

Nature Research and Reviews Journals Online
ACADEMIC LICENCE AGREEMENT SCHEDULE

AGREEMENT DATE: 10/29/01	AGREEMENT REF NO: 1029013102
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Licensee: [Institution] of [address].	
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Nature Research Journals	
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May 1998, in each case available for access on the Internet at the URL <http://www.nature.com/neuro/> from time to time together with any additional material that the Licensor makes available to the Licensee.

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Nature Reviews Journals

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COMMENCEMENT DATE:

On or about November 26, 2001

THE TERM: 12 months from the Commencement Date

LICENCE DETAILS:

DEPARTMENTS: [Insert name of Departments]

Licensee Average number of Staff and Students (as defined in the attached Terms) in the Departments during the 12 month period prior to the Commencement Date:
not more than [31,971].

IP Address of Network:	See attached list
LICENCE FEE:	[Text deleted] (Reviews Journals)
SPECIAL TERMS:	(Research Journals)
HELPDESK:	(e-mail/telephone number) [Text deleted]
CONTRACT	Licensors: Nature America Licensee: [Text deleted]
MANAGERS:	[Text deleted] Tel: 012 771 4444 Tel: 012 987 6531

[Text deleted]

The parties acknowledge the terms of this agreement (which expression includes this Schedule and the rest [Text deleted] [Text deleted])

Signer
For
Nature

Signed by

For and on behalf of California State University,
Licensee University of California

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Nature Structural Biology

The electronic versions of the Short Communications, Articles, Insight and Letters sections contained in (a) the most recent printed edition of Nature Structural Biology at the date of access and (b) the printed editions of Nature Structural Biology published since 1 June 1997, in each case available for access on the Internet [at the URL <http://www.nature.com/nsb/>] from time to time together with any additional material that the Licensor makes available to the Licensee.

INTERPRETATION

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

"Authorized User": (a) every member of staff employed by or otherwise accredited by the Licensee; (b) every student accredited to the Licensee for the purposes of full-time or part-time attendance; (c) individual members of the public who are users of the Licensee's library or information service; and (d) 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.

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

"Staff and Students": the students enrolled or accredited to the Licensee and the teaching and research staff employed by or otherwise accredited to the Licensee. Nothing in this definition shall in any way limit or otherwise affect the definition of Authorized User, above.

JEX

CLH

NELSON response: We need to keep this clause in because Nature is allowing the teaching and research staff to have access to Nature.

CDL Response: OK, but need to add "Nothing in this definition shall in any way limit or otherwise affect the definition of Authorized User, above," in order to ensure that non-academic staff such as librarians are Authorized Users. This was OK'd for Nature by Donna.

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

1.2 The Agreement contains the entire agreement and undertaking between the parties relating to the Licensed 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

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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 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 Licensed Material, for research, teaching, and private study purposes by means of workstations connected to the Network;	
(b) make the Licensed Material accessible via the Network to the Authorized Users for their research, teaching, and private study purposes;	
(c) permit Authorized Users to display, print and/or download individual articles and other individual items from searches of the Licensed Material for research, teaching, and private study purposes by means of workstations connected to the Network;	
(d) permit teaching staff accredited to the Licensee to reproduce individual articles from the Licensed 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 <u>or in reserves.</u>	2.1(d) Nature's Site Licensing policy does not currently allow electronic reserves that involve the making of electronic copies of licensed material that your users can then access without going through our servers for authentication. The current policy does, however, allow for the posting of links to the licensed material on reserve lists that, when clicked on, take the user to Nature's server for authentication. We can accept your proposed change if CDL deletes the term "electronic." This policy is currently under review, but for now this remains a rather inflexible stipulation of the current agreement. <u>CDL Response: The deletion of "electronic" is acceptable, since posting of links on reserve lists will suffice for UC's purposes currently.</u> <u>NELSON response: We need to keep "teaching" in the clause. It would read "permit teaching staff accredited to the Licensee to</u>

