

LICENSE AGREEMENT

PROQUEST LLC

AND

THE REGENTS OF THE UNIVERSITY OF CALIFORNIA

This License Agreement (this "Agreement") is made effective as of March 15, 2011 (the "Effective Date") between *ProQuest LLC, 789 E. Eisenhower Parkway, Ann Arbor, Michigan 48106-1346, USA ("Licensor")* and The Regents of the University of California, a non-profit academic institution, with its principal offices at The California Digital Library, University of California Office of the President, 415 20th Street, 4th floor, Oakland, CA 94612, USA ("Licensee").

In consideration of the mutual promises contained herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

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Availability of Licensed Materials. Upon the Effective Date of this Agreement, Licensors shall make the Licensed Materials available to Licensee and Authorized Users.

Documentation. Licensors will provide and maintain help files and other appropriate user documentation.

Training and Support. Licensors will offer installation support, including assisting with the implementation of any Licensors software. Licensors will provide appropriate training to Licensee staff relating to the use of the Licensed Materials and any Licensors software. Licensors will offer reasonable levels of continuing support to assist Licensee and Authorized Users in use of the Licensed Materials. Licensors will make its personnel available by email, phone or fax during regular business hours, Monday through Friday for feedback, problem-solving, or general questions.

Quality of Service. Licensors shall use reasonable efforts to ensure that the Licensors's server or servers have sufficient capacity and rate of connectivity to provide the Licensee and its Authorized Users with a quality of service comparable to current standards in the on-line information provision industry in the Licensee's locale.

Licensors shall use reasonable efforts to provide continuous service seven (7) days a week with an average of 98% up-time per month. The 2% down-time includes periodic unavailability due to maintenance of the server(s), the installation or testing of software, the loading of additional Licensed Materials as they become available, and downtime related to the failure of equipment or services outside the control of Licensors, including but not limited to public or private telecommunications services or internet nodes or facilities. Scheduled down-time will be performed at a time to minimize inconvenience to Licensee and its Authorized Users.

If the Licensed Materials fail to operate in conformance with the terms of this Agreement, Licensee shall immediately notify Licensors, and Licensors shall promptly use reasonable efforts to restore access to the Licensed Materials as soon as possible. If, however, the Licensed Materials are 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

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Compliance with Americans with Disabilities Act. Licensor shall make reasonable efforts to comply with the Americans with Disabilities Act (ADA).

VIII. LICENSEE PERFORMANCE OBLIGATIONS

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Provision of Notice of Intellectual Property Right to Authorized Users. Licensee shall make reasonable efforts to provide Authorized Users with notice of any applicable Intellectual Property or other rights applicable to the Licensed Materials. Licensee shall make reasonable efforts to prevent the infringement of any Intellectual Property or other rights of the Licensor in the Licensed Materials. Licensee shall promptly notify Licensor of any infringement that comes

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IX. TERM

This Agreement shall continue in effect for one year commencing on the Effective Date.

X. RENEWAL

This agreement shall be renewable at the end of the current term for a successive one year term unless either party gives written notice of its intention not to renew thirty (30) days before expiration of the current term.

XI. EARLY TERMINATION

In the event that either party believes that the other materially has breached any obligations under this Agreement, or if Licensor believes that Licensee has exceeded the scope of the License, such party shall so notify the breaching party in writing. The breaching party shall have sixty (60) days from the receipt of notice to cure the alleged breach and to notify the non-breaching party in writing that cure has been effected. If the breach is not cured within the sixty (60) day period, the non-breaching party shall have the right to terminate the Agreement without further notice.

Upon Termination of this Agreement for cause online access to the Licensed Materials by Licensee and Authorized Users shall be terminated. Except in the case of termination due to Licensee's breach of this Agreement, Authorized copies of Licensed Materials may be retained by Licensee or Authorized Users and used subject to the terms of this Agreement.

In the event of termination for cause by Licensee due to Licensor's breach, Licensee shall be entitled to a refund of any fees or pro-rata portion thereof paid by Licensee for any remaining period of the Agreement from the date of termination.

