Nutzungsbedingungen für die Teilnahme an der Allianz-Lizenz für SPIE Digital Library 2015 - 2017

AUTHORIZED USERS

SPIE grants to the Members and Authorized Users at Member institutions online access to titles listed in Appendix B. This grant extends only to the Members and to Authorized Users at Member institutions 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 Members, and persons, which may include retired employees, with legal access to the Members' library collections and facilities on-site, using an IP address within the ranges provided to SPIE by the Consortia or via Remote Access. Remote Access means access provided by Member institutions via secured authentication means only to students, faculty, or employees of the Member Institution who are not physically present at the Member Institution. University alumni do not qualify as Authorized Users. The Consortium and its Members will exercise reasonable vigilance and shall be responsible for all access control and security measures necessary to ensure that the Members' IP addresses are not used to access the SPIE Digital Library by anyone other than Authorized Users. The Consortium and its Members warrant and represent 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 Consortium and its Members 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.

IP ADDRESSES

Authorized Users will be recognized and authorized by their Internet address. IP addresses and/or address ranges for the Member institutions may be updated or changed by the primary contact for the Member sending an email request to SPIE requesting the change. SPIE requires the Consortium and/or its individual Members to provide the name and e-mail address of a network contact who will be the primary contact person for SPIE for each Member institution and for the Consortium (Appendix A). The Consortium or its Members may submit the IP addresses of additional Members throughout the license period for SPIE's approval, subject to the terms of section 7(a)(2).

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 Members and 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 Members 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. For the licensed material listed or referred to in Appendix B, SPIE grants the Members and Authorized Users permission to use the licensed material for text and data mining exclusively for academic research and similar educational purposes and to load, store, and analyze the results on a secure network provided such use is in accordance with all other provisions of this License. Information derived from the analysis of text or data mining results may be made public; however, the original copyrighted source documents may not be publically distributed.

d. Members agrees to fulfill Interlibrary Loan 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 clause 3 of the Guidelines for the Proviso of Subsection 108(g)(2) prepared by the National Commission on New Technological Uses of Copyrighted Works (CONTU). The following conditions and restrictions apply:

1. Concerning providing copies of papers or articles to another person or library that is not a legal part of the Member, only a hard copy printed from the electronic files or as provided in a secure electronic environment
such as Ariel, of the licensed material may be supplied to such others person or libraries. Except as noted above, under no circumstance may an electronic paper or article file be transmitted in digital form by the Member to any person not officially associated with the Member.

2. Neither Member nor an Authorized User may supply a paper or article to any person or entity on a commercial, revenue-generating basis without full payment of the Publisher's royalty, as indicated by the Item Fee Code for each publication.

3. 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.

4. Member may not remove, obscure or modify copyright notices that are part of an article to be printed and supplied to another person or entity.

c. The Consortium agrees that use of the licensed material by the Members or Authorized Users other than indicated above is a violation of the terms of this Agreement.

PROHIBITIONS ON CERTAIN USE

a. Other than as provided in Section 4 of this Agreement, the Members 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 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, an 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 SPIE and/or payment of an Item Fee or royalty to SPIE or to the Copyright Clearance Center, is prohibited.

c. All rights not expressly granted herein are reserved to the stated Publisher of the licensed material, SPIE. The 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.

d. SPIE shall not be required to distribute, and Members 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. Member further recognizes and agrees that misuse or abuse of Licensed Materials 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 Member or its Authorized Users, SPIE may seek injunctive relief in a court of competent jurisdiction.

DURATION OF AGREEMENT

a. This Agreement is for the period 1 January 2015 through 31 December 2017, and becomes effective on the date last signed by the authorized signers of the parties hereto and upon SPIE's receipt of payment of the Subscription Fee as defined in Appendix D.

b. This Agreement will end on the expiration date of the agreement.

c. Participating German National Alliance Consortium Member institutions are free to discontinue subscription at the end of any given subscription term without penalty; there is no obligation to continue to subscribe under this Agreement.

d. 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 an e-mail to the address of the Primary Contact for Consortium included in this Agreement.

2) No later than the expiration date of the Agreement currently in effect.

FEES AND PAYMENT

a. The Consortium agrees to pay a Consortium 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 Consortium Subscription Fee:

1) A print copy of any title included in the Licensed Materials listed on Appendix B may be added at a discounted price which is available upon request.

2) The Consortium may request that new Members be added to this Agreement throughout the license period subject to SPIE approval, such approval not to be unreasonably withheld. SPIE may take account of any current or prior subscriptions to the Publishers' proceedings or journals held by such Members and may adjust the Consortium Subscription Fee accordingly. All adjustments to the list of Members or IP addresses and to the Consortium Subscription Fee are to be mutually agreed by SPIE and the Consortium.

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 Consortium Subscription Fee may be adjusted by agreement between SPIE and the Consortium.

b. The Consortium agrees that, with the exceptions listed above, there will be no other reductions or adjustments in the Consortium Subscription Fee for the duration of this Agreement.

c. To provide time for administrative tasks, access to the SPIE Digital Library will commence within three business days of receipt of payment of the Consortium Subscription Fee. At its sole discretion SPIE may waive or relax this provision.