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	<u>reproduce individual articles from the Licensed 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."</u> CDL Response: OK. We can accept these terms.
<u>1.1 copy data from the electronic journal volumes for the purpose of preservation and/or for the creation of a readable archive.</u> <i>JEX</i> <i>CDL</i>	2.1(c) Nature's Licensing policy does not currently allow the licensee to create their own archive of the Licensed material. Clause 4.5 of this agreement strictly prohibits such archiving of electronic material upon termination of this agreement by either party. This policy is currently being reviewed, but for the time being, we are not able to bend on this issue. CDL Response: The CDL will continue to address this issue, which is related to perpetual access, with Donna Namorato. We are under the understanding that the perpetual access issue is currently under review by Nature's Board. <u>NELSON response: We understand your concerns over perpetual access and this issue will continue to be reviewed by the Board of Directors. At this time, we cannot include CDL's proposed clause 2.1e.</u> CDL Response: OK, we can accept removing this clause until Nature's Board approves perpetual access for its customers.
<u>1.1 permit Licensee to provide electronic links to the Licensed Material from Licensee's web pages, and is encouraged to do so in ways that will maximize the usefulness of the Licensed Material to Authorized Users. Licensor's staff will provide assistance to Licensee upon request in creating such links effectively. Licensee agrees to make changes in the appearance of such links as reasonably requested by Licensor. Licensor will also provide means for Licensee to link directly from records in Licensor's bibliographic computing systems to the content of the Licensed Material at the title, issue, and article levels, using standard Internet communications and applications protocols and such other methods as may be agreed to by Licensor and Licensee. Other than the creation of such links, Licensee shall not modify, manipulate, or create a Derivative Work of the Licensed</u>	2.1(f) Some clarification on this Clause is necessary before we can comment. The creation of links to Licensed Material located on Nature's servers is fine. Can you be a bit more explicit about the type of assistance CDL would require in setting up these links and what type of modifications to the appearance of these links might be necessary? Also, what is meant in laymen's terms by "...means for Licensee to link directly from records in Licensor's bibliographic computing systems to the content in the Licensed Material at the title, issue, and article levels..." Does this mean simply that you would like to be able to provide a link that will take the user

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Material without the prior written permission of Licensor.

be able to provide a link that will take the user to a specific article in a specific issue? Please clarify.

links.

your technical staff, and typically, this requires about 30 minutes of your staff's time. Yes, we seek to link from our library catalog directly to specific articles in a specific issue, rather than sending the patron to a vendor website or a journal title link. Please see Appendix II and IV of the attached technical requirements document for more detail.

In terms of modifications to the appearance of such links, this is not required by us and is rarely requested by Licensors, but here we are agreeing to do so if you request it. If this is an important issue for Nature, we can attempt to provide an example of a situation in which a vendor requested such a change.

If you prefer, we could replace this entire section f, with the statement:

"Nature agrees to follow the open URL standard for both linking into and out of the licensed materials." Details about the open URL standard are listed in Appendix IV of the attached document.

Technical requirements
are being discussed and
reviewed with CBL

JEK
CUT

(g) permit Licensee to supply to the user of another library (whether by post or fax) for the purposes of research or private study, a single paper copy of an electronic original of an individual document, a practice commonly known as Interlibrary Loan.

2.2 The Rights are personal to the Licensee (The Regents of the University of California) through which rights are extended to the ten UC campuses. Neither party may assign, sub-license, transfer, charge or otherwise dispose of its rights under this Agreement without the prior written consent of the other.

2.3 Title to, and ownership of, the Licensed 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.

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2.4 The Licensee is responsible for the provision of and payment for the computer equipment and telecommunication services necessary for access to the Licensed 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.

The Licensor shall use reasonable efforts to provide continuous service 7 days a week with an average of 99% uptime per month. The 1% downtime includes scheduled maintenance and repair. Scheduled downtime will be performed at a time to minimize inconvenience to customers world-wide.

Technical requirements
are being reviewed and
discussed with CDL.

JEK

CUH

2.5 This issue is covered in Clause 7.4(d) of the Agreement. Therefore, its addition here is not necessary.

CDL Response: The service quality described in 7.4(d) does not meet the minimum requirements that the CDL has specified for vendors in order to serve our clientele's needs. Please see "1.1 Fail-safe operations" in attached technical document for further information. While we may be willing to strike the insertion of this clause here, resolution of the service quality issue at 7.4

meet our minimum requirements.

