



American Chemical Society
Publications Division
Online Products Institutional Access Agreement
CORPORATE SAMPLE

This Online Products Institutional Access Agreement (“Agreement”) is entered into on XXXX between the American Chemical Society (“ACS”), a federally-chartered nonprofit located at 1155 16th Street NW, Washington DC 20036 and XXXX, located at XXXX (“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 for the XXXX subscription year. 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 “Quote” attachment, as may be supplemented by mutual consent via subsequent quote sheet at the time of renewal. 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 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. Grantee acknowledges and agrees that Access Fee rates for any renewal term will change from term to term, as may be appropriate.

4. AUTHORIZED USERS; AUTHORIZED SITES

a. 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 current employees and individual contractor employees of Grantee. “Authorized Sites” means a single location or address of a Grantee facility with business operations that are greater than fifty percent (50%) owned by Grantee as of the start of the Initial Term of this Agreement. An affiliate may qualify as an Authorized Site, provided that the affiliate is greater than fifty percent (50%) owned by Grantee. Authorized Users may access the ACS Products from remote sites.

b. Authorized Users will be recognized and authorized by their Internet Protocol (“IP”) addresses. Only those IP addresses submitted by Grantee, listed on the Site List Attachment, and approved by ACS will have access to the ACS Products (“Authorized IP Address(es)”).

5. GRANTEE RESPONSIBILITIES AND DUTIES

a. Grantee shall exercise reasonable care and shall be responsible for all access control to ensure only Authorized Users access the ACS Products for Permitted Use as defined herein. All usage/downloads of ACS content by Authorized Users that gain access through the Grantee’s firewall, proxy servers and other gateways for users authorized via the Authorized IP Address(es) listed on the Site List Attachment will be factored into the Grantee’s Access Fee. Grantee agrees to notify Authorized 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 will cooperate with the ACS in investigating any such violations or unauthorized uses and in taking reasonable steps to prevent a reoccurrence. Grantee shall be responsible for compliance with all terms and conditions of this Agreement.

b. Reasonableness of Use. ACS monitors the volume of searching and downloading activities of Grantee on a routine basis, for the purposes of (i) benchmarking “average” use, noting any significant variance in patterns of usage, and (ii) ensuring compliance with the terms of access and use. ACS may ask Grantee’s designated administrator to discuss with ACS any usage pattern(s), ACS questions and, if necessary, work with ACS to reach a solution if a problem is uncovered.

If ACS determines that use is excessive or violates the terms of this Agreement, ACS, in its sole discretion, may (i) on a temporary or non-temporary basis, de-activate the IP address(es) at issue, (ii) issue a surcharge, or (iii) terminate the Agreement in its entirety. ACS prefers to resolve these types of issues with Grantee without de-activating IP addresses, issuing a surcharge, or terminating the Agreement in its entirety and will use reasonable efforts to do so. For purposes of this section, “excessive” shall include (i) use, search activity, downloading and/or exporting that is materially greater than, or different from, typical use patterns of searching, downloading or exporting, and/or (ii) activity that is indicative of an otherwise manual process being automated.

c. Grantee is responsible for providing valid IP addresses for each Authorized Site listed on the Site List Attachment. IP ownership must be verifiable and accepted by ACS. If the Grantee plans 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. Access to the site via open proxies and other nonauthenticated proxy servers is prohibited. ACS Products may only be accessed through an Authorized IP Address. Grantee warrants:

- i. Each IP address listed in the Site List Attachment has been assigned exclusively to and is under the exclusive control of Grantee;

- ii. The ACS Products will only be used by Grantee's Authorized Users for use in accordance with the terms and conditions of this Agreement; and
- iii. Grantee will promptly notify ACS of any changes to Authorized IP address(es).

d. Grantee will use reasonable efforts to ensure that only Authorized Users have access to the ACS Products and use the ACS Products in accordance with this Agreement. Grantee acknowledges the ACS copyright and ownership interests in the ACS Products, that the ACS Products are principal products of ACS, and the importance to ACS of maintaining these rights in the ACS Products.

e. Grantee will exercise reasonable, good faith efforts to:

- i. Inform Authorized Users of the Permitted and Prohibited Uses and to enforce them;
- ii. Monitor usage of the ACS Products for compliance with these Permitted and Prohibited Uses, and notify ACS immediately of any suspected violation by any user;
- iii. Investigate with ACS any violation or suspected violation, whether by an Authorized User or unauthorized user; and;
- iv. Cooperate with ACS in the resolution of the matter.

Grantee agrees, at ACS's request, to review from time to time with ACS the efforts described above and to make such changes thereto as may be reasonably necessary. Grantee will be responsible for any failure on its part to act in compliance with the terms and conditions of this Agreement.

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.

6. PERMITTED USES

a. Authorized Users may view, download, save, or print individual articles, individual book chapters, or other individual items from the ACS Products for private, internal purposes directly related to Grantee's business. Authorized Users may make a printed copy of individual articles, individual book chapters, or other individual items from the ACS Products for the internal business use of others who are Authorized Users but who are unable to access the ACS Products. Authorized Users may include (and are encouraged to provide) links to the ACS Products within an e-mail communications.

b. Interlibrary Loans from or to libraries of commercial entities are not permitted.

