

National Institute for Materials Science

AtomWork-Adv Service Terms of Use

April 1, 2018

Revised:

AtomWork-Adv Service Terms of Use (hereinafter referred to as “Terms”) set forth the terms and conditions of use of the Service (defined in Article 1 below; hereinafter referred to as “Service”) to make available the Inorganic Material Database “AtomWork-Adv,” which is provided on a website by National Institute for Materials Science (hereinafter referred to as “Institute”), for advanced use of a database which is managed and operated by the Institute. Contractors (defined in Article 1 below) of the Service are obligated to comply with these Terms when using the Service, and upon registration for use of the Service, Contractors are deemed to have agreed to these Terms, the site policy (<http://www.nims.go.jp/siteinfo/site-policy.html>) and the privacy policy (<http://www.nims.go.jp/siteinfo/privacy-policy.html>) on the official website of the Institute. Therefore, please carefully read these Terms, the site policy and the privacy policy before using the Service.

Article 1: Definition

The following terms as used in these Terms shall have the meaning respectively prescribed in the following items.

(1) “Service” Services provided at charge to Contractors (defined in the following item) through systems owned by the Institute, including, without limitation, the Inorganic Material Database AtomWork-Adv and the accompanying web page, application and use registration system. Its content is described in “About AtomWork-Adv” (<https://atomwork-adv.nims.go.jp/service.html>);

(2) “Contractors” Individuals or corporations that have agreed to these Terms and submitted an application to the Institute for use of the Service pursuant to paragraph 1 of Article 4 below and whose use of the Service has been approved by the Institute;

(3) “Use Agreement” Agreement for use of the Service that includes these Terms in the content;

(4) “Site” Web page of the AtomWork-Adv;

(5) “ID-PW” ID issued to each account and the password (PW) set by Contractor. For the avoidance of doubt, one (1) e-mail address registered for use shall be treated as one (1) account;

(6) “Single License” A type of license that allows for use of the Service only by way of ID-PW authentication. This type of license does not require IP address authentication nor limit the networks from which the Service can be used;

(7) “IP Address License” A license that allows for use of the Service only from the IP address registered for use when using the Service;

(8) “Single IP Address License” Out of the IP Address License, the license under which an ID is granted to one (1) e-mail address (one (1) account);

(9) “Corporate IP Address License” Out of the IP Address License, the license which does not involve the granting of IDs or limitations on accounts;

(10) “DATA” Data, content (including text, illustrations, pictures and tables) that are provided through the AtomWork-Adv and the Service;

(11) “Processed DATA” The DATA that have been processed into a table or other form of expression. The Processed DATA shall include the DATA and other data, etc., that have been processed into a table or other form of expression;

(12) “Download Function” The function to allow for the download of a part of the DATA to a certain extent.

Article 2: Applicability and Amendment to These Terms

1. These Terms shall apply to use of the Service that is provided by the Institute and all matters in conjunction with provision of the Service.

2. Provisions announced through the AtomWork-Adv from time to time by the Institute and provisions for use posted on the Site when using the Service shall also constitute a part of these Terms.

3. The Institute may amend the details of these Terms at any time without the prior consent of Contractors. The terms after such amendment shall be deemed to have been agreed by all Contractors when such terms have been posted on the Site for one (1) month.

4. In addition to the case described in the preceding paragraph, when the Institute judges it necessary, the Institute shall notify Contractors of necessary information from time to time. The notified content shall be deemed to have been agreed by all Contractors when it has been posted on the Site for one (1) week.

Article 3: Purpose of Use of Service, License, Functionality, etc.

1. AtomWork-Adv and the Service are provided for the purpose of promoting science and technology and facilitating assistance in research and development. The Institute therefore will provide the Service only to those individuals or corporations that use the Service for the purpose of education or research and development.

2. The functions that can be used for the Service vary depending on the type of license. The Download Function may be used only under licenses under which IDs are granted (Single License and Single IP Address License).

