

## ELECTRONIC ACCESS LICENCE AGREEMENT

This Agreement is made the *18<sup>th</sup>* of *Dec*. 2002 between The Royal Society of Chemistry located at Thomas Graham House, Science Park, Milton Road, Cambridge CB4 0WF, UK ("Publisher") of the one part and The Regents of the University of California, a non-profit academic institution, with its principal offices at The California Digital Library, 415 20<sup>th</sup> Street, 4<sup>th</sup> floor, Oakland, CA 94612-2901, USA ("Customer") of the other part.

### WHEREAS

- (A) Publisher holds journal articles in electronic form.
- (B) Customer wishes to license access to journal articles at certain of its sites.

NOW, THEREFORE, in consideration of the mutual promises set forth herein, the parties agree as follows:

### **1. Licence**

Subject to the terms and conditions set forth in this Agreement, Publisher hereby grants to Customer a non-exclusive and non-transferable right and licence to use Publisher Content listed in Schedule A (as amended from time to time by the parties).

- 1.1 Publisher licenses Customer to access Publisher Content posted on a file server maintained by Publisher or by a third party host on Publisher's behalf from IP addresses provided by Customer for the sites specified in Schedule B ("Customer Sites").
- 1.2 Publisher licenses Customer to allow employees, students, registered patrons and other persons affiliated with Customer ("Authorised Users") to access Publisher Content. Remote access by Authorised Users to Publisher Content is allowed.
- 1.3 Publisher licenses Customer to allow "walk-in users" to access and use Publisher Content.
- 1.4 Publisher licenses Customer to supply interlibrary loan requests from Customer Sites in accordance with the Interlibrary Loan Provision of section 108 of the US Copyright Law and the CONTU Guidelines.
- 1.5 Publisher licenses Customer, upon written request of Customer, to create one (1) copy of the entire set of Publisher Content to be maintained as a backup or archival copy ("Archive") during the term of this Agreement, or as required to exercise Customer's rights under this Agreement.
- 1.6 Customer is committed to the use of the emerging OpenURL standard to allow linking to related materials in other locations. If Publisher does not use the OpenURL standard, Publisher will provide information to Customer upon request to assist the Customer in creating links directly from Customer catalogs and licensed resources to Publisher content at the journal, issue and article levels.

### **2. Payment**

Customer agrees to pay Publisher the fees set out in Schedule C for the rights set forth in this Agreement.

### **3. Copyright and Ownership**

- 3.1 The copyright and ownership of Publisher Content reside with Publisher.
- 3.2 Customer will abide by Publisher's Terms and Conditions as set out in Schedule D and will make reasonable efforts to distribute Publisher's Terms and Conditions to Authorised Users and "walk-in users". These Terms and Conditions are subject to change at the discretion of Publisher with proper Notice to Customer as noted in Clauses 10 and 12.

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

The Term of this Agreement is 1 January 2003 to 31 December 2003, unless terminated sooner as provided for under Clause 5. This Agreement shall be renewable at the end of the current term for a successive one-year term unless either party gives written notice of its intention not to renew thirty (30) days before expiration of the current term.

### **5. Termination**

- 5.1 If either party shall fail to observe or perform any one or more of its obligations hereunder, either party may request the other by notice in writing specifying the default to remedy the default (if remediable) within thirty (30) days of notice, and if such remedy has not been completed within the said thirty (30) day period, or if no remedy is possible, either party may terminate this Agreement forthwith.
- 5.2 If Publisher becomes aware of a material breach of the rights granted to Customer under the Agreement that Publisher reasonably believes will cause immediate and severe economic injury, Publisher will notify Customer immediately in writing and shall have the right to temporarily suspend Customer's access to Publisher Content. Customer shall have the right to remedy the breach within thirty (30) days of receipt of written notice from Publisher. Once the breach has been remedied or the breaching activity halted, Publisher will immediately reinstate access to the Publisher Content. If Customer does not satisfactorily remedy the breaching activity within thirty (30) days, Publisher may terminate this Agreement upon written notice to Customer.
- 5.3 Either party shall have the right to terminate this Agreement summarily upon notice to the other upon the other committing an act of bankruptcy or having a receiver or liquidator appointed over its assets except for the purposes of amalgamation or reconstruction.
- 5.4 Termination of the Agreement for whatsoever reason shall be without prejudice to the right of the parties to claim damages for any previous breach. Waiver of any previous breach by either party shall not prevent subsequent enforcement of this Agreement by either party.
- 5.5 Following termination of this Agreement under Clause 4 or Clause 5.3, or termination of this Agreement by Customer under Clause 5.1, Customer shall continue to have the rights granted in this Agreement with respect to Publisher Content, provided Customer abides by Publisher's Terms and Conditions in force at the time.
- 5.6 Following termination of this Agreement by Publisher under Clause 5.1 or Clause 5.2:



- 5.6.1 Publisher shall immediately remove Customer access to Publisher Content;
- 5.6.2 Publisher shall forthwith repay the proportion of the fees paid that represents the un-expired part of the Subscription Year 2003.
- 5.6.3 Customer will abide by Publisher Terms and Conditions set out in Schedule D for access to the Archive.

