

SPIE DIGITAL LIBRARY MULTI-SITE LICENSE AGREEMENT

The effective date of this Agreement is July 1, 2004, and is by and between:

The Society of Photo-Optical Instrumentation Engineers, Inc. ("SPIE"), with offices at 1000 20th St., Bellingham, WA 98225,
and

The Regents of the University of California, a non-profit academic institution, with its principle offices at The California Digital Library, University of California Office of the President, 415 20th Street, 4th Floor, Oakland, CA 94612, USA ("Licensee").

WHEREAS, SPIE and the Licensee agree that it is desirable to allow Authorized Users, as defined below, of the University of California to have access to the online versions of the Publisher's proceedings and journals irrespective of location or of the separate subscriptions held at campuses or Lawrence Livermore National Laboratory ("LLNL").


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 to which the Licensee subscribes, and any additional titles that the Licensee and SPIE agree to include, and are listed in Appendix B.
- 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 B.

2. AUTHORIZED USERS

SPIE grants to the Licensee and its Authorized Users online access to titles listed in Appendix B. This grant extends only to the Authorized Users 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 Licensee as defined in Appendix A, and persons with legal access to the Licensee's library collections and facilities on-site, using an IP address within the ranges identified in Appendix C. The Licensee will exercise reasonable vigilance and shall be responsible for all access control and security measures necessary to ensure that the


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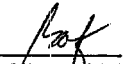
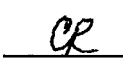
Licensee's IP addresses are not used to access the SPIE Digital Library by anyone other than Authorized Users. The Licensee warrants and represents that common and reasonable methods will be used to inform Authorized Users of general terms and conditions for the use of the Licensed Material that are consistent with this Agreement. Furthermore, the Licensee 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. IP addresses and/or address ranges for campuses and LLNL are indicated in Appendix C. SPIE requires the Licensee to provide the name and e-mail address of a network contact who will be the primary contact person for SPIE. The Licensee may submit the IP addresses of additional Authorized Users throughout the license period for SPIE's approval, subject to the terms of section 7(a)(2).

4. PERMITTED USE

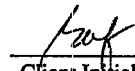
- a. Authorized Users are permitted online access to the Licensed Material listed in Appendix B, and may download, save, or print text, search results, or other information from the Licensed Material solely for their private use, teaching or research. The Licensee's Authorized Users may only use this online access in a way that conforms with all applicable laws and regulations.
- b. For the Licensed Material listed or referred to in Appendix B SPIE grants the Licensee and Authorized Users 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. Concerning providing copies of papers or articles to libraries that are not Authorized Users, only a hard copy printed from the electronic files of the Licensed Material may be supplied by mail, fax, or Ariel. Under no circumstance may any electronic paper or article that is a part of the Licensed Material be transmitted in digital form by the Licensee to a non-University library or to any person at an institution not a part of the University of California or LLNL. The following conditions and restrictions likewise apply:


 
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- 1) Licensee may not supply a paper or an article to another library on a commercial, revenue-generating basis without full payment of the Publisher's royalty, as indicated by the Item Fee Code for each publication. See paragraph 4, c. 4 below for further restrictions.
 - 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), Licensee may download and print individual papers or articles that are then faxed, mailed, sent via Ariel, or hand-delivered to a requester under Licensee's interlibrary loan procedures, so long as the requesting institution is an academic library located in the same country as the Licensee. No other form of electronic transmission or forwarding of material is permitted. Further, the supply of papers or articles to a non-Licensee 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 B), 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) Licensee may not remove, obscure or modify copyright notices that are part of an article to be printed and supplied to another library.
 - 5) Licensee and Authorized Users may use a reasonable portion of the Licensed Materials in the preparation of Course Packs or other educational materials, Course Reserves (Print and Electronic) and for use in connection with specific courses of instruction offered by the University of California.
- d. The Licensee 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, the Licensee shall not knowingly permit anyone other than Authorized Users to use the Licensed Materials. Altering, recompiling, reselling, publishing or republishing of any paper or journal


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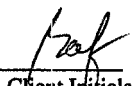

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text, output search result, or other information from the Licensed Materials, or any portion thereof, in any form or medium, is prohibited.

- 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 capture, reproduce, or transfer the entire output of a proceedings or journal volume, a issue, or 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 the Publishers and/or payment of an Item Fee or royalty to the Publishers 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. The Members and Authorized Users may not circumvent SPIE's access control systems or use SPIE's systems or services to make any attempt to gain unauthorized access to any other system or network. In the event that SPIE utilizes any type of digital rights management technology to control the access or the usage of Licensed Materials, SPIE agrees to notify Licensee of the name, contact information and any technical specifications for the digital rights management technology utilized.
- d. SPIE shall not be required to distribute, and Licensee shall not redistribute, the Licensed Material or any article therein to a country to which export is prohibited by U.S. law or regulation.
- e. Client further recognizes and agrees that misuse or abuse of the interlibrary loan 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.