XII. PERPETUAL LICENSE

For Licensed Materials listed in Appendix A: I Perpetual Rights Apply ONLY: Licensor hereby grants to Licensee a nonexclusive, royalty-free, perpetual license to use any Licensed Materials listed in Appendix A: I Perpetual Rights Apply that were accessible during the term of this Agreement. Such use shall be in accordance with the provisions of this Agreement, which provisions shall survive any termination of this Agreement. The means by which Licensee shall have access to such Licensed Materials shall be in a manner and form substantially equivalent to the means by which access is provided under this Agreement.

XIII. WARRANTIES

Subject to the Limitations set forth elsewhere in this Agreement:

Licensor warrants that it has the right to license the rights granted under this Agreement to use Licensed Materials, that it has obtained any and all necessary permissions from third parties to license the Licensed Materials, and that use of the Licensed Materials by Authorized Users in accordance with the terms of this Agreement shall not infringe the copyright of any third party.

Licensor warrants that the physical medium, if any, on which the Licensed Materials is provided to Licensee will be free from defects for a period of ninety (90) days from delivery.

XIV. LIMITATIONS ON WARRANTIES

Notwithstanding anything else in this Agreement:

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XV. INDEMNITIES

The Licensor shall indemnify and hold Licensee and Authorized Users harmless for any losses, claims, damages, awards, penalties, or injuries incurred, including reasonable attorney's fees, which arise from any claim by any third party of an alleged infringement of copyright or any other property right arising out of the use of the Licensed Materials by the Licensee or any Authorized User. Licensor shall not be liable hereunder if (i) any infringement or violation claim is based solely upon the use of the Licensed Materials in combination with programs, equipment or devices not of Licensor's origin, design or selection; or (ii) any infringement or violation claim arises out of your use of the Licensed Materials 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. NO LIMITATION OF LIABILITY SET FORTH ELSEWHERE IN THIS AGREEMENT IS APPLICABLE TO THIS INDEMNIFICATION.

Each party shall indemnify and hold the other harmless for any losses, claims, damages, awards, penalties, or injuries incurred, including reasonable attorney's fees, which arise from any alleged breach of such indemnifying party's representations and warranties made under this Agreement, provided that the indemnifying party is promptly notified of any such claims.

The indemnifying party shall have the right to defend such claims at its own expense. The other party shall provide assistance in investigating and defending such claims as the indemnifying party may reasonably request and have the right to participate in the defense at its own expense.

XVI. ASSIGNMENT AND TRANSFER

Neither party may assign, directly or indirectly, all or part of its rights or obligations under this Agreement without the prior written consent of the other party, which consent shall not be unreasonably withheld or delayed.

XVII. GOVERNING LAW

This Agreement shall be interpreted and construed according to, and governed by, the laws of California, excluding any such laws that might direct the application of the laws of another jurisdiction. The federal or state courts located in California shall have jurisdiction to hear any dispute under this Agreement.

XVIII. DISPUTE RESOLUTION

In the event of any dispute or controversy arising out of or relating to this Agreement, the parties agree to exercise their best efforts to resolve the dispute as soon as possible. The parties shall, without delay, continue to perform their respective obligations under this Agreement which are not affected by the dispute.

Mediation. In the event that the parties cannot by exercise of their best efforts resolve the dispute, they shall submit the dispute to Mediation. The parties shall, without delay, continue to perform their respective obligations under this Agreement which are not affected by the dispute. The invoking party shall give to the other party written notice of its decision to do so, including a description of the issues subject to the dispute and a proposed resolution thereof. Designated representatives of both parties shall attempt to resolve the dispute within five (5) working days after such notice. If those designated representatives cannot resolve the dispute, the parties shall meet at a mutually agreeable location and describe the dispute and their respective proposals for resolution to responsible executives of the disputing parties, who shall act in good faith to resolve the dispute. If the dispute is not resolved within thirty (30) calendar days after such meeting, either party may seek alternative ways to resolve said dispute as allowed under California law.

XIX. 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, strikes or other work stoppages, and/or any other cause beyond the reasonable control of the party whose performance is affected.

XX. ENTIRE AGREEMENT

This Agreement constitutes the entire agreement of the parties and supersedes all prior communications, understandings and agreements relating to the subject matter hereof, whether oral or written.

XXI. AMENDMENT

No modification or claimed waiver of any provision of this Agreement shall be valid except by written amendment signed by authorized representatives of Licensor and Licensee.

