**Jan 2024 to Dec 2026**

 **[ESTABLISHMENT]**

And

 **OPTICA PUBLISHING GROUP**

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**COUPERIN LICENSE AGREEMENT OPTICS INFOBASE**

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**LICENSE AGREEMENT**

**OPTICS INFOBASE**

Between

[**ESTABLISHMENT FULL LEGAL NAME**]

[FULL ADDRESS]

SIRET Number:

APE (Principal Activity) Code:

Intra-Community VAT:
represented by its [TITLE: CHAIRMAN OR DIRECTOR], [NAME OF CHAIRMAN OR DIRECTOR]

Hereinafter referred to as the “Subscribing Member”

and

**Optica Publishing Group**

2010 Massachusetts Ave NW, Washington DC 20036

Represented by

Elizabeth Nolan

Deputy Executive Director and Chief Publishing Officer

Hereinafter referred to as the “Licensor”

This license agreement (hereinafter referred to as the “Agreement”) between the Subscribing Member and the Licensor is established for a duration of three years starting from the 1 January 2024 to 31 December 2026.

This License Agreement has been drafted along the model of contract intended for e-journals by the Couperin consortium.

This agreement is to be concluded following a negotiation conducted by the consortium.

Owing to the mutual agreements herein stated and of the tangible contribution deemed as received and sufficient, the parties hereby agree on the following clauses:

1. **PREAMBLE**

This License Agreement provides online access to the Licensed Resource as listed in Appendix 2.

The Licensor offers, through the Internet, e-versions of copyrighted documents. The Licensed Resource consists of the Optics InfoBase package of 19 journals, 1 magazine, conference papers and associated videos from hundreds of Optica’s Topical Meetings, and 11 archival ebooks, plus complimentary access to the entire backfile for all of publications in the package as well as our legacy journal titles (herein- after referred as « Content ». See appendices for the list of journals, works or modules which the Licensor commits to providing access to during the term of the License Agreement.

This resource is available on the Optica Publishing Group platform at opg.optica.org (hereinafter referred as the « OPG platform ».

At the request of the Subscribing Member, the purpose of this License Agreement is to provide access to e-versions of the products listed in Appendix 2.

The « License Agreement » shall refer to this document and its appendices as listed below in decreasing order of importance:

1. The License Agreement
2. The Appendices
3. In the event of contradiction between the different documents, the higher level document shall prevail for the obligation involved.
4. **DEFINITIONS**

In this License Agreement, the following terms, whenever used, shall have the following meaning as defined below:

**« SUBSCRIBING MEMBER »**: herein [**ESTABLISHMENT NAME**] is the Subscribing Member.

**« AUTHORIZED USERS »**For the purposes of this License Agreement, the Authorized Users of the Licensed Resource are the following persons:

* Students in initial and continuing education; students on internship with the Subscribing Member, in the framework of an internship agreement; students enrolled with the Subscribing Member and partly studying in another establishment; PhD students in a jointly-approved doctorate with partner establishments.
* Researcher/lecturer members of the Subscribing Member’s faculty, wherever they work; staff temporarily in charge of teaching at the Subscribing Member; researchers from another establishment invited by the Subscribing Member within an agreement, over the period covered by this agreement.
* The Subscribing Member’s permanent staff, wherever they work.
* Anyone with official library registration, whether as part of an agreement, or as an individual, provided he/she is registered into the e- directory of the company client.
* Visitors or walk-in users may access the resource only from computers on the Subscribing Member’s premises.

**« LICENSED RESOURCE »**: The Licensed Resource covered by this Agreement is detailed in Appendix 2attached to this License Agreement (hereinafter referred to “Licensed Resource”).

**« EXTENDED BACKFILE»**: refers to access to previously published content that is provided to Subscribing Members as part of the Licensed Resource on a complimentary basis during the term of the agreement only (see Appendix 2 for more information). Post-cancellation rights do not apply to the Extended Backfile content.

**« INTELLECTUAL PROPERTY »:** refers to trademarks, patent applicationsor granted patents, copyright, design rights, property rights to intellectual works, derivative works or any other protected element of intellectual creation.

**« SECURE NETWORK »**: refers to a network that can only be accessed with secure sign-on.

**« SECURE ACCESS »**: refers to the Authorized Users’ controlled access to the Licensed Resource:

- Through the domain name(s) and the specific categories of Internet Protocol (“IP”) addresses mentioned by the Subscribing Member in Appendix 3

- And/or through users’ names and passwords as part of a Shibboleth solution.

Also refers to remote Authorized Users’ secure or on-the-go access, from any location in and outside the Subscribing Member’s premises.

Remote access, secure and « on-the-go », is controlled by the Subscribing Member with a SSO (Single Sign On) system via proxy-type servers or any other identification and authentication such as access control systems to subscribed web services (identity federation by the Shibboleth[[1]](#footnote-1) protocol).

It may also refer to any sign-on system that could be developed in the future and would be approved by the Licensor and the Subscribing Member.

**« ACCESS RIGHTS »**: refers to the rights paid for by the Subscribing Member to access the Licensed Resource and use it.