6. DURATION OF AGREEMENT

- a. This Agreement is for the period July 1, 2004, to December 31, 2004, and becomes effective on the date last signed by the authorized signers of the parties hereto and


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upon SPIE's receipt of payment of the Multi-site Subscription Fee as defined in Appendix D.

- 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 pricing arrangement is reached by November 1 of the current term
- 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 January 1st of any year of the Agreement if SPIE has not received the Licensee's Subscription Fee for that year.

7. FEES AND PAYMENT

- a. The Licensee agrees to pay a Subscription Fee as set out in Appendix D. 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 by Licensee for the price of the subscription for that title, as indicated in Appendix D.
 - 2) The Licensee may request that new IP Addresses be added to this Agreement throughout the license period subject to SPIE approval, such approval not to be unreasonably withheld. All adjustments to the list of IP addresses and to the -Subscription Fee are to be mutually agreed by SPIE and the Licensee.


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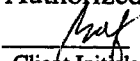
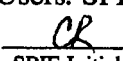
- 3) If any title in Appendix B ceases publication or is withdrawn by a Publisher from the SPIE Digital Library, or if SPIE is otherwise unable to provide continued access to any title during the term of this Agreement, the Institution's Licensee Subscription Fee may be adjusted by agreement between SPIE and the Licensee.
 - 4) If the University of California, Riverside chooses to be a party to this Agreement, the subscription fees noted in Appendix D will be adjusted to reflect the addition of the campus. Licensee will provide SPIE with written notification when the campus wishes to be added to the agreement. The 2004 annual incremental fee for the addition of Riverside to this License is [REDACTED]
- b. The Licensee 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.
 - c. To provide time for administrative tasks, access to the SPIE Digital Library will commence within seven business days of receipt of payment of the -Subscription Fee.

8. COPYRIGHT

The Licensed Material and their contents, including abstracts, are copyrighted by the Publisher. 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

SPIE shall use reasonable efforts to provide continuous service seven (7) days a week with an average of 97% up-time per month. The 3% down-time includes periodic unavailability due to maintenance of the server(s), the installation or testing of software, the loading of additional Licensed Materials as they become available, and downtime related to the failure of equipment or services outside the control of Licensor, including but not limited to public or private telecommunications services or internet nodes or facilities. Scheduled down-time will be performed at a time to minimize inconvenience to Licensee and its Authorized Users. SPIE,


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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.

Subject to the previous paragraph, if the Licensed Materials fail to operate in conformance with the terms of this Agreement, Licensee shall immediately notify Licensor, and Licensor shall promptly use reasonable efforts to restore access to the Licensed Materials as soon as possible. In the event that Licensor fails to repair the nonconformity in a reasonable time, Licensor shall reimburse Licensee in an amount that the nonconformity is proportional to the total Fees owed by Licensee under this Agreement.

10. ARCHIVAL RIGHTS OF LICENSEE



The following section only applies to Licensed Material published by SPIE, as indicated in Appendix B.

Upon request, SPIE will provide one copy of the Licensed Materials published during the period subscribed by Licensee, in CD-ROM, DVD, or a mutually agreeable electronic medium. This set will be maintained as a usable backup or archival copy to be used in accordance with the terms and conditions of this Agreement. The Subscriber 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 Subscriber. 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; INDEMNIFICATION

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 THEIR 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

 
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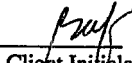
SPIE shall indemnify, defend, and hold Licensee and Authorized Users harmless for any losses, claims, damages, awards, penalties, or injuries incurred, including reasonable attorney's fees, which arise from any claim by any third party of an alleged infringement of copyright or any other property right arising out of the use of the Licensed Materials by the Licensee or any Authorized User. NO LIMITATION OF LIABILITY SET FORTH ELSEWHERE IN THIS AGREEMENT IS APPLICABLE TO THIS INDEMNIFICATION.

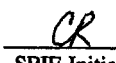
Each party shall indemnify and hold the other harmless for any losses, claims, damages, awards, penalties, or injuries incurred, including reasonable attorney's fees, which arise from any alleged breach of such indemnifying party's representations and warranties made under this Agreement, provided that the indemnifying party is promptly notified of any such claims.

