

**OPTICAL SOCIETY OF AMERICA  
MULTI-SITE LICENSE AGREEMENT**

This Agreement is entered into as of the \_\_1st\_\_ day of \_September\_\_, 2009, by and between:

The Optical Society of America ("OSA"), with offices at 2010 Massachusetts Ave., N.W, Washington, D.C. 20036-1012, the Publishers of Optics InfoBase, the OSA online journal service whose online journals are listed in Appendix A; and

Regents of the University of California, a non-profit academic institution, with its principal offices at The California Digital Library, University of California, Office of the President, 415 20<sup>th</sup> Street, 4<sup>th</sup> Floor, Oakland, CA 94612 USA ("the Institution");

WHEREAS, OSA and the Institution agree that it is desirable to allow Authorized Users, as defined below, at each of the Institution's sites to have access to the online versions of the Publishers' titles irrespective of location or of the separate journal subscriptions held by the campus participants,

THEREFORE, the parties agree as follows:

**1. SCOPE AND COVERAGE**

a. The journals covered by this Agreement are the electronic versions of those titles listed in Appendix A. These journals ("the Licensed Material") are made available through an electronic publishing platform operated by OSA.

b. OSA warrants that this Agreement applies to its own and co-published titles listed in Appendix A.

**2. AUTHORIZED USERS**

OSA grants to the Institution's Authorized Users online access to titles listed in Appendix A. This grant extends only to the Institution and may not be transferred or extended to others. "Authorized Users" means the employees, faculty, staff, and students officially affiliated with the Institution, and persons with legal access to the Institution's library collections and facilities on-site, using an IP address within the ranges identified in Appendix C. The Institution will exercise reasonable vigilance and shall be responsible for all access control and security measures necessary to ensure that the Institution's IP addresses are not used to access Optics InfoBase by anyone other than Authorized Users. The Institution warrants and represents that common and reasonable methods will be used to inform Authorized Users of general terms and conditions for the use of the Licensed Material that are consistent with this Agreement. Furthermore, the Institution will make every attempt to enforce the terms of this Agreement upon receiving information from OSA or any other source that reasonably indicates that one or more Authorized Users is in violation of the terms of this Agreement.

### 3. IP ADDRESSES

Authorized Users will be recognized and authorized by their Internet address. IP addresses and/or address ranges for the Authorized Users are indicated in Appendix C. OSA requires the Institution to provide the name and e-mail address of a network contact who will be the primary contact person for OSA. The Institution may submit the IP addresses of additional Authorized Users throughout the license period, subject to OSA's approval. The use of proxy servers that limit remote or off-campus use to Authorized Users is permitted, via a secure network. Authentication is the responsibility of the Institution.

CDL Technical Contact:

[Text Deleted]

Senior Development Programmer

California Digital Library

415 20<sup>th</sup> Street, 4<sup>th</sup> Floor

Oakland, CA 94612

Email: [Text Deleted]

Tel. [Text Deleted]

### 4. PERMITTED USE

a. Authorized Users are permitted online access to the Licensed Material listed in Appendix A, and may download, save, or print text, search results, or other information from Optics InfoBase solely for their private use or research. The Institution may only use this online access in a way that conforms with all applicable laws and regulations.

b. OSA grants the Institution permission to use brief quotations from the content of the online journals with the customary acknowledgment of the source, and to copy and transmit content from individual articles in "person-to-person" and non-systematic scholarly exchanges of information between Authorized Users and specific individuals.

c. Institution may supply an electronic copy of an article, via paper, facsimile transmission, or intermediated means such as Ariel, to a library outside the Institution only under the following conditions:

1. Institution may not supply an article to another library on a commercial, revenue generating basis.
2. No article may be supplied to a corporation or other non-academic institution.
3. Institution 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.
4. Institution may not remove, obscure or modify copyright notices that are part of an article to be printed and supplied to another library.



d. Faculty at Institution may include articles from the Licensed Material in anthologies (coursepacks) in print or digital form for distribution to Authorized Users for their use in connection with classroom instruction or in reserves (print or digital) set up by Institution for access by Authorized Users in connection with specific courses offered by the Institution. Copies of items in digital form which are included in online coursepacks or reserves will be deleted by the Institution after the end of the semester in which the related course concludes.

e. The University of California is committed to the use of the emerging OpenURL standard to allow linking to related materials in other locations. OSA agrees that once it becomes fully OpenURL compliant, it will provide information to Institution upon request to assist in creating links directly from the University's library catalogs and licensed resources to the content at the journal, issue, and article levels.

