the Publisher no longer offers the Publisher Content online, Customer may use the backup copy to exercise Customer's rights under "Perpetual Rights" section of this Agreement.
- 2.7 Scholarly Sharing. Authorised Users may transmit to a third party in hard copy or electronically, minimal, insubstantial amounts of the Publisher Content for personal use or scholarly, educational, or scientific research or professional use but in no case for resale or commercial purposes as defined in the STM Voluntary Principles for Article Sharing on Scholarly Collaboration Networks (http://www.stm-assoc.org/2015_06_08_Voluntary_principles_for_article_sharing_on_scholarly_collaboration_networks.pdf).
- 2.8 Text and Data Mining ("TDM"). Authorised Users may use the Publisher Content to perform and engage in text and/or data mining activities for academic research, scholarship, and other educational purposes and may utilise and share the results of text and/or data mining in their scholarly work and make the results available for use by others, so long as the purpose is not to create a product for use by third parties that would substitute for the Publisher Content. Publisher will, upon receipt of written request, use all reasonable efforts to cooperate with Customer and Authorised Users as reasonably necessary in making the Publisher Content available in a manner and form most useful to the Authorised User.
- 2.9 Customer and Authorised Users may make use of all of the Publisher Content as is consistent with the Fair Use / Fair Dealing Provisions of United States and international copyright laws.
- 2.10 Display. Customer and Authorised Users shall have the right to electronically display the Publisher Content in systems accessible only to Authorised Users.
- 2.11 Digitally Copy. Customer and Authorised Users may download and digitally copy a reasonable portion of the Publisher Content.
- 2.12 Print Copy. Customer and Authorised Users may print a reasonable portion of the Publisher Content.
- 2.13 Recover Copying Costs. Customer may charge a reasonable fee to cover costs of copying or printing portions of Publisher Content for Authorised Users.
- 2.14 Caching. Customer and Authorised Users may make local digital copies of the Publisher Content in order to ensure efficient use by Authorised Users by appropriate browser or other software. For the avoidance of doubt, the cached copy is not a derivative work.
- 2.15 Classroom Use. Customer and Authorised Users may distribute single copies of individual articles or items of the Publisher Content in print or electronic form to Authorised Users. For the avoidance of doubt, classroom handouts shall include the distribution of a copy for teaching purposes to all individual Authorised Users in a class at authorised sites.
- 2.16 Collection of Information. Customer and Authorised Users shall be permitted to extract or use information contained in the Publisher Content for educational, scientific, or research purposes, including extraction and manipulation of information for the purpose of illustration, explanation, example, comment, criticism, teaching, research, or analysis.
- 2.17 Course Packs (Print and Electronic). Customer and Authorised Users may use a reasonable portion of the Publisher Content in the preparation of Course Packs or other educational materials.
- 2.18 Course Reserves (Print and Electronic). Customer and Authorised Users may use a reasonable portion of the Licensed Materials for use in connection with specific courses of instruction offered by the University of California.
- 2.19 Electronic Links. Customer and Authorised Users may provide hyperlinks from the Customer's and Authorised Users' web page(s) or web site(s) to individual units of content within the Publisher Content.
- 2.20 Interlibrary Loan. Using electronic, paper, or intermediated means, Customer at its discretion may fulfill occasional requests from other institutions, a practice commonly called Interlibrary Loan. Customer agrees to fulfill such requests in compliance with Section 108 of the United States Copyright Law (17 USC §108, "Limitations on exclusive rights: Reproduction by libraries and archives") and the Guidelines for the Proviso of Subsection 108(g)(2) prepared by the

National Commission on New Technological Uses of Copyrighted Works.

