Dated September 23, 2003

IOP PUBLISHING LIMITED (1)

and

THE REGENTS OF THE UNIVERSITY OF CALIFORNIA (2)

VARIATION AGREEMENT
THIS AGREEMENT is made the 23rd day of September, 2003

BETWEEN:

(1) IOP PUBLISHING LIMITED a company incorporated in England (registered number 467514) and having its registered office at Dirac House, Temple Back, Bristol BS1 6BE, United Kingdom ("IOPP"); and

(2) THE REGENTS OF THE UNIVERSITY OF CALIFORNIA, a non-profit academic institution, with its principal offices at The California Digital Library, 415 20th Street, 4th Floor, Oakland CA, 94612, USA ("the Consortium").

RECITALS:

(A) On 1 November 1999 the parties entered into an Agreement which was varied by letter dated 13 February 2002, such agreement as so varied being "the Agreement" for the purpose of this Variation Agreement.

(B) The parties now wish to vary the Agreement on the terms hereof.

1. INTERPRETATION

1.1. The headings in this Variation Agreement are for convenience only and shall not affect its interpretation.

2. TERM

2.1. This Variation Agreement will commence on signature by both parties.

3. THE VARIATION

3.1 The parties now agree to vary the Agreement as follows:

3.2 All Licensees and Ernest Orlando Lawrence Berkeley National Laboratory of Library Building 50, 1, Cyclotron Road, Room 4206, Berkeley, California 94720 ("LBNL") shall have access to IOPP's Archive as listed in Schedule 1 to this Variation Agreement ("the Archive") on the following basis:

3.1.1. Access is to the full text and linked HTML references of the Archive for volumes published during 1874 to 1992 inclusive only;

3.1.2. Access is via IOPP's web server;
3.1.3. Access to the Archive is governed by the following clauses of the Agreement: 1 (Rights of Licensees) 3 (Duties of Licensees). Clause 7 of the Agreement (on Withdrawal of Publications) does not apply to the Archive;

3.1.4. IOPP reserves the right at any time to withdraw from the Archive any material which in IOPP's sole discretion it on reasonable grounds believes infringes copyright, is defamatory, obscene, unlawful or is otherwise objectionable. IOPP will give reasonable written notice to the Licensees and LBNL of any such withdrawal. On receipt of such notice the Licensees and LBNL will immediately make reasonable endeavours to comply with IOPP's reasonable instructions with respect to the destruction, deletion, return or surrender of the withdrawn material;

3.1.5. Access is conditional on payment of a fee totalling [Text deleted]

3.1.6. An annual update fee for annual updates to the Archive is chargeable. IOPP agrees to waive such fee whilst the Consortium has the right electronically to access IOPP journals other than the Archive ("the Current Journals");

3.1.7. In the event that the Agreement terminates in respect of the Current Journals so that the Consortium ceases to have the right electronically to access Current Journals the annual update fee will become payable for continued electronic access to the Archive and for annual updates to the Archive;

3.1.8. In the event that the Consortium does not pay the annual update fee if the Agreement terminates in respect of the Current Journals (so that the Consortium ceases to have the right electronically to access Current Journals) electronic access to both Current Journals and the Archive via IOPP's web server will automatically cease; and

3.1.9. At any time Licensees and LBNL will be given, on request, an appropriate copy of the Archive for local loading purposes to enable continued access to the Archive in perpetuity in accordance with clauses 1 and 3 of the Agreement. Local loading provisions on security and network security notified at such time will apply to such copies.

3.1.10. Notwithstanding anything else in this Variation Agreement, IOPP hereby grants to the Licensees a nonexclusive, worldwide, royalty-free, perpetual licence to use any materials licensed for use under this Variation Agreement that were accessible during the term of this Variation Agreement. Such use shall be in accordance with the
provisions of the Agreement, which provisions shall survive any termination of the Agreement.

3.2. IOPP USES ALL REASONABLE ENDEAVOURS TO INCLUDE ALL MATERIAL FORMING PART OF THE PRODUCTS IN THE ARCHIVE BUT DUE TO THE AGE, RARITY AND UNAVAILABILITY OF CERTAIN MATERIAL IOPP ACCEPTS NO RESPONSIBILITY FOR THE COMPLETENESS OF THE MATERIAL AND MAKES NO REPRESENTATION OR WARRANTY IN THIS REGARD. IOPP WILL MAKE REASONABLE ENQUIRIES AND INVESTIGATE THE POSSIBILITY OF INCLUDING ANY PARTICULAR ITEM WHICH IS MISSING AND WHICH IS BROUGHT TO IOPP'S ATTENTION.

3.12. IOPP CONDUCTS REASONABLE QUALITY CHECKING AS PART OF THE PRODUCTION PROCESS OF THE ARCHIVE. THIS CHECKING ENCOMPASSES ACCURACY AND COMPLETENESS. NO CHECKING ABOVE AND BEYOND THE CHECKING WHICH FORMS PART OF THE PRODUCTION PROCESS HAS BEEN CARRIED OUT. CONSEQUENTLY IOPP ACCEPTS NO RESPONSIBILITY FOR THE ACCURACY OR COMPLETENESS OF THE ARCHIVE MATERIAL LICENSED AND MAKES NO WARRANTY OR REPRESENTATION IN THIS REGARD.

4. SUPPLY OF ARTICLES FILES FOR LOCAL LOADING

4.1. For the avoidance of doubt the parties agree that in the event that IOPP supplies a copy of the Publications by way of article files pursuant to clause 13.2 of the Agreement or in the event that IOPP supplies a copy of the Archive pursuant to clause 3.1.9 of this Variation Agreement IOPP grants to the Licensees a nonexclusive, worldwide, royalty free, perpetual licence to use such files in accordance with the provisions of the Agreement as varied by this Variation Agreement.

5. GENERAL

5.1. Terms which are defined in the Agreement shall have the same meaning where used in this Variation Agreement.

5.2. Save as varied by this Variation Agreement the Agreement shall remain in full force and effect.

AS WITNESS the hands of the parties the day and year first above written.
## SCHEDULE 1

### THE ARCHIVE

**Part A**

**PUBLICATIONS WITHIN THE HISTORIC FULL-TEXT ARCHIVE**

(1874-1991 INCLUSIVE: "THE Historic Archive")

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**Part B**

**PUBLICATIONS WITHIN THE RECENT 10 YEAR FULL-TEXT ARCHIVE**

(1992 - 2001 inclusive: "the Recent 10 Year Archive")

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Date 2/10/03

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