**« COMMERCIAL USE »**: refers to the use of the Licensed Resource or any portion of the content of the Licensed Resources with the aim of deriving some benefit (from or for the Subscribing Member or an authorized user) through the broadcast, distribution, dissemination, sale, re-sale, loan, rental or any other form of use of the Licensed Resource.

Neither the access rights nor the payment of a financial contribution by the Authorized Users [to the Subscribing Member], nor the use by the Subscribing Member or the Authorized Users of the Licensed Resource as part of some research work funded by a commercial organization are considered commercial uses.

**« SUBSCRIPTION DURATION »**: refers to the time during which access to the Licensed Resource as described in Appendix 2 is available.

1. **LICENSE** **AGREEMENT**

The parties have agreed on the following:

**Article 1. CONTENTS OF THE LICENSED RESOURCE; LICENSING**

1.1 The Licensor herein grants the Subscribing Member the non-exclusive right to use the Licensed Resource and to allow Authorized Users to access the Licensed Resource through the Subscribing Member’s secure network in accordance with this Agreement.

1.2 The Subscribing Member acknowledges that the Licensed Resource is protected by copyright or by database rights belonging to Licensor and/or the Licensor’s publishing partners. All rights not expressly granted on a specific basis to the Subscribing Member are expressly reserved by Licensor.

1.3 The Subscribing Member acknowledges that termination or expiration of its paid subscription shall automatically terminate its and its Authorized Users’ access to the Extended Backfile, which is provided on a complimentary basis. Non-subscribers may obtain access to the Extended Backfile by purchasing one or more of the Licensor’s Digital Archive products.

1.4 If the Subscribing Member provides public access to its library collection when users are in the library, the Subscribing Member may also provide access and authorize reproduction of the Licensed Resource by members of the public for study or research purposes.

**Article 2. AUTHORIZED ACCESS**

2.1 The Licensor provides controlled access to the Licensed Resource through the domain name(s) and the specific categories of Internet Protocol (“IP”) addresses mentioned by the Subscribing Member in Appendix 3 and / or through users’ names and passwords.

2.2 The Licensor allows secure and « on-the-go » remote access, from any location in and outside the Subscribing Member’s premises.

Remote access, secure and « on-the-go », is controlled by the Subscribing Member with any identification and sign-on such as, for instance, VPN products, SSO (Single Sign On) systems, LDAP directories, associated with any type of proxy servers.

**Article 3. AUTHORIZED USE**

3.1 The Licensor allows the Authorized Users:

3.1.1 to browse, search, query, and view separate articles for teaching or personal use;

3.1.2 to download and save individual articles, data and statistics; and to print copies of articles and chapters from individual works.

Reproduction and saving are limited to a reasonable number of single copies of separate articles. Authorized users shall not be allowed to print and save a whole document (journal, conference proceeding or book);

3.1.3 to send research colleagues a reasonable number of individual articles outside the institution of the Subscribing Member for non-commercial research use.

3.1.4 to occasionally and non-systematically share limited amounts of the Licensed Resource with unauthorized persons, with a view to joint research work or for studying purposes without any commercial publication purpose;

3.1.5 to only use a reasonable amount of the Licensed Resource as a contribution to lecture material or other teaching aids, including partial reproduction of the Licensed Resource on dedicated or digital media, in which case, each extract shall provide all the necessary information concerning the source, title and author.

The Licensor grants users the possibility of working collaboratively on these documents. For course packs, electronic reserves, and use of the Licensed Material in classroom management software, the Subscribing Member and Authorized Users may incorporate any part of the Licensed Resource in Course Packs, Electronic Reserve collections, and in campus systems for classroom management without the prior written permission of Licensor, as long as: any copies created, whether print or electronic, are to be removed and deleted when the relevant course ends, and any other use of the materials included in the course packs, etc., shall require prior written permission from Licensor. This shall apply to lecture material and other teaching aids that the Subscribing Member creates under non-digital and unprinted formats such as Braille;

3.1.6 to use print or digital extracts from the Licensed Resource in academic papers such as theses or master’s dissertations, including reproducing those papers for individual use or library deposit. Print or digital copies of those works may be provided, when appropriate, to the sponsors. Each extract shall provide all the necessary information concerning the source, title and author.

3.1.7 to perform any Data and Text Mining activities on available data for academic research purposes, in compliance with the law dated October 7th 20163, namely the French Law for a Digital Republic and the November 24 2021 ’ordonnance n° 2021-1518.

<https://www.legifrance.gouv.fr/jorf/id/JORFTEXT000044362034>

See also : <https://www.ouvrirlascience.fr/la-fouille-de-textes-et-de-donnees-a-des-fins-de-recherche-une-pratique-confirmee-et-desormais-operationnelle-en-droit-francais/>

3.2 PEB (inter-library loan service)

The electronic format of the Licensed Resource may be used on a reasonable basis as an inter-library loan resource (herein referred to as « PEB ») by which the Licensed Resource (articles, chapters) may be printed and the print copies mailed by post, fax or through a service using a fax to meet the PEB demands from any university, research or other non-commercial library.

The PEB (inter-library loan service) through secure electronic transmission is authorized. The transmitted files shall include copyright notices and comply with copyright legislation.