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. This Agreement may be amended only in writing and signed by both parties. The Licensee may not make any changes to this Agreement without written consent of SPIE.

The Licensee 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 Licensee's use of the SPIE Digital Library, the licensed material and/or the rights granted under this Agreement.




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The Licensee may not assign or transfer their 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.

This Agreement shall be interpreted and construed according to, and governed by, the laws of California, excluding any such laws that might direct the application of the laws of another jurisdiction. The federal or state courts located in California shall have jurisdiction to hear any dispute under this Agreement.

The University of California is committed to the use of the emerging OpenURL standard to allow linking to related materials in other locations. If SPIE does not use the OpenURL standard, SPIE staff will provide information to Licensee upon request to assist the Licensee in creating links directly from UC's library catalogs and licensed resources to the content at the journal, issue and article levels.


	
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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 Regents of the University of California.

For the Client: The Regents of the University of California ("Licensee")



Authorized Signature


, DEPUTY UNIVERSITY LIBRARIAN, CDL

Name and Title


June 10, 2004

Date

For the Publisher: The Society of Photo-Optical Instrumentation Engineers, Inc. ("SPIE")



Authorized Signature


Senior Director of Operations

6/17/04

Date

APPENDIX A
Campuses of the University of California and LLNL

University of California, Berkeley

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

Lawrence Livermore National Laboratory

APPENDIX B
Listing of the Titles of the Licensed Material
(The SPIE Digital Library)

The Proceedings of SPIE
Optical Engineering Journal (OE)
Journal of Electronic Imaging (JEL)
Journal of Biomedical Optics (JBO)
Journal of Microlithography, Microfabrication, and Microsystems (JM3)

APPENDIX C
Listing of Authorized IP Addresses of Licensee
IP ADDRESSES OF LICENSEE
UNIVERSITY OF CALIFORNIA
INCLUDING UC LAWRENCE LIVERMORE LABORATORY

UC Berkeley

[DELETED]

UC Davis

[DELETED]

UC Irvine

[DELETED]

UC Los Angeles

[DELETED]

UC Merced

[DELETED]

UC Riverside

[DELETED]

UC San Francisco

[DELETED]

UC Santa Barbara

[DELETED]

UC Santa Cruz

[DELETED]

UC San Diego

[DELETED]

UC OP - California Digital Library

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[DELETED]

UC Lawrence Livermore Laboratory

[DELETED]

Primary Administrative Contact:

[DELETED]

[DELETED]

APPENDIX D: Pricing

Ref No.	Description	Fees
1.	10 Campus Digital Library Subscription Fee Prorated for the Term July 1 through December 31, 2004. N.B. 2004 Annual Fee for 10 campuses is [DELETED].	[DELETED]
2.	Merced Campus: Annual fee: [DELETED]. Once campus is fully operational as defined in Section 7.a.4., prorated fees will be applied.	--

3.*	Optional: Addition of Print *	Fee Schedule—US*	Quantity	Fees
a.	Proceedings of The SPIE	Prorated for Proceedings published during the Term July 1 through December 31, 2004 (N.B. 2004 Annual fee for full year is[DELETED])	1	[DELETED]
	Journals:			
b.	OE (Optical Engineering):	Not available for partial year subscriptions terms.	NA	--
c.	JEI (Journal of Electronic Imaging)		NA	--
d.	JBO (Journal of Biomedical Optics)		NA	--
e.	JM3 (Journal of Microlithography, Microfabrication, and Microsystems)		NA	--
f.	All Four Journals		NA	

4.	CDROM of content published during subscription year	Not available for partial year subscriptions terms.	NA	--
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	Total			[DELETED]
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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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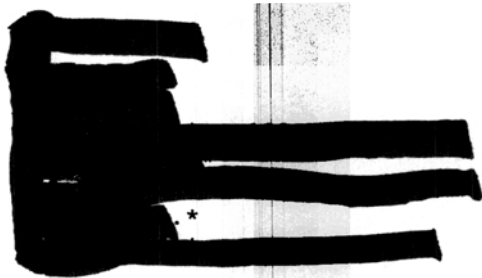
APPENDIX C

**UNIVERSITY OF CALIFORNIA
INCLUDING UC LAWRENCE LIVERMORE LABORATORY**

(deleted)



UC Lawrence Livermore Laboratory



Primary Administrative Contact:

[Redacted]
Associate Director, Shared Content
California Digital Library
University of California
415 20th Street, 4th Floor
Oakland, CA 94612-2901
Phone: [Redacted]
Fax: [Redacted]
Email: [Redacted]