XXII. SEVERABILITY

If any provision or provisions of this Agreement shall be held to be invalid, illegal, unenforceable or in conflict with the law of any jurisdiction, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

XXIII. WAIVER OF CONTRACTUAL RIGHT

Waiver of any provision herein shall not be deemed a waiver of any other provision herein, nor shall waiver of any breach of this Agreement be construed as a continuing waiver of other breaches of the same or other provisions of this Agreement.

XXIV. NOTICES

All notices given pursuant to this Agreement shall be in writing and may be hand delivered, or shall be deemed received within five (5) business days after mailing if sent by registered or certified mail, return receipt requested. If any notice is sent by facsimile, confirmation copies must be sent by U.S. Mail or hand delivery to the specified address. Either party may from time to time change its Notice Address by written notice to the other party.

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General Counsel of ProQuest LLC
789 E. Eisenhower Parkway
Ann Arbor
Michigan
USA
48106-1346

If to Licensee:

University of California Office of the President
California Digital Library
415 20th Street, 4th Floor
Oakland, CA 94612
USA
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XXVII. Funding Contingency (multi-year agreements)

The University of California reasonably believes that funds can be obtained sufficient to pay all monies due during the term of this Agreement and hereby covenants that it will do all things lawfully within its power to obtain, maintain, and properly request and pursue funds from which payments for this transaction may be made, including making provisions for such payments to the extent necessary in each budget submitted for the purpose of obtaining funding, using its bona fide best efforts to have such portion of the budget approved and exhausting all available administrative review and appeals in the event such portion of the budget is not approved. It is the University of California's intent to make payments for the full term of this transaction. The University of California represents that the use of the materials under this transaction are essential to its proper, efficient and economic operation.

In the event no funds or insufficient funds are appropriated and budgeted and are not otherwise legally available by any means whatsoever in any fiscal period for payments due under this transaction, the University of California will immediately notify Licensor of such occurrence and this transaction shall terminate on the last day of the subscription period for which payment has been made without penalty of expense to the University of California of any kind whatsoever, except as to the portions of payments herein agreed for which funds shall have been appropriated and budgeted or otherwise available. In the event of such termination the University of California shall maintain its perpetual right to materials licensed under the subscription periods for which it has fully paid.

Additional Provisions Requested by ProQuest:

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IN WITNESS WHEREOF, the parties have executed this Agreement by their respective, duly authorized representatives as of the date first above written.

LICENSOR:

BY: [REDACTED] DATE: 3/21/11
Signature of Authorized Signatory of Publisher

Print Name: [REDACTED]
Title: Sr. Manager, Global Customer Support
Address: 789 Eisenhower Pkwy, Ann Arbor MI
Telephone No.: [REDACTED]
E-mail: [REDACTED]

[REDACTED]
Approved by Legal

LICENSEE:

BY: [REDACTED] DATE: 3.16.11
Signature of Authorized Signatory of Licensee

Print Name: [REDACTED]
Title: Executive Director
Address: 415 20th Street, 4th Floor, Oakland, CA 94612
Telephone No.: [REDACTED]
E-mail: [REDACTED]

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Appendix B

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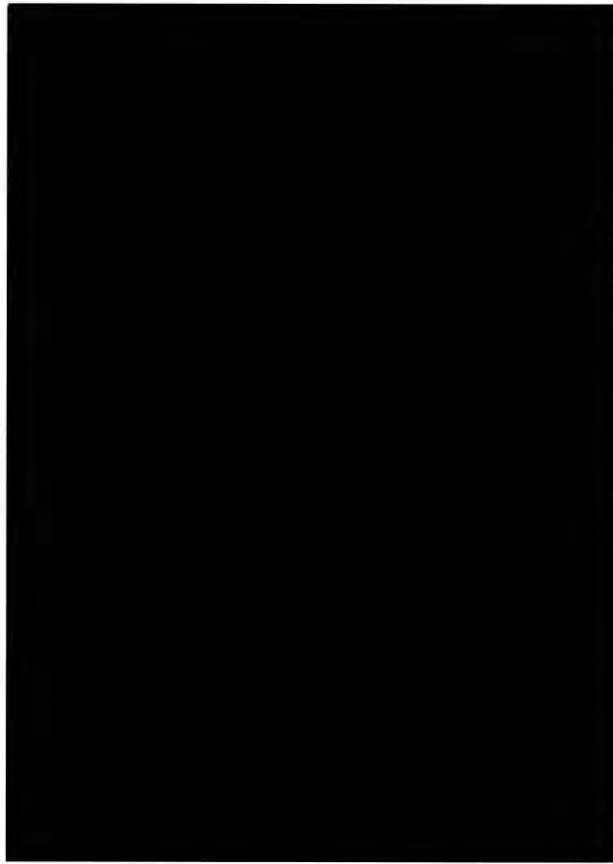