3.3 Research *via* a web portal

The Subscribing Member may design and deploy collaborative tools, which are demonstrated to be safe and secure to Licensor’s reasonable satisfaction, such as document/resource portals or Discovery tools described in a technical notice providing the necessary elements to control access limitations (Appendix 3 of the Licensed Agreement) to the Licensed Resource.

The Licensor shall do its utmost to facilitate interoperability between the Licensor’s and the Subscribing Member’s library database through link solvers and shall particularly be committed to passing on all the information required for adequately referencing the Licensed Resource to those library tool(s), so long as such interoperability is demonstrated to be safe and secure to Licensor’s reasonable satisfaction.

3.4 The Licensor shall submit its editorial policy in Romeo Sherpa[[2]](#footnote-2) concerning the deposit of materials in open Archives whether in self-archiving by the authors or as Open Access publications.

3.5 Use of an anti-plagiarism software or platform

When the Subscribing Member has installed anti-plagiarism software in its establishment or if the Subscribing Member uses the services provided by an anti-plagiarism platform, the Subscribing Member is authorized to use data from the Licensed Resource in order to compare students’ works (electronic Master’s papers and theses) with those data.

3.6 DRM (Digital Rights Management): the Licensor shall not install any technical protection measures on the Licensed Resource without first notifying the Subscribing Member. The Licensor shall by no means hinder the use of the resource available under the License Agreement, particularly the export and downloading functions unless the Licensor detects systematic downloading or some other type of fraudulent behavior.

3.7 The Licensor undertakes to deactivate for authorized users of this Agreement all data collection, analysis, profiling and aggregation systems present on their systems for profiling purposes, for example through the use of cookies , IP addresses, device fingerprinting technologies or similar technologies that enable the tracking of user behavior, except for the logging of information in server transaction logs for the purpose the provision of a statistical information service provided for in the contract, if applicable.

**Article 4. POST-CANCELLATION RIGHTS**

4.1 The Licensor acknowledges the Subscribing Member’s right to access in perpetuity the subscribed Licensed Resource as described in the License Agreement and listed in Appendix 2. Those rights and the way they can be exercised are described below (herein referred to as Post-Cancellation Rights).

4.2 Upon the termination or expiration and non-renewal of this License Agreement, Licensor will provide the Subscribing Member with online access to the Licensed Resource published during the year(s) of this License Agreement.

4.2.1 The Licensed Resource will be provided via the OPG Platform. Licensor will charge a $250 annual fee to recover its costs for providing continuing access following termination of a subscription. For Subscribing Members that continue to subscribe to any Licensor journal post cancellation (excluding the member magazine, Optics & Photonics News), Licensor will waive the maintenance fee for that year.

4.2.2 The Subscribing Member’s use of archival material will be subject to the terms and conditions contained herein.

4.2.3 Complimentary access to materials published prior to the term of this License Agreement is offered only for as long as this License Agreement remains active. Such materials will not be included in Subscribing Member’s post-subscription archival material. Similarly, other features of the OPG Platform for the Licensed Resource that are available to the Subscribing Member during the term of the License Agreement may not be included.

4.2.4 For the avoidance of doubt, these Post-Cancellation Rights do not apply to complimentary access to the Licensor’s Extended Backfile.

**Article 5. SPECIFIC USE LIMITATIONS CONCERNING THE LICENSED RESOURCE**

5.1 Neither the Subscribing Member nor its Authorized Users may modify, adapt, transform, translate or create some derivative work on any medium on the basis of or including some content from the Licensed Resource, or use such resource in any other way that might infringe Licensor’s copyright or any other related property rights. Removing, masking or altering in any way a copyright, trademark, other proprietary notice, author’s comment or disclaimer included by the Licensor in the Licensed Resource is forbidden. The Subscribing Member shall publish appropriate notices and take reasonable measures to ensure that the Authorized users have been notified of the conditions of application of copyright legislation and of the limitations under the Agreement concerning reproduction, use and dissemination of the Licensed Resource.

5.2 Publishing articles, chapters, booklets, conference proceedings or full books or full meetings on institutional or personal websites is prohibited.

5.3 Using the Licensed Resource, either directly or indirectly, for any Commercial Use as defined herein or for the following purposes is not permitted:

5.3.1 Systematic or bulk reproduction whether for non-lucrative or Commercial Use or against payment or freely.

5.3.2 Re-dissemination, resale or sub-licensing in any manner including in relation with a paid service except as described in Appendix 1.

5.3.3 The provision or systematic dissemination of single or multiple copies, whatever their format, to anyone who is not an Authorized User.

5.3.4 The dissemination of part of the Licensed Resource on any electronic network other than the Subscribing Member’s secure network.

5.4 Using part of or the whole Licensed Resource for profit (whether by the Subscribing Member or any Authorized User) through/by the sale, transfer or any other form of exploitation of the Licensed Resource requires the Licensor’s express authorization. The reproduction or mass dissemination of print or electronic copies of the Licensed Resource for commercial or marketing purposes is specifically forbidden.