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.

FAILURE OF PERFORMANCE

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

DISCLAIMER OF WARRANTIES; LIMITATION OF LIABILITY

SPIE warrants that it is entitled to grant the licenses granted in this Agreement, and is authorized to execute this Agreement. SPIE MAKES NO WARRANTY OR REPRESENTATION OF ANY KIND, EXPRESS OR IMPLIED, WITH RESPECT TO THE SPIE DIGITAL LIBRARY, INCLUDING 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 WITH THE
SUBSCRIPTION OR LICENSES GRANTED HEREUNDER, THE USE OR INABILITY TO USE THE SPIE
DIGITAL LIBRARY, SPIE'S PERFORMANCE UNDER THIS AGREEMENT, TERMINATION OF THIS
AGREEMENT BY SPIE OR THE LOSS OF DATA, BUSINESS OR GOODWILL, EVEN IF SPIE IS
ADVISED OR AWARE OF THE POSSIBILITY OF SUCH DAMAGES. IN NO EVENT SHALL THE
TOTAL AGGREGATE LIABILITY OF SPIE FOR ANY CLAIMS, LOSSES OR DAMAGES ARISING OUT
OF ANY BREACH OR TERMINATION OF THIS AGREEMENT EXCEED THE TOTAL AMOUNT PAID
BY THE SUBSCRIBER TO SPIE FOR THE SPIE DIGITAL LIBRARY SUBSCRIPTION, FOR THE
CURRENT SUBSCRIPTION YEAR IN WHICH SUCH CLAIM, LOSS OR DAMAGE OCCURRED,
WHETHER IN CONTRACT, TORT, OR OTHERWISE, INCLUDING WITHOUT LIMITATION DUE TO
NEGLIGENCE. The foregoing limitation of liability and exclusion of certain damages shall apply regardless of
the success or effectiveness of other remedies. No claim may be made against SPIE unless suit is filed thereon
within one (1) year after the event giving rise to the claim.

The Consortium and its Members assume sole responsibility for all use of the SPIE Digital Library and the
licensed material by the Members and by each Authorized User.

OPEN ACCESS

a. Repositories: by Agreement between SPIE and German National Alliance Consortia, with funding made
available through the DFG, SPIE grants to authors (and their employers) of papers, published in an SPIE Journal
or Proceedings during the term of this Agreement, the right to store an author prepared version or an official
version (preferred version) of the published paper in an (institutional or discipline-specific) repository of their
choice, and to make it free of charge available through open access, provided that (a) the repository does not
operate as a commercial or for-profit entity (b) such posting is noncommercial in nature and the paper is made
available to users without charge; (c) an appropriate SPIE copyright notice and full citation appear with the
paper, and (d) a link to SPIE's official online version of the abstract is provided using the DOI (Document
Object Identifier) link.

b. "Double Dipping": Open Access articles on the SPIE Digital Library are provided via the Gold Open Access
Method. For Member Institutions who paid Gold Open Access Fees to SPIE, SPIE agrees to refund fees to the
Member Institution at the end of each subscription period.

The following process will be implemented at the end of each annual subscription period during which this
Agreement is in effect

1. SPIE will issue a report detailing journal articles published during the then subscription period in its Gold
Open Access Journal program where (a) the affiliation of the primary author as published on the article is a
participating member of this Agreement as detailed in Appendix A and where (b) the full amount of the open
access fee has been paid to SPIE thereby enabling the article to be included in SPIE Gold Open Access
Program.

2. Based on the report described above, SPIE will issue separate refund payments individually to each Member
institution in an amount equal to the sum of fees paid by the Member institution to SPIE enabling the desired
journal article(s) to be included in the SPIE Gold Open Access Program.

3. The payment is one-time refund and will be valued and paid in US dollars and delivered via wire transfer.
Any transaction fees or taxes that may apply to the refund will be the responsibility of the institution receiving
the payment.

ARCHIVAL RIGHTS

SPIE will use reasonable efforts to retain in an archive all electronic information that it publishes. Upon
termination of a Member subscription ,the Member will be provided online access to the content published
during its subscription term(s) prior to termination for a period of 10 (ten) years at no annual maintenance
charge. For the avoidance of doubt, in all cases "content published during the subscription term" is defined to be content published during the 12 month calendar year. After ten (10) years content may continue to be accessed on the SPIE Digital Library platform for a modest annual maintenance fee; or Member may elect to access the content using Portico; or after 10 years, SPIE is agreeable to providing content published during the subscription term(s) for terminating Members to TIB to be locally loaded, maintained and delivered to those members, thus assuming responsibility for post termination access to terminating subscribers. Provision for TIB assuming this responsibility will require a Letter of Agreement and verification by SPIE that technology and authentication mechanisms are in place and operating to the then industry standards. SPIE retains the sole authority to determine if TIB’s infrastructure meets then industry standard levels required to ensure the security of the content. In the event this provision is put into practice, SPIE will not be required to pay any service fees to TIB and all archive access obligations will cease in their entirety. Also TIB will not be required to pay any additional fee to SPIE for receiving the content.

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.