

DOE Alliance Consortium, 10008138



**American Chemical Society
Publications Division
Online Products Institutional Access Agreement**

This Online Products Institutional Access Agreement ("Agreement") is entered into this 15th day of December 2021, between the American Chemical Society ("ACS"), a federally-chartered nonprofit located at 1155 16th Street NW, Washington DC 20036 and Alliance for Sustainable Energy, LLC, management and operating contractor of the National Renewable Energy Laboratory located at 15013 Denver West Parkway, Golden, CO 80401, on behalf of the U.S. Department of Energy, Integrated Contractor Purchasing Team ("DOE ICPT") ("Grantee") (ACS and the Grantee are collectively referred to in this Agreement as "the Parties"). In that Grantee represents those Contractors, as such term is defined in the Basic Ordering Agreement number AGR-2022-22103, hereinafter, Grantee shall mean both the Grantee and the Contractors (individually and together), as may be appropriate and applicable.

1. SCOPE OF GRANT

ACS grants Grantee non-exclusive and nontransferable permission to access the ACS Products, subject to the terms and conditions set forth in this Agreement, including all attachments. All attachments are incorporated by reference. For purposes of this Agreement, ACS Products means those products and services identified by Grantee annually and periodically throughout the Term (defined below) via an ACS quote form signed by Grantee or a signed purchase order issued by Grantee.

2. TERM

a. This Agreement shall be effective from 1 January 2022 through 31 December 2026 ("Term"). During the Term, annually, ACS will send a quote or invoice of the respective fees ("Access Fee") for the upcoming calendar year as agreed to between the Parties for access to the ACS Products identified by Grantee. Grantee shall endeavor to sign or approve such quote or invoice by December 1 prior to the upcoming year. Upon Grantee's written acceptance or approval, the terms and conditions of this Agreement (including any appendices) shall continue to apply to the Parties. Periodically, during the Term, Grantee may desire to purchase or subscribe to additional ACS products and services, which, upon signature by Grantee of the applicable ACS-issued quote or Grantee-issued purchase order for such additional product or service, the terms and conditions of this Agreement shall apply. Notwithstanding anything to the contrary, in cases of a one-time purchase of an ACS product or service, this Agreement shall continue to apply for as long as Grantee maintains or has access to that product or service.

b. From time to time, ACS may require the Parties to execute a new Agreement.

3. FEES AND PAYMENTS

a. Grantee agrees to pay ACS any and all Access Fees, in accordance with the appropriately issued invoice from ACS. ACS will not activate Grantee's access to the ACS Products until Grantee provides ACS with: (1) the email address of a contact person; (2) a duly executed Agreement; and (3) any other information required by ACS to set-up and activate Grantee's access.

b. Grantee agrees to pay all ACS invoiced Access Fees within forty-five (45) days of receipt of the invoice date. ACS reserves the right to discontinue Grantee's access to the ACS Products and to terminate this Agreement in the event Grantee fails to pay all Access Fees in accordance with the ACS invoice. ACS shall issue an invoice to Grantee no later than thirty (30) days after the period of performance start date.

c. ACS reserves the right to modify the Access Fee for any renewal term upon prior written notice to Grantee.

4. INSTITUTIONAL CUSTOMER TYPE; AUTHORIZED USERS; SITES; ADDRESSES

DOE Alliance Consortium, 10008138

a. ACS grants to Grantee and its Authorized Users at the authorized sites approved by ACS ("Authorized Sites") identified in the Site List and IP Address Attachment ("Site List Attachment"), online access to the ACS Products. This Agreement extends to Grantee and Authorized Users individually at Authorized Sites. For purposes of this Agreement,

"Authorized Users" means, those individuals employed or otherwise directly engaged by the Authorized Site to perform research and development in furtherance of the Authorized Site's business, who are: employees; contract employees, individual consultants; students; and visiting professionals affiliated with the Authorized Site's locations and individuals using computer terminals within the library facilities at the locations permitted by the Authorized Site to access the subscribed products for purposes of personal research, education or other non-corporate use ("Walk-in Users"). Aside from Walk-in Users, Authorized Users may access the ACS Products from remote sites.

