

**Nature Archive License
ACADEMIC LICENSE AGREEMENT SCHEDULE**

AGREEMENT DATE: December 16, 2003	AGREEMENT REF NO: 0073292003001
PARTIES: Licensor: Nature America, Inc. whose principal place of business is at 345 Park Avenue South, New York, NY 10010-1707 Licensee: 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 20 th Street, 4 th Floor, Oakland, CA 94612 USA.	
ARCHIVED MATERIAL: the electronic versions of the editions of <i>Nature</i> (excluding adverts) published by the Licensor from 1 January 1987 to 31 December 1996 in each case available for access on the Internet at the URL http://www.nature.com from time to time together with any additional material that the Licensor makes available to the Licensee.	
COMMENCEMENT DATE: <p style="text-align: center;">JANUARY 1, 2004</p>	
LICENSE DETAILS: Licensee average number of Staff and Students during the 12 month period prior to the Commencement Date: TOTAL FTE 196,188 undergrad and grad 2002/2003. see www.cdlib.org/vendors/FTE2002-2003.pdf IP Address of Licensee Network: see attached list	
ARCHIVE FEE: [REDACTED]	
MAINTENANCE FEE: 7%	
SPECIAL TERMS: Archive and maintenance fees include access by all campuses of the University of California, including Merced, as well as UC-managed Lawrence Berkeley Laboratory and Lawrence Livermore National Laboratory.	
HELPDESK: cdl@www.cdlib.org , tel. CDL Helpline: [REDACTED]	
CONTRACT MANAGERS: Licensor: [REDACTED] Tel: [REDACTED] Fax: [REDACTED] Email: [REDACTED]	Licensee: [REDACTED] Dir. Bus. Dev. Tel: [REDACTED] Fax: [REDACTED] Email: [REDACTED]
<p>The parties each agree to the terms of this Agreement (which expression includes this Schedule and the attached Terms).</p> <div style="display: flex; justify-content: space-between;"><div style="width: 45%;">Signed by: [REDACTED] For and on behalf of Nature America, Inc.</div><div style="width: 45%;">Signed by: [REDACTED] For and on behalf of Regents of the Univ. Calif. Licensee</div></div>	

INTERPRETATION

1.1 In these Terms, unless the context requires otherwise, the following expressions have the following meanings:

"Archive Fee": means the archive license fee set out in the Schedule or as amended pursuant to clause 5.5.

"Archived Material": means the archived material referred to in the Schedule.

"Authorised User": (a) Faculty, Staff and Students (b) individual members of the public registered as users of the Licensee's library or information service; and (c) individual members of the public permitted to use the Licensee's library or information services; in each case who are permitted general access to the Network by the Licensee.

"Commencement Date": means the commencement date of this Agreement as set out in the Schedule.

"Customer Support": the Helpdesk providing reasonable e-mail and telephone support.

"Electronic Version": means a copy of the Archived Materials on CD ROM (or in such other electronic form as the Licensor shall decide) subject to the Licensor's terms and conditions of use.

"Faculty Staff and Students": the students enrolled or accredited to the Licensee and the staff employed by or otherwise accredited to the Licensee.

"Maintenance Fee": means the annual fee set out in the Schedule or as amended pursuant to clause 6.2.

"Network": the Licensee's local area network system of connected computers at the Licensee's premises, the IP address for which is set out in the Schedule.

"Schedule": means the schedule to this Agreement.

"Term": means the term of this Agreement as set out in clause 4.

1.2 The Agreement contains the entire agreement and undertaking between the parties relating to the Archived Material and supersedes any prior agreement.

1.3 The termination of this Agreement shall not prejudice the rights and remedies of either party against the other in respect of any prior breach of covenant, terms, warranty or condition.

1.4 The failure of any party to enforce any provision of this Agreement on any one occasion shall not affect its right to enforce another provision or the same provision on another occasion.