Technical Contact Information	
Primary Contact:	
Name:	[Redacted]
Email address:	[Redacted]
Phone Number:	[Redacted]
Mailing Address:	415 20th Street 4th Floor Oakland CA 94612
Secondary Contact	
Name:	
Email address:	
Phone Number:	
Mailing Address	

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
Ref No.	Description	Fees
1.	10 Campus Digital Library Subscription Fee Prorated for the Term July 1 through December 31, 2004. N.B. 2004 Annual Fee for 10 campuses is [REDACTED]	[REDACTED]
2.	Riverside Campus: 2004 Annual fee: [REDACTED] If campus chooses to join the Agreement in 2004 prorated fees will be applied. Price increases may apply for subscription terms after 2004.	--

3.*	Optional: Addition of Print *	Fee Schedule—US*	Quantity	Fees
a.	Proceedings of The SPIE	Prorated for Proceedings published during the Term July 1 through December 31, 2004: [REDACTED] (N.B. 2004 Annual fee for full year is [REDACTED])	NA	--
	Journals:			
b.	OE (Optical Engineering):	Not available for partial year subscriptions terms.	NA	--
c.	JEI (Journal of Electronic Imaging)		NA	--
d.	JBO (Journal of Biomedical Optics)		NA	--
e.	JM3 (Journal of Microlithography, Microfabrication, and Microsystems)		NA	--
f.	All Four Journals		NA	--

4.	CDROM of content published during subscription year	Not available for partial year subscriptions terms.	NA	--
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	Total			[REDACTED]
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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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Addendum 1

This addendum to that Agreement by and between The Society of Photo-Optical Instrumentation Engineers, Inc. ("SPIE") and The Regents of the University of California, a non-profit academic institution, with its principle offices at The California Digital Library, University of California Office of the President, 415 20th Street, 4th Floor, Oakland, CA 94612, USA ("Licensee"). (the "Client"), dated July 1, 2004 is intended to modify that Agreement as follows:

Appendix D/Pricing

Is hereby modified to include print publications as follows

Ref No.	Description	Fees			
2.*	Optional: Addition of Print *	Fee Schedule—US*	Quantity	Each	
a	Proceedings of the SPIE	Prorated for the term July 1 -- December 31, 2004 (2004 Annual cost: [REDACTED])	3	[REDACTED]	[REDACTED]

All other provisions of the original Interim License remain in effect as written.

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

For the Client:

[REDACTED]
Authorized Signature
Deputy Univ. Librarian
Calif. Digital Library

[REDACTED]
Date

For the Publisher: The Society for Photo-Optical Instrumentation Engineers, Inc. ("SPIE")

[REDACTED]
Authorized Signature for SPIE

[REDACTED]
Date

[REDACTED]
Chief Operating Officer

Addendum 2

This addendum to that Agreement by and between The Society of Photo-Optical Instrumentation Engineers, Inc. ("SPIE") and The Regents of the University of California, a non-profit academic institution, with its principle offices at The California Digital Library, University of California Office of the President, 415 20th Street, 4th Floor, Oakland, CA 94612, USA ("Licensee"). (the "Client"), dated July 1, 2004 is intended to modify that Agreement as follows:

Term of the License is hereby modified as follows:

At the end of the current term, the License will be renewed for the period of 12 months, from January 1, 2005 to December 31, 2005

Appendix D/Pricing

Is hereby modified as follows:

APPENDIX D: Pricing

Ref No.	Description	Fees
1a	Digital Library Subscription Fee for the Term January 1 through December 31, 2005. Includes access for: University of California, Berkeley University of California, Davis University of California, Irvine University of California, Los Angeles University of California, Merced 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 Lawrence Livermore National Laboratory	
1b.	Access for UC Riverside is not included. If the campus chooses to join the Agreement in 2005 prorated fees will be applied. <u>2005 Annual fee that would apply to UC Riverside:</u> . Price increases may apply for subscription terms after 2005.	--

2.*	Optional: Addition of Print *	Fee Schedule—US*	Quantity	Fees
a.	Proceedings of The SPIE		1	
	Journals:			
b.	OE (Optical Engineering):		NA	--
c.	JEI (Journal of Electronic Imaging)		NA	--
d.	JBO (Journal of Biomedical Optics)		NA	--
e.	JM3 (Journal of Microlithography, Microfabrication, and Microsystems)		NA	--
f.	All Four Journals		1	
3.	CDROM of content published during subscription year		Included	--
Total				

*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


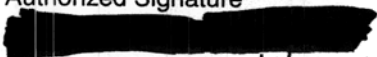
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