

Sales Territory Number:

Before you use ProQuest Information and Learning Company's electronic products, whether marketed under the ProQuest, Chadwyck-Healey, bigchalk, Micromedia, Softline, Heritage Quest, UMI or other proprietary brands, you need to understand and agree to this Electronic Products License Agreement that governs your use of it. After reading the Agreement you must accept it by signing your name. If you have questions, please call ProQuest Information and Learning at 1-800-521-0600, extension 2971. Please retain a copy of the Agreement and keep it in your files.

4.01.2003/jcd

**I agree to be bound by the following Terms and Conditions.**

<p><b>Authorization by ProQuest Information and Learning Company (Licensor):</b></p> <p>Institution: _____</p> <p>Signature: _____ <span style="color: red; font-size: small;">Duly Authorized Signature</span></p> <p>Name: _____</p> <p>Title: _____</p> <p>Date Signed: _____</p>	<p><b>Authorization by Customer (Licensee):</b></p> <p>Signature: _____ <span style="color: red; font-size: small;">Duly Authorized Signature</span></p> <p>Name: _____</p> <p>Title: _____</p> <p>Date Signed: _____</p>
--	---

**CUSTOM TERMS AND CONDITIONS**

If you are the representative of your firm, institution, or organization, all references to "you" in this Agreement refer to the entity that you represent. By accessing or using the product(s) you agree that you and your Authorized Users are bound by these terms and conditions. All language in this Agreement shall be assumed to be used in accordance with standard dictionary definitions, unless otherwise specifically defined within this Agreement.

1) **License:**

- a) Subject to the terms of this Agreement, ProQuest Information and Learning Company ("ProQuest") hereby grants you a non-exclusive, non-transferable license to have access to and use the on-line products provided by ProQuest to you as listed in the attached Fee Schedule, attached invoice or accepted purchase order (the "Products"). You do not acquire any ownership interest or rights in the Products and associated materials and all such rights and interests remain in ProQuest and its licensors. This License is granted to you at your institutional location(s) for both remote and on-site access, with unlimited simultaneous users.
- b) You will use the Products solely for your own personal or internal use. Authorized Users shall be permitted to extract or use information contained in the Products for personal, educational, scientific, or research purposes, including extraction and manipulation of information for the purpose of illustration, explanation, example, comment, criticism, teaching, research, or analysis. You will not publish, broadcast or sell any materials retrieved through the Products or use the materials in any manner that will infringe the copyright or other proprietary right of ProQuest or its licensors. You may not use the Products to execute denial of service attacks nor may you perform automated searches against ProQuest's systems to the extent such searches unduly burden ProQuest's systems (including, but not limited to automated "bots" or link checkers). You may print and make copies of materials retrieved through the Products only as permitted in Section 1 (d) of this Agreement. You represent and warrant to ProQuest that you will not use the Products or any material retrieved from the Products to create products or perform services which compete or interfere with the publications and services of ProQuest or its licensors.
- c) Notwithstanding the previous paragraph, if you represent a public library, educational institution, governmental agency or non-profit institution allowing public access to data and information, then, subject to any special restrictions of the copyright owner, you may provide public access to and retrieval of data and information through the Products by or for walk-in public users while on-site, and to Authorized Users remotely as described under Paragraph g) below. You will limit such use to the customary services provided to patrons and you will not re-distribute the materials retrieved from the Products or provide access to the Products to other libraries or third parties either directly or indirectly, unless specifically authorized by ProQuest, except as described under section f) below.
- d) You may create printouts of materials retrieved through the Products via on-line printing, off-line printing, facsimile, or electronic mail. All reproduction and distribution of such printouts, and all downloading and electronic storage of materials retrieved through the Products shall be for your own internal, personal, scholarly, educational, scientific research or professional use. Downloading of all or parts of the Products in a systematic or regular manner so as to create a collection of materials comprising all or part of the Products is strictly prohibited whether or not such collection is in electronic or print form.

Notwithstanding the above restrictions, this paragraph shall not restrict your use of the materials under the doctrines of "fair use" or "fair dealing" as defined under the laws of the United States or England, respectively.

