

**Nature Archive License  
ACADEMIC LICENCE AGREEMENT SCHEDULE**

<b>AGREEMENT DATE:</b> April 29 <sup>th</sup> , 2015	<b>AGREEMENT REF NO:</b>
<b>PARTIES:</b>	
<b>Licensor:</b>	Nature America, Inc. d/b/a Nature Publishing Group, whose principal place of business is at [Text deleted]
<b>Licensee:</b>	University of California, San Diego, whose principal place of business is at 9500 Gilman Dr [Text delete] La Jolla, CA 92093
<b>ARCHIVED MATERIAL:</b>	
<b>SECTION A. NATURE</b>	
N/A	
<b>SECTION B. NPG JOURNALS</b>	
N/A	
<b>SECTION C. PALGRAVE MACMILLAN JOURNALS</b>	
<b><i>Latino Studies : January 2003 - December 2003</i></b>	
The electronic versions of the editions of <i>Latino Studies</i> published by the Licensor from 1 January 2003 to 31 December 2003 in each case available for access on the Internet at the URL <a href="http://www.palgrave-journals.com/lst">http://www.palgrave-journals.com/lst</a> from time to time together with any additional material that the Licensor makes available to the Licensee.	
<b><i>Social Theory &amp; Health : January 2003 - December 2003</i></b>	
The electronic versions of the editions of <i>Social Theory &amp; Health</i> published by the Licensor from 1 January 2003 to 31 December 2003 in each case available for access on the Internet at the URL <a href="http://www.palgrave-journals.com/sth">http://www.palgrave-journals.com/sth</a> from time to time together with any additional material that the Licensor makes available to the Licensee.	
<b><i>Subjectivity: International Journal of Critical Psychology : May 2008 - December 2009</i></b>	
The electronic versions of the editions of <i>Subjectivity: International Journal of Critical Psychology</i> published by the Licensor from 1 May 2008 to 31 December 2009 in each case available for access on the Internet at the URL <a href="http://www.palgrave-journals.com/sub">http://www.palgrave-journals.com/sub</a> from time to time together with any additional material that the Licensor makes available to the Licensee.	
<b>SECTION D. PALGRAVE MACMILLAN THIRD PARTY JOURNALS</b>	
<b><i>Journal of Simulation : December 2006 - December 2013</i></b>	
The electronic versions of the editions of <i>Journal of Simulation</i> published by the Licensor from 1 December 2006 to 31 December 2013 in each case available for access on the Internet at the URL <a href="http://www.palgrave-journals.com/jos">http://www.palgrave-journals.com/jos</a> from time to time together with any additional material that the Licensor makes available to the Licensee.	
<b>COMMENCEMENT DATE:</b> April 29 <sup>th</sup> , 2015	

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**LICENCE DETAILS:**

**Licensee average number of Staff and Students (as defined in the attached Terms) during the 12 month period prior to the Commencement Date:**

Licensee's Full Staff and Students: [ ] (for Nature, Scientific American, Palgrave Macmillan Journal and Palgrave Macmillan Third Party Journal archives)

Licensee's Scientific Department Staff and Students: [ ] (for NPG Journal (excluding Scientific American) archives)

**IP Address of Licensee Secure Network:** On file.

**ARCHIVE FEE:** \$[Text deleted]

**SPECIAL TERMS:** Solely with respect to *Scientific American: January 1845 - December 1909, Scientific American: January 1910 - December 1947, and Scientific American: January 1948 - December 1992* Archive, sections 5.4 and 5.5 do not apply.

The following clauses have been amended: 1.1 "Authorized User," 1.1 "Electronic Version," 1.1 "Network," 2.1(a), 2.1(b), 2.1(c), 2.1(d), 3(c), 4.3, 4.4, 4.5, 4.7, 5.4, 5.5, 6.2, 7.1, 7.4, 8.5, 8.7, 9, and 13.

The following clauses have been added: 1.6, 2.1(g), 2.6, and 6.3.