5.5 Using a robot or a website vacuum is strictly prohibited.

5.6 Licensor has a policy regarding authors’ use of artificial intelligence (AI) tools in published papers that Authorized Users are expected to adhere to (see https://opg.optica.org/resources/author/ethical\_guidelines.pdf). The use of content such as the Licensed Resource to train or develop AI tools however, is a new area. Licensor and the Couperin consortium have therefore agreed to monitor and discuss the evolving use of AI with regard to the Licensed Resource, and to draft an amendment to this agreement within one year that defines permitted and prohibited uses of AI tools.

**Article 6. THE LICENSOR’S OBLIGATIONS**

6.1 From the subscription date, the Licensor shall provide the Subscribing Member and the Authorized Users with the Licensed Resource in digital format.

6.2 The Licensor shall do its utmost to guarantee the Subscribing Member uninterrupted online access and continuous provision of the Licensed Resource in accordance with the License Agreement and to restore access to the Licensed Resource as soon as possible in the event of some service interruption or suspension due to the Licensor’s server failure or maintenance.

Licensor guarantees an average uptime of 98% per year, with the remaining 2% including maintenance and repair work to be performed where possible at times that cause the least inconvenience to Subscribing Members.

Non-compliance with the functional guarantee referred to in the above paragraph for a continuous period **exceeding one hundred and twenty (120) consecutive hours, or a period exceeding 8 cumulative days per year**, shall result in Licensor being liable to the Subscribing Member for a penalty as calculated in the following paragraph, without prejudice to the right of the Subscribing Member to terminate this License Agreement thirty (30) days after formal notice to re-establish access to the Licensed Resource that has remained unfulfilled.

The amount of the penalty is calculated by applying the following formula: P = R \* M / 365

P = the amount of the penalty in US dollars, R = number of days of lack of continuous access to the Subscriptions starting from the 6th day of lack of continuous access or the 9th day accumulated in the year.

M = annual amount due by the Subscribing Member. The amount taken into account is that of the year during which the lack of access is noted.

Despite the foregoing, Licensor shall not be liable for any interruption in access to the Licensed Resource if such interruption results from (i) malfunctioning of the relevant Authorized Users' hardware or software or lack of backup, anti-virus or other appropriate protection or (ii) improper or unintended use of the License Resource by the Subscribing Member or an Authorized User (including failure to install any updates recommended by Licensor) (iii) force majeure as defined in paragraph 12.2 below.

6.3 The Licensor reserves the right to withdraw from the Licensed Resource a resource or part of a resource whose publishing rights Licensor no longer holds or which Licensor reasonably suspects of infringing copyright or being violative law, false, defamatory or illicit in another way. Written notice of such a withdrawal shall be given by the Licensor.

In the event of withdrawal of part of the Licensed Resource as mentioned in appendix 2, a price review shall be initiated based on the actual price of the number of resources withdrawn from the catalogue.

6.4 During the Licensor’s office hours, the Licensor will provide the Subscribing Member with an e-mail-based help-desk and support service. This email -ased help-desk and support service, which can be reached by sending an email to subscriptions@optica.org, shall provide answers to questions related to the use, functionalities and contents of the Licensed Resource. Response must be provided within 48 hours.

6.5 The Licensor is committed to providing the Subscribing Member with documentation about its e-products. The Licensor allows the Subscribing Member to copy the documentation for Authorized Users, provided it is a full reproduction and that it bears the mention of the property of the Licensor.

6.6 The Licensor shall endeavour to be compatible with Open URL.

6.7 The Licensor shall do its utmost to be compatible with W3C standards.

6.8 The Licensor shall do its utmost to provide the descriptive metadata of the resource acquired under standard format as well as of metadata updates.

6.9 The Licensor authorizes the Subscribing Member to unsubscribe at the end of a calendar year according to 9.2 below.

6.10 Usage data of the Licensed Resource shall be collected every month by the Licensor and shared with the Subscribing Member in compliance with the applicable privacy protection legislation and written provisions regarding the confidentiality of the parties. The data shall be available on the Internet on a site to be accessed by user name and password. Shared usage data shall comply with the latest COUNTER release within a two-year period of the release.

6.12 Data describing content packages (of e- journals and e-books) shall be provided for every journal and book on the Licensor’s platform. They will be available on the Internet on a public website in compliance with the KBART[[3]](#footnote-3) norm.

NISO RP-9-2014 for journals and e-books, MARC format for records for e-book titles. Records must include all available bibliographic information; characters must use UTF8 encoding.

Licensor agrees to provide Users with metadata documentation.

The Licensor grants the beneficiaries the right to modify the format of the Metadata and to enrich it by adding content or links. The metadata may therefore be integrated into all union catalogs (for example, the SUDOC and WorldCat) and the national knowledge base BACON.

The Licensor undertakes to ensure that a permanent URL is assigned to each Title in the Database.

6.12. Information duty: The Licensor will provide a sole source letter certifying their ownership of Intellectual Property and commercial redistribution of the Licensed Resource.

The Licensor shall keep the Subscribing Member informed of any modification concerning the Licensed Resource, by giving the Subscribing Member the detailed and comprehensive list of any new resource available and of the resource withdrawn at a date agreed upon by the two parties.