NELSON response: Technical issues will be

JEK 2.6 Nature shall make reasonable efforts to comply with the American with Disabilities Act (ADA).

2.7 The parties shall cooperate in the implementation of additional security procedures as they are developed

As it is, it is a bit
clarify.

∴ We to Public

Technical requirements are being
reviewed and discussed with
CDL.

JEK

CUH

Please see Appendix II of the attached technical document for a discussion of the issues.

NELSON response: Technical issues will be determined if legal changes are negotiated.

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2.8 Upon termination of this Agreement, Licensor shall provide Licensee with the content previously licensed by and accessible to Licensee as of the date of such termination in a format usable by the Licensee and acceptable to both parties. Licensor hereby grants to Licensee a non-exclusive, royalty-free, perpetual license to use such content in accordance with the terms of this Agreement, which terms shall survive any termination of this Agreement. <i>JEK</i> <i>CH</i>	2.8 It is not currently Nature's site licensing policy to allow for this addition (see my comments on 2.1e). <u>CDL Response:</u> In consonance with our status as a research university, UC cannot forfeit its significant investments in digital content by bending on this. The CDL will continue to address this issue with Donna Namorato. We are under the understanding that the perpetual access issue is currently under review by Nature's Board. <u>NELSON response:</u> Again, we do understand your concern, but at this time we cannot include this additional clause.
3. USAGE RESTRICTIONS	
Except as expressly permitted in Clause 2.1, the Licensee warrants that it will not, nor will it knowingly license or permit others to, without the Licensor's prior written consent:	
(a) sell, distribute, license, rent or otherwise exploit the Licensed Material, or any element of it, for any commercial purpose;	
(b) make the Licensed Material, or any element of it, available by any means to persons other than Authorized Users;	
(c) make the Licensed 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 Licensed Material including hard-copy print-outs;	
(e) use the Licensed Material to create any derivative work, product or service, or merge the Licensed Material with any other product, database, or service;	

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(g) undertake any activity which may have a damaging effect on the Licensor's ability to achieve revenue through selling and marketing the Licensed Material. (Note: As an educational institution, we cannot participate which activities would be detrimental to Nature's bottom line, nor can we be held responsible for it. However, we do intend to abide by the agreement and to inform our users of their responsibilities.) JEK CJH	3(g) We suggest the following alternate language: "undertake any activity which would directly compete with the Licensor's efforts to sell and market the Licensed Material" CDL Response: While this language is better, isn't this addressed in 3.(a) which prohibits commercial use? As mentioned previously, since the redacted license serves as the CDL's way of informing staff and other users of their obligations, both Nature and the CDL have an interest in the license being as clear and succinct as possible. NELSON response: While we understand that your redacted license serves as CDL's way of informing staff, and other users of their obligation, we cannot delete 3G in its entirety. CDL Response: OK, we can accept replacing with "undertake any activity which would directly compete with the Licensor's efforts to sell and market the Licensed Material."
(h) otherwise use the Licensed Material supplied in accordance with this Agreement in a manner that would infringe the copyright or other proprietary rights contained within it; or JEK CJH	3(h) We cannot accept this change. Can you tell us why CDL wants to exclude proprietary rights from this clause? CDL Response: What proprietary rights are being referred to here? Please clarify your meaning by providing concrete examples. NELSON response: By Proprietary rights, we mean any right of ownership of the licensor. Because of this, Legal counsel insist we leave it in. CDL Response: OK, we can accept initial language.
(i) make the Licensed Material or any part of it available by remote access to any person other than Authorized Users.	
4. TERM AND TERMINATION	