b. Authorized Users will be recognized and authorized by their Internet Protocol ("IP") addresses. Grantee is responsible for providing valid IP addresses. The form of the IP addresses must be acceptable to ACS as defined on the IP Address and Site List Attachment. IP Ownership must be verifiable and IP addresses must be directly affiliated with Grantee. Only those IP addresses submitted by Grantee, listed on the Site List Attachment, and approved by ACS will have access to the ACS Products. If the Grantee(s) plan to use a Proxy Server or enable Virtual Private Network (VPN) access, such access must be registered with ACS and use an ACS-approved configuration.

c. Grantee shall exercise reasonable care and shall be responsible for all access control to ensure only Authorized Users and Other Users access the ACS Products for Permitted Use as defined herein. All usage/downloads of ACS content by Authorized Users that gain access through the Grantee's firewall, proxy servers and other gateways for users authorized via the ACS Approved IP addresses listed on the Site List Attachment will be factored into the Grantee's Access Fee. Grantee agrees to notify Authorized Users of the relevant conditions for accessing ACS Products. Grantee further agrees to notify ACS promptly upon learning of any violations of this Agreement by Authorized Users and will cooperate with the ACS in investigating any such violations or unauthorized uses and in taking reasonable steps to prevent a recurrence.

d. Except for a temporary shutdown automatically triggered by safeguards built into ACS's access platform due to misuse or abuse by a user, ACS will not shut down a site's access without prior notification to the applicable site.

5. PERMITTED USES

a. Authorized Users may view, download, save, or print individual articles, individual book chapters, proceedings, Reagent Chemicals monographs or other individual items from the ACS Products for their personal scholarly, research, and educational use. If the Grantee is a commercial entity, Authorized Users may use ACS Products to support their scientific research undertaken in the normal course of their employment or in connection with the process of obtaining regulatory approval for drug products as provided herein. Authorized Users may make a printed copy of individual articles, individual book chapters, proceedings, Reagent Chemical monographs, or other individual items from the ACS Products for the internal or personal use of others who are Authorized Users but who are unable to access the ACS Products. Authorized Users may include (and are encouraged to provide) links to the ACS Products as part of course pack offerings or e-mail communication.

b. Grantee or Authorized Users may provide print or electronic copies of individual items taken from ACS Products to national or international regulatory authorities in connection with the preparation or submission of the Grantee's or Authorized User's applications for drug and product approval, provided that such applications do not amount to commercial redistribution for direct profit. Grantee and Authorized Users may supply print or electronic copies of individual items taken from the ACS Products when required by law.

c. Grantee or Authorized Users may reactively supply print or electronic copies of individual items taken from ACS Products to healthcare professionals or other third parties in response to enquiries relating to Grantee's medical products. Such copies must carry, without modification, those copyright notices already incorporated in the ACS Products. This use of the ACS Products is restricted to responding to enquiries only. For the avoidance of doubt, this excludes proactive or multiple supplies of articles for marketing, sales, or other purposes, including any activity that would replace a subscription or the purchase of reprints.

d. Interlibrary Loan. Except as set forth in Prohibited Uses herein, Grantee may use the ACS Products to fulfill requests for Interlibrary Loans (“ILL”) by transmitting a copy of an article in PDF format via electronic transmission or by mail, fax, Ariel, or other ILL mechanisms. ILLs are permitted to support non-commercial scholarly research by patrons of other libraries such as public, school, or college libraries. Grantee agrees to fulfill such requests in compliance with Section 108 of the United States Copyright Law (17 USC Section 108, “Limitations on exclusive rights: Reproduction by libraries and archives”) and clause 3 of the Guidelines for the Proviso of Subsection 108(g)(2) prepared by the National Commission on New Technological Uses of Copyrighted Works. Notwithstanding anything to the contrary, international cross-border ILL is not permitted. ILL to libraries of commercial entities is not permitted.

e. Text and data mining is permitted solely on a project by project basis within an Authorized Site, subject to the Text and Data Mining Addendum, which is attached hereto and incorporated by reference. A TDM content delivery fee may apply. If a fee does apply for any single case of delivery of content for TDM purposes, ACS shall provide written notification to Grantee, and the Parties shall reach mutual agreement regarding such fee amount.

