

**American Chemical Society
Publications Division**

Multiple-Site/Consortium Sales Agreement

This Sales Agreement is entered into this 1st (day) of January (month) 2009, between the American Chemical Society (hereinafter ACS) and The Regents of the University of California on behalf of the California Digital Library, University of California Office of the President, 415 20th Street, 4th Floor, Oakland, CA 94612, USA (hereinafter Licensee).

1. Agreement

This Sales Agreement between the ACS and the Licensee grants the Licensee a non-exclusive, worldwide and nontransferable License to access ACS Web Editions, Chemical & Engineering News Online, ACS Legacy Archives (hereafter referred to as the "ACS Products") according to the terms and conditions set forth in this Agreement, including all attachments and terms & conditions of use.

2. Provisions of Consortium License

a. Consortium. The Consortium is comprised of the University of California, including all of its campuses and libraries, and participating campuses of the California State University, that have authorized the California Digital Library to negotiate this license on their behalf. Consortium shall notify ACS of any additions or deletions to this list of members and acknowledges that such changes may necessitate a change in the fees due under this Agreement. The designated Licensee is signing on behalf of all members of the Consortium and shall be responsible for compliance with all terms of this Agreement by all members of the Consortium. All references to "Licensee" in this Agreement shall apply equally and fully to the Consortium and each of its members. The Licensee warrants it has the right to enter into this Agreement on behalf of the Consortium and agrees to indemnify the ACS against any claims brought by members of the Consortium and against any claims resulting from any actions by members of the Consortium.

b. See Attachment C for fees for the initial term.

c. Attachment B. Licensee shall supply the complete names and addresses of all locations that are participating in this Sales Agreement (Authorized Sites), plus their ACS account numbers (if available). ACS will send Licensee an invoice for the License fee for the ACS Products. A location that has no Current Print Subscriptions may still participate in this Sales Agreement as an Authorized Site so long as it is identified as provided above. These sites will be subject to a minimum participation fee. (see last paragraph in this agreement) All Authorized Sites will have access to the ACS Products, and the collective holdings of all journal titles as selected in Attachment A and subscribed to by the Licensee. The Licensee agrees to be liable for all fees charged under this Agreement, and to advise of any additions to the list of Authorized Sites.

d. Sales Agreement Administrator: Licensee agrees to designate a single person to be the administrator of this Agreement for all Authorized Sites. The name, address, phone number, and e-mail address of the Sales Agreement administrator shall be listed in Attachment B. Licensee shall notify ACS of any changes to the assigned administrator or contact information. In addition, each Authorized Site of the Consortium must supply a contact person with e-mail address, mail address, and phone, to be used for supplying customer information and in case troubleshooting access becomes necessary.

e. Current Print Subscriptions: Current Print Subscriptions are defined as all print copies of ACS titles now available as Web Editions that were purchased as of January 2002 at the institutional rates at all Authorized Sites. Current Print Subscriptions do not include subscriptions by individuals who work at Authorized Sites.

3. Agreement Definition, Duration and Payment

a. Initial term: The initial term of this Agreement shall be until December 31, 2010. This Agreement shall then automatically renew for one-year terms unless otherwise terminated as provided for herein. The term of this Agreement for Reagent Chemicals Online will commence with access to the current Reagent Chemicals Online site and conclude with the posting to the ACS Web site of a new edition, at which time the older edition will be permanently removed. The Licensee agrees to pay ACS the appropriate License

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fee specified on the invoice for a term of one calendar year starting on January 1 of the current year and ending December 31. Upon receipt of a completed, signed Sales Agreement, access to the ACS Products will be activated. All License fees shall be paid within 30 days of invoicing. The Licensee agrees to pay ACS the appropriate License fee specified on supplemental invoices received when the Licensee adds Consortium members, Authorized Sites, ACS titles in print or Web Edition formats, or other electronic products to this agreement.