- e) Individual content providers or licensors may have conditions of use applicable solely to their content. Such conditions of use shall be displayed on the computer screen displays associated with such content and shall not materially alter your use of the Products.
  - f) Licensee may fulfill requests from other institutions, a practice commonly called Interlibrary Loan. Licensee agrees to fulfill such requests in compliance with Section 108 of the United States Copyright Law (17 USC 108, "Limitations on exclusive rights: Reproduction by libraries and archives") and clause 3 of the Guidelines for the Proviso of Subsection 108(g)(2) prepared by the National Commission on New Technological Uses of Copyrighted Works and in accordance with any conditions as described under e) above.
  - g) Since your subscription allows you to provide remote access to the Products, you will use reasonable efforts to limit access to the Products to Authorized Users (defined below) through the use of user identification numbers and passwords, IP address verification or other secure method of user verification. You will immediately notify ProQuest if you believe one or more of your secure access method(s) is being misused. If you authorize fee-per-article access to materials outside your subscription bundle, you are responsible for all charges incurred by users accessing the on-line products through your designated secure access method(s). The term "Authorized User" means: (1) For public libraries: library staff, individual residents of a reasonably defined geographic area in addition to walk-in patrons while on-site; (2) For schools and academic institutions: currently enrolled students, faculty and staff in addition to walk-in patrons and visiting scholars while on-site; and (3) For other types of organizations: employees, independent contractors and other temporary workers while performing duties within the scope of their employment or assignment.
- 2) **Privacy.** To the extent there are any privacy or other laws and regulations restricting the collection, use and distribution of personally identifiable information, ProQuest makes no representation as to whether any such laws and regulations may require you to obtain consent from any Authorized User (or the parent or guardian of such user) in your administration of Authorized Users access to the Products and/or services licensed hereunder. The Products and services provided by ProQuest typically do not require the entering or capture of personally identifiable information by or for the use of ProQuest.
- 3) **Suspension and Termination.** ProQuest may suspend delivery of Products to Licensee if Licensee fails to comply with its obligations under Section 1 of this Agreement and ProQuest determines that it would cause irreparable harm to it or its licensors under the specific circumstances. Such delivery suspension shall be limited to the specific IP address and/or username/account involved, and in no case shall ProQuest suspend delivery to an entire subscribing Licensee institution without advance written notice. In any event, ProQuest shall work with Licensee in good faith to cure its material breach or suspected breach of Section 1 and, if access was suspended, to restore Licensee's access to the Service as soon as possible. For any other material breach of the Agreement, ProQuest shall allow Licensee a cure period of at least thirty (30) days from the time ProQuest notifies Licensee of the suspected material breach before suspending Licensee's access to the Services. In addition, ProQuest reserves the right to pursue any other legal remedy available to it.
- 4) **Linking.** Subject to Publisher Restrictions, you may link to search results or materials contained in the Products licensed to you. The security embedded in these links is your responsibility and only on-site users and/or Authorized Users are permitted access to the Products or the materials contained therein consistent with Sections 1(b) and 1(g) of this agreement. With respect to any original materials and third party materials that may be presented in conjunction with links into the Products, you represent that you have all rights necessary to use these third party materials. ProQuest shall inform Licensee of any such Publisher Restrictions known to it or which subsequently become known.
- 5) **Proprietary Rights.** All intellectual property rights, including without limitation, trade secrets, copyrights and patent rights to any software, materials, databases or hardware supplied to you by ProQuest will remain the sole property of ProQuest or its licensors, and no title or license right is granted to you except as expressly set forth in this Agreement.
- 6) **Additional Materials.** From time to time during the term of this Agreement, ProQuest may add, delete or modify information, databases, materials, capabilities or services to the Products. ProQuest will announce substantial changes to the materials available on the on-line system on its electronic mailing list service.
- 7) **Hardware and Software.**
- a) ProQuest may supply software from time to time for use in connection with the Products. ProQuest may designate that certain hardware and software are capable of operating compatibly with the Products, but such designation means only that the hardware or software appears to meet the necessary requirements of the Products. PROQUEST SPECIFICALLY DISCLAIMS ANY RESPONSIBILITY FOR DETERMINING THE COMPATIBILITY OF ANY HARDWARE OR SOFTWARE NOT SUPPLIED BY PROQUEST WITH THE PRODUCTS AND PROVIDES NO WARRANTY WITH RESPECT TO THE OPERATION OF SUCH HARDWARE OR SOFTWARE WITH THE PRODUCTS.
  - b) You are responsible for local telecommunication connections if they are needed and the charges therefor.

8) **U.S. Government Restricted Rights.**

The Products include materials that are commercial technical data and/or computer databases and/or commercial computer software, as applicable, which were developed exclusively at private expense by ProQuest Information and Learning Company (formerly UMI Company) 300 North Zeeb Road, Ann Arbor, MI 48103. U.S. Government rights to use, modify, reproduce, release, perform, display, or disclose these technical data and/or computer databases and/or computer software are subject to the limited rights restrictions of DFARS 252.227-72 (October 1998) Rights in Computer Software and Computer Software Documentation, DFARS 252.227-7020 (June 1995) Rights in Special Works and/or subject to the restrictions of DFARS 252.227-7019 (June 1995) Validation of Asserted Restrictions – Computer Software, as applicable for U.S. Department of Defense procurements and the limited rights restrictions of FAR 52.227-14 (June 1987) Rights in Data-General, FAR 52-227-20(c)(2-3)) (March 1994) Rights in Data-SBIR Program and/or subject to the restricted rights provisions of FAR 52.227-15 (June 1987) Representation of Limited Rights Data and Restricted Computer Software and FAR 52.227-19 (June 1987) Commercial Computer Software-Restricted Rights, as applicable, and any applicable agency FAR Supplements, for non-Department of Defense Federal procurement.

9) **Limited Warranty and Disclaimer of Warranty.** ProQuest warrants that it has all rights necessary to enter into this Agreement and to provide the Products to you.

