



**Institution Name, Account Number**  
**American Chemical Society**  
**Publications Division**  
**Online Products Institutional Access Agreement**

This Online Products Institutional Access Agreement (“Agreement”) is entered into this \_\_\_\_\_ day of \_\_\_\_\_ 201\_\_\_\_, between the American Chemical Society (“ACS”), a federally-chartered nonprofit located at 1155 16<sup>th</sup> Street NW, Washington DC 20036 and \_\_\_\_\_ located at \_\_\_\_\_ (“Grantee”) (ACS and the Grantee are collectively referred to in this Agreement as “the Parties”).

**1. SCOPE OF GRANT**

ACS grants Grantee non-exclusive and nontransferable permission to access ACS products and services as identified in the attachments to this Agreement (collectively “ACS Products”), subject to the terms and conditions set forth in this Agreement, including all attachments.

**2. TERM**

a. The Initial Term of this Agreement shall be through December 31, 2015. Unless otherwise agreed to by ACS and Grantee in writing, or modified or terminated as provided for herein, the Agreement shall automatically renew for additional one-year terms on payment of annual access, subscription and/or platform maintenance fees as set by ACS and agreed to by the Grantee.

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 the amounts (Access Fee) set forth in the attached “Access Fee” attachment, as may be supplemented by mutual consent. 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.

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

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

a. If Grantee is a “consortium,” Grantee shall, prior to ACS’s activation of Grantee’s access to the ACS Products, provide ACS with a current listing of all participating consortium members, including physical location and IP addresses. Further, by entering into this Agreement, Grantee affirms its authority to enter into this Agreement on behalf of each of the listed consortium members. During the Term of this Agreement, Grantee shall promptly notify ACS of any changes to the membership of the consortium. Grantee acknowledges that any such changes to the membership of the consortium may necessitate a change in the Access Fee due under this Agreement. Grantee shall notify each consortium member of the terms and conditions for accessing the ACS Products. Grantee further agrees to notify ACS promptly upon learning of any violations of this Agreement by any consortium members and/or consortium members’ authorized users and will cooperate with the ACS in investigating any such violations or unauthorized uses and in taking reasonable steps to prevent a reoccurrence.

b. 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 serving in the capacity of employees, faculty and other teaching staff, and persons officially registered as full or part-time students located at an Authorized Site. Authorized Users may access the

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ACS Products from remote sites. Others who are physically present at an Authorized Site may access the ACS Products but may not do so from locations outside of an Authorized Site (“Other Users”).

**c.** 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.

**d.** 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 and Other 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 and Other 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 Other Users and will cooperate with the ACS in investigating any such violations or unauthorized uses and in taking reasonable steps to prevent a recurrence.

### **5. PERMITTED USES**

**a.** Authorized Users and Other 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 and Other 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 and Other Users may include (and are encouraged to provide) links to the ACS Products as part of course pack offerings or within an e-mail communications.

**b.** Except as set forth in Prohibited Uses herein, Grantee may use the ACS Products to fulfill requests for Interlibrary Loans (“ILL”). ILLs are permitted to support non-commercial scholarly research by patrons of other libraries such as public, school, or college libraries. Grantee may obtain a copy of an individual article, individual book chapters, proceedings, Reagent Chemicals monographs, or other individual items from the ACS Products in PDF format (Portable Document Format) and transmit it to the ILL requesting Library by mail, fax, or electronic transmission. The Grantee may make up to five (5) free article copies of individual journal articles, proceedings, individual book chapters, Reagent Chemicals monographs or other individual items from the ACS Products per year for ILL purposes. Additional requests may be fulfilled only if the applicable single copy fees are paid either to the Copyright Clearance Center or directly to ACS through its sales procedures for single articles, individual book chapters, proceedings, Reagent Chemicals monographs or other individual items from the ACS Products.

**c.** 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.

**d.** 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.

**6. PROHIBITED USES**

a. Except as provided in Permitted Uses herein, Grantee, its Authorized Users and Other 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 ILL 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 and Other 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 Other Users, and agrees to remedy identified cases of prohibited use.

c. Authorized Users and Other 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 and Other 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 and Other 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. TRIAL AND/OR NEW SUBSCRIPTIONS**

Grantee may from time to time during the Term of this Agreement desire access to other ACS products and/or services not identified in this Agreement as ACS Products, either for a limited, trial period ("Trial Subscription") to determine its usefulness or suitability to Grantee or for changes to the list of ACS Products for the remainder of the Term of this Agreement. Similarly, Grantee may from time-to-time during the term of this Agreement desire access to other ACS products and/or services through the Metered Access Plan (MAP). Grantee's access to and use of any and all such additional ACS products and/or services shall be subject to and governed by all applicable Terms and Conditions of this Agreement.

**8. 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

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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.** 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*, 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.

**c.** 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 to institutions that have access via a separate agreement.

**d.** 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.

**e.** 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.

## **9. 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. Notwithstanding anything in this Section to the contrary, disputes in which there is a claim for injunctive relief or other equitable remedy, including specific performance, may be brought in any court having competent jurisdiction throughout the world.

## **10. 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 sixty (60) 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.

**11. 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.

**12. 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.

**13. GRANTEE'S AUTHORIZATION**

In the event this Agreement is for a Consortium, Grantee represents and warrants that it has the right to enter into this Agreement on behalf of each and every one of the Consortium members. Grantee shall be responsible for compliance with all terms and conditions of this Agreement by all Consortium members and by all Authorized Users and Other Users. In the event this Agreement is not for a consortium, the undersigned represents and warrants that he/she has the right to enter into this Agreement on behalf of the Grantee.

**14. INDEMNIFICATION**

Grantee agrees to indemnify ACS against any and all claims brought by Authorized Users and/or Other Users and/or Consortium members against ACS and any claims brought against ACS resulting from any actions by Authorized Users and/or Other Users and/or Consortium members. If ACS has designated Grantee as a "consortium," all references to "Grantee" in this Agreement shall apply equally and fully to the Consortium and each of its members.

15. GENERAL

This Agreement sets forth the entire understanding of the Parties 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.

16. 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. ACS reserves the right to modify non-material terms and conditions in this Agreement at any time by posting the modified non-material terms and conditions on the ACS Publications Web site. Any use of ACS Products after such posting shall constitute acceptance of the modified non-material terms and conditions. (For clarification, "material" terms include the following: pricing/fees, term, permitted uses, prohibited uses, termination, and subject matter of the agreement. Anything not part of that list would be considered as "non-material". ACS will notify Grantee in writing of any material changes to the Agreement.)

**ACCEPTED:**

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

Grantee: \_\_\_\_\_

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

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

Date: \_\_\_\_\_

Grantor: American Chemical Society

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

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

Date: \_\_\_\_\_