- 2.21 Bibliographic Citations. Customer and Authorised Users may use, with appropriate credit, figures, tables, and brief excerpts from the Publisher Content in the Authorised User's own scientific, scholarly, and educational works. For the avoidance of doubt, Customer and Authorised Users may use citation and abstract information in faculty profiling systems, in lists of publications on faculty and institutional web pages, and to create bibliographies, and store a single copy of an individual document being part of the Licensed Materials, including within secure personal bibliographic reference/citation management systems.
- 2.22 No diminution of Rights. Nothing in this Agreement, including but not limited to authorized uses, shall be interpreted to diminish the rights and privileges of the Customer or Authorised Users with respect to any of the Publisher Content, including exceptions or limitations to the exclusive rights of copyright owners, such as fair use, under Section 107 of the U.S. Copyright Act. In the event that any content included in the Publisher Content is in the public domain or has been issued under a Creative Commons or other open license, Publisher shall not place access, use or other restrictions on that content beyond those found in the open license, where applicable.
- 2.23 Unlimited and Simultaneous User Access. Subject to the terms of this Agreement, Customer and its Authorised Users shall have unlimited and simultaneous user access to the Licensed Materials.
- 2.24 Publisher licenses Customer to download, extract and index information from the Publisher Content and, where required, mount, load and integrate the results on a server used for the Customer's text mining system and evaluate and interpret the text and data mining ("TDM") output for access and use by Authorised Users. Customer ensures that all TDM is carried out under the other conditions of this Clause 2. TDM may be undertaken on either locally loaded Publisher Content or as mutually agreed.
- 2.25 Customer and Authorised Users are prohibited from using any automated program including without limitation web crawlers to access Publisher Content, except as permitted by this Agreement. Such activities may have a detrimental effect on Publisher Content or access thereto and are strictly forbidden.
- 2.26 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, 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 when applicable.
- 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. All fees are due and payable by Customer sixty (60) days after the date of invoice from Publisher, but no earlier than thirty (30) days before renewal. Notwithstanding anything to the contrary: (i) for each Term in which Customer is a member of Access Group 1, Fees for a successive new Term for any Publisher Content offered under the BOA or purchased by Customer under the BOA shall not be increased by more than 3.5%; (ii) for each Term in which Customer is not a member of Access Group 1 but declines to exercise Customer's option—in a successive new Term—to add three new Journals to Customer's licensed Publisher Content, Fees for the successive new Term for any Publisher Content offered under the BOA or purchased by Customer under the BOA shall not be increased by more than 3.5%; and (iii) if Customer is not a member of Access Group 1 and does exercise Customer's option—in a successive new Term—to add three new Journals to Customer's licensed Publisher Content, Fees for the successive new Term for any Publisher Content offered under the BOA or purchased by Customer under the BOA shall not be increased by more than **4.5%**.

4. Term of Agreement

The term of this Agreement („Term“) is 1 January 2019 to 31 December 2019. 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 as necessary, shall be signed by both parties.

5. Copyright and Ownership

5.1 Publisher Content is copyright and is subject to all applicable copyright 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 reasonable precautions to prevent theft or inadvertent illicit use of the intellectual property in Publisher Content. The relevant copyright notice may not be obscured on copies of information made from Publisher Content:

The recommended form of acknowledgement (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):

- (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";

5.2 Customer acquires no intellectual property rights in Publisher Content and all such rights remain with the copyright owner.

5.3 Customer shall make reasonable efforts to prevent unauthorised use of the Publisher Content.

5.4 Each party shall use its reasonable 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. An updated IP list will be sent to Publisher on an annual or as needed basis. Publisher will cooperate with Customer in the implementation of new authentication protocols and procedures (such as Shibboleth) as they are developed during the term of this Agreement.

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, with an average of 98% up-time per month. Publisher may schedule brief unavailability periods, but will do so only where (1) it has given at least forty-eight (48) hour notice to Customer, and (2) in ways and at times that minimise inconvenience to Customer and its Authorised Users, regardless of when notice has been given. 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 Publisher reserves the right to change the format of or the hosting service for Publisher Content.

