

SAMPLE LICENSE

SPIE DIGITAL LIBRARY LICENSE AGREEMENT

The effective date of this Agreement is **DAY MONTH, 200X** and is by and between:

The Society of Photo-Optical Instrumentation Engineers, Inc. (“SPIE”), with offices at 1000 20th Street, Bellingham, WA, USA 98226 USA.

and

[Client Name] (“Client”), with offices at [Client address]

WHEREAS, SPIE and the Client agree that it is desirable to allow Authorized Users, as defined below, to have access to the online versions of SPIE’s proceedings and journals which are a part of the SPIE Digital Library,

THEREFORE, the parties agree as follows:

1. SCOPE AND COVERAGE

- a. The proceedings and journals (“Licensed Material”) covered by this Agreement are the electronic versions of those titles indicated in Appendix A, and any additional titles that the Client and SPIE agree to include.
- b. SPIE warrants that this Agreement applies to its own titles defined as the Proceedings of SPIE and its published journals as further identified in Appendix A.

2. AUTHORIZED USERS

SPIE grants to the Authorized Users at Client’s facility online access to all titles included in the Library. This grant extends only to Authorized Users at Client’s facility and may not be transferred or extended to others. For purposes of this Agreement, “Authorized Users” means the employees, faculty, staff, and students officially affiliated with the Client and persons with legal access to the Client’s library collections and facilities on-site, using an IP address within the ranges identified in Appendix B. The Client will exercise reasonable vigilance and shall be responsible for all access control and security measures necessary to ensure that its IP addresses are not used to access the Library by anyone other than Authorized Users. The Client

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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 Client will make every attempt to enforce the terms of this Agreement upon receiving information from SPIE 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 as indicated in Appendix B. SPIE requires the Client to provide the name and e-mail address of a network contact who will be the primary contact person for SPIE.

4. PERMITTED USE

- a. Authorized Users are permitted online access to the Library and the licensed material contained therein, and may download, save, or print text, search results, or other information from the Library solely for their private use, teaching or research. The Authorized Users may only use this online access in a way that conforms to all applicable laws and regulations.
- b. SPIE grants the Authorized Users permission to use brief quotations from the content of the licensed materials with the customary acknowledgment of the source, and to copy and transmit content from individual papers or articles in “person-to-person” and non-systematic scholarly exchanges of information between Authorized Users and specific individuals.
- c. Concerning providing copies of papers or articles to another person or library that is not a legal part of the Client, only a hard copy printed from the electronic files of the licensed material may be supplied to such other person or library. Under no circumstance may an electronic paper or article file be transmitted in digital form by the Client to any person not officially associated with the Client. The following conditions and restrictions likewise apply:
 - 1) Neither Client nor an Authorized User may supply a paper or article to any person or entity on a commercial, revenue-generating basis without full

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payment of the Publisher's royalty, as indicated by the Item Fee Code for each publication.

- 2) No paper or article may be supplied to a corporation or other non-academic institution without full payment of the Publisher's Item Fee or royalty.
 - 3) Regarding interlibrary loans (ILL), Client may download and print individual papers or articles that are then faxed, mailed or hand-delivered to a requester under Client's Interlibrary loan procedures, so long as the requesting institution is an academic library located in the same country as the Client. No other form of electronic transmission or forwarding of material is permitted. Further, the supply of papers or articles to an academic library without payment of the Item Fee is limited in a one-year period to no more than six (6) articles from any title (i.e. Proceedings of SPIE or the specific journals listed in Appendix A), published within the last five (5) years. The use of papers or articles from the licensed material that exceeds these limits must be accompanied by payment of the Item Fee directly to the Publisher or to the Copyright Clearance Center.
 - 4) Client may not remove, obscure or modify copyright notices that are part of an article to be printed and supplied to another person or entity.
- d. The Client agrees that use of the licensed material by Authorized Users other than indicated above is a violation of the terms of this Agreement.

5. PROHIBITIONS ON CERTAIN USE

- a. Other than as provided in Section 4 of this Agreement, Client shall not knowingly permit anyone other than Authorized Users to use the Licensed Materials. Altering, recompiling, reselling, publishing or republishing of any proceedings or journal text, output 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

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capture, reproduce, or transfer the entire output of a proceedings volume or journal volume, a journal issue, or a journal topical section, or sequential or cumulative search results, or collections of abstracts, articles, or tables of contents. Other such systematic or programmatic use of the Licensed Materials that interferes with the access of Authorized Users or that may affect the performance of the SPIE Digital Library system, for example, the use of “robots” to index content, is prohibited. Redistribution of the Licensed Materials, except as permitted in Section 4, without permission of SPIE and/or payment of an Item Fee or royalty to SPIE or to the Copyright Clearance Center, is prohibited.