1.5 Nothing contained in this Agreement shall constitute or shall be construed as constituting

a partnership, joint venture, or contract of employment between the parties.

2. DELIVERY AND GRANT OF RIGHTS

2.1 In consideration of the payments made and to be made by the Licensee, and subject to the Licensee observing its obligations under this Agreement, the Licensor grants to the Licensee for the Term the following non-exclusive rights ("the Rights"), to:

(a) access via the Network at any time the Licensor's server, or as the case may be any service provided by an agent on its behalf, for the purpose of accessing the Archived Material, for research, teaching, and private study purposes by means of workstations connected to the Network;

(b) make the Archived Material accessible directly or remotely via the Network to the Authorized Users for their research, teaching, and private study purposes;

(c) permit Authorized Users to print and/or download individual articles and other individual items from searches of the Archived Material for research teaching, and private study purposes by means of workstations connected to the Network;

(d) permit staff accredited to the Licensee to reproduce individual articles from the Archived Material for distribution during the term of this Agreement to students accredited to the Licensee for the purpose of including such individual articles in course study packs or in reserves;

(e) reproduce single copies of individual articles from the Archived Material in hard copy print form for distribution without charge in hard copy form (but not electronically) during the term of this Agreement to individual libraries or not for profit non commercial organisations in accordance with fair usage guidelines. No right or license is hereby granted to any person provided with such a copy to copy or otherwise deal with that individual article; or

(f) create a hypertext link to any part of the Archived Material provided that no person other than an Authorised User may use such hypertext link.

2.2 The Rights are personal to the Licensee and do not extend to its subsidiary or parent organizations, or to any other related or affiliated organizations. The Licensee may not assign, sub-license, transfer, charge or otherwise dispose of its rights under this Agreement without the prior written consent of the Licensor.

2.3 Title to, and ownership of, the Archived Material (including any copies made by the Licensee) is not transferred to the Licensee and remains vested in the Licensor, subject to the Rights granted in Clause 2.1. The Licensee acknowledges that any rights not expressly granted in this license are reserved to the Licensor.

2.4 The Licensee is responsible for the provision of and payment for the computer equipment and telecommunication services necessary for access to the Archived Material. The Licensor shall not issue credits or refunds against charges incurred by the Licensee in relation to such telecommunication services or those incurred contacting Customer Support. The Licensee accepts that the Licensor has no control over such telecommunication services and that the Licensor shall have no liability to the Licensee for the acts or omissions of providers of telecommunication services or for faults in or failures of their apparatus.

2.5 The Licensor may assign this Agreement without the consent of the Licensee.

3. USAGE RESTRICTIONS

Except as expressly permitted in Clause 2.1, the Licensee warrants that it will not, nor will it license or permit others to, directly or indirectly, without the Licensor's prior written consent:

- (a) sell, distribute, license, rent or otherwise exploit the Archived Material, or any element of it, for any commercial purpose;
- (b) make the Archived Material, or any element of it, available by any means to persons other than Authorized Users, except as granted in section 2.1.e;
- (c) make the Archived Material, or any element of it, available on, or by, electronic bulletin boards, news groups, Web sites, FTP or any other means of posting or transmitting material on the Internet, an on-line service or wide area network;
- (d) remove or obscure the Licensor's copyright notice from the Archived Material including hard-copy print-outs;
- (e) use the Archived Material to create any derivative work, product or service, or merge the Archived Material with any other product, database, or service;
- (f) alter, amend, modify, translate, or change the Archived Material;
- (g) undertake any activity which may have a damaging effect on the Licensor's ability to achieve revenue through selling and marketing the Archived Material;
- (h) otherwise use the Archived Material supplied in accordance with this Agreement in

a manner that would infringe the copyright or other proprietary rights contained within it; or
(i) make the Archived Material or any part of it available by remote access to any person other than Authorised Users

4. TERM AND TERMINATION

4.1 Subject to the other terms of this Agreement, this Agreement shall begin on the Commencement Date and continue in perpetuity.