6.4 Availability of Publisher Content. Upon the Effective Date of this Agreement, Publisher will make the Publisher Content available to the Customer and Authorised Users.

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

6.6 Persistent Linking. Publisher shall use all reasonable efforts to comply with the most current version of the OpenURL standard (ANSI/NISA Z39.88) for outbound links only, and will provide

a mechanism for persistent links to content. For avoidance of doubt Publisher does not support inbound OpenURL links.

- 6.7 Support. Publisher will provide activation and installation support, including assisting Customer and Authorised Users with the implementation of any Publisher software. Publisher will offer reasonable levels of continuing support to assist Customer and Authorised Users in use of the Publisher Content. Publisher will make its personnel available by email and/or phone during Publisher's regular business hours, Monday through Friday, for feedback, problem-solving, or general questions and will respond in a timely manner.
- 6.8 Update. Publisher will provide regular system and project updates to Customer as they become available.
- 6.9 Problems with Publisher Content. If the Publisher Content fails to operate, display, load, or render in conformance with the terms of this Agreement, Customer shall immediately notify Publisher, and Publisher shall promptly use best efforts to restore access to the Publisher Content as soon as possible. In the event that the non-conformity materially affects the Customer's or Authorised Users' use of the Publisher Content, and Publisher fails to repair the nonconformity within five (5) business days, Publisher shall reimburse Customer for such problems in an amount that is proportional to the total Fees owed by Publisher under this Agreement.
- 6.10 Transfer or Acquisition of Titles. If any portion of the Publisher Content is transferred to or acquired from another party, Publisher shall use best efforts to ensure that Customer does not lose access to content subject to this Agreement as a result of the transfer or acquisition. Any archival and perpetual access rights that have been granted shall be honored, whether the Publisher is acting as the transferring or acquiring party. If Publisher is transferring any portion of the Publisher Content to another party, Publisher will use best efforts to assign all rights and obligations to the assignee. If Publisher is acquiring works that become subject to this Agreement, Publisher will use best efforts to acquire the rights to perform under this Agreement, including but not limited to perpetual access rights. Publisher agrees to communicate with the party from which it is acquiring works to exchange such relevant payment and rights information. For journal titles, Publisher will comply with the NISO Transfer Code of Practice.¹
- 6.11 Completeness of Content. Publisher will inform Customer of instances where online content differs from print versions of the Publisher Content. Where applicable, Publisher will cooperate with Customer to identify and correct content errors or omissions, and when necessary, the Publisher shall use reasonable efforts to ensure that the online content: (1) is at least as complete as print and other physical format versions of the Publisher Content; and (2) represents complete, accurate, and timely replications of the corresponding content contained within the print and other physical format versions of Publisher Content. For avoidance of doubt the print version of *Chemistry World* and *Education in Chemistry* are different from the online versions.
- If online content is a digitized version of print content and differs from the print or other physical format versions of Publisher Content so as to be substantially less useful to the Customer or its Authorised Users, the Customer may seek to terminate this Agreement for breach pursuant to the termination provisions of this Agreement.
- 6.12 Notification of Modifications of Publisher Content. From time to time Publisher may add, change, or modify portions of the Publisher Content, or migrate the Publisher Content to other formats. When such changes, modifications, or migrations occur, the Publisher shall give notice of any such changes to Customer as soon as is practicable, but in no event less than sixty (60) days in advance of modification. If any of the changes, modifications, or migrations renders the Publisher Content substantially less useful to the Customer or its Authorised Users, the Customer may seek to terminate this Agreement for breach pursuant to the termination provisions of this Agreement.
- 6.13 Itemized Holdings/Title List. The Publisher will provide to the Customer, prior to the beginning of the calendar year within the current term, an itemized holdings report that specifies the titles included in the Publisher Content for the next subscription term. Publisher will use reasonable efforts to update itemized holdings reports as soon as is practicable. If the Publisher Content include content covered by the [NISO Knowledge Bases And Related Tools \(KBART\) Recommended Practice](http://www.niso.org/workrooms/kbart),² Licensor will provide itemized holdings lists for the Licensed

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

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

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Materials in KBART-compliant format, including a column/field for dates (YYYY-MM) of additions.