TO THE EXTENT ALLOWED BY WASHINGTON LAW AND EXCEPT AS PROVIDED IN THE PRECEDING SENTENCE, THE PRODUCTS AND ALL EQUIPMENT AND SOFTWARE PROVIDED BY PROQUEST TO YOU ARE PROVIDED "AS IS" AND "AS AVAILABLE." THE WARRANTIES IN THIS AGREEMENT ARE IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION, ANY WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. WITHOUT LIMITING THE FOREGOING, NEITHER PROQUEST NOR ANY PROVIDER OF INFORMATION OR SOFTWARE IN THE PRODUCTS WARRANTS THE USE OF THE PRODUCTS OR THAT THE SOFTWARE WILL BE UNINTERRUPTED OR ERROR-FREE OR MAKES ANY WARRANTY AS TO THE AVAILABILITY OF THE PRODUCTS, THE ACCURACY, TIMELINESS OR COMPLETENESS OF THE INFORMATION OR THE RESULTS OF LICENSEE'S USE OF THE PRODUCTS, THE SOFTWARE OR THE INFORMATION, EVEN IF ASSISTED BY PROQUEST.

10) **Limitation of Liability.** TO THE EXTENT ALLOWED BY WASHINGTON LAW, THE MAXIMUM LIABILITY OF PROQUEST AND ITS LICENSORS, IF ANY, UNDER THIS AGREEMENT, OR ARISING OUT OF ANY CLAIM RELATED TO THE PRODUCTS, FOR DIRECT DAMAGES, WHETHER IN CONTRACT, TORT OR OTHERWISE SHALL BE LIMITED TO THE TOTAL AMOUNT OF FEES RECEIVED BY PROQUEST FROM YOU HEREUNDER UP TO THE TIME THE CAUSE OF ACTION GIVING RISE TO SUCH LIABILITY OCCURRED. IN NO EVENT SHALL PROQUEST OR ITS LICENSORS BE LIABLE TO YOU FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, PUNITIVE OR SPECIAL DAMAGES RELATED TO THE USE OF THE PRODUCTS OR PROQUEST'S FAILURE TO PERFORM ITS OBLIGATIONS UNDER THIS AGREEMENT, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, REGARDLESS OF WHETHER PROQUEST OR ITS LICENSORS ARE NEGLIGENT.

ProQuest shall indemnify and hold you harmless from liability for all costs or damages incurred by you in any action or threatened action for infringement of any intellectual property right of any third party, relating to or caused by the Products in the form in which they are furnished hereunder, provided that you have given ProQuest notice of any suit or threatened suit for infringement brought against you within twenty (20) days of the day of service of the complaint upon you or from the receipt by you of notice of a threatened suit and further provided that ProQuest shall control the defense of any such suit. ProQuest shall not be liable hereunder if (i) any infringement or violation claim is based solely upon the use of the Products in combination with programs, equipment or devices not of ProQuest origin, design or selection; or (ii) any infringement or violation claim arises out of your use of the Products in a manner contrary to the rights granted in the Agreement, including use contrary to the Copyright Act of 1976, Title 17 U.S.C. or other intellectual property law.

11) **Miscellaneous.**

- a) **Assignment.** Neither party may assign this Agreement or any right granted hereunder without the prior written consent of the other party, which consent shall not unreasonably be withheld.
- b) **Waiver.** Failure of either party to enforce at any time any of the provisions of this Agreement shall not be construed to be a waiver of such provisions or of the right of such party thereafter to enforce any such or other provisions of this Agreement.
- c) **Force Majeure.** Neither Party shall be liable in damages or have the right to terminate this Agreement for any delay or default in performing hereunder if such delay or default is caused by conditions beyond its control including, but not limited to Acts of God, Government Restrictions (including the denial or cancellation of any export or other necessary license), wars, insurrections and/or any other cause beyond the reasonable control of the party whose performance is affected.
- d) **Interruption of On-Line Products.** Neither ProQuest nor its licensors shall be liable or deemed in default of this Agreement for any failure or delay or interruption in the on-line Products or any failure of any equipment or telecommunications resulting from any cause or circumstance beyond the reasonable control of ProQuest. If, however, the on-line Product is unavailable due to circumstances within ProQuest's reasonable control for a period of six hours in a 24 hour period not including times scheduled for normal systems maintenance and upgrades, the subscription terms shall be extended one day (24 hours) for each six hours of downtime as described above.
- e) **Severability.** If any provision of this Agreement is found invalid or unenforceable pursuant to a decree or decision of competent jurisdiction, the remainder of this Agreement shall remain valid and enforceable according to its terms.
- f) **Governing Law.** The Agreement shall be construed according to the laws of the State of Washington, without application of its conflict of laws provisions.
- g) **Effective Date.** This Agreement shall be effective as outlined by the terms of the Purchased Services Contract between ProQuest Learning and Information Company and The State of Washington Office of the Secretary of State, Washington State Library Division, and signed by ProQuest's Authorized Signatory on 3/8/05.

04/01/03 /jcd