6. PROHIBITED USES

a. Except as provided in Permitted Uses herein, Grantee and its Authorized Users agree not to forward, transfer, sell, rent, or otherwise knowingly distribute or provide access to the ACS Products or any portions thereof, to any third party. Individual articles, individual book chapters, proceedings, Reagent Chemicals monographs or other individual items from the ACS Products and other information obtained under this Agreement may not be used for fee-for-service purposes such as document delivery, except under a separately negotiated transactional agreement. The ACS Products may not be used to supply single articles, individual book chapters, proceedings, Reagent Chemicals monographs, or other individual items to requesters that are employed by a commercial organization or by a library that belongs to a for-profit company without prior written approval of ACS.

b. Authorized Users may not use ACS Products to support work performed on behalf of any commercial entity other than the Grantee. Grantee agrees to take all reasonable measures to ensure proper use of ACS Products by Authorized Users, and agrees to remedy identified cases of prohibited use.

c. Authorized Users may not modify, alter, or create derivative works of the materials contained in the ACS Products without prior written permission from ACS. Indexing, by human or machine means, aggregating, data mining, peer-to-peer (or similar) file-sharing are all prohibited uses unless an institution concludes a specific, separate agreement with ACS to do so. Authorized Users may not use illustrations or other graphic excerpts or abstracts without a complete citation and the inclusion of a persistent URL link to the appropriate material within ACS Products.

d. Individual articles, book chapters, Reagent Chemicals monographs, and other individual items from the ACS Products that include information obtained as a result of access to the ACS Products are not to be systematically downloaded, re-published in any media, print or electronic form. Individual articles, book chapters, Reagent Chemicals monographs, or other individual items from the ACS Products may not be downloaded in aggregate quantities or centrally stored for later retrieval.

e. Grantee acknowledges that ACS may prevent Grantee, its Authorized Users from using, implementing, or authorizing use of any computerized or automated tool or application to search, index, test, or otherwise obtain information from ACS Products (including without limitation any “spidering” or web crawler application) that has a detrimental impact on the use of the services under this Agreement. Grantee agrees to assist ACS in correcting unauthorized use of such methods or applications and acknowledges that ACS may from time-to-time implement tools or other controls on the ACS Products to regulate or restrict use of computerized or automated applications that are used to search, index, test, or obtain information from the ACS Products. ACS acknowledges that Grantee may not be able to prevent its Authorized Users and Other Users from using such methods or applications.

f. Grantee is required to notify ACS of any infringements of copyrights or unauthorized use of which they become aware. Grantee will cooperate with the ACS in investigating any unauthorized uses and in taking reasonable steps to prevent a reoccurrence.

7. ACCESS

a. ACS shall use reasonable commercial efforts to provide continuous availability of ACS Products through the Internet. It is understood that availability will be subject to periodic interruption due to maintenance of the server(s), installation or testing of software, loading new information files, and downtime related to equipment or services outside the control of ACS including public and private telecommunications services or Internet nodes or facilities. ACS shall not be liable for any delay, downtime, transmission error, software or equipment incompatibilities, force majeure or other failure of performance.

b. ACS will make reasonable efforts to maintain the legacy archive of journal articles published in PDF format between 1879 and 1995. In the event that it proves commercially unreasonable for ACS to maintain the ongoing availability of the PDF legacy archive, ACS, in consultation with its customer advisory panel, will make a conservation copy of the archive available through an acceptable repository, such as CLOCKSS, LOCKSS, Portico, etc. to institutions that have access via a separate agreement. If an Authorized Site lacks access to an acceptable repository, ACS will provide the copy as a single delivery by other means such as a removable hard-drive, FTP transfer, etc.