**Article 7. THE SUBSCRIBING MEMBER’S OBLIGATIONS**

7.0.1 If the Subscribing Member uses a Shibboleth solution, only its Authorized Users shall be granted a password or any other access by the Subscribing Member; the Subscribing Member shall do its utmost to ensure that Authorized Users do not disclose those passwords or other access modalities to a third party.

7.0.2 The Subscribing Member shall provide the Licensor with a valid list of IP addresses to be updated at intervals decided on and validated by the two parties.

7.0.3 The Subscribing Member shall do its utmost, including by resorting, without limitation, to secure sign-on, to ensure that only Authorized Users are allowed to access the Licensed Resource.

7.0.4 If any usage of the Licensed Resource or any access to the resource is found to be contrary to the provisions of the License Agreement, the Subscribing Member shall immediately inform the Licensor, take all feasible steps to put an end to the usage or access and shall help the Licensor to terminate these practices.

7.0.5 The Subscribing Member shall not be held liable to the Licensor for failing to have any Authorized User fulfill the Agreement terms to the extent that the Subscribing Member did not willfully or inadvertently facilitate or encourage this failure to perform nor allow such failure to continue after being actually notified.

7.1 The Subscribing Member acknowledges that protecting the integrity of the Licensed Resource provided by the Licensor, including limitations in reproduction, usage and dissemination such as laid out herein, and ensuring that the usage of the Licensed Resource is limited to Authorized Users are important obligations. The Subscribing Member recognizes the Licensor’s right to monitor the access to and the usage of the Licensed Resource in order to detect its misuse and to inform the Subscribing Member. In the event that an Authorized User misused some Licensed Resource in any manner, the Subscribing Member, upon the Licensor’s request, shall terminate the Authorized User’s access to the Licensed Resource. The Licensor shall not take action to terminate access to the Licensed Resource without giving the Subscribing Member a prior 30-day notice to allow the latter to do its utmost to put an end to the misuse. If thirty (30) days after discovery, such unauthorized use has not been cured by the Subscribing Member, Licensor may immediately terminate this License Agreement. Notwithstanding anything in the foregoing to the contrary, Licensor reserves the right, in Licensor’s sole discretion, to restrict access to the Subscribing Member and its Authorized Users at any time during the thirty (30) day period, if Licensor deems such a step necessary to protect the security of the Licensed Resource.

7.2 The Subscribing Member shall do its utmost to notify Authorized Users of any current Intellectual Property right or of any other right applying to the Licensed Resource. The Subscribing Member shall do its utmost to prevent counterfeiting of any/all Intellectual Property right or any other infringing of the Licensor’s rights related to the Licensed Resource. The Subscribing Member shall account to the Licensor for any right, counterfeit or infringement detected and shall contribute to taking appropriate action to avoid further offences.

**Article 8. PRICES**

8.1 The Subscribing Member agrees to pay the Licensor for using the Licensed Resource as laid out in Appendix 1.

8.2 Payment terms

The Subscribing Member shall pay the fees to the Licensor within forty-five (45) days from the invoicing date. In the event of payment default from the Subscribing Member, the latter may suspend the Subscribing Member’s access to the Licensed Resource until the unpaid amounts due under the invoice are paid.

If the Subscribing Member wishes to contest in good faith any amount billed by the Licensor, the Subscribing Member shall give the Licensor written notice of his disagreement with all supporting documentation within ten (10) working days from the billing date. Both the Subscribing Member and the Licensor undertake to make reasonable efforts to solve and settle the dispute within ten (10) working days from the mail posting date.

Once the dispute is solved and settled, the Subscribing Member shall pay the due amount within thirty (30) days from the dispute settlement.

**Article 9. DURATION AND TERMINATION**

9.1. The Duration of the Agreement is three years from 1 January 2024 and until 31 December 2026.

9.2 This License Agreement may be terminated:

9.2.1 By either party if the other party fails to perform its obligations. The termination shall only be effective thirty days (30) after the complainant has sent a registered letter with acknowledgement of receipt, unless, during this period, the defaulting party has met its obligations or brought evidence of an impediment due to force majeure.

9.2.2 On its own right in case of bankruptcy, without any compensation.

9.2.3 If the Subscribing Member fails to pay the appropriate license fee by the agreed date, including the suspension or cancellation of access to the Subscribing Member within a period of thirty (30) calendar days from the date of the missed payment.

9.2.4 If Licensor or the Subscribing Member discovers a violation of the Terms and Conditions that, in Licensor’s judgment, threatens the security of the Licensed Resource or other Licensor Intellectual Property. Licensor may immediately suspend access to the Subscribing Member until such time as the violation ceases or is adequately addressed. If the Subscribing Member fails to address such violation, Licensor may cancel access to the offending Subscribing Member and/or Authorized User(s).

9.2.5 For violations of the Terms and Conditions that do not threaten the security of the Licensed Resource or other Licensor Intellectual Property, Licensor shall grant the Subscribing Member thirty (30) days from receipt of notice of such violation to cure the violation. At the end of the thirty (30) day notice period, if Licensor determines in its sole discretion that the Subscribing Member has not taken reasonable satisfactory steps to cure the violation, Licensor may cancel access to the offending Subscribing Member.