3. In the case of the Corporate IP Address License, corporations only may be Contractor.

Article 4: Registration for Use

1. Registration for use of the Service shall be completed when the person who desires to use the Service submits an application to the Institute for registration for use on the Site and the Institute approves the use registration. Upon completion of use registration, the Use Agreement shall be concluded between the individual whose use registration has been approved, as Contractor and the Institute.

2. When the Institute judges that one of the following events exists in relation to the applicant of use registration, the Institute may disapprove the application for use registration, and the Institute shall not assume any obligation to disclose the reason therefor.

(1) If the applicant does not exist;

(2) If the Institute judges that the applicant may not satisfy the requirements described in paragraph 1 of the preceding Article;

(3) If the applicant has reported false information at the time of application for use registration;

(4) If the application is made by a person who has committed a violation of these Terms;

(5) If the Institute has otherwise judged that the use registration is not appropriate.

3. The preceding paragraph shall apply mutatis mutandis to cases where Contractor desires the continued use described in Article 6 below.

4. When, with respect to Contractor, the address, name, phone number, e-mail address or other information entered in the form for registration for use of the Service is changed, Contractor shall promptly report the change to the Institute by updating the relevant information on the user information registration page of the Site. In the case of the IP Address License, when the global IP address to use the Service is changed, Contractor shall make an application for the change through the user consultation service (atomwork-adv@ml.nims.go.jp) and obtain approval of the Institute.

Article 5: Notification of ID

Immediately after the completion of registration for use and confirmation of payment of the service charge for the initial year, the Institute shall notify Contractor of the following matters, which depend on the type of license, by sending an e-mail to the registered e-mail address.

(1) Single License and Single IP Address License: ID-PW and the date of the

commencement of use and the date of the expiration of the use period;

(2) Corporate IP Address License: Date of the commencement of use and the date of the expiration of the use period.

Article 6: Use Period

1. The use period of the Service shall be until the date of the expiration of the use period described in the notice described in Article 5 above.

2. When Contractor desires the continuance of the Service after the expiration of the use period, please submit an application for the continued use on the Site and pay the service charge for one (1) year. Immediately after the confirmation of the payment of the service charge, the Institute shall notify Contractor of the matters described in the items of the preceding Article, depending on the type of license.

3. When Contractor has submitted an application for the continued use pursuant to the preceding paragraph, if the payment of the service charge is not confirmed, the Institute shall suspend the provision of the Service until the payment is confirmed. Paragraph 3 of Article 9 below shall apply mutatis mutandis to the suspension under this paragraph.

4. When Contractor cancels the Use Agreement of the Service without cause, Contractor shall make an application for such cancellation through the user consultation service (atomwork-adv@ml.nims.go.jp) at least one (1) month prior to the date of the expiration of the use period. When the Institute has accepted the application for such cancellation and gives notice of approval, the Use Agreement of the Service shall terminate effective on the date of the termination of the use period.

Article 7: ID-PW and Scope of Users

1. Contractors may use, or cause those described in paragraph 2 below (hereinafter referred to as "Users") to use, the Service, by using the ID-PW in the case of Contractors to whom the Single License or Single IP Address License has been granted, or by using the IP address registered for use in the case of Contractors to whom the Corporate IP Address License has been granted.

2. The Users whose use of the Service may be permitted by Contractor shall be Contractor's officers, employees and workers (including dispatched workers) who perform operations on behalf of Contractor under the direction of Contractor (hereinafter collectively referred to as "Contractor's Employees, etc."). In the case of the Single License and Single IP Address License, such Users shall be Contractor's Employees, etc., who have been registered as the User at the time of the registration for use.

3. Contractors shall not cause any person other than those described in the preceding

paragraph to use the Service, and shall not cause the Service to be used beyond the scope permitted by these Terms.

4. In the case of the Single License and Single IP Address License, Contractor shall cause only those described in paragraph 2 above to use the ID-PW.

5. Contractor agrees that Contractor shall cause the Users permitted under paragraph 2 above to comply with these Terms, and that the use of the Service by such Users shall be deemed to be an act of Contractor itself.