4.2 The Licensor may terminate this Agreement at any time upon written notice to the Licensee if the Licensee defaults by failing to perform any obligation on its part. The termination will become effective thirty days after receipt of written notice unless, in the case of a remediable default, during the relevant period of thirty days the defaulting party has remedied the default.

4.3 Either party may terminate this Agreement at any time upon written notice to the other if the Licensee is unable to exercise the Rights due to the Archived Material being unavailable for a period in excess of 50 hours (in aggregate) in any continuous period of 1,000 hours as a result of any act or omission of the Licensor. In the event that the Archived Material is unavailable in excess of the limits set forth in the preceding sentence and this Agreement is terminated, the Licensor shall provide the Licensee with an Electronic Version of the Archived Materials and this shall be the Licensee's sole remedy.

4.4 On termination of this Agreement, the Licensee agrees to destroy, and will use its reasonable endeavours to procure that all Authorised Users destroy, all Archived Material [with exception of Archived Material provided in Electronic Version per Clause 4.7.] stored on any digital information storage media, including, but not limited to, system servers, hard disks, diskettes, and back up tapes.

4.5 The Licensor may suspend the provision of the Archived Material with immediate effect on written notice without liability if the Licensor reasonably believes the Archived Material is being used by the Licensee, or any Authorised User in a manner, which contravenes the provisions of this Agreement.

4.6 Either party may terminate the Agreement forthwith on notice in writing to the other if the other party is unable to pay its debts or ceases or threatens to cease to carry on business, goes into administration, receivership or administrative receivership, or

JEK

*CAF
3*

any event analogous to any of the foregoing occurs in any jurisdiction.

4.7 The Licensee may terminate this Agreement at any time by giving 30 days written notice of termination to the Licensor. On such termination, subject to payment of the appropriate fee, the Licensor shall provide the Licensee with an Electronic Version of the Archived Materials.

5. ARCHIVE FEE

5.1 The Licensee agrees to pay to the Licensor the Archive Fee within 30 days of the date of invoice.

5.2 All amounts payable by the Licensee under this Agreement shall be exclusive of any sales, use, value added or similar taxes.

5.3 The Licensee warrants that its Faculty, Staff and Students during the 12 months prior to the Commencement Date did not exceed the number of Faculty, Staff and Students stated in the Schedule.

5.4 The Archive Fee is assessed on the number of the Licensee's Faculty, Staff and Students during the 12 month period prior to the Commencement Date. *JEX* The Licensee shall notify the Licensor ^{at renewal} if the number of its Faculty, Staff and Students exceeds the number of such Faculty, Staff and Students stated in the Schedule.

5.5 The Licensee acknowledges that in the event that either it notifies Licensor pursuant to clause 5.4 above or it becomes apparent to the Licensor that the number of the Licensee's Faculty, Staff and Students has exceeded the number of such Faculty, Staff and Students stated in the Schedule then the Archive Fee will be increased in accordance with the Licensor's then applicable charges. The Licensee agrees to pay to Licensor any such increase in the Archive Fee within 30 days of being invoiced for such increase. On payment of any such invoice the number of the Licensee's Faculty, Staff and Students stated in the Schedule will be increased to reflect the increase made to the Archive Fee.

6. MAINTENANCE FEE

6.1 The Licensee agrees to pay to the Licensor the Maintenance Fee within 30 days of the Commencement Date and within 30 days of each anniversary of the Commencement Date thereafter during the Term.

6.2 The Licensor reserves the right to make reasonable increases to the Maintenance

Fee. Any increase in the Maintenance Fee will be notified to the Licensee in writing.

7. LICENSEE'S UNDERTAKINGS

7.1 The Licensee will ensure that the Archived Material is used only in accordance with the terms and conditions of this Agreement and shall inform Authorized Users of the permitted use restrictions and other provisions set out in this Agreement.