## **5. PROHIBITIONS ON CERTAIN USE**

a. The Institution shall not knowingly permit anyone other than Authorized Users to use the Licensed Materials. Altering, recompiling, reselling, publishing or republishing of any journal text, search result, or other information from the Licensed Materials, or any portion thereof, in any form or medium, is prohibited.

b. Systematic or programmatic downloading, printing, transmitting, or copying of the Licensed Materials is prohibited. "Systematic or Programmatic" means downloading, printing, transmitting, or copying activity of which the intent or the effect is to capture, reproduce, or transfer the entire output of a journal volume, a journal issue, or sequential or cumulative search results, or collections of abstracts, articles, or tables of contents for purposes other than education or research. Other such systematic or programmatic use of the Licensed Material that interferes with the access of Authorized Users or that may affect the performance of the Optics InfoBase system, for example, the use of "robots" to index content, or downloading or attempting to download large amounts of material in a short period of time, is prohibited. Redistribution of the Licensed Material, except as permitted in Section 4, without permission of the Publishers and/or payment of a royalty to the Publishers or to the appropriate Reproduction Rights Organization, is prohibited.

c. All rights not expressly granted herein are reserved to the stated Publisher of the Licensed Material. The Institution and Authorized Users may not circumvent OSA's access control systems or use OSA's systems or services to make any attempt to gain unauthorized access to any other system or network.

d. OSA shall not be required to distribute, and Institution shall not redistribute, the Licensed Material or any article therein to a country to which export is prohibited by U.S. law or regulation.

## **6. DURATION OF AGREEMENT**

a. This Agreement is effective as of January 1, 2005.



b. This Agreement will renew automatically at the end of the current term unless either party gives written notice of its intention not to renew thirty (30) days before expiration of the current term.

c. In the event that either party believes that the other materially has breached any obligations under this Agreement, or if OSA believes that the Institution has exceeded the scope of the License, such party will so notify the breaching party in writing. The breaching party will have sixty (60) days from the receipt of notice to rectify the alleged breach and to notify the non-breaching party in writing that measures to correct the abuse have been effected. If the breach is not rectified within the sixty (60) day period, the non-breaching party shall have the right to terminate the Agreement without further notice.

Upon Termination of this Agreement for cause online access to the Licensed Materials by OSA and Authorized Users shall be terminated. Authorized copies of Licensed Materials may be retained by Institution and used subject to the terms of this Agreement.

In the event of early termination permitted by this Agreement, Institution shall be entitled to a refund of any fees or pro-rata portion thereof paid by Institution for any remaining period of the Agreement from the date of termination.

d. Institution must submit Institution Access Fee no later than March 1 of any year of the Agreement.

## **7. FEES AND PAYMENT**

See Appendix D.

## **8. COPYRIGHT**

The Licensed Material and their contents, including abstracts, are copyrighted by OSA or as indicated within the individual journals. This material is subject to all applicable copyright, database protection and other rights of the stated owner and Publisher under the laws of the United States and other countries. Copyright notices in the Licensed Material and its articles may not be removed, obscured, or modified in any way. Unauthorized copying or redistribution of any content licensed herein is a violation of copyright laws.

## **9. FAILURE OF PERFORMANCE**

OSA endeavors to provide service through Optics InfoBase 24 hours a day, 365 days a year. OSA will announce to subscribers any planned downtime necessary for service upgrades, and will always seek to minimize the length and effect of such downtime. OSA will use reasonable efforts to ensure that its server or servers have sufficient capacity and rate of connectivity to provide the Institution and its Authorized Users with a quality of service comparable to current standards in the online information industry in the Institution's locale.

OSA will use reasonable efforts to provide continuous service seven (7) days a week with an



average of 98% up-time per month. Scheduled down-time will be performed at a time to minimize inconvenience to Institution and its Authorized Users.