Article 8: Management of ID-PW

1. Contractors shall comply with the following: (a) Contractors shall not disclose or lend the ID-PW to, or share the ID-PW with, any third party other than the Users described in paragraph 2 of Article 7 above, and (b) Contractors shall carefully manage the ID-PW to avoid leaks or unauthorized use of the ID-PW. The Institute shall not assume any liability for damages caused to Contractors or other persons arising out of the management or use of the ID-PW.

2. If a person other than Contractor or those described in paragraph 2 of Article 7 above uses the Service with the ID-PW, such act shall be deemed to be an act of Contractor, and Contractor shall pay the service charge for such use as set forth in Article 9 below.

Article 9: Payment of Consideration

1. During the use period, as consideration for the provision of the Service, Contractors shall pay the Institute the service charge that shall be separately determined by the Institute and posted on the Site, by the method designated by the Institute. For the avoidance of doubt, remittance fees and other costs necessary for such payment by Contractors shall be borne by Contractors.

2. If the service charge or any other liabilities owed to the Institute arising from the Use Agreement remain unpaid by Contractor after the due date, the Institute may terminate the Use Agreement under Article 17 below, and may suspend the provision of the Service until the Institute receives such payment from Contractor.

3. The Institute shall assume no liability for damages, if any, suffered by Contractor or any other person in connection with a delay in the commencement of, or non-commencement of, the provision of the Service pursuant to the preceding paragraph.

Article 10: Trial Use

1. The person who has completed registration for use pursuant to paragraph 1 of Article 4 above may obtain a temporary access right, free of charge, only for seventy-two (72) hours

from the use registration for the purpose of trial use and may thereby use the Service. (See the Member Registration Guide, https://atomwork-adv.nims.go.jp/registration_guide.pdf) For the avoidance of doubt, the Download Function shall not be available during the trial use period, irrespective of which type of license has been applied for.

2. Even during the trial use period, the Use Agreement shall be concluded and all provisions of these Terms other than the payment of the service charge shall apply. For example, the registrants may not transfer or lend to any third party the ID-PW granted for use described in the preceding paragraph. Furthermore, the registrants shall not conduct web scraping and other acts that are prohibited under Article 12 below.

Article 11: Rights to Data, etc.

1. The rights to use and manage the DATA that are provided through AtomWork-Adv and the Service is held by the Institute. Copyrights to AtomWork-Adv, all web pages on the Site and the systems in general are also held by the Institute.

2. The Institute shall license Contractors to use the DATA only for use by themselves for the purpose of education, or research and development or product development and the manufacture of products so developed, and review pertaining to the foregoing.

3. When Contractor or any of the Users publishes any deliverables of research and development or product development using the DATA, Contractor shall display the names of the Institute and the Service as the source of data. However, this shall not apply when the Institute has approved omission of such display.

4. If Contractors or the Users have any questions about the Institute's rights relevant to the use or exploitation of the DATA, Users' obligation to display the source, etc., please contact the user consultation service (atomwork-adv@ml.nims.go.jp).

Article 12: Prohibited Acts

Contractors shall not conduct the following acts. Furthermore, Contractors shall take appropriate measures to prevent the Users from conducting the following acts, and if the User conducts any of the following acts, such act shall be deemed to be a violation by Contractor itself of the obligation, and Contractor shall assume liability to the Institute for such act (including liability for damages).

(1) All acts of using the DATA other than use licensed under paragraph 2 of the preceding Article (including copying, translation, adaption, derivative use, transmission, uploading, distribution, assignment, lending, licensing or merchandising other than use licensed under paragraph 2 of the preceding Article);

(2) Act of selling or distributing the DATA or Processed DATA through publication,

download sales or by other means. However, publication of deliverables of research and development or product development using the DATA shall be excluded;

(3) Act of reprinting the DATA or Processed DATA in documents, websites, etc. However, the publication of deliverables of research and development or product development using the DATA shall be excluded;

(4) Use of the Service in violation of these Terms;

(5) Web scraping (meaning automatic extraction of data from web pages by using a program);

(6) Resales of the Service, provision or sublicensing of use of the Service to a third party;

(7) All acts of making the functions of the Service available to any person other than those described in paragraph 2 of Article 7 above;

(8) Disclosure, provision or sublicensing use of the ID-PW to a third party and other acts in connection with the ID-PW, except for those licensed under these Terms;

(9) Act of attempting an unauthorized access to the system of the Institute or Service, and the act of sending a virus or otherwise disrupting the server or network;

(10) Act that may interfere with the operation of services by the Institute;

(11) Act of impersonating another Contractor or User;

(12) Act of offering benefits directly or indirectly to an anti-social force in connection with the services of the Institute;

(13) Any other acts deemed inappropriate by the Institute.