7.2 The Licensee shall put into place reasonable procedures to monitor the compliance with the terms and conditions of this Agreement by the Authorized Users.

7.3 The Licensee will notify the Licensor immediately of infringements that come to the Licensee's notice and the Licensee agrees to co-operate with the Licensor as appropriate to stop further abuse should it occur.

7.4 The Licensor shall be entitled to monitor the use of the Archived Material through the Licensor's servers so as to monitor compliance with this Agreement.

8. WARRANTIES, UNDERTAKINGS AND INDEMNITIES

8.1 The Licensor warrants to the Licensee that it has full rights and authority to grant the Rights to the Licensee and that the use by the Licensee of the Archived Material in accordance with this Agreement will not infringe the rights of any third party.

8.2 The Licensor shall indemnify the Licensee for the amount of any award of damages against the Licensee by a court of competent jurisdiction as a result of any claim arising from a breach of the warranty in Clause 8.1 provided that the Licensor shall be entitled to assume sole conduct of any defence and shall have the right at its option:

- (a) to procure the right for the Licensee to continue using the Archived Material;
- (b) to make such alterations, modifications or adjustments to the Archived Material that it becomes non-infringing without incurring a material reduction in performance or function; or
- (c) to replace the Archived Material with non-infringing substitutes provided that such substitutes do not entail a material reduction in performance or function.

8.3 The Licensor shall not be liable to the Licensee for any loss or damage whatsoever resulting from omissions or inaccuracies in the Archived Material regardless of how caused. The Licensor does not warrant that access to the Archived Material will be free from errors

or faults. In the event of a fault, the Licensee shall notify Customer Support of the same by telephone, electronic mail or in writing.

8.4 Without prejudice to the generality of the foregoing, the Licenser shall not be liable for any claim arising from:

(a) any failure or malfunction resulting wholly or to any material extent from the Licensee's negligence, operator error, use other than in accordance with any user documentation provided by the Licenser or any other misuse or abuse of the Archived Material;

(b) the failure by the Licensee to implement recommendations previously advised by the Licenser in respect of, or solutions for, faults in the Archived Material; or

(c) the decompilation or modification of the Archived Material or its merger with any other program or any maintenance repair adjustment alteration or enhancement of the Archived Material by any person other than the Licenser or its authorized agent.

8.5 The Licensee shall use its best efforts to safeguard the intellectual property, confidential information including without limitation the terms of this license, and proprietary rights of the Licenser.

8.6 **THE ARCHIVED MATERIAL IS PROVIDED "AS IS." NEITHER THE LICENSOR NOR ANYONE ELSE MAKES ANY WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, WARRANTIES OF MERCHANTABILITY, QUALITY, ACCURACY OR FITNESS FOR A PARTICULAR PURPOSE. EXCEPT AS OTHERWISE EXPRESSLY PROVIDED IN THIS CLAUSE 8, ALL CONDITIONS, WARRANTIES, TERMS, REPRESENTATIONS, AND UNDERTAKINGS EXPRESS OR IMPLIED, STATUTORY OR OTHERWISE IN RESPECT OF THE ARCHIVED MATERIAL ARE TO THE FULLEST EXTENT PERMITTED BY LAW EXPRESSLY EXCLUDED. NO ORAL OR WRITTEN INFORMATION OR ADVICE GIVEN BY ANY REPRESENTATIVE OF THE LICENSOR OR BY ANYONE ELSE SHALL CREATE ANY WARRANTIES. SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OF IMPLIED WARRANTIES, SO THE ABOVE EXCLUSIONS MAY NOT APPLY TO YOU AND YOU MAY HAVE OTHER LEGAL RIGHTS THAT VARY BY JURISDICTION.**

8.7 The content of the Archived Material is subject to change without notice.

8.8 The Licenser shall, at its discretion, provide to the Licensee usage data indicating the number of articles from the Archived Material downloaded by the Licensee and its Authorised Users on a monthly basis for the Licensee's private internal use only Provided That the Licenser shall not be required to disclose any information to the Licensee which it is prohibited from disclosing to the Licensee due to any legal or regulatory constraint imposed upon it including without limitation any applicable privacy or data protection legislation or regulations or contractual obligations.