#### **10. ARCHIVAL RIGHTS OF INSTITUTION**

OSA will provide one shared print copy of titles available in print at no additional cost. In the event Institution stops subscribing to Licensed Materials, OSA will provide, upon request, one copy of the entire set of Licensed Materials to be maintained as an archival copy as required to exercise Institution's perpetual rights. The requested materials will be delivered in a mutually agreed upon format, and the Institution will cover the processing and delivery costs. The Institution is permitted to copy that content to the institution's information systems and redistribute that content to Authorized Users. Any hardware or software required to distribute content from the archive copy will be the responsibility of the Institution. The definitions of Authorized Users and allowed and prohibited uses as provided in this Agreement shall otherwise apply to the use of the archive copy.

#### **11. DISCLAIMER OF WARRANTIES; LIMITATION OF LIABILITY; INDEMNIFICATION**

OSA warrants that it is entitled to grant the licenses granted in this Agreement, and is authorized to execute this Agreement. OSA MAKES NO WARRANTY OR REPRESENTATION OF ANY KIND, EXPRESS OR IMPLIED, WITH RESPECT TO THE LICENSED MATERIALS, INCLUDING THEIR QUALITY, ORIGINALITY, SUITABILITY, SEARCHABILITY, OPERATION, PERFORMANCE, COMPLIANCE WITH ANY COMPUTATIONAL PROCESS, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

OSA SHALL NOT BE LIABLE FOR: EXEMPLARY, SPECIAL, INDIRECT, INCIDENTAL, CONSEQUENTIAL OR OTHER DAMAGES, ARISING OUT OF OR IN CONNECTION WITH THE SUBSCRIPTION OR LICENSES GRANTED HEREUNDER, THE USE OR INABILITY TO USE ANY OSA ONLINE JOURNAL, OSA'S PERFORMANCE UNDER THIS AGREEMENT, TERMINATION OF THIS AGREEMENT BY OSA OR THE LOSS OF DATA, BUSINESS OR GOODWILL, EVEN IF OSA IS ADVISED OR AWARE OF THE POSSIBILITY OF SUCH DAMAGES. IN NO EVENT SHALL THE TOTAL AGGREGATE LIABILITY OF OAS FOR ANY CLAIMS, LOSSES OR DAMAGES ARISING OUT OF ANY BREACH OR TERMINATION OF THIS AGREEMENT EXCEED THE TOTAL AMOUNT PAID BY THE INSTITUTION TO OSA FOR THE ONLINE JOURNAL SUBSCRIPTION FOR THE CURRENT SUBSCRIPTION YEAR IN WHICH SUCH CLAIM, LOSS OR DAMAGE OCCURRED, WHETHER IN CONTRACT, TORT, OR OTHERWISE, INCLUDING WITHOUT LIMITATION DUE TO NEGLIGENCE. The foregoing limitation of liability and exclusion of certain damages shall apply regardless of the success or effectiveness of other remedies.

OSA shall indemnify and hold Institution and Authorized Users harmless for any losses, claims, damages, awards, penalties, or injuries incurred, including reasonable attorney's fees, which arise from any claim by any third party of an alleged infringement of copyright or any other property right arising out of the use of the Licensed Materials by the Institution or any Authorized User.



NO LIMITATION OF LIABILITY SET FORTH ELSEWHERE IN THIS AGREEMENT IS APPLICABLE TO THIS INDEMNIFICATION.

Each party shall indemnify and hold the other harmless for any losses, claims, damages, awards, penalties, or injuries incurred, including reasonable attorney's fees, which arise from any alleged breach of such indemnifying party's representations and warranties made under this Agreement, provided that the indemnifying party is promptly notified of any such claims. The indemnifying party shall have the right to defend such claims at its own expense. The other party shall provide assistance in investigating and defending such claims as the indemnifying party may reasonably request and have the right to participate in the defense at its own expense.

## **12. GENERAL**

This Agreement constitutes the entire agreement between the parties and supersedes any prior communication or agreement between the parties with respect to the subject matter hereof. The headings used in this Agreement are for convenience only and are not to be considered in construing the terms of this Agreement. Subject to termination under Section 6, this Agreement may be amended only by consent (via mail, email, or fax) of both parties. The Institution may not make any changes to this Agreement without written consent of OSA.