## 6. Warranties and Liabilities

- 6.1 Publisher hereby warrants to Customer that, to the best of its belief, 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.
- 6.2 Publisher shall use its best endeavours to ensure that the information contained in Publisher Content is accurate, but Publisher accepts no liability for omissions or errors therein or their consequences. Publisher shall not be liable for any consequential, direct or indirect loss or damage of any nature whatsoever alleged to be caused by errors or omissions in Publisher Content provided that nothing in this Agreement shall prevent Publisher being liable for death or personal injury caused by its negligence or that of employees servants or agents.
- 6.3 Publisher cannot accept responsibility for any corruption of Publisher Content including but not limited to any defect caused by its transmission or processing.
- 6.4 Publisher shall use reasonable efforts to provide continuous service seven (7) days a week with an average of 98% up-time per month. The 2% down-time includes periodic unavailability due to maintenance of the server(s), the installation or testing of software, the loading of additional Publisher Content as they become available, but excludes downtime related to the failure of equipment or services outside the control of Publisher, including but not limited to public or private telecommunications services or internet nodes or facilities. Scheduled down-time will be performed at a time to minimize inconvenience to Customer and Authorized Users.

If access to Publisher Content is not in accordance with this Agreement, Customer shall immediately notify Publisher, and Publisher shall promptly use reasonable efforts to restore access to the Publisher Content. In the event that Publisher fails to repair the nonconformity in a reasonable time, Publisher shall reimburse Customer in an amount such that the nonconformity is proportional to the total payment made by Customer under this Agreement.

- 6.5 Publisher shall defend, indemnify, and hold harmless Customer, their officers, agents and employees from all damages, liabilities, costs, fees, including, but not limited to, attorney's fees, resulting from any judgement or settlement agreement arising out of the claim of a third party that Publisher Content or Customer's use of Publisher Content under the terms and conditions of this Agreement constitutes an infringement of any patent, copyright, trademark, trade name, trade secret, or other proprietary or contractual right of any third party. NO LIMITATION OF LIABILITY SET FORTH ELSEWHERE IN THIS AGREEMENT IS APPLICABLE TO THIS INDEMNIFICATION. Customer shall give prompt notice of an infringement claim to Publisher, provide such co-operation and assistance to Publisher as is reasonably necessary to defend the claim, and shall allow Publisher to have sole control of the defense, provided, however, that Customer retains the right to participate in the defense at its own expense.
- 6.6 Customer warrants that, during the Term of this Agreement, each individual Customer Site listed in Schedule B will only cancel full institutional rate duplicate copies of printed versions of Publisher Content subscribed to at that Customer Site. Should a



Customer Site makes further cancellations of printed versions of Publisher Content, Publisher will increase the yearly payment under this Agreement to regain the revenue lost by such cancellations.

## **7. Perpetual License**

Notwithstanding anything else in this Agreement, Publisher hereby grants to Customer a nonexclusive, royalty-free, perpetual license to use any Publisher Content that was accessible 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.

## **8 Entire Contract**

This Agreement, including Schedules A, B, C and D, constitutes the entire contract between the parties.

## **9 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.

## **10 Alteration of Agreement**

This Agreement may be amended only in writing signed by duly authorised representatives of the parties. This Agreement shall be binding upon and inure to the benefit of both parties hereto and their respective successors and permitted assignees.

## **11 Assignment**

Neither Customer nor Publisher may assign or transfer its rights or obligations under this Agreement without the prior written consent of the other.

## **12 Notices**

Any notice or request under this Agreement shall be sufficiently given or made by posting the same in a registered letter addressed to a party at the address set forth above or at any other address as one party may specify by notice to the other. Every such notice or request shall be deemed to have been given or made on the day on which the same would in the ordinary course of post be received by the addressee.

**13 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.

**14 Confidentiality**

Both parties shall keep the financial terms of this Agreement strictly confidential and shall not disclose same (except to the extent of any disclosure required by law).

**15 Applicable Law**

This Agreement shall be governed by and construed in accordance with the laws of California.