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4.1 This Agreement shall begin on the Commencement Date and continue for an initial period the Term as defined in the Schedule. The Term may be renewed for additional one year periods, subject to payment of appropriate fees and acceptance thereof by the Licensor, in accordance with Clause 5.1.	
4.2 Either party may terminate this Agreement at any time upon written notice to the other if the other party 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 material default, during the relevant period of thirty days the defaulting party has remedied the default.	JEK <i>CUH</i>
4.3 Either party may terminate this Agreement at any time upon thirty days' written notice.	
4.4 If termination of this Agreement occurs as a result of notice being given by the Licensee under Clause 4.2 or 4.2.6, or 7.7 by the Licensor under Clause 4.3, the Licensor shall repay the Licensee a rateable proportion of the License Fee as represents the paid but unexpired Term at the date of termination.	CDL Response: The renumbering is acceptable. <i>CUH</i> JEK
4.5 On termination of this Agreement, the Licensee agrees to destroy, and will use its reasonable endeavours to procure that all Authorized Users destroy, all Licensed Materials stored on any digital information storage media, including, but not limited to, system servers, hard disks, diskettes, and back up tapes. (Note: The CDL requires a perpetual license to use the material it has paid for to date at the time of termination. See Clause 2.8.)	4.5 It is not currently Nature's Licensing policy to allow for a perpetual license to use the Licensed Material upon termination of the agreement, therefore we cannot delete this clause. <u>CDL Response: The CDL will continue to address this issue with Donna Namorato. We are under the understanding that the perpetual access issue is currently under review by Nature's Board.</u> <u>NELSON response: Through discussions with Donna and Kurt, at this time we can only use the following, "On termination of this Agreement, the Licensee agrees to destroy, and will use its reasonable endeavors to procure that all Authorized Users destroy, all Licensed Materials stored on any digital information storage media, including, but not limited to, system servers, hard disks, diskettes, and back up tapes."</u> <i>JEK</i> <i>CUH</i> CDL Response: OK, we can accept removing this clause until Nature's Board approves perpetual access for its customers.

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4.65 The Licensor may temporarily suspend the provision of the Licensed Material to only the Licensee's IP addresses from which unauthorized use is suspected with immediate effect on written notice without liability if the Licensor believes the Licensed Material is being used in a manner which contravenes the provisions of this Agreement.	CDL Response: The renumbering is acceptable. <i>CDL JEK</i>
4.76 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 any event analogous to any of the foregoing occurs in any jurisdiction.	CDL Response: The renumbering is acceptable. <i>CDL JEK</i>
5. LICENCE FEE	
5.1 The Licensee agrees to pay the Licensor the Licence Fee within 60 days of the Commencement Date. Provided that the Licensor is satisfied with the manner in which the Licensee has performed its obligations under this Agreement the Licensee will receive, if possible 90 days but no later than 90 days before the end of the Term an invoice for fees for renewal of the Agreement for a further period of one year. (Note: We prefer that notification by CDL Acquisitions representatives serve as official notice of whether we are renewing or not.)	
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, to the best of its knowledge, its Staff and Students during the 12 months prior to the Commencement Date did not exceed the number of Staff and Students stated in the Schedule.	
5.4 The License Fee is assessed on the number of Licensee's Staff and Students during the 12 month period prior to the Commencement Date for the initial term and for subsequent 12 month periods for subsequent one year terms. The Licensee shall notify the Licensor if the number of Licensee Staff and Students significantly exceeds or falls short of the number of Licensee Staff and Students stated in the Schedule. The parties acknowledge that in the event that such number of Licensee Staff and Students increases or decreases in any subsequent 12 month period after the Commencement Date, the Licensee Fee will be adjusted accordingly using the Licensee's then applicable charges for the one year period subsequent to such 12 month	
period. (Note: This clause is very awkward. Perhaps we	CDL Note: Any chance of making this

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<u>simply say that the license fee will be adjusted annually based on the actual FTE?</u> - JEK CDL	<u>clearer?</u> <u>NELSON response: Nature has modified clause 5.4 and believes this reads clearer: 'The License Fee is assess on the number of Licensee's Staff and Students during the 12 month period prior to the Commencement Date for the initial term and for subsequent 12 month periods for subsequent one year terms. The Licensee shall notify the Licensor on an annual basis of the number of Licensee Staff and Students as reported in Licensee's most recent published data of record. The License Fee will be adjusted in accordance with the Licensor's then applicable charges for the specified renewal period.'</u> <u>CDL Response: The new language is acceptable.</u>
6. LICENSEE'S UNDERTAKINGS	
6.1 The Licensee will take reasonable steps to ensure that the Licensed 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.	
6.2 The Licensee shall put into place reasonable procedures to restrict access to the materials to Authorized Users and to inform them of the terms and conditions of this Agreement.	6.2 We cannot accept the deletion of this clause. Nature does not expect CDL to police the behavior of its authorized users. We do, however, ask that you have reasonable procedures in place to restrict access to Authorized Users, and to inform Authorized Users of the terms and conditions of this Agreement. This could take the form of postings on your intranet, or placing information by computer stations in your library. In essence, the same procedures that you normally use to inform your patrons of your library's services are sufficient. <u>CDL Response: The CDL has suggested new language which we believe more clearly reflects Nature's expectation regarding our scope of responsibilities. Please see language at left.</u> <u>NELSON response: Your change to clause 6.2 is accepted, but we are confused why you have added, "restrict access"?</u>