9.2.6 Unauthorized Use

In the case of any unauthorized use of the Licensed Resource by the Subscribing Member or an Authorized User, the Licensor or the Subscribing Member (whichever party discovers the violation) shall immediately inform the other party and cooperate to identify the Authorized User. Access may be suspended while the Licensor takes the necessary protective action. The Licensor shall immediately notify the Subscribing Member in writing. If the unauthorized use has not been addressed within thirty (30) days, the Licensor may terminate this License Agreement.

9.2.8 Upon termination of the License Agreement on substantial grounds, online access to the Licensed Resource shall be withdrawn from the Subscribing Member and its Authorized users. The Licensor shall grant the Subscribing Member and its Authorized users uninterrupted access to that part of the Licensed Resource which the Subscribing Member was entitled pursuant to paragraph 4.2 Access will be provided following the procedure described in paragraph 4.2 insofar as the Subscribing Member continues to meet its obligations concerning security and restrictions on the use.

9.3 For a cancelled Subscribing Member or Authorized User to be considered for restoration, the Subscribing Member or Authorized User must sign a letter committing to comply with the security measures that Licensor considers appropriate to prevent further misuses of the Licensed Resource. Licensor will have sole discretion whether or not to restore access.

9.4 The Subscribing Member reserves its right to terminate the License Agreement at the end of a calendar year provided that at least 60 days’ notice is given to the Licensor if the budget has been significantly cut down due to decreasing financial support which the Subscribing Member relied on to pay the owed sums.

 9.5 Should the Licensor sell or transfer one or several elements of the Licensed Resource to another publisher, Licensor should do its utmost to keep a non-exclusive copy of the works already published and make them available on its server by following the procedure described in paragraph 4.2.

9.6 If the Licensor ceases to publish one or several elements of the Licensed Resource, a digital archive of those elements shall be kept and made available on the Licensor’s server by following the procedure described in paragraph 4.2. An annual maintenance fee of $250 will be charged to the Subscribing Member to recover its costs for providing continuing access following termination of a subscription and/or for preparing archival copies.

9.7 The Subscribing Member shall not be entitled to a refund or reduction of the license fee if Licensor cancels access pursuant to this section.

**Article 10. REPRESENTATIONS, WARRANTIES AND COMPENSATION**

Licensor warrants that it is entitled to grant the licenses granted in this Agreement. THE LICENSED RESOURCE IS PROVIDED “AS IS” AND, EXCEPT AS SET FORTH IN THE PRECEDING SENTENCE, LICENSOR 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. LICENSOR SHALL NOT BE LIABLE FOR ANY LOSS, INJURY, CLAIM, LIABILITY OR DAMAGE OF ANY KIND RESULTING FROM THE UNAVAILABILITY OF THE ONLINE JOURNALS, LICENSOR’S PERFORMANCE OR TERMINATION OF THIS AGREEMENT, INTERRUPTION OF THE SERVICES PROVIDED HEREUNDER, OR ARISING OUT OF OR IN CONNECTION WITH SUBSCRIBING MEMBER’S USE OF THE LICENSED RESOURCE. LICENSOR SHALL NOT BE LIABLE FOR ANY INDIRECT, SPECIAL, INCIDENTAL, PUNITIVE OR CONSEQUENTIAL DAMAGES, EVEN IF ADVISED OF THE POSSIBILITY OF DAMAGES. IN NO EVENT SHALL LICENSOR’S LIABILITY EXCEED THE AMOUNT PAID TO LICENSOR BY THE SUBSCRIBING MEMBER FOR THE LICENSED RESOURCEFOR THE CURRENT SUBSCRIPTION YEAR IN WHICH ANY CLAIM, LOSS OR DAMAGE OCCURRED, INCLUDING WITHOUT LIMITATION DUE TO NEGLIGENCE. No claim may be made against Licensor unless suit is filed thereon within one (1) year after the event giving rise to the claim.

**Article 11. THE LICENSOR’S TRADEMARKS**

11.1 Throughout the duration of the Agreement, all the publication titles licensed hereunder, as well as all trademarks, logos and colophon owned or licensed by the Licensor or its affiliates, that appear on the Licensed Resource, shall be published online as provided herein and may not be deleted nor modified by the Subscribing Member or by its Authorized Users.

11.2 Any usage of Licensor’s publication titles, trademarks, logos and colophon by Subscribing Member or by its Authorized Users shall be preapproved in writing by Licensor, in Licensor’s sole discretion, so as to ensure consistency with the above paragraph 7.1 and with the Licensor’s quality standards.

11.3 All rights related to the publication titles, trademarks, logos, company name and colophon belong to and are expressly and exclusively reserved by Licensor.

**Article 12. GENERAL REGULATIONS**

12.1 The Subscribing Member may not transfer nor assign, directly or indirectly, all or part of the rights and obligations under this agreement without prior written consent by the Licensor. In the event of the Licensor’s assignment to a Third party, the Licensor shall endeavour to ensure that the Third party performs the terms of the Agreement.

12.2 Force majeure: The Licensor’s failure to perform any modality or term of the Agreement prevented by circumstances beyond its control such as, without exceptions, war, strikes, fires, floods, governmental restrictions, electricity cutoffs or damage to or destruction of computer networks or servers, shall not be considered as failure to perform the Agreement.