b. Renewals: At the end of a calendar year, if renewal payment for the ACS Web Editions and/or ACS Division Proceedings Online is not received within 30 days after the end of the calendar year, access to the ACS Web Editions and/or ACS Division Proceedings Online and/or Chemical & Engineering News Online will be discontinued. At the end of a calendar year, if renewal payment or annual access fee for the one-time purchase of the ACS Legacy Archives is not received within 30 days after the end of the calendar year, access to the ACS Legacy Archives will be discontinued. ACS reserves the right to modify the terms of this Agreement for any renewal period or to adjust the License fee or pricing model for any renewal period upon sixty days prior notice.

c. Usage Reports: ACS agrees to provide the Licensee COUNTER-compliant usage reports on a monthly basis for applicable ACS Products subscribed to by the Licensee.

d. Interlibrary Loan: Licensee may use the ACS Products to fulfill requests for InterLibrary Loan (ILL) according to the provisions of the Agreement by transmitting a copy of an article in PDF format via electronic transmission or by mail, fax, or Ariel. InterLibrary Loan shall include requests to support non-commercial scholarly research by patrons of other libraries such as public, school, or college libraries. Licensee agrees to fulfill such requests in compliance with Section 108 of the United States Copyright Law (17 USC § 108) and the Guidelines for the Proviso of Subsection 108(2g)(2) CONTU Guidelines prepared by the National Commission on New Technological Uses of Copyrighted Works.

e. Fair Use: Nothing in this Agreement shall in any way exclude, modify or affect anything the Licensee or an Authorized User is allowed to do in respect of any of the ACS Products consistent with the Fair Use Provisions of United States Copyright Law.

f. Accessibility: ACS shall make reasonable efforts to comply with the Americans with Disabilities Act (ADA).

4. Indemnification

ACS shall defend, indemnify and hold Licensee harmless from all damages, costs, fees (including reasonable attorney's fees) resulting from any judgment or settlement agreement arising out of the claim by a third party that Licensee's use of the ACS Web Editions, as permitted herein, constitutes an infringement of any the copyright or other proprietary or intellectual property rights of any third party. Licensee shall give prompt notice of an infringement claim to ACS, provide such cooperation and assistance to ACS as is reasonably necessary to defend the claim, and shall allow ACS to have sole control of the defense, provided, however, that Licensee retains the right to participate in the defense at its own expense. The foregoing indemnity obligation shall not apply with respect to any claim of infringement of materials contained in ACS Web Editions which have been modified by Licensee without the prior authorization of ACS.

5. Notices

a. Notice of the Use of Digital Rights Management Technology: In the event that Licensor utilizes any type of digital rights management technology to control the access or the usage of Licensed Product, Licensor agrees to notify Licensee of the name, contact information and any technical specifications for the digital rights management technology utilized.

b. Notice of the Use of Digital Watermarking Technology: If Licensor utilizes any type of digital watermarking technology for any element of the Licensed Product, Licensor agrees that watermarks will not be visible to the human eye and will not degrade image quality. These watermarks shall not contain user-related information such as account number or IP address. If digital watermarking technology is used, Licensor agrees to notify Licensee, in advance, of the name, contact information, and any technical specifications for the technology used.

6. 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 not less than ~~seven~~ (30) business days. If the

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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.

b. Termination for Convenience: Either Party may cancel this Agreement at any time by providing the other party with sixty (60) days prior written notice. In the event of such a termination by the Licensee, the Licensee shall not receive a pro-rated refund of the unused License fee, and in the event of such a termination by ACS, the Licensee shall be entitled to receive a pro-rated refund of the unused License Fee.

c. Funding Contingency: The University of California reasonably believes that funds can be obtained sufficient to pay all monies due during the term of this Agreement and hereby covenants that it will do all things lawfully within its power to obtain, maintain, and properly request and pursue funds from which payments for this transaction may be made, including making provisions for such payments to the extent necessary in each budget submitted for the purpose of obtaining funding, using its bona fide best efforts to have such portion of the budget approved and exhausting all available administrative review and appeals in the event such portion of the budget is not approved. It is the University of California's intent to make payments for the full term of this transaction. The University of California represents that the use of the materials under this transaction are essential to its proper, efficient and economic operation.