**HELPDESK:** [Text deleted]

**CONTRACT MANAGERS:**

**Licensor:** [Text deleted]

**Tel:** [Text deleted]

**Email:** [Text deleted]

**Licensee:** [Text deleted]

**Tel:** [Text deleted]

**Email:** [Text deleted]

The parties each agree to the terms of this Agreement (which expression includes this Schedule and the attached Terms).

[Text deleted]

Signed by: .....

For and on behalf of

Nature America Inc.

Date of signature: 4/30/15

[Text deleted]

Signed by: .....

For and on behalf of

Licensee

Date of signature: 4/30/15

## TERMS

### 1. INTERPRETATION

1.1 In this Agreement (as defined in the Schedule), 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) 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 Secure 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 and Licensee shall mutually decide) subject to the same terms and conditions of use outlined in this Agreement;

**"Full Staff and Students"**: the full time students enrolled or accredited to the Licensee and the full time teaching and research staff employed by or otherwise accredited to the Licensee (relevant to **Nature, Scientific American, Palgrave Macmillan Journal and Palgrave Macmillan Third Party Journal** archives only);

**"Secure Network"**: the Licensee's local area network system of connected computers under central administration, the IP address(es) for which are set out in the Schedule;

**"Scientific Department Staff and Students"**: the full time students enrolled or accredited to the Scientific Department of the Licensee and the full time teaching and research staff employed by or otherwise accredited to the Scientific Department of the Licensee (relevant to **NPG Journal (excluding Scientific American)** archives only);

**"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.

1.6 Nothing in this Licence Agreement shall in any way exclude, modify, or affect any of Licensee's statutory or common law rights under the copyright laws of the United States.

### 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 Secure 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 Secure 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 Secure Network;

(d) permit teaching 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 reserve materials;

(e) reproduce single copies or insubstantial amounts of individual articles or other individual

items from the Archived Material for non-commercial distribution in hard copy print form, or by secure electronic transmission (but not including the use of email) using the system known as Ariel or its equivalent, whereby the electronic file is deleted after printing, to individual libraries of not-for-profit, non-commercial organisations solely for the purposes of research or private study and not for commercial use in any event. Requests received from for-profit companies or directly from individuals must not be honoured. Files transmitted in this manner must retain the relevant copyright notice. This reproduction right set out at this sub-paragraph 2.1(e) shall not apply to the extent that it is used with centralized ordering facilities, such as document delivery services or for any other commercial or systematic distribution, nor cover arrangements that have, as their purpose or effect, that the library receiving such copies for distribution does so in such aggregate quantities so as to substitute for a subscription to or purchase of such material. No right or licence is hereby granted to any person provided with such a copy to copy or otherwise deal with that individual article, or items; 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.

(g) permit Authorized Users to transmit to a third party in hard copy print form single copies or insubstantial amounts of individual articles, or other individual items from the Archived Material for personal use or scholarly, education, or scientific research or professional use, but in no case for resale or commercial purposes (a practice known commonly as Scholarly Sharing).

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.

2.6 The Licensor will use best efforts to provide the Archived Material in the archiving solution such as Portico. On the date of signing this Agreement, Licensor currently archives the Archived Material in the Portico Digital Preservation archiving services. The URL that provides details of trigger events that allow access to the archived is at <http://www.portico.org/new/trigger/html>.

### 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;

(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 outside of the Licensee's Secure 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

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(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 This Agreement shall begin on the Commencement Date and continue in perpetuity, subject to the terms of this Agreement, including the termination provisions below.

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 The Licensee may terminate this Agreement at any time upon written notice to the Licensor 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 for cause, as outlined in Clause 4.2, the Licensee agrees to destroy, and will use its reasonable endeavours to procure that all Authorised Users destroy, all Archived Material 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. Whenever possible, Licensor will take action and suspend access only to specific IP addresses of concern.

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 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, the Licensor shall provide the Licensee with an Electronic Version of the Archived Materials, subject to the Licensee's payment of a reasonable fee for the cost of creating and sending the Electronic Version.