Article 13: No Transfer of Rights

Contractors shall not transfer to others the whole or any part of the rights or obligations they have as Contractor of the Service.

Article 14: Handling of Contractor Information

1. The accessing device's IP address, content of requests, use time, usage environment, response results given to and other such data of Contractors or the Users are automatically collected in connection with the Service. Before using AtomWork-Adv and the Service, Contractors shall agree that the access logs so collected will be used as information for making a decision in response to inquiries by Contractors or the Users, system maintenance, analysis of use, improvement in convenience of services, etc. The Institute will not use such access logs for any purpose other than the above-described purposes.

2. In addition to the provision of the preceding paragraph, the site policy and the privacy policy shall apply to the protection of the information and privacy of Contractors and the Users in connection with the use of AtomWork-Adv and the Service.

3. Contractors agree that the Institute may disclose the information described in the preceding two paragraphs to third parties in the following cases.

- (1) When the person related to the information agrees to the disclosure;
- (2) When the Institute is required by laws or regulations to disclose such information.

Article 15: Disclaimer

1. If a dispute with a third party arises out of use of AtomWork-Adv and the Service, Contractor shall settle the dispute at its own responsibility and cost, and the Institute shall assume no liability for such dispute.

2. The DATA provided through AtomWork-Adv and the Service may be subject to additions, amendments or deletions without notice. The Institute shall assume no liability for any damages caused by amendments, additions, deletions, etc., of the content of the DATA.

3. The Institute shall assume no legal liability for the DATA provided through AtomWork-Adv and the Service, nor shall the Institute provide any warranty as for the quality of the DATA, including, without limitation, the integrity or accuracy of information. The Institute shall therefore assume no liability for any damage caused as a result of development or other acts conducted by using the DATA.

4. The Institute shall not be concerned with, or assume liability for, the content of websites that are provided by other organizations and linked from AtomWork-Adv and the Service.

5. The Institute shall assume no obligation or liability for any of the following items:

- (1) The DATA satisfy the requirements of Contractors; or
- (2) AtomWork-Adv and the Service are operated and available at all times, and that failure or trouble is not caused in providing the DATA contained therein.

6. When a default on the part of the Institute is not caused by willfulness or gross negligence of the Institute, the Institute shall be relieved of liability for the default. Even when the Institute assumes liability for any reason, the Institute shall assume the liability for compensation only for direct damages that can be incurred ordinarily.

Article 16: Service Change, etc.

1. The Institute may change, suspend or discontinue the whole or any part of AtomWork-Adv and the Service at any time without giving prior notice to Contractors when the Institute deems such change, suspension or discontinuance to be necessary (including all cases where the Institute deems such change, suspension or discontinuance to be necessary for any operational or technical reason, including, without limitation, cases where system maintenance is conducted and cases where a power failure or other event makes the provision of services impossible), and Contractors shall consent thereto.

2. The Institute may discontinue the provision of AtomWork-Adv and the Service by giving one (1) month prior notice to Contractors. The notice shall be deemed to have been agreed by all Contractors when it has been posted on the Site for one (1) month.

3. When the Institute changes, suspends or discontinues or interrupts AtomWork-Adv and the Service pursuant to the provision of paragraph 1 above, the Institute shall assume no liability to Contractors, and Contractors shall consent thereto. The same shall apply to the case where the Institute terminates the provision of AtomWork-Adv pursuant to the preceding paragraph.

