

ELECTROCHEMICAL SOCIETY MULTI-SITE LICENSE AGREEMENT

This Agreement is entered into as of the ___1st___ day of _September ___, 2009, by and between:

The Electrochemical Society ("ECS"), with offices at 65 S Main Street, Pennington, New Jersey 08534-2839 acting on its own behalf and whose content is published on SCITATION, referred to as the ECS Digital Library, whose online journals are listed in Appendix A; and

Regents of the University of California, a non-profit academic institution, with its principal offices at The California Digital Library, University of California, Office of the President, 415 20th Street, 4th Floor, Oakland, CA 94612 USA ("the Institution");

WHEREAS, ECS and the Institution agree to allow Authorized Users, as defined below, at each of the Institution's sites to have access to the online versions of the Publishers' titles irrespective of location or of the separate journal subscriptions held by the campus participants,

THEREFORE, the parties agree as follows:

1. SCOPE AND COVERAGE

a. The journals covered by this Agreement are the electronic versions of those titles listed in Appendix A. These journals ("the Licensed Material") are hosted on and made available through SCITATION, an electronic publishing platform operated by the American Institute of Physics ("AIP").

2. AUTHORIZED USERS

ECS grants to the Institution's Authorized Users online access to titles listed in Appendix A. This grant extends only to the Institution and may not be transferred or extended to others. "Authorized Users" means the employees, faculty, staff, and students officially affiliated with the Institution, and persons with legal access to the Institution's library collections and facilities on-site, using an IP address within the ranges identified in Appendix C. The Institution will exercise reasonable vigilance and shall be responsible for all access control and security measures necessary to ensure that the Institution's IP addresses are not used to access SCITATION by anyone other than Authorized Users. The Institution warrants and represents that common and reasonable methods will be used to inform Authorized Users of general terms and conditions for the use of the Licensed Material that are consistent with this Agreement. Furthermore, the Institution will make every attempt to enforce the terms of this Agreement upon receiving information from ECS or any other source that reasonably indicates that one or more Authorized Users is in violation of the terms of this Agreement.

3. IP ADDRESSES

Authorized Users will be recognized and authorized by their Internet address. IP addresses and/or address ranges for the Authorized Users are indicated in Appendix C. ECS requires the Institution to provide the name and e-mail address of a network contact who will be the primary contact person for ECS. The Institution may submit the IP addresses of additional Authorized

Users throughout the license period, subject to ECS's approval. The use of proxy servers that limit remote or off-campus use to Authorized Users is permitted, via a secure network. Authentication is the responsibility of the Institution.

CDL Technical Contact:

[Text Deleted]

Senior Development Programmer

California Digital Library

415 20th Street, 4th Floor

Oakland, CA 94612

Email: [Text Deleted]

Tel. [Text Deleted]

4. PERMITTED USE

a. Authorized Users are permitted online access to the Licensed Material on Scitation listed in Appendix A, and may download, save, or print text, search results, or other information from SCITATION solely for their private use or research. The Institution may only use this online access in a way that conforms with all applicable laws and regulations.

b. The Publisher of the online journals listed in Appendix A grants the Institution permission to use brief quotations from the content of the online journals with the customary acknowledgment of the source, and to copy and transmit content from individual articles in "person-to-person" and non-systematic scholarly exchanges of information between Authorized Users and specific individuals.

c. Institution may supply an electronic copy of an article, via paper, facsimile transmission, or intermediated means such as Ariel, to a library outside the Institution only under the following conditions:

1. Institution may not supply an article to another library on a commercial, revenue generating basis without full payment of the Publisher's royalty, as indicated by the Item Fee Code for each publication.

2. No article may be supplied to a corporation or other non-academic institution without proper permission through proper Rights Royalty Organizations, such as the Copyright Clearance Center.

3. Institution 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(2g)(2) prepared by the National Commission on New Technological Uses of Copyrighted Works.

4. Institution may not remove, obscure or modify copyright notices that are part of an article to be printed and supplied to another library.

d. Faculty at Institution may include articles from the Licensed Material in anthologies (coursepacks) in print or digital form for distribution to Authorized Users for their use in

connection with classroom instruction or in reserves (print or digital) set up by Institution for access by Authorized Users in connection with specific courses offered by the Institution. Copies of items in digital form which are included in online coursepacks or reserves will be deleted by the Institution after the end of the semester in which the related course concludes.

e. The University of California is committed to the use of the emerging OpenURL standard to allow linking to related materials in other locations. ECS agrees that once it becomes fully OpenURL compliant, it will provide information to Institution upon request to assist in creating links directly from the University's library catalogs and licensed resources to the content at the journal, issue, and article levels.

5. PROHIBITIONS ON CERTAIN USE

a. The Institution shall not knowingly permit anyone other than Authorized Users to use the Licensed Materials. Altering, recompiling, reselling, publishing or republishing of any journal text, search result, or other information from the Licensed Materials, or any portion thereof, in any form or medium, is prohibited.

b. Systematic or programmatic downloading, printing, transmitting, or copying of the Licensed Materials is prohibited. "Systematic or Programmatic" means downloading, printing, transmitting, or copying activity of which the intent or the effect is to capture, reproduce, or transfer the entire output of a journal volume, a journal issue, or sequential or cumulative search results, or collections of abstracts, articles, or tables of contents for purposes other than education or research. Other such systematic or programmatic use of the Licensed Material that interferes with the access of Authorized Users or that may affect the performance of the SCITATION system, for example, the use of "robots" to index content, or downloading or attempting to download large amounts of material in a short period of time, is prohibited. Redistribution of the Licensed Material, except as permitted in Section 4, without permission of the Publisher and/or payment of a royalty to the Publisher or to the appropriate Reproduction Rights Organization, is prohibited.

c. All rights not expressly granted herein are reserved to the stated Publisher of the Licensed Material. The Institution and Authorized Users may not circumvent ECS's access control systems or use ECS's systems or services to make any attempt to gain unauthorized access to any other system or network.

d. ECS shall not be required to distribute, and Institution shall not redistribute, the Licensed Material or any article therein to a country to which export is prohibited by U.S. law or regulation.

6. DURATION OF AGREEMENT

a. This Agreement is effective as of January 1, 2009 for a period of three (3) years.



b. This Agreement will renew automatically at the end of the current term unless either party gives written notice of its intention not to renew thirty (30) days before expiration of the current term.

c. In the event that either party believes that the other materially has breached any obligations under this Agreement, or if ECS believes that the Institution has exceeded the scope of the License, such party will so notify the breaching party in writing. The breaching party will have sixty (60) days from the receipt of notice to rectify the alleged breach and to notify the non-breaching party in writing that measures to correct the abuse have been effected. If the breach is not rectified within the sixty (60) day period, the non-breaching party shall have the right to terminate the Agreement without further notice.

In the event of early termination permitted by this Agreement, Institution shall be entitled to a refund of any fees or pro-rata portion thereof paid by Institution for any remaining period of the Agreement from the date of termination.

d. Institution must submit Institution Access Fee no later than March 1 of any year of the Agreement.

7. FEES AND PAYMENT

See Appendix D.

8. COPYRIGHT

The Licensed Material and their contents, including abstracts, are copyrighted by the Publisher. This material is subject to all applicable copyright, database protection and other rights of the stated owner and Publisher under the laws of the United States and other countries. Copyright notices in the Licensed Material and its articles may not be removed, obscured, or modified in any way. Unauthorized copying or redistribution of any content licensed herein is a violation of copyright laws.

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10. ARCHIVAL RIGHTS OF SUBSCRIBERS

ECS will retain in an archive all electronic information that they publish. Institution has the option to receive from ECS, upon request, one copy of the entire set of Licensed Materials to be maintained as a backup or archival copy during the term of this Agreement, or as required to exercise Institution's perpetual rights. The requested materials will be delivered in a mutually agreed upon format, and the Institution will cover the processing and delivery costs. The

Institution is permitted to copy that content to the institution's information systems and redistribute that content to Authorized Users. Any hardware or software required to distribute content from the archive copy will be the responsibility of the Subscriber. The definitions of Authorized Users and allowed and prohibited uses as provided in this Agreement shall otherwise apply to the use of the archive copy.

11. DISCLAIMER OF WARRANTIES; LIMITATION OF LIABILITY; INDEMNIFICATION

ECS warrants that it is entitled to grant the licenses granted in this Agreement, and is authorized to execute this Agreement indicated in Appendix A. EXCEPT AS SET FORTH IN THE PRECEDING SENTENCE, ECS MAKES NO WARRANTY OR REPRESENTATION OF ANY KIND, EXPRESS OR IMPLIED, WITH RESPECT TO THE ONLINE JOURNALS AND SCITATION, INCLUDING THEIR QUALITY, ORIGINALITY, SUITABILITY, SEARCHABILITY, OPERATION, PERFORMANCE, COMPLIANCE WITH ANY COMPUTATIONAL PROCESS, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

ECS SHALL NOT BE LIABLE FOR: EXEMPLARY, SPECIAL, INDIRECT, INCIDENTAL, CONSEQUENTIAL OR OTHER DAMAGES, ARISING OUT OF OR IN CONNECTION WITH THE SUBSCRIPTION OR LICENSES GRANTED HEREUNDER, THE USE OR INABILITY TO USE ANY ECS ONLINE JOURNAL, ECS'S PERFORMANCE UNDER THIS AGREEMENT, TERMINATION OF THIS AGREEMENT BY ECS OR THE LOSS OF DATA, BUSINESS OR GOODWILL, EVEN IF ECS IS ADVISED OR AWARE OF THE POSSIBILITY OF SUCH DAMAGES IN NO EVENT SHALL THE TOTAL AGGREGATE LIABILITY OF ECS FOR ANY CLAIMS, LOSSES OR DAMAGES ARISING OUT OF ANY BREACH OR TERMINATION OF THIS AGREEMENT EXCEED THE TOTAL AMOUNT PAID BY THE SUBSCRIBER TO ECS FOR THE ONLINE JOURNAL SUBSCRIPTION FOR THE CURRENT SUBSCRIPTION YEAR IN WHICH SUCH CLAIM, LOSS OR DAMAGE OCCURRED, WHETHER IN CONTRACT, TORT, OR OTHERWISE, INCLUDING WITHOUT LIMITATION DUE TO NEGLIGENCE. The foregoing limitation of liability and exclusion of certain damages shall apply regardless of the success or effectiveness of other remedies.