- 6.14 Interoperability with Prevailing Web Browsers. Publisher will use reasonable efforts to ensure that the Publisher Content are accessible and interoperable with prevailing web browsers and internet access tools, including, at a minimum, the most recent two major versions (current version and one version prior) and all the associated releases for those versions.
- 6.15 Branding. Publisher will provide Customer the option to brand the Publisher's Platform with the name of the Customer and/or authorised sites at Customer's discretion.
- 6.16 MARC Records. When applicable to the Publisher Content, at Customer's request, Publisher shall provide full OCLC-quality batched sets of MARC records incorporating Customer specifications at no additional cost by the date of the execution of this License Agreement. Updates to existing records and new title records, matching the schedule of release and delivery of new publications, will be provided on a mutually agreed-upon schedule and in a format that renders them useful to the Customer. For avoidance of doubt Publisher only supplies MARC records for the volumes in the book series *Issues in Environmental Science & Technology* and does not supply MARC records for the other Publisher Content.
- 6.17 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 Perpetual License. Notwithstanding anything else in the Agreement, Publisher grants to Customer a nonexclusive, royalty-free, system wide perpetual license to use any Publisher Content that was subscribed to or for which a perpetual license fee has been paid during the term of this Agreement. Such use shall be in accordance with the provisions of this Agreement, which provisions shall survive any termination of this Agreement. The means by which Customer shall have access to such Publisher Content shall be in a manner and form substantially equivalent to the means by which access is provided under this Agreement. If the Publishers' means of access is not available, the Customer may provide substantially equivalent access to the Publisher Content by use of an archival copy or by engaging the services of third-party trusted archives (such as Portico) and/or participating in collaborative archiving endeavors to exercise its perpetual use rights.
- 7.2 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 suspend access to the breaching IP address(es) and will immediately notify Customer that it has done so Customer will investigate and take necessary action as indicated under Clause 8.2, which clause shall survive the termination of this Agreement. When Publisher is reasonably satisfied that such breach has been remedied, Publisher shall reinstate access as soon as possible.
- 7.3 Journals and Journal Backfiles
- 7.3.1 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 7.2 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 upon request of Customer, Customer may receive from Publisher and/or create one (1) copy of the entire set of the PDF forms of the articles from the volumes of the Journals that Customer has subscribed to under this Agreement, at a reasonable cost-based fee, as required to exercise Customer's perpetual rights granted in this Agreement. The archival copy from the Publisher shall be provided without any DRM in a mutually agreeable medium suitable to the content, and any fees for provision of copies will be on a time and materials basis only.
- 7.3.2 Upon termination of the Agreement by Publisher under Clause 8.1 or 8.2, Publisher shall immediately remove Customer access to the Journals.
- 7.3.3 Publisher and Customer acknowledge that either party may engage the services of

third-party trusted archives and/or participate in collaborative archiving endeavours to exercise Customer's rights to use the contents of the volumes of the Journals that Customer has subscribed to under this Agreement, subject always to the provisions of Clauses 7.2 and this Clause 7.3. Publisher agrees to cooperate with such archiving entities and/or initiatives as reasonably necessary to make the volumes of the Journals that Customer has subscribed to under this Agreement available for archiving purposes. Customer may perpetually use the third-party trusted system to access or store the volumes of the Journals that Customer has subscribed to under this Agreement, so long as Customer's use is otherwise consistent with this Agreement. In the event the Publisher discontinues or changes the terms of its participation in a third-party archiving service, the Publisher shall notify the Customer in advance, and shall in good faith seek to establish alternative arrangements for trusted archiving and perpetual access to the Publisher Content.

