

AMERICAN INSTITUTE OF PHYSICS MULTI-SITE LICENSE AGREEMENT

This Agreement is entered into as of the 15th day of August, 2009, by and between:

The **American Institute of Physics** ("AIP"), with offices at 2 Huntington Quadrangle, Suite 1N01, Melville, NY 11747-4502, acting on its own behalf and as an agent of the publishing customers ("the Publishers") of SCITATION, the AIP 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 20th Street, 4th Floor, Oakland, CA 94612 USA ("the Institution");

WHEREAS, AIP 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 hosted on and made available through SCITATION, an electronic publishing platform operated by AIP. Included in this Agreement are the SPIN bibliographic database and other features and content available through SCITATION, which material is copyrighted by AIP.

b. AIP warrants that this Agreement applies to its own titles and to the titles of other Publishers listed in Appendix A, for whom AIP acts as agent for the purposes of this Agreement.

2. AUTHORIZED USERS

AIP 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 SCITATION 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 AIP 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. AIP requires the Institution to provide the name and e-mail address of a network contact who will be the primary contact person for AIP. The Institution may submit the IP addresses of additional Authorized Users throughout the license period, subject to AIP'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:

[REDACTED]
Senior Development Programmer
California Digital Library
415 20th Street, 4th Floor
Oakland, CA 94612
Email: [REDACTED]
Tel. [REDACTED]

4. PERMITTED USE

a. Authorized Users are permitted online access to SCITATION and the Licensed Material listed in Appendix A, and may download, save, or print text, search results, or other information from SCITATION 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. The Publisher of each online journal listed in Appendix A 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 without full payment of the Publisher's royalty, as indicated by the Item Fee Code for each publication.
2. No article may be supplied to a corporation or other non-academic institution without full payment of the Publisher's royalty.
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. AIP 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 SCITATION 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 AIP's access control systems or use AIP's systems or services to make any attempt to gain unauthorized access to any other system or network.

d. AIP 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, 2001.
- 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 AIP 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 AIP 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

- a. The Institution agrees to pay an Institution Access Fee. The fee is payable upon receipt of an invoice from AIP. The Institution Access Fee and the journal subscription payments are subject to each Publisher's annual average price increase for the journals listed in Appendix A. AIP agrees, however, that the total price increase for the Institution in any given year shall not exceed a percentage determined by AIP and the Publishers, subject to the Institution's approval. In 2009, the total negotiated license price will not exceed [REDACTED]. Only the following adjustments may be made to the journal subscription payments or to the Institution Access Fee:

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

[REDACTED] Acquisitions Coordinator, California Digital Library
Geisel Library
University of California
9500 Gilman Drive #0175A

c. If any journal in Appendix A ceases publication or is withdrawn by a Publisher from SCITATION, or if AIP 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 AIP and the institution.

8. COPYRIGHT

The Licensed Material and their contents, including abstracts, are copyrighted by the Publishers indicated in Appendix A 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

AIP endeavors to provide service through SCITATION 24 hours a day, 365 days a year. AIP will announce to subscribers any planned downtime necessary for service upgrades, and will always seek to minimize the length and effect of such downtime. AIP 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.

AIP 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 SUBSCRIBERS

This section only applies to Licensed Material published by AIP and the American Physical Society, as indicated in Appendix A.

AIP and APS will retain in an archive all electronic information that they publish. Subscribers have the option to receive from AIP, upon request, one copy of the entire set of Licensed Materials to be maintained as a backup or archival copy during the term of this Agreement, or 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 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.

11. DISCLAIMER OF WARRANTIES; LIMITATION OF LIABILITY; INDEMNIFICATION

AIP warrants that it is entitled to grant the licenses granted in this Agreement, and is authorized to execute this Agreement on behalf of the publishing customers indicated in Appendix A. EXCEPT AS SET FORTH IN THE PRECEDING SENTENCE, AIP MAKES NO WARRANTY OR REPRESENTATION OF ANY KIND, EXPRESS OR IMPLIED, WITH RESPECT TO THE ONLINE JOURNALS AND SCITATION, INCLUDING THEIR QUALITY, ORIGINALITY, SUITABILITY, SEARCHABILITY, OPERATION, PERFORMANCE, COMPLIANCE WITH ANY COMPUTATIONAL PROCESS, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

AIP 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 AIP ONLINE JOURNAL, AIP'S PERFORMANCE UNDER THIS AGREEMENT, TERMINATION OF THIS AGREEMENT BY AIP OR THE LOSS OF DATA, BUSINESS OR GOODWILL, EVEN IF AIP IS ADVISED OR AWARE OF THE POSSIBILITY OF SUCH DAMAGES. IN NO EVENT SHALL THE TOTAL AGGREGATE LIABILITY OF AIP FOR ANY CLAIMS, LOSSES OR DAMAGES ARISING OUT OF ANY BREACH OR TERMINATION OF THIS AGREEMENT EXCEED THE TOTAL AMOUNT PAID BY THE SUBSCRIBER TO AIP 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.