#### 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 the number of 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 Archive Fee is assessed on the number of Staff and Students during the 12 month period prior to the Commencement Date.

5.5 CLAUSE NOT USED.

#### 6. ACCESS FEE

6.1 Licensee shall be subject to a reasonable annual access fee with respect to each of the journals listed in the Schedule (the "Access Fee"), payable within 30 days of each anniversary of the Commencement Date. Notwithstanding the foregoing, such Access Fee shall be waived with respect to any journals listed in the Schedule for which Licensee has a current site license for access to current issues of such journal (each, a "Current Journal License"). In the event that Licensee ceases, for any reason, to maintain a Current Journal License, and desires to continue to get access to the Archived Material with respect to the journal that was the subject of the terminated Current Journal License, Licensee agrees to pay the Access Fee with respect to such journal within 30 days of the termination of such Current Journal License and within 30 days of each anniversary of such termination during the Term.

6.2 The Licensor reserves the right to make reasonable increases to the Access Fee. Any increase in the Access Fee will be notified to the Licensee in writing. Nothing in this Clause 6 is intended to

supersede or restrict Licensee's termination rights as set forth in Clause 4.7. If Licensee chooses not to pay the Access Fee, Licensor will provide Licensee with an Electronic Version of the Archived Material, which can continue to be made available to Authorized Users and use in a manner consistent with the Terms of this Agreement.

6.3 In the event that Licensee ceases, for any reason, to maintain a Current Journal License as described in Clause 6.1, Licensee will also be provided with Post-Cancellation Access to the Archived Material through the Portico Digital Preservation site described in Clause 2.6, provided Licensee is a current Portico member institution.

## 7. LICENSEE'S UNDERTAKINGS

7.1 The Licensee will use best efforts to 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 cooperate 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. In such monitoring, the privacy of individual Authorized Users shall not be infringed.

## 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 Licensee must inform the Licensor immediately upon

becoming aware of any claim, not attempt to compromise or settle the claim and give reasonable assistance to the Licensor who 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;

(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 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 any user documentation provided by the Licensor or any other misuse or abuse of the Archived Material;

(b) the failure by the Licensee to implement recommendations previously advised by the Licensor 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 Licensor or its authorized agent.

8.5 The Licensee shall use commercially reasonable efforts consistent with the efforts it uses to safeguard its own confidential information and property rights to safeguard the intellectual property, confidential information including without limitation the terms of this license, and proprietary rights of the Licensor, except as required by law.

## 8.6 THE ARCHIVED MATERIAL IS PROVIDED "AS IS." NEITHER THE

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8.7 The content of the Archived Material is subject to change without notice, provided that if there is a substantial material reduction in the quantity and/or volume of the Archived Material, the Licensee shall receive a reasonable pro-rated refund of the portion of the Archive Fees paid in connection with such portion(s) of the Archived Material.

## 9. USAGE STATISTICS

The Licensor confirms to the Licensee that usage statistics covering the online usage of the Archived Material covered by this Agreement will be provided. The Licensor further confirms that it shall use all reasonable endeavours to ensure that such usage statistics will adhere to the specifications of the COUNTER Code of Practice, including data elements collected and their definitions; data processing guidelines, usage report content, frequency and delivery method PROVIDED THAT these statistics are intended strictly for the Licensee's private internal use and 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.

## 10. FORCE MAJEURE

*Nature America, Inc. is an Equal Employment Opportunity employers and subject to applicable federal, state and local laws regarding non-discrimination. Nature America, Inc. provides equal employment opportunities to employees and applicants for employment without regard to race, color, religion, gender, sexual orientation, nation origin, age, disability or veteran status.*

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.

## 11. 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.

## 12. LIABILITY

12.1 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.

12.2 Except as provided for in Clause 12.1 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 [Text deleted] or an amount equal to the fees paid under this Agreement.

12.3 Except as provided for in Clause 12.1, 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.

## 13. 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.

## 14. 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.

#### **15. 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.