ECS shall indemnify and hold Institution and Authorized Users harmless for any losses, claims, damages, awards, penalties, or injuries incurred, including reasonable attorney's fees, which arise from any claim by any third party of an alleged infringement of copyright or any other property right arising out of the use of the Licensed Materials by the Institution or any Authorized User. NO LIMITATION OF LIABILITY SET FORTH ELSEWHERE IN THIS AGREEMENT IS APPLICABLE TO THIS INDEMNIFICATION.

Each party shall indemnify and hold the other harmless for any losses, claims, damages, awards, penalties, or injuries incurred, including reasonable attorney's fees, which arise from any alleged

breach of such indemnifying party's representations and warranties made under this Agreement, provided that the indemnifying party is promptly notified of any such claims. The indemnifying party shall have the right to defend such claims at its own expense. The other party shall provide assistance in investigating and defending such claims as the indemnifying party may reasonably request and have the right to participate in the defense at its own expense.

12. GENERAL

This Agreement constitutes the entire agreement between the parties and supersedes any prior communication or agreement between the parties with respect to the subject matter hereof. The headings used in this Agreement are for convenience only and are not to be considered in construing the terms of this Agreement. Subject to termination under Section 6, this Agreement may be amended only by consent (via mail, email, or fax) of both parties. The Institution may not make any changes to this Agreement without written consent of ECS.

The Institution must pay any applicable taxes (including but not limited to any Value Added Taxes, Sales Taxes, and Import Taxes) other than taxes on ECS's net income, arising out of the Members' use of SCITATION, the Licensed Material and/or the rights granted under this Agreement.

14. Notice of the Use of Digital Rights Management Technology

In the event that ECS utilizes any type of digital rights management technology to control the access or the usage of the Licensed Material, ECS agrees to notify the Institution of the name, contact information and any technical specifications for the digital rights management technology utilized.

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I have read and agree to adhere to and abide by all the terms and conditions stated above, and I certify that I am authorized to sign this Agreement on behalf of the Institution and its Authorized Users.

Regents of the University of California on behalf of California Digital Library

Name: [Text Deleted]

Title: *Executive Director, California Digital Library*

Date:

[Text Deleted]
Signature:

3.22.10

Electrochemical Society

Name [Text Deleted]

Title: *Global Sales Manager*

Date:

[Text Deleted]
Signature

4.08.10

Please return to:

ECS
65 S Main Street
Pennington, NJ 08534-2839

APPENDIX A
Licensed Material

Journal of the Electrochemical Society (JES)

Electrochemical Solid State Letters (ESL)

ECS Interface

ECS Transactions (ECST)

Meeting Abstracts (MA)

APPENDIX B
Campuses of the University of California and Related Sites

University of California, Berkeley (including Lawrence Berkeley Lab)

University of California, Davis

University of California, Irvine

University of California, Los Angeles

University of California, Merced

University of California, Riverside

University of California, San Diego

University of California, San Francisco

University of California, Santa Barbara

University of California, Santa Cruz

University of California Office of the President

Lawrence Berkeley National Laboratory

APPENDIX C IP Addresses

UC Berkeley (including Lawrence Berkeley Laboratory)
[\[Text Deleted\]](#)

UC Davis
[\[Text Deleted\]](#)

UC Irvine
[\[Text Deleted\]](#)

[Text Deleted]

UC Los Angeles

[Text Deleted]

UC Merced

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UC Riverside

[Text Deleted]

UC San Francisco

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UC Santa Barbara

[Text Deleted]

UC Santa Cruz

[Text Deleted]

UC San Diego

[Text Deleted]

[Text Deleted]

UC Office of the President - California Digital Library

[Text Deleted]

[Text Deleted]

APPENDIX D
Business Terms

CONTACT TERM: 3 years - 2009, 2010, and 2011.

PRICE

Annual price increase cap of [Te

FEE: 2009 - [Text Deleted]
2010 -
2011 -

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Billing Contact:

[Text Deleted] Acquisitions Coordinator, California Digital Library
Geisel Library
University of California
9500 Gilman Drive #0175A
La Jolla CA 92093-0175
[Text Deleted] - voice
- fax
Email: [Text Deleted]

If any journal in Appendix A ceases publication or is withdrawn by the Publisher from SCITATION, or if ECS is otherwise unable to provide continued access to any title during the term of this Agreement, the Institution's annual subscription payments and/or Institution Access Fee may be adjusted by agreement between ECS and the Institution.