7.4 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, upon receiving request from Publisher, shall confirm to Publisher in writing that it has done so.

7.5 Journal Archive and EBooks

7.5.1 If Customer ceases to access Journal Archive on Publisher's server, upon request of Customer, Customer may receive from Publisher and/or create one (1) copy of the entire set of Publisher Content, in a mutually-agreed electronic medium at a reasonable cost-based fee, as required to exercise Customer's perpetual rights granted in this Agreement.

7.5.2 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, upon receiving request from Publisher, shall confirm to Publisher in writing that it has done so.

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 sixty (60) days of notice, and if such remedy has not been completed within the said sixty (60) 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, including, but not limited to, causing detrimental effect when TDM, Publisher may:

- (i) If Customer accesses Publisher Content by External means, temporarily suspend offending IP address's access to Publisher Content and immediately notify Customer in writing. When Publisher is reasonably satisfied that such breach has been remedied, Publisher shall reinstate access as soon as possible, unless this Agreement is earlier terminated pursuant to this Section 8.

Customer shall have sixty (60) 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.

If Customer does not satisfactorily remedy or halt the breaching activity within sixty (60) days, Publisher may terminate this Agreement with immediate effect upon written notice to Customer.

If Customer persistently and materially breaches this Agreement, irrespective of whether such breaches were later remedied, Publisher may limit access to Publisher Content, providing it only to Customer's library staff until Customer can provide evidence that it has made all reasonable efforts to prevent future breaches.

- 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.
- 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, upon receipt of request from Publisher, shall confirm to Publisher in writing that it has done so.
- 8.7 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.

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.
- Publisher shall use all reasonable efforts to ensure that the Publisher Content complies with California and federal disabilities laws and regulations, and conforms to the accessibility requirements of [Web Accessibility Initiative, Web Content Accessibility Guidelines](#) (WCAG) 2.0 at level AA.³ Publisher agrees to promptly respond to and use all reasonable efforts to resolve any complaint regarding accessibility of Licensed Materials.
- 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 Publisher to the Customer for death or personal injury caused by its negligence or that of its employees, servants or agents.
- 9.5 In no event shall either party's aggregate liability arising out of or related to this Agreement, whether arising out of or related to breach of contract, tort (including negligence) or otherwise, exceed 100% (one hundred per cent) of the total amounts paid pursuant to this agreement in the twelve (12) months preceding the event giving rise to the claim. Notwithstanding anything else in this Agreement, neither party shall be liable for any indirect, special, incidental, punitive or consequential damages, including but not limited to loss of data, business interruption, or loss of profits, that arises from the use of the Publisher Content, or the inability to use the Publisher Content.
- 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

³ <http://www.w3.org/WAI/guid-tech.html>

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. If any such withdrawal renders the Publisher Content less useful to Customer or its Authorised Users, Publisher shall reimburse Customer for the withdrawal in an amount proportional to the total Fees owed by Customer for the Publisher Content under this Agreement. If any such withdrawal renders the Publisher Content substantially less useful to Customer or its Authorised Users, Customer may seek to terminate this Agreement for breach pursuant to the termination provisions.
- 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 Schedule, and the BOA and attachments thereto, embody and set forth the entire agreement and understanding of the parties and supersede 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 or the BOA.
- 10.2 In the event that Publisher requires Authorised Users to agree to terms relating to the use of the Publisher Content before permitting Authorised Users to gain access to the Publisher Content (commonly referred to as "click-through" or "clickwrap" licenses), Publisher shall provide Customer with notice of and an opportunity to comment on such terms prior to their implementation. In no event shall the terms of such "click-through" licenses materially differ from the provisions of this Agreement. In the event of any conflict between the terms of such "click-through" licenses and this Agreement, the terms of this Agreement shall prevail. For the avoidance of doubt, Authorised Users are not a party to this Agreement.
- 10.3 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 Neither party may not assign or transfer its rights or obligations under this Agreement without the prior written consent of the other party, except as otherwise provided in "Access to and Availability of Publisher Content" section, such agreement not to be unreasonably withheld. Notwithstanding the above, Customer may assign all its rights and obligations under this Agreement to a successor manager and operator of its facility or facilities, to the U.S. Department of Energy, or to the National Nuclear Security Administration if directed to do so by the U.S. Department of Energy or the National Nuclear Security Administration.