The Institution must pay any applicable taxes (including but not limited to any Value Added Taxes, Sales Taxes, and Import Taxes) other than taxes on OSA's net income, arising out of the Members' use of the Licensed Material and/or the rights granted under this Agreement.

## **13. PERPETUAL LICENSE**

Notwithstanding anything else in this Agreement, OSA grants to Institution a non-exclusive, royalty-free, perpetual license to use any Licensed Materials paid for during the term of this Agreement. Such use shall be in accordance with the provisions of this Agreement, which provisions shall survive any termination of this Agreement.

## **14. Notice of the Use of Digital Rights Management Technology**

In the event that OSA utilizes any type of digital rights management technology to control the access or the usage of the Licensed Material, OSA agrees to notify the Institution of the name, contact information and any technical specifications for the digital rights management technology utilized.

## **15. 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.

**16. OSA RESERVES THE RIGHT TO MAKE CHANGES TO THESE TERMS AND CONDITIONS AT ANY TIME.** However, OSA must provide Institution with at least thirty (30) days' prior written notice of any changes. If Institution does not accept any change to the terms of the Agreement by OSA, Institution may notify OSA by e-mail, fax, or letter, prior to the effective date of such changes, that the Institution does not accept such change, in which case the current terms shall apply until the end of the Institution's current subscription term. In the absence of any such objection by Institution, OSA's new terms shall apply.

I have read and agree to adhere to and abide by all the terms and conditions stated above, and I certify that I am authorized to sign this Agreement on behalf of the Institution and its Authorized Users.

For the Institution

Name: [Text Deleted]

Title: *Executive Director, California Digital Library*

Date:

[Text Deleted]

Signature:

*12.17.09*

For the Publisher

Name: [Text Deleted]

Title: *Deputy Executive Director & COO*

Date:

Signature:

[Text Deleted]

*12/22/09*

Please mail me completed and signed Agreement to:

Optical Society of America  
2010 Massachusetts Ave., N.W  
Washington, D.C. 20036-1012



**APPENDIX A**  
**Licensed Material**

Optics InfoBase: (All)

Journal of the Optical Society of America A (from 1984)

Journal of the Optical Society of America B (from 1984)

Applied Optics (from 1962)

Optics Letters (from 1977)

Optics Express (from 1997)

Journal of Optical Communications and Networking

Journal of Optical Networking (2002-2009)

Advances in Optics and Photonics (from 2002)

Journal of the Optical Society of America (1917-1983)

Virtual Journal of Biomedical Optics

Journal of Lightwave Technology (from 1998)

Journal of Optical Technology (from 1999)

Journal of Display Technology

Chinese Optics Letters

Applied Spectroscopy



**APPENDIX B**  
**Campuses of the University of California and Related Sites**

University of California, Berkeley (including the Lawrence Berkeley Laboratory)

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

## APPENDIX C IP Addresses

UC Berkeley (including Lawrence Berkeley Laboratory)  
[Text Deleted]

UC Davis  
[Text Deleted]

UC Irvine  
[Text Deleted]



UC Los Angeles

[Text  
Deleted]

UC Merced

[Text Deleted]

UC Riverside

[Text Deleted]

UC San Francisco

[Text Deleted]

UC Santa Barbara

[Text Deleted]

UC Santa Cruz

[Text  
Deleted]

UC San Diego

[Text Deleted]

UC Office of the President - California Digital Library  
[\[Text Deleted\]](#)



## APPENDIX D

### Business Terms

PRICE: The negotiated rate for 2010, including all discounts, is [Text Deleted] Any increase for years 2011-2012 will be no more than [Text Deleted]

One shared print copy [Text Deleted] Campus print subscriptions are available at a [Text Deleted] discount. They must be ordered directly with OSA.

OK to cancel print.

If any journal in Appendix A ceases publication or is withdrawn from Optics InfoBase, or if OSA is otherwise unable to provide continued access to any title during the term of this Agreement, the Institution's annual subscription payments and/or Institution Access Fee may be adjusted by agreement between OSA and the institution.

All invoices and communications regarding fees and payment will be directed to:

[Text Deleted] Acquisitions Coordinator, California Digital Library  
Geisel Library  
University of California  
9500 Gilman Drive #0175A  
La Jolla CA 92093-0175  
[Text Deleted]  
- voice  
- fax  
Email: [Text Deleted]