AIP 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 AIP.

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 AIP's net income, arising out of the Members' use of SCITATION, the Licensed Material and/or the rights granted under this Agreement.

13. PERPETUAL LICENSE

Notwithstanding anything else in this Agreement, AIP grants to Institution a non-exclusive, royalty-free, perpetual license to use any Licensed Materials published 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 AIP utilizes any type of digital rights management technology to control the access or the usage of the Licensed Material, AIP 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.

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: [REDACTED]

Title: Executive Director, California Digital Library

Signature: [REDACTED]

Date: 9.1.09

For the Publisher

Name: [REDACTED]

Title: Vice President of Publishing

Signature: [REDACTED]

Date: 11/18/05

Please mail the completed and signed Agreement to:

American Institute of Physics
Manager, Licensing and Sales
2 Huntington Quadrangle
Suite 1N01
Melville, NY 11747-4502

[REDACTED]
Fax: +1-516-576-2374

Technical Support:
E-mail: help@aip.org
Telephone: +1-800-344-6902
Fax: +1-516-576-9704

[Handwritten signature]

APPENDIX A
Licensed Material

Applied Physics Letters (1962-2009) <http://apl.aip.org/apl/>
Chaos (1991-2009) <http://chaos.aip.org/chaos/>
Computing In Science & Engineering (1997-2009) <http://cise.aip.org/cise/>
Conference Proceedings Online (1970-2009) <http://proceedings.aip.org/proceedings/>
Journal of Applied Physics (1931-2009) <http://jap.aip.org/jap/>
Journal of Chemical Physics (1933-2009) <http://jcp.aip.org/jcp/>
Journal of Mathematical Physics (1960-2009) <http://jmp.aip.org/jmp/>
Journal of Physical & Chemical Reference Data (2000-2009) <http://jpcrd.aip.org/jpcrd/>
Journal of Renewable and Sustainable Energy (free pub) <http://jrse.aip.org/>
Low Temperature Physics (1997-2009) <http://ltp.aip.org/>
Physics of Fluids (1958-2009) <http://pof.aip.org/pof/>
Physics of Plasmas (1958-2009) <http://pop.aip.org/pop/>
Review of Scientific Instruments (1930-2009) <http://rsi.aip.org/rsi/>
Physical Review A (2006-2009) <http://pra.aps.org/>
Physical Review B (2006-2009) <http://prb.aps.org/>
Physical Review C (2006-2009) <http://prc.aps.org/>
Physical Review D (2006-2009) <http://prd.aps.org/>
Physical Review E (2006-2009) <http://pre.aps.org/>
Physical Review Focus (free pub.) <http://focus.aps.org/>
Physical Review Special Topics (free pub) <http://prst-ab.aps.org/>
Physical Review Letters (2006-2009) <http://prl.aps.org/>
Reviews of Modern Physics (2006-2009) <http://rmp.aps.org/>
PROLA (APS Physical Review Online Archive, 1893-2005) <http://prola.aps.org/>
Journal of the Acoustical Society of America (1975-2009) <http://scitation.aip.org/jasa/>
Journal of Vacuum Science & Tech. A (1983-2009) <http://scitation.aip.org/jvsta/>
Journal of Vacuum Science & Tech. B (1983-2009) <http://scitation.aip.org/jvstb/>
Surface Science Spectra (1992-2009) <http://scitation.aip.org/ssso/>
American Journal of Physics (1975-2009) <http://scitation.aip.org/ajp/>
Powder Diffraction (2001-2009) <http://scitation.aip.org/pdj/>
Journal of Laser Applications (2002-2009) <http://scitation.aip.org/jla/>
Geophysics (1936-2009) <http://scitation.aip.org/geophysics>
The Leading Edge (1982-2009) <http://scitation.aip.org/tle>
Journal of Rheology (1929-2009) <http://scitation.aip.org/joro/>
The Physics Teacher (1975-2009) <http://scitation.aip.org/tpt/>
Medical Physics (1974-2009) <http://scitation.aip.org/medphys/>

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APPENDIX B
Campuses of the University of California and Related Sites

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 Berkeley National Laboratory

APPENDIX C
IP Addresses

UC Berkeley (including Lawrence Berkeley Laboratory)

[REDACTED]

UC Davis

[REDACTED]

UC Irvine

[REDACTED]

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