c. ACS will make reasonable efforts to maintain the ACS Symposium Series Archive, Current Editions of the Symposium Series, and other similar eBook published content, online published in PDF and/or HTML format. In the unlikely event that it proves commercially unreasonable for ACS to maintain the ongoing availability of the content, ACS, in consultation with its customer advisory panel, will make a conservation copy of the ACS Symposium Series Archive and Current Editions of the Symposium Series online available through an acceptable repository, such as CLOCKSS, LOCKSS, Portico, etc. If an Authorized Site lacks access to an acceptable repository, ACS will provide the copy as a single delivery by other means such as a removable hard-drive, FTP transfer, etc.

d. ACS agrees to provide Grantee COUNTER compliant or, in the event that COUNTER is superseded by another reporting standard, comparable usage reports via a self-service web site on a monthly basis for applicable ACS Products subscribed to by Grantee under this Agreement. ACS allows use of COUNTER data for internal use or disclosure as required by law, regulation or DOE Order only. Such reports may be accessed by vendors or other third parties retained by the Grantee only upon notification to ACS by the Grantee and only for the purpose of usage analysis of the Grantee. ACS shall not provide the Grantee's usage data (except in aggregated, collective, or anonymized form) to any third party without the Grantee's written authorization, unless the third party owns rights in the subscribed products or as required by law. In all cases, 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. ACS shall not disclose or sell to other parties, usage data or information about the Grantee or its Authorized Users (except in aggregated, collective or anonymized form) without the Grantee's express written permission, unless required by law.

e. Except for termination for cause, upon request at the time of cancellation or expiration of this Agreement, Grantee will be provided access to the ACS Products from the ACS Web Editions published during Grantee's subscribed access period only. Upon cancellation of all or part of subscribed access, Grantee may retain digital access rights to only those journals that were subscribed to and published during the time the Grantee had an active, paid subscription to ACS Web Editions. Such digital access rights shall be contingent upon payment of an annual post-cancellation platform maintenance fee. *Chemical & Engineering News*, Reagent Chemicals, Back-file or Archive products, eBooks Symposium Series, or content acquired via ACS Articles on Command, ACS Metered Access, and ACS Lab Packs have no post cancellation rights. Agreements that terminate through cause or default have no post cancellation rights under this program. Upon cancellation of ACS Products, no additional service will be provided save the aforementioned options for the ACS Web Editions

8. DISPUTES

The Parties agree to enter into negotiations to resolve any controversy, claim or dispute ("Dispute") arising under or relating to this Agreement. The Parties agree to negotiate in good faith to reach a mutually agreeable resolution of such dispute within ten (10) days of written notice of the dispute or such other time period as ACS and Grantee mutually agree. If the dispute is not timely resolved, the Parties agree, on request of either Party, to resolve the dispute by binding and final arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association then in effect. The arbitration shall take place in the District of Columbia, USA. The arbitrator(s) shall be bound to follow the provisions

of this Agreement in resolving the dispute, and may not award specific performance or punitive damages. The decision of the arbitrator(s) shall be final and binding on the Parties, and any award of the arbitrator(s) may be entered or enforced in any court of competent jurisdiction. The Parties agree that the conduct and results of the arbitration will be kept confidential except as required by law.

9. TERMINATION

a. Termination for Default. If either party breaches a term of this Agreement, the other may send written notice of the breach, including a reasonable cure period of not less than seven (7) business days. If the breach is not cured within that time, or if the Parties do not reach a satisfactory agreement on extending the cure period, then the non-breaching party may terminate this Agreement effective immediately upon written notice. In the event Grantee wishes to restore access after a termination for default, if the reduced access period is less than ninety (90) days, there will be no reduction in Grantee's current subscription price. If the Grantee is reinstated after ninety (90) days access cancellation, the Grantee shall be required to pay a \$500 service charge prior to reinstatement. Once Grantee's account is in good standing, ACS will provide Grantee with a prorated credit for its following year's subscription fee equivalent to the reduced or terminated access period.

b. Termination for Convenience. Either party may cancel this Agreement at any time by providing the other party with thirty (30) days prior written notice. In the event of such a termination by Grantee, Grantee shall not receive a pro-rated refund of the unused Access Fee, and in the event of such a termination by ACS, Grantee shall be entitled to receive a pro-rated refund of the unused Access Fee. Notwithstanding, in cases of multi-year subscriptions, Grantee may not cancel this Agreement until after the completion of the agreed-upon multi-year Term.