[8.9 Provided it is given timely notice and opportunity to defend, with counsel selected and paid for by it, the Licenser shall indemnify and hold Licensee and Authorized Users harmless for any losses, claims, damages, awards, penalties, or injuries incurred, (including reasonable attorney's fees if Licenser elects not to provide its own defense with counsel of its own choosing), 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 if the indemnifying party elects not to provide its own defense with counsel of its own choosing), 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.]

9. FORCE MAJEURE

Either party's failure to perform any term or condition of this Agreement as a result of conditions beyond its control such as, but not

JEK

JEK

JEK

limited to, war, strikes, floods, governmental restrictions, power failures, or damage or destruction of any network facilities or services, shall not be deemed a breach of this Agreement.

No provision of this Agreement or breach thereof may be waived except in a writing signed by the party against whom the waiver is sought to be enforced.

10. NOTICE

Any notice to be served on either party by the other made under this Agreement shall be in writing sent by prepaid recorded delivery or registered post to the address of the addressee as set out in the Schedule or to such other address as notified by either party to the other as its address for service of notices and all such notices shall be deemed to have been received within 48 hours after posting.

11. LIABILITY

11.1 Neither party excludes or limits liability to the other party for death or personal injury caused by its own negligence or any other liability the exclusion or limitation of which is expressly prohibited by law.

11.2 Except as provided for in Clause 11.1 above, the liability of the Licensor in respect of any and all claims (whether in contract or in tort) arising out of or in connection with this Agreement is limited in respect of each event or series of connected events to the greater of [REDACTED] or an amount equal to the fees paid under this Agreement.

11.3 Except as provided for in Clause 11.1, notwithstanding anything else contained in this Agreement in no event shall the Licensor be liable to the Licensee for:

- (a) loss of profits, business, revenue, goodwill, anticipated savings;
- (b) indirect, special, incidental or consequential loss or damage; and/or
- (c) any inaccuracy in the Archived Material.

12. GOVERNING LAW

[This Agreement, and the rights and liabilities of the parties with respect to this Agreement and its subject matter, shall be governed by the laws of the State of California, without reference to the principles of conflicts of laws thereof.]

13. SEVERABILITY

In the event any provision of this Agreement is held by a court or other tribunal of competent jurisdiction to be contrary to law, the remaining provisions of this Agreement will remain in full force and effect.

14. WAIVERS

BAF
b

APPENDIX A – THE LICENSEE

Name of the Licensee:

University of California

Listing of all addresses for the Licensee:

1. University of California, Berkeley
2. University of California, Davis
3. University of California, Irvine
4. University of California, Los Angeles
5. University of California, Merced
6. University of California, Riverside
7. University of California, San Diego
8. University of California, San Francisco
9. University of California, Santa Barbara
10. University of California, Santa Cruz
11. University of California, Office of the President
12. UC Lawrence Livermore National Laboratory
13. UC Lawrence Berkeley Laboratory

License Administrator:

Name: [REDACTED] Director, Business Development

Address: California Digital Library

University of California

415 20th Street - 4th floor

Oakland, CA 94612-2901

Telephone: [REDACTED]

e-mail: [REDACTED]

Licensee's Technical Contact:

Name: [REDACTED]

Address: California Digital Library

University of California

415 20th Street - 4th floor

Oakland, CA 94612-2901

Telephone: [REDACTED]

e-mail: [REDACTED]

Licensee's Technical Contact:

Name: [REDACTED]

Geisel Library

UC San Diego

9500 Gilman Dr. [REDACTED]

La Jolla, CA 92093

Telephone: [REDACTED]

[REDACTED]

APPENDIX B - IP ADDRESSES OF LICENSEE

12/16/03

(deleted)