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<i>CDL</i> JEK	CDL Response: The renumbering is acceptable. A change to "The Licensee shall put into place reasonable procedures to restrict access <i>only</i> to the materials to Authorized Users and to inform them of the terms and conditions of this Agreement" would highlight our intention here.
6.32 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.	CDL Response: The renumbering is acceptable. <i>CDL</i> JEK
6.43 Subject to Clause 4.5, Nothing in this Agreement shall make the Licensee liable for breach of the terms and conditions of this Agreement by any Authorized User as long as the Licensee complied with the terms of Clauses 6.1, 6.2 and 6.3 did not intentionally cause, intentionally assist in or encourage such breach nor allowed it to continue after having received notice of such breach whether from the Licensor or otherwise. However, in the event of continuing abuse the Licensor shall be entitled to terminate this Agreement following a 30 day cure period as described in Clause 4.2. JEK <i>CDL</i>	6.4 the references to Clauses 4.5 and 6.3 should stay. Otherwise, your proposed modification is fine. CDL Response: <u>We can accept keeping clause 6.3 and have reinstated it at left. Since we are continuing to discuss the perpetual access issue, the final language for this clause will depend on the outcome of those discussions.</u> NELSON response: <u>We are continually discussing perpetual access, however at this time clause 6.4 must read as follows: "Subject to clause 4.5, nothing in this agreement shall make the Licensee liable for breach of the terms and conditions of this agreement by any Authorized User as long as the Licensee complied with the terms of Clauses 6.1, 6.2 and 6.3, and did not intentionally cause, assist in or encourage such breach nor allowed it to continue after having received notice of such breach whether from the Licensor or otherwise. However, in the event of continuing abuse the Licensor shall be entitled to terminate this Agreement following a 30 day cure period as described in Clause 4.2."</u> CDL Response: The new language, directly above, is acceptable until such time that Nature's Board approves perpetual access.
6.54 The Licensor shall be entitled to monitor the use of the Licensed Material through the Licensor's servers so as to monitor compliance with this Agreement. Such	CDL Response: The renumbering is acceptable. <i>CDL</i> JEK

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as to monitor compliance with this Agreement. Such monitoring shall not compromise Authorized Users' right to privacy.	
7. WARRANTIES, UNDERTAKINGS AND INDEMNITIES	
7.1 The Licensors 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 Licensed Material in accordance with this Agreement will not infringe the rights of any third party.	
7.2 The Licensors 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 7.1 provided that the Licensors 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 Licensed Material;	
(b) to make such alterations, modifications or adjustments to the Licensed Material that it becomes non-infringing without incurring a material reduction in performance or function. However, if such modification adversely affects the value of the product, Licensee may terminate this Agreement and be entitled to a pro-rated refund off fees as outlined in Clause 7.7; or	7.2(b) and 7.2(c) We believe that your additions here are unnecessary. These Clauses already guarantee that the stated alterations would not incur "material reduction in performance or function" to the Licensed Materials. You will additionally be protected from alterations that change the scope of the Licensed Material if you accept our proposed modification of Clause 7.7 (see below). CDL Response: Should Nature accept our revised definition of "materially alter the scope" at Clause 7.7 below, we agree to delete our additions in 7.2 b and c. NELSON response: (b) The clause(s) must remain as it. "To make such alterations, modifications or adjustments to the Licensed Materials that it becomes non-infringing without incurring a material reduction in performance or function." CDL Response: OK, the initial language is acceptable.
(c) to replace the Licensed Material with non-infringing substitutes provided that such substitutes do not entail a material reduction in performance or function. However, if such modification adversely affects the value of the product, Licensee may terminate this Agreement and be entitled to a pro-rated refund off fees as outlined in	NELSON response: (c) The clause(s) must remain as it is. "To replace the Licensed Material with non-infringing substitutes provided that such substitutes do not entail a material reduction in performance or

