

## **Amendment to American Chemical Society ACS Web Editions Academic Consortium License Agreement for 1998 Subscriptions dated June 17, 1998**

**Replace all references to "ACS Web Editions" with "ACS Web Editions, the ACS Journal Archives and Chemical and Engineering News."**

**Amend Section, 1, License, to read:**

### **1. License**

This License Agreement ("Agreement") between the American Chemical Society and the Licensee grants the Licensee and its Authorized Users (hereinafter defined) using Authorized Terminal(s) (hereinafter defined) located at the Authorized Site(s) (herein after defined), a non-exclusive, non-transferable, worldwide License to access the **ACS Web Editions, the ACS Journal Archives and Chemical and Engineering News**, collectively known hereinafter as the "Licensed Materials," according to the terms and conditions set forth in this Agreement.

**Amend Section, 4, License Definition, Archive, Duration & Payment to read:**

### **4. License Definition, Archive, Duration & Payment**

A License to the Licensed Materials provides the Licensee and Authorized Users access to the electronic database of the journal title. In the event this Agreement is terminated in its entirety, online access to the entire database and future updates is terminated.

Upon termination, Licensor will provide to Licensee 1). an archival digital copy in a mutually agreed upon format of those subscription years of **ACS Web Editions and Chemical and Engineering News** to which access has been provided during the term of this Agreement, or 2). ongoing online access to those subscription years of the Licensed Materials to which it has access during the term of this Agreement. Licensor shall provide an archival digital copy at its cost of creation and/or the parties shall negotiate in good faith to determine an appropriate access fee for such online access. The use of such digital archive copies or such continuing online access shall be subject to all other terms and conditions of this Agreement.

Beginning in 2003, Licensor will ensure access to any **ACS Web Editions** electronic content subscribed to which falls outside of the current subscription (1996-1998 and each subsequent sixth year as it drops off the 5 year ACS Web Edition current subscription) upon request in a format consistent with the ACS Archive Policy. ACS shall offer a one-time provision of PDF version of the digital files or the option to ongoing online access for a reasonable fee.

The initial term of this Agreement shall be to December 31, 1998. This License shall then automatically renew for one year terms unless otherwise terminated as provided for herein.

The Licensee agrees to pay ACS the appropriate License fee specified on the invoice for a term of 1 calendar year starting on January 1 of the current year and ending December 31. Upon receipt of a completed, signed License Agreement, access to the journal database will be activated. All Web Edition License fees shall be paid within 30 days after activation of service through the end of the calendar year in question. Licenses starting later than February of the year will be charged a pro-rated fee for the remaining months.

The Licensee agrees to pay ACS the appropriate License fee specified on supplemental invoices received when the Licensee adds Consortium members, Authorized Sites, or ACS Journal titles to this agreement.

At the end of a calendar year, if renewal payment is not received within 30 days after the end of the calendar year, access to the journal database will be discontinued. ACS reserves the right to modify the terms of this Agreement for any renewal period or to raise the License fees for any renewal period upon sixty (60) days prior written notice. ACS agrees to provide the Licensee with ACS standard usage reports on a quarterly basis to the Consortium.

**Amend Section 5.b, Use By Others Through InterLibrary Loan, as amended by August 31, 2000 Addendum to ACS Web Edition Academic Consortium License Agreement to read:**

Except as set forth in paragraph 6 and elsewhere in this Agreement, Licensee may use the Licensed Materials 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, "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.

**Add to Section 5, Permitted Use, a new clause 5.c:**

**5.c Fair Use:** Nothing in this Agreement shall in any way exclude, modify or affect anything the Licensee or any Authorized Users is allowed to do in respect of any of the Licensed Materials consistent with the Fair Use Provisions of United States Copyright Law.

**Amend Section 7, Delivery to read:**

**7. Delivery**

The Licensed Materials will be delivered in the standard Internet formats using HTML and Adobe Acrobat PDF format. ACS reserves the right to change formats with three months notice. It is the responsibility of the Licensee and the Authorized Users to establish and maintain at their expense Internet connections to the ACS; to provide and install suitable Web browsers, licenses for Adobe Acrobat, and any other software necessary to view the Licensed Materials.

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

ACS shall use reasonable efforts to provide continuous availability of the Licensed Materials 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, the loading of new information files, and downtime related to equipment or services outside the control of the ACS including public and private telecommunications services or Internet nodes or facilities.

ACS shall use reasonable efforts to provide continuous service 7 days a week with an average of 99% up-time per month averaged over 3 months. The 1% down-time includes scheduled maintenance and repair. Scheduled down-time will be performed at a time to minimize inconvenience to customers world-wide.

ACS will provide means for Licensee to link directly from records in Licensee's bibliographic computing systems to the content of the Licensed Materials at the site, title, issue, and article levels, using standard Internet communications and applications protocols and such other methods as may be agreed to by the Licensor and the Licensee.

ACS shall use reasonable efforts to ensure that the contents of the Licensed Materials are complete, correct and current in comparison with the print equivalents, and will collaborate with Licensee to identify and correct errors or omissions.

**Amend Section 11, General to read:**

This Agreement sets forth the entire understanding of the parties and may not be modified without the express written consent of both parties.

The Licensee must pay any taxes, other than taxes on ACS's net income, arising out of the Licensee's use of the **ACS Web Editions** and/or the rights granted under this Agreement.

Neither party may assign or transfer its rights under this Agreement.

The provisions of Sections 4, 6, 8, and 9 shall survive any termination or expiration of this Agreement.

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 ACS Web Editions, ACS Journal Archives, and Chemical and Engineering News shall be in the District of Columbia, but delivery location shall have no bearing on the forum that will be used to decide any dispute between the parties nor will it determine the governing law.

**Addendum to 2000 ACS Web Editions Plan B License Agreement is superceded by this Amendment.**

ACCEPTED:

Licensee (Institution name) Regents of the University of California

Authorized Signature \_\_\_\_\_

Print name of Authorizing Person: \_\_\_\_\_

4/11/03

Accepted by ACS \_\_\_\_\_