- 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 jnl_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.

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

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. If Publisher is compelled by law or court order to disclose personally identifiable information of Authorised Users or patterns of use, Publisher shall provide the Customer with adequate prior written notice as soon as is practicable, so that Customer or Authorised Users may seek protective orders or other remedies. Publisher will notify Customer and Authorised Users as soon as is practicable if the Publisher's systems are breached and the confidentiality of personally identifiable information is compromised.

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), including but not limited to its provisions on customer confidentiality. When a release of a new COUNTER Codes of Practice is issued, Publisher shall use all reasonable efforts to comply with the implementation time frame specified by COUNTER to provide use statistics in the new standard format. These statistics will cover all Publisher Content listed in Schedule A, Sections A, B and C excluding the Databases *Chemistry World* and *Education in Chemistry*. Customer reserves the right to collect, analyse, and make results available to both internal and external constituencies of usage data compiled by Publisher and made available to Customer for statistical purposes.

Publisher shall not provide Customer's usage statistics in any form to any third party without the Customer's written authorisation, unless the third party owns rights in the Publisher Content. In all cases, the disclosure of such data shall fully protect the anonymity of individual users and the confidentiality of their searches, and will comply with all applicable privacy laws. The Publisher shall not disclose or sell to other party's usage data or information about the Customer

20. Dispute Resolution

In the event of any dispute or controversy arising out of or relating to this Agreement, the parties agree to exercise their best efforts to resolve the dispute as soon as possible. The parties shall, without delay, continue to perform their respective obligations under this Agreement which are not affected by the dispute.

Mediation. In the event that the parties cannot by exercise of their best efforts resolve the dispute, they shall

a

submit the dispute to Mediation. The parties shall, without delay, continue to perform their respective obligations under this Agreement which are not affected by the dispute. The invoking party shall give to the other party written notice of its decision to do so, including a description of the issues subject to the dispute and a proposed resolution thereof. Designated representatives of both parties shall attempt to resolve the dispute within five (5) working days after such notice. If those designated representatives cannot resolve the dispute, the parties shall meet at a mutually agreeable location and describe the dispute and their respective proposals for resolution to responsible executives of the disputing parties, who shall act in good faith to resolve the dispute. If the dispute is not resolved within thirty (30) calendar days after such meeting, either party may pursue a legal action in court. The exclusive jurisdiction and venue for any and all actions arising out of or brought under the Agreement is in a state court of competent jurisdiction, situated in Alameda County, California (or, if applicable, the federal court located in the Northern District of California). During such court action, the parties shall continue to perform their respective obligations under this Agreement that are not affected by the dispute.

21. Applicable Law

This Agreement shall be interpreted and construed according to, and governed by US Federal law, excluding any such laws that might direct the application of the laws of another jurisdiction. The relevant state and federal courts located in New York shall have jurisdiction to hear any dispute under this Agreement.

22. Notice of the Use of Digital Rights Management Technology

In the event that Publisher utilises any type of digital rights management technology to control the access or the usage of Publisher Content, Publisher agrees to notify Customer of the name, contact information and any technical specifications for the digital rights management technology utilised. In no event may such Digital Rights Management Technology be used in such a way as to limit the usage rights of a Customer or any Authorised User as specified in this Agreement or under applicable law. If the use of DRM renders the Publisher Content substantially less useful to the Customer or its Authorised Users, the Customer may seek to terminate this Agreement for breach pursuant to the termination provisions of this Agreement.