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N)

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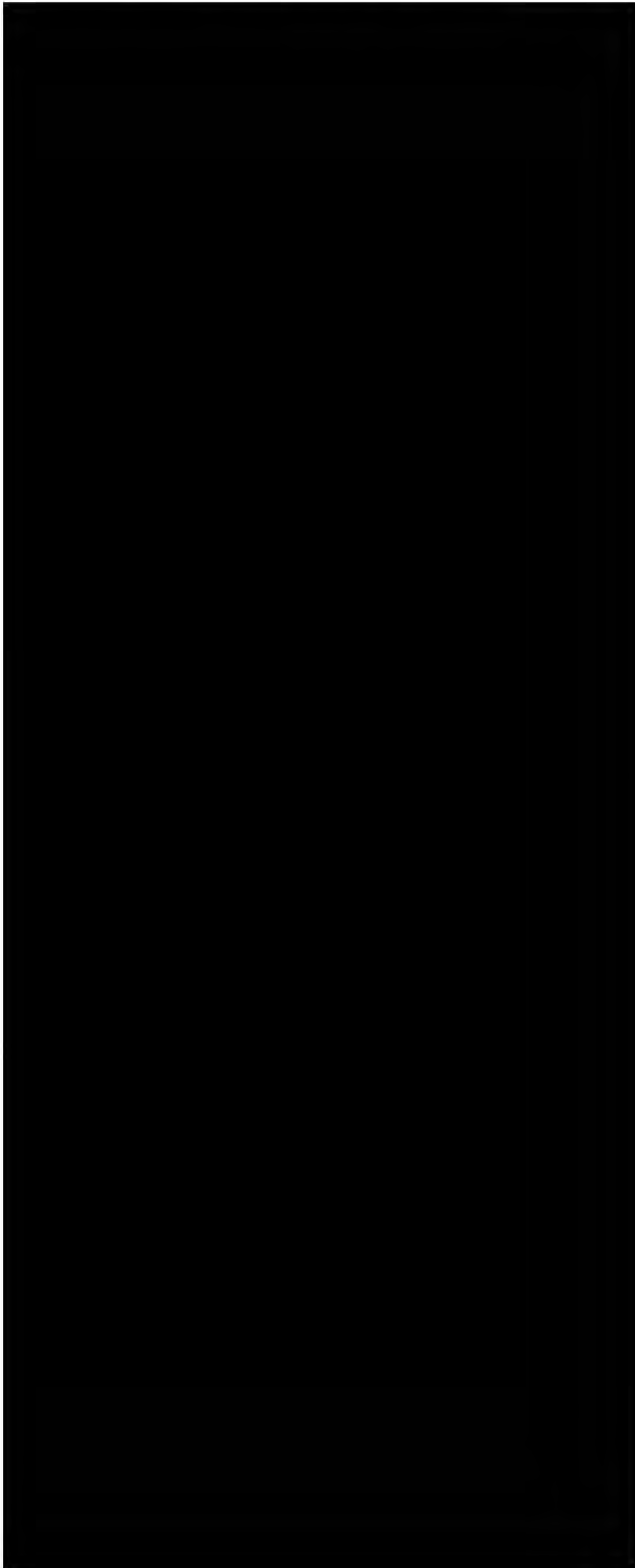
Santa Barbara (UCSB)

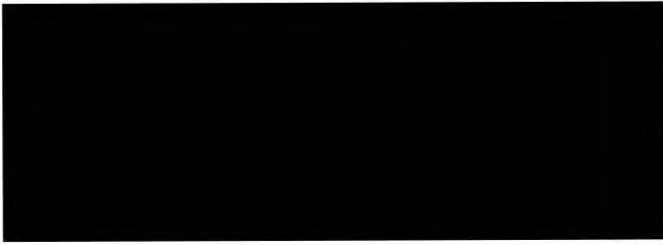


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