- c. All rights not expressly granted herein are reserved to the stated Publisher of the licensed material, SPIE. The Client and/or Authorized Users may not circumvent SPIE’s access control systems or use SPIE’s, or any hosting entity’s systems or services to make any attempt to gain unauthorized access to any other system or network.
- d. Client further recognizes and agrees that misuse or abuse of the Licensed Materials process can bring financial harm to SPIE and that such harm would be difficult to quantify, and it therefore agrees that, in the case of such misuse or abuse by Client or its Authorized Users, SPIE may seek injunctive relief in a court of competent jurisdiction and that SPIE would be entitled to reimbursement for court costs and attorney fees for successful action for injunctive relief.

6. DURATION OF AGREEMENT

- a. This Agreement is for the period **Month Day, 200X to December 31, 200X**, and becomes effective on the date last signed by the authorized signers of the parties hereto and upon SPIE's receipt of payment of the Subscription Fee as defined in Appendix **C**.
- b. This agreement will automatically renew for an additional one year term on the expiration date of the agreement each year unless either party gives written notice of its intention not to renew thirty (30) days before expiration of the current term, or if no mutually agreeable new pricing arrangement is reached sixty (60) days before expiration of the current term.

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c. This Agreement will terminate:

- 1) Following thirty (30) days' prior written notice that any term or condition of this Agreement is violated for any reason, knowingly or unknowingly, provided that violation is not remedied with all reasonable haste upon notification. The foregoing notwithstanding, SPIE reserves the right to suspend access to any individual IP address or address range immediately upon detecting a breach of this Agreement by a person or persons at the IP addresses in question. SPIE will use reasonable efforts to notify the Licensee as soon as possible, usually within three (3) days of any such suspension of service, by sending e-mail to the authorized agent address included in this Agreement.
- 2) No later than the expiration date of the Agreement currently in effect if SPIE has not received the Licensee's Subscription Fee for the subsequent subscription term as provided for in Section 6.b.

7. FEES AND PAYMENT

- a. Client agrees to pay a Subscription Fee as set out in Appendix C. The fee is payable upon signing of this Agreement. Only the following adjustments may be made to the Subscription Fee:
 - 1) A print copy of the licensed material may be added for the price of the subscription for that title, as indicated on Appendix C.
 - 2) If any title that is a part of the Library ceases publication or is withdrawn by the Publisher from the Library, or if SPIE is otherwise unable to provide continued access to any title during the term of this Agreement, the Client's annual Subscription Fee may be adjusted by agreement between SPIE and Client.
- b. The Client agrees that, with the exceptions listed above, there will be no other reductions or adjustments in the Subscription Fee for the duration of this Agreement.

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- c. To provide time for administrative tasks, access to the SPIE Digital Library will commence within 3 (three) business days of receipt of payment of the Subscription Fee.

8. COPYRIGHT

The licensed material and their contents, including abstracts, are copyrighted by the Publishers. 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

From the effective date of this Agreement, the Client, and the Authorized Users are entitled to attempt online access to the licensed material at any time. SPIE endeavors to provide service to its Digital Library 24 hours a day, 365 days a year. SPIE will announce to subscribers any planned downtime necessary for service upgrades, and will always seek to minimize the length and effect of such downtime. SPIE, however, will not be liable for any delay, transmission error, software or equipment incompatibilities, force majeure or other failure of performance. SPIE will use all commercially reasonable efforts to correct any material performance problem brought to its attention as quickly as possible and may suspend performance pending such correction.

10. ARCHIVAL RIGHTS OF SUBSCRIBERS

The following section only applies to licensed material published by SPIE as indicated in Appendix A.

SPIE will use reasonable efforts to retain in an archive all electronic information that they publish. Client has the option to purchase for a fee as described in Appendix C, published annually, an archive copy, delivered via CD-ROM or DVD, of the licensed material, published during the term for which a paid subscription was maintained. The Client 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

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responsibility of the Client. 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. Upon the cessation of a subscription for whatever reason, no additional service is provided.

11. DISCLAIMER OF WARRANTIES; LIMITATION OF LIABILITY

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

SPIE 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 THE SPIE DIGITAL LIBRARY, SPIE'S PERFORMANCE UNDER THIS AGREEMENT, TERMINATION OF THIS AGREEMENT BY SPIE OR THE LOSS OF DATA, BUSINESS OR GOODWILL, EVEN IF SPIE IS ADVISED OR AWARE OF THE POSSIBILITY OF SUCH DAMAGES. IN NO EVENT SHALL THE TOTAL AGGREGATE LIABILITY OF SPIE FOR ANY CLAIMS, LOSSES OR DAMAGES ARISING OUT OF ANY BREACH OR TERMINATION OF THIS AGREEMENT EXCEED THE TOTAL AMOUNT PAID BY THE CLIENT TO SPIE FOR THE SPIE DIGITAL LIBRARY 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. No claim may be made against SPIE unless suit is filed thereon within one (1) year after the event giving rise to the claim.

The Client assumes sole responsibility for all use of the Library and the licensed material by each Authorized User.

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12. WAIVERS

The failure of SPIE to exercise any right provided for or the waiver of any provision of this Agreement shall not prevent subsequent exercise of such right or be deemed a waiver of any subsequent breach of the same, or any other, provision of this Agreement.

13. 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. This Agreement may be amended only in writing and signed by both parties.

The parties hereto agree that the specific contents of this Agreement, including, but not limited to, prices, quantities and specific license provisions, are confidential and may not be disclosed to third parties without the prior written consent of the other party.

The laws of the State of Washington, USA, applicable to contracts executed in and performed entirely within that State govern this Agreement. Any claim or action arising from or related to this Agreement shall be brought exclusively in a court located in the State of Washington. The parties expressly waive any right to a jury trial regarding disputes related to this Agreement.

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

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The Client may not assign or transfer its rights under this Agreement. The provisions of Sections 2, 4, 5, 8, 9, 10, 11 and 12 hereof shall survive any expiration or termination of this Agreement.

The persons signing below hereby warrant that they are authorized to sign this Agreement on behalf of their respective organizations.

<p><u>For Client</u></p> <p>Authorized Signature: _____</p> <p>Name, Title: _____</p> <p>Date: _____</p>	<p><u>For Publisher</u> SPIE</p> <p>Authorized Signature: _____</p> <p>Brad S. Ferguson Senior Director of Finance & Administration</p> <p>Date: _____</p>
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APPENDIX A Listing of the Titles of the Licensed Material (The SPIE Digital Library)

The Proceedings of SPIE
Optical Engineering Journal (OE)
Journal of Electronic Imaging (JEI)
Journal of Biomedical Optics (JBO)
Journal of Micro/Nanolithography, MEMS and MOEMS (JM3)
Journal of Applied Remote Sensing (JARS)
Journal of Nanophotonics (JNP)

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APPENDIX B Listing of Authorized IP Addresses

Ref. No.	Site Name or Site Location	Associated IP (s)
1.		

Primary Contact/Administration Contact Information	
Name:	
Email address:	
Phone Number:	
Mailing Address: (Complete if different from address on Page 1.)	

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APPENDIX C

Pricing

Ref No.	Description	Fees in US \$\$
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1.	SPIE Digital Library Subscription Fee for the term: Month Day through December 31, 200X	XXXX
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2.*	Optional: Addition of Print *	Fee Schedule US**	Quantity	Fees**
a.	Proceedings of The SPIE	\$12,050	NA	--
	Journals:			
b.	OE (Optical Engineering):	\$230	NA	--
c.	JEI (Journal of Electronic Imaging)	\$105	NA	--
d.	JBO (Journal of Biomedical Optics)	\$160	NA	--
e.	JM3 (Journal of Micro/Nanolithography, MEMS and MOEMS)	\$105	NA	--
f.	All Four Journals	\$600	NA	--

3.	CDROM of content published during subscription term	\$350	Per Segment	--
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	Total			\$XXXXX
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* Section 2—Optional: Addition of Print. Prices quoted herein are part of a package which is exclusive to Digital Library Subscribers. Print prices apply only if print is purchased and fulfilled directly through SPIE. For clients electing to work through serials vendors and/or book agencies, print may be purchased at the regular list price which will be made available upon request.

** Funds to be paid in \$US Dollars.

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