12.3 If one or several provisions of the Agreement are deemed null, illegal and inapplicable whatever the reason, such nullity, illegality or inapplicability shall not impact any other provision of the Agreement, which shall be interpreted as if those null, illegal or inapplicable provisions had never been part of it, unless the suppression of that or those provisions resulted in such a significant change that the transactions hereunder would considerably modify the overall economy of the contract.

12.4 The License Agreement, including all attachments, appendices and additional documents, as well as all the documents specifically included (particularly instruction manuals and specification documents) constitute the entire agreement that has been reached between the parties. It supersedes and replaces all prior and simultaneous agreements, communications, proposals, orders, whether oral or written, reached between the parties with respect to the subject matter. The Subscribing Member acknowledges and affirms that he may not assign or transfer any of its rights or obligations under this License Agreement, except with prior written consent by the Licensor.

12.5 No modification or surrender of any provision of the Agreement shall be valid except under the form of an additional written contract signed by the authorized representatives of the Licensor and of the Subscribing Member.

12.6 Any waiver of one of the provisions shall not be considered as a waiver of any other provision of the Agreement. Similarly, waiving any failure to perform the agreement shall not be interpreted as uninterrupted waiver of other failures to perform the same or other provisions of the Agreement.

12.7 All sums owed by the Subscribing Member under the contract are VAT exclusive for sale and use. The withholding tax, value added tax or similar taxes, contributions and administrative deductions or others shall exclusively fall to the Subscribing Member.

In order to receive tax exclusive invoices, the Subscribing Member shall give the Licensor its VAT ID number and tax certificate, evidencing that the Subscribing Member is a company liable to pay VAT in its European country of residence.

12.8 All the notifications pursuant to the Agreement shall be given in writing and may be delivered personally or via email, or shall be deemed received within the five (5) working days if sent by registered post or email with proof of receipt. For any notification sent by fax, a confirmation copy shall be sent by post or email or delivered personally at the specified address. One or the other party may occasionally change the shipping address by notifying it in writing to the other party.

If addressed to the Licensor:

Elizabeth Nolan

Optica Publishing Group

2010 Massachusetts Ave NW, Washington DC 20036

Email: enolan@optica.org and Legal@optica,org

If addressed to the Subscribing Member:

[**FULL LEGAL NAME OF SUBSCRIBING MEMBER**]

[FULL ADDRESS OF THE ESTABLISHMENT]

12.9 This Agreement includes the following Appendices that shall be integral part of the Agreement:

Appendix 1: Modalities and pricing conditions

Appendix 2: List of contents of the Licensed Resource – Subscribed

Appendix 3: Description of the Subscribing Member’s website(s) and list of IP addresses

12.10 The agreement is drawn up in French and translated in English, but in the event of an interpretation disagreement between the two versions of the agreement and of possible subsequent additional contracts, the French version shall be valid.

**Article 13: CONFIDENTIALITY**

The parties shall comply with the European and French regulations on the freedom of information and more particularly with the provisions of the Code of conduct on the relations between the French administration and the general public. The parties acknowledge the confidentiality of the data pertaining to the exceptions duly mentioned in the French regulation in force concerning any potential damage to the financial interests of the holder and of business confidentiality.

**IN WITNESS WHEREOF,** the parties have asked their duly authorized representatives to sign the Agreement, as of the date below.

**Subscribing Member:**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Signature: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Delegation\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Name \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Title: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

At [PLACE], on the:

Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**Licensor**: Optica Publishing Group

Signature: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Name: Elizabeth Nolan

Title: Deputy Executive Director and Chief Publishing Officer

Date:

**Appendix 1: Modalities and pricing conditions**

The License agreement between the Subscribing Member and the Licensor is drawn for a duration of three years from 1 January 2024.

**A.1. License fee**

**A.1.1**. The license fee payable to the Licensor by the Subscribing Member for online access to the Licensed Resource as described in Appendix 2 is as follows:

Ajouter le prix pour votre établissement

A discount of 18% off the list price applies on the package, to which an additional discount applies under the Couperin agreement based on each Subscribing Member’s historical pricing.

**A.1.2** Prices are quoted tax-exclusive (see clause 13.8 of the license agreement)

**A.1.3** **Maximum annual increase**

The annual increase is 1.5% in year 1, then 2% per year for years two and three, so long as the number of Subscribing Members remains at 20.

**A.2.** **Catalogue of titles**

The list of the titles subscribed by the Subscribing Members is shown in Appendix 2.

**A.3. Access to prior documents and archive rights**

The Licensor shall grant to the Subscribing Member access to the Licensed Resource as listed in Appendix 2 for the term of the License Agreement or for as long as the Subscribing Member pays the Licensor’s annual subscription fee. The Subscribing Member and its Authorized Users will also have perpetual access to the Licensed Resource based on the post cancellation rights noted in Article 4.

If the Subscribing Member chooses to purchase one of the Licensor’s Digital Archive products, Licensor will provide a separate invoice specific to the Digital Archive chosen and provide perpetual access to the Subscribing Member’s Authorized Users via the Licensor’s online platform once the invoice has been paid.