23. Notice of the Use of Digital Watermarking Technology

Publisher includes a digital watermark on PDF forms of the Journal articles containing the following information and agrees that watermarks will not reduce readability of content and will not degrade image quality,

- the date the article was published;
- the name of the organisation which downloaded the article; and
- the date and time the article was downloaded.

These watermarks do not contain user-related information such as account number or IP address. If any changes to the digital watermarking technology are proposed, Publisher agrees to notify Customer, at least thirty (30) days in advance of implementation, of the name, contact information, and any technical specifications for the technology used. If the use of the watermarking technology renders the Publisher Content substantially less useful to the Customer or its Authorised Users, the Customer may seek to terminate this Agreement for breach pursuant to the termination provisions of this Agreement.

24. Open Access Option

In the event that Publisher offers an open access option to its authors, Publisher agrees to annually review the number of open access articles published in the Publisher Content under the open access option. For all Publisher Content in which such articles are published, Publisher will share with Customer the following information:

- the number of articles published under the open access option by Customer's authors, listed by journal title and campus.
- the number of articles published under the open access option by all authors, listed by journal title.

If the ratio of the number of open access articles to articles published under the traditional subscription model increases in comparison to the previous year, Publisher will reflect such increase by way of a proportional reduction in the subscription price for the current subscription year.

25. Author Rights to Use their Own Work

Notwithstanding any terms or conditions to the contrary in any author agreement between authors and Publisher, authors who are Authorised Users ("Authors") whose work ("Content") is accepted for publication

by Publisher during the Term shall retain the non-exclusive, irrevocable, worldwide, royalty-free right to use their Content for scholarly and educational purposes, including self-archiving or depositing the Content subject to a 12 month embargo from date of acceptance in institutional, subject-based, national or other open repositories or archives, and to comply with all grant or institutional requirements associated with the Content. The Author(s) may make available the Content via the personal website(s) of the Author(s) or via the Intranet(s) of the organisation(s) where the Author(s) work(s). No embargo period applies.

26. Open Access Discounts

Publisher agrees to provide a discount of 15% on any article processing charges for all Content submitted for open access publication by Authors.

For the avoidance of doubt,

- it is the intent of the parties to this Agreement that Authors are third party beneficiaries of these provisions 25 and 26 of the Agreement. Nothing in this section shall eliminate or limit any other rights that Customer or any Author may have to deposit, host or make available Content published by Publisher.

Definitions applying to Clauses 25 and 26 only:

Author: An author of a work published by Publisher who is an Authorised User.

Content: The author's accepted manuscript version (after peer review and including revisions from the peer review process but before copy-editing and final publication) of any work by an Author that is accepted for publication by Publisher.

Scholarly and educational purposes: Purposes encompassing teaching, research, and institutional needs, including but not limited to the right to (a) use, reproduce, distribute, perform, and display the Content in connection with teaching, conference presentations, and lectures; (b) make full use of the Content in future research and publications; (c) meet requirements and conditions of research grants or publishing subventions provided by government agencies or non-profit foundations, and; (d) grant to the Author's employing institution some or all of the foregoing rights, as well as permission to use the Content in connection with administrative activities such as accreditation, mandated reports to state or federal governments, and similar purposes. In all cases, the Author and/or the Author's employing institution will be expected to provide proper citation to the published version. Authors must seek permission from Publisher if they want to republish, update or revise the Content in whole or in part for later publication

Repositories or archives: Non-commercial open-access digital repository services such as those provided by the Author's employing institution, an academic consortium, a discipline-based entity, or a governmental funding agency. For avoidance of doubt Content may not be deposited in commercial repositories.

SCHEDULE A

Customer Site(s) and Secure Authentication Protocol

Customer Site(s)

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

Secure Authentication Protocol

External:

Secure Authentication by IP addresses

List IP addresses

IPS TO BE ADDED HERE