10. COPYRIGHTS; OTHER INTELLECTUAL PROPERTY RIGHTS

Except as otherwise specifically noted, ACS is the owner of all right, title and interest in the content of the ACS Products, including, without limitations, individual journals, articles, abstracts, book chapters, proceedings. All ACS Products are protected under the Copyright Laws of the United States Codified in Title 17 of the U.S. Code and subject to the Universal Copyright Convention and the Berne Copyright Convention. Grantee agrees not to remove or obscure copyright notices. Grantee acknowledges that it has no claim to ownership of any part of the ACS Products or other proprietary information accessed under this Agreement.

The names "American Chemical Society," "ACS" and the titles of the journals and other ACS Products are trademarks of ACS.

11. DISCLAIMER OF WARRANTIES; LIMITATION OF LIABILITY

ACS warrants that it is entitled to grant this Agreement. EXCEPT AS SET FORTH IN THE PRECEDING SENTENCE, ACS MAKES NO WARRANTY OR REPRESENTATION OF ANY KIND, EXPRESS OR IMPLIED, WITH RESPECT TO THE ACS PRODUCTS INCLUDING THEIR QUALITY, ORIGINALITY, SUITABILITY, SEARCHABILITY, OPERATION, PERFORMANCE, COMPLIANCE WITH ANY COMPUTATIONAL PROCESS, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

ACS SHALL NOT BE LIABLE FOR: EXEMPLARY, SPECIAL, INDIRECT, INCIDENTAL, CONSEQUENTIAL OR OTHER DAMAGES ARISING OUT OF OR IN CONNECTION WITH THE AGREEMENT GRANTED HEREUNDER, THE USE OR INABILITY TO USE ANY ACS PRODUCT, ACS'S PERFORMANCE

UNDER THIS AGREEMENT, TERMINATION OF THIS AGREEMENT BY ACS OR THE LOSS OF DATA, BUSINESS OR GOODWILL EVEN IF ACS IS ADVISED OR AWARE OF THE POSSIBILITY OF SUCH DAMAGES. IN NO EVENT SHALL THE TOTAL AGGREGATE LIABILITY OF ACS OUT OF ANY BREACH OR TERMINATION OF THIS AGREEMENT EXCEED THE TOTAL AMOUNT PAID BY GRANTEE FOR ACCESS TO ACS PRODUCTS FOR THE CURRENT YEAR IN WHICH SUCH CLAIM, LOSS OR DAMAGE OCCURRED, WHETHER IN CONTRACT, TORT OR OTHERWISE, INCLUDING, WITHOUT LIMITATION, DUE TO NEGLIGENCE. The foregoing limitations and exclusions of certain damages shall apply regardless of the success or effectiveness of other remedies. No claim may be made against ACS unless suit is filed within one (1) year after the event giving rise to the claim.

12. GRANTEE'S AUTHORIZATION

a. Grantee represents and warrants that it has the right to enter into this Agreement.

b. ACS agrees that any member of the DOE ICPT may enter into this Agreement as a respective Grantee by issuing a purchase order referencing this Agreement, executing a copy of this Agreement, or providing an unambiguous indication, that is satisfactory to ACS, of the respective member's intent to be bound by the terms of this Agreement.

c. Each member that enters into this Agreement as described above shall be individually responsible for its compliance with all terms and conditions of the Agreement by the respective member and its Authorized Users. Notwithstanding any other provision of this Agreement, no member shall be accountable or liable in any way for any other member.