In WITNESS WHEREOF the parties have duly executed this Agreement on the date and year as written.

CUSTOMER

**TEXT DELETED**  
Signed: \_\_\_\_\_

Name: \_\_\_\_\_

Title: Deputy University Librarian

Date: December 18, 2002

The Royal Society of Chemistry

**TEXT DELETED**  
Signed: \_\_\_\_\_

Name: \_\_\_\_\_

Title: General Manager, Journals and Reviews

Date: 06/01/03

**TEXT DELETED**

Signed

Name:

Title: Director, Publishing

Date: 07.01.03

## SCHEDULE A

### Publisher Content

The electronic versions of the following journals:

Journal	E-ISSN	Years
The Analyst	1364-5528	2003
Annual Reports on the Progress of Chemistry, A B C	1460-4760	2003
	1460 4779	2003
	1460-4787	2003
Chemical Communications	1364-548X	2003
Chemical Society Reviews	1460-4744	2003
CrystEngComm	1466-8033	2003
Dalton Transactions	1477-9234	2003
Faraday Discussions	1364-5498	2003
Geochemical Transactions	1467-4866	2003
Green Chemistry	1463-9270	2003
Journal of Analytical Atomic Spectrometry	1364-5544	2003
Journal of Environmental Monitoring	1464-0333	2003
Journal of Material Chemistry	1364-5501	2003
Lab on a Chip	1473-0189	2003
Mendeleev Communications	1364-551X	2003
Natural Product Reports	1460-4752	2003
New Journal of Chemistry	1369-9261	2003
Organic & Biomolecular Chemistry (formerly Perkin Transactions 1 & 2)	1477-0539	2003
Pesticide Outlook	1364-5455	2003
Photochemical & Photobiological Sciences	1474-9092	2003
PhysChemComm	1460-2733	2003
Physical Chemistry Chemical Physics	1463-9084	2003
Russian Chemical Reviews	1468-4837	2003

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The electronic versions of the following databases:

Database		
Catalysts and Catalysed Reactions		2003 Database
Methods in Organic Synthesis		2003 Database
Natural Product Updates		2003 Database

## SCHEDULE B

### Customer Sites and Internet Protocol Addresses

#### Customer Sites

UC Berkeley  
UC Davis  
UC Irvine  
UC Los Angeles  
UC Merced  
UC OP - California Digital Library  
UC Riverside  
UC San Diego  
UC San Francisco  
UC Santa Barbara  
UC Santa Cruz

#### Internet Protocol Addresses

The California Digital Library (CDL) creates and maintains persistent identifiers to link entries in catalogs to licensed resources. This is done so that when a URL for a resource changes, we need only to update our persistent identifier (PID) and need not make changes in catalog records.

As part of the maintenance process, the CDL will periodically validate all PIDs to assure that they still resolve to the correct URLs. This will be done not more than once per week, and will appear to your server as a normal HTTP access. However, because the process is automated, it is considered a 'robot' or 'spider', as opposed to human-initiated retrieval. If your site maintains a robots.txt entry indicating that it does not permit programmatic access to the site, the CDL assumes permission to run its validation tool for the PIDs that the CDL has assigned to the licensed content. No reconfiguration of your robots.txt file is needed; our tool can be configured to bypass the robots.txt file. Please contact the CDL's Technical Coordinator if you have any questions or concerns about this process.

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## Schedule C

### Payment

The fee payable in 2003 for the articles published in 2003 is equal to <sup>TEXT DE</sup> of the total paid for 2003 print subscriptions held at Customer Sites.

These fees are dependent on the following:

In the event of automatic renewal, the fee payable for 2004 shall not exceed the fee paid in 2003 by an amount greater than <sup>TEXT DE</sup> more than the yearly UK Retail Price Index Percentage increase as measured on 31 December 2003, unless Publisher increases payments as allowed in Clause 6.6, in which case there will be no upper limit on the fee payable.

Upon request, Publisher agrees to provide an archival print copy of Publisher Content at 10% of print subscription cost.