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and be entitled to a pro-rated refund of fees as outlined in Clause 7.2.	function." JEK
(d) NO LIMITATION OF LIABILITY SET FORTH ELSEWHERE IN THIS AGREEMENT IS APPLICABLE TO THIS INDEMINIFICATION.	CDL Response: OK, the initial language is acceptable.
7.3 The Licensor shall not be liable to the Licensee for any loss or damage whatsoever resulting from omissions or inaccuracies in the Licensed Material regardless of how caused. In the event of a fault, the Licensee shall notify Customer Support of the same by telephone, electronic mail or in writing.	
7.4 Without prejudice to the generality of the foregoing, the Licensor 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 the user Documentation or any other misuse or abuse of the Licensed Product;	
(b) the failure by the Licensee to implement recommendations previously advised by the Licensor in respect of, or solutions for, faults in the Licensed Material;	
(c) the decompilation or modification of the Licensed Material or its merger with any other program or any maintenance repair adjustment alteration or enhancement of the Licensed Material by any person other than the Licensor or its authorized agent; or	
(d) the Licensee or any Authorized User being unable to exercise the Rights due to the Licensed material being unavailable as a result of any act or omission of the Licensor provided that the period for which the Licensed Material is not available shall not exceed a period of 50 20 hours (in aggregate) in any continuous period of 1000 hours.	7.4(d) We can only promise to deliver to the Licensees what is guaranteed to us by our host, which is that no black-out or breakdown in service will exceed 50 hours (in aggregate) in any continuous period of 1000 hours. For this reason, our original numbers in this section must stay <u>CDI Response: Unfortunately, this level of service does not meet the CDI required technical standards (see attached technical document, p. 3) to meet the expectations of our users. If you provide us with contact information for your host, we would be willing to contact them directly to discuss this</u> <u>NELSON response: Technical issues will be determined if legal changes are negotiated.</u>
Technical requirements are being reviewed and discussed with CDI. JEK <i>CDL</i>	
7.5 The Licensee shall use its reasonable efforts	7.5 We have signed agreements with other

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to safeguard the intellectual property, confidential information, and proprietary rights of the Licensor JEK CH	state run institutions and this Clause has not been an issue. Is there something specific to California state law that prevents you from being able to make promises as to confidentiality and protection of proprietary rights? In the past, when an issue with this clause has arisen, we have suggested the following alteration that has been accepted: "Either party shall use its best efforts to safeguard the intellectual property, confidential information, and proprietary rights of the other." <u>CDL Response: California has the Brown Sunshine Act which prohibits state agencies to guarantee the confidentiality of any public records, which extends to such items as contracts, prices, etc., should they be requested for review by the public. The CDL can accept that we will use "reasonable efforts" to safeguard all three rights, with the understanding that we are limited in our ability to do so by California law.</u> <u>NELSON response: Nature will agree to the following: "The Licensee shall use reasonable efforts to safeguard the intellectual property, confidential information, and proprietary rights of licensor."</u> CDL Response: OK, the new language, directly above, is acceptable.
7.6 THE LICENSED 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 7, ALL CONDITIONS, WARRANTIES, TERMS, REPRESENTATIONS, AND UNDERTAKINGS EXPRESS OR IMPLIED, STATUTORY OR OTHERWISE IN RESPECT OF THE LICENSED MATERIAL ARE TO THE FULLEST EXTENT PERMITTED BY LAW EXPRESSLY EXCLUDED.	
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7.7 The content of the Licensed Material is subject to change without notice. However, Licensee has the right to terminate within 30 days as a result of any material changes that the Licensee, in its sole discretion, believes adversely affects the value of the product. In this event, the Licensee has the right to a pro-rated refund of the current subscription per the date of termination.	JEK C 1K
7.8 The Licensor shall provide to the Licensee on a quarterly basis usage data indicating the number of articles from the Licensed Material downloaded by the Licensee and its Authorized Users on a monthly basis for the Licensee's private internal use only Provided That the Licensor 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. The Licensee shall keep all usage data supplied by the Licensor confidential and shall not disclose it to any person other than selected staff within the Licensee's institution without the prior written consent of the Licensor.	
7.9 <u>Licensor shall use reasonable efforts to ensure that the online content is equivalent to print journals, represents complete, faithful and timely replications of the print versions of such journals and will cooperate with the Licensee to identify and correct errors or omissions.</u>	7.9 While I believe I understand your concern here, we believe that the addition of this clause is unnecessary. While Nature Online does offer online access to the full content of the printed journal, it is essentially a separate product from Nature, the weekly printed journal. The Licensed Material is defined in the schedule as "the edition of Nature at the date of access and the editions of Electronic Nature published since 1 June 1997 in each case available for access on the internet...from time to time together with any additional material that the Licensor makes available to the Licensee." Nature Online is not simply an electronic version of the printed edition; it is the printed edition PLUS any additional material that the Licensor makes available. This license agreement (prior to your addition of Clause 7.9) guarantees CDL online access to the most recent print edition of Nature at the date of access. Beyond this definition of the License Material in the schedule, CDL's interest in defining the licensed Material by