13. GENERAL

a. This Agreement sets forth the entire understanding of the Parties regarding the subject matter hereof and, except as provided herein, may not be modified without the express written consent of both Parties. The validity, construction and performance of this Agreement shall be governed by and construed in accordance with the laws of the District of Columbia, USA without reference to its conflicts of laws principles. Grantee acknowledges that the delivery of the ACS Products will occur in the District of Columbia, USA. Grantee shall pay any taxes lawfully due from it, other than taxes on ACS's net income, arising out of Grantee's use of ACS Products and/or other rights granted under this Agreement. Grantee may not assign or transfer its rights under this Agreement without the express written consent of ACS.

b. The Parties acknowledge that ACS and certain individual consortium members of Grantee had previously entered into access agreements, and in some of these instances, ACS and that member entered into certain addenda to these access agreements regarding ACS archive products ("Prior-Signed Addenda"). The Parties agree that this Agreement does not affect the Prior-Signed Addenda. The Prior-Signed Addenda are subject to such terms and conditions as are provided for therein.

14. ACCEPTANCE

Signing this Agreement constitutes acceptance by Grantee of the terms and conditions contained herein. Grantee warrants that it has read and understands this Agreement.

ACCEPTED:

I have read and agree to adhere to and abide by all the terms and conditions of this Agreement.

Grantee: Alliance for Sustainable Energy, LLC, manager and operator of the National Renewable Energy Laboratory, on behalf of the U.S. Department of Energy, Integrated Contractor Purchasing Team (DOE ICPT)

Authorized Signature: _____

Print name and Title of Authorizing Person: Maurice A. Nelson

Date: _____

Digitally signed by
Maurice A. Nelson
Date: 2021.12.15
17:11:03 -07'00'

Grantor: American Chemical Society

Authorized Signature: Eric S. Slater/JP

Print name and Title of Authorizing Person: Eric S. Slater

Date: 15 December 2021

Text & Data-Mining Addendum

Definitions

“**Licensee**” means the legal entity holding a subscription to or grant of access to ACS products and services under an appropriate ACS Online Products Institutional Access Agreement (to which this Addendum is appended).

“**Subscribed Content**” means the requested content (for TDM purposes), delivered by ACS to Licensee, from the ACS Front File (*i.e.* published from 1996 to the present) journals to which Licensee subscribes.

“**Text and Data Mining**” (“TDM”) means to perform extensive automated searches of Subscribed Content, including data embodied therein, the sorting, parsing, addition or removal of linguistic structures, and the selection and inclusion of Subscribed Content into an index or database for purposes of classification or recognition of relations and associations.”

“**TDM Output**” means the result of any Text and Data Mining activity or operation, capable of fixation, reproduction and/or communication in any form, including without limitation the creation of an index, reference, abstract, relative or absolute description or representation of Subscribed Content, an algorithm, formula, metrics, method, standard or taxonomy describing or based on Subscribed Content, a relational expression or measurement, whether scalable or not, of Subscribed Content, extraction, alternative representation or translation, expression or discussion of any extracts from mined Subscribed Content, whether in the form of a direct extraction or a representation in any form which is based on Subscribed Content.

Clause 1 – Licensed uses: Text and Data Mining

The Licensee may use all of the Subscribed Content in the course and for the purpose of non-commercial research:

(a) store electronic copies of the Subscribed Content as necessary solely to ensure efficient use by Authorized Users in connection with their work on a TDM project and only during the lifetime of any project, and provided locally stored copies are kept separate from proprietary or other third-party content and datasets. Such locally stored copies of Subscribed Content are not to be redistributed for any purpose or to be used for marketing of the Licensee or the Authorized User’s research capabilities. This also includes any commercial research capabilities.