In the event no funds or insufficient funds are appropriated and budgeted and are not otherwise legally available by any means whatsoever in any fiscal period for payments due under this transaction, the University of California will immediately notify Licensor of such occurrence and this transaction shall terminate on the last day of the subscription period for which payment has been made without penalty of expense to the University of California of any kind whatsoever, except as to the portions of payments herein agreed for which funds shall have been appropriated and budgeted or otherwise available. In the event of such termination, the University of California shall have its choice amongst the post-termination access options offered by the ACS, be they direct or via trusted third parties

7. General

This Agreement sets forth the entire understanding of the parties and may not be modified without the express written consent of both parties. Delivery of the ACS Products is in the District of Columbia. The Licensee must pay any taxes lawfully due from it, other than taxes on ACS's net income, arising out of the Licensee's use of the ACS Products and/or the rights granted under this Agreement. The Licensee may not assign or transfer its rights under this Agreement without the express written consent of the ACS.

8. Acceptance

Signing this license constitutes acceptance by the licensee of all contents contained herein, including the attached document stipulating the Terms and Conditions under the license. Licensee warrants that they have read and understand the Terms and Conditions. ACS reserves the right to unilaterally modify or change the contents of the Terms and Conditions without notice, provided that such changes shall not materially affect the rights of the Licensee and the Licensee's Authorized Users under this Agreement.

ACCEPTED:

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

Licensee (Institution name) Regents of the University of California

Authorized Signature: _____

Print name of Authorizing Person: _____, Executive Director

Accepted by ACS _____

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Attachment A: ACS Electronic Journal Collection List

This agreement covers the following ACS electronic products:

- ACS Legacy Archives
- Chemical & Engineering News Online
- Reagent Chemicals Online
- ACS Division Proceedings Online
- ACS Web Editions

Current Web Edition subscriptions to the following journals:

- Accounts of Chemical Research
- ACS Applied Materials & Interfaces
- ACS Chemical Biology
- ACS Nano
- Analytical Chemistry
- Biochemistry
- Bioconjugate Chemistry
- Biomacromolecules
- Chemical Research in Toxicology
- Chemical Reviews
- Chemistry of Materials
- Crystal Growth & Design
- Energy & Fuels
- Environmental Science & Technology
- Industrial & Engineering Chemistry Research
- Inorganic Chemistry
- Journal of Agricultural and Food Chemistry
- The Journal of the American Chemical Society
- Journal of Chemical & Engineering Data
- Journal of Chemical Information and Modeling
- Journal of Chemical Theory and Computation
- Journal of Combinatorial Chemistry
- Journal of Medicinal Chemistry
- Journal of Natural Products
- The Journal of Organic Chemistry
- The Journal of Physical Chemistry A/B/C
- Journal of Proteome Research
- Langmuir
- Macromolecules
- Molecular Pharmaceutics
- Nano Letters
- Organic Letters
- Organic Process Research & Development
- Organometallics

Attachment B: Customer Information and Authorized Sites

Consortium Name California Digital Library

Name Of Sales Agreement Administrator: [REDACTED] Licensing Manager

Address 415 20th Street, 4th Floor

Oakland, CA 94612 USA

Phone Number: [REDACTED]

E-mail: [REDACTED]

Accounting Contact:

[REDACTED] CDL Acquisitions Specialist

Geisel Library

University of California

9500 Gilman Drive #0175A

La Jolla CA 92093-0175

Phone number: [REDACTED]

E-mail: [REDACTED]

Fax: [REDACTED]

Technical Contact:

[REDACTED] Senior Development Analyst

415 20th Street, 4th Floor

Oakland, CA 94612 USA

Phone number: [REDACTED]

E-mail: [REDACTED]

Usage Statistics Contact:

[REDACTED]

415 20th Street, 4th Floor

Oakland, CA 94612 USA

Phone number: [REDACTED]

E-mail: [REDACTED]