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 patents, drug, and other 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.

7. PROHIBITED USES

a. Except as provided in Permitted Uses herein, Grantee, its Authorized 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, 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.

b. Authorized 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 agrees to remedy identified cases of prohibited use.

c. Authorized 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 Grantee concludes a specific, separate agreement with ACS to do so. Authorized 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, 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, republished in any media, print or electronic form. Individual articles, book chapters, or other individual items from the ACS Products may not be downloaded in aggregate quantities or centrally stored for later retrieval. Systematic storing or repository building of individual downloaded articles, book chapters, or other individual items from the ACS Products, including, but not limited to, storage through third-party services, for institution-wide use is strictly prohibited.

e. Grantee acknowledges that ACS may prevent Grantee and its Authorized 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.

8. 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.

9. SCOPE OF 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 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. ACS shall comply with the Americans with Disabilities Act (ADA), by supporting assistive software or devices such as large print interfaces, text-to-speech output, voice-activated input, refreshable braille displays, and alternate keyboard or pointer interfaces, in a manner consistent with the Web Accessibility Initiative Web Content Accessibility Guidelines 2.1 Level AA (<http://www.w3.org/WAI/guid-tech.html>) to the degree indicated in its current Voluntary Product Accessibility Template (VPAT), a copy of which will be provided upon request, and is incorporated herein by reference. ACS represents and warrants that the aforementioned VPAT substantively shows its degree of compliance with Section 508 of the Rehabilitation Act of 1973. Nothing in this Agreement shall limit the Grantee from making lawful, noninfringing uses to facilitate access to the ACS Products by Authorized Users who have disabilities. For the avoidance of doubt, the ACS authorizes such uses.

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.

10. 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.

11. 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.

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. Notwithstanding, in cases of multi-year subscriptions, Grantee may not cancel this Agreement until after the completion of the agreed-upon multi-year Term.

12. 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.

13. 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.

14. PRIVACY

Each Party acknowledges and agrees that both Parties may be required to comply with certain data protection, privacy, and/or information security laws, rules, regulations, or guidelines enforced in the jurisdictions in which Grantee and/or Authorized Users utilize the ACS Products related to the collection and processing of Personal Data, including, without limitation, the European Union General Data Protection Regulation (the “Privacy Laws”). Grantee agrees that ACS may collect, use, and otherwise process Personal Data in accordance with the ACS Privacy Policy, available at <https://www.acs.org/privacy.html> and incorporated herein by reference. Each Party agrees to employ appropriate administrative, physical, and technical safeguards designed to protect the Personal Data submitted to ACS or otherwise processed through access to and use of the ACS Products. Each Party shall promptly notify the other Party in the event of any unauthorized use, disclosure, collection, or access of Personal Data.

15. INDEMNIFICATION

Grantee agrees to indemnify ACS against any and all claims brought by Authorized Users and/or unauthorized users against ACS and any claims brought against ACS resulting from any actions by Authorized Users and/or unauthorized users.

16. ANTI-BRIBERY AND CORRUPTION

Grantee agrees that, in the procurement of this Agreement, it, and each of its direct or indirect owners or other financial interest holders (“Owners”), directors, employees, and every person working for it or on its behalf (collectively “Representatives”) have not violated the Foreign Corrupt Practices Act, the UK Bribery Act 2010, or any other applicable laws and regulations prohibiting public or commercial bribery, extortion, kickbacks, or other unlawful or improper means of conducting business.

Grantee agrees to comply with all applicable U.S. export control and sanctions laws and regulations. Grantee represents and warrants that (i) Grantee is not designated or otherwise identified on any of the various U.S. government lists of denied/sanctioned parties, including, but not limited to, the U.S. Treasury Department, Office of Foreign Assets Control’s Specially Designated Nationals and Blocked Persons List, Sectoral Sanctions Identifications List, or Foreign Sanctions Evaders List; the U.S. Department of Commerce’s Denied Persons List, Unverified List, or Entity List; or the U.S. Department of State’s Non-Proliferation Sanctions Determinations lists, and (ii) Grantee is not 50% or more directly or indirectly owned, in the aggregate, by one or more individuals or entities identified on any of the various U.S. government lists of denied/sanctioned parties. Grantee agrees that ACS may cease performance of this Agreement if ACS deems such cessation necessary, in its sole discretion, to ensure compliance with applicable law. Under such circumstances, Grantee agrees that ACS shall be released from responsibility for fulfilling its obligations under this Agreement and shall not be subject to any penalties or other liability for breach of contract or any other legal or equitable claim.

17. 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.

18. 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. The undersigned represents and warrants that he/she has the authority to enter into this Agreement on behalf of the Grantee. If Grantee uses a purchase order in conjunction with ordering or paying for the ACS Products, the Parties agree that the terms and conditions of the purchase order will in no way modify, delete, or supersede the terms and conditions of this Agreement. Any discrepancy between the purchase order and this Agreement will be resolved in favor of this Agreement.

ACCEPTED:

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

Grantee: Cotter Company Test

Authorized Signature:

Print name of Authorizing Person:

Date:

Grantor: American Chemical Society

Authorized Signature:

Print name of Authorizing Person:

Date: