

**OSA ONLINE JOURNALS
INSTITUTIONAL USER AGREEMENT**

BY THIS AGREEMENT between the Optical Society of America ("OSA") and the Subscriber named below ("Subscriber"), OSA grants a subscription to the OSA online journals checked below, subject to the Terms and Conditions set forth in paragraphs 1-8, all of which are agreed to between OSA and the Subscriber.

Subscriber:

Name: Massachusetts Institute of Technology

Billing Address: 77 Massachusetts Avenue
Cambridge, MA 02139-4307

Subscriber Account #: _____

If subscribing through an agency, please give name of agency: Blackwell's Periodicals, US

Please check each OSA journal listed below for which a subscription is ~~currently maintained~~ ^{desired}, and maintained in print.

- Applied Optics Online
- Journal of the Optical Society of America A (JOSA A) Online
- Journal of the Optical Society of America B (JOSA B) Online
- Optics Letters Online

Contact person responsible for administration of Online Journals:

Name: Ellen Duranceau

Address: MTT Libraries Room 14E-210A
77 Massachusetts Avenue, Cambridge, MA 02139-4307

Telephone: 617 353 7562 **Fax:** 617 253 2464

E-mail: efinnie@mit.edu

Institution's IP addresses for these subscriptions: *18.*.*.* ; 128.52.*.* ; ~~198.125.160.*-163.*~~ ; 198.125.176.*-179.*

*Attach additional sheet if necessary. For assistance, contact your computer services department.
Please note if a proxy server is used as additional information is needed.

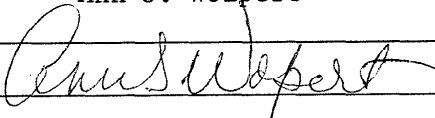
Number of workstations served by these IP addresses (check one):

- 1-100 101-500 more than 500

Please read the following Terms and Conditions. By signing below you certify that you have read and agree to abide by all such Terms and Conditions and you certify that you are authorized to sign this form on behalf of your institution.

Ann J. Wolpert

Name: _____

Signature: 

Title: Director Of Libraries

Date: November 2, 1999

The completed and signed agreement can be mailed or faxed to: Optical Society of America, InfoBase & Electronic Publishing, 2010 Massachusetts Ave., NW, Washington, DC 200361023; Fax: 202-416-6100.

Questions may be directed to: Kathy McQuilkin, OSA, Tel: 202-416-1965; Fax: 202-416-6100; E-mail: kmcqui@osa.org

Signed for OSA:

Name: _____

Title: _____

Signature: _____

Date: _____

Terms and Conditions

1. Authorized Users

OSA's grant to the Subscriber and Authorized Users at the Subscriber's institution of access to the OSA online journals for which the Subscriber maintains a current subscription extends **only to the Subscriber and such Authorized Users individually and may not be transferred to, or extended to, others.** "Authorized Users" means only the employees, faculty, **staff, and students** officially affiliated with the Subscriber's facilities, using an IP address within the range identified in this Agreement. This includes occasional users who access **the** online journals through stations physically located on the site and under the control **and** administration of the Subscriber. Authorized Users also includes persons **affiliated** with remote sites or campuses of **the** Subscriber that are administered **from** the Subscriber's site or campus, but not persons **affiliated** with remote sites or campuses that have separate administrative staffs. Unauthorized use of **the** Subscriber's IP address for access to the online journals is a breach of this Agreement and a violation of OSA's copyrights.

The Subscriber **warrants and** represents **that** common and reasonable measures will be used to prevent access by **unauthorized** persons to its IP addresses **and to inform** Authorized Users of general terms and conditions for the use of online journals that are consistent with **this** Agreement. Furthermore, the Subscriber 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 of more Authorized Users is in violation of the terms of this Agreement. The Subscriber shall be responsible for display, access control and security **measures.**

2. Permitted Use

The Subscriber and Authorized Users are permitted access to **the** online journals, **and may download** or print text, search results, or other information **from the** online journals solely for the private use or research of the Subscriber and the Authorized Users. The **Subscriber and the** Authorized Users are permitted to print one hard copy **and share** such **hard** copy with **third** parties to the same extent as the print edition or to the extent permitted under **fair** use provisions of **the** Copyright Act of 1976. The Subscriber **and** each Authorized User agrees to use this online access in a way that conforms with all applicable laws and regulations.

3. Prohibitions on Certain Uses

Altering, compiling, copying, reselling, redistributing, publishing or republishing of any journal text output, search results, or other **information** from **the** online journals, or any portion thereof, including without limitation, copyright trade secret, proprietary and/or other legal notices contained therein, in any **form** or medium is prohibited. Systematic downloading, service bureau redistribution services, printing for **fee-for-service** purposes and/or the making of print or electronic copies for transmission to non-subscribers or non-subscribing institutions (beyond **that** permitted in Section 2) are prohibited. All rights not expressly granted are reserved to OSA.

4. Duration of Agreement

This Agreement will become effective on receipt by OSA of a paid subscription and the Agreement signed by an authorized agent of the **Subscriber, and, subject to the terms and** conditions of this Agreement, will last through the end of the calendar year in which the subscription first becomes **effective.** This Agreement will remain in effect thereafter for successive subscription years so long as annual subscription fees are paid.

This Agreement will terminate:

- a. Immediately, if any term or condition of **this** Agreement is violated for any reason.
- b. If Subscriber does not accept any change or changes by OSA, provided to **Subscriber with thirty (30) days'** prior written notice, in **the** terms of this Agreement. **Subscriber will** notify OSA in writing, or by e-mail or **fax** **that the Subscriber does** not accept such change or changes. (In the absence of any such **objection by** Subscriber, OSA's new terms **shall apply.**)
- c. **Immediately, if a failure** in performance of an agency outside OSA's control cannot be **rectified.**

5. Copyright

OSA's online journals and their contents, including abstracts, are copyrighted **by OSA** and are subject to **all** applicable copyright, **database** protection and other rights of OSA as copyright owner and publisher under the laws of the United States **and other** countries. Copyright notices in **the** OSA journals may not **be** removed, **obscured,** or modified in any way.

6. Failure of Performance

Following online access approval, the Subscriber **and** Authorized Users will be permitted to attempt access to the online journals at any time. OSA will not be liable for any delay, downtime, transmission error, **software** or equipment incompatibilities, force **majeure** or other failure of performance. OSA may have contracted with one or more outside agencies to provide the online service **and** OSA shall seek to ensure that all services are provided by outside agencies as negotiated. OSA will use commercially reasonable efforts to correct any material **performance** problem brought to its attention and may suspend **performance** pending such correction. OSA's responsibility to the Subscriber **and** Authorized Users **does** not extend beyond **such** endeavors.

7. Disclaimer of Warranties; Limitation of Liability

OSA warrants that it is entitled to grant the licenses granted in **this** Agreement. **THE ONLINE JOURNALS ARE PROVIDED "AS IS" AND, EXCEPT AS SET FORTH IN THE PRECEDING SENTENCE. OSA MAKES NO WARRANTY OR REPRESENTATION OF ANY KIND, EXPRESS OR IMPLIED, WITH RESPECT TO THE ONLINE JOURNALS, INCLUDING THEIR QUALITY, PERFORMANCE, COMPATIBILITY, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.**

OSA SHALL NOT BE LIABLE FOR ANY LOSS, INJURY, CLAIM, **LIABILITY** OR DAMAGE OF ANY **KIND** RESULTING **FROM** THE UNAVAILABILITY OF THE ONLINE JOURNALS, OSA'S PERFORMANCE OR TERMINATION OF THIS AGREEMENT, INTERRUPTION OF THE SERVICES PROVIDED HEREUNDER, OR ARISING OUT OF OR IN CONNECTION WITH SUBSCRIBER'S USE OF THE ONLINE JOURNALS. OSA SHALL NOT BE LIABLE FOR ANY INDIRECT, SPECIAL, INCIDENTAL, PUNITIVE OR CONSEQUENTIAL DAMAGES. **IF** NO EVENT SHALL OSA'S LIABILITY EXCEED THE AMOUNT PAID TO OSA BY THE SUBSCRIBER FOR THE ONLINE JOURNAL SUBSCRIPTION FOR THE CURRENT SUBSCRIPTION YEAR IN WHICH ANY CLAIM, LOSS OR DAMAGE OCCURRED, INCLUDING WITHOUT LIMITATION DUE TO NEGLIGENCE. No claim may be made against OSA unless suit is filed thereon within one (1) year **after the** event giving rise to the **claim.**

8. General

This Agreement constitutes the **entire** agreement between the parties and supersedes any prior communication between the parties with respect to **the subject matter** hereof. Subject to termination under Section 6, this Agreement may be amended only by a written instrument signed by both parties. The headings used in **this** Agreement are for convenience only **and** are not to be considered in construing the terms of this Agreement.

The Subscriber may not assign or **transfer** its rights under this Agreement. The provisions of Sections 1, 2, 3, 5, 7, and 8 hereof shall survive any expiration or termination of this Agreement.

This Agreement will be governed by, and construed in accordance with, the laws of the State of New York, applicable to contracts entered into **and fully performed** in the State of New York. Any action arising out of, or relating to, this Agreement or any OSA journals shall be brought in courts **situated** in New York **and** the parties consent to the jurisdiction of such courts.

This document is an addendum to the standard "OSA Online Journals Institutional User Agreement" between the licensor Optical Society of America and the licensee Massachusetts Institute of Technology. Where the standard contract differs from the language below, this addendum takes precedence.

Section 1. Authorized Users.

In place of 'employees, faculty, staff, and students officially affiliated with the Subscriber's facilities,' the following definition, specific to MIT, is substituted:

"Authorized users shall consist of 1) persons officially registered as full or part-time students of MIT including those participating in distance education programs; its faculty (including some retired faculty) and other members of the teaching staff, administrators; employed staff;* 2) authorized affiliates (including, e.g., some House Masters and Chaplains; the President's spouse; and Members of the MIT Corporation); affiliated or visiting scholars or researchers; and consultants under contract with MIT; 3) other individual authorized users sponsored by senior MIT faculty or staff with guest accounts to complete academic or administrative work; and 4) patrons physically present in the MIT Libraries.

*Please note that there may be approximately six months' lag time during which those no longer associated with MIT retain access to their campus network accounts."

The standard contract specifies that authorized users must access the journals 'using an IP address within the range identified in this agreement.' We operate a proxy server that allows members of the MIT community to use our web products remotely (through a certificates-based authentication system). Users coming to OSA via the proxy would be coming from an MIT IP address, although they would not originate from an MIT IP address. This addendum confirms that this remote access service is acceptable and is included in the agreement as a permitted use.

Section 2. Permitted Use.

The opening line of this section is altered to read 'The subscriber agrees to make reasonable efforts to inform authorized users that they are permitted. . . .'

The last line of this section is altered to read ' . . . The Subscriber will, and will make reasonable efforts to inform authorized users that they should, use this online access in a way that conforms with all applicable laws and regulations.'

The word 'educational' is added to the intended uses named in the standard contract as 'private' and 'research.'

Section 3. Prohibitions on certain uses.

The word 'copying' is removed from the list of prohibitions. Copying will be allowed according to the Fair Use provisions of US copyright law.

Section 4. Duration of Agreement

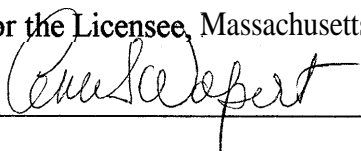
Section 4a. A cure period of 10 days for nonmaterial breach will be allowed.

Section 7. Disclaimer of Warranties

The third sentence of the second paragraph is altered to read: 'Except in cases involving intellectual property infringement, in no event shall OSA's liability exceed the amount paid to OSA by the subscriber.. . '

The last line of the section is altered to read ' . . . within one year after the subscriber was made aware of the event giving rise to the claim.'

SIGNED, for the Licensee, Massachusetts Institute of Technology:


Signature: 

Name: Ann J. Wolpert'

Title: Director of Libraries

Date: November 2, 1999

SIGNED, for the Licensor, Optical Society of America:

Signature: 

Name: Deborah C. Herrin

Title: Acting Director of Publications

Date: 11-11-99