4. If the Institute terminates the provision of the Service pursuant to the provision of paragraph 2 above, when Contractors request that such portion of the annual service charge already paid by them as is allocable to the period after the termination (hereinafter referred to as "Remaining Period's Charge") be adjusted, they shall notify the user consultation service (atomwork-adv@ml.nims.go.jp), by the method designated by the Institute, of information about the account at a financial institution to which the relevant money shall be remitted. The Institute shall calculate the Remaining Period's Charge on a pro-rated daily basis and refund the amount so calculated to Contractors that request the adjustment and have provided information, by the method designated by the Institute, on the financial institution to which the relevant money shall be remitted (with fractions of less than one (1) day discarded). Fees to remit the money for adjustment shall be borne by Contractors. However, when Contractors have not claimed the return of the Remaining Period's Charge after elapse of one (1) year from the date of the suspension of use, they shall lose the rights to claim the return. The Institute shall not assume any liability other than the liabilities relevant to such adjustment, and Contractors shall consent thereto.

Article 17: Cancellation of Use Agreement

1. If the Institute judges that one of the following events exists in relation to Contractor or any of the Users, the Institute may immediately terminate the Use Agreement of the Service and suspend the use of the Service by Contractor without giving prior notice to, or obtaining the prior consent of, Contractor.

(1) If one of the events described in the items of paragraph 2 of Article 4 above exists or is likely to exist in relation to Contractor;

(2) If Contractor fails to pay the whole or any part of the service charge by the due date set forth in paragraph 1 of Article 9 above;

(3) If Contractor or any of the Users has caused or allowed a person other than those permitted under paragraph 2 of Article 7 above to use the Service;

(4) If Contractor or any of the Users has committed or may have committed an act in

violation of Article 11 or Article 12 above, including use of the Service for any purpose other than education or research and development;

(5) If Contractor or any of the Users has spread false information relating to AtomWork-Adv or the Service or otherwise interfered with the operation or damaged the credibility of the Institute;

(6) If Contractor has violated these Terms;

(7) If Contractor has been required to follow attachment or disposition for failure in payment;

(8) If a petition for the commencement of bankruptcy, special liquidation, civil rehabilitation or corporate reorganization proceedings has been filed by or against Contractor;

(9) If Contractor has been required to follow dissolution or business suspension disposition.

2. If the Institute terminates the Use Agreement pursuant to the preceding paragraph, the Institute shall not assume any liability for damages caused to Contractor, the Users or third parties due to such termination, and Contractors shall consent thereto.

Article 18: Effect after Termination of Agreement

1. When the Use Agreement terminates due to expiration of the term, termination pursuant to the preceding Article or in any other manner, Contractor shall lose the rights to use the Service and shall not use the Service or cause the Service to be used by the Users thereafter. Upon request of the Institute, Contractor shall submit a written acknowledgement to provide assurance on compliance with the same.

2. Even after the termination of Use Agreement, these Terms shall remain in force with respect to matters arising in connection with use of the Service.

Article 19: Miscellaneous

1. The formation, effect, implementation and interpretation of these Terms shall be governed by the laws of Japan.

2. All disputes arising in connection with these Terms, Service Use Agreement, AtomWork-Adv and the Service shall be referred to the Tokyo District Court as the court of first instance having exclusive jurisdiction.

3. Notwithstanding the preceding paragraph, when the address of the individual Contractor exists outside Japan, and when the location of the head office of the corporate Contractor exists outside Japan, disputes arising in connection with these Terms and/or the Use Agreement between Contractor and the Institute shall be settled only by arbitration by the Japan Commercial Arbitration Association in Tokyo, Japan in accordance with its Arbitration Rules. The arbitral award shall be final and binding upon both Contractor and the Institute.

The arbitration expenses (including fees of attorneys and lawyers) shall be borne by the losing party unless otherwise specified in the arbitral award.

4. The failure at any time of either Party to enforce or require strict compliance with any provision of the Use Agreement and/or these Terms shall in no way be construed as a waiver of such provision nor in any way be construed to affect the right of such Party to thereafter enforce that or any other provision .

5. The Japanese version of the Use Agreement and these Terms shall be the official version. In the event of any conflict between the provisions of the Japanese version and the English language translation thereof, the provisions of the Japanese version shall prevail.

Supplementary Provision

These Terms shall come into force as from April 1, 2018, and applied starting from April 1, 2018.