**A.4.** **Fee payment**

**A.4.1.** The payment of a fee as described in clause A.1 authorizes the Subscribing Member as listed in Appendix 3, online access to the resources listed in Appendix 2.

**A.4.2.** All fees shall be directly invoiced to the Subscribing Member by the Licensor.

**A.5. Subscribing years**

1 January 2024 to 31 December 2026

**APPENDIX 2. List of the Contents of the Licensed Resource – Subscribed**

|  |  |  |
| --- | --- | --- |
| **Titles** | **ISSN/ISBN** | **Complimentary Backfile Access\*\*** |
| Advances in Optics and Photonics<https://opg.optica.org/aop> | 1943-8206 Online | 2009-current |
| Applied Optics<https://opg.optica.org/ao> | 2155-3165 Online | 1962-current |
| Applied Spectroscopy \*<https://opg.optica.org/as> | 1943-3530 Online | 1946-current |
| Biomedical Optics Express (Open Access)<https://opg.optica.org/boe> | 2156-7085 Online | 2010-current |
| Chinese Optics Letters \*<https://opg.optica.org/col> | 1671-7694 Online | 2003-current |
| Current Optics and Photonics (Open Access) (*formerly Journal of the Optical Society of Korea) \**<http://opg.optica.org/copp> | 2508-7274 Online | 1997-current |
| Journal of Display Technologyhttps://opg.optica.org/jdt | 1558-9323 Online | 2005-2016 |
| Journal of Lightwave Technology \*<https://opg.optica.org/jlt> | 1558-2213 Online | 1998-current |
| Journal of Near Infrared Spectroscopy \*<https://opg.optica.org/jnirs> | 1751-6552 Online | 1993-current |
| Journal of Optical Communications & Networking*(formerly Journal of Optical Networking) \**<https://opg.optica.org/jocn> | 1943-0639 Online | 2009-current |
| Journal of Optical Networking \**(now Journal of Optical Communications & Networking)*https://opg.optica.org/jocn/browse.cfm#jonarchives | 1536-5379 Online | 2002-2009 |
| Journal of Optical Technology \*<https://opg.optica.org/jot> | 1091-0786 Online | 1999-current |
| Journal of the Optical Society of Americahttps://opg.optica.org/josa | 0030-3941 Print | 1917-1983 |
| Journal of the Optical Society of America A https://opg.optica.org/josaa | 1520-8532 Online | 1984-current |
| Journal of the Optical Society of America B<https://opg.optica.org/josab> | 1520-8540 Online | 1984-current |
| Journal of the Optical Society of Korea \**(now Current Optics and Photonics)*https://opg.optica.org/copp/browse.cfm#joskarchives | 2093-6885 Online | 1997-2016 |
| Optica (Open Access)<http://opg.optica.org/optica> | 2334-2536 Online | 2014-current |
| Optical Materials Express (Open Access)<https://opg.optica.org/ome> | 2159-3930 Online | 2011-current |
| Optica Quantum (Open Access)https://opg.optica.org/opticaq.cfm | 2837-6714 Online | Oct 2023 - current |
| Optics Express (Open Access)<https://opg.optica.org/oe> | 1094-4087 Online | 1997-current |
| Optics and Photonics News*(formerly Optics News)*<https://optica-opn.org/> | 1541-3721 Online | 1990-current |
| Optics News*(now Optics and Photonics News)*<https://opg.optica.org/on> | 0098-907X Print | 1975-1989 |
| Optics Letters<https://opg.optica.org/ol> | 1539-4794 Online | 1977-current |
| Optics Continuum (Open Access) (*formerly OSA Continuum*)https://opg.optica.org/optcon | 2770-0208 Online | 2022-current |
| OSA Continuum (Open Access) (*now Optics Continuum*)<https://opg.optica.org/osac> |  2578-7519 Online |  2018-2021 |
| Photonics Research (Open Access) \*<http://opg.optica.org/prj> | 2327-9125 Online | 2013-current |
| Optica Conference Papers Topical Conferences<https://opg.optica.org/conferences.cfm> | N/A | 1979-current |
| NEW - 10 Archival eBook Series<https://opg.optica.org/books/> | N/A | N/A |

\* Partner journal.

\*\* Complimentary access to the backfile for each package is only provided during the term of the License Agreement and is not part of Post-Cancellation Access to content subscribed to during the License Agreement.

**APPENDIX 3: Contact Information and IP Addresses for the Subscribing Member**

The following Subscribing Member shall access the Licensed Resource as described in Appendix 2.

Subscribing Member Name, Contact Name, Contact Name Email Address and Subscribing Member IP Addresses

1. Described in : <https://www.internet2.edu/products-services/trust-identity/shibboleth/>, <https://services.renater.fr/federation/introduction/la-federation-education-recherche/fer-idps> (18/07/2024) [↑](#footnote-ref-1)
2. <http://www.sherpa.ac.uk/romeo.php> [↑](#footnote-ref-2)
3. Available on <https://groups.niso.org/apps/group_public/download.php/16900/RP-9-2014_KBART.pdf> [↑](#footnote-ref-3)