Campuses of the University of California

University of California, Berkeley

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

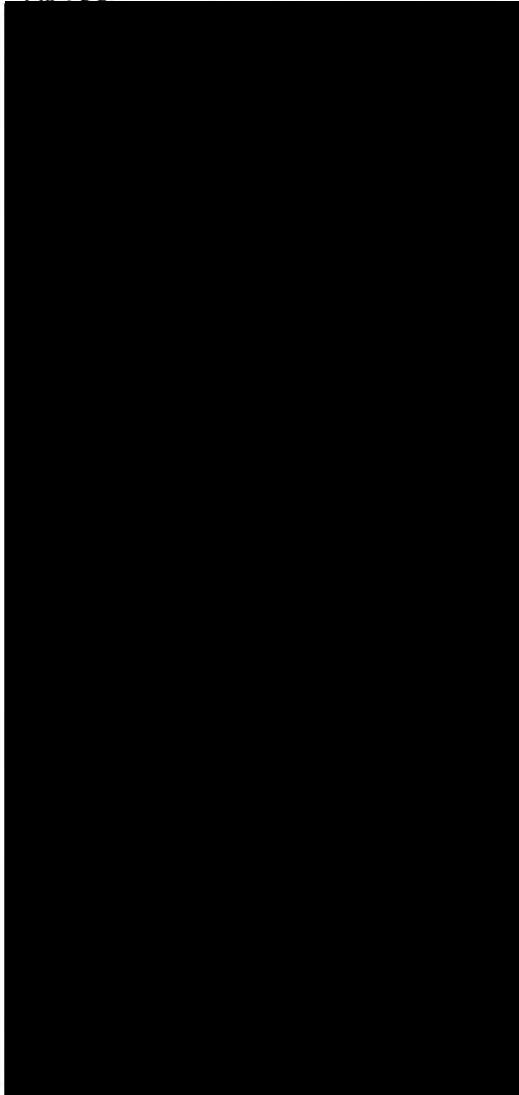
University of California, Santa Barbara

University of California, Santa Cruz

University of California Office of the President

University of California IP Addresses by Campus

UC Berkeley (including Lawrence Berkeley Laboratory)



UC Davis



UC Irvine



UC Los Angeles



UC Merced



UC San Francisco



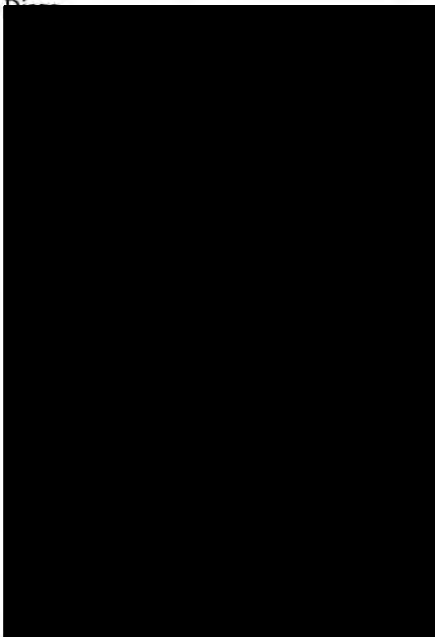
UC Santa Barbara



UC Santa Cruz



UC San Diego



UC Office of the President - California Digital Library





Attachment C: Business Terms

- 1) For the term 2008 through 2010, Licensee's prices for electronic access to the licensed materials will increase at a rate of [REDACTED] annually, and will be as follows: in 2008 [REDACTED]; in 2009 [REDACTED]; in 2010, [REDACTED]
- 2) For the term 2008 through 2010, Licensee's prices for newly-published licensed materials will be [REDACTED] the price of electronic access in the prior year, and will be as follows: in 2008 [REDACTED]; in 2009, [REDACTED]; in 2010 [REDACTED]
- 3) At the end of the current three-year contract term, Licensee will have the option to extend the Agreement for an additional two-year period [REDACTED]
[REDACTED]
[REDACTED]
- 4) In 2008, the Licensee's price for the ACS Legacy Archives will be [REDACTED]
- 5) In 2008, the Licensee's price for Chemical & Engineering News Online will be [REDACTED]
- 6) Licensee may subscribe to print versions of the licensed materials for [REDACTED] of those journals. Print subscriptions are optional and the maintenance of print subscriptions are not required.
- 7) Lawrence Berkeley Laboratory will be included in UC Berkeley Library access and licensing.