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	the printed journal is covered if you accept our modification of 7.7 (see comments on 7.7 above). <u>CDL's Response: Our suggested language, at left, addresses the CDL's concern that the online version contain at least as much editorial content as the print and that it represents a timely replication of such. We welcome Nature's suggestion for language that addresses such concern.</u> <u>NELSON response: Nature cannot include CDL's proposed change of 7.9.</u> CDL Response: CDL requires that this clause remain and Donna approved it on Sept. 13, 2001.
8. FORCE MAJEURE	
8.1 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 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.	
8.2 If any event set out in Clause 8.1 shall continue for a period in excess of 30 days either party shall be entitled to terminate this Agreement forthwith by written notice to the other.	
9. 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.	
10. LIABILITY	
10.1 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.	

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10.2	Except as provided for in Clause 7.2 and 10.1 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 US\$10,000 or an amount equal to the fees paid under this Agreement.	
10.3	Except as provided for in Clause 7.2 and 10.1, 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; and/or	
(b)	indirect, special or consequential loss or damage.	
10.4	EXCEPT AS PROVIDED IN CLAUSE 7.2 and 10.1, IN NO EVENT WILL THE LICENSOR BE LIABLE TO THE LICENSEE OR ANYONE ELSE FOR ANY DAMAGES, INCLUDING BUT NOT LIMITED TO ANY LOST PROFITS, LOST SAVINGS OR OTHER INCIDENTAL OR CONSEQUENTIAL DAMAGES, ARISING OUT OF: (1) THE USE OR INABILITY TO USE THE LICENSED MATERIALS OR ANY INTERRUPTIONS IN THEIR USE; (2) ANY INACCURACY IN THE LICENSED MATERIALS; OR (3) THE UNAVAILABILITY AT ANY TIME OR TIMES OF CUSTOMER SUPPORT, IN EACH CASE EVEN IF THE LICENSOR HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES IN ADVANCE.	
11.	VARIATION	
	The Licensor may modify the Agreement from time to time, such modifications becoming effective within 30 days of notification of the same by the Licensor to the Licensee. The Licensee shall have 30 days from such written notification to accept the modifications or terminate the Agreement	
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. Any dispute arising out of or relating to this Agreement or its subject matter not settled by the parties may be resolved only by the courts of the State California or, if subject matter jurisdiction exists, by the United States federal courts, with venue in the County of Alameda (in the case of state court) or in the District of California (in the case of federal court). Each of the parties hereby consents to the	

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jurisdiction of such courts over it in any action involving any such dispute. Each of the parties agrees not to commence or maintain a legal proceeding involving any such dispute in any forum except a court of the State of California located in Alameda County or the United States District Court for the District of California (other than to enforce a judgement obtained in such courts) and agrees not to contest the venue of any action involving any such dispute in the County of Alameda or the District of California, as the case may be, nor to assert in any such court the doctrine of forum non conveniens or the like.	
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	
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.	