### 2003 Print subscriptions to Publisher Content

JOURNAL TITLE	U C B	U C D	U C I	U C L A	UCR	U C S D	U C S F	U C S B	U C S C	UC NON- PACKAGE SUBS	2003 LIST PRICE	2003 UC COST
Analyst	1	H	1	1	H	1	0	H	0	4	TEXT DELETED	
Analytical Abstracts	0	0	0	0	0	0	0	0	0	0		
Annual Reports on the Progress of Chemistry, A-C	A	A	1	0	1	A	0	A	1	3		
Chemical Communications	A	A	B	B	1	A	1	A	B	2		
Chemical Society Reviews	A	A	1	1	1	A	1	A	1	5		
CrystEngComm (Electronic only)	A	A	0	0	0	A	0	A	0	0		
Dalton Transactions	A	A	B	B	1	A	0	A	B	1		
Faraday Discussions	A	A	1	1	1	A	0	A	0	3		
Geochemical Transactions (Electronic only)	A	A	0	0	0	A	0	A	0	0		
Green Chemistry	A	A	0	0	0	A	0	A	0	0		
JAAS - Journal of Analytical Atomic Spectrometry	1	1	0	0	0	1	0	0	0	3		
Journal of Environmental Monitoring	1	H	0	0	H	0	0	H	0	1		
Journal of Materials Chemistry	A	A	B	B	0	A	0	A	B	0		
Mendeleev Communications	0	1	0	0	0	0	0	0	0	1		
Methods in Organic Synthesis (Added 3/9/01)	A	A	0	0	1	A	0	A	0	1		
Natural Product Reports	A	A	1	1	1	A	0	A	1	4		
Natural Product Updates (Added 3/9/01)	A	A	0	0	1	A	0	A	0	1		



New Journal of Chemistry	A	A	B	B	1	A	0	A	B	1	TEXT DELETED
Organic & Biomolecular Chemistry	A	A	B	B	1	A	1	A	B	2	
PhysChemComm (Electronic only)	A	A	0	0	0	A	0	A	0	0	
Physical Chemistry Chemical Physics (incorporating Faraday Transactions)	A	A	B	B	1	A	0	A	B	1	
Russian Chemical Reviews	1	0	1	0	0	0	0	1	0	3	
Catalysts & Catalysed Reactions	A	A	0	0	0	A	0	A	0	0	
Photochemical & Photobiological Sciences	A	A	0	0	0	A	0	A	0	0	

Package A	1	1	0	0	0	1	0	1	0	4	TEXT DELETED
Package B	0	0	1	1	0	0	0	0	1	3	
Package H	0	1	0	0	1	0	0	1	0	3	

Print for 2003	5	4	7	5	12	4	3	3	4	46	
Subtotal: Access Fee TEXT DELETED											

NEW TITLES										Mult. Factor	List Price	E-price @	Total	TEXT DELETED
Lab on a Chip										1				TEXT DELETED
Catalysts & Catalysed Reactions										1				
Photochemical & Photobiological Sciences										1				
Subtotal: New Titles														
Subtotal: Access Fee for New TEXT DELETED														

TOTAL DUE: Access Fee on Print + New Titles + Access Fee on New Titles for 2003														
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## SCHEDULE D

### Terms and Conditions Use of Information from The Royal Society of Chemistry

#### Permitted Uses

Authorised Users and "walk-in users" of Publisher Content are permitted to:

1. electronically display Publisher Content
2. copy (including printing and downloading) Publisher Content and retain it as long as they wish for their own personal use;
3. store Publisher Content electronically, provided the use is consistent with the other terms and conditions described here;
4. distribute or otherwise make available Publisher Content to other Authorised Users;
5. include Publisher Content in a presentation provided that the material carries the credit "Reproduced by permission of The Royal Society of Chemistry" in such a position and typeface as to be clearly visible to the audience;
6. include Publisher Content (eg. a diagram or chart) in a published work provided permission has been sought and obtained from the RSC in advance;
7. include copies (hardcopy or downloaded) of Publisher Content (i) in anthologies (coursepacks) in print or digital form for sale and/or distribution to the Authorised Users for their use in connection with classroom instruction and/or (ii) in reserves (print or digital) set up by Customer's libraries for access by Authorised Users in connection with specific courses offered by Customer. Copies of Publisher Content in digital form which are included in online coursepacks or reserves will be deleted by Customer after the end of the term in which the related course concludes.

Authorised Users must obtain special permission to make Publisher Content available to non-Authorised Users in any form whatsoever. This includes, for example:

1. making printed or electronic copies of Publisher Content for provision to non-Authorised Users (except as noted above for interlibrary loan);
2. making available a database from Publisher Content to non-Authorised Users;
3. publishing a collection of Publisher Content for provision to non-Authorised Users.

#### Copyright

Publisher Content is copyright and is subject to all applicable copyright, database protection, and other rights of the copyright owner and publisher. Copyright notices may not be removed, obscured, or modified in any way. Authorised Users must take all reasonable precautions to prevent theft or inadvertent illicit use of the intellectual property in Publisher Content. The relevant copyright notice must be displayed on all copies made from Publisher Content.