(b) use TDM Output as part of original non-commercial research carried out by Authorized Users and describe or otherwise reproduce extracts and quotations from TDM Output as part of original works of authorship, e.g. articles that describe, analyze, and interpret research. Reproductions shall follow U.S. copyright and fair use laws and practices. Where Subscribed Content is embodied, quoted or referred to, or where bibliographic metadata of Subscribed Content is displayed, it should be accompanied by a DOI link that points back to the individual full text item of Subscribed Content.

(c) not make the results of any TDM Output available on an externally facing server or website beyond the inclusion of a few lines of query-dependent text of individual items of Subscribed Content (e.g. extracts from articles) which shall be in any event shorter than 150 characters or 15 words or 1 complete sentence or limited to bibliographic metadata, and in no event shall the TDM Output contain links to access substantial parts of a full-text work or database of Subscribed Content beyond the above limitation.

(d) Subject to sub-clause 1(c) above and clause 2 below, the Licensee may for non-commercial purposes and government regulatory purposes (such as seeking government approval of Licensee’s medical or other product) communicate the TDM Output whether for internal or external use without creating products that substitute for Subscribed Content, provided that the Licensee may not make the results or the TDM Output in the form of data sets available to third parties for their use.

Clause 2 – Prohibited uses relating to Subscribed Content and TDM Output

- (a) Subject to clause 1 above and unless agreed by separate written agreement, the Licensee and its Authorized Users may not engage in activities listed under (b.1 to b.6).
- (b.1) create derivative products or services that would compete with or be substitutable for the Publisher's products and services;
- (b.2) extract, develop or use Subscribed Content in any commercial activity;
- (b.3) abridge, modify, translate Subscribed Content, or create any derivative work based on the Subscribed Content, except to the extent necessary to make them perceptible on a computer screen to Authorized Users;
- (b.4) sell or provide rights to TDM Output or allow a third party to harvest any TDM Output to an internal or external server;
- (b.5) remove, obscure or modify in any way any copyright notices, other notices or disclaimers as they appear in the Subscribed Content;
- (b.6) substantially or systematically reproduce, retain or redistribute the Subscribed Content.
- c) This clause 2, as well as the restrictions in clause 1 shall remain effective and survive termination of this Subscription Agreement, howsoever arising.

Clause 3 – Security, Grant of Access Rights, Formats and Delivery Mechanisms

The Publisher and the Licensee agree,

- (a) The Licensee is responsible to ensure compliance by Authorized Users.
- (b) Licensee shall implement and maintain adequate and effective state of the art data security systems and measures, in line with international industry standards and best practices.
- (c) In the event the Licensee collects or otherwise processes or uses personal data, Licensee shall expressly obtain consent from the end user or any person that is a beneficiary of applicable data protection laws which shall be limited to the use the end user/affected person expressly consents to. Licensee shall undertake the appropriate technical and security measures to protect any personal data Licensee collects.
- (d) The Subscribed Content is made available "as is" and without warranty of fitting the description in metadata or otherwise, any fitness for purpose, satisfactory quality, reliability, completeness, and Publisher disclaims any implied quality.

Clause 4 – Breach and Termination

- (a) **Breach:** In addition to any contractual rights and remedies under the applicable law, Publisher shall retain the right to deny delivery or to require destruction of Subscribed Content where the Licensee is in breach of any of the conditions of this license relating to TDM. Where Licensee has made available any of Subscribed Content or any resulting TDM Output available to third parties, Publisher shall be entitled to terminate rights granted under clause 1 hereof and also to charge the Licensee any subscription fee that would have been payable to the Publisher, had the use in question been agreed.

(b) Termination: Removal of locally-loaded copies of Subscribed Content: Upon termination of any TDM grant of rights under clause 4(a) above or upon termination of the entire subscription agreement, howsoever arising, the Licensee shall procure the destruction of any copies of the Subscribed Content if locally loaded or stored for purposes of Text and Data Mining. The Licensee shall provide a certificate of destruction no later than 30 days after termination, signed by an authorized officer of the Licensee. Additionally, for clarity, an investigator is prohibited from storing or holding on to the content for possible future use or for rolling over into another project. For a future project, the